

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

ROGUE ADVOCATES,  
*Petitioner,*

vs.

JACKSON COUNTY,  
*Respondent.*

LUBA No. 2020-077

FINAL OPINION  
AND ORDER

Appeal from Jackson County.

Sean T. Malone filed the petition for review.

No appearance by Jackson County.

ZAMUDIO, Board Member; RYAN, Board Member, participated in the decision.

RYAN, Board Member, concurring.

RUDD, Board Chair, did not participate in the decision.

REMANDED 05/13/2021

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

**NATURE OF THE DECISION**

Petitioner challenges an ordinance adopted by the board of county commissioners approving an exception to Statewide Planning Goal 14 (Urbanization) and rezoning three parcels from Rural Residential 5-acre minimum (RR-5) to Rural Residential 2.5-acre minimum (RR-2.5).

**BACKGROUND**

The subject property is comprised of three parcels, each of which is approximately five acres in size and developed with a single-family dwelling.<sup>1</sup> The subject property is designated Rural Residential Land on the Jackson County Comprehensive Plan (JCCP) Map and zoned RR-5. Hillside Drive abuts the eastern boundary of the subject property. The subject property is situated west of the city of Medford, roughly between the cities of Jacksonville and Central Point, and is not within an unincorporated community, urban growth boundary, or urban reserve area. The property is within one-half mile of the city of Central Point's urban reserves. Record 111.

The subject property is within a rural residential area that runs roughly north-south and is sandwiched between forest resource zones in the hills to the west and exclusive farm use zones in the valley to the east. See JCCP Map. Properties adjacent to the subject property are zoned RR-2.5 and RR-5 and are

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<sup>1</sup> Although the subject property is comprised of three parcels in separate ownership, we refer to the subject property in the singular for ease of reference.

1 developed with dwellings. “The parcelization of this area occurred prior to 1973,  
2 and has experienced few changes since.” Record 179. Although it is unclear, it  
3 appears from the current zoning that an exception to Statewide Planning Goal 3  
4 (Agricultural Lands), Statewide Planning Goal 4 (Forest Lands), or both, was  
5 taken in 1973, when the subject property was first assigned the RR-5 zoning  
6 designation. Record 126 (observing that an unspecified exception was taken in  
7 1973, when the properties were first assigned a zoning designation).

8 Immediately adjacent to Hillside Drive, and across from the northeastern  
9 corner of the subject property, is an area that is designated Urban Residential  
10 Land on the JCCP Map, zoned Urban Residential (UR-1), and divided into a  
11 cluster of 30 to 35 parcels that are each approximately one acre in size and are  
12 developed at urban residential density (one dwelling on two or less acres). Record  
13 30, 114. Another UR-1-zoned area lies to the southeast. Record 30.

14 The applicant sought, and the county approved, a Goal 14 “irrevocably  
15 committed” exception to allow a zone change to from RR-5 to RR-2.5, which  
16 includes a minimum parcel size of 2.5 acres and allows one dwelling per 2.5  
17 acres, a higher rural residential density than that allowed in the RR-5 zone. To  
18 support the exception, the applicant provided maps and a list of the 275 parcels  
19 within a one-half-mile study area adjacent to and surrounding the subject  
20 property and covering approximately 724 acres. The study identified parcel  
21 acreage, ownership, zoning, and development. The average parcel size in the  
22 study area is 3.29 acres and the median parcel size is 1.42 acres.

1       The county adopted the applicant's findings that the typical parcel size in  
2       the study area is 1.42 acres, the study area is developed to urban levels of  
3       residential density, including 108 parcels that are zoned UR-1 near or adjacent to  
4       the subject property, and the area has urban levels of facilities and services.  
5       Record 32. This appeal followed.

6       For reasons explained below, we agree with petitioner that that county's  
7       decision must be remanded for the county to adopt adequate findings.

8       **SECOND ASSIGNMENT OF ERROR**

9       Petitioner argues that the decision should be remanded because the  
10      county's findings are inconsistent and inadequate. *See Heiller v. Josephine*  
11      *County*, 23 Or LUBA 551, 556 (1992) (adequate findings must (1) identify the  
12      relevant approval standards, (2) set out the facts which are believed and relied  
13      upon, and (3) explain how those facts lead to the conclusion that the approval  
14      standards are met).

15      The board of county commissioners' findings adopt and incorporate by  
16      reference findings in 449 pages of documents, which includes the entire planning  
17      commission record.<sup>2</sup> In the proceeding before the planning commission,

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<sup>2</sup> The decision provides:

**"SECTION 2.     LEGAL FINDINGS**

"Based on the evidence and arguments presented, the [board of  
commissioners] makes the following legal findings with respect to

1 petitioner and planning staff submitted proposed findings supporting denial. The  
2 planning commission recommended approval of the application based upon the  
3 applicant's proposed findings. The board adopted all of those findings and  
4 provided no explanation of how it resolved inconsistencies within the 449 pages  
5 of documents that it adopted as findings.

