BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

BRIAN TALLMAN and
SAGE WALDEN,
Petitioners,

vs.

CLATSOP COUNTY,
Respondent,

and

PRISCILLA PESTERFIELD,
Intervenor-Respondent.

LUBA No. 2004-018

FINAL OPINION
AND ORDER

Appeal from Clatsop County.

Daniel Kearns, Portland, filed the petition for review and argued on behalf of petitioners. With him on the brief was Reeve Kearns, PC.

No appearance by Clatsop County.

Charles Hillestad, Cannon Beach, filed the response brief and argued on behalf of intervenor-respondent.

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

REMANDED 07/12/2004

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

Opinion by Bassham.

NATURE OF THE DECISION

Petitioners appeal a county decision approving a lot-of-record dwelling on a 4.92-acre parcel zoned for exclusive farm use (EFU).

FACTS

A critical issue in this appeal is the predominant slope of the subject property, and hence whether it is predominantly composed of high-value soils. The county soil survey maps the entire subject property as soil type 71C, Walluski silt loam with 7 to 15 percent slopes. This soil type has a soil classification of IIIe, and is not defined as high-value farmland in the county. A related soil type, Walluski silt loam with 0 to 7 percent slopes (soil type 71B), has a soil classification of IIe, and is defined as high-value farmland soil in the county. The only significant difference between soils types 71C and 71B is the slope. Under the county zoning ordinance, and the statutes and administrative rules the zoning ordinance implements, different and more difficult approval standards apply to a proposal for a lot-of-record dwelling on a parcel composed predominantly of high-value farmland.

The subject property is undeveloped and roughly rectangular in shape. The western portion is relatively flat pasture, while the eastern half features a low ridge or rise of ground overgrown with brush. Adjoining the subject property on the south and west is petitioners' dairy farm. From 1987 to 1998 petitioners fenced off the western portion of the subject property and used it as part of their dairy farm, under the mistaken belief that it was part of their property. Access to both intervenor's property and petitioners' property is provided by Barber Road, a county road with a 60-foot right-of-way and a 12-foot semi-improved surface that narrows to one-lane for some of its length. Barber Road dead-ends at petitioners' property, and petitioners are the only current users of the road.

In 2003, intervenor-respondent (intervenor) applied to the county for a lot-of-record dwelling on the subject property, which she has owned since 1971. Planning staff administratively

approved the application, based in part on a determination that the subject property is not composed predominantly of soils classified as high-value farmland. Petitioners appealed the staff decision to the county hearings officer, and submitted testimony and other evidence indicating that the slopes on a majority of the subject property do not exceed seven percent. Petitioners also argued that their use of a portion of the subject property in conjunction with their dairy farm between 1987 and 1998 means that the subject property is comprised of high-value farmland pursuant to OAR 660-033-0020(8)(d), which defines high-value farmland in relevant part to include "tracts" with certain class III soils that were "used in conjunction with a dairy operation on January 1, 1993."

The hearings officer concluded that the subject property is not composed predominantly of high-value farmland, and approved the requested lot-of-record dwelling. This appeal followed.

FIRST ASSIGNMENT OF ERROR

Petitioners argue that the hearings officer's findings that the property is not composed predominantly of high-value farmland are inadequate and not supported by substantial evidence.

The hearings officer's decision relies on the county soil survey to conclude that the subject property is not composed predominantly of high-value farmland, and further appears to reject petitioners' alternative argument that the subject property is high-value farmland by virtue of its former use in conjunction with petitioners' dairy farm.[1] Petitioners challenge both conclusions.

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[1] The hearings officer's decision states, in relevant part:

> "One of the issues on appeal is the designation of the soil. [Petitioners] contend that the subject property is 'High Value Farmland' based upon its slope and classification. They provided testimony, exhibits and supplemental materials to support their argument. 'High Value Farmland' is defined in OAR 660-033-0020.
>
> "The county relied upon a determination made pursuant to the Soil Survey of Clatsop County by the U.S. Department of Agriculture and Soil Conservation. The Department of Community Development relies upon this document for this and other determinations when soil type is at issue.
>
> "The most persuasive evidence on the question of soil type is the official Soil Survey of Clatsop County relied upon by the County staff in making its original investigation of this

A. Slopes

Petitioners submitted a letter from a Natural Resource Conservation Service (NRCS) agent, suggesting that the subject property "may be dominated by slopes of 7 percent or less," and recommending that petitioners contact a certified soil consultant to determine whether the soils on the subject property constitute high-value farmland.[2] Petitioners apparently did not contact a soil scientist, but did hire a surveyor who measured elevations at 16 points on the subject property and prepared a map depicting ten chords or lines between the elevation points showing the slope or elevation difference between those elevations. Record 50. The map at Record 50 shows that the slope or elevation difference between the measured points on the subject property are as low as 1.3 percent in the west and as high as 28 percent in the south-east. The lowest elevation marked is

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application and further supported by the testimony and exhibits. No compelling evidence to contradict this authority was presented.

