

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

DEC 21 9 37 AM '81

SARA P. HOWELL and
KATHARINE MILLS,

Petitioners,

vs.

HOOD RIVER COUNTY,

Respondent.

LUBA No. 81-093

FINAL OPINION
AND ORDER

Appeal from Hood River County.

Teunis Wyers, Hood River, filed the Petition for Review.
Sara P. Howell argued the cause on her own behalf.

Hubert V. Garrabrant, Hood River County, filed the brief
and argued the cause on behalf of Respondent.

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

REMANDED

12/21/81

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 INTRODUCTION

3 Petitioners appeal the county's approval of a comprehensive
4 plan amendment and zone change from "forest" to "commercial"
5 for 2.86 acres owned by the Dillard's. Petitioners assert that
6 the county's two orders violate Goals 2, 4, 5, 8 and 9.

7 STANDING

8 Petitioner Howell asserts that she has standing because she
9 appealed the planning commission's approval of the zone and
10 comprehensive plan changes to the Board of Commissioners of
11 Hood River County. As the appellant, Howell claims she was
12 entitled to notice under Hood River County Zoning Ordinance,
13 Section 61.04 and 60.06. She also asserts that she received
14 written notice of the hearings. Petitioner Mills asserts her
15 interests were adversely affected and she was aggrieved by the
16 county's "decision" because the decision adversely affects the
17 250 acres of property which she owns in the general vicinity of
18 the Dillard property. She claims that substantial portions of
19 her property are forested and that by granting a commercial
20 zone in a forest area Hood River County has:

21 "[S]ubjected Mills' property to increased
22 property tax assessments, increased people pressure in
23 the form of vandalism, fire hazards and complaints
24 about employment of forest management practices, and a
25 general degradation of quality of life for her as an
26 area resident, and user of adjacent public forest
lands."

25 Hood River County challenges the standing of both
26 petitioners. The county concedes both petitioners appeared

1 before the county in the proceedings. The county, however,
2 argues that petitioner Howell was not entitled to notice of the
3 county's hearings because she lacked standing under the
4 county's ordinance to appeal the decisions from the planning
5 commission to the Board of Commissioners. The county's
6 ordinance requires some demonstration of adverse effect or
7 aggrievement, and the county says that Howell could not meet
8 this test since she lived some 20 miles from the Dillard
9 property. The county also argues that even if Howell has
10 standing to appeal the zone change, she does not have standing
11 to appeal the comprehensive plan amendment. This lack of
12 standing to appeal the plan amendment is because the planning
13 commission only has the authority to recommend a comprehensive
14 plan change to the Board of Commissioners of which there can be
15 no "appeal" to the Board of Commissioners. The county says
16 Howell did not appeal and could not have appealed the planning
17 commission's recommendation on the comprehensive plan change to
18 the Board of Commissioners and so was not entitled to notice of
19 the Board of Commissioners' hearing on the comprehensive plan
20 change.

21 The county also argues that petitioner Mills lacks standing
22 because the factual allegations are untrue or are, in fact,
23 mere conclusions unsupported by any fact allegations. For
24 example, the county disputes petitioner Mills' assertion that
25 her property is in the general vicinity, stating that in fact
26 her property is 7 1/2 miles away and separated from the Dillard

1 property by the village of Parkdale. The county disputes
2 Mills' assertion about increased property tax assessments,
3 stating that in fact taxes on Mills' property would likely be
4 reduced if anything as a result of an increased tax assessment
5 on the Dillard property which would result from commercial
6 zoning. Not only does the county dispute petitioner Mills'
7 claims concerning increased people pressure, it also contends
8 that this allegation as well as the allegation concerning
9 degradation of quality of life are mere conclusions unsupported
10 by factual statements.

