BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

FRIENDS OF UMATILLA COUNTY,
ROBERT KLEIN and NORM KRALMAN,
Petitioners,

vs.

UMATILLA COUNTY,
Respondent,

and

POWERLINE RANCH, LLC, VINEYARD GROUP, LLC,
HIGH RIDGE PROPERTIES, LLC, and
NORTH SLOPE MANAGEMENT, LLC,
Intervenor-Respondents.

LUBA Nos. 2007-150, 2007-151, 2007-152 and 2007-153

FINAL OPINION
AND ORDER

Appeal from Umatilla County.

Daniel Kearns, Portland, filed the petition for review and argued on behalf of petitioners. With him on the brief was Reeve Kearns, PC.

Douglas R. Olsen, County Counsel, Pendleton, filed a joint response brief on behalf of respondent. With him on the brief were Krista N. Hardwick, John M. Junkin, Patricia Sullivan, Bullivant Houser Bailey, PC and Corey, Byler, Rew, Lorenzen & Hojem, LLP.

Krista N. Hardwick, John M. Junkin, Portland, and Patricia Sullivan, Pendleton, filed a joint response brief on behalf of intervenor-respondents. With them on the brief were Douglas R. Olsen, Bullivant Houser Bailey, PC and Corey, Byler, Rew, Lorenzen & Hojem, LLP.

HOLSTUN, Board Chair; BASSHAM, Board Member; RYAN, Board Member, participated in the decision.

REMANDED 11/28/2007

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

Opinion by Holstun.

NATURE OF THE DECISION

Petitioners appeal four county decisions that approve applications to partition four EFU-zoned parcels.

MOTION TO INTERVENE

Powerline Ranch, LLC, Vineyard Group, LLC, High Ridge Properties, LLC, and North Slope Management, LLC, the applicants below, move to intervene on the side of respondent. There is no opposition to the motion, and it is allowed. We refer to intervenors as intervenors or applicants in this opinion.

INTRODUCTION

A. Minimum Parcel Size Under State Law in the EFU Zone

All four of the disputed partitions create at least one new farm parcel that is approximately 80 acres in size.[1] Under ORS 215.780 and OAR 660-033-0100(1), the county may allow EFU-zoned parcels to be divided into parcels as small as 80 acres, if the land is not designated rangeland. The parcels that were partitioned in this case are all designated as agricultural land and zoned EFU, and they are not designated as rangeland. Therefore, as a matter of state law, the subject EFU-zoned parcels could be divided into parcels that are as small as 80 acres.[2]

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[1] The parties refer to the four subdivided properties by their tax lot numbers. Tax lot 400 is divided into parcels of 80 and 93.25 acres. Tax lot 401 is divided into parcels of 170.55, 80.08 and 90.53 acres. Tax lot 802 is divided into parcels of 80.5, 161 and 132.2 acres. Tax lot 803 is divided into parcels of 231.64, 83.8 and 147.9 acres.

[2] Apparently the properties that are the subject of this appeal would also be entitled to take advantage of a February 8, 2007 county decision that authorized subdivision of certain EFU-zoned lands into parcels as small as 40-acres. See ORS 215.780(2) (authorizing counties to "go below" the minimum 160 or 80 acre parcel sizes in the EFU zone in certain circumstances). LUBA dismissed an appeal of that decision. *Thompson v. Umatilla County*, 54 Or LUBA ___ (LUBA No. 2007-052, July 5, 2007). An appeal of LCDC's earlier January 2, 2007 Order that authorized the county's February 8, 2007 decision is pending at the Court of Appeals as of the date of our decision in this appeal. No party argues that those prior decisions and the pending appeal of LCDC's order have any legal significance in these consolidated appeals.

