

BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

Nov 23 11 48 AM '82

DON WESTERBERG, DONNA)
WESTERBERG, EUGENE CARL)
and DONNA RIETZ,)

Petitioners,)

LUBA NO. 82-045

v.)

FINAL OPINION
AND ORDER

LINN COUNTY and MORSE BROS. INC.)

Respondents.)

Appeal from Linn County.

Sandra Smith Gangle, Salem, filed a petition for review and argued the cause for Petitioners.

Edward F. Schultz, Albany, filed a brief and argued the cause for Respondent Morse Brothers, Inc.

Cox, Referee; Bagg, Referee; participated in the decision; Reynolds,* Chief Referee dissents.

Remanded.** 11/23/82

You are entitled to judicial review of this Order. Judicial review is governed by the provisions of Oregon Laws 1979, ch 772, sec 6(a), as amended by Oregon Laws 1981, ch 748.

*
Reynolds, Chief Referee resigned effective November 15, 1982.

**
What follows is the entire text of the Land Use Board of Appeals opinion and recommendation to the Land Conservation and Development Commission (LCDC). Since the LCDC chose by majority vote to agree with the dissenting position of Referee Reynolds, the matter is being remanded to Linn County for further proceedings not inconsistent with that position. It should be noted that the majority opinion was adopted on all issues discussed except that dealing with the "exceptions process" which is the subject of the dissent. Specifically, the LCDC stated in its November 22, 1982 Determination:

"The Land Conservation and Development Commission hereby approves the recommendation of the Land Use Board of Appeals in LUBA Case No. 82-045 with the following change:

"Adoption of Chief Referee Reynolds' dissenting opinion."

1 COX, Referee.

2 NATURE OF PROCEEDING

3 Petitioners contest Linn County Ordinance No. 82-156 which
4 became effective May 7, 1982. The ordinance amended the zone
5 on a 229.29 acre tract from Exclusive Farm Use (EFU) to
6 Aggregate Extraction and Processing (AXP). The 229.29 acre
7 tract is made up of Tax Lots 500 and 1000 in T11S, R3W Section
8 10; Tax Lots 2401 and 2402 in Section 10; and Tax Lot 406 in
9 Section 14.

10 ALLEGATIONS OF ERROR

11 Petitioners set forth three assignments of error as follows:

12 "Assignment of Error #1:

13 "Respondent Linn County misconstrued the applicable
14 law and violated Goals 2, 3, 5, and 6 of th state-wide
15 goals when it granted a zone amendment from EFU to
16 AXP, thereby permitting applicant to begin extracting
17 aggregate immediately and unconditionally from useable
18 agricultural land. Respondent's conclusions under
19 Goals 2, 3, 5 and 6 are not supported by its findings,
20 nor are its findings supported by substantial evidence
21 in the record."

18 "Assignment of Error #2:

19 "Respondent Linn County misconstrued the applicable
20 law and violated the Agricultural Resource Lands
21 Policy or the Aggregate Resources Policy of its
22 Comprehensive Plan when it allowed the zone amendment
23 from EFU to AXP."

22 "Assignment of Error #3:

23 "Respondent Linn County vioated Section 16.010,
24 Section 27.080, Section 20.060, or Section 27.090 of
25 its County zoning ordinance when it granted the zone
26 amendment from EFU to AXP."

1 FACTS

2 The subject property, consisting of 229.29 acres, is owned
3 by Respondent Morse Bros. Inc. In 1972, prior to the adoption
4 of the Linn County Zoning Ordinance, Albany Rock Products began
5 operating extraction and processing facilities on approximately
6 92.47 acres of the tract in question. The existing processing
7 facilities located on that 92.47 acre portion constitute a
8 non-conforming use under present Linn County zoning rules.
9 Subsequent to the adoption of the Linn County Zoning Code,
10 conditional use permits were granted to Respondent Morse Bros.
11 to extract aggregate from all but approximately 40 acres of the
12 remaining 136.82 acres in the subject tract.

13 The existing processing facilities at the 92.47 acre Albany
14 Rock Products site include one office with scales, one shop,
15 one cement-treated base plant, one ready-mix concrete plant,
16 one asphaltic concrete plant, one rock crusher which receives
17 mined material via a conveyor belt system, and one storage
18 area.

19 If the requested zone change is not granted, aggregate
20 extraction activities would be allowed to continue on all the
21 property upon which applicant has received either
22 non-conforming use or conditional use status to this date.
23 That property contains all but the southeastern 40 acres of the
24 subject tract and is identified as Tax Lot 406. Processing
25 will continue on the property now in non-conforming use status.

26 The present site contains 50 percent of the asphaltic

1 concrete facilities in Linn County and 50 percent of the
2 ready-mix concrete facilities in the Albany market area
3 according to the county's findings. The Linn County Board of
4 Commissioners found that this site supplies 58 percent of the
5 total sand and gravel used in the Albany and Corvallis markets
6 at this time. In addition, evidence in the record indicates
7 that the site contains aggregate reserves of approximately
8 three million cubic yards. Approximately 3.5 million cubic
9 yards have previously been extracted from the site. Applicant
10 Morse Bros., Inc. sought the zone amendment application under
11 its apparent belief that it was necessary to protect its
12 on-going aggregate operation which annually produces over
13 310,000 cubic yards of aggregate for the Albany market area.
14 Linn County's Comprehensive Plan has not received
15 acknowledgment from LCDC, therefore, the statewide goals apply
16 to this contested decision.

17 DECISION

18 Assignment of Error No. 1

19 Petitioners claim Respondent Linn County misconstrued the
20 applicable law and violated Statewide Goals 2, 3, 5 and 6 when
21 it granted the subject zone amendment. In addition,
22 petitioners claim that Linn County's conclusions under
23 Statewide Goals 2, 3, 5 and 6 are not supported by its findings
24 nor are its findings supported by substantial evidence in the
25 record.

