

BEFORE THE LAND USE BOARD OF APPEALS
OF THE STATE OF OREGON

FEB 18 3 54 PM '81

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2
3 MAS FUJIMOTO, DELMER EISERT,)
ROBERT and AGNES GUY,)
4)
Petitioners,)
5)
vs.)
6)
CITY OF HAPPY VALLEY,)
7 a municipal corporation,)
8)
Respondent.)

LUBA No. 80-111

FINAL OPINION
AND ORDER

9
10 Appeal from City of Happy Valley.

11 Terry D. Morgan, Portland, filed the Petition for Review
and argued the cause for Petitioners.

12 James Carskadon, Jr., Milwaukie, filed the brief and argued
13 the cause for Respondent. With him on the brief were Redman,
Carskadon & Knauss.

14 REYNOLDS, Chief Referee; COX, Referee; BAGG, Referee;
15 participated in this decision.

16 REVERSED and REMANDED

2/18/81

17
18 You are entitled to judicial review of this Order.
19 Judicial review is governed by the provisions of Oregon Laws
1979, ch 772, sec 6(a).

1 REYNOLDS, Chief Referee.

2 NATURE OF THE PROCEEDINGS

3 Petitioners challenge Happy Valley Ordinance No. 75
4 adopting a comprehensive plan for the city and Happy Valley
5 Ordinance No. 76 adopting a land development code for the
6 city.

7 ASSIGNMENTS OF ERROR

8 Petitioners challenge the validity of the comprehensive
9 plan and land development code on the basis of alleged
10 violations of Goals 2, 3, 9, 10, 11, 12 and 14 and Article I,
11 Section 20 of the Oregon Constitution. Petitioners assignments
12 of error are all directed at the city's average density of 2.46
13 units per net acre (UNA) which petitioners believe is too low
14 to comply with the requirements of Metro's Land Use Framework
15 Element (the Metro urban growth boundary), a violation of Goal
16 2, and the requirements of Goals 10 and 14.

17 STATEMENT OF FACTS

18 The City of Happy Valley consists of some 1440 acres,
19 approximately 300 of which are presently developed. The city
20 lies in the northwest urban area of Clackamas County inside the
21 regional urban growth boundary. Except where it touches the
22 City of Portland to the north, Happy Valley is surrounded on
23 all sides by unincorporated urban or urbanizable lands. It
24 lies in close proximity to Highway I-205 and to the planned
25 industrial and commercial centers in Clackamas County.

26 Over 98% of the dwellings are single-family units. The

1 city has approximately 1450 residents. Seventy-five percent of
2 the heads of household are employed in white-collar positions,
3 with median household incomes exceeding \$30,000. As there are
4 no existing commercial or industrial uses in the city, all of
5 the city's employed residents commute, mostly to Portland or
6 eastside suburban areas.

7 Eleven hundred sixty-four of the city's 1440 acres are
8 presently undeveloped. Three hundred thirty-five of these
9 acres are undevelopable due to excessive slopes, flood hazards,
10 or drainage problems. Of the balance, 602 acres have been set
11 aside in the comprehensive plan and designated for residential
12 use, 200 acres for roadways and 27 acres for institutional
13 uses. The plan assumes an average net residential density for
14 the city of 2.46 units per acre for new development. This
15 average density coupled with the city's assumption of a
16 household size of 3.3 persons results in a projected maximum
17 population for the city of approximately 6,400 people.

18 In compliance with the comprehensive plan, the development
19 code identifies 5 residential districts providing for housing
20 densities from a low of 1 unit per 5 acres to a high of 6 units
21 per acre. While mobile homes situated on an individual lot are
22 permitted as an outright use in all but the high density
23 residential (HDR) district (6 units per acre) mobile home parks
24 are not permitted as an outright use in any of the districts.
25 Duplexes and multi-family housing are permitted in the HDR
26 district, but the resulting density cannot exceed 6 units per

1 acre.

2 The development code contains provisions for planned unit
3 development and permits clustering of units. However,
4 clustering may not result in densities greater than those
5 permitted in the underlying district.

