

LAND USE
BOARD OF APPEALS

BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

MAY 17 2 30 PM '84

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3 RAY STEPHENS, CAROLE CANEVARI,)
and DONALD MCINTOSH,)

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Petitioners,

LUBA No. 84-006

vs.

FINAL OPINION
AND ORDER

JOSEPHINE COUNTY, and ANTON)
and SHIRLEY BOTWINIS,)

Respondents.)

Appeal from Josephine County.

Richard V. Kengla, Grants Pass, filed the petition for review and argued the cause on behalf of petitioners.

Walter J. Cauble, Grants Pass, filed a brief and argued the cause on behalf of Respondents, Anton and Shirley Botwinis.

No appearance by Josephine County.

DUBAY, Referee; BAGG, Chief Referee; KRESSEL, Referee; participated in the decision.

REMANDED

05/17/84

You are entitled to judicial review of this Order. Judicial review is governed by the provisions of Oregon Laws 1983, ch 827.

1 Opinion by DuBay

2 NATURE OF THE DECISION

3 This is an appeal from an approval of a partition of a 232
4 acre tract into three parcels of 58, 72, and 102 acres.

5 STANDING

6 Respondents, Anton and Shirley Botwinis, challenge the
7 allegations of standing in the petition. Petitioners are three
8 individuals who allege they each appeared in the proceedings
9 below. They each allege they will be adversely affected or
10 aggrieved by the partition because the partition would
11 undermine or diminish the rural character of the area.
12 Petitioners Canevari and McIntosh allege they own land adjacent
13 to the Botwinis Ranch.

14 This is a quasi-judicial proceeding. Therefore, a
15 petitioner who has filed a notice of intent to appeal and has
16 appeared before the local hearing body must also allege
17 petitioner either:

18 "(A) Was entitled as of right to notice and hearing
19 prior to the decision to be reviewed; or

20 "(B) Is aggrieved or has interests adversely affected
21 by the decision." ORS 197.830(3)(c).

22 The allegations in the petition for review must state
23 "[t]he facts that establish that the petitioner has standing."
24 ORS. 197.830(9)(a). The facts alleged by petitioners in this
25 case are the allegations by Petitioners Canevari and McIntosh
26 that they are adjacent owners. We believe that allegation is
sufficient to confer standing as ownership of adjacent lands is

1 substantially equivalent to being within sight and sound of the
2 effected property. See Duddles v. City of West Linn, 21 Or App
3 310, 328, 535 P2d 583 rev den (1975) (property owner in
4 reasonably close proximity, such as within sight or sound of
5 proposed use of land should ordinarily have standing).

6 Petitioners Canevari and McIntosh are entitled to standing.

7 Petitioner Stephens alleges he resides in the local
8 vicinity of the Botwinis' property. This allegation is not
9 sufficient to show close proximity to the proposed use.

10 Petitioner Stephens has not alleged facts sufficient to confer
11 standing.

12 FACTS

13 The owners of the property, the Botwinises, acquired the
14 farm as three separate tracts, two of them in 1963 and the
15 third in 1975.¹ The two tracts purchased in 1963 are
16 diagonally adjacent. That is, their boundaries touch at one
17 point only, the intersection of lot lines. The third tract
18 lies between the first two, sharing a boundary with one tract
19 on the north and another on the east. The division approved by
20 the county is along the original tract lines.

21 The entire tract is zoned for exclusive farm use. The
22 minimum lot size by county ordinance is 120 acres on lands
23 zoned EFU, but the ordinance allows creation of smaller lots
24 based on a case by case analysis using criteria in the zoning
25 ordinance. The criteria are similar to the factors of
26 legislative policy for agricultural lands set forth in ORS

1 215.243. The county comprehensive plan and zoning ordinances
2 have not been acknowledged by the Department of Land
3 Conservation and Development Commission (LCDC) as being in
4 compliance with statewide planning goals. For this reason,
5 statewide planning goals are directly applicable to this
6 decision. ORS 197.175.