- 26 1. Statewide Goals 2 and 3

1 Petitioners point to the fact that the soil on the property
2 is SCS Class IV or better and, therefore, an exception to Goal
3 3 must be taken in order to permit uses other than
4 agriculture. Petitioners' argument is that even though
5 aggregate extraction is a use permitted in an EFU zone under
6 provisions of ORS 215.213(2), the AXP zone applied to this
7 property permits uses which are not contemplated under ORS
8 215.213(2)(b).¹

9 The Linn County Zoning Ordinance describes the purpose of
10 the Aggregate Resource Extraction and Processing (AXP) District
11 as follows:

12 "SECTION 16.010 STATEMENT OF PURPOSE

13 "The purpose of the Aggregate Resource Extraction
14 and Processing (AXP) District shall be to provide for
15 the immediately foreseeable demand for sand, gravel,
16 rock, stone and related aggregate material resources;
17 permit the development and utilization of aggregate
18 resources in a manner compatible with neighboring land
19 uses; provide for the interim use of land prior to
20 extraction for agricultural and forest uses; prohibit
the use of land zoned AXP for uses incompatible with
aggregate resource extraction and processing; provide
for the ultimate reclamation, rehabilitation and
ultimate beneficial reuse of extraction sites in a
manner compatible with the surrounding land use
pattern and establish standards for development and
operation.

21 The AXP Zone allows as uses permitted outright the
22 processing, manufacturing and fabrication of aggregate material
23 provided that at least 50 percent of the aggregate materials
24 are excavated on-site. Among other things, the non-extraction
25 activities that may take place as an outright use in the AXP
26 District include asphalt paving (hot mix) plant (presently

1 taking place), concrete batching plant (presently taking place)
2 and the manufacturing, fabrication and storage of aggregate
3 products such as tile, block, concrete beams, girders, columns
4 and bricks. The manufacturing and fabrication activities just
5 listed are not presently allowed on the property. In addition
6 the AXP District allows for equipment storage yards,
7 maintenance and storage buildings associated with on-site
8 operations, and retail and wholesale activities.²

9 Respondents first argue there was no violation of Goal 3
10 and that a Goal 2 exception to Goal 3 was not required. In the
11 alternative, respondent argues that a Goal 2 exception was
12 properly taken by the county.

13 The main thrust of respondents' first response is that ORS
14 215.213(2)(b) states "operations conducted for * * *
15 exploration, mining and processing of aggregate * * * *" are
16 allowed on EFU land and is incorporated by Goal 3 into the
17 definition of farm use. Respondents contend that since both
18 gravel quarrying activities and processing of aggregate are
19 mentioned in the statute all activities (uses) allowed by the
20 AXP zone are permitted. Morse Bros. points to Websters' New
21 Collegiate Dictionary, 1974 Edition, definition of processing
22 to support its argument. That dictionary defines to process as

23 "to subject to a special process or a treatment as in
24 the course of manufacture."

25 Morse Bros. concludes from that definition that the common
26 definition of the word process means to manufacture.

1 Respondent also points out that Linn County concluded it did
2 not have to take an exception to Goal 3 because some
3 manufacturing activities (i.e. crusher, concrete plants and
4 asphalt plant), exist on the site as nonconforming uses, and
5 also there was no class I-IV soil left on the site due to prior
6 excavation activity.

7 In addressing respondents' argument regarding the
8 definition of processing, the LCDC apparently has indicated it
9 does not believe the uses allowed in the AXP zone fit within
10 the meaning of processing as used by LCDC in Goal 3.

11 Specifically, the county's findings state:

12 "1. Linn County has developed a comprehensive land
13 use plan and implementing ordinances which have
14 been submitted to the Land Conservation and
15 Development Commission for review. In February,
16 1982, the LCDC reviewed the Comprehensive Plan
and DLCD staff report. The LCDC took action to
grant a 150 day continuance to Linn County, and
issued guidance to Linn County under statements
of "N-Order-2-Comply" provisions.

17 "2. In February, 1982, the LCDC determined that
18 approval may be granted to zone land Aggregate
19 Resource Extraction and Processing (AXP) in an
20 Agricultural Resource Comprehensive Plan
21 designation. However, LCDC directed that an
exception be taken to allow manufacturing
processes, including manufacturing activities,
through an exception." Record 56. (Emphasis
added).

22 It appears to us from the record that LCDC has stated in
23 the context of their review of Linn County's Comprehensive
24 Plan, that (1) the manufacturing activity allowed under the AXP
25 zone is not within the definition of processing it intended
26 when it included ORS 215.213(2)(b) as part of Statewide Goal 3,

1 and (2) there does not need to be an exception taken for the
2 allowance of aggregate extraction under the AXP zone.³

3 As to the respondents' argument that the manufacturing
4 activity already exists on the property and the soil has been
5 removed leaving non-agricultural soils, respondents fail to
6 recognize that some of the allowed manufacturing activities
7 i.e. fabrication of tile, block, and concrete beams are not now
8 allowed. Also respondents' argument fails to recognize that a
9 minimum of 40 acres of the proposed tract is still in
10 agricultural use and contains agricultural class soils.

11 Respondents' next argument is that an exception to Goal 3
12 is not required because the goal only requires an exception
13 when a governing body is proposing to convert rural
14 agricultural land to urbanizable land.⁴ Respondents point
15 out that urbanizable land is defined in the goals as:

16 "Those lands within the urban growth boundary and
17 which are identified and (a) determined to be
18 necessary and suitable for future urban use areas; (b)
can be served by urban services and facilities; (c)
are needed for the expansion of an urban area."

19 Respondents argue this site is not in an urban growth boundary,
20 is not going to be used for urbanizable land and therefore, an
21 exception is not required. We do not agree. Goal 3 states
22 that "agricultural lands shall be preserved and maintained for
23 farm use, consistent with existing and future needs for
24 agricultural products, forest and open space." The issue here
25 is not one of conversion, an argument inherent in respondent's
26 position. The issue here is whether the county during

1 application of Goal 3 must decide it can not apply the goal to
2 the subject property. Such a decision would then require a
3 Goal 2 exception.⁵

4 Based on the foregoing, we conclude the county was required
5 to take an exception to the agricultural lands goal for the
6 manufacturing uses allowed by the AXP zone, and we will now
7 evaluate respondents' alternative argument that the county's
8 findings satisfy the Goal 2 exception requirements.

9 Goal 2, Part II requires that if an exception to the goal
10 is adopted, then the compelling reasons and facts to support
11 the exception shall be completely set forth in the plan and
12 shall include an analysis of:

13 "(a) why these other uses should be provided for;

14 "(b) what alternative locations within the area could
be used for the proposed uses;

15 "(c) what are the long-term environmental, economic,
16 social and energy consequences to the locality,
17 the region or the state from not applying the
goal or permitting the alternative use; and

18 "(d) a finding that the proposed use will be
19 compatible with other adjacent uses."