11 Taking the standing of petitioner Mills first, we agree
12 with the county that she has failed to establish her standing
13 to appeal. Petitioner Mills' statement that the decision will
14 subject her to a "degradation of the quality of life" is a mere
15 conclusion and as such cannot be used as a basis for standing.
16 See, e.g., Hilliard v Lane County, (Order Denying Motion to
17 Intervene), 1 Or LUBA 83 (1980). The county not only denied
18 her remaining allegations, but also asserted what it believed
19 to be the true facts. Under these circumstances the burden was
20 on petitioner Mills to come forward with some proof that her
21 allegations of fact were true. Duddles v City of West Linn, 21
22 Or App 310, 535 P2d 583 rev den (1975), LUBA Rule 8(C)(2).
23 Having failed to come forward, petitioner Mills has failed to
24 establish her standing to appeal.

25 The standing of petitioner Howell is a different matter,
26 however. We conclude petitioner Howell does have standing to

1 appeal the zone change decision, but not the decision amending
2 the comprehensive plan. Petitioner Howell's standing to appeal
3 to this Board the county's zone change depends upon whether she
4 was entitled to notice below of the county's hearing on her
5 appeal of the zone change. The county maintains she was not
6 entitled to notice because she was not, in fact, entitled to
7 appeal the planning commission's decision granting the zone
8 change. While the county did not contest petitioner's standing
9 to appeal below, it asks that this Board do so for the purpose
10 of establishing petitioner Howell's non-entitlement to notice.

11 In Dobaj v Beaverton, 1 Or LUBA 237 (1980), we said one
12 could not raise for the first time on appeal to this Board a
13 procedural irregularity which occurred below and which might
14 have been corrected had the alleged error been brought to the
15 attention of the governing body. We think standing is, or at
16 least should be, treated the same as a procedural matter which
17 the governing body, whenever possible, should be given the
18 chance to rule upon in the first instance. If not given the
19 chance to do so we ought not permit the matter to be raised on
20 appeal. If, then, a party to the county's proceedings below
21 had not challenged petitioner Howell's standing before the
22 county and sought to do so for the first time on appeal,
23 applying the rule announced in Dobaj v Beaverton, supra, we
24 would conclude the challenge was untimely.

25 The county, however, argues it should not be held to the
26 same requirements as might another party who had participated

1 in the county's proceeding because the county was not a "party"
2 to its own proceedings. We disagree with the county that it
3 should be treated differently in this matter than another party
4 to the county's proceedings. The governing body has every bit
5 as much the same opportunity to raise the issue of one's
6 standing to appeal to it a hearings officer or planning
7 commission decision. When the governing body's own ordinance,
8 as here, specifically limits standing to who can demonstrate
9 adverse effect or aggrievement, we think the governing body
10 certainly has the right if not the duty to determine whether
11 standing has been satisfied. We, therefore, see no reason to
12 say the county should be permitted on appeal to this Board to
13 raise the issue of petitioner's standing when it failed to
14 inquire as to her standing below.

15 There are additional reasons for not allowing the county to
16 raise the issue of petitioner's standing on appeal. Our
17 function on appeal is to review a governing body's decision, not
18 to make that decision in the first instance. The county is
19 asking us to pass upon petitioner Howell's standing under the
20 county's ordinance rather than to review the county's
21 determination on that issue. In addition, whether or not
22 petitioner was in fact entitled to appeal she was treated by
23 the county as though she were entitled to do so. So long as
24 she was treated by the county as a legitimate appellant she was
25 entitled to notice of the county's hearing. As she was
26 entitled to notice and did in fact appear in the county's

1 proceedings, she has standing to appeal the decision to this
2 Board.

3 The foregoing concerning petitioner Howell applies,
4 however, only to her standing to appeal the zone change
5 decision. There was no "appeal" of the planning commission
6 determination to the Board of Commissioners on the
7 comprehensive plan amendment. The planning commission only
8 made a recommendation on the plan amendment to the Board of
9 Commissioners. As there was no "appeal" by petitioner of the
10 planning commission's recommendation, petitioner was not
11 entitled to notice of the Board of Commissioner's hearings on
12 the plan amendment. Petitioner Howell alleges no facts to show
13 how the plan amendment adversely affected or aggrieved her in
14 any manner. Accordingly, we conclude she has not alleged facts
15 sufficient to give her standing to appeal the comprehensive
16 plan amendment.

