BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

ARVIS BILLINGTON and MARY BILLINGTON, Petitioners,	LUBA NO. 81-079
v.	FINAL OPINION AND ORDER
POLK COUNTY and TERRY J. CHRISMAN, Respondents.	

Appeal from Polk County.

Robert E. Stacey, Jr. and Richard P. Benner, Portland, filed a brief and Robert E. Stacey, Jr. argued the cause for petitioners.

Terry J. Chrisman, Dallas, filed a brief but was unavailable to argue the cause for himself.

Cox, Referee; Reynolds, Chief Referee; Bagg, Referee; participted in the decision.

Remanded. 11/09/81

You are entitled to judicial review of this Order. Judicial review is governed by the provisions of Oregon Laws 1979, ch 772, sec 6(a).

COX, Referee.

NATURE OF PROCEEDING

Petitioners seek reversal of Polk County Board of Commissioners' June 24, 1981 letter order approving a conditional use permit for a non-farm dwelling on a one-acre parcel.

ALLEGATIONS OF ERROR

Petitioners contend that Polk County's action violates ORS 215.213(3), Polk County's zoning ordinance and Polk County's comprehensive plan. Petitioners allege that the order violates 215.213(3) because its findings are vague and conclusional. They argue the findings fail to explain what facts underlie the county's conclusions and fail to provide reasons explaining how evidence led it to that decision. In addition, petitioners claim the conclusions that do exist are not supported by substantial evidence in the record. Petitioners make similar allegations that the findings are not responsive to Polk County Zoning Ordinance Section 136.040(m) and Polk County Comprehensive Plan Policies 1.3 and 1.4.

FACTS

In April, 1981, Terry J. Chrisman and Neoma Reynolds applied to Polk County for conditional use approval to place a non-farm dwelling in an exclusive farm use zone. The application called for placement of a mobile home, garage and related development on a one acre site surrounded by farm lands. The subject parcel is composed of Soil Conservation

Service Class II soil. The property apparently is unused and undeveloped except for the presence of a pump house. The Polk County Planning Director denied the applicants' request. Mr. Chrisman appealed the denial to the Polk County Board of Commissioners.

The Board of Commissioners heard the appeal on June 10, 1981. On June 17, 1981, the Board of Commissioners decided to approve the non-farm use. A letter decision was approved June 24, 1981 and sent to the applicants. No other formal order was issued by the Board of Commissioners.

DECISION

Section 136.040(m) of the Polk County Zoning Ordinance authorizes approval of an application for a non-farm dwelling in an EFU zone subject to ORS 215.213(3)(a, b, c and d). ORS 215.213(3) provides:

> "Single-family residential dwellings, not provided in conjunction with farm use, may be established, subject to approval of the governing body or its designate in any area zoned for exclusive farm use upon a finding that each such proposed dwelling:
>
> "(a) Is compatible with farm uses described in subsection (2) of ORS 215.203 and is consistent with the intent and purposes set forth in ORS 215.243; and
>
> "(b) Does not interfere seriously with accepted farming practices, as defined in paragraph (c) of subsection (2) of ORS 215.203, on adjacent lands devoted to farm use; and
>
> "(c) Does not materially alter the stability of the overall land use pattern of the area; and
>
> "(d) Is situated upon generally unsuitable land for the production of farm crops and livestock, considering the terrain, adverse soil or land

conditions, drainage and flooding, vegetation, location and size of the tract."

Therefore, to obtain a conditional use for a non-farm dwelling in the Polk County EFU zone, the applicant is required to demonstrate and the Polk County Board of Commissioners is required to find that the four elements of ORS 215.213(3), supra, have been met. Polk County's letter decision of June 24, 1981 states in its entirety:

"Re: Approval of Conditional Use 81-8

"Dear Mr. Chrisman and Mrs. Reynolds:

"Mr. Chrisman has applied to the County to place a non-farm dwelling in an area zoned EFU. The land is a one acre parcel surrounded by agricultural uses.

"The application was submitted to the Planning Director, who denied the request. An appeal was taken by the applicant to the Board of Commissioners. A public hearing was held May 27 and June 10, 1981, wherein public testimony was received. After consideration of the testimony and viewing of the property, the Board of County Commissioners granted the applicants' request.

"The Board moved that the majority of the one acre piece was not farmable with it being very damp and soil with excessive surface shale deposits. The owner had tried raising strawberries, as well as wild grass both to no avail. The proposed use of the property would not interfere with practices in the surrounding area and does not materially alter the stability of the overall land use pattern and is compatible with established farm uses in the area. This evidence is found in the applicants statement, and the Board's personal view of the property. This approval is subject to proper easements for a septic system, should such be required. The motion to approve the applicants request was passed unanimously."

We find that the county's order does not comply with the requirement that it contain findings addressing the four

criteria set forth in ORS 215.213(3). As was stated by the Oregon Supreme Court in Green v. Hayward, 275 Or 693, 707 (1976):

> "If there is to be any meaningful judicial scrutiny of the activities of an administrative agency -- not for the purpose of substituting judicial judgment for administrative judgment but for the purpose of requiring the administrative agency to demonstrate that it has applied the critera [sic]prescribed by statute and by its own regulations and that it has not acted arbitrarily on an ad hoc basis -- we must require that its order clearly and precisely state what it found to be the facts and fully explain why those facts lead it to the decision it makes. Brevity is not always a virtue * * * * The Homeplate, Inc. v. O.L.C.C., 20 Or App 188, 530 P2d 862, 863 (1975)."

