

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

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THOMAS MORLEY and LAURA MORLEY,)
husband and wife,)
Petitioners,)
vs.)
MARION COUNTY,)
Respondent.)

LUBA No. 87-095
FINAL OPINION
AND ORDER

Appeal from Marion County.

Robert L. Engle, Woodburn, filed the petition for review and argued on behalf of petitioners. With him on the brief was Eichsteadt, Bolland, Engle & Schmidtman.

Jane Ellen Stonecipher, Salem, filed a response brief and argued on behalf of respondent. With her on the brief was Robert C. Cannon.

SHERTON, Referee; BAGG, Chief Referee; HOLSTUN, Referee; participated in the decision.

AFFIRMED 02/03/88

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

1 Opinion by Sherton.

2 NATURE OF THE DECISION

3 This is an appeal of the county's denial of petitioners'
4 application for (1) a minor partition to divide an 11 acre
5 EFU-zoned parcel into an 8 acre and a 3 acre parcel; and (2) a
6 conditional use permit to allow a dwelling not in conjunction
7 with farm use (non-farm dwelling) on the 3 acre parcel.

8 FACTS

9 Petitioners own an 11 acre, triangular shaped parcel in the
10 exclusive farm use (EFU) zone. The subject property is
11 bordered on the east by Keene Road and on the northwest by a
12 railroad track with a raised bed. There are three non-farm
13 parcels across the railroad tracks from the proposed 3 acre
14 parcel and one small parcel across the road from the proposed 8
15 acre parcel. These four parcels all contain dwellings. The
16 other parcels surrounding the subject property are all large
17 farm parcels. All surrounding property is zoned EFU.

18 The subject property contains two dwellings and a farm
19 accessory building. One of the dwellings, a mobile home, was
20 placed on the property under a hardship conditional use
21 permit. The hardship no longer exists, and petitioners have
22 been asked by the county to remove the mobile home. The denied
23 minor partition/conditional use permit would allow the mobile
24 home to remain in its present location as a non-farm dwelling
25 on the proposed 3 acre parcel.

26 The requested minor partition and conditional use permit

1 were initially denied by the Marion County Planning Director.
2 Petitioners appealed that decision to the Marion County
3 Hearings Officer, who, after a public hearing, issued an order
4 denying the applications. Petitioners appealed the Hearings
5 Officer's decision to the Marion County Board of Commissioners,
6 which denied the appeal, adopting the findings and conclusions
7 of the Hearings Officer.

8 SCOPE OF REVIEW

9 A local government decision denying a requested land use
10 approval or permit must be upheld if the proposed development
11 does not meet all applicable approval criteria. Heilman v.
12 City of Roseburg, 39 Or App 71, 77, 591 P2d 390 (1979);
13 Marracci v. City of Scappoose, 26 Or App 131, 552 P2d 552, rev
14 den (1976). In reviewing a local government's decision denying
15 a requested approval or permit, we examine the decision to
16 determine whether there are findings supporting a conclusion
17 that any one of the required approval criteria has not been
18 met. Portland City Temple v. Clackamas County, 11 Or LUBA 70,
19 78 (1984); Weyerhauser v. Lane County, 7 Or LUBA 42, 46 (1982).

20 If a local government denial contains adequate findings
21 demonstrating noncompliance with a required approval criterion,
22 and those findings are supported by substantial evidence in the
23 record, the denial will be affirmed. In such cases affirmance
24 is required even if the local government's findings on other
25 applicable criteria are erroneous or unsupported by substantial
26 evidence in the record. McCoy v. Marion County, ___ Or

1 LUBA ____ (LUBA No. 87-063; December 15, 1987). In addition,
2 affirmance is required if the local government's findings and
3 conclusion that a required approval criterion has not been met
4 are not challenged by petitioners in their petition for review,
5 even if petitioners successfully challenge the local
6 government's determinations of noncompliance with other
7 required approval criteria. Cf. Davis v. Marion County, ____ Or
8 LUBA ____ (LUBA No. 86-083; February 23, 1987).