17 STATEMENT OF FACTS

18 On July 13, 1981, the Hood River County Board of
19 Commissioners approved the application of Dan and Sharon
20 Dillard for a comprehensive plan amendment and zone change
21 altering the designation on a portion of the applicants'
22 property from forest to commercial. The plan amendment and
23 zone change were for 2.86 acres out of a total of some 160
24 acres owned by the applicants. Located on the property at the
25 time the county gave its approval were the Cooper Spur Inn, a
26 cabin used as a residence by the applicants, an out building

1 and eight cement foundations, 24 feet by 32 feet in size. The
2 foundations had been poured by the applicants pursuant to a
3 conditional use permit granted by Hood River County in 1979,
4 which permit authorized the applicants to construct eight
5 cabins on foundations not exceeding 20 feet by 24 feet in
6 size. Because the applicants poured foundations for cabins in
7 excess of the size permitted under the conditional use permit,
8 the county had ordered that no further work on constructing the
9 cabins be permitted.¹

10 The zone change approved by Hood River County in July of
11 1981 limited the applicants' commercial use of the 2.86 acres
12 to the "existing restaurant" and to no more than eight, one
13 bedroom cabins whose foundations were not to exceed 20 feet by
14 24 feet in size. In granting the zone change, the county
15 adopted the majority findings of the planning commission
16 approving the requested zone change and adopted additional
17 findings of its own. These findings were also used to support
18 the comprehensive plan amendment. There was no dispute before
19 the planning commission or the Board of Commissioners that the
20 property covered by the zone change was forest land within the
21 meaning of Goal 4 and that an exception to Goal 4 was
22 necessary. The planning commission made the following findings
23 to support a Goal 2 exception to Goal 4:

24 "(a) Need: No overnight facilities exist close
25 to the mountain. The Mt. Hood plan overlooked what
26 already existed there since the 1940's.

1 "(b) Alternatives: Much better land use
2 planning to utilize existing facilities already
developed than to relocate on another site.

3 "(c) Consequences: The proposal will have a
4 positive effect on the local tax base, encouraging
local people to utilize resources in their county
rather than going outside the area.

5 "(d) Compatibility: No new use is being
6 introduced into the area. This site has been used for
7 overnight lodging in the past and the restaurant is
already in use."

8 The planning commission also addressed "need" in its
9 findings concerning Goal 8 as follows:

10 "Recreational Needs: To satisfy the recreational
11 needs of the citizens of the state and visitors, we
have a demand now for recreational facilities. This
12 would meet recreational needs of persons of limited
mobility and finances living in Hood River County.
13 This would provide conservation of energy both in
transportation and energy. At present many people
travel outside the county for these facilities."

14 Under Goals 9 and 10, the planning commission made the
15 following findings:

16 "Goal No. 9 - Economy of The State: Additional
17 jobs and taxes will be brought into the county. Hood
River County has a narrow economic base and this use
18 will be a diversification.

19 "Goal No. 10 - Housing: A segment of society
20 feels there is a need for additional overnight housing
in this area. The Forest Service indicated
21 development should occur on private lands. This is
not a new use, but one that existed for many years.
22 It makes no sense to shut this use down and move one
and one half miles southwest. It would also be a
23 waste of land. Why move into a new, undeveloped
area? This would only take more land out of
production and be poor planning."

24 The Board of Commissioners by a vote of three to two
25 dismissed petitioner Howell's appeal of the planning
26

1 commission's decision to rezone 2.86 acres of the applicants'
2 property. As previously stated, the board adopted the planning
3 commission's findings set forth above and added some additional
4 findings. The county found that it was necessary to change the
5 zoning on this property rather than to continue recognizing the
6 existing use as a non-conforming use:

7 "To continue the operation of this commercial
8 operation in a non-conforming status is contrary to
9 the theory that non-conforming uses are to be phased
out of existence, or brought into conforming
compliance.

