

LAND USE
BOARD OF APPEALS

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

OCT 19 6 42 PM '88

WAYNE FLYNN, CLYDE FLYNN and
JEANNE FLYNN,

Petitioners,

vs.

POLK COUNTY, OREGON,

Respondent.

LUBA No. 88-047

FINAL OPINION
AND ORDER

Appeal from Polk County.

Wallace W. Lien, Salem, filed the petition for review and argued on behalf of petitioners.

Robert W. Oliver, Dallas, filed the response brief and argued on behalf of respondent county.

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

REMANDED

10/19/88

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

1 Opinion by Bagg.

2 NATURE OF THE DECISION

3 Petitioners requested and received a conditional use permit
4 for a winery. Along with the permit, Polk County imposed
5 conditions. Petitioners appeal two of the conditions.

6 FACTS

7 Petitioners' conditional use permit authorizes construction
8 of a winery at the site of an existing vineyard. Along with
9 the buildings to serve the production of wine, petitioners
10 asked for a tasting room and a kitchen and restaurant
11 facility.¹ The Polk County hearings officer approved the
12 grant with conditions, and petitioners appealed the hearings
13 officer's order to the Polk County Board of Commissioners. The
14 county board also approved the permit, but imposed two
15 conditions which petitioners find objectionable.

16 "5. The tasting room shall not be operated as a
17 commercial-type restaurant facility open to the public
18 during regular hours of operation. The facility shall
19 be operated as an incidental and auxillary use to the
20 winery operations. The facility shall be limited to
21 12 special promotional events and related activities
22 and shall obtain the applicable food service servicing
23 licenses.

24 ** * * * *

25 "9. Prior to occupancy of the winery, Farmer Road
26 shall be improved by the construction of a 20-foot
asphalt surface on Farmer Road from Highway 99W
through the Cadle Road intersection to specifications
provided by the Road Engineer." Record 8.

We understand petitioners ask we remand the decision with
instructions to eliminate conditions 5 and 9.

1 FIRST ASSIGNMENT OF ERROR

2 "Polk County allowed evidence and testimony into the
3 record after it was closed, and denied Petitioners an
4 opportunity to respond and rebut that evidence thereby
 violating Petitioners' right to due process and
 resulting in substantial prejudice."

5 Petitioners advise that the record of proceedings before
6 the county board of commissioners was closed on May 11, 1988.
7 After the record was closed, according to petitioners, the Polk
8 County roadmaster, legal counsel and planning department
9 provided "information, evidence and opinion on what the outcome
10 of petitioners' application should be" and what conditions
11 should be imposed. Petition for Review 7. Petitioners claim
12 the memoranda submitted by county staff were not made available
13 to petitioners, and petitioners did not receive copies of the
14 memoranda or know of their existence until the record was
15 submitted as part of our review proceeding.² Id. Further,
16 petitioners were not allowed to speak or participate during the
17 May 25, 1988 meeting at which the memoranda were discussed.

18 Petitioners argue this process violated petitioners'
19 Fourteenth Amendment due process right to confront witnesses,
20 present evidence and rebut evidence. Petitioners claim they
21 were prejudiced because the documents and testimony presented
22 "relate directly to the applicablility of the restaurant and
23 requirements for road improvements on Farmer Road."³
24 Petition for Review 8.

25 Petitioners list the evidence they believe was improperly
26 submitted after the final hearing was closed. The first is a

1 May 23, 1988 memorandum from the roadmaster which includes,
2 according to petitioners, new information about the standards
3 to which Farmer Road and Cadle Road are to be improved. In
4 addition, petitioners claim that at the May 25, 1988 board of
5 county commissioners' meeting, the roadmaster elaborated on his
6 memorandum and urged adoption of his recommendation that
7 petitioners be required to pave 800 feet of Farmer Road.

8 Petitioners next complain the planning department submitted
9 additional information as follows:

10 "Similarly, new information was provided by the
11 Planning Department, including the position that
12 certain golf courses represented pre-existing
13 nonconforming uses in the EFU zone (a proposition that
14 Petitioners believe to be inaccurate), including
15 statements bolstering Polk County staff position by
16 their reference to extra-record discussion with DLCD
17 personnel and extra-record comments from the Southwest
18 Polk Rural Fire Protection District. Record, pp.
19 15-16." Petition for Review 10.