9 FIRST ASSIGNMENT OF ERROR

10 "The Hearing Officer erred in finding that the
11 surrounding uses are predominantly commercial farm
12 operations and in concluding that the approval of the
partitioning application would therefore materially
alter the stability of the area."

13 In this assignment of error petitioners challenge the
14 county's determination of noncompliance with Marion County
15 Zoning Ordinance (MCZO) 136.040(d)(3). MCZO 136.040(d)(3) sets
16 out the following criterion for approval of a conditional use
17 permit for a non-farm dwelling in the EFU zone:

18 "It does not materially alter the stability of the
19 overall land use pattern of the area."

20 In addition, MCZO 136.070(b)(2) sets out the following
21 requirement for the partitioning of land in the EFU zone to
22 create non-farm parcels:

23 "The criteria in Section 136.040 applicable to the
24 proposed use of the parcel shall apply to the creation
of the parcel."

25 Thus, under the MCZO, the above-quoted "stability" criterion of
26 MCZO 136.040(d)(3) is an approval standard both for a partition

1 of EFU-zoned land to create a non-farm parcel to be used for a
2 non-farm dwelling and for a conditional use permit for a
3 non-farm dwelling.

4 Petitioners argue that the county's findings addressing
5 MCZO 136.040(d)(3) do not properly identify the overall land
6 use pattern of the area, are conclusional and are not supported
7 by substantial evidence in the record. Specifically,
8 petitioners argue that the "area" for which the county
9 identified the overall land use pattern should be determined
10 "in relation to the access roads which serve the surrounding
11 properties," and should be limited to properties abutting Keene
12 Road. Petition for Review 12. Petitioners also argue the
13 evidence in the record requires a finding that the overall land
14 use pattern in this area is a combination of rural residential
15 and farm uses. Finally, petitioners argue the county's
16 findings in support of its conclusion that the proposed
17 partition and non-farm dwelling would materially alter the
18 overall land use pattern in the area either are not relevant to
19 the ordinance criterion or are not supported by substantial
20 evidence.

21 The county responds that its identification of the relevant
22 "area" under MCZO 136.040(d)(3) properly included large parcels
23 surrounding the subject property, and its characterization of
24 the overall land use pattern of the area is supported by
25 substantial evidence in the record. The county argues
26 petitioners must show more than that there is evidence in the

1 record to support their position. The county also argues that
2 its findings and conclusions as to why the proposed partition
3 and non-farm dwelling would materially alter the stability of
4 the land use pattern of the area are supported by evidence in
5 the record. The county adds it was entitled to consider the
6 effect of the requested approvals against possible future
7 applications, citing our decision in Endresen v. Marion County,
8 15 Or LUBA 60 (1986).

9 To support a denial on the basis of noncompliance with MCZO
10 136.040(d)(3), the county's findings must (1) identify the
11 "area" considered, (2) describe the overall land use pattern of
12 that area, and (3) explain why the county does not believe the
13 proposed partition and non-farm dwelling will not materially
14 alter the stability of that land use pattern.

15 Although the county could have been more specific in
16 delineating the extent of the "area" it considered, the
17 county's findings¹ are sufficient to indicate that the county
18 defined the "area" as being properties immediately surrounding
19 and in the general area of the subject 11 acre property.
20 Because considering only the immediate vicinity of a parcel
21 would not provide analysis of "the overall land use pattern of
22 the area," the county would have erred had it considered only
23 the parcels adjoining the proposed 3 acre non-farm parcel or
24 only those abutting Keene Road, as urged by petitioners. See
25 Resseger v. Clackamas County, 7 Or LUBA 152, 158 (1983).

26 The county's order finds that the overall land use pattern

1 of the area is "large farm parcels."² Record 17. This
2 finding is supported by testimony of county planning staff and
3 aerial photographs which show the subject property to be
4 surrounded by predominantly large parcels under cultivation.
5 Record 24, 27, 74-75.