20 We will analyze the county's reasons and facts associated with
21 each of these four guidelines.

22 A. "Why these other uses should be provided for"

23 The primary thrust of petitioners' argument that this
24 portion of the exceptions analysis has not been satisfied is
25 that the present supply of rock is adequate to meet immediate
26 and foreseeable future demand in the Albany area. As we have

1 indicated above, an exception is required only for the uses
2 permitted by the AXP zone which exceed those uses that are
3 allowed in an EFU zone under ORS 215.213(2)(b) as referenced in
4 Statewide Goal 3. With that explanation in mind, we review the
5 county's findings for evidence of their reasoning and an
6 explanation of why the manufacturing activities allowed by the
7 AXP zone should be located on this property.

8 The Board of Commissioners' findings recognize that
9 empirical data was submitted by both sides to verify or
10 invalidate the existence of "a public need" for this request.
11 The findings weigh that evidence and make judgments upon which
12 statistics the county believed (Record 24). They indicate that
13 much of the county's consideration as to "why these
14 manufacturing uses should be provided for" is directed at
15 location of the site in relation to the market for the products
16 produced and the fact the site is presently producing. The
17 county makes special note of testimony submitted by Janet
18 McLennan, former Assistant to the Governor for Natural
19 Resources. According to the finding, Ms. McLennan pointed out
20 that development of potential aggregate resources is sensitive
21 to the costs of developing the site (such as land cost,
22 equipment cost, operating cost, etc.) and the cost of
23 transporting the material to market. The finding indicates
24 McLennan had noted that transportation costs are particularly
25 critical. She pointed out a source ideal in every other
26 respect, but located remote from the market place, is priced

1 out of the market due to transportation costs (Record 28). In
2 addition, Oregon Department of Economic Development (DED)
3 information, as noted by the findings, points out that sand and
4 gravel and crushed stone sites should be provided near urban
5 areas and other locations where demand is high. The DED
6 information indicates that such locations would cut down on the
7 total cost of construction projects since transportation of
8 building materials from the source to market represents a major
9 portion of their cost to users. (Record 28). The county also
10 recognized that there exists on this site under a
11 non-conforming use status, an office with scales, one shop, one
12 cement treated base plant, one ready-mix concrete plant, one
13 asphaltic concrete plant, one rock crusher which receives mine
14 material via a conveyor belt system, and one storage area. The
15 county noted that with the exception of one other concrete
16 plant located some four miles southwest of Albany, the next
17 closest plants are located in Marion County and Lebanon, all of
18 which are greater than ten miles from Albany. In addition, it
19 was found that there are only two commercial asphaltic plants
20 located in Linn County, the one at this site and one in Sweet
21 Home which is greater than 30 miles from Albany. Record 27.
22 The subject site is located within one and one-half miles of
23 the Albany city limits and one-half mile east of Interstate 5.
24 Record 27-30.

25 The county's findings analyze the demand, both immediate
26 and future for the products that could be manufactured on the

1 site. The findings include an analysis of demand based on the
2 traditional employment sectors in Linn County's economy and the
3 relation of those employment sectors to the present downturns
4 in the economy. There is also an analysis of construction
5 activity that will or may require products from this plant in
6 the immediate future. The analysis recognizes a 700 to 800
7 acre economic development district in Albany which will require
8 streets, sewers, storm drains, etc.; two shopping centers; City
9 of Albany projects, which include street, sewers and public
10 building improvements; and expansion of the Oregon Metalurgical
11 Corporation plant. Record 14 through 19.

12 There still exists the question posed by the petitioners of
13 why it is necessary to rezone this property to AXP in light of
14 the fact that some of the manufacturing activities allowed by
15 the zone already exist on a portion of the subject tract. In
16 answer to that question the findings indicate that the Board of
17 Commissioners was acting for economic reasons and to protect
18 this site from encroachment by incompatible uses. In reviewing
19 the county's findings, we must keep in mind the Supreme Court
20 stated in Sunnyside Neighborhood v. Clackamas County Comm'rs,
21 280 Or 3, 569 P2d 1063 (1977), that no particular form of
22 findings are required and no magic words need to be employed.
23 The court held that

24 "[w]hat is needed for adequate judicial review is a
25 clear statement of what, specifically, the decision-
26 making body believes, after hearing and considering
all the evidence, to be the relevant and important
facts upon which its decision is based. Conclusions

1 are not sufficient." 280 Or at 21.

2 There exists over 80 pages of "findings" which address the
3 issues before the county. With the Sunnyside court's
4 admonition in mind, we are required to review findings made by
5 the county to attempt to answer questions raised before LUBA on
6 appeal by petitioners. As such, some doubt may arise as to how
7 exactly the county would have answered petitioners' question if
8 petitioners had framed those questions exactly as they are
9 framed before this Board. Viewed in that context, the findings
10 make evident the county was working from the realization that
11 it had an on-going operation, logistically well located in
12 relation to the major Albany area markets for products produced
13 on the site. It was also aware of the economies to be realized
14 by manufacturing the aggregate on-site, especially economies in
15 transportation. This emphasis is evidenced in a finding which
16 addresses the cost of transporting raw, or semi-processed
17 aggregate to sites for manufacturing into final product form.
18 The finding references testimony that the cost of aggregate
19 materials to potential purchasers doubles with each additional
20 five miles of hauling distance. Carried to its logical
21 conclusion, such a finding indicates that having to haul raw or
22 semi-processed aggregate off site to be turned into asphalt or
23 cement or formed into concrete tile, beams, etc., and then
24 hauling those finished products to various construction sites
25 adds greatly to the ultimate cost of the manufactured
26 products.⁶

1 The county recognized that it had a unique resource located
2 close to an urban area as above discussed. Citing its
3 comprehensive plan, the county stated:

4 "Potential and existing aggregate resource sites are
5 being lost and threatened principally by urban and
6 rural residential development * * * Extraction sites
7 and potential resource areas need protection from uses
8 that result in compatibility problems.'" Record 30-31.

9 The county then went through a historical background of this
10 site indicating that on no fewer than six separate occasions,
11 beginning in September of 1973, it has had matters before it
12 regarding permits to continue extraction activity at this
13 site. Some of those permits were contested by neighbors and
14 one permit was appealed to this Board. The commissioners also
15 found the Linn County Comprehensive Plan embraces the concept
16 that aggregate is a resource requiring similar concern and
17 protection as other resources such as agricultural and forest
18 lands. As one finding states:

19 "Evidence from both applicants in opposition verified
20 that aggregate extraction activities began on this
21 site prior to the objection (sic) neighbors moving
22 into the area."

