

LAND USE
BOARD OF APPEALS

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

Oct 17 9 22 AM '83

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2
3 DAVID R. SILLS,)
4) Petitioner,)
5) v.)
6 JOSEPHINE COUNTY and)
7 DON W. AND CHRISTIE L.) DALLEY,)
8) Respondents.)

LUBA No. 83-026
FINAL OPINION
AND ORDER

9
10 Appeal from Josephine County.

11 David R. Sills, Cave Junction, filed the Petition for
12 Review and argued the cause on his own behalf.

13 Respondent Josephine County made no appearance.

14 Walter L. Cauble, Grants Pass, filed the brief and argued
15 the cause on behalf of Respondents Dalley.

16 BAGG, Board Member.

17 REMANDED 10/17/83

18 You are entitled to judicial review of this Order.
19 Judicial review is governed by the provisions of Oregon Laws
20 1979, ch 772, sec 6(a), as amended by Oregon Laws 1981, ch 748.
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1 BAGG, Board Member.

2 STATEMENT OF THE CASE

3 Petitioner appeals a decision by the Josephine County Board
4 of Commissioners approving a comprehensive plan amendment and
5 zone change from Exclusive Farm District to Rural Residential
6 to allow construction and operation of a facility described as
7 a girls school and dormitory. Petitioner alleges the county
8 denied him due process, and he argues the decision violated
9 Statewide Goals 1, 2, 3, 4, 5 and 7, as well as the county's
10 comprehensive plan and zoning ordinance.

11 FACTS

12 Respondents own approximately 140 acres in the Exclusive
13 Farm District zone. A portion of the property is currently in
14 farm use. Respondents initially asked for a comprehensive plan
15 amendment and zone change to Rural Residential 5 (RR-5) for 40
16 acres of the property. The request was amended to 20 acres
17 after discussions with the planning department.

18 Surrounding properties include farms to the west and
19 southwest, forest to the south and east and residential uses to
20 the north.

21 Respondents' intention is to construct and operate "a group
22 home for troubled teenage girls" who will be wards of the court
23 and committed to the custody of respondents. Record 16. The
24 facility will accommodate a maximum of 40 girls. Respondents
25 intend to construct a new dormitory, recreation hall, kitchen
26 and dining facilities, laundry room, offices and school room

1 with pottery shop and agricultural area, smoke house and other
2 buildings, including staff houses. The facility is intended to
3 be a therapeutic community where the girls will participate in
4 agricultural activities already taking place on respondents'
5 property. To operate the home, respondents must be licensed by
6 the Children's Services Division of the State of Oregon.

7 The Central Illinois Valley Citizens Advisory Committee,
8 herein "C.A.C.," reviewed the request on July 29, 1982, and
9 recommended to the Josephine County Planning Commission that
10 the request be granted. The planning commission held a hearing
11 on August 9, 1982, and approved on August 30, 1982. On
12 September 29, 1982, the board of commissioners held a hearing
13 on the request and, after on-site inspection of the property,
14 voted to approve the request on October 8, 1982. Petitioner
15 requested a rehearing. The request for rehearing was argued
16 before the board of commissioners and denied. A written order
17 to that effect was entered December 1, 1982. On January 26,
18 1983, the board of commissioners issued its findings of fact
19 and final order approving the comprehensive plan amendment and
20 rezone. This appeal followed.

21 ASSIGNMENTS OF ERROR

22 Petitioner makes 21 assignments of error. The Board views
23 many complaints to be repetitious and will not address all of
24 them. Kerns v Pendleton, 1 Or LUBA 1 (1980). What follows is
25 a discussion of the arguments the Board finds merit review.

26 1. Petitioner's 1st and 21st assignments of error are:

1 "1. The county erred in denying petitioner the right
2 to cross-examine applicants and their witnesses [sic].
This action went against Josephine County Land Use
Hearing Rules and denied petitioner his due process."

3 "21. In denying petitioner's right to due process
4 through cross-examination at a Public Hearing, the
County violated Statewide Goal 2 by allowing their
5 findings to become defective."

6 Petitioner alleges a denial of due process and a violation
7 of Josephine County Land Use Hearing Rules based on a lack of
8 opportunity to cross-examine respondents and respondents'
9 witnesses in the hearing before the board of commissioners.
10 Petitioner further alleges this denial of due process led the
11 board of commissioners to rely on false and misleading evidence
12 to support the comprehensive plan amendment and zone change.

13 Respondents argue petitioner is foreclosed from raising
14 this objection because petitioner failed to raise it at the
15 public hearing before the board of commissioners. Respondents
16 further point out petitioner was present at all public hearings
17 and did, in fact, interrogate respondents. Respondents urge
18 that any procedural error was harmless and did not affect the
19 substantial rights of petitioner who had an adequate and fair
20 opportunity to present his case.

21 Josephine County Land Use Hearing Rules provide:

22 "Every party shall have the right to cross-examine
23 parties and witnesses who testify, and shall have the
right to submit rebuttal evidence." Exhibit 7, p. 9.

24
25 The Board is cited to no place in the record where petitioner
26 or others were given the right to cross-examine respondents or

1 respondents' witnesses. At the September 29, 1982 hearing,
2 petitioner asked the chairman of the board of commissioners:
3 "When you ask for additional questions are you asking,
4 from the audience?" TR 38.

5 The chairman responded:

6 "Not at this time, no. You'll, once we have gone
7 through, basically what the procedure is, we'll go
8 through all the testimony the applicant has on his
9 behalf. Then we will ask for testimony for [sic]
10 those who are speaking in favor of the applicant or
11 item and then once that is completed then anyone who
12 wishes to speak in opposition will speak an [sic] then
13 the applicant will have to have an opportunity for
14 rebuttal, directly. And that is the basic procedure
15 that we follow." TR 38-39.

16 While petitioner did not object to the chairman's statement
17 that the procedure was for the commissioners only to question
18 witnesses, petitioner did raise the objection and asked for an
19 opportunity to cross-examine witnesses by letter received by
20 the board of commissioners on October 10, 1982. Petitioner
21 argued the request before the board of commissioners on October
22 20, 1982, stating he had not been able to locate the specific
23 rule on cross-examination at the time of the hearing.
24 Petitioner's request for a rehearing was denied by written
25 order on December 1, 1982,

26 "based upon the fact that there was no new evidence
presented to warrant hearing, and the fact that any
alleged procedural error by the chairman was
inadvertent and did not affect the substantial rights
of any party, and was harmless." Record 175.

