

LAND USE  
BOARD OF APPEALS  
Dec 11 10 50 AM '80

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

THOMAS ABREGO, ELLEN ABREGO, )  
RAY HUNT, MARGUARY HUNT, )  
ORLIN H. ROTH, WILLIAM ROTH, )  
and FRANCIS ROTH, )  
Petitioners, )  
vs. )  
YAMHILL COUNTY, )  
Respondent, )  
and )  
NEWBERG SCHOOL DISTRICT 29JT, )  
Applicant-Respondent. )

LUBA NO. 80-074  
FINAL OPINION  
AND ORDER

Appeal from Yamhill County.

John C. Pinkstaff, McMinnville, filed a petition for review and argued the cause for petitioners.

Daryl S. Garrettson, McMinnville, filed a brief and argued the cause for Respondent Yamhill County.

George H. Layman, Newberg, filed a brief and argued the cause for Respondent Newberg School District 29JT.

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

Remanded

12/11/80

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 COX, Referee.

2 NATURE OF PROCEEDING

3 Petitioners challenge a quasi-judicial decision by Yamhill  
4 County Board of Commissioners granting an amendment to the  
5 Yamhill County Comprehensive Plan to enlarge the City of  
6 Newberg's urban growth boundary by adding an additional 18.8  
7 acre parcel for an elementary school site. Petitioners seek  
8 reversal of the decision.

9 STANDING

10 Petitioners standing is not an issue in this case.

11 ALLEGATIONS OF ERROR

12 Petitioners set forth five assignments of error as follows:

- 13 1. "The Board Failed to Follow the Applicable  
14 Procedure for Taking an Exception Under LCDC Goal  
2 When Changing an Urban Growth Boundary."
- 15 2. "The Board's Decision Improperly Construed the  
16 Applicable Law by Failing to Demonstrate With  
17 Compelling Reasons and Facts; That the  
Requirements for Taking an Exception Under LCDC  
Goal 2 Were Met."
- 18 3. "The Board's Findings in Applying LCDC Goal 14  
19 Were Not Supported by Substantial Evidence in the  
Whole Record."
- 20 4. "The Board's Decision Improperly Construed the  
21 Applicable Law by Violating the Newberg  
Comprehensive Plan Provisions Regarding Schools.
- 22 5. "The Board's Decision Improperly Construed the  
23 Applicable Law by Violating the Yamhill County  
Comprehensive Plan Provisions Regarding Schools."

24 STATEMENT OF FACTS

25 On or about February 6, 1980, the applicant, Newberg School  
26 District 29JT (District) requested an amendment to the Newberg

1 Urban Growth Boundary (UGB) to expand the UGB to include an  
2 18.8 acre parcel for a "future school and recreational site."  
3 The subject parcel is outside the existing Newberg UGB and  
4 carries with it a comprehensive plan designation of very low  
5 density residential (VLDR). Yamhill County's Comprehensive  
6 Plan has been acknowledged by LCDC.<sup>1</sup> The subject property  
7 presently carries with it a zone of "agriculture/forestry," ten  
8 acre minimum parcel size. To the east the parcel is bordered  
9 by the Newberg city limits and there is a common boundary with  
10 the UGB of approximately 250 feet on the southeast corner of  
11 the subject property. The lands to the southwest and north of  
12 the parcel are presently in farm operations with acreage in  
13 orchards, hay, small grains and pasture.

14 The parcel in question is currently in farm use with  
15 approximately 15 percent in a producing filbert orchard and 85  
16 percent in hay production. The soils on the property are  
17 primarily SCS Class III with lesser amounts of SCS Class II.  
18 The subject property is adjoined on the east by a 70-unit  
19 residential subdivision called Anne's Addition.

20 On May 27, 1980, a hearing on the District's application  
21 was held by the Newberg Urban Area Management Commission  
22 (NUAMC) which resulted in a recommended approval of the  
23 application. On June 9, 1980, the Newberg City Council held a  
24 hearing on the application and voted to approve the ordinance  
25 to enlarge the city UGB to include the 18.8 acre parcel. On  
26 June 11, 1980, the Yamhill County Board of Commissioners held a

1 public hearing and voted to approve the District's  
2 application. On June 25, 1980, the Board of Commissioners  
3 voted to adopt Ordinance 239 and Findings. It is that  
4 ordinance which is the subject of this appeal.

