

LAND USE  
BOARD OF APPEALS

MAR 25 1 20 PM '81

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

3	CITY OF ASHLAND,	)	
		)	
4	Petitioner,	)	LUBA NO. 80-124
		)	
5	v.	)	
		)	
6	JACKSON COUNTY,	)	FINAL OPINION
		)	AND ORDER
		)	
7	Respondent.	)	

8 Appeal from Jackson County.

9 Robert E. Stacey, Jr., Portland, filed a brief and argued  
10 the cause on behalf of Petitioner.

11 John L. DuBay, Medford, filed a brief and argued the cause  
12 on behalf of Respondent.

13 Bagg, Referee; Reynolds, Chief Referee; Cox, Referee;  
14 participated in the decision.

15 REMANDED.

3/25/81

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

2 STATEMENT OF THE CASE

3 The City of Ashland challenges those portions of Ordinance  
4 80-17 and Ordinance 80-18 which designate some 56 acres as  
5 "Interchange Commercial." Ordinance 80-17 enacts the Jackson  
6 County Comprehensive Plan, and Ordinance 80-17 adopts the  
7 zoning ordinance and the official maps. Petitioner challenges  
8 the designations for an alleged failure to comply with LCDC  
9 Goal 3, Agricultural Lands; Goal 2 (exceptions); and Goal 14,  
10 Urbanization.

11 STANDING

12 Standing of petitioners is not challenged.

13 FACTS

14 The subject properties lie north of the City of Ashland in  
15 an area called the "North Ashland Interchange." The properties  
16 are outside the city's urban growth boundary, and are in the  
17 vicinity of the intersection of Interstate 5 and Valley View  
18 Road. The property is composed of predominantly Class IV soils  
19 which if irrigated would bear a Class III designation. The  
20 lands are undeveloped and some are in farm use.

21 The city and the county call this an "area of mutual  
22 concern." That label signifies an agreement by the city and  
23 county to coordinate their land use plans and decision-making  
24 over the property. The city has objected to the  
25 "Interchange-Commercial" designation the county has chosen, and  
26 the record includes the objections by the city. The city

1 apparently believes the land should be left with a rural  
2 designation until necessary for development. Should that time  
3 arise, the city believes the land should be included within the  
4 city's urban growth boundary and not be allowed to develop  
5 outside the urban growth boundary. (Record 60).

6 Under the challenged ordinances, the lands bear the  
7 designation "IC" (Interchange-Commercial) and "IC/RR-5"  
8 (Interchange-Commercial plan designation with rural residential  
9 zoning of five acres). The latter designation requires a zone  
10 change before any commercial development may occur. That zone  
11 change process includes the necessity of findings showing  
12 compliance with applicable statewide planning goals and, of  
13 course, Jackson County plan policies.

14 An exception to LCDC Goal 3 was taken. There is an  
15 exceptions document in the record which describes generally the  
16 reasons for taking an exception and the criteria used. The  
17 exceptions document lists two reasons for taking an exception:

18 [t]he agricultural land is developed or irrevocably  
19 committed to urban or rural uses; or

20 "the agricultural land is needed for future urban or  
21 rural nonfarm use." Exceptions to Agricultural and  
Forest Goals, Exhibit B, August 15, 1980.

22 The county lists "types" of exceptions, that amount to  
23 justification for placing specific properties within an  
24 exception area. The types are as follows:

25 The land is committed to other uses.

26 The land is predominantly Class III or IV soils and

1 not presently in farm use or assessed as farmland  
2 (under the provisions of ORS 308.345).

