

LAND USE  
BOARD OF APPEALS

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

JUL 27 9 56 AM '89

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ROY SWEETEN, CHARLOTTE SWEETEN, )  
EUGENE FALTUS, JOYCE FALTUS, )  
ROY HILL, KIMBERLY SCHEAFER, )  
BRENT SCHEAFER, JERRY PATTERSON, )  
BONNIE PATTERSON, LUDWIG JOHN, )  
STEVE JOHNSON, JILL JOHNSON, )  
JOHN HENGSTLER, MARY HENGSTLER, )  
ED KOZLOWSKI, LEONARD GUILLES, )  
LORA GUSTAFSON, DARLENE HILL, )  
MARY LEBERT, RICHARD PETERSON, )  
GINGER PETERSON, KIM SALEM, )  
ROSEMARY GLUTOCH, CLEO WOLF, )  
and ARLENE PETERSON, )  
Petitioners, )  
vs. )  
CLACKAMAS COUNTY, )  
Respondent. )

LUBA No. 89-024  
FINAL OPINION  
AND ORDER

Appeal from Clackamas County.

James S. Coon, Portland, filed the petition for review and argued on behalf of petitioners. With him on the brief was Imperati, Barnett, Sherwood & Coon.

Michael E. Judd, Oregon City, filed the response brief and argued on behalf of respondent.

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

REMANDED 07/27/89

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

1 Opinion by Kellington.

2 NATURE OF THE DECISION

3 Petitioners appeal a decision of the Clackamas County  
4 hearings officer approving a nonfarm dwelling on land zoned for  
5 exclusive farm use.

6 FACTS

7 The subject property consists of seven acres zoned for  
8 exclusive farm use. The property is primarily zoned Exclusive  
9 Farm Use Twenty Acres (EFU-20) with a small portion zoned  
10 General Agriculture District (GAD).<sup>1</sup> Most of the property  
11 (75-80%) consists of Class II soils with the balance of the  
12 property consisting of Class III and Class VIII soils.

13 The property has been used for cattle grazing and vegetable  
14 crops. The property is located in an area characterized by  
15 "rural residential uses or small scale farming uses and large  
16 commercial farming operations." Record 2.

17 The applicant applied for a "lot" division and approval of  
18 three nonfarm dwellings. The hearings officer, in a single  
19 final order, denied the "lot" division and two nonfarm  
20 dwellings, and approved one nonfarm dwelling. This appeal of  
21 the hearing officer's approval of the single nonfarm dwelling  
22 followed.

23 FIRST ASSIGNMENT OF ERROR

24 "The County improperly construed the applicable law in  
25 that it made inadequate findings concerning the  
suitability of the subject tract for agricultural use."

26 The Clackamas County Zoning and Development Ordinance (ZDO)

1 401.05(A)(4) provides that a nonfarm dwelling may be approved  
2 if the county finds that the dwelling:

3 "Is situated upon generally unsuitable land for the  
4 production of farm crops and livestock, considering  
5 the terrain, adverse soil or land conditions, drainage  
6 and flooding, vegetation, location and size of tract."

7 The county's findings relevant to this standard are as follows:

8 "\* \* \* The use is consistent with the limited  
9 potential of the property for commercial level farm or  
10 forest uses. While portions of the property contain  
11 soils that have a Class IIw classification, the  
12 Hearings Officer is satisfied from the testimony and  
13 evidence received that these soils are very shallow,  
14 contain riverwash from repeated floodings of the  
15 Molalla River, and are generally insufficient to  
16 support commercial agricultural or forest uses, taken  
17 together with the size and shape of the property. The  
18 balance of the property contains soils totally  
19 unsuitable for agriculture.

20 "\* \* \* \* \*

21 "The proposed use is situated upon generally  
22 unsuitable land for the production of farm crops and  
23 livestock, considering the adverse soil conditions,  
24 drainage and flooding, vegetation and size and shape  
25 of the property. This finding is supported by the  
26 discussion above." Record 4-5.

27 Petitioners argue that the findings do not satisfy ZDO  
28 401.05(A)(4).<sup>2</sup> First, petitioners contend that the county's  
29 finding that the parcel will not support commercial agriculture  
30 does not satisfy an approval criterion which requires that the  
31 parcel be "generally unsuitable for the production of farm  
32 crops and livestock." ZDO 401.05(A)(4). Second, petitioners  
33 argue that the county failed to explain why the size and shape  
34 of the property, as well as some shallow soils and riverwash,  
35 lead to the conclusion that the parcel is unsuitable for

1 commercial agriculture.

