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

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KENNETH R. GASKE, ALBERT F.)
KUSCHKE, ALLEN A. GEMMELL,)
V. GERALD WOESTE, ANN DEE)
WOESTE, MELVIN REX BRADLEY,)
WILLIAM M. NADEL, DREW J.)
RUDGEAR, MRS. M. J. SUTTON,)
ROBERT R. BENNETT, MILDRED)
E. SCHORR, N. B. ADLEY, DEE)
MARTIN, NORMAN LeCOMPTE, and)
WILLIAM SLOAT,)

Petitioners,)

v.)

LANE COUNTY, MAZAMA TIMBER)
PRODUCTS, INC.,)

Respondents.)

LUBA NO. 81-006

FINAL OPINION
AND ORDER

Appeal from Lane County. ,

Bruce Anderson and D. Michael Wells, Eugene, filed the
petition for review and argued the cause for petitioners. With
them on the brief were Hutchinson, Harrell, Cox, Teising &
Anderson, P.C.

Scott Galenbeck, Springfield, filed a brief and argued the
cause for Respondent Mazama Timber Products, Inc. With him on
the brief were Lively, Wiswall, Svoboda, Thorp & Dennett.

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

Remanded.

6/30/81

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 Petitioners challenge Lane County Commissioners' Order No.
3 80-12-17-24 accepting a dedication of a roadway as a public
4 road.

5 FACTS

6 In November of 1979, Respondent Mazama Timber Products,
7 Inc. petitioned the county for the dedication of a public right
8 of way. The matter was reviewed by the Lane County planning
9 staff which recommended a denial. In February of 1980, the
10 planning commission recommended approval of the petition.
11 However, at a hearing to consider the matter in April, the
12 Board of Commissioners was unable to pass a motion to accept
13 the dedication. The attempted dedication failed, therefore, for
14 want of a majority vote. No findings of fact or conclusions of
15 law were adopted pursuant to that decision.

16 On September 29, 1980, the Respondent Mazama Timber
17 Products again petitioned for a dedication of a public
18 roadway. On October 28, 1980, the Lane County Board of
19 Commissioners set the application for hearing. The petitioners
20 objected to the Board setting the matter for hearing because of
21 a provision in the Lane Code allowing the Planning Commission
22 30 days for consideration of a matter before the County
23 Commissioners are to consider it. See Lane Manual 3.915(e).
24 Petitioners insist the Board action was premature.
25 Nonetheless, the Board of Commissioners set the matter for
26 hearing for December 3, 1980. That scheduled hearing was

1 postponed at the request of the attorney for Respondent
2 Mazama. The hearing was moved to December 9. Petitioners note
3 that there was no notice to the attorney for petitioners before
4 granting this postponement.

5 The commissioners conducted public hearings on the
6 application on December 9 and 10, 1980, and the matter was set
7 over for final action and adoption of findings for December
8 17. Findings of fact were submitted by Respondent Mazama on
9 December 15, and on December 17, the commissioners issued Order
10 80-12-17-24 accepting the dedication and adopting the findings
11 and conclusions as submitted. Also on the 17th of December,
12 the commissioners denied the petitioners' request for a further
13 postponement. Petitioners requested the postponement to
14 provide them with seven days to study and then object to the
15 findings.

16 The roadway involved is mostly an existing roadway lying
17 wholly within property owned by the Respondent Mazama Timber
18 Products, Inc. The roadway is approximately 2.75 miles in
19 length and it connects two existing county roads south of the
20 city limits and the urban growth boundary of the City of
21 Eugene. The two roadways connected are Murdock Road and Tolman
22 Road. Taken together, these roadways will provide a shorter
23 route between Camas Swale Road and the Creswell area and the
24 Eugene-Springfield area than any other existing road, though
25 the county's findings show that travel over the
26 Tolman-Mazama-Murdock Road Route will require a longer travel

1 time than other presently used routes.

2 The existing Mazama Road has a usable width varying between
3 18 to 24 feet. Under the terms of the dedication and the
4 county's acceptance, the right of way will be 60 feet wide and
5 the travelled road will be improved and widened to 24 feet.
6 Additionally, a quarter-mile section of roadway 24 feet in
7 width will be constructed over territory not presently part of
8 the existing road. All property adjacent to the roadway is in
9 timber production and is classified as timber resource land.

10 MOTION TO DISMISS

11 Respondent moves to dismiss this case on the ground that
12 acceptance of the roadway right-of-way dedication with
13 conditions is nothing more than the acceptance of a gift and is
14 not a land use decision. Respondent claims petitioners
15 argument is that the roadway will bring about development of
16 adjacent and nearby properties which will in turn alter land
17 use patterns in the area. In other words, the real issue is
18 not the roadway, but what the roadway might bring. Respondents
19 say development of the area is not undertaken by the dedication
20 of Mazama Road. Development is a separate issue and not part
21 of this decision. Respondents then argue acceptance of the
22 gift of right-of-way does not involve the application of the
23 statewide goals and the county comprehensive plan, but rather
24 ORS ch 368, the chapter controlling county roadways.

25 Petitioners counter that the provisions of ORS ch 368 are
26 enabling provisions that do not excuse the county from applying

1 other legal requirements such as standards for road
2 construction and statewide land use goals. Petitioners also
3 cite the Board's decision in Bettis v. Roseburg, 1 Or LUBA 174
4 (1980) wherein the Board said

5 "streets and improvement of streets can have an effect
6 on land use development within a local government's
7 jurisdiction. Indeed, the definition of comprehensive
8 plan requires inclusion of 'transportation systems'
9 within the 'coordinated land use map' that is the
10 comprehensive plan.

11 * * * *

12 "Streets seem to us to be a part of a
13 'transportation system.' As such, streets and street
14 improvements, arguably, should be included in
15 comprehensive plans. Street improvements are subjects
16 'relating to the use of lands.' ORS 197.015(5)."
17 Bettis v. Roseburg, 1 Or LUBA 174, 177 (1980).

