BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

CAROL PADDOCK, HARVE PADDOCK
and TINA PADDOCK,
Petitioners,

vs.

YAMHILL COUNTY,
Respondent,

and

GEORGE JOHNSTON and MARIJO JOHNSTON,
Intervenors-Respondent.

LUBA No. 2003-042

FINAL OPINION
AND ORDER

Appeal from Yamhill County.

Barry Adamson, Lake Oswego, filed the petition for review and argued on behalf of petitioners.

No appearance by Yamhill County.

Catherine A. Wright and Thomas C. Tankersley, McMinnville, filed the response brief. With them on the brief was Drabkin and Tankersley. Thomas C. Tankersley argued on behalf of intervenors-respondent.

HOLSTUN, Board Member; BASSHAM, Board Chair; BRIGGS, Board Member, participated in the decision.

REMANDED 07/11/2003

You are entitled to judicial review of this Order. Judicial review is governed by the provisions of ORS 197.850.

Opinion by Holstun.

NATURE OF THE DECISION

Petitioners appeal a county decision that grants preliminary subdivision plat approval for a six-lot subdivision in the county's Very Low Density Residential (VLDR)-2.5 zone.

MOTION TO INTERVENE

George Johnston and Marijo Johnston (hereafter intervenors), the applicants below, move to intervene on the side of respondent. There is no opposition to the motion, and it is allowed.

FACTS

This is the second time a county decision approving the disputed subdivision has been appealed to LUBA. After petitioners filed their petition for review in the first appeal, the applicant and county sought a voluntary remand of the original county decision, and we granted the request for voluntary remand. *Paddock v. Yamhill County*, ___ Or LUBA ___ (LUBA No. 2002-129, November 26, 2002) (hereafter *Paddock I*). Following our decision in *Paddock I*, the county held an additional hearing where the board of county commissioners received additional evidence and legal argument concerning the issues presented in petitioners' petition for review in *Paddock I*. The board of county commissioners thereafter adopted the decision challenged in this appeal. The challenged decision includes additional findings to address the issues raised by petitioners in *Paddock I*.

PRELIMINARY MATTER

Petitioners first contend that the county's decision to join in the applicants' request for voluntary remand in *Paddock I* "incorporates an implicit concession of some error." Petition for Review 5 n 2. Petitioners argue that the county took the position on remand that there were no defects at all in the original decision:

> "Flouting the 'correction-of-deficiencies' premise for the voluntary remand, and laboring under a misapprehension about the implications of certain language in the Applicant's motion for voluntary remand filed with [LUBA],

> both Applicant and the County took the position during the remand hearing that the County's earlier approval bore no defects at all." Petition for Review 4 (footnote and record citations omitted).

We are not sure what petitioners' point is. The county apparently did not believe the findings that were adopted to support the original decision were adequate, because it asked that the original decision be remanded. Following our decision in *Paddock I*, the county adopted additional findings in support of its decision. The adequacy of those findings is subject to review in this appeal. If petitioners believe a voluntary remand *necessarily* means the original decision is substantively flawed, they are wrong. The corrective action that a local government must take on remand to adopt a decision that it can successfully defend in any subsequent appeal *might* require that it amend its original decision to correct a substantive error in the original decision. However, it is also possible that a substantive change in the original decision might not be required. There is nothing necessarily wrong with a local government moving for voluntary remand to (1) adopt additional findings that better explain why the original decision satisfies applicable approval criteria, or (2) readopt the original decision after correcting any procedural errors it may have committed in adopting the original decision. In both of these instances, the local government might readopt the same substantive decision, as the county apparently has done in this case.

If petitioners are arguing that a *mea culpa* of some sort is required from the local government during its proceedings on remand, we do not agree. In cases where the responding local government moves for voluntary remand, inadequate findings or a substantive or procedural error of some sort—or at least substantial concerns regarding the adequacy of the findings, the substance of the decision or the procedures that were followed—almost certainly are the motivation for the motion for voluntary remand. Nevertheless, we have held that a local government seeking voluntary remand need not expressly "confess error" as a precondition of seeking voluntary remand. *Hribernick v. City of Gresham*, 35 Or LUBA 329, 331 (1988), *aff'd* 158 Or App 519, 974 P2d 791 (1999)

(citing *Mulholland v. City of Roseburg*, 24 Or LUBA 240, 242 (1992)). Neither must a local government confess error during the local proceedings on remand. The local government's obligation in considering a decision following a voluntary remand is to conduct whatever additional proceedings may be necessary to allow it to correct any errors or possible errors there may be in the original decision, so that it can adopt a decision that it can defend in any further appeal. We turn to petitioners' assignments of error to determine whether the county has done so.

