

1 Opinion by Kellington.

2 **INTRODUCTION**

3 The challenged decision is an ordinance approving (1) a
4 plan amendment from Primary Agriculture (PA) to Interchange
5 Development (ID); (2) a zone change from Exclusive Farm Use
6 (EFU) to Interchange District - Limited Use Overlay; and (3)
7 a conditional use permit to authorize the expansion of an
8 existing recreational vehicle (RV) park.

9 The county has twice adopted decisions authorizing
10 expansion of the subject RV park. In 1000 Friends of Oregon
11 v. Marion County, 18 Or LUBA 408 (1989) (1000 Friends I), we
12 remanded the county's first decision granting the requested
13 land use approvals. In 1000 Friends of Oregon v. Marion
14 County, 24 Or LUBA 20 (1993) (1000 Friends II), we remanded
15 the county's second decision granting the requested land use
16 approvals. This appeal is before us on remand of our
17 decision in 1000 Friends II. 1000 Friends v. Marion County,
18 116 Or App 584, 842 P2d 441 (1992) (1000 Friends III).

19 In 1000 Friends I, supra, 18 Or LUBA at 409-10, we set
20 out the following facts:

21 "This appeal concerns an expansion of an existing
22 RV park, located at the Aurora/Donald interchange
23 on Interstate 5. * * *:

24 " '* * * The existing RV park has 84
25 spaces for RV's; the expansion would
26 allow 77 additional RV spaces, restrooms
27 and an open area.

28 "The plan amendment, zone change and
29 permit are for approximately 5 acres of

1 an approximately 11.45-acre parcel. The
2 entire parcel is zoned EFU. The 5 acres
3 are currently used for growing Christmas
4 trees. The remaining 6 acres are
5 proposed to be used as the sewer
6 treatment facility; a portion of this 6
7 acres contains the existing sewage
8 treatment facilities for the RV park. *
9 * *

10 "The parcel is bordered on two sides
11 (northern and eastern) by EFU [zoned]
12 land. The property to the east
13 comprises the Yule Tree Farms Christmas
14 tree farm. The record does not indicate
15 the current use of the EFU [zoned] land
16 to the south of the 11.45 acre parcel.
17 The property is bordered on the west by
18 I-5 and on the north by an existing RV
19 park, a gas station, a convenience
20 grocery store and a trucking company
21 service terminal on land zoned ID.

22 "The applicants own the existing RV
23 park, the gas station, convenience store
24 and the trucking company service
25 terminal. Mr. Isberg also is a
26 principal in Yule Tree farms.

27 "The applicant owns an unspecified
28 number of acres of undeveloped land,
29 already zoned ID, at the interchange to
30 the north of the RV park. There is also
31 an unspecified number of acres of
32 undeveloped land zoned ID on the other
33 (west) side of the highway from the
34 interchange that the applicants do not
35 own." (Citations omitted.)

36 **DECISION**

37 The county took a "reasons" exception to Statewide
38 Planning Goal 3 (Agricultural Lands), pursuant to OAR 660-
39 04-020 and 660-04-022, to justify the proposed plan

1 amendment.¹ To justify the nonresource use of resource
2 zoned land, OAR 660-04-022(1)(a) imposes the following
3 relevant requirement:

4 "There is a demonstrated need for the proposed use
5 or activity, based on one or more of the
6 requirements of Statewide Goals 3 to 19[.]"

7 The court of appeals reversed the portion of our
8 decision in 1000 Friends II in which we determined the
9 record lacked substantial evidence to support the county's
10 determination that there is a "need" for additional RV
11 spaces. Specifically, the court of appeals determined:

12 "LUBA dismissed [intervenors'] consultant's
13 testimony as 'conclusory' and as not identifying
14 the two RV parks to which it referred. However,
15 LUBA acknowledged that there was other evidence in
16 the record from which it is apparent that the
17 identity of the parks could be inferred. The fact
18 that the testimony was conclusory goes to its
19 weight, not its sufficiency. Although weight may
20 not be entirely or invariably immaterial in the
21 [Younger v. City of Portland, 305 Or 346, 752 P2d
22 262 (1988)] calculus, the consultant's testimony
23 here, when viewed with the other evidence in the
24 record identified by LUBA, is not beyond the ambit
25 of a reasonable person's belief. We conclude that
26 LUBA misapplied the Younger standard of review in
27 rejecting the county's finding of demonstrated
28 need. We do not foreclose the possibility that
29 LUBA may re-evaluate the substantiality of the
30 evidence on remand or may reconsider whether the

¹The reasons exception to Goal 3 was also based upon county findings that there were no alternative sites, not requiring an exception, that could reasonably accommodate the proposed development. OAR 660-04-020(2)(b). The court of appeals affirmed our determination in 1000 Friends II that the county's alternative sites analysis is inadequate and that an inadequate reasons exception to Goal 14 (Urbanization) had been taken. 1000 Friends III. We do not consider those issues further here.

1 same legal conclusion follows independently of the
2 substantial evidence question. We hold only that
3 the present decision exceeds its permissible scope
4 of review." 1000 Friends III, supra, 116 Or App
5 at 588.

6 After remand of our decision in 1000 Friends II, we
7 invited the parties to submit memoranda concerning the
8 adequacy of evidence supporting the county's findings of
9 "need," in view of the court's finding that the testimony of
10 intervenors' consultant could reasonably be relied upon.
11 Thereafter, the parties advised the Board that they were
12 attempting to settle the appeal. However, the parties
13 ultimately advised the Board they were unable to settle the
14 appeal and declined to submit memoranda concerning the
15 evidentiary question. We base our review on the arguments
16 in the parties' briefs in 1000 Friends II.

17 The challenged decision determines there is a
18 demonstrated need for additional RV spaces along the I-5
19 corridor within Marion County. The record establishes there
20 is an existing RV park owned by intervenors, and that RV
21 park has turned away potential RV customers on a regular
22 basis due to a lack of space. There is evidence in the
23 record that, at least as of 1989, another RV park located
24 along the I-5 corridor (Champoeg park) is often full.
25 However, there is also evidence in the record that a
26 relatively new RV park with 141 spaces has been established
27 since 1989, a few miles to the south of intervenors' RV
28 park, near I-5 in the City of Woodburn (Woodburn RV park).

1 Intervenor's consultant's testimony, which is the focus of
2 the court of appeals' decision in 1000 Friends III, states:

3 "* * * Two new RV parks have been built and are
4 operating at capacity. * * *" Record 37b.

5 "The [proposed] additional campground spaces are
6 needed despite the development of a new campground
7 at the Woodburn interchange. That campground was
8 developed after the original application for this
9 proposal. * * *" Record 52.

10 Substantial evidence is evidence upon which a
11 reasonable person could rely to reach a conclusion. Younger
12 v. City of Portland, supra. We see no reason to re-evaluate
13 the substantiality of the evidence in light of the decision
14 of the court of appeals in 1000 Friends III. We find that a
15 reasonable person could rely on the consultant's testimony
16 that other RV parks in the area are unable to accommodate RV
17 travelers' needs. Therefore, the county's finding that
18 there is a demonstrated need for the proposed use is
19 supported by substantial evidence in the whole record.

20 Accordingly, the first and second assignments of error
21 are denied, in part, with regard to petitioner's substantial
22 evidence challenge to the county findings concerning need
23 for the additional RV spaces. All other bases for our
24 decision in 1000 Friends II were affirmed by 1000 Friends
25 III. Therefore, no further changes to our decision in 1000
26 Friends II are required.

27 The county's decision is remanded.