BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

SUSAN G. FILTER, Petitioner, vs. COLUMBIA COUNTY BOARD OF COMMISSIONERS and WILLIAM R. FILTER, Respondents.	LUBA No. 81-050 FINAL OPINION AND ORDER

Appeal from Columbia County.

Susan G. Filter, Vernonia, filed the Petition for Review and argued the cause on her own behalf.

Jill Thompson, St. Helens, filed the brief and argued the cause on behalf of Respondent Columbia County.

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

Reversed. 8/12/81

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).

COX, Referee.

NATURE OF THE PROCEEDING

Petitioner seeks this Board's review of the Columbia County Board of Commissioners' April 1, 1981 decision to allow a minor partition.

ALLEGATION OF ERROR

Petitioner contends that the grant of the contested minor partition violates statewide Goals 3, 4, 5, 6 and 13. We find it necessary to review only petitioner's allegation of error regarding Statewide Goal 3.

FACTS

Property owner William R. Filter requested approval of a minor partition to divide a 30.35 acre parcel into 3 parcels of approximately 5, 7 and 18 acres. The property at the time of the request was being farmed and was receiving farm tax deferral. There is one structure on the site, a barn. The property is outside of any urban growth boundary. The county found, based on some evidence in the record, that the property does not contain Class I through IV soils. There is conflicting evidence in the record, however, which indicates the property consists of Class III and IV soils.

According to the "Land Use Action Data Sheet" submitted by the applicant, the property is presently in use as pasture with surrounding land uses being farm crop and timber production. In addition, the applicant in the 'data sheet' declares that the type and typical yields of crops grown in the area of the

subject parcel are hay, one ton per acre; and grain, 60 bushels per acre. The applicant states however that neither hay nor grain could be produced in an economic manner on this parcel because of the parcel's size. In response to the question "Is the parcel large enough to support commercial agricultural production?" the applicant answered that the property could augment basic income or retirement income but it was not economical as the sole source of income.

Columbia County's findings indicate that it treated this matter as a request for minor partition only. If application is made for building or septic permits the opponents would be notified of a hearing thereon in order that they then might voice their objections. The findings also indicate that one commissioner commented the granting of the minor partition "may or may not change the use of the land," but in any event she could not see "where granting of the minor partition would be in violation of the LCDC goals."

DECISION

Respondent intially argues that the contested action is only one component of an overall procedure necessary to alter the use of land. It argues that quasi-judicial hearings are held prior to issuance of building and septic tank permits. At those hearings the statewide goals are applied and any development must satisfy the applicable goals before permits are issued. As a result of this procedure, Respondent takes the position that petitioner's arguments are premature. We

interpret respondents' argument to be that minor partitions need not be reviewed against the statewide goals if at a subsequent proceeding the goals will be applied.

Clearly, respondent is required to apply the statewide goals to a minor partitioning and therefore respondent's argument is misplaced. Jurgensen v Union County Court, 42 Or App 505, ___ P2d ___ (1979) and Alexanderson v Polk County Commissioners, 289 Or 427, ___ P2d ___ (1980).

Goal 3

Petitioner's argument regarding Statewide Goal 3 (To Preserve and Maintain Agricultural Lands) is twofold. Petitioner argues first that the county's findings are legally inadequate and second that the County Board of Commissioners' findings are not supported by substantial evidence in the whole record.

Columbia County responds that the partitioning does not violate Goal 3. Specifically, respondent states in its brief:

> "The standard for applying Goal 3 to partitions was set forth in Jurgensen v Union County Court, 42 Or App 505 (1979), which requires the applicant to meet one of the following tests:
>
> "1) A predominant soil classification outside classes I-IV; or
>
> "2) Compatibility with surrounding agricultural uses; or
>
> "3) Satisfaction of ORS 215.213. 42 Or App at 511; * * *"

The respondent then argues "the record shows that both of the first two tests above were met."[1]

We find the respondent entirely misstates the holding in Jurgensen v Union County Court, supra, and that the county's decision to grant the requested partition is in violation of Statewide Goal 3. The Jurgensen Court held that in order to satisfy Goal 3, an owner seeking to partition agricultural land has the burden of proving:

> "(1) the predominant soil classes on the property are other than agricultural land within the Goal 3 definition, see Meyer v Lord, 37 Or App 59, 586 P2d 367 (1978), rev den 286 Or 303 (1979); or (2) the lot sizes created by the partition will be sufficient for the continuation of the existing agricultural enterprise in the area; or (3) the factors set out in ORS 215.213, and incorporated by reference into Goal 3, relevant to permitting non-farm uses - usually meaning residential use - on agricultural land are met, see Rutherford v Armstrong, 31 Or App 1319, 572 P2d 1331 (1977), rev den 281 Or 431 (1978)." Jurgenson v. Union County Court, 42 Or App at 511.

See also Hinson v Jackson County, 1 Or LUBA 24 (1980).

Respondent's position that the Jurgensen, supra, holding only requires a showing that the predominant soil classification on the property is other than SCS Class I-IV fails to give consideration to "other lands" which fit within the Goal 3 definition of agricultural land.[2] The record in this case clearly reveals that the subject property, at a minimum, falls within the "other lands" portion of the agricultural land definition contained in Statewide Goal 3. Respondent's findings themselves indicate that "this parcel is being farmed and is receiving farm tax deferral." In addition, the applicant for the partitioning stated in his "Land Use Action Data Sheet" that the property is within an area where

hay and grain is grown providing typical yields of one ton and 60 bushels per acre respectively. In response to a statement by petitioner that there are people interested in leasing the land for agricultural uses such as pasture, the applicant stated:

> "Well, what I'm trying to get at, it is not now engaged in agricultural use and it is not likely to be under my ownership, and as far as 7 animals per acre and that sort of thing, it's just, without intensive fertilization and liming and all the other things that are leased on that score, I can find people that will testify to the actual yields there and they have never seeded just with hay alone, 3 tons to the acre in any part of that."