18 Petitioner also cites us to City of Roseburg v. Douglas County
19 and John Whitesell, LCDC No. 79-004 in which the commission
20 held that a road vacation is a decision constituting the
21 exercise of a county's planning and zoning responsibilities and
22 is subject to scrutiny under statewide planning goals.

23 It is the Board's view that the motion to dismiss should be
24 denied. The acceptance of this roadway along with its
25 improvement to facilitate public use and travel is the kind of
26 decision that must follow the policies set out in county
27 comprehensive plan provisions relating to roads and streets and
28 that must follow statewide land use goals relating to
29 transportation. We recognize that this roadway is very short
30 and that there is no change in zoning or other land use
31 regulations going along with the taking of the road, but the

1 roadway will change traffic patterns in the area to some small
2 degree, and such changes are subject, we believe, to county
3 plan and Goal 12 provisions concerning a transportation
4 system. For example, the county transportation plan includes
5 goals and objectives that recognizes a relationship between
6 transportation and development. See Lane County Transportation
7 Plan and Master Road Plan 1980 discussion of "Road System," pp.
8 6-7. Here, the opening of this roadway will alter traffic
9 patterns and thereby may alter development of adjacent areas.

10 We do not mean to say that the opening of this roadway will
11 not be subject to other goals, but we believe that it is at
12 least minimally subject to goal 12 and the county comprehensive
13 plan. As such, it is a land use decision within the meaning of
14 Oregon Laws 1979, ch 772, sec 3. The motion to dismiss is
15 denied.

16 ASSIGNMENT OF ERROR NO. 1

17 Assignment of error no. 1 takes us back to the County
18 Commissioners' tie vote at the April 30, 1980 hearing.
19 Petitioner claims it was error for the county to fail to issue
20 findings and conclusions after the county's "decision" on the
21 initial road dedication proposal.

22 Respondents argue that the tie vote simply resulted in the
23 gift of real property being refused. Petitioners claim there
24 is no need for findings in such a case.

25 We are unable to review this particular assignment of
26 error. The time to challenge this act or failure to act has

1 long since passed. Oregon Laws 1979, ch 772, sec 4(4) provides
2 that the notice of intent to appeal a land use decision must be
3 made not later than 30 days after the local decision becomes
4 final. The notice of intent to appeal in this case was filed
5 beyond 30 days following the April 30, 1980 meeting.

6 Assignment of error no. 1 is denied.

7 ASSIGNMENT OF ERROR NO. 2

8 The second assignment of error alleges Lane County failed
9 to follow its own procedure for processing road dedication
10 requests. Lane Manual 15.105 et seq. lays out the required
11 procedure, and section 15.150(1)(c) allows for a Board of
12 Commissioner review of a road dedication request upon an appeal
13 of the Lane County Planning Commission's failure to act within
14 30 days after the filing of the initial application. Mazama
15 submitted its application on September 29, 1980, and the
16 Planning Commission had at least until October 29 to consider
17 the matter. However, on October 28, the commissioners revealed
18 that they had already set the matter for consideration on
19 December 3, 1980. This revelation, asserts petitioner, shows
20 that the county had already taken over jurisdiction by setting
21 the matter for hearing prior to the 30 day period within which
22 the Planning Commission had authority to act.

23 Petitioners claim they were required by this action to
24 prepare for a December hearing without findings from the April
25 decision and without the opportunity for public comment at the
26 Planning Commission level. Without such a record, petitioners

1 claim they were prejudiced in their preparation.

2 Respondent notes that the Planning Commission approved the
3 first application for dedication in February, 1980. The record
4 reveals a majority of the Planning Commission had determined
5 the issue of this dedication would not be considered again.
6 This determination was made at a meeting of a majority of
7 Planning Commission members and a Planning Department staff
8 member. See Record 49. No action would be taken by the
9 Planning Commission, claims respondent, and it would be useless
10 to wait for the 30 day period to pass. Respondent disputes any
11 prejudice was caused petitioners.

12 We agree with the respondent's conclusion. Even if
13 violation of the Lane Manual has occurred, we do not believe
14 the petitioners have shown how they have been prejudiced by
15 that violation. The record in this case is replete with the
16 comments of petitioners, and we fail to understand how it is
17 that an additional day or a few days could possibly cause a
18 difference in petitioners' case preparation. All of the issues
19 that are raised before this Board appear in one form or another
20 as objections to the proposed dedication before the Lane County
21 Commissioners. All are articulate and do not appear to suffer
22 from any lack of thought or preparation. We simply are unable
23 to find any evidence of any prejudice, and we may not overturn
24 a local government decision on a procedural issue without such
25 a showing. Oregon Laws 1979, ch 772, sec 5(4)(a)(B).

26 Petitioners also complain about the postponement granted to

1 Respondent Mazama. Petitioners note the postponement was
2 granted on the basis of an ex parte contact with Commissioner
3 Rutherford. Petitioners point to the fact that the county
4 refused to grant a postponement when requested by petitioners'
5 attorney. Petitioners' complaint appears to be that respondent
6 Mazama Timber Products, Inc.'s written presentation to the
7 County Commissioners was delivered only one day in advance of
8 the hearing. Petitioners wanted the opportunity to review the
9 material for several days before the hearing and, therefore,
10 asked for the postponement.

11 We fail to find this allegation of prejudice supported by
12 the record in this case. There is nothing to suggest the
13 petitioners did not have full opportunity to present their
14 case. The fact that Mazama Timber Products, Inc. chose to
15 present its argument and facts in writing does not alter the
16 fact. There is no requirement that opponents in a contested
17 case or in a legislative proceeding must hand their arguments
18 to each other in advance of the fact finding hearing on the
19 issues.

20 Petitioners next complain that Lane County may not accept a
21 public dedication of a road without accompanying land
22 development. As we read this portion of the second assignment
23 of error, we understand petitioners to be saying that Lane
24 County cannot adopt ad hoc construction standards and apply
25 them to a road dedication. Petitioners claim that because the
26 acceptance of a road dedication is a quasi-judicial land use

1 decision, the standards must be in place before the decision
2 and the parties to the case must have the opportunity to
3 address those standards.