FIRST AND SECOND ASSIGNMENTS OF ERROR

Petitioners' first two assignments of error concern the manner in which the county applied Yamhill County Land Division Ordinance (YCLDO) 6.090, which requires that newly subdivided lots have an adequate water supply.[1] Petitioners present 19 pages of

[1] YCLDO 6.090 provides as follows:

"Water Supply

"All lots within a * * * subdivision shall have an adequate quantity and quality of water to support the proposed use of the land. No final plat of a subdivision * * * shall be approved unless the Director and engineer have received and accepted:

"1. A certification by a municipal, public utility or community water supply system, subject to the regulation by the Public Utility Commission of Oregon, that water will be provided to the parcel line of each and every parcel depicted in the final plat; or

"2. A bond, contract or other assurance by the subdivider * * * to the county that a domestic water supply system will be installed on behalf of the subdivider * * * to the parcel line of each and every parcel depicted on the final plat. * * *;

"3. A water well report filed with the State of Oregon Water Resources Department for each well provided within a subdivision * * *. The location of such wells and an appropriate disclosure shall be placed on the face of the final plat. If the subdivider * * * intends that domestic water will be provided to the proposed lot or lots by well(s) and no test wells have been drilled, the Director may require that test wells be drilled prior to final approval. The number and location of such wells shall be determined by the director and watermaster having jurisdiction; or

"4. In lieu of Subsections (1), (2), and (3) of this Section, when a municipal, public utility, community water supply or private well system is not available, then a statement must be placed on the final plat or map which states:

argument in support of these two assignments of error and attack the county's findings and the manner in which those findings are worded from a number of different directions.[2] The core disagreement between petitioners and the county is whether YCLDO 6.090, and a number of statutory requirements for groundwater use that are enforced by the Oregon Water Resources Department (OWRD) to protect groundwater and existing wells from potential adverse impacts from new wells, require that the county consider off-site impacts on groundwater and existing wells that use that groundwater before granting preliminary subdivision approval.[3] The county concluded that such an off-site impacts inquiry is not required under YCLDO 6.090. The county gave two reasons for that conclusion.

First, the county found that

> "YCLDO 6.090 specifically provides 'all lots *within* a….subdivision shall have an adequate quantity and quality of water.' * * * The language of YCLDO 6.090 specifically limits the county's review to the provision of water within the subdivision. The specific language of YCLDO 6.090 addresses only the adequacy of water supplied to the subject subdivision lots, not impacts on other properties. The county's interpretation of [YCLDO 6.090] is consistent with its words, context and policy. Further, the Oregon Supreme Court has held that a local government's interpretation of its own ordinance is binding unless that interpretation is contrary to the express

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> 'No municipal, public utility, community water supply or private well system will be provided to the purchaser of those lots noted hereon.'"

[2] Under these assignments of error and under the third through sixth assignments of error, petitioners argue the county should be found to have waived its right to adopt the interpretations of its local land use legislation that it adopted on remand, because it failed to adopt those interpretations in its first decision. We reject the argument.

[3] Petitioners contend that the county's decision improperly fails to address and defers findings of compliance with ORS 537.535 (regulating and requiring OWRD permits for non-exempt new uses of groundwater), 537.545(1) (listing exempt uses of groundwater), 537.615 (governing applications for permits to appropriate groundwater), 537.621 (review procedure and criteria for applications for permits to appropriate groundwater) and 537.629 (conditions or limitations on new wells to prevent interference with other wells). In this opinion we refer to the considerations under the statutes that petitioners believe the county should have but did not consider as "off-site" impacts. We understand the applicants to be proceeding on an assumption that individual wells will serve the disputed lots and that those individual wells will qualify for the exemption provided by ORS 537.545(1)(d) for "[s]ingle or group domestic purposes in an amount not exceeding 15,000 gallons a day." Petitioners fault the county for not finding that this exemption will be available to the applicants, however, petitioners offer no reason why the disputed lots would not qualify for the ORS 537.545(1)(d) exemption.

