BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

1000 FRIENDS OF OREGON, an Oregon non-profit corporation, Petitioner, vs. WASHINGTON COUNTY, Respondent, and JIM ALLISON, Respondent-Participant.	LUBA No. 85-100 FINAL OPINION AND ORDER

Appeal from Washington County.

Robert E. Stacey, Jr., Portland, filed the petition for review and argued on behalf of petitioner.

Dan R. Olsen, Hillsboro, filed a response brief and argued on behalf of Respondent County.

Jim Allison, Sherwood, filed a response brief and argued on his own behalf.

DuBAY, Referee; KRESSEL, Chief Referee, participated in the decision.

BAGG, Referee, Concurring

REMANDED 04/11/86

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

Opinion by DuBay.

NATURE OF DECISION

Petitioner appeals a decision changing the county's comprehensive plan and zoning map from Agricultural (AF-20) to Rural Residential (AF-5) for approximately 26 acres. The change requires an exception to statewide planning goals.

FACTS

Eighteen of the 26 acres are used for raising grain. Soils are Class II on 14 acres, Class III on 10 acres, and Class IV on 2 acres. The property is outside the regional urban growth boundary. However, the land on three sides is zoned AF-5, the result of a previous exception to statewide planning goals. Across the road on the fourth side is a 72 acre tract zoned AF-20, the same designation as the subject property. The 72 acre tract is vacant, although it is platted into six lots.

The county first approved this map amendment in December, 1984. The decision was appealed and resulted in a remand. See 1000 Friends of Oregon v. Washington Co., 13 Or LUBA 65 (1985). Thereafter, the governing body remanded the application to the planning commission. The planning commission approved the map amendment. Petitioner appealed the planning commission decision to the county commission, which affirmed the planning commission.

Before discussing the merits, we take up a preliminary procedural question.

MOTION TO DISMISS PARTICIPANT ALLISON AS A PARTY

Petitioner moves for an order dismissing Participant James Allison for lack of standing to appear in the appeal. Mr. Allison filed a Statement of Intent to Participate in accordance with OAR 661-10-020(1) and filed a brief in opposition to the petition for review.

Allison contends he has standing to participate as an intervenor according to ORS 197.830(5). This provision states:

> "(5) Within a reasonable time after a petition for review has been filed with the Board, any person may intervene and be made a party to the review proceeding upon a showing of compliance with subsection (2) or (3) of this section."

Subsections (2) and (3) of ORS 197.830 set forth the statutory requirements for standing to appeal to LUBA.

ORS 197.835(3) provides in relevant part:

> "...a person may petition the Board for review of a quasi-judicial land use decision if the person:
>
> * * *
>
> "(b) Appeared before the local government, special district or state agency orally or in writing; and
>
> "(c) Meets one of the following criteria:
>
> "(A) Was entitled as of right to notice and hearing prior to the decision to be reviewed; or
>
> "(B) Is aggrieved or has interests adversely affected by the decision."

Allison does not allege he was adversely affected or aggrieved by the decision. His allegations are framed to show compliance with ORS 197.830(3)(c)(A). That is, he claims he

was entitled as of right to notice and hearing prior to the decision.

The county ordinance requires notice of hearings on small tract map amendments must be given to the following:

> "A. The applicant or representative;
>
> "B. All property owners of record...(within 250 feet or 500 feet, depending on whether the property is in the urban or rural areas).
>
> "C. The Community Planning Organization within which the subject property is located." Washington County Community Development Code, Section 204-4.2

Mr. Allison does not say which of these categories apply to him. He alleges only that he was a "party of record" in the county proceedings and that the county provided him with notice of the hearing and a copy of the final decision. These allegations do not show compliance with the standing requirements in ORS 197.830(3)(c)(A).

