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

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JACKSON-JOSEPHINE FOREST)
FARM ASSOCIATION, CRAIG)
LOWRY, RALPH MOULTON,)
Petitioners,)
vs.)
JOSEPHINE COUNTY,)
Respondent.)

LUBA No. 84-032

FINAL OPINION
AND ORDER

Appeal from Josephine County.

Susan M. Hammer, Portland, filed the Petition for Review on behalf of Petitioners.

No appearance by Josephine County.

BAGG, Chief Referee; DuBAY, Referee; KRESSEL, Referee; participated in this decision.

REMANDED 08/08/84

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

1 Opinion by Bagg.

2 NATURE OF THE DECISION

3 Petitioners appeal the county's approval of the
4 partitioning of a 105.80 acre parcel. Petitioners ask us to
5 reverse the decision.

6 FACTS

7 The division creates two lots within the woodlot
8 Residential (WR) Zone, one of 11.51 acres and one of 10.46
9 acres, and a third lot including the balance of the acreage in
10 the Forest Conservation (FC) Zone. The record includes
11 evidence that portions of the subject property have potential
12 for timber production. A county planning department staff
13 report concludes the area has "very good forestry potential."
14 Record at 30. There is also evidence in the record that the
15 area is a wildlife habitat.¹

16 The planning commission heard this matter on September 12
17 and September 26, 1983, and approved the partition. The
18 approval was appealed to the county board of commissioners
19 which upheld the planning commission's decision. This appeal
20 followed.

21 ASSIGNMENT OF ERROR 1

22 "The County failed to adopt findings of fact or
23 conclusions of law to show the partition complied with
Goal 4."

24 Petitioners assert the record reveals the property is under
25 the protection of statewide planning Goal 4, the forest lands
26 goal. Goal 4 requires that forest land be "retained for the

1 production of wood fibre and other forest uses." Petitioners
2 assert the only finding bearing on the question of compliance
3 with Goal 4 is the following:

4 "The Planning Commission did consider Goal 4, Forest
5 Lands, as pertains to the woodlot concept, and
6 attached protective conditions of approval
7 accordingly." Record 16.

8 The county's order recites that the findings of fact and
9 conclusions are set forth in an attached exhibit. The exhibit
10 does not discuss Goal 4 except in the finding quoted above.
11 The exhibit, however, adopts by reference the findings of fact
12 made by the planning commission, along with "the entire record
13 and file documents before the Planning Commission, and the
14 minutes and documents submitted and resulting from this appeal
15 proceeding." Record at 17. However, we note the planning
16 commission did not make a written order containing findings of
17 fact and conclusions. We assume the reference is simply to the
18 minutes of the planning commission's meeting on the matter.

19 We decline to consider the record, minutes and documents in
20 the file to be findings of fact or conclusions of law. The
21 county board's order must state, or clearly refer to documents
22 which state, the facts believed to be true. Designating an
23 entire record as findings tells nothing of the standards the
24 county found to be applicable and the facts the county found to
25 be true. A record contains a considerable amount of
26 information, often contradictory information. This requirement
is not fulfilled by making reference to a stack of papers. See

1 South of Sunnyside Neighborhood League v. Clackamas County
2 Commissioners, 280 Or 3, 569 P2d 1063 (1977); Phillips v. Coos
3 County, 4 Or LUBA 73 (1981). Also, we will not consider
4 minutes of local governmental meetings to constitute findings.
5 Allen v. Columbia County Board of Commissioners, 6 Or LUBA 81
6 (1982).²

7 We conclude, therefore, that the order lacks findings
8 showing compliance with statewide planning Goal 4.³

9 Petitioners' first assignment of error is sustained.

10 ASSIGNMENT OF ERROR 2

11 "The partition violated Goal 4."