> words, policy or context of the local enactment. *Clark v. Jackson County*, 313 Or 508, 836 P2d 710 (1992*).*
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> In *Perry v. Yamhill County*, [26 Or LUBA 73, 83 (1993), *aff'd* 125 Or App 588, 865 P2d 1344 (1993)], the Land Use Board of Appeals specifically upheld Yamhill County's interpretation of YCLDO 6.090 as not requiring consideration of impacts on the water supplies of adjacent properties." Record 10-11 (emphasis in original).[4]

Second, the county found that ORS chapter 537 preempts the county from requiring that applicants consider the off-site impacts that a proposed subdivision may have on groundwater.[5] Because we agree with the county's interpretation of YCLDO 6.090, we need not and do not consider whether we agree with the county's alternative "preemption" rationale.[6]

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[4] In other findings the county stated "[o]ffsite water resources impacts are not within the purview of the County decision making process due to * * * YCLDO 6.090 as supported by *Perry v. Yamhill County*[.]" Record 10. In response to that finding, petitioners argue:

> "* * * Not even the broad shelter of ORS 197.829(1)(a) insulates that kind of textual exaggeration; as worded, [YCLDO] § 6.090 does no more than *require* an *on-site* evaluation, but it most certainly does not 'limit' any *off-site* evaluation." Petition for Review 10 (emphases in original).

We are inclined to agree with petitioners' characterization of the language of the YCLDO 6.090. However, we understand the county, by invoking *Clark* and by specifically relying on its prior decision in *Perry*, to have taken the position in its decision in this appeal that it elected to stand by its prior construction of YCLDO 6.090 in *Perry* to limit the required analysis to the on-site analysis that is expressly required by YCLDO 6.090. Although there is language in the county's decision that can be read to suggest otherwise, we do not understand the county to have taken the position that the language of YCLDO 6.090 necessarily precluded the county from exercising its interpretive discretion under *Clark* to agree with petitioners' broader reading of the impacts that may be addressed under YCLDO 6.090.

[5] The county's preemption theory appears to be based on ORS 537.769, which provides:

> "The Legislative Assembly finds that ground water protection is a matter of statewide concern. No ordinance, order or regulation shall be adopted by a local government to regulate the inspection of wells, construction of wells or water well constructors subject to regulation by the Water Resources Commission or the Water Resources Department under ORS 537.747 to 537.795 and 537.992."

[6] We briefly note and reject one argument that petitioners advance that is related to the preemption argument. Petitioners challenge the following county finding:

> "Yamhill County has chosen to defer to the State all ground water issues, beyond those requiring provision of water to a development, because there is an argument that ORS

YCLDO 6.090 is set out in full at n 1. We agree with the county that there is nothing in the text of YCLDO 6.090 that *requires* that the county consider off-site impacts in this preliminary subdivision approval proceeding. Neither does YCLDO 6.090 require a finding that the applicants will ultimately be successful in securing OWRD approval for the permits and any exemptions that may be needed for wells on the lots created by the disputed subdivision.[7] Accordingly, the county's interpretation of YCLDO 6.090 is not reversible under ORS 197.829(1) and *Clark*.[8] The county's interpretation here is essentially the same interpretation that we affirmed in *Perry*, where we explained:

> "The county's interpretation of YCLDO 6.090 is consistent with its words, context and policy. * * * The language of YCLDO 6.090 addresses only the

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537.769 creates state preemption of such issues and therefore requires such deference." Record 10.

Petitioners read the above-quoted finding to state that the county either in the past chose or in the challenged decision is making a policy choice to defer to the OWRD with regard to subdivision off-site impacts on water resources. We need not address petitioners' extensive arguments based on petitioners' understanding of the quoted finding. Even if the county is not preempted from regulating such off-site impacts, nothing cited by petitioners mandates that the county do so or mandates that the county consider such impacts in this subdivision approval proceeding.

[7] In fact, although one of the conditions of approval which we discuss below apparently precludes the applicants from selecting the option provided under YCLDO 6.090(4), that subsection of YCLDO 6.090 expressly allows subdivision applicants to subdivide without providing *any* water supply so long as the lack of a water supply is disclosed on the final plat. *See* n 1.

