

BEFORE THE COLUMBIA RIVER GORGE COMMISSION

FRIENDS OF THE COLUMBIA GORGE,)
)
 Petitioner,)
)
 v.) CRGC File No.: COA-S-95-02
) Skamania Co. No.: NSA 95-57
 SKAMANIA COUNTY,)
)
 Respondent,)
) DECISION
 and)
)
 DEAN and DICTA MILLS,)
)
 Intervenor-)
 Respondents.)

This case is an appeal by Friends of the Columbia Gorge ("Friends") from a decision of Skamania County upholding the planning director's approval of a dwelling and shop in the Columbia River Gorge National Scenic Area. We reverse.

The applicants, Dean and Dicta Mills, sought a permit to build a residence and shop in conjunction with an agricultural use on a twenty-acre parcel. The property, located in Skamania County within a general management area, is designated large-scale agriculture. The parcel is one of eleven contiguous and separately deeded tracts owned by Lois Jemptegaard that are approximately 335 acres in total size.

The plan for development was submitted to the County on June 15, 1995. Following approval by the planning director, the Friends appealed the decision to the Board of Adjustment. The Board conducted a hearing and upheld the director. The petitioner then filed this appeal with the Gorge Commission.

We turn to the standard of review first. The Commission shall reverse or remand a land use decision when:

- (a) The governing body exceeded its jurisdiction;
- (b) The decision is unconstitutional;
- (c) The decision violates a provision of applicable law and is prohibited as a matter of law; or
- (d) The decision was clearly erroneous or arbitrary and capricious.
- (e) The findings are insufficient to support the decision;
- (f) The decision is not supported by substantial evidence in the whole record;
- (g) The decision is flawed by procedural errors that prejudice the substantial rights of the petitioner(s);
- (h) The decision improperly construes the applicable law; or
- (i) A remand is required pursuant to 360-60-090(2)(d).

Commission Rule 350-60-220(1).

Since the issues raised by petitioner are essentially legal in nature, we are required to determine whether the decision violates a provision of applicable law and is prohibited as a matter of law, based on the record below.

Petitioner contends the county erred by approving the use because the applicants did not meet all of the requirements for it in the ordinance. Under this view, since a residence already exists on the property, the criteria did not permit approval of an additional dwelling.

The respondent and intervenor argue the application satisfies the requirements of the ordinance, especially because the property in question - a twenty-acre parcel, not the total Jemptegaard ownership - is without a residence. In addition, they assert the property is not currently dedicated to a specific agricultural purpose and thus, it is not an existing farm or ranch.

Our analysis begins with the pertinent provision of the ordinance¹ which provides as follows:

¹For ease of reference, the complete requirements state:

- i) No other dwellings exist on the subject farm or ranch, including all of its constituent parcels, contiguous or otherwise, which are vacant or currently occupied by persons not directly engaged in farming or working on the subject farm or ranch and which could be used as the principal agricultural dwelling;
- ii) The farm or ranch upon which the dwelling will be located is currently devoted to agricultural use, as defined, where the day-to-day activities of one or more residents of the agricultural dwelling will be principally directed to the agricultural use of the land. The farm or ranch must meet the income capability test set out in subsection iii), below; and
- iii) The farm or ranch is a commercial agricultural enterprise as determined by an evaluation of the following factors:
 - Size of the entire farm or ranch including all land in the same ownership;
 - Type(s) of agricultural uses (crops, livestock) and acreage;
 - Operational requirements for the particular agricultural use common to area agricultural operations; and
 - The farm or ranch, and all its constituent
(continued...)

- i) No other dwellings exist on the subject farm or ranch, including all of its constituent parcels, contiguous or otherwise, which are vacant or currently occupied by persons not directly engaged in farming or working on the subject farm or ranch and which could be used as the principal agricultural dwelling;

Skamania County Ordinance, 22.08.050 B. 3. a)

In examining this part of the ordinance, the first requirement includes consideration of an existing residence. The second requirement addresses the subject farm or ranch, including all of its constituent parcels, contiguous or otherwise. The third requirement concerns whether the existing residence is vacant or currently occupied by someone not directly engaged in farming or working on the farm or ranch. The fourth requirement deals with use of the existing residence as the principal agricultural dwelling.

While the parties devoted argument to these requirements, our primary focus is on the second one. The meaning of the phrase "subject farm or ranch, including all of its constituent parcels,

¹(...continued)

parcels, is capable of producing at least \$40,000 in gross annual income. This determination can be made using the following formula:

$$(A)(B)(C) = I$$

A = Average yield of the commodity per acre, or unit of production

B = Average price of the commodity

C = Total acres suitable for production, or total units of production that can be sustained, on the subject farm or ranch

I = Income capability

Skamania County Ordinance, 22.08.050 B. 3. a)

contiguous or otherwise" is the principal legal issue presented in the appeal.

In our review, we apply basic rules of construction to the provisions of the ordinance. The words are used in accord with their plain meaning. Cowiche Canyon Conservancy v. Bosley, 118 Wn. 2d 801, 828 P.2d 549 (1992). They are construed in a manner that best advances their purpose. Allison v. Housing Authority, 118 Wn.2d 79, 821 P.2d 34 (1991). They are applied so that meaning is given to each term. Clark v. Pacificorp, 118 Wn.2d 167, 822 P.2d 162 (1991).

