

LAND USE
BOARD OF APPEALS

BEFORE THE LAND USE BOARD OF APPEALS FEB 17 4 33 PM '81

OF THE STATE OF OREGON

DEPARTMENT OF LAND)
CONSERVATION and)
DEVELOPMENT)

Petitioner,)

LUBA No. 80-031

vs.)

FINAL OPINION
AND ORDER

CROOK COUNTY BOARD OF)
COMMISSIONERS and OCHOCO)
CONSTRUCTION, INC.)

Respondents.)

Appeal from Crook County.

Edward C. Rochette, Salem, filed the Petition for Review and argued the cause for petitioner.

Stephen Dixon, Prineville, filed the brief and argued the cause for respondents.

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

REMANDED 2/17/81

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 PROCEEDINGS

3 Petitioner Department of Land Conservation and Development
4 (hereinafter DLCD or Department) appeals Crook County's
5 preliminary plat approval for Cascade Village, a 200 lot
6 subdivision on 433 acres located approximately 4 miles from the
7 City of Prineville and 4.4 miles from the rural center of
8 Powell Butte.

9 ASSIGNMENTS OF ERROR

10 DLCD's challenge to the tentative subdivision approval is
11 on the basis that the approval fails to comply with Crook
12 County's acknowledged comprehensive plan, zoning and
13 subdivision ordinance.¹ The first contention is that the
14 subdivision allows an urban use on agricultural lands
15 designated in the plan as rural and zoned EFU in violation of
16 the comprehensive plan. The plan was also violated, according
17 to DLCD, because the county failed to adequately consider the
18 agricultural policy set forth in the plan and by failing to
19 adequately address the requirements of ORS 215.213(3) as
20 required by the comprehensive plan. DLCD contends the
21 subdivision violates the Crook County zoning ordinance because
22 the county failed to properly address the requirements for
23 allowing development within an EFU zone. Finally, DLCD
24 contends the county was without authority to withdraw its first
25 order tentatively approving the subdivision dated February 27,
26 1980, and withdrawn on May 21, 1980, some fifteen days after

1 DLCD had petitioned the Board for review of the approval.

2 STANDING

3 Respondent challenge DLCD's standing to bring this appeal
4 on the basis that, after acknowledgment, DLCD cannot be
5 adversely affected by a local government's application or
6 misapplication of its comprehensive plan. Respondents contend
7 what a local jurisdiction does after acknowledgment is purely a
8 local matter and should be of no concern to DLCD.

9 DLCD argues, however, that it would be adversely affected
10 by a jurisdiction's failure to follow its comprehensive plan
11 after acknowledgment because DLCD expended large sums of money
12 on behalf of the state to get the comprehensive plans
13 acknowledged in the first place. Thus, as a representative of
14 the state, DLCD argues it has an interest in ensuring that the
15 result of that effort, i.e., an acknowledged comprehensive
16 plan, is not ignored once acknowledged.

17 The matter of statewide interest which prompted the
18 legislature to enact ORS ch 197 is the concern over
19 uncoordinated land use:

20 "Uncoordinated use of lands within this state
21 threaten (sic) the orderly development, the
22 environment of this state and the health, safety,
23 order, convenience, prosperity and welfare of the
24 people of this state." ORS 197.005(1).

25 Achieving coordinated land use is a two step process. It
26 involves, on the one hand, adoption of comprehensive plans
27 which comply with statewide planning goals.² It also
28 involves implementation of that plan once adopted and

1 acknowledged as in compliance with the goals. We disagree with
2 the county that the state has no interest in a plan's
3 implementation after acknowledgment. Because achieving
4 coordinated land use is a two step process, the state has as
5 much interest in the sound implementation of local
6 comprehensive plans as it does in their initial adoption.