[8] As relevant, ORS 197.829 provides:

> "The Land Use Board of Appeals shall affirm a local government's interpretation of its comprehensive plan and land use regulations, unless the board determines that the local government's interpretation:
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> "(a) Is inconsistent with the express language of the comprehensive plan or land use regulation;
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> "(b) Is inconsistent with the purpose for the comprehensive plan or land use regulation;
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> "(c) Is inconsistent with the underlying policy that provides the basis for the comprehensive plan or land use regulation; or
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> "(d) Is contrary to a state statute, land use goal or rule that the comprehensive plan provision or land use regulation implements.

> adequacy of water supply to the subject subdivision lots, not impacts on other properties."[9] 26 Or LUBA at 83.

We again conclude that the county's interpretation of YCLDO 6.090 is well within its interpretive discretion under ORS 197.829(1) and *Clark*.

The county imposed nine conditions of approval. Condition "7" requires that the applicant demonstrate that the "quality and quantity of water" is adequate "to support the proposed use" by complying with the requirements of YCLDO 6.090(1), (2) or (3) before the final plat can be approved. Record 17. The county went on to find that because the

> "existing well on the property * * * currently provides potable water at a rate of 10 gallons per minute, the County reasonably concludes that the applicant[s have] demonstrated that it will be feasible for the applicant[s] to provide water to all lots within the subdivision as required by Condition of Approval number 7." *Id*.

We conclude that the county's findings and condition 7 are adequate to ensure that the disputed subdivision complies with YCLDO 6.090.

Finally, petitioners argue that the county's failure to find that the subdivision complies with the previously cited OWRD statutory requirements or that it is feasible for the subdivision to comply with those requirements is inconsistent with a number of decisions by LUBA that petitioners assert require such findings.[10]

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[9] In *Perry*, the county adopted the following interpretation of YCLDO 6.090:

> "[YCLDO 6.090 does] not require a demonstration that the provision of an adequate quality and quantity of water to the proposed dwellings on these two lots shall not result in the limitation of the [supply or] quality of water to other uses within the vicinity of the lots or otherwise will not adversely affect such off-site uses or activities. * * *
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> "[YCLDO 6.090] requires only that the applicant demonstrate the availability of a water source of sufficient quality and quantity to serve two single family dwellings and does not require an assessment of impacts on surrounding properties, if any, stemming from such service. * * *" 26 Or LUBA at 83.

[10] The cases cited by petitioner are as follows: *DLCD v. City of Warrenton*, 37 Or LUBA 933, 954 (1999); *Thomas v. Wasco County*, 35 Or LUBA 173, 193-195 (1998); *Deal v. City of Hermiston*, 35 Or LUBA 16, 23 (1998); *Sunningdale-Case Heights Assoc. v. Washington County*, 34 Or LUBA 549, 557-58 (1998); *Tenly Properties Corp. v. Washington County*, 34 Or LUBA 352, 356-61 (1998); *Harcourt v. Marion County*, 33 Or

Petitioners apparently believe these LUBA decisions establish a broad principle that in granting a local land use approval a local government must find that the proposed land use complies with state permitting requirements, or must find that it is feasible for the proposed use to satisfy state permitting requirements, whenever a question is raised in a local land use proceeding regarding the ability of a proposal to secure required state regulatory permits that will be necessary to construct the use or some aspect of the use. Petitioners are mistaken. None of the above-cited cases stands for that proposition.

Harcourt v. Marion County comes the closest to lending some support to petitioners' position. However, as petitioners recognize, *Harcourt* involved a zoning ordinance criterion that required that proposed lots be large enough to ensure an "adequate water supply," and the county improperly deferred its finding of compliance with that local criterion to OWRD.[11] As we have already explained, as the county interprets YCLDO 6.090, it simply does not require that subdivision applicants consider off-site well impacts or establish that the OWRD will issue any permits necessary for the wells that will serve the proposed lots or grant them any required exemptions.[12] Simply stated, the county's failure to adopt findings addressing potential impacts the proposed subdivision might have on nearby wells or the feasibility that lot owners will be able to obtain well permits and exemptions from the OWRD could only provide a basis for reversal or remand if some relevant local approval criterion requires that the county adopt those findings in the first place. We have rejected

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LUBA 400, 406 (1997); *DLCD v. Tillamook County*, 33 Or LUBA 163, 171 (1997); *Thomas v. Wasco. County*, 30 Or LUBA 302, 311 (1996); and *Rhyne v. Multnomah County*, 23 Or LUBA 442, 447-48 (1992).