Petitioner raised his objection to the lack of opportunity

1 for cross-examination within two days of the final hearing and
2 three months prior to the final decision of the board of
3 commissioners. Under these circumstances, the Board believes
4 the objection was timely. Therefore, the question is whether
5 the denial prejudiced the substantial rights of petitioner.
6 Without a showing of such prejudice, the Board will not reverse
7 or remand the decision because of a procedural error. 1979 Or
8 Laws, ch 772, §5(4)(a)(B).

9 Because of his inability to cross-examine witnesses,
10 petitioner alleges he was unable to elicit evidence on

11 "prospectus of proposed juvenile treatment center,
12 suggesting a used [sic] grester [sic] than a 'school
and residential dormitory'.

13 "final decree of applicant's divorce. Petitioner was
14 unable to cross-examine applicants as to the nature of
their relationship and work experience." Petition for
Review at 11.

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16 The Board finds petitioner's complaints lack specificity.
17 Petitioner does not say who he wanted to cross-examine, what
18 information he expected to elicit, why the information might be
19 relevant or how it might change the outcome of the case. The
20 Board does not understand how the substantial rights of
21 petitioner have been prejudiced by denial of the right to
22 cross-examine on these two issues.

23 Petitioner also complains his inability to cross-examine
24 witnesses resulted in the county's acceptance of and reliance
25 on false and misleading information. This error allegedly led
26 the commissioners to conclude:

1 "We find that the applicants have been in contact with
2 the State of Oregon Children's Services Division and
have had encouragement from that agency." Record 17.

3 Petitioner claims the Children's Services Division, herein
4 "CSD," did nothing more than inform respondents of the
5 procedure necessary to apply for group home certification.
6 Petition for Review at 48. Petitioner quotes from several
7 letters indicating there was no CSD approval or encouragement.
8 This information was introduced into evidence, according to
9 petitioner, and therefore was available to the board of
10 commissioners.

11 Petitioner had the opportunity to present rebuttal evidence
12 on this issue and did so. Petitioner has not explained what
13 the cross-examination would show that is not already before the
14 county. Therefore, the error in failing to allow petitioner to
15 cross-examine Mr. Cauble or other witnesses on the issue of CSD
16 approval or encouragement was harmless.

17 The Board denies petitioner's assignments of error 1 and 21.

18 2. Petitioner's 2nd and 3rd assignments of error are:

19 "2. Goal 2 was violated when the County helped
20 prepare, accepted and processed this land use
21 action calling the proposed facility a 'girls
22 school and dormitory' when the applicants
intended on building and operating a juvenile
treatment center.

23 "3. In calling the proposed project a 'girls school
24 and dormitory' the County violated Josephine
25 County Zoning Ordinances 22.010, 22.020, 22.025
pertaining to the RR-5 District."

26 Fairly read, petitioner's argument under these assignments

1 of error alleges the board of commissioners erred in granting a
2 zone change to RR-5 to allow a girls' school and dormitory
3 because the proposed use is a juvenile treatment facility. A
4 juvenile treatment facility is neither a permitted nor a
5 conditional use in the RR-5 zone.

6 Respondents answer petitioner's complaint is premature in
7 that it is more appropriately raised at a conditional use
8 hearing. The proceeding on review is a zone change, and the
9 inquiry appropriate for a zone change is whether there is a
10 need for the use in this area under the Goal 2 exceptions
11 process.

12 The Board agrees with respondents. There is no conditional
13 use permit before the county. The only act by the county was a
14 rezoning of the property; whether the county zoning ordinance
15 will allow the proposed juvenile treatment facility is a matter
16 for consideration under a conditional use permit application.

17 Assignments of error 2 and 3 are denied.

18 3. Petitioner's 4th assignment of error is:

19 "The County erred in adopting the minutes from the
20 Planning Commission as 'Findings, Reasons and
21 Conclusions'. This violated Statewide Goal 2."

22 The Board understands petitioner to say mere reference in
23 the county order to minute findings of the planning commission
24 is inadequate to meet the Goal 2 requirement that whenever an
25 exception is taken, "compelling reasons and facts...be
26 completely set forth in the plan." See Statewide Planning Goal

1 2 "Exceptions."

2 Respondents answer the board of commissioners' findings of
3 fact are comprehensive, address all relevant criteria and
4 demonstrate how the board of commissioners dealt with the
5 conflicting evidence.

6 In its final order, the county stated:

7 "The findings, reasons and conclusions as stated by
8 the Josephine County Planning Commission in
9 recommending approval of the application are well
taken. We hereby adopt by reference said findings,
reasons and conclusions." Record 21.

10 The county board also made extensive findings of its own. The
11 mere fact the board of commissioners incorporated planning
12 commission findings is not enough to invalidate the decision.
13 No particular form is required for findings of fact as long as
14 the findings address the relevant criteria, explain why the
15 facts support the decision and are supported by substantial
16 evidence. South of Sunnyside Neighborhood v Clackamas County,
17 280 Or 3, 569 P2d 1063 (1977). The sufficiency of the findings
18 is a separate issue and will be discussed below under
19 assignments of error 18 through 20.

20 The Board denies this assignment of error.

21 4. Petitioner's 5th assignment of error is:

22 "The Commissioners erred in stressing the
23 recommendation for approval of the Central Illinois
24 Valley Citizen Advisory Committee as reason for their
25 Finding in support of this land use action. In doing
so, the Commissioners have violated Statewide Goal 1."

26 The Board understands petitioner to complain Statewide Goal

1 1, requiring citizen involvement in all phases of the planning
2 process, was violated by the county's reliance on an allegedly
3 inadequately noticed Citizen Advisory Commission meeting to
4 consider the plan amendment and zone change. Petitioner also
5 argues the county's findings, to the extent they rely on the
6 recommendation of the C.A.C., are inadequate. According to
7 petitioner, only one day's notice of the C.A.C. meeting on
8 respondents' proposal was given by publication in the Illinois
9 Valley News. Petitioner also maintains the notice did not
10 advise the public that the proposal would involve a
11 comprehensive plan amendment.

12 There is no legal basis for invalidating the county's
13 action because of a defective notice of a C.A.C. meeting.
14 Also, the influence, or lack of it, of a C.A.C. in a county
15 decision is not grounds for remand or reversal. Christie v
16 Tillamook County, 5 Or LUBA 256 (1982).¹ Because petitioner
17 and a number of other surrounding property owners and members
18 of the public were present at the planning commission hearing
19 and the two board of commission hearings, the Board does not
20 find petitioner was denied full participation in the process
21 leading to this land use decision. As to the failure to give
22 notice that an exception would be taken, the Board observes
23 that notice of an exception is to be made by the governing
24 body, not the C.A.C. Also, such an omission is a violation of
25 a specific Goal 2 notice provision, not a Goal 1 citizen
26 involvement provision. See Abrego v Yamhill Co., 2 Or LUBA 101

1 (1980), wherein the Board held failure to state an exception
2 was to be taken will not, alone, result in remand providing the
3 notice otherwise gives adequate notice of the action to be
4 taken.

