

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

3
4 THOR A. BERG,)
5)
6 Petitioner,)
7)
8 vs.)
9) LUBA No. 91-115
10 LINN COUNTY,)
11) FINAL OPINION
12 Respondent,)
13) AND ORDER
14 and)
15)
16 RIVER OAKS GOLF CENTER, and)
17 RANDY TRIPP,)
18)
19 Intervenors-Respondent.)

20
21
22 Appeal from Linn County.

23
24 Thor A. Berg, Sweet Home, filed the petition for review
25 and argued on his own behalf.

26
27 John T. Gibbon, Albany, represented respondent.

28
29 Edward F. Schultz, Albany, represented intervenors-
30 respondent.

31
32 SHERTON, Referee; HOLSTUN, Chief Referee, participated
33 in the decision.

34
35 REMANDED 01/02/92

36
37 You are entitled to judicial review of this Order.
38 Judicial review is governed by the provisions of ORS
39 197.850.

1 Opinion by Sherton.

2 **NATURE OF THE DECISION**

3 Petitioner appeals a board of county commissioners
4 order approving a conditional use permit for a golf center.

5 **MOTION TO INTERVENE**

6 River Oaks Golf Center and Randy Tripp move to
7 intervene in this proceeding on the side of respondent.
8 There is no opposition to the motion, and it is allowed.

9 **FACTS**

10 The subject property is 44.78 acres in size and is
11 zoned Exclusive Farm Use (EFU). It is surrounded by other
12 EFU zoned properties. The City of Albany Urban Growth
13 Boundary adjoins the property to the north.

14 Intervenors-respondent applied for a conditional use
15 permit for a golf center on the subject property. The golf
16 center was proposed to consist of an 18 hole par 3 golf
17 course,¹ driving range, miniature golf course, coffee shop
18 and golf equipment sales area. The county planning
19 commission approved the conditional use permit. Petitioner
20 appealed this decision to the board of commissioners. After
21 a de novo hearing, the board of commissioners approved a
22 conditional use permit for a modified golf center,
23 consisting of an 18 hole par 3 golf course, driving range,
24 snack bar and golf equipment sales area.

¹An 18 hole par 3 golf course (with a course par of 54) is considerably smaller than a regulation golf course (with a course par of 70-72).

1 This appeal followed.

2 **MOTION TO DISMISS**

3 On the day of the oral argument in this appeal, the
4 Board received a motion to dismiss from respondent.² That
5 motion, in its entirety, states that respondent moves to
6 dismiss this appeal "for lack of jurisdiction since with the
7 applicant's withdrawal there is no valid application under
8 Linn County Zoning Ordinance [LCZO] § 2.100." Motion to
9 Dismiss 1.

10 Although the documents constituting "the applicant's
11 withdrawal" are not attached to the motion to dismiss, we
12 understand respondent to argue that intervenors have
13 withdrawn their application for a conditional use permit for
14 a golf center and, therefore, that this appeal is moot.

15 LCZO 2.100 ("Application Process") states that
16 applications are required for the development of land under
17 the LCZO, and sets out requirements for the content and
18 review of such development applications. LCZO 2.100 does
19 not address the effect of the applicant's withdrawal of an
20 application after the county has made a final decision
21 approving that application. We have previously stated that
22 where it is not clear from the local code that the
23 applicant's withdrawal of a permit application after the
24 local government makes a decision approving it has any

²Neither respondent nor intervenors-respondent (intervenors) have filed a response brief.

1 effect on that decision, the withdrawal does not in itself
2 make an appeal of such decision to this Board moot. Gilson
3 v. City of Portland, ___ Or LUBA ___ (LUBA No. 91-093,
4 November 15, 1991), slip op 14; McKay Creek Valley Assoc. v.
5 Washington County, 16 Or LUBA 1028 (1987).

6 The motion to dismiss is denied.

7 **FIFTH ASSIGNMENT OF ERROR**

8 "Respondent made inadequate findings under ORS
9 215.296(1), which is applicable to all golf
10 courses placed on land zoned for exclusive farm
11 use."

