

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

OCT 1 10 54 AM '81

RICHARD CLEMENS, )  
 )  
 Petitioner, )  
 )  
 v. )  
 )  
 LANE COUNTY, )  
 )  
 Respondent, )  
 )  
 and )  
 )  
 MELVIN LEMMON, )  
 )  
 Respondent-Applicant )

LUBA NO. 81-056

FINAL OPINION  
AND ORDER

Appeal from Lane County.

Michael F. Farthing, Eugene, filed a brief and argued the cause for Petitioner. With him on the brief were Butler, Husk, Gleaves & Swearingen.

William A. Van Vactor, Lane County Counsel, appeared specially for the limited purpose of contesting petitioner's standing.

Bruce C. Moore, Eugene, filed a brief and argued the cause for Respondent-Applicant Melvin Lemmon. With him on the brief were Bick, Monte, Alstatt & Doyle.

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

Reversed.

10/01/81

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).

1 COX, Referee.

2 NATURE OF PROCEEDING

3 Petitioner seeks reversal of Lane County Order No.  
4 81-4-1-11 whereby Respondent-Applicant Lemmon was granted a  
5 five-year conditional use permit to operate a boat repair and  
6 storage business on land zoned agricultural, grazing and timber  
7 raising (AGT).

8 STANDING

9 Both Respondent Lane County and Respondent-Applicant Melvin  
10 Lemmon contest petitioner's standing to bring this action.  
11 Petitioner Clemens alleges in his petition for review that he  
12 appeared before the Lane County Board of Commissioners opposing  
13 the granting of the permit both orally and in writing.  
14 Petitioner alleges that not only was he entitled to, but was  
15 mailed notice of the Lane County Board of Commissioners'  
16 proceedings in this matter. Petitioner also alleges he was  
17 aggrieved by the granting of the permit because it allows  
18 Lemmon to operate a full-time commercial/industrial business in  
19 contravention of the AGT zoning district, the Lane Code, the  
20 applicable comprehensive plan and certain statewide planning  
21 goals. Petitioner further alleges

22 "the granting of the Permit provides an unfair  
23 economic advantage to Lemmon by permitting operation  
24 of his business on cheaper, agricultural land rather  
than in a commercial or industrial zoning district.

\* \* \*

25 "Petitioner was aggrieved by the granting of the  
26 Permit and the unfair economic advantage that Lemmon  
obtained from building an agricultural building and  
then using it for commercial/industrial purposes."

1 Respondent Lane County moves to dismiss this appeal on the  
2 grounds that Clemens lacks standing to appear pursuant to  
3 Oregon Laws 1979, ch 772, sec 4(3). Respondent-Applicant  
4 Lemmon joins in Lane County's motion to dismiss. Oregon Laws  
5 1979, ch 772, sec 4(3) states:

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

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

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

17 Respondents argument essentially is that the persons who  
18 are "entitled as of right to notice and hearing prior to the  
19 decision to be reviewed" as set forth in Section 4(3)(b), can  
20 only be owners of property within 300 feet of the subject  
21 property by virtue of Lane Code 10.320-55. Lane Code 10.320  
22 governs conditional use permits. Section 55 of Lane Code  
23 10.320 is entitled Hearings Official Public Hearing and  
24 Notice. That section provides:

25 "(1) The Hearings Official shall hold not less than  
26 one public hearing on each Conditional Use Permit  
application.

"(2) Notice of the time and place of hearing shall be  
given at least 10 days in advance, by mail to the  
applicant, property owner (if not the applicant), and  
the owners of all property within 300 feet of the  
exterior boundaries of the contiguous property  
ownership involved."

1       \*\* \* \*

2       "(4) The Hearings Official shall make and enter  
3       findings from the record and conclusion thereof which  
4       support the decision, and the findings and conclusions  
5       shall set forth and demonstrate the manner in which  
6       the decision carries out the purpose and intent of the  
7       Lane County zoning ordinance; the Conditional Use  
8       permit criteria and other applicable County policies  
9       as provided in the Lane Manual. The Hearings Official  
10      shall render a written decision and transmit a copy of  
11      said decision by mail to the applicant and other  
12      parties of record who have requested the same within  
13      10 days of the conclusion of the public hearing.  
14      Conditional Use Permit decisions by the Hearings  
15      Official become final after an elapsed period of 10  
16      days from the date of the written decision unless  
17      appealed to the Board of Commissioners within that 10  
18      day period. \* \* \* \*" (Emphasis added).