5 This assignment of error is denied.

6 5. Petitioner's 6th and 7th assignments of error are:

7 "6. The County in approving this action violated
8 Statewide Goal 5.

9 "7. The County violated Goal 2 in not Addressing the
10 exceptions to exclude this parcel from Goal 5."

11 The Board understands petitioner to argue the county erred in
12 not taking a Goal 2 exception to Goal 5, Open Spaces, Scenic
13 and Historic Areas and Natural Resources, in that the subject
14 parcel is a winter range for the blacktail deer. Petitioner
15 further complains the county's findings on Goal 5 are
16 inadequate in that they fail to address the economic, social,
17 environmental and energy consequences of conflicting uses on
18 the property and do not establish a management program to
19 protect Goal 5 interests. Petitioner adds the findings are not
20 supported by substantial evidence in the record.

21 Petitioner quotes from a letter from Department of Fish and
22 Wildlife Biologist Alan K. Smith, dated August 9, 1982, stating
23 the "property falls within important blacktail deer winter
24 range * * * *". The letter continues:

25 "Winter range is part of the deer habitat which has
26 been classed as 'sensitive', or especially important
by Department of Fish and Wildlife biologists. If any
development occurs on deer winter range, serious

1 conflicts will result. Some of these conflicts are:

2 "(1) costs to residents for deer proof fences or other
3 damage control measures, (2) costs to residents for
4 replacement of plants destroyed by deer, and (3)
5 reduced deer populations in the area because of the
6 removal of winter range from available habitat. On
7 this basis, I respectfully urge you as members of the
8 Planning Commission to deny this request for an
9 amendment from exclusive farm to rural residential for
10 this property. I am firmly opposed to the subdivision
11 of land in this rural area." Record 84.

12 Despite Mr. Smith's expression of concern and opposition to
13 the plan amendment, the board of commissioners found the
14 "property does not possess unique characteristics which would
15 warrant strict application of the goal (5)." Record 14. Also,
16 the county adopted the findings of the planning commission,
17 which state in pertinent part:

18 "While the Department of Fish and Wildlife had
19 expressed concern regarding negative impact to the
20 deer habitat, Commissioner Scott also found that such
21 impact would be minimal due to the area involved."
22 Record 65.

23 "While the Department of Fish and Wildlife had
24 expressed concern regarding the wildlife habitat,
25 Commissioner Dahl stressed the abundance of BLM land
26 in the immediate area." Record 66.

Goal 5 is to "conserve open space and protect natural and
scenic resources." The goal requires an inventory of wildlife
areas and habitats and further requires,

"where no conflicting uses for such resources have
been identified, such resources shall be managed so as
to preserve their original character. Where
conflicting uses have been identified, the economic,
social, environmental and energy consequences of the
conflicting uses shall be determined and programs
developed to achieve the goal."

1 The findings do not show adequate consideration of the
2 wildlife habitat potential of this property. The findings,
3 including those of the planning commission, do not explain what
4 the abundance of BLM land has to do with this area's quality
5 (or lack of it) as a habitat. The evidence cited by the
6 petitioner showing this area to be a wildlife habitat must be
7 addressed and was not. Gruber v Lincoln Co., 2 Or LUBA 180
8 (1981).

9 The 6th assignment of error is sustained. The 7th
10 assignment of error is denied. No exception need be taken to
11 Goal 5. It has within it its own conflict resolution system.
12 See the LCDC Policy Paper "Common Questions About The
13 Exceptions Process" in the LCDC Policy Manuel.

14 6. Petitioner's 8th through 11th and 13th assignments of
15 error are:

- 16 "8. The County erred and violated Statewide Goal 7
when they approved this land use action.
- 17 "9. The County erred in that its findings in regard
18 to flooding and Goal Seven are not supported by
substantial evidence in the record and
19 consequently violated Statewide Goal Two.
- 20 "10. The County violated Goal 2 in that its findings
on flooding do not state why the county found as
21 it did.
- 22 "11. The County erred when it failed to indicate that
it considered evidence in its findings that may
23 weaken or even destroy its' [sic] case in regard
to flooding and Goal 7. This also violates Goal
24 2."
- 25 "13. The County violated Goal 2 in that its order
lacks the specificity required of land use
26 decisions and actions."

1 The Board understands petitioner to argue that Goal 7,
2 Areas Subject to Natural Disasters and Hazards, is violated by
3 the county's approval of the plan amendment and zone change.
4 Petitioner says the county's conclusion there is no flood
5 hazard on the property is not supported by substantial
6 evidence. Petitioner cites evidence in the record showing the
7 property to be subject to flooding.² Petitioner further
8 argues the county's decision violates Goal 2 in that the area
9 subject to the plan amendment is not described sufficiently to
10 determine where the affected area is. Presumably, petitioner's
11 Goal 2 argument is the county lacked a factual basis for its
12 conclusion about flooding.

13 Respondents answer there is substantial evidence in the
14 record to support the county's finding, and it would be
15 improper for LUBA to reweigh the evidence. Respondents argue
16 the county's reliance on the flood insurance ratings maps,
17 herein "F.I.R. maps," was proper and sufficient to support the
18 finding. Respondents further state the record reflects there
19 was no question on the part of officials or the applicant as to
20 where the subject property was located, and petitioner had the
21 benefit of knowing such specifics. Respondents claim the board
22 of commissioners, in its final order, clearly identified the
23 location of the affected property and a site plan in the record
24 shows the location.

25 The county's final order describes the affected property in
26 the following manner:

1 "A portion of the property located at 740 Robinson
2 Road, approximately 3/4 of a mile west of its
3 intersection with Holland Loop Road (39-7-22, Tax Lot
4 700; 39-7-27, Tax Lot 301; 39-7-23, Tax Lot 101),
5 containing 20 acres more or less of the subject
6 property located in the northeast corner of the
7 ownership, the acreage to be flexible to enable the
8 placement of buildings necessary to the establishment
9 of the intended girls' school and residential
10 dormitory." Record 12.

11 The Board is not cited to a map or site plan in the record
12 which clearly shows the exact location of the affected
13 property. There is a soil scientist map, but it is a poor
14 reproduction from which it is impossible to tell where the
15 affected property lies. There are other maps in the record
16 which are equally unclear. There is a clear map in the record
17 at page 75 showing "COMPREHENSIVE PLAN CHANGE" with a line
18 drawn to shaded property.