23 Also, the county found that area residents have compounded
24 drainage problems at the resource site area. Record 63-64.
25 The findings of the county indicate that the complaining
26 neighbors moved to the site and there has been an increasing
amount of rural residential development in the area of the
site. Finally, one can not overlook the fact that the reason
this site is before this Board for the second time is

1 complaints of the neighbors.

2 Given the above review of the county's findings, this Board
3 believes that a reasonable person could be compelled to
4 conclude as did the county. The county concluded the applicant
5 had established that the uses (including manufacturing and
6 fabrication), allowed in the AXP zone should be provided for at
7 the subject location. As the attorney for Morse Bros. Inc.
8 argued, the main activity the zone will allow which is not now
9 taking place on the property is to permit cement to dry into
10 blocks, columns, beams, etc. A reasonable person could also be
11 compelled to conclude the county acted properly in taking steps
12 (applying the AXP zone) to protect this resource.

13 B. "What alternative locations within the area could be
14 used for the proposed uses?"

15 Petitioners' main concern here is that other locations
16 exist which could provide the aggregate proposed to be
17 extracted from the subject site. The thrust of petitioners'
18 argument is based on the fact they introduced considerable
19 evidence that the gravel bars of major streams of Linn County
20 are viable alternatives.

21 Once again, the issue before this Board is not the
22 alternative locations for aggregate extraction but the
23 alternative locations available for the manufacturing
24 activities allowed under the AXP zone. As we above indicated,
25 the county placed a great deal of emphasis on the cost of
26 transporting processed and unprocessed aggregate and the

1 resulting increase in cost to the consumer. It is on those
2 bases, as well as proximity to the Albany area, that the county
3 concluded the processing and manufacturing of aggregate
4 extracted from the subject site is best accomplished on the
5 property in question, as compared with other sites already
6 zoned for the intended use.

7 The county pointed out that this is the only site in the
8 county to be zoned AXP. It also found the existing processing
9 activity has been on the site for many years and that an
10 established system of getting the extracted aggregate via a
11 conveyor belt to the processing and manufacturing equipment
12 exists. As was indicated above, the county found only two
13 ready-mix concrete plants located in the Albany market area,
14 one at this site and one at the Hubb City Concrete Plant four
15 miles southwest of Albany. Other plants are located more than
16 ten miles from Albany. Also, the two commercial asphaltic
17 concrete plants located in Linn County are at this site and in
18 Sweet Home, which is more than 30 miles from Albany. The
19 county found there is an established road system providing
20 access to the subject site and an ongoing system of commerce
21 between the customers and the producers of the rock products.
22 In addition, the county found that of 49 aggregate sites in the
23 county, 38 are also zoned EFU; 7 are located in the city limits
24 of Albany and Millersberg (not within the county's
25 jurisdiction); three are zoned farm forest, and one is zoned
26 rural residential. The county included in its inventory two

1 other sites, one located in Benton County and the other in
2 Marion County. Manufacturing activities of the type existing
3 and proposed at the subject site do not exist on most those
4 alternative sites. Furthermore, as above indicated, the
5 subject site was found to be the closest available site in the
6 county to serve Albany and the surrounding area.

7 Given the combination of factors, the major emphasis of
8 which is the existing nature of this site, we believe the
9 county's analysis of alternatives was sufficient to compel a
10 reasonable person to conclude that this was a suitable site for
11 the AXP zone.

12 C. "Long term environmental, economic, social and energy
13 consequences to the locality, the region or the state
14 from not applying the goal or permitting the
15 alternative use."

16 Under this heading petitioners argue that 229 acres of
17 farmland is a valuable agricultural resource. Furthermore,
18 they argue that the subject gravel resource will remain
19 untouched and available for future extraction if it is not now
20 harvested. Petitioners conclude that by granting the AXP zone:

21 "Linn County has allowed the immediate extraction of
22 gravel from the entire 229 acre parcel. Not only will
23 the valuable farmland be lost forever to farm
24 production but the gravel will be unavailable for
25 future needs as well. The land will be a varitable
26 wasteland, a huge waterfilled pit, totally
unproductive, except for possible recreational use."

25 Petitioners are somewhat off the mark in their argument.

26 ORS 215.213(2)(b) allows aggregate extraction on EFU land. The

1 argument that petitioners are making seems to have been
2 considered by the legislature when it decided the policy of
3 this state would be to forego one resource (agricultural land
4 in production) for the use of another (aggregate).
5 Furthermore, petitioners fail to recognize that all but about
6 40 acres of this property has either already been excavated or
7 is under a conditional use permit to allow excavation.

8 The county made findings evaluating the consequences to the
9 locality of allowing the uses permitted by the AXP zone. The
10 petitioners do not contest those findings. Suffice it to say
11 the proposed manufacturing use was found not to adversely
12 impact the appropriate development or use of surrounding
13 properties in the area and the region.

14 D. "The proposed use will be compatible with other
15 adjacent uses."

16 Here again petitioners address a considerable portion of
17 their argument to aggregate extraction which we have held is
18 not the subject of the exception necessary in this case.
19 Petitioners do, however, argue the record does not support a
20 finding that the manufacturing uses allowed in an AXP zone will
21 be compatible with surrounding areas. Petitioners' main
22 concern appears to be with noise, drainage and turbidity of
23 groundwater.

24 Petitioners' concerns about drainage and groundwater
25 turbidity are not associated with manufacturing activity
26 allowed by the rezone but rather with the extraction of

1 aggregate resources. Since the exceptions analysis in this
2 case does not need to address the aggregate extraction activity
3 allowed in the zone, we find those arguments to be irrelevant.

4 The relevant argument here is about the noise associated
5 with manufacturing activity on the property. The county
6 addressed the noise concern by first analyzing the location of
7 the various existing manufacturing activities and then the
8 method used to transport excavated aggregate (via conveyor
9 belt) to the existing processing location. The county states
10 after review of applicant's proposal that

11 "material would be transported by the conveyor belt
12 system being expanded. No transportation via trucks
13 on on-site haul roads is proposed. Expansion of the
conveyor belt system will preclude the need to
relocate existing processing facilities." Record 37.

14 The county also found that:

15 "No adjacent neighbor has filed a noise complaint
16 either with the applicant or with the Department of
17 Environmental Quality. No testimony was submitted to
verify that operations at the Albany Rock Products
site are in violation of DEQ standards." Record 39.

