

1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

3 CITY OF JACKSONVILLE,

4 *Petitioner,*

5 vs.

6 JACKSON COUNTY,

7 *Respondent,*

8 and

9 SOUTH STAGE LANDFILL, INC.,

10 and BOTTJER-GAMBEE, INC,

11 *Intervenors-Respondents.*

12 LUBA No. 2010-094

13 FINAL OPINION

14 AND ORDER

15 Appeal from Jackson County.

16 Kurt H. Knudsen, Ashland, filed the petition for review and argued on behalf of  
17 petitioner.

18 G. Frank Hammond, Jackson County Counsel, Medford, filed a joint response brief  
19 on behalf of respondent.

20 Steven W. Abel, filed a joint response brief and argued on behalf of intervenors-  
21 respondents. With him on the brief was Stoel Rives LLP.

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

24 AFFIRMED

25 01/25/2011

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

**NATURE OF THE DECISION**

Petitioner challenges county approval of a comprehensive plan map amendment to redesignate a 403.8-acre tract from Forestry/Open Space to Rural Use.

**FACTS**

The subject 403.8-acre tract is located adjacent to the city limits and urban growth boundary of petitioner the City of Jacksonville. The tract is designated Forestry/Open Space and zoned Woodland Resource and Open Space. Intervenors-respondents (intervenors) applied to the county to amend the property’s county comprehensive plan map designation from Forestry/Open Space to Rural Use. The Rural Use plan designation is implemented by three different zoning designations, RU-20, RU-30, and RU-40, which differ depending on the permitted minimum parcel size, and resulting rural residential density. However, intervenors’ application did not request any zoning map amendment to implement the requested Rural Use plan designation.

Before the board of commissioners, petitioner argued that the county comprehensive plan required the applicant to submit, and the county to consider, a concurrent application for a zone change to one of the Rural Use zones, in order to approve the plan redesignation to Rural Use. The board of commissioners rejected that argument, and approved the application. This appeal followed.

**ASSIGNMENT OF ERROR**

The Jackson County Comprehensive Plan (JCCP) Map Designation Element for the Rural Use designation provides, in relevant part:

“3) Establishment of Zoning District:

“Rural Use zoning districts may be established on the Jackson County Zoning Maps following Plan map designation as Rural Use. The Land Development Ordinance establishes permissible density, uses and development standards consistent with the purpose statement in Section (1) above.

1           “4)     Determination of Appropriate Density:

2                   *“When a right to develop more than one residence on Rural Use*  
3                   *designated land is requested, the plan amendment proposal must be*  
4                   *coupled with a request for an appropriate zoning district to assure that*  
5                   *future development will be appropriate to the area. Allowable density*  
6                   *will be established based on an analysis of nearby development*  
7                   *patterns and land suitability factors, including urbanization policies of*  
8                   *any adjoining cities or urban reserve areas. A binding site*  
9                   *development plan is required when a Rural Use area is proposed for*  
10                   *subsequent land division. Density may be set on a minimum parcel*  
11                   *size basis in accordance with Land Development Ordinance Chapter 8*  
12                   *provisions, or based on a total number of units to be developed in the*  
13                   *area designated Rural Use (e.g., cluster or PUD development). \* \* \**  
14                   (Emphasis added.)

15           Petitioner argued to the county, and argues now, that intervenors’ requested  
16     comprehensive plan map amendment application necessarily requests the “right to develop  
17     more than one residence on Rural Use designated land,” and therefore the above emphasized  
18     JCCP language requires that the plan map amendment be coupled with a request for the  
19     county to determine the appropriate RU zoning district. Petitioner notes that under the prior  
20     Forestry/Open Space plan designation and its implementing zoning districts there was no  
21     “right to develop more than one residence.” In contrast, petitioner argues, all three of the RU  
22     zoning districts implementing the Rural Use designation would allow the subject property to  
23     be divided and developed with more than one residence. For example, the most intensive  
24     RU-20 zone would allow land division for and development of up to 27 new residences.  
25     Given that the only zoning districts that implement the Rural Use designation would allow  
26     multiple residences on the property, petitioner argues, the requested Rural Use plan map  
27     amendment should be understood as “requesting” the right to develop more than one  
28     residence on the subject property.

29           The board of commissioners rejected that argument, expressly adopting intervenors’  
30     suggested interpretation:

31                   “Jackson County concludes that this criterion was intended to be applicable  
32                   only when plan amendments are coupled with a zone change application to

1 RU and to the extent there is any ambiguity, Jackson County so interprets [this  
2 criterion]. The application now before Jackson County does not include a  
3 zone change application. The request is solely for a Rural Use comprehensive  
4 plan map designation. A determination of appropriate density is not required  
5 at this time because the underlying zoning will remain in effect and the right  
6 to develop more than one residence on Rural Use designated land is not  
7 sought.” Record 3.

8 In addition, the board of commissioners found that:

9 “[T]he granting of a comprehensive plan map amendment to Rural Use does  
10 not, by its very nature, grant development rights. The Board finds that such  
11 an interpretation would render the cited comprehensive text meaningless. If  
12 such a right were to be granted by the very nature of this comprehensive plan  
13 map approval, then the text would have expressly required that all  
14 comprehensive plan map amendment applications be coupled with a zone  
15 change request.” Record 3-4.

16 The county and intervenors argue, and we agree, that the board of commissioners’  
17 interpretation of the relevant JCCP text is consistent with its express language, and must be  
18 affirmed. ORS 197.829(1)(a). As the county noted, the phrase “[w]hen a right to develop  
19 more than one residence on Rural Use designated land is requested” would have no apparent  
20 meaning under petitioner’s preferred interpretation. That phrase suggests there are  
21 circumstances when an application to designate land Rural Use would not be accompanied  
22 by a zone change application to one of the RU zones. The county’s interpretation is further  
23 supported by the preceding paragraph, which provides that “Rural Use zoning districts may  
24 be established on the Jackson County Zoning Maps *following Plan map designation as Rural*  
25 *Use.*” (Emphasis added). That suggests that establishment of a RU zoning district may  
26 “follow” the plan map designation to Rural Use, and need not be concurrent. The county’s  
27 interpretation gives meaning to the relevant text and context and is consistent with the  
28 express language of the JCCP provision. Therefore, we affirm the interpretation. ORS  
29 197.829(1)(a).

30 The assignment of error is denied.

31 The county’s decision is affirmed.