

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

LEO J. GARRE,)	
)	
Petitioner,)	
)	LUBA No. 89-131
vs.)	
)	FINAL OPINION
CLACKAMAS COUNTY,)	AND ORDER
)	
Respondent.)	

Appeal from Clackamas County.

Donald M. Kelley, Silverton, filed a petition for review and argued on behalf of petitioner. With him on the brief was Kelley and Kelley.

Michael E. Judd, Oregon City, filed the response brief and argued on behalf of respondent.

KELLINGTON, Referee; SHERTON, Chief Referee; HOLSTUN, Referee, participated in the decision.

AFFIRMED 02/27/90

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

Opinion by Kellington.

NATURE OF THE DECISION

Petitioner appeals a Clackamas County Hearings Officer's order denying petitioner's application for a conditional use permit for a private theme park, in the county's Exclusive Farm Use, 20 Acre District (EFU-20).

FACTS

The subject property is zoned EFU-20, and consists of fifteen level acres, with soils suitable for agricultural production. Petitioner grows several flower and vegetable crops on the property. The property is located approximately 640 feet from the City of Canby urban growth boundary. It is surrounded on three sides by other property also zoned for exclusive farm use, and on its fourth side by property zoned Rural Residential Farm/Forest 5 Acres (RRFF-5).

Sometime in 1984 or 1985, petitioner constructed a scale model railway around the perimeter of an eleven acre portion of his property. The railway is used as follows:

"* * * The railway was constructed and used for farm purposes, including * * * hauling of fertilizer, hauling of irrigation pipe and equipment and the hauling of farm produce. Petitioner has continued to use [the] railway for those farm purposes. In addition, petitioner has used [the] train as a marketing tool for his farm business allowing customers to ride the train to his fields for u-picks and attracting customers to his produce stand. * * *" Petition for Review 3.

In response to these activities, the Clackamas County

Planning Department requested petitioner to apply for a conditional use permit.¹

Petitioner uses only a portion of the subject property as a theme park. However, the exact amount of property devoted to the "theme park" use is unclear. Petitioner sells crafts and railway memorabilia, as well as produce, at his produce stand. Additionally, there is a portable snack wagon and several picnic tables available for the convenience of petitioner's customers. While petitioner does not charge a fee for use of his facilities, he does solicit donations.

The hearings officer denied petitioner's application, and this appeal followed.

THIRD ASSIGNMENT OF ERROR

"The hearings officer erred in interpreting the Clackamas County Zoning Ordinance so as to prohibit petitioner's conditional use in the EFU-20 zone because workers on a certain parcel of land adjacent to the subject property might be distracted."

FOURTH ASSIGNMENT OF ERROR

"The hearings officer erred in that there is not substantial evidence in the record to support the hearings officer's finding that granting the applicant's request would create conflicts with agricultural lands."

The hearings officer denied petitioner's application

¹There is no issue in this appeal regarding whether it is necessary that a conditional use permit be obtained for the activities occurring on petitioner's property.

for failure to comply with certain agricultural goals of the Clackamas County Comprehensive Plan (plan), as required by Clackamas County Zoning and Development Ordinance (ZDO) 1203.01.E.² The plan goal at issue in these assignments of error requires the following:

"[p]rotect agricultural lands from conflicting uses, high taxation and the cost of public facilities unnecessary for agriculture." Plan 82.

The hearings officer found that the proposed use violates the above quoted plan policy. The hearings officer determined that the proposed use would conflict with agricultural activities on adjacent lands because it would (1) distract agricultural workers on surrounding property, and (2) increase traffic in the area, creating conflicts between agricultural vehicles and traffic generated by the proposed use.

Petitioner argues that distraction of agricultural workers is an inadequate justification for denial of the proposed use. Petitioner also contends the findings regarding distraction of farm workers are not supported by substantial evidence. Petitioner maintains the only evidence regarding the potential for such farm worker

²Conditional uses in the EFU-20 zone must satisfy the conditional use criteria of ZDO 1203. ZDO 401.06.A.2. ZDO 1203.01.E requires conditional uses to meet the following criterion:

"[t]he proposal satisfies the goals and policies of the Comprehensive Plan which apply to the proposed use."

distraction is that farm workers, on a neighboring parcel zoned RRFF-5, sometimes look up from their work.