19      Lane Code 10.320-60 entitled "Appeal to the Board of  
20      Commissioners" states:

21      "(1) An appeal may be made to the Board of  
22      Commissioners by any interested person or County  
23      official. Such appeal shall be filed in written form  
24      from the Planning Division within 10 days of the  
25      Hearings Official's written decision stating how the  
26      Hearings Official erred in application of the  
27      requirements of this section." (Emphasis added).

28      Respondents reason that since petitioner resides a distance  
29      of several miles from the property affected by the land use  
30      decision, he is not a person entitled as of right to notice and  
31      hearing prior to the decision to be reviewed. Respondents  
32      argue that the fact petitioner was mailed notice and provided  
33      an opportunity to be heard was not a result of petitioner being  
34      entitled by right to such notice and opportunity but rather  
35      because petitioner so requested. Respondents argue that the  
36      Lane County Board of Commissioners grants people the  
37      opportunity to be heard and attempts to provide every

1 opportunity to its constituents to air their grievances before  
2 the Board of County Commissioners. This "open meeting" type  
3 approach, argue respondents, should not be treated as legally  
4 exposing the county to protracted litigation. Respondents  
5 argue that from a policy standpoint if this Board holds that  
6 the mailing of notice to people who request such notice  
7 automatically exposes the county to protracted litigation, the  
8 county will have no recourse but to severely restrict local  
9 citizens' input into the planning process.

10 In 1000 Friends of Oregon v. Benton County, 2 Or LUBA 324,  
11 327 (1981) we stated:

12 "While not specified in the county's ordinance, we  
13 believe one who appeals to the Board of Commissioners  
14 a planning commission decision would be entitled as a  
15 matter of right to written notice of the Board of  
16 Commissioner's hearing on the appeal. This would, in  
our view, be necessary to satisfy minimal due process  
requirements as discussed in Fasano v. Board of  
Commissioners for Washington County, 264 Or 574, 507  
P2d 23 (1973)."

17 In this case the Lane County Board of Commissioners allowed  
18 petitioner to appeal the decision even though he does not live  
19 within 300 feet of the subject parcel. By allowing petitioner  
20 to appeal the decision, petitioner is granted as a matter of  
21 due process the right to notice of hearing on the appeal which  
22 he filed. If the county had intended to restrict the right to  
23 appeal hearing officials' decisions to only those people who  
24 live within 300 feet of the exterior boundaries of the property  
25 involved, its code would have so stated. The code, however,  
26 states, as above cited, "an appeal may be made to the Board of

1 Commissioners by any interested person or county official."  
2 Once the county has allowed the petitioner to appeal, it cannot  
3 then argue that he is not a "person entitled as of right to  
4 notice and hearing prior to the decision being reviewed \* \* \*  
5 \*" Therefore, based on the foregoing, we rule that petitioner  
6 has standing to bring this appeal. It is not necessary for us  
7 to reach the alternative allegation that petitioner has  
8 interests which are adversely affected or is a person who was  
9 aggrieved by the decision.

10 ALLEGATIONS OF ERROR

11 Petitioner levels the proverbial shotgun blast at  
12 Respondent Lane County's decision. Petitioner sets forth eight  
13 assignments of error which allege violations of Statewide Goals  
14 1, 2, 3, 6, 11 and 14. In addition, petitioner alleges that  
15 the order of Lane County violates Lane Code 10.110-15(31) (AGT  
16 zoning district), 10.320-20 (conditional use permits) and  
17 10.342 (rural home occupations). Petitioner alleges that the  
18 record lacks substantial evidence to support the county's  
19 findings that the requirements of the above cited provisions as  
20 well as other relevant provisions in Chapter 10 zoning of the  
21 Lane Code have been addressed and satisfied.