2 We address each of these attacks on the county's findings  
3 separately.

4 A. Unsuitability For Commercial Agriculture

5 Petitioners point to our decision in Smith v. Baker County,  
6 14 Or LUBA 167, 170 (1985), where we explained that a finding  
7 that a parcel will not support commercial agriculture does not  
8 satisfy an approval criterion requiring a finding that the  
9 parcel is "generally unsuitable for the production of farm  
10 crops and livestock." (Emphasis in original.)

11 Respondent asks us to "reexamine and reverse" our decision  
12 in Smith v. Baker County, supra. Respondent's Brief 3.

13 We decline the invitation to reverse Smith v. Baker  
14 County. The unsuitability for commercial agriculture standard  
15 against which the county measured the nonfarm dwelling, is not  
16 the standard expressed in ZDO 401.05(A)(4). The county applied  
17 the wrong standard to approve the nonfarm dwelling.

18 This subassignment of error is sustained.

19 B. County's Explanation For Its Conclusion of  
20 Unsuitability.

21 Petitioners contend the county provided no explanation why  
22 shallow soils and riverwash and the size and shape of the  
23 parcel necessarily leads to a conclusion that the subject  
24 parcel is "generally unsuitable" for farm use.

25 Respondent maintains that the nexus between shallow soils,  
26 riverwash, the size and shape of the parcel and the county's

1 conclusion that the subject parcel is unsuitable for commercial  
2 farm use is "obvious." Respondent argues that even if the  
3 county's conclusion is not obvious, there is substantial  
4 evidence in the whole record to support it. Respondent argues  
5 that under ORS 197.835(10)(b) we should affirm the county's  
6 decision based on the evidence cited in its response to the  
7 second assignment of error.<sup>3</sup>

8 We agree with petitioners that to satisfy ZDO 401.05(A)(4)  
9 the county must explain why the size, shape, and soils lead to  
10 the conclusion that the parcel is unsuitable for agriculture.  
11 Looking to other evidence in the record, as respondent asks,  
12 does not disclose evidence clearly supporting the county's  
13 decision. The county's order is fundamentally flawed because  
14 it applies the wrong approval standard, as we pointed out in  
15 the subassignment above. Even if there were substantial  
16 evidence in the whole record to support the county's finding  
17 that the parcel is "generally unsuitable" for "commercial  
18 agriculture," that evidence would not support the determination  
19 that the ZDO requires--a determination that the parcel is  
20 generally unsuitable for the production of farm crops and  
21 livestock. Accordingly, this subassignment of error is  
22 sustained.

23 The first assignment of error is sustained.

24 SECOND ASSIGNMENT OF ERROR

25 "The County erred in making a decision of agricultural  
26 unsuitability not supported by substantial evidence in  
the whole record."

1           Because we agree with the petitioners under the first  
2 assignment of error that the findings are not sufficient to  
3 demonstrate compliance with ZDO 401.05(A)(4), no purpose would  
4 be served by consideration of whether the evidence is  
5 sufficient to support the county's inadequate findings. DLCD  
6 v. Columbia County, \_\_\_ Or LUBA \_\_\_ (LUBA No. 87-109, March 15,  
7 1988), slip op 7; McNulty v. City of Lake Oswego, 14 Or LUBA  
8 306, 373 (1986).

9           The second assignment of error is sustained.

10 THIRD ASSIGNMENT OF ERROR

11           "The County improperly construed the applicable law in  
12 finding that the proposed non-farm use is compatible  
13 with farm uses and consistent with the intent and  
14 purpose set forth in ORS 215.243."

14 FOURTH ASSIGNMENT OF ERROR

15           "The County's finding concerning consistency with  
16 ORS 215.243 is not supported by substantial evidence."

17           ZDO 401.05(A)(1) requires as a prerequisite to county  
18 approval of a nonfarm dwelling that the county find the  
19 dwelling:

20           "[i]s compatible with farm uses described in  
21 subsection 401.03 of this Ordinance and is consistent  
22 with the intent and purpose set forth in ORS 215.243."