"Based upon the Soil Survey and evidence, it is the finding of the hearings officer that the property is predominantly Walluski silt loam (71C) with a 7-15% slope and has a land capability of IIIe. The land does not meet the definition of 'High Value Farmland' under the Oregon Administrative Rules (OAR). Specifically, the soil does not constitute Class I or II soils, it is not used in conjunction with a dairy operation and it is not listed in any of the OAR subclassifications. The subject land does not constitute high value farmland." Record 9-10.

[2] The letter from the NRCS agent states, in relevant part:

"You [petitioners] have pointed out to me that there is a problem with Clatsop County soil map unit 71C—Walluski silt loam, 7 to 15 percent slopes matching into your Tillamook County farmland with soil map unit KaB—Knappa silt loam, 0 to 7 percent slopes. The Walluski soil was not mapped in the older Tillamook County report but is being mapped in the present update. It is possible that you have the Walluski soil in the Knappa map unit.

"The capability classification and slope difference between the two soil maps is more of a concern when looking at the issue of high-value farmland. * * * You have observed that the Tillamook landscape [on petitioners' property] is very similar to the Clatsop landscape [on the subject property] which makes me think the adjacent 71C unit may be dominated by slopes of 7 percent or less which would fit into capability classification IIe and thereby would be considered high value farmland * * *. Also note, on page 117 of the Clatsop soil survey, 71C has inclusions of Walluski soils with slopes less than 7 percent but is less than 15 percent of the map unit.

"I suggest you contact one of the certified soil consultants on the attached list. They can help determine if there may be an error in the adjacent Clatsop soil map unit designation and whether or not the adjacent parcel would meet the state high value farmland definition." Record 49.

approximately 100 feet, while the highest marked elevation is approximately 125 feet. The map does not depict the slopes or topography of the property as a whole, and the surveyor apparently did not offer a conclusion regarding whether the slopes of the soils on the subject property are predominantly less than seven percent.[3]

Petitioners argue that the map at Record 50 is the only substantial evidence of the slope of the subject property in the record. According to petitioners, the soil survey is not a reliable source of information regarding slope, because the soil survey is based on large-scale maps representing the dominant soil in the area. Petitioners cite a letter from a county soil and water conservation district agent pointing out that the soil survey "delineation is done in very broad terms and each area can include other soil types," and that "it's not unlikely that land with a slope less than 7% could be included in a soil phase having a slope greater than 7%." Record 166. Given the limitations of the soil survey, petitioners argue, the hearings officer erred in ignoring the map at Record 50 in determining that the soil on the subject property is not high-value farmland. Relatedly, petitioners argue that the hearings officer's findings on this issue are inadequate, because the hearings officer simply dismissed the site-specific evidence offered by petitioners, without explaining why blind faith in the soil survey is appropriate.

The hearings officer found that the soil survey presented the "most persuasive" evidence of soil type, and that "no compelling evidence to contradict" the soil survey was presented. Record 10. Where there is conflicting evidence, the local government may choose which evidence to accept, but it must state the facts it relies upon and explain why those facts lead to the conclusion that the applicable standard is satisfied. *LeRoux v. Malheur County*, 30 Or LUBA 268, 271 (1995). While admittedly brief, the findings quoted at n 1 recite the facts the county relies upon and

[3] Petitioners also cite us to Record 30-31, which is a document prepared by the same surveyor. The purpose of that document is to "verify the approximate location of the top of the embankment on the North side of Barber Road" near the subject property. Record 30. As far as we can tell, the surveyor determined that the "top of the embankment" is located on property east of the subject parcel. Neither the document at Record 30-31 nor petitioners explain what that determination has to do with the slope of the soils on the subject property.

explains why those facts lead to the conclusion that the predominant soil type on the subject property is 71C. At least where this Board is able to determine that a reasonable decision maker would rely on the evidence the decision maker chose to rely on, findings specifically addressing conflicting evidence are unnecessary. *Port Dock Four, Inc. v. City of Newport*, 36 Or LUBA 68, 76, *aff'd* 161 Or App 199, 984 P2d 958 (1999); *Angel v. City of Portland*, 22 Or LUBA 649, 656-57, *aff'd* 113 Or App 169, 831 P2d 77 (1992); *Douglas v. Multnomah County*, 18 Or LUBA 607, 619 (1990). Therefore, the hearings officer's failure to address petitioners' evidence in her findings does not necessarily mean those findings are inadequate.

