

1 BEFORE THE LAND USE BOARD OF APPEALS
2 OF THE STATE OF OREGON
3
4 CLARENCE SIMMONS, RAYMOND WERNER,)
5 SHARON V. CATES, and JIM ROTH,)
6)
7 Petitioners,)
8)
9 vs.)
10) LUBA No. 91-184
11 MARION COUNTY,)
12) FINAL OPINION
13 Respondent,) AND ORDER
14)
15 and)
16)
17 APOSTOLIC CHRISTIAN CHURCH,)
18)
19 Intervenor-Respondent.)

22 Appeal from Marion County.

24 William G. Paulus, Salem, filed the petition for review
25 and argued on behalf of petitioners. With him on the brief
26 was Garrett, Seideman, Hemann, Robertson, Paulus, Jennings &
27 Comstock.

29 Jane Ellen Stonecipher, Salem, filed a response brief
30 and argued on behalf of respondent.

32 James L. Murch, Salem, filed a response brief and
33 argued on behalf of intervenor-respondent. With him on the
34 brief was Sherman, Bryan, Sherman & Murch.

36 SHERTON, Referee; KELLINGTON, Referee, participated in
37 the decision.

39 REMANDED 02/28/92

41 You are entitled to judicial review of this Order.
42 Judicial review is governed by the provisions of ORS
43 197.850.

1 Opinion by Sherton.

2 **NATURE OF THE DECISION**

3 Petitioners appeal a Marion County Board of
4 Commissioners order approving a lot line adjustment and
5 conditional use permit for a church in an exclusive farm use
6 zone.

7 **MOTION TO INTERVENE**

8 Apostolic Christian Church moves to intervene in this
9 proceeding on the side of respondent. There is no objection
10 to the motion, and it is allowed.

11 **FACTS**

12 The subject property is designated Primary Agriculture
13 on the Marion County Comprehensive Plan (plan) map and is
14 zoned Exclusive Farm Use (EFU). The subject property
15 consists of two adjoining parcels, 4.0 and 34.5 acres in
16 size. The parcels are undeveloped and in farm use. They
17 are located at the northeast corner of Silverton Road
18 (Highway 213) and Howell Prairie Road. Land to the east,
19 north and west is zoned EFU and is in commercial farm use.
20 To the south are several commercial uses on land zoned
21 Commercial General (CG) or Commercial Retail (CR), and a
22 public school on land zoned EFU. This developed area to the
23 south is referred to in the plan as the Central Howell
24 "rural service center." Plan p. 42.

25 The Apostolic Christian Church (ACC) was established in
26 the late 1800's, and has approximately 150-160 members. Its

1 facilities are currently located in the City of Silverton.
2 On May 15, 1991, the ACC filed applications with the county
3 for a lot line adjustment to create parcels 5.0 acres and
4 33.5 acres in size and for a conditional use permit to place
5 a church on the 5.0 acre parcel. The church facility is
6 proposed to include a sanctuary, Sunday school rooms, a
7 fellowship and dining hall, and a parking area.

8 After a public hearing, the county hearings officer
9 issued an order approving ACC's applications. Petitioner
10 Werner appealed the hearings officer's decision to the board
11 of commissioners. On October 15, 1991, the board of
12 commissioners issued the challenged order affirming the
13 hearings officer's decision and approving the applications.

14 **FIRST ASSIGNMENT OF ERROR**

15 "The [county] erred in finding that the use was
16 compatible with farm uses and was consistent with
17 ORS 215.243."

18 Marion County Zoning Ordinance (MCZO) 136.030(o)
19 provides churches are a conditional use in the EFU zone, and
20 must satisfy the criteria established by MCZO 136.040(d).
21 MCZO 136.040(d)(1) requires that a conditional use "is
22 compatible with farm or forest uses and is consistent with
23 ORS 215.243."