23           Petitioners maintain that the county's findings are  
24 inadequate to satisfy ZDO 401.05(A)(1) because they do not  
25 address "compatibility" but rather only address "suitability."  
26 Petitioners cite our decision in Bruck v. Clackamas County, 15  
Or LUBA 540, 545 (1987), where we rejected a similar finding

///

1 because it ignored the "compatibility" criteria.

2 Petitioners raise a second objection to the above quoted  
3 findings arguing that a finding of "compatibility" would be  
4 internally inconsistent with other parts of the county's order  
5 rejecting three nonfarm dwellings on the basis that nonfarm  
6 dwellings are inherently incompatible with farm use.

7 Petitioners raise a third objection to the county's finding  
8 that the nonfarm dwelling is consistent with the intent and  
9 purpose of ORS 215.243, claiming that the county's decision  
10 that three nonfarm dwellings are not consistent with  
11 ORS 215.243 forecloses a finding that one nonfarm dwelling is  
12 consistent with that statute. These objections to the findings  
13 are logically distinct, and we treat them separately below.

14 A. Lack of Findings Addressing Compatibility

15 Respondent concedes that the county failed to adopt  
16 adequate findings explicitly addressing ZDO 401.05(A)(1).<sup>4</sup>  
17 However, respondent asks us to read the findings addressing ZDO  
18 401.05(A)(1) together with other findings to conclude that the  
19 county adequately addressed ZDO 401.05(A)(1). The findings  
20 that the county asks us to read together follow:

21 "3. Subsections 401.05A and 402.05A of the ZDO  
22 provide that a single-family residential dwelling  
23 not provided in conjunction with farm use may be  
24 approved where the application satisfies each of  
25 the criteria set forth therein. This request, to  
26 the extent it seeks approval of one single-family  
residence not in conjunction with farm use on the  
entire property under consideration, satisfies  
those criteria, as follows:

"a. A single family residence is compatible with

1 farm uses described in subsections 401.03  
2 and 402.03 of the ZDO, and is consistent  
3 with the intent and purpose set forth in  
4 ORS 215.243. The use is consistent with the  
5 limited potential of the property for  
6 commercial level farm or forest uses. While  
7 portions of the property contain soils that  
8 have a Class IIw classification, the  
9 Hearings Officer is satisfied from the  
10 testimony and evidence received that those  
11 soils are very shallow, contain riverwash  
12 from repeated floodings of the Molalla  
13 River, and are generally insufficient to  
14 support commercial agricultural or forest  
15 uses, taken together with the size and shape  
16 of the property. The balance of the  
17 property contains soils totally unsuitable  
18 for agriculture.

19 "Approval of a single-family residence would  
20 not conflict with the requirements of  
21 ORS 215.243 since no large blocks of  
22 agricultural land will be divided, no lands  
23 suitable for commercial farm or forest  
24 production will be removed from production  
25 or availability, and approval of a single  
26 residence will not require the extension of  
27 urban level services not already present in  
28 the area.

29 "b. The proposal will not seriously interfere  
30 with accepted farming practices, as defined  
31 in subsection 401.03 and 402.03 of the ZDO.  
32 Given the existing residential development  
33 in the area, approval will not generate  
34 substantially greater adverse impacts on  
35 agriculture than already exists. The  
36 conditions of approval will require that the  
37 residence, if constructed on tax lots 1301  
38 or 1391, be located as far south as is  
39 reasonable and consistent with the setback  
40 requirements of the zoning districts. This  
41 condition will serve to protect the  
42 character of agricultural uses to the north,  
43 on adjacent lands devoted to farm use."  
44 Record 4-5.

45 Reading the findings as a whole, they are inadequate to  
46 show that the proposed nonfarm dwelling will be compatible with

1 the farm uses in the area. There is no discussion which  
2 identifies other farm uses in the area or any explanation of  
3 how the nonfarm dwelling will be compatible with identified  
4 farm uses.<sup>5</sup> The county has not adopted findings which  
5 satisfy ZDO 401.05(A)(1).