22 FACTS

23 On March 28, 1980, Respondent Lemmon applied to Lane County  
24 for a conditional use permit that would allow him to continue  
25 to operate a boat repair and storage business as a rural home  
26 occupation in an agricultural, grazing and timber raising (AGT)

1 zoning district. An earlier conditional use permit, granted on  
2 March 16, 1977, expired on March 16, 1979. Since the  
3 expiration date, Lemmon has operated his business without the  
4 required permits. The March 16, 1977 order (No. 77-3-16-13)  
5 did not address the statewide planning goals.

6 On May 5, 1980, Mr. Lemmon was sent a letter from the Land  
7 Use Compliance Officer for Lane County informing him that not  
8 only had his conditional use permit expired and that he had  
9 been so informed on February 26, 1980, but that it had come to  
10 her attention that he had expanded the use to property beyond  
11 the limits which were approved by the original but expired  
12 conditional use permit.

13 Both of the buildings being used by Lemmon in his boat  
14 repair business were constructed initially as agricultural  
15 buildings. On May 7, 1981, the senior building inspector for  
16 Lane County notified Mr. Lemmon that during an inspection on  
17 May 1, 1980, it was noted that the structures built on  
18 agricultural permits 14-32-76 and 3377-79 were being used for  
19 other than agricultural purposes. The letter informed Mr.  
20 Lemmon that the structures had to be inspected when an  
21 occupancy change takes place. Furthermore, the inspector  
22 notified Mr. Lemmon that he was required to discontinue the use  
23 of the structures for other than agricultural purposes within  
24 ten days of the receipt of the notice.

25 On July 10, 1980, a Lane County hearing officer considered  
26 Lemmon's new application for a conditional use permit. At that

1 time there was no opposition to the permit. The conditional use  
2 permit was granted on July 18, 1980 by the hearings officer.  
3 Petitioner filed an appeal of the hearing officer's decision and  
4 the hearing on that appeal was first scheduled before the Board  
5 of County Commissioners on November 5, 1980. Petitioner alleges  
6 he never received notice of that hearing and that he learned of  
7 the November 5 hearing by chance. Lane County's records  
8 indicate notice was mailed. Petitioner requested a postponement  
9 so that he could prepare. A postponement was granted until  
10 December 2, 1980, and again petitioner alleges he was not  
11 notified by either mail or phone of the hearing. Again, Lane  
12 County's records indicate notices were mailed. Petitioner  
13 appeared at the December 2 hearing with an attorney, at which  
14 time an oral request was made for a set over in order to allow  
15 the petitioner time to prepare. Lane County Board of  
16 Commissioners denied the request for a further extension of time  
17 and proceeded to hold the hearing. Petitioner claims he was not  
18 provided an opportunity to rebut newly introduced evidence at  
19 the Board of Commissioner's hearings.

20 On April 1, 1981, the findings of the county were adopted by  
21 the Board of County Commissioners, nearly four months after the  
22 public hearing. In the period between the public hearing and  
23 the April 1, 1981 signing of the findings and order,  
24 petitioner's attorney submitted letters which, in effect, took  
25 exception to and pointed out errors in the proposed findings  
26 which he had been provided an opportunity to review.

1           The record indicates that the Lemmon boat repair and  
2 storage operation utilizes in excess of 5,000 square feet of  
3 building area. The site contains substantial blacktop surface,  
4 is surrounded by a 700 foot chain link fence, is located on 1  
5 1/2 acres of land and contains a rock surface driveway. The  
6 property proposed for the conditional use is located at 5522  
7 Barger Drive, Eugene, on Tax Lots 800 and 801. A conditional  
8 use permit which was issued on November 10, 1976 was apparently  
9 for Tax Lot 800 only. Tax Lots 800 and 801 are part of a 15  
10 acre parcel made up of SCS Class II and IV soils. While the  
11 record is not entirely clear the remainder of the 15 acre  
12 parcel appears to be designated as Tax Lot 900. Agricultural  
13 activities such as grazing and hay production are presently  
14 occurring on the portion of the property not being used for  
15 boat repair and storage.

16           DECISION

17           Petitioner's first assignment of error asserts:

18           "The procedures followed by Lane County are  
19 inconsistent with Statewide Goal 1, Citizen  
20 Involvement, in that petitioner was denied an  
21 opportunity to adequately participate in the permit  
22 application process."

