

BEFORE THE LAND USE BOARD OF APPEALS
OF THE STATE OF OREGON

REID GIESY,)
)
Petitioner,)
)
vs.)
)
BENTON COUNTY,)
)
Respondent,)
)
and)
)
ROBERT C. MONTGOMERY and)
DEBORAH S. MONTGOMERY,)
)
Intervenors-Respondent.)

LUBA No. 93-047

FINAL OPINION
AND ORDER

Appeal from Benton County.

Marion B. Embick, Salem, filed the petition for review and argued on behalf of petitioner. With her on the brief was Depenbrock, Gangle & Greer.

Janet S. McCoy, Assistant County Counsel, Corvallis, filed a response brief and argued on behalf of respondent.

Robert C. Montgomery and Deborah S. Montgomery, Philomath, filed a response brief. Robert C. Montgomery argued on his own behalf.

SHERTON, Chief Referee; HOLSTUN, Referee; KELLINGTON, Referee, participated in the decision.

AFFIRMED 06/23/93

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

1 Opinion by Sherton.

2 **NATURE OF THE DECISION**

3 Petitioner appeals an order of the board of county
4 commissioners approving an application for a farm dwelling
5 on a 40.17 acre parcel zoned Exclusive Farm Use (EFU).

6 **MOTION TO INTERVENE**

7 Robert C. Montgomery and Deborah S. Montgomery move to
8 intervene on the side of respondent in this appeal
9 proceeding. There is no objection to the motion, and it is
10 allowed.

11 **FACTS**

12 This is the second time a county decision approving the
13 subject farm dwelling has been appealed to this Board.¹ In
14 Giesy v. Benton County, ___ Or LUBA ___ (LUBA No. 92-111,
15 December 8, 1992) (Giesy I), slip op 2, we stated the
16 relevant facts as follows:

17 "Intervenors own both the subject parcel and an
18 adjacent 80.38 acre parcel also zoned EFU. Both
19 the subject and adjacent parcel are used for
20 agricultural operations, including Christmas tree
21 and hay production, as well as livestock pasture.

22 "The proposal is to allow the contract purchasers
23 of the subject property, the applicants below, to
24 construct a dwelling on the subject property. The
25 applicants propose to establish on the subject
26 parcel a livestock operation involving the raising
27 of purebred sheep and cattle."

¹In this opinion, the local record from the first appeal is cited as "Record I" and the local record compiled during the proceedings leading to the second appeal is cited as "Record II."

1 In Giesy I, we remanded the county's decision for
2 failure to comply with Benton County Development Code (BCDC)
3 55.110(3) and OAR 660-05-025(1), which establish standards
4 for the size of the farm unit or lot, respectively, on which
5 a farm dwelling is proposed to be situated. On remand, the
6 board of commissioners held additional evidentiary hearings.
7 On March 3, 1993, the board of commissioners adopted the
8 challenged order approving the proposed farm dwelling.

9 **FIRST ASSIGNMENT OF ERROR**

10 As relevant in this case, BCDC 55.110(3) establishes
11 the following standard for approval of a farm dwelling in
12 the EFU zone:

13 "The size of the farm unit is consistent with the
14 size of existing commercial farm enterprises in
15 the area when considering:

16 "(a) The size of the applicant's farm unit and the
17 type of farm crops or commodities being
18 produced on the farm unit, and;

19 "(b) The median size of commercial farms which
20 operate management units within one-half
21 (1/2) mile of the proposed site of the farm
22 dwelling as reported by the Oregon State
23 University Extension Service, Agricultural
24 Conservation and Stabilization Services or
25 other similar source[.]

26 " * * * * *"²

27 The challenged decision concludes that "the median size
28 of commercial farms which operate management units within

²We note the BCDC does not include a definition of the term "farm unit" or "management unit," as used in this standard.