6 Petitioner Fujimoto owns approximately 80 acres of land,
7 petitioner Eisert owns approximately 40 acres and petitioners
8 Robert and Agnes Guy own approximately 30 acres of land all
9 within the city. All of petitioners' land is presently
10 undeveloped and petitioners seek to develop their property for
11 residential use. Petitioners sought development densities
12 commensurate with those assumed in the UGB findings during the
13 comprehensive planning process before the city. The city's
14 comprehensive plan and development code as adopted, however,
15 designate petitioners' property for an average density of 3 UNA.

16 OPINION

17 Statewide planning Goal 2 provides, in pertinent part:

18 "[C]ity, county, state and federal agency and
19 special district plans and actions related to land use
20 shall be consistent with the comprehensive plans of
cities and counties and regional plans adopted under
ORS 197.705 through 197.795."

21 The Metropolitan Land Use Framework Element, of which the
22 Metropolitan Urban Growth Boundary is but a part, was adopted
23 by CRAG, Metro's predecessor, in November, 1978, pursuant to
24 the authority vested in CRAG under ORS 197.705 through
25 197.795. Metro assumed, in somewhat modified form, the
26 planning duties, powers and responsibilities of CRAG in the

1 Metro area after CRAG ceased to exist on January 1, 1979.
2 Although Metro does not derive its powers from ORS 197.705
3 through 197.795, as that section has been repealed, we believe
4 compliance with the Metro Land Use Framework Element is
5 required by virtue of the above quoted section of Goal 2.
6 See: City of Sandy v. Clackamas County, LCDC 79-029 (1979).
7 The Metro Urban Growth Boundary (UGB) is a portion, at least,
8 of such a regional comprehensive plan with which compliance
9 under Goal 2 is required.

10 This conclusion is not only supported by a common sense
11 reading of Goal 2 but is also supported by ORS 268.390. ORS
12 268.390 allows Metro to force jurisdictions within the Metro
13 region to make comprehensive plans comply with the Metro UGB.
14 If compliance with the Metro UGB were not required, obviously
15 Metro could not force compliance.

16 The Metro UGB consists of more than just a line on a map.
17 The Metro UGB contains some thirty thousand acres more
18 buildable land than will be needed by the year 2000. LCDC
19 acknowledged the urban growth boundary, however, with the
20 understanding that Metro would ensure that effective growth
21 control mechanisms would be in place to prevent premature
22 conversion of urbanizable lands. See: Thompson v. Metro
23 Service District, ___ Or LUBA ___ (LUBA No. 80-081, 1980).

24 Metro's findings in support of its UGB assumed local
25 jurisdictions would provide for a new construction
26 single-family/multi-family (SF/MF) ratio of 50/50 with average

1 densities for new development at 4.04 units per net acre (UNA)
2 for new single-family development and 13.26 UNA for
3 multi-family development. These assumptions resulted in the
4 ultimate standard that new development within the Metro UGB
5 region would achieve a 6.23 UNA overall. As part of its review
6 of the Metro UGB for acknowledgement, LCDC concluded Metro's
7 assumptions concerning overall density were not necessarily
8 adequate to meet Goal 10 although they were adequate for
9 meeting the purposes of Goal 14:

10 "Falling short of regional UGB housing guidelines
11 may, in certain limited circumstances, be acceptable.
12 However, merely zoning for these minimal regional
13 densities and mix assumptions does not necessarily
14 guarantee compliance with Goal 10. Generally speaking
15 to comply with Goal 10 local zoning must provide for
16 densities considerably in excess of UGB densities
17 assumptions." Adopted DLCD acknowledgement of
18 compliance report on Metro UGB, December 13, 1979.

