

1 Opinion by Holstun.

2 **NATURE OF THE DECISION**

3 Petitioner appeals a county decision denying his
4 request to divide a 10 acre parcel from an existing 50.33
5 acre parcel and establish a nonfarm dwelling on the new 10
6 acre parcel.

7 **FACTS**

8 The subject 50.33 acre parcel is zoned EFU-20, an
9 exclusive farm use zone. Although it is zoned EFU-20, there
10 is no dispute that the subject property includes 90% Class
11 VII soils.¹ The topsoil on the subject property is very
12 shallow, with an average soil depth of 8 inches, and the
13 property includes numerous rock outcroppings. On much of
14 the property, there is a solid layer of basalt approximately
15 26 inches below the surface. The approximately 10% of the
16 soils on the property which are Class I through IV, are
17 interspersed with the Class VII soils.

18 Prior to 1976, a portion of the property was used for
19 pasture, but that use was discontinued because the property

¹Goal 3 (Agricultural lands) defines agricultural land in western Oregon as "land of predominantly Class I, II, III and IV soils." However, the Goal 3 definition of "agricultural land" also includes certain "other lands which are suitable for farm use taking into consideration soil fertility, suitability for grazing, climatic conditions, existing and future availability of water for farm irrigation purposes, existing land use patterns, technological and energy inputs required, or accepted farming practices." Goal 3 also provides that "[l]ands in other classes which are necessary to permit farm practices to be undertaken on adjacent or nearby lands shall be included as agricultural land in any event." See 1000 Friends of Oregon v. Wasco County Court, 299 Or 344, 703 P2d 207 (1985).

1 produced insufficient forage. The property has not been on
2 farm tax deferral since 1982. Part of the property is
3 covered with Douglas fir, the largest having a diameter of
4 two feet. Most of the property is covered with brush, grass
5 and Scotch broom. A wetland area of approximately 4 to 5
6 acres is located near the center of the property.

7 The subject property is bounded on the west by tax lot
8 400, a 40 acre parcel.² The western portion of tax lot 400
9 is comprised of Class I through IV soils. However, the
10 eastern 3/4 of tax lot 400, bordering the subject property,
11 is comprised of Class VII soils.

12 The subject property adjoins the Washington County
13 line, and properties to the north in Washington County are
14 zoned for small tract residential development with a minimum
15 2 1/2 acre lot size. To the south is property zoned Rural
16 Residential Farm/Forest 5 Acres (RRFF-5), which is currently
17 in blueberry and filbert production.

18 To the north and northeast of the subject property are
19 tax lots 500 and 600. Eighteen of the 30 acres in tax lots
20 500 and 600 are located in Clackamas County, the remaining
21 portion of tax lots 500 and 600 is located in Washington
22 County. A potting soil business is located at the northeast

²Petitioner refers to this 40 acre parcel as tax lot 400. The assessor's map included in the record lists the parcel as tax lot 200. An aerial photograph in the record shows the parcel as tax lot 800. All the tax lot designations appear to be applied to the same 40 acre parcel, and in this opinion we refer to the parcel as tax lot 400.

1 corner of tax lot 500. Tax lots 500 and 600 contain
2 primarily Class I through IV soils and are used in the
3 summer months for grazing.³

4 **INTRODUCTION**

5 Approval of nonfarm land divisions and nonfarm
6 dwellings on EFU-20 zoned lands is subject to the standards
7 set forth at Clackamas County Zoning and Development
8 Ordinance (ZDO) 401.05(A), which provides, in part, as
9 follows:

10 "Single-family residential dwellings not provided
11 in conjunction with farm use may be tentatively
12 approved by the Planing Director * * *. Tentative
13 approval shall not be granted unless the Planning
14 Director finds that the proposed nonfarm use:

15 "1. Is compatible with farm uses described in
16 subsection 401.03 of this Ordinance and is
17 consistent with the intent and purpose set
18 forth in ORS 215.243;

19 "2. Does not interfere seriously with accepted
20 farming practices as defined in subsection
21 401.03 of this Ordinance, on adjacent lands
22 devoted to farm use;

23 "3. Does not materially alter the stability of
24 the overall land use pattern of the area;

25 "4. Is situated upon generally unsuitable land
26 for production of farm crops and livestock,
27 considering the terrain, adverse soil or land
28 conditions, drainage and flooding,
29 vegetation, location and size of the tract;

³There is testimony in the record that there is standing water on portions of tax lots 500 and 600 during portions of the year and they may, therefore, qualify as wetlands. Record 55.