19 The exact location of the property is important because of
20 the Goal 7 flooding issue. On Goal 7, Applicability, the
21 county found:

22 "H. Regarding statewide goal no. 7, the report of the
23 soil scientist indicates that much of the parcel
24 is subject to occasional flooding from Sucker
25 Creek; the flood insurance rating maps do not
26 show the affected portion of the site being
27 within the flood plain." Record 14.

28 "The flood insurance ratings maps indicate that
29 only the extreme northern portion of the property
30 is affected by flooding from Sucker Creek."
31 Record 16.

32 "With regard to statewide planning goal no. 7, we
33 find that the flood insurance ratings maps do not
34 show the affected portion of the site being
35 within the flood plain. Therefore, we conclude
36 that the subject property is not subject to

1 natural disasters and hazards." Record 20-21.

2 The county's findings say major portions of respondents'
3 140 acre parcel are subject to flooding. Record 14.³ To
4 reach the conclusion that 20 acres proposed for rezoning were
5 not subject to flooding, the county relied on F.I.R. maps,
6 which purportedly show that the 20 acres are not within the
7 flood plain of Sucker Creek.⁴ However, since the 20 acre
8 parcel has not been described with specificity, the Board
9 cannot determine whether the county knew exactly what property
10 was subject to flooding and, therefore, what property would be
11 usable for the project and subject to the rezoning. A
12 comparison of the map on page 75 of the record and a flood map
13 on page 247 does not show with any certainty that the shaded
14 portions do not overlap the subject property (the Board
15 presumes the shading means flood prone areas).

16 This lack of specificity in the location of the plan
17 amendment is a violation of Goal 2 because it ,

18 "prohibits a determination of whether a factual basis
19 for the decision exists." Kalmiopsis Audubon Society
20 v. Curry County, 4 Or LUBA 185 (1981).

21 The county was under an obligation to consider and resolve
22 the evidence on the location of property subject to flooding,
23 Audubon Society v. OR Dept of Fish and Wildlife, 7 Or LUBA 166
24 (1983). On remand, the county should describe the affected
25 property with sufficient specificity to enable a determination
26 of goal applicability.

1 The 8th, 11th and 13th assignments of error are sustained
2 insofar as they allege a failure to provide an adequate factual
3 basis for the conclusion that Goal 7 is inapplicable to the
4 subject property. Also, the 13th assignment of error is
5 sustained insofar as it alleges an inadequate factual basis for
6 the county's conclusion about Goal 7.

7 7. Petitioner's 12th, 15th, 16th and 17th assignments of
8 error are:

9 "12. The Board of County Commissioners erred in that
10 their approval of this land use action has
11 violated Statewide Goal 3."

12 "15. The County erred in that their findings do not
13 sufficiently address Goal 3 in that the parcel is
14 comprised mostly of Class IV soils and supports
15 agricultural use on other lands.

16 "16. The County erred in that this land use decision
17 violates Josephine County Comprehensive Plan Goal
18 1: 'To preserve and maintain agricultural lands
19 and the rural character of Josephine County.'

20 "17. The County violated Goal 2 in that its findings
21 are not supported by a factual base."

22 The Board understands petitioner to argue the county
23 violated Goal 3, Agricultural Lands, by taking agricultural
24 land out of the protected exclusive farm zone thereby
25 permitting its development for non-agricultural purposes.
26 Petitioner maintains this alleged violation also violates
27 Josephine County Comprehensive Plan Goal 1: "To preserve and
28 maintain agricultural lands and the rural character of
29 Josephine County."

30 Petitioner's proper challenge under these assignments of

1 error should be to the adequacy of the exception. The county
2 has committed no Goal 3 violation as alleged because it has
3 taken an exception to Goal 3 for this zone change.

4 The Board will not review the challenge to the county's
5 agricultural goal policy. If an exception is taken, it must be
6 incorporated into the plan. Rudd v Malheur Co., 1 Or LUBA 322
7 (1980). Because the case is to be remanded, the matter of plan
8 compliance will come before the county when it reconsiders the
9 exception.

10 Assignments of error 12, and 15 through 17 are denied.

11 8. Petitioner's 14th assignment of error is:

12 "14. The County erred in that its final order violated
13 Zoning Ordinance 19.040(a) requiring 120 acres
14 minimum in the Exclusive Farm District and failed
15 to address 19.040(d), criteria established in ORS
215.243 pertaining to parcels smaller than 120
acres in Exclusive Farm District."

16 Petitioner maintains the county violated its zoning ordinance
17 by effecting a rezone that created a parcel of less than 120
18 acres in the Exclusive Farm District zone.

19 Respondents answer no parcel was created by the rezone.

20 The Board understands respondents to argue that contiguous lots
21 in the same ownership, regardless of zone designation, are not
22 separate parcels.

23 The ordinance defines "lot" as "a tract of land created by
24 a subdivision." §14.050(68). "Parcel" is defined as "a tract
25 of land created by a partition." §14.050(92). Lots are
26 created by subdivisions and parcels are created by partitions.

1 Neither a subdivision nor a partition was created by the
2 county's action. The Board finds the county did not violate
3 §19.040 of its zoning ordinance in approving the comprehensive
4 plan amendment and rezone.

5 Petitioner's 14th assignment of error is denied.

6 9. Petitioner's 18th, 19th and 20th assignments of error
7 are:

8 "18. The County violated Statewide Goal 2, part II in
9 excepting this parcel from the agricultural land
base.

10 "19. The County erred in that their findings in regard
11 to Statewide Goal 2, part II are: unsupported by
12 evidence in the record and ignore major issues of
compatibility with forest resources and
availability of alternative sites.

13 "20. The County erred in that their findings
14 addressing petitioner's conflicting evidence
15 failed to address why the County decided as it
did."

16 The Board understands petitioner to argue the county's
17 decision violates Goal 3 requiring the preservation of
18 agricultural land in that the county's findings do not support
19 an exception to the requirements of Goal 3 as established in
20 the Goal 2 exceptions process.

21 Respondents answer the record contains substantial evidence
22 to support the county's exception to Goal 3. Respondents say
23 the county weighed heavily the opinion of the soil scientist
24 that the subject property was not suitable for agricultural
25 purposes.