6 Additional evidence in the record to which petitioners
7 direct our attention does not conflict with that relied on by
8 the county, but simply places more importance on the presence
9 in the "area" of four small acreage homesites abutting Keene
10 Road.³ Record 61, 81, 82-83, 85-86. The evidence in the
11 record is evidence a reasonable mind would rely on to reach the
12 conclusion that the overall land use pattern in the area is
13 large farm parcels, and therefore the challenged finding is
14 supported by substantial evidence. Homebuilders Association of
15 Metropolitan Portland v. Metropolitan Service District, 54 Or
16 App 60, 62, 633 P2d 1320 (1981).

17 We must next consider whether the county's findings support
18 its conclusion that the proposed partition and non-farm
19 dwelling would materially alter this land use pattern.

20 Two bases stated by the county for its conclusion are that
21 two new non-farm parcels would be added to the area and that
22 there would be an expansion of non-farm dwellings in the EFU
23 zone. Record 17. These statements are not sufficient to
24 support the county's conclusion because they could be made
25 about any non-farm dwelling partition or conditional use permit
26 in an EFU zone. If finding that a non-farm parcel or dwelling

1 would be added to an area zoned EFU in itself justifies a
2 conclusion that the approval would materially alter the
3 stability of the area's land use pattern, there would be no
4 point in using the "stability" standard as an approval
5 criterion, as no division or conditional use permit would ever
6 satisfy it.

7 There are two other bases the county relies on for its
8 conclusion of noncompliance with the "stability" standard. The
9 county asserts approval "would make permanent what was done as
10 a temporary exceptional measure to relieve a family hardship -
11 placement of additional non-farm mobile homes in the EFU zone"
12 and "would set a precedent for the division of farm parcels
13 based on the relative difficulty or cost to use or improve
14 farmland for farm use and based on the evidence of personal
15 expense resulting from the obligation to abide by the terms of
16 approval for hardship placement of mobile homes." Record
17 17-18. We understand these findings to express the county's
18 concern that approval of the subject application would
19 encourage similar applications for non-farm parcels and
20 dwellings for other properties in the area.

21 We previously held that in reaching a conclusion of
22 noncompliance with the "stability" standard, the county is
23 entitled to consider the effect of approval of a non-farm
24 dwelling partition or conditional use permit against possible
25 future applications. McCoy v. Marion County, supra, at 12;
26 Endresen v. Marion County, 15 Or LUBA at 66. However, in both

1 McCoy and Endresen the county's findings described the history
2 of progressive partitioning and homesite development of the
3 subject area or subject property or found that there were other
4 similarly situated properties in the area for which similar
5 non-farm dwelling applications would be encouraged.

6 In this case, there are no findings on the history of
7 partitioning and homesite development in the area or findings
8 that there are other properties in the area which require
9 expensive techniques or improvements for farm use or are the
10 site of mobile homes approved on a temporary hardship basis.
11 Thus, the county's findings do not provide any basis for its
12 conclusion that approval of the subject applications will
13 encourage similar applications for other properties.

14 In sum, the county's findings do not justify its conclusion
15 that approval of this non-farm partitioning and dwellings would
16 materially alter the land use pattern of the area, and
17 therefore does not comply with MCZO 136.040(d)(3).⁴ The
18 first assignment of error is sustained in part.

19 SECOND ASSIGNMENT OF ERROR

20 "The Hearing Officer erred in finding that the soil
21 and land are suitable and adequate for farming and
22 farm use and in concluding that the approval of the
23 application would therefore fail to comply with the
24 intent of the agricultural policies of the Marion
25 County Comprehensive Plan."

26 In this assignment of error petitioners challenge the
27 county's determinations of noncompliance with MCZO 136.040(c)
28 and 136.040(d)(6). The challenges to the county's
29 determinations with regard to each of these approval criteria

1 will be discussed as separate subassignments of error below.

2 A. MCZO 136.040(c)

3 MCZO 136.040(c) sets out the following criterion for
4 approval of non-farm dwelling conditional use permits and, by
5 virtue of MCZO 136.070(b)(2), non-farm dwelling partitions:

6 "[Single family dwellings not in conjunction with farm
7 use] shall be situated on generally unsuitable land
8 for farm use considering the terrain, adverse soil or
9 land conditions, drainage and flooding, location and
10 size of the parcel."

