

1 Opinion by Holstun.

2 **NATURE OF THE DECISION**

3 Petitioner appeals a county decision denying her
4 request for conditional use approval for a nonfarm dwelling.

5 **FACTS**

6 The subject .86 acre property is designated
7 Agricultural in the Benton County County Comprehensive Plan
8 and is zoned Exclusive Farm Use (EFU). The property is flat
9 and is made up of U.S. Soil Conservation Service Class II
10 soils. The soils are deep and somewhat poorly drained, but
11 are suitable for small grains, hay, pasture and grass seed.

12 The property is located on the east side of Springhill
13 Drive. Across Springhill Drive to the west of the property,
14 is the North Albany Exception Area, a large area for which
15 an exception to Statewide Planning Goal 3 (Agricultural
16 Lands) has been taken and which is planned and zoned to
17 allow residential uses.¹ The subject property and other
18 adjoining and nearby properties to the east of Springhill
19 Drive are not included in the North Albany Exception Area
20 and are zoned for exclusive farm use.

21 The subject property historically has not been
22 cultivated, but has been used for pasture and farm equipment
23 storage. The adjoining property to the north is a 129 acre
24 parcel currently in farm use. The adjoining property to the

¹Fir View Homes, a residential subdivision with one-half acre lots, lies directly across Springhill Drive to the west.

1 east and south is a 20 acre parcel currently in farm use.

2 The planning commission denied the request. Petitioner
3 appealed the planning commission's decision to the board of
4 county commissioners, and the board of county commissioners
5 affirmed the planning commission's decision.

6 **FIRST ASSIGNMENT OF ERROR**

7 In her first assignment of error, petitioner expresses
8 general disagreement with the county's decision in this
9 matter and alleges the county demonstrated an ignorance of
10 the state of the economy and the considerable development
11 nearby.

12 Petitioner's disagreement with the county's decision
13 provides no basis for reversal or remand. McCarty v. City
14 of Portland, 20 Or LUBA 86, 89 (1990). Petitioner makes no
15 attempt to explain how her remaining allegations under this
16 assignment of error demonstrate error in the county's
17 decision that four approval criteria are not satisfied.
18 Therefore, the first assignment of error is denied.

19 **SECOND ASSIGNMENT OF ERROR**

20 The county used more than one audio recording machine
21 during the local proceedings. Because those machines record
22 at different speeds, and because the overall quality of the
23 tape recordings in some cases is very poor, petitioner has
24 had difficulty preparing transcripts of the local
25 proceedings. Moreover, at one point during the board of
26 county commissioners' deliberations in this matter, a

1 commissioner asked petitioner if she could speak off the
2 record. Petitioner complains that without the county
3 commissioner's expressions of frustration with the process,
4 the board of county commissioners' meeting is "rather
5 mundane sounding." Petition for Review 7.

6 However, petitioner does not explain how these alleged
7 failures demonstrate that any properly submitted evidence
8 was not considered by the county during its decision making
9 process. Furthermore, while any testimony missing from the
10 tapes is not available for this Board's consideration,
11 petitioner has not shown why the county's decision should be
12 remanded for that reason alone. None of petitioner's
13 arguments under this assignment of error provide a basis for
14 reversal or remand.

15 The second assignment of error is denied.

16 **THIRD AND FOURTH ASSIGNMENTS OF ERROR**

17 Under the third and fourth assignments of error,
18 petitioner contends she was not taken seriously by the
19 county commissioners and that the subject property is so
20 small that it will not be farmed regardless of the county's
21 decision to deny her request for a nonfarm dwelling.

22 To the extent petitioner's arguments under this
23 assignment of error challenge the county's findings
24 concerning the suitability of the subject property for farm
25 use, we address those arguments infra. Petitioner's
26 remaining arguments under these assignments of error provide

1 no basis for reversal or remand.

2 The third and fourth assignments of error are denied.

3 **FIFTH ASSIGNMENT OF ERROR**

4 Under the fifth assignment of error, petitioner
5 complains the county gave the testimony of opponents of the
6 proposal undue credibility. Petitioner contends that some
7 of this testimony consists of outdated anecdotes, but makes
8 no attempt to demonstrate how the county relied on any of
9 this testimony.

10 We are required to remand a local government decision
11 if it is not supported by substantial evidence. ORS
12 197.835(7)(a)(C). Petitioner's arguments under this
13 assignment of error are insufficient to show the county in
14 fact relied on the evidence petitioner complains of.
15 However, even if the county did so, petitioner provides no
16 basis for concluding that reliance on such evidence by the
17 county was improper.