24 **A. Compatibility with Farm Uses**

25 Petitioners argue the comprehensive plan establishes
26 that the intent of allowing churches as conditional uses in
27 the EFU zone is to serve "farm residents of the 'local rural

1 area' -- not all rural residents no matter where they live."
2 Petition for Review 6. Petitioners cite the following
3 discussion in the plan concerning the Primary Agriculture
4 and Rural Service Center designations:¹

5 * * * * Additional uses which should be allowed
6 [under the Primary Agriculture designation] are
7 * * * needed rural community facilities and
8 services. Community facilities may include
9 schools, churches, parks, nonprofit community
10 organizations and other equivalent public and
11 private uses which are necessary to serve the
12 residents of the local rural area." (Emphasis
13 added.) Plan p. 19.

14 * * * * These [rural service] centers should
15 remain substantially as they are, small in size
16 and rural in character, with no demands for urban
17 services. They should continue to provide the
18 basic convenience and service needs of the
19 neighboring area with minimal adverse impact on
20 surrounding farming or forestry activities.
21 * * *" (Emphasis added.) Plan p. 42.

22 Petitioners further contend the Central Howell rural service
23 center has a distinct "local rural area" which is delineated
24 by the boundaries of its school district. Petitioners argue
25 the proposed church would impermissibly serve not only
26 members who live in this "local rural area," but also
27 members who live in other rural areas, rural service centers
28 and cities.

29 Respondent and intervenor-respondent (respondents)

¹Petitioners also cite discussion in the plan concerning areas designated for nonfarm uses through exceptions to Statewide Planning Goal 3 (Agricultural Lands) and designated "Rural Communities." However, as such areas are not involved in this case, we fail to see how these plan provisions are relevant.

1 argue that the compatibility between the proposed church and
2 farm uses required by MCZO 136.040(d)(1) is that "the uses
3 be capable of co-existing harmoniously. LaPine Pumice Co.
4 v. Deschutes County, 13 Or LUBA 242, 248, aff'd 75 Or App
5 691, rev den 300 Or 704 (1986)." Respondents' Brief 4.
6 Respondents point to the following county findings
7 addressing this requirement:

8 "** * * The Marion County Comprehensive Plan
9 recognizes churches serving rural residents,
10 located in rural communities or service centers,
11 as generally compatible with farm uses. In this
12 case, the church has a rural congregation and the
13 proposed location is a rural service center. The
14 proposed location is adjacent to commercial
15 activities for rural residents. Under these
16 circumstances, the church will be compatible with
17 farm use." Record 17.

18 Respondents argue petitioners do not specifically challenge
19 the adequacy of or evidentiary support for these findings,
20 but rather erroneously contend the plan establishes as a
21 matter of law that the proposed church cannot be compatible
22 with farm uses if its congregation is not limited to farm
23 residents living within the Central Howell school district.

24 The only argument articulated by petitioners under this
25 subassignment of error is that the county comprehensive plan
26 does not allow a church located on the subject Primary
27 Agriculture designated property to serve members other than
28 farmers in the immediate "neighboring area" consisting of
29 the Central Howell school district. Petitioners further

1 argue that because the proposed church would do so,² it is
2 not compatible with farm uses. However, petitioners do not
3 base their argument on the plan Agricultural Lands or Rural
4 Development goals, policies, or objectives, but rather on
5 narrative discussion describing the plan's Primary
6 Agriculture and Rural Service Center designations.

7 In a section entitled "Using the Plan," the plan states
8 as follows:

9 "[T]he Plan contains intent statements in a
10 narrative form. These statements explain the
11 basis and intent for the County's position on each
12 subject in the plan and have significance in
13 clarifying and settling County policy.

14 "Goals, policies, objectives and standards are
15 implemented when the County reviews individual
16 land use actions. To determine whether a specific
17 land use proposal is appropriate, a decision must
18 be made [on] the applicability of each goal,
19 policy or standard. These evaluations form the
20 comparative justification for approving or denying
21 land use proposals." Plan p. 6.