12 In this assignment of error, petitioners allege the county
13 violated Goal 4 because the partitioning was contrary to the
14 provisions of an LCDC enforcement order issued February 3,
15 1984. The enforcement order prohibits the county from
16 approving any land division which creates parcels smaller than
17 40 acres in the WR-10 and FR-10 Zone.⁴

18 We understand petitioners to request us to find the county
19 in violation of the enforcement order. We do not believe we
20 have authority to determine violations of enforcement orders.
21 Compliance with enforcement orders is handled in another
22 forum. See ORS 197.320(6). However, petitioners may be asking
23 us to find the county in violation of Goal 4 simply because
24 LCDC found the county ordinance controlling this decision fails
25 to meet goal requirements. We believe we may consider the
26 enforcement order as an expression of LCDC opinion on a related

1 goal issue. While we give great weight to such an expression,
2 there is no legal requirement that we automatically find the
3 county to be in violation of the goal. 1000 Friends of Oregon
4 v. Wasco County Court, 68 Or App 765, ___ P2d ___ (1984). See
5 our opinion issued this day in Jackson-Josephine Forest Farm
6 Association v. Josephine County, LUBA No. 84-037.

7 Petitioners' argument may also be read to allege that
8 failure to adopt findings showing compliance with Goal 4
9 violates Goal 4. McCrystal v. Polk County, 1 Or LUBA 145
10 (1980); see also, Thede v. Polk County, 3 Or LUBA 335 (1981).
11 In this case, it is not entirely clear that the county found
12 Goal 4 to be applicable. Because of the county's failure to
13 adopt findings discussing Goal 4 we are unable to fulfill our
14 review function. Without findings, we simply cannot determine
15 whether Goal 4 is or is not applicable and whether it has or
16 has not been violated. Hoffman v. DuPont, 1 Or LUBA 136
17 (1980), 49 Or App 699, 621 P2 63, rev den, 290 Or at 651
18 (1981). Therefore, this matter must be remanded to the county
19 for the development of findings on the Goal 4 issue.

20 ASSIGNMENT OF ERROR 3

21 "The Board's finding on Goal 5 is not supported by the
22 Record."

23 Petitioners allege the record shows the property is an
24 important blacktail deer winter range. Petitioners advise the
25 respondent county was required to make findings showing
26 compliance with Goal 5 and particularly that portion of Goal 5

1 calling for the protection of wildlife habitat.⁵ Patzkowsky
2 v. Klamath County, 8 Or LUBA 64 (1983). As evidence the
3 property is subject to the protection of Goal 5, petitioners
4 cite an Oregon Department of Fish and Wildlife study opposing
5 the partitioning because of the blacktail deer winter range.
6 See Record 145.

7 There is sufficient evidence in the record showing the
8 property may be subject to Goal 5 protection to warrant
9 adoption of findings about Goal 5. The conclusion in the
10 county's order that the property is not a "critical or
11 sensitive blacktail deer habitat" is not sufficient. See
12 Record at 16. The conclusion fails to address Goal 5 directly,
13 or explain what distinctions are intended by the ambiguous
14 words "critical" and "sensitive."⁶ We are cited to nothing,
15 furthermore, showing this conclusion is supported by
16 substantial evidence in the record.⁷

17 Petitioners' third assignment of error is sustained.

18 ASSIGNMENT OF ERROR 4

19 "The partition violated Goal 5."

20 The county's order does not make conclusions about
21 applicability or compliance with Goal 5. Goal 5 and Goal 5
22 issues are found in the following:

23 "A) Summary

24 "The appellant in this matter had argued that the
25 Planning Commission had not followed Statewide
26 Planning Goal 4, Forest Lands, the County Hearing
Rules, the recommendation of the Department of Fish

1 and Wildlife pertaining to Statewide Goal 5, and that
2 the WR zoning was an oversight."

3 * * *

4 "The response from the Department of Fish and
5 Wildlife did not establish by study or fact that the
6 subject property was critical or sensitive blacktail
7 deer habitat, and the use of this argument by the
8 appellant is without foundation." Record at 16.