4 Respondent agrees that Lane County had trouble deciding
5 what standards should apply to this roadway. The standards
6 that were finally adopted are standards for construction of
7 roadways greater than local roadways, (the title finally given
8 this road), and equal to the minimum standards for collector
9 roads. Respondent notes for 'us that the petitioners are not
10 claiming that the standards finally chosen were wrong, and the
11 petitioners are not arguing that Lane Code Section 15.045(2)
12 requiring that roadways be designed and developed in accordance
13 with proper engineering practice has been violated.

14 Simply because a county plan and ordinance do not include
15 definitions and standards which may fit each and every case
16 does not mean that land use actions must stop while the county
17 develops such standards. The record shows much discussion
18 about whether Mazama roadway would be a collector road, serving
19 as a transportation corridor of some kind, or whether it would
20 be a local road serving adjacent properties. After
21 considerable thought and discussion, the county concluded that
22 Mazama Road would serve abutting properties. The county,
23 therefore, called the roadway a local road and not a
24 collector. Because the county viewed safe travel on the
25 roadway to require a somewhat higher standard, the county
26 decided to accept the proposition that the street should be 24

1 feet in width and otherwise conform to collector street
2 standards. We do not see anything inherently wrong with the
3 county developing a roadway to a higher standard than
4 necessary. It is true that if the county were to construct a
5 super highway through the middle of a residential neighborhood,
6 certain land use issues might be involved and, in fact, be
7 violated. Here, the difference between the collector road
8 standards and the local road standards are not significant.²

9 Also, the county stated in its findings that it viewed Lane
10 Code Section 15.045(2) to control. Section 15.045(2) requires
11 that roadways be designed and developed in accordance with
12 current proper engineering practice. The engineering study
13 included in the record and made part of the findings recommends
14 the collector street standards be used on this roadway, and the
15 county was within its authority to accept that recommendation
16 as being based on proper engineering practices.

17 In sum, we reject the notion that there were no standards
18 applicable as we find that standards did exist and the county's
19 problems were more in deciding what to call the road than in
20 applying particular standards.³

21 Assignment of error no. 2 is denied.

22 ASSIGNMENT OF ERROR NO. 3

23 Petitioners next argue that the dedication violates the
24 Lane County Transportation Plan and Master Road Plan

25 "because it is not part of the transportation system
26 plan to meet future growth and development needs, it
encourages the spread of residential development in

1 forest areas, it is not consistent with adopted public
2 policies and plans, it encourages the use of what has
3 been alleged to be a local road for through traffic
4 and, it is not designated in the Master Road Plan and
5 no procedures were initiated for making changes or
6 additions to the Plan." Petition for Review 19-20.

7 We understand the petitioners to allege generally that the
8 Lane County Transportation Plan and Master Road Plan (two
9 documents) require that roadways conform to the road plan and
10 to the comprehensive plan. See Lane Code 15.045(4). Our
11 review of the plans controlling this area does not show any
12 prohibition on new roadways or on the kind of dedication that
13 has occurred here. However, there are objectives and
14 recommendations in the Transportation Plan that touch upon this
15 roadway dedication.

16 Petitioners correctly point out that one of the objectives
17 in the plan is to "discourage the spread of residential
18 development in agricultural and forest areas," and additionally
19 to "discourage the use of local roads for through traffic,
20 especially in rural development centers, by continuing to
21 assist in the development and maintenance of arterial roads."
22 See Lane County Transportation Plan, page 6. Petitioners'
23 point is that this roadway facilitates development in forest
24 resource areas and flatly violates the plan recommendation
25 urging that local roads not be used for through traffic.

26 Respondent characterizes this assignment of error as one
asserting that the roadway will lead to development.

Respondent rejects the notion development will automatically

1 occur. Before any property adjacent to Mazama Road is
2 developed, respondent notes "that development must comply with
3 statewide goals or an acknowledged comprehensive plan."
4 Respondent then points to findings by the county recognizing
5 this fact. Finding No. 2 states:

6 "2. Ultimate Finding of Fact and Conclusion No. 13
7 should be supplemented to indicate that a
8 question was raised concerning the possible need
9 for an exception to Goal No. 4. That Ultimate
10 Finding of Fact and Conclusion, as amended,
11 should read as follow:

12 "13. The evidence submitted demonstrated that
13 Goals No. 3, 4, 11, 13 and 14 have no
14 applicability to the dedication of a local
15 public road. It was suggested during the
16 public hearing on this matter that an
17 exception to Goal No. 4 may be necessary on
18 the grounds either that the road dedication
19 might lead to development of the property or
20 that the right-of-way width and improvement
21 surface exceeded the minimum standard
22 required by Guideline B-4 of that Goal. The
23 proposed dedication does not involve any
24 development proposal and the Board has
25 already determined that any development
26 proposal would have to comply with the
zoning in effect, an acknowledged
comprehensive plan, and/or Statewide Goals
(see Finding of Fact No. 20). No exception
is required on the grounds that dedication
might lead to development; a determination
concerning whether an exception is required
may be appropriate if any development is
subsequently proposed for this property.
The Board has further determined that the
right-of-way width and improvement standards
are the minimum necessary for safety and no
exception is required under Guideline No.
B-4."

24 Supplemental findings of fact no. 2 (R 2).

25 As to the assertion that the development of the roadway
26 will violate the Transportation Plan provision discouraging use

1 of local roads for through traffic, respondent simply says
2 "[t]here is no evidence in the record that the county intends
3 to alter its arterial roads policies."

4 The Board does not view the Lane County Transportation Plan
5 and Master Road Plan to prohibit acceptance of Mazama Road and
6 improvement of the roadway. The county's findings explain the
7 county's belief that this roadway provides a "convenient route
8 between Fox Hollow Road and Camas Swale Road." The county
9 claims this new route will be the "most economical" route
10 between those two roadways, and it provides a lesser travel
11 distance than other presently available routes.

12 We note that the county apparently does recognize that
13 while Mazama Timber Products,, Inc. does not have any plan to
14 develop the property at present,

15 "the comprehensive plan adopted by Lane County in June
16 of 1975 clearly recognizes or provides for further
17 rural development. It is a complete misapplication to
18 Lower Coast Fork Subarea Plan to suggest that this
19 proposed road dedication be denied because it might
20 result in development already permitted by the plan."
21 Findings (Exhibit A, page 16).