5 The District serves more than just Newberg city students as  
6 its jurisdiction extends over 65 square miles. The need for an  
7 additional elementary school, grades K through 5 was recognized  
8 in the Newberg Comprehensive Plan (unacknowledged), which  
9 provides for an additional elementary school in the northern  
10 area of the city. Of the 75 elementary school classrooms  
11 presently existing, 25 are currently overcrowded. Evidence  
12 indicates that there is no additional classroom space available  
13 for the increase of 535 students in grades K through 5  
14 anticipated by October of 1984. The District claims it cannot  
15 add to existing elementary schools for various reasons.

16 In anticipation of this additional school need, the school  
17 District began in 1978 searching for a school site in the  
18 northern area of Newberg, with anticipated construction to  
19 begin sometime in 1983-85. The District ran a story in the  
20 local newspaper stating that it was looking for a school site  
21 and requested assistance without results. On April 12, 1978,  
22 the District sent a letter to all Newberg realtors requesting  
23 assistance in the location of a school site. Of the realtors  
24 responding, one 10 acre parcel was suggested. The District  
25 rejected it because the parcel was too hilly, located on a  
26 major highway, too far from sewer and water and too far from

1 the urban growth boundary. Another site was initially  
2 suggested within the urban growth boundary but the district  
3 rejected the parcel because its cost exceeded available funds  
4 and another election would have been necessary to possibly get  
5 the funds. A realtor in the area considered other sites but  
6 concluded that there was none available for less money than the  
7 parcel which had been rejected. The funds for purchase of the  
8 school site come from a capital improvement bond issue approved  
9 by the voters in March, 1978, the second time the issue was  
10 before the voters. After the District had entered into an  
11 option agreement to purchase the subject property, another  
12 possible site within the urban growth boundary became  
13 available. This unchosen alternative site is known as the  
14 Coppergold or Pony Farm site.

15 The subject property is presently serviced by sewer and  
16 water. The northwest sewer trunk line is adjacent to the  
17 property; and, in the opinion of the city engineer, capable of  
18 handling the proposed school.

19 The District needs eleven acres at a minimum for a school  
20 of the type being proposed. The record is not complete on why  
21 the other 7.8 acres are needed. Plans call for using the  
22 additional property as a park and additional playing fields for  
23 the school. In addition, the record indicates that  
24 approximately one acre will be used for road development.

25 The site has been the subject of an exception to Statewide  
26 Goal No. 3 taken by the County when adopting its comprehensive

1 plan.

2 FIRST ASSIGNMENT OF ERROR

3 Petitioners argue that Yamhill County violated Statewide  
4 Goal 14 by failing to follow the applicable procedures and  
5 requirements for taking an exception under Goal 2.<sup>2</sup>

6 Statewide Goal 14 provides in pertinent part

7  
8 "\*\*\*\* In the case of a change of a boundary, a  
9 governing body proposing such change in the boundary  
10 separating urbanizable land from rural land, shall  
11 follow the procedures and requirements as set forth in  
the Land Use Planning Goal (Goal 2) for goal  
exceptions."<sup>3</sup>

12 Petitioners argue that although the county attempted to  
13 follow the applicable exception procedure in this case, it  
14 failed to do so. They argue that the respondent should have  
15 provided notice of public hearings specifically noting that an  
16 exception would be taken and that the notice should have  
17 summarized the issues in a meaningful way as required by Goal  
18 2.

19 Petitioner's allegation of error that the county failed to  
20 follow the procedures applicable to it, because it did not in  
21 its notice indicate an exception would be taken, is denied.  
22 Little would be served when an exception is not necessary to  
23 put in the notice the words "an exception will be taken." The  
24 notice provided by the respondent sets forth:

25 "An amendment to the Newberg Urban Growth  
26 Boundary and a Plan Amendment to the Yamhill County  
Comprehensive Plan to incorporate 18.8 acres from a

1 larger 37.6 acre parcel for utilization as an  
2 Elementary School site; and amend the Yamhill County  
3 Comprehensive Plan from an 'Agricultural/Forestry  
4 Small Holding' designation to 'Future Urbanizable  
5 Lands.'"