[11] The other cited cases deal with the adequacy of adopted findings, whether conditions of approval were improperly substituted for required findings, and whether required findings were improperly deferred to subsequent proceedings. However, in all of these cases, unlike the present case, the applicable approval criterion imposed an obligation on the decision maker to address the disputed considerations. It was that obligation, which is missing in this case, that gave rise to the findings obligation.

[12] The county apparently does view YCLDO 6.090 to require that the applicants establish that there is groundwater available to provide a source of water for the disputed lots. As previously noted, the county found that the existing well on the subject property, which produces 10 gallons per minute, demonstrates that it is feasible to serve the lots with individual wells. The county also imposed condition 7, which requires that the applicants drill test wells for the lots to provide further assurances that wells are feasible.

petitioners' argument that YCLDO 6.090 requires those findings, and petitioners identify no other criterion that requires those findings. Therefore, the cited cases provide no basis for reversal or remand.

The first and second assignments of error are denied.

THIRD THROUGH SIXTH ASSIGNMENTS OF ERROR

In these assignments of error, petitioners contend the county improperly construed YCLDO 6.000(1) to require only that the proposed subdivision be consistent with the Yamhill County Zoning Ordinance Very Low Density Residential designation.[13] Petitioners go on to argue that the county's misconstruction of YCLDO 6.000(1) led it to conclude that the applicants need not demonstrate that the subdivision complies with the Yamhill County Comprehensive Plan (YCCP). Specifically, petitioners contend that Section I (Urban Growth and Change and Economic Development), Part B (Rural Area Development), Goal 1, Policy c (hereafter YCCP Policy I(B)(1)(c)) and YCCP Section II (The Land and Water), Part C (Water Resources), Goal 1, Policy i (hereafter YCCP Policy II(C)(1)(i)) cannot be summarily dismissed as approval criteria.[14] Petitioners contend that both of these YCCP

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[13] YCLDO 6.000(1) provides as follows:

> "Conformity to the Comprehensive Plan, Official Map, Zoning Ordinance and Other Ordinances or Factors - The subdivision or partition shall conform to and be in harmony with the county comprehensive plan, the development pattern, the zoning ordinance and any other ordinance legally adopted or amended."

[14] As relevant YCCP Policy I(B)(1)(c) provides:

> "All proposed rural area development and facilities:
>
> "1. Shall be appropriately, if not uniquely, suited to the area or site proposed for development.
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> "* * * * *
>
> "3. Shall be furnished with adequate access and an adequate individual or community water supply, if required; and shall not be justified solely or even primarily on the argument that the land is less costly than alternative better sites or that federal or state aid is available in the form of subsidized water supply or sewerage extensions from nearby urban centers."

provisions require that the county consider off-site impacts on water resources and that the county erred by concluding that the policies do not apply directly to the challenged decision and by failing to demonstrate that the subdivision complies with those plan provisions.

The county adopted the following findings:

> "Section 6.000 of the [YCLDO] requires subdivisions to conform with the requirements of the [YCCP] * * *. [I]n 1980 the area had an exception taken to Goal 3, the agricultural protection goal. At that time the property was given a [YCCP] designation of VLDR Very Low Density Residential. The request is to divide the property into lots that are intended for very low density residential use. YCLDO 6.000(1) provides that: 'The subdivision or partition shall conform to and be in harmony with the [YCCP].' Although the ordinance employs the word 'shall' and is therefore a mandatory requirement, conformity with the [YCCP], if the [YCCP] were read to require specific undertakings, would be a very broad, if not unmanageable criteri[on]. Therefore, the County interprets this requirement to mean that if the subdivision complies with the applicable zoning ordinance established under the acknowledged [YCCP], the development is deemed to be in conformity and harmony with the [YCCP]. Those portions of the [YCCP] cited by opponents * * * are interpreted by the County to contain only aspirational language and not specific requirements. Thus, the actual finding required by YCLDO 6.000(1), is a finding that the development conforms with the applicable zoning designation adopted under the [YCCP]. This property is zoned for very low density residential lots with minimum average lot sizes of 2.5 acres. As noted above, the development complies with the applicable zoning designation and is therefore deemed to be in conformity with the Comprehensive Plan." Record 8.

