



Opinion by Kellington.

NATURE OF THE DECISION

Petitioner appeals a decision amending the comprehensive plan designation for a 37 acre parcel from Agriculture to Rural, and changing the zoning designation from Exclusive Farm Use Cropland Grazing (EFU-CG) to Rural One-Acre Minimum (R-1).

MOTION TO INTERVENE

Turnstone Inc., moves to intervene on the side of the respondent. There is no objection to the motion and it is allowed.

FACTS

The petition for review states the relevant facts as follows:

"[The] subject property is located a quarter to a half a mile from the east shore of Agency Lake, half a mile east of Madoc Point Highway, a mile north of the intersection of Madoc Point Highway and Highway 422 South. It is about 26 miles north of Klamath Falls and four miles west of Chiloquin. It is outside any urban growth boundaries.

"There is [Rural designated property] to the south and west of the subject property and [Agriculture designated property] to the the north and west. The adjacent parcel is zoned R-1 and is known as the Bella Vista Subdivision. The parcel to the north is zoned EFU-CG, as is a parcel to the east. A 396.4 acre parcel to the east has 119 acres zoned R-1.

"Subdivisions have been platted in the area. Oregon Shores 1 subdivision is described as about 25 to 30 percent built-out. It is an entirely mobile home subdivision with small lots of less

than one acre. Oregon Shores 2 subdivision has 30 to 40 houses built out of 1,196 lots. Latakomie Shores, which is on the west side of Highway 422 and adjoining Bella Vista has [no houses], although there is some construction. Bella Vista has 70 one-acre lots. Other parcels were described as being held for future residential development. Evidence in the record indicates that the areas described above are to be developed as residential homesites. The 396 acre parcel to the east is owned by the developer of the Oregon Shores subdivisions and is apparently being held for residential development. Septic service is proposed on the basis that the soils are the same as in the Bella Vista subdivision, and there are no severe slopes. County roads in the Bella Vista Subdivision would be used for access. Also, Highway 422, a paved road, is about a half mile from the parcel. It is the intention of the developer to build a residential subdivision.

"There are some "hobby farms" lying adjacent to Agency Lake. Parcels to the south of the Williamson River are productive farm land. Two to three miles beyond to the Wood River Valley, alfalfa and native grass is grown in the EFU zones." (Record citations omitted.) Petition for Review 3-5.

The Klamath County Board of Commissioners approved intervenor-respondent's (intervenor's) application for a plan amendment and zone change for the subject property. This appeal followed.<sup>1</sup>

#### FIRST ASSIGNMENT OF ERROR

"The county misconstrued applicable law by approving the plan amendment and zone change to

---

<sup>1</sup>In its order approving the challenged plan amendment and zone change, the county also approved an exception to Statewide Planning Goal 3 (Agricultural Lands). Petitioner does not challenge the adequacy of the Goal 3 exception.

allow an urban use on rural lands without an exception to Goal 14."

Petitioner argues that the challenged plan amendment and zone change approves an "urban" use outside of an urban growth boundary in violation of Statewide Planning Goal (Goal) 14 (Urbanization). Petitioner cites the county's findings at Record 17-19, and argues that those findings are inadequate to establish the proposal is in compliance with Goal 14. Specifically, petitioner argues the following findings are erroneous:

"The R-1 zone is a rural land use zone. The uses allowed in the zone are rural, not urban uses. Therefore, the approval of the subject request does not result in the conversion of rural land to urban uses and no exception to Goal 14 is required." Record 19.

Petitioner argues this statement is conclusory and is not supported by the plan or the Klamath County Land Development Code (LDC). Petitioner contends neither the plan nor the LDC specifically contemplates that the R-1 zone authorizes only "rural" land uses within the meaning of Goal 14, such that replanning and rezoning agricultural land to a "Rural" plan designation and to a R-1 zone does not violate Goal 14.

In sum, petitioner argues that (1) the county findings referenced above are inadequate to establish Goal 14 does not apply to the proposal, (2) Goal 14 applies in fact to the challenged decision because the proposed one acre zoning is "urban" in nature, and (3) under these circumstances, the county erred by failing to take an exception to Goal 14.

Respondent and intervenor (respondents) argue that the R-1 zone designation has been acknowledged by the Land Conservation and Development Commission as a "rural" zone and, consequently, authorizes only uses properly considered "rural" within the meaning of Goal 14. Respondents cite the purpose clause for the R-1 zone, which provides:

"The purpose of this zone is to establish areas for Rural Residential living styles. These areas allow for the pursuit of limited agricultural activities. These zones also serve to implement the Comprehensive Plan policy calling for buffers between Urban and Agricultural Areas.

"Typically, the zone is appropriate in rural or semi-rural areas, small family farm areas, and in areas with a pattern of one acre rural residential development. This zone may be applied where existing or proposed public facilities or services are appropriate for a one acre density, or where there is no history of subsurface sewage problems, water problems, or other natural limitations. This zone is intended to implement the Comprehensive Plan designation of rural. This zone may be applied to rural lands, rural communities, and rural service centers."  
LDC 51.004.A.