7 The county found the 232 acre tract to have 166 acres of
8 tillable irrigated land and approximately 50 acres of forested
9 land. The fields are predominantly Kerby Soils, which have a
10 Class I agricultural rating under the Soil Conservation Service
11 rating system when irrigated. Each of the three tax lots
12 receive tax treatment as farm land under ORS 308.370 et seq.
13 The county also found the parcels to be divided by physical
14 features (driveways and forested areas), that the farmable
15 parcels comprised "three distinct farms being operated by one
16 owner" and that the division would be in conformity with the
17 distinct geographical regions.

18 FIRST ASSIGNMENT OF ERROR

19 Petitioners first challenge the decision on the grounds it
20 is in violation of Statewide Planning Goal 3. OAR
21 660-15-000(3).² The challenge is based on petitioners' claim
22 the county did not properly find the three parcels to be of a
23 size appropriate for continuation of the existing commercial
24 agricultural enterprise within the area. The findings relevant
25 to this issue are as follows:

26 "8. ...[t]he Illinois Valley is not a large farm

1 agricultural area nor is it close to agricultural
2 markets. The three proposed parcels of land are
3 a series of small irregular fields not conducive
4 to large machinery. We find that qualified part
5 time labor is non-existent in the area for farm
6 work. We find that this is an area of intensive
7 farming. There is a winery within two miles
8 which purchases grapes; also, within one-half
9 mile away, a party by the name of Sichler has
10 seven acres of grapes. Gerber has 17 acres of
11 grapes three-fourths of a mile away. Two miles
12 away, LaForest has 10 acres of grapes. A few
13 years ago there were five acres of strawberries
14 in the area.

8 "On Parcel III there is a modern set of dairy
9 buildings. We find that dairying in Josephine
10 County has become a highly specialized intensive
11 farming practice. According to the statement of
12 Mr. Johnson, who is an expert in the field, the
13 economically sound units in the dairy business
14 milk several hundred cows in a feedlot setting
15 with just enough land to get rid of the waste,
16 purchasing for the most part all of their feed.
17 Apparently, the only exception to the practice is
18 where the owner has induced several members of
19 the family to become involved and farm some of
20 the land. We find Mr. Johnson is credible and
21 accept his statement. As far as these parcels
22 are concerned, there are three separate power
23 lines to the property. The irrigation systems
24 are separate. There are three ponds on the
25 property with water rights on Sucker Creek.

18 "We find that in the two sections which the
19 property straddles there are 15 Exclusive Farm
20 parcels larger than 10 acres, with an average
21 size of 72 acres. Approval of the partition only
22 reduces the average size of parcels to 63.6
23 acres."

21 * * *

22 "11. With regard to LCDC Goal #3 the board makes the
23 following findings: There is no mandatory lot
24 size required by LCDC Goal #3, whereas the
25 Josephine County Zoning Ordinance requires EF
26 zoning to maintain a 120 acre minimum lot size.
The division of land to acreages of less than 120
acres must demonstrate that the resultant parcels
are of sufficient size "for the continuance or

1 creation of a viable farm unit which is
2 appropriate for the type of farming in the
3 area." We find that the evidence does indicate
4 intensive type specialty agricultural production
5 which does not require the larger tracts of
6 agricultural lands which evidence has been
7 discussed in detail in paragraph 8 hereinabove.
8 The evidence does establish that there has been
9 intensive agriculture in the area which does
10 demonstrate that such agricultural practices are
11 economically feasible. It is this type of
12 agricultural activity which is in the area and
13 therefore, the parcels of the size proposed after
14 division are suitable to maintain a 'commercial
15 agriculture operation.' We conclude therefore
16 that the proposed division does result in
17 agricultural parcels that are of sufficient size
18 for the continuance or creation of viable farm
19 units which is in fact appropriate for the type
20 of farming in that area. The application is
21 consistent with LCDC Goal #3. The board finds
22 that unless the partition is granted this
23 valuable agricultural land will not be used to
24 its full potential. As a practical matter the
25 partition will not require any changes in
26 property lines, irrigation systems or fence
lines. All three parcels would have existing
access to Holland Loop Road."