22 It is clear from the above quoted plan provisions that
23 the provisions cited by petitioners are not approval
24 standards for the subject application. Additionally, the
25 only provision cited by petitioner which specifically refers
26 to churches in Primary Agriculture designated areas states
27 simply that such churches "serve the residents of the local
28 rural area." Plan p. 19. This statement provides no basis

²The parties do not dispute the record shows that approximately 80% of ACC's members are rural residents, but that most of these rural members do not reside in the immediate vicinity of Central Howell. Record 133.

1 for concluding that the "local rural area" served by such a
2 church must be limited to the area of the local school
3 district, or that such a church cannot serve persons other
4 than farmers who reside in the "local rural area." Finally,
5 we see no obligatory connection between these plan
6 statements and the requirement of MCZO 136.040(d)(1) that
7 this particular church be "compatible" with farm uses.

8 Petitioners' arguments provide no basis for concluding
9 the county erred in determining that the proposed church is
10 compatible with farm uses.

11 This subassignment of error is denied.

12 **B. ORS 215.243**

13 Under this subassignment of error, petitioners
14 challenge the county's determination that the proposed
15 church is consistent with ORS 215.243. Petitioners' entire
16 argument consists of the following statement:

17 "This proposed use has no relationship to
18 preservation of the family farm, it will encourage
19 future development in the area and it is contrary
20 to the principles set forth in ORS 215.243."
21 Petition for Review 7.

22 Petitioners' argument does no more than express their
23 disagreement with the county's conclusion and assert that
24 the county's determination is contrary to ORS 215.243.
25 Petitioners do not explain why they believe the county's
26 decision is inconsistent with ORS 215.243. It is
27 petitioners' responsibility to provide a basis upon which we
28 might grant relief. Deschutes Development v. Deschutes

1 County, 5 Or LUBA 218, 220 (1982). Petitioners have failed
2 to do so.

3 This subassignment of error is denied.

4 The first assignment of error is denied.

5 **SECOND ASSIGNMENT OF ERROR**

6 "The [county] erred in finding that the addition
7 of a church to this rural service center will not
8 materially alter the stability of the overall land
9 use pattern of the area."

10 MCZO 136.040(d)(3) requires that a conditional use "not
11 materially alter the stability of the overall land use
12 pattern of the area."

13 We understand petitioners to challenge the evidentiary
14 support for the county's determination that the proposed
15 church complies with MCZO 136.040(d)(3). Petitioners
16 contend the "construction of a 15,000 square foot building
17 * * * designed for 250-300 members with parking for 90
18 automobiles materially changes the character of the land use
19 patterns in the Central Howell Rural Service Center."
20 Petition for Review 7. Petitioners also argue there is
21 nothing to prevent the proposed facility from being fully
22 occupied seven days a week, all year round.

23 Respondents argue the record shows that the property on
24 which the proposed church will be located is within a rural
25 service center, and adjacent to existing commercial and
26 public uses, including a fruit and vegetable stand, farm
27 equipment outlet, co-op, store and school. Respondents

1 further argue the record shows that the proposed church will
2 not require the expansion of urban services, and will meet
3 only on Sunday and on Wednesday evenings. Respondents
4 contend there is no conflicting evidence in the record and
5 argue that the evidence in the record constitutes
6 substantial evidence supporting the county's decision.

7 We are authorized to reverse or remand the county's
8 decision if it is "not supported by substantial evidence in
9 the whole record." ORS 197.835(7)(a)(C). Substantial
10 evidence is evidence a reasonable person would rely on in
11 reaching a decision. City of Portland v. Bureau of Labor
12 and Ind., 298 Or 104, 119, 690 P2d 475 (1984); Bay v. State
13 Board of Education, 233 Or 601, 605, 378 P2d 558 (1974); Van
14 Gordon v. Oregon State Board of Dental Examiners, 63 Or App
15 561, 567, 666 P2d 276 (1983); Braidwood v. City of Portland,
16 24 Or App 477, 480, 546 P2d 777 (1976).

