BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

WILLIAM McCOY and DONALD CLARKE, Petitioners, vs. TILLAMOOK COUNTY, Respondent, and JOHN and MADELYNE MEMERING, Respondents.	LUBA No. 85-038 FINAL OPINION AND ORDER

Appeal from Tillamook County.

Corinne C. Sherton, Salem, filed the petition for review and argued the cause on behalf of Petitioners. With her on the brief were Sullivan, Josselson, Roberts, Johnson & Kloos.

Lois A. Albright, Tillamook, and Mark Wehrly, Tillamook, filed the response brief. Lois A. Albright argued the cause on behalf of Respondent County and Respondents Memering.

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

REMANDED 10/02/85

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

Opinion by Kressel.

NATURE OF THE DECISION

This appeal concerns approval of the subdivision of the Neah-Kah-Nie Golf Course, a 39 acre tract in Tillamook County. The tract is proposed to be divided into eight residential lots (10,000 square feet each) and a 37 acre lot.

FACTS

The property is located between Highway 101 and the Pacific Ocean, on the southern slope of Neah-Kah-Nie Mountain. It is zoned R-1 (Low Density Residential) and is inside the county's Community Growth Boundary (CGB). The county's plan and implementing ordinances have been acknowledged by LCDC.

Respondents John and Madelyne Memering applied for preliminary approval of the "Seaward Slope" plat in December 1984. The county planning commission approved the proposal in February, 1985. Petitioners, who own adjacent land, appealed the decision to the county governing body. Their objections centered on the fragility of the area (notably, its steep, unstable slopes) and the inadequacy of services. A hearing on the appeal was held on April 3, 1985. The final order approving the preliminary plat, subject to conditions, was adopted on May 1, 1985.

FIRST ASSIGNMENT OF ERROR

Petitioners first contend the county failed to evaluate the proposal in terms of a comprehensive plan policy concerning development within the Community Growth Boundary. The policy

reads as follows:

> "The County will review land development actions and service district expansions according to the following four criteria listed in Goal 14:
>
> "(1) Orderly, economic provision for public facilities and services;
>
> "(2) Availability of sufficient land for the various uses to ensure choices in the market place;
>
> "(3) LCDC goals;
>
> "(4) Encouragement of development within urban areas before conversion of urbanizable areas." Policy XIV.3.11, Tillamook County Comprehensive Plan.

The final order does not refer to the cited plan policy. However, respondents[1] argue the omission is insignificant for the following reasons: (1) the plan policy does not establish approval criteria for specific land development proposals, but instead is enabling legislation for ordinances establishing such criteria; (2) petitioners did not claim the policy was relevant during the county's proceedings and; (3) in any event, the record demonstrates the policy was satisfied. We find none of these arguments persuasive and therefore sustain the first assignment of error.

The land use decision in issue must conform to the acknowledged plan. ORS 197.175(2)(d). Of course, not all segments of a plan are intended to serve as decisionmaking criteria. The function of particular plan language depends largely on the text itself. In this instance, the plan text states the county will review land development actions

according to listed criteria. Given the plan text, we must agree with petitioners that this portion of the plan must be applied in the review of the preliminary plat. We reject respondents' argument that the policy merely sets the stage of adoption of decisionmaking criteria.

Respondents' remaining arguments are equally ineffective to counter this assignment of error. Petitioners' failure to cite the plan policy during the county's hearings is not a bar to their reliance on the policy before LUBA. ORS 197.825(3). Finally, the county's failure to discuss the plan policy in the final order cannot be cured by assertions in respondents' brief that the policy is satisfied. The relationship between the pertinent facts and the applicable plan policy must be addressed in the final order adopted by the local decision makers. South of Sunnyside Neighborhood League v. Board of Commissioners of Clackamas County, 280 Or 3, 569 P2d 1063 (1977); Hoffman v. DuPont, 49 Or App 699, 705-06, 621 P2d 63 (1980), rev den 290 Or 651 (1981).

The first assignment of error is sustained. On remand, the application must be evaluated in terms of plan Policy XIV.3.11.

