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

DONALD STILL,

Petitioner,

v.

MARION COUNTY BOARD OF
COMMISSIONERS

Respondent.

LUBA No. 81-037

FINAL OPINION
AND ORDER

Appeal from Marion County.

Donald Still, Salem, filed a brief on his own behalf.

Marion County did not appear.

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

Remanded.

7/01/81

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).

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1 BAGG, Referee.

2 NATURE OF THE DECISION

3 The decision under review is a grant of a minor
4 partitioning application. The partitioning is to divide 55.4
5 acres into two parcels of 20 acres and 35.4 acres within a
6 "Special Agriculture" zone in Marion County. Petitioner
7 requests the Land Use Board of Appeals reverse the grant of
8 partitioning by the Marion County Board of Commissioners.

9 FACTS

10 The original application was to divide the 55.4 acres into
11 three parcels. Two of the parcels would be 10 acres in size
12 and the remainder would be 35 acres. The Planning Director
13 approved a modified request to divide the parcel into two
14 parcels of 35.4 acres and 20 acres on November 10, 1980. An
15 appeal was taken to the Marion County Planning Commission and a
16 hearing was held on January 6, 1981. The matter was continued
17 until January 20, at which time the Planning Commission upheld
18 the decision of the hearings officer. The matter was then
19 appealed to the Marion County Board of Commissioners, and the
20 Board of Commissioners denied the appeal on February 11, 1981.

21 We understand, from the Planning Commission decision
22 adopted by the Board of Commissioners, that the parcel has been
23 used for grass seed production but is not presently being
24 managed for agricultural purposes. The property is vacant.
25 Farm tracts with what the county describes as similar or larger
26 lot sizes lie to the west and east, parcels of some five to ten

1 acres lie to the north "and are used as acreage residences and
2 small farming activities," and an apparently undevelopment
3 subdivision with lots ranging in size from two to eight acres
4 lies to the south. The land uses within one-half of a mile of
5 the property include pasture, grass seed operations, orchards
6 and some Christmas trees. Parcel sizes in that same area range
7 from 10 to 150 acres.

8 The prospective buyer of the property wished to establish a
9 vineyard on the larger of the two parcels. There are no
10 vineyards in the immediate area, but there are several located
11 in an area known as the South Salem Hills. The record includes
12 an evaluation of the 35 acre parcel by Wincrest Vineyards, Inc.
13 of Salem, and they conclude that the parcel has an excellent
14 potential "for growing north European grape varieties." Record
15 3 as quoted in county's finding.

16 The county mentions in its conclusions that it "is aware of
17 other enterprises of this nature in the general area that
18 appear to be evolving into successful commercial operations."
19 The county is referring to other vineyards. The county also
20 concludes that establishing a tree farm of some 20 acres as was
21 proposed for the remaining lot "appears to be a logical
22 management strategy to maximize agricultural production on this
23 property." The county cites no particular facts but adds that
24 "evidence" shows a conversion of grass seed operations in the
25 South Salem Hills area to other "more profitable agricultural
26 enterprises." The county tells us there are large areas in

1 Marion County where grass seed is a profitable use, and this
2 conversion does not "threaten" the grass seed industry.

3 We understand from portions of the Special Agricultural
4 (SA) zone in the record that the zone carries no minimum lot
5 size. The county's findings tell us that the zone is designed
6 to "make suitable area available for alternate types of
7 intensive commercial agriculture." Marion County does not have
8 an acknowledged comprehensive plan.

9 STANDING

10 Standing of petitioner has not been challenged. we find he
11 has alleged sufficient facts to grant him standing under 1000
12 Friends v. Benton Co., ____ Or LUBA ____ (LUBA No. 80-134,
13 1981).

14 ASSIGNMENTS OF ERROR

15 Petitioner makes six assignments of error. The first
16 alleges the county failed to make findings showing that the
17 property division would result in lot sizes that are
18 "appropriate for the continuation of the existing commercial
19 agricultural enterprise within the area." LCDC Goal 3. The
20 second assignment of error alleges that ORS 215.243, requiring
21 that agricultural lands be maintained in "large blocks" is
22 violated by the decision. A third assignment of error alleges
23 that the County Commissioners made the decision for the wrong
24 reason. Petitioner asserts that the county divided the
25 property because the present use for grass seed operations
26 would provide only a marginal return. The remaining three

1 assignments of error assert that the findings are not supported
2 by substantial evidence within the record.