17 We have reviewed the evidence in the record cited by
18 the parties concerning this issue. Record 50, 59, 70,
19 73-76, 115, 122-25. That evidence shows the proposed church
20 will be located on a 5.0 acre parcel within a designated
21 rural service center, adjacent to several existing
22 commercial and public uses, and will not require urban
23 services. The evidence also shows the proposed use and
24 subject rural service center are otherwise surrounded by
25 large parcels in commercial farm use. We conclude the
26 evidence in the record is evidence upon which a reasonable

1 person would rely to determine the proposed use will not
2 materially alter the stability of the overall land use
3 pattern in this area.

4 The second assignment of error is denied.

5 **THIRD ASSIGNMENT OF ERROR**

6 "The [county] erred in finding that the proposed
7 use complies with the purposes and intent of the
8 agricultural policies [of] the Marion County
9 Comprehensive Plan."

10 MCZO 136.040(d)(6) requires that the proposed use
11 "complies with the purpose of the agricultural policies in
12 the Marion County Comprehensive Plan." (Emphasis added.)

13 Petitioners state "[s]pecific provisions of the
14 comprehensive plan relating to this subject are found at [13
15 cited pages of the plan]." Petition for Review 8.
16 Petitioners also incorporate by reference the arguments set
17 out under the first and second assignments of error.
18 Petitioners go on to argue, as they did under the first
19 assignment of error, that most of the members of the
20 proposed church live outside the "neighboring area" and are
21 not residents of the Central Howell "local rural area,"
22 citing pages 19 and 42 of the plan.

23 As we explained under the first assignment of error,
24 the narrative discussion at pages 19 and 42 of the plan does
25 not establish approval standards for a decision on an
26 individual conditional use permit application. Further,
27 although petitioners' citations to the plan include plan

1 pp. 25-26, which pages contain Agricultural Lands policies
2 1-10, petitioners offer no explanation of why the proposed
3 use is not consistent with these agricultural policies.
4 Petitioners therefore provide no basis for concluding the
5 county failed to comply with MCZO 136.040(d)(6).

6 The third assignment of error is denied.

7 **FOURTH ASSIGNMENT OF ERROR**

8 "The [county] erred in finding that there was a
9 demonstrated need for area residents and the
10 general public which outweighs the need for, or
11 benefits of, the [farm] use."

12 MCZO 136.030(o) provides that churches in the EFU zone
13 must satisfy either MCZO 136.040(c) or (e). The challenged
14 decision determines the proposed use complies with
15 MCZO 136.040(e).³ MCZO 136.040(e) contains three standards
16 which must be satisfied by a proposed use. In this
17 assignment of error, petitioners challenge the county's
18 determination of compliance with MCZO 136.040(e)(1), which
19 establishes the following requirement:

20 "There is a demonstrated need that the use will
21 satisfy for area residents or the general public
22 which outweighs the need for, or benefits of, the
23 existing or potential farm or forest use[.]"

24 Petitioners contend the county's determination of
25 compliance with MCZO 136.040(e)(1) is not supported by
26 substantial evidence in the record. Petitioners again argue

³The challenged decision also finds the proposed use does not satisfy MCZO 136.040(c), because the subject property is generally suitable for farming.

1 the fact that members of the ACC congregation live in rural
2 areas does not make it a rural church. Petitioners contend
3 the record shows that the school district, the owners of the
4 commercial uses in the Central Howell rural service center
5 and neighboring farm owners object to the proposed use.
6 Petitioners also argue that evidence in the record that
7 there are churches in other county rural service centers is
8 irrelevant to whether there is a need for this particular
9 church.

10 Respondents argue the record shows that the current ACC
11 structure is too small and cannot be expanded to meet the
12 congregation's needs. Respondents further argue that the
13 subject site is centrally located to serve the needs of the
14 predominantly rural ACC congregation.

