

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

LINN COUNTY FARM BUREAU, CORY  
KOOS and KIM KOOS, JOHN GALE  
SWATZKA ESTATE, BETTY JO SMITH,  
MARY B. PARKER and LONNIE L. PARKER,  
PETER BOUCOT and JAN BOUCOT,  
MICHAEL GREIG and PRISCILLA GREIG,  
TELLY WIRTH, CAROLYN JENKS OLSEN,  
CINDY CLARK, ART MARTINAK and  
JOYCE MARTINAK, DEAN SCHROCK and  
KATHLEEN SCHROCK,

Petitioners,

v.

LINN COUNTY BOARD OF  
COMMISSIONERS,

Respondent.

LUBA No. 2010-006

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**PETITION FOR REVIEW**

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1           **I.       STANDING**

2           ORS 197.830(2) establishes two requirements for standing to bring a LUBA appeal.  
3           Petitioners must have (1) filed a timely notice of intent to appeal, and (2) appeared during the  
4           local proceedings. *Miller v. Washington County*, 25 Or LUBA 169 (1993). The final order on  
5           the proceedings was issued on January 11, 2010. Petitioners’ notice of intent to appeal was filed  
6           on January 25, 2010, within 21 days of the final decision. Petitioners appeared orally and in  
7           writing during the local proceeding. Rec. pp. 112-114, 116-118, 126, 128-129, 131-137, 145,  
8           1020, 1032, and elsewhere. Thus, Petitioners have standing.

9           **II.       STATEMENT OF THE CASE**

10           **A.       Nature of the Decision and Relief Sought.**

11           The challenged decision, Linn County Board of Commissioners Resolution No. 2009-570  
12           (the “Challenged Decision”), approves a conditional use permit application by the Linn County  
13           Parks & Recreation Department to develop a County park on a 175-acre property, including  
14           recreational vehicle camping facilities in the Exclusive Farm Use (EFU) zone. Petitioners seek  
15           reversal or remand of the County’s decision.

16           **B.       Summary of Argument.**

17           Linn County (“Respondents” or “County”) misinterpreted ORS 215.283(2)(d)’s  
18           allowance of parks on EFU land by ignoring the limitations imposed on such use by the  
19           implementing regulations under OAR 660-034-0035 and 660-034-0040. Although public parks  
20           are permissible uses on farmland, the urban type RV park authorized by Linn County in the  
21           challenged decision exceeds the intensity of allowable park uses when the County has not  
22           adopted a local park master plan or taken an exception to Goal 3.

23           Based on the analysis of state statute and park planning regulations, the County could not  
24           approve the RV park component of the proposed park without taking exceptions to the Goals.  
25           Since the statewide process for avoiding the exception process has not been met in this  
26           application, the County was required to determine whether Goal 14 is implicated by the proposed

1 196 space RV park. Based on *1000 Friends of Oregon v. Marion County*, 24 Or LUBA 20  
2 (1992), and *1000 Friends of Oregon v. LCDC* (“Curry County”), 301 Or 447 (1986), the RV  
3 park is an urban use on resource land that is impermissible unless the County undergoes an  
4 exception to Goal 14.

5 Moreover, the County’s proposal to develop urban levels of public services requires the  
6 County to review the application for an exception to Goal 11. The septic system proposed to  
7 serve the RV park and other park uses will cross two parcels and is an urban scale community  
8 facility that qualifies as a sewer system under OAR 660-011-0060(1)(f). These characteristics  
9 show that County’s process culminates in allowing the establishment of a new sewer system  
10 outside of the UGB in contravention to OAR 660-011-0060(2)(a) and impermissibly does so  
11 without taking an exception to Goal 11. Further, the County’s condition of approval to  
12 consolidate the parcels is an improper deferral of the county code criteria and Petitioners due  
13 process with respect to construction of the septic system under *Gould v. Deschutes County*  
14 (“*Gould II*”), 216 Or.App. 140 (2007) and *Gould v. Deschutes County* (“*Gould IV*”), 227  
15 Or.App. 601, 611 (2009).

16 In addition, the RV park use requires review under Goal 12 to determine whether  
17 allowing the RV park will comply with the transportation planning rule (TPR) because Goal  
18 exceptions will be required. Since the record does not contain a final traffic study and the sole  
19 traffic study prepared to analyze the project only reviews impacts in 2008, the TPR is violated  
20 because the County has not reviewed the project in light of the TPR planning period.