26 Goal 3 requires the preservation of agricultural lands

1 through exclusive farm use zoning. Where, as here, the
2 proposal is to rezone agricultural land for non-agricultural
3 use, the Goal 2 exceptions process must be met. To justify an
4 exception to Goal 3, Goal 2 provides:

5 "When, during the application of the statewide goals
6 to plans, it appears that it is not possible to apply
7 the appropriate goal to specific properties or
8 situations, then each proposed exception to a goal
9 shall be set forth during the plan preparation phases
10 and also specifically noted in the notices of public
11 hearing. The notices of hearing shall summarize the
12 issues in an understandable and meaningful manner.

13 "If the exception to the goal is adopted, then the
14 compelling reasons and facts for that conclusion shall
15 be completely set forth in the plan and shall include:

16 "(a) Why these other uses should be provided for;

17 "(b) What alternative locations within the area could
18 be used for the proposed uses;

19 "(c) What are the long term environmental, economic,
20 social and energy consequences to the locality,
21 the region or the state from not applying the
22 goal or permitting the alternative use;

23 "(d) A finding that the proposed uses will be
24 compatible with other adjacent uses."

25 The Board will address petitioner's complaints in the order
26 listed in the goal.

1. Why these other uses should be provided for.

Petitioner challenges the county's finding of "need" (or,
why the use should be provided for)⁵ on the following basis:

a. No need for additional RR-5 acreage was shown in
that the proposed use is not a permitted or
conditional use in the RR-5 zone. Petitioner
claims the county mischaracterized the proposed
use as a girls' school and dormitory when it is,
in fact, a juvenile treatment and corrections

1 facility.

2 b. Evidence was insufficient to establish need for
the proposed use.

3 c. Evidence relied on by the county to establish
4 need was false and misleading.

5 d. The county's finding of need for a group home is
inadequate.

6
7 Respondents answer need for this facility was established
8 and was supported by substantial evidence. Respondents
9 maintain the findings are adequate.

10 On the issue of need, the county found in summary part:

11 a. While a school is a conditional use in the
12 exclusive farm zone, a dormitory is not. Oregon
13 Revised Statutes will not permit a change to the
exclusive farm use zone to allow for a dormitory
so a change is required to accommodate the
planned use.⁶

14 b. A dormitory in conjunction with a school is a
15 conditional use in the RR-5 zone. Id.

16 c. No presently zoned RR-5 land will accommodate the
17 use in part because of the need for isolation
from surrounding residences. Id. at 17.⁷

18 d. Respondent's property will accommodate the
19 proposed use because of its isolation and
proximity to respondent's residence. Id. at
17-18.

20 e. There is a public need for this kind of
21 facility. Id.

22 Based on the above findings, the county concluded there was a
23 need for this parcel to be rezoned RR-5. The county did not
24 attempt to show a need for any other uses available in the RR-5
25 zone or for more RR-5 acreage in general.
26

1 The county characterized the proposed use as "a group home
2 for troubled teenage girls who will be wards of the court and
3 committed to the care and custody of the applicants." Record
4 16. The county found that "the group home will serve as a
5 therapeutic community for the wards" and that "many of the
6 activities involving the wards would be related to the
7 agricultural activities already taking place on the adjoining
8 ranch such as the raising of livestock."⁸ Id.

9 The county's findings do not describe the facility to be a
10 "school" within the zoning ordinance's definition. A school is
11 defined as "an educational institution which may include
12 curriculums [sic] in kindergarten, elementary, secondary,
13 higher education, vocational education or special education."
14 Josphine County Zoning Ordinance, §14.050(110). While the
15 program includes "a fully accredited school room," the program
16 encompasses much more and is specifically limited to a
17 particular population, "troubled" teenage girls who will be
18 wards of the court. The findings reflect a perceived need for
19 an isolated location.⁹ If the proposed use were merely for
20 a school, this isolation would not be necessary and the use
21 would be acceptable on other RR-5 land. The county's findings
22 say the proposed facility would not be acceptable on any other
23 RR-5 land within the county because of the proximity of
24 residences.

25 The finding describes something closer to a "group home"
26 under §14.050(56) which is "(a) licensed home, maintained and

1 supervised by adults for the purpose of providing care, food
2 and lodging for children under the age of eighteen (18) years,
3 and unattended by parent(s) or guardian(s)." The Board notes a
4 "group home" does not appear to be allowed in any of the county
5 zones. Juvenile treatment and corrections facilities are not
6 defined in the county ordinance but are allowed in the
7 "Industrial Park District" only. Josephine County Zoning
8 Ordinance §31.025(6). A school with a dormitory is allowed as
9 a conditional use in residential zones. Id., §20.025(9). The
10 Board believes the county needed to explain the apparent
11 legislative intent to place juvenile treatment facilities and
12 "schools" in different zones. On its face, the ordinance does
13 not appear to allow the proposed "group home and treatment
14 facility for troubled girls" in the RR-5 zone.

15 The Board concludes no need has been established for RR-5
16 zoning on the subject property because the use the county
17 justified in its findings is not allowed in the RR-5 zone.¹⁰
18 It appears the county would be better able to show a need for a
19 zone change to the "Industrial Park District" because that zone
20 allows the desired use.

21 The remaining grounds upon which the county rests its
22 findings of need are incomplete and without evidentiary
23 support. Relevant county findings are:

24 "The applicants intend to operate a group home for
25 troubled teenage girls who will be wards of the court
26 and committed to the care and custody of the
applicants. There is no such similar facility in the
State of Oregon. Many of the activities involving the

1 wards would be related to agricultural activities
2 already taking place on the adjoining ranch, such as
the raising of livestock.

3 ** * *

4 "We conclude that there is a great public need for
5 providing such a facility as the applicants propose
6 and that the comprehensive plan amendment is a
necessary step in accomplishing that end." Record
16-17.

7 "In regard to the testimony that there is not a need
8 for the type of group home proposed, we have found
9 that, in fact, there is a great need for this
particular proposal and that, in fact, the Children's
Services Division of the State of Oregon, has
encouraged the applicants to proceed." Record 21.

10
11 In sum, the county found a need for the facility because no
12 such similar facility exists in the State of Oregon and CSD has
13 encouraged respondents to proceed.

14 The evidence in the record, however, does not support this
15 finding of encouragement. Evidence from CSD is contained in an
16 August 6, 1982 letter from Fred Kaatz, Manager, Agency
17 Licensing Unit of the Children's Services Division, to the
18 planning office. That letter reads:

19 "This letter is at the request of Mr. Darrell Wilson
and Mr. Don Dalley.

20 "These gentlemen have contacted Children's Services
21 Division three times to date, to express their
22 interest in starting a residential program for girls,
to be located near Cave Junction, Oregon.