6 This subassignment of error is sustained.

7 B. County Rejection of Three Nonfarm Dwellings

8 The county's order is divided into two parts. One part  
9 contains the findings disapproving the land division and two of  
10 the three requested nonfarm dwellings and another part  
11 approving one nonfarm dwelling. In the denial portion of the  
12 order the county found:

13 "The application is not consistent with the intent and  
14 purpose set forth in ORS 215.243. The agricultural  
15 land use policies of this state include retaining open  
16 land as an efficient means of conserving natural  
17 resources and preventing expansion of urban  
18 development into rural areas because of the  
19 unnecessary increases in the cost of community  
20 services, conflicts between farm and urban activities  
21 and the loss of open space and natural beauty around  
22 urban centers. Dividing the property into three lots  
23 for nonfarm residences will conflict with these  
24 considerations. Clearly, open space will be lost.  
25 The additional residences will take access from, and  
26 increase pressure on Alder Creek Lane, a road  
described as barely adequate to handle the existing  
traffic. These additional residences will increase  
the inherent conflict between farm and residential  
uses, particularly in an area which already contains  
some small lots developed only for residential  
purposes." (Emphasis supplied.) Record 3.

24 We agree with petitioners that it appears inconsistent for  
25 the county to conclude that approval of three nonfarm dwellings  
26 is inherently inconsistent with the state land use policy

1 expressed in ORS 215.243, but that the approval of one nonfarm  
2 dwelling is not. We do not mean to suggest the apparent  
3 inconsistency could not be overcome, but the county must  
4 explain why the generalizations it made about the inherent  
5 conflicts between nonfarm dwellings and farm uses in its denial  
6 of three nonfarm dwellings do not apply to the approval of one  
7 nonfarm dwelling. Additionally, the county must explain how  
8 the finding that the inherent conflicts with and  
9 incompatibility between farm uses, which conflicts and  
10 incompatibility are already exacerbated by the presence of  
11 "other small lots developed only for residential purposes,"  
12 harmonizes with a contrary finding for one nonfarm dwelling.  
13 Record 3.

14 Examining additional findings as the county requests will  
15 not improve the county's position. The county must explain how  
16 this nonfarm dwelling is distinguishable from the two nonfarm  
17 dwellings that the county disapproved.

18 This subassignment of error is sustained.

19 C. Evidentiary Support

20 We have concluded that there are no findings addressing the  
21 ZDO requirement that the proposed nonfarm dwelling be  
22 compatible with farm uses. We have also concluded the findings  
23 to support the county's decision that the nonfarm dwelling is  
24 consistent with ORS 215.243 are inadequate. No purpose would  
25 be served in considering whether there is sufficient evidence  
26 to support lacking or inadequate findings.

1 This subassignment of error is sustained.

2 The third and fourth assignments of error are sustained.

3 FIFTH ASSIGNMENT OF ERROR

4 "The County misconstrued the applicable law in finding  
5 that a proposed non-farm use would not materially  
6 alter the stability of the overall land use pattern in  
the area."

7 ZDO 401.05(A)(3) provides that a nonfarm dwelling may be  
8 approved if it:

9 "[d]oes not materially alter the stability of the  
10 overall land use pattern of the area."

11 The county found this criterion is satisfied as follows:

12 "The proposal does not materially alter the stability  
13 of the overall land use pattern of the area. The  
14 three tax lots have been determined to be a legal lot  
15 of record for the purposes of qualifying for a  
16 non-farm use permit. The staff finding in that regard  
is accepted by the Hearings Officer. One residence on  
the 7.31 acres is not out of character with the  
existing development in the area. There are both  
smaller and larger lots in the area developed with  
residences." Record 5.

17  
18 Petitioners argue that this finding is inadequate to  
19 satisfy ZDO 401.05(A)(3). We understand petitioners to argue  
20 that the county applied ZDO 401.05(A)(3) improperly, and that  
21 the county's findings are inadequate to demonstrate compliance  
22 with ZDO 401.05(A)(3), as properly applied.

23 A. Proper Application of ZDO 401.05(A)(3)

24 Petitioners cite our decision in Shaad v. Clackamas County,  
25 15 Or LUBA 70, 77-78 (1986) to establish that ZDO 401.05(A)(3)  
26 was improperly applied by the county. Petitioners contend that

1 whether there exist "smaller and larger lots in the area" and  
2 whether the subject parcel is a "legal lot of record" are  
3 considerations which are irrelevant to a determination that the  
4 overall land use pattern of the area will be unaltered.<sup>6</sup>

5 Petitioners suggest that Shaad, supra, precludes the county  
6 from considering any nonfarm use in the area in reaching its  
7 determination that the overall land use pattern of the area is  
8 not materially altered by the nonfarm dwelling.