11 Petitioners argue that the county improperly construed MCZO
12 136.040(c) by concluding that only soil classes are relevant in
13 determining whether a parcel is generally suitable for farm
14 use. Petitioners also argue that the evidence before the
15 county "overwhelmingly establishes" that the subject property
16 is generally unsuitable for farm use, and that the county's
17 findings are unsupported by any evidence.

18 The county responds that the challenged conclusion
19 regarding the relevancy of soil classes referred to application
20 of the parcel size standard of MCZO 136.070(b)(1), not the
21 general unsuitability standard of MCZO 136.040(c). The county
22 further argues that failure to comply with MCZO 136.070(b)(1)
23 was a separate basis for denial of the application, which
24 petitioners did not assign as error; and, therefore, we must
25 uphold the county's denial. The county also argues that the
26 applicants did not meet their burden of demonstrating that the
27 general unsuitability standard was satisfied.

28 We agree with the county that the findings petitioners

1 allege demonstrate an improper construction of MCZO 136.040(c)
2 actually interpret and apply MCZO 136.070(b)(1), not MCZO
3 136.040(c).⁵ MCZO 136.070(b)(1) establishes the following
4 mandatory approval requirement for partitions of EFU-zoned land
5 to create non-farm parcels:

6 "If the proposed parcel is intended for a non-farm use
7 and is located on Class I through IV agricultural
8 soils, it shall only be as large as necessary to
accommodate the use and any buffer area needed to
ensure compatibility with adjacent farm uses."

9 It is clear that the only factor determining whether the
10 standard of MCZO 136.070(b)(1) applies to the proposed
11 partition is the soil classification of the proposed non-farm
12 parcels. The county found the proposed parcels are composed of
13 Class II soils. MCZO 136.070(b)(1) therefore applies, and the
14 county concluded the applicant had not met this criterion.
15 Failure to comply with MCZO 136.070(b)(1) is a sufficient basis
16 for denial of both the partition and conditional use
17 permits;⁶ and, therefore, the county's decision must be
18 affirmed. However, we will proceed to address the other
19 challenges made under this assignment, as they may provide
20 additional bases for affirming the county's decision.

21 The county findings relevant to MCZO 136.040(c) clearly
22 indicate the county considered drainage, ponding, size,
23 fertility, past farming history and terrain, as well as soil
24 classification, in concluding that the applicants failed to
25 demonstrate that the property was generally unsuitable for farm
26 use.⁷ The county properly construed and applied MCZO

1 136.040(c).

2 In order for petitioners to prevail in their claim that the
3 county's conclusion of noncompliance with the "unsuitability"
4 standard is not supported by substantial evidence, it is not
5 sufficient for petitioners to show there is evidence in the
6 record which supports their position. Rather, the "evidence
7 must be such that a reasonable trier of fact could only say
8 [petitioners'] evidence should be believed." McCoy v. Marion
9 County, supra at 2-3; Weyerhauser v. Lane County, supra.

10 The evidence in the record to which we are directed by
11 petitioners includes statements by petitioners regarding
12 drainage and runoff problems on the property, their
13 unsuccessful attempt to raise Christmas trees on the property
14 and the prohibitive cost of tiling the property. Record
15 57-58. There is also testimony from a neighboring farmer that
16 the configuration of the property does not allow use of
17 reasonably sized farm equipment, that the location and
18 configuration make tiling of the property to provide reasonable
19 drainage uneconomic and that the soil is not "favorable for the
20 production of agricultural crops." Record 62.

21 Finally, there is testimony by petitioners' attorney which
22 concedes the property is composed of Class II and III soil, but
23 contends that drainage problems, lack of fertility and the
24 improvements already on the property make it unsuitable for
25 farm use. Record 83-84, 86-89. The attorney also related
26 discussions he had with the owner of a tiling business

1 purporting to demonstrate that tiling of the property would be
2 economically infeasible. Record 89-90.