9 As noted, supra, there is evidence in the record that Goal
10 5 may be applicable because of the evidence about the blacktail
11 deer habitat. The fact the county zoned a portion of this
12 property WR, a zoning designation which is designed to protect
13 natural resources, suggests the county believes some of the
14 natural resource elements included in Goal 5 are applicable to
15 this proceeding. However, we would be substituting our
16 judgment for that of the county were we to conclude that the
17 county found Goal 5 to be applicable or not. The county has
18 simply not articulated in its findings whether Goal 5 is
19 applicable or not and whether this partitioning complies with
20 the goal. As with the Goal 4 issue, without findings we are
21 unable to perform our review function. Hoffman, supra. If the
22 county believes Goal 5 to be inapplicable in this case, it
23 needs to say so. See, 1000 Friends of Oregon v. Douglas
24 County, 1 Or LUBA 42 (1980). As it is, we are faced with a
25 record including information suggesting the property is subject
26 to Goal 5 and a county order which fails to respond to this
evidence or to otherwise make clear whether Goal 5 is or is not
applicable. As a consequence, the matter must be remanded for

1 the development of adequate findings and, perhaps, a more
2 extensive record to supply substantial evidence for whatever
3 findings the county may make. See, Niemi v. Clatsop County, 6
4 Or LUBA 147 (1982).

5 This matter is remanded to Josephine County for further
6 proceedings not inconsistent with this opinion. The county
7 must adopt findings of fact and conclusions of law addressing
8 applicability and compliance with statewide planning Goals 4
9 and 5, in particular, and also all other relevant criteria
10 whether found in statewide planning goals, statutes or the
11 county's own plan and ordinances.

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FOOTNOTES

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4 Goal 4 recognizes wildlife habitat as a forest use.

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6 Even if we were to consider minutes of the board's hearings
7 to be part of the order, the minutes offer no support for the
8 decision. The individual comments of the board members,
9 recited in the minutes, advising why individual commissioners
10 voted for a particular course of action do not constitute
11 findings or conclusions of the board. We believe the board
12 speaks through its order, and while the comments of the
13 commissioners may be interesting to the persons present or to
14 the reader of a record, they do not offer findings of fact and
15 conclusions of law by the decisionmaker, the county board of
16 commissioners. See our opinion issued this date in
17 Jackson-Josephine Forest Farm Assoc. v. Josephine County, (LUBA
18 No. 84-037, Slip Op 08/08/84).

19 3
20 Josephine County has not, as yet, received acknowledgment
21 from the Land Conservation and Development Commission stating
22 its land use plan and implementing measures are in compliance
23 with statewide planning goals. Any land use action taken by
24 the county must be in compliance with statewide planning goals
25 and not only local plans and ordinances. ORS 197.175(2)(c).

26 4
27 We believe we may take notice of the enforcement order
28 under the provisions of ORS 40.090(2). In addition, we have
29 received no objection to consideration of the enforcement order.

30 5
31 Goal 5: "To conserve open space and protect natural and
32 scenic resources.

33 "Programs shall be provided that will: (1) insure open
34 space, (2) protect scenic and historic areas and natural
35 resources for future generations, and (3) promote healthy and
36 visually attractive environments in harmony with the natural
37 landscape character. The location, quality and quantity of the
38 following resources shall be inventoried:

* * *

"d. Fish and wildlife areas and habitats;"

6

Goal 5 does not discuss wildlife habitat in terms of whether it is "critical" or "sensitive." The goal simply lists wildlife habitat as a resource. See Footnote 5, supra. While the quality of the resource may be a consideration in making choices between Goal 5 resources and other needs, the quality of the wildlife habitat has nothing to do with whether or not the goal applies.

7

We are aware that during the course of the commissioners' meeting on this issue one of the commissioners stated that there is "much deer winter range in Josephine County." See Record 118. Presumably, the commissioner believed there is enough range without this property. The statement does not constitute a finding or conclusion of law for the reasons discussed, supra. See Olsen v. Columbia County, 8 Or LUBA 152 (1983).