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

1
2
3 CHAMPION INTERNATIONAL)
CORPORATION,)
4)
Petitioner,)
5)
vs.)
6)
DOUGLAS COUNTY,)
7)
Respondent,)
8)
WILLIAM L. RICE,)
9)
Intervenor-Respondent.)

LUBA No. 89-029

FINAL OPINION
AND ORDER

11 Appeal from Douglas County.

12 Steven L. Pfeiffer and John Shurts, Portland, filed the
13 petition for review and John Shurts argued on behalf of
petitioner. With them on the brief was Stoel, Rives, Boley,
14 Jones & Grey.

15 No appearance by respondent Douglas County.

16 Kathy A. Lincoln, Salem, filed a response brief and argued
on behalf of intervenor-respondent. With her on the brief was
17 Churchill, Leonard, Brown & Donaldson.

18 SHERTON, Referee; HOLSTUN, Chief Referee; KELLINGTON,
Referee participated in the decision.

19 REVERSED 07/21/89

20 You are entitled to judicial review of this Order.
21 Judicial review is governed by the provisions of ORS 197.850.

1 Opinion by Sherton.

2 NATURE OF THE DECISION

3 Petitioner appeals a Douglas County (county) decision
4 approving a zone change from Timberlands Resource (TR) to Farm
5 Forest (FF) for an approximately 67 acre portion of a 120 acre
6 parcel.

7 MOTION TO INTERVENE

8 William L. Rice moves to intervene in this proceeding on
9 the side of respondent. There is no opposition to the motion,
10 and it is granted.

11 FACTS

12 Intervenor-respondent (intervenor) filed an application
13 with the county requesting a zone change from TR to FF for the
14 subject 67 acres to allow future placement of a dwelling on the
15 FF zoned land. Record 32. Intervenor owns the entire 120 acre
16 parcel, which is designated Timberlands by the Douglas County
17 Comprehensive Plan (plan). The parcel is bisected by Lees
18 Creek Road, a Bureau of Land Management (BLM) timber access
19 road. The portion of the parcel east of the road is proposed
20 to be rezoned FF. The parcel is vacant, except for an
21 intermittently used recreational cabin located on the portion
22 of the parcel west of the road.

23 Except for property adjoining the parcel to the southwest,
24 all adjoining properties are designated Timberlands, zoned TR
25 and in active forest management. Land to the southwest, along
26 Lees Creek Road, is designated Farm Forest Transitional in the

1 plan and zoned FF.

2 The county planning commission approved intervenor's
3 request on December 15, 1988. Petitioner appealed the planning
4 commission's decision to the board of commissioners. On
5 March 15, 1989, the board of commissioners issued its order
6 affirming the planning commission's decision. This appeal
7 followed.

8 FIRST ASSIGNMENT OF ERROR

9 "Respondent misconstrued the applicable law and acted
10 in violation of state statutes, the Statewide Planning
11 Goals and respondent's own comprehensive plan and
12 implementing ordinance by approving an application for
13 a zone change without also requiring the applicant to
14 apply for and obtain a necessary amendment to the
comprehensive plan map designation for the subject
property, resulting in a zone designation for the
property that is in conflict with the comprehensive
plan designation."

15 Citing Baker v. City of Milwaukie, 271 Or 500, 505-509, 533
16 P2d 772 (1975), petitioner argues the county improperly
17 approved a zoning designation for the subject property which
18 conflicts with the property's plan designation. According to
19 petitioner, such action violates ORS 197.175(2)(b), ORS
20 215.050(2) and Statewide Planning Goal 2 (Land Use Planning).¹

21 Petitioner points out that the plan designates the subject
22 property as Timberlands. Petitioner argues that the county
23 "finding" that the plan Timberlands designation may be
24 implemented by either the TR or the FF zone is really an
25 incorrect legal conclusion. Petitioner contends plan forest
26 resource policies and policy implementation statements,² plan

1 rural land use map designation definitions, and Douglas County
2 Land Use and Development Ordinance (LUDO) TR and FF zone
3 provisions, considered together, show the FF zone implements
4 and is consistent with only the Farm/Forest Transitional plan
5 designation, not the Timberlands plan designation.