3 On the other hand, the county directs us to testimony by
4 county planning department staff that the soils on the property
5 are considered good agricultural soils, and that the property
6 could be considered "a small farm operation with potential for
7 intensive commercial farm activity such as a nursery or cane
8 berries on this quality of soil." Record 75-76. In addition,
9 the U.S. Soil Conservation Service maps and report in the
10 record identify the soils on the subject property as Class II
11 and III, and place them in capability units IIw-2 and IIIw-2,
12 respectively. The report states that restricted drainage is a
13 moderately severe limitation to use of soils in these
14 capability units, and, if undrained, the soils are not suited
15 to deep-rooted perennial crops, but can be used for small
16 grains, pasture, hay or (Class II only) grass seed. When
17 drained and irrigated, small acreages can be used for vegetable
18 and specialty crops. Record 26-31.

19 We cannot say that the evidence in support of petitioners'
20 position is so convincing that the county could only reasonably
21 believe that the subject property is generally unsuitable for
22 farm use. The county could reasonably believe that even
23 without drainage, the property is suitable for small grains,
24 pasture and grass seed, and that petitioners' failure with
25 Christmas trees was due to an improper choice of crop. See
26 Record 13-14, 15-16.

1 The county's determination of noncompliance with MCZO
2 136.040(c) is upheld. This subassignment of error is denied.

3 B. MCZO 136.040(d)(6)

4 MCZO 136.040(d)(6) sets out the following criterion for
5 approval of non-farm dwelling conditional use permits and, by
6 virtue of MCZO 136.070(b)(2), non-farm dwelling partitions:

7 "The proposed use complies with the purpose and intent
8 of the agricultural policies in the Marion County
Comprehensive Plan."

9 Petitioners challenge the county's determination that the
10 application fails to comply with the agricultural policies of
11 the Marion County Comprehensive Plan (plan). Petitioners argue
12 that the county's determination of noncompliance with MCZO
13 136.040(d)(6) is not supported by findings.

14 The county responds by quoting portions of the plan in its
15 brief and arguing that these plan provisions "make it clear
16 that the division of a farm parcel into two non-farm parcels
17 would not comply with the purpose and intent of the plan."
18 Respondent's Brief 7.

19 The county's determination of noncompliance with MCZO
20 136.040(d)(6) is supported only by the following two references
21 to the plan in its findings:

22 " * * * The Marion County Comprehensive Plan policy
23 discourages non-farm uses on identified agricultural
lands and limits land divisions to those compatible
24 with agricultural needs.

* * * * *

25 " * * * [The proposed partition] would open a back
26 door to accomplish what the Marion County

1 Comprehensive Plan and Zone Code clearly discourages -
2 the expansion of non-farm dwellings in the EFU zone.

3 Record 16, 17.

4 In Prow v. Marion County, 12 Or LUBA 99, 102-103 (1984), we
5 stated that the county's determination of noncompliance of a
6 proposed non-farm partitioning with MCZO 136.040(d)(6) suffered
7 because the county's final order did not state what specific
8 policies of the plan were violated by the proposed partition.
9 We said the county had not adequately demonstrated how the
10 proposed partition failed to meet the criterion.

11 The county's decision in this case suffers from the same
12 deficiencies identified in Prow. The order does not identify
13 the provisions of plan agricultural policies with which the
14 application fails to comply, other than stating that plan
15 policy "limits land divisions to those compatible with
16 agricultural needs." The county does not identify any plan
17 agricultural policy which imposes such a requirement, and the
18 county's order does not explain why the proposed partition is
19 not compatible with agricultural needs.⁸

20 This subassignment of error is sustained.

21 In conclusion, in our denial of the first subassignment of
22 the second assignment of error, we upheld the county's
23 determinations that the proposed partition and conditional use
24 permits failed to comply with the mandatory approval
25 requirements of MCZO 136.040(c) and 136.070(b)(1), and
26 therefore the county's decision is affirmed.