Additionally, petitioner contends that the adjoining RRFF-5 land, regardless of whether it is in farm use, is not protected by the above quoted plan goal. Petitioner reasons that distraction of farm workers on land zoned RRFF-5 is an irrelevant consideration under the above quoted agricultural goal. Petitioner argues in the alternative that if land zoned RRFF-5 is protected by this plan goal, the proposed use could be screened from the neighboring parcel to alleviate any conflicts.

The county argues the findings and evidence in the record regarding distraction of nearby farm workers are adequate to support denial of the proposed use. The county states that under ZDO 309.03.B one of the primary purposes of the RRFF-5 zone is "general farm use." Respondent's Brief 7. The county argues that in determining compliance with the above quoted agricultural goal, the relevant question is not whether the neighboring parcel is zoned RRFF-5, but rather whether there are farm uses occurring on that parcel. The county points out it is not disputed that the neighboring parcel is used for agricultural purposes.

The county also contends the findings regarding distraction of farm workers are not the only bases for the hearings officer's determination that the proposed use violates the above quoted plan policy. The county points to

other findings which articulate additional reasons supporting denial of the proposed use, including traffic conflicts between large produce trucks, farm equipment and the traffic generated by the proposed use. The county contends these additional findings, not challenged by petitioner, provide adequate justification to support the county's denial for failure to comply with the above quoted agricultural goal. Finally, the county contends this additional justification for denial is supported by substantial evidence in the whole record.

At the outset, it is important to recognize the hearings officer's decision is one to deny the proposed use. In denying a land use approval, the county need only adopt findings demonstrating that one or more standards are not met. Douglas v. Multnomah County, ___ Or LUBA ___ (LUBA No. 89-086, January 12, 1990), slip op 16. Furthermore, in challenging the evidentiary support for the hearings officer's determination that the applicable approval standard is not met, petitioner must demonstrate that the applicant met his burden to demonstrate compliance with that standard as a matter of law. Id.; see Jurgeson v. Union County, 42 Or App 505, 510, 600 P2d 1241 (1979).

Petitioner does not challenge the adequacy of the findings regarding traffic conflicts between farm vehicles, farm equipment and the traffic generated by the proposed use.

The hearings officer found the proposed use violated the above quoted agricultural goal on two different bases, (1) it would distract farm workers, and (2) it would create conflicts between farm vehicles and equipment and the traffic generated by the proposed use. The findings regarding distraction of farm workers on surrounding property are not essential to the hearings officer's determination that the proposed use does not comply with the above quoted agricultural goal. Petitioner does not challenge the findings regarding traffic conflicts, and those findings serve as an adequate basis for denial of the proposed use. Petitioner does not articulate a basis upon which we may grant relief. Deschutes Development Co. v. Deschutes County, 5 Or LUBA 218, 220 (1982).³

With regard to petitioner's challenge to the evidentiary support for the county's decision, petitioner does not specifically challenge the evidentiary support for the findings regarding traffic conflicts. The county cites evidence in the record which supports those findings. Record 206 and 208. We believe that different reasonable conclusions could be drawn from the evidence in the record

³We do not decide, in this opinion, whether the findings concerning possible distraction of farm workers are adequate to serve as an independent basis for denial of the application. Furthermore, because these findings are not essential to the decision, it is unnecessary to determine whether there is evidentiary support in the record for the findings that farm workers on surrounding properties will be distracted by the proposed use.

regarding conflicts between farm vehicles and equipment and the traffic generated by the proposed use. The choice between different reasonable conclusions to draw from the evidence belongs to the county. See Stefan v. Yamhill County, ___ Or LUBA ___ (LUBA No. 89-118, February 16, 1990), slip op 24. There is substantial evidence to support the hearings officer's findings that the proposed use creates traffic conflicts with farm equipment and vehicles.

We conclude the findings that the above quoted plan agricultural goal is violated by the proposed use are adequate and supported by substantial evidence in the record.

The third and fourth assignments of error are denied.⁴

The county's decision is affirmed.

⁴Because we sustain one of the county's bases for denial under these assignments of error, we need not address petitioner's arguments in the first and second assignments of error challenging an alternative basis for the county's denial. Douglas v. Multnomah County, slip op at 24.