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

DAVID R. WILLIAMS, JR.,)	
)	
Petitioner,)	LUBA No. 88-036
)	
vs.)	FINAL OPINION
)	AND ORDER
WASCO COUNTY,)	
)	
Respondent.)	

Appeal from Wasco County.

Donald V. Reeder, Madras, filed the petition for review and argued on behalf of petitioner. With him on the brief was Glenn, Sites & Reeder.

Charles Belknap, The Dalles, filed the response brief and argued on behalf of respondent.

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

REMANDED 09/16/88

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 conditional use permit for a
4 campground in an exclusive farm use zone.

5 FACTS

6 The proposed campground would be located on a 29.1 acre
7 parcel in an active farming area. The county's decision limits
8 the campground operation to four weeks per year during the
9 period of July 1 through August 31. Camp attendance would be
10 limited to a maximum of twelve campers, ages eight to
11 fourteen. Each session is approximately one week long. There
12 will be no additional buildings constructed on the property as
13 a result of this permit. There is an existing residence with
14 accessory buildings on the property.

15 ASSIGNMENT OF ERROR No.1

16 "Wasco County's decision that the conditional use does
17 not materially alter the stability of the overall land
18 use pattern in * * * the area was not supported by
19 substantial evidence and * * * findings."

20 We understand petitioner to argue the conditional use
21 permit will cause increased pressure to develop other property
22 in the area. Petitioner advises there is a recreation area
23 nearby which can serve the campers. Petitioner argues that if
24 the proposed campground is allowed, there will be pressure for
25 more recreational development on farm land as the nearby Pine
26 Hollow recreation area becomes crowded.

Petitioner also argues the county was obliged to show that

1 the campground permitted by the county's decision will not
2 adversely affect farming on petitioner's property and other
3 farm lands in the area. Petitioner argues the record shows the
4 proposed conditional use will inhibit farm practices on his
5 property.

6 Respondent argues it is unlikely that the proposed
7 campground will set any precedent for similar conditional
8 uses. Respondent characterizes petitioner's argument as
9 speculative, and contends this decision establishes no
10 precedent for approval of applications for similar conditional
11 uses. Respondent argues such future requests, if they are
12 received, will be reviewed on their own merits.

13 The possibility that other conditional uses will be
14 requested certainly exists, but the addition of this one
15 conditional use does not necessarily mean that there will be
16 more such applications. However, petitioner is correct that
17 the Pine Hollow area is designated in the plan for recreational
18 uses. It is within two miles of the subject property. While
19 petitioner does not precisely so argue, the overall land use
20 pattern in the area apparently is exclusively farm use with
21 recreational uses at the Pine Hollow site. In these
22 circumstances, we conclude allowing the proposed campground may
23 materially alter the stability of the overall land use pattern
24 in the area. On remand, the county must explain how the
25 existing land use pattern is maintained by allowing the
26 proposed recreational use in its exclusive farm use zone rather

1 than requiring the use to locate on nearby land already
2 planned, zoned and partially developed for such use.

3 Respondent's other claim that the proposed use inhibits
4 farm uses on petitioner's property is discussed under the
5 second assignment of error.

6 Assignment of error no. 1 is sustained.

7 ASSIGNMENT OF ERROR No.2

8 "Wasco County's finding that goal 3, agricultural
9 lands, implementation measure 1(b),(3), that non-farm
10 uses permitted within farm zones adopted pursuant to
11 ORS 215.213 should be minimized in agricultural areas,
12 is not supported by substantial evidence and in itself
13 violates goal 3."

14 In this assignment of error, petitioner claims the proposed
15 conditional use is not compatible with farm uses and violates
16 implementation measure 1(B),(3) of the Wasco County plan. This
17 provision provides that:

18 "non-farm uses permitted within farm zones adopted
19 pursuant to ORS 215.213 should be minimized to allow
20 for maximum agricultural productivity."

21 Petitioner complains that the farming activity during the
22 summer months, which includes field burning, along with use of
23 farm chemicals, is not compatible with a camping use.