15 Petitioners fault the findings and decision for several
16 reasons, summarized as follows:

- 17 1) The existing commercial agricultural enterprise
18 for the property is as a dairy farm capable of
19 producing most, if not all, feed or pasture
20 necessary for the operation. The conceptual
21 approval of a change to a smaller feedlot type of
22 dairy does not maintain the existing enterprise
23 and is therefore a violation of Goal 3.
- 24 2) The findings of an existing commercial
25 agricultural enterprise consisting of intensive
26 farming on small acreages is inadequate.
Petitioners say the evidence of three owners
growing grapes on small tracts does not show an
existing commercial agricultural enterprise
because the number of grape growers and land used
for viticulture is too small, and there is no
evidence of commercial grape growing on the small
tracts.

1 3) Intensive farm operations on smaller tracts will
2 suffer from the same lack of part time help the
3 county reasoned would prohibit the use of the 232
4 acre tract as a dairy farm."

5 We will consider these arguments in order. Petitioners'
6 first claim, that the existing commercial agricultural
7 enterprise is a 232 acre dairy able to provide its own animal
8 food, implies that any change of use will necessarily interfere
9 with the existing agricultural enterprise. If so, according to
10 this line of reasoning, any division of agricultural land that
11 prohibits continuation of the existing use is in violation of
12 Goal 3. We do not read Goal 3 to be so restrictive. The goal
13 requires agricultural lands to be preserved and maintained for
14 farm use. It also commands that lot sizes "shall be
15 appropriate for continuation of the existing commercial
16 agricultural enterprise with(in) the area." The bench mark is
17 the size of farms comprising the commercial agricultural
18 enterprise in the area and not the size of the property
19 proposed for division. If the latter were the standard, no
20 tract could be divided once it is used as a commercial farm.
21 If an existing farm is larger than the size necessary to
22 maintain the existing commercial enterprise, it may be divided
23 so long as the new parcels are also large enough to maintain
24 the kind of commercial farming existing in the area.³ And,
25 where the commercial farm enterprise changes over time,
26 resulting in economic obsolescence of large farms, the breakup
27 of large tracts no longer feasible for use as an economic farm

1 has been approved. Meeker v. Board of Commissioners, 287 Or
2 665, 601 P2d 804 (1979).⁴

3 The minimum lot size standard of Goal 3 is not always
4 controlled by the existing or historical farm use on the
5 subject property, but whether the new lot sizes will maintain
6 the existing commercial agricultural enterprise for the area.
7 We therefore reject petitioners' contention, phrased in
8 absolute terms, that there may be no division having the effect
9 of changing the historical farm use of the property. Though,
10 as we note later, there may be uncertainty about what land is
11 meant by "area" as used in Goal 3, we reject petitioners'
12 argument that the area is limited to the farm being considered
13 for division.

14 Petitioners' next argument is that the findings showing the
15 existence of intensive farming on parcels less than 120 acres
16 are inadequate to show the proposed parcels are appropriate to
17 maintain the existing commercial agricultural enterprise. This
18 argument requires a consideration of how the Goal 3 Standard is
19 met when creating new lots on lands zoned EFU. The procedure
20 was described by LUBA as follows:

21 "It is our view that the county was required to
22 determine what current agricultural operations make up
23 the agricultural enterprise of the county. From that
24 inquiry, the county must determine what size parcel is
25 necessary to constitute a 'commercial agricultural
26 operation.' Once those two decisions are made, the
county may then determine what agricultural activities
are suitable on the subject property. The next step,
as we understand commission policy, is to determine
whether or not given the agricultural activities which
are suitable, the particular land division proposed

1 will result in parcels large enough to maintain the
2 county's commercial agricultural enterprise. Sane
3 Orderly Development v. Douglas County, supra. The
4 immediate 'area' around the subject parcel may be
5 important because of limitations on the kind of
6 agricultural operations that may take place, ownership
7 and leasehold patterns, climate and any number of
8 other factors that may bear upon what crops may be
9 grown and what size parcel is needed to grow the crops
10 on a commercial scale. However, we think as a general
11 rule that the county must determine what the
12 commercial agricultural enterprise is within its
13 county as a first step." Kenagy v. Benton County, 6
14 Or LUBA 93, 104 (1982).