6 Petitioner points out that the plan establishes criteria
7 for distinguishing between lands which should be designated
8 Timberlands and Farm/Forest Transitional. Land Use Policy
9 Implementation 1. Petitioner contends the plan forest resource
10 policies "set forth a scheme to separate prime forest lands
11 from non-prime forest lands, designating the former as
12 Timberlands and the latter as Farm/Forest Transitional."
13 Petition for Review 7.

14 Petitioner admits that the plan does not expressly state
15 that only the TR zone implements the Timberlands designation.
16 However, petitioner points out that the plan Timberlands Policy
17 Implementation statements refer solely to the TR zone.
18 Petitioner also argues that Timberlands Policy Implementation 1
19 is virtually identical to the purpose section of the TR zone,
20 LUDO 3.2.000.

21 Petitioner maintains the FF zone does not include a purpose
22 statement similar to that of the TR zone, or provide the type
23 of protection to prime forest lands required by Timberlands
24 Policy Implementation 1. Petitioner argues the objective
25 expressed by the Farm/Forest Transitional Lands policies is to
26 include lower quality forest lands with potential for farm uses

1 and to create two zoning designations to cover the range of
2 land suitable for designation as Farm/Forest Transitional.
3 According to petitioner, the FF and Agriculture and Woodlot
4 (AW) zones implement the plan Farm/Forest Transitional
5 policies, but are not consistent with protecting prime forest
6 land.

7 As an example, petitioner notes that plan policies prohibit
8 the construction of nonforest dwellings (dwellings not
9 accessory to and necessary for a forest use) on forest lands
10 designated as Timberlands. According to petitioner, only the
11 TR zone prohibits nonforest dwellings. The FF zone, on the
12 other hand, allows as permitted uses up to two dwellings
13 "customarily provided in conjunction with a permitted use."
14 LUDO 3.5.050.4 and .5. Petitioner argues that because the
15 permitted uses in the FF zone include nonforest uses, LUDO
16 3.5.050.4 and .5 have the effect of allowing nonforest dwellings
17 in the FF zone as a permitted use. In addition, the FF zone
18 allows single-family nonresource dwellings as conditional
19 uses. LUDO 3.5.100.12. Petitioner argues that the specific
20 purpose of intervenor's requested zone change is to allow the
21 type of residential development not allowed by the plan on land
22 designated Timberlands.

23 Petitioner concludes the plan and LUDO cannot logically be
24 interpreted to provide that the FF zone may implement the
25 Timberlands plan designation. Petitioner asks this Board to
26 reverse the county's decision, because the county cannot

1 approve the requested zone change without a comprehensive plan
2 amendment to change the plan designation of the subject
3 property from Timberlands to Farm/Forest Transitional.

4 Intervenor argues the county correctly decided that either
5 the FF or TR zone can implement the Timberlands plan
6 designation. Intervenor points out that a plan policy
7 concerning the Timberlands designation states that "nonforest
8 uses compatible with forest uses and necessary for the public
9 convenience and welfare" may be allowed subject to county
10 review. Timberlands Policy 5. According to intervenor, this
11 policy means that the county has discretion to determine that a
12 nonforest use of land allowed under the FF zone is compatible
13 with forest uses and necessary for the public convenience and
14 welfare and is, therefore, allowable on land designated
15 Timberlands in the plan.

16 Intervenor further argues that in this case application of
17 the FF zone is consistent with the Timberlands plan designation
18 "because it promotes the utilization and management of forested
19 grazing land and land which might not be forested, but has that
20 potential." Intervenor's Brief 7. Intervenor argues that the
21 FF zone will protect the forest resource value of the subject
22 property, as required by Goal 4 (Forest Lands). Intervenor
23 contends the record is clear that his property will remain in
24 forest use, and will "serve as a buffer between the ten-acre
25 homesites to the south[west], and the unbroken forest to the
26 north, [east and west]." Intervenor's Brief 4-5.

1 The county adopted the following statement in support of
2 its decision:

3 "FINDING NO. 1: The Timberlands designation may be
4 implemented by either the (TR) Timberland Resource
Zone or the (FF) Farm Forest Zone." Record 1.

5 We are bound by any local government "finding of fact * * * for
6 which there is substantial evidence in the whole record."
7 ORS 197.830(11)(c). However, we agree with petitioner that the
8 above-quoted county statement is not a finding of fact, but
9 rather a conclusion of law setting out the county's
10 interpretation of provisions of its plan and LUDO.