18 The fifth assignment of error is denied.

19 **SIXTH ASSIGNMENT OF ERROR**

20 Although not clearly stated as such, we understand the
21 sixth assignment of error to challenge the evidentiary
22 support for the county's decision. Under Benton County Code
23 (BCC) 55.220, "a conditional use permit for a nonfarm
24 dwelling shall be based on findings that the proposed
25 dwelling:

26 "(a) Is compatible with adjacent farm uses and
27 consistent with the intent and purposes set

1 out in ORS 215.243;

2 "(b) Does not interfere seriously with accepted
3 farming practices on adjacent lands;

4 "(c) Does not materially alter the stability of
5 the overall land use pattern of the area;

6 "(d) Is situated on land generally unsuitable for
7 the production of farm crops and livestock,
8 considering the terrain, adverse soil or land
9 conditions, drainage and flooding,
10 vegetation, and size of the tract; * * *

11 "* * * * *."

12 As explained earlier, in the immediate area of the
13 subject property, Springhill Drive separates properties to
14 the west (for which an exception to Goal 3 has been taken to
15 allow those properties to be planned and zoned for rural
16 residential use) from the properties to the east (which
17 remain subject to Goal 3 and are zoned EFU). While nonfarm
18 dwellings (including a large residential subdivision) exist
19 west of Springhill Drive, there are no nonfarm dwellings
20 east of Springhill Drive in the vicinity of the subject
21 property. The county found these EFU zoned properties to
22 the east of Springhill Drive and adjoining the subject
23 property are used for a variety of agricultural uses which
24 create "noise, dust, and impacts from spraying for weeds,
25 disease and/or insect control, as well as field burning * *
26 *." Record 6.

27 Based largely on the above findings, which petitioner
28 does not really dispute, the county found the proposed
29 nonfarm dwelling does not satisfy the criteria of BCC

1 55.220(1)(a) through (c), quoted above. With regard to the
2 "generally unsuitable" land criterion of BCC 55.220(1)(d),
3 the county found as follows:

4 "The subject parcel is suitable for farm use.
5 There are no unique features of the property which
6 would preclude its cultivation for farm uses. The
7 property could be cultivated, or otherwise used
8 for farming purposes by adjacent farms. The size
9 of the parcel alone is not sufficient to establish
10 the lack of suitability of the parcel for farm
11 use.

12 "The Amity silt loam soil * * * is generally
13 suitable for the production of farm crops. It can
14 be used for small grain, hay, pasture and grass
15 seed. It is also suitable for a wider range of
16 crops if drained, and can be used for pole beans,
17 corn and other row crops where irrigation is
18 installed. There are no limitations on farm use
19 due to terrain, adverse soil conditions, drainage
20 or flooding. The parcel is located such that it
21 could be incorporated into the adjacent farm use.
22 Therefore the request does not comply with [BCC
23 55.220(1)(d)]." Record 6-7.

24 Petitioner relies almost entirely on her own testimony
25 and partial transcripts of statements made by members of the
26 planning commission during their deliberations in this
27 matter, in arguing that the record demonstrates the criteria
28 of BCC 55.220(1) are satisfied. The record includes a
29 detailed statement by petitioner concerning historical use
30 of the property. Petitioner also cites the fact the
31 property has been assessed as residential property for
32 property tax purposes and notes the potential use of waivers
33 to protect against possible legal action by residents of the
34 proposed nonfarm dwelling concerning impacts of farming

1 practices on adjoining properties.

2 As noted earlier in this opinion, the decision
3 challenged in this appeal is a decision denying petitioner's
4 request for conditional use approval. Therefore the county
5 need only find that one of the applicable approval standards
6 is not met. Douglas v. Multnomah County, 18 Or LUBA 607,
7 618-19 (1990). The county found that four of the criteria
8 in BCC 55.220(1) are not satisfied. In challenging those
9 findings of noncompliance on evidentiary grounds, petitioner
10 must demonstrate that the evidentiary record in this matter
11 demonstrates the standards are met as a matter of law. Id.
12 Petitioner has not carried that burden in this appeal.

13 At best, the evidence cited by petitioner concerning
14 the proposed nonfarm dwelling's compliance with these
15 standards is conflicting. It does not demonstrate
16 compliance with these criteria as a matter of law. In
17 particular, the evidence cited by petitioner does not
18 establish as a matter of law that the property is generally
19 unsuitable for farm use. To the contrary, while the subject
20 property is small, and petitioner prefers to use the
21 property for nonfarm purposes, it is composed of relatively
22 good agricultural soils and is suitable for a variety of
23 agricultural purposes. To the extent the parcel's small
24 size is a limiting factor, it clearly could be used in
25 conjunction with adjoining or nearby commercial agricultural
26 enterprises. See Stefan v. Yamhill County, 18 Or LUBA 820,

1 825 (1990).

2 In addition, the county's findings explain that in view
3 of the proximity of this property to adjoining commercial
4 agricultural enterprises to the north, east and south and
5 the residential development across Springhill Drive to the
6 west, the county believes approval of the requested nonfarm
7 dwelling would introduce a nonfarm residence into an area
8 presently separated from such residences, in violation of
9 BCC 55.220(1)(a) through (c). While petitioner may disagree
10 with those findings, she has not identified evidence in the
11 record that would require contrary findings as a matter of
12 law.

13 The sixth assignment of error is denied.

14 The county's decision is affirmed.