As we explain below, the county has not adopted an EFU zone that sets 80 acres as the minimum parcel size in agricultural areas that are not designated as rangeland. Instead, the county has adopted a much more complicated process that establishes a 160-acre minimum parcel size in its EFU zone, but allows creation of smaller parcels on a case-by-case basis through what the county refers to as Type IV Land Division. However, as we also explain below, the county apparently also allows division of EFU parcels that are not designated as rangeland into parcels as small as 80 acres, if the applicant for a division of EFU-zoned land is first granted a variance.

B. Minimum Parcel Size Under The County's EFU Zone

The Umatilla County Development Code (UCDC) is not easy reading. It sets out many different procedures for land divisions and selecting the correct procedure requires interpretation of code provisions that are far from clear. The minimum parcel size in the county's EFU zone for farm parcels, at least nominally, is 160 acres. Umatilla County Development Code (UCDC) 152.062(A). [3]

The part of the UCDC that is devoted to land divisions is 54 pages long. UCDC 152.640 through UCDC 152.739. There are six different "Types" of land division (Type I through Type VI). UCDC 152.062(A), which sets the 160-acre minimum parcel size for new parcels in the EFU zone, requires that any such new EFU-zoned parcels must be "established through the Type IV process listed in [UCDC] 152.710." *See* n 3. The "General Provisions" of the "Land Divisions" section of the UCDC similarly require that land divisions in the EFU zone proceed through Type IV Land Division review. UCDC 152.646(D).

All parties agree that Type IV Land Division review was required in this case.

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[3] As relevant, UCDC 152.062(A) provides:

> "*Farm parcels*. Parcels of 160 acres or larger may be established through the Type IV process listed in [UCDC] 152.710. * * *"

C. Type IV Land Division Review

Under UCDC 152.710, Type IV Land Divisions employ one of three different "Reviews," Review I, Review II or Review III. Review I, Review II and Review III all apply different approval criteria. Review II is further broken down into three "Levels," Level I, Level II and Level III. To determine whether Review I, Review II or Review III applies under a Type IV Land Division, UCDC 152.710 sets out a table. That table is reproduced below.

Land Use Type	*Parcel Size*		
	160 acres +	*Less Than 160 acres*	*Less Than 20 acres*
Continued resource use in EFU Zone	Review I, with or without a dwelling	Review II; Level I with or without a dwelling, Level II income test (no dwelling allowed), Level III naturally bounded parcel (no dwelling allowed)	X
Continued resource use in GF Zone	Review I, with or without a dwelling	Review III (no dwelling allowed)	X
Continued resource use in identified critical winter range	Review I and the requirements of the CWR Overlay	Review II or III and the requirements of the CWR Overlay	X
Nonresource (EFU or GF Zone) new or existing dwelling	X	X	Conditional use permit with required first then Review I
Nonresource (EFU or GF Zone) uses other than dwellings	Conditional use permit required first then Review I	Conditional use permit required first then Review I	Conditional use permit required first then Review I

Based on the table set out above, it would appear that proposals to divide EFU-zoned land for "[c]ontinued resource use" would follow Type IV, Review II, if one or more of the new parcels are to be "[l]ess than 160 acres." Since all four of the disputed land divisions will divide EFU-zoned land into at least one parcel of less than 160 acres, it would appear

from the above table that Review II, should have been applied here.[4] The three "Levels," *i.e.* Level I, Level II, and Level III that apply under Review II each apply different methods to determine the appropriate parcel size for the new (less than 160-acre) parcels.[5]

The county did not apply Type IV, Review II, which appears to set out the procedure and criteria the county has adopted for approving divisions of EFU-zoned parcels into parcels that are smaller than 160 acres. Instead, the county approved a variance under UCDC 152.625 to 152.630 to the EFU 160-acre minimum parcel size, and applied Type IV, Review I. The county's reasoning for applying Type IV, Review I is not clear to us, because Type IV, Review I appears to set out the procedure and criteria the county has adopted for approving divisions of EFU-zoned parcels into parcels that are *160 acres or larger*.

