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

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CITY OF ROCKAWAY,)
)
Petitioner,) LUBA No. 80-049
)
v.) FINAL OPINION
) AND ORDER
TILLAMOOK COUNTY,)
)
Respondent.)

Appeal from Tillamook County.

Edward J. Sullivan, Portland, filed the Petition For Review for Petitioner City of Rockaway.

Warren A. McMinimee, County Counsel, filed the Brief for Respondent Tillamook County.

REYNOLDS, Chief Referee, COX, Referee, BAGG, Referee; participated in the decision.

REVERSED and REMANDED. 9/04/80

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 REYNOLDS, Chief Referee

2 NATURE OF THE DECISION

3 Petitioner appeals the county's adoption of an urban growth
4 boundary for the City of Rockaway. In adopting the urban
5 growth boundary, the county amended the urban growth boundary
6 as previously adopted by the City of Rockaway by making the
7 southern portion of the boundary coterminous with the city
8 limits of Rockaway. This act had the effect of excluding an
9 area known as Twin Rocks from within the Rockaway urban growth
10 boundary.

11 STATEMENT OF FACTS

12 The City of Rockaway adopted its urban growth boundary in
13 January of 1979. Included within this boundary was an
14 unincorporated area known as Twin Rocks. Tillamook County
15 subsequently held hearings and adopted an urban growth boundary
16 for the City of Rockaway. In doing so, the county made the
17 boundary for the southern portion of Rockaway coterminous with
18 the city limits, thereby omitting from the boundary the Twin
19 Rocks area.

20 The findings adopted by Tillamook County in support of its
21 urban growth boundary are attached to Ordinance No. 26 and in
22 their entirety, are as follows:

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24 1. Section 7 of the ordinance specifically
25 provides for automatic extension of the urban growth
boundary to coincide with any city limits extensions
by Rockaway through legal annexation proceedings.

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2. The results of an informal County poll of

1 property owners in the Twin Rocks Water District
2 (originally proposed to be included in the Rockaway
3 urban growth boundary) revealed that a large majority
4 of those favoring the Rockaway urban growth boundary
5 proposal were within that portion of the area
6 petitioning for annexation to the city and which would
7 automatically be included within the urban growth
8 boundary if legally annexed.

9 3. The Oregon State Land Conservation and
10 Development Commission has established by
11 administrative rule orderly procedures for annexation
12 of land to cities in accordance with the statewide
13 planning goals.

14 4. An advisory opinion from the Land
15 Conservation and Development Commission to Tillamook
16 County has stated that a separate urban growth
17 boundary could be established for the Twin Rocks area
18 south of Rockaway in compliance with the statewide
19 planning goals.

20 5. Special service districts have been
21 established in the Twin Rocks area which are capable
22 of providing the water and sewer services needed in an
23 urban and urbanizable area. Fire protection is
24 provided to this area on a contract basis by the City
25 of Rockaway. Street lighting is provided by Twin
26 Rocks Water District. Other services are provided by
Tillamook County.

Establishment of this urban growth boundary
for the City of Rockaway, together with the
establishment of an adjacent urban growth boundary for
the Twin Rocks area in the Tillamook County
comprehensive plan, will meet the basic requirement of
Statewide Planning Goal 14 calling for separation of
urban and rural lands.

ASSIGNMENTS OF ERROR

Petitioner alleges that the county erred in adopting
Ordinance No. 26 in two particulars:

(1) The county failed to provide findings demonstrating
conformance with Goal 14, and

(2) Section 7 of the ordinance violates Goal 14 in

1 permitting urban growth boundary extensions to be based solely
2 upon annexation proceedings.

3 Respondent's primary contention appears to be that the
4 findings are as good as they can be, given the long standing
5 dispute in the area as to the appropriate designation for Twin
6 Rocks and the fact that the county's decision to exclude Twin
7 Rocks was a political, not a land use planning decision.
8 Concerning the matter of the provision in the ordinance
9 authorizing urban growth boundary amendments upon annexation to
10 the city, respondent argues that if the Board finds that this
11 provision is objectionable it can be severed from the remainder
12 of the ordinance without invalidation of the entire ordinance.

13 OPINION

14 Petitioner argues that in adopting an urban growth
15 boundary, a jurisdiction is required to adopt findings which
16 demonstrate that Goal 14 requirements for establishment of an
17 urban growth boundary have been satisfied. In this regard,
18 petitioner argues that Goal 14 requires a jurisdiction to do
19 more than just think about the goals, rather, a jurisdiction
20 must have findings demonstrating that consistency with the
21 goals has been achieved in adoption of the urban growth
22 boundary. Petitioner argues that none of the county's findings
23 with, perhaps, the exception of findings 4, 5, and 6 "bear even
24 a remote connection to Goal 14 requirements."

25 Respondent county responds by saying that the findings
26 which were made are adequate given the facts in this case. The

1 county argues that the area involved is strictly urban and
2 urbanizable and has been for many years. The sole question,
3 according to respondent, is whether the Twin Rocks area should
4 have been included within the Rockaway urban growth boundary or
5 within a separate Twin Rocks urban growth boundary presently
6 being established by the county.