7 The state has a financial interest in the matter as well.
8 Millions of dollars have been given to local jurisdictions in
9 the form of planning assistance and other grants to further the
10 state's interest in the preparation, adoption and
11 acknowledgment of the local comprehensive plans. Crook County
12 has received, according to DLCD, over \$100,000 in various
13 planning grants since 1975. Crook County and other
14 jurisdictions with acknowledged comprehensive plans must not
15 just put those plans on the shelf after acknowledgment, but
16 must follow the plans and abide by their terms. Otherwise, the
17 millions of dollars of grant money and the other expenditures
18 at the state level have all been for naught.

19 DLCD is a proper representative of the state to protect the
20 state's financial as well as policy interest in coordinated
21 land use planning at the local level. DLCD was established to
22 promote coordinated statewide land conservation and
23 development. See ORS 197.005(4). Certainly, it must have
24 implied if not express authority to protect the state
25 interest. By alleging that Crook County failed to comply with
26 its acknowledged comprehensive plan in granting preliminary

1 approval to the Cascade Village Subdivision, we believe DLCD
2 has alleged sufficient injury to itself and the State of Oregon
3 to grant it standing to challenge the county's decision.³

4 STATEMENT OF FACTS

5 On February 27, 1980, Crook County granted preliminary plat
6 approval for Cascade Village, a 200 lot subdivision on 433
7 acres. One of the lots created is 69 acres in size and the
8 rest are of varying sizes each averaging 1.8 acres. DLCD filed
9 an appeal of the preliminary plat approval with the Board on
10 March 28, 1980 and its Petition for Review on May 6, 1980.
11 Subsequent to the filing of the Petition for Review, the Crook
12 County Court on May 21, 1980 ordered that its decision and
13 order on the tentative approval be withdrawn for further
14 consideration and rewriting. The county court stated that
15 further input be allowed by DLCD, Eddie Allen, the county and
16 the developers, Ochoco Construction, Inc. The county proceeded
17 to hold three additional hearings and on August 12, 1980,
18 entered a supplemental order approving the tentative
19 subdivision.

20 The hearings held subsequent to withdrawal of the order
21 were solely for the purposes of reconsideration and rewriting
22 of the original order and not for the purpose of taking
23 additional evidence. By agreement of the parties to this
24 appeal, the ninety day time limit by which this Board is
25 required in Oregon Laws 1979, ch 772 to render a decision was
26 waived and the submission of supplemental briefs following

1 entry of a new order by Crook County was consented to.

2 The final order entered by Crook County on August 12, 1980,
3 is approximately 31 pages in length. It sets forth the
4 criteria which the county believed had to be satisfied in the
5 comprehensive plan, zoning ordinance and subdivision ordinance
6 and attempts to analyze the criteria. The criteria set forth
7 in the order are as follows:

8 "(1) Whether the land is generally
9 non-productive for agriculture. Ordinance 18, sec
3.030(3)(a) and (4); ORS 215.213(3)(d).

10 "(2) Whether each of the units proposed would
11 significantly interfere with accepted farming
12 practices on adjacent agricultural lands and whether
13 they would be compatible with farm uses on adjacent
lands. Ordinance 18, sec 3.030(3)(a) and (4); ORS
215.213(3)(a) and (b).

14 "(3) Whether development of each of the proposed
15 dwellings would materially alter the stability of the
16 overall land use pattern of the area. Ordinance 18,
17 sec 3.030(3)(a) and (4); Ordinance 19, sec 3.020; ORS
215.213(3)(c); Ordinance 18, sec 6.020(2).

18 "(4) Whether it is properly conditioned for the
19 protection of agriculture in the area. Ordinance 18,
20 sec 3.030(4); ORS 215.213(e).

21 "(5) Whether there is a public need for the
22 proposal. Ordinance 18, sec 3.030(4).

23 "(6) Whether the development will preserve
24 natural features. Ordinance 18, sec 6.020(4);
25 Ordinance 19, sec 3.020(1).

26 "(7) Whether services have been provided at an
adequate level to support rural development and
whether the impacts have been properly addressed.
Comprehensive Plan at 100, Public Facilities and
Services Policy No. 2; Ordinance 18, sec 3.030(C)(a)
and (b); Ordinance 19, sec 3.020(2) and (4).

