

LAND USE
BOARD OF APPEALS

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

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MARVIN M. JOHN and EVANGELINE)
JOHN, Husband and Wife; DONALD)
L. TRACY and MARY ELLEN TRACY,)
Husband and Wife; RAY KURZ and)
BERNICE M. KURZ, Husband and)
Wife; CIPRIANO RODRIGUEZ and)
FRANKIE M. RODRIGUEZ, Husband)
and Wife; CLIFFORD E. THURSTON;)
ERVIN W. BUSHBY and JANET E.)
BUSHBY, Husband and Wife;)
CHARLES F. BIRMAN and MARY S.)
BIRMAN, Husband and Wife;)
LLOYD H. SAMPSON and WINIFRED)
J. SAMPSON, Husband and Wife,)
and ROBERT A. LORENCE and)
EVELYN TRACY LORENCE, Husband)
and Wife,)
Petitioners,)
v.)
UMATILLA COUNTY,)
Respondent.)

LUBA NO. 82-065

FINAL OPINION
AND ORDER

Appeal from Umatilla County.

John Grove, Milton-Freewater, filed a petition for review for Petitioners and waived oral argument. With him on the brief were Monahan, Grove & Tucker.

No appearance by Umatilla County or Applicant Schneider either in form of brief or oral argument.

COX, Board Member; BAGG, Board Member.

Remanded 02/03/83

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), as amended by Oregon Laws 1981, ch 748.

1 COX, Board Member.

2 NATURE OF PROCEEDING

3 Petitioners request that LUBA reverse or remand the July
4 13, 1982 order of Umatilla County approving a comprehensive
5 plan map amendment from rural residential to commercial. The
6 contested amendment involves 1.5 acres fronting the south side
7 of Highway 730 approximately two miles west of the Umatilla
8 City limits.

9 ALLEGATIONS OF ERROR

10 Petitioners allege the following:

11 "I. Respondent County violated [Statewide] Goal 2
12 and its Comprehensive Plan and Zoning Policy by
changing the Comprehensive Plan Map.

13 "II. There is no proof of public need for the
14 rezoning nor that any such public need would
best be served by this rezoning.

15 "III. There is no proof of a mistake in the original
Comprehensive Plan.

16 "IV. There is no evidence to support Respondent
17 County's decision.

18 "V. Respondent County violated all of the Statewide
19 Goals by not adequately addressing the same and
by not making the required findings to support
20 their decision."

21 FACTS

22 Umatilla County's decision amends the Umatilla County
23 Comprehensive Plan Map by changing the designation of 1.5 acres
24 of land (subject property) from rural residential to
25 commercial. Umatilla County adopted its comprehensive plan
26 initially in 1972 and most recently amended it on May 3, 1978.

1 The Land Conservation and Development Commission has not
2 acknowledged the comprehensive plan as being in compliance with
3 the statewide goals. The zoning on the 1.5 acre parcel before
4 the subject comprehensive plan map change was R-1A, 2 acre
5 residential.

6 The property is located two miles west of the Umatilla City
7 limits and is outside the urban growth boundary for the City of
8 Umatilla. The property has a history of use as a hardware
9 store, building supply store, plumbing shop and occasionally
10 for vehicle sales. The present use of the property is for
11 storing, selling, trading and repairing of cars, trucks,
12 equipment and parts.

13 The Soil Conservation Service preliminary soil survey of
14 1977 for the area designates the site as containing Quincy
15 Loamy Fine Sand and Quincy Loamy Fine Sand, gravelly
16 substratum. Both soils have a non-irrigated land capability of
17 Class VIe and on the Quincy, gravelly substratum an irrigated
18 rating of Class IIIe. In addition to those facts, the county
19 found that both types of soils have severe limitations for
20 septic tanks and buildings. According to the county's
21 findings, based on the testimony of the applicant, the site was
22 formerly a gravel pit.