15 Evidence that a reasonable person would rely on in
16 determining compliance with MCZO 136.040(e)(1) is evidence
17 that (1) identifies a need by area residents or the general
18 public for the proposed use, (2) establishes the benefits of
19 the existing or potential farm or forest use of the subject
20 property, and (3) leads to a conclusion that the identified
21 need outweighs the identified benefits.

22 We have reviewed the evidence cited by the parties.
23 Record 7-13, 27-28, 30, 41-46, 66, 71-78, 92-95, 115-18,
24 122-25, 133. With regard to a "need that the [proposed] use
25 will satisfy for area residents or the general public," we
26 agree with respondents that the record shows the growing ACC

1 congregation has a need for a larger church facility which
2 cannot be satisfied by expanding its existing facility, and
3 that most of the ACC congregation members reside in rural
4 areas surrounding Central Howell.⁴ Record 115-18, 122-25,
5 133. With regard to the existing or potential benefits of
6 farm use of the subject 5.0 acre parcel, the record shows
7 the parcel is composed of predominantly SCS Class II soil
8 and can be used for commercial farm use in conjunction with
9 the adjoining 33.5 acre parcel. Record 76-77. Many persons
10 testifying in opposition to the proposed church describe the
11 subject site as "prime farm land." Record 7-8, 27, 43-44,
12 46, 66, 72.

13 Thus, there is evidence both that there is a need by
14 area residents for the proposed use and that the subject 5.0
15 acre site has a great deal of potential for farm use.
16 MCZO 136.040(e)(1) requires the county to weigh the need for
17 the church against the benefit provided by the farm use, a
18 necessarily subjective determination.

19 We have previously held that where different reasonable
20 conclusions can be reached based on the evidence in the
21 record, the choice between such different reasonable
22 conclusions belongs to the local government decision maker.
23 Wissusik v. Yamhill County, ____ Or LUBA ____ (LUBA No.

⁴We do not agree with petitioners' apparent belief that the term "area residents," as used in MCZO 136.040(e)(1), is limited to the residents of the Central Howell rural service center itself.

1 90-050, November 13, 1990), slip op 13; Garre v. Clackamas
2 County, 18 Or LUBA 877, 881, aff'd, 102 Or App 123 (1990);
3 Stefan v. Yamhill County, 18 Or LUBA 820, 838 (1990).
4 Therefore, because we find the county's conclusion, that the
5 need for the proposed church outweighs the benefits of the
6 subject site for farm use, is reasonable based on the
7 evidence in the record, the county's decision is supported
8 by substantial evidence.

9 The fourth assignment of error is denied.

10 **FIFTH ASSIGNMENT OF ERROR**

11 "The [county] erred in finding there was no other
12 feasible location for the proposed church which
13 would satisfy MCZO 136.040(c)."

14 MCZO 136.040(e)(2) requires that "[t]here is no other
15 feasible location for the proposed use that would satisfy
16 [MCZO] 136.040(c)[.]" As mentioned supra, MCZO 136.040(c)
17 requires that the proposed use be "situated on land
18 generally unsuitable for farm use."

19 We understand petitioners to challenge the evidentiary
20 support for the county's determination that there is no
21 feasible alternative location for the proposed church that
22 satisfies MCZO 136.040(c). Petitioners contend the map and
23 list of alternative sites submitted to the county by ACC
24 improperly rules out alternative sites because of ACC's
25 "personal preferences." Petitioners contend the ACC study
26 indicates "there are feasible (although not ideal) sites in

1 or outside of the Silverton area * * *.⁵ Petition for
2 Review 12.