"(8) Environmental, energy, social and economic
consequencies of the development. Ordinance 18, sec

1 3.030(4)(C)(c)(1).

2 "(9) Whether it is a proper treatment of the
3 development possibilities which will be as attractive
4 as the nature of the use and its setting warrant.
5 Ordinance 19, sec 3.020(1); Ordinance 18, sec 6.020(3).

6 "(10) Whether the applicant has the financial
7 ability to carry out the proposal and whether the
8 proposal was presented in good faith. Ordinance 18,
9 sec 6.020(5); Ordinance 19, sec 3.020(3).

10 The county found that the 433 acre parcel was not
11 productive agricultural land. To support this the county
12 determined in its order that the property consisted of steep
13 slopes and Class VII soil. There was no irrigation potential
14 and no history of marketable crops. There was no creditable
15 evidence regarding the history of the property as grazing. The
16 only person who had testified about the grazing history did so
17 as a guess and was a non-expert.⁴ The county found that
18 there was no fence around the property and hence grazing was
19 not possible.

20 The county found that the subdivision was compatible with
21 farm uses and accepted farming practices in the area.
22 Surrounding farm practices were found to consist of hay
23 cultivation and low intensity grazing. The county found these
24 uses do not conflict with residential uses as do farm uses
25 requiring cultivation which necessitate spraying and cause dust
26 problems that can affect residential uses. The county found
27 that buffers existed between the subdivision and surrounding
28 agricultural uses where the potential for conflict may arise.
29 The county found there was no conflict with ORS 215.213 because

1 the 433 acre parcel was not "ag land" as used in that statute.
2 The county concluded the allowance of the subdivision actually
3 promotes the policy expressed in 215.243 because development on
4 non-productive soils reduces the pressure to develop productive
5 agricultural areas.

6 The county found the subdivision would not interfere with
7 the stability of and would be consistent with the land use
8 pattern in the area. There were many similar type developments
9 in the area - 8 to be exact. This one was in fact closer to
10 the City of Prineville than some others. The county also found
11 that the proposed subdivision was in the immediate vicinity of
12 the airport management area which would be used for "urban
13 related development of a commercial and industrial nature."
14 Existing agricultural units would not be upset because these
15 units are productive agricultural areas and cannot be
16 developed. Also there will be no extension of services to the
17 subdivision requiring that existing agricultural units be
18 crossed with such services.

19 The county found the conditions imposed by it were
20 adequate. Two major conditions involved the requirement that
21 road improvements to ensure safety be made if determined to be
22 necessary and that the community water system be approved
23 before lots could be sold.

24 The county believed its requirement that there be public
25 need was satisfied by this subdivision. The county found that
26 development within the Prineville Urban Growth Boundary was

1 presently stymied for two reasons: A virtual sewer hookup
2 moratorium within the city limits and the unavailability of
3 land outside the city limits but within the urban growth
4 boundary due to the owners' unwillingness to allow the property
5 to be subdivided. Just outside the urban growth boundary is
6 prime agricultural land which the county believes must be
7 preserved. The county found there was tremendous pressure to
8 meet unfilled housing needs in the area. The county stated its
9 preference to look to non-productive lands in rural areas where
10 development may be allowed in accordance with the plan and
11 ordinances. Twenty-nine spaces in the subdivision would be
12 devoted to mobile homes, thus satisfying the need for that type
13 of housing. The county felt it was an ideal location for
14 housing, primarily because of the lack of adverse impacts on
15 surrounding agricultural land.

16 The county found that public facilities and services
17 appropriate for rural development would be provided to the
18 subdivision. Fire, police and schools were the only government
19 services which would need to be provided. The rest would be
20 provided by the development itself. While the county did not
21 discuss what might be required in the way of additional fire or
22 police protection, it did state that schools in the area were
23 adequate to serve the subdivision. Water was to be provided by
24 community sewer systems and the approval of the system was a
25 condition to the sale of any lots in the subdivision. Access
26 to a major arterial (Highway 126) was already provided by a

1 county road to which improvements would be made by the
2 developer if necessary. The county also found that the
3 subdivision had a good potential for utilization of solar
4 energy because of its southern exposure and low density.

