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

CARTER PARSONS, WAYNE MCKY,)
and FRIENDS OF JOSEPHINE, INC.,)
Petitioners,)
v.)
JOSEPHINE COUNTY and)
JAMES HARTSFIELD,)
Respondent.)

LUBA NO. 80-159
FINAL OPINION
AND ORDER

Appeal from Josephine County.

Edward S. Reiff, Portland, filed a brief and argued the cause on behalf of Petitioners.

Daniel F. Hughes, Grants Pass, filed a brief and argued the cause on behalf of Respondent James Hartsfield.

Bagg, Referee; Reynolds, Chief Referee; Cox, Referee; participated in the decision.

Dismissed. 3/02/81

You are entitled to judicial review of this Order. Judicial review is governed by the provisions of Oregon Laws 1979, ch 772, sec 6(a).

1 BAGG, Referee.

2 STATEMENT OF THE CASE

3 Petitioners challenge a comprehensive plan amendment
4 redesignating certain property within Josephine County from
5 farm residential to rural residential. The property
6 redesignated is undeveloped and contains mostly SCS Class IV
7 soils and Site Class 5 Douglas Fir.

8 Petitioners challenge the decision alleging it violates
9 LCDC Goal 3 "as it designates agricultural land for a nonfarm
10 use without a proper exception;" Goal 4 "because it designates
11 forest land for nonforest uses without a proper excpetion;" and
12 Goal 2 "because it fails to show with compelling reasons and
13 facts that it is not possible to manage the land for farm or
14 forest use * * * *" Petitioners' Brief at 2.

15 STANDING

16 Oregon Laws 1979, ch 772, sec 4 states in pertinent part as
17 follows:

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19 "(3) Any person who has filed a notice of intent
20 to appeal as provided in subsection (4) of this
21 section may petition the board for review of a
quasi-judicial land use decision if the person:

22 "(a) Appeared before the city, county or special
23 district governing body or state agency orally or in
writing; and

24 "(b) Was a person entitled as of right to notice
25 and hearing prior to the decision to be reviewed or
was a person whose interests are adversely affected or
who was aggrieved by the decision.

26 * * *

1 "(6) * * * The petition shall include a copy of
2 the decision sought to be reviewed and shall state:

3 "(a) The facts that establish that the petitioner
4 has standing."

5 Petitioners claim for standing is as follows:

6 "I. STANDING OF PETITIONERS

7 "Petitioner Carter Parsons resides on land 1/2
8 mile from the contested land. The subdivision
9 approved for the land by the amendment to the county's
10 comprehensive plan challenged herein would directly
11 adversely affect him in the use and enjoyment of his
12 land. It would interfere with scenic views and cause
loss of open space and resource land. It would cause
a lowering of the water table on which he depends for
his water supply. There would be increased traffic on
rural roads which he uses. Tax assessments on his
land would rise to provide rural services. Local
schools would become overcrowded.

13 "Petitioner Parsons is entitled by Goals 2, 3 and
14 4 to protection from the adverse affects caused by
rural settlement of the contested land.

15 "Petitioner Wayne McKy resides within three miles
16 of the subject property. He frequently uses Russell
17 Road when traveling to Merlin, the same road that
18 would be used by residents in the proposed development
and surrounding properties. Crowding of Russell Road
will interfere with petitioner McKy's use and
enjoyment of his property.

19 "Petitioners Parsons and McKy participated in
20 hearings before the county on this matter by letter or
oral testimony.

21 "Petitioner Friends of Josephine, Inc. is a
22 nonprofit organization for the purpose of securing
23 sound implementation of state land use laws in
24 Josephine County. Petitioners McKy and Parsons are
members of Friends of Josephine. Friends has standing
to represent members who have standing. 1000 Friends
of Oregon v. Marion County, LUBA No. 79-005."

25 Respondents contend that Carter Parsons and Wayne McKy have
26 not set out sufficient facts to establish standing. Respondent

1 also alleges that there has been no showing that petitioners
2 have been adversely affected or aggrieved by the challenged
3 land use decision. Respondents claim the injury alleged by
4 both Mr. Parsons and Mr. McKy is "speculative."

5 Mr. Parsons allegedly resides within one-half mile of the
6 subject property. He claims the decision will interfere with
7 scenic views and resource lands. However, there is no
8 allegation that he can see or hear activities that may occur on
9 the property. There is no claim that his view will be
10 diminished or that a resource he uses or enjoys will be lost.
11 See 1000 Friends v. Multnomah Co., 39 Or App 917, 593 P2d 1171
12 (1979); Hilliard v. Lane Co. Comm., 1 Or LUBA 83 (1980).
13 Similarly, Mr. Parson's allegation that there would be a
14 lowering of the water table (presumably on Mr. Parsons'
15 property) fails to include any allegation as to how that might
16 injure him. A lower water table may have no affect on
17 petitioner's property unless it is reduced so low as to create
18 a shortage of water. There has been no allegation that any
19 water shortage would occur.

20 Mr. McKy's claim for standing rests on his use of a
21 roadway. Petitioner claims crowding of the roadway will
22 interfere with his use of his land. We note there is no
23 allegation of how many vehicle trips will be generated by the
24 redesignation of this property. For all the Board knows from
25 the allegations, any development allowed by this new land use
26 designation may use additional roadways and thereby make use of

1 Russell Road inconsequential. Perhaps also Russell Road can
2 easily accommodate increased traffic. Even if we presume the
3 roadway will become more crowded, petitioner does not tell us
4 how any greater use of the roadway will injure him. Increased
5 traffic on any roadway may interfere with an individual's use
6 of the same road, but to no greater or lesser degree than any
7 other citizen in the area that may use the road.

8 In sum, petitioners have not set forth sufficient
9 allegations of fact and injury so as to show that either of
10 them has suffered or will suffer any injury that sets them
11 apart from other citizens in the county or the general area of
12 the subdivision. In Mr. Parsons' case there have been
13 allegations of fact but no clear allegation of injury arising
14 from those facts. In Mr. McKy's case, there is a conclusions
15 of injury that is not supported by facts. The Board believes
16 that not only must facts be alleged which might support a
17 conclusion of injury, but the injury itself must be alleged.

18 As neither individual has standing, Friends of Josephine
19 County has no standing in its representational capacity. Clark
20 v. Dagg, et al, 38 Or App 21, 588 P2d 1298 rev den, 286 Or
21 637, ____ P2d ____ (1979).

22 This matter is dismissed.

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