9 Respondent argues that Shaad v. Clackamas County, supra,  
10 does not invalidate the manner in which the county applied  
11 ZDO 401.05(A)(3). Respondent maintains that it analyzed only  
12 the area zoned for exclusive farm use in its determination that  
13 the stability of the land use pattern of the area is not  
14 materially altered by this nonfarm dwelling. Respondent  
15 contends that it is indeed relevant that there is "substantial  
16 residential development on small acreages." Respondent's Brief  
17 10. Further, respondent suggests that its determination that  
18 the parcel is a "legal lot of record" is a relevant  
19 consideration because it demonstrates that no division of land  
20 is necessary to accommodate the nonfarm dwelling.

21 Our decision in Shaad v. Clackamas County, supra, held that:

22 "[t]he appropriate consideration under provisions such  
23 as [ZDO] 402.05(A)(3) is the land development pattern  
24 on agricultural land in the area." (Emphasis in  
original.)

25 Petitioners are incorrect in their contention that the  
26 county may not consider nonfarm uses occurring on land zoned for

1 exclusive farm use in determining the overall land use pattern  
2 of the area. The overall land use pattern of an area zoned for  
3 exclusive farm use may include a mix of farm and nonfarm uses  
4 which mix may support a finding that the proposed use will not  
5 materially alter the overall land use pattern of the EFU zoned  
6 area. The county examined the land use pattern of the area  
7 zoned for exclusive farm use in making its determination that  
8 the approved nonfarm dwelling will not materially alter the  
9 stability of the overall land use pattern of the area. We  
10 conclude that the county properly applied ZDO 401.05(A)(3).

11 This subassignment of error is denied.

12 B. Adequacy of Findings

13 Petitioners claim that the county's findings do not  
14 demonstrate compliance with ZDO 401.05(A)(3). Petitioners  
15 contend:

16 "[t]he County's stability finding is further flawed in  
17 that the existence of similar or smaller-sized  
18 residential lots in the area does not demonstrate that  
19 the changing of agricultural land to residential land  
will not affect the stability of the area's land use  
patterns. \* \* \*" Petition for Review 14.

20 Petitioners cite Endresen v. Marion County, 15 Or LUBA 60  
21 (1986) for the proposition that

22 "the significant question with respect to the  
23 stability of land use patterns is not the division  
24 creating a parcel but the transformation of that  
parcel into a residential use." Petition for  
Review 14.

25 The county found that

26 "[o]ne residence on the 7.31 acres is not out of

1 character with the existing development in the area.  
2 There are both smaller and larger lots in the area  
developed with residences." Record 5.

3 We believe that Shaad v. Clackamas County, supra, and  
4 Endresen v. Marion County, supra, read together, require a  
5 three step inquiry in deciding whether a nonfarm dwelling will  
6 materially alter the overall land use pattern of the area.  
7 First, the county must select an area for consideration. The  
8 area selected must be reasonably definite including adjacent  
9 land zoned for exclusive farm use. Second, the county must  
10 examine the types of uses existing in the selected area. In  
11 the county's determination of the uses occurring in the  
12 selected area, it may examine lot or parcel sizes. However,  
13 area lot or parcel sizes are not dispositive of, or even  
14 particularly relevant to, the nature of the uses occurring on  
15 such lots or parcels. It is conceivable that an entire area  
16 may be wholly devoted to farm uses notwithstanding that area  
17 parcel sizes are relatively small. Third, the county must  
18 determine that the proposed nonfarm dwelling will not  
19 materially alter the stability of the existing uses in the  
20 selected area.

21 In this case, the county has not identified the nature of  
22 the other residences which it found exist on "smaller and  
23 larger lots" in the area.<sup>7</sup> Thus, the county has not  
24 sufficiently identified the land use pattern in the area. It  
25 is apparent that the county only compared the parcel sizes upon  
26 which other dwellings are situated with the parcel size on

1 which the subject dwelling is proposed in determining that the  
2 subject nonfarm dwelling will not materially alter the land use  
3 pattern of the area.