11 The interpretation of local government plan and ordinance
12 provisions is a question of law which LUBA reviews for
13 correctness. McCoy v. Linn County, 90 Or App 271, 275-276, 752
14 P2d 323 (1988). Although we do consider the local government's
15 interpretation of its own enactment in our review, and give
16 some weight to it if it is not contrary to the express language
17 and intent of the enactment, our acceptance or rejection of a
18 local government's interpretation is determined solely by
19 whether we believe that interpretation to be correct. McCoy v.
20 Linn County, supra; Sevcik v. Jackson County, ___ Or LUBA ___
21 (LUBA No. 87-087, May 23, 1988), slip op 4.

22 In this case, the plan and LUDO do not expressly establish
23 which zoning districts may be applied to implement the various
24 plan map designations. We, therefore, examine the relevant
25 plan and LUDO provisions to determine whether the county's
26 Timberlands plan designation can be implemented by its FF zone,

1 as argued by intervenor,³ or whether the FF zone is
2 inconsistent with the Timberlands plan designation, as
3 contended by petitioner.

4 Land Use Objective B is "[t]o reduce conflicts between
5 forest and nonforest uses." The Land Use Policy Implementation
6 statements reflect an intent to distinguish, by plan
7 designation and zone, between prime commercial forest lands and
8 nonprime forest lands:

9 "1. Inventory and identify Douglas County's forest
10 land base. Delineate and separate prime
11 commercial forest lands from farm/forest
12 transitional and agricultural lands. Prime
13 forest lands * * * will be designated Timberlands
14 while nonprime forest lands will be designated
15 Farm/Forest Transitional.

16 "[The policy implementation statement then lists
17 the types of land which will be designated
18 Timberlands, and those which will be designated
19 Farm/Forest Transitional.]

20 "2. Provide within the zoning ordinance provisions
21 for a Farm/Forest Resource and a Farm/Forest
22 Woodlot zoning category. * * *

23 "* * * * *

24 The Timberlands Objective is "[t]o protect, for resource
25 uses, prime forest lands from encroachment by conflicting land
26 uses." (Emphasis added.) Timberlands Policy Implementation 1
provides as follows:

27 "The Timberland Resource classification is intended to
28 preserve and protect lands for continued timber
29 production, harvesting and related uses, conserve and
30 protect watersheds, wildlife habitats and other such
31 uses associated with forests; provide for the orderly
32 development of both public and private recreational
33 uses as appropriate and not in conflict with the
34 primary intent of the Timberland Resource zone, which

1 is the sustained production of forest products. Use
2 of land not associated with the management and
3 development of forests shall be discouraged to
4 minimize the potential hazards of damage from fire,
5 pollution and conflict caused by nonfarm related
6 residential, commercial and industrial activities.

7 " * * * * " (Emphasis added.)

8 The above-quoted policy implementation statement implies
9 that areas designated Timberlands will be zoned TR. In
10 addition, as pointed out by petitioner, the purpose section of
11 the TR zone matches, nearly word for word, Timberlands Policy
12 Implementation 1:

13 "Purpose

14 "The Timberland Resource classification is intended to
15 preserve and protect lands for continued timber
16 production, harvesting and related uses, conserve and
17 protect watersheds, wildlife habitats and other such
18 uses associated with forests and to provide for the
19 orderly development of both public and private
20 recreational uses as appropriate and not in conflict
21 with the primary intent of the zone, which is
22 sustained production of forest products. Uses of land
23 not associated with the management and development of
24 forests shall be discouraged to minimize the potential
25 hazards of damage from fire, pollution and conflict
26 caused by nonforest related residential, commercial
27 and industrial activities." LUDO 3.2.000.

28 On the other hand, the purpose section of the FF zone provides
29 as follows:

30 "The Farm-Forest Classification is intended to promote
31 management, utilization, and conservation of forested
32 grazing lands, lands which might not be forested but
33 have such potential, and nontillable grazing lands
34 adjacent to forested lands. The purpose of this
35 classification is to encourage sound management
36 practices on such lands for agricultural or forest
37 resource uses, including but not limited to:
38 watershed management; recreation; fish and wildlife
39 management; and agricultural activities consistent
40 with sound forest and agricultural management

1 practices, to retain lands within the district for
2 farm and forest use, preserving such land from
nonresource use and conflicts." LUDO 3.5.000.