6 Such a notice sufficiently apprises the public of the  
7 activities that will be taking place at the hearing and  
8 summarizes the issues in a meaningful way as required by Goal  
9 2. In addition, the petitioners have failed to show any  
10 prejudice as a result of the notice problems they allege. All  
11 petitioners appeared and were heard at the hearing. Cf. Oregon  
12 Laws 1979, ch 772, sec 5(4)(A).

13 For the above stated reasons, petitioner's first assignment  
14 of error is denied.

15 SECOND ASSIGNMENT OF ERROR

16 Petitioners allege that the subject ordinance and findings  
17 supporting the change in the UGB must be measured against the  
18 findings required by Goal 2. Inasmuch as Goal 14 refers to  
19 Goal 2 as above cited, we agree with petitioners. Therefore,  
20 we will apply Goal 2 and its requirements in analyzing the  
21 decision made by Respondent Yamhill County. Goal 2 provides,  
22 when read in conjunction with Goal 14, that when a change of an  
23 urban growth boundary is proposed, the procedures and  
24 requirements set forth in Goal 2 shall be followed.<sup>3</sup>

25 Therefore, the compelling reasons and facts for the decision to  
26 expand the Newberg Urban Growth Boundary to incorporate the  
proposed school must include consideration of the following:

1           "(a) Why these other uses [elementary school]  
2 should be provided for;

3           "(b) What alternative locations within the area  
4 could be used for the proposed uses [elementary  
5 school];

6           "(c) What are the long term environmental,  
7 economic, social and energy consequences to the  
8 locality, the region or the state from not applying  
9 the goal or permitting the alternative use;

10           "(d) A finding that the proposed uses will be  
11 compatible with other adjacent uses.

12           These elements have been summarily described as (a) need,  
13 (b) alternatives, (c) consequences, and (d) compatibility. See  
14 LCDC publication "Common Questions About the Exceptions  
15 Process," 3-4 (May 9, 1979) and Still v. Marion County, 42 Or  
16 App 155, 600 P2d 433 (1979).

17 A. Need

18           The need at issue is for an elementary school to service  
19 the greater Newberg area. In Respondent Yamhill County's  
20 findings No. 1 they state that:

21           "There is a need for an additional elementary  
22 school to serve the Newberg Urban Area."

23           The County went on to find that the need is best served by  
24 providing a site in the vicinity of the proposed site; that the  
25 need was substantiated by enrollement statistics. The record  
26 includes as factors supporting a finding of need enrollment  
statistics, projected housing and employment trends in the  
community, lack of available classrooms; and need to institute  
a building program in order to have the facilities available  
when the projected growth impact will be realized. In fact,



1 petitioners candidly conceded during oral argument that they  
2 did not dispute there was a need for a new school.

3 Based on the foregoing, we find that the respondent has  
4 sufficiently indicated in its findings and a reasonable person  
5 reviewing the conclusions, derived from the data in the record,  
6 would be compelled to conclude as did the respondent that a  
7 need for an elementary school to service the District 29JT area  
8 exists. 1000 Friends v. Clackamas County, \_\_\_ Or LUBA \_\_\_  
9 (1980), (LUBA No. 80-060).

10 The county has failed to show, however, that the entire  
11 18.8 acre parcel is needed for the development. The record  
12 indicates that at a minimum only 11 acres are needed for the  
13 school (plus one acre for roadways). The remaining acreage is  
14 proposed to be used as park land but no finding of need for a  
15 park is contained in the contested order. The record indicates  
16 in fact that the land may not be used as park due to financial  
17 constraints on the local park district. The land once inside  
18 the UGB may possibly be developed for purposes not presently  
19 proposed by the District. The County needs to address these  
20 issues within the dictates of Statewide Goal 2.

