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

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LARRY D. ALLEN and PATRICIA)
A. ALLEN, Husband and Wife;)
TRUMAN WINFIELD and CAROL)
WINFIELD, Husband and Wife;)
BLAZE GRDEN and MARY GRDEN,)
Husband and Wife; TIM BROWN)
and SHARON BROWN, Husband)
and Wife; RICHARD FINCH and)
PAULA FINCH, Husband and Wife;)
JOE DAYTON and LUCY DAYTON,)
Husband and Wife; and BOB)
RITTENHOUSE and DARLENE)
RITTENHOUSE, Husband and Wife,)
)
Petitioners,)
v.)
UMATILLA COUNTY,)
Respondent,)
CHRISTIAN RAINBOW CENTER,)
A Washington Non-profit)
Corporation, ROBERT A. KLICHER)
and NANCY L. KLICHER, Husband)
and Wife; and RICHARD J.)
KLICKER and MARY ALICE KLICHER,)
Husbnd and Wife,)
Participant-Respondents.)

LUBA No. 82-076
FINAL OPINION
AND ORDER

Appeal from Umatilla County.

Wm. A. Galbreath, Milton-Freewater, filed a petition for review on behalf of petitioners.

John U. Grove, Milton-Freewater, filed a brief on behalf of Participant-Respondents. With him on the brief were Monahan, Grove & Tucker.

Umatilla County did not appear.

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

REMANDED 5/19/83

Page 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 Petitioners appeal Umatilla County's grant of a conditional
3 use permit to construct a non-denominational church retreat and
4 related facilities in a forest zone (F-5, 5-acre minimum).
5 Petitioners make one assignment of error in which they say the
6 county violated Goal 4 and its own comprehensive plan.

7 FACTS

8 The facility to be constructed is on a five acre portion of
9 a 389.78 acre lot on the west side of County Road No. 486 known
10 as Mill Creek Road. The building is to be a lodge with rustic
11 appearance, constructed primarily of wood. The building would
12 be about 5,000 square feet in size. The lodge would include
13 private rooms, kitchens, restrooms, a deck and open meeting
14 areas and additional sleeping space. The site of the structure
15 is about 11 miles from Walla Walla, Washington and is in the
16 foothills of the Blue Mountains. The property is zoned F-5.
17 Adjacent land to the west is a recreational camp known as Camp
18 Kiwanas which includes permanent buildings. Land to the
19 southwest and upstream of the property is subdivided into a
20 development known as Mill Creek Glen Addition. That
21 subdivision has 115 lots with 80 percent occupancy. Land to
22 the north includes a rock quarry. The lodge building on the
23 subject property would be located some 600-700 feet from the
24 nearest house in the Mill Creek Glen Subdivision.

25 The site has received DEQ site inspection for a septic
26 system, and fire protection may be provided by the Walla Walla

1 County Fire District No. 4. Water is available from the City
2 of Walla Walla Public Works.

3 The application was heard by the county hearings officer on
4 May 12, 1982, and he issued an order denying the application on
5 June 23, 1982. The county reversed the decision in its order
6 of August 11, 1982 and thereby allowed the request for a
7 conditional use. This appealed followed.

8 ASSIGNMENT OF ERROR

9 "RESPONDENT COUNTY VIOLATED GOAL 4 IN ITS OWN
10 COMPREHENSIVE PLAN RELATING TO FOREST LANDS AND
POLICIES FOR FOREST LANDS."

11 Petitioners point out the county's comprehensive plan,
12 adopted in April of 1972, has not yet been acknowledged by
13 LCDC. As we understand petitioners' argument, the use is on
14 land subject to Statewide Goal 4 protection. Petitioners argue
15 this particular lodge and its support facilities are not those
16 contemplated within that portion of the goal which authorizes
17 development of "outdoor recreational activity and related
18 support services."¹ Petitioners claim the recreational uses
19 contemplated in Goal 4 are low-intensity recreational
20 facilities and cite for this proposition the LCDC case of
21 Teamsters v. Hood River City, 2 LCDC 83, 98 (1979).²

22 Petitioners then cite the county's forest use goals and
23 policies in its comprehensive plan, and we understand
24 petitioners to argue that the proposed conditional use violates
25 the below listed goals for forest lands and the below listed
26 policy prohibiting development on slopes of 25 percent or

1 greater.