5 OPINION

6 Crook County Ordinance No. 18, sec 3.030(2)(A) provides
7 that single family residences not in conjunction with farm use,
8 subdivisions and planned unit developments may be permitted in
9 Crook County within the EFU-3 zone as a conditional use subject
10 to subsections 3 and 4 of sec 3.030. Section 3.030(3)(A)
11 specifies that a conditional use may be permitted:

12 "...upon a finding by the commission that such
13 use is consistent with the intent and purpose of the
14 county's comprehensive plan, this ordinance, and more
15 specifically this section, and that such use is
16 situated on relatively non-productive land for
agriculture and does not significantly interfere with
accepted farming practices on adjacent agricultural
lands, and does not materially alter the stability of
the overall land use pattern of the area."

17 Sec 3.030(4)(A) provides that non-farm residential uses and
18 land divisions may be established on generally non-productive
19 agricultural lands provided it is found that such uses or
20 divisions comply with the criteria set forth in ORS 215.213(3)
21 for approval of non-farm dwellings within an exclusive farm use
22 zone. Finally, sec 3.030(5) specifies the dimensional
23 standards for conditional uses within the EFU-3 zone. It
24 provides:

25 "(A) The minimum lot area for any use permitted
26 by this section shall be as determined by the
commission as necessary to carry out the intent and

1 purposes of ORS 215, the county's comprehensive plan,
2 and more specifically this section, but in no case
3 shall such lot areas be less than 1 acre except in the
4 case of a planned unit development with an equivalent
5 density factor."

6 The above standards demonstrate that while numerous
7 specific criteria must be fulfilled in approving a subdivision
8 in the EFU-3 zone, an independent requirement is that the
9 subdivision be found to be consistent with the intent and
10 purpose of the county's comprehensive plan. Thus, in determining
11 whether the subdivision complies with the county's
12 comprehensive plan the county cannot, nor can this Board on
13 review, single out one portion of the plan and say because it
14 complies with that section it necessarily also complies with
15 the comprehensive plan. What is required is an examination of
16 the plan and its policies as a whole, to determine whether the
17 use approved by the county's decision complies with the plan
18 and all relevant policies. The county failed to address many
19 relevant policies in its order. For this reason we must hold
20 that the county's decision in this matter is invalid.

21 Plan Policies

22 The Crook County comprehensive plan contains many
23 implementation policies which address the question of what
24 types of growth should go where and the problem of providing
25 sufficient housing for the needs of the Prineville area to the
26 year 2000. The comprehensive plan states as its policy, among
27 others, to limit non-agricultural development, maintain a low
28 population density and concentrate the major portion of the

1 county's population growth within the urban growth boundary.

2 The comprehensive plan contains the following policy statements:

3 "It shall be the policy of Crook County, Oregon
4 to preserve agricultural lands, to protect agriculture
5 as an economic enterprise, to balance economic and
6 environmental considerations, to limit
7 non-agricultural development, to maintain a "low"
8 population density and to maintain a high level of
9 liveability in the county. Plan at page 47.

10 "It shall be the policy of Crook County to
11 concentrate the major portion of the county's
12 population within the Urban Growth Boundary (UGB) of
13 the City of Prineville. Development outside the UGB
14 will be permitted only where conflicts with productive
15 agricultural areas are minimal and only when in
16 compliance with the factors set forth in ORS 215.213
17 in the comprehensive plan. Plan at pages 47-48.

18 "The expansion of urban development into rural
19 areas of the county is a matter of public concern due
20 to increasing costs of community services, conflicts
21 between farm and urban activities, and continuing loss
22 of open space."

23 ***

24 "The major portion of Crook County's population
25 growth shall be concentrated within the defined Urban
26 Growth Boundary of the City of Prineville and low
27 density development in rural areas shall be
28 maintained. Plan at page 9.

29 "Residential expansion is to be encouraged within
30 the Urban Growth Boundary." Plan at page 134.