22 The county goes on to explain that the Lower Coast Fork Subarea
23 Plan calls for parcel sizes between 20 acres and 10 acres, and
24 it recognizes that development may occur in that area. This
25 roadway provides, according to the county, the most direct
26 route available to serve that possible development.

27 While recognizing that development may occur, the county
28 does not believe that the roadway will experience a great and
29 immediate increase in use. The county adopted, through its

1 inclusion of the Mazama Timber Product's traffic analysis, some
2 traffic studies done by Branch Engineering. Those studies show
3 that while the distance involved with other routes is longer
4 than the route available by Mazama Road, the travel time over
5 the Mazama route is longer. "Since through traffic tends to
6 take the shorter time route, the majority of trips would
7 continue to occur over I-5." Findings A, page 4.

8 We agree that this roadway does not itself create
9 development, but it does appear to make travel somewhat more
10 convenient for residents of a particular area of the county.
11 Even if we recognize that the road may facilitate some
12 development, we find nothing to prohibit a roadway simply
13 because it may facilitate development. Also, we can find
14 nothing in the county's plans that would prohibit taking a
15 roadway or creating one for the primary purpose of providing a
16 convenient route of access even if the roadway is called a
17 "local road." The plan recommendation to discourage use of
18 local roads for through traffic does not prohibit through
19 traffic on local roads, rather it discourages such traffic "by
20 continuing to assist in the development and maintenance of
21 local roads." Lane County Transportation Plan, IV(7), page 9.
22 If there is a prohibition on the county in this policy, it is
23 that the county should not allow through traffic on existing
24 rural roads at the expense of arterial roads. We do not
25 understand the county to be creating Mazama Road to the
26 detriment of the remainder of its roadway system.

1 We add that one of the goals in the transportation plan for
2 the county's road system is to provide "an efficient, safe and
3 attractive highway network to serve the existing and future
4 arrangement of land uses." Road plan at 6. One of the
5 objectives under that goal is to insure that future route
6 selection considers direct as well as indirect costs of
7 construction. Included in the county's findings was an
8 analysis of the cost of improving Mazama Road over other
9 alternate routes giving residents similar access
10 opportunities. The county had sufficient facts in the record
11 to support its findings that the Mazama Route would be the
12 least expensive to improve. Mazama Road, then, directly
13 satisfies at least one plan policy.

14 Assignment of error no. 3 is denied.

15 ASSIGNMENT OF ERROR NO. 4

16 Petitioner argues that the dedication violates the five
17 year Capital Improvement Program. Petitioner says there is no
18 authorization for construction or improvement to upgrade
19 Murdock Road and Tolman Road (as required by the dedication) in
20 the county's program. Petitioners are correct that the capital
21 improvement program does not list these roadways for
22 improvement, but there is nothing in the Capital Improvement
23 Program that would prohibit the county from undertaking
24 projects outside the program. The program allocates money for
25 projects, but the program does not limit the county.⁴

26 We believe a county decision to spend on a project of this

1 variety may not be subject to our review for political wisdom
2 unless it can be shown that the county actively violated a
3 controlling document or spent funds on something outside its
4 official jurisdiction. Courts and certainly this Board will
5 not question the wisdom of that expenditure.

6 Assignment of error no. 4 is denied.

7 ASSIGNMENT OF ERROR NO. 5

8 Petitioner asserts that the road dedication violates the
9 Lower Coast Fork Subarea Plan. The Lower Coast Fork Subarea
10 Plan applies to most of the property owned by Mazama Timber
11 Products, Inc. and all of the property which abuts this
12 dedicated roadway. Lane Code 15.045(4) requires compliance
13 with this plan. Respondent notes that the plan has not been
14 acknowledged "nor is it likely to be." Nonetheless, the plan
15 is still in effect and does purport to control development.

16 Petitioners' complaint, as we understand it, is that the
17 plan's transportation policies are violated.

18 "2. Transportation

19 "A. Findings

20 "(1) The highway and street system will continue
21 to be the predominant mode of transportation
in the Lower Coast Fork area.

22 "(2) Bus transportation is available from each
23 city, but the dispersed nature of the rural
24 population makes bus service to the outlying
area economically unfeasible at the present
time.

25 "(3) The highways, collectors, and local streets
26 are not nearing capacity and are adequate to

1 serve projected rural population increases in
the foreseeable future.

2 "(4) Major upgrading of roads in the area, and
3 construction of new ones, would add greatly to
pressures for land development.

4 B. Recommendations.

5 "(1) Capacity and improvement needs studies on all
6 streets identified as collectors should be
7 conducted by the county and road-building
emphasis should be placed on eliminating
existing traffic conflicts.

8 "(2) Traffic improvement programs in the Subarea
9 should be directed at increasing the
efficiency and reducing or eliminating traffic
10 conflicts and hazards.

11 "(3) Support efforts to develop alternative
12 transportation systems particularly bicycle
paths and busses (as well as carpooling) in
13 areas where a need has been identified, is
economically feasible and has local support."
Lower Coast Fork Subarea Plan, p. 27.

14 The petitioners argue that the plan's finding that the
15 highways, collectors and local streets in the areas are not at
16 capacity and are adequate to serve future rural population
17 increases somehow is violated by the dedication. Also violated
18 is the plan finding that upgrading of roads "would greatly add
19 to pressures for land development." We note that these points
20 are "findings" in the plan and are not recommendations or
21 policies. The policy on transportation simply says that road
22 building emphasis should be placed on eliminating "existing
23 traffic conflicts" and hazards. There is nothing to prohibit
24 new roadways in the subarea. Petitioners apparently have not
25 challenged whether the findings in the Lower Coast Fork Subarea
26 Plan are sufficient to support the recommendations.

