

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

FEB 8 3 32 PM '83

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

E. LORRAINE SPECHT and)
CECIL O. CRAIG,)
Petitioners,)
vs.)
BAKER COUNTY,)
Respondent.)

LUBA No. 82-084
FINAL OPINION
AND ORDER

Appeal from Baker County.

E. Lorraine Specht and Cecil O. Craig, Richland, filed the
Petition for Review on their own behalf. Oral argument was
waived by the parties.

Ken Hadley, Baker, filed the brief on behalf of Respondent.

BAGG, Board Member; COX, Board Member; participated in this
decision.

REMANDED 2/08/83

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 BAGG, Board Member.

2 NATURE OF THE DECISION

3 Petitioners appeal the grant of a conditional use permit to
4 Dee Olsen. The permit allows a mobile home park to be built on
5 certain property in Baker County. The permit has the effect of
6 modifying a prior conditional use permit allowing a
7 recreational vehicle park and commercial storage facility on
8 the same property.

9 In November 21, 1980, Dee Olsen was issued a conditional
10 use permit by the Baker County Planning Commission allowing
11 construction of a recreational vehicle park and commercial
12 storage facility. The applicant thereafter requested a
13 modification of the conditional use permit to allow conversion
14 of 20 recreational vehicle spaces to permanent mobile home
15 spaces. The planning commission heard and granted the request
16 on June 24, 1982. The conditional use permit issued June 28,
17 1982 states the use permitted and includes three conditions.

18 "Use Permitted: Mobile Home Park, RV Park with related
19 commercial storage, sanitary dump station, and
20 restroom and shower facility. Subject to the
21 following conditions:

- 22 "1. All state permits required for Mobile Home and RV
23 Park, particularly with respect to water and
24 sewage disposal facilities and services.
- 25 "2. The terms of this permit restrict the Park area
26 to approximately 3 acres.
- "3. The terms of this permit restrict the number of
spaces within the Park for permanent Mobile Home
use to twenty (20)."

1 On July 7, 1982 petitioners herein appealed the planning
2 commission's decision to the Baker County Court. The county
3 court heard the matter on August 24, 1982 and issued an order
4 on August 31, 1982 upholding the grant of the permit.

5 ASSIGNMENT OF ERROR

6 Petitioners attack the conditional use permit of June 28,
7 1982 on the ground that it violates Statewide Planning Goal 11,
8 the public facilities and services goal. Petitioners' primary
9 complaint is that the city water department is limited as to
10 the number of service connections possible, and the inclusion
11 of new permanent mobile home sites will adversely affect city
12 water service. Petitioners are particularly worried about fire
13 protection. Petitioners claim that the drop of water pressure
14 during summer

15 "is so substantial as to create the worry of not
16 having enough to run the [fire] truck's pumps. We
17 feel this matter should be considered under state goal
18 11, which was intended to protect neighboring areas
19 from the acts of developers." Petition for Review at
20 1.

21 The respondent county argues that the conditional use
22 permit is conditioned upon the applicant's obtaining all
23 necessary state permits "which would require complete
24 compliance with Goal 11..." Respondent's Brief at 2.
25 Respondent cites Gustafson v Grants Pass, 3 Or LUBA 189 (1981)
26 wherein the Board stated:

27 "There is nothing in Goal 11 that prohibits a local
28 jurisdiction from making a decision conditioned upon
29 compliance with what Goal 11 dictates * * *.

1 Petitioners do not argue that the conditions imposed
2 on the applicant, if complied with, fail to assure
compliance with Goal 11." Gustafson, 3 Or LUBA at 200.

3 The applicant goes on to equate securing necessary permits
4 with compliance with Goal 11.

5 "If the applicants obtain the necessary permits to
6 obtain water from the city, or develops their own
7 water source as was discussed in the transcript (Tr
19, line 16), they would then be in compliance with
Goal 11 and there would be no violation of that goal.