23 "On date of this letter I have provided them detailed
24 information to instruct them on how to make
25 application for licensing by Children's Services
26 Division. If they pursue the necessary steps, I will
in time have various inspections made (including by
sanitarian and fire marshall), and will also consider
their program itself, all potentially leading to

1 licensing their (new) agency.

2 "If you wish additional information from me or from
3 others in Children's Services Division, we will be
4 glad to oblige." Record 82.

5 The Board believes petitioner is correct in stating the
6 letter cannot be construed as encouraging the applicants to
7 proceed. The letter merely states that CSD has provided
8 respondents with information and will follow appropriate
9 procedures should respondents apply for CSD licensing of a
10 residential program for girls. This letter does not say there
11 is a need for a facility of the type proposed by
12 petitioner.¹¹

13 The Board concludes the county failed to show by
14 "compelling reasons and facts" why this use should be provided
15 on resource land.

16 2. What alternative locations within the area could be
17 used for the proposed uses.

18 Petitioner says he offered into evidence a list of three
19 parcels where the proposed facility could be located.
20 According to petitioner, these parcels were similar in size to
21 the subject property, were zoned RR-5 and were for sale.
22 Petitioner states one of the parcels was near the subject
23 property, but even more isolated. Petition for Review at 45,
24 Record 227. The county did not consider any alternative
25 locations, according to petitioner. Petitioner also challenges
26 the county's findings that 4H leaders and farmers in the area

1 have committed themselves to assist with the program.
2 Petitioner says the findings are not supported by the
3 evidence.

4 Respondent answers there is substantial evidence in the
5 record to support the county's finding that all four criteria
6 necessary for an exception to Goal 3 were met.

7 Concerning suitability of alternative locations, the county
8 found, "the subject property is the only site for this rural
9 residential parcel and the contemplated use." Record 17. This
10 conclusion is based on a description of the characteristics of
11 property suitable for use as a residential corrections facility
12 in conjunction with agricultural activities, the character of
13 the area as developing rural residential, the needs of
14 respondents who propose to operate the facility and commitments
15 from 4H leaders and farmers in the area to provide instruction
16 and work training for the wards.¹²

17 The county found the subject property was uniquely suited
18 to the proposed use, in part because of commitments from 4H
19 leaders and farmers in the immediate vicinity to provide
20 assistance integral to the program. However, these 4H leaders
21 and farmers are not identified in the record. In fact,
22 petitioner submitted a letter from Arch McHie, Beef Leader from
23 the Illinois Valley Livestock 4H Club, dated September 28,
24 1982, which states Mr. McHie checked with the overall leader of
25 the Illinois Valley Livestock 4H Club and the leader of the 4H
26 Goat Club and found none of them had been contacted by

1 respondents or made commitments to assist respondents. Record
2 163. In response, respondents' attorney maintained a new 4H
3 chapter would be formed. TR 53. Still, 4H leaders are not
4 identified.

5 Similarly, the county's finding with respect to work
6 training commitments from nearby ranchers lacks support in the
7 record. Testimony in the form of a letter from a Mr. Jerry
8 Summers, farm owner in the Illinois Valley, states:

9 "In checking, I have found that none of the ranchers,
10 businessmen and farmers have agreed to any such
11 thing." Record 166.

11 The only contradictory evidence is a statement from
12 respondents' attorney:

13 "My clients have also informed me that they have in
14 fact coordinated plans with local area farmers,
15 ranchers. It happens that the names of the people
16 that were mentioned in opposition testimony were not
17 those people they coordinated with, they coordinated
18 with others * * * *" TR 53.

17 The "others" with which respondents are alleged to have
18 coordinated are never identified. The Board concludes there is
19 insufficient evidence to support the county's finding that
20 ranchers in the immediate area have committed to provide work
21 and training for the wards. Therefore, to the extent the above
22 facts are intended to support the county's conclusion that no
23 other location is suitable because support from farmers and 4H
24 leaders in the immediate area is available, and is an intergral
25 part of the program, the county's finding must fail for lack of
26

1 substantial evidence.

2 In this case, petitioner presented the county with three
3 alternative sites for the proposed use. The county did not
4 address these or other sites but simply found "no other
5 alternative locations would be available considering the entire
6 county" (Record 17) in part because respondents do not live on
7 the other sites and could not reasonably operate a 24 hour care
8 facility off their own property. This finding makes the
9 proposed use personal to respondents.

10 The Board believes that under the alternative sites
11 criterion, the county is required to consider what other
12 locations might sustain the proposed use, regardless of the
13 identity and needs of the parcel owners. Limiting the inquiry
14 of other possible sites because of the convenience of the
15 applicants improperly limits the county's review.

16 On remand, the county must address all potentially suitable
17 sites for the proposed use, apply the appropriate criteria to
18 each and give reasons why the use can or cannot be accommodated
19 in any of the alternative locations. Abrego v Yamhill Co., 2
20 Or LUBA 350 (1981).

21 3. Long-term environmental, economic, social and energy
22 consequences to the locality, the region or the state from not
23 applying the goal or permitting the alternative use.

24 Petitioner claims county findings on the environmental and
25 economic issues in the exception criterion are not supported by
26 substantial evidence. The county's findings under this

1 exception criterion are as follows:

2 "Long term consequences

3 "a. Environmental: there will be no substantial loss
4 in terms of agricultural potential according to
5 Mr. Pescador's report. There will be a need of a
6 septic system for subsurface sewage disposal,
7 however test holes have been dug on the property
8 and the site is favorable for the use of
9 subsurface sewage disposal. Also, it appears
10 that the use of ground water will not cause any
11 adverse affects. The area is noted as being a
12 good area for ground water. Much of the natural
13 vegetation on the property will be retained, and
14 undesirable vegetation will be cleared. There
15 are no unidentified energy sources, minerals or
16 other natural resources which may be impacted by
17 this proposal.

11 "There are no natural hazards, flooding or runoff
12 problems attributed to the action of permitting
13 the alternative use.

13 "b. Economic: In developing the site, there will be
14 the employment of contracts for the construction
15 of the facilities. Also, in the operation of the
16 proposed facility the applicants intend to hire
17 approximately 15 people. This will provide
18 needed jobs in an area suffering from economic
19 depression. Also there will be economic benefits
20 to those providing services in the nearby
21 community of Cave Junction.

18 Until a complete analysis of Goal 5 and the flooding
19 potential for this property is performed, the Board does not
20 believe it is able to fully review the county's findings about
21 environmental consequences under the third exception criteria
22 in Goal 3.