The county apparently deviated from Type IV, Review II in favor of a variance and Type IV, Review I based its practice of doing so in the past. Although petitioners challenge the adequacy of the county's findings under Type IV, Review I and the variance that the county approved for each proposed division, petitioners do not assign error to the county's failure to follow Type IV, Review II in reviewing the challenged land division applications to create new parcels of less than 160 acres. We therefore do not consider that issue further and turn to petitioners' assignments of error.

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[4] UCDC 152.710(B)(3)(a)(4) expressly requires that parcels created through the *Review I* process "will be *160 acres or larger* or be combined with adjacent lands." (Emphasis added.)

UCDC 152.710(C) includes the following explanation of the *Review II* process:

> "The Review II process is for the creation of parcels *less than 160 acres* and is divided into three different levels of review and are referred to as Level I, Level II and Level III. * * *" (Emphasis added.)

[5] Level I employs what is referred to a "circular area review" and "linear area review" to determine parcel size based on the parcel size of nearby parcels. UCDC 152.710(C)(3)(a). Level II employs a gross income test to determine the parcel size that is appropriate to "continue existing commercial agriculture in the area." UCDC 152.710(C)(3)(b). Level III allows land divisions to be "based upon features of the land that preclude efficient farm management." UCDC 152.710(C)(3)(c)

FIRST ASSIGNMENT OF ERROR

In their first assignment of error, petitioners allege, among other things, that the county erred by failing to address a number of comprehensive plan policies that they believe apply directly to the disputed land divisions. The criteria for Type IV, Review I approval of a proposed land division are set out at UCDC 152.710(B)(3).[6] Under UCDC 152.710(B)(3)(a) the proposed land divisions must comply with "applicable policies in the Comprehensive Plan and [the UCDC]." During the proceedings before the county to consider the proposed land divisions, petitioners argued that the proposed land divisions are inconsistent with Umatilla County Comprehensive Plan (UCCP) Agricultural Policies 3, 5 and 6 and UCCP Grazing/Forestry Policies 6 and 7.[7] Petitioners argued below that these

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[6] The relevant criteria are set out at UCDC 152.710(B)(3)(a), which provides in part:

> "The proposed division complies with the *applicable policies in the Comprehensive Plan and this Development Code* which include, but are not limited to:
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> "1. Preserves agricultural lands and agricultural uses as intended in ORS 215.243 and Policy 3 of the agricultural policies for the county; and for those areas designated grazing/forest on the Comprehensive Plan Map meets the criteria above as well as preserves forest lands for forest uses as intended by Policies 1, 2 and 4 in the grazing/ forest policies for the county.
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> "2. Meets the minimum for road frontage, yard setbacks, stream setbacks, road and/or easement standards, if a dwelling is proposed.
>
> "3. Is either for the purpose of farm use as defined by ORS 215.203(2) and set out in § 152.003 or forest use as described in Policy 2 of grazing/forest policies for the county.
>
> "4. All parcels created *will be 160 acres or larger or be combined with adjacent lands*.
>
> "5. The proposed division is a result of the requirements of an approved conditional use request or variance request." (Emphases added.)

[7] It would serve no purpose to quote or discuss these plan policies at length. A brief summary of their key provisions will suffice. UCCP Agricultural Policy 3 provides that parcels of less than 160 acres may be created in the EFU zone if they are "found to be appropriate to continue the existing agricultural enterprise in the North/South County Agricultural Region." UCCP Agricultural Policy 5 sets out the circular area and linear area review methods for determining appropriate parcel size for divisions of EFU-zoned land into new parcels that are smaller than 160 acres. This policy appears to be implemented by Type IV, Review II, Level I. UCDC 152.710(C)(3)(a). *See* n 5. UCCP Agricultural Policy 6 sets out a gross income test for determining appropriate parcel size for divisions of EFU-zoned land to create new parcels that are smaller than 160 acres.

policies apply to, and limit creation of, parcels of less than 160 acres in the EFU zone. Record 56-59.