YCLDO 6.000(1) expressly requires that "[t]he subdivision * * * shall conform to and be in harmony with the [YCCP]." The YCLDO is a land use regulation. The county's attempt to interpret YCLDO 6.000(1) to summarily to preclude any *possibility* that the YCCP may include any specific requirements that might apply directly to its approval of a particular subdivision is inconsistent with the "express language of the * * * land use regulation," and

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As relevant YCCP Policy II(C)(1)(i) provides:

> "Where conflicting uses are identified or intended, in specific proposals or programs, the economic, social, environmental and energy consequences of the conflicting uses shall be determined as [sic] used as a basis for decision-making."

we reject that interpretation. ORS 197.829(1).[15] If the county believes that the requirement in YCLDO 6.000(1) that subdivisions shall conform to the YCCP imposes an unnecessarily onerous a burden, it must amend YCLDO 6.000(1) to remove that burden. The county may not interpret YCLDO not to require what it expressly requires.

Citing *Fessler v. Yamhill County*, 38 Or LUBA 844 (2000) and *Spiro v. Yamhill County*, 38 Or LUBA 133 (2000), intervenors argue that the VLDR zone, which is referenced in the findings, specifically implements the YCCP and therefore obviates any obligation to apply the YCCP directly under YCLDO 6.000(1). Intervenor makes no attempt to explain how the VLDR zone specifically implements the two YCCP plan provisions that petitioners cite, and, for that reason, we reject the argument. *See Durig v. Washington County*, 35 Or LUBA 196, 202 (1998), *aff'd* 158 Or App 36, 969 P2d 401 (1999) (for land use regulations to entirely displace comprehensive plan as a potential source of relevant approval criteria there must be "explicit supporting language" in the comprehensive plan and land use regulations).

Of course, as we have explained on many occasions, just because the comprehensive plan may include potentially relevant approval criteria, that does not mean that *all* comprehensive plan provisions are mandatory approval criteria. *Axon v. City of Lake Oswego*, 20 Or LUBA 108, 112 (1990). Some comprehensive plan provisions may be "merely an advisory statement." *Id.* Moreover, even mandatory comprehensive plan provisions may not apply to a particular land use decision. *Id*. We now turn to the two YCCP provisions cited by petitioners to determine (1) whether they impose mandatory approval criteria and (2) if so, whether these policies apply to intervenors' subdivision application.

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[15] *See* n 8.

YCCP Policy I(B)(1)(c)(1) provides that "[a]ll proposed rural area development * * * [s]hall be appropriately, if not uniquely, suited to the area or site proposed for development." The charge that development "shall be appropriately, if not uniquely, suited to the area or site proposed for development" is subjective, but there is nothing aspirational about the language of YCCP Policy I(B)(1)(c)(1). In a previous unrelated appeal, we concluded that YCCP Policy I(B)(1)(c)(1) imposes a mandatory criterion. *Spiro v. Yamhill County*, 38 Or LUBA at 138. We see no reason to reach a different conclusion here.

The other YCCP policy cited by petitioners, YCCP Policy II(C)(1)(i), provides:

> "Where conflicting uses are identified or intended, in specific proposals or programs, the economic, social, environmental and energy consequences of the conflicting uses shall be determined as [sic] used as a basis for decision-making."

We conclude there is nothing aspirational about YCCP Policy II(C)(1)(i) either. Under YCLDO 6.000(1), the disputed subdivision must "conform" to both of those policies. Although the disputed subdivision must be shown to "comform" to both policies, that does not necessarily mean either of those policies "encompass[] the off-site water resource impacts of a rural subdivision," as petitioners argue. Petition for Review 28. We turn next to that issue.