23 With respect to the findings about the economic
24 consequences of the decisions, the Board wishes to note that
25 this exception criterion simply calls for an analysis of the
26

1 economic consequences of the action, it does not require a
2 finding that there will be benefit to the county. Presumably,
3 were the analysis to show there would be economic detriment to
4 the area, it would influence the decision whether or not there
5 is a need for the use and whether or not the use should be
6 allowed in the location chosen. The Board is cited to no such
7 evidence of detriment in the record.

8 4. A finding that the proposed uses will be compatible
9 with other uses.

10 The county finding is as follows:

11 "Compatibility of the Proposed Use with Other Adjacent
12 uses: The predominant adjacent uses are mainly rural
13 residential. To the south of the subject property
14 there are some agricultural uses. Also, the
15 applicants' remaining property is an agricultural
16 use. The activities that will be conducted in
17 connection with the group home will be related to the
18 agricultural uses on the applicants' remaining
19 property. The closest residence to the proposed site
20 is located approximately one-half mile away. There
21 are no residential uses in the area within sight or
22 sound of the proposed facility due to natural terrain
23 and distance. Mr. Pescador reported that the subject
24 site, if changed, will not affect the farming
25 operation and we so find. Also, we find that the
26 wards will be carefully screened prior to their
admission to the facility of this type in order that
the proposed wards will be non-violent types of
individuals. Therefore, we feel that an element of
violent criminals will not be injected into the
particular area. We conclude that there will be no
conflicts between the rural residential uses of this
property and surrounding rural residential uses.
Also, there will be no conflict between the proposed
uses and any surrounding agricultural uses." Record
19-20.

25 Petitioner complains the county failed to establish
26 compatibility of the proposed use with forest resources to the

1 east and rural residential uses to the north. Petitioner also
2 says the county should have taken an exception to Goal 4,
3 Forest Resources, because the land is adjacent to a forested
4 area.

5 Firstly, nothing in Goal 4 requires an exception be taken
6 for non-forest lands adjacent to forest lands. Also, there is
7 nothing to which the Board has been cited to suggest that the
8 placement of a group home on this property will in any way
9 impact adjacent forest uses. The county found no forest soils
10 are identified on the property. However, the county findings
11 say the "affected portion of the property is covered with oak
12 and pine trees." Record 20. Because of the existence of the
13 trees, the Board believes there must be some explanation of
14 whether forest uses exist. If forest uses are on the property,
15 the findings must address how the rezone will be compatible
16 with those forest uses.

17 Finally, part of petitioner's argument about the proposed
18 group home's incompatibility with surrounding uses rests upon
19 the fact the facility will serve troubled youth. Petitioner
20 points to evidence in the record from neighbors who feel
21 threatened by the presence of a residential treatment
22 facility. The county found, however, that the residents of the
23 facility would not be violent and would not cause injury to
24 other persons in the area. The Board views this inquiry to be
25 to a social issue and not a land use matter. The matter of
26 "compatibility" referred to in Goal 3 goes to compatibility of

1 land uses only. That is, the land use inquiry is to the size
2 of the facility, the level of activity on and off the site, the
3 effects it may have on other land uses, and, arguably,
4 aesthetic considerations. The concerns expressed by petitioner
5 include land use issues (for example, agricultural and forest
6 use impacts); however, the concerns are also about social and
7 psychological compatibility. There is no yardstick to measure
8 this particular kind of compatibility, and it is outside the
9 limits of this Board's inquiry. Indeed, the Board does not
10 believe it is possible to construct findings that would
11 "compel" a reasonable person to conclude that the group home,
12 considering its purpose and those who would inhabit it, will or
13 will not be compatible with other persons living in the
14 community. These issues are not a land use issue subject to
15 established land use standards.

16 Petitioner's assignments of error 18 through 20 are
17 sustained in part insofar as they allege the county failed to
18 meet the Goal 2 exception criteria as discussed, supra.

19 This matter is remanded to Josephine County for action not
20 inconsistent with this opinion.

21

22

23

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25

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FOOTNOTES

1

2

3 1

The board of commissioners does not appear to have relied on the C.A.C. recommendation to any significant extent. The C.A.C. recommendation is not mentioned in the written findings, only in the planning commission's minute findings, which the board of commissioners incorporated by reference into its order.

6

7 2

Petitioner points to evidence, including the following, demonstrating the flood hazard on the property:

1. The subject parcel is not accurately shown on the F.I.R. maps in that 15 acres of the original 40 acres proposed for rezoning have been left off. Petition for Review at 25, Record 48.

11

2. Mr. Nappe testified to many experiences he had with flooding from Sucker Creek, including loss of three acres and four irrigation headgates and the need for installing rip rap. Rip rap installed adjacent to respondents' property in 1964 was lost in 1973 due to flooding, according to Mr. Nappe. See Record at 93. See also his testimony at TR 50-51.

15

3. Evidence in the form of a letter from former owners of the property, Mr. and Mrs. Louis Maurer, indicated there were five or six times the property had been flooded during their 30-year ownership of the property. Record 91, 164-165.

19

4. The soil scientist's report stated riverwash occurs in the flood plain of Sucker Creek, the channel of the creek has changed course in the northwest corner of the parcel, the area subject to the rezone and plan amendment, and even soils not in the flood plain are subject to flooding. Petition for Review at 26, Record 159-161.

23

24 3

The county refers to the soil scientist's report as establishing the affected property is not suitable for agricultural activities. On that issue the soil scientist's report states:

26

1 "The major portion of this parcel is in the annual
2 flood plain of Sucker Creek. Those areas with an
3 irrigated potential for agriculture have severe
4 limitations imposed because of flood potential and/or
5 gravel content. Removal of trees in this flood plain
6 would increase erosion hazards and possible channel
7 changes." Record 55.

8 At least in part, the affected property is unsuitable for
9 agricultural activities due to occasional flooding. Thus,
10 there is a contradiction between the county's finding the
11 property is unsuitable for agriculture, based on the soil
12 scientist's report, and is not subject to flooding. The county
13 specifically found the soil scientist's report factual and did
14 not dispute any part of the report.

15 "We find that the portion of the property affected is
16 unsuitable for agricultural purposes. In support of
17 this finding we refer to the report of Mr. Pescador,
18 the soil scientist. We find this report is factual."
19 Record 16-17.

20 4
21 There is evidence in the soil scientist's report that the
22 stream channel has changed. Record 54. It is not clear
23 whether the change occurred before or after the flood insurance
24 ratings maps were prepared since there is no indication when
25 these maps were prepared. If the change occurred after
26 preparation of the F.I.R. maps, then the county's reliance on
27 these maps in finding Goal 7 did not apply would have to be
28 reevaluated.

29 5
30 See DLCD v. Tillamook Co., 3 Or LUBA 138(1981).