1 FOOTNOTES

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5 The county's findings relevant to MCZO 136.040(d)(3), from
6 Record 13 and 17, state:

7 "Surrounding uses consiste [sic] predominantly of
8 large parcels to the west, east, south and partially
9 to the north. There are three non-farm parcels to the
10 northwest of the subject property, and a small parcel
of land directly across Keene Road from the subject
property. These four parcels all contain dwellings.
All surrounding properties are zoned EFU.

11 "The Planning Director found that the surrounding
12 large parcels were in commercial farm use. Applicant
13 disputed this finding, arguing that the only
14 commercial farm operation in the vicinity of the
subject property was property to the east owned by Ed
Halter. A review of the available aerial photographs
(Exs. 7, 8 and 9), indicate [sic] that properties
15 immediately surrounding and in the general area of the
subject property are and have been under cultivation
16 since at least 1963. The preponderance of the
evidence indicates that the surrounding uses are
commercial farm operations.

17 * * * * *

18 "Applicants have not, however, met the criteria in 3-3
19 and 3-6. As the Planning Director found, there are
20 many pockets of small parcels in the EFU zone. As
applicants stated, one of those pockets already exists
21 to the northwest of the subject property. Applicants
argue that the character of the area won't change.
22 The precedent for small non-farm parcels has already
been set. The Hearings Officer cannot accept this
argument.

23 "In 1979 Minor Partitioning Case No. 79-221, the
24 Marion County Planning Commission denied applicants
the very same request to partition the 11 acres into a
25 3 acre and an 8 acre parcel. There is no evidence of
any change since that previous denial which would
26 support this application. The mobile home is located

1 on the subject property only because of hardship
2 conditions, which no longer exist. (See Section IV(6)
3 above). Approval of this partitioning would
4 materially alter the overall land use pattern in the
5 area, which is large farm parcels, in several
6 respects. It would add two new non-farm parcels where
7 one farm parcel now exists. It would make permanent
8 what was done as a temporary exceptional measure to
9 relieve a family hardship - placement of additional
10 non-farm mobile homes in the EFU zone. It would open
11 a back door to accomplish what the Marion County
Comprehensive Plan and Zone Code clearly discourages -
the expansion of non-farm dwellings in the EFU zone.
Finally, it would set a precedent for the division of
farm parcels based on the relative difficulty or cost
to use or improve farmland for farm use and based on
the evidence of personal expense resulting from the
obligation to abide by the terms of approval for
hardship placement of mobile homes. These are not
valid criteria to justify the division of farmland."

The last two paragraphs of findings quoted above are
located in the "Partitioning" section of the county's order.
However, the "Non-Farm Dwelling" section of the county's order
states that the findings found in the partitioning section are
applicable to approval of the non-farm dwellings as well, and
based on those findings concludes the application for non-farm
dwelling conditional use permits also fails to meet MCZO
136.040(d). Record 18.

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Petitioners' assignment specifically challenges the
county's finding that "the surrounding uses are predominantly
commercial farm operations." Record 13. However, what is
required by MCZO 136.040(d)(3) is a finding describing the
overall land use pattern of the area. The challenged finding
is not essential to support the county's conclusion of
noncompliance with MCZO 136.040(d)(3), because that conclusion
does not describe the overall land use pattern as being
"commercial farm operations." Errors in gratuitous findings
are not ground for reversal or remand by this Board. McNulty
v. City of Lake Oswego, ___ Or LUBA ___ (LUBA No. 86-086;
February 20, 1987).

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The county's findings recognize the existence of these four
small acreage homesites, but deal with them as a "pocket" of
small parcels interspersed in the predominant pattern of large
farm parcels. Record 13, 17.

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Although we find the county's findings inadequate to demonstrate noncompliance with MCZO 136.040(d)(3), we note that we do not find that the application complies with MCZO 136.040(d)(3) as a matter of law, or that the county could not adopt findings adequate to demonstrate noncompliance with MCZO 136.040(d)(3).