18 The county found that extraction operations will move toward an
19 area developed with four residences but away from the majority
20 of the residences clustered south of State Highway 20. It also
21 found that no evidence was introduced showing processing
22 [manufacturing] operations are in conflict with agricultural
23 uses in the area. It found that processing activities had been
24 in operation at the site for more than 15 years without
25 producing any negative impacts on surrounding agricultural
26 uses. The county then found that:

1 "This site is being operated in compliance with all
2 county and state regulatory permits. Several
3 governmental agencies were contacted and not one has
4 reported a violation or a complaint of a violation.

5 * * *

6 * * * Opponents complaint about noise and noise
7 potential is not persuasive as the concerns of
8 drilling and blasting will not occur at this site,
9 operational noise has not been complained of and the
10 only noise source near residences will be a front end
11 loader. It is difficult to believe that a front end
12 loader operating below ground level, and behind a
13 berm, will provide enough noise to constitute a
14 violation. We conclude that the applicant has
15 introduced satisfactory information in regard to
16 limiting noise potential by grouping processing
17 equipment at a great distance from the residences, use
18 of conveyor belts to move and stockpile aggregate, the
19 use of only one vehicle, similar to a tractor, to
20 excavate the aggregate, routing of truck travel away
21 from residential areas, upon a paved, and approved,
22 haul route and operating in compliance with regulatory
23 permits, and therefore there is no incompatibility in
24 regard to noise." Record 47.

25 Based on the foregoing review of the four-part evaluation
26 required by Statewide Goal 2, Part II, this Board believes the
27 county has made satisfactory findings, supported by substantial
28 evidence, to compel a reasonable person to conclude that an
29 exception should be granted to allow the AXP zone permitted
30 manufacturing uses on the subject site. Therefore,
31 petitioners' assignments of error regarding Goals 2 and 3 are
32 denied.

33 2. Goal 5.

34 Petitioners allege that when Linn County allowed the AXP
35 zone amendment it violated the intent and purpose of Statewide
36 Goal 5. Statewide Goal 5 in pertinent part states:

1 "To conserve open space and protect natural and scenic
resources.

2 "* * * *

3 "Where no conflicting uses for such resources [mineral
4 and aggregate resources] have been identified, such
resources shall be managed so as to preserve their
5 original character. Where conflicting uses have been
6 identified the economic, social, environmental and
energy consequences of the conflicting uses shall be
determined and programs developed to achieve the goal."

7
8 Petitioners' argument is that a conflicting use exists on
9 the subject property. They allege that conflict to be between
10 agricultural land and aggregate resources. Petitioners argue
11 that by zoning this property EFU, instead of AXP as proposed by
12 the applicant, the land is protected from encroaching
13 development and by maintaining an agricultural use, mineral and
14 aggregate resources will be preserved.

15 Once again, petitioners' concern is directed solely at the
16 removal of the aggregate resource. Petitioners' argument is
17 conditioned upon a belief that aggregate extraction is
18 incompatible with agricultural uses. That argument seems to
19 have been settled against them by the Oregon State Legislature
20 when it allowed aggregate extraction as a use allowed in EFU
21 zones, and LCDC when it included aggregate extraction in the
22 definition of farm use. In addition, the goal itself is one
23 that is designed to inventory and restrict uses conflicting
24 with mineral and aggregate resources. If there is a
25 conflicting use under Statewide Goal 5, it is the agricultural
26 use that is conflicting with the mineral and aggregate

1 resource. Goal 5 makes no mention of agricultural uses being
2 in a protected category. In addition, petitioners seem to be
3 desirous of preserving the resource for preservation sake.
4 Their argument would logically lead to the fact that the
5 resource presently being harvested should be preserved
6 indefinitely. The goal was not intended to serve that type of
7 purpose.

8 We deny petitioners' Goal 5 assignment of error.

9 3. Goal 6.

10 Under this allegation of error, petitioners contend that
11 when Linn County approved the proposal without requiring the
12 applicant to demonstrate that it would not violate noise level
13 standards, contribute to drainage problems or aggravate
14 existing water contamination in the area, it violated Goal
15 6.⁷ Petitioners argue they presented credible evidence of
16 their concern for issues covered by Statewide Goal 6 and
17 consequently the burden shifted to applicant to show no adverse
18 affects on air and water quality would result from its
19 activities allowed by the AXP zone.

20 We know of no law or rule that requires a burden shift in
21 application of Goal 6. Petitioners cite to this Board's
22 holding in Shadybrook EPA v. Washington County, 4 Or LUBA 236
23 (1981) for such a proposition. In Shadybrook, we merely said
24 that a county, when faced with sufficient evidence to raise an
25 issue concerning relevant criterion must address that issue in
26 its findings, citing City of Wood Village v. Portland Metro

1 Area Local Government Boundary Comm., 48 Or App 79, ___ P2d ___
2 (1980) and Hillcrest Vineyard v. Bd. of Comm'rs of Douglas
3 County, 45 Or App 285, 608 P2d 201 (1980). The fact a
4 governing body, when faced with sufficient evidence to raise
5 the Goal 6 issue must make findings relating to that goal does
6 not mean, as petitioners' claim, that the burden shifts to the
7 county, or the respondent-applicant, to prove there will be no
8 adverse affects on air and water quality as a result of the
9 proposed action. Goal 6 does not require proof that there be
10 no adverse effects.

11 Linn County in the case before this Board addressed Goal 6
12 and addressed the data or evidence in the goal submitted by
13 petitioners. The county concluded the more credible evidence
14 showed petitioners' concerns to be unfounded. Specifically the
15 county acknowledged the noise pollution issue and reviewed the
16 issue in terms of location of noise producing machinery in
17 relation to noise recipients. The county also reviewed its
18 records on noise complaints. See discussion supra.

19 With reference to the drainage impacts, the county reviewed
20 the evidence both pro and con, evaluated the impact resulting
21 from the proposed zone change and concluded there was
22 insufficient evidence to indicate any surface drainage problems
23 will result from the proposed action.

24 Petitioners also introduced evidence of water contamination
25 which could result or has in the past resulted from mining
26 operations on the subject property. Petitioners' experts

1 testified about groundwater pollution problems which have
2 occurred around other mining operations in Oregon. There was
3 expert testimony introduced recommending a detailed geological
4 groundwater study be conducted if extraction were to continue
5 on the site. That expert testimony was in the form of a study
6 done some two years before. The county found that no reports
7 of ground water contamination from increased turbidity had been
8 reported to the Linn County Environmental Health Division or
9 State Department of Water Resources during the two years since
10 the study even though extraction had continued at the site.