15 Completing that procedure satisfactorily has been difficult
16 in many cases, requiring, as it does, the consideration of
17 several concepts embedded in Goal 3. We therefore consider it
18 helpful to illustrate the concepts by recounting some of the
19 problems encountered in meeting the Goal 3 Standard. For
20 example, a criterion for evaluating division of agricultural
21 land worded in terms of tracts of sufficient size to support
22 commercial agricultural production was rejected for failure to
23 incorporate the operative words maintained and existing which
24 are part of the Goal 3 Standard. Sane Orderly Development v.
25 Douglas County Board of Commissioners, 2 Or LUBA 196 (1981). A
26 claim that division of land into small tracts would allow more
intensive farming practices using small equipment was held not
adequate where there was no evidence showing such intensive use
was part of the existing commercial agricultural enterprise of
the area. Meyer v. Washington Cty., 3 Or LUBA 61 (1981).

The definition of the appropriate area in which lot sizes
appropriate for commercial farming are to be maintained is not

1 specified in Goal 3 but is left for definition by the governing
2 entity. Decisions based on areas not clearly defined have been
3 held inadequate. Still v. Marion Cty., 3 Or LUBA 212 (1981).
4 Even if clearly specified, areas must not be too small to
5 represent the commercial agricultural enterprise, Thede v. Polk
6 Cty., 3 Or LUBA 335 (1981) (one mile radius), and there must be
7 an explanation showing how the area is representative of the
8 existing enterprise. Krahmer v. Washington County, 7 Or LUBA
9 36 (1982); Kenagy v. Benton County, 6 Or LUBA 93 (1983); Thede
10 v. Polk Cty., 3 Or LUBA 335 (1981). The mere intent to operate
11 a farm for profit does not mean a land division will maintain
12 commercial farming. Sane Orderly Development v. Douglas County
13 Board of Commissioners, supra. Similarly, projected net income
14 from a new parcel does not show the size of the parcel will be
15 appropriate to maintain the existing commercial agricultural
16 enterprise. Kenagy v. Benton County, supra.

17 We agree with petitioners that Findings 8 and 11, and the
18 evidence in the record supporting them, do not show compliance
19 with the Goal 3 minimum lot size standard. In order to create
20 new parcels of agricultural land, the first step in the process
21 is to determine the commercial agricultural enterprise. These
22 findings identified two elements of the agricultural
23 enterprise: dairy farms and viticulture. The reference to
24 dairy farming quotes the conclusion of a witness that "the
25 economically sound units in the dairy business milk several
26 hundred cows in a feedlot setting...." Record at 11. This

1 finding does not give a clear picture of the number of dairy
2 farming operations in the county or any part of it, the
3 financial importance of dairy farming as part of the
4 agricultural enterprise, or other data about this type of
5 farming activity sufficient to identify its place in the
6 commercial farming enterprise of the county. No facts were
7 given at all about the range of sizes of dairy farms or the
8 average size. Information of this type is fundamental to
9 support a conclusion that a proposed division will create lots
10 appropriate to maintain the commercial agricultural
11 enterprise. 1000 Friends v. Marion County, 1 Or LUBA 33
12 (1980); 1000 Friends v. Benton County, 2 Or LUBA 324 (1981);
13 City of Eugene v. Lane County, 1 Or LUBA 265 (1981) aff'd sub
14 nom Lane Co. v. City of Eugene, 54 Or App 26, 633 P2d 1306
15 (1981); Mechau v. Baker Cty., 2 Or LUBA 371 (1981).

16 The reference in the findings to viticulture relate that a
17 winery within two miles purchases grapes and that three
18 individuals each have vineyards of 17 acres or less within two
19 miles of the Botwinis' farm. Although these findings are
20 factual, they do not provide any information about the place of
21 viticulture in the commercial scheme of farming operations in
22 the area. We recognize wine grape growing is a relatively new
23 and apparently expanding aspect of agriculture in Oregon, and
24 information about the commercial practicalities of viticulture
25 has probably not been accumulated to the same extent as it has
26 for other farm activities. Nevertheless, the mandate of Goal 3

1 limits creation of new lots to those of a size appropriate to
2 maintain existing commercial farm operations. Findings showing
3 wine grape plantings on small tracts do not give a clear
4 picture of commercial viticulture in the county. Neither do
5 such findings set forth facts about the size of vineyards
6 appropriate to maintain the commercial agricultural enterprise,
7 assuming that enterprise was properly identified in the
8 findings. Although it may be possible to grow wine grapes on
9 small acreages and to market the crop, the small acreages may
10 not be necessary to maintain the existing commercial winemaking
11 enterprise. See Sane Orderly Development v. Douglas County,
12 supra at 208.