12 Golf courses are allowed in the county's EFU zone
13 pursuant to ORS 215.283(2)(e). ORS 215.296(1) provides:

14 "A use allowed under ORS 215.213(2) or 215.283(2)
15 may be approved only where the local governing
16 body or its designee finds that the use will not:

17 "(a) Force a significant change in accepted farm
18 or forest practices on surrounding lands
19 devoted to farm or forest use; or

20 "(b) Significantly increase the cost of accepted
21 farm or forest practices on surrounding lands
22 devoted to farm or forest use."

23 The county findings relevant to the requirements of
24 ORS 215.296(1) provide:

25 "Surrounding farm uses include cattle pasture, a
26 horse stable and grass seed production. No
27 comments in opposition to the proposal have been
28 received from the owners/operators of these farm
29 uses. * * *

30 "Conditions of approval have been incorporated
31 into the decision that allow irrigation of the
32 golf course only from the Calapooia River. Any
33 well on the property may not be used for golf

1 course irrigation.

2 "Information from a recognized expert in the field
3 of turf management * * * has been submitted that
4 demonstrates healthy turf will act as a biological
5 filter to minimize movement of fertilizers and
6 pesticides into ground water. This will limit any
7 potential impact fertilizers and pesticides may
8 have on water for stock.

9 "There has been no information submitted that
10 indicates the proposed development will result in
11 any change in the accepted farming practices or
12 that the proposal will result in a significant
13 increase in the cost of the accepted farming
14 practices." (Emphasis added.) Record 8.

15 Petitioner argues the above quoted findings do not
16 describe the farm practices on lands surrounding the subject
17 property and do not explain why the proposed golf center
18 will not force a significant change in those practices or
19 their cost, as required by ORS 215.296(1). Petitioner also
20 argues that the portion of the findings emphasized above
21 indicates that the county improperly shifted the burden of
22 showing whether there will be a significant impact on farm
23 practices on surrounding lands onto petitioner and other
24 opponents of the proposed golf center. See Platt v.
25 Washington County, 16 Or LUBA 151 (1987).

26 Petitioner is correct that under ORS 215.296(1), the
27 burden is on the applicant (intervenors) to show the
28 proposed golf center will force no significant change in
29 accepted farming practices or their cost, and on the county
30 to so find. Schellenberg v. Polk County, ___ Or LUBA ___
31 (LUBA No. 91-018, August 2, 1991), slip op 12; Platt v.

1 Washington County, 16 Or LUBA at 154. Thus, the above
2 emphasized portion of the county findings stating that
3 "[t]here has been no information submitted that indicates
4 the proposed development will result in any change in the
5 accepted farming practices * * *" (emphasis added) does
6 nothing to establish compliance of the proposed use with ORS
7 215.296(1).

8 We have previously stated that in order to demonstrate
9 compliance with ORS 215.296(1), county findings must:

10 "* * * (1) describe the farm and forest practices
11 on surrounding lands devoted to farm and forest
12 use, (2) explain why the proposed use will not
13 force a significant change in those practices, and
14 (3) explain why the proposed use will not
15 significantly increase the cost of those
16 practices. * * *" Schellenberg v. Polk County,
17 supra, slip op at 20; see Washington Co. Farm
18 Bureau v. Washington Co., ___ Or LUBA ___ (LUBA
19 No. 90-154, March 29, 1991), slip op 9 n 6.

20 In this case, the findings state only that
21 "[s]urrounding farm uses include cattle pasture, a horse
22 stable and grass seed production." Record 8. The findings
23 fail to identify the farm practices employed on the
24 surrounding properties devoted to these farm uses.
25 Furthermore, without an adequate identification of the
26 accepted farm practices on surrounding lands, the findings
27 cannot explain why the proposed use will not cause a
28 significant change in or increase the cost of such
29 practices. Schellenberg v. Polk County, supra, slip op at
30 22-23. We, therefore, agree with petitioner that the

1 findings are inadequate to demonstrate compliance with ORS
2 215.296(1).

3 The fifth assignment of error is sustained.³

4 The county's decision is remanded.

³Sustaining the fifth assignment of error necessitates remand of the county's decision. In view of the time constraint imposed on the issuance of this Board's final opinions and orders by ORS 197.830(14), and the indication by respondent that intervenors have withdrawn their application and no longer desire to conduct the proposed use on the subject property, we do not address the first through fourth assignments of error.