3 The purpose section quoted above shows the FF zone was not
4 intended to be applied to prime forest land, and the purpose of
5 the FF zone is significantly different from that of the TR
6 zone. Specifically, the FF zone gives equal importance to farm
7 and forest uses, rather than emphasizing forest uses alone.⁴

8 In addition, the Rural Land Use chapter of the plan's Land
9 Use Element contains sections describing the plan's rural map
10 designations. The Timberlands and Farm/Forest Transitional
11 sections contain provisions concerning the intent and
12 definition of these designations which are consistent with the
13 plan Forest Resource Element objectives, policies and policy
14 implementation statements quoted above. Plan 15-5 to 15-8.
15 The Land Use Element, at 15-11, also contains a chart entitled
16 "Douglas County Land Use, Generalized Acreage Summary, (Revised
17 11/25/87)." This chart shows the number of acres in the county
18 subject to each plan designation on November 25, 1987. Also,
19 for the forest resource designations, the chart shows the acres
20 subject to each plan designation by zone, as follows:

<u>Type</u>	<u>Acres</u>	<u>Percent of County Total</u>
TIMBERLANDS (TR Zone)	2,469,620	75%
FARM/FOREST TRANSITIONAL		
FF Zone	398,710	
AW Zone	14,920	
Subtotal	<u>413,630</u>	13%

1 The above plan chart indicates that, at least on November 25,
2 1987, none of the 2,469,620 acres in Douglas County designated
3 Timberlands were zoned FF, all were zoned TR.

4 The preceeding discussion establishes that the plan and
5 LUDO, considered together, reflect an intent (1) to distinguish
6 between prime and nonprime forest lands; (2) to designate prime
7 forest land as Timberlands in the plan; and (3) to implement
8 the Timberlands designation solely through the TR zone, not
9 through the FF zone. Turning to petitioner's arguement that
10 the FF zone is directly inconsistent with Timberlands policies
11 with regard to nonforest dwellings, the relevant Timberlands
12 policies provide:

13 * * * * *

14 "2. Prohibit incompatible development such as the
15 construction of nonaccessory dwellings within
designated timberlands.

16 * * * * *

17 "5. Certain nonforest uses compatible with forest
18 uses and necessary for the public convenience and
19 welfare may be permitted within the Timberlands
classification subject to review by the governing
body or its designee."

20 In order to interpret these policies together, giving
21 meaning to both, we must conclude that the "certain nonforest
22 uses compatible with forest uses" which may be allowed
23 conditionally on land designated Timberlands under Timberlands
24 Policy 5 do not include nonforest dwellings, which are
25 prohibited as incompatible under Timberlands Policy 2.⁵ The
26 FF zone is inconsistent with these Timberlands policies because

1 it allows, (1) as a permitted use, a single family dwelling
2 customarily provided in conjunction with farm use; (2) as a
3 permitted use, a second single family dwelling if necessary for
4 farm use and occupied by a relative; (3) as a conditional use,
5 additional single family dwellings accessory and necessary to
6 farm use; and (4) as a conditional use, single family dwellings
7 not provided in conjunction with farm or forest uses.⁶
8 LUDO 3.5.050.4, 3.5.050.5, 3.5.100.1, 3.5.100.12.

9 Because the FF zone is inconsistent with plan policies for
10 land designated Timberlands and, therefore, is inadequate to
11 implement the plan Timberlands designation, we agree with
12 petitioner that the application of the FF zone to Timberlands
13 designated property violates ORS 197.175(2)(b) and (d),
14 ORS 215.050(2) and Goal 2. Furthermore, because application of
15 the FF zone to property designated Timberlands in the county
16 plan is prohibited as a matter of law, we are required to
17 reverse the county's decision. OAR 660-10-071(1)(c).

18 The first assignment of error is sustained.

19 SECOND ASSIGNMENT OF ERROR

20 "Respondent misconstrued the applicable law and acted
21 in violation of its comprehensive plan and
22 implementing ordinance by failing to determine,
23 through adequate findings supported by substantial
evidence, that its decision complies with all
applicable criteria set forth in Section 3.38.100 of
the Douglas County Land Use and Development Ordinance."