Turning to the evidentiary issue, we disagree with petitioners that the only substantial evidence regarding the slope of the subject property, and hence its soil type, is the map at Record 50. Despite its broad scope and the fact that it does not necessarily map inclusions of different soil types, the soil survey the county relied upon is direct, probative evidence of the slope of the subject property and its soil type.[4]

The question then becomes whether a reasonable person could rely on the soil survey, considering countervailing evidence cited to us in the whole record, including the map at Record 50. *Canfield v. Yamhill County*, 142 Or App 12, 17-18, 920 P2d 558 (1996) (LUBA must consider both arguments that there is no substantial evidence supporting a finding and that supporting evidence is not substantial viewed against countervailing evidence cited in the record). We conclude that the county could rely on the soil survey to conclude that the subject property is composed

[4] We note that ORS 215.710(6) provides that "[s]oil classes, soil ratings or other soil designations used in or made pursuant to this section are those of the Soil Conservation Service [now, the NRCS] in its most recent publication for that class, rating or designation before November 4, 1993." ORS 215.710(5) provides that the owner of a lot or parcel may change the NRCS soil class or rating for that lot or parcel after submitting (1) a statement from NRCS agreeing that the soil class or rating may be changed, (2) a report from a soils scientist that the soil class or rating should be changed, and (3) a statement from the state Department of Agriculture that the soil scientist's report is sound and scientifically based. *See also* OAR 660-033-0020(8)(f) and (g). Arguably, under these statutes and rules, the county is required to use the NRCS soil classification for a property proposed for a lot-of-record dwelling. Under these statutes and rules, it would appear that only if the soil class or rating is changed pursuant to ORS 215.710(5) or OAR 660-033-0020(8)(g) may the county find that the soil class or rating is something other than the NRCS designation in its most recent publication before November 4, 1993. However, because we reject petitioners' evidentiary challenge to the hearings officer's finding that the soil on the property is class 71C, we need not and do not consider this question further.

predominantly of soil class 71C, and hence is not composed predominantly of high-value farmland, as petitioners contend. The testimony of the NRCS and county agents simply indicate that there may be inclusions of soil type 71B on the subject property. The map at Record 50 simply shows elevations at certain points on the property and the slope between some of the marked elevations. There is no attempt to indicate the topography, or to provide a basis to estimate whether the soil slope on the property are predominantly less than seven percent.[5] To the extent the evidence cited by petitioners bears on the question of whether the subject property is composed predominantly of soil type 71B or 71C, it does not so undermine the soil survey so as to render that survey nonsubstantial evidence.

B. Use in Conjunction with a Dairy Operation

Petitioners testified below that after purchasing their dairy in 1986 from intervenor's brother they mistakenly fenced "a good portion" of the subject property, and used that fenced portion for pasture, as part of their dairy operation, until intervenor surveyed the property in 1998 and ejected petitioners. Record 43. According to petitioners, that portion of the subject property was used in conjunction with a dairy operation on January 1, 1993, and therefore the subject property must be considered "high-value farmland" as defined at OAR 660-033-0020(8)(d).[6] Petitioners contend

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[5] It is not clear to us, and petitioners make it no clearer, exactly how one goes about determining the slope of the predominant soils on a parcel. Because the pertinent question is whether the subject property is composed predominantly (>50 percent) of soil type 71B or 71C, and because that question turns on the slope of the soils, presumably a soil scientist or similar expert would need to determine the slope of soils for the entire parcel and then whether the majority of the parcel has slopes that exceed or are less than seven percent. If there is some way a layperson (such as the hearings officer or the members of this Board) can make that determination from the map at Record 50, petitioners have not explained how to do so. It may be that the surveyor who prepared the map could make that determination; but, as explained, we do not see that the surveyor actually did so in this case.