4 Petitioners are correct that the relevant inquiry is  
5 whether the alteration of the character of this parcel by the  
6 addition of a nonfarm dwelling will materially alter the land  
7 use pattern of the area. The county must identify an EFU zoned  
8 area for evaluation, determine the land use pattern in that  
9 area and analyze whether the proposed nonfarm dwelling will  
10 materially alter that land use pattern.

11 The fifth assignment of error is sustained.

12 SIXTH ASSIGNMENT OF ERROR

13 "The County misconstrued the applicable law in finding  
14 that the proposed non-farm use will not seriously  
interfere with accepted farming practices."

15 SEVENTH ASSIGNMENT OF ERROR

16 "The County's finding concerning interference with  
17 accepted farming practices is not supported by  
substantial evidence."

18 ZDO 401.05(A)(2) states that a nonfarm dwelling may be  
19 approved if it is found that it

20 "[d]oes not interfere seriously with accepted farming  
21 practices as defined in subsection 401.03 of this  
Ordinance, on adjacent lands devoted to farm use."

22 The county concluded that the above non-interference criterion  
23 was satisfied for the following reasons:

24 "\* \* \* Given the existing residential development in  
25 the area, approval will not generate substantially  
26 greater adverse impacts on agriculture than already  
exists [sic]. The conditions of approval will require  
that the residence, if constructed on tax lots 1301 or

1 1391, be located as far south as is reasonable and  
2 consistent with the setback requirements of the zoning  
3 districts. This condition will serve to protect the  
4 character of agricultural uses to the north, on  
5 adjacent lands devoted to farm use." Record 5.

6 Petitioners contend that our decisions in Billington v.  
7 Polk County, 13 Or LUBA 125, 131-132 (1985); Stefansky v. Grant  
8 County, 12 Or LUBA 91, 94 (1984) and Resseger v. Clackamas  
9 County, 7 Or LUBA 152, 157 (1983) establish that this finding  
10 is inadequate because it fails to identify existing and  
11 potential farming practices in the area and fails to explain  
12 why the nonfarm dwelling does not "seriously interfere" with  
13 those identified farm practices. Petitioners argue the  
14 county's finding is conclusionary and "misconstrues the  
15 applicable law." Petition for Review 15, 16.

16 Respondent argues that its finding is adequate because it  
17 explains "residential development already exists in the  
18 immediate area, and that the new residence would be buffered  
19 from agricultural operations, at least on the north, east and  
20 south sides." Respondent's Brief 11. Respondent contends  
21 "this finding is clearly adequate \* \* \* since in essence there  
22 are no 'adjacent lands devoted to farm use' on those three  
23 sides." Id.

24 Our decision in Resseger v. Clackamas County, supra,  
25 established that the absence of agricultural activities on  
26 adjacent lands does not end the inquiry of whether the proposed  
27 nonfarm dwelling does not "seriously interfere" with accepted  
28 farming practices. In Resseger v. Clackamas County, supra,

1 (interpreting essentially the same language found in the  
2 current ZDO), we decided that:

3 "[t]he inquiry must be to present and potential farm  
4 \* \* \* practices, commercial or otherwise." 7 Or LUBA  
at 157.

5 Further, we have stated that a county must specifically  
6 describe "farming practices on the agricultural lands in the  
7 area \* \* \*" and how the nonfarm dwelling "will interact" with  
8 the farm uses identified. Stefansky v. Grant County, supra.

9 The county's general findings that "[g]iven the residential  
10 development in the area, approval will not generate  
11 substantially greater adverse impacts on agriculture than  
12 already exist \* \* \*" and that the imposition of a setback  
13 condition "will serve to protect the character of agricultural  
14 uses to the north, on adjacent lands devoted to farm use,"  
15 Record 5, do not identify the existing potential farming  
16 practices on adjacent lands.<sup>8</sup> There is evidence in the  
17 record to suggest that the adjacent lands are or could be used  
18 for farm purposes.<sup>9</sup> The county must discuss what the  
19 existing and potential accepted farming practices are on  
20 adjacent lands, and must explain why the approval of this  
21 nonfarm dwelling will not interfere with those identified  
22 practices. The county has not done this. Accordingly, the  
23 sixth assignment of error is sustained.

