

LAND USE  
BOARD OF APPEALS

BEFORE THE LAND USE BOARD OF APPEALS  
Oct 21 2 09 PM '80

OF THE STATE OF OREGON

MARK J. LAUDAHL and MILDRED )  
A. LAUDAHL, )

Petitioners, )

vs. )

POLK COUNTY, VALLEY & SILETZ )  
RAILROAD, CHARLES PHILLIPS )  
and JOANNE PHLLIPS, )

Respondents. )

LUBA NO. 80-089

FINAL OPINION  
AND ORDER

Appeal from Polk County.

Mark Irick  
Hayter, Shetterly & Weiser  
P.O. Box 105  
Dallas, OR 97338

Dennis McCaffrey  
Polk County Counsel  
Polk County Courthouse  
Dallas, OR 97338

McArthur & Jennings, P.C.  
Attorneys at Law  
110 North Atwater St.  
P.O. Box 368  
Monmouth, OR 97361

COX, Referee; REYNOLDS, Chief Referee; BAGG, Referee;  
participated in the decision.

Remanded.

10/21/80

You are entitled to judicial review of this Order.  
Judicial review is governed by the provisions of Oregon Laws  
1979, ch 772, sec 6(a).

1 COX, Referee.

2 This matter is before the Board on motion of Respondents  
3 Valley & Siletz Railroad, Charles and Joanne Phillips, with  
4 Respondent Polk County's concurrence therein. Respondents  
5 Valley & Siletz Railroad and Phillips appeared by and through  
6 their attorneys, McArthur & Jennings, and Respondent Polk  
7 County appeared by and through its Polk County Counsel, Dennis  
8 McCaffrey. Petitioners, appearing by and through their  
9 attorney, Mark Irick of the firm of Hayter, Shetterly and  
10 Weiser, opposed the motion.

11 Respondents move this Board for an order of remand on the  
12 grounds that they admit the findings of fact in the subject  
13 case are inadequate. Petitioners oppose the motion requesting  
14 that this Board reverse rather than remand the decision.  
15 Petitioners argue that a reversal would have the effect of  
16 barring respondents from bringing the matter before Polk County  
17 again within one year based on a Polk County ordinance  
18 provision. This Board does not have a copy of the Polk County  
19 provision and does not comment in any way on the accuracy of  
20 petitioners' contention.

21 It is the Board's decision that based upon Respondent's  
22 motion and admission of inadequate findings, the matter shall  
23 be remanded to Polk County pursuant to Oregon Laws 1979, ch  
24 772, sec 5(4)(B) for failure to follow the procedure applicable  
25 to the matter before it in a manner that prejudiced the  
26 substantial rights of the petitioner. Petitioners have a right

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CERTIFICATE OF MAILING

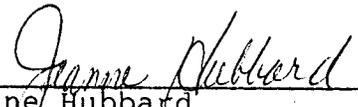
I hereby certify that I served the foregoing Final Opinion and Order for LUBA No. 80-089, on October 21, 1980, by mailing to said parties or their attorney a true copy thereof contained in a sealed envelope with postage prepaid addressed to said parties or their attorney as follows:

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Dated this 21st day of October, 1980.

  
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Jeanne Hubbard  
Secretary to the Board

1 to adequate and accurate findings of fact explaining the basis  
2 for respondents action. Fasano v. Washington County, 264 Or  
3 574, 507 P2d 23 (1973); Heilman v. City of Roseburg, 39 Or App  
4 71, 591 P2d 390 (1979).

5 Adequate findings of fact are preliminary to this Board's  
6 review of quasi-judicial decisions. When, as here, those  
7 findings are admittedly inadequate, this Board has no reason to  
8 look further into the matter. Remand is the proper manner to  
9 deal with such a situation.

10 As of the date of this order, the action by Respondent Polk  
11 County shall have no effect and the county shall take further  
12 actions as it deems necessary consistent with this order.

13 Petitioners' deposit for costs shall be returned to  
14 petitioners, and Respondents shall reimburse Petitioners for  
15 their filing fee of \$50.00. The said \$50.00 filing fee  
16 reimbursement shall be divided between the Respondents in a  
17 manner satisfactory to them.

18 Remanded.  
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