

1 INTRODUCTION

2 Petitioner appeals Jackson County's denial of his applica-
3 tion for tentative subdivision approval. Petitioner is the owner
4 of the property and, therefore, his standing is not in issue.

5 The thrust of petitioner's argument on appeal is that the
6 county erred, as a matter of law, in determining that his
7 property was agricultural land within the meaning of goal 3.
8 Petitioner argues that because his property was not agricultural
9 land, the county had no basis for denying his rural residential
10 subdivision on the basis that it violated goal 3.

11 FACTS

12 Petitioner sought tentative subdivision plat approval from
13 Jackson County to divide his 45 acre parcel into eight parcels
14 ranging in size from 5 to 5.99 acres. The property is located
15 19 miles from Medford and 6 miles from Ruch and is, presumably,
16 outside any urban growth boundary.

17 This 45 acre parcel was once part of a much larger working
18 ranch. When the petitioner purchased the property, it was part
19 of a larger parcel containing in excess of 500 acres. In 1972,
20 he sold 217 acres to another party and made 16 divisions of the
21 property which he retained.

22 The 45 acre parcel consists predominantly of class VI soils
23 on one-half and class IV soils on the other half. The
24 property received a farm use tax assessment for many years,
25 but one week prior to the hearing before the Hearings Council
26 for Jackson County the petitioner elected to have it removed

1 from this special assessment. Petitioner asserts that in the
2 years 1974-1977, the losses from farming operations on the
3 property ranged from \$32,000 to \$11,000 each year. Respondent,
4 however, points out that these figures could not possibly be
5 for the 45-acre parcel alone but must be the total operating
6 losses of the petitioner for his entire farming operation.
7 The Hearings Council found, based upon testimony received at
8 one of its hearings, that the property has historically been
9 used as a winter grazing area for the raising of cattle. The
10 uses which occur on nearby lands are open space, rural residen-
11 tial, grazing and forest related uses. The Hearings Council
12 also found that the property is currently open space land with
13 no visible land use.

14 The Hearings Council found that the majority of tracts
15 which are developed with houses in the area range from one
16 acre to ten acres in size. Nearly all of these tracts are
17 adjacent to existing county roads in the area. Land east,
18 south, and northeast of the property is undeveloped land
19 with parcels predominantly over 40 acres in size. It would
20 be necessary in order to serve the property to extend a
21 county road across irrigated land used for pasture and livestock
22 grazing.

23 The Hearings Council found that the property was agricul-
24 tural land because of its farm assessment and its historical use
25 as a winter range for cattle. However, the Hearings Council
26 split 2 to 2 on whether to approve the subdivision application.

1 Two members of the hearings council voted to approve the appli-
2 cation because they found there was no conflict with goal 3
3 "because the agricultural productivity of the ranch has been
4 reduced by the previous creation of 15 parcels, soils are
5 predominantly class VI, and the area has already been impacted
6 by the existing residential development that has occurred
7 on the parcels created from the original ranch." The hearings
8 council's non-recommendation was forwarded to the board of
9 commissioners which considered the subdivision application at
10 a public hearing.

11 Based upon the record before the Hearings Council and
12 based upon the testimony which it received at its public
13 hearing, the Board found that the subdivision application
14 conflicted with statewide planning goal 3 for the following
15 reasons:

16 "(1) The proposed deed restrictions prohibit
17 agricultural uses on the property.

18 "(2) The proposed road will divide existing
19 farm land.

20 "(3) The property was receiving green belt
21 taxation until July, 1979.

22 "(4) The property has historically been
23 used for winter grazing of cattle."

24 OPINION ON THE MERITS

25 Subdivision approvals must be reviewed in accordance with
26 the statewide planning goals. 1000 Friends vs. Benton County,
32 Or App 413, 575 P2d 651, rev den 284 Or 41, 504 P2d 1371.