8 "On the other hand, if applicants fail to develop
9 their own water system, or obtain necessary permits
10 from the state, they will not be allowed to add the
mobile home spaces on their property and the
modification to the conditional use permit is invalid."

11 Statewide Goal 11 calls for local governments

12 "To plan and develop a timely, orderly and efficient
13 arrangement of public facilities and services to serve
as a framework for urban and rural development.

14 "Urban and rural development shall be guided and
15 supported by types and levels of urban and rural
16 public facilities and services appropriate for, but
17 limited to, the needs and requirements of the urban,
18 urbanizable and rural areas to be served. A provision
for key facilities shall be included in each plan. To
meet current and long-range needs, a provision for
solid waste disposal sites, including sites for inert
waste, shall be included in each plan."

19 The "timely, orderly and efficient arrangement of public
20 facilities and services" is defined in the goal as

21 "a system or plan that coordinates the type, location
22 and delivery of public facilities and services in a
23 manner that best supports the existing and proposed
land uses."

24 We have held that specific development proposals do require
25 attention to Goal 11. Friends of Linn County v City of Lebanon
26 and Tektronix, Inc., 1 Or LUBA 50 (1980); Gustafson v Grants

1 Pass, 3 Or LUBA 189 (1981); Holmstrom v Marion County, 3 Or
2 LUBA 309 (1981). We believe that provision of adequate water
3 services to a proposed development falls within Goal 11's
4 requirement for "orderly and efficient arrangement of public
5 facilities and services." We believe, therefore, that it was
6 incumbent upon the county to consider whether Goal 11 is met by
7 the proposal.

8 As we understand the county order, the county also believes
9 Goal 11 is applicable and must have been considered by the
10 Baker County Planning Commission in allowing this proposed
11 conditional use. The county then goes on to state the
12 following about this proposal and Goal 11:

13 "(3) That testimony and exhibits referring to Goal 11
14 show some water lines to the area and that an 8"
15 sewer line running north to south through the
property with a present dump station and man
holes does presently exist.

16 "(4) That testimony of the appellants states the
17 desire that new uses not be allowed until water
problems are solved.

18 "(5) That the 1982 conditional use permit allows
19 mobile homes in addition to the 1980 permit for
R/V parking.

20 "(6) That testimony regarding Mr. Olsen's various
21 agreements with the City of Richland in regards
22 to meeting the requirements of Goal 11 may or may
23 not help him to obtain the state permits, and,
Mr. Olsen may have to use other means than the
City of Richland to meet the conditions imposed
by the Planning Commission in regards to Goal 11.

24 "(7) That Goal 11 standards will be met if and when
25 the Planning Commission's conditions are met.

26

1 "(8) That water and sanitation standards set by the
2 State of Oregon which reflect on Goal 11 are
3 administered by the State of Oregon, and the
4 State of Oregon is responsible to issue licensing
5 based on whether such standards are fulfilled by
6 the applicant."

7 We do not believe these findings and the conditions quoted
8 earlier made by the planning commission and included by
9 reference in the county order are sufficient to satisfy Goal
10 11. As we understand the county order, the county states that
11 Goal 11 will be met simply by the fulfilling of any state
12 permit requirements as to water and sewage disposal. However,
13 the county does not say in its order what those standards are
14 and how it is that state permit standards can, in any event,
15 ensure that a particular development in a local community
16 represents a "timely, orderly and efficient arrangement of
17 public facilities and services." Therehere is no factual
18 information in the record to support the county's belief about
19 goal compliance through the permits. The record does not
20 reveal what permits are being referenced, let alone what they
21 require. Therefore, we are unable to determine if the county
22 was aware of what, if any, Goal 11 related criteria would be
23 used to evaluate the permit application.