[6] OAR 660-033-0020(8) defines "high-value farmland" as follows:

> "(a) 'High-Value Farmland' means land in a tract composed predominantly of soils that are:
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> "(A) Irrigated and classified prime, unique, Class I or II; or
>
> "(B) Not irrigated and classified prime, unique, Class I or II.

that it is legally irrelevant under OAR 660-033-0028(8)(d) that their use of the subject property on January 1, 1993, was without permission of the owner. Petitioners fault the hearings officer for failing to address petitioners' arguments under OAR 660-033-0020(8)(d). Further, given the undisputed fact that petitioners used part of the subject property as part of their dairy operation on the relevant date, petitioners argue that the hearings officer is obligated to conclude that the subject property is "high-value farmland."

The hearings officer's findings do not specifically address petitioners' arguments under OAR 660-033-0020(8)(d), other than to conclude cryptically that the soil on the subject property "is not used in conjunction with a dairy operation and it is not listed in any of the OAR subclassifications." Record 10, quoted at n 1. Intervenor argues that the hearings officer was not obligated to specifically address the argument petitioners raised under OAR 660-033-0020(8)(d), because that argument has no legal merit. According to intervenor, the legislature surely did not intend ORS 215.710(4), on which OAR 660-033-0020(8)(d) is based, to include circumstances where property is illegally used in conjunction with a dairy operation. Alternatively, intervenor argues that even if OAR 660-033-0020(8)(d) does define "high-value farmland" to include land used illegally in conjunction with a dairy operation, at best petitioners used only a *portion* of the subject property on January 1, 1993, in conjunction with their dairy operation. Intervenor contends

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"* * * * *

"(d) In addition to that land described in subsection (a) of this section, high-value farmland, if west of the summit of the Coast Range and used in conjunction with a dairy operation on January 1, 1993, includes tracts composed predominantly of the following soils in Class III or IV or composed predominantly of a combination of the soils described in subsection (a) of this section and the following soils:

"(A) Subclassification IIIe, specifically, Astoria, Hembre, Knappa, Meda, Quillayutte and Winema;

"(B) Subclassification IIIw, specifically, Brennar and Chitwood;

"(C) Subclassification IVe, specifically, Astoria, Hembre, Meda, Nehalem, Neskowin and Winema; and

"(D) Subclassification IVw, specifically, Coquille."

that there is no basis to conclude that the subject property as a whole, or the predominant part of it, is high-value farmland as defined by OAR 660-033-0020(8)(d).

The hearings officer concluded that the soils on the subject property are "not listed in any of the OAR subclassifications," an apparent reference to the soil subclassifications listed at OAR 660-033-0020(8)(d). There is no dispute that the Walluski soils on the subject property are not among the Class III soils listed in OAR 660-033-0020(8)(d). Petitioners' theory as to why soils on the subject property are "high-value farmland" as defined by OAR 660-033-0020(8)(d) is based, apparently, on the fact that some of the soils on petitioners' adjoining farm are Knappa silt loams, one of the Class IIIe soils listed at OAR 660-033-0020(8)(d)(A). Petitioners assert that their dairy farm is "high-value farmland" under OAR 660-033-0020(8)(d)(A), and that may well be. However, for land to constitute "high-value farmland" under OAR 660-033-0020(8)(d), it must be (1) west of the summit of the Coast Range, (2) used in conjunction with a dairy operation on January 1, 1993, and (3) part of a "tract" composed predominantly of the listed soils. OAR 660-033-0020(10) defines "tract" as "one or more contiguous lots or parcels in the same ownership." While petitioners may have used a portion of the subject property in conjunction with their adjacent dairy operation, they do not assert that they owned the subject property at any relevant time, or otherwise explain their apparent belief that the subject property is or was part of a "tract" that included their farm for purposes of OAR 660-033-0020(8)(d). To the extent petitioners argue that the relevant "tract" consists of the subject property by itself, as noted there is no dispute that the Walluski soils on the subject property are not among the Class III soils listed in OAR 660-033-0020(8)(d). We agree with intervenors that there is no basis to conclude that the subject property is high-value farmland as defined by OAR 660-033-0020(8)(d).

The first assignment of error is denied.