3 The land is in parcel sizes of less than 10 acres or  
4 in blocks of land of less than 50 acres.

5 The maps adopted by the county include a coding system  
6 which labels each piece of property with a number which when  
7 compared to a key will furnish a reason for the exception. For  
8 example, a property the county believed committed to nonfarm use  
9 will be labeled with the number "2" which corresponds to a  
10 finding of "built or committed" on the key section of the  
11 map.<sup>1</sup>

#### 12 ASSIGNMENT OF ERROR NO. 1

13 Petitioner alleges the "Interchange-Commercial"  
14 designations violate Goal 3 and the requirements for exceptions  
15 contained in Goal 2. Petitioner argues the exceptions document  
16 included in the comprehensive plan does not supply sufficient  
17 reasons to justify an exception. An exception requires very  
18 site specific and use specific determinations "supported by  
19 facts showing that the land is physically developed with, or  
20 committed to, a use not permitted by the goal, or that such a  
21 use is needed at the specific site in question." Petitioner's  
22 Brief at 6. Since the exceptions document does not contain the  
23 needed information, petitioner argues one must look at the map  
24 to see whether an exception is justified.

25 Petitioner finds fault with the map key system as again  
26 failing to show that compelling reasons and facts exist for  
taking an exception for individual pieces of property. The map

1 simply makes conclusions as to why property should be excluded  
2 from the rigors of Goal 3 without giving any facts explaining  
3 those conclusions.

4 The Board must agree with petitioners. LCDC Goal 2 is very  
5 specific in its requirement that

6 "[i]f the exception to the goal is adopted, then the  
7 compelling reasons and facts for that conclusion shall  
8 be completely set forth in the plan and shall include:

9 "(a) Why these other uses should be provided for;

10 "(b) What alternative locations within the area  
11 could be used for the proposed uses;

12 "(c) What are the long term environmental,  
13 economic, social and energy consequences to  
14 the locality, the region or the state from  
15 not applying the goal or permitting the  
16 alternative use;

17 "(d) A finding that the proposed uses will be  
18 compatible with other adjacent uses."  
19 (Emphasis added).

20 The county believes an exceptions claim is justified for  
21 any land (1) committed to other uses; or (2) not presently in  
22 farm use or assessed as farmland; or (3) is a parcel of less  
23 than 10 acres; or in blocks of less than "50 contiguous  
24 acres." There is no clear explanation of how factors 2 and 3  
25 make exclusive farm use designations impossible. We find no  
26 facts or explanation in the record suggesting, for example, how  
it is in Jackson County that lands not assessed for farm use  
under ORS 308.345 are unsuitable for EFU zoning.<sup>2</sup> Certainly,  
the existence of one or more of these factors (factor 2 or 3)  
does not "compel" one to the conclusion that land is

1 "committed" to other than agricultural use. See Wright v.  
2 Marion County, 1 Or LUBA 164, 173 (1980).<sup>3</sup>

3 ASSIGNMENT OF ERROR NO. 2

4 Assignment of error no. 2 alleges the "IC" designation  
5 violates LCDC Goal 14, Urbanization. Petitioner points to  
6 LCDC's final order in the City of Sandy and Metro v. Clackamas  
7 County and Carmel Estates, Inc., LCDC No. 79-029 in which the  
8 commission stated it was a violation of Goal 14 to plan a large  
9 scale commercial facility outside an urban growth boundary.  
10 Petitioner says the City of Ashland advised Jackson County that  
11 the Interchange Commercial designation would accommodate more  
12 commercial demand than could be generated by the population  
13 existing outside the urban growth boundary. Areas within the  
14 city's urban growth boundary designated to support such  
15 commercial activity exist at the South Ashland Interchange. It  
16 is within the urban growth boundary that this commercial growth  
17 should occur, argues petitioner. The city claims growth within  
18 the urban growth boundary would be stifled by a development to  
19 the north and outside the established Ashland urban growth  
20 boundary.