The only findings the county adopted that appear to address this issue are as follows:

> "The parcels will continue to be in farm use. A change in the land use is not proposed, intended nor should be caused by the partition. The partition application complies with the Umatilla County Comprehensive Plan agricultural policies and is consistent with Oregon's agricultural land use policy provided for in ORS 215.243. The Umatilla County Development Code implements the policies found in the Comprehensive Plan. Applicant has complied with the Development Code and the Comprehensive Plan policies as interpreted and applied by the County." Record 3, 10, 17, 24.

We agree with petitioners that the issue they raised with regard to the application of the cited UCCP Policies is a relevant issue that the county was obligated to address in its findings. *Blosser v. Yamhill County*, 18 Or LUBA 253, 264 (1989) (citing *Norvell v. Portland Metropolitan LGBC*, 43 Or App 849, 852-53, 604 P2d 896 (1979)); *McCoy v. Linn County*, 16 Or LUBA 295, 302 (1987), *aff'd* 90 Or App 271, 752 P2d 323 (1988).

It may be, as intervenors and respondent suggest in their brief, that the cited UCCP Grazing/Forest Policies do not apply because the disputed properties are not designated Grazing/Forest. However, the city's findings do not take that position. Also, there does not appear to be any dispute that the subject properties are designated as agricultural land and therefore are at least potentially subject to the UCCP Agricultural Policies. The county's conclusory statement that "[t]he Umatilla County Development Code implements the policies found in the Comprehensive Plan" may have been intended as a finding that the cited UCCP Agricultural Policies have been incorporated into the UCDC and therefore need not be applied directly to the disputed land divisions. If that is what the county meant, it must explain why that finding remains an adequate response in view of the county's decision not to apply Type IV, Review II, which incorporates the substance of the cited agricultural

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This policy appears to be implemented by Type IV, Review II, Level II. UCDC 152.710(C)(3)(b). *See* n 5. UCCP Grazing/Forest Policies 6 and 7 set out a number of standards and requirements when dividing parcels into new parcels that are smaller than 160 acres in areas that are designated Grazing/Forest.

policies. The substance of the cited agricultural policies is not set out in Type IV, Review I and the substance of those policies was not applied in this case. The above conclusory findings are inadequate to respond to the issue petitioners raised. We agree with petitioners that the county must either apply the cited UCCP Policies or offer a more focused and developed explanation for why the county believes it is not obligated to apply those UCCP Policies under UCDC 152.710(B)(3)(a) as part of Type IV, Review I.[8]

This subassignment of error is sustained.

The only other argument that petitioners raise and develop sufficiently to merit review under the first assignment of error concerns the Type IV, Review I approval standard that appears at UCDC 152.710(B)(3)(a)(4). That standard requires that the county find that "[a]ll parcels created will be 160 acres or larger or be combined with adjacent lands." *See* n 6. For reasons that are not clear to us, the challenged decision sets out the UCDC 152.710(B)(3)(a)(4) standard with extra words inserted.

> "All parcels created will be 160 acres *or within the limits allowed by ordinance* or be combined with other lands." Record 5, 12, 19, 26. (Emphasis added.)

As far as we can tell, the emphasized words are not part of UCDC 152.710(B)(3)(a)(4). In their brief, respondent and intervenors take the position that "[p]etitioners misstate this provision in their brief" by failing to recognize the emphasized words. However, it is the county and intervenors who appear to read language into UCDC 152.710(B)(3)(a)(4) that is not there.

After misquoting UCDC 152.710(B)(3)(a)(4), the county adopted the following findings:

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[8] It may be that the county believes the variances it approved somehow render the cited UCCP Policies inapplicable. If so, the county does not explain why it takes that view. We note that UCDC 152.625, which is quoted and discussed below, seems to authorize variances to provisions of the UCDC. UCDC 152.625 does not expressly authorize variances to applicable UCCP Policies.