24 Because we decide that the county's findings are inadequate  
25 to satisfy ZDO 401.05(A)(2), no purpose would be served by  
26 examining the record to determine whether there is substantial

1 evidence to support an inadequate finding. The seventh  
2 assignment of error is sustained.

3 The county's decision is remanded.  
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FOOTNOTES

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4 The GAD and EFU-20 standards concerning nonfarm dwellings  
and land divisions are the same.

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7 Petitioners cite ORS 215.283(3)(d) as the applicable  
standard. This statute provides that a nonfarm dwelling may be  
approved if it:

8 "is situated upon generally unsuitable land for the  
9 production of farm crops and livestock, considering the  
terrain, adverse soil or land conditions, drainage and  
10 flooding, vegetation, location and size of the tract \* \* \*."

11 At oral argument, the parties agreed that the  
12 ZDO provisions (which are materially identical to the statute  
cited) are the applicable approval standards and that we may  
13 treat the references in the petition for review to provisions  
of ORS 215.283(3) as being to the parallel provisions of  
14 ZDO 401.05(A)(4). Accordingly, we will address the approval  
criteria contained in the ZDO rather than the statutory  
standards of ORS 215.283.

15  
16 3  
In its brief, respondent contends:

17 "Even if this board should conclude that the finding  
18 [of unsuitability for commercial agriculture] itself  
is inadequate, Respondent believes the evidence in the  
19 record discussed under the next assignment of error,  
clearly supports the Hearings Officer's decision on  
20 this point, which should be affirmed pursuant to  
ORS 197.835(10)(b)." Respondent's Brief 5.

21 We understand the county to ask that we find substantial  
22 evidence in the record, as cited in its response to the second  
assignment of error, to support the hearings officer's  
23 determination that the parcel is generally unsuitable for  
commercial agriculture.

24  
25 4  
26 The county suggests that the standard in ZDO 401.05(A)(1)  
requiring the county to find the nonfarm dwelling is compatible  
with farm uses is surplusage and that the county was not

1 required to make a specific finding that the proposed nonfarm  
2 dwelling is compatible with farm uses. We understand the  
3 county to suggest that if the county finds that the other  
4 factors of ZDO 401.05 are met that it would necessarily follow  
5 that the nonfarm dwelling is compatible with farm uses. We  
6 disagree. The evidence which enables the county to make  
7 findings the other criteria of ZDO 401.05(A)(1) are met may  
8 also furnish evidence upon which the county could conclude that  
9 a particular nonfarm dwelling is "compatible" with the area.  
10 However, we will not speculate that the county's approval  
11 criterion requiring compatibility is without meaning independent  
12 of other separately stated approval criteria. Credible  
13 evidence could be presented that a nonfarm dwelling is  
14 inherently incompatible with farm uses and the continuation  
15 thereof due to attendant development pressure or otherwise,  
16 even though the county is able to find that other approval  
17 criteria are met.

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19 The county strongly suggests in its order and brief that  
20 "small farming operations" are the equivalent of a "rural  
21 residential use" which it does not consider as a farm use and  
22 that large commercial farms are the only farm uses deserving  
23 protection under ZDO 401.05(A)(1). Record 2, Respondent's  
24 Brief 4, 11. We disagree that a "small farming operation"  
25 necessarily could not be considered a farm use under the ZDO  
26 criteria.

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28 Petitioners do not challenge the county's determination  
29 that the subject parcel is a legal "lot of record."

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31 In another part of its order (Record 2), the county equated  
32 "rural residential" uses with "small farming operations." As  
33 we said in n 5, we do not agree that the two are functional  
34 equivalents.

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36 The county may have started with the wrong premise in  
37 applying ZDO 401.05(A)(2). We noted under the first assignment  
38 of error that the county was concerned with commercial farm  
39 uses, rather than farm uses generally, in determining the  
40 suitability of the parcel for farm uses. Similarly, the county  
41 may have concerned itself with whether the nonfarm dwelling  
42 will interfere with accepted farming practices occurring on  
43 adjacent commercially farmed land with regard to ZDO

1 401.05(A)(2). As we noted in our consideration of the first  
2 assignment of error, the ZDO is not limited in its application  
to land which is commercially farmed.

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5 The adjacent parcels are zoned for exclusive farm use and  
the area was referred to as an "exclusive farm use district."  
Record 14, 81.

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