SECOND ASSIGNMENT OF ERROR

Petitioners next allege that the final order does not adequately address geologic hazards presented by the proposal. The allegations arise under provisions of the land use ordinance, the comprehensive plan and statewide Goal 7.

1. Land Use Ordinance

Section 4.070(1) of Land Use Ordinance No. 32 defines the scope of the county's regulations governing development in "geologic hazard" areas. Among the areas subject to the regulations are

> "inactive landslides, landslide topographic and mass movement topography identifed in DOGMI Bulletins 74 and 79 where slopes are greater than 19%...." Section 4.070(1)(b), Tillamook County Land Use Ordinance No. 32.

The county found that the Seaward Slope plat is outside the scope of the hazards ordinance because slopes are below the 19% standard. The final order explains that although DOGMI maps show the property to be both an inactive landslide and landslide topography area, aerial photographs taken by the U.S. Soil and Conservation Service

> "...indicate that soils on the property consists of neahkanie, gravely silt loam of 3-15% slopes." Record at 8.

Petitioners argue that the county's determination under Section 4.070(1)(b) of the ordinance is not supported by substantial evidence in the record. They make these arguments:

(1) The aerial photographs relied on by the county are not in the record;

(2) In any event, soil mapping photographs do not provide reliable data on slope percentages;

(3) Another finding in the order suggests that slopes on portions of the property exceed 19%; and

(4) The other evidence in the record tending to support the county's finding pertains only to the

slopes on a small portion of the land to be subdivided.

Respondents seem to concede that the soil maps referred to in the county's finding are not in the record. However, their brief cites other evidence of slope percentages that support the county's determination under Section 4.070(1). In particular, respondents direct our attention to a staff report containing the following statement:

"(1) Topography: The entire parcel slopes south at grades from about 10-15%." Record at 54.

We agree that the planning staff report is substantial evidence for the finding in question. Bay v. State Board of Higher Education, 233 Or 601, 605, 378 P2d 558 (1974); Braidwood v. City of Portland, 24 Or App 477, 546 P2d 777 (1976).

2. Plan Policies

Petitioners next direct our attention to the following plan policies concerning landslide hazards:

"d. All excavations, fills and drainage changes and vegetation removal programs in areas of mass movement topography shall be engineered to minimize the possibility of sliding."

* * *

"g. Projects involving modifications of established drainage patterns should be evaluated in terms of the effect these changes would have on drainage and slope stability.

"h. Projects which include plans for modifying the topography of sloping areas should be evaluated in terms of the effect these changes would have on drainage and slope stability.

"i. Projects or long-range plans involving urbanization of given areas should be evaluated in terms of the long-range influence the proposed land use would have on land stability; drainage is particularly critical."

* * *

"k. Proposed development in close proximity to active or inactive landslides shall require site investigation." Policy 2.1, Tillamook County Comprehensive Plan.

The claim is that even if the requirements of the land use ordinance are not applicable in this case (see above), the cited plan policies should have been addressed.

Respondents concede that these plan policies are not discussed in the final order. Their answer to petitioners' charge is that the county has defined the lands that are subject to its regulations governing landslide hazards in the land use ordinance, more particularly Section 4.070 of Ordinance No. 32. They argue that since the tract is outside the scope of the land use ordinance (see previous discussion) the plan policies relied on by petitioners are inapplicable. We disagree.

Like the plan policies concerning the community growth boundary (see page 3, supra) the landslide policies are written as regulatory measures. That is, they prescribe performance or evaluation standards for specific land use actions or projects. We read them to have force independent of other county regulations. Nothing in the text of the policies or in the related provisions of the comprehensive plan makes the

policies applicable only where the provisions of Section 4.070 of the land use ordinance must also be applied. The land use ordinance itself expresses no such linkage with the plan. Accordingly, we agree with petitioners that the policies should have been applied to the application in the final order. The county's failure to address the policies warrants a remand. South of Sunnyside Neighborhood League v. Board of Commissioners of Clackamas County, supra.