1 one-half (1/2) mile of the proposed site of the farm
2 dwelling," as set out in BCDC 55.110(3)(b), is 100 acres.
3 Record II 14, 17. The decision includes the following
4 finding with regard to information on this issue received
5 from the U.S. Agricultural Stabilization and Conservation
6 Service (ASCS):

7 "The median size of the existing commercial farm
8 enterprises located within the 1/2-mile radius is
9 100.33 acres according to the ASCS letter of
10 February 17, 1993."³ Record II 13.

³The record of the initial county proceedings includes a letter to petitioner from the ASCS, dated February 8, 1992, which states that 12 "farms" in a certain area have a median size of 155 acres and a mean average size of 260 acres. Record I 92. However, a later county staff report indicates this letter "did not include all commercial farms within one-half mile of the subject parcel and did include numerous farms more than one-half mile away" and, therefore, "is not relevant to the county's review of this application." Record II 82.

The local record on remand includes a second letter to petitioner from the ASCS, dated February 10, 1993. Record II 48-49. That letter states the ASCS drew a one-half mile circle around an area identified by petitioner and determined that for eight tracts of farmland within that area the mean size is 188.38 acres and the median size is 100 acres. The letter also states that five ownerships identified by petitioner were not included in this computation because the ASCS has no records on these properties in its computer system, but if these five ownerships are included, the median size is 151 acres.

Finally, the record includes a letter to intervenor Robert Montgomery from the ASCS, dated February 17, 1993. Record II 67. It is this third letter which is referred to in the finding quoted in the text. The third letter identifies the eight tracts relied on in the second letter, explains that one tract should be deleted because it is outside the one-half mile area, explains that a second tract should not be considered because it has been converted to timber production, and revises the acreage used for a third tract. The third letter concludes that the remaining six tracts, which it lists as T495 (Eddy) 100 acres, T933 (Taylor) 88 acres, T934 (Montgomery) 100 acres, T935 (Turner) 35 acres, T1200 (Giesy) 40 acres, and T7574 (Moore) 239 acres, have a mean of 100.3 acres and a median of between 88 and 100 acres.

1 However, the decision goes on to explain that there are
2 certain deficiencies in the information obtained from the
3 ASCS, and also sets out a separate determination that the
4 "median size of the existing [commercial] farm enterprises
5 within 1/2-mile of the subject property is 100 acres."
6 Record II 14. This determination is supported by the
7 following findings:

8 "The 'existing commercial farm enterprises within
9 [the] one-half-mile area' are:

10 "(a) Verley -- 90 to 100 ewes on the 38.4 acres
11 property. * * * The 38.4 acres are pasture.

12 "(b) Giesy -- Last year 10 to 20 sheep were kept
13 on 41.75 acres * * *. Within the 1/2-mile
14 area Mr. Giesy has cut hay from about 34
15 acres on the east side of the highway, and
16 land immediately to the north, owned by the
17 Turners in the past. [A total of 75.75
18 acres.]

19 "(c) Montgomery -- 30-35 acres in hay and 30 acres
20 in Christmas trees. [A total of 60 to 65
21 acres.]

22 "(d) Russell -- Mixed commercial and purebred
23 [cattle] operation. * * * They raise their
24 own hay for the cattle operation. There are
25 currently a total of 50-55 head of cattle on
26 the property. [A total of 226 acres.⁴]"
27 Record II 14-15.

28 The county apparently averaged the total acreages of these
29 four commercial farm enterprises (38.4, 75.75, 60, 226

⁴The findings elsewhere state that the Russell farm operation consists of 226 acres, including 206 acres used for pasture and hay production and 20 acres leased for hay production. Record II 14.