23 A similar request for a comprehensive plan map amendment
24 was made by the same applicant in 1980. That request was
25 denied on the 30th day of December, 1980 in part because the
26 county determined the requested commercial zone was not in

1 conformance with the county's comprehensive plan. In addition,
2 the county determined in 1980 that since the use made of the
3 property had changed repeatedly over the years, the property
4 could not be considered to have "grandfather rights." The 1980
5 denial was also based on the fact that the request would
6 "create a small area of commercial surrounded by rural
7 residential uses."

8 DECISION

9 We remand this case to Umatilla County for further
10 proceedings because its findings are inadequate. We will not
11 go into each of the petitioner's allegations of error but
12 rather concentrate only on some general problems we have which
13 prevent us from evaluating the case on its merits.

14 STATEWIDE GOAL 2

15 In the county's findings under the subheading Conclusions
16 of Law, the county states in reference to Statewide Planning
17 Goal No. 2:

18 "Land Use Planning - The board has conducted all land
19 use hearings on this matter in accordance with
20 appropriate Statutes and Ordinances (Findings #1-14
and 24-27)."

21 In reviewing the findings referenced by the county in its
22 conclusion of law, we find nothing addressing the Statewide
23 Goal 2 requirement that:

24 "City, county, state and federal agency and special
25 district plans and actions related to land use shall
26 be consistent with the comprehensive plans of cities
and counties * * * *"

1 First of all, the county failed to address some basic
2 policies in its comprehensive plan. The county's comprehensive
3 plan, as amended, designated the subject and surrounding
4 property as 2 acre residential. Under the residential
5 designation the plan establishes as a goal the desire

6 "3. To protect residential areas from encroachment by
7 land uses such as intensive commercial or
8 industrial use that would be incompatible and
9 result in unpleasant living conditions and
10 lowering of property values."

11 Furthermore, the plan provides that it is the policy for
12 residential land use that:

13 "2. Residential areas shall be restricted to
14 residential uses and uses that are commonly found
15 in connection with residences such as churches,
16 parks, schools and utilities necessary for public
17 service."

18 The comprehensive plan also addresses commercial land and sets
19 forth as a policy:

20 "1. A general commercial zone shall be developed to
21 accommodate most of the existing general
22 commercial development in the unincorporated
23 areas of Umatilla County. However, as a general
24 rule, the county planning commission will
25 discourage the establishment of new general
26 commercial zones, but will instead encourage this
type of commercial establishment to locate in
existing commercial zones, existing rural
centers, or in incorporated cities."

27 The county has failed to address any of these comprehensive
28 plan policies and goals in its findings. Thus, we are unable
29 to determine whether the county evaluated the contested
30 amendment against its comprehensive plan provisions. The
31 county has not included in its findings anything to suggest the

1 above comprehensive plan goals and policies have been
2 supplanted by specific ordinance provisions.

3 Goal 2, Part II

4 The findings do not indicate whether an exception to
5 Statewide Goal 3 has been taken for the subject property. The
6 findings do show that agricultural class soils exist on the
7 site. The site is in the midst of a rural residential area
8 designated as such in the Umatilla County Comprehensive Plan.
9 It could very well be that the whole area is committed to rural
10 residential uses. But there is no commitment type exception
11 addressed in the county's findings.

12 GOAL 3

13 Since this property is technically within the definition of
14 agricultural land under Statewide Goal 3, the county's findings
15 fail to adequately address Goal 3. The county in its findings
16 section entitled Conclusions of Law address Statewide Goal 3
17 and state:

18 "The request will not adversely impact this goal as
19 the site is not suitable for agricultural use,
(Findings #16, 19, 24, 25, 28 and 30)."

20 The findings do not support that conclusion. For instance,
21 Findings No. 16 identifies the soil as being of SCS Classes
22 IIIe or IVe. There is no indication as to the ratio of the
23 soils on the site, and there is no indication the county has
24 attempted to correlate its conclusion with the definition of
25 agricultural land found in Statewide Goal 3.¹ Even if we
26 were to ignore the SCS classification (some evidence indicates

1 the site is an old gravel pit) the county has failed to address
2 the alternative definitions of agricultural land found in
3 Statewide Goal 3. For instance, there is no indication whether
4 this site fits within the "Other Lands" or the "Adjacent or
5 Nearby Lands" definitions of agricultural land (see Ftn. 1).