24 Further, petitioner argues there is no substantial evidence
25 in the record to support the finding that there is relatively
26 little conflict with agricultural activity. Petitioner argues
there is substantial evidence in the record, including evidence
from the Wasco County Planning Department and the testimony of
petitioner, that the conditional use will impact petitioner's

1 farm use enterprise.

2 The county found that goal 3 implementation measure 1(B)

3 "* * * does not provide standards or guidelines by
4 which to judge which non-farm uses are acceptable, but
5 does direct the county to closely examine requests to
6 allow only those consistent with the agricultural
7 lands goal."

8 Policy 1 under goal 3 provides in its entirety "Maintain
9 Exclusive Farm Use Zoning." Policy 1 is followed by a list of
10 implementation measures.¹ The context in which the
11 implementation measures are presented does not suggest they are
12 approval standards for individual applications for non-farm
13 uses. There are no definitions or other provisions in the plan
14 or land use regulations stating that implementation measures
15 are approval standards.² Instead, they appear to provide the
16 basis for more specific implementing provisions and approval
17 standards in the county's land use and development ordinance.
18 That ordinance includes specific approval standards applicable
19 to non-farm uses:

20 "* * * The following limitations shall apply to a
21 conditional use * * *:

22 "1. Is compatible with farm use described in
23 subsection (2) of ORS 215.203, and is consistent
24 with the intent and purposes set forth in
25 ORS 215.243, the County's Comprehensive Plan, and
26 this Ordinance.

"2. Does not interfere seriously with accepted
farming practices as defined in paragraph (c) of
subsection (2) of ORS 215.203, on adjacent lands
devoted to farm uses; and

"3. Does not materially alter the stability of the
overall land use pattern of the area; and

1 "4. Is situated upon generally unsuitable land for
2 the production of farm crops, livestock and
3 wildlife, considering the terrain, adverse soil
4 or land conditions, drainage and flooding,
5 vegetation, location and size of the tract; and

6 "5. Complies with such other conditions as the
7 governing body of the County considers necessary,
8 and specifically complies with the intent and
9 purposes of the County's Comprehensive Plan and
10 the legislative intent of Oregon Revised Statute
11 215.263." Land Use and Development Ordinance
12 Section 3.210(D).

13 In our view compliance with the generally worded
14 implementation measure cited by petitioner is achieved by
15 requiring the proposed use to comply with approval criteria
16 under Section 3.210(D) of the land use development ordinance."

17 There remains the question of what the county meant by
18 concluding goal 3 implementation measure 1(B) only directs the
19 county to "closely examine requests to allow only those
20 consistent with the agricultural lands goal." Because we
21 conclude that goal 3 implementation measure 1(B) is not an
22 approval standard, the county is not obliged to conclude that
23 the request is consistent with the agricultural lands goal,
24 only that the request meets the approval standards set forth in
25 the land use and development ordinance.

26 The substance of petitioner's argument under the second
27 assignment of error is that there is no substantial evidence to
28 support the county's finding that there will be little conflict
29 with agricultural activity and no serious interference with
30 accepted farming practices. Such findings are required by
31 Sections 3.210(D)(1) and (2) of the land use and development

1 ordinance quoted supra. However, petitioner does not
2 explicitly tie his complaint about the incompatibility of the
3 recreational use with surrounding agricultural uses to Sections
4 3.210(D)(1) and (2).

5 Where petitioners fail to identify the plan or ordinance
6 standards they claim are violated by a land use decision, our
7 usual practice is to refuse to supply the legal theory or
8 speculate as to what standards may be violated. Tichy v.
9 Portland City Council, 6 Or LUBA 13, 23-24 (1982); Deschutes
10 Development v. Deschutes Cty., 5 Or LUBA 218, 220 (1982).

11 However, it is clear from petitioner's argument that he is
12 saying the county's decision violates Sections 3.210(D)(1) and
13 (2) of the land use and development ordinance. Accordingly, we
14 will review the county's order against the criteria.