1 acres) to arrive at its determined "median" size of 100
2 acres.⁵

3 Petitioner contends the county's determination of "the
4 median size of commercial farms which operate management
5 units within one-half (1/2) mile of the proposed site of the
6 farm dwelling," as required by BCDC 53.110(3)(b), is
7 incorrect. As an initial point, our review of petitioner's
8 argument under this assignment of error is hampered by the
9 fact that petitioner simply sets out what he believes to be
10 the correct method of determining the median size of
11 commercial farms in the area, a calculation which petitioner
12 contends results in a median size of 165 acres.⁶ Other than
13 by setting out his own calculation, petitioner does not seek
14 to explain why the county's determination of the median
15 size, as described in the findings quoted above, is in
16 error. To the extent we can determine from petitioner's
17 argument that he contends some aspect of the county's

⁵BCDC 55.110(3)(b) requires consideration of the "median" size of existing commercial farms. "Median" is not defined in the BCDC. However, the dictionary definition of "median" is "a value in an ordered set of quantities below and above which fall an equal number of quantities or which is the arithmetic mean of the two middle values if there is no middle number." Webster's Third New International Dictionary 1402 (1981). Thus, whereas the mean of sizes of these four commercial farm enterprises is 100 acres, the median is actually 68 acres. However, because BCDC 55.110(3) establishes a minimum farm unit size for approval of a farm dwelling, and the correctly calculated median value of the sizes of existing commercial farm enterprises is actually 32 acres less than the figure used by the county, the county's mathematical error is harmless.

⁶The petition for review actually states 173 acres. Petition for Review 11. However, at oral argument, petitioner explained this figure was in error and should be 165 acres.

1 determination is erroneous, we consider each such contention
2 separately below.

3 **A. Taylor/Sims/Kavanaugh Property**

4 Petitioner argues the acreage of the Giesy farm
5 operation should include the 88 acre Kavanaugh property,
6 which petitioner testified below that he leases.
7 Record II 57.

8 The challenged decision addresses this issue as
9 follows:

10 "The Taylor/Sims property is 88.35 acres. It has
11 been in and out of production for several years.
12 In 1991 and 1992 a small portion of the property
13 was used as pasture and some wheat was planted on
14 the western portion of the property. It was idle
15 for several years before that. * * * The
16 property is being sold to a Mr. Kavanaugh. The
17 property sale has not been closed. According to
18 [petitioner] the purchaser has verbally agreed to
19 lease the property to [petitioner]. [Petitioner]
20 intends to farm the property. [However,] no lease
21 agreement or farm management plan was presented
22 for this acreage by [petitioner]. Therefore, the
23 property is not presently operated as part of an
24 existing farm operation." Record II 14.

25 The above quoted finding is supported by evidence in the
26 record. Record II 81.

27 Petitioner does not explain why the above findings are
28 an insufficient basis for not including the
29 Taylor/Sims/Kavanaugh property as part of the existing Giesy
30 commercial farm operation. BCDC 55.110(3)(b) requires a
31 determination of "the size of the existing commercial farm
32 enterprises in the area." The county could reasonably

1 interpret "existing commercial farm enterprises" not to
2 include property that is not presently operated as part of a
3 commercial farm operation.

4 **B. Bush/Moore Properties**

5 Petitioner argues the determination of median size of
6 commercial farms in the area should include the 337 acre
7 Bush property and 239 acre Moore property, which petitioner
8 contends are being farmed as a single farm unit.
9 Record II 57, 67.

10 The challenged decision addresses this issue as
11 follows:

12 "The Moore property of 239.40 acres has been
13 leased in the past by the Bushs [sic] as part of
14 their farm operations. * * * The property has
15 not been farmed within the past year, and is not
16 in condition for farming at present because of the
17 deteriorated condition of the premises. The Bush
18 family had most recently used the land as pasture,
19 prior to that for grass seed, and wheat. The Bush
20 farm does not presently lease this property and
21 does not conduct any farm activities within the
22 1/2-mile area." Record II 14.