The record shows Mr. Allison appeared at the planning commission hearing to give testimony as the applicant's land use consultant. The record also includes a document signed by Mr. Allison which makes statements about conditions on and near the property and an opinion about the practicability of farming it. These facts show Mr. Allison was entitled to notice, if at all, as a representative of the applicant. However, he represents only himself in this appeal. His entitlement to notice as a representative of the applicant does not bring him within the coverage of ORS 197.835(3)(c)(A).[1]

The record does not show Mr. Allison was entitled to notice

of hearing prior to the decision under the county ordinances. We therefore sustain petitioner's motion to dismiss Mr. Allison as a party to the appeal.

FIRST ASSIGNMENT OF ERROR

Petitioner says the county's findings do not demonstrate the decision complies with criteria for an exception based on irrevocable commitment in ORS 197.732, Statewide Goal 2, and the goal's implementing rules.

ORS 197.732 authorizes a local government to adopt an exception to a statewide goal when:

> "(b) The land subject to the exception is irrevocably committed as described by commission rule to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors makes uses allowed by the applicable goal impracticable;"

A conclusion that land is irrevocably committed to uses not allowed by the goal must be based on one or more of seven factors listed in Goal 2's implementing rules. The factors are:

(a) Existing adjacent uses;
(b) Public facilities and services (water and sewer lines, etc.);
(c) Parcel size and ownership patterns of the exception area and the adjacent lands;
(d) Neighborhood and regional characteristics;
(e) Natural boundaries and other buffers separating the exception area from adjacent resource land;
(f) Fiscal development; and
(g) Other relevant factors.

Even though the order includes findings about four of these seven factors, the county concluded that the property cannot be profitably farmed because the parcel size is too small and ownership patterns prevent use of the property as part of a

larger operation. The county found this factor alone justifies a finding of irrevocable commitment to non-farm uses. Petitioner nevertheless challenges findings regarding the factors which were not relied on by the county. Nothing is served by our review of non-essential findings. Bonner v. City of Portland, 11 Or LUBA 40, 50-52 (1984).

The county's order identifies two key issues which form the basis for the county's conclusion that parcel size and ownership patterns commit the property to nonresource use. The issues are:

> "(a) Whether the parcel alone can be profitably be used for agriculture;
>
> "(b) Whether it can be reasonably combined with other parcels and managed with them equitably." Record at 53.

The county answered these two questions by finding the property cannot be profitably farmed, either alone or in conjunction with other lands. The county's reasons may be summarized as follows:

1. Because part of the property is in the flood plain and the soil is poorly drained, only 18 acres are practicable for farming.

2. Poor drainage on the 18 acres limits crops to those requiring large acreages to be profitable, e.g., pasture, small grain, grass and legume seed production and hay.

3. No contiguous properties are in farm use.

4. To get farm equipment to the property requires travel over Evergreen Road, a heavy traveled urban road.

5. Local farmers facing the expenses of operating

> separate fields and the risks imposed by heavy traffic will not use property this size.

This rationale fails to give sufficient weight to the existing use of the property for raising grain. The findings do not show, as they must, that the land is unprofitable or impracticable for farming. Where, as here, the land is being used for farm purposes, statements that other farmers would choose not to farm it because of operating difficulties do not show irrevocable commitment to nonfarm use.

The county found the present operator is farming the parcel at the request of the owner, his brother. Further, the county noted access to the parcel for farm equipment is not over Evergreen Road, but over a private way. The county described the situation as "unique," and not available to other farmers. However, the findings do not explain why the access is not available to others.[2] The significant fact is that the parcel is currently in farm use by an operator who also farms nearby property. Findings that some operators would not risk taking equipment over Evergreen Road do not demonstrate the impracticability of farm use in these circumstances.

We sustain this assignment of error.

SECOND ASSIGNMENT OF ERROR

Petitioner alleges the county's findings are not supported by substantial evidence in the record in 10 instances.

1. "...[T]he code recognizes that there will be impact on surrounding property because of the six subdivision lots to the west and recognizes that there will be effort to minimize the impact, not

eliminate it." Record at 45.

2. "...(New parcel) is in close proximity to industrially designated areas that are currently experiencing development. It is also in the vicinity of the area now proposed for UGB expansion." Record at 45.