1 Petitioner also claims that the studies called for in the
2 plan have not been performed. We do not view the language in
3 the plan to set out a requirement that no further road
4 acquisition or improvement take place before the studies are
5 completed. The studies are part of a "recommendation," not a
6 mandate. Further, the county did explore the traffic impact of
7 the new road. The county found

8 "Lane County has recognized the need for better
9 mobility in the Camas Swale/Fox Hollow area: A
10 portion of Fox Hollow Road was recently improved;
11 South Willamette Street to Fox Hollow Road is
12 scheduled for improvement in the near future; and a
13 bridge structure on Tolman Road is also programmed for
14 improvement in the near future.

15 "The need exists for the County to begin planning for
16 an additional north/south route between Fox Hollow and
17 Camas Swale Roads, not because additional roadway
18 capacity is needed, but because better mobility and
19 systems efficiency is needed.

20 "As the Camas Swale area continues to develop over the
21 next 10-20 years, the demand for better mobility will
22 also increase, especially the demand to travel to and
23 from the developing downtown Eugene area. This
24 increased travel demand will increase the need for an
25 additional north/south connector such as the Mazama
26 route.

 "The Mazama Road corridor (including Tolman and
Murdock Roads) is a logical transportation corridor.
It is appropriately spaced between two existing
traffic corridors, Lorane Highway and I-5 corridors,
yet it is far enough away from each corridor that
costly transportation services will not be duplicated.

 "The capital costs to improve this route are
considerably less than with the other alternatives
considered. In addition, maintenance costs of the
Mazama section would be borne by abutting property
owners, not Lane County." Finding "A", page 33.

Assignment of error no. 5 is denied.

1 ASSIGNMENT OF ERROR NO. 6

2 Petitioners next assert that the road dedication violates
3 the Spencer Creek Subarea Plan. The Spencer Creek Subarea Plan
4 is applicable to the western portion of property abutting the
5 roadway. The assertion here is that the dedication encourages
6 conflicts on this resource land between timber resource uses
7 and other uses. This access, claim petitioners, also results
8 in increased potential for trespass and fire.

9 Respondent denies that any portion of its property is
10 designated either Natural Resource or Forest Land I under that
11 plan. Respondent notes that no portion of the roadway is
12 located within the Spencer Creek Subarea.

13 As no portion of the roadway is located within the subarea,
14 we believe it speculative to assert that the roadway will
15 contribute to fire danger within the subarea. Were the roadway
16 to run through the subarea, the potential conflict between the
17 road and timber resource land would be cognizable under the
18 subarea plan (whether a conflict would exist is a separate
19 issue). As it is only a portion of Mazama Timber Products,
20 Inc.'s property that is within the subarea, we fail to see how
21 ownership of the property controls application of the plan to a
22 roadway not existing within the plan's jurisdictional limits.

23 Even if we agree that the roadway will open the Spencer
24 Creek area to more travel, we fail to find a violation of the
25 plan. The subarea plan does not prohibit access to the
26 subarea, and it has not been shown that access to the area

1 would, itself, create conflicts with timber resource uses. We
2 do not feel petitioners have shown the roadway alone to
3 threaten timber in the Spencer Creek subarea. The relationship
4 between the road and damage is simply speculative.

5 Assignment of error no. 6 is denied.

6 ASSIGNMENTS OF ERROR NO. 7 AND 8

7 Petitioners assert that the road dedication violates
8 Statewide Planning Goal 2

9 "in that the dedication irrevocably commits to
10 non-forest uses a stretch of forest land sixty feet
11 wide and approximately 2.75 miles in length without
the taking of an Exception to Goal 4."

12 In assignment of error no. 8, Goal 4 is alleged to be violated
13 because the roadway commits forest land for nonforest use and
14 would increase the pressure for development. We will combine
15 the assignments of error here, as assignment of error no. 7
16 depends on a finding of violation of Goal 4 in assignment of
17 error no. 8.

18 Respondent asserts that no Goal 2 violation has occurred
19 because no exception to Goal 4 is necessary. Respondent claims
20 Goal 4 is not violated for several reasons. Firstly,
21 respondent claims there is no new roadway proposed; all that is
22 new is that an existing road is open to the public. This
23 assertion is not entirely accurate as there is a quarter-mile
24 stretch of roadway that will have to be created. That
25 quarter-mile stretch plus the widening of the existing roadway
26 will spill constructed portions of roadway over into land not

1 presently occupied by a road.⁵

2 Respondent goes on to assert that the committed lands
3 doctrine applies here. The committed lands doctrine suggests
4 that a Goal 2 exception requirement is met whether the land is
5 (1) physically developed or built upon; (2) irrevocably
6 committed to nonfarm or nonforest uses in urban or rural
7 areas. See 1000 Friends v. Marion Co. and the LCDC Policy
8 Paper, "Common Questions About Goal 3," August 5, 1977.

9 Respondent suggests that this roadway is physically developed
10 or built upon, has ample shoulders and whether accepted by the
11 county or not, "it will still be a roadway."

12 Moreover, respondent notes that a reading of Goal 4 shows
13 no prohibition against roadways through forest lands. Roadways
14 are necessary for logging purposes, and only the guidelines in
15 Goal 4 speak to the matter of roadways. The guidelines do not
16 prohibit roadways, but only suggest that roadways should be
17 designed (1) so as not to preclude forest growth; and (2) have
18 minimum width as necessary for management and safety. In this
19 present case, the Lane County Public Works Director believed
20 that the right of way should be of no less than 60 feet, and
21 the findings contain considerable discussion on why the 24 foot
22 travelled portion is necessary for safe and convenient travel.

23 The county includes a finding on Goal 4, but essentially
24 says that Goal 4 is not applicable. The county's finding notes
25 that guideline 4 requires that the road be of a minimum width,
26 and the county simply states that its width of 24 feet is the

1 minimum standard established for a local public road.

2 We do not agree that Goal 4 is not applicable. The
3 existence of the roadway for purposes other than timber
4 production and harvesting must be viewed along with Goal 4's
5 mandate to preserve forest land. We realize only a quarter of
6 a mile of new roadway is to be constructed, and the remaining
7 2.6 plus/minus miles of roadway is already in existence. The
8 widening of the roadway in those portions where it is only 18
9 feet to 24 feet may not be a significant enough taking of
10 forest land to warrant calling this construction a violation of
11 Goal 4, but we believe the county was obligated to at least
12 address the issue. The county included justification for the
13 new route, but did not discuss that justification in terms of
14 Goal 4's mandate to preserve forest land.