Petitioners final claim in this assignment of error arises under statewide planning Goal 7 (Areas Subject to Natural Disasters and Hazards). The claim is that because the property is in an inactive slide area, the county should have determined whether "appropriate safeguards" would be provided by the subdivider, as required by Goal 7.[2]

The county's plan and implementing measures have been acknowledged for statewide goal conformance by LCDC. Ordinarily, the acknowledgment would take the goals out of consideration in our review of specific land use decisons, such as the one here. Byrd v. Stringer, 295 Or 311, 666 P2d 1332 (1983). However, in this instance, the acknowledged plan broadly identifies "LCDC goals" as criteria to be applied to land development actions within the community growth boundary. See First Assignment of Error, supra. Because we construe the Seaward Slopes Subdivision proposal to be such an action, we must agree with petitioners that Goal 7 should have been addressed in the final order.

The second assignment of error is sustained. On remand, the county should enter findings evaluating the proposal in terms of the pertinent policies on landslides hazards in the comprehensive plan and statewide Goal 7.

THIRD ASSIGNMENT OF ERROR

The county's plan recognizes erosion as a serious development constraint. The plan sets forth the following policy, among others, on the erosion issue:

> "Development on slopes of 15% or greater shall require the submission of topography and other information to show that no significant detrimental effects will occur." Tillamook County Comprehensive Plan Policy VII.2.4.b.

Petitioners claim this policy is applicable to the proposed subdivision because, as the county found, the slopes on the property range from 3 to 15 percent. Petitioners therefore contend that the county was obligated to require submission of the necessary topographical information. Based on that information, they add, the county should have entered findings demonstrating that "no significant detrimental effects will occur."

Respondents again concede that no findings addressing the quoted plan policy were adopted. Their answers to petitioners' charge are (1) the required topographical information concerning the eight proposed building sites was submitted; similar data for the remaining 37 acre lot was unnecessary because the lot is not proposed for immediate development and

(2) the plan policy on erosion, like other plan policies discussed earlier, is inapplicable to this case because the policy is merely a predicate for the regulatory standards set forth in the land use ordinance.

Respondents' arguments are ineffective to repel petitioners' attack. Concedely, the plan policy in this instance requires topographical information only for those portions of the property to be "developed." However, the policy requires more than merely the submission of topographical information. The information must "show that no significant detrimental effects will occur." The plan text requires the county to evaluate the submitted information in terms of the quoted standard. The final order contains no such evaluation, an omission requiring a remand of the county's decision. Hoffman v. Dupont, supra.

The third assignment of error is sustained.

FOURTH ASSIGNMENT OF ERROR

Petitioners next direct our attention to several provisions concerning drainage in the county's land division ordinance and comprehensive plan. Once again, they contend the county erred in failing to apply these provisions to the preliminary plat.

1. Land Division Ordinance

Section 8 of the land division ordinance requires the following, among other things, to be shown on a preliminary plat:

"(2) The direction of slope by means of arrows or

other suitable symbol."

* * *

"(4) The location and direction of water courses and the location of areas subject to flooding."

Another provision of the ordinance requires a storm water easement or drainage right of way where a subdivision is traversed by a "water course, such as a drainageway, channel or stream." Section 28(3), Tillamook County Land Division Ordinance.

Petitioners maintain that the information required by these ordinance sections was not provided by the subdivision applicants. With respect to the slopes in the area proposed for residential development, the record contradicts petitioners' claim. However, respondents have not cited corresponding data regarding the remaining (37 acre) lot in the subdivision. They contend this data was not required because the lot is not proposed for immediate development.

We cannot sustain respondents' argument because the distinction they make is not reflected in the land division ordinance. Section 8, on which petitioners rely, broadly requires that the preliminary plat include certain information about site topography. There is no distinction in the ordinance between lots proposed for immediate development and those reserved for future development.[3] The preliminary plat at issue here divides the 39 acre tract into nine lots.[4] There is no basis for concluding that only some of the proposed

lots were subject to the informational requirements.

In this portion of the assignment of error, petitioners also claim that a water course/drainageway traverses the property but was not shown or provided for in the preliminary plat. They buttress this claim by citing a neighbor's testimony before the planning commission. The pertinent minutes state as follows:

> "Mr. McCoy said that there was a run-off problem on the golf course and that it had a huge pond. He was concerned about additional houses possibly floating away. He further objected to their being no plans for drainage. He stated that he saw a one-foot-wide, six-inch river running today. He said that maintenance people were removing slide rock and felt that the land is moving. He felt that there was no consideration in this plan for the lay of the land." Record at 49-50.