21           The thrust of petitioner's argument is that he was denied  
22 the opportunity to properly present his case due to his  
23 discovering late that the December 2, 1980 hearing was to be  
24 held. Petitioner alleges he did not receive notice and was not  
25 afforded a reasonable opportunity to participate in the hearing  
26 process because of his late learning of the hearing and the

1 county's refusal to set the matter over. Petitioner argues he  
2 was prejudiced because he was unable to review the entire  
3 record of the hearings officer's proceeding or to investigate  
4 additional matters prior to the December 2 hearing.

5 Respondent Lemmon does not argue that Goal 1 isn't  
6 applicable to this proceeding, but he does allege the  
7 petitioner waived the contention that he was denied an  
8 opportunity to adequately participate. Lemmon points to the  
9 record where petitioner stated that he was "totally prepared \*  
10 \* \*" to proceed at the December 2, 1980.

11 In the fact situation before this Board, it is clear that  
12 petitioner had an opportunity to present his case before the  
13 Board of County Commissioners, was allowed to address the  
14 evidence submitted by the applicant and was furthermore  
15 provided an opportunity to contest the proposed findings of  
16 fact. The record indicates that on February 24, 1981, the  
17 petitioner submitted a letter to the Lane County Board of  
18 Commissioners pointing out defects in the proposed findings of  
19 fact. The letter is detailed and expresses the concerns of the  
20 petitioner. Again, on March 24, 1981, petitioner submitted a  
21 letter to the Lane County Board of Commissioners setting forth  
22 additional reasons for his concern about the proposed  
23 findings. As such, petitioner has had ample opportunity to  
24 present his case and make known his position to the fact  
25 finding body. Petitioner cites us to and we can find no  
26 specific due process deprivations. To the extent Goal 1 may be

1 applicable in this case, we find no violation based on the  
2 facts which appear in the record. Based on the foregoing, it  
3 is this Board's decision that petitioner's first allegation of  
4 error shall be denied.

5 AGRICULTURAL LAND

6 Petitioner attacks Lane County's finding that the subject  
7 property is not agricultural land and the county's alternative  
8 finding that the property is built upon and committed to  
9 nonfarm use. First, petitioner argues that the record lacks  
10 substantial evidence to support the county's finding that the  
11 property is not agricultural land. Specifically, finding no.  
12 16 in the county order states:

13 "The subject property does not contain predominantly  
14 agricultural soil; therefore, Goal 3 does not apply.

15 "The land on which the CUP will exist contains fill  
16 from road construction with a thin layer of Class IIw  
17 and IVw topsoil over it. The Board heard testimony  
18 that the subject soil is not capable of supporting  
19 agricultural production. The remainder of the 15-acre  
20 parcel on which the subject property exists is used,  
21 and will remain, in farm use as grazing land."

22 Since Lane County's comprehensive plan has not been  
23 acknowledged, the contested CUP must be shown to be in  
24 conformance with the statewide goals. Statewide Goal 3 requires  
25 that agricultural lands be preserved and maintained.<sup>1</sup> When  
26 during the application of Goal 3 to a land use decision it  
27 appears it is not possible to apply the goal to the specific  
28 property, then an exception to the goal must be adopted.  
29 Therefore, our analysis of this case must first determine

1 whether Statewide Goal 3 applies to this decision and if so,  
2 whether an exception was taken.

3 The county found that the property does not contain  
4 predominantly agricultural soil. The presence of agricultural  
5 soil is but one way of determining whether the property is  
6 agricultural land within the definition of Statewide Goal 3.  
7 Agricultural land is defined in Goal 3:

8 "AGRICULTURAL LAND - In western Oregon is land of  
9 predominantly Class I, II, III and IV soils and in  
10 eastern Oregon is land of predominantly Class I, II,  
11 III, IV, V and VI soils as identified in the Soil  
12 Capability Classification System of the United States  
13 Soil Conservation Service, and other lands which are  
14 suitable for farm use taking into consideration soil  
15 fertility, suitability for grazing, climatic  
16 conditions, existing and future availability of water  
17 for farm irrigation purposes, existing land use  
18 patterns, technological and energy inputs required, or  
19 accepted farming practices. Lands in other classes  
20 which are necessary to permit farm practices to be  
21 undertaken on adjacent or nearby lands, shall be  
22 included as agricultural land in any event.