11 A consulting geologist (Redfern) testified that expansion
12 of the extraction activities onto Tax Lot 406 (the 40 virgin
13 acres) would increase the potential for groundwater
14 contamination and would increase the rate of groundwater flow
15 toward the quarry. That consulting geologist also recommended
16 that a detailed study of groundwater conditions and septic
17 systems be undertaken prior to approval of the requested zone
18 change. There was testimony by one Mildred Olsen, owner of Tax
19 Lot 600, demonstrating that coliform bacteria had contaminated
20 her well. The tests indicating the coliform bacteria
21 contamination were performed by the Oregon State University
22 Department of Microbiology in June and December of 1981.

23 Faced with petitioners' evidence and information, the
24 county made findings and conclusions as follows:

25 "Opponents have alleged contamination of ground water
26 and a loss of water supply will result from the
aggregate operation. Contamination of groundwater is

1 based on two reports submitted by opponents and the
2 claims of Mrs. Olsen. The Redfern report offers
3 little factual data to support his contentions. Both
4 Redfern and Boatwright discussed the potential of a
5 Drapersville problem, without discussing the great
6 difference in property densities and without any
7 on-site evaluation of soils. These two factors
8 severely limit the credibility of the two reports.
9 Applicants have submitted information which indicated
10 there have [been] no reports of water contamination
11 other than Mrs. Olsen. The evidence also shows no
12 turbidity in any wells, including the on-site well.
13 Turbidity being the most common problem in aggregate
14 operations. Mrs. Olsen's residence is located further
15 away than many residences from ongoing site
16 operations. The lab reports indicates that coliform
17 bacteria can come from humans or animals. Human
18 sources would be nearby septic tanks, the majority of
19 which are north of Cox Creek. Septic tank problems
20 according to the testimony are rare occurring only
21 during peak flooding. Animal sources for coliform are
22 present in the form of Cooley's calf operation has
23 [sic] a common element, a high density of animals on
24 the land. Each of these properties drains, as the
25 others do, toward the northwest in the direction of
26 the Olsen residence. Mrs. Olsen, nor anyone else, has
identified the depth of her well. The evidence shows
that there is an impervious layer of 25-30 feet in
depth. The only evidence before us is the Boatwright
listing of well logs. Of the wells listed, only Morse
Brothers well is listed at 30' or less. We conclude
that the record indicates no ground water
contamination can be directly attributed to the
proposed change due to the ground water problems, the
distance of the only ground water problem from the
site, the lack of evidence that this well draws from
the ground water and not the aquifer below the
impervious layer, the intervening wells without a
problem and the majority of the sources of
contamination, both animal and human, are north of the
aggregate site." Record 73

22 Once again, the county analyzed the data that was submitted
23 to it and decided to not base its decision upon that
24 information. There is substantial evidence in the record to
25 support the findings and conclusions the county did make. Goal
26 6 does not require any more of a local government. Families

1 for Responsible Government v. Marion County, _____ Or LUBA _____
2 (LUBA NO. 82-054, 1982, proposed opinion accepted by LCDC).

3 Air Pollution

4 In the manner that petitioners present their argument in
5 their petition for review we are not sure they are alleging a
6 Goal 6 violation based on air contamination. They do not
7 specifically allege a violation, however, they indirectly claim
8 air discharges would be a problem to them. The county made
9 considerable findings on the question of air pollution. The
10 findings contain a review of the testimony submitted to the
11 county by both the applicant and the opponents. Also, the
12 findings indicate the county reviewed its records and found
13 that only two claims regarding air pollution at the site had
14 been presented to it. One claim regarded a dust problem and
15 the other industrial smoke. The claim about dust came from one
16 of the petitioners during construction of a berm designed to
17 protect petitioners' property. The county found the evidence
18 showed the applicant responded quickly to the complaint by
19 placing asphalt and asphalt oil as a dust control. The
20 complaint about industrial smoke was allowed over applicant's
21 objection. The complaint came from Mildred Olsen. The county
22 found that Mrs. Olsen had provided no information of how often
23 this alleged industrial smoke problem occurred. In addition,
24 the county found that Mrs. Olsen had not alleged that the
25 industrial smoke is in violation of any regulation. In
26 addition, the county found that the applicant has a DEQ air

1 discharge permit and is operating in accordance with that
2 permit. No evidence that DEQ air discharge rules had been
3 broken was introduced. Finally the county concluded that Mrs.
4 Olsen's concern did not constitute a valid claim of an adverse
5 impact from air discharge. After review, the county concluded
6 the evidence showed:

7 "compliance by applicant of air discharge rules,
8 operational permits have been obtained and applicant
9 has quickly solved problems when notified. We do not
believe air discharges from the operation produce an
adverse impact."

10 Based on the foregoing, we find the county to have complied
11 with the dictates of Statewide Goal 6. It allowed testimony
12 and evidence on potential problems with air, water and land
13 resources resulting from the proposed zone change. It analyzed
14 the material presented it and concluded that no credible
15 evidence was introduced to support the allegations by
16 petitioners on any of the subjects covered by Goal 6. We have
17 reviewed the record in light of petitioners' allegations of
18 error and find no Goal 6 error.⁹

1 REYNOLDS, Dissenting.

2 The exceptions process was intended to be a tool of
3 necessity, not of convenience. That is why an exception can
4 only be allowed if there are compelling reasons and facts for
5 saying a particular goal should not be applied according to its
6 terms. Goal 2 requires consideration of at least four
7 factors. The first two factors -- why these other uses should
8 be provided for and what alternative locations are available --
9 are the meat of the exceptions test. They are the factors
10 which go to justifying the use at a particular location. The
11 latter two factors are concerned with the consequences from
12 allowing the use. In the case of an exception to allow a
13 non-resource use of property, if the applicant can not present
14 compelling reasons and facts why the proposed use should be
15 allowed at that particular location, then no exception, in my
16 view, may be approved.

17 The exception which has been approved in this case allows
18 aggregate extraction as an outright permitted use on 230
19 acres. The exception also allows use of the 230 acres for the
20 manufacture or fabrication of such aggregate related products
21 as concrete beams, girders and columns. Also allowed outright
22 anywhere on the 230 acres are an asphalt paving (hot-mix)
23 plant, equipment storage and buildings associated with wholesale
24 and retail activities.