Respondents answer that the cited testimony was insufficient to require the county to probe further into whether easements or drainage rights-of-way should have been required. Again, we disagree. The testimony is relevant to an applicable review standard. It also focused enough on specific circumstances to warrant a discussion of the issue in the final order. See Norvell v. Portland Metropolitan Area Local Boundary Commission, 43 Or App 849, 604 P2d 696 (1979).

Next, petitioners invite us to consider the county's findings with respect to another requirement of the land division ordinance. Section 36(3) of the ordinance provides:

> "Drainage. Such grading shall be performed and drainage facilities installed conforming to county specifications as are necessary to provide proper

drainage within the subdivision and other affected areas in order to secure healthful, convenient conditions for the residents of the subdivision and for the general public. Drainage facilities in the subdivision shall be connected to drainageways or storm sewers outside the subdivision. Dikes and pumping systems shall be installed if necessary to protect the subdivision against flooding or other inundation."

The county entered the following finding in connection with the adequacy of proposed drainage facilities:

"17. Storm drainage of the property has been adequately planned for, as evidenced by Map 3 of the preliminary plat and the absence of design alterations resulting from the public works director's review of the preliminary plat." Record at 9.

Petitioners assail the finding in three ways. First, they say it does not correspond to the ordinance because it does not discuss drainage "within the subdivision and in other affected areas." Petition at 16. We disagree. We construe the reference in the finding to "storm drainage of the property" to include the off-site as well as on-site effects of storm drainage. Second, petitioners claim the finding of adequacy is untenable because the pertinent maps show:

"...drainage on either side of Sunset Drive and Horizon Drive simply ending at the intersection of those two streets without indicating a connection with the existing drainageway or otherwise explaining where the water will go from there (presumably it will flow to the south and west onto Petitioner McCoy's property)." Petition at 16.

This point is well-taken. As noted, the drainage provision in the ordinance extends protection to the subdivided tract and

other affected areas. The land adjacent to the intersection of Sunset and Horizon Drives is clearly affected by the proposal. The record includes testimony that the subdivider's plans do not adequately address the drainage problems likely to be created at the intersection. Given the testimony, the county should have entered a finding on the adequacy of the drainage associated with the proposed intersection. Norvell v. Portland Metropolitan Area Local Boundary Commission, supra.

Petitioner's third objection to the finding reiterates the point discussed above. On remand, the county must fully discuss the adequacy of the subdivider's drainage plan for land bordering the intersection of Horizon Drive and Sunset Drive.

2. Comprehensive Plan

The last claim in this assignment of error arises under the following policy of the county's comprehensive plan:

> "New developments should be designed to minimize peak storm water discharge. Alteration of natural drainageways should be minimized. Roads in urban areas should have adequate ditches and culverts to transport storm water effectively." Policy XI.3.2(i), Tillamook County Comprehensive Plan.

Petitioners allege the policy was not discussed in the county's final order. However, we note the policy is not expressed as a regulatory requirement. Instead, the policy merely encourages the pursuit of certain objectives (minimizing storm water discharge) and discourages certain actions (alteration of natural drainageways). Given the text, we conclude no responsive findings are required.

FIFTH ASSIGNMENT OF ERROR

The county's land division ordinance requires that platted lots shall either

> "be served by a public domestic water supply system conforming to county specifications or the lot size shall be increased to provide such separation of water sources and sewage disposal facilities as the county Health Department considers adequate for soil and water conditions." Section 36(1), Tillamook County Land Division Ordinance; see also Section 12(2) (subdivision applicant must submit "plan for water supply, including the source, quality and quantity and plans for water lines").

The county found that the Neah-Kah-Nie Water District would make service available, and that "there are currently 26 single family hookups available for the entire 39.45 acre parcel." Record at 8.

Petitioners claim the finding on water service is unsupported by substantial evidence. They point out that the water district qualified its statement of service availability by stating "we must also receive a satisfactory geological report before we can extend mains to an unserved area such as this." Record at 70.