21 In light of the County’s improper reliance on state law under ORS 215.283 and OAR  
22 660-034-0040 to avoid direct application of the Goals, the County unlawfully approved the  
23 proposed urban uses by dressing the RV park in the costume of a local park.

24 **C. Summary of Material Facts.**

25 In this case, Linn County attempts to enter the business of renting recreational vehicle  
26 spaces, 196 of them, within an RV “Park” under the guise of building a local public park. On

1 January 5, 2010 Linn County approved a conditional use permit to develop a county park on a  
2 175-acre property identified as 12-3-4 tax lots 500 and 600. Rec. pp. 6-9. The approval  
3 guarantees that 196 year round RV parking spaces are allowed at the park, even though the Parks  
4 & Recreation Department intends to phase the RV parking space development beginning with 50  
5 spaces. Rec. p. 11. The property is planned and zoned Exclusive Farm Use (EFU) on the far  
6 west portion of the County, where the comprehensive plan emphasizes protection of farmland for  
7 farm use. Rec. pp. 10 and 156. It is located at the southwest corner of the intersection of  
8 Highway 34 and Seven Mile Lane, within 2 – 2.4 miles of the urban growth boundaries (UGB)  
9 of both Albany and Tangent. Rec. pp. 10 and 21. The land has not been included in the  
10 County’s local park master plan, is prime farmland as identified in the County’s comprehensive  
11 plan, comprised of Class II-IV soils, and is currently under cultivation in perennial ryegrass.  
12 Rec. pp. 150, 153, 201 and 1002.

13 The proposed park would include natural areas and day use areas. Rec. p. 11. Sixty of  
14 the 175 acres would contain RV camping facilities accommodating up to 196 spaces. Rec. p. 11.  
15 The park amenities would include trails, play areas, shelters and restrooms with the necessary  
16 supporting infrastructure and utilities. Access would be at two locations on Seven Mile Lane.  
17 The County stated that water requirements would be 20,000 – 25,000 per day, provided by a  
18 community water system. Rec. p. 26. Urban scale sewage disposal facilities to serve the RV  
19 park, RV dump station, and up to eight restroom/shower locations would be provided on-site and  
20 cross both tax lots. Rec. pp. 26 and 211. Although the County claims that only 50 RV spaces  
21 will be constructed at this time, the supporting infrastructure and utilities for the full 196 space  
22 RV park have been approved for the entire project. Rec. pp. 6-9.

23 Notwithstanding the many existing RV facilities available nearby and along the I-5  
24 corridor, including the Blue Ox RV Park in Albany, the Mallard Creek Golf Course, Foster Lake  
25 RV Park & Campground, Lane KOA, KOA Albany-Corvallis, and Knox Butte RV Park, and an  
26 RV Park currently under development along I-5 at the Jefferson exit (Rec. p. 156), the County

1 believes that additional agricultural land should be transformed into an urban-scale RV Park with  
2 individual water, electrical and sewer hook-ups, permanent caretaker residence, camp store,  
3 clubhouses, and restroom facilities. Rec. pp. 10, 12 and 197.

### 4 III. STATEMENT OF JURISDICTION

5 Respondent's final decision involves the discretionary application of the state land use  
6 statutes and regulations, as well as the County's Comprehensive Plan. Accordingly, the County  
7 decision is a land use decision as that term is defined under ORS 197.015(10).

### 8 IV. STANDARD OF REVIEW

9 Under ORS 197.835(9), LUBA must reverse or remand the County's decision if it  
10 improperly construed the law or made a decision unsupported by substantial evidence. The  
11 County identified the following state laws as applicable decision criteria: ORS 215.283(2)(d),  
12 OAR 660-034-0035 and OAR 660-034-0040. Therefore, LUBA is not required to give the  
13 County's interpretation of ORS 215.283(2)(d) and the related administrative rules deference;  
14 instead LUBA must determine whether the county correctly interpreted the applicable statutes.  
15 *Collins v. Klamath County*, 148 Or App 515, 520, 941 P2d 559 (1997) (citing *Marquam Farms*  
16 *Corp. v. Multnomah County*, 147 Or App 368, 380, 936 P2d 990 (1997)). As will be shown  
17 below, the County misinterpreted the state land use regulations and inadequately addressed the  
18 approval criteria. Therefore, LUBA must reverse or remand the County's decision.

