



1 BAGG, Board Member.

2 NATURE OF THE DECISION

3 Petitioners appeal Columbia County's grant of a mobile home  
4 siting permit and a "septic construction permit." The permits  
5 would allow placement of a mobile home on property owned by  
6 David Chrysler. Columbia County's comprehensive plan has not  
7 been acknowledged by LCDC as being in compliance with the  
8 statewide goals.

9 FACTS

10 This property was subject to a minor partition request by  
11 the respondent, David Chrysler, in January of 1982. There was  
12 a grant of a minor partition in February of 1982, and the grant  
13 was appealed to this Board in Allen v Columbia County, 6 Or  
14 LUBA 81 (1982). The case was remanded to the Columbia County  
15 Board of Commissioners upon motion of its counsel.

16 In March of 1982, David Chrysler filed a mortgage release  
17 with the Columbia County Tax Assessor creating a new tax lot  
18 from a portion of tax lots 4221-020-00801 and 4220-000-00100.  
19 The new lot is 2.5 acres in size and is known as tax lot  
20 4221-020-00804. The 2.5 acres segregated are out of a total of  
21 8.5 acres. Record at 4.

22 In August of 1982, LCDC issued an enforcement order,  
23 effective November 2, 1982, against Columbia County restricting  
24 it from approving subdivisions, major or minor partitions,  
25 building permits and mobile home siting permits for new  
26 dwellings on parcels of five acres or larger.

1 On November 25, 1982, respondent Chrysler requested  
2 approval for a "septic construction" and mobile home siting  
3 permit on the new tax lot. At the hearing to consider the  
4 request, petitioner David Allen appeared and objected to the  
5 permits.

6 The Board of Commissioners granted the request for septic  
7 tank construction and mobile home siting in an order issued on  
8 December 15, 1982.

9 ASSIGNMENT OF ERROR NO. 1

10 The first assignment of error alleges the grant is in  
11 violation of the LCDC enforcement order issued on August 20,  
12 1982 and effective November 2, 1982. Petitioners allege that  
13 though Mr. Chrysler claims the site is 2.5 acres, it is in fact  
14 the unpartitioned 14.5 acres which he sought to partition in  
15 1982 and which this Board remanded to the county in Allen v  
16 Columbia County, supra. We understand petitioners to say the  
17 size of the subject parcel requires adherence to the  
18 enforcement order.

19 We do not have authority to reach this assignment of  
20 error. Review of a local decision for compliance with an  
21 enforcement order is controlled by ORS 197.320.<sup>1</sup> Whether a  
22 violation of the enforcement order exists must be determined by  
23 the Circuit Court. Any opinion we would make would be advisory  
24 only. See Port of Portland v. Portland, 3 Or LUBA 109 (1981).

25 Petitioners assignment of error no. 1 is denied.

26 ASSIGNMENT OF ERROR NO. 2

1           Petitioners allege the Board of Commissioners' findings are  
2 inadequate and not supported by substantial evidence in the  
3 record. Petitioners say the decision is lacking any findings  
4 of fact showing compliance with Ordinance 80-8, a Columbia  
5 County ordinance providing criteria for review of land use  
6 actions on agricultural land. Petitioners also say there are  
7 no findings showing compliance with statewide planning goals.  
8 Petitioners conclude their argument by claiming the findings  
9 that do exist are simple recitations of evidence which the  
10 Court of Appeals in Hill v Union County Court, 42 Or App 833,  
11 601 P2d 905 (1979) held to be inadequate.

12           Ordinance 80-8 requires the county to apply certain  
13 criteria before any dwelling may be constructed or any  
14 partitioning may occur on agricultural land. The ordinance  
15 defines agricultural land as follows:

16           ""For purposes of this ordinance only and until more  
17 detailed credible evidence is presented, Goal 3  
18 agricultural lands in Columbia County shall be  
19 presumed to be Soil Associations 1, 2, 3, 4, 5, 6, 7,  
20 and 9 as indicated upon General Soil Map M7-E-22503  
21 prepared by the U.S. Department of Agriculture, Soil  
Conservation Service, in cooperation with Oregon  
Agricultural Experiment Station, assisting Columbia  
Soil and Water Conservation District, and dated  
August, 1972, which by this reference is incorporated  
herein and made a part hereof."

22           The findings recite that "the site is not predominately Class I  
23 through IV soil." Record at 1, Finding No. 9. However, the  
24 above Columbia County ordinance definition of agricultural land  
25 does not appear to limit soil types to Class I through IV soil.  
26

1 Further, statewide Goal 3 requires protection of what is  
2 known as "other lands."<sup>2</sup> There is no discussion in the  
3 county's findings as to whether or not the subject property  
4 qualifies under the "other lands" criteria.

5 Without a discussion of the Ordinance 80-8 definition, we  
6 fail to understand how the county can find that the application  
7 is not in violation of both those standards. The counties  
8 findings are not sufficient to show compliance with criteria  
9 the county appears to believe are applicable.<sup>3</sup> Hoffman v.  
10 Dupont, 49 Or App 699, 621 P2d 63, rev den, 290 Or 651 (1981);  
11 Harrel v. Baker County, 5 Or LUBA 192 (1982).

12 Assignment of error no. 2 is sustained.

13 ASSIGNMENT OF ERROR NO. 3

14 Assignment of error no. 3 alleges the county erred in  
15 approving the septic permit in violation of statewide planning  
16 Goals 2, 3, 4, and 7 and Columbia County Ordinance 80-8.

17 Petitioners argue that since Columbia County does not have  
18 an acknowledged comprehensive plan, statewide planning Goals 2,  
19 3, 4 and 7 apply to each land use decision. The county grant  
20 of a septic permit is alleged to be defective because none of  
21 the statewide planning goals were addressed directly.