10 ***

11 "Section 65.30 of the Zoning Ordinance is in
12 direct conflict with the purpose of Article 65, as
13 described in Section 65.00. This has led to a
14 continued expansion of a commercial operation in a
15 forest zone. Therefore, a use which should have been
phased out is more firmly established to a point where
it will not be possible to prevent future expansions.
A change in the zoning is preferable to a continued
and expanded, non-conforming use."²

16 Under the caption "Statewide Planning Goal Analysis," the
17 board's order contains the following "Goal Exceptions:"

18 "A. The closest restaurant is approximately six
19 miles distant, it has limited operational facilities
and hours. The nearest overnight accommodations are
in Hood River City, approximately 20 miles distant.

20 "B. The entire surrounding area is classified
21 either 'forest' or 'exclusive farm use' precluding
22 other commercial uses. The commercial uses in the
villages of Mt. Hood or Parkdale are not conducive to
23 this type of dining establishment.

24 "C. The actual area rezoned, has not been in
25 forest use for more than 50 years. It could not
26 produce timber for at least another 30 years. There
will be significant tax revenue from a small
commercial operation as opposed from a miniscule,
unharvested forest acreage. This commercial operation

1 will provide some needed local employment, in an area
2 that tends to have exceptionally high unemployment due
3 to seasonal farm uses. It will be a gathering place
4 for social contacts in a totally rural community.
5 There will be a conservation of fossil fuels by
6 providing services that are not available locally.

7 "D. The fact that the use is not compatible with
8 the adjacent land uses is its greatest value. It
9 provides a haven for humans in the midst of a large
10 forest."

11 In addition to the foregoing, the county's order recited
12 "minority findings" adopted by the two dissenting
13 commissioners. After a recitation of all the findings, the
14 county's order ordered that petitioner Howell's appeal of the
15 planning commission's approval of the zone change be denied and
16 that the zone change be approved subject to certain
17 conditions. The only two conditions which are particularly
18 relevant here are those limiting the uses within the commercial
19 zone to the restaurant and cabins and restricting the size and
20 number of cabins which could be located on the property.

21 OPINION

22 Petitioner's first two assignments of error are
23 interrelated and will be discussed together. The substance of
24 these two assignments of error is that inasmuch as the use
25 authorized by the zone change is not a permitted forest use
26 within the meaning of Goal 4, an exception to Goal 4 was
required. Petitioner contends the exception was not adequate
because the county failed to properly address need,
alternatives, consequences and compatibility as required by Goal
2. Concerning need, petitioner argues that the record shows

1 Hood River has designated 64 acres of vacant buildable land as
2 commercial outside of the incorporated cities of the
3 county.³ Four acres exist in Parkdale and ten acres exist in
4 Mt. Hood. Twenty acres of vacant buildable land are zoned
5 commercial in Government Camp. Thus, according to petitioner,
6 the record shows a total of 34 vacant commercial acres situated
7 close to Mt. Hood and available to accommodate any need for
8 commercial development near the mountain. Petitioner takes
9 issue with the planning commission's findings adopted by the
10 Board of Commissioners that "no overnight facilities exist
11 close to the mountain." Petitioner says that Timberline Lodge
12 has 53 overnight guest rooms and sits on Mt. Hood. In
13 Government Camp, Rhododendron and Welches lodging may also be
14 provided. In view of this availability, petitioner contends no
15 need has been shown for additional commercial land. Petitioner
16 says that the county's findings concerning need only indicate a
17 "market desire" for use of the Cooper Spur Inn property for
18 commercial purposes and that this is insufficient under both
19 Still v Marion County, 42 Or App 115, 600 P2d 433 (1979) and
20 Rudd v Malheur County, 1 Or LUBA 32 (1980). In addition, what
21 may be convenient for customers, according to petitioner, is
22 also not the same thing as need under Goal 2 citing City of
23 Sandy v Clackamas County, 3 LCDC 139 (1979).

