

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

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GLEN KELLER,)	LUBA No. 80-005
Petitioner,)	
)	FINAL OPINION AND ORDER
vs.)	(ORDER OF DISMISSAL)
)	
CROOK COUNTY, and)	
Richard Allen and Bernice)	
Allen.)	
)	
Respondent.)	

Appeal from Crook County.

Carl M. Dutli, Prineville, argued the cause and filed a petition for review on behalf of Petitioner Glen Keller.

Gary S. Thompson, Prineville, argued the cause and filed a brief on behalf of Respondent Crook County.

Stephen D. Dixon, Prineville, representing Respondents Allen made no appearance.

Bagg, Referee; Reynolds, Chief Referee; Cox, Referee; participated in the decision.

Dismissed

5/19/80

You are entitled to judicial review of this Order. Judicial review is governed by the provisions of Oregon Laws 1979, ch 772, sec 6(a).

1 BAGG, referee.

2 This matter is before the Board on its own motion.
3 Discussion at the hearing on the merits of this case held on
4 April 24, 1980 and a review of a supplement to the record of
5 this case, consisting of the Crook County Comprehensive Plan,
6 the Crook County Zoning Ordinance and, most importantly, the
7 Crook County Subdivision Ordinance lead this Board to conclude
8 that it lacks jurisdiction to hear the matter under Oregon Laws
9 1979 ch. 772 sec. 3-5.

10 FACTS

11 In July of 1979, Respondents Richard and Bernice Allen
12 filed a proposal for an eight unit subdivision on land within
13 an exclusive farm use zone in Crook County. The land is near
14 the city of Prineville but outside the city's urban growth
15 boundary. The property consists of class III and IV soils, and
16 would therefore be considered agricultural lands under the
17 definition found in LCDC Statewide Land Use Goal number 3.

18 The property is surrounded on three sides by agricultural
19 land which is presently being farmed. The parcel itself
20 consists of a hill covered with juniper trees, and there is
21 some evidence that both sheep and cattle have been run on the
22 hill at one time.

23 The Planning Commission denied the application for an
24 "Outline Development Plan" on the ground that the proposal was
25 not compatible with commercial agricultural enterprise

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1 existing in the area. Respondents Richard and Bernice Allen
2 appealed to the county court, and the county court approved a
3 plan to allow a five lot subdivision, but not the original
4 eight lot division as requested.

5 In Crook County, Article 3 of the Crook County Land
6 Development Ordinance 1978, Ordinance No. 19, provides that
7 applications for subdivision may be made by tendering a
8 "Tentative Subdivision Plan" or an "Outline Development Plan."
9 Section 3.030 of Article 3 of the Ordinance provides

10 If an Outline Development plan is prepared and
11 submitted with the application for a subdivision, it
12 shall include both maps and written statements as set
13 forth in this section. The information shall deal
14 with enough of the areas surrounding the proposed
subdivision to demonstrate the relationship of the
subdivision to adjoining land uses both existing and
allowable under applicable zoning.

15 Two sections follow that together require considerable detail
16 in maps and written statements that must be included in the
17 Outline Development Plan. That information, however, is not as
18 detailed as the information required in section 3.060 of the
19 same article. Section 3.060 of Article 3 lists the information
20 required in Tentative Subdivision Plan applications, and the
21 requirements include sufficient information so that the county
22 might proceed to grant tentative approval and comply with the
23 standards and procedures contained in ORS 92.090 (the statute
24 providing requisites for approval of tentative plans or plats
25 of a subdivision). Article 3 sections 3.010 through 3.060 are
26 attached to this opinion.

1 It is clear by a comparison of the information required in
2 the Outline Development Plan and that required in the Tentative
3 Subdivision Plan, that the Outline Development Plan forms
4 something of a discussion document only. In fact, the
5 ordinance provides

6 "[C]ommission review of an Outline Development
7 Plan is intended only as a review relative to
8 applicable Comprehensive Plan and Zoning provisions
9 and thereof (sic) is intended more as a service to the
10 developer than as a commitment of approval. Pursuant
11 thereto, Commission approval or general acceptance of
12 an Outline Development Plan for a subdivision shall
13 constitute only a provisional and conceptual approval
14 or acceptance of the proposed subdivision." Crook
15 County Land Development Ordinance #19, Sec 3.030(3).

16 That "provisional and conceptual approval" is rather different
17 than the approval granted a tentative plan. Approval granted a
18 tentative plan constitutes approval to proceed with
19 construction of the subdivision in accordance with the terms of
20 the tentative plan. See section 3.090 and of the Crook County
21 Land Development Ordinance Article 9 (improvements) and ORS
22 92.040.

23 JURISDICTION OF LAND USE BOARD OF APPEALS

24 The Board's jurisdiction to review this case is derived
25 from the definition of "Land Use Decision" contained in Oregon
26 Laws 1979, ch 772, sec 3. A land use decision is

27 "(a) A final decision or determination made by a
28 city, county or special district governing body that
29 concerns the adoption, amendment or application of:

30 (A) The state-wide planning goals;

31 (B) A comprehensive plan provision; or

1 (C) A zoning, subdivision or other ordinance that
2 implements a comprehensive plan; or

3 (b) A final decision or determination of a state
4 agency other than the Land Conservation and
5 Development Commission, with respect to which the
6 agency is required to apply the state-wide planning
7 goals.

8 Under the temporary rules of the Land Use Board of Appeals, a
9 final decision or determination is "a decision or determination
10 which has been reduced to writing and which bears the necessary
11 signatures of the governing body." LUBA temporary rules 3 C, and
12 LUBA Permanent Rule 3 C. The decision in this case is in the form
13 of an order and does bear the signatures of two county
14 commissioners. It would appear that the rule of the Land Use Board
15 Appeals defining the final decision or determination has been met,
16 except that there is nothing "final" about an Outline Development
17 Plan.

18 By its terms, the Outline Development Plan is a guide and is
19 not a final decision granting or denying a subdivision application.
20 It does not appear to be a go-ahead signal for construction or any
21 other activity than a follow-up tentative plan. The Outline
22 Development Plan is, in fact, optional and not at all a requirement
23 of the Crook County Subdivision process. It is the tentative plan
24 that is required in Crook County and by Oregon Law to be filed, and
25 it is the application for the tentative plan that contains enough
26 information upon which the county may base a decision as to the
proposed subdivision's compliance with the counties subdivision
ordinance and its comprehensive plan.

1 It appears from our reading of the ordinance and the comments
2 made at oral argument on the merits, that there is no bar to an
3 appeal of a subsequent tentative plan simply because the Outline
4 Development Plan has not been appealed. Also, the county is not
5 bound to find in favor of the tentative plan simply because it may
6 have found in favor of an earlier Outline Development Plan. In
7 short, there is simply no finality to the Outline Development Plan
8 and, therefore, no actual effect on land use that we may review.

9 It is the Board's view that this case must be dismissed.
10 This dismissal is most certainly not a bar to an appeal of a "final
11 decision or determination" made by Crook County on this or a
12 similar subject in the future. It is simply our conclusion that
13 the Outline Development Plan procedure in Crook County does not
14 present us with a reviewable decision under our enabling
15 legislation.

16 This matter is dismissed.
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