23 "More detailed soil data to define agricultural land  
24 may be utilized by local governments if such data  
25 permits achievement of this goal."

26 We find after reviewing the record the Lane County finding  
that Statewide Goal 3 does not apply is not supported by  
substantial evidence. The Lane County planning staff analyzed  
the 15 acre parcel owned by Lemmon and placed in the record a  
soil classification form. The form indicates that on 5/29/81,  
the entire 15 acre parcel contained Class II and IV soils.  
There is a column in the soil classification form designed to  
be used to indicate what percent of the property relates to  
each SCS soil classification. That portion of the form is not

1 filled in, however, so all we can presume is that the entire 15  
2 acres is Class II and IV soil. In addition, testimony in the  
3 record indicates that agricultural activity in the form of  
4 grazing, hay raising, as well as raising of grass seed is  
5 taking or has taken place on the 15 acre parcel.

6 The county seems to have concentrated its soil class  
7 analysis on only that portion of the 15 acres to be used for  
8 the boat repair and storage business. Lemmon testified that a  
9 portion of the property on which the business activity was to  
10 take place is composed of fill materials. The record does not  
11 indicate what portion he was referring to, however. His  
12 testimony is not critical in this situation anyway. As was  
13 held in Meyer v. Lord, 37 Or App 59, 69, 586 P2d 367 (1979) in  
14 determining the predominant soil classification, the entire  
15 tract must be considered. The Court of Appeals appears to have  
16 modified that ruling in Flury v. Douglas County, 50 Or App 263  
17 (1981). However, that modification, if accurate, relates only  
18 to subdivisions.<sup>2</sup> Since there is no subdivision involved in  
19 this case, the soil classification on the 1.5 acre business  
20 activity site is not controlling for the purposes of applying  
21 Goal 3. See also 1000 Friends of Oregon v. Douglas County, 1  
22 Or LUBA 42 (1980).

23 The county doesn't address whether the parcel is  
24 agricultural land of a type other than that which consists of  
25 Class I through IV soils. There is no evidence in the record  
26 which indicates the property is not necessary to permit farm

1 practices to be undertaken on adjacent or nearby lands. The  
2 record indicates that the buildings that were constructed on  
3 the specific 1.5 acre CUP site were allowed under permits  
4 indicating that they were agricultural buildings. Even if the  
5 ground upon which the agricultural buildings are built is not  
6 agricultural soil within the definition of Goal 3, the fact  
7 that the buildings were originally permitted for agricultural  
8 purposes would indicate that Goal 3 is applicable.

9 The next step is to ascertain whether an exception to Goal  
10 3 has been taken. As was set forth in 1000 Friends v.  
11 Clackamas County, \_\_\_\_ Or LUBA \_\_\_\_ (LUBA No. 80-060, 1981),  
12 the LCDC has devised a procedure not found in Goal 2 for taking  
13 an exception to the statewide goals. That procedure has become  
14 known as the built upon or committed test. The county in  
15 finding no. 16 determined that the property was committed to  
16 nonfarm use.<sup>3</sup> We determine, based on the facts in the record  
17 and the county's findings that the county has misapplied the  
18 built upon or committed test. As we mentioned above, the  
19 "built upon" portion of the property consists of only 1.5 acres  
20 of the total 15 acre parcel. That 1.5 acre site was "built  
21 upon" with the understanding that the structures placed thereon  
22 would be used for agricultural purposes. The record is clear  
23 that the buildings can still be used for agricultural  
24 purposes. Furthermore, the county's findings regarding the  
25 commitment test do not indicate why the facts found prohibit  
26 farm use on the subject parcel. See 1000 Friends v. Clackamas

1 County, supra. The record indicates that the property is in an  
2 area zoned for 20 acre lot sizes. The record also indicates  
3 that Lemmon, in his own testimony states there are ongoing  
4 grass seed growing operations in the vicinity of his property.

5 In light of the foregoing, we find it unnecessary to  
6 address the petitioner's other assignments of error. The  
7 property is agricultural land within the definition contained  
8 in Statewide Goal No. 3 and a proper exception has not been  
9 taken to allow the proposed use. A reasonable person would not  
10 be compelled by the argument that buildings allowed to be  
11 placed on property, based on assertions they are for  
12 agricultural purposes and which the evidence indicates are  
13 suitable for agricultural use, somehow commit the property to  
14 nonagricultural use.