2 As quoted by petitioners, the comprehensive plan's Forest
3 Lands Goals are

4 "1. To develop the existing forested areas of the
5 county as to perpetuate their present wooded
6 aspect.

7 "2. To encourage reforestration in areas of the
8 county that are best suited to forest use, but
9 that have been cleared and converted to other
10 uses.

11 "* * * *

12 "Mountain valley walls and slopes of 25% or greater
13 will be prohibited to development."

14 Petitioners say the cite is located on 35 to 40 percent
15 slopes.

16 Participants counter that the conditional use is compatible
17 with forest lands and not in violation of either Statewide Goal
18 4 or the county's comprehensive plan. Participants say the
19 Teamsters case was one in which the size of the improvement
20 requested bore no relation to the land or facility involved
21 here. Here it is argued there is minimal affect on soil and
22 vegetation; while in the Teamsters case, it is alleged the
23 construction area was large and impact on soil and vegetation
24 was great.

25 Participants then argue that if one considers the proposed
26 use a non-forest use, it is conditionally permitted as long as
it is compatible with forest land. Participants cite
Shadybrook Environmental Protection Association (SEPA) v.

1 Washington County, 4 Or LUBA 236 (1981), 61 Or App 474, ___
2 P2d ___ (1983).³ Participants remind the Board that the
3 proposal consists of only one building with minimal resulting
4 disturbance to the soil and site. They add that the facility
5 will be located on a bench and say that although the building
6 is to be surrounded by steep slopes, the site on which the
7 building is to be placed is only subject to a 7 to 10 percent
8 grade. See Record 9, 49, 62.

9 We understand participants also to argue that the land is
10 not or should not be subject to full Goal 4 protection because
11 "adjacent areas are already lost for forest production."
12 Participants Brief at 11. Participants mention the Mill Creek
13 addition or subdivision and the rock quarry to the north as
14 further evidence that adjacent lands are "lost for forest
15 production." Respondent's Brief at 11.

16 The county's findings on Statewide Goal 4 are as follows:

17 "Forest Lands -- The site is adjacent to other
18 non-resource related uses and would not impact this
19 goal. (Findings no. 17, 19, 20, 24, 31)." Record 10.

19 The supporting findings state:

20 "17. The subject parcel is located in the foothills of
21 the Blue Mountains." Record 5.

22 "19. The 1973 Uniform Building Code with Oregon
23 Amendments places the entire State within Seismic
24 Zone 2. Therefore, the earthquake hazard is no
25 different for this site than any other areas of
26 the State. There are no known fault lines
located on or near the proposed site. The site
is located in an area with 35-40% slopes.

"20. The site is adjacent to Camp Kiwanis which is a
facility used by the Kiwanis Foundation, Inc. as

1 a camp for children and provides a variety of
2 outdoor experiences. The proposed site would not
3 necessarily have any additional outdoor
4 recreational facilities other than trails
5 (Testimony of Gilmore)." Record 5-6.

6 "24. The Umatilla County Comprehensive Plan which was
7 adoped on April 6, 1972 designates the site as
8 Forest Lands." Record 6.

9 "31. The proposed project is above all the residential
10 development and screened from surrounding
11 properties by trees (Testimony of Gilmore, Olson,
12 Klicker)." Record 8.

13 We do not believe the findings are sufficient to support
14 the view that the land is not subject to Goal 4. The findings
15 do not fully address the definition of Forest Lands contained
16 in Goal 4. The county did not discuss whether the land was
17 existing or potential forest land suitable for commercial
18 forest uses, whether the land was needed for water shed
19 protection, wildlife, fisheries habitat or recreation, whether
20 there were extreme conditions of climate, soil and topography
21 or whether the land was composed of "other forest lands"
22 included in part 4 of the forest lands definition. See
23 Footnote 1, supra.