31 That the comprehensive plan intends to concentrate
32 population growth within the urban growth boundary is further
33 reflected in a more specific way in the housing section of the
34 plan. The housing section projects the housing units needed in
35 Crook County by the years 1980 and 1990. The plan estimates
36 that county-wide by the year 1990 there will be a need for
37 1,138 additional housing units of which 1,018 or 90% will be

1 needed within the urban growth boundary. Only 10% or
2 approximately 120 units are to be provided outside the UGB.

3 The housing section of the plan recognizes that there is an
4 immediate need for additional housing within the Prineville
5 urban growth boundary. In 1978, when the plan was adopted, a
6 vacancy rate of .56% existed within the Prineville UGB and an
7 estimated housing shortage existed within the UGB of 335
8 units.⁵

9 The comprehensive plan not only discusses this housing
10 shortage problem it also identifies planning solutions to the
11 problems posed within the Prineville area. First, the plan
12 includes sufficient land within the urban growth boundary to
13 provide housing for the area's projected population. The plan
14 projects an increased population within the urban growth
15 boundary of approximately 6,000 people by the year 2000. If
16 developed at half its maximum density (i.e. 6 units per acre),
17 the UGB contains sufficient land to accommodate an additional
18 27,000 people by the year 2000.⁶

19 Second, the plan contains specific policies designed to
20 ensure that the land within the UGB will be developed for
21 residential housing. As identified in the DLCD acknowledgment
22 report, these policies have been adopted to:

23 1. Encourage a variety of housing types in new
24 subdivisions;

25 2. Reduce housing costs by increasing height
26 maximums, decreasing street width requirements,
retaining low front yard setback requirements and low
minimum lot sizes, allowing mobile home subdivisions

1 adjacent to city limits, and establishing site review
criteria for apartments;

2
3 3. Form a task force consisting of planning
4 commissions, real estate representatives, and the
5 Chamber of Commerce to investigate the possibility of
6 opening up new land in and immediately surrounding the
7 city for development;

8
9 4. Create a housing authority to facilitate
10 administration of federal HUD programs;

11
12 5. Provide for urban level services and
13 densities in new subdivisions within the growth
14 boundary;

15
16 6. Encourage multiple unit high density housing
17 near the downtown core area;

18
19 7. Encourage residential expansion within the
20 UGB as well as higher residential densities."

21 In summary, the intent of the comprehensive plan for Crook
22 County and the City of Prineville is to direct the vast
23 majority of development in the county within the Prineville
24 UGB. When the city and county adopted their joint
25 comprehensive plan they were acutely aware of the housing
26 situation which existed in the Prineville area. The
27 comprehensive plan provided a scheme for solving the housing
28 problem.

29 County's Findings

30 In spite of the foregoing policies, the county has
31 attempted to justify looking outside the UGB to solve the
32 Prineville area's housing shortage. In its order granting
33 preliminary approval to Cascade Village, the county first
34 points out that the plan did not intend to restrict all growth
35 to within the UGB and, in fact, specifically rejected such a

1 notion.

2 The petitioner, however, is not contending that all
3 development should be located within the UGB. Clearly, Crook
4 County's Ordinance No. 18 does allow non-farm development
5 outside the UGB under certain circumstances. Ordinance No. 18
6 has been acknowledged by LCDC as in conformance with the
7 comprehensive plan. It is also true that this subdivision's
8 density fits within the maximum density limits for rural
9 housing (1 unit per acre, see sec 3.030(5)(A), supra). It is
10 one thing, however, to say the plan contemplates that some
11 development may take place outside the UGB at densities up to 1
12 unit per acre. It is quite another to say the plan intended to
13 allow a subdivision of 200 lots outside the UGB.⁷

14 The county's order then mentions two factors relied upon to
15 justify locating the Cascade Village Subdivision outside the
16 UGB.

17 "Development within the present Prineville UGB is
18 stymied by two factors. The first is a virtual sewer
19 hook-up moratorium within the Urban Growth Boundary
20 (UGB). The city will only permit limited individual
21 sewer hook-ups within the city limits and no sewer
22 hook-ups for land inside the urban growth boundary,
23 but outside the city limits. The result is that
24 demand cannot be met within the UGB until this
25 moratorium is lifted.

