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

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3 GERALDINE PEARSON, PAUL)
4 STEHELEY, dba, STEHELEY)
5 BROTHERS DAIRY, and)
6 CENTRAL POINT-LELAND ROAD)
7 NEIGHBORHOOD ASSOCIATION,)
8
9 Petitioners,)
10
11 vs.)
12
13 CLACKAMAS COUNTY and)
14 WALTER PARROTT,)
15
16 Respondents.)

LUBA No. 80-098

FINAL OPINION
AND ORDER

Appeal from Clackamas County.

Richard Hayden, Jr. and Thomas R. Page, Portland, filed a petition for review and argued the cause for Petitioners. With them on the brief were Stoel, Rives, Boley, Fraser and Wyse.

Scott Parker and John E. Schwab, Oregon City, filed a brief and argued the cause for Respondent Clackamas County.

Terry Morgan, Portland, filed a brief and argued the cause for Respondent Parrott.

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

REVERSED and REMANDED 08/13/81

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 REYNOLDS, Chief Referee.

2 NATURE OF THE PROCEEDINGS

3 Petitioners contest the adoption by the Clackamas County
4 Board of Commissioners of Order 80-1491 which approved a
5 subdivision application for property in rural Clackamas County
6 and waived certain requirements of Clackamas County's
7 subdivision ordinance.

8 ASSIGNMENTS OF ERROR

9 Petitioners allege that Clackamas County's approval of the
10 subdivision application violates Goals 3 and 4 because it
11 authorizes non-farm/non-forest uses of agricultural and forest
12 land. Petitioners claim that the exception taken by Clackamas
13 County to Goals 3 and 4 was inadequate. Finally, petitioners
14 allege that Clackamas County erred in waiving certain
15 provisions of its subdivision ordinance.

16 STATEMENT OF FACTS

17 Clackamas County granted approval of Intervenor-Respondent
18 Walter Parrott's application to divide a 56 acre parcel in
19 rural Clackamas County into ten residential lots, each
20 approximately 5 acres in size. This property was recently
21 included in Clackamas County's rural plan amendment (RUPA II)
22 in which Clackamas County attempted to designate this property
23 as rural and zone this property for five acre minimum lot sizes
24 (RRFF-5). That plan and zoning designation, however, was
25 invalidated by this Board in 1000 Friends of Oregon vs.
26 Clackamas County, ___ OR LUBA ___ (LUBA Nos. 80-075 and 80-076,

1 1981).

2 Intervenor-Respondent Parrott moved to intervene in the
3 case of 1000 Friends of Oregon vs. Clackamas County, supra, for
4 the sole purpose of arguing that the county's plan and zoning
5 designation in RUPA II was moot with respect to his property.
6 The motion to intervene was granted. However, the subsequent
7 motion to dismiss on the grounds of mootness was denied by the
8 Board. See 1000 Friends of Oregon vs. Clackamas County, 2 Or
9 LUBA 235, Order (denying motion to dismiss, November 18, 1980).

10 Intervenor-Respondent Parrott argued in his motion to
11 dismiss on the grounds of mootness in 1000 Friends of Oregon
12 vs. Clackamas County, supra, that the exception taken in this
13 subdivision proceeding for the specific use of the property
14 superseded the exception taken for the rural plan designation
15 and zoning of the property in the earlier RUPA II proceeding.
16 The basis for this argument was that the county in approving
17 this subdivision took an exception to Goals 3 and 4 on the
18 basis of "need" as well as determined the property was
19 committed to non-farm/non-forest uses. This action superseded
20 the earlier RUPA II exception for Parrott's property which had
21 been based solely upon a determination of commitment to
22 non-farm/non-forest uses. Consequently, according to
23 Intervenor-Respondent Parrott, the appeal as to Parrott's
24 property in the RUPA II proceeding was moot.

25 In denying the motion to dismiss, we concluded that the
26 exception taken by Clackamas County in approving the

1 subdivision application was not a proper exception within the
2 meaning of Goal 2. The exception was not taken to the
3 Clackamas County Comprehensive Plan as required in Wright v.
4 Marion County, 1 Or LUBA 201 (1980). Because the exception
5 taken by Clackamas County in approving the subdivision
6 application was not proper it did not supersede or render moot
7 the county's earlier RUPA II determination in which the county
8 concluded that Intervenor-Respondent Parrott's property was
9 committed to non-farm/non-forest uses.