These findings are included in the section concerning adjacent uses. However, the findings do not address the criteria in ORS 197.732 and Goal 2 regarding existing adjacent uses. Future development proposals are not relevant in determinations whether existing adjacent uses irrevocably commit lands to nonresource uses. Because the finding is legally inadequate petitioner's challenge to its evidentiary basis requires no decision. See Allen v. Columbia Co., 8 Or LUBA 78 (1983).

3. "The average parcel size of a farming site in Washington County ranges from 56 acres for horticultural specialities to 273 acres for general farms." Record at 47.

Petitioner points out that the sole source for this finding, Exhibit C to the decision, shows entire farm sizes in the county, as distinguished from sizes of parcels making up farms. Petitioner is correct. The finding is not supported by substantial evidence.

4. "According to SCS, approximately 8 acres of the 16 acres parcel is in flood plain and would be very impracticable to farm, except as pasture." Record at 48.

Petitioner says the parcel is 26, not 16, acres. Although petitioner is correct, we see no error. The figure 16 is obviously a typographical error as other findings on the same

page state 18 acres are available for farming.

> 5. "The opponents counter these opinions (about the utility of the subject parcel as part of a commercial farm) with no expert opinion (and) no testimony from anyone with experience in farming." Record at 49.

This finding expresses the county's views about the evidence, or lack of evidence, submitted by the opponent. Even if the finding is not supported by substantial evidence, the decision still rests on other findings about the practicality of farming the 18 acres as part of a larger farm. Only evidence relied upon to support necessary findings need be reviewed for substantial evidence. Comments about conflicting evidence are not in this category. Petitioner's objection may not be sustained for this reason alone. However, we believe the challenged finding is supported in the record.

Petitioner contends expert testimony was submitted in the form of Oregon State University Extension Service Report No. 697. The report, which includes no background information about the experience or training of its preparers, shows it is prepared by the Extension Service and the Department of Geography of Oregon State University. Record 313-314. The report consists of statistical information about farms, including the size, value, income, expenses, the size and distance of fields making up the farms, and market information. Data for each type of crop are tabulated in the report.

We deny petitioner's charge. We construe the finding to

say that no opponent testified at the hearing as an agricultural expert about the practicality of using the 26 acres as part of a commercial farm. The statistical report does not refute the challenged finding.

6. "...[T]he only reason that the parcel is in farm use is that the brother of the applicant is doing it as a favor because the land is owned by his brother." Record at 49.

Petitioner argues this finding makes a statement about the reasons the property is currently in farm use that is not supported in the record. We agree.

In context, the finding attempts to discount the importance of evidence that the property is currently being farmed. The idea, as we read the finding, is that the property is not suited to farm use and that it is in farm use now only because the present operator wishes to help his brother. The finding is not borne out by the record. The owner's brother stated:

"First, why do I farm my brother Jerry Vanderzanden's 26 acre parcel. [sic] It is because it is my brother's land, and he wants someone to care for it. He lives in Idaho." Record at 138.

This statement shows that the only reason this operator is farming the property is his brother's request. Other operators may have valid reasons for farming the property that are not excluded by the present operator's statement.

We sustain this challenge.

7. "The statistics offered by opponents are not reliable in this situation. First, they derive from Clackamas County, that no evidence has been introduced to establish they apply to a comparable situation.... No contention has been

made that these responses were randomly selected or that they are statistically significant.... There is no indication that typical field size is the same as minimum field size necessary to support a profitable farm operation." Record at 50.

8. "This evidence comes from the survey of Clackamas County agriculture and the opponents have done nothing to establish similar circumstances between the present situation and those prevailing among the respondents in the study they relied upon." Record at 50.