24 Also, we are not able to agree with the county that the
25 proposed use is a "recreational" use allowed under Goal 4. We
26 believe the Teamsters v. Hood River City cited supra is
authority to suggest that this lodge or retreat facility is too
intensive to be a recreational use within the meaning of Goal
4. The use is not a recreational support facility but instead
should be classified as a non-forest use which may be allowed

1 in forest lands under certain conditions. We believe in order to
2 allow such a non-forest use in forest lands, the county must
3 apply the standards like those contained in the Benton County
4 ordinance reviewed by us in the case of Publishers Paper v.
5 Benton County, 6 Or LUBA 182 (1982). In that ordinance,
6 non-forest uses were allowed upon a showing that the proposed
7 use⁴

8 "a. Is compatible with forest uses;

9 "b. Does not seriously interfere with accepted forest
practices on adjacent lands;

10 "c. Does not alter the stability of surrounding land
11 use patterns;

12 "d. Is situated on lands least suitable for forest
13 production considering the terrain, adverse soils
14 or land conditions, drainage and flooding,
15 vegetation, location and size of tract, and the
cost of roads, power and telephone lines; * * *
*" See Publishers Paper v. Benton County, 6 Or
LUBA 182, 186 (1982).

16 Without findings addressing these matters, we are unable to
17 review the decision for compliance with Goal 4. Hoffman v.
18 Dupont, 49 Or App 699, 621 P2d 63, rev den 290 Or 651 (1981).

19 As to the alleged violation of the county's comprehensive
20 plan, we note the county's findings do not mention slope other
21 than to say that "[t]he site is located in an area with 35-40%
22 slopes." Record 6, Finding 19. While it may be as
23 participants assert that the specific building site is on a
24 portion of land with considerably less slope, the findings do
25 not reflect this assertion.⁵

26 This matter is remanded to Umatilla County for further

Page action not inconsistent with this opinion.

FOOTNOTES

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3 1

Goal 4, Forest Lands state:

4 "GOAL: To conserve forest lands for forest uses.

5 "Forest land shall be retained for the production of
6 wood fibres and other forest uses. Land suitable for
7 forest uses shall be inventoried and designated as
8 forest lands. Existing forest land uses shall be
protected unless proposed changes are in conformance
with the comprehensive plan.

9 * * *

10 "Forest Lands -- are (1) lands composed of existing
11 and potential forest lands which are suitable for
commercial forest uses; (2) other forest lands needed
12 for watershed protection, wildlife and fisheries
habitat and recreation; (3) lands where extreme
13 conditions of climate, soil and topography require the
maintenance of vegetative cover irrespective of use; .
14 (4) other forested lands in urban and agricultural
areas which provide urban buffers, wind breaks,
wildlife, and fisheries habitat, livestock habitat,
15 scenic corridors and recreational use.

16 "Forest Uses -- are (1) the production of trees and
the processing of forest products; (2) open space,
17 suffers from noise, and visual separation of
conflicting uses; (3) watershed protection and
18 wildlife and fisheries habitat; (4) soil protection
from wind and water; (5) maintenance of clean air and
19 water; (6) outdoor recreational activities and related
support services and wilderness values compatible with
20 these uses; and (7) grazing land for livestock."

21 2

22 In that case, the commission held that "related support
23 services for forest uses" means shelters for hikers, skiers or
outdoor lavatory facilities or drinking fountains. The
24 commission found that hotel resort facilities with restaurant,
lounge and retail stores are not contemplated by Goal 4. The
25 commission further found that large resorts are not
contemplated by Goal 4.

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2 Shadybrook involved a rock quarry, not a recreational
3 facility or lodge facility.

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5 The Land Conservation and Development Commission approved
6 the recommendation of the Land Use Board of Appeals in LUBA
7 82-076 with the following modifications:

8 "1. On page 7, lines 1 (starting with the new sentence)
9 through 6 amend as follows:

10 "...We believe in order to allow such a non-forest use
11 other than a dwelling in forest lands, the county
12 where it differentiates between predominate forest
13 areas and mixed forest use areas, must apply in such
14 mixed forest use areas standards like those contained
15 in the Benton County ordinance reviewed by us in the
16 case of Publishers Paper v Benton County. 6 Or LUBA
17 182 (1982). To allow nonforest uses in a mixed use
18 forest area, the county must apply standards upon a
19 showing that the proposed use...."

20 "2. On page 7, between lines 14 and 15, insert the
21 following:

22 "However, the standards set forth in the Publishers
23 case are insufficient to protect forest lands in all
24 cases in light of the Court of Appeals decision in
25 Shadybrook v. Washington County, 61 Or App 474
26 (1983). Where the County does not distinguish between
27 predominate and mixed use forest areas, allowance of a
28 non-forest use must be based upon a stricter
29 standard. Such a standard allowing non-forest uses in
30 predominate forest areas must demonstrate that the
31 land is 'not suitable' for forest uses as opposed to
32 lands which are 'least suitable.' The record must
33 clearly show 'the retention and protection of forest
34 land' (see Shadybrook v. Washington County, 61 Or App
35 474, 482 (1983)."