6 "The practice of incorporating other decisions or documents as findings or  
7 statements of relied-upon fact frequently presents problems, and local  
8 governments that do so run the risk of adopting inconsistent findings." *Spiro v.*  
9 *Yamhill County*, 38 Or LUBA 133, 140 (2000) (citing *Gonzalez v. Lane County*,  
10 24 Or LUBA 251, 259 (1992); *Wilson Park Neigh. Assoc. v. City of Portland*, 24  
11 Or LUBA 98, 106 (1992)).

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these proceedings. Where factual conflicts arose, the [board of  
commissioners] has resolved them consistent with these findings:

"2.1 The [board of commissioners] hereby adopts, as its own, the  
Findings contained in the [planning commission] Record  
pages 1-397 and in the [board of commissioners] Record  
pages 1-52.

### **"SECTION 3. CONCLUSIONS**

"\* \* \* \* \*

"3.2 The [board of commissioners] hereby adopts, as its own, the  
Conclusions contained in the [board of commissioners']  
Record, pages 1-52. These conclusions demonstrate that the  
application is in compliance with the applicable Statewide  
Planning Goals, Oregon Administrative Rules, the applicable  
policies in the [JCCP], and the applicable sections of the  
Jackson County Land Development Ordinance." Record 2.

1 “We have repeatedly emphasized the importance of findings to  
2 [LUBA], the appellate courts and participants in land use  
3 proceedings. Final decisions may incorporate findings in other  
4 documents prepared by staff or an applicant, but, as petitioner notes,  
5 they may not do so in a way that leaves the parties and [LUBA]  
6 guessing which documents are made part of the decision or where  
7 the necessary findings may be located in the record.” *DLCD v.*  
8 *Tillamook County*, 33 Or LUBA 323, 325 (1997).

9 Petitioner argues, and we agree, that it is difficult if not impossible to  
10 understand what findings the board of commissioners relied upon to support the  
11 decision. While the board adopted the applicant’s supplemental findings in  
12 support of the application in the proceeding before the board, those findings  
13 reference and rely on documents elsewhere in the record from the earlier stages  
14 of the county proceeding. Record 26-37. Moreover, not all of the specific  
15 applicable criteria are listed, much less addressed, in the applicant’s supplemental  
16 findings, the board’s decision, or the planning commission decision. *See* Record  
17 47 (notice of board of county commissioners hearing listing specific applicable  
18 criteria).

19 Ultimately, the county’s decision is overinclusive in incorporating  
20 essentially the entire documentary record, failing to identify all applicable criteria  
21 and explain how they are satisfied, and providing no guidance to the parties or  
22 LUBA on how to resolve inconsistencies in the adopted findings in the record.  
23 We agree with petitioner that remand is required for the board to make findings  
24 addressing the applicable criteria or, at a minimum, more specifically identify the

1 findings in the record that support its decision and explain and resolve any  
2 apparent inconsistencies in the incorporated findings.

3 We agree with petitioner that we cannot tell precisely what the county  
4 concluded or which facts the county found that lead to those conclusions. In  
5 several additional assignments of error, petitioner argues that the county is  
6 prohibited as a matter of law from rezoning the three parcels from RR-5 to RR-  
7 2.5 and, thus, the county's decision should be reversed. However, given the stark  
8 inadequacy of the county's findings, petitioner is essentially guessing at what  
9 constitutes the county's decision in order to assign error. For that reason, and  
10 because the county may adopt new and different findings on remand, we do not  
11 reach or resolve petitioner's remaining assignments of error.

12 The second assignment of error is sustained.

13 The county's decision is remanded.

14 Ryan, Board Member, concurring.

15 I agree with the resolution of the second assignment of error and agree that  
16 it is difficult, if not impossible, to understand what findings the board of  
17 commissioners adopted in the 449 pages of incorporated material to support its  
18 decision. I also agree that, given the stark inadequacy of the county's findings,  
19 we should not reach or resolve petitioner's remaining assignments of error. I  
20 write separately to emphasize that, if we reached the issue presented in  
21 petitioner's first assignment of error, I would agree with petitioner that the county  
22 may not both (1) approve an exception to Goal 14 based on a conclusion that the

1 subject property is irrevocably committed to urban levels of density, and (2)  
2 continue to apply a Rural Residential zoning designation, such as the requested  
3 RR-2.5 zoning designation, to the property. The JCCP makes clear that the RR-  
4 2.5 zoning designation implements the JCCP's Rural Residential Land  
5 comprehensive plan map designation. Record 159, JCCP Map Designations  
6 Element, Table 4-1. If a property is irrevocably committed to urban levels of  
7 density, then the property must be redesignated on the JCCP Map as Urban  
8 Residential Land and assigned a zoning district that implements the Urban  
9 Residential Land comprehensive plan map designation.