

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

THE JEFFERSON LANDFILL COMMITTEE and HASKELL HAWKINS,  
Petitioners,

vs.

MARION COUNTY, W.R. SCHLITT W.R. SCHLITT, JR., and BROWNS ISLAND,  
INC.,  
Respondents.

LUBA No. 85-047  
FINAL OPINION AND ORDER  
Reported at: 14 Or LUBA 156

(Date Decided: September 17, 1985)

(This file was derived from the Slip Opinion and may include the text of LUBA  
HeadNotes, but does include Headnote markers.)

Appeal from Marion County.

M. Chapin Milbank, Salem, filed the petition for review and argued the cause on behalf  
of Petitioners.

Robert C. Cannon, Salem, filed the response brief and argued the cause on behalf of  
Respondent County.

Richard C. Stein, Salem, filed the response brief and argued the cause on behalf of  
Respondents Schlitt and Browns Island, Inc. With him on the brief were Ramsay, Stein,  
Feibleman and Myers.

BAGG, Referee; KRESSEL, Chief Referee; DUBAY, Referee; participated in this  
decision.

AFFIRMED 09/17/85

**Opinion by Bagg.**

#### **NATURE OF THE DECISION**

Petitioners challenge a conditional use and major partitioning decision by Marion  
County. The decision allows opening of a sanitary landfill.

#### **FACTS**

This case is before us for the second time. In Jefferson Landfill v. Marion County, 12 Or LUBA 79 (1984), we considered several challenges to Marion County's decision to [PG 157]approve a landfill. We decided each of the challenges in favor of the county except that we found the county failed to provide an adequate fire protection plan as was required by its ordinance. We remanded the case because of the inadequate fire protection plan.

On remand, the county reopened the proceeding to consider a new fire protection plan. Petitioners asked that the proceeding include consideration of whether the partitioning and conditional use should be allowed at all. The county rejected this request and approved the fire protection plan.

## ASSIGNMENT OF ERROR

"Marion County erred in failing to hold a de novo hearing on the question of whether to approve a conditional use which would allow a garbage landfill on a 412 acre Special Agriculture (SA) parcel."

Petitioners claim a new hearing on the conditional use and major partitioning is required for the following reasons:

"1. A significant passage of time.

(Three and one-half years)

"2. Change in Board personnel.

"3. Change in Marion County attitude toward garbage burning as opposed to landfilling." [FN1] Petition for Review at 3-4

In support of their position that the entire proposal should have been considered on remand, petitioners argue the Marion County Zoning Ordinance does not permit long delays between conditional use approvals and their exercise. The ordinance provides that a conditional use permit must be exercised within six months after it is granted. See Marion County Zoning Ordinance, §122.090. However, petitioners do not assert Section 122.090 is violated. [FN2] According to petitioners, the long delay caused by the passage of this approval through the appeals process means that the findings made to support the original decision do not reflect present facts. Petitioners do not argue that provisions in the Marion County Comprehensive Plan or zoning code would require disapproval of the application if it were to be submitted today.

[PG 158][HEADNOTE 1] We are cited to no legal authority requiring the county to reconsider the matter of the conditional use and major partitioning as requested by petitioners. The original approval was remanded on limited grounds, and nothing in our order or in the authorities relied on by petitioners obliged the county to reopen the whole proceeding or test the application against standards other than fire protection standards.

The county's decision is affirmed.

FOOTNOTES

1

In connection with 3. above, petitioners argued the following facts show this "change in...attitude:"

- "(a) A different type of residue will be placed in the landfill such as ash or fire changed debris.
- "(b) Frequency and weight of truck trips on nearby roads will occur.
- "(c) The expansion of use of the land- fill to take in garbage from other counties may happen.
- "(d) The present need, if at all, for such a landfill facility.
- "(e) Changed attitude of DEQ and E.Q.C.

with regard to 'deadlines.'

- "(f) Change in economic status of franchise since original application.
- "(g) New geographic considerations based upon the location of the Brooks

Burn Facility.

- "(h) Legislative changes." Petition for Review at 3-4.

2

Marion County Zoning Ordinance, Section 122.080, provides that the effective date of a variance (or other permit such as a conditional use permit) is

"10 days after the mailing of the notice of decision or until after the regular meeting of the Governing Body following the date of such mailing, whichever is last; provided, however, in case of certification of the proceedings has been requested by the Governing Body or an appeal has been taken as hereinafter provided, the variance shall not be effective until the Governing Body has acted on the certification or appeal." (Emphasis added).

We understand this provision to effectively suspend the six month time period provided for in Section 122.090. Therefore, the delay occasioned by the appeals in this case results in no violation of the county's ordinance.