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

1000 FRIENDS OF OREGON, )  
an Oregon non profit )  
organization, )  
Petitioner, )  
vs. )  
WASHINGTON COUNTY, )  
Respondent. )

LUBA No. 84-079  
FINAL OPINION  
AND ORDER

Appeal from Washington County.

Robert E. Stacey, Jr., Portland, filed the Petition for Review.

No appearance by Respondent County, and Respondents Gerald and Donna Vanderzanden.

KRESSEL, Referee; BAGG, Chief Referee; DUBAY, Referee, participated in the decision.

REMANDED 01/11/85

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

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1 Opinion by Kressel.

2 NATURE OF THE DECISION

3 Petitioner seeks review of the decision of the Board of  
4 Commissioners of Washington County approving a comprehensive  
5 plan and zoning map amendment from Agricultural (AF-20) to  
6 Rural Residential (AF-5) for a 26.28 acre parcel of rural  
7 agricultural land. The order includes an exception from the  
8 Goal 3 requirement that rural agricultural land be zoned for  
9 exclusive farm use.

10 FACTS

11 The parcel in question lies outside the regional urban  
12 growth boundary. Most of the 26 acres consists of Class III  
13 soils. A portion of the property is in farm use. The county's  
14 acknowledged plan and zoning ordinance designate the property  
15 for exclusive farm use.

16 The challenged order maintains the parcel is no longer  
17 suitable for resource use because of surrounding rural  
18 residences and the parcelization of nearby land into small  
19 lots. A portion of the order states:

20 "In view of the facts that the parcel is surrounded by  
21 14 small lots with a possibility of 5 more being  
22 created on its northern boundary, the Board finds that  
23 designating the Vanderzanden property for Exclusive  
24 Farm or Exclusive Forest use is impracticable, because  
25 a small lot size of the surrounding parcels severely  
26 limits resource use. The small lot size means a dense  
development of homes which produce the operational  
conflicts previously described." Record at 29.

25 According to the final order, the above circumstances  
26 warrant relief under the criteria in the acknowledged plan

1 governing changes from AF-20 to AF-5. See Washington County  
2 Comprehensive Plan Policies 1.g. and 18. The order also  
3 concludes the facts warrant relief under provisions in state  
4 law authorizing an exception from applicable statewide goals  
5 where the land is committed to uses not allowed by the goals.  
6 See ORS 197.732(1)(b); OAR 660-04-028.

7 FIRST ASSIGNMENT OF ERROR

8 Petitioner alleges the findings of fact relied on by the  
9 county are not supported by substantial evidence. Our  
10 attention is specifically directed to certain findings which  
11 petitioner claims make up the key elements of the county's  
12 decision. The findings may be paraphrased as follows:

- 13 (1) The subject property is completely surrounded by  
14 small parcels or by land already approved by LCDC  
to be partitioned into small parcels.
- 15 (2) The small size of the surrounding parcels  
16 severely limits resource use by causing dense  
development which produces conflicts with farm  
operations.
- 17 (3) The parcel is too small to stand alone as a  
18 full-time farm and is isolated from other  
19 agricultural parcels of significant size.  
20 Parcelization and varied ownerships in the area  
21 make assembly of a large piece of land for  
resource use impracticable. Leasing or renting  
the land for resource use is not financially  
feasible.

22 Petitioner claims these key findings lack evidentiary  
23 support in the record. Its position is summarized by the  
24 following:

25 "There is no basis in the record for respondent's  
26 findings in support of its conclusion that farm use of  
the subject parcel is 'impracticable.' The evidence

1 shows the contrary: that this is agricultural land in  
2 farm use adjoining other agricultural land and in an  
3 area containing many large ownerships zoned EFU or  
4 AF-20. The county's decision is inconsistent with the  
5 facts in the record; those facts required the county  
6 to deny the request for an exception to Goal 3; and  
7 this Board should therefore reverse the order rather  
8 than remanding." Petition at 12 (citation omitted).