> "Proposed parcels will not meet the county's minimum acreage size of 160 acres. However, the parcels will be 80 acres or larger and a variance is approved in conjunction with the partition. OAR 660-033-0100(1). As stated above, this is the accepted practice in Umatilla County to reduce a parcel of 160 acres as provided for in the Umatilla County Development Code to 80 acres as provided for by State law and administrative rules." Record 5, 12, 19, 26.

The above findings do not appear to rely on the added "or within the limits allowed by ordinance" language. Instead the county's decisions appear to rely on the variances it granted to allow the four land divisions to create new EFU-zoned parcels that are smaller than 160 acres. In our discussion of the second assignment of error, we conclude that the county's findings in support of the variances are inadequate. It follows that the county's findings regarding UCDC 152.710(B)(3)(a)(4), which rely entirely on the variance findings to avoid the 160-acre minimum parcel size requirement, are also inadequate to support the county's decision.

This subassignment of error is sustained.

The first assignment of error is sustained.

SECOND ASSIGNMENT OF ERROR

UCDC 152.003 provides the following definition of "variance:"

> "**VARIANCE.** A device which grants a property owner relief from certain provisions of [UCDC chapter 152] when, because of the particular physical surroundings, shape, or topographical condition of the property, compliance *would result in a particular hardship upon the owner, as distinguished from a mere inconvenience or a desire to make more money*. * * *" (Emphasis added.)

UCDC 152.625 authorizes the planning director to grant variances:

> "The Planning Director may grant a variance to the requirements of [UCDC chapter 152] *where it can be shown that owing to special and unusual circumstances related to a specific lot, strict application of [UCDC chapter 152] would cause an undue or unnecessary hardship*.* * *" (Emphasis added.)

UCDC 152.627 then sets out the "circumstances," in which the county may grant a variance:

> "A variance may be granted under *some or all* of the following circumstances:

> "(A) Exceptional or extraordinary circumstances apply to the property which do not apply generally to other properties in the same zone or vicinity, and result from lot size or shape, topography, or other circumstances over which the owners of property since enactment of this chapter have had no control;
>
> "(B) The variance is necessary for the preservation of a property right of the applicant substantially the same as possessed by the owner of other property in the same zone or vicinity;
>
> "(C) The variance would not be materially detrimental to the purposes of [UCDC chapter 152], or to property in the same zone or vicinity in which the property is located, or otherwise conflict with the objectives of any county plan or policy;
>
> "(D) The variance requested is the minimum variance which would alleviate the hardship." (Emphasis added.)

Petitioners first argue the county erred by finding that a variance could be granted based on a single circumstance under UCDC 152.627. For reasons they do not explain, petitioners contend "at least two" of the four circumstances in UCDC 152.627 must be found to be present. Petition for Review 11.

The "some or all" language in UCDC 152.627 creates an ambiguity. However, we need not resolve that ambiguity in this case. Contrary to petitioners' argument, the county did not find that only one of the circumstances set out in UCDC 152.627 must be present. The county found that all four were present. Because the county did not take the position that petitioners challenge, that challenge provides no basis for reversal or remand.

However, petitioners also argue that it is not sufficient to address the circumstances set out in UCDC 152.627 in isolation. We understand petitioners to argue that based on the above-quoted UCDC 152.003 definition of "variance," and the UCDC 152.625 authorization to the planning director to grant variances, the UCDC 152.627 circumstances must also be found to result in a *hardship* on the applicant, before a variance can be granted.[9] Petitioners

[9] Petitioners also cite UCDC 152.409(D) which sets out special limitations on variances for "permits." Petitioners, however, make no attempt to explain why a limitation on variances for *permits* has any bearing on

contend the county's findings do not show that the county's 160-acre minimum parcel size results in a *hardship* on the intervenors.