7 We agree with petitioner that Goal 14 requires findings
8 which reflect the results of its consideration of the seven
9 factors in Goal 14 for establishment of an urban growth
10 boundary. See 1000 Friends v CRAG, LCDC No. 77-004,
11 Introductory Order dated December 19, 1977. We also conclude
12 that the county's findings are not adequate to justify its
13 decision with respect to the Rockaway urban growth boundary.
14 The county makes a good argument in its brief as to why the
15 Twin Rocks area need not be included within the Rockaway urban
16 growth boundary. Respondent also makes a good argument as to
17 why some of the criteria in Goal 14 are probably meaningless in
18 the Rockaway area because the area involved is all at least
19 urbanizable; and, thus, drawing a boundary line at some point
20 between Twin Rocks and the City of Rockaway would not be for
21 the purpose of separating urbanizable land from rural land, but
22 more for the purpose of delineating who has the responsibility
23 to provide services within a given area. In this regard, the
24 situation is very similar to that which exists in the Portland
25 metropolitan area where cities touch one another and decisions
26 must be made as to where the jurisdictional lines for planning

1 purposes are to be drawn.

2 However, the county has set forth in its findings neither
3 the history nor any of the particularly unusual factors which
4 exist so that this board can tell from a review of the findings
5 that the county complied in so far as is practicable with Goal
6 14's seven factors for establishment of an urban growth
7 boundary. Much of what is contained in the county's brief
8 ought probably be contained also in the county's findings, but
9 was not. For example, the county argues that the area in
10 question was never farm land and is not within miles of farm
11 land, so that factor number 6 "retention of agricultural land
12 as defined" is not applicable in any manner whatsoever to the
13 Rockaway urban growth boundary, at least in this particular
14 area. Similarly, because "there is not now within miles of the
15 boundaries of the proposed area any agricultural activity as
16 suggested in number 7," the county argues that factor number 7
17 of Goal 14 "compatibility of the proposed urban uses with
18 nearby agricultural activities" is similarly not applicable.
19 The county, in its brief, describes the area as follows:

20 "The undeniable fact is that the entire tract
21 involved in the urban growth boundary in this case is
22 and has been for many years urban land. The area
23 consists of a narrow strip of land bordering the
24 Pacific Ocean on the west and forest land on the east;
25 Rockaway runs parallel to the Pacific Ocean with the
26 present highway 101 running through the narrow
Rockaway strip with small shops and homes bordering
highway 101 on either side. It has been for many
years urban land and nothing else."

Respondent county also argues that there is evidence in the

1 record which discloses the urban characteristics of the Twin
2 Rocks area. The county argues that if the board feels that
3 "Goal 14 relates to urbanization and is applicable to this
4 case" then the findings of the county comply with Goal 14's
5 requirements in that, according to the county, the record
6 basically shows that information was entered into the record
7 pertaining to the various Goal 14 criteria. However, as
8 previously mentioned, compliance with Goal 14 requires more
9 than just listening to evidence relating to the various factors
10 contained in Goal 14. Compliance requires that findings be
11 adopted which show the results of consideration of the seven
12 factors in Goal 14 by elected policy makers.

13 Concerning petitioner's second assignment of error, we do
14 not believe that the ordinance as drafted eliminates the
15 necessity of complying with Goal 14 prior to or concurrent with
16 an annexation to the city.

17 Because the ordinance provides for the extension of the
18 urban growth boundary when land is annexed, the annexation must
19 be accompanied with an appropriate city and county plan
20 amendment consistent with applicable provisions of Goal 14.
21 Given this, in order for the City of Rockaway to be able to
22 justify annexation of land to the city, it would have to
23 consider the seven factors contained in Goal 14 for change of
24 the urban growth boundary. While there may be a question here
25 as to whether the county may abdicate its responsibilities under
26 Goal 14 for participation in the adoption of an urban growth

1 boundary, the City of Rockaway has not asserted that as a
2 grounds for error.

3 In summary, we do not believe that petitioner's second
4 assignment of error is well taken, The legal effect of
5 Ordinance No. 26 is not to relieve the City of Rockaway from
6 having to comply with the seven factors in Goal 14 for
7 amendment of its urban growth boundary when it annexes land to
8 the city.

9 For the foregoing reasons, we sustain petitioner's first
10 assignment of error and deny petitioner's second assignment of
11 error. The decision is accordingly, reversed and remanded to
12 the county for further proceedings consistent with this opinion.

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STATE OF OREGON

INTEROFFICE MEMO

TO: MEMBERS OF THE LAND CONSERVATION AND DEVELOPMENT COMMISSION DATE: 7/22/80

FROM: LAND USE BOARD OF APPEALS

SUBJECT: CITY OF ROCKAWAY v TILLAMOOK COUNTY
LUBA No. 80-049

Enclosed for your review is the Board's proposed opinion and final order in the above captioned appeal.

The Board concludes that the county erred in adopting an urban growth boundary for the City of Tillamook because its "findings" do not contain the "results" of its consideration of the seven factors in Goal 14 for establishment of an urban growth boundary.

The Board is of the opinion that oral argument would not assist the commission in its understanding or review of this appeal. Therefore, the Board recommends that oral argument before the commission not be allowed.



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