21 Respondents claim the LCDC decision in the Sandy case to be  
22 inapplicable. The Sandy case involved a specific proposal for  
23 a 90,000 square foot shopping center. Characterization of this  
24 use as "urban" was proper, and such uses are appropriate within  
25 cities under Goal 14. Here, there is no specific plan of  
26 development, and before any development can take place on much

1 of the property, there must be a zone change from RR-5 to  
2 Interchange Commercial.<sup>4</sup>

3 We believe the county's reliance on a zone change before  
4 development to protect the Ashland urban growth boundary and to  
5 insure compliance with Goal 14 to be insufficient. The  
6 question of whether a particular use will be incompatible with  
7 Goal 14 is most properly answered at the time the plan  
8 designation is made. The IC designation is so broad it would  
9 allow intensive uses that Goal 14 seeks to keep within  
10 established urban growth boundaries.<sup>5</sup>

11 "Proof that rural development will injure a city is  
12 proof of a Goal 14 violation. Cities and counties are  
13 not in competition for urban developments. Cities are  
14 the housing, employment, shopping, and service centers  
15 and providers. Goal 14; Goal 11. The whole point of  
16 Goal 14 is that rural lands are not available to  
satisfy the state's housing, shopping, non-resource  
employment, and other non-farm and non-forest related  
needs." Metro v. Clackamas County and Carmel Estates,  
Inc., LCDC No. 79-029. Report and Recommendation at  
13.

17 It is our view that designation of a large area outside an  
18 urban growth boundary for urban-like or intensive uses is a  
19 violation of Goal 14. Petitioner's second assignment of error  
20 is sustained.

21 CONCLUSION

22 Jackson County Ordinances 80-17 and 80-18 are remanded for  
23 proceedings consistent with this opinion.

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FOOTNOTE

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3 1  
4 Apparently by clerical oversight, three small parcels on  
5 the interchange frontage road and Valley View south are given  
6 the "IC" designation but not included in the map showing the  
7 exception areas.

8  
9 2  
10 The exceptions paper and the report of the "Jackson County  
11 Agricultural Land Use Committee" included in the record contain  
12 facts about farming in Jackson County. The report does not,  
13 however, tie the discussion of farming in Jackson County to  
14 particular properties but only to kinds and sizes of  
15 properties. The facts needed to support an exception must be  
16 particular to the property and must, therefore, "compel" a  
17 conclusion that Goal 3 cannot be applied. General statements  
18 absent lands in Jackson County do not compel conclusions about  
19 individual parcels.

20 3  
21 It is petitioner's conclusion that the effect of the  
22 exceptions document is to attempt to redefine LCDC Goal 3.  
23 Apparently, petitioner views the exceptions document to be so  
24 broad that the exception is not to the application of Goal 3 to  
25 individual situations, but to the definition of the goal  
26 itself. In other words, new standares for what lands go into  
EFU zones have been made by the county. The LCDC definition of  
agricultural land as land bearing class I-IV soils has been  
replaced. We do not believe it is necessary to address this  
view.

4  
18 There are three parcels having an IC designation on which  
19 there is existing development, however.

5  
20 The Comprehensive Plan Map Designations describes  
21 Interchange Commercial as follows:

22 "This category reflects strictly tourist oriented  
23 businesses and services. Interchange commercial uses  
24 typically include automobile service stations,  
25 motels/hotels/eating or drinking establishments,  
26 limited personal services, gift shops, and truck stop  
facilities." (Record, Map Designations, p. 38.)

25 This designation is broad enough to include a large convention  
26 facility. See also Jackson County Zoning Ordinance, pp. 82,  
"Interchange Commercial."

BEFORE THE  
LAND CONSERVATION AND DEVELOPMENT COMMISSION  
OF THE STATE OF OREGON

LAND USE  
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ASHLAND,

Petitioner(s),

v.

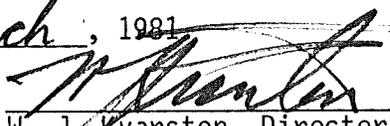
JACKSON COUNTY,

Respondent.

LUBA 80-124  
LCDC Determination

The Land Conservation and Development Commission hereby adopts  
the recommendation of the Land Use Board of Appeals in Ashland v.  
Jackson County, LUBA 80-124.

DATED THIS 24<sup>th</sup> DAY OF March, 1981

  
W. J. Kvarsten, Director  
For the Commission

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