

1 Opinion by DuBay.

2 NATURE OF THE DECISION

3 This is an appeal from approval of a partition of 29.22
4 acres into 13.2 and 16.02 acre parcels.

5 FACTS

6 The property is zoned "Woodlot Residential (WR) and is part
7 pasture and part wooded. The pasture land has Class IV
8 agricultural soils, and the wooded or forested portion of the
9 tract is mostly Class 4 forest site class. The partition
10 generally divides the pasture land with the agricultural soils
11 from the wooded portion, which has soils of poor agricultural
12 capability.

13 The county's comprehensive plan has not been acknowledged
14 by the Land Conservation and Development Commission (LCDC) as
15 being in compliance with the statewide planning goals.

16 The county's order includes extensive summaries of the
17 testimony given before the board of commissioners, followed by
18 findings about certain physical attributes of the property and
19 the surrounding area including size, access, terrain, existing
20 improvements, water availability, soils and sewage disposal.
21 Following these findings of fact are two paragraphs concluding
22 the proposal complies with the zoning ordinance and with Goals
23 3 and 4. The order then recites the views of the individual
24 commissioners in the succeeding sections of "Findings and
25 Conclusions." Record 16.

26

1 FIRST ASSIGNMENT OF ERROR

2 Petitioners say the decision is defective because it is
3 supported by no conclusion of law. The inclusion in the order
4 of the disparate views of each commissioner is pointed out as
5 evidence no conclusion was reached. The order states the
6 commissioners' conclusions as follows:

7 "11. Findings by Commissioners Haugen and Corriea:

8 "(a) Found that application was in compliance
9 with the Josephine County Comprehensive
10 Plan, Subdivision Ordinance, and Zoning
11 Ordinance.

12 "(b) Commissioner Corriea found the request to be
13 in compliance with Statewide Land Use Goals
14 III and IV.

15 "(c) Commissioner Haugen felt the request would
16 take exception to Goals III and IV, and
17 would adopt by reference pages 21-23 of the
18 Staff Report."

19 * * *

20 "12. Findings by Commissioner Ford:

21 "(a) Found that taking exceptions to Goals III
22 and IV and V were not justified, and that
23 applicant had not given evidence tied to the
24 goals to demonstrate public need for the
25 division in accordance with Statewide
26 Planning Goals and the Josephine County Data
Base.

"(b) Adopted by reference the reasons and
conclusions as cited by Josephine County
Planning Commission Members." Record 16-17.

There are conclusions of law in this order. For example,
finding 11(a) concludes the proposal complies with the
comprehensive plan, the subdivision ordinance and the zoning
ordinance. However, we understand

1 petitioners to claim a majority of the commissioners did not
2 arrive at the same conclusions. This observation has merit.
3 Indeed, the views of the commissioners appear to be
4 inconsistent with each other. For example, one states the
5 proposal is in compliance with the goals. Another states an
6 exception is warranted,¹ and yet another states an exception
7 is not available to support this proposal. Such divergent
8 views directly conflict with the conclusion, stated in the
9 order, that the proposal is in compliance with the goals. The
10 different views illustrate on the face of the order that a
11 majority of the commissioners did not agree on a basis for
12 approval of the partition.

13 A conclusion of compliance with applicable criteria must be
14 unequivocally expressed in the decision document. It must also
15 appear the decision is the action of the person or body
16 responsible for making it. Here, the conclusions of the
17 individual commissioners expressed in the order conflict with
18 the general conclusion of goal compliance. Therefore, we
19 cannot determine whether a majority of the commissioners agreed
20 the proposal satisfied Goals 3 and 4. We therefore sustain
21 this assignment of error.

22 SECOND ASSIGNMENT OF ERROR

23 Petitioners next allege there are no findings showing
24 compliance with Goals 3 or 4.²

25 Since the county's comprehensive plan has not been
26 acknowledged, the decision must comply with applicable

1 statewide planning goals. ORS 197.835. The order lists Goals
2 3 and 4 as applicable. Where Goal 3 and 4 apply, the findings
3 must set forth facts supporting conclusions the proposal
4 satisfies them both. 1000 Friends of Oregon v. Douglas County
5 Board of Commissioners, 1 Or LUBA 42, 49 (1980). We agree with
6 petitioners that the order does not have adequate findings,
7 including findings of fact and statements of reasons, showing
8 compliance with Goals 3 and 4.

9 The Oregon Supreme Court has clearly stated the finding of
10 fact requirement:

11 "What is needed for adequate judicial review is a
12 clear statement of what, specifically, the
13 decisionmaking body believes, after hearing and
14 considering all of the evidence, to be the relevant
15 and important facts upon which its decision is
16 based." Sunnyside Neighborhood v. Clackamas Co.
17 Comm., 280 Or 3, 21, 569 P2d 1063 (1977).

18 In addition, decisionmakers must set forth the reasons why
19 the facts set forth led them to the conclusions they make.
20 Green v. Hayward, 275 Or 693, 522 P2d 815 (1976); The Home
21 Plate, Inc. v. OLCC, 20 Or App 188, 530 P2d 802 (1975). Here,
22 there are neither findings of fact nor stated reasons related
23 to compliance with Goals 3 and 4.

24 The commissioners heard testimony for and against the
25 partition proposal. Indeed, the testimony of each witness was
26 summarized in the order. However, such summaries or
27 recitations of evidence are not sufficient to show what the
28 county board, the decisionmaking body, believed to be the
29 relevant and important facts upon which it based its

1 decisions. See Norvell v. Portland Area LGBC, 43 Or App 849,
2 604 P2d 896 (1979).