19 In its acknowledgement of the Metro UGB, LCDC conditioned
20 acknowledgement upon Metro's assurance that it would provide
21 effective growth control mechanisms and upon Metro's implied
22 assurance that development within the Metro UGB would occur at
23 least an average overall density of 6 plus units per net acre
24 and greater if and where necessary to meet regional housing
25 needs. Thus, the Metro UGB not only delineates the area within
26 which urban growth is to occur in the Metro region, it also
27 sets forth an average density requirement which must be met by
28 jurisdictions with planning and zoning responsibilities within
29 the confines of the Metro UGB.

30 Because the Metro UGB is a regional plan within the meaning

1 of Goal 2 and because the 6 units per net acre density standard
2 is a basic requirement for development on an overall basis
3 within the Metro UGB, each jurisdiction within Metro must plan
4 so as to achieve this minimum overall density figure in order
5 to avoid a prima facie violation of statewide planning Goal 2.
6 With respect to Happy Valley, it is clear that Happy Valley has
7 not planned for an overall new development density of 6 units
8 per net acre. In fact, Happy Valley's density for new
9 development is less than half that required by the Metro UGB.
10 In the absence of some compelling demonstration by Happy Valley
11 as to why it has not provided for a new development density of
12 6 plus units per net acre, Happy Valley's comprehensive plan
13 cannot be held to be consistent with Metro's UGB within the
14 meaning of Goal 2.

15 Happy Valley has attempted to justify its 2 plus units per
16 net acre density on the basis of geographic constraints. Happy
17 Valley contends that due to excessive slopes, low soil
18 permeability, a lack of public transportation, limited
19 vehicular access into the valley and the lack of sewer
20 facilities, development at a greater density is impossible or
21 at least inappropriate. The city has been unable, however, to
22 point to anything in the plan that supports the city's
23 contention concerning development on buildable lands. The city
24 has approximately 600 acres of unconstrained land (land
25 suitable for development). The maximum density permitted on
26 any of these lands is 6 units per net acre. While it may very

1 well be that given certain geographical constraints and other
2 limitations the City of Happy Valley can only support a
3 population of around 6,000 people by the year 2000, it does not
4 necessarily follow that the additional 4500 people who will
5 move to Happy Valley in the next twenty years must be spread
6 out over the city's entire 600 acres of buildable land. It may
7 well be that the city will have considerable buildable land
8 undeveloped by the year 2000 if it complies with Metro's 6
9 units per net acre overall density requirement for all new
10 development. That Happy Valley would have such a surplus is
11 probably as LCDC intended in acknowledging the Metro UGB,
12 inasmuch as regionwide there were to be some 30,000 acres of
13 undeveloped, buildable land remaining by the year 2000.

14 Happy Valley has not demonstrated that the land which is
15 suitable for development cannot support densities which would
16 enable Happy Valley to meet the overall 6 units per net acre
17 average. Happy Valley has not demonstrated any justification
18 for deviation from the density standard contained in the Metro
19 UGB. Accordingly, Happy Valley's comprehensive plan violates
20 statewide planning Goal 2.

21 We do not address petitioner's remaining assignments of
22 error which primarily concern alleged violations of statewide
23 planning Goal 10 and Article I, section 20 of the Oregon
24 Constitution. It may be, as LCDC implied in its
25 acknowledgement of the Metro UGB, that Goal 10 will require at
26 least some jurisdictions within Metro to adopt implementing

1 zoning ordinances providing for development in excess of the 6
2 units per net acre standard in the Metro UGB. It is not
3 necessary to address Goal 10, however, since Happy Valley has
4 clearly not even met the 6 units per net acre minimum standard
5 in the UGB. Concerning petitioner's constitutional argument,
6 we think that it is better policy not to address such issues
7 unless necessary in the disposition of an appeal. Reaching
8 petitioner's constitutional question is not necessary in the
9 disposition of this appeal.

10 For the foregoing reasons, Happy Valley's comprehensive
11 plan and development code failed to comply with statewide
12 planning Goal 2 because the city has failed to demonstrate why
13 it cannot achieve an overall average density of at least 6
14 units per net acre for new development as required by the
15 acknowledged Metro UGB. This matter is reversed and remanded
16 to the City of Happy Valley for further proceedings consistent
17 with this opinion.

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