25 The reasons and facts which the county found to be
26 compelling to rezone this 230 acres of land from EFU to AXP are

1 set forth at pp. 13-34 of the record. In summary, they are as
2 follows:

- 3 (1) The site is a major producer of aggregate
4 resources in the Albany-Corvallis area. The site
5 provides 58 percent of the aggregate within the
6 market area.
- 7 (2) The site has processing facilities on-site and is
8 one of few or the only site to have these
9 facilities as well as a high quality aggregate
10 resource.
- 11 (3) Resource sites, such as this, need to be
12 protected from encroachment of incompatible
13 uses.

14 I disagree with the majority that these reasons provide
15 compelling justification for the AXP zone on this property.
16 First, the property surrounding the site is zoned exclusive
17 farm use with a 40-acre minimum lot size. There is no finding
18 that future development which is in accordance with this zone
19 may cause further compatibility problems. Second, there is no
20 showing or finding that without the zoning there is any
21 likelihood that Morse Bros. won't be able to continue its
22 310,000 per year cubic yard output.⁸

23 The best the county has done is make the following
24 conclusion (Record 31):

25 "If operations were not allowed zoning under the AXP
26 District, these facilities would have to continue
27 under the existing non-conforming status, which would
28 preclude maximum use of the site for extraction and
29 processing."

30 This conclusion, however, does not explain how it is that
31 maximum use of the site for extraction and processing is
32 "precluded" under the existing non-conforming status. This

1 conclusion is particularly confusing since aggregate extraction
2 and processing are not non-conforming uses in an EFU zone in
3 any event! See ORS 215.213(2)(b).

4 Third, the conditional use permit process, and the
5 protection which such process affords to potentially affected
6 neighboring landowners, can not be cited, in my view, as a
7 compelling reason for rezoning the property. One of the
8 reasons why aggregate extraction on agricultural lands is a
9 conditional use rather than an outright permitted use is to
10 insure that the concerns of adjacent farm owners are taken into
11 consideration in reviewing the magnitude of the aggregate
12 resource operation. Adjacent farm owners have the right to
13 insist upon the placement of reasonable conditions on the
14 aggregate extraction activity so as to minimize interference
15 with their farm activities. Such conditions might relate to
16 hours of operation and buffering, to name but two. Permitting
17 aggregate resource extraction as an outright use in an
18 agricultural zone along with related manufacturing and
19 processing activities leaves adjacent landowners with no right
20 to insist upon the imposition of reasonable conditions on the
21 uses allowed. It may be, in a given case, that an aggregate
22 operator such as Morse Bros. could show that it is simply being
23 harrassed unduly by neighboring landowners and that such
24 harrassment has resulted in or will result in substantial
25 economic losses or even the eventual demise of the business.
26 No such facts were found by the county in this case.

1 The findings in this case attempt to justify placing the
2 AXP zone on this property to protect the uses presently taking
3 place on the property. There are no findings of fact or
4 conclusions which address why uses allowed in the AXP zone, but
5 not presently allowed to occur on the property (i.e.,
6 manufacturing or fabrication of such products as girders, beams
7 and columns), should be allowed on this property or anywhere
8 else. While no particular form of findings is required,
9 Sunnyside Neighborhood v Clackamas County, 280 Or 3, 569 P2d
10 1063 (1977), the county has a duty to address the relevant
11 issues someplace in its findings. Here, a relevant and, in my
12 judgment, critical issue, is: Why should manufacturing and
13 fabrication uses not presently occurring on the property but
14 allowed in the AXP zone be allowed on this site? There are no
15 reasons, let alone compelling reasons, in the findings why such
16 aggregate related products as girders, beams and columns should
17 be allowed to be manufactured or fabricated on this 230 acres.

18 The majority opinion believes this issue is addressed in
19 the county's findings about the costs associated with hauling
20 aggregate. In my judgment, the findings only address the cost
21 of hauling aggregate for use in its raw form, There is no
22 finding about what effect having to transport raw aggregate to
23 an off-site manufacturing/fabricating plant will have on the
24 overall cost of the final product. We are left to speculate as
25 to whether the effect on the overall cost would be minimal or
26 significant.

1 Perhaps of more concern, however, is the principle that the
2 cost of hauling aggregate can be used as a justification for
3 allowing on-site manufacturing and fabrication of finished
4 aggregate products. First, I believe little justification has
5 been shown here in terms of transportation costs because the
6 site abuts at one corner the Albany UGB, within which
7 manufacturing/fabrication plants could be allowed without the
8 need for an exception to Goal 3. Second, to allow
9 transportation costs to be a justification at all means quite
10 simply that the further away from an urban growth boundary an
11 aggregate site is located, the better the justification for
12 allowing on-site manufacturing and fabrication. Thus, I do not
13 believe it is appropriate to use transportation costs as a
14 reason for allowing on-site manufacturing and fabrication of
15 finished aggregate products as an exception to Goal 3. But
16 even if there could be circumstances where the transportation
17 costs could be such as to warrant an exception, those facts do
18 not appear in the county's findings in this case.

19 In conclusion, there may be a reason here for the county to
20 allow this property to be rezoned AXP. But having just a
21 reason is not enough. The reason must be compelling. I do not
22 believe the county's findings show anything close to a
23 compelling reason for zoning this property AXP in order to
24 protect aggregate activities presently occurring on the site.
25 Those uses which are presently occurring may continue. In
26 addition, the findings fail to present any justification for

1 allowing uses to occur on this site which are permitted under
2 the AXP zone but not presently occurring on the property.

3 There is presented no compelling justification for placing the
4 AXP zone on this 230 acres. I, therefore, respectfully dissent.

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FOOTNOTES

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ORS 215.213(2) in pertinent part states:

4 "(2) The following nonfarm uses may be
5 established, subject to the approval of the governing
6 body or its designate in any area zoned for exclusive
7 farm use:

8 "(a) Commercial activities that are in
9 conjunction with farm use.

10 "(b) Operations conducted for the mining and
11 processing of geothermal resources as defined by ORS
12 522.005 or exploration, mining and processing of
13 aggregate and other mineral resources or other
14 subsurface resources." (Emphasis added).

15
16 2

Section 16.030 USES PERMITTED OUTRIGHT states:

17 "In the Aggregate Resource Extraction and
18 Processing (AXP) District, the following buildings and
19 uses and their accessory buildings and uses are
20 permitted outright, subject to the general provisions
21 and exceptions set forth below:

22 "1. Operations that entail the extraction and
23 stockpiling of sand, gravel, rock, and
24 topsoil overburden;

25 "2. The processing of aggregate material in the
26 following manners, provided that at least
27 50% of the aggregate materials are excavated
28 on-site: washing, sorting, screening,
29 measuring, weighing, crushing, asphalt
30 paving (hot mix) plant, concrete batching
31 plant, and the manufacturing fabrication and
32 storage of aggregate products such as tile,
33 block, prestressed concrete beams, girders,
34 columns and bricks;

35 "3. Aggregate resource-related contractors'
36 equipment storage yard, maintenance and
37 storage buildings associated with the
38 on-site operations;

- 1 "4. Retail and wholesale sales of aggregate
2 products produced on-site;
3 "5. Offices appropriate to the uses permitted in
4 this district;
5 "6. Farm and forest uses defined in this
6 Ordinance; and
7 "7. Signs, subject to provisions of Section
8 16.060 of this Article."

