

LAND USE
BOARD OF APPEALS

BEFORE THE LAND USE BOARD OF APPEALS

OCT 17 11 37 AM '80

OF THE STATE OF OREGON

THE CITY OF ALBANY,

Petitioner,

vs.

LINN COUNTY,

Respondent.

LUBA NO. 80-058

FINAL OPINION
AND ORDER

Appeal from Linn County.

James V. B. Delapoer, Albany, filed a petition for review on behalf of Petitioner City of Albany. With him on the brief were Long, Post, Delapoer, & Kocs, P.C.

Respondent Linn County appeared by stipulation signed by Edward Schultz, County Counsel.

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

Reversed

10/17/80

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).

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1 BAGG, Referee.

2 NATURE OF THE DECISION

3 The City of Albany, Petitioner, appeals the Linn County
4 Board of Commissioner's amendment to the county's comprehensive
5 plan map redesignating approximatey 16.99 acres from an Interim
6 Farm-Forestry, 20 acre minimum lot size, to Urbanizing Highway
7 Commercial, one acre minimum lot size. Petitioner seeks to
8 have the decision invalidated on a number of grounds.

9 FACTS

10 In late 1979, the Linn County Board of Commissioners
11 requested the Planning Staff to prepare a proposed amendment to
12 the comprehensive plan redesignating something under 17 acres
13 of property located one mile east of the City of Albany. The
14 redesignation was initiated at the request of various property
15 owners and involved a change in use designation from
16 agricultural-forestry to a commercial use. When learning of
17 the proposal, the city voiced its objections and continued to
18 voice its objections through several hearings held by the
19 county to consider the change. Notwithstanding the objections
20 of the city, the county designated the property "UHC" or Urban
21 Highway Commercial with one acre minimum acre lot size.

22 Petitioner filed a petition for review with the Board
23 alleging eleven assignments of error. By stipulation of the
24 parties, the eleven assignments of error were pared to five,
25 each alleging violation of a statewide goal. The stipulation
26 also provided that the decision of the Board of Commissioners

1 is invalid "for lack of adequate findings, procedural errors,
2 and lack of LCDC goal compliance." The stipulation requests
3 that this Board "makes such determination as it deems
4 appropriate regarding assignments of error nos. 7-11."

5 The following are the assignments of error alleging
6 violation of LCDC goals:

- 7 1. "Seventh Assignment of Error: The proposed land
8 use change violates the LCDC Goal 3-Agriculture."
- 9 2. "Eighth Assignment of Error: The proposed land
10 use decision violates Goal 11-Public Facilities
11 and Services."
- 12 3. "Ninth Assignment of Error: The proposed
13 developments violates Goal 12-Transportation."
- 14 4. "Tenth Assignment of Error: The proposed land
15 use decision violates 13-Energy Conservation."
- 16 5. "Eleventh Assignment of Error: The proposed land
17 use decision violated Goal 14-Urbanization."

18 With two exceptions, the findings adopted by the Linn
19 County Board of Commissioners do not contain sufficient
20 information for us to determine in what manner violations of
21 specific LCDC goals may have occurred. In order for us to
22 determine whether an LCDC goal has been violated, we must have
23 some understanding of what the county has done. However, we
24 will discuss Goals 3 and 14 as there is, in the case of Goal 3,
25 sufficient information to review the county's action against
26 Goal 3; and, in the case of Goal 14, the goal itself requires
findings and a failure to make findings is itself a violation
of the goal. 1000 Friends v. CRAG, LCDC No. 77-004; City of
Rockaway v. Tillamook County, ___ Or LUBA ___ (1980) (LUBA No.

1 80-049).

2 GOAL 3

3 The findings of the Linn County Board recite that the
4 subject property includes Class II and IV soils. That finding
5 by the Board is enough for us to review the findings generally
6 for compliance with Goal 3. Our review of the findings does
7 not show us that the county found the land was somehow to be
8 excluded from the requirements of Goal 3 by any of the tests
9 articulated by the Land Conservation and Development
10 Commission. For example, the county did not find the land to
11 be "committed" to other uses thus exempting the land from Goal
12 3 requirements. See 1000 Friends vs. Marion County, LCDC
13 75-006 (1977) and "Common Questions About Statewide Goal # 3,
14 Agricultural Lands" adopted by the Commission on March 24,
15 1978. As the property appears to be subject to Goal 3, a
16 change in use from a farming designation to a commercial
17 designation would require an exception to goal 3. We find no
18 exception included in the findings of the Linn County Board,
19 and we can, therefore, conclude that LCDC Goal 3 has been
20 violated.