13 The findings describe average farm parcel sizes in the two
14 sections straddling the subject property. We understand this
15 to describe the "area" in which the commercial farm enterprise
16 is to be determined. Goal 3 does not specify with certitude
17 what areas are to be considered or how the area is to be
18 circumscribed but leaves that determination to the county.
19 Thede v. Polk Cty., 3 Or LUBA 335 (1981). Less than
20 countywide areas may be selected based on a variety of factors
21 such as geographical characteristics, type of agricultural
22 enterprise or the capacity of a limited area to be
23 representative of a larger area such as the entire county.
24 Whatever the reason for selection of a limited area, there must
25 be a rational basis, enunciated by the deciding body, stating
26 the basis of the area designation and its relationship to the

1 commercial agricultural enterprise. We are unable to determine
2 from the findings before us whether the two sections of land
3 straddling the Botwinis' ranch are illustrative of a limited
4 area of the county where some types of farming are restricted
5 or they are representative of the commercial farming areas of
6 the county.⁵ Neither are we able to determine from the
7 findings any other basis for selecting the two sections as the
8 area for determination of the existing commercial farm
9 enterprise.

10 In summary, the findings do not generally set forth
11 sufficient facts to determine whether the county properly
12 concluded the partition creates parcels in accordance with the
13 Goal 3 minimum lot size standard. This assignment of error is
14 sustained.⁶

15 SECOND ASSIGNMENT OF ERROR

16 Petitioners challenge the conclusion in the findings that
17 "...there are three distinct farms being operated by one owner,
18 the applicants." This finding addresses the criterion in
19 §19.040(1)(d)(a) of the zoning ordinance:

20 "a. The division shall preserve open land used for
21 agricultural use as an efficient means of
22 conserving natural resources that constitute an
23 important physical, social, aesthetic, and
24 economic asset to all of the people of this
25 state, whether living in rural, urban or
26 metropolitan areas of the state." Record 8.

24 This ordinance section reflects the policy statement contained
25 in ORS 215.243(1).⁷

26 In addressing this criterion, the findings describe the

1 proposed parcels as consistent with distinct geographical
2 divisions of the land as well as consistent with past
3 operations on each parcel as separate farms. The findings then
4 conclude the division would not be contrary to §19.040(1)(d)(a)
5 of the ordinance because the geographical divisions illustrate
6 the property does not constitute open space lands used for
7 agricultural purposes. Record 11.

8 Petitioners argue that evidence in the record refutes the
9 conclusion there are three distinct farms on the property.
10 Petitioners do not contest the finding that open lands will be
11 preserved but do challenge whether such lands will be preserved
12 for agricultural use.

13 Consideration of this assignment of error is best begun by
14 a discussion of the function and purpose of the criterion the
15 commissioners were addressing in this challenged finding. We
16 believe the purpose of §19.040(1)(d)(a) and ORS 215.243(1) is
17 to "preserve open land for agricultural use...." If a proposed
18 division of agricultural land were for non-farm purposes, this
19 criterion would not be met. Conversely, this criterion is
20 satisfied when the land use decision results in keeping land
21 available for farm use. The criterion does not require
22 continuation of past or existing farm uses, only that open land
23 be kept available for farm use. Whether a division is proposed
24 to follow geographical features or whether large farm tracts
25 are proposed to be divided into smaller farm tracts, are not
26 relevant factors in the consideration of this criterion unless

1 such facts indicate if the land will or will not be kept
2 available for farm use. Therefore, even if petitioners are
3 correct in their contention that the property has been operated
4 as a single farm unit in the past, that fact does not require a
5 conclusion the partition will not preserve the land for
6 agricultural use.

7 The findings show the land will be available for grape
8 growing and feedlot dairy operations, and no non-farm uses are
9 proposed. Although the findings may not meet other applicable
10 criteria, the findings are sufficient to show compliance with
11 the criterion in §19.040(1)(d)(a) and ORS 215.243(1). Therefore
12 this assignment of error is denied.