24 We believe the county, not the State of Oregon, was
25 responsible to test this proposal against Goal 11 and determine
26 whether or not the proposal met Goal 11, or, in the
27 alternative, whether sufficient means existed to ensure
28 compliance with Goal 11. See Abrego v Yamhill County, 3 Or

1 LUBA 350 (1981). If sufficient means existed to ensure
2 compliance with Goal 11, the county would then be obligated to
3 explain the means and impose conditions requiring the exercise
4 of such means.¹ If a permit system included enough factors
5 to ensure that issuance would meet the county's obligation to
6 comply with the goal, the county needed to explain how the
7 permit would ensure compliance.

8 Because we feel the county was responsible to make its own
9 determination with respect to compliance with Goal 11, and
10 because we do not view a simple statement that compliance with
11 state agency permits is itself a means of completely complying
12 with Goal 11, this matter is remanded to Baker County for
13 further proceedings not inconsistent with this opinion.²

14

15

16

17

18

19

20

21

22

23

24

25

26

FOOTNOTES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

1 While we note that the county apparently believes that Mr. Olsen "may have other means than the City of Richland to meet the conditions imposed by the planning commission in regards to Goal 11," these "other means" are not defined in the county order and are not clearly imposed upon the applicant in a manner that would satisfy Goal 11.

2 See OAR 660-31-005 to OAR 660-31-035.



STATE OF OREGON

INTEROFFICE MEMO

6.2

TO: MEMBERS OF THE LAND CONSERVATION AND DEVELOPMENT COMMISSION DATE: 1/11/83

FROM: THE LAND USE BOARD OF APPEALS

SUBJECT: SPECHT v BAKER COUNTY
LUBA No. 82-084

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

This case is about a conditional use for permanent mobile home spaces granted by Baker County. Petitioners bring only one assignment of error, alleging violation of Goal 11. Petitioners are fearful that there will be insufficient water to serve the community in case of fire.

We find that the Baker County Commission did not adequately address whether the proposal would satisfy Goal 11's requirement for a "timely, orderly and efficient arrangement of public facilities and services." Baker County did not address Goal 11 sufficiently in the order, but relied on the issuance of state permits to satisfy Goal 11 criteria. It is not clear from the order or the record what state permits are required and what, if any, Goal 11 related criteria would be used to evaluate the permit application. In short, the findings were insufficient to satisfy the goal.

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.



Contains
Recycled
Materials

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

E. LORRAINE SPECHT and)	
CECIL O. CRAIG,)	LUBA No. 82-084
)	
Petitioners,)	DEPARTMENT RECOMMENDATION
)	
v.)	
)	
BAKER COUNTY,)	
)	
Respondent.)	

Case Description

Baker County issued a conditional use permit allowing conversion of 20 recreational vehicle spaces to permanent mobile home spaces. LUBA recommends that the decision be reversed for failure to comply with Goal 11 (Public Facilities and Services).

Oral Argument

LUBA recommends no oral argument. The Department concurs.

Department Recommendation

LUBA reaches the following conclusion with respect to Goal 11:

1. The county's general findings that Goal 11 will be met simply by the fulfilling of any state permit requirements as to water and sewage disposal is inadequate to ensure compliance with Goal 11.

BEFORE THE LAND CONSERVATION AND DEVELOPMENT COMMISSION
LAND USE BOARD OF APPEALS
OF THE STATE OF OREGON

FEB 3 10 13 AM '83

E. LORRAINE SPECHT and
CECIL O. CRAIG,

Petitioners,

v.

BAKER COUNTY,

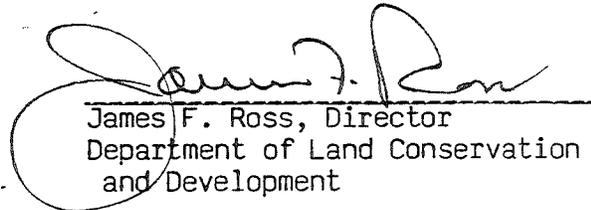
Respondent.

)
) LUBA Nos. 82-084
)
) LCDC DETERMINATION
)
)
)
)
)
)

The Land Conservation and Development Commission hereby approves the recommendation of the Land Use Board of Appeals in LUBA 82-084.

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