23 Petitioner does not explain why the above findings are
24 an insufficient basis for not including the Bush/Moore
25 properties as a commercial farm in the determination
26 required by BCDC 55.110(3)(b). BCDC 55.110(3)(b) requires
27 consideration of "commercial farms which operate management
28 units within one-half (1/2) mile of the proposed site of the
29 farm dwelling." The above quoted findings explain that the
30 Moore property is not currently operated as a management

1 unit of a commercial farm. The findings also explain that
2 the Bush farm does not operate management units within the
3 1/2-mile area. These findings are supported by substantial
4 evidence in the record. Record II 67, 81.

5 **C. Beazell Property**

6 Petitioner argues the Beazell timber farm should be
7 excluded from the determination required by
8 BCDC 55.110(3)(b).

9 The challenged decision does not include the Beazell
10 property in the determination of the median size of
11 commercial farms in the area. The findings state:

12 "The following properties within the 1/2 mile
13 radius are not 'commercial farms [which] operate
14 management units within the 1/2-mile area': * * *
15 Beazell 290.99 acres * * *." Record II 13.

16 **D. Verley Property**

17 Petitioner argues the Verley property should be
18 included in the determination required by BCDC 55.110(3)(b).

19 The challenged decision includes the 38.4 acre Verley
20 property as one of the four existing commercial farm
21 enterprises within the 1/2-mile area. Record II 14-15.
22 Petitioner identifies nothing wrong with this aspect of the
23 county's decision.

24 **E. Russell/Chambers Property**

25 Petitioner argues the Russell/Chambers property should
26 be included in the determination required by
27 BCDC 55.110(3)(b).

1 The challenged decision includes the 226 acre Russell
2 farm operation in its determination of median commercial
3 farm size. Record II 14-15. Petitioner identifies nothing
4 wrong with this aspect of the county's decision.⁷

5 **F. Eddy Property**

6 Petitioner argues the Eddy property should be included
7 in the determination required by BCDC 55.110(3)(b).

8 The challenged decision addresses this issue as
9 follows:

10 "The Eddy property consists of 75.80 acres of
11 unused farmland, and 20 acres which are leased for
12 hay, as part of the Russells' commercial farm
13 unit.^[8] The property has not been farmed
14 commercially for several years. The Russells also
15 keep a horse on a 10 acre portion of the [Eddy]
16 property. The keeping of a horse on the acreage
17 is not a commercial farm use." Record II 14.

18 These findings are supported by evidence in the record.
19 Record II 81.

20 As explained in n 8, supra, 20 acres of the Eddy
21 property are included in the county's determination of
22 median commercial farm size, as part of the Russell farm
23 operation. Petitioner does not explain why the above

⁷In the petition for review, petitioner uses a figure of 228 acres for the Russell/Chambers property. The difference between 228 acres and the 226 acre figure used by the county in the challenged decision is not significant.

⁸As noted supra, the 226 acre figure used by the county as the size of the Russell farm operation includes "20 acres leased [for] hay." Record II 14.

1 findings are insufficient to provide a basis for excluding
2 the remainder of the Eddy property from the determination
3 required by BCDC 55.110(3)(b). As explained above, under
4 BCDC 55.110(3)(b) the county may exclude property that is
5 not currently operated as part of a commercial farm.

6 **G. Livestock Operations**

7 Petitioner argues:

8 "If only the purebred livestock commercial [farm]
9 operations are considered (Giesy (165.88 acres)
10 and Russell/Chambers (228 acres)), the median
11 would be * * * even greater [than 165 acres]."
12 Petition for Review 11.

13 To the extent petitioners may argue that because the
14 proposed farm dwelling would be in conjunction with a
15 purebred livestock farm operation, under BCDC 55.110(3)(b),
16 the county should only consider the size of other purebred
17 livestock farm operations in the 1/2-mile area, that
18 argument is insufficiently developed to allow review and is
19 not supported by the language of BCDC 55.110(3)(b).

20 None of petitioner's arguments under this assignment of
21 error provide any basis for concluding the county erred in
22 its determination of the median size of commercial farms
23 that operate management units within one half mile of the
24 proposed farm dwelling site.