10 OPINION ON THE MERITS

11 In view of the above stated facts, this Board must reverse
12 Clackamas County's approval of Intervenor-Respondent Parrott's
13 application for subdivision approval. Inasmuch as the property
14 is predominantly composed of agricultural and forest land, the
15 property must properly be determined to be built upon or
16 irrevocably committed to non-farm/non-forest uses, or a valid
17 exception to Goals 3 and 4 is required before a
18 non-farm/non-forest use of the property maybe allowed. The
19 determination of "commitment" in RUPA II was declared invalid
20 in 1000 Friends of Oregon v. Clackamas County, supra. The
21 determination of commitment as part of the subdivision
22 approval¹ is insufficient for the same reasons as the
23 commitment finding was declared invalid in 1000 Friends v.
24 Clackamas County, supra.

25 The exception based upon "need" purportedly taken by
26 Clackamas County in approving the subdivision application was

1 invalid in that the county failed to follow the process for
2 taking an exception as required by Goal 2. An exception must
3 be taken as part of the comprehensive planning process. The
4 process for amending a comprehensive plan where one is in
5 existence must be followed by the jurisdiction and the findings
6 which are adopted in support of the exception must be included
7 as part of the comprehensive plan. Wright vs. Marion County, 1
8 Or LUBA 201 (1980). An amendment to the Clackamas County
9 Comprehensive Plan was not done in the present case when
10 subdivision approval was granted.

11 Intervenor-Respondent Parrott has attempted to distinguish
12 this case from that of Wright v. Marion Marion County, supra.
13 Parrott argues that in the Wright case the county had not
14 previously determined the property was committed to
15 non-farm/non-forest use as part of its comprehensive plan
16 whereas in the present case Clackamas County had already made
17 such a determination for the Parrott property in RUPA II. We
18 fail, however, to see the significance of this distinction,
19 particularly where, as here, the commitment determination in
20 the plan is invalid. Goal 2 requires the "compelling reasons
21 and facts" in support of an exception to be set forth in the
22 comprehensive plan. This simply did not occur in this case.²

23 Accordingly, Clackamas County's approval of
24 Intervenor-Respondent Parrott's application for a subdivision
25 is reversed and this matter is remanded to the county for
26 further proceedings consistent with this opinion.

FOOTNOTES

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1 The "commitment" finding is as follows:

"The subject property also qualifies as land which is already committed to rural use. The site is unsuitable for commercial agricultural or forestry production. The land is in proximity to Oregon City, adjacent to a major thoroughfare, and surrounded by primarily rural uses. The parcel size is significantly smaller and the density is significantly larger than the adjoining agricultural district. The site is characterized by soils and slope conditions which separate it from the adjoining agricultural lands and which serve as a natural barrier between rural and agricultural districts."

2 In the present case, Intervenor-Respondent Parrott could have, as part of his subdivision application, requested that the comprehensive plan designation for his property be amended so as to incorporate an exception based upon findings relating to need for the subdivision. Mr. Parrott apparently sensed that there might be a problem with the validity of the RUPA II plan designation for his property because instead of relying upon this designation in his subdivision application, he sought to go beyond the finding of commitment and prove the need for his subdivision request. He failed, however, to request that the comprehensive plan be amended at the same time.

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

GERALDINE PEARSON, PAUL)
STEHELEY, dba, STEHELEY)
BROTHERS DAIRY, and)
CENTRAL POINT-LELAND ROAD)
NEIGHBORHOOD ASSOCIATION,)
Petitioners,)
vs.)
CLACKAMAS COUNTY and)
WALTER PARROTT,)
Respondents.)

LUBA No. 80-098

PROPOSED OPINION
AND ORDER

Appeal from Clackamas County.

Richard Hayden, Jr. and Thomas R. Page, Portland, filed a petition for review and argued the cause for Petitioners. With them on the brief were Stoel, Rives, Boley, Fraser and Wyse.

Scott Parker and John E. Schwab, Oregon City, filed a brief and argued the cause for Respondent Clackamas County.

Terry Morgan, Portland, filed a brief and argued the cause for Respondent Parrott.

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

REVERSED and REMANDED 11/18/80

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).