A. YCCP Policy I(B)(1)(c)(1)

In addition to its attempts to interpret YCLDO 6.000(1) to summarily dismiss the YCCP as a potential source of approval criteria and to interpret YCCP Policy I(B)(1)(c)(1) and YCCP Policy II(C)(1)(i) as merely aspirational, the county also adopted the following findings addressing YCCP Policy I(B)(1)(c)(1):

> "Finally, even if the [YCCP] provision cited by the opponent, namely [YCCP Policy I(B)(1)(c)(1)], were to be applied as specific approval criteria, this subdivision is wholly consistent with it. [YCCP Policy I(B)(1)(c)(1)] provides that a proposed rural area development 'shall be appropriately, if not uniquely, suited to the area or site proposed for development.' Here, the neighboring property (belonging to opponents) has already been subdivided into one acre lots. The applicant[s'] proposed layout of the subdivision takes

> into account the topography of the site and the conditions of approval require the provision of adequate water supplies to the individual lots within the subdivision. As to the water issue, *Perry* ends the inquiry here. Indeed, the language of [YCCP Policy I(B)(1)(c)(3)][16] supports the standard of *Perry* in providing that all '*proposed* rural development' * * * 'shall be furnished with adequate access and an adequate individual or community water supply,' thereby limiting the inquiry concerning water to the provision of a water supply on site." Record 8-9.

As petitioners correctly note, *Perry* concerned the proper interpretation and application of YCLDO 6.090, not YCCP Policy I(B)(1)(c)(1). While we agree with petitioners that *Perry* therefore does not dictate that the county interpret YCCP Policy I(B)(1)(c)(1) not to require consideration of off-site conflicts with nearby wells, there is nothing inherently wrong with applying a similar construction to YCCP Policy I(B)(1)(c)(1), so long as that narrow focus is not inconsistent with the express language of YCCP Policy I(B)(1)(c)(1) or its purpose or its underlying policy. *See* n 8.

As we have already noted, the requirement under YCCP Policy I(B)(1)(c)(1) that the proposed subdivision be "appropriately, if not uniquely, suited to the area or site proposed for development" is subjective. There is nothing inconsistent with that language in concluding, as the board of county commissioners did, that it does not require that the county consider potential off-site conflicts with existing wells. While it might not be inconsistent with YCCP Policy I(B)(1)(c)(3) to apply it in the broader way that petitioners wish, YCCP Policy I(B)(1)(c)(3) dictates that the subdivision be appropriately suited "to the area *or* site." (Emphasis added.) It is not inconsistent with that language to limit the inquiry to the "site."

B. YCCP Policy II(C)(1)(i)

As petitioners correctly note, the above-quoted findings specifically reference YCCP Policy I(B)(1)(c)(1) and do not specifically refer to YCCP Policy II(C)(1)(i). While it may be that the board of commissioners intended to apply the same narrow interpretation to

[16] YCCP Policy I(B)(1)(c)(3) and YCCP Policy I(B)(1)(c)(1) are both subsections of YCCP Policy I(B)(1)(c). See n 14.

YCCP Policy II(C)(1)(i) that it applied to YCCP Policy I(B)(1)(c)(1), there are significant differences in the language of the two policies. See n 14. YCCP Policy II(C)(1)(i) requires that the county determine "the economic, social, environmental and energy consequences" of identified "conflicting uses" and then use that determination "as a basis for decision-making." While YCCP Policy II(C)(1)(i) need not be interpreted to require that the county consider potential conflicts between wells on the newly subdivided lots and *off-site* conflicts with existing wells, it would not be unreasonable to interpret it to impose that obligation. Even if the county were to interpret YCCP Policy II(C)(1)(i) to require consideration of the consequences of off-site conflicts with wells, YCCP Policy II(C)(1)(i) need not be interpreted to require that the county *deny* the requested subdivision or even to require changes in the subdivision to avoid or mitigate such conflicts. YCCP Policy II(C)(1)(i) does not dictate a particular result in county decision making, and apparently leaves the county considerable discretion in determining how the "economic, social, environmental and energy consequences" of identified conflicts should influence its decision making.

Given our conclusion that the YCCP cannot be dismissed altogether as a source of potentially applicable criterion and our conclusion that YCCP Policy II(C)(1)(i) is not merely aspirational, and given the county's failure to adopt findings that apply YCCP Policy II(C)(1)(i) and demonstrate that the disputed subdivision complies with that policy, we must sustain petitioners' sixth assignment of error. On remand, the county must adopt findings addressing that policy.

The third, fourth and fifth assignments of error are denied.

The sixth assignment of error is sustained.