In applying these standards to the case before us, the scope of the requirement in the ordinance is illuminated. The phrase "subject farm or ranch, including all of its constituent parcels, contiguous or otherwise", conveys one basic concept. The most natural reading of the provision is the Jemptegaard property includes all eleven parcels which are designated for large-scale agricultural use.

To construe the requirement to mean the property includes only one twenty-acre parcel requires us to disregard the remaining portion of the provision relating to constituent parcels. We decline to do this because it conflicts with our responsibility to apply the law as it is written, in accord with its precise terms. Moreover, it is inconsistent with the purposes and standards of the Scenic Area Act.² 16 U.S.C. § 544a, 544d; See also Friends v.

²The purposes of the Act are:

(continued...)

Skamania County, CRGC No. COA-S-95-01, 9 (November 16, 1995) ("The fidelity to the precise provisions of the National Scenic Area Act and the legislative history revealed in prior decisions of the courts of Washington and Oregon in interpreting the law underscore the standard we must adhere to in this appeal.").

The intent of the language contained in the ordinance is equally important. The Commission actually considered several different approaches to protecting agricultural resources, including an analysis that approval of a dwelling on each separately deeded lot was not appropriate for areas of large scale agriculture. See Draft Policy Options, Agricultural Lands In General Management Areas, 5 (May 15, 1990).

²(...continued)

(1) to establish a national scenic area to protect and provide for the enhancement of the scenic, cultural, recreational, and natural resources of the Columbia River Gorge; and

(2) to protect and support the economy of the Columbia River Gorge area by encouraging growth to occur in existing urban areas and by allowing future economic development in a manner that is consistent with paragraph (1).

16 U.S.C. § 544a.

The Act also provides standards and includes the Commission shall develop land use designations that shall:

(2) designate those lands used or suitable for the production of crops, fruits or other agricultural products or the sustenance of livestock as agricultural lands.

(3) designate land used or suitable for the production of forest products as forest lands.

16 U.S.C. § 544d(b) (2), (3).

The meaning of this requirement in the ordinance is also supported by other factors. As discussed above, the property is designated large-scale agriculture. This classification is the result of the elaborate planning process required by the Scenic Area Act for creation of the management plan. 16 U.S.C. § 544d.

The portion of the plan relating to agriculture was based on extensive study regarding the policies for maintaining resource land, encouraging its use and, preventing fragmentation.³ See Management Plan, October 14, 1991, II-2. This work was the result of a specific requirement in the Scenic Area Act to designate resource land for agricultural and forest use. 16 U.S.C. § 544d(b) (2), (3).

The Commission subsequently adopted Designation Policies in the Management Plan to advance the objective of maintaining the viability of large-scale agriculture (including the consolidation of smaller parcels):

- (1) A. Blocks of agricultural land shall be designated Large-Scale Agriculture if they:

³After analysis, inventory and review, designations were first made in the initial plan using the requirement for the "subject farm or ranch, including all of its constituent lots/parcels, contiguous or otherwise." Preliminary Management Plan for General Management Area, Guidelines 2.d.(1), 136 (December, 1990). The Final Draft Management Plan included the requirement with the same language. Final Draft Management Plan for General Management Area and Special Management Area, Review Uses, 1. e. (1), I-11 (July, 1991). The Gorge Commission subsequently adopted the Management Plan and once again, included the requirement with the same language. Management Plan for the Columbia River Gorge National Scenic Area, Review Uses, 1.E.(1), II-8 (October, 1991). Skamania County's National Scenic Area ordinance (July, 1993) included the requirement; the ordinance was subsequently found consistent by the Gorge Commission (September, 1993); and, concurred in by the Secretary of Agriculture (December, 1993).

- (1) Are currently devoted to agriculture of a scale that is land intensive, employees workers, or provides significant products for markets or processors, or
- (2) Have a combination of soil capability, size, and freedom from conflicting use that renders them suitable for large-scale agriculture of farm forestry.

Management Plan, October 15, 1991, II-4.

In addition to these considerations, while we are not required to determine the legal effect of prior Commission decisions regarding the Jemptegaard property and do not do so today, it is instructive to note the same land was previously considered agricultural. The earlier decisions are also a reminder of the importance of consistency from case to case for purposes of the principle of maintaining resource land for resource use.

In Director's Decision C91-0016-S-G-12 (July 3, 1991), when Lois Jemptegaard applied for a land division, it was determined the "subject ownership [Jemptegaard property] consists of three tax lots totalling 335.6 acres" and the property "is used for both the growing of forest products and the production of farm commodities and/or pasturing, grazing or feeding of livestock." Decision, 3. The application was denied because approval would "allow further fragmentation of resource based lands by introducing rural residential uses that are not compatible with the predominant resource use of the subject area." Decision, 4.

In Director's Decision C92-0135-S-G-11 (December 21, 1992), when Lois Jemptegaard applied for construction of a dwelling and accessory shop building, it was found the same property that is the subject of this appeal "has been used for grazing livestock and the

harvesting of timber" and is part "of a large contiguous tract which, as a whole, has been used for and is suitable as agricultural and forest land." Decision, 3-4.

In our decision today, we adhere to the specific provisions of the requirements in the ordinance, as governed by the Scenic Area Act. In holding the property is part of a larger contiguous farm and already has a residence available for agricultural use, we ensure consistency between the purposes and standards of the Act, the Management Plan and the ordinance.

Dated this 27th day of June, 1996.



ROBERT THOMPSON

Chair

Columbia River Gorge Commission