A threshold question that we turn to first is whether the county must demonstrate that the intervenors will suffer a *hardship* in the absence of the requested variance, either separately or as part of its demonstration that some or all of the circumstances set out in UCDC 152.627 are present. We conclude that the county is obligated to demonstrate that the intervenors will suffer a hardship without the requested variance. In *Kelly v. Clackamas County*, 158 Or App 159, 973 P2d 916 (1999), the Court of Appeals found that a threshold finding of hardship was required where the Clackamas County Zoning and Development Ordinance authorized variances from zoning code requirements "that would create a hardship due to one or more of [four specified conditions].[10] In reaching that conclusion, the Court of Appeals reversed LUBA's decision, which had determined that no finding of hardship was required and that the four specified conditions themselves each set out hardships, any one of which would warrant approval of a variance.

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variances for *land divisions*. We do not see that UCDC 152.409(D) lends any support to petitioners' arguments under the second assignment of error.

[10] The relevant Clackamas County Zoning Ordinance language that was at issue in Kelly authorized a variance where:

> "'[c]ompliance with the applicable requirement or standard of the ordinance would create a hardship due to one or more of the following conditions:
>
> "'1. The physical characteristics of the land, improvements, or uses are not typical of the area. When the requested variance is needed to correct an existing violation, that violation shall not be considered as a condition ''not typical of the area.'
>
> "'2. The property cannot be developed to an extent comparable with other similar properties in the area if the requirement or standard is satisfied.
>
> "'3. Compliance with the requirement or standard would eliminate a significant natural feature of the property.
>
> "'4. Compliance with the requirement or standard would reduce or impair the use of solar potential on the subject property or adjacent properties.'" *Kelly*, 158 Or App at 161.

The legal requirement for a threshold hardship finding is perhaps a bit closer question in this case, because the UCDC is worded somewhat differently than the Clackamas County Zoning Ordinance at issue in *Kelly*. But at least one of the UCDC 152.627 criteria assumes that a hardship has been identified. UCDC 152.627(D). More importantly, UCDC 152.625, which is the section that expressly authorizes the planning director to grant variances, specifically limits approval of a variance to circumstances "where it can be shown that owing to special and unusual circumstances related to a specific lot, strict application of this chapter would cause an undue or unnecessary hardship." To approve a variance under UCDC 152.625 and 152.627, the county must demonstrate that the variance is required to avoid a hardship that would otherwise result from application of the UCDC 152.062(A) 160-acre minimum parcel size requirement that is to be avoided by the requested variance.

The relevant county findings that apparently were adopted to demonstrate that a hardship will result without the variance are set out below:

> "Vineyards are costly to plant and operate. Approximately $20,000 per acre is required to plant a vineyard. Parcels of a size smaller than the 160-acre minimum required in the North & South EFU zone can be operated as a commercially viable agricultural enterprise. Conversely, parcels of 160 acres are prohibitively expensive to plant and operate as vineyards. A variance is needed in order to reduce the parcel size of the applicant's property to a more economically viable size for use as a vineyard. * * *" Record 6, 13, 20, 27.[11]

The above findings potentially identify a good reason for the county to consider amending the UCDC to allow minimum parcel sizes of 80 acres in some areas of the county's EFU zone that are suitable for more intensive agricultural crops, such as wine grapes, where the 160-acre minimum parcel size may result in parcels that are larger than needed for a profitable vineyard and it is prohibitively expensive to establish a 160-acre vinyard. But there is a difference between a potential lost economic opportunity and a

[11] The county also found "[t]o process this application differently from previous requests for 80-acre parcels in the EFU zone would result in a hardship to the land owner." Record 7, 14, 21, 28.

hardship. UCDC 152.003 does not include a definition of the term "hardship." The earlier quoted UCDC 152.003 definition of "variance," expressly distinguishes the concept of "hardship" "from a mere inconvenience or a desire to make more money." That distinction does not support the county's apparent construction of the term "hardship" to encompass circumstances where the 160-acre minimum parcel size results in new parcels that are too expensive to develop, in their entirety, as a vineyard. Neither does the dictionary definition of the term "hardship" support the county's interpretation in this case.[12] The subject properties were planted in winter wheat in 2007. Intervenors and the county do not contend that the properties cannot continue to be put to that use. So even if it is prohibitively costly to develop a 160-acre vineyard (as opposed to an 80-acre vineyard), it is difficult to see how that could constitute a hardship that would warrant a variance.