26 "The second factor is the unavailability of
land. Undeveloped property within the UGB is
primarily comprised of three large ownerships which
include the Boston Ranch, Hudspeth and Foster. These
owners are unwilling to sell for subdivision
purposes. This situation forces pressure for growth
on prime agricultural lands lying just outside the
UGB. Whatever the alternative chosen, these prime
agricultural lands must be preserved."

1 The above findings of the county are not sufficient to
2 justify scuttling all of the policies contained in the
3 comprehensive plan that are geared toward directing development
4 within the UGB to satisfy the area's population demands. The
5 county's finding concerning the limitation on sewer hookups
6 does not explain how restrictive the limitation is, what the
7 nature of the limitation is or how it is that a limitation, as
8 opposed to an outright ban on sewer hookups, is a serious
9 problem. Nor does the finding explain what the cause of this
10 limitation is and how long it is expected to last. This lack
11 of an explanation is particularly critical because the county's
12 RS-1 zone which applies to most of the land within the UGB but
13 outside the city allows development on 1 acre lots even without
14 the existence of public sewer or water.

15 Concerning the unavailability of land due to the
16 undeveloped property being comprised "primarily" of three large
17 ownerships, the finding does not explain why these owners will
18 not sell, what efforts have been made to get them to sell, or
19 how much land is actually undeveloped and available for
20 development. According to the comprehensive plan, however, at
21 least 1,000 acres within the UGB are not even in agricultural
22 production.⁸ Are these 1000 acres all owned by people who
23 are unwilling to sell? We simply can't tell from the
24 conclusory nature of the findings. In light of the
25 comprehensive plan's policies which, among other things,
26 provide for the creation of a task force to open new land for

1 development within the urban growth boundary, the unexplained
2 findings of the county concerning the unavailability of land
3 for development within the UGB are an inadequate justification
4 for avoiding the intent and purpose of the comprehensive plan
5 to direct residential development within the UGB.⁹

6 In summary, the intent and purpose of the Prineville-Crook
7 County Comprehensive Plan is to direct residential development
8 within the urban growth boundary. Adequate amounts of land
9 were placed within the UGB to satisfy the area's expected
10 population to the year 2000. The comprehensive plan sets forth
11 policies and implementation strategies to alleviate the area's
12 residential housing shortage by utilizing the land placed
13 within the UGB. The county has not demonstrated in its order
14 that these policies cannot, have not or will not work.¹⁰

15 DLCD argues in its final assignment of error that the
16 county was without authority to withdraw its final order for
17 reconsideration after an appeal had been commenced. We believe
18 that in the context of land use planning, a local jurisdiction
19 should be deemed to have the authority to withdraw an order for
20 purposes of reconsideration when the decision is quasi-judicial
21 in nature and the person who filed the initial request with the
22 local jurisdiction asks for or at least consents to the
23 withdrawal. It would be incongruous for a local jurisdiction
24 to grant a subdivision approval, have the applicant for the
25 approval request that the order be withdrawn but have the
26 jurisdiction be unable to withdraw the order because someone

1 had appealed it. We should encourage rather than discourage
2 jurisdictions to withdraw orders for purposes of
3 reconsideration if they believe their orders do not meet legal
4 requirements.

5 The decision of Crook County is remanded for further
6 proceedings consistent with this opinion.

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FOOTNOTES

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3 1
4 Crook County and the City of Prineville jointly adopted a
5 comprehensive plan in 1978 which received acknowledgment from
6 LCDC as in compliance with the statewide goals in January, 1979.

7 2
8 "'Comprehensive Plan' means a generalized, coordinated land
9 use map and policy statement of the governing body of a state
10 agency, city, county or special district that interrelates all
11 functional and natural systems and activities relating to the
12 use of lands...a plan is 'coordinated' when the needs of all
13 levels of governments, semi-public and private agencies and the
14 citizens of Oregon have been considered and accommodated as
15 much as possible..." ORS 197.015(5).