Petitioner challenges the evidentiary support for the county's statements about the Oregon State University Extension Service Report No. 697 submitted by petitioner. The challenged findings explain the county's reasons for not relying on the report to reach a final decision. However, even if these findings are not supported by substantial evidence, the decision still rests on other findings about the practicability of farming the 18 acres as part of a larger farm. Only evidence relied upon to support necessary findings need be reviewed for substantial evidence. Bonner v. City of Portland, 11 Or LUBA 40 (1984). Statements of reasons for rejecting conflicting evidence are not required. Petitioner's evidentiary challenge to the findings may be rejected for this reason alone. In any event, however, we believe the challenged findings are supported by substantial evidence.

As we understand the finding, the county refuses to accept the report as an accurate portrayal of Washington County agriculture in general or the farmability of this parcel in particular. Primarily, the commissioners did not believe the

report showed how the survey applies to Washington County. The reports' only comment on this issue is in the following explanatory note:

> "This survey was administered by Oregon State University, Department of Geography, for the purpose of supplementing census data on characteristics of commercial agricultural. The data for Clackamas County are intended to represent baseline data for Agricultural District 1 which includes Columbia, Washington, Yamhill, Clackamas and Multnomah Counties." Record at 314.

While this explanatory note avows an intention to provide baseline data for Agricultural District 1, nothing in the report shows the relationship between these five counties. The significance of Agricultural District 1 is not explained. If farms in Clackamas County are similar to farms in Washington County, the report does not say so. In fact, the record shows dissimilarities in each of the two counties. For example, the county found the average size of grain farms in Washington County is 261 acres. Record at 36.[3] Yet the report shows the mean size of grain farms in Clackamas County is 129 acres. Record at 317. In these circumstances, substantial evidence supports the finding that the report fails to establish the similarity between Washington County farms and farms surveyed in Clackamas County.

Since the county rejected the report for lack of relevance to Washington County, the statistical reliability of the report for farms surveyed in Clackamas County is not an issue. We see no point in further analysis of petitioner's allegations about

the statistical reliability of the report.

> 9. "Evergreen Road is one of 'only three major arterials' designated in the Hillsboro area (page 18), and 'this is a major arterial and carries traffic serving major industrial areas within the Hillsboro area.'" Record at 51.

Petitioner alleges that no evidence in the record shows Evergreen Road is a designated arterial, and no evidence shows that Evergreen Road in the vicinity of 273rd Street carries heavy traffic to industrial areas. In reviewing this evidentiary support challenge, we must rely on respondents to show us where the supporting evidence is found in the record. 1000 Friends of Oregon v. Washington Co., 13 Or LUBA 65, 67-68 (1985). See also City of Salem v. Families for Responsible Govt, 64 Or App 238, 249, 668 P2d 395 (1983), rev on other grounds, City of Salem v. Families for Responsible Govt, 298 Or 574, 684 P2d 965 (1985). Respondents have not done so. Even if we may take notice of the county's official road designations in its comprehensive plan, the county has not supplied any information about where the designations in the plan may be found. We will not undertake an independent search of the county's planning documents to discover evidence supporting the findings. Petitioner's challenge is sustained.

> 10. "It is not practicable to safely move farm machinery on the major arterial, Evergreen Street."

This conclusion is based on findings that summarize the evidence about roads near the property. Mr. Allison, a land use consultant and farmer in the area, submitted a statement

that the property is served by an inefficient road network, and that the only way to get farm equipment to the property is via Evergreen Road

> "which is a heavily traveled road in a fast developing area. This would mean holding up urban traffic which can be hazardous." Record 75.

The county also quoted from the statement of Valentine Schaaf, a farmer with experience farming noncontiguous fields as part of a large farm operation. Mr. Schaaf said:

> "Another limiting factor is the cost of moving our farm machinery and the traffic problems caused by our slow moving equipment over urban roads or other roads where there is heavy traffic.
>
> * * *
>
> "If the field is near or in an urbanized area where the traffic is heavier than in rural areas, then I believe that such isolated fields probably should be larger than 20 acres. Otherwise, given the problems of adjacent homesites coupled with the traffic hazards of moving the equipment over urban roads, it is not practicable in most cases for a farmer to rent or lease the land." Record at 71.

