

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF LINCOLN

Case No: 21CV46002

Judy Cammann; John Blackburn; Lauri Hines;
Peter Prehn

Plaintiffs

**Memorandum Opinion Re:
Jurisdiction**

v.

Curtis L. Landers; Lincoln County

Defendants

And

Monica Kirk; Michele Riley,

Intervenors

This matter came before the court on Plaintiff and Defendants "Joint Motion to Transfer Case to the Land Use Board of Appeals (LUBA)" filed on January 14, 2022. The court heard arguments on February 10, 2022 and March 2, 2022. Plaintiffs appeared represented by counsel Steven Berman and Lydia Anderson-Dana. Defendant appeared represented by Christopher Crean and Emily Matasar. Intervenors appeared represented by Daniel Kearns.

Motion to Transfer Case to LUBA

The complaint in this case challenges the validity of Ballot Measure 21-203 (hereafter "the measure") approved by the voters of Lincoln County on November 2, 2021. The measure was an initiative petition drafted by Lincoln County residents to amend the regulation of short-term rentals in unincorporated Lincoln County under chapter 4 of the Lincoln County Code.

Plaintiff's assert that the circuit court and LUBA have concurrent jurisdiction over some of the issues raised in this matter. Defendant asserts that LUBA has exclusive jurisdiction in this matter. Both request that the case be transferred to LUBA. Intervenors oppose the motion to transfer and assert LUBA does not have jurisdiction in this case.

Jurisdictional Analysis

It is not surprising that each party is asserting a different opinion regarding jurisdiction given the complexity of land use law in Oregon. Oregon has a "federal" land use system in which each level of government regulates land use concurrently to implement broad goals set by the state. In 1969, the Oregon Legislature passed SB 10, which required local jurisdictions to adopt a comprehensive plan detailing how a local jurisdiction will implement the statewide planning goals. Cities and counties may also enact local land use regulations that are not required by statewide planning goals so long as they are consistent with statewide planning goals. The Land Use Board of Appeals was established to review

constitutional, statutory, local plan, or ordinance-based challenges to land use decisions by a governmental body.

LUBA has exclusive jurisdiction to review any land use decision of a local government. ORS 197.825(1). A “land use decision” is defined in ORS 197.825 as:

(A) A final decision or determination made by a local government or special district that concerns the adoption, amendment or application of:

- (i) The goals;
- (ii) A comprehensive plan provision;
- (iii) A land use regulation; or
- (iv) A new land use regulation;

ORS 197.015(11).

A “Land use regulation” is defined as “any local government zoning ordinance, land division ordinance ... or similar general ordinance establishing standards for implementing a comprehensive plan.” ORS 197.075(11).

In addition, LUBA may also review a decision by a local government if it will have a “significant impact on present or future use of land.” Billington v. Polk County, 299 Or 471, 478–479 (1985); Petersen v. Klamath Falls, 279 Or 249, 254 (1977). The significant-impact test “encompasses a broader range of decisions than those that apply, or should apply, statewide planning goals, comprehensive plans, or land use regulations.” Citizens For Better Transit v. Metro Service Dist., LUBA 86-022, 15 Or LUBA 482, 484 (1987). “[T]he decision must create an actual, qualitatively or quantitatively significant impact on present or future land uses. Further, the expected impacts must be likely to occur as a result of the decision, and not simply speculative.” Carlson v. City of Dunes City, LUBA Nos. 94-069, 94-146, 28 Or LUBA 411, 414 (1994).

Application

Plaintiff and Defendant each assert that the measure is a “land use decision,” as defined by ORS 197.015(10) because the measure is a “land use regulation.” Intervenors argue that the measure is not a land use regulation because the measure modifies Lincoln County Code chapter 4, Business Regulation, not Chapter 1, Land Use Planning. Intervenors further assert that measure does not contain standards to implement the County Comprehensive Plan. For the reasons stated in more detail below, the court finds that the measure is in a land use decision.

