

BEFORE THE BOARD OF COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

Applications by Western States
Development Corp. for the validation of
farm management plans.

PRE 16-98, 17-98 and 18-98

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
FINAL ORDER

99-113

The Multnomah County Board of County Commissioners (the Board) hereby denies the applicant's request for validation of its farm management plans under Ordinance 903. Validation of the plans was sought as a prerequisite for building permits for dwellings in conjunction with farm use on the subject parcels.

I. PROCEDURE AND PROCEDURAL HISTORY:

In the 1980s, Western States Development Corp. (Western States), as well as others, acquired several large tracts of farm and forestland in Northwest Multnomah County. It divided the tracts into approximately 20-acre parcels and, for land zoned as farmland, obtained approvals of farm management plans for "dwellings in conjunction with farm use" in 1989.

In 1998, a case came before a prior Board involving a similar permit. Opponents requested that the permits be declared invalid because they were nine years old and had never been implemented. The Board was reluctant to declare the permits invalid and requested an ordinance be drafted to void unimplemented pre-1994 farm dwelling permits unless, within two years of adoption, there was a determination of substantial implementation of the first two years of the farm management plans.

Ordinance 903 was appealed by Rochlin/Foster to LUBA. LUBA found that the notice provisions of the ordinance were invalid because they did not comply with state law. LUBA remanded the ordinance back to the County. That LUBA decision was appealed by Western States, as an Intervenor, to the Court of Appeals. The Court of Appeals affirmed LUBA.

The three PRE's on appeal before this Board were filed with the Planning Department after the LUBA decision but before the Court of Appeals decision.

The preliminary procedural question that was before this Board on June 10, 1999, was what effect the remand of Ordinance 903 would have on the three PRE applications on appeal before this Board.

II. APPLICATION OF ORDINANCE 903 TO THESE APPLICATIONS:

Board options were to sever and apply the substantive provisions of Ordinance 903 to the subject applications; or, to not sever the valid and invalid provisions, treating the entire ordinance as invalid on account of the remand of Ordinance 903.

Oregon case law allows severance and application of the valid portions of an ordinance when a part of an ordinance is declared invalid, if the invalid portions are not "inseparably connected." *City of Portland v. Dollarhide*, 300 Or 490, 504 (1986).

However, there are no cases mandating a jurisdiction apply the valid portions of an ordinance where other portions were held by an appellate court to be invalid.

III. FINDINGS AND DECISION:

We noticed a hearing on the appeals of applicant and opponents Rochlin/Foster in the above-referenced matter for June 10, 1999. The Clerk of the Board called the item at the appointed time.

As a preliminary matter, we heard an explanation by County Counsel on our options on how to deal with Ordinance 903 in these appeals.

We find the following:

- (1) That the Board has the legal discretion to sever and apply the portions of Ordinance 903.
- (2) That the Board has the legal discretion to not sever Ordinance 903.
- (3) We exercise our discretion to not sever and apply the portions of Ordinance 903 that were found to be valid.
- (4) The reasons we rely upon for not applying any of the provisions of Ordinance 903 include:
 - a) The notice provisions of Ordinance 903 are invalid by a decision of LUBA (Case No. 98-067) and affirmed by the Court of Appeals (Case No. CA 104562 (Control)) because they are inconsistent with state statutory requirements.

b) The substantive provisions of Ordinance 903 set out criteria for validation of previously approved (pre-1993) farm management plans that are less strict than OAR 660-05-030(4) (1986). This OAR was in effect at the time of the original approvals of the farm management plans and required that the day-to-day activities on the subject land be principally directed to the farm use of the land. It is likely that the criteria of Ordinance 903 are insufficient under state law because they do not assure compliance with this OAR. This matter was not decided by LUBA in the appeal of Ordinance 903 but could be an issue in any case where the remaining provisions of Ordinance 903 are used as criteria in a land use application.

c) This Board, as a matter of policy, has determined that its land use decisions must be based on criteria at least as strict as state law requires.

d) This Board declares that for purposes of these appeals that the provisions of Ordinance 903 should not be applied to these applications.

e) The Board has directed staff to place on the Board agenda, after proper notices, the repeal of Ordinance 903.

(5) We deny the applications of applicant because they were made under Ordinance 903; the criteria of Ordinance 903 were applied by the staff and the Hearings Officer; and, those criteria are not applicable to a determination of sufficient day-to-day farm use of the land for a dwelling in conjunction with farm use.

(6) The appeals of opponents Rochlin/Foster are moot.

(7) The appeals of applicant are moot.

IV. CONCLUSION

Based on the foregoing Findings of Fact and Conclusions of Law, we hereby deny the applicant's request for validation of the farm management plans approved in 1989 for PRE 16-98, 17-98 and 18-98.

IT IS SO ORDERED this 17th day of June, 1999.



BOARD OF COUNTY COMMISSIONERS
MULTNOMAH COUNTY, OREGON


Beverly Stein, Chair

REVIEWED:

THOMAS SPONSLER, COUNTY COUNSEL
FOR MULTNOMAH COUNTY, OREGON

By


Sandra N. Duffy
Chief Assistant County Counsel

H:data/lit/Duffy/Western States/Findings