15 The county order, and respondent's brief appear to argue
16 that because of the short time span that the camp will be in
17 use and the relatively small number of campers, any adverse
18 impacts from farming activities are essentially non-existent.
19 However, petitioner's agricultural activity includes field
20 burning during the month of August. The campground is to be in
21 operation during the month of August. The county order does
22 not explain how adjacent field burning activity is compatible
23 with the proposed recreational use. The county's order simply
24 concludes that the likelihood of conflicts with farming
25 practices is "not sufficiently great to warrant denial of the
26 permit." This statement is not sufficient explain why the

1 farming operations are compatible with the campground or that
2 the campground will not seriously interfere with petitioner's
3 farming operation. We believe such an explanation is required
4 in order to sustain the permit under the county land use and
5 development ordinance.³

6 Finally, the county concludes that there is no evidence
7 that the proposal would interfere with farming practices on
8 adjacent land while at the same time noting that there are
9 "potential incompatibilities" with this use. We disagree that
10 there is no evidence that the proposal will interfere with
11 farming practices on adjacent lands. Petitioner presented
12 testimony about his farm operation and how chemicals, dust and
13 smoke from this operation would not be consistent with a camp
14 use. See Record, minutes of Wasco County Planning Commission,
15 April 4, 1988. This evidence is sufficient to raise the
16 question and the county was obliged to respond to it. McCoy v.
17 Tillamook County, 14 Or LUBA 108, 116-117 (1985).

18 The second assignment of error is sustained in part.

19 The decision of Wasco County is remanded.

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FOOTNOTES

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4 "A. Maintain Exclusive Farm Use Zone consistent with
5 O.R.S. 215.203 to 215.273 to qualify for special
6 farm use assessment as set forth in O.R.S.
7 308.370 to 308.406.

8 "B. Minimum lot sizes in agricultural zones shall be
9 appropriate for the preservation of ground water
10 resources, continued agricultural use and
11 aesthetic qualities.

12 "1. On all lands designated as Exclusive Farm
13 Use on the Comprehensive Plan may, if
14 determined to be non-productive, using the
15 Soil Conservation Service soils maps (soils
16 classes VII or VIII) the minimum lot size
17 may be reduced to twenty (20) acres, in
18 accordance with Chapter 3.210(2)(c) of the
19 Wasco County Zoning Ordinance and the
20 applicable regulations of the Wasco County
21 Subdivision and Land Development Ordinance.

22 "2. Commercial activities in conjunction with
23 farm use shall be allowed as conditional
24 uses in the Exclusive Farm Use zone.

25 "3. Non-farm uses permitted within farm use
26 zones adopted pursuant to O.R.S. 215.213
should be minimized to allow for maximum
agricultural productivity.

"4. Non-farm dwellings within the Exclusive Farm
Use zone may be permitted with a conditional
use permit in accordance with the provisions
of O.R.S. 215.213.

"5. Subdivisions and Planned Unit Developments
will not be permitted in the Exclusive Farm
Use zone." Goal #3, Policy 1(A), (B) (1-5).

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24 We note that the implementation measure is written in
25 non-mandatory terms "nonfarm uses * * * should be
26 minimized." However, if implementation measures are
designated as approval standards under the Wasco County
Comprehensive Plan, the fact individual implementation

1 measures may be written in non-mandatory language would
2 not necessarily render them otherwise. Cf, Downtown
3 Community Association v. City of Portland, 80 Or App 336,
4 341, 722 P2d 1258, rev den 302 Or 86 (1986).

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4 We note the county appears to rely also on a farm
5 management easement. The county required that a farm
6 management easement be provided in order to protect nearby
7 farm operations. The terms of the farm management
8 easement are not explained. Therefore, we cannot tell
9 whether the farm management easement is sufficient to
10 comply with Sections 3.210(D)(1) and (2) of the land use
11 development ordinance. It is not clear to us how the farm
12 management easement could protect adjacent farm uses from
13 complaints by parents of children adversely affected by
14 smoke or chemical use on adjacent farms.