20 Lastly, petitioners complain about a memorandum submitted
21 by the Polk County legal counsel. Record 18-19.

22 As a general proposition, it is permissible for county
23 staff to communicate with the governing body during the
24 pendency of a quasi-judicial proceeding. The communication may
25 even be outside the view of the parties and not be cause for
26 reversal or remand by this Board. ORS 215.422(4).⁴ This
statute establishes a legislative policy encouraging
communication between public bodies and their support staff.
It is our view that, providing the communication does not
infringe on petitioners' right to rebut evidence in the record

1 upon which the local decision maker bases its decision,
2 petitioners have no right to respond to such support staff
3 communications. See Dickas v. City of Beaverton, ____ Or
4 LUBA ____ (LUBA No. 87-086, April 11, 1988).⁵

5 The memorandum provided by the county roadmaster states, in
6 part, as follows:

7 "The commercial development proposed will impact on
8 Farmer Road. Farmer Road is not currently built to
9 standards consistent with its intended use
10 (collector). The applicant (Flynn) should therefore
bring to the standards described in the previous
memorandum, that section of Farmer Road abutting the
applicant's property.

11 "Cadle Road is currently built to standards consistent
with its intended use." Record 17.

12 The only new facts presented in the memo are that Farmer Road
13 is not built to collector street standards, and Cadle Road is
14 built to "standards consistent with its intended use."

15 Petitioners do not explain why the new facts (if indeed
16 petitioners were not aware of them) requires a remand. We
17 conclude, therefore, that receipt of this evidence from the
18 roadmaster did not prejudice petitioners' substantial rights
19 and provides no basis for remand under ORS 197.835(8)(a)(B).

20 With respect to the planning staff memorandum, we note the
21 memorandum discusses restaurants in conjunction with golf
22 courses. Record 15. It is not clear that this information
23 existed elsewhere in the record or was presented at a time that
24 would give petitioners the opportunity to respond. However,
25 respondent county argues these comments were irrelevant and not
26

1 material to this application. The county further says the
2 county board took no notice of the comments in the final order.

3 Whether or not the county expressly took notice of the
4 evidence in its final order is not the point. The question is
5 whether evidence upon which the county relies to support its
6 decision was introduced to the county board without an
7 opportunity given petitioners to respond. Staff stated:

8 "The applicant's consultant cited the presence of
9 restaurants in conjunction with golf courses in the
10 EFU Zone as evidence of a similar allowed use type on
11 agricultural lands. Although it is true that such
12 facilities (e.g., Oak Knoll Golf Course) exist in EFU
13 zones around the State, in every case these facilities
14 were developed prior to the mandates of Statewide Goal
15 3 for Agricultural Lands. Accordingly, they represent
16 pre-existing, non-conforming uses in the EFU Zone and
17 should not be considered justification for the
18 proliferation of similar use types on agricultural
19 lands. Staff discussion with the DLCD supports our
20 position relative to this issue." Record 16.

21 The discussion in this memo is the commentary about
22 restaurants in conjunction with golf courses in EFU Zones in
23 response to discussion by the applicants' consultant. We
24 believe this discussion is not factual but rather is legal
25 argument and interpretation.

26 While we agree that a new fact should not be given to the
27 county board and included in the record without affording
28 petitioners the chance to respond, the argument presented, even
29 if it could be viewed as partially factual, did not prejudice
30 petitioners substantial rights. In considering whether the
31 proposed restaurant is appropriate as a commercial activity in
32 conjunction with farm use, the county did not rely on facts

about the existence of restaurants in conjunction with golf courses in EFU zones. Further, the comparison of wineries to golf courses having restaurants is of little relevance to whether wineries are typically associated with restaurants. Petitioners fail to demonstrate how the information about golf courses prejudiced their case.

The petitioners also object to information from the local fire district. Staff relayed this evidence as follows:

"Both the applicant and Staff have consulted with the South West Polk RFPD regarding their concerns and recommendations for this project. Their recommendations include provisions for adequate water supply for fire fighting purposes per State regulations and for provision of a secondary access to the site from Cadle Road for emergency vehicles. The secondary access to the site from Cadle Road would be advantageous in the event the primary highway entrance was blocked and would also allow fire fighters to attack a fire from two directions. The SW Polk RFPD feels the secondary access is justified by the size of the structure and the potential number of persons occupying the structure during a promotional event. Evidently, the SW Polk RFPD would not object to a locked gate at this secondary access location should such a condition be required." Record 16.

With respect to comments from the fire district, we again fail to see how this evidence prejudices the petitioners. Petitioners do not explain how the comments may have improperly influenced the county board. It is not clear that the evidence had any bearing on the complained of conditions.

Lastly, the memorandum from the county counsel does not include new facts, but is a discussion of the meaning of the term "restaurant" in the Polk County Zoning Ordinance (PCZO). The memo discusses whether the proposed facility fits the

1 ordinance definition. Because this memo is a staff
2 communication including no new evidence, we do not believe the
3 discussion is objectionable on the grounds stated by
4 petitioners. County boards are entitled to receive legal
5 opinions from counsel and are not obliged to consider
6 petitioners counter arguments. ORS 215.422(4); Dickas, 92 Or
7 App at 172-173.