15 We agree that the existing roadway already committed the
16 majority of acreage used for roadway purposes. However, the
17 roadway was made to exploit forest resources. Now the purpose
18 of the road is different, in part, and that change should be
19 discussed. We do not find that the facts in this case are so
20 overwhelming and clear in the county's favor that we could
21 consider Goal 4 issues to be answered indirectly. See Twin
22 Rocks Water Dist. v. Rockaway, 2 Or LUBA 36 (1980) and Lee v.
23 Portland, ____ Or LUBA ____ (LUBA No. 80-142, 1981).⁶

24 Assignments of error nos. 7 and 8 are sustained only
25 insofar as they call for analysis of the roadway in terms of
26 its impact on Goal 4.

1 ASSIGNMENT OF ERROR NO. 9.

2 Assignment of error no. 9 alleges a violation of Statewide
3 Planning Goal 11, Public Facilities and Services,

4 "in that Mazama Road is a collector road which is a
5 service appropriate only for urban uses and for
6 connecting urban uses, the dedication of which will
7 add to development pressures outside of the
8 established Urban Growth Boundary of the
9 Eugene-Springfield area."

10 Petitioners' complaint is that the roadway is constructed to
11 standards appropriate for collector streets. As such, the
12 roadway is not suitable solely for rural needs.

13 Respondent claims that the county required only standards
14 reasonably necessary for these rural requirements. The roadway
15 "was limited to a reasonable size and capacity relative to its
16 intended use." Respondent's Brief at 22.

17 The county includes in its findings a memo from the
18 Department of Public Works listing various alternative
19 standards for Mazama Road. It would appear that the
20 construction standards chosen meet the minimum requirements for
21 a public collector street, but those minimum requirements are
22 not significantly greater than the minimum requirements for a
23 public local roadway. The "desirable" construction standards
24 for local roads exceed the minimum requirements for roads. See
25 Exhibit C to county findings. The differences that exist
26 between the minimum standards are in centerline radius (200 as
opposed to 100 feet) surfacing (oil mat as opposed to gravel)
grade (12 percent as opposed to 16 percent) and width of right

1 of way (60 as opposed to 50 feet). The design speed apparently
2 is 30 miles an hour with the engineering study revealing an
3 average speed along the roadway of about 27 miles an hour.

4 We do not find anything in the record to show that these
5 facts suggest other than rural travel. Petitioners presumption
6 is again that the construction of the roadway and opening of
7 the roadway will allow development to occur. We do not believe
8 the roadway is of a kind necessary to serve urban needs, and we
9 conclude that even if the road does encourage development, it
10 remains a road suitable only for rural needs. We fail to see a
11 violation of Goal 11 which, after all, only limits the service
12 to "rural needs," and does not itself prohibit access even to
13 wilderness areas. Assignment of error no. 9 is denied.

14 ASSIGNMENT OF ERROR NO. 10

15 Assignment of error no. 10 claims that Statewide Planning
16 Goal 12 is violated in that the roadway dedication does not
17 encourage the use of existing facilities and rights of way.
18 Petitioners point to Goal 12 generally and say that the
19 dedication does not minimize social, economic and environmental
20 impacts and costs, does not conserve energy and does not meet
21 applicable plans.

22 The county made extensive findings on transportation. The
23 findings address matters in the county transportation plan,
24 road plan, Lane Manual, Lane Code, ORS ch 368 and LCDC goals.
25 The county also notes in its findings that certain Goal 12
26 guidelines have application. The findings encompass many pages

1 and address each of the various issues raised by petitioners.

2 In the light of the detail included by the county in its
3 findings, we do not view petitioners' allegations sufficient to
4 support a Goal 12 violation. For example, petitioners mention
5 the roadway will require money to upgrade Murdock and Tolman
6 Roads, but the county's findings show that the chosen
7 alternative is cheaper than others considered by many thousands
8 of dollars. The petitioners assert that the dedication will
9 not conserve energy, yet the facts show that this roadway is
10 the shortest link between Eugene and Creswell. The petitioners
11 claim the dedication violates various applicable plans (as in
12 the previous assignments of error), but we have found no such
13 violations. Without more specific allegations of error, we
14 must find for the respondents and deny this assignment of error.

15 ASSIGNMENT OF ERROR NO. 11

16 Assignment of error no. 11 alleges the dedication violates
17 Planning Goal 13 in that it does not promote "use of high
18 capacity transportation corridors to achieve greater energy
19 efficiency." Petitioners argue that use of Interstate 5 and
20 Highway 99 provides proper access between Creswell and the
21 cities of Eugene and Springfield; use of Mazama Road for this
22 purpose will take longer and use more gasoline.

23 We don't believe that fact alone, even if true, would equal
24 a violation of Goal 13. There is nothing in the Statewide
25 Planning Goals that prohibits alternative traffic patterns per
26 se. Respondent correctly notes that "[i]t should be apparent

1 to this Board that high speeds over a greater distance will not
2 result in energy savings." Respondent's Brief at 23.

3 Respondent notes that the difference in travel time between the
4 existing I-5 route and Mazama Road route is only 40 seconds
5 longer using Mazama Road. Perhaps the Mazama Road route would
6 result in energy savings. We find nothing in these facts that
7 indicates a violation of Goal 13.

8 Assignment of error no. 11 is denied.

9 ASSIGNMENT OF ERROR NO. 12

10 Assignment of error no. 12 alleges Goal 14 has been
11 violated in that the dedication "is inconsistent with the
12 phasing and location of public facilities and services to
13 support urban expansion into urbanizable areas and restrict it
14 from rural areas". Petitioners say the roadway is outside the
15 urban growth boundary; and yet, it will, petitioners say,
16 encourage development of an urban nature. This fact, claims
17 petitioners, results in a violation of Goal 14.