The county found Mr. Schaaf's opinion applicable to the property in question.

Petitioner points to no evidence detracting from the evidence relied upon by the county except the statement by petitioner's representative that Evergreen Road is not "an insurmountable obstacle to farm equipment."

The county's findings about the impracticability of moving farm equipment on Evergreen Road is supported by substantial evidence.

In summary, we uphold petitioner's evidentiary challenges to the three findings, numbered 3, 6 and 9 above. Petitioner's remaining challenges are denied.

THIRD ASSIGNMENT OF ERROR

Petitioner says the decision is flawed for failure to submit a map or aerial photo of the exception area and adjoining lands as required by ORS 660-04-028(7). The rule states:

> "(7) The evidence submitted to support a committed exception shall, at a minimum, include a current map, or aerial photograph which shows the exception area and adjoining lands, and any other means needed to convey information about the factors set forth in this rule."

We note that OAR 660-04-028(7) was not in effect when the county made its decision. The county decision on October 8, 1985, predates the effective date of the rule which was filed with the Secretary of State on November 15, 1985. The amended rule provides that the requirement in Section 7 for a map or aerial photograph applies only to committed exceptions adopted after the effective date of the amendment. OAR 660-04-028(8).[4]

For these reasons, we deny this assignment of error.

FOURTH ASSIGNMENT OF ERROR

The county's procedures for plan map amendments are challenged in this last assignment of error. By county ordinance, decisions to amend the map are made in the first instance by the planning commission. This decision is final

unless appealed to the county commissioners. Petitioner claims this violates state law requiring hearings by county governing bodies before action regarding a comprehensive plan is effective. Petitioner relies on the following two statutory provisions.

> "The county governing body shall adopt and may from time to time revise a comprehensive plan and zoning, subdivision and other ordinances applicable to all of the land in the county. The plan and related ordinances may be adopted and revised part by part or by geographic area." ORS 215.050(1).

> "Action by the governing body of a county regarding the plan shall have no legal effect unless the governing body first conducts one or more public hearings on the plan and unless 10 days' advance public notice of each of the hearing is published in a newspaper of general circulation in the county or, in case the plan as it is to be heard concerns only part of the county, is so published in the territory so concerned and unless a majority of the members of the governing body approves the action. The notice provisions of this section shall not restrict the giving of notice by other means, including mail, radio and television." ORS 215.060

After this Board's decision in 1000 Friends of Oregon v. Washington County, 13 Or LUBA 65 (1985), the county commissioners remanded the application to the planning commission for further proceedings. The planning commission approved the application. Petitioner appealed to the county commissioners, alleging in part that the planning commission is prevented from making final amendments by the above-quoted statutes. Petitioners contend here, as they did below, that the county commissioners must hold hearings on the plan change according to ORS 215.060. According to petitioner, the

county's requirement that petitioner file an appeal and pay an appeal fee to obtain a hearing the statute requires is a violation of the statute.

Petitioner does not allege the commissioners' final order violated ORS 215.050 and 215.060. However, petitioner contends the county's plan amendment procedures violate state law and has prejudiced a substantial right of petitioners, viz, the right to present testimony at a hearing required by statute without paying a fee.

The county presents several defenses to this challenge. First, the county asserts these procedures were in effect for approximately 12 years and were approved by the Oregon Supreme Court in Fifth Avenue Corp. v. Washington County, 282 Or 591, 581 P2d 50 (1978). According to the county, the court approved the county's small tract zoning amendment procedures for small tract comprehensive plan amendments. We disagree.