3 We will deal only with assignment of error no. 1. The
4 first three assignments of error rest on whether the division
5 is in keeping with Goal 3's requirement that any divisions of
6 property shall be appropriate for maintaining the existing
7 commercial agricultural enterprise. As we find that the county
8 did not make the required findings, it is unnecessary for us to
9 discuss the remaining assignments of error. We note that had
10 the county made findings showing compliance with Goal 3, the
11 second and third assignments of error would necessarily be
12 denied and we would simply be looking at whether there is
13 substantial evidence in the record to support the county's
14 decision.

15 ASSIGNMENT OF ERROR

16 Petitioner says that respondent is required to make
17 findings that show that the parcels created "would be of
18 appropriate size for commercial farm units." Petition for
19 Review 5. Petitioner says these findings are absent.
20 Petitioner also alleges that the respondent has not conducted
21 an inventory of the "existing commercial agriculture in the
22 county, let alone in the South Salem Hills." Petition for
23 Review 5.

24 Goal 3 does not require that the lot sizes created be
25 appropriate for the continuation of existing agricultural
26 enterprise on an absolute scale. The goal includes the words

1 "in the area" in that mandate. It is incumbent, therefore, on
2 the county to determine its "area" and conduct a study to find
3 what commercial agricultural enterprises exist and what lot
4 size is necessary to maintain them. If the county finds that
5 the proposed agricultural use is consistent with the existing
6 uses and will, in fact, "maintain" those existing uses, the
7 partitioning may be allowed. If, on the other hand, the county
8 finds that the existing commercial agricultural enterprises in
9 the area will not be maintained by the land division, the
10 division must be denied or an exception taken to the goal. See
11 Sane Orderly Develoment, et al v. Douglas County, _____ Or
12 LUBA _____ (LUBA No. 80-121, 1981).

13 The petitioner is correct when he asserts that this
14 inventory is missing. The findings recite what lot sizes exist
15 in the immediate vicinity, but the findings do not really
16 define the area of inquiry, and they do not define what
17 agricultural enterprises may exist in that area.¹ Without
18 these basic facts included in the record and discussed in the
19 findings, we are unable to perform our review function.
20 Dupont v. Jefferson County, 1 Or LUBA 136 (1980).

21 In sum, we have considered this record and the findings,
22 and we simply do not find sufficient information in the record
23 regarding the existing commercial agricultural enterprise in
24 this vicinity, or any other in the county, from which the
25 county could make findings and conclusions on the effect of the
26 partitioning on existing commercial agricultural enterprises in

1 the area. We do not mean to imply that a division of property
2 such as this for a new form of agricultural enterprise is not
3 possible in this area. We are simply saying that before the
4 county can conclude that the division is possible, it must
5 first make the necessary inquiries.

6 CONCLUSION

7 This matter is remanded to Marion County for further
8 proceedings consistent with this opinion.²

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FOOTNOTES

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Conceivably, the "area" could be the whole county depending
on the kind of agricultural enterprise considered.

2
We wish to add that without argument from respondents, our
inquiry is necessarily limited and may be lopsided. Without
the benefit of respondent's arguments, this Board may be
mislead or make errors that would result in a waste of time and
resources for all parties. We encourage all parties interested
in a case to make an appearance, if only on paper.



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: STILL V. MARION COUNTY
LUBA No. 81-037

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

We address only the goal issue, as it is determinative of the outcome of the case and as the other assignments of error are very closely related to the issue of whether the county has made the findings necessary to show compliance with goal 3.

The decision involves a minor partitioning in an agricultural area of the county. The site was at one time used for grass seed production, but is not now actively farmed. The proposal is to divide the property into two parcels, one of 35 acres and one of 20 acres. The larger of the two parcels is to be used as a vineyard, the smaller as a Christmas tree farm.

We found the county failed to conduct the inventory of existing commercial agricultural enterprises in the area necessary before it could allow the proposed division. Without the analysis of the existing commercial agricultural enterprise, the county was not in a position to determine that the partition was consistent with goal 3.

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.



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