15 Reversed.

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FOOTNOTES

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Goal 3 Agricultural Lands states:

"GOAL: To preserve and maintain agricultural lands.

"Agricultural lands shall be preserved and maintained for farm use, consistent with existing and future needs for agricultural products, forest and open space. These lands shall be inventoried and preserved by adopting exclusive farm use zones pursuant to ORS Chapter 215. Such minimum lot sizes as are utilized for any farm use zones shall be appropriate for the continuation of the existing commercial agricultural enterprise with the area. Conversion of rural agricultural land to urbanizable land shall be based upon consideration of the following factors: (1) environmental, energy, social and economic consequences; (2) demonstrated need consistent with LCDC goals; (3) unavailability of an alternative suitable location for the requested use; (4) compatibility of the proposed use with related agricultural land; and (5) the retention of Class I, II, III and IV soils in farm use. A governing body proposing to convert rural agricultural land to urbanizable land shall follow the procedures and requirements set forth in the Land Use Planning goal (Goal 2) for goal exceptions.

"AGRICULTURAL LAND - In western Oregon is land of predominantly Class I, II, III and IV soils and in eastern Oregon is land of predominantly Class I, II, III, IV, V and VI soils as identified in the Soil Capability Classification System of the United States Soil Conservation Service, and other lands which are suitable for farm use taking into consideration soil fertility, suitability for grazing, climatic conditions, existing and future availability of water for farm irrigation purposes, existing land use patterns, technological and energy inputs required, or accepted farming practices. Lands in other classes which are necessary to permit farm practices to be undertaken on adjacent or nearby lands, shall be included as agricultural land in any event.

"More detailed soil data to define agricultural land may be utilized by local governments if such data permits achievement of this goal."

1  
2           Appellants in Flury have asked the court for  
3 reconsideration or clarification of that portion of the court's  
4 decision.

5           The County's finding no. 16 states:

6           "Goal 3, Agricultural Lands: The subject property  
7 does not contain predominantly agricultural soil;  
8 therefore, Goal 3 does not apply.

9           "The land on which the CUP will exist contains fill  
10 from road construction with a thin layer of Class IIw  
11 and IVw topsoil over it. The Board heard testimony  
12 that the subject soil is not capable of supporting  
13 agricultural production. The remainder of the 15-acre  
14 parcel on which the subject property exists is used,  
15 and will remain, in farm use as grazing land.

16           "The appellant asserted that the proposed CUP violated  
17 Goal 3 because the soils were in classes II and IV.  
18 The Board finds that in addition to the above stated  
19 facts regarding the lack of productive capacity of the  
20 subject property, the property is precommitted to  
21 nonfarm use. In order to so find, existing parcel  
22 sizes and their ownership must be considered in  
23 relation to the land's actual use. Characteristics  
24 which must be considered are (a) adjacent uses, (b)  
25 public services, (c) parcel size and ownership  
26 patterns, (d) neighborhood and regional  
characteristics, and (e) natural boundaries. A  
finding of precommitment, in a setting such as the  
Conditional Use Permit at issue here, must be  
supported by detailed findings. See Land Conservation  
and Development Commission Information Paper on the  
Exceptions Process approved March 10, 1979, as amended  
May 3, 1980, Section II (15).

27           "(a) Adjacent Uses:

28           "To the north of the subject property are  
29 numerous, small, residential lots. Adjacent to  
30 the property on the west and east are commercial  
31 enterprises. The Board also notes that as this  
32 area is designated residential in the subarea  
33 plan, the committed character of the neighborhood  
34 can only increase in that direction.

1           "(b) Public Services:

2           "The Board finds sufficient public facilities  
3           exist to support the proposed CUP, and no new  
4           ones are necessary. The appellant stated that  
5           the oil from the applicant's operation will foul  
6           the soil on the property, and an industrial  
7           sewerage system is necessary to support the  
8           proposed used. [sic] The Board heard evidence  
9           from the applicant that his oil trap prevented  
10          contamination of the soil; the County inspectors  
11          have never cited the applicant for fouling the  
12          soil. The Board finds the applicant's system is  
13          adequate to prevent soil pollution.