SECOND ASSIGNMENT OF ERROR

Clatsop County Land and Water Development and Use Ordinance (LWDUO) S3.519(f) provides that:

"A county may, by application of criteria adopted by ordinance, deny approval of a dwelling allowed under Section (3) of this rule in any area where the County determines that approval of the dwelling would:

"(A) Exceed the facilities and service capabilities of the area;

"(B) Materially alter the stability of the overall land use pattern of the area; or

"(C) Create conditions or circumstances that the County determines would be contrary to the purposes or intent of its acknowledged comprehensive plan or land use regulations."[7]

Petitioners argued below that the proposed lot-of-record dwelling should be denied under LWDUO S3.519(f)(A)—(C), because (1) Barber Road, which serves the property and petitioners' farm, is incapable of providing safe access, (2) the dwelling will destabilize the predominantly agricultural land use pattern in the area, and (3) the dwelling is inconsistent with the purpose of the EFU zone and comprehensive plan agricultural policies requiring that non-agricultural uses on EFU land be minimized. Petitioners contend that the hearings officer's findings addressing the issues raised under LWDUO S3.519(f)(A)—(C) are inadequate and not supported by substantial evidence.[8]

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[7] LWDUO S3.519(f) repeats, verbatim, the text of OAR 660-033-0130(3)(f). OAR 660-033-0130(3)(f), and the statute on which it is based, is a *grant of authority* for counties to adopt criteria by ordinance under which the county may deny lot-of-record dwellings for any of the three reasons listed. The county's *verbatim* adoption of OAR 660-033-0130(3)(f) is, therefore, somewhat odd. Nonetheless, no party disputes that in adopting LWDUO S3.519(f) the county intended to exercise that grant of authority and the standards set forth in LWDUO S3.519(f)(A)—(C) are standards the county has chosen to adopt as potentially applicable criteria for lot-of-record dwellings.

[8] The hearings officer's findings addressing LWDUO S3.519(f)(A)—(C) state, in full:

> "Tillamook County is responsible for road maintenance on Barber Road. [Petitioners] are concerned that any additional traffic will pose a safety hazard and create an added burden on Tillamook County resources to ensure visibility. The hearings officer does not find that the added traffic will create any additional burden or service requirements on the road. Safety precautions will need to be observed and visibility will need to be maintained regardless.
>
> "There are no public facilities or service capabilities in this area. Applicant will need to provide water from a well, spring or the river. Sewer needs will be handled by septic system. Applicant will be required to provide fire suppression for the dwelling.
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> "The overall land use pattern of the area is a mixture of farm or forest uses. The EFU zone and OAR both allow this request subject to standards set by the county.

A. LWDUO S3.519(f)(A) (Exceed Facility and Service Capability)

Petitioners testified that Barber Road is narrow and unsafe, due to broken pavement, poor visibility and the lack of guardrails on a portion that borders a cliff. According to petitioners, traffic from the proposed dwelling would conflict with frequent semi-truck deliveries and pickups to and from their dairy farm. Petitioners argue that the hearings officer's findings that the proposed dwelling would not "[e]xceed the facilities and service capabilities" of Barber Road misconstrue LWDUO S3.519(f)(A). The hearings officer erred, petitioners contend, by assuming that LWDUO S3.519(f)(A) is violated only if traffic generated by the dwelling would exceed some objective county road service standard, and therefore declining to consider more subjective evidence that the use of Barber Road by occupants of the dwelling would be unsafe, given the road's condition and conflicting use by petitioners. Petitioners suggest that compliance with LWDUO S3.519(f)(A) requires intervenor to widen and improve Barber Road.

The hearings officer found in relevant part that the additional traffic generated by the proposed dwelling would not "create any additional burden or service requirements on the road." It is not clear to us that the hearings officer interpreted LWDUO S3.519(f)(A) as petitioners contend, but it is reasonably clear that the hearings officer disagreed with petitioners that the traffic generated by the dwelling would create an "additional burden" on Barber Road. Petitioners offer no focused challenge to that finding. If there is traffic that burdens Barber Road or exceeds its "capability," however that term is defined, it would seem much more likely that truck traffic associated with petitioners' dairy, rather than automobile traffic associated with the proposed dwelling, would be responsible for that burden. Be that as it may, petitioners' disagreement with the hearings officer's finding that traffic generated by the dwelling will not create "any additional burden" on the road

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> "It is important to note that although the purpose section describing EFU zones states the purpose and intent is to provide areas for the continued practice of agriculture, Clatsop County *does allow* lot-of-record dwellings as a Conditional Use Permit. A non-farm dwelling is permitted when certain standards are met.
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> "Applicant meets the above criteria." Record 11-12 (emphasis in original).

provides no basis for reversal or remand. Given that largely unchallenged basis for finding compliance with LWDUO S3.519(f)(A), petitioners' argument that the hearings officer misconstrued LWDUO S3.519(f)(A) also does not provide a basis for reversal or remand.

This subassignment of error is denied.