24 Concerning the "alternatives" requirement of Goal 2,
25 petitioner argues the county's findings are "impermissibly
26 conclusionary (sic)...in their failure to state why other

1 available sites are not appropriate." As mentioned previously,
2 petitioner believes there are sites available for commercial
3 development in Parkdale, Mt. Hood, Hood River, Odell,
4 Government Camp, Rhododendron and Welches. Thus, petitioner
5 disputes Hood River County's findings regarding alternatives
6 "that other restaurants and overnight facilities are too far
7 away" and that the commercial areas nearby "are not conducive
8 to this type of dining establishment." Petition for Review, p.
9 10. Petitioner argues that the county inadequately addressed
10 the "consequences" requirement of Goal 2 in its finding that
11 the zone change would have a positive effect on the tax base
12 and it would encourage local people to utilize resources close
13 to home rather than outside the area. Petitioner says another
14 consequence not considered by the county "may be that the
15 public may be convinced that complying with land use laws is
16 unnecessary." This decision, argues petitioner, will simply
17 invite people to violate conditions contained in permits such
18 as the applicants' conditional use permit which was granted by
19 the county in 1977 and, according to petitioner, exceeded by
20 the applicant. It was this violation of the original permit
21 that necessitated the present request for the comprehensive
22 plan amendment and zone change. Petitioner also argues people
23 who patronize the facilities might be bothered by surrounding
24 forestry activities, and the complaints of patrons would
25 inhibit the ability of owners of adjacent properties to manage
26 their property for resource uses. Petitioner also argues the

1 county did not consider the consequences to the area of other
2 commercial uses which might be allowed by the commercial
3 designation on the property.

4 Petitioner asserts that the "compatibility" requirement of
5 Goal 2 was not adequately addressed primarily because the
6 county failed to consider the impact on surrounding land uses
7 of uses on the property permitted in the commercial zone.

8 Petitioner also argues that an exception to Goal 4 cannot
9 be justified on the basis that the 2.86 acres is "built upon or
10 irrevocably committed" to non-forest uses. Much of the
11 development which is already on the property, according to
12 petitioner, is a result of the applicants' violation of a
13 conditional use permit which was not itself reviewed against
14 the goals. Petitioner argues the property is not committed to
15 non-forest uses under the five factor test first enunciated by
16 LCDC and expanded in the recent case of 1000 Friends of Oregon
17 v Clackamas County, ___ Or LUBA ___ (Luba No. 80-060, 1981).⁴

18 In its brief, the county argues that the 2.86 acres rezoned
19 by the county has been adequately shown to be committed to
20 non-forest uses. The record shows, according to the county,
21 that the property has historically been used as a restaurant
22 and also, at various times since the early 1900's, for such
23 uses as a gasoline station and cabins. Respondent refers to
24 petitioner's concession in her brief that the parcel of land is
25 at least partially physically developed and that the present
26 restaurant "deserves preservation." The county says this is

1 sufficient to meet its burden under the rules announced in 1000
2 Friends of Oregon v Board of Commissioners of Marion County,
3 LCDC No. 75-006.

4 The county also argues that the county's exceptions
5 findings concerning need, alternatives, consequences and
6 compatibility are adequate. Concerning need, the county says
7 petitioner's reference to adjacent communities ignores "the
8 distances involved in hazardous weather conditions that exist
9 during highest seasons of use." The county says there are no
10 overnight facilities existing elsewhere in Hood River County,
11 and there are no parcels adjacent to existing ski areas on
12 which overnight facilities may be erected.

13 Regarding adverse impacts or compatibility of the proposed
14 use with adjacent uses, the county argues that petitioner's
15 contentions are basically speculation. The county concludes by
16 saying that all the county has done in this case is to
17 acknowledge:

18 "[A] preexisting use that was overlooked and not
19 provided for in the drafting of the Mt. Hood
20 Comprehensive Plan. What it has done is to recognize
21 as exiting fact and to provide for its continuance and
22 modest growth in a tightly controlled manner, avoiding
23 anymore impact on surrounding land than already
24 exists."