3 In the proceedings below, ACC submitted to the county a
4 study of 55 potential church locations in the area north,
5 west and south of Silverton. Record 126-30. Each
6 alternative location is indicated on the map and separately
7 listed in the study under the category "Not For Sale," "Sold
8 Recently," "For Sale, But Not Acceptable" or "Acceptable
9 Property." The listing for each location in the "For Sale,
10 But Not Acceptable" category is accompanied by an
11 explanation of why ACC considers the location "not
12 acceptable." The only "Acceptable Property" listed in the
13 study is the subject site. Record 130.

14 All parties cite the ACC alternative locations study
15 (Record 126-30) as the only evidence in the record relevant
16 to the challenged county determination of compliance with
17 MCZO 136.040(e)(2). Petitioners do not argue that feasible
18 alternative locations for the proposed use were omitted from
19 the ACC study. Rather, petitioners argue that locations
20 identified as being available⁶ in the ACC study are

⁵In addition, petitioners argue that one particular site listed as "not acceptable" was improperly found to be such, but petitioners' argument is based on evidence which is not in the record. With exceptions not relevant here, our review is limited to the evidence in the record of the local proceedings. ORS 197.830(13)(a).

⁶It is not entirely clear whether petitioners dispute the propriety of the ACC study eliminating from consideration locations which are not for sale or have been sold recently to other buyers. Petitioners do state that

1 determined not to be "feasible locations" for impermissible
2 reasons.

3 We agree with petitioners that "feasible location," as
4 that term is used in MCZO 136.040(e)(2) does not mean "ideal
5 location." "Feasible" is defined as "capable of being done,
6 executed or effected: possible of realization." Webster's
7 Third New International Dictionary 831 (1981). In
8 interpreting a county ordinance provision requiring that "no
9 feasible alternative site in the area exists * * *," we have
10 stated a county cannot deem alternative sites "infeasible"
11 simply because it would be difficult for the applicant to
12 make use of those sites. Weist v. Jackson County, 18
13 Or LUBA 627, 632 (1990). Additionally, we have frequently
14 stated that a site or project is "feasible" if there are
15 reasonable solutions available for identified problems.
16 Southwood Homeowners Assoc. v. City of Philomath, ____
17 Or LUBA ____ (LUBA No. 90-103, June 12, 1991), slip op 15;
18 Bartels v. City of Portland, ____ Or LUBA ____ (LUBA No.
19 90-111, December 3, 1990), slip op 10; Meyer v. Portland, 7
20 Or LUBA 184, 196 (1983), aff'd 67 Or App 274, rev den 297 Or
21 82 (1984).

22 The "For Sale, But Not Acceptable" section of the ACC

"other acceptable property undoubtedly will go on the market in the future." Petition for Review 12. To the extent petitioners make such an argument, in view of the established present need for a new church facility for the ACC congregation, we believe it is proper for the county, in the context of approving a conditional use permit under MCZO 136.040(e)(2), to determine that sites which are not presently available for sale are not "feasible locations."

1 study includes the following listings:

2 * * * * *

3 "7. * * * 5 acres. Not acceptable because of the
4 location being between unattractive
5 commercial property and Silver Creek, and
6 with river rock all through the soil making
7 it difficult for landscaping and possible
8 cemetery use. \$30,000.00

9 "8. * * * This property is located across from
10 Cascade Farm Equipment and next to a heavily
11 industrial area which offers poor cosmetic
12 appearance. Also, the ground was very wet.

13 "10. * * * 6 acres. This property has a
14 northeasterly slope, and for this reason, the
15 only view is over the industrial area of
16 Silverton, which is not very attractive.
17 Also, we felt the price was out of our
18 budget. EFU

19 * * * * *

20 "16. * * * 11 acres. We just did not think the
21 surroundings and the lay of the land were
22 conducive to a church location, and the price
23 was more than our budget would allow. EFU
24 \$85,000.00

25 * * * * *

26 "21. * * * Not found acceptable by Marion County.

27 * * * * *

28 "45. * * * Possibility of land for sale, but too
29 secluded.

30 " * * * * " Record 128-30.

