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

DANIEL REEVES,)
)
Petitioner,)
)
vs.)
) LUBA No. 94-105
YAMHILL COUNTY,)
) FINAL OPINION
Respondent,) AND ORDER
)
and)
)
PHILIP LISAC and NORMA LISAC,)
)
Intervenors-Respondent.)

On remand from the Court of Appeals.

William C. Cox, Portland, represented petitioner.

No appearance by respondent.

Stephen T. Janik and Richard H. Allan, Portland,
represented intervenors-respondent.

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

REMANDED 03/06/95

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

1 Opinion by Sherton.

2 On October 6, 1994, we issued a final opinion and order
3 remanding a decision of the board of county commissioners
4 approving a permit for a dwelling in the Willamette River
5 Greenway (WRG). Reeves v. Yamhill County, ___ Or LUBA ___
6 (LUBA No. 94-105, October 6, 1994) (Reeves I). The single
7 basis for our remand was that the county's findings were
8 inadequate to demonstrate compliance with Yamhill County
9 Zoning Ordinance (YCZO) 902.06.D.¹

10 Petitioner appealed our decision to the Court of
11 Appeals, contending this Board erred by affirming the
12 county's determination that the proposed development
13 complies with another applicable code provision,
14 YCZO 902.06.E.² The court agreed with petitioner, rejecting
15 the two alternative interpretations of YCZO 902.06.E
16 expressed in the challenged county decision.³ Reeves v.

¹However, we also noted that because the county's findings were inadequate, no purpose would be served by considering petitioner's evidentiary challenge, and we declined to do so. Id., slip op at 11.

²YCZO 902.06.E establishes the following standard for WRG permits:

"[L]ands exhibiting [U.S. SCS] Class I-IV soils for agricultural production shall be preserved and maintained for farm use."

There is no dispute the subject property is comprised entirely of Class II and III soils.

³The court rejected the interpretation affirmed by this Board primarily because that interpretation improperly relied on a "committed" exception to Statewide Planning Goal 3 (Agricultural Lands) for the subject property,

1 Yamhill County, 132 Or App 263, ___ P2d ___ (1995). The
2 court stated a remand to this Board "is necessary for
3 further proceedings concerning [YCZO] 902.06.E," but noted
4 that the appropriate course for this Board to take may be "a
5 direct remand to the county on the issue." Id. at 269.

6 The county presumably has access to the language of any
7 acknowledged exception to Goal 3 for the subject property
8 adopted as part of the county comprehensive plan. It is
9 appropriate for the county to reconsider its interpretation
10 of YCZO 902.06.E in the first instance, in light of any such
11 goal exception and argument on the issue from the parties.
12 Consequently, we remand the challenged decision to the
13 county to interpret and apply YCZO 902.06.E and to correct
14 the deficiency in the findings addressing YCZO 902.06.D
15 identified in Reeves I.

16 The county's decision is remanded.

although the language of the exception was neither in the record nor made
the subject of official or judicial notice.