

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

3
4 STEVE DOOB,)
5)
6 Petitioner,)
7)
8 vs.)
9)
10 JOSEPHINE COUNTY,)
11)
12 Respondent.)
13

LUBA No. 96-132
FINAL OPINION
AND ORDER

14
15 Appeal from Josephine County.

16
17 Steve Doob, Merlin, filed the petition for review and
18 argued on his own behalf.

19
20 Marc Kardell, Assistant County Counsel, Grants Pass,
21 filed the response brief and argued on behalf of respondent.

22
23 GUSTAFSON, Referee, participated in the decision.

24
25 AFFIRMED 03/25/97

26
27 You are entitled to judicial review of this Order.
28 Judicial review is governed by the provisions of ORS
29 197.850.

1 Opinion by Gustafson.

2 **NATURE OF THE DECISION**

3 Petitioner appeals an ordinance amending the county's
4 land use regulations to change the definition of "guest
5 house" and allowing site-constructed dwellings as medical
6 hardship dwellings in certain situations.

7 **FACTS**

8 In this legislative proceeding, the county amended its
9 Rural Land Development Code (RLDC) to address concerns with
10 reviewing and enforcing requirements for guest houses and
11 medical hardship dwellings in rural residential exception
12 areas. Prior to the amendments, a "guest house" was defined
13 as follows:

14 "GUEST HOUSE. An accessory structure, site
15 constructed and built to the following
16 specifications: no plumbing for a sink except for
17 a bathroom and a wetbar; no 220 wiring or natural
18 gas pipes to an outlet other than a water heater,
19 furnace, or heating system; no kitchen facilities,
20 or laundry facilities; and limited to a maximum of
21 1,000 square feet. There may be only one guest
22 house in addition to the main residence per legal
23 lot. A floor plan shall accompany the application
24 for a Guest House. A Guest House may be used for
25 rental purposes as a Bed and Breakfast Inn under
26 Article 92." RLDC 11.030-151.

27 The amendments repeal that definition and adopt the
28 following in its stead:

29 "GUEST HOUSE. An auxiliary residence constructed
30 on property located in the Rural Residential,
31 Serpentine and Limited Development zones when the
32 following conditions are met: the parcel on which
33 the guest house is placed is at least 2.5 acres in

1 size; the guest house is no more than 500 square
2 feet in size; is attached to or within 50 feet of
3 the main residence; and serviced by the same water
4 system, sewage disposal system (as authorized by
5 the Department of Environmental Quality) and
6 utility meters as the main residence. A guest
7 house may be site constructed or consist of a
8 manufactured dwelling."

9 The amendments also allow a medical hardship dwelling
10 to remain on the property if it meets the definition of a
11 guest house, and relax the requirements for septic disposal
12 for such additional medical hardship dwellings.

13 **FIRST AND THIRD ASSIGNMENTS OF ERROR**

14 Petitioner contends in his first assignment that the
15 amendments authorize an additional dwelling on rural parcels
16 in violation of various county comprehensive plan
17 provisions.¹ In his third assignment, petitioner contends
18 the additional dwellings may result in urban density, and
19 that the county should have adopted findings establishing
20 compliance with Goal 14.

21 The county adopted sufficient findings interpreting its
22 comprehensive plan provisions and explaining why the
23 amendments assure that guest houses will not exceed the
24 carrying capacity of the land. In particular, the county
25 imposed a new minimum size of 2.5 acres, reduced the maximum
26 allowed size of the guest house and required that it be

¹The petition for review also raises a Goal 10 issue, but petitioner admitted at oral argument that his Goal 10 argument is based only on the guideline concerning carrying capacity rather than the Goal itself; he conceded that this subassignment should be denied.

1 within 50 feet of the main residence and connected to the
2 same utilities. The county could properly conclude that
3 such measures assure that any additional density will not
4 exceed carrying capacity.

5 The county did not specifically address Goal 14 in its
6 findings. However, the decision does address the rural
7 nature of the areas affected by the amendment, and
8 petitioner fails to establish how these amendments will
9 violate Goal 14 by requiring or resulting in urban levels of
10 service.

11 The first and third assignments of error are denied.

12 **SECOND ASSIGNMENT OF ERROR**

13 Petitioner contends the county erred in considering the
14 difficulty of enforcing its earlier guest house provisions
15 as a basis for adopting the amendments. Petitioner fails to
16 develop this argument in any meaningful way or to identify a
17 statutory basis for reversal or remand.

18 This assignment of error is denied.

19 The county's decision is affirmed.