In addition to the above, it is not clear from the record whether this property contains Class I through IV soils. The respondent found that the site does not contain Class I through IV soils. There is evidence in the record, however, which indicates that a more detailed soil analysis than the one relied on by the respondent for its finding, revealed Class III and IV soils on the subject property. (See Spooner v. Marion County, 2 Or LUBA 1 (1980). Respondent did not address this contradictory evidence.

While a local government may choose between conflicting evidence, it nevertheless must indicate in its findings that it has considered the conflicting evidence that may weaken or even indisputably destroy the basis for the finding it ultimately chooses to make. As we held in Sane and Orderly Development v Douglas County Board of Commissioners, 2 Or LUBA 196, 206 (1981):

> "Not only did the county fail to produce substantial evidence to support its findings, it failed to also take into consideration evidence in the record which detracts from the findings it did make. As was stated in K.C. Davis, Administrative Law, 3 Ed, Section 2903, p 531, citing Jaffe Administrative Procedure Re-examined: The Benjamin Report, 56 Harvard Law Review, 704, 733 (1943):
>
> > "'Obviously, responsible men would not exercise their judgment on only that part of the evidence which looks in one direction; the rationality or substantiality of a conclusion can only be evaluated in the light of the whole fact situation or so much of it as appears. Evidence which may be logically substantial in isolation may be deprived of much of its character or its claim to creditability when considered with other evidence.'"

As regards respondent's argument that the Jurgensen decision merely requires a showing of "compatibility with surrounding agricultural uses" a review of the holding in that case reveals that respondent's position is without merit. The test set forth in Jurgensen, supra is that "the lot sizes created by the partition will be sufficient for the continuation of the existing agricultural enterprise in the area," 42 Or App 505 at 511. The determination of what is the "existing commercial agricultural enterprise" in the area is no small task as can be seen by a review of this Board's decision in Sane and Orderly Development v Douglas County, supra. We, nevertheless, have held that at a minimum the record must reveal (1) the county's commercial agriculture enterprise(s) is (are) known and (2) the lot sizes required to maintain the commercial agricuture enterprise(s). Statewide Goal 3. See

1000 Friends v. Benton County, 2 Or LUBA 324 (1981), Eugene v Lane County, 1 Or LUBA 265 (1980) and 1000 Friends of Oregon v Marion County, 1 Or LUBA 33 (1980). There neither appears to be any inventory of Columbia County's commercial agricultural enterprise(s) and related lot sizes in this record nor do the respondent's findings contain any indication that it believes this partitioning will create lots sufficient in size to continue the commercial agricultural enterprise(s).

Due to our holding on petitioner's Statewide Goal No. 3 allegations, it is unnecessary to address her other allegations of error. Kerns v. Pendleton, 1 Or LUBA 1 (1980).

Reversed.

FOOTNOTE

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1 Inasmuch as the respondent does not rely on satisfaction of ORS 215.213 to justify its decision, this Board will only briefly address that portion of the Jurgensen, supra, holding. It is clear that reliance on 215.213 would not be valid in light of a record which indicates the land is suitable for the production of farm crops and livestock.

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2 "AGRICULTURAL LAND - in western Oregon is land of predominatly [sic] Class I, II, III and IV soils and in eastern Oregon is land of predominatly [sic] Class I, II, III, IV, V and VI soils as identified in the Soil Capability Classification System of the United States Soil Coniservation Service, and other lands which are suitable for farm use taking into consideration soil fertility, suitability for grazing, climatic conditions, existing and future availability of water for farm irrigation purposes, existing land use patterns, technological and energy inputs required, or accepted farming practices. Lands in other classes which are necessary to permit farm practices to be undertaken on adjacent or nearby lands, shall be included as agricultural land in any event."

BEFORE THE
LAND CONSERVATION AND DEVELOPMENT COMMISSION
OF THE STATE OF OREGON

Filter,	)	
	)	
Petitioner(s),	)	
	)	
v.	)	LUBA 81-050
	)	LCDC Determination
Columbia City,	)	
	)	
Respondent.	)	
	)	

The Land Conservation and Development Commission hereby approves the recommendation of the Land Use Board of Appeals in LUBA 81-050 concerning the allegations of Statewide Goal violations.

DATED THIS 12th DAY OF August, 1981.

FOR THE COMMISSION:

W. J. Kvarsten, Director
Department of Land
Conservation and Development

WJK:ER:cp
6345A/p2/2B

STATE OF OREGON INTEROFFICE MEMO

TO: MEMBERS OF THE LAND CONSERVATION AND DEVELOPMENT COMMISSION

DATE: 7/21/81

FROM: THE LAND USE BOARD OF APPEALS

SUBJECT: FILTER V. COLUMBIA COUNTY
LUBA NO. 81-050

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

This case involves the decision by Columbia County to grant a minor partition of a 30 plus acre parcel into three parcels of 5, 7 and 18 acres. The 30 acre parcel is farm land by Goal 3 definition. No exception was taken, rather Columbia County concluded essentially that the goals did not need to be applied at this time. In the alternative, the county argued that it met the test set forth in Jurgenson v. Union County Court, 42 Or App 505 (1979) for allowing division of agriculture land.

We determine that the minor partition of land requires compliance with the goals and that the county misapplied the Jurgenson, supra, test. We, therefore, reverse the decision.

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