19 In addition, under ORS 197.835(8), LUBA must reverse or remand the County's decision  
20 if the challenged decision is not in compliance with the County's comprehensive plan. The  
21 County listed as decision criteria Linn County's Comprehensive Plan ("LCC") 933.310 which  
22 states that all criteria listed in 933.310(B) apply to the proposed park as well as mandating that  
23 "other requirements of law are met." In addition, LCC 928.330, governing nonfarm uses on  
24 EFU zones, similarly requires that uses approved in the Rural Resource Zone must meet "other  
25 requirements of the law." In several instances discussed in the assignments of error below, the  
26

1 County failed to meet requirements of its comprehensive plan, the county's local constitution  
2 governing land use decisions. Therefore, the County's decision must be reversed or remanded.

3 **V. ASSIGNMENTS OF ERROR**

4 **FIRST ASSIGNMENT OF ERROR - The County Misinterpreted the**

5 **Applicable Law and Failed to Comply with Goal 2, Exceptions.**

6 The County's decision criteria includes,

7 "Relevant statutes and administrative rules include ORS  
8 215.283(1)(p) and 215.283(2)(d); ORS 215.296; OAR 660-034-  
0035; and OAR 660-034-0040."

9 Rec. p. 10. The County findings then contends that,

10 "Arguments have been made in this case that the proposed park  
11 cannot be approved unless the County takes 'exception' to a host  
12 of statewide planning goals\*\*\* The Board rejects the arguments  
13 made with regard to Goal exceptions. State law allows the  
development of public parks in Exclusive Farm Use zones. An  
exception is not required to allow public park uses in the  
established zone.\*\*\*

14 ORS 215.283 allows listed farm and nonfarm uses to take place in  
15 exclusive farm use zones. Both state statute and LCDC  
16 administrative rules allow the use of agricultural land for the  
development of public parks."

17 Rec. pp. 18-19. However, the permissibility of locating a public park on agricultural and  
18 forestland is limited by the state regulations that govern local park planning. Pursuant to  
19 OAR 660-034-0040, LCDC created a process to plan for local parks on EFU lands, as requiring  
20 the preparation of local park master plans.<sup>1</sup>

21 \_\_\_\_\_  
22 <sup>1</sup> OAR 660-034-0040 Planning for Local Parks

23 "(1) Local park providers may prepare local park master plans, and local governments may amend  
24 acknowledged comprehensive plans and zoning ordinances pursuant to the requirements and procedures of  
25 ORS 197.610 to 197.625 in order to implement such local park plans. Local governments are not required  
26 to adopt a local park master plan in order to approve a land use decision allowing parks or park uses on  
agricultural lands under provisions of ORS 215.213 or 215.283 or on forestlands under provisions of OAR  
660-006-0025(4), as further addressed in sections (3) and (4) of this rule. If a local government decides to  
adopt a local park plan as part of the local comprehensive plan, the adoption shall include:

(a) A plan map designation, as necessary, to indicate the location and boundaries of the local park; and

1 The purpose of local park master planning is to take into account those comprehensive  
2 plan policies that prevent adverse impacts to other valued resources like agricultural land, and  
3 require recreational needs studies. See OAR 660-034-0040(4)(b) and OAR 736-018-  
4 0015(16)(f).<sup>2</sup> For example, looking at LCC governing community facilities and development,  
5 LCC Chapter 904<sup>3</sup> applies to recreational planning. LCC 904.400 directs that the

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7 (b) Appropriate zoning categories and map designations (a "local park" zone or overlay zone is  
8 recommended), including objective land use and siting review criteria, in order to authorize the existing and  
9 planned park uses described in local park master plan.

9 (2) Unless the context requires otherwise, this rule does not require changes to:

10 (a) Local park plans that were adopted as part of an acknowledged local land use plan prior to July 15,  
11 1998; or

12 (b) Lawful uses in existence within local parks on July 15, 1998.

13 (3) All uses allowed under Statewide Planning Goal 3 are allowed on agricultural land within a local park  
14 and all uses allowed under Statewide Planning Goal 4 are allowed on forest land within a local park, in  
15 accordance with applicable laws, statewide goals, and rules.