25 The first assignment of error is denied.

26 **SECOND ASSIGNMENT OF ERROR**

27 As stated above, BCDC 55.100(3) requires that the size
28 of the farm unit on which the dwelling is proposed to be

1 located must be consistent with the size of existing
2 commercial farm enterprises in the area. The challenged
3 decision finds that the proposed farm dwelling will be
4 located on a commercial farm operation consisting of 95
5 acres, and that a 95 acre commercial farm unit is consistent
6 with the 100 acre median size for commercial farms operating
7 in the area.⁹ Relevant findings include the following:

8 "The applicant's (Starkey['s]) commercial farm
9 enterprise is presently conducted on an excess of
10 95 acres. The applicant currently owns and
11 manages a farm operation that includes 20
12 registered purebred Limousin cows, a herdsire, and
13 30 to 50 registered Hampshire ewes. * * * He
14 proposes to move this operation to the subject
15 parcel of 40 acres. He will also continue to
16 lease 55 acres for his stock and rotate the sheep
17 on various acreages of grass seed fields as well
18 as purchase supplemental feed seasonally, as
19 necessary. The leasing of additional acreage as
20 well as the purchase of supplemental feed are
21 common management practices for livestock
22 operations locally and county-wide. * * * The
23 applicant's existing and proposed operation
24 consists of 95 acres plus additional leased
25 pasturage." Record II 15-16.

26 "* * * The applicants' commercial farm consists
27 of 95 acres, plus additional leased grass seed
28 field pasturage. The applicants' farm operation
29 is consistent in acreage with the existing
30 commercial farm enterprises in the area.

31 "* * * * *

32 "The applicants' * * * farm enterprise, is found

⁹Petitioner's challenges to the county's determination of a 100 acre median size for existing commercial farms in the area are addressed under the first assignment of error, supra.

1 to be consistent with existing commercial farm
2 enterprises in the area. The term 'consistent'
3 means 'to be in harmony with.' It does not mean
4 'the same as.' The Webster's Ninth New Collegiate
5 Dictionary, 1986, provides a definition of
6 'consistent' which is the same as compatible,
7 i.e.: 'Capable of existing or operating together
8 in harmony.' Applicants' livestock operation is
9 clearly capable of existing in harmony with the
10 area operations of livestock, hay and Christmas
11 trees.

12 "It is not the intent of [BCDC] 55.110(3) to
13 require an acre-for-acre comparison of commercial
14 farms, but rather to provide for an evaluation of
15 the existing farm enterprises in light of the
16 proposed farm enterprise. The evaluation is one
17 based on the enterprises, not the acreage.

18 * * * * *

19 "The median size of the commercial farms in the
20 area is 100 acres. The applicants' current farm
21 is 95 acres. Approximately 39 acres would be
22 farmed on the subject property and an additional
23 55 acres are leased. * * *"¹⁰ Record II 17.

24 As best we can determine, petitioner contends that
25 under BCDC 55.110(3), (1) the county was required to
26 demonstrate that the 40 acre parcel on which the farm
27 dwelling is proposed to be located (rather than the 95 acre
28 farm unit) is consistent with the size of existing

¹⁰We note the findings also indicate that a commercial "farm unit" may be composed of several "management units." The findings state that the "management unit" on which the proposed dwelling will be located is 40 acres in size. The findings go on to compare this management unit or "field size" with the size of other livestock management units in the area, such as the Verley 38.4 acre parcel, the Giesy 41.75 acre parcel and the Russell 206 acre parcel. Record II 17-18. However, because BCDC 55.110(3) requires a comparison of the size of the proposed "farm unit" with that of "existing commercial farm enterprises," we regard these findings as surplusage.

1 commercial farm enterprises in the area, and (2) even if the
2 county could consider the size of the entire farm unit,
3 there is not substantial evidence in the record to support a
4 determination that the proposed farm unit will include 55
5 leased acres in addition to the subject 40 acre parcel.