In Fifth Avenue Corp., supra, the court considered both the validity of the county's plan adoption procedures and the plaintiff's challenge to its validity as applied under the doctrine of exhaustion of remedies. The court first held ORS 215.050, requiring the county governing body to adopt comprehensive plans, does not require observance of the same formalities required to adopt an ordinance.[5] The court also held the plan adoption procedures were the functional equivalent of the county's procedures to adopt ordinances. We think it significant that the court suggested in a footnote

that strict compliance with ordinance adoption procedures would subject the procedure to attack for violation of the notice requirements in ORS 215.060. See Fifth Avenue Corp. v. Washington County, supra, at 603.[6]

In its discussion of the exhaustion of remedies doctrine, the issue before the court was whether the county's ordinances provided a means to obtain changes in comprehensive plan designations for small tracts. The court found that the zoning ordinance expressed the sole method to make administrative quasi-judicial changes, including small tract comprehensive map amendments. Accordingly, the court found the applicant had an available remedy.

Although the court found the procedure available, the court did not review the procedure for compliance with the requirements of ORS 215.060. Consequently, we do not consider Fifth Avenue Corp., supra, as approval of the county's procedures making small tract comprehensive plan changes without compliance with ORS 215.060.

The county also claims the comprehensive plan map change is a contested case as defined in ORS 215.402(1).[7] Governing bodies are authorized by statute to designate planning and zoning hearings officers to hear and decide contested cases. ORS 215.406. Respondent claims this statutory framework empowers Washington County to designate small tract comprehensive plan amendments as contested cases to be heard and decided by the planning commission.

This construction of ORS 215.402 and 215.406, however, fails to take account of other sections in the same legislation enacted in 1973. As part of the same bill which adopted ORS 215.402 and 215.406, the provisions of ORS 215.050 and 215.060 were amended. See 1973 Or Laws, Chapter 552. The substance of the amendments was to substitute "governing body" for "planning commission" in both ORS 215.050 and 215.060. One of the evident purposes of the amendment was to designate local governing bodies as the unit of government responsible for adoption and revision of comprehensive plans. This legislative assignment of responsibility to governing bodies is inconsistent with respondent's interpretation.

We, therefore, do not accept the county's characterization of comprehensive plan map amendments as contested cases which may be decided by planning commissions.

Respondent also finds support for its position in the revised definition of "land use decision" in ORS 197.015(10). According to respondent, before 1981, the definition referred to decisions of the "city, county or special district." See 1979 Or Laws, Ch. 772, Sec. 3. The 1981 amendment changed the reference to decisions of the "local government." See 1981 Or Laws, Ch. 748, Sec. 1.

According to respondent, this indicates that comprehensive plan map revisions may be decided by other governmental agencies besides governing bodies.

We do not accept this view of the amended definition.

Hearings officers and planning commissions are empowered to make a variety of decisions regarding permits and other land use matters under various county ordinances and regulations. The inclusion of these decisions by hearings officers and planning commissions as land use decisions does not mean that hearings officers and planning commissions are authorized to make all land use decisions. The requirements of ORS 215.060 indicate otherwise.

Respondent next contends that petitioner's arguments, if carried to their logical conclusion, would prohibit small tract zone change decisions by hearings officers and planning commissions. Respondent says such changes are generally recognized as within the power of hearings officers and planning commissioners.

Assuming counties may authorize small tract zoning changes by hearings officers and planning commissions, respondent's argument fails to meet petitioner's claim that ORS 215.060 applies expressly to actions regarding the comprehensive plan. This case involves a plan change. We reject respondents' claim.

Respondent also points to ORS 215.432(1)(a) to buttress its argument. Respondent says this statute allows the county to establish procedures to control local appeals process, citing Colwell v. Washington County, ___ Or LUBA ___ (1986) (LUBA No. 85-063, dated January 12, 1986). There, the county commissioners dismissed an appeal of a planning commission

decision granting a small tract plan amendment. The appeal was dismissed because filing fees required by county ordinance were not paid. We held the petitioner had not exhausted local remedies as required by ORS 197.825(a). We also held that imposition of an appeal fee is authorized by ORS 215.422(1)(a). The merits of petitioner's claims were not addressed because petitioner's failure to exhaust all local remedies required affirmance of the county's decision. The decision in Colwell, supra, does not control our review of petitioner's claim here.