31 The reasons given for finding five of the six sites
32 listed above "unacceptable" include being next to
33 "unattractive commercial property," "difficult for

1 landscaping," next to an "industrial area which offers poor
2 cosmetic appearance," having very wet ground, an
3 unattractive view, surroundings which are not "conducive to
4 a church location" and being "too secluded." We agree with
5 petitioners that such reasons are not sufficient to
6 establish that these sites are not capable of being used for
7 the proposed church and, therefore, are not "feasible
8 locations."

9 With regard to sites 10 and 16 above, the study states
10 that the prices of these two sites are more than ACC's
11 budget allows. MCZO 136.040(e)(2) does not allow an
12 applicant to put EFU zoned land to a nonfarm use simply
13 because it is less expensive than other land or because the
14 applicant cannot afford to pay more for other land. At
15 least in the absence of evidence that the sale prices for
16 these sites are unreasonable for the proposed church
17 facility use, the price is not justification for finding
18 these sites infeasible. Finally, with regard to site 21,
19 there is simply no explanation of why the site is not
20 considered feasible.

21 The evidence in the record would not allow a reasonable
22 person to determine that at least sites 7, 8, 10, 16, 21 and
23 45 on the ACC study are not feasible locations for the
24 proposed use. Further, there is no evidence in the record
25 as to whether these sites would satisfy MCZO 136.040(c)
26 (general unsuitability for farm use). Therefore, there is

1 not substantial evidence in the record to support the
2 county's determination that "there is no other feasible
3 location for the proposed use that would satisfy
4 [MCZO] 136.040(c)," as required by MCZO 136.040(e)(2).

5 The fifth assignment of error is sustained.

6 **SIXTH ASSIGNMENT OF ERROR**

7 "The [county] erred in finding that the church
8 will not cause adverse long term environmental,
9 economic, social or energy consequences for the
10 area."

11 MCZO 136.040(e)(3) requires that the proposed use "will
12 not cause adverse long term environmental, economic, social
13 and energy consequences for the area, the region or the
14 state."

15 Petitioners point out that ACC currently has 150-160
16 members, but is anticipating growth to 250-300 members and
17 proposes parking for 90 cars. Petitioners argue:

18 "It is obvious that the church is growing
19 dramatically and that its needs will continue to
20 increase with resulting social and environmental
21 consequences for the area. The more people
22 injected into the facility the greater the adverse
23 impact on the land use policies set forth in ORS
24 215.243." Petition for Review 13.

25 Petitioners assert it is "obvious" that the proposed
26 church will cause "social and environmental consequences for
27 the area." Petitioners do not allege that the county
28 misinterpreted the applicable standard, that the county's
29 findings are inadequate or are not supported by substantial
30 evidence or that the county committed any other legal error.

1 Petitioners simply disagree with the county's conclusion.
2 Expressions of disagreement with a local government's
3 decision, which are unrelated to the local government's
4 findings or the legal standards applicable to a request for
5 land use approval, are inadequate to constitute a basis for
6 reversal or remand. McCarty v. City of Portland, ____
7 Or LUBA ____ (LUBA No. 90-090, October 8, 1990), slip op 5;
8 Dougherty v. Tillamook County, 12 Or LUBA 20, 34 (1984);
9 Tichy v. City of Portland, 6 Or LUBA 13, 23-24 (1982).

10 The sixth assignment of error is denied.

11 **SEVENTH ASSIGNMENT OF ERROR**

12 "The hearing officer erred in admitting written
13 statements of the proponents after July 3rd,
14 without giving opponents notice thereof and
15 without giving them an opportunity to either
16 examine those parties or file a rebuttal statement
17 prior to the closure of the Record on July 17th."