6 **A. Interpretation**

7 BCDC 55.110(3) requires that the "farm unit" on which a
8 farm dwelling is proposed to be located be consistent with
9 the size of existing commercial farm enterprises in the
10 area. BCDC 55.110(3) uses both the term "farm unit" and the
11 term "management unit," neither of which are defined in the
12 BCDC. The challenged decision interprets "farm unit" to
13 include all portions of a farm operation, which in this case
14 is both the 40 acre subject parcel and 55 additional acres
15 of leased pasture located elsewhere in the county. The
16 decision also recognizes that commercial farm enterprises or
17 operations may include more than one "management unit."
18 Record II 17.

19 This Board is required to defer to a local government's
20 interpretation of its own ordinances, unless that
21 interpretation is contrary to the express words, policy or
22 context of the local enactment. Clark v. Jackson County,
23 313 Or 508, 514-15, 836 P2d 710 (1992). This means we must
24 defer to a local government's interpretation of its own
25 enactments, unless that interpretation is "clearly wrong."
26 Goose Hollow Foothills League v. City of Portland, 117 Or

1 App 211, 217, ___ P2d ___ (1992); West v. Clackamas County,
2 116 Or App 89, 93, 840 P2d 1354 (1992).

3 BCDC 55.110(3)(b) requires the county to consider
4 "[t]he median size of commercial farms which operate
5 management units within one-half (1/2) mile of the proposed
6 site of [a] farm dwelling." This provision recognizes that
7 commercial farms may be composed of several separate
8 management units. In view of this, it is reasonable for the
9 county to interpret "farm unit," as used in BCDC 55.110(3),
10 to include all land that is part of a farm operation,
11 including land in different locations. Therefore, the
12 county did not err in finding compliance with BCDC 55.110(3)
13 based on a comparison of the size of the proposed 95 acre
14 farm operation to the size of existing commercial farm
15 enterprises which operate management units in the 1/2-mile
16 area.

17 This subassignment of error is denied.

18 **B. Evidentiary Support**

19 We are authorized to reverse or remand a challenged
20 decision if it is not supported by substantial evidence in
21 the whole record. ORS 197.835(7)(a)(E). Substantial
22 evidence is evidence a reasonable person would accept as
23 adequate to support a conclusion. Carsey v. Deschutes
24 County, 21 Or LUBA 118, 123, aff'd 108 Or App 339 (1991);
25 Douglas v. Multnomah County, 18 Or LUBA 607, 617 (1990).

26 We have reviewed the evidence in the record cited by

1 the parties. That evidence includes the following written
2 testimony by the applicants:

3 "We are currently leasing 40 acres of irrigated
4 pasture and hay land in Benton County. * * * We
5 are also renting 40 acres of annual rye grass in
6 Benton County, which is currently being grazed by
7 our ewes and lambs. We expect to continue this
8 pattern, as we have for many years in the past.
9 [R]enting supplemental pasture is more of a 'rule
10 than an exception' in the livestock industry. The
11 lack of a permanent management facility, and
12 wintering location for the cattle remain a serious
13 limitation for our program.

14 "* * * Our goal is to increase the herd to
15 approximately 35 mother cows. We believe this is
16 reasonable because of the long-term availability
17 of the currently leased irrigated pasture,
18 assuming that a management facility and 'home
19 base' can be established on the [subject 40 acre
20 parcel]." Record II 85.

21 In addition, a county planning staff report states that in
22 addition to farming 39 acres on the subject parcel, the
23 applicants' farm operation will include an additional 79
24 acres to be managed for breeding purebred cows and sheep.
25 Record II 83.