18 Respondent again says the "Board of Commissioners did
19 nothing by accepting the road to further urban growth or alter
20 that existing urban growth boundary." Respondent's Brief at 23.

21 We find for respondent. There is nothing in this record we
22 can find that tells us that development of an urban nature will
23 occur along this roadway at anytime in the future. The
24 creation of the roadway does not mean that the county has
25 amended its urban growth boundary or provided for urban growth
26 outside the urban area. The roadway is certainly much more a

1 country road than it is a city street, by all facts in the
2 record. The placement of the road alone is not sufficient to
3 improperly circumvent an urban growth boundary. Compare City
4 of Ashland v. Jackson Co., _____ Or LUBA _____ (LUBA No. 80-124,
5 1981).

6 Assignment of error no. 12 is denied.

7 ASSIGNMENT OF ERROR NO. 13

8 Assignment of error no. 13 asserts that the findings and
9 conclusions do not support the dedication in that they do not
10 show what standard is being applied. Petitioners argument is
11 that because the county had to create standards for the
12 acceptance of this dedication, and because the county was never
13 able to determine the applicability of its transportation plan,
14 the decision is reversible. Petitioners' position requires the
15 Board to hold that the decision to accept the roadway was
16 wholly quasi-judicial and, therefore, subject to established
17 standards.

18 Respondent claims that the decision is legislative.
19 Respondent does not challenge that the county was in some doubt
20 as to what standards to apply.

21 Whether legislative or quasi-judicial, we do not believe
22 the county's procedure in this particular case "failed to
23 determine the standards applied." The findings made by the
24 county include a detailed discussion of how the county came to
25 choose the classification of the road and the standards used
26 that led to the classification. The fact that standards for

1 roadway of this variety were not in place or, if in place,
2 existed in various different bits and pieces throughout county
3 ordinances and plans does not make the decision erroneous. The
4 county applied the applicable provisions of the Lane Code and
5 the Lane Manual controlling the procedure for consideration of
6 roadway dedications and controlling construction standards for
7 collectors and local roads. Simply because the county did not
8 have a standard applicable to a roadway which might somehow
9 qualify as both a collector and a local road does not mean that
10 the county cannot proceed to accept the roadway and improve it
11 in accordance with county ordinances. See Lee v.
12 Portland, ____ Or LUBA _____ (LUBA No. 80-142, 1981) and
13 discussion under Assignment of Error No. 2, supra.

14 Assignment of error no. 13 is denied.

15 ASSIGNMENT OF ERROR NO. 14

16 Assignment of error no. 14 attacks the findings on the
17 ground they are not supported by substantial evidence. The
18 specific allegations are as follows:

19 "Finding of Fact No. 5 states that Respondent
20 Mazama has guaranteed to take certain actions.
21 Respondent has not guaranteed to do any of the actions
22 but rather has granted a warranty deed to Respondent
23 Lane County with certain conditions which, if
unfulfilled, will result in the reversion of the
dedicated property back to Respondent Mazama or its
successor in interest. See Record at 6-7.

24 "Finding of Fact No. 6 states that Fox Hollow
25 Road, at its intersection with Murdock Road, is
classified as a minor collector. It is classified as
a major collector. See Record at 120-21; 149.

26

1 "Finding of Fact No. 9 indicates that the
2 majority of the trips over 'this road' would be
3 generated by existing homes and properties on Tolman
4 Road and Murdock Road. There is no evidence to
5 suggest that the majority of trips over Mazama Road
6 would be generated by existing homes on Tolman Road
7 and Murdock Road.

8 "Finding of Fact No. 19 states that the property
9 owned by Respondent Mazama within the boundaries of
10 the Spencer Creek Subarea is designated as Rural Land
11 II. The actual designation is Natural Resource:
12 Forest Land I. See discussion, supra at D.6.

13 "Ultimate Finding of Fact and Conclusion No. 9
14 states that Respondent Mazama has agreed to rectify
15 all minor deficiencies. It has not done so. See
16 discussion, supra, at D. 14." Emphasis in original
17 text. Petition for Review 32-33.

18 Respondent answers petitioners' arguments as follows:

19 "1. If the applicant fails to perform according
20 to the terms of the warranty deed, the roadway will
21 revert to its former owner, Mazama Timber Products,
22 Inc. At that point, applicant would have nothing for
23 its effort. The warranty deed with a condition
24 subsequent is, in essence, a guarantee.

25 "2. Lane Code 15.027, classifies Fox Hollow
26 Road, west of Willamette Street, as a 'minor
27 collection.' See Item 3, 'Transportation Plan and
28 Master Road Plan,' page 30.

29 "3. Evidence of the anticipated source of
30 'Mazama Road' traffic and its frequency is in the
31 record. See pages 29 and 30, Applicant's Report, Item
32 1 of record.

33 "4. The Spencer Creek Subarea Plan designates
34 respondent's property Rural Land II. Reference to the
35 'Plan Diagram' contained in Item 6 of the record would
36 eliminate petitioners' confusion.

37 "5. Respondent stands ready to perform in
38 accordance with the terms of the warranty deed (R.
39 67)." Respondent's Brief 24-25.

40 It is our view that even if there were a lack of
41 substantial evidence to support the findings listed above, that

1 fact alone is not case determinative given these findings.
2 Finding no. 5, even if deficient, would simply indicate that
3 the county made a "bad deal," not one that is violative of
4 statewide land use planning laws or of any controlling
5 ordinance that we have been cited to or that we can find. If
6 finding of fact no. 6 is not supported by substantial evidence,
7 that also is not significant. The classification of the
8 roadway is not as important as the effect of the roadway on
9 land use planning activities. In short, it does not make much
10 difference what the roadway is called. What makes a difference
11 is what the roadway does. Finding of Fact No. 9 is based upon
12 a traffic study of some detail included in the findings of
13 fact. This finding is important as it goes to need for the
14 roadway, its use and the standards controlling development. It
15 is our view that the materials included in that traffic study
16 suggest that finding of fact no. 9 is correct. We have been
17 cited to no evidence by petitioners that would suggest to us
18 that the findings made in the traffic study are untrue. A
19 county is entitled to rely on experts. Unless there is some
20 evidence presented by petitioners to suggest that the expert's
21 facts and conclusions are wrong estimates as to source and flow
22 of traffic and other such technical matters are clearly within
23 the expertise of traffic engineers. As to finding of fact no.
24 19, whether this nearby property bears one designation or
25 another is not significant in large part, because the roadway
26 does not run through that property. Even if the roadway were

1 to run through that property, the existence of the roadway
2 itself would not be so important as the activities allowed
3 adjacent to the roadway. As to the last finding complained of,
4 we really have no idea what "minor deficiencies" are. Whether
5 the Respondent Mazama Timber Products performs according to
6 some contract or agreement it has with the county is not a
7 subject for our review.