B. LWDUO S3.519(f)(B) (Stability of Overall Land Use Pattern)

Petitioners argue that the hearings officer's findings addressing the stability standard at LWDUO S3.519(f)(B) are inadequate and misconstrue the applicable law. According to petitioners, LWDUO S3.519(f)(B) implements ORS 215.705(5)(b) and OAR 660-033-0130(3)(f)(B), and the stability standard set forth therein requires detailed findings, based on an identified study area, regarding the land uses in the area, and a determination that the proposed dwelling will not materially alter the stability of the land use pattern in the area. *Sweeten v. Clackamas County*, 17 Or LUBA 1234, 1246 (1989); *see also* OAR 660-033-0130(3)(c)(C)(iii) (requiring that counties apply the detailed findings requirements set forth in OAR 660-033-0130(4)(a)(D) to lot-of-record dwellings that are subject to the stability standard under the rule).

The hearings officer found, simply, that "[t]he overall land use pattern of the area is a mixture of farm or forest uses" and that "[t]he EFU zone and OAR both allow this request subject to standards set by the county." Record 11. We agree with petitioners that those findings are inadequate and appear to misconstrue the applicable law. The hearings officer appears to conclude that if a proposed lot-of-record dwelling complies with applicable lot-of-record standards, that is a sufficient reason by itself to conclude that the proposed dwelling complies with the stability standard. That view of LWDUO S3.519(f)(B) essentially reads the stability standard out of the code. Further, petitioners are correct that the hearings officer's findings are deficient.[9] While petitioners

[9] Petitioners appear to assume that the stability standard at LWDUO S3.519(f)(B) that the county adopted pursuant to authority granted by ORS 215.705(5)(b) and OAR 660-033-0130(3)(f)(B) must be applied in the same manner as the stability standard found in other statutes and rules that apply to lot-of-record dwellings, such as those at ORS 215.705(2)(a)(C)(iii) (lot-of-record dwellings on high-value farmland), OAR 660-033-0130(3)(c)(C)(iii)

offer no compelling reason to believe that the proposed dwelling in fact violates the stability standard, findings that "[t]he overall land use pattern of the area is a mixture of farm or forest uses" and that lot-of-record dwellings are allowed in the EFU zone fall far short of explaining why the proposed dwelling will not materially alter the stability of the land use pattern in the area.

This subassignment of error is sustained.

C. LWDUO S3.519(f)(C) (Contrary to Purposes or Intent of Plan and Code)

Petitioners argue that the hearings officer's findings of compliance with LWDUO S3.519(f)(C) are inadequate and misconstrue the applicable law. According to petitioners, they offered testimony that the proposed dwelling would conflict in various ways with their dairy operation, and argued below that the dwelling would "[c]reate conditions or circumstances" that "would be contrary to the purposes or intent of [the county's acknowledged comprehensive plan or land use regulations." Petitioners cited to the purpose statement of the EFU zone at LWDUO 3.562 and to comprehensive plan policies that generally require protection of agricultural uses and minimization of non-farm uses in EFU zones. Petitioners contend that the hearings officer was obligated to address their arguments and explain why the proposed dwelling is not contrary to the purpose and intent of the cited code and plan provisions. Instead, petitioners argue, the hearings officer took the same approach as with the LWDUO S3.519(f)(B) stability standard, and concluded that because the EFU zone allows lot-of-record dwellings, any lot-of-record dwelling that complies with the lot-of-record standards is, *ipso facto*, consistent with the purpose and intent of the county's code and plan.

We agree with petitioners that the hearings officer misconstrued the applicable law and failed to adopt adequate findings with respect to LWDUO S3.519(f)(C). That code standard becomes a nullity if it is satisfied by a finding that lot-of-record dwellings are allowed in the EFU

(same) and OAR 660-033-0130(4)(a)(D) (setting out detailed findings requirements for undertaking the stability analysis found in various statutes and rules). Whether that assumption is correct or not, a point we do not decide, we agree with petitioners that the hearings officer's findings of compliance with LWDUO S3.519(f)(B) are inadequate, even if the detailed findings requirements of OAR 660-033-0130(4)(a)(D) do not apply.

zone. While petitioners offer no compelling reason to conclude that the dwelling proposed here is, in fact, contrary to the purpose or intent of cited code and plan provisions, we agree with petitioners that the hearings officer must address that question in her findings.

This subassignment of error is sustained.

The second assignment of error is sustained, in part.

The county's decision is remanded.