25 We conclude that the county's findings attempting to take
26 an exception to Goal 4 are not sufficient for that purpose.
27 While the county argues in its brief that the 2.86 acres is
28 really committed to non-forest uses, the county made no such
29 finding in its order approving a zone change or a comprehensive

1 plan amendment for the 2.86 acres. The applicants submitted
2 purposed findings that the 2.86 acres was committed to
3 non-forest uses. These findings, however, were not adopted by
4 the Board of Commissioners.⁵

5 We also conclude that while the county's findings
6 concerning the "need"⁶ and "consequences" criteria of Goal 2
7 are adequate, the findings concerning the "alternatives" and
8 compatibility criteria of Goal 2 do not adequately address
9 those criteria. In the context of Goal 4, the first two
10 criteria in Goal 2 require that compelling reasons and facts
11 show why a particular non-forest use should be provided and
12 that there are no alternative locations within the area for the
13 proposed use. Under "need" the county found that there were no
14 overnight facilities within 20 miles of Hood River City. The
15 county by adopting the planning commission's findings also
16 found that:

17 "****This would meet recreational needs of persons
18 of limited mobility and finances living in Hood River
19 County. This would provide conservation of energy
both in transportation and energy. At present many
people travel outside the county for these facilities."

20 We believe the county's finding concerning need is an adequate
21 expression of why eight cabins should be allowed in the area of
22 Cooper Spur.⁷ Conservation of energy and providing
23 facilities for persons of limited mobility are reasons which,
24 we believe, would compel a reasonable person to conclude
25 overnight lodging facilities should be provided in the area.

26 The county's finding concerning alternative locations to

1 satisfy the need identified, however, are inadequate.

2 Petitioner has referred to many areas such as Parkdale and Mt.
3 Hood Village which have areas designated commercial and would
4 be, at least arguably, appropriate to satisfy whatever need
5 might exist for overnight lodging facilities. The county's
6 findings do not discuss these alternatives, however, or state
7 why these areas "are not conducive to this type of dining
8 establishment." Assuming "this type of dining establishment"
9 includes a dining establishment with adjacent overnight lodging
10 accommodations, the county's finding simply does not explain
11 why the areas in Mt. Hood or Parkdale or other areas identified
12 by 1000 Friends of Oregon in their written submittal and
13 referred to by petitioner are not adequate to satisfy the need
14 identified.

15 In Teamster Local Union No. 670 v Board of Commissioners of
16 Hood River County, LCDC No. 78-109, LCDC made the following
17 comment concerning the "alternatives" requirement of Goal 2:

18 "But Part II does not stop at Part II(a). It
19 also requires a 'compelling' factual and policy
20 showing as to three other matters, one of which is
21 'what alternative locations within the area could be
22 used for the proposed uses.' The reason these other
23 elements were included within Part II was to prevent
24 local and regional governments from substituting local
25 policy for state policy in their application of the
26 goals. ORS 215.243 and Goals 3 and 4, the relevant
state policies, compel the preservation of even
'marginal' farm and forest lands unless there are no
alternative lands available and unless the other
standards of Goal 2, Part II are demonstrated by
'compelling facts and reasons.' Goal 2, Part II
allows an exception from Goals 3 and 4 only under
highly unusual and limited circumstances. The reason,
again, is that the Commission meant what Goals 3 and 4

1 say: farm and forest lands 'shall' be preserved for
farm and forest uses." LCDC 78-109 at 51.

2 The commission went on to note that "the requirement that
3 alternative locations be identified is crucial" and a finding
4 must be made as to why these identified sites are not as
5 appropriate. The commission further noted that what is
6 required is "an examination of reasonable alternatives."

7 The Board of Commissioners' findings in the present case
8 fail to undertake the analysis required by Teamsters Local
9 Union No. 67 v Hood River County Board of Commissioners, supra,
10 as well as other cases subsequently decided by this Board.
11 See, e.g.: DLCD v Tillamook County, 3 Or LUBA 138 (1981).