While intervenors or their successors may prefer 80-acre vineyards and the economics of establishing vineyards may argue in favor of 80-acre vineyards, there is no reason why the properties cannot be divided into 160-acre parcels so that 80 acres of the parcel can be converted to vineyard use while the remaining 80 acres remains in wheat production. Again, the economic or policy desirability of allowing EFU parcels to be divided into 80-acre parcels to facilitate conversion of some wheat fields into vineyards may well justify amending the county's EFU zone to allow such land divisions, which appear to be permissible under state law. The county's error is in attempting to achieve that legislative result through a variance. As the Court of Appeals explained in *Kelly*,

> "Variance law is largely embodied in local legislation, and its particulars of course vary from locality to locality. It nevertheless contains, if not constants, recurring themes. As indicated in the cited cases, the concept of 'hardship' is one of those themes. Another * * * is that variances are an extraordinary remedy that 'should not be employed as a substitute for the normal legislative

[12] In *Kelly*, the Court of Appeals relied on Webster's Third New Int'l Dictionary 1033 (unabridged ed 1993) definition of "hardship" which provides that a hardship entails "suffering or privation." *Kelly*, 158 Or App at 163.

> process of amending zoning regulations.' * * * Against that background, the appearance of the term 'hardship' in the county's ordinance here cannot be regarded as a coincidence, independent of its traditional meaning[.] 158 Or App at 164.

The county failed to establish that the variances that made the disputed land divisions possible are necessary to avoid a hardship that is caused by the EFU zone's 160-acre minimum parcel size.

In defense of the county's decision under the second assignment of error, respondent and intervenors cite *Church v. Grant County*, 187 Or App 518, 523-24, 69 P3d 759 (2003) and ORS 197.829(1) for the proposition that LUBA should defer to the county's interpretation of the UCDC in this matter.[13] The county did not really adopt much of an interpretation of the term "hardship." To the extent the county's decision takes the position that no finding of "hardship" is required under the UCDC, we reject that position. For the reasons explained above, such a position is inconsistent with the language of UCDC 152.625 and is also inconsistent with the underlying policies for granting variances, which are embodied in UCDC 152.625 and the UCDC 152.003 definition of variance. If there are other underlying policies for the county's variance provisions, the county and intervenors do not cite them.

The county and intervenors also suggest that lack of alignment between the county's nominal 160-acre minimum parcel size and the 80-acre minimum parcel size that is

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[13] ORS 197.829(1) provides, in relevant part:

> "[LUBA] shall affirm a local government's interpretation of its comprehensive plan and land use regulations, unless the board determines that the local government's interpretation:
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> "(a) Is inconsistent with the express language of the comprehensive plan or land use regulation;
>
> "(b) Is inconsistent with the purpose for the comprehensive plan or land use regulation;
>
> "(c) Is inconsistent with the underlying policy that provides the basis for the comprehensive plan or land use regulation[.]"

permissible under state law works a hardship on land owners. However, as we have already explained, that lack of alignment may result in lost economic opportunities, which the county is free to take legislative action to address. But that lack of alignment does not result in a "hardship" that warrants approval of variances from the UCDC 152.062(A) 160-acre minimum parcel size in the EFU zone, on a case-by-case basis, under UCDC 152.625.

The second assignment of error is sustained.

The county's decision is remanded.