8 The first assignment of error is denied.

9 SECOND ASSIGNMENT OF ERROR

10 "Polk County improperly construed its zoning ordinance
11 and state law in finding that the restaurant proposed
12 here is not a commercial activity in conjunction with
13 farm use."

14 Petitioners advise PCZO 136.060(6) and ORS 215.213(2)(c)
15 allow commercial activities in conjunction with farm use as a
16 conditional use. Petitioners assert the restaurant facility is
17 a commercial activity in conjunction with farm use, and argue
18 the county's contrary interpretation is erroneous.⁶

19 Petitioners explain:

20 "Petitioners' application is not for a traditional
21 restaurant. The facility involved here is a
22 limited-purpose facility whose primary objective is to
23 showcase and sell sparkling wines and champagnes
24 produced at the winery. The facility is a marketing
25 tool used to show members of the public how the
26 vinyard's [sic] wines can be presented with various
27 food types, groups and menus." Petition for Review 12.

28 Petitioners advise the facility will not profit from the
29 meals, nor be the primary attraction to the public.
30 Petitioners assert the purpose of the proposed restaurant
31 facility is to enable the public to sample wines with various

1 foods in the hope that customers will leave the facility
2 carrying away some bottles of the wine. Further, petitioners
3 hope this marketing tool will encourage customers to remember
4 their wine later in the grocery store "based on their
5 recollection of the wine from having tasted it with a meal at
6 Flynn Vinyards [sic]." Petition for Review 13.

7 Petitioners argue that the restaurant is a commercial
8 activity in conjunction with the vineyard on the property, a
9 farm use. The winery takes the raw agricultural product from
10 that vineyard and other vineyards, refines it and produces
11 wine. The tasting room and restaurant act as a marketing tool
12 to showcase the product, according to petitioners. Without any
13 one of these functions, "the cycle from planting the grapevine
14 to consumer purchase of the bottle of wine is broken,"
15 according to petitioners. Petition for Review 15.

16 We believe petitioners' challenge is misdirected. The
17 county relies on its conclusion that the restaurant facility is
18 not in compliance with the purpose and intent of its Exclusive
19 Farm Use (EFU) zone, not that the proposed use could not be
20 viewed as a commercial activity in conjunction with farm use.
21 Petitioners apparently attack the county's order on the basis
22 that the restaurant is indeed a commercial activity in
23 conjunction with farm use permitted under ORS 215.213(2)(c),
24 and that the county, therefore, is precluded from asserting
25 that such uses are inappropriate in the EFU zone.

26 We do not find the county so limited. ORS 215.213(2)

1 expressly provides that commercial activities in conjunction
2 with farm uses may be required to meet "reasonable standards
3 adopted by the [county]." The county found, and petitioners do
4 not challenge, that commercial activities in conjunction with
5 farm uses must comply with the purpose and intent of the EFU
6 zone. The purpose and intent of the EFU zone

7 "is to provide areas for the continued practice of
8 agriculture and permit the establishment of only those
9 new uses which are compatible to [sic] agricultural
10 activities. * * * Further, the Exclusive Farm Use Zone
11 is intended to guarantee the preservation and
12 maintenance of the area so classified for farm use,
13 free from conflicting non-farm use and influences."
14 PCZO 136.010.

15 The county board concluded that the restaurant facility did not
16 comply with this purpose because

17 "in effect it would be a public food service
18 facility. However, a tasting room facility as a
19 subordinated and auxiliary use incidental to the
20 winery operation would not conflict with the overall
21 intent and purpose of the Exclusive Farm Use Zone and
22 may be granted as a Conditional Use. However, before
23 such facility can be granted, it would be subject to
24 the requirements of ensuring that such condition is in
25 harmony with the purpose and the intent of the
26 Exclusive Farm Use Zone and that such conditions as
are necessary for the public health and safety are
imposed upon the operation." Record 7.

27 In its brief, respondent asserts petitioners' proposal for
28 a winery with a restaurant is a proposal for a much different
29 kind of activity than encompassed by a winery with a tasting
30 room.⁷ Respondent argues that a restaurant is not generally
31 associated with farm uses. Respondent explains:

32 "Petitioners go altogether too far in their argument.
33 If it is permissible for a winery to open a restaurant
34 on its premises to promote sales of its wine, would it

1 not be permissible for a fruit grower to open a
2 restaurant on his premises to promote sales of his
3 fruit? Or a wheat grower? [sic] Or a dairy farmer?
4 [sic] Each could argue that his product, like wine,
5 can be fully appreciated in all its manifestations
6 only when presented in a restaurant-style setting.
7 Each could argue this would be a vital link in the
8 chain of marketing the product. Each could argue that
9 the restaurant, therefore, would be a "commercial
10 activity in conjunction with farm use.

11 "Respondent believes this Board would open a Pandora's
12 Box by holding Petitioners' proposed restaurant to be
13 a commercial activity in conjunction