31 6
32 The whole text of the finding on this issue is as follows:

33 "The request is for a comprehensive plan amendment to
34 rural residential to facilitate a zone change to RR-5
35 so that the applicants may request a conditional use
36 to allow a dormitory in conjunction with the school.
37 While schools are a conditional use in the zone,
38 Oregon Revised Statutes do not provide for dormitories
39 in the exclusive farm zone. A recent analysis of the
40 Josephine County Comprehensive Plan by the Department
41 of Land Conservation and Development affirmed that

1 residential dormitories may not be authorized.
2 Because county zoning ordinances must conform to the
3 Oregon Revised Statutes, it would not be possible to
4 enact a text change to include the proposed facility
5 as a conditional use within the existing zone;
6 however, rural residential districts could accommodate
7 the use." Record 16.

8

9

10 The whole text of the finding on this issue is as follows:

11 "The subject property is further the best site for the
12 proposed use inasmuch as it is isolated, and not close
13 to any neighboring residences. It is necessary for
14 the operators to maintain strict control, devoid of
15 any outside influences." Record 17.

16 "We feel that this application constitutes a very
17 unique situation that can not be accommodated in any
18 other already designated rural residential area." Id.
19 at 18.

20 "The facility needs to be in a relatively isolated
21 area, particularly for security purposes. It would
22 not be appropriate in an urban area or near other
23 residential uses. The need for relative isolation
24 appears to be enhanced by the presence of Sucker Creek
25 along the north property line * * *. As stated
26 earlier; it appears there are unique features of the
27 proposed site, but this needs to be borne out by the
28 evidence." Planning Staff Report, incorporated by
29 reference into final order. Record 33.

30

31

32 "The rural residential zoning district would permit a
33 school with necessary dormitory and residential
34 buildings in connection with the operation. The
35 applicants intend to operate a group home for troubled
36 teenage girls who will be wards of the court and
37 committed to the care and custody of the applicants.
38 There is no such similar facility in the State of
39 Oregon for girls. The proposed facility would
40 accommodate a maximum of 40 wards. It will be
41 necessary for the applicants to construct a new
42 dormitory, recreation hall, kitchen and dining
43 facilities, laundry room, offices, and a fully
44 accredited school room with pottery shop and
45 agricultural area, smoke house and various other
46 buildings, including staff houses. The group home

1 will serve as a therapeutic community for the wards,
2 creating an environment conducive toward instilling a
3 sense of responsibility in the wards. A majority of
4 the wards will be committed to the indefinite term
5 program. The ranch owned by the applicants is already
6 an active agricultural facility. Many of the
7 activities involving the wards would be related to
8 agricultural activities already taking place on the
9 adjoining ranch, such as the raising of livestock.

6 ** * *

7 "We conclude that there is a great public need for
8 providing such a facility as the applicants propose
9 and that the comprehensive plan amendment is a
10 necessary step in accomplishing that end." Record
11 16-17.

10 _____
11 9

11 See Footnote 10, supra.

12 _____
13 10

13 The Board recognizes the proposed use may not be adequately
14 accommodated in the industrial park district zone and that the
15 proposal is for a group home in a rural setting where
16 agricultural activities can be included as part of the
17 therapeutic goal. If the county decides the proposed use
18 should be provided for outside the Industrial Park District,
19 the county must amend its zoning ordinance to permit the use in
20 other zones deemed appropriate. The county cannot circumvent
21 it legislative responsibility by fitting a round peg in a
22 square hole, or, in this case, calling a juvenile treatment and
23 corrections facility a school with a dormitory so that it may
24 be established on a particular parcel of property.

20 _____
21 11

21 Indeed, Mr. Kaatz wrote a letter of clarification to
22 petitioner on September 21, 1982, which was made part of the
23 record before the board of commissioners. Record 122. In the
24 September 21 letter, Mr. Kaatz states he has provided
25 respondents with information on licensing a residential care or
26 treatment program pursuant to their request, but has received
no application from them. He goes on to say CSD may license a
facility and yet not place children within it or make
corresponding payments. He notes that CSD's severe budget cuts
have made it difficult for CSD to place children and have
deterred prospective agencies, unless they have non-CSD sources
of children and payments. Mr. Kaatz attaches a list including

1 approximately four residential care and treatment programs in
2 the State of Oregon, some of which operate more than one
3 residential facility.

3
4 12

4 The county findings on alternative sites for the proposed
5 use are:

5 "We find that the subject property is the only site
6 for this rural residential parcel and the contemplated
7 use. It is adjoining a rural residential district,
8 and the surrounding property development is already in
9 the character of rural residential development. As
10 noted above, the subject property is a portion of the
11 applicant's operating ranch so it is convenient and
12 suitable for the training activities of the wards who
13 will be housed in the proposed group home site. Also,
14 we submit that no other alternative location would be
15 available considering the entire county, inasmuch as
16 it would be necessary for the operators of the group
17 home to conduct an operation in such a location where
18 they will have 24 hour control over the wards. The
19 applicants live at the site and they will be involved
20 in the conduct of the operation. It would be
21 virtually impossible if the group home were located on
22 another parcel of property for the applicants to
23 maintain the 24 hour control that they themselves will
24 exercise. We find that the applicants have been in
25 contact with the State of Oregon Children's Services
26 Division and has [sic] had encouragement from that
agency. The granting of a license to the applicants
to operate the group home is conditional upon
applicants obtaining the necessary permit for the
facilities.

19 "The subject property is further the best site for the
20 proposed use inasmuch as it is isolated, and not close
21 to any neighboring residences. It is necessary for
22 the operators to maintain strict control, devoid of
23 any outside influences. This particular site affords
24 that opportunity on the operator's own property.
25 Also, the subject property is only eight miles from
26 the City of Cave Junction, so that the isolation is
not to the extent that emergency calls and the
obtaining of necessary supplies can [not] be made.

24 "In this immediate area, 4H leaders have committed
25 themselves to provide instruction to the wards in
26 their respective specialties. These commitments would
not be binding if the location were moved to some

1 other site. The 4H leader training is an integral
2 part of the operation of the group home.

3 "Also, the ranch owners in the immediate area have
4 committed to provide work and training to wards who
5 may work toward college credits and possible
6 employment upon release. This commitment would not be
7 binding if the group home were to be located
8 elsewhere.

9 * * *

10 "We find that the applicants could not, as a practical
11 matter, move to another location and be able to
12 conduct simultaneously the operation of the ranch and
13 farm and the girls' group home contemplated. We feel
14 that this application constitutes a very unique
15 situation that cannot be accommodated in any other
16 already designated rural residential area." Record
17 17-18.