21 B. Alternatives

22 As regards alternative sites, the respondent's findings  
23 indicate the following:

24  
25 "1. \* \* \* the site has been identified as the  
26 most efficient location in terms of cost to the school  
district taxpayers.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

"\* \* \* \*

"11. \* \* \* Denial of the subject request would place an undue burden upon the School District to find a more compatible location as the availability of adequate sites in this area of Newberg appears to be severely limited.

"\* \* \* \*

"12. \* \* \* there has been an adequate demonstration that there are no alternative locations within the area which could better be used for the proposed school site."

Petitioners basically are arguing that respondent's decision should be reversed because they failed to adequately consider suitable lands inside the urban growth boundary. The consideration that respondent must give to alternative locations is set forth in Goal 2(B) which states:

"(b) What alternative locations within the area could be used for the proposed uses;

The record indicates that:

(1) There are no other parcels presently zoned or planned for a school site in the City of Newberg. The Newberg Comprehensive Plan provides for a floating designation for a proposed school site to be placed in an appropriate location when the need arises;

(2) A major consideration in location of the school site was that it be on the northern edge of Newberg in order to serve the growth in that area and to maintain a reasonable service area relationship with existing schools;

(3) The district solicited possible sites in the local

1 press with no results;

2 (4) The district solicited sites from all area realtors  
3 with few, if any, alternatives available at the time that a  
4 decision was made to enter into contractual arrangements (i.e.  
5 options) for the subject site;

6 (5) There are limited funds to work with based on the  
7 requirement that the district get its money from the taxpayers  
8 who have already approved a budget which limits the amount of  
9 money available to acquire a site;

10 (6) The school district considered but could not expand the  
11 existing schools;

12 (7) The proposed site was analyzed in terms of availability  
13 of public facilities (Findings No. 2); and

14 (8) The proposed site was analyzed in terms of  
15 transportation, location to a major arterial, size and  
16 accessibility. Findings 3, 4, 5, 7 and 10.

17 Petitioner makes a strong argument that a major  
18 consideration in selecting this site over alternative sites was  
19 merely one of cost. We agree with petitioner that cost alone  
20 is not a sufficient factor to justify the expansion of an urban  
21 growth boundary. The mere fact that an urban growth boundary  
22 exists tends to increase the cost of land within the boundary.  
23 If an expansion of an urban growth boundary were to be allowed  
24 based merely on the fact that the cost of the land outside the  
25 urban growth boundary was less, the entire usefulness of the  
26 urban growth boundary concept would be destroyed. We do not

1 find, however, that the sole controlling consideration for the  
2 selection of this site was cost. There is no question that a  
3 governmental body depending on bond issues and taxing base  
4 supported by the vote of the people is going to be restricted  
5 in the amount of money available to it. In this case, however,  
6 cost was but one consideration. It appears that most  
7 alternative sites were considered in terms of availability,  
8 location, access, availability of public facilities, as well as  
9 costs.

10 Coppergold, Pony Farm Site

11 The record indicates that the Coppergold site on the  
12 surface may be a viable alternative located within the urban  
13 growth boundary. This site was not addressed specifically in  
14 the findings nor does the record reveal much consideration of  
15 it. The record does indicate its availability became evident  
16 after options were entered into for purchase of the subject  
17 property. The record does not reveal, however, the cost or  
18 reasonableness of dropping those options. The Coppergold site  
19 seems to have been rejected without a great deal of  
20 investigation or consideration. We cannot tell from the record  
21 whether a reasonable person would be compelled to conclude as  
22 the county did that Coppergold was not a reasonable alternative  
23 site.

24 In light of the above, we hold that respondent has failed  
25 to make sufficient findings regarding the alternative  
26 Coppergold site to exclude it as a viable alternative located

1 within the urban growth boundary.