12 We believe the county adequately addressed the
13 "consequences" criterion under the Goal 2 exceptions process.
14 Any of the consequences of the proposed use which the county
15 found desirable are also the reasons why the county concluded
16 there was a need for overnight accommodations in the Cooper
17 Spur area. While the county did not address specifically the
18 long term consequences economically of removing this land from
19 forest production, we believe such a specific analysis would be
20 unnecessary in this case given that the property has not been
21 in forest or resource use for the past 50 years and is very
22 small in size. A loss of two acres from resource use is not
23 likely to have any adverse consequence on the county's timber
24 production capabilities.

25 We do agree with petitioner, however, that the county's
26

1 finding concerning the fourth criteria under Goal 2 is
2 insufficient. The county, on the one hand, found that "no new
3 use is being introduced into the area" as the site had been
4 used for overnight lodging in the past and on the other hand
5 found that "the fact that the use is not compatible with the
6 adjacent land uses is its greatest value [as] it provides a
7 haven for humans in the midst of a large forest." Not only do
8 we have difficulty squaring these two findings but we have
9 difficulty understanding why simply because this property may
10 have been used sometime in the past for overnight lodging that
11 eight new cabins would necessarily be compatible with any
12 future uses of adjacent property. Conditions in the logging
13 industry and forest practices generally have changed in the
14 last 20 or 30 years. What may have been compatible with the
15 logging industry as practiced 20 years ago may not be
16 compatible with such an industry as practiced in the next 10 to
17 15 years. The county should have given some consideration to
18 what is likely to occur on surrounding properties in the
19 foreseeable future and how that will impact or be impacted by
20 the county's approval of the commercial zoning designation on
21 the 2.86 acres.

22 Petitioner has also raised some issues about the adequacy
23 of the county's decision in light of Goals 5, 8 and 9.
24 Petitioner argues under Goal 5 that the county's decision
25 threatens the county's ability to preserve Cooper Spur Inn as
26 an historic site. The commercial designation, argues

1 petitioner, would permit uses adjacent to the Cooper Spur Inn
2 which may conflict with the inn's historic value. We find,
3 however, that the conditions placed by the county on the
4 commercial use of the property in limiting the use to the
5 existing inn and eight cabins sufficiently protects the
6 property as an historic site to the extent such a requirement
7 may exist under Goal 5.

8 Petitioner's last assignment of error, that the county's
9 decision violates Goals 8 and 9 because the county's findings
10 on these goals are conclusional and not supported by adequate
11 evidence, is not persuasive. Conservation of energy and
12 satisfying recreational needs of local residents were primary
13 reasons the county gave to approving the zone change request.
14 There was some testimony in the record indicating overnight
15 lodging accommodations would be desirable to have in the Cooper
16 Spur area for people who would like to ski at the Cooper Spur
17 ski area. Testimony was also received that such lodging
18 accommodations would be used by people locally and might avoid
19 the necessity of such people having to go outside the area,
20 thereby saving fuel. Substantial evidence to support a finding
21 of fact is evidence which a reasonable person would accept as
22 adequate to support the finding challenged. Christian Retreat
23 Center v Board of Commissioners for Washington County, 280 Or
24 App 673, 560 P2d 1100 (1977); Stringer v Polk County, 1 Or LUBA
25 104 (1980). Petitioner has made only the bald assertion that
26 the county's findings "are conclusionalary [sic] and not

1 supported by adequate evidence." Petition for Review, p. 17.

2 We are directed to noplace in the record where there may exist
3 evidence which, when viewed in the totality of the record,
4 would render less than substantial the evidence referred to
5 above. We believe, therefore, the county's findings and the
6 evidence in the record in support of those findings are
7 adequate in this case.

8 For the foregoing reasons, we conclude that the county's
9 exception to Goal 4 rezoning petitioner's property does not
10 comply with the requirements of Goal 2, Part II, Exceptions.
11 The county's decision to rezone the property is remanded for
12 further proceedings not inconsistent with this opinion.

FOOTNOTES

1
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3 1

4 Between 1977 and 1980 the applicants had also sought and
5 obtained permission from Hood River County to expand the Cooper
6 Spur Inn, but it is unclear whether any of that expansion had
7 actually occurred at the time of the decisions involved in this
8 appeal.