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8 3

8 Beyond the fact that the manufacturing uses permitted by
9 this zone require the taking of an exception, the question
10 arises of whether an exception is needed to allow, as an
11 outright permitted use (rather than a use subject to prior
12 governing body approval), the extraction of aggregate from land
13 previously zoned EFU. The LCDC continuance order (which is not
14 in the record) referred to in the county's findings seems to
15 indicate an exception is not necessary. A review of Goal 3
16 would indicate that the extraction activity allowed in the AXP
17 zone is within the definition of farm use used in statewide
18 Goal 3. That definition is:

14 "Farm Use - is as set forth in ORS 215.203 and
15 includes the nonfarm uses authorized by ORS 215.213."

16 See SEPA v. Washinton County, 4 Or LUBA 236 (1981).

17 4

18 Statewide Goal 3 states:

19 "GOAL: To preserve and maintain agricultural lands.

20 "Agriculture lands shall be preserved and
21 maintained for farm use, consistent with existing and
22 future needs for agricultural products, forest and
23 open space. These lands shall be inventoried and
24 preserved by adopting exclusive farm use zones
25 pursuant to ORS Chapter 215. Such minimum lot sizes
26 as are utilized for any farm use zones shall be
27 appropriate for the continuation of the existing
28 commercial agricultural enterprise with the area.
29 Conversion of rural agricultural land to urbanizable
30 land shall be based upon consideration of the
31 following factors: (1) environmental, energy, social
32 and economic consequences; (2) demonstrated need
33 consistent with LCDC goals; (3) unavailability of an

1 alternative suitable location for the requested use;
2 (4) compatibility of the proposed use with related
3 agricultural land; and (5) the retention of Class I,
4 II, III and IV soils in farm use. A governing body
5 proposing to convert rural agricultural land to
6 urbanizable land shall follow the procedures and
7 requirements set forth in the Land Use Planning goal
8 (Goal 2) for goal exceptions."

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Goal 2, Part II, Exceptions states:

"When, during the application of the statewide goals to plans, it appears that it is not possible to apply the appropriate goal to specific properties or situations, then each proposed exception to a goal shall be set forth during the plan preparation phases and also specifically noted in the notices of public hearing. The notices of hearing shall summarize the issues in an understandable and meaningful manner.

"If the exception to the goal is adopted, then the compelling reasons and facts for that conclusion shall be completely set forth in the plan and shall include:

"(a) Why these other uses should be provided for;

"(b) What alternative locations within the area could be used for the proposed uses;

"(c) What are the long term environmental, economic, social and energy consequences to the locality, the region or the state from not applying the goal or permitting the alternative use;

"(d) A finding that the proposed uses will be compatible with other adjacent uses."

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We note the county did not make a clear link in its findings between the need for aggregate and for manufactured products. The county's findings do talk of "aggregate products," a term we believe, fairly read, the county intended to mean "manufactured products." The county's emphasis on costs of transport and new projects using "aggregate products" may be read as justification, then, for rezoning the property to allow for expansion of present activities and to permit finished product manufacturing.

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In pertinent part Statewide Goal 6 provides:
"To maintain and improve the quality of the air, water
and land resources of the state.

"All waste and process discharges from future
development, when combined with such discharges from
existing developments shall not threaten to violate,
or violate applicable state or federal environmental
quality statutes, rules and standards. With respect
to the air, water and land resources of the applicable
air sheds and river basins described or included in
state environmental quality statutes, rules,
standards, and implementation plan [sic], such
discharges shall not (1) exceed the carrying capacity
of such resources, considering long range needs; (2)
degrade such resources; or (3) threaten the
availability of such resources.

Waste and Process Discharges - refers to solid waste,
thermal, noise atmospheric or water pollutants,
contaminants, or products therefrom. Included here
also are indirect sources of air pollution which
result in emissions of air contaminants for which the
state has established standards."

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In this regard it should be noted that this site, with the
3 million cubic yard total reserve, will only be productive at
its present rate for ten more years. Unless output at the site
drops off markedly in the next few years, the need to preserve
this site against future encroachment, at least encroachment
which may occur more than ten years down the road is slight.

9

The first part of petitioners' assignment of error no. 2
discusses the agricultural resource lands policy of the Linn
County Comprehensive Plan. We understand that policy in the
county's unacknowledged plan to mirror statewide planning Goal
3 and to require, if a change of use of agricultural land is
proposed, the applicant to comply with the exceptions statement
policies in the comprehensive plan. Those exceptions policies
are the same as those found in statewide Goal 2. Because of
our discussion in assignment of error no. 1, supra, we see no
need to address this portion of petitioners' assignment of
error.

The second portion of petitioners' second assignment of
error alleges a violation of the aggregate resources section of
the Linn County Comprehensive Plan. The aggregate resources
section includes a provision that the conditional use process
shall be used to permit activities which may create significant

1 conflicts with surrounding land uses. The issues raised by
2 petitioners are the same as those raised in assignment of error
3 no. 1 under the fourth exceptions criterion in Goal 2. Again,
4 because of our discussion under assignment of error no. 1, we
5 do not feel it necessary to discuss this portion of
6 petitioners' assignment of error no. 2.

7 As to assignment of error no. 3, we understand petitioners
8 to complain that the county failed to meet the criteria for
9 application of the AXP zone (sec 16.010) and the criteria for
10 approval of a zone change (sec 27.080). We also understand
11 petitioners to view sec 20.060 and 27.090 to prohibit county
12 action on this proposed use within one year of a previously
13 submitted conditional use on the same property.

14 Because we understand petitioners to be arguing, again,
15 that the county failed to comply with the first criteria of the
16 exceptions process, we believe our discussion under assignment
17 of error no 1 to control. Further, as we understand the county
18 to have rezoned the property as opposed to holding a second
19 conditional use hearing within one year, we do not understand
20 the county's time limitation on applications for conditional
21 uses to apply.
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