14          "(c) Parcel Size and Ownership Patterns:

15          "Parcel size patterns are changing in the area,  
16          as it changes character from rural to urban.  
17          Immediately to the north of the subject property,  
18          lots are generally an acre or less in size, and  
19          the trend is likely to continue. See map  
20          attached as Exhibit B for a perspective on  
21          neighborhood lot sizes.

22          "(d) Neighborhood and Regional Characteristics:

23          "Again, the area has no definite character,  
24          except that the area is urbanizing. The Board  
25          notes, however, that the development of the area  
26          is halted for the present by the lack of sewers,  
27          and the soil, which does not permit septic  
28          systems to be installed.

29          "(e) Natural Boundaries:

30          "Natural boundaries are not a factor in this  
31          decision. The Board therefore finds the subject  
32          property is precommitted to nonfarm uses.

33          "Additionally, the subject property is already  
34          built on, it is the site of a shed and driveway."

BEFORE THE  
LAND CONSERVATION AND DEVELOPMENT COMMISSION  
OF THE STATE OF OREGON

CLEMENS,

Petitioner(s),

v.

LANE COUNTY,

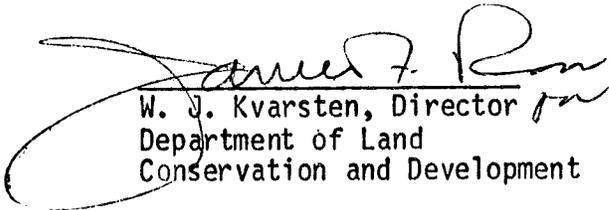
Respondent.

)  
LUBA 81-056  
LCDC Determination

The Land Conservation and Development Commission hereby approves  
the recommendation of the Land Use Board of Appeals in LUBA 81-056.

DATED THIS 30~~th~~ DAY OF September, 1981.

FOR THE COMMISSION:

  
W. J. Kvarsten, Director  
Department of Land  
Conservation and Development

WJK:ER:af  
6768A/9B



## STATE OF OREGON

## INTEROFFICE MEMO

TO: MEMBERS OF THE LAND CONSERVATION AND DEVELOPMENT COMMISSION      DATE: 9/4/81

FROM: THE LAND USE BOARD OF APPEALS

SUBJECT: CLEMENS V. LANE COUNTY  
LUBA NO. 81-056

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

Our ruling on this case places before the Commission the question of applicability of Statewide Goal 3 to an approval of a conditional use permit allowing a boat repair and storage business as a rural home occupation. We ruled the goal has not been complied with. The county did not take a Goal 2 exception to Goal 3 but rather attempted to rely on the "built upon or committed test." The county's reliance on the built upon portion of the test is faulty because the existing buildings were approved as and still are capable of serving as agriculture buildings. The conclusion of commitment is not supported by the record.

Petitioners also allege a violation of Goal 1. We have not ruled on Goal 1's applicability to this fact situation because the issue was not briefed by the respondents and the facts indicate petitioner was fully involved in the proceeding before the county.

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.



Contains  
Recycled  
Materials

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

3 RICHARD CLEMENS,                               )  
4                    Petitioner,                               )  
5            v.    )  
6 LANE COUNTY,    )  
7                    Respondent,                               )  
8            and    )  
9 MELVIN LEMMON,    )  
10                    Respondent-Applicant                    )

LUBA NO. 81-056  
PROPOSED OPINION  
AND ORDER

11            Appeal from Lane County.

12            Michael F. Farthing, Eugene, filed a brief and argued the  
13 cause for Petitioner. With him on the brief were Butler, Husk,  
14 Gleaves & Swearingen.

15            William A. Van Vactor, Lane County Counsel, appeared  
16 specially for the limited purpose of contesting petitioner's  
17 standing.

18            Bruce C. Moore, Eugene, filed a brief and argued the cause  
19 for Respondent-Applicant Melvin Lemmon. With him on the brief  
20 were Bick, Monte, Alstatt & Doyle.

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

23            Reversed.    9/03/81

24            You are entitled to judicial review of this Order.  
25 Judicial review is governed by the provisions of Oregon Laws  
26 1979, ch 772, sec 6(a).