2 C. Consequences

3 Petitioners allege that the findings failed to adequately  
4 address the long-term environmental, economic, social and  
5 energy consequences from expanding the UGB and permitting the  
6 proposed alternative use. Petitioners argue that the site is  
7 not centrally located with regard to residential sites in the  
8 city. They allege the site fails to provide for compact  
9 balanced growth of the Newberg community and would increase  
10 residential build up in the northwest quadrant of the city,  
11 thus resulting in a leap frog or scattered development  
12 pattern. They further contend the proposed use would place  
13 additional housing demands on the District. Petitioners allege  
14 the effects upon agricultural land and activities in the area  
15 of the site were not sufficiently considered. Finally  
16 petitioners argue that the impact on public facilities and  
17 services was not properly considered and is not supported by  
18 substantial evidence.

19 Respondents findings number 2, 3, 4, 5, 7, 9, and 10 all in  
20 part address this question of consequences. They indicate the  
21 respondent has considered the effects upon future growth, the  
22 effects upon agricultural land and activities in the area of  
23 the site, the impact upon public facilities and services for  
24 the area. In addition, they indicate the consideration of the  
25 present roadway network and its problems, the economic and  
26 energy consequences and the capabilities of the sewers to

1 satisfy the increased demand. The record indicates that:

2 (1) The school site is within one mile of approximately 559  
3 approved urban residential lots and would serve the outlying  
4 areas of the county which already have lots approved for  
5 another 150 dwellings;

6 (2) The school is needed because of existing approved  
7 developments as well as any new development;

8 (3) The proposed site is centrally located in relation to  
9 other existing schools and has existing public facilities  
10 available; and

11 (4) The consequences of loss of agriculture uses in the  
12 area were addressed by the county when it took an exception to  
13 goals 3 and 4 for the subject property and surrounding  
14 properties as part of its acknowledged urban growth boundary.  
15 Hilliard v. Lane County, \_\_\_\_ Or LUBA \_\_\_\_ (1980) (LUBA No.  
16 79-012).

17 Based on the foregoing, we find that there is substantial  
18 evidence in the record to support the findings made by the  
19 respondent. In addition, we find that a reasonable person  
20 faced with the information available to the decision maker in  
21 this case would be compelled to agree with the respondent's  
22 decision concerning consequences resulting from placement of  
23 the proposed school on the subject piece of property.

24 COMPATIBILITY

25 Petitioners allege that findings regarding compatibility do  
26 not explain why the proposed use will be compatible nor do they

1 address the specific problems with forms of compatibility that  
2 may result, e. g. problems with drainage off the site onto  
3 adjoining agricultural land, trespassing, traffic, and  
4 possibility of nuisance claims due to the neighboring  
5 agricultural activities, (i.e. spraying). Respondents claim  
6 that compatibility with agricultural lands was dealt with in a  
7 prior Yamhill County exceptions process and does not have to be  
8 repeated. They refer to the fact that surrounding property was  
9 excepted from the controls of Goals 3 and 4 during the county's  
10 successful comprehensive plan acknowledgment process.

11 Respondent's findings regarding compatibility when read in  
12 their entirety show a conscious concern for the effects of the  
13 school on surrounding lands. There is no specific form  
14 required for findings, Sunnyside Neighborhood v. Clackamas Co.  
15 Comm., 280 Or 3, 569 P2d 1063 (1977). The finding is  
16 sufficient if it sets forth the basis for the decision.  
17 Homeplate, Inc. v. OLCC, 280 Or App 188, 530 P2d 862 (1975). A  
18 review of the findings indicates that they are supported by  
19 substantial evidence. It should be noted that showing  
20 compatibility of a school with adjacent farming activities is  
21 less of a burden than if a more intensive use such as  
22 industrial were proposed since ORS 215.213 allows schools in  
23 EFU areas as a permitted use.

24 The county failed to address, however, the evidence in the  
25 record indicating an explosives warehouse is located in the  
26 vicinity of the proposed school. The severe danger such a

1 potentially incompatible neighbor may have on a school needs to  
2 be addressed by the county.

3 THIRD ASSIGNMENT OF ERROR

4 Petitioners third assignment of error is that respondent  
5 Yamhill County failed to adequately consider the seven factors  
6 under Goal 14. A review of their petition and the contents  
7 thereof indicates that basically they are rearguing under  
8 another format the same matters that were argued under their  
9 allegation of error no. 2, supra. We find it unnecessary to  
10 reconsider these items and reference our discussion and  
11 holdings set forth supra.