1. The measure is a land use regulation

A. The Measure is a zoning ordinance:

The measure is a land use regulation because it is a zoning ordinance. There is no statutory definition of a “zoning ordinance.” Intervenors assert that because the measure does not rezone any property, it is not a zoning ordinance. While it is true that the measure does not rezone any property in Lincoln County it does place new restrictions on land in 3 residential zones and those limits apply only because of the land’s existence in the specified zone. The measure goes on to classify all current short-term rental licenses in these zones as non-conforming uses of land. A non-conforming use is specifically defined in the Zoning chapter of Lincoln County Code as “the use of a structure or land, or structure and

land in combination, which was lawfully established in compliance with all applicable ordinances and laws, but which, because of the application of a subsequent **zoning ordinance**, no longer conforms to the use requirements for the use zone in which it is located.” Lincoln County Code Section 1.1115(63) (emphasis added). Furthermore, the measure states that if a subdivision wishes to allow short-term rentals it must petition the county for a zoning change. The effect of this measure is to change three residential zones in such a way that any landowner in these zones would have to apply to rezone their property in order to be granted the same rights they had prior to the measure. While not labeled a zoning ordinance the plain language of the measure clearly establishes that it is in fact a zoning ordinance.

B. The measure establishes standards for implementing a comprehensive plan.

The measure is also a land use regulation because it establishes standards for implementing a comprehensive plan. To determine whether a decision concerns the application of a comprehensive plan it is generally not sufficient that a decision touches on some aspects of the comprehensive plan. Brodka v. City of Eugene, 35 Or. LUBA 695, 696 (1999). The decision at issue must directly implement the comprehensive plan. “[W]hen an ordinance is specifically identified as an implementing measure to achieve compliance with a goal for purposes of acknowledgment, that ordinance applies the goal.” Home Builders Association of Lane County, Petitioner, v. City of Eugene, Respondent, and Kevin Matthews, Robert Zako and John Kline, Intervenor-respondent., 41 Or LUBA 453, 458, 2002 WL 1485086, at *4.

The drafters of this measure specifically identify their purpose as follows:

[A] major purpose of these provisions is to control, manage and limit vacation rentals in single-family dwellings to protect the character of neighborhoods for residents... short term rentals in dwellings in unincorporated Lincoln County require special consideration so they properly operate with respect to the Comprehensive Plan and the objectives of the underlying zone districts.

Lincoln County Code contains the following Land Use Planning Goals as part of the comprehensive plan:

- (1) To identify activities, issues and problems of land use.
- (2) To ensure that all growth is orderly and efficient.
- (3) To establish a land use planning process and policy framework as a basis for all decisions and actions related to the use of land, and to assure an adequate factual basis for such decisions and actions.

Lincoln County Code 1.0010.

Intervenors cite a number of cases where regulations or ordinances touched on or even served to further a comprehensive plan but were found not to have implemented it or applied it. Those cases can be distinguished from this measure. This measure identifies a specific problem occurring with land use in Lincoln County and establishes a specific procedure for correcting that problem in line with the county planning goals. This is also different than the recent cases in which LUBA determined that the regulations of short-term rental licenses were not land use decisions. This measure does not simply

involve the regulation of short-term licenses. This measure serves to eliminate all short-term rentals from certain areas of land regardless of their compliance with specific business license criteria.

The goal of the measure is not safe and compliant business operation, it is orderly and efficient use of land. Regardless of what chapter this measure amends, the court finds that it does establish standards for implementing a comprehensive plan and is thus a land use regulation.

2. The measure has a significant impact on present or future use of land.

Even if the measure is not a “land use decision” as defined by statute, LUBA has jurisdiction because it will have a significant impact on present or future use of land. Billington v. Polk County, 299 Or 471, 478–479 (1985); Petersen v. Klamath Falls, 279 Or 249, 254 (1977). The measure phases out short-term rentals 3 residential zones, however it also limits the number of short-term rental licenses a single owner can have in unincorporated Lincoln County regardless of their location. This decision creates an actual and significant impact on future land uses in Lincoln County. The impacts are likely to occur as a result of the measure given the number of short-term rentals that currently exist in Lincoln County.

Conclusion

The measure includes new land use regulations which will have a significant impact on future use of land in Lincoln County. Jurisdiction is proper before the Land Use Board of Appeals. Plaintiff and defendant’s joint motion to transfer the case to LUBA is granted.

Signed: 3/15/2022 10:52:41 AM



Circuit Court Judge Amanda Benjamin