3 It is true the findings regarding the size of the parcel,
4 access, terrain, existing zoning on surrounding lands, water
5 availability, soils and sewage disposal are findings of fact.
6 However, the order does not include any reasons why these facts
7 demonstrate compliance with Goals 3 or 4. These facts only
8 show the site characteristics. They do not show how a division
9 of this land will be in compliance with Goals 3 and 4.

10 Since there are no findings of fact or stated reasons
11 showing compliance with Goals 3 and 4, we sustain this
12 assignment of error.

13 THIRD ASSIGNMENT OF ERROR

14 Here petitioners challenge the order on the ground the
15 county failed to take an exception under Goal 2. This
16 challenge is based on the proposition the partition does not
17 comply with Goal 3 or 4, and an exception to the goals is
18 required before the partition may be allowed. Although there
19 is mention of an exception in the order, petitioners argue an
20 exception was not properly taken because the county's
21 comprehensive plan was not amended to reflect the exception.

22 The order states:

23 "Commissioner Haugen felt the request would take
24 exception to Goals III and IV and would adopt by
reference pages 21-23 of the staff report." Record 16.

25 Petitioners correctly point out a Goal 2 exception must be
26 part of a comprehensive plan. See Goal 2, Part 2 and ORS

1 197.732. However, we sustain this assignment of error for a
2 more basic reason. As earlier noted, the language quoted above
3 is not a decision by the Board of Commissioners. It reflects
4 the view of one commissioner only. There is nothing in the
5 order to indicate the other two commissioners agreed, nor is
6 there any indication the order incorporates this view. The
7 order simply does not adopt an exception to the county's
8 comprehensive plan.

9 This assignment of error is therefore sustained.

10 FOURTH ASSIGNMENT OF ERROR

11 Petitioners claim the partition violates Goal 4 because the
12 13.2 and 16.02 acre parcels are too small to conserve forest
13 land for forest uses as Goal 4 requires. In support of this
14 claim, petitioners cite LCDC's Continuance Order dated July 30,
15 1982. The continuance order notes the county's plan provisions
16 allowing 10 acre lots in the WR Zone is not supported, and
17 effective timber management on such lands may require parcels
18 at least four or five times as large as the 10 acre standard.³

19 Although the findings do not specifically state the
20 property is forest land subject to Goal 4, there are indicators
21 the land is forest land.⁴ Nonetheless, the findings do not
22 clearly address the question. If we assume the land is forest
23 land as suggested in the order, the findings do not demonstrate
24 how the land division complies with Goal 4, as we have noted
25 earlier. Without facts and explanations, there is no
26 foundation on which to assess whether or not the division

1 violates Goal 4.

2 The decision must therefore be remanded for adequate
3 findings. The review of the county's action for compliance
4 with Goal 4 must await proper findings and explanations on this
5 issue.

6 In summary, we do not rule at this time on petitioners'
7 claim of Goal 4 violation, as we have already sustained
8 petitioners' claim the matter must be remanded for findings and
9 conclusions addressing Goals 3 and 4. Perkins v. City of
10 Rajneeshpuram, ___ Or App ___, ___ P2d ___ (1984) (Slip Op.
11 dated June 27, 1984).

12 FIFTH ASSIGNMENT OF ERROR

13 Finally, petitioners claim no exception to statewide goals
14 is justified by the facts in this case.

15 As we observed previously in the discussion of the third
16 assignment of error, no exception was adopted by a majority of
17 the county commissioners. There is, therefore, no action by
18 the county for LUBA to review. LUBA will not render advisory
19 opinions. Grant Co. v. Oregon Department of Fish and Wildlife,
20 1 Or LUBA 214 (1980). This assignment of error is therefore
21 denied.

22 The matter is remanded for further action by the county
23 reflecting compliance with all relevant criteria. The decision
24 must unequivocally state what the board of commissioners
25 believes to be the facts upon which the decision is based. If
26 the land is found by the county to be subject to the protection

1 of Goal 4, the decision must include findings of fact and an
2 explanation how the proposed partition complies with that goal,
3 as well as any other applicable goal or other criteria.⁵

4 REMANDED.
5
6
7
8
9
10
11
12
13
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
An exception procedure is available when "it appears that it is not possible to apply the appropriate goal to specific properties or situations...." Goal 2. It follows that an exception is warranted only where the proposal does not otherwise comply with goal requirements.

2
Petitioners note one commissioner did conclude the partition complied with Goals 3 and 4, but no commissioner individually or collectively stated the facts supporting such conclusion.

3
Two days after the county's decision in this case, an enforcement order, imposed by LCDC, became effective on the county. The order prohibited the county from allowing divisions of land smaller than 40 acres in the WR Zone.

4
The order states the partition places the better forest and non-agricultural soils in one parcel and the low priority forest and agricultural soils in the other parcel (Record 9); Goal 4 is listed as a criteria applicable to the proposal (Record 8); the northern third of the property includes open pastures and forested land (Record 15); the property includes forest site Classes 4 and 5 (Record 15), and one of the stated purposes of the WR Zone classification is to conserve forest lands (Record 8).

5
If Goal 4 is applicable, the findings should address the issues raised by LCDC's objections to the 10 acre minimum lot size in the WR Zone. Although LUBA is not required to adopt LCDC's general views expressed in the continuance and enforcement orders in a particular case, the agency's comments in those two orders will be relevant on the question of Goal 4 compliance. See Jackson-Josephine Forest Farm Association v. Josephine County, (LUBA No. 84-032, Slip Op. 8/8/84).