Respondents contend the county simply applied the plan and zone designation to the subject property which best fit the characteristics of that property. Respondents argue that in addition to the purpose clause of the R-1 zone, various portions of the plan establish that the Rural plan designation, as well as the R-1 zoning designation, authorize only "rural" uses and therefore, Goal 14 is not implicated by replanning or rezoning to those designations. Respondents cite a chart in the county plan which identifies

various planning designations and the particular zones which correspond to those planning designations. The chart indicates the Rural plan designation corresponds to the R-1 and R-5 zoning designations.

Respondents also cite plan Goal 11 Policy 12 and the implementation strategy for plan Goal 11 Policy 16. Policy 12 provides:

"Development proposals shall not be approved unless the type and level of public facilities and services required are available or are to be provided concurrently with defined levels of development within urban and rural areas.

The implementation strategy for plan Goal 11 Policy 16 provides, in part:

"Based on past development activities in rural areas, the County establishes the following appropriate densities and corresponding levels of service:

<u>"PLAN DESIGNATION</u>	<u>Min. Allowable Lot Size</u>	<u>Is A Community Sewer System Appropriate?</u>	<u>Is A Community Water System Appropriate?</u>
--------------------------	--------------------------------	---	---

" \* \* \* \* \*

"Rural (R)

" \* \* \* \* \*

"Other Rural Areas	1 acre (R-1)	No	Yes
	5 acre (R-5)	No	No

" \* \* \* \* \*

"NOTE: A 'yes' indicates that the proposed development of a community water (or

sewer) system is appropriate and no plan amendment is required.

"A 'No' indicates that the proposed development of a community water (or sewer) system may be appropriate and that a plan amendment may be required prior to approval of the development and an exception to Goal 11 and 14 may be required.

"\* \* \* \* \*"

Respondents conclude these provisions, read as a whole, demonstrate a distinction between development densities for which "urban" level services are appropriate, and those development densities for which "rural" level services are appropriate. According to respondents, if the proposal will not require "urban" level services, then the proposal is "rural" in nature within the meaning of Goal 14. Respondents argue that because only individual water wells and sewer systems are contemplated for the proposed development, the proposal only authorizes development which is rural in nature under the county's planning scheme. Respondents complain there are no statutes or administrative rules to govern how the Goal 14 term "urban" is to be applied. They argue that in the absence of statewide standards, the acknowledged plan and LDC provisions guide the scope of meaning of the Goal 14 term "urban" in this context.<sup>2</sup>

---

<sup>2</sup>Respondents agree that in the absence of an administrative rule or statute defining the uses considered "urban" within the meaning of Goal 14, DLCD has the power to make such determinations on a case by case basis.

Respondents also contend the county adopted findings adequate to establish that Goal 14 is not violated by the proposal.

We agree with petitioner that the cited plan and LDC provisions do not establish that all of the uses authorized by the Rural plan designation and the R-1 zone designation are necessarily rural in nature within the meaning of Goal 14. For example, plan Goal 11 Policy 18 applies to decisions rezoning land from R-5 to R-1. Policy 18 and its implementation strategy provide that the county must either determine that the proposal to rezone land from R-5 to R-1 is consistent with the "intent of the 'rural land'

---

However, respondents argue that DLCD did not explain below why it believes that the proposed rezone to R-1 constitutes "urban" level development, and it is less than clear why it does. Respondents argue:

"The Supreme Court in [1000 Friends v. LCDC (Curry County)], 301 Or 447, 724 P2d 268 (1986),] held that LCDC could define rural uses and that LCDC could adopt a rule that a one acre residential lot is an urban use. However, as of this point in time LCDC has not made such a determination. If it is trying to do so on a case by case basis, then it has the burden of demonstrating first to the county in the initial land use proceedings, and then to LUBA in this proceeding, that, based on substantial evidence in the record, a one-acre residential lot is an urban use." Respondents' Brief 8.

To the extent respondents are suggesting that the burden is on petitioner to establish that the proposal complies with applicable requirements, respondents are incorrect. Sunnyside Neighborhood v. Clackamas Co. Comm., 280 Or 3, 18, 569 P2d 1063 (1977). Additionally, to the extent respondents are also suggesting that petitioner did not adequately raise the issue below, we believe that DLCD adequately raised below its concern that the proposal violates Goal 14. Accordingly, petitioner is entitled to raise the issue of compliance with Goal 14 in this appeal proceeding.

definition"<sup>3</sup> or an exception to Goal 14 is required.<sup>4</sup> We believe the determination of whether a particular proposal to rezone land to R-1 will result in urban level uses requires a case by case analysis. 1000 Friends v. LCDC (Curry County), 301 Or at 511; Hammack and Associates, Inc.

---

<sup>3</sup>Rural land is defined by LDC 11.002 as follows:

"Rural lands are those which are outside the urban growth boundary and are: (a) Non-urban agricultural, forest or open space lands, or (b) Other lands suitable for sparse settlement, small farms or acreage homesites with no or hardly any public services, and which are not suitable, necessary or intended for urban use."