12 FOURTH ASSIGNMENT OF ERROR

13 Petitioners allege that the respondent's decision violates  
14 provisions of the Newberg Comprehensive Plan. The Newberg  
15 Comprehensive Plan regarding schools provides:

16 "Elementary schools should be centrally located in  
17 reference to the services areas.

18 "In accordance with land use plan the school district  
19 should anticipate development and acquire best site  
for advanced urbanization.

20 "Location of schools should be major tool to direct  
future residential growth.

21 "Schools shall be encouraged to serve as centers for  
22 neighborhood and community activities.

23 "New schools shall be located in such a manner to  
24 provide adequate and safe pedestrian, bicycle and  
automobile accesses."

25 Once again this allegation of error strikes at the heart of  
26 the four elements set forth in petitioners' second allegation



1 of error. We, therefore, rely on the discussion and holdings  
2 set forth in response to petitioners' second allegation of  
3 error.

4 FIFTH ASSIGNMENT OF ERROR

5 This again is a rehash of petitioners' other assignments of  
6 error and refer to the discussion and holdings set forth in  
7 response to petitioners' second allegation of error.

8 Remanded.

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

FOOTNOTES

1  
2  
3 1  
4 That acknowledgment is the subject of an appeal pending  
5 before the Oregon Court of Appeals.

6 2  
7 Goal 14 provides:

8 "\*\*\* for an orderly and efficient transition from  
9 rural to urban land use.

10 "Urban growth boundaries shall be established to  
11 identify and separate urbanizable land from rural land.

12 "Establishment and change of the boundaries shall  
13 be based upon consideration of the following factors:

14 "(1) Demonstrated need to accommodate long-range  
15 urban population growth requirements consistent with  
16 LCDC goals;

17 "(2) Need for housing, employment opportunities,  
18 and livability;

19 "(3) Orderly and economic provision for public  
20 facilities and services;

21 "(4) Maximum efficiency of land uses within and  
22 on the fringe of the existing urban area;

23 "(5) Environmental, energy, economic and social  
24 consequences;

25 "(6) Retention of agricultural land as defined,  
26 with Class I being the highest priority for retention  
and Class VI the lowest priority; and,

"(7) Compatibility of the proposed urban uses  
with nearby agricultural activities.

"The results of the above considerations shall be  
included in the comprehensive plan. In the case of a  
change of a boundary, a governing body proposing such  
change in the boundary separating urbanizable land  
from rural land, shall follow the procedures and  
requirements as set forth in the Land Use Planning  
Goal (Goal 2) for goal exceptions.

1 \*\*\*\*

2 "Establishment and change of the boundaries shall be a  
3 cooperative process between a city and the county or  
4 counties that surround it."

4  
3

5 "PART II - EXCEPTIONS: When, during the application  
6 of the statewide goals to plans, it appears that it is  
7 not possible to apply the appropriate goal to specific  
8 properties or situations, then each proposed exception  
9 to a goal shall be set forth during the plan  
preparation phases and also specifically noted in the  
10 notices of public hearing. The notices of hearing  
11 shall summarize the issues in an understandable and  
12 meaningful manner.

10 "If the exception to the goal is adopted, then the  
11 compelling reasons and facts for that conclusion shall  
12 be completely set forth in the plan and shall include:

12 "(a) Why these other uses should be provided for;

13 "(b) What alternative locations within the area  
14 could be used for the proposed uses;

15 "(c) What are the long term environmental,  
16 economic, social and energy consequences to  
17 the locality, the region or the state from  
18 not applying the goal or permitting the  
19 alternative use;

17 "(d) A finding that the proposed uses will be  
18 compatible with other adjacent uses."

19  
4

20 The Land Conservation and Development Commission  
21 issued a determination on December 10, 1980 whereby they  
22 adopted the recommendation of the Land Use Board of  
23 Appeals concerning allegations of Goal violations.  
24  
25  
26