6 MISTAKE

7 Petitioners also argue that the county amended the
8 comprehensive plan in part based on a conclusion there had been
9 a mistake in the original comprehensive plan map. Petitioners
10 claim that there is no support in the record for the conclusion
11 that a mistake had been made in the original designation of the
12 property as residential rather than commercial. The county
13 included in its findings document, under the subject heading
14 "Conclusions of Law," the following statement:

15 "Evidence presented by the applicant and others
16 indicated that the original plan designation was the
17 wrong designation. It would appear from the record
18 that the site should have been designated for
19 commercial use, due to its long history of being used
for commercial purposes as testified by both
proponents and opponents of the request. (Findings
#16-33).

20 While we tend to agree with the petitioners that there is
21 insufficient support for the above quoted conclusion, this
22 allegation is controlled by our discussions regarding Statewide
23 Goals 2 and 3. It appears the county is saying this property
24 is committed to a commercial use. However, as we held above,
25 there is no indication in the findings document the county
26 relied on the "Commitment Test" or its parent, the Goal 2, Part

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II exceptions criteria.

For all of the above reasons, we find it unnecessary to proceed further in our review of this case. The county has failed to make findings addressing the applicable statewide goals and the cited portions of its comprehensive plan. Therefore, we remand the matter back to Umatilla County for further proceedings not inconsistent with this opinion.

FOOTNOTES

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Goal 3's definition of Agricultural Land states:

"In western Oregon is land of predominantly Class I, II, III and IV soils and in eastern Oregon is land of predominantly Class I, II, III, IV, V and VI soils as identified in the Soil Capability Classification System of the United States Soil Conservation Service, and other lands which are suitable for farm use taking into consideration soil fertility, suitability for grazing, climatic conditions, existing and future availability of water for farm irrigation purposes, existing land use patterns, technological and energy inputs required, or accepted farming practices. Lands in other classes which are necessary to permit farm practices to be undertaken on adjacent or nearby lands, shall be included as agricultural land in any event.

"More detailed soil data to define agricultural land may be utilized by local governments if such data permits achievement of this goal."

LAND USE
BEFORE THE LAND CONSERVATION AND DEVELOPMENT COMMISSION
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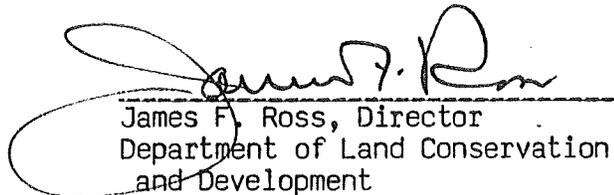
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LORENCE and EVELYN TRACE LORENCE,)
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UMATILLA COUNTY,)
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Respondent.)

The Land Conservation and Development Commission hereby approves the recommendation of the Land Use Board of Appeals in LUBA 82-065.

DATED THIS 2 DAY OF FEBRUARY 1983.

FOR THE COMMISSION:


James F. Ross, Director
Department of Land Conservation
and Development

JFR:RE:11t
2817B/63C



STATE OF OREGON

INTEROFFICE MEMO

6.4

TO: MEMBERS OF THE LAND CONSERVATION
AND DEVELOPMENT COMMISSION

DATE: 1/4/83

FROM: THE LAND USE BOARD OF APPEALS

SUBJECT: JOHN V. UMATILLA COUNTY
LUBA NO. 82-065

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

Petitioners alleged Umatilla County violated all of the statewide goals. We did not go into each of petitioner's allegations of error because the lack of findings prevented thorough evaluation on the merits. We did address Goals 2 and 3, however. This Board is remanding this case for further proceedings because the findings of Umatilla County are inadequate.

The Board is of the opinion that oral argument would 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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