<sup>4</sup>Plan Goal 11 Policy 18 provides:

"POLICY: A change from a lower density rural zone to a higher density rural zone must be supported by findings addressing each of the factors used in establishing densities for committed lands \* \* \*. Approval of such a request requires a finding of consistency with the intent of the 'rural land' definition or an exception to Goal 14 shall be required.

"Rationale:

"Because the zoning and densities applied to rural lands within Klamath County is based on specific criteria, a finding of consistency with this [sic] criteria is appropriate.

"Implementation:

"A finding of consistency with the intent of the 'rural land' definition, and findings addressing each of the committed lands density criteria shall be required for zone change requests to a higher density.

"If a finding of consistency within the intent of the 'rural land' definition cannot be made, an exception to Goal 14 (Urbanization) shall be required.

"This policy shall apply to only the following zone change requests:

"Rural-5 to Rural-1."

v. Washington County, 16 Or App 75, 80 (1987); see also Shaffer v. Jackson County, \_\_\_ Or LUBA \_\_\_ (LUBA No. 89-015, July 7, 1989) (compliance with terms of zoning ordinance does not, of itself, establish that a particular proposal will not result in urban level uses).

However, in addition to the findings discussed and rejected above (i.e. the findings that the plan and LDC provisions regarding the R-1 zoning classification necessarily establish that the challenged decision will not authorize urban level uses), the county adopted findings specifically addressing whether the proposal will result in urban level development within the meaning of Goal 14. The county's findings explain why it believes the proposal will not result in "urban" level development, and that an exception to Goal 14 is not required.<sup>5</sup> Petitioner does not

---

<sup>5</sup>These findings follow:

"\* \* \* The relevant statewide planning goals are \* \* \* Goal 14 Urbanization. \* \* \*

"\* \* \* \* \*

"Land Use Goal 14 is intended to provide for the orderly and efficient transition from rural to urban land use. We find that the subject application is consistent with the requirements of Goal 14. As provided in Section 51.004 of Klamath County's Land Development Code, the purpose of the rural R-1 zone is to provide areas for rural residential living styles which may include limited agricultural activities such as maintaining a horse or a small number of livestock. Rural residential development is appropriate in areas that do not have an expectation or history of subsurface sewage problems, water problems or other natural limitations. It is also appropriate for rural land that has little or no resource value. The subject property lies in the heart of a rural area

challenge the adequacy of any of these findings. Without some argument from petitioner specifically challenging the adequacy of the county's findings that the challenged decision approves rural level development within the meaning of Goal 14, we are unable to conclude the county erred in concluding the proposal complies with Goal 14. See Von Lubken v. Hood River County, \_\_\_ Or LUBA \_\_\_ (LUBA No. 90-031, August 22, 1990).

The first assignment of error is denied.

SECOND ASSIGNMENT OF ERROR

"The county has failed to consider the application of OAR 660-04-018 which sets forth the permissible planning and zoning designations of areas subject to goal exceptions."

Petitioner argues that if the challenged decision

---

that has been developed consistent with Klamath County's Land Use Plans and zoning ordinances for rural residential use. The land in this area, because of its elevation and topography, is generally not suitable for agricultural use. It is physically separated and buffered from resource uses in the general area. It has a history of appropriate development of on-site septic and water systems. And, it is in an area which has, as described above, appropriate public and private facilities. The nearby subdivisions demonstrate that this area and the subject property do not require urban level services such as community water and sewer systems, but can be developed successfully with rural level services. Those services which the county deems important or necessary for rural development are already existing in the Agency Lake area and are of adequate size to accommodate the level of services and demands for services that the development of this property will add.

"The large size of these lots will further enhance the ability of the land to accommodate rural residential development and demonstrates that the density of the development on this land is not at urban levels. The development of this property at that level will not result in the conversion of rural land to an urban use." (Emphasis added.) Record 19-24.

authorizes "urban" uses, then the county also violated the provisions of OAR 660-04-018(2) requiring that irrevocably committed Goal 3 exception areas be planned and zoned only for rural uses. However, since under the first assignment of error we upheld the county's findings that the proposed zone change would not allow urban uses, this assignment of error provides no basis for reversal or remand.

The second assignment of error is denied.

### THIRD ASSIGNMENT OF ERROR

"The county has failed to adequately consider Goal 11."

Petitioner reasserts its argument that the challenged decision authorizes urban uses, in violation of Goal 11 (Public Facilities and Services). Petitioner states the county's Goal 11 analysis relies upon its determination that only rural level uses are authorized by the challenged decision. According to petitioner, this reliance establishes that the county's Goal 11 analysis is fundamentally flawed because of petitioner's view that the county's decision authorizes urban level uses. However, as we stated under the first assignment of error, the county adopted findings that the challenged decision authorizes only rural level uses and that a Goal 14 exception is not required; and petitioner did not challenge those findings. Petitioner offers no other explanation of why the county's Goal 11 findings are erroneous. Accordingly, this assignment of error provides no basis for reversal or remand

of the county's decision.

The third assignment of error is denied.

The county's decision is affirmed.