13 THIRD ASSIGNMENT OF ERROR

14 Petitioners here challenge the order for failure to meet
15 the requirements of the zoning ordinance criteria which emulate
16 ORS 215.243(1) and (2), and §19.010 of the zoning ordinance
17 which allows divisions of lands zoned EFU if the resulting
18 parcels are of sufficient size "for the continuance or creation
19 of a viable farm unit which is appropriate for the type of
20 farming in the area...." In addition, petitioners fault the
21 decision because comments made by one commissioner during the
22 hearing are alleged to show the applicable law was misapplied.

23 The contentions regarding compliance with ORS 215.243(1)
24 have been discussed in the second assignment of error. We only
25 note here that the findings show the land will be generally
26 available for farm use of some kind and are therefore

1 sufficient to show satisfaction of the first policy criterion
2 of ORS 215.243.

3 The second section of ORS 215.243 expresses the policy
4 statement that it is necessary for agricultural land to be
5 preserved in large blocks to conserve the state's economic
6 resources and to maintain the agricultural economy of the
7 state.⁸ Petitioners say the findings regarding this
8 criterion are based on the erroneous finding that the Illinois
9 Valley, where this property is located, is an area of intensive
10 farming. Record 11. This conclusion, according to
11 petitioners, opens the door to future small lot divisions of
12 the entire Illinois Valley. Petitioners also say the
13 conclusion is based on insufficient information to justify it.
14 We agree.

15 As noted in the discussion of compliance with Goal 3 under
16 the first assignment of error, there are few facts in the
17 record showing either the limits of the area being considered
18 or an inventory of farm operations. The average size of farm
19 parcels over 10 acres in a 2 square mile area and the existence
20 of 34 acres of vineyards within 2 miles of the property are not
21 facts from which a conclusion may be made that the Illinois
22 Valley is an area of small intensive farms. Such findings may
23 support a conclusion that small intensive farms are possible in
24 the area, but do not support a conclusion the Illinois Valley
25 is comprised of small intensive farms. The criterion of ORS
26 215.243(2) requiring a maximum amount of farm land to be

1 preserved in large blocks is not met by these findings. This
2 subassignment of error is sustained.

3 Petitioners also say the decision violates §19.010 of the
4 county's zoning ordinance, which permits creation of parcels
5 less than 120 acres if the resulting parcels are of sufficient
6 size "for the continuance or creation of a viable farm unit
7 which is appropriate for the type of farming in the area." We
8 view this ordinance provision to incorporate some of the
9 concepts of Goal 3, and our comments under the first assignment
10 of error are applicable here. What was there said about
11 failure of the findings to show the existing commercial
12 agricultural enterprise for the area applies equally here.
13 That is, the findings do not contain sufficient facts to
14 identify the area for application of the ordinance standard or
15 the type of farming in the area. Such facts must be in the
16 findings. Sunnyside Neighborhood v. Clackamas Co. Comm., 280
17 Or 3, 569 P2d 1063 (1977). Only one kind of farming, grape
18 growing, has been identified within two miles of the property,
19 and that takes place on a very small part of the land available
20 for agricultural use. We therefore agree with petitioners the
21 findings are inadequate to support a conclusion Ordinance
22 §19.010 has been met.

23 Finally, petitioners challenge the decision as flawed
24 because of comments made at the hearing by a commissioner. The
25 comments expressed a personal philosophy of land use regulation
26 characterized by petitioners as sufficiently biased to taint

1 the decision. We do not agree such statements are evidence of
2 bias or prejudice sufficient to overturn the decision. This
3 Board has previously held:

4 "Whether or not a commissioner or all the
5 commissioners happen to believe that an individual
6 should be able to do what he might wish with his land
7 does not mean that the commissioner cannot render a
8 decision as required by law. A county commissioner is
9 not expected to be 'detached, independent, and
10 non-political.' See Eastgate Theater v. Board of
11 County Commissioners, 37 Or App 745, 588 P2d 640
12 (1978)." Gearhard v. Klamath County, 7 Or LUBA 27,
13 35 (1982).