Respondents do not directly answer the substantial evidence challenge. Instead, they contend that, even as qualifed the district's statement is sufficient to enable the county to grant preliminary plat approval. We would agree with this contention if the county had expressly conditioned preliminary plat approval on full satisfaction of the district's requirements. Such a condition would guarantee that amendments

to the preliminary plat (and further county review) would be required in the event the district decided it could not actually deliver services.[5] However, the order adopted by the county contains no such guarantee. We therefore cannot dismiss the challenge on the ground urged by respondents.

Turning to the question of whether substantial evidence supports the county's finding that the district will make water available, we conclude the question must be answered in the negative. The only evidence the parties have brought to our attention is the water district's report, dated December 28, 1984. As already noted, the report indicates that an allocation of 26 single family hookups is available but add that a "satisfactory geological report" must be received before mains can be extended. The statement is not one that a reasonable person would rely on to conclude, as the final order does, that water service would be available from the district. Braidwood v. City of Portland, supra.

Based on the foregoing, we sustain this challenge. In the absence of a condition of preliminary plat approval (requiring the district to give unqualified assurance of service), the county must either (1) adopt a factually supported finding that water service is now available from the district without qualifications or (2) adopt a factually supported finding that the requirements of Section 36(1) of the ordinance will be met in some other way (e.g., wells).

Petitioners also allege that the county should have

responded in its final order to testimony by neighbors that the project would overburden the existing water supply system. The neighbor's testimony is in a letter alleging that the existing system provides inadequate water pressure and quantity during the summer months. Respondents answer this contention by arguing that the testimony

> "...is not within the purview of the preliminary plat review; but rather is an issue that should be addressed to the Neah-Kah-Nie Water District." Brief of Respondent at 15.

We disagree with respondents. As earlier pointed out, the location of the site inside the CGB makes the statewide planning goals applicable to the proposal. See, First Assignment of Error. One of the goals (Public Facilities and Services) requires that public facilities and services must be appropriate for the area to be served. The testimony suggests that water service to the property may be inadequate. The testimony was relevant to the goal standard and specific enough to warrant discussion in the final order. Norvell v. Portland Metropolitan Area Local Boundary Commission, supra. On remand, the final order should address the adequacy of water pressure and quantity during peak demand seasons.

The fifth assignment of error is sustained.

SIXTH ASSIGNMENT OF ERROR

This assignment of error presents numerous claims arising under the street design standards in the county's land division ordinance and comprehensive plan.

The first claim arises under an ordinance requirement that existing conditions, including easements, must be shown on the preliminary plat. See Section 8(1), Tillamook County Land Division Ordinance. The contention is that Petitioner Clark has an easement for use of Horizon Drive which was not shown on the plat or considered by the county. However, petitioners neither support this contention with a citation to the record nor explain why the alleged omission would warrant reversal or remand of the county's decision. Accordingly, we reject the claim.

Next, petitioners draw attention to the following standards in the land division ordinance:

> "Grades shall not exceed 6% on arterials, 10% on collector streets, or 12% on any other street...where existing conditions, particularly topography, make it otherwise impractical to provide buildable lots, the planning commission may accept steeper grades and sharper curves." Section 27(11), Tillamook County Land Division Ordinance.

The county applied this standard to grades on Horizon Drive as follows:

> "14. Horizon Drive has a 17% grade in the vicinity of the Highway 101 intersection. This grade exceeds the maximum profile grade under Ordinance #16, §15. However, due to topographical characteristics of the subject property, a maximum grade of 17% is being allowed by the Tillamook County Public Works Department, pursuant to the Ordinance #16, §15 waiver allowance. The reason for the waiver is that if the road were angled to the south, a greater grade would be necessary and if the road were angled to the north, it would have access to Highway 101 in close proximity to Sunset Drive." Record at 9.