26 Based on the above, a reasonable person could conclude
27 that the applicants' farm operation will include both the
28 subject 40 acre parcel and at least 55 additional acres
29 leased as pasture.¹¹

¹¹The evidence appears to support a finding that as much as 80 acres of leased pasture will be part of the applicants' farm operation. However, the county did not err by conservatively relying on the use of only 55 acres of leased pasture. Had the county chosen to find that a larger amount of leased pasture will be part of the applicants' farm operation,

1 This subassignment of error is denied.

2 The second assignment of error is denied.

3 **THIRD ASSIGNMENT OF ERROR**

4 BCDC 55.110(3)(b) requires the county's determination
5 of compliance with BCDC 55.110(3) to be based on the median
6 size of commercial farms that operate management units
7 within the relevant area "as reported by the Oregon State
8 University Extension Service, [ASCS] or other similar
9 source." (Emphasis added.) Based on this provision,
10 petitioner argues the county should have relied entirely on
11 the information it received from the ASCS.¹² Petitioner
12 also contends the county erred by relying on information
13 submitted by intervenors. Petitioner argues comments
14 submitted by neighboring property owners are not evidence
15 from a "similar source," as required by BCDC 55.110(3)(b).

16 The county argues it properly considered the data
17 provided by the ASCS, and explicitly adopted the 100 acre
18 median commercial farm enterprise size established by the

that would have simply increased the overall size of the farm unit, and provided additional support for the county's determination of compliance with BCDC 55.110(3).

¹²Petitioner also complains that the ASCS improperly made changes in the analysis of median farm size presented in its second, February 10, 1993 letter (Record II 48-49), based on information the ASCS received from intervenors. While it is clear from the record that the ASCS considered information submitted to it by petitioner in arriving at the median farm size figures reported in its second letter, nothing in the third ASCS letter (Record II 67) indicates that the figures given therein are based on information from intervenors. However, even if it did, that would provide no basis for reversal or remand of the challenged decision. Petitioner cites no applicable approval standard governing how the ASCS may arrive at its determination of median farm size.

1 ASCS data. Record II 17. However, the county further
2 argues that the ASCS data "lacks the detail which is
3 necessary to apply the [BCDC] because the ASCS maintains
4 data for differing reasons and under differing categories
5 than those set forth in [BCDC 55.110(3)]." Respondent's
6 Brief 18. For instance, according to the county, the ASCS
7 only maintains records on farms that are, have been or could
8 be participating in federal programs, and does not identify
9 "existing commercial farm enterprises." Record II 48. The
10 county further argues it is required to determine compliance
11 with the criteria established by the BCDC and, where ASCS
12 data is insufficient, it is reasonable to interpret the
13 "similar source" provision of BCDC 55.110(3)(b) to allow the
14 county to supplement the ASCS data with information from the
15 county planning department, tax assessor's office and even
16 neighboring property owners, if that evidence is reliable.

17 BCDC 55.110(3)(b) does not prohibit the county from
18 considering evidence relevant to the median size of
19 commercial farms in the 1/2-mile area surrounding the
20 subject site obtained from sources other than the extension
21 service and ASCS.¹³ It is within the discretion afforded to
22 local governments under Clark v. Jackson County, supra, for

¹³We also note the third and final ASCS letter determined the median farm size in the relevant area is between 88 and 100 acres, and the mean farm size is 100.33 acres. Record II 67. Therefore, if the county had relied solely on this ASCS information, it would have found a median commercial farm size that is no greater than the 100 acres determined by the county in the challenged decision.

1 the county to interpret the "similar source" provision of
2 BCDC 55.110(3)(b) to allow it to consider relevant evidence
3 from the county planning department, county assessor's
4 office or other reliable sources, particularly where the
5 evidence obtained from the ASCS does not adequately address
6 the requirements of BCDC 55.110(3)(b).

7 Furthermore, petitioner does not allege that any
8 specific finding in the challenged decision, critical to
9 determining the median size of commercial farms which
10 operate management units within the 1/2-mile area, is based
11 solely on evidence submitted by intervenors. Therefore, it
12 is not necessary for us to determine whether county reliance
13 solely on information from a neighboring property owner, in
14 determining median commercial farm size, is permissible
15 under BCDC 55.110(3)(b).

16 The third assignment of error is denied.

17 The county's decision is affirmed.