14 This subassignment of error is denied.

15 This assignment of error is sustained in part and denied in
16 part. The matter is remanded for further proceedings not
17 inconsistent with this opinion.
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FOOTNOTES

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4 Partition proceedings are necessary to divide the 232 acre
5 tract even though it is composed of tracts separately acquired
6 since they are contiguous properties under the same ownership.
7 ORS 92.010(8) states in part: "'Partition land' means to divide
8 an area or tract of land into two or three parcels within a
9 calendar year when such area or tract of land exists as a unit
10 or contiguous units of land under single ownership at the
11 beginning of such year."

8

2

9 Goal 3 states in part:

10 "GOAL: To preserve maintain agricultural lands.

11 "Agriculture lands shall be preserved and maintained
12 for farm use, consistent with existing and future
13 needs for agricultural products, forest and open
14 space. These lands shall be inventoried and preserved
15 by adopting exclusive farm use zones pursuant to ORS
16 Chapter 215. Such minimum lot sizes as are utilized
17 for any farm use zones shall be appropriate for the
18 continuation of the existing commercial agricultural
19 enterprise with(in) the area."

16

3

17 This view was illustrated by the following example in 1000
18 Friends of Oregon v. Marion County, 64 Or App 218, 668 P2d 412
(1983):

19 "For example, suppose that most of the land in the
20 area of Farmer A's property is in grass seed
21 production, which requires a parcel of at least 80
22 acres. There are, however, also several parcels
23 devoted to tulip production, an endeavor that requires
24 only 20 acres. Farmer A owns 100 acres of Class IV
25 soil that is currently in grass seed. The guideline
26 minimum lot size for Class IV soil is 80 acres.
Farmer B wishes to purchase 20 acres from Farmer A in
order to start a tulip farm. Division of the land
would create a parcel for Farmer B smaller than the
recommended minimum size, but the division would not
violate Goal 3's requirement that the new parcel be
'appropriate for the continuation of the existing
agricultural enterprise with(in) the area.'"

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4 In Meeker the court approved a division of an 80 acre
5 tract, once a dairy farm, into 10 to 20 acre parcels where
6 there was credible evidence (1) the farm was on marginal
7 agricultural land which could not then or in the
8 foreseeable future be found profitable; (2) even larger
9 farms in the area were not economical to operate; (3) most
10 farming operations in the area were on 10 to 20 acre size
11 tracts, and (4) greater agricultural utilization would
12 result from breaking the individual parcels into small
13 farms of that size.

14 _____
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16 The Botwinis ranch is located in an area known as the
17 Illinois Valley. There is no indication in the findings
18 the two sections straddling the Botwinis ranch comprise
19 all of Illinois Valley.

20 _____
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22 In this assignment of error petitioners also fault the
23 reasoning in the order that the non-existence of part time
24 farm labor in the area prohibits practical farm operations
25 on large tracts. Respondents say this sword cuts both
26 ways, that lack of part time farm labor will be a
27 detriment to small scale specialty farms as well as large
28 tract farms. We will not weigh the merits of this
29 argument, not because it may not be relevant to the issue
30 of size of farms comprising the commercial agricultural
31 enterprise, but because without a delineation of that
32 enterprise and a more complete analysis of the various
33 factors having a bearing on the appropriate size of
34 parcels necessary to maintain it, consideration of the
35 availability of farm labor by itself is premature.

36 _____
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38 ORS 215.243(1) states:

39 "(1) Open land used for agricultural use is an
40 efficient means of conserving natural resources
41 that constitute an important physical, social,
42 aesthetic and economic asset to all of the people
43 of this state, whether living in rural, urban or
44 metropolitan areas of the state."
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ORS 215.243(2) states:

"(2) The preservation of a maximum amount of the limited supply of agricultural land is necessary to the conservation of the state's economic resources and the preservation of such land in large blocks is necessary in maintaining the agricultural economy of the state and for the assurance of adequate, healthful and nutritious food for the people of this state and nation."

The county ordinance modifies the above statutory language by rephrasing the syntax so that the policy is changed to an imperative. (The division will result in the preservation, etc....) In addition, the ordinance adds the following:

"...and the division shall be consistent with the area needed to manage a type of farm use as an economic unit." Josephine County Zoning Ordinance, §19.040(1)(d)(b).

The findings address compliance with ORS 215.243(2) and not the comparable ordinance section. Our review does the same.