8 Assignment of error no. 14 is denied.

9 CONCLUSION

10 The decision of the Lane County Board of Commissioners is
11 remanded for action consistent with this opinion.

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FOOTNOTES

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We add that ORS Ch 368 generally grants the county governing body authority over roadways. The planning commission can be no more than an advisory body. The Board of Commissioners in this case did not improperly remove the matter from planning commission jurisdiction. Even if the Board of Commissioners is seen to have delegated some authority to the planning commission, reassuming the delegated jurisdiction is not proper. Sunnyside Neighborhood v. Clackamas Co. Comm., 280 Or 3, 569 P2d 1063 (1977).

7
8 2

The major differences are in centerline radius, surface (oil versus gravel), grade (4 percent points) and right of way width. The "desirable" construction standards for a local road exceed the minimum standards for a collector road.

10
11 3

It is possible petitioners are complaining that the county may not accept this roadway unless the roadway is taken in conjunction with some form of development such as a subdivision or major partition. The Board does not agree that the Lane Manual limits acceptance of roadway dedication to dedications made in the course of subdivision approval. Lane Manual Section 15.105 et seq. clearly contemplates the acceptance of roadway dedications outside partitioning and subdivision plats.

16
17 4

We note the Capital Improvement Program includes within it a method to evaluate projects. Whether or not the county followed this Capital Improvement Program is not something we can review in any event. The Capital Improvement Program does not appear to be part of Lane County's comprehensive land use plan. Also, it does not even appear to be part of the county's "law," its ordinances.

20
21 5

We do not view the existence of a 60 foot right of way (50 feet of which is necessary by law before the county may have jurisdiction over the roadway) as determinative of the Goal 4 issue.

23
24 6

We stop short of saying an exception to Goal 4 is required. It may be that the roadway will be found consistent with Goal 4. We only say the analysis must be made.

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

3 KENNETH R. GASKE, ALBERT F.)
KUSCHKE, ALLEN A. GEMMELL,)
4 V. GERALD WOESTE, ANN DEE)
WOESTE, MELVIN REX BRADLEY,)
5 WILLIAM M. NADEL, DREW J.)
RUDGEAR, MRS. M. J. SUTTON,)
6 ROBERT R. BENNETT, MILDRED)
E. SCHORR, N. B. ADLEY, DEE)
7 MARTIN, NORMAN LeCOMPTE, and)
WILLIAM SLOAT,)

8)
)
9)
)
10)
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11)
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12)
)

LUBA NO. 81-006

v.

PROPOSED OPINION
AND ORDER

LANE COUNTY, MAZAMA TIMBER
PRODUCTS, INC.,

Respondents.

13 Appeal from Lane County.

14 Bruce Anderson and D. Michael Wells, Eugene, filed the
15 petition for review and argued the cause for petitioners. With
16 them on the brief were Hutchinson, Harrell, Cox, Teising &
Anderson, P.C.

17 Scott Galenbeck, Springfield, filed a brief and argued the
18 cause for Respondent Mazama Timber Products, Inc. With him on
the brief were Lively, Wiswall, Svoboda, Thorp & Dennett.

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

20 Remanded.

6/9/81

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



STATE OF OREGON

INTEROFFICE MEMO

TO: MEMBERS OF THE LAND CONSERVATION AND DEVELOPMENT COMMISSION DATE: 6/9/81

FROM: THE LAND USE BOARD OF APPEALS

SUBJECT: GASKE V. LANE COUNTY
LUBA NO. 81-006

Enclosed for your review is the Board's proposed opinion and final order in the above captioned appeal.

This case is about a dedication and improvement of a roadway in Lane County. For the most part, the road is an existing logging road winding through timber land. It is 2.75 miles in length. The petitioner has made many assignments of error, and his very broad attack is the reason for the length of this opinion.

The petitioner alleges that a violation of Goal 2 and Goal 4 has occurred because the roadway cuts through forest land and will, by its existence, result in development on forest land and a conversion to non-forest uses. The county did not take an exception to Goal 4 for the roadway, therefore, both Goal 4 and Goal 2 have been violated according to petitioners. We reject the notion that a conversion has occurred per se. We do find, however, that the county's conclusion that Goal 4 is not applicable is erroneous. We believe the county should have addressed the impact of this roadway on Goal 4 lands. Whether the county would conclude that a violation of Goal 4 will occur because of realignment of the roadway, removal of timber or change in roadway use is unknown. The inquiry must, however, be made.

Petitioner also alleges Goals 11, 12, 13 and 14 are violated generally because the roadway will result in development and is, therefore, not a service for a rural area. The petitioner believes the roadway violates Goal 12 and 13 because it is not an efficient means of transportation and it will waste energy. The notion the road will equal development and urbanization of the area results in a violation of Goal 14, according to petitioners.

We do not find that the creation of an alternate route between Creswell results in a violation of any of these goals. What controls development along the roadway is a separate issue from the fact that the roadway exists, we believe. We can find nothing the goals to prohibit the creation of alternate routes of traffic. We also find the roadway is built to serve rural and most certainly not urban traffic patterns.



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Materials

Memo to LCDC
6/9/81
Page 2

Our discussion of the goal issues is included in assignments of error 7 through 12.

The Board is of the opinion that oral argument would not assist the commission in its understanding or review of the statewide goal issues involved in this appeal. Therefore, the Board recommends that oral argument before the commission not be allowed.