9 Substantial evidence is evidence a reasonable mind would  
10 rely on in reaching a conclusion or making a challenged  
11 finding. Homebuilders Association of Metropolitan Portland v.  
12 Metropolitan Service District, 54 Or App 60, 62, 633 P2d 1320  
13 (1981). Where a land use decision is challenged for lack of  
14 substantial evidence, we ordinarily expect the respondent to  
15 provide citations to the record covering the points in  
16 contention. If neither the final order nor the briefs provide  
17 the necessary citations, we will not conduct an independent  
18 search of the record for evidentiary support. In City of Salem  
19 v. Families for Responsible Government, 64 Or App 238, 249, 668  
20 P2d 395 (1983), the Court of Appeals stated:

21 "Here, LCDC has drawn a conclusion of goal compliance  
22 from the facts in the Conformance Document, but  
23 neither LCDC nor the city has cited evidence to  
24 support those findings. Without LCDC's and the city's  
25 assistance in locating evidence that justifies the  
26 findings - if such evidence exists - we have no basis  
27 for a determination that the findings are supported by  
28 substantial evidence. We then have to hold that the  
29 findings of fact are not supported by substantial  
30 evidence." (footnotes omitted).

31 In a footnote, the Court added:

32 "We decline to conduct an independent search of the  
33 record for evidentiary support. Both LCDC and the  
34 city should be intimately familiar with the record,  
35 and we are not. When they are unwilling or unable to  
36 direct us to the documentary evidence upon which the

1 findings are based, we will assume that none exists."  
2 64 Or App at 249, n. 13.

3 See also Bowman Park Neighborhood Association v. City of  
4 Albany, \_\_\_ Or LUBA \_\_\_, LUBA No. 84-110, June 5, 1984.

5 In the present case, no appearance has been made by the  
6 Respondent County or the applicant benefitted by the county's  
7 decision. The final order, which covers 16 pages, does not  
8 refer to the evidence relied on by the county in support of the  
9 various findings of fact and conclusions of law supporting the  
10 decision. We therefore have no basis for rejecting  
11 petitioner's challenge under ORS 197.835(8)(a)(C). City of  
12 Salem v. Families for Responsible Government, supra.

13 The first assignment of error is sustained. A remand of  
14 the decision is appropriate. OAR 661-10-070(1)(C)(2).

15 SECOND ASSIGNMENT OF ERROR

16 Petitioner next contends the county erroneously concluded  
17 it could disregard criteria in state law governing goal  
18 exceptions because the proposal satisfied equivalent criteria  
19 in the county's acknowledged comprehensive plan. According to  
20 petitioner, "To the extent the order relies on this conclusion,  
21 it must be reversed or remanded." Petition at 13.

22 Although a portion of the challenged order asserts the  
23 county's plan criteria are equivalent to the state law  
24 requirements for exceptions, other portions of the order  
25 include findings expressly relating the facts to the pertinent  
26 statutory (ORS 197.732) and administrative rule (OAR  
660-04-028) standards. See Record at 25. Petitioner's charge

1 that the county disregarded state law standards is incorrect.

2 Petitioner also claims certain of the county's findings are  
3 legally insufficient to support an exception to Goal 3. The  
4 petition states:

5 "In particular, the order's reliance on findings that  
6 the absence of Class I soils and the 'limited amount  
7 of tillable land' render the parcel 'impracticable' to  
8 farm, are irrelevant under Goal 2, Part II and OAR  
9 660-04-028 and cannot support a conclusion that an  
10 exception from Goal 3 is justified." Petition at 18.

11 We find no reference to "the absence of Class I soils" in  
12 the portion of the order addressing OAR 660-04-028, LCDC's rule  
13 governing the commitment of land to uses not allowed by the  
14 goals. However, references to the "limited amount of tillable  
15 land" on the site are made. For example, the order states:

16 "The 18 acres of tillable land are far below that  
17 required for a full-time farmer to make a living in  
18 Washington County." Record at 26. See also Record at  
19 29.

20 We agree with petitioner that the various findings  
21 concerning the amount of "tillable land" on the site in  
22 question are not relevant to the issue of whether the land is  
23 committed to uses not allowed by Goal 3. See 1000 Friends of  
24 Oregon v. LCDC, 69 Or App 717, 728 \_\_\_ P2d \_\_\_ (1984). We  
25 note, however, that the county's decision relied on other  
26 factors in support of the commitment exception, e.g.,  
surrounding uses, parcel sizes, and ownership patterns. Those  
factors are relevant under OAR 660-04-028, and petitioner does  
not challenge the adequacy of the findings discussing them.  
However, since we have held that none of the key findings on

1 these points are supported by substantial evidence, see page 5,  
2 supra, it would be pointless to consider whether, disregarding  
3 the findings concerning "tillable land," the remaining findings  
4 present sufficient reasons for a commitment exception.

5 Remanded.

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