In Sunnyside Neighborhood v. Clackamas County, 280 Or 3, 21, 569 P2d 1063 (1977), the court stated:

> "We wish to make it clear that by insisting on adequate findings of fact we are not simply imposing legalistic notions of proper form, or setting an empty exercise for local governments to follow. No particular form is required, and no magic words need to be employed. What is needed for adequate judicial review is a clear statement of what, specifically, the decision-making body believes, after hearing and considering all the evidence, to be the relevant and important facts upon which its decision is based. Conclusions are not sufficient."

See also Roseta v. County of Washington, 254 Or 161, 458 P2d 405 (1969).

As this Board has held in previous decisions, findings consisting of conclusions without facts to support them are defective. Van Volkinburg v. Marion County Bd. of Comm'rs., 2 Or LUBA 112, 118 (1980). Each factor of the statutory provisions governing approval of non-farm dwellings must be

met. Miles v. Clackamas County, 48 Or App 951 (1980); Still v. Marion County, 42 Or App 115 (1979); and Stringer v. Polk County, 1 Or LUBA 104 (1980).

The standards set forth in ORS 215.213(3)(a) indicate that ORS 215.243(2) must be addressed. ORS 215.243(2) seeks to protect agricultural lands by maintaining such land in large blocks. The policy of preserving farm lands in large blocks simply is not addressed by the couhty and it must be in order to comply with the dictates of 215.213(3).

ORS 215.213(3)(b) prohibits a non-farm use which will seriously interfere with accepted farming practices on adjacent lands devoted to farm use. The county's findings merely recite this standard and refer the reader to the record. Referencing the record is not enough without a statement as to what facts in the record led to the conclusions. Sunnyside Neighborhood v. Clackamas Co. Comm., supra; Dickson v. Washington Cty, 3 Or LUBA 123 (1981); Twin Rocks Water Dist. v. Rockaway, 2 Or LUBA 36 (1980).

ORS 215.213(3)(c) prohibits the non-farm use from materially altering the stabilty of the overall land use pattern in the area. The county found that "the proposed use of the property * * * would not materially alter the stability of the overall land use pattern." The finding does not point to specific facts or reasons why the board concluded as it did. The "finding" is merely a recitation of the standard. As such, it is insufficient. Davis v. Nehalem, ___ Or LUBA ___

(LUBA No. 81-030, 1981). The application under review seeks to place a residential use on a one-acre lot in an area where the other parcels are ten acres or larger. The order fails to say why the stability is not altered by so significant a departure from the prevailing parcel size.

ORS 215.213(3)(d) requires a finding that the land is generally unsuitable for the production of farm crops and livestock considering the terrain; adverse soil and land conditions, drainage and flooding, vegetation, location and size of the tract. The county failed to determine whether the land is suitable for livestock. This is enough to hold the finding insufficient. Pilcher v. Marion Cty, 2 Or LUBA 309 (1981). In addition, the mere finding that one person could not grow strawberries or wild grass on the property does not sufficiently exhaust the property's potential for farm use. See Hillcrest Vineyard v. Bd. of Comm. Douglas Co., 45 Or App 285, 608 P2d 201 (1980).

The county's findings fail to address every factor of ORS 215.213(3)(d). This failure alone is sufficient justification to hold the findings are inadequate. Stringer v. Polk County, 1 Or LUBA 104, 108 (1980). What the county did comment on regarding the factors in 215.213(3)(d) were soil conditions and drainage. The county concluded that the land is unfarmable due to its being "very damp" and having "excessive shale deposits." Yet the evidence in the record indicates the parcel is composed of Class II Salkum silty clay soils. This

inconsistency between the evidence and the finding of the Board has not been explained. Land which has been identified by the SCS and the county as containing SCS class I-IV soils is entitled to a presumption that it is "in fact, suitable for farm use." Meyer v. Lord, 37 Or App 59, 582 P2d 369 (1978). The fact that the county decided not to follow that presumption must be explained. As this Board stated in Sane Orderly Development v. Douglas County, 2 Or LUBA 196 (1981)

> "'Obviously, responsible men would not exercise their judgment on only that part of the evidence which looks in one direction; the rationality or substantiality of a conclusion can only be evaluated in the light of the whole fact situation or so much of it as appears. Evidence which may be logically substantial in isolation may be deprived of much of its character or its claim to credibility when considered with other evidence.' [Citing K. C. Davis, Administrative Law, 3d Ed, sec 29.03, page 531].

"See also Universal Camera Corp. v. NLRB, 340 US 474, 488, 71 S Ct 456, 464, 95 L Ed 456 (1951) wherein the court stated:

> "The substantiality of evidence must take into account whatever in the record fairly detracts from its weight."

In summary, the county's findings in this case fall far short of the standards set out in Green, supra and Sunnyside, supra. There is neither clear and precise statements of what the county found to be the facts nor does the order fully explain what lead the county to decide that each element of ORS 215.213(3) had been met and that the non-farm residence should be approved. The findings are vague and ambiguous because they are justified on the nebulous grounds of something the

applicant said and something the board saw on the site. What that something was and whether it was presented in the hearing room or in the field, no one can tell from the findings. The language of the findings simply makes it impossible to know what struck the commissioners as important, relevant, persuasive or ultimately determinative. No one can know what the Polk County Board of Commissioners considered and accepted, considered and rejected or simply overlooked. No reasoning demonstrating how conclusions were reached is made explicit. For the most part the board's order is merely a recitation of the ORS 215.213(3) language. See Concerned Property Owners of Rocky Point v. Klamath Falls, 3 Or LUBA 182 (1981).

As we have held in prior cases, without proper findings this Board cannot review a decision. Laudahl v. Polk County, 2 Or LUBA 149 (1980). See also Roseta, supra at page 170. In light of the above, we find it of no value to address petitioners' other assignments of error. Therefore, it is the order of this Board that the county's decision be remanded for further proceedings not inconsistent with this opinion.