SEVENTH THROUGH NINTH ASSIGNMENTS OF ERROR

Three of the six lots in the disputed subdivision will utilize a common easement for access to Mineral Springs Road, a paved county road. Mineral Springs Road curves sharply to the south approximately 300 feet north of the intersection of the easement and Mineral

Springs Road. Petitioners asserted below that the proximity of the easement/Mineral Springs Road intersection with the curve in Mineral Springs Road to the north posed a "sight-distance-related hazard." Petition for Review 36. We understand petitioners to argue that this issue is relevant because YCCP Policy I(B)(1)(c)(1) and (3) require that the subdivision be "appropriately, if not uniquely, suited to the area or site" and that it be "furnished with adequate access." *See* n 14.

The county adopted findings addressing petitioners' sight distance concerns. Some of those findings say that the county has adopted American Association of State Highway and Transportation Officials (AASHTO) standards. The county apparently has not adopted those AASHTO standards, and petitioners assign error to those findings. Petitioners also challenge the adequacy of the county's findings responding to their sight distance concerns.

The findings that suggest the county has adopted AASHTO standards apparently are incorrect. However, we fail to see how those incorrect findings constitute reversible error. The county also found:

> "* * * Bill Gille, Director of Yamhill County Public Works, has stated that the applicable standards used by Yamhill County for safe stopping sight distances are identified in the [AASHTO] standards. The applicable standard for this road, if drivers are taking the corner at the posted 25 miles per hour speed limit, is 150 feet. If drivers manage to negotiate the corner at 40 miles per hour, it appears they will require 275-325 feet to stop on wet pavement. Given that no party has disputed the fact that the access point onto Mineral Springs Road is over 300 feet from the corner in question, it is reasonable to find that this development meets the applicable AASHTO standard adopted by Yamhill County." Record 5.

The above findings and other county findings that we do not set out in this opinion can be read to suggest that the board of county commissioners was laboring under the false impression that it has actually adopted the AASHTO standards, and that the AASHTO standards were therefore determinative. Although the county's findings could have been worded more carefully, the county's findings can also be read to say the county merely applied AASHTO standards because the county has not adopted any sight distance standards.

We believe the county's findings express an adequate basis for rejecting petitioners' sight distance concerns. *See Sunnyside Neighborhood v. Clackamas Co. Comm.*, 280 Or 3, 21, 569 P2d 1063 (1977) (findings need not be perfect and do not require magic words). We do not agree that it was reversible error for the county to apply professional highway safety standards to respond to petitioners' sight distance concerns. Although those standards may have not been formally adopted by the county, in the absence of any other standards that would have assisted the board of commissioners in responding to petitioners' concerns, we do not believe it is inconsistent with the cited YCCP policies to apply the AASHTO standards to determine whether petitioners expressed concerns under the YCCP are valid.

The seventh, eighth and ninth assignments of error are denied.

TENTH ASSIGNMENT OF ERROR

YCLDO 6.030(5) imposes the following requirement for side lot lines:

> "Lot Sidelines - As far as practical, lot side lines shall run at right angles to the street upon which the lots face, except that on curved or cul-de-sac streets, they shall be radial to the curve. The Director may vary this requirement when it is found that existing topography, providing for solar orientation or other factors, make such a requirement impractical."

Petitioners point out that the side lot lines for the three lots that front on Mineral Springs Road form approximately 45-degree angles with Mineral Springs Road, rather than the required 90-degree angles. Petitioners contend:

> "The DECISION furnishes no mention of the noncompliance with a mandatory approval criterion, let alone an explanation for that noncompliance." Petition for Review 39.

Petitioners are mistaken. The challenged decision provides the following explanation for the approved side lot lines:

> "Given the topography of the property in question and the need to protect the riparian area, the proposed layout of lots in this development is the most practical for meeting all other requirements. Thus, the Director of Planning has reasonably found that it is practical to vary the lot sideline layout to account for these factors. The applicant stated and the County agrees that

such a finding was implicit in the prior proceeding and the initial staff report." Record 11.

Petitioner makes no attempt to challenge the adequacy of the above-quoted findings. Absent such a challenge, we conclude that they are adequate to demonstrate compliance with a standard that only requires right-angle side lot lines unless there are "factors" that persuade the planning director that the requirement is "impractical."

The tenth assignment of error is denied.

The county's decision is remanded.