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5 We note the record shows that steepness of slope was an
6 issue in the county proceeding. As it was raised below, the
7 county had an obligation to address it. Gruber v. Lincoln
8 County, 2 Or LUBA 80 (1981).



STATE OF OREGON

INTEROFFICE MEMO

TO: MEMBERS OF THE LAND CONSERVATION AND DEVELOPMENT COMMISSION DATE: 4/5/83

FROM: THE LAND USE BOARD OF APPEALS

SUBJECT: Allen v. Umatilla County
LUBA No. 82-076

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

Petitioners make one assignment of error in this case, that the county violated Goal 4 (and its own comprehensive plan). Petitioners' point is that a proposed lodge and its support facilities are not the kinds of recreational uses allowed under Goal 4. The proposed uses are too intensive.

We concluded the use should be classified as a non-forest use. In order to allow such a non-forest use in forest lands, the county should apply standards similar to those discussed in Publishers Paper v. Benton County, 6 Or LUBA 182 (1982). -

We concluded the case should be returned to the county for further action.

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.



1 in forest lands under certain conditions. We believe in order to
2 allow such a non-forest use in forest lands, the county must
3 apply the standards like those contained in the Benton County
4 ordinance reviewed by us in the case of Publishers Paper v.
5 Benton County, 6 Or LUBA 182 (1982). In that ordinance,
6 non-forest uses were allowed upon a showing that the proposed use

7 "a. Is compatible with forest uses;

8 "b. Does not seriously interfere with accepted forest
practices on adjacent lands;

9 "c. Does not alter the stability of surrounding land
10 use patterns;

11 "d. Is situated on lands least suitable for forest
12 production considering the terrain, adverse soils
or land conditions, drainage and flooding,
13 vegetation, location and size of tract, and the
cost of roads, power and telephone lines; * * *
14 *" See Publishers Paper v. Benton County, 6 Or
LUBA 182, 186 (1982).

15 Without findings addressing these matters, we are unable to
16 review the decision for compliance with Goal 4. Hoffman v.
17 Dupont, 49 Or App 699, 621 P2d 63, rev den 290 Or 651 (1981).

18 As to the alleged violation of the county's comprehensive
19 plan, we note the county's findings do not mention slope other
20 than to say that "[t]he site is located in an area with 35-40%
21 slopes." Record 6, Finding 19. While it may be as
22 participants assert that the specific building site is on a
23 portion of land with considerably less slope, the findings do
24 not reflect this assertion.⁴

25 This matter is remanded to Umatilla County for further
26 action not inconsistent with this opinion.

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2 Shadybrook involved a rock quarry, not a recreational
3 facility or lodge facility.

4

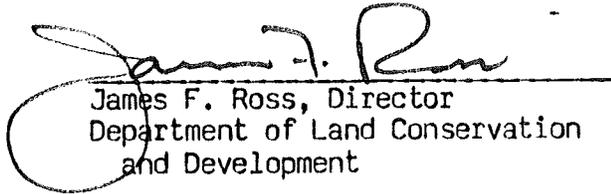
5 We note the record shows that steepness of slope was an
6 issue in the county proceeding. As it was raised below, the
county had an obligation to address it. Gruber v. Lincoln
County, 2 Or LUBA 80 (1981).

2. On page 7, between lines 14 and 15, insert the following:

"However, the standards set forth in the Publishers case are insufficient to protect forest lands in all cases in light of the Court of Appeals decision in Shadybrook v. Washington County, 61 Or App 474 (1983). Where the County does not distinguish between predominate and mixed use forest areas, allowance of a non-forest use must be based upon a stricter standard. Such a standard allowing non-forest uses in predominate forest areas must demonstrate that the land is 'not suitable' for forest uses as opposed to lands which are 'least suitable.' The record must clearly show 'the retention and protection of forest land' (see Shadybrook v. Washington County, 61 Or App 474, 482 (1983))."

DATED THIS 29 DAY OF APRIL 1983.

FOR THE COMMISSION:


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

JFR:RE:11t
3616B/55C