1 In Jurgenson v. County Court, 42 Or App 505 (1979), the court
2 stated:

3 "When a local government has denied a requested
4 land use change, the concept of reviewing for sub-
5 stantial evidence to sustain the denial presents
6 difficulties. See Wes Linn Land Co. v. Bd. of
7 Comm'rs, 36 Or App 39, 583 P2d 1159 (1978);
8 Marracci v. City of Scappose, 26 Or App 131, 552
9 P2d 552, rev den (1976); Dickinson v. Bd. of
10 County Comm., 21 Or App 98, 533 P2d 1395 (1975).
11 In a local land use proceeding the proponent
12 of change has the burden of proof. Fasano v.
13 Washington Co. Comm., 264 Or 574, 507 P2d 23
14 (1973). Could not a local government deny
15 a land-use change on the sole basis that
16 the proponent did not sustain his burden of
17 proof because his evidence was not credible?
18 If so, in what sense would we be expected to
19 say that the denial was supported by substantial
20 evidence?" 42 Or App at 510.

13 The court answered the questions raised in the above
14 quotation by stating:

15 "In other words, a denial is supported
16 by substantial evidence within the meaning
17 of ORS 34.040(3) unless the reviewing court
18 can say that the proponent of change sustained
19 his burden of proof as a matter of law." Id.

18 The court then proceeded to set forth a three-part test
19 which an owner seeking to partition land has the burden of
20 meeting:

21 "(1) the predominant soil classes on the property
22 are other than agricultural land within the Goal 3
23 definition, see Meyer v. Lord, 37 Or App 59, 586
24 P2d 367 (1978), rev den 286 Or 303 (1979); or
25 (2) the lot sizes created by the partition
26 will be sufficient for the continuation of the
existing agricultural enterprise in the area; or
(3) the factors set out in ORS 215.213, and
incorporated by reference into Goal 3, relevant to
permitting nonfarm uses--usually meaning resi-
dential use--on agricultural land are met, see

1 Rutherford v. Armstrong, 31 Or App 1319, 572 P2d
2 1331 (1977), rev den 281 Or 431 (1978)." 42 Or
3 App at 511.

4 Petitioner does not contend that he proved, as a matter
5 of law, conformance with parts 2 and 3 of the test set forth
6 above in Jurgenson. In other words, petitioner does not
7 contend that although the property is agricultural land the
8 subdivision of the property does not violate goal 3. Rather
9 petitioner argues that he proved, as a matter of law, that the
10 predominant soil classes on the property are not I-IV, and that,
11 therefore, goal 3 has no application to this subdivision.

12 The county did not conclude that the property was agri-
13 cultural land based upon soil type, inasmuch as the county found
14 that half of the property was composed of predominantly class IV
15 soils and half composed of predominantly class VI soils. In
16 order to be agricultural land in western Oregon based upon soil
17 type alone, property must be predominantly, at least, class IV
18 soil.

19 The county found, however, that the property was agricultural
20 land because of its farm use assessment for a number of years and
21 because of its historical use for the winter grazing of cattle.
22 (Findings 3 and 4 set forth above). These findings bear upon
23 the question of whether the property is nevertheless agricultural
24 land because it is "suitable for farm use" within the meaning
25 of goal 3.

26 When there is evidence in the record that property is
27 suitable for farm use within the meaning of goal 3, then goal

1 3 must be applied to any subdivision of land unless the county
2 determines, based upon evidence in the record that the property
3 is not suitable for farm use and does not meet any of the other
4 definitions of agricultural land in goal 3. In this case, the
5 county found that the property was suitable for farm use.
6 The only evidence cited by petitioner which goes against this
7 finding is that of losses sustained by petitioner in farming
8 the property during the years 1974 to 1977. However, it is
9 apparent from a review of exhibits 46 to 49 (petitioner's
10 tax forms for the years 1974 to 1977) that the losses sustained
11 by petitioner were not solely as a result of farming the 45
12 acres in question but were the result of his total farm-
13 ing operations in the area. In any event, the best that can
14 be said from the petitioner's standpoint is that there was
15 conflicting evidence in the record as to the suitability
16 of the property for farm use. The county's determination
17 that the property was suitable for farm use is, therefore,
18 supported by substantial evidence in the record. Christian
19 Retreat Center v. Comm. for Wash. Co., 28 Or App 673,
20 560 P2d 1100, rev den (1977). Petitioner has not proven, as
21 a matter of law, that the property was not agricultural land
22 as defined in goal 3, and it was, accordingly, not error for
23 the county to conclude that the property was agricultural land
24 within the meaning of goal 3.

25 Affirmed.