

MAR 25 3 45 PM '83

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
27
28

SANDI JONES,)
)
 Petitioner,)
)
 vs.)
)
 LINCOLN COUNTY,)
)
 Respondent,)
)
 vs.)
)
 WILFRED R. GERTTULA,)
)
 Intervenor.)

LUBA No. 82-099

FINAL OPINION
AND ORDER

Sandi Jones
Kernville Route
Box 809
Lincoln City, OR 97367

Nancy Craven
Lincoln County Courthouse
225 W. Olive
Newport, OR 97365
Attorney for Respondent County

Frederick J. Ronnau
Kulla & Ronnau, P.C.
4741-A S.W. Highway 101
Lincoln City, OR 97367
Attorney for Intervenor

BAGG, Board Member; COX, Board Member.

DISMISSED 3/25/83

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), as amended by Oregon Laws 1981, ch 748.

1 BAGG, Board Member.

2 This matter is before the Board on the motion of Intervenor
3 Wilfred R. Gerttula. Intervenor asks that we dismiss the
4 proceeding on the ground this Board has no jurisdiction to hear
5 petitioner's complaints. The petition for review filed herein
6 challenges a grant of a subdivision by the Lincoln County Board
7 of Commissioners on grounds that the subdivision violates Goals
8 2, 5, 7 and 17. The Land Conservation and Development
9 Commission acknowledged the Lincoln County Comprehensive Plan
10 on December 21, 1982. Intervenor claims that an exceptions
11 paper drawn to facilitate this department was reviewed by the
12 commission as part of the acknowledgment proceeding. As the
13 comprehensive plan, implementing ordinances and the exception
14 for this property have been acknowledged by the commission,
15 there can be no review by this Board of any challenge to
16 actions taken under the acknowledged plan.

17 Petitioner Jones argues that the subdivision violates
18 portions of Lincoln County ordinances controlling development
19 in hazardous areas and development in areas of historical and
20 archeological importance. Because these issues are addressed
21 in Lincoln County Ordinance Sections 13.030 and 13.040,
22 Petitioner Jones argues the Board retains jurisdiction.

23 The petition for review alleges violations of statewide
24 planning goals. Nowhere in the petition is there mentioned any
25 violation of the Lincoln County plan or implementing
26 ordinances. Because the county's adherence to statewide

1 planning goals has already been tested in the acknowledgment
2 proceeding and found adequate, we do not believe we have the
3 power to review actions taken under the plan for compliance
4 with the goals. To do so would put the Board in the position
5 of second guessing an acknowledgment, and we do not believe we
6 have the power to either second guess the acknowledgment or
7 consider whether the commission properly followed its own
8 goals. Byrd v Stringer, 60 Or App 1 (1982), rev accepted;
9 Fujimoto v Land Use Board of Appeals, 52 Or App 875 (1981);
10 Cole v Deschutes County, 5 Or LUBA 156 (1982).

11 Because the issues in this case have been rendered moot by
12 the acknowledgment of the Lincoln plan and implementing
13 ordinances of January 18, 1983, this appeal is dismissed.

14

15

16

17

18

19

20

21

22

23

24

25

26

6.2



STATE OF OREGON

INTEROFFICE MEMO

TO: MEMBERS OF THE LAND CONSERVATION AND DEVELOPMENT COMMISSION DATE: 2/22/83

FROM: THE LAND USE BOARD OF APPEALS

SUBJECT: JONES v LINCOLN COUNTY
LUBA No. 82-099

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

This case is about a subdivision granted by the Lincoln County Board of Commissioners. After the grant of the subdivision, the Land Conservation and Development Commission acknowledged the Lincoln County Comprehensive Plan. Petitioner's challenges are based only on statewide planning goals. Because of the acknowledgment, we view the issues in this case to be moot, and we have dismissed the appeal.

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.



Contains Recycled Materials

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

LAND USE
BOARD OF APPEALS

MAR 17 10 53 AM '83

SANDI JONES,

Petitioner,

vs.

LINCOLN COUNTY

Respondent,

WILFRED R. GERTTULA,

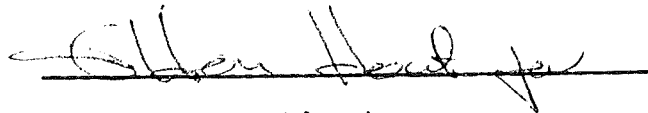
Intervenor.

LUBA NO. 82-099
LCDC DETERMINATION

The Land Conservation and Development Commission hereby approves the
recommendation of the Land Use Board of Appeals in LUBA No. 82-099.

DATED THIS 18 DAY OF MARCH 1983.

FOR THE COMMISSION:



James F. Ross, Director

Department of Land Conservation and
Development

JFR:RE:af

3267B-2/63C