16 3
17 While DLCD appealed the Crook County's planning
18 commission's decision to the Crook County Court, no claim was
19 made at that time that DLCD had no interest in the question of
20 whether the subdivision complied with the comprehensive plan.
21 In fact, the county expressly found in its order that DLCD's
22 appeal was proper.

23 4
24 One Eddie Allen testified about the history of the property
25 and its suitability for grazing. However, it appears that this
26 evidence came in during the hearings held after the county's
27 original order was withdrawn, which hearings were not for the
28 purpose of receiving new evidence.

29 5
30 This housing shortage within the UGB was cited by Crook
31 County as a basis for granting preliminary subdivision approval
32 to the Cascade Village Subdivision. Although not cited in the
33 order, reference was made by Dick Brown, a former county-city
34 planner and consultant for the applicant in the Cascade Village
35 Subdivision, that the plan estimated a need by the end of the
36 year 1980 for some 500 housing units within the UGB and that
37 only approximately 180 building permits had actually been
38 issued. This left a 1980 deficit of some 370 housing units
39 within the Prineville UGB.

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2 The City of Prineville recognizes that it probably will not
3 develop at half the maximum density allowed but a much lower
4 density of some 2.5 units per acre. Even at this much lower
5 density, however, the urban growth boundary would have
6 available some 600 additional acres undeveloped by the year
7 2000, or a 36% "market freedom factor." See letter of Dick
8 Brown to DLCD, record pages 248 - 249.

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7 We note that even the county's comprehensive plan
8 definition of rural land specifies that it is land "not
9 suitable, necessary nor intended for urban use." Contrast this
10 with the plan's definition of urban land which states:

10 "Urban areas are those places which must
11 have an incorporated city. Such areas may include
12 lands adjacent to and outside the incorporated city
13 and may also:

12 "(a) Have concentrations of persons
13 who generally reside and work in the area;..."

14 A subdivision the primary purpose of which is to provide
15 housing for people who work and would like to live in the
16 Prineville area under even the above definitions, is an urban
17 as opposed to a rural use of land.

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8

17 Two thousand two hundred-sixty of the 4,000 acres within
18 the Prineville UGB but outside the city of Prineville are
19 undeveloped. Eleven hundred thirty-eight of these acres are
20 now in agricultural use leaving a balance of approximately
21 1,000 acres undeveloped and not in agricultural use.

20
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21 We also note that the record contains little evidence with
22 respect to either the sewer hook-up moratorium or the
23 unavailability of land due to owners' unwillingness to sell.
24 The former was briefly alluded to by Dick Brown, the
25 applicant's consultant, during a planning commission hearing.
26 The latter was not referred to anywhere in the record as far as
we could determine.

25
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26 We would note that this is a particularly difficult burden

1 for the county and the applicant to meet, however, given the
2 very brief period of time these policies had been given a
3 chance to work. The ink was barely dry on LCDC's
4 acknowledgment of the comprehensive plan when this subdivision
5 proposal was before the county planning commission for approval.

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SEP 29 10 32 AM '83

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

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OCHOCO CONSTRUCTION, INC.,)
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Petitioner,)
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vs.)
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DEPARTMENT OF LAND)
CONSERVATION AND DEVELOPMENT)
and CROOK COUNTY BOARD OF)
COMMISSIONERS,)
)
Respondents.)

LUBA No. 80-031
CA A20450
SC 28537

* * * * *

Submitted on reversal and remand from the Oregon Court of Appeals, February 22, 1982, as affirmed by the Supreme Court, July 26, 1983.

Judicial Review from the Land Use Board of Appeals.

IT IS HEREBY ORDERED that the previous opinion dated February 17, 1981 is vacated and this appeal is hereby dismissed consistent with the opinion and order of the Court of Appeals in Ochoco Construction, Inc. v Dept of Land Conservation and Development, et al, 56 Or App 32, 64 P2d 49, ___ Or ___, ___ P2d ___ (1983).

Dated this 29th day of September, 1983.