

LAND USE
BOARD OF APPEALS

BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON JUN 9 8 48 AM '80

1
2
3 Michael A. McCrystal and)
Friends of Polk County,)
4 Petitioners,)
5 vs.)
6 Polk County, and)
7 Thomas C. Forbes,)
8 Respondent.)

LUBA No. 80-008
FINAL OPINION AND ORDER

9
10 Appeal from Polk County

11 Michael A. McCrystal, Dallas, filed a petition for review
and argued the cause on his own behalf.

12 Dennis McCaffrey, appeared on behalf of Polk County.

13 George M. Jennings, Monmouth, filed a brief and argued the
14 cause for Respondent Forbes.

15 BAGG, Referee; Reynolds, Chief Referee; Cox, Referee;
participated in the decision

16 Remanded

June 9, 1980

17
18 You are entitled to judicial review of this Order.

19
20 Judicial review is governed by the provisions of Oregon Laws
21 1979, ch 772, sec 6(a).

1 BAGG Referee

2 NATURE OF THE PROCEEDING

3 This case is about an objection to the approval of a
4 partitioning of 34 acres of agricultural land in Polk County.
5 The case has something of a complicated history in that on May
6 5, 1980, the Board was informed that a stipulation had been
7 reached disposing of the necessity of a hearing; but by the end
8 of the month, the stipulation had broken down and a hearing on
9 the merits had to be scheduled.

10 The Board held the hearing on May 29, 1980.

11 FACTS

12 From the record in the case, the Board finds that the
13 subject property consists of a 34 acre parcel which Thomas
14 Forbes sought to divide into two 17 acre parcels. The
15 application was processed by Polk County as "special exception
16 79-76," and the request was denied by the Polk County Planning
17 Director.

18 The applicant appealed that denial to the polk County Board
19 of commissioners and the commissioners held a public hearing on
20 the matter on November 29, 1979 On December 12, 1979, the
21 county commissioners announced their decision to approve the
22 partitioning. Their decision was reduced to writing in a letter
23 dated December 18, 1979.

24 STATUS OF FRIENDS OF POLK COUNTY

25 The Notice of Intent to Appeal in this case provides on
26 page two that "Friends of Polk County" is appearing by and

1 through its Vice President, Walter W. Scherf. Mr. Scherf is
2 not a member of the Oregon State Bar.

3 Land use appeals before the Land Use Board of Appeals are
4 "proceedings" within the meaning of ORS 9.320. In any such
5 proceeding, a party may represent himself or be represented by
6 an attorney. Persons who are not members of the Oregon State
7 Bar (attorneys) may not represent other persons or
8 associations. Friends of Polk County has, then, made no
9 appearance before the Land Use Board of Appeals and is not a
10 party to this proceeding. See McCrystal vs. Polk County, LUBA
11 80-001; 35 Op Atty Gen 1088 1972; 36 Op Atty Gen 960, 989 1974;
12 ORS 9.160; ORS 9.320

13 ASSIGNMENTS OF ERROR BY PETITIONER

14 The petitioner alleges (1) violation of state land use
15 goals, numbers 3 and 4; (2) a procedural error in relying on
16 observations made by county commissioners during a visit to the
17 property; and (3) vague, incomplete, and conclusory findings in
18 the letter-order granting the special exception. At the
19 hearing on May 29, 1980, Respondent Forbes admitted that the
20 findings were inadequate to support the decision.

21 The Board agrees with Respondent Forbes that the findings
22 do not support the decision and form a very limited basis for
23 Board review of the proceeding in Polk County. Therefore,
24 based on the admission of Respondent, the petitioners third
25 assignment of error is sustained and this case must be remanded
26 to Polk County for further proceedings consistent with this

1 opinion. It is unnecessary to review Petitioner's remaining
2 assignments of error. In this case, such review would be
3 difficult because of the very sketchy findings.

4 This matter is remanded to Polk County.
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

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

Michael A. McCrystal and
Friends of Polk County,

Petitioners,

vs.

Polk County,

Respondent.

and

Thomas C. Forbes,

Respondent.

LUBA NO. 80-008

ORDER

This matter is before the Board on the motion of
Petitioners Michael A. McCrystal and Friends of Polk County.
The motion is for an extension of time within which to file the
petition for review. Petitioners ask for an extension of time
to March 11, 1980. The motion was filed on March 6, 1980, only
a few days before the requested deadline of March 11, 1980.
The brief actually arrived on March 14, 1980, outside the time
provided for in petitioners' motion.

Respondents have made no objection to the motion to extend
the time to file a petition, and they have made no objection to
the filings of the petition. According to Rule 14 of the
Board's temporary Rules of Procedure, the "adverse party" (Polk
County) had ten days to object either to the motion or to the
filing of the petition. The Board has no power to extend the
time for the filing of a petition for review on its own. If
any time limit is to be extended, it must be with the consent

1 or acquiescence of all the parties to the proceeding. It is
2 our view that Polk County has acquiesced to the filing of the
3 petitions.

4 As the petitions were filed beyond the date set in the
5 motion for extension of time and as there has been no objection
6 raised by Polk County, we believe it unnecessary to rule on the
7 motion for extension of time. We will consider the petitions
8 as filed. Polk County, therefore, has 20 days from the date of
9 the filing of the petition within which to file its brief
10 unless, by agreement of the parties, that time is extended.

11 Dated this 2nd day of April, 1980.

12 /s/ John T. Bagg

13 -----
14 John T. Bagg
15 Hearings Referee
16
17
18
19
20
21
22
23
24
25
26