21 GOAL 14

22 The only other goal that we can address on the merits is
23 Goal 14. Goal 14 requires that findings be made whenever a
24 change from rural to urban designation occurs. The findings
25 presented by the Linn County Board of Commissioners do not show
26 with any degree of clarity upon what factors the county relied

1 when it made the change in designation from a rural to an urban
2 use. Therefore, we can conclude that Goal 14 has been violated.

3 With respect to allegations of violations of Goals 11, 12
4 and 13, we can only speculate as there are insufficient facts
5 in the findings from which we can base any evaluation of what
6 the county has done relative to those goals.

7 Findings are necessary to show compliance with the goals.
8 1000 Friends vs. Marion County, LUBA No. 79-005. Without
9 findings, we cannot determine whether or not the goals have
10 been violated; and, for that reason alone, the case has to be
11 returned to Linn County. The stipulation provides for the
12 return to Linn County in any event. Our comments concerning
13 Goals 3 and 14 provide, we hope, some minimal assistance to the
14 county. However, we are not in a position to engage in any
15 detailed examination of the record in this case without having
16 findings upon which to base our review.

17 The decision of the Linn County Board of Commissioners
18 rezoning certain properties within Linn County from Interim
19 Farm-Forestry to Urbanizing Highway Commercial in Township 11
20 South, Range 3 West, Section 10, is reversed.

LAND USE
BOARD OF APPEALS

AUG 28 1 49 PM '80

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

3 THE CITY OF ALBANY,)
4)
5 Petitioner,) Case No. LUBA 80-058
6 vs.)
7 LINN COUNTY,) STIPULATION
8 Respondent.)
9 _____)

10 COMES NOW the parties hereto, by and through their
11 attorneys, and stipulate and agree as follows:

12 1. The decision of the Linn County Board of Commissioners,
13 which is the subject of this proceeding, should be determined to
14 be invalid for lack of adequate findings, procedural errors, and
15 lack of LCDC goal compliance. The rezoning and comprehensive
16 plan change in question is invalid and any proposal to rezone all
17 or any portion of the property in question or change the compre-
18 hensive plan designation therefore shall be proceeded by new
19 hearings before the Linn County Board of Commissioners and any
20 new decision shall be supported by such new findings as the County
21 may deem appropriate and as may be required by law.

22 2. Any subsequent decision to rezone all or any part of
23 the property in question or amend the comprehensive plan designa-
24 tion therefore, shall require compliance with the Preliminary
25 Urban Growth Boundary Agreement entered into between The City of
26 Albany and Linn County or any successor agreement which may be

27 1 - STIPULATION

1 entered into between the parties hereto.

2 3. No determination need be made by the Board with
3 regard to Petitioner's assignments of error numbers 1 through 6.

4 4. The parties request that the Board make such determin
5 tion as it deems appropriate regarding assignments of error number
6 7 through 11.

7 DATED this 26th day of August, 1980.

8
9 THE CITY OF ALBANY

10 By *James V. B. Delapoer*
11 James V. B. Delapoer
12 Long, Post, Delapoer & Koos, P.C.

13 LINN COUNTY

14 By *Edward Schultz*
15 Edward Schultz
16 Attorney at Law

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2 - STIPULATION

BEFORE THE LAND USE
LAND CONSERVATION AND DEVELOPMENT COMMISSION BOARD OF APPEALS
OF THE STATE OF OREGON

OCT 16 1 50 PM '80

City of Albany,

Petitioner(s),

v.

Linn County,

Respondent.

LUBA 80-058
LCDC Determination

The Land Conservation and Development Commission hereby affirms the recommendations of the Land Use Board of Appeals in LUBA 80-058 with respect to the allegations of goal violations.

DATED THIS 15th DAY OF OCTOBER, 1980.


W. J. Kvarsten, Director
For the Commission

WJK:ER:km
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