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The challenged findings provide:

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"Divisions of land in an EFU zone are controlled by MCZO (Marion County Zoning Ordinance) 136.070. Subsection (b) sets forth the requirements for the creation of non-farm parcels. If a proposed parcel is intended for a non-farm use and is located on a Class I through IV agricultural soil, it may only be as large as necessary to accommodate the use and any buffer area needed to ensure compatibility with adjacent farm uses. * * *

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"The proposed parcels are both composed of Class II soils. Both proposed parcels are larger than necessary to accommodate the non-farm dwellings and the buffer zones required. Applicant argues that this criterion is irrelevant because the subject property is not a farm parcel. * * * However, MCZO 136.070(b)(1) deals only with soil classes. The subject property falls within the range of soils prescribed. The soils are agricultural soils by definition. * * * The applicant has not met this criteria [sic]."

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Record 15-16.

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MCZO 136.070(b)(1) is an approval criterion only for partitions. However, under MCZO 136.030(b), MCZO 136.040(a)(1) applies to conditional use permits for non-farm dwellings in the EFU zone. MCZO 136.040(a)(1) states:

22

23

"The proposed dwelling shall be the only dwelling on the subject property and contiguous property in the same ownership."

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Thus, the requested conditional use permits for two non-farm dwellings on the subject property cannot be approved without concurrent approval of a partition.

26

2 The county's findings relevant to MCZO 136.040(c) state:

3 "The Soil Conservation Service has identified
4 predominantly Class II and III soils on the property.
5 Evidence provided by the applicant (Ex. 9) shows that
6 the specific soil classes are Amity Silt Loam II W-2
7 and Concord Silt Loam III W-2. Both soils have
8 moderate fertility and suffer from poor to moderately
9 severe drainage, and seasonal ponding. Drainage
10 difficulties make the choice of crops limited.
11 Undrained soil is best used for pasture, small grains
12 and grass seed. If drained and irrigated, the soil
13 can be used for berries and vegetables.

14 "The soil map for area No. 14 indicates that Amity and
15 Concord soils predominate in this area.

16 * * * * *

17 " * * * Christmas trees had been planted. Nearly all
18 have died because of poor drainage in winter and no
19 irrigation in summer. The land cannot be made
20 productive unless it is tilled [sic] at a cost of \$600
21 per acre, and a \$2,000 pump installed to dispell
22 excess water. The expense is prohibitive for so small
23 a property. * * * The failure of the soil to support
24 Christmas trees is not indicative of unsuitability for
25 farm use. Christmas trees are the wrong type of crop,
26 and with drainage and irrigation, crops can be grown.

27 "The criteria in MCZO 136.040 applicable to the
28 partitioning are contained in Subsections (c) and
29 (d). MCZO 136.040(c) requires that the land be
30 generally unsuitable for farm use considering terrain,
31 adverse soil or land conditions, drainage and
32 flooding, location and size of parcel.

33 "Applicant has pointed out significant deficiencies in
34 the subject property as prime farm ground. Terrain is
35 suitable. The subject property is generally level.
36 Soil and land conditions are adequate for farming,
37 although the soil is not very fertile. The soil will
38 support berries, grains, grass seed and pasture, if
39 drained and irrigated. Winter flooding and drainage
40 and lack of irrigation in summer are, however, serious
41 problems. And the size of the parcel, 11 acres, is an
42 adverse factor.

43 //

1 "As pointed out in paragraph 1 above, however, the
2 land is not uniquely or inherently unsuitable for farm
3 use. It can be improved with drainage and
4 irrigation. It will support a variety of crops. The
5 general area supports substantial agriculture
6 activity. All surrounding farms have similar soil.
7 As the Planning Director found, this parcel could at
8 best support a small farm operation such as berries.
9 This proposal will create two non-farm parcels with
10 dwellings. The Marion County Comprehensive Plan
11 policy discourages non-farm uses on identified
12 agricultural lands and limits land divisions to those
13 compatible with agricultural needs. The applicant has
14 not met this criteria [sic]."

15 Record 13-14, 15-16.

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18 In fact, the county specifically found that the proposed
19 partition complied with MCZO 136.040(d)(1). This provision
20 requires the proposed partition to be "compatible with farm or
21 forest uses and consistent with ORS 215.243." Record 17.