Petitioners raise several points in connection with the county's application of Section 27(11) of the land division ordinance. First, they argue that the county's final order addresses the problem of excessive grades only in connection with the intersection of Horizon Drive and Highway 101, while the record indicates that grades along the entire length of Horizon Drive will exceed the 12% standard. We must agree that the finding cited by petitioners is limited to the grade at the intersection with Highway 101. However, the county's order includes additional language of broader scope. The following finding by the public works director is included in the conditions of approval imposed by the county:

> "As per Ordinance #16, §15, in order for the roads to be eligible for acceptance onto the county maintenance road system, the maximum profile grade is 12%. The proposed grades of 17% on the preliminary plat exceed this standard. However, due to topographic characteristics of Seaward Slopes, the Public Works Department is waiving the 12% maximum and allowing a maximum grade of 17%." Record at 11.

We read this language to refer to the entirety of Horizon Drive. Accordingly, petitioners' claim that the county considered only the grade at the intersection of Horizon Drive and Highway 101 cannot be sustained.

The second objection acknowledges the scope of the above-quoted condition. However, petitioners argue that the waiver referred to in the condition does not correspond to the waiver standard appearing in Section 27(11) of the land division ordinance. They argue that while the adopted

condition waives the 12% standard "due to topographic characteristics of Seaward Slopes," the ordinance more specifically conditions relief on a finding that topographic conditions "...make it otherwise impractical to provide buildable lots...." We agree that the discrepancy between the finding and the waiver standard[6] in the ordinance warrants a remand.

Petitioners next contend that the approved plat violates land division and plan standards governing intersection alignment. The alleged violations can be summarized as follows:

> (1) According to the preliminary plat, Horizon Drive, the main road serving the project, intersects with Highway 101 only 50 or so feet from the highway's intersection with Sunset Drive. However, the Land Division Ordinance requires a significantly greater distance between such "T intersections."
>
> (2) The preliminary plat also shows that both Horizon and Sunset Drives intersect with Highway 101 at less than 60 degree angles. However, the Land Division Ordinance establishes a 60 degree minimum unless there is a "special intersection design."

The county's order addresses these issues as follows:

> "15. The intersection of Horizon Drive with Highway 101 is planned to be redesigned to allow for a 90 degree angle of intersection between the two roadways. Such a change will increase the distance between the intersections of Horizon Drive and Sunset Drive with Highway 101." Record at 9.

We agree with petitioners that the order does not adequately address the cited standards. First, the order does

not demonstrate that the approved distances between Sunset and Horizon Drives along Highway 101 will meet intersection standards. The order simply notes, in vague terms, that the redesign of Horizon Drive will "increase the distance between the intersections of Horizon Drive and Sunset Drive with Highway 101." Record at 9. The "increase" is not legally significant unless it is sufficient to meet ordinance and/or plan requirements. There is no finding that these requirements are met.[7]

More fundamentally, although the order states that there is a plan to redesign the intersection of Horizon Drive and Highway 101 to meet ordinance requirements, the order does not expressly condition subdivision approval on the implementation of that plan. Instead, the order more generally conditions plat approval on review and approval by the State Highway Department. The state agency, however, is not responsible for assuring compliance with the county's land division requirements. This function must be performed by the county itself. Hoffman v. Dupont, supra.

Petitioners conclude this assignment of error with several additional objections to the approved traffic circulation system. First, they contend that allowance of the intersection of Horizon Drive and Highway 101 violates a plan policy "discouraging" direct intersection between local roads and principal arterials. The cited policy "discourages" but does not bar such intersections. We therefore reject the argument.

We also reject a similar argument pertaining to the allowance of through traffic as a result of the loop design of Sunset and Horizon Drives. The ordinance "discourages" through streets but does not prohibit them.

Next, petitioners claim there is no factual support for the county's conclusion that nearly all the traffic associated with the subdivision will use Horizon Drive. They argue that demands will also be made on Sunset Drive and that the record shows the road is inadequate.

Respondents answer by citing an engineer's testimony to the effect that Sunset Drive access is incidental to the subdivision and that Horizon Drive will serve as the principal access. The expert's testimony is admittedly conclusional. However, it constitutes substantial evidence to support the challenged finding. Valley & Siletz Railroad v. Laudahl, 56 Or App 487, 491, 642 P2d 337 (1981); pet for rev dis, 296 Or 779 (1984).