STATE OF OREGON

INTEROFFICE MEMO

TO: MEMBERS OF THE LAND CONSERVATION AND DEVELOPMENT COMMISSION DATE: 11/18/80

FROM: THE LAND USE BOARD OF APPEALS

SUBJECT: PEARSON v CLACKAMAS COUNTY
LUBA No. 80-098

Enclosed for your review is the Board's proposed opinion and final order in the above captioned appeal.

Petitioners contest Clackamas County's approval of a subdivision application in rural Clackamas County on the basis that the approval violates Goals 3 and 4 and because it authorizes non-farm/non-forest uses of agricultural and forest land. Petitioners claim that the exception taken by Clackamas County in approving this subdivision application was inadequate to satisfy Goals 3 and 4.

The property which is the subject of the subdivision approval was also included in one of the areas successfully challenged by 1000 Friends of Oregon v. Clackamas County, LUBA No. 80-075 and 80-076. In approving this subdivision application, however, Clackamas County did not rely upon the validity of the commitment exception taken in RUPA II which was declared invalid in 1000 Friends of Oregon v. Clackamas County, supra. Instead, the county determined once again that the property was "committed" and also determined that there was a need for the subdivision in Clackamas County. However, the county did not amend the comprehensive plan to include the findings which would support an exception on the basis of need.

The Board concluded, citing Wright v. Marion County, ___ Or LUBA ___ (LUBA No. 80-010, 1980) that the county's failure to follow the Goal 2 process for taking an exception rendered the "need" determination inadequate to avoid having to comply with Goals 3 and 4. The Board also concluded that the determination of commitment as part of the subdivision approval was insufficient for the same reasons as the commitment finding had been declared invalid in 1000 Friends v. Clackamas County, supra.

The Board is of the opinion that oral argument will not assist the commission in its understanding or review of the statewide goal issues involved in this appeal. Therefore, the Board recommends that oral argument before the commission not be allowed.



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

PEARSON

Petitioners,)

v.)

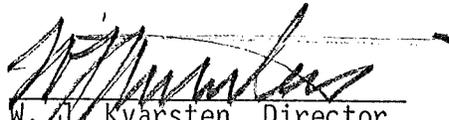
CLACKAMAS COUNTY,)

Respondent.)

LUBA 80-098
LCDC Determination

The Land Conservation and Development Commission hereby returns the recommendation in LUBA 80-098 to LUBA for consideration to be consistent with the final LUBA decision in LUBA 80-075 and 80-076.

Dated this 30th day of December, 1980.



W. J. Kvarsten, Director,
For the Commission.

ER:gpt
4047A

1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

3 GERALDINE PEARSON, PAUL)
 4 STEHELEY, dba, STEHELEY)
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LUBA No. 80-098
 PROPOSED OPINIÖN
 AND ORDER

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13 petition for review and argued the cause for Petitioners. With
14 them on the brief were Stoel, Rives, Boley, Fraser and Wyse.

15 Scott Parker and John E. Schwáb, Oregon City, filed a brief
16 and argued the cause for Respondent Clackamas County.

17 Terry Morgan, Portland, filed a brief and argued the cause
18 for Respondent Parrott.

19 REYNOLDS, Chief Referee; COX, Referee; BAGG, Referee;
20 participated in the decision,

21 REVERSED and REMANDED 4/14/81

22 You are entitled to judicial review of this Order.
23 Judicial review is governed by the provisions of Oregon Laws
24 1979, ch 772, sec 6(a).
25
26



STATE OF OREGON

INTEROFFICE MEMO

TO: MEMBERS OF THE LAND CONSERVATION AND DEVELOPMENT COMMISSION DATE: 4/14/81

FROM: THE LAND USE BOARD OF APPEALS

SUBJECT: PEARSON v CLACKAMAS COUNTY
LUBA No. 80-098

Enclosed for your review is the Board's proposed opinion and final order in the above captioned appeal.

The proposed opinion has been modified in accordance with LCDC's determination dated December 30, 1980. The only modification involved a change in the citation to the case of 1000 Friends of Oregon v. Clackamas County, LUBA No. 80-075 and 80-076.

The Board is of the opinion that oral argument will not assist the commission in its understanding or review of the statewide goal issues involved in this appeal. Therefore, the Board recommends that oral argument before the commission not be allowed.



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