22 Similarly, compliance with Ordinance 80-8 was not shown as the  
23 county simply recited that its action was not in violation of  
24 the ordinance without detailing compliance with the ordinance.

25 We agree with the petitioners that the findings are not  
26 sufficient to show compliance with statewide planning goals or

1 Ordinance 80-8. A conclusional finding of compliance alone is  
2 not sufficient. We can not, however, say that the county has  
3 violated those goals without first having the opportunity to  
4 review findings. We have said in the past that without  
5 adequate findings, we are unable to test the local decision for  
6 compliance with applicable criteria. Dupont v Jefferson  
7 County, 1 Or LUBA 136, aff'd, Hoffman v. Dupont, supra.

8 Assignment of error no. 3 is sustained insofar as it  
9 alleges violation of Ordinance 80-8 and the lack of findings  
10 addressing the goals.

11 ASSIGNMENT OF ERROR NO. 4

12 Assignment of error no. 4 alleges the county erred by  
13 failing to follow applicable procedure in that it failed to  
14 require the applicant, David Chrysler, to provide a legal  
15 survey of the road easement before granting additional land use  
16 actions. As we understand, it this assignment of error is  
17 based on a county staff recommendation that road standards be  
18 adopted before building permits could be allowed along the  
19 roadway. The county apparently informed Mr. Chrysler that the  
20 county roadmaster would not be able to recommend road standards  
21 until Mr. Chrysler presented the legal description of the  
22 centerline of a 60 foot road easement affecting the property.  
23 As we understand petitioners' complaint, the survey was not  
24 done.

25 We are unable to review this assignment of error because we  
26 do not understand the requirement of a survey to be lawfully

1 imposed as a condition for the grant of the permits under  
2 review here. We understand petitioners to cite to portions of  
3 the record in LUBA No. 82-028 which petitioners may believe  
4 will show a requirement for a survey, but the record of LUBA  
5 No. 82-028 is not part of the record in this proceeding. The  
6 record submitted by the county did not include the record of  
7 LUBA 82-028, and there has been no objection to the record as  
8 submitted by the county. Therefore, we do not believe the  
9 record of LUBA No. 82-028 may be reviewed by us in this  
10 proceeding.

11 Assignment of error no. 4 is denied.

12 This matter is remanded to Columbia County for action not  
13 inconsistent with this opinion.

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FOOTNOTES

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3 <sup>1</sup>  
4       ORS 197.320(6) states:

5       "The commission may institute actions or proceedings  
6 for legal or equitable remedies in the Circuit Court  
7 for Marion County or in the circuit court for the  
8 county to which the commission's order is directed or  
9 within which all or a portion of the applicable city  
is located to enforce compliance with the provisions  
of any order issued under this section or to restrain  
violations thereof. Such actions or proceedings may  
be instituted without the necessity of prior agency  
notice, hearing and order on an alleged violation."

10  
11 <sup>2</sup>  
12       Goal 3 defines agricultural land as follows:

13       "In western Oregon is land of predominantly Class  
14 I, II, III and IV soils and in eastern Oregon is land  
15 of predominantly Class I, II, III, IV, V and VI soils  
16 as identified in the Soil Capability Classification  
17 System of the United States Soil Conservation Service,  
18 and other lands which are suitable for farm use taking  
19 into consideration soil fertility, suitability for  
20 grazing, climatic conditions, existing and future  
21 availability of water for farm irrigation purposes,  
22 existing land use patterns, technological and energy  
23 inputs required, or accepted farming practices. Lands  
24 in other classes which are necessary to permit farm  
25 practices to be undertaken on adjacent or nearby  
26 lands, shall be included as agricultural land in any  
event. More detailed soil data to define agricultural  
land may be utilized by local governments if such data  
permits achievement of this goal." (Emphasis added).

27 <sup>3</sup>  
28       We understand the county to believe the criteria applicable  
29 because in the preamble to its findings of fact it says that  
30 the application "is not in violation of Ordinance 80-8 which  
31 provides criteria for review of land use actions on  
32 agricultural land under statewide Goal 3, and is in compliance  
33 with the statewide planning goals and procedures." Record at 1.





STATE OF OREGON

INTEROFFICE MEMO

TO: MEMBERS OF THE LAND CONSERVATION  
AND DEVELOPMENT COMMISSION

DATE: 4/5/83

FROM: THE LAND USE BOARD OF APPEALS

SUBJECT: ALLEN V. COLUMBIA COUNTY  
LUBA NO. 83-006

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

Petitioners are appealing the grant of a mobile home siting permit and a septic construction permit. Assignment of Error No. 3 alleges violation of goals 2, 3, 4 and 7. We found the findings are insufficient to show compliance with the goals. The appeal is being remanded to Columbia County for further findings.

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.



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Materials

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

DAVID E. ALLEN and )  
WENDY RENE ALLEN, )  
 )  
Petitioners, )  
 )  
vs. )  
 )  
COLUMBIA COUNTY BOARD )  
OF COMMISSIONERS, )  
 )  
Respondent, )  
 )  
and )  
 )  
DAVID L. CHRYSLER, )  
 )  
Respondent. )

LUBA No. 83-006

PROPOSED OPINION  
AND ORDER

Appeal from Columbia County.

Linda L. Chamales, St. Helens, filed the Petition for Review on behalf of Petitioners. With her on the brief were Williamson, Williamson and Leineweber.

Respondents did not file a brief. Oral argument was waived.

BAGG, Board Member; COX, Board Member; participated in this decision.

Remanded . 4/05/83

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.