1 "5. Will not be in conflict with the
2 Comprehensive Plan or be detrimental to
3 surrounding property;

4 "* * * * *."

5 The county hearings officer found that the application
6 satisfies ZDO 401.05(A)(2) but that it does not satisfy ZDO
7 401.05(A)(1), (3), (4) and (5). Most of petitioner's
8 arguments attack the hearings officer's assumptions and
9 analysis in concluding that ZDO 401.05(A)(1), (4) and (5)
10 are violated. We conclude below that the hearings officer's
11 findings that the applicant failed to demonstrate compliance
12 with ZDO 401.05(A)(3) are adequate and supported by
13 substantial evidence in the record. Because failure to
14 demonstrate compliance with a single approval criterion is a
15 sufficient basis for denial, we do not consider petitioner's
16 arguments concerning the remaining approval criteria.⁴
17 Portland City Temple v. Clackamas County, 11 Or LUBA 70, 78
18 (1984); Weyerhaeuser v. Lane County, 7 Or LUBA 42, 46
19 (1982).

⁴In his third assignment of error and elsewhere in the petition for review, petitioner suggests the hearings officer erred in determining that the subject property is "agricultural land" as that term is defined in Goal 3. See n 1, supra. However, the application at issue in this appeal only requests approval of a nonfarm division and a nonfarm dwelling under the county's EFU-20 zone requirements. The application neither requests a determination that the subject property does not qualify as "agricultural land" nor does it request that the property be placed in a zoning district other than an exclusive farm use district. See Hearne v. Baker County, 89 Or App 282, 286-87 (1988). Because the question of whether the subject property is properly zoned for exclusive farm use is not presented in this appeal, we do not consider it.

1 **SECOND ASSIGNMENT OF ERROR**

2 "The hearings officer erred when he found that the
3 approval of the application would materially alter
4 the stability of the overall land use pattern of
5 the area."

6 The hearings officer found that the proposed nonfarm
7 dwelling and land division do not comply with ZDO
8 401.05(A)(3) because they would materially alter the
9 stability of the land use pattern of the area. Within the
10 relevant area identified by the hearings officer, there are
11 23 exclusive farm use zoned parcels. The parcels range in
12 size from .17 acre to 90 acres. The hearings officer found:

13 "There is existing residential development on
14 small parcels to the south of the subject
15 property. Most of this development has been
16 recognized by the RRFF-5 zoning district [applied]
17 to those properties. But, as shown on the aerial
18 photographs of this area, the exclusive farm use
19 zoned properties are generally larger.
20 Parcelization and residential development within
21 the farm use area would be out of character with
22 existing land use patterns." Record 4.

23 The hearings officer explained that because the subject
24 50.33 acre parcel contains soils unsuitable for agricultural
25 production and most of the property to the west is composed
26 of such soils, approval of the subject application would
27 establish a precedent and "substantially increase the
28 pressure for nonfarm residential development on these
29 existing properties." Record 3-4.

30 A finding that a proposed nonfarm partition would
31 establish a precedent and encourage additional requests for

1 nonfarm partitions of similarly situated properties, if
2 supported by substantial evidence in the record, can be
3 sufficient to support a determination that a proposed
4 nonfarm partition will materially alter the stability of the
5 overall land use pattern of the area. McCoy v. Marion
6 County, 16 Or LUBA 284, 292 (1987); Endresen v. Marion
7 County, 15 Or LUBA 60, 66 (1986). The subject property and
8 adjoining property to the west are very similar to the
9 property that would be included in the proposed 10 acre
10 lot.⁵

11 Petitioner faults the hearings officer for focusing on
12 the potential for additional divisions of the subject
13 property and the property to the west and failing to
14 consider historical land divisions in the area. Although
15 consideration of past land divisions might have provided an
16 additional basis for concluding the proposed partition would
17 materially alter the stability of the land use pattern of
18 the area, we do not believe it was error for the hearings
19 officer not to consider historical land divisions in the
20 area. Further, while the hearings officer's focus was on
21 the subject parcel and adjacent parcel, and the possibility

⁵Although the proposed new parcel would include 10 acres, ZDO 401.09(C) establishes a recommended minimum lot size for nonfarm parcels of 2 acres. Therefore, a potentially large number of nonfarm parcels could be subdivided from those properties. Although it is true that each application would have to be judged on its own merits, we see no error in the county's considering the precedential effect of the subject application in determining whether ZDO 401.05(A)(3) is satisfied.

1 of further divisions and nonfarm development of those
2 parcels, the findings quoted above show the larger area was
3 considered in reaching his decision.

4 The second assignment of error is denied.

5 The county's decision is affirmed.