18 After the July 3, 1991 hearing before the hearings
19 officer, pursuant to ORS 197.763(6)⁷ the evidentiary record
20 was left open until 5:00 p.m. on July 17, 1991. Record 15.
21 Several documents from the proponents of the proposed church
22 were received by the county on July 17, 1991. The hearings
23 officer's decision was issued on September 11, 1991.
24 Appeals of the hearings officer's decision to the board of

⁷ORS 197.763(6) provides:

"* * * if a participant so requests before the conclusion of the initial evidentiary hearing, the record shall remain open for at least seven days after the hearing. * * *"

1 commissioners could be filed on or before September 23,
2 1991. An appeal was filed by petitioner Werner.

3 Petitioners contend the documents submitted by
4 proponents of the proposed church on July 17, 1991 contain
5 critical factual information. Petitioners argue that copies
6 of these documents were not provided to opponents of the
7 proposed church, and the opponents were not given an
8 opportunity to rebut the documents prior to the hearings
9 officer's decision. According to petitioners, "[f]ailure to
10 give the opponents timely notice and an opportunity to
11 respond to those documents violates the provisions of the
12 Notice of Public Hearing * * *." Petition for Review 14.
13 Petitioners also argue that the proponents' statements were
14 not sworn affidavits, as required by the notice of hearing.
15 Petitioners assert these procedural errors prejudiced their
16 substantial rights. ORS 197.835(7)(a)(B).

17 The errors alleged by petitioners under this assignment
18 of error are procedural. We have consistently held that
19 where a party has the opportunity to object to a procedural
20 error before the local government, but fails to do so, that
21 error cannot be assigned as grounds for reversal or remand
22 of the local government's decision in an appeal to this
23 Board.⁸ Schellenberg v. Polk County, ___ Or LUBA ___ (LUBA

⁸The "raise it or waive it" provisions of ORS 197.763(1) and 197.835(2), enacted in 1989, partially duplicate this requirement, at least with regard to alleged procedural errors which it is possible to raise before the close of the evidentiary record below. However, no party contends the

1 No. 91-018, August 2, 1991), slip op 25; Torgeson v. City of
2 Canby, 19 Or LUBA 511, 519 (1990); Miller v. City of
3 Ashland, 17 Or LUBA 147, 153 (1988); Mason v. Linn County,
4 13 Or LUBA 1, 4, aff'd in part, rev'd in part on other
5 grounds 73 Or App 334, rev den 299 Or 314 (1985); Meyer v.
6 City of Portland, 7 Or LUBA 184, 190 (1983), aff'd 67 Or App
7 274, rev den 297 Or 82 (1984); Dobaj v. Beaverton, 1 Or LUBA
8 237, 241 (1980).

9 Petitioners had the opportunity to object to these
10 alleged procedural errors in an appeal to the board of
11 commissioners.⁹ However, only petitioner Werner filed an
12 appeal, and petitioner Werner did not object to these
13 alleged procedural errors in his appeal. Record 6-8.
14 Accordingly, petitioners may not assign these alleged
15 procedural errors as a basis for reversal or remand by this
16 Board.

17 The seventh assignment of error is denied.

requirement that parties raise objections to procedural errors when it is possible to do so at any stage of the local proceedings is superseded by the requirements of ORS 197.763(1) and 197.835(2), and we do not see that it is.

⁹Petitioners may intend to argue they were precluded from objecting to the alleged procedural errors because they were unaware that the documents at issue had been submitted to the county on July 17, 1991, due to the county's alleged error in failing to notify petitioner of their submittal. However, we note petitioners do not identify, and we are unaware of, any legal requirement that the county notify petitioners of the submittal of such documents. Petitioners do not dispute they were aware that the record was left open until 5:00 p.m. on July 17, 1991. Parties to a land use proceeding have a duty to familiarize themselves with the record and the evidence in the local government file. Schellenberg v. Polk County, ___ Or LUBA ___ (LUBA No. 91-206, February 19, 1992), slip op 8 n 7; Sigurdson v. Marion County, 9 Or LUBA 163, 167 (1983).

1 The county's decision is remanded.