16 (4) Although some of the uses listed in OAR 660-034-0035(2)(a) to (g) are not allowed on agricultural or  
17 forest land without an exception to Goal 3 or Goal 4, a local government is not required to take an  
18 exception to Goals 3 or 4 to allow such uses on land within a local park provided such uses, alone or in  
19 combination, meet all other statewide goals and are described and authorized in a local park master plan  
20 that:

17 (a) Is adopted as part of the local comprehensive plan in conformance with Section (1) of this rule and  
18 consistent with all statewide goals;

19 (b) Is prepared and adopted applying criteria comparable to those required for uses in state parks under  
20 OAR chapter 736, division 18; and

21 (c) Includes findings demonstrating compliance with ORS 215.296 for all uses and activities proposed on  
22 or adjacent to land zoned for farm or forest use.”

23 <sup>2</sup> Note that OAR 660-034-0040(b) directs local park master planning prepared and adopted applying criteria  
24 comparable to those required for uses in state parks under OAR chapter 736, division 18, which is why Petitioners  
25 point to the criteria in OAR 736-018-0015(16)(f) that

26 “Findings describing the compliance of the master plan with the state land use  
goals, ORS 215.296, compatibility with applicable local comprehensive plans,  
and other findings as needed for local comprehensive plan amendments\*\*\*\*”

<sup>3</sup> Although Linn County Code Chapter 904 is not in the record, the Court may take judicial notice of these  
documents. *Fort Vannoy Irr. Dist. v. Water Resources Com'n*, 345 Or 56, 188 P3d 277 (2008).

1                    “[c]ounty’s primary niche in the provision of park land is largely  
2                    outside of the larger urban areas and federal resource lands, and  
3                    away from the intensive agricultural lands in the far west portion  
4                    of Linn County.” (emphasis added).

4                    LCC 904.400 further directs that development of future proposals for recreational facilities  
5                    should include consideration of the recreational needs of the County as determined through  
6                    recreation studies and public input. Rec. pp. 152-153, 156. The County’s decision to ignore this  
7                    plan policy obviated the need for a master planning process that would require a public review  
8                    process under OAR Chapter 736, Division 18, and would require explicit findings demonstrating  
9                    compliance with ORS 215.296 regarding whether the park would increase farming costs.<sup>4</sup>  
10                    Rec. pp. 112 and 1004. In effect, if a park master plan is adopted then the County can avoid  
11                    taking Goal 3 or Goal 4 exceptions. Linn County has not prepared such a local parks master plan  
12                    and Petitioners raised the lack of such plan throughout the public review process. Rec. pp 153  
13                    and 1002.

14                    Where no local park master plan has been adopted, Linn County may still consider a local  
15                    plan in compliance with OAR 660-034-0040(4), which provides:

16                    “(4) Although some of the uses listed in OAR 660-034-0035(2)(a)  
17                    to (g) are not allowed on agricultural or forest land without an  
18                    exception to Goal 3 or Goal 4, a local government is not required  
19                    to take an exception to Goals 3 or 4 to allow such uses on land  
20                    within a local park provided such uses, alone or in combination,  
21                    meet all other statewide goals and are described and authorized in  
22                    a local park master plan that:

22                    <sup>4</sup>                    See OAR 660-034-0040(4)(b) and (c). Under OAR 660-034-0040(4)(b), the requirement for local parks  
23                    master planning as a method for avoiding direct application of the goals requires that a local park plan be prepared  
24                    and adopted applying criteria comparable to those required for state parks under OAR chapter 736 division 18. Such  
25                    criteria would include, for example OAR 736-018-0015(2) parks master planning which requires assessment of  
26                    suitability of an area for a park; OAR 736-018-0015(7) assessment of need; OAR 736-018-0015(14) impacts on  
                         adjacent land; OAR 736-018-0020(2)(i) mitigate impacts on public services; OAR 736-018-0020(k) comply with  
                         land use goals; and OAR 736-018-0020(j) compliance with the comprehensive plan. The master planning process  
                         would have looked at the goals in context of the need and impacts of the park and if approved would have been  
                         allowed without having to take exceptions to the statewide planning goals. However, the County completely  
                         ignored this process.

