

LAND USE
BOARD OF APPEALS

Nov 16 8 56 AM '87

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

DEPARTMENT OF LAND CONSERVATION)
AND DEVELOPMENT,)
Petitioner,)
vs.)
KLAMATH COUNTY,)
Respondent.)

LUBA No. 87-070
FINAL OPINION
AND ORDER

Appeal from Klamath County.

Cheryl Coodley, Salem, filed the petition for review and argued on behalf of Department of Land Conservation and Development. With her on the brief were Dave Frohnmayer, Attorney General; William F. Gray, Deputy Attorney General; and Virginia L. Linder, Solicitor General.

Michael Spencer, Klamath Falls, filed a response brief and argued on behalf of Respondent County.

BAGG, Chief Referee; SHERTON, Referee; participated in the decision.

REMANDED 11/16/87

You are entitled to judicial review of this Order. Judicial review is governed by the provisions of ORS 197.850.

1 Opinion by Bagg.

2 NATURE OF THE DECISION

3 Petitioner appeals a comprehensive plan amendment and zone
4 change enacted by Klamath County. The county's decision
5 changes the plan designation and zoning for some 420 acres from
6 forest use to rural residential use.

7 FACTS

8 On July 21, 1982, the Klamath County Board of Commissioners
9 approved a partitioning of 420 acres into nine parcels. On
10 July 30, the board issued an order rescinding this approval on
11 two of the nine parcels. The owner, Mr. Schoonover, filed an
12 action against the county in the U.S. District Court. As a
13 result of that case, a judgment was entered on March 26, 1987
14 finding that the county's rescision of its July 21, 1982 order
15 denied plaintiff due process of law. The judgment required the
16 county to approve partition of all nine parcels in accordance
17 with the county's original order of July 21, 1982.

18 The order on appeal to us in this case is entitled

19 "In the Matter of Action Taken by the Board of
20 Commissioners to Comply with Civil Case No.
82-6259KF-PA, Amended Judgment U.S. District Court,
21 Replan and Rezone of Subject Property."

22 In the county order of July 29, 1987, approving the new
23 comprehensive plan and zoning designation, the county listed as
"FINDINGS" the following:

24 "All testimony and exhibits and discussion presented,
25 and the amended judgment, Civil Case No. 82-6259KF-PA
of March 24, 1987."
26

1 The county's stated conclusion was that

2 "the county planning commission and board of
3 commissioners had no choice but to comply with the
4 above-mentioned judgment." Record 4.

5 After issuance of this order, petitioner filed this review
6 proceeding.

7 ASSIGNMENT OF ERROR

8 "The county did not adopt an exception to Goal 4 to
9 allow conversion of forest land to rural residential
10 use, in violation of ORS 197.732 and Goal 2."

11 Petitioner says the county's failure to take an exception
12 to Goal 4, the forest lands goal, warrants reversal. The
13 county's action amends the comprehensive plan and zoning
14 ordinance to allow residential development, a use not permitted
15 by Goal 4, on land otherwise subject to the forest lands goal.
16 Petitioner argues the county was required to take an exception
17 and did not. Therefore, petitioner claims the case must be
18 reversed and remanded to the county.

19 Petitioner discounts the county argument, apparent from its
20 order, that the county had no choice but to grant the plan and
21 zone change because of the U.S. District Court decision.

22 Petitioner states

23 "[b]ut the law in Oregon is well-settled that a
24 particular comprehensive plan designation does not
25 dictate a particular zoning designation, nor does the
26 recording of a plat entitle the landowner to a
particular zoning designation, nor, as in the instant
case, does approval of a partition dictate a
particular result in application for a comprehensive
plan amendment or zone change." Petition for Review
at 4.

Petitioner says nothing in the record indicates the county

1 took its action approving the plan and zone change in
2 compliance with applicable land use goals. Further, petitioner
3 advises that whether or not the partitioning was made in
4 compliance with the goals, neither the partitioning of property
5 nor the court's order guarantees any particular land use.

6 Respondent County argues that the district court order
7 specifically requires approval of the parcels subject to the
8 court's decision. Respondent argues

9 "The approval of a comprehensive plan amendment and
10 zone change was in recognition of probability that had
11 these parcels been approved as set out in the board of
12 county commissioner's order dated July 21, 1982, that
13 the applicant in this case would have been able to
14 have obtained the plan designation of Residential and
15 zone designation of R-5 in the acknowledgement
16 process." Respondent's Brief at 2.

17 Respondent goes on to argue that the applicant began the
18 application process in 1970, but was delayed until 1982 when
19 approval was finally granted. Respondent claims as follows:

20 "Between the time of application and the time of final
21 approval in 1982, Oregon's Land Use Statutes became
22 effective and acted to prevent the applicant from
23 developing the lots in the manner that would have been
24 possible in 1970 and subsequent years. The action of
25 the board of county commissioners in approving the
26 comprehensive plan change and zoning designation of
the present case is in recognition of the denial of
due process of law afforded to the applicant and the
fact that had the applicant been afforded due process
of law in the beginning of his application process,
those properties would have been developed to the
point where they would have been included in the
acknowledged plan as residential properties."
Respondent's Brief at 2-3.

27 We are not persuaded by respondent's argument. Nothing in
28 the record, which includes the District Court's order, makes

1 any mention of the use of the property or the appropriate
2 comprehensive plan and zoning designation for the property.
3 The court's order concerns itself with the county's action as
4 to the July 21, 1982 partitioning order and what is described
5 in the court's amended judgment as the "commissioner's
6 memorandum of July 30, 1982." Record 22. We conclude,
7 therefore, that the property is subject to applicable Oregon
8 and local land use regulations, notwithstanding the
9 partitioning.

10 Respondent does not deny that this property is subject to
11 Statewide Planning Goal 4. The county's order granting the
12 comprehensive plan and zone change does not discuss Goal 4, nor
13 does it take an exception to Goal 4. A comprehensive plan
14 amendment must be supported by findings addressing applicable
15 goals. Sunnyside Neighborhood v. Clackamas Co. Comm., 280 Or
16 3, 20-23, 569 P2d 1063 (1977). Omission of findings is an
17 error requiring a remand. OAR 661-10-070(1)(C).

18 The county's decision is remanded for further proceedings
19 consistent with this opinion.
20
21
22
23
24
25
26