9
10 2

11 Section 65.00 of the Hood River County Zoning Ordinance
12 provides as follows:

13 "It is necessary and consistent with the
14 establishment of this zoning code that all uses and
15 structures incompatible with permitted uses or
16 structures in each zone be regulated and permitted to
17 exist under controls, the ultimate purpose of which is
18 to phase out or change each non-conforming use or
19 structure to a conforming status."

20 Section 65.30 of the Zoning Ordinance, entitled "Enlargement of
21 Non-Conforming Use of Land or Buildings," provides as follows:

22 "No existing building designed, arranged or
23 intended for or devoted to a use not permitted in the
24 zone in which the building is located, shall be
25 enlarged, extended, reconstructed, structurally altered
26 or reoccupied unless approved by the planning
27 commission. Action on enlargement of non-conforming
28 uses shall be the same as for conditional use permits."

29 3

30 Many of the facts in the record to which petitioners refer
31 are contained in a written submittal by 1000 Friends of Oregon.

32 4

33 In 1000 Friends of Oregon v Clackamas County, supra, we
34 listed the following as the factors upon which a finding of
35 commitment must be based: adjacent uses, parcel size and
36 ownership patterns, public services, neighborhood and regional
37 characteristics, natural boundaries, and other relevant factors.

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39 Inasmuch as the applicants proposed findings were not

1 adopted by the Board of Commissioners we will not analyze these
2 proposed findings to determine whether they would have been
adequate to support a finding of commitment had they been
3 adopted by the Board of Commissioners.

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7 Actually, Goal 2 requires compelling reasons and facts
8 showing "why these other uses should be provided for" and
9 "what alternative locations within the area could be used
10 for the proposed uses." In Department of Land
11 Conservation and Development v Tillamook County, 3 Or LUBA
12 138 (1981), we said LCDC's shorthand expression of the
13 first of these criteria as "need" did not do "undue
14 violence to the meaning and intent of the Goal."
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28 We discuss, *infra*, the petitioner's contention that
29 this finding is not supported by substantial evidence in
30 the record.
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STATE OF OREGON

INTEROFFICE MEMO

TO: MEMBERS OF THE LAND CONSERVATION AND DEVELOPMENT COMMISSION DATE: 11/24/81

FROM: THE LAND USE BOARD OF APPEALS

SUBJECT: HOWELL v HOOD RIVER COUNTY
LUBA No. 81-093

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

Petitioners in this case appealed Hood River County's approval of a comprehensive plan amendment and zone change from "forest" to "commercial" for 2.86 acres. Petitioners asserted that the county's two decisions violate Goals 2, 4, 5, 8 and 9.

The Board decided, preliminarily, that only petitioner Howell had standing and that her standing was limited to appealing the zone change. The Board's opinion, therefore, does not address the validity of the comprehensive plan amendment.

The Board concluded that Hood River County's findings in support of its exception to Goal 4 failed to comply with the "alternatives" and "compatibility" requirements of Goal 2. The present use on the property consists of the Cooper Spur Inn. The zone change to commercial was to enable the owners of the property to construct eight overnight cabins on the 2.86 acres. The commercial zoning on the property was limited by the county to eight overnight cabins and the existing restaurant. The Board found that sufficient reasons were expressed in the findings to demonstrate that overnight lodging facilities in the area of Cooper Spur should be provided and that there were beneficial consequences from doing so. However, the Board concluded that Hood River County had not adequately explained why other potential areas were not available to accommodate overnight lodging facilities. For example, two nearby villages of Parkdale and Mt. Hood had areas designated for commercial use and yet the county failed to explain why these villages could not take care of the need identified for overnight lodging facilities. Concerning compatibility of the proposed use, the Board said that the county should have given some consideration to what was likely to occur on surrounding properties in the foreseeable future and how that will impact or be impacted by the county's approval of the commercial zoning designation.



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The Board also addressed petitioner's contentions concerning Goals 5, 8 and 9, but found that those contentions were without merit.

The Board is of the opinion that oral argument will 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.