Petitioners' last challenge in this assignment of error is that the county failed to adopt findings in connection with Section 27(1) of the land division ordinance. That section sets forth the following standard:

> "The location, width and grade of streets and other public ways shall be considered with their relation to existing and planned streets, to topographic conditions, to public convenience and safety, and to the proposed use of the land to be served by the streets...."

Petitioners are correct. The standard must be addressed in

the final order.

The sixth assignment of error is sustained. On remand, the county must (1) address the question of excessive grades in terms of the waiver standard set forth in the ordinance, and (2) demonstrate that all intersection standards are satisfied by the proposed design.

SEVENTH ASSIGNMENT OF ERROR

Petitioners next object to the incorporation into the final order of

> "all of the exhibits, testimony and staff reports which were presented at the hearing of the Board of Commissioners on April 3, 1985." Record at 6.

Although we agree that the county's order includes the foregoing language, we have reviewed the appeal on the assumption that Order No. 85-82 and the attached exhibit constitute the entirety of the county's findings and conclusions. No further discussion of this assignment of error is warranted.

EIGHTH ASSIGNMENT OF ERROR

Petitioners' final contention is that the county commission erred in conducting a view of the proposed subdivision site without notice to the parties and after the close of the public hearing concerning the application. It is undisputed that the site visit was conducted. The record indicates also that a planning official accompanied the commissioners and answered their questions about drainage issues. We agree the board

erred in conducting the site visit without notice or opportunity for the parties to participate. Concerned Property Owners of Rocky Point v. Klamath County, 3 Or LUBA 182, 188 (1981).

This assignment of error is sustained.

The county's order is remanded for proceedings consistent with this opinion.

FOOTNOTE

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1 Our references to "Respondents" indicate John and Madelyne Memering and Tillamook County. A single responsive brief was filed by both parties.

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2 Goal 7 states:

"GOAL: To protect life and property from natural disasters and hazards.

"Development subject to damage or that could result in loss of life shall not be planned nor located in known areas of natural disasters and hazards without appropriate safeguards. Plans shall be based on an inventory of known areas of natural disaster and hazard.

"Areas of Natural disaster and Hazards - are areas that are subject to natural events that are known to result in death or endanger the works of man, such as stream flooding, ocean flooding, ground water, erosion and deposition, landslides, earthquakes, weak foundation soils and other hazards unique to local or regional areas."

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3 One exception to this point is set forth in Section 10 of the land division ordinance. It provides:

"If the subdivision plat pertains to only part of the tract owned or controlled by the subdivider, the Planning Commission may require a sketch of a tentative layout for streets in the unsubdivided portion."

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4 ORS 92.010(12) defines "subdivide land" to mean

"...to divide an area or tract of land into four or more lots within a calendar year when such area or tract of land exists as a unit or contiguous units of land under a single ownership at the beginning of such year."

Under ORS 92.010(1), a "lot" is "a unit of land that is created by a subdivision of land." See also, Section 2(20), Tillamook County Land Division Ordinance. We conclude that the Seaward Slopes proposal is to create nine subdivision lots.

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5 Under the land division ordinance, lot size adjustments can be required when public water service is unavailable. See, Section 36(1), Tillamook County Land Division Ordinance. We believe such adjustments should be made, if necessary, during the preliminary plat review stage, before construction and related activities have firmly committed the site to a given layout. For this reason, we believe the county should have conditioned preliminary plat approval on the district's of unqualified ability to provide service. Such a condition would make it clear that the district's inability to deliver services would necessitate amendment of the preliminary plat, i.e., further review and hearings by the county.

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6 Petitioners also argue that relief from the 12% grade standard could only be allowed by way of a variance under the land division ordinance. However, we reject that argument because Section 27(11) of the ordinance specifically incorporates a waiver standard. The general variance provisions in the ordinance are therefore inapplicable in this instance.

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7 We have some doubt as to the applicable requirement for distance between the Sunset Drive and Horizon Drive intersections with Highway 101. The land division ordinance seems to require a 200 foot separation between T intersections. See Section 27(4). On the other hand, the plan establishes 400 feet as the "minimum desirable distance" between offset T intersections along Highway 101. On remand, the county should clarify which standard(s) applies.