24 Petitioner argues that neither the county's findings nor
25 the evidence in the record is adequate to support a
26 determination of compliance with the approval criteria of the

1 LUDO for a zone change.

2 Because we determined, under the first assignment of error,
3 that the appealed zone change is prohibited as a matter of law,
4 at least absent a comprehensive plan amendment changing the
5 plan designation of the subject property, no useful purpose
6 would be served by reviewing petitioner's allegations
7 concerning compliance with the county's criteria for a zone
8 change. We, therefore, do not address the second assignment of
9 error.⁷

10 The county's decision is reversed.

FOOTNOTES

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ORS 197.175(2) provides in relevant part:

"* * * each city and county in this state shall:

"* * * * *

"(b) Enact land use regulations to implement their comprehensive plans;

"* * * * *

"(d) If its comprehensive plan and land use regulations have been acknowledged by the [Land Conservation and Development Commission], make land use decisions in compliance with the acknowledged plans and regulations."

ORS 215.050(2) states:

"Zoning, subdivision or other ordinances or regulations and any revisions or amendments thereof shall be designed to implement the adopted county comprehensive plan."

Goal 2, Part I provides in relevant part:

"* * * The plans shall be the basis of specific implementation measures. These measures shall be consistent with and adequate to carry out the plans.
* * *"

2

The Forest Resource Policies section of the plan's Forest Element contains the county's forest resources Goal ("conserve forest lands for all forest uses") and Objectives A through F. Objective A (Resource Management), Objective B (Land Use), Objective C (Timberlands) and Objective D (Farm/Forest Transitional Lands) are relevant in this review proceeding, and will be discussed later in this opinion. Each of these objectives is followed by numbered "Policies" and "Policy Implementation" statements. We will refer to each policy or policy implementation statement by the title of the objective to which it applies, e.g., Timberlands Policy Implementation 1.

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A good deal of intervenor's argument is devoted to whether the particular use he proposes to carry out on the subject property is consistent with Statewide Planning Goal 4 and the Timberlands plan designation. We note, however, that what we must consider under this assignment of error is whether the FF zone itself is consistent with the Timberlands plan designation, particularly when, as here, the zone change approved is not limited to allowing a particular use of the subject property.

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We note that the purpose of and uses allowed in the FF zone appear to correspond closely to the Farm/Forest Transitional Lands objective and policy implementation statements. The plan's objective for land designated Farm/Forest Transitional is "[t]o conserve and maintain open space lands which have potential for forest use and farm use or both such uses, or are otherwise necessary to protect natural resource areas." Farm/Forest Transitional Lands Objective. The plan encourages the development of zoning provisions for land designated Farm/Forest Transitional which allow farm uses, forest uses and uses listed in ORS 215.213(1) as permitted uses; and uses listed in ORS 215.213(2) and (3), dwellings on lots of record and water impoundments as conditional uses. Farm/Forest Transitional Lands Policy Implementation 1.

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This interpretation is supported by the following provisions from the policy implementation statement for the Timberlands plan designation:

"* * * Use of land not associated with the management and development of forests shall be discouraged to minimize the potential hazards of damage from fire, pollution and conflict caused by nonfarm [sic nonforest] related residential, commercial and industrial activities.

"Homesite development shall be discouraged within areas designated as timberlands. When allowed, homesite development shall be clearly accessory to and necessary for a permitted use. Homesite development shall be subject to review and in the review process the burden shall be upon the applicant to show that the homesite is compatible with the purpose and policies of the timberlands classification."
Timberlands Policy Implementaion 1.

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By contrast, in the TR zone, no dwellings are permitted outright, and the only dwellings conditionally permitted are single family dwellings necessary and accessory to forest uses. LUDO 3.2.100.3.

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We are aware that ORS 197.835(10)(a) generally requires us, when reversing or remanding a land use decision, to decide all issues presented to us. However, as we said in Standard Insurance Company v. City of Hillsboro, Or LUBA (LUBA No. 89-017, June 21, 1989), slip op 12, n 4, "we believe the purpose of this provision is to provide needed guidance to the local government making the decision, so that it may, if possible, correct all deficiencies in its decision without the need for repeated appeals to this Board." However, as explained in the text, in this case the county's zone change decision is not correctable and, therefore, this statutory purpose would not be served by addressing the issues raised by petitioner with regard to compliance with the county's zone change criteria.