Last, respondent claims the county's home rule powers authorize it to establish procedures for quasi-judicial decisionmaking, including small tract amendments to its comprehensive plan. According to respondent's argument, the controlling statutes do not clearly displace or impinge upon the county's right to establish its own quasi-judicial procedures. We disagree. As stated above, we believe ORS 215.050 and 215.060 grant exclusive responsibility for comprehensive plan adoption and amendments to county governing bodies.

If respondent's argument is more far reaching and includes a claim that ORS 215.050 and 215.060 may not control the procedural aspects of county government, our jurisdiction to decide this issue is doubtful. To sustain this position requires a determination that the statutes violate the home rule powers authorized by Article VI, Section 10 of the Oregon

Constitution. While ORS 197.835(8)(a)(E) allows the Board to reverse a land use decision determined to be unconstitutional, no authority is granted to declare a state legislative act unconstitutional.

This assignment of error is sustained.

Remanded.

Bagg, Referee, Concurring.

I concur in the result in this case but I would require the county to consider an additional matter on remand.

In the second assignment of error, petitioner challenges a finding that it is not practicable to safely move farm machinerey on Evergreen Road. Evidence supporting this finding includes testimony that the road is "heavily traveled." I do not believe this conclusion is a sufficient basis, even when combined with other testimony about practical difficulties in moving farm equipment, to support the finding. "Heavy traffic" is not defined. Is it heavy at rush hour? Is "heavy traffic" 10 cars per hour, 20, 50? How much traffic does it take to disrupt farm equipment travel?

As this case is being remanded, I would require the county to review this issue further.

FOOTNOTES

1

Mr. Allison's testimony qualified him as a party according to county ordinances. However, his status as a party in the county proceedings does not entitle him to notice and hearing under the applicable code section, Section 204-4.2, quoted in the text.

2

Petitioner contends the private right of access is a right that runs with land the current operator is farming under a lease. Petitioner argues the right is available to any one leasing the other property. The findings neither reflect these allegations nor provide another explanation about ownership of the right of way or under what conditions it may be used.

3

The data for average size of farms in Washington County is also supplied by Oregon State University Extension Service.

4

OAR 660-04-028 states:

"(8) The requirement for a map or aerial photograph in section (7) of this rule only applies to the following committed exceptions:

"(a) Those adopted or amended as required by a Continuance Order dated after the effective date of OAR 660-04-028(7); and

"(b) Those adopted or amended after the effective date of OAR 660-04-028(7) by a jurisdiction with an acknowledged comprehensive plan and land use regulations."

5

The court also held adoption of a comprehensive plan is a legislative responsibility. The court interpreted the county charter to authorize the county commissioners to exercise this responsibility through procedures provided by ordinance or resolution. Since procedures established by an ordinance were followed, the court held the plan was lawfully adopted.

[6] The court noted that the county's ordinance adoption procedures do not require publication of notice of the hearing at least 10 days prior to the hearing as required by ORS 215.060.

[7] ORS 215.402 provides in part:

> "(1) 'Contested case' means a proceeding in which the legal rights, duties or procedures of specific parties under general rules or policies provided under ORS 215.010 to 215.213, 215.215 to 215.263, 215.283 to 215.337 and 215.402 to 215.438, or any ordinance, rule or regulation adopted pursuant thereto, are required to be determined only after a hearing at which specific parties are entitled to appear and be heard."

CERTIFICATE OF MAILING

I hereby certify that I served the foregoing Final Opinion and Order for LUBA No. 85-100, on April 11, 1986 by mailing to said parties or their attorney a true copy thereof contained in a sealed envelope with postage prepaid addressed to said parties or their attorney as follows:

Robert E. Stacey, Jr.
300 Willamette Bldg.
534 SW Third Avenue
Portland, OR 97204

Dan R. Olsen
Assistant County Counsel
150 North First
Hillsboro, OR 97124

Jim Allison
Route 3, Box M73
Sherwood, OR 97140

Dated this 11th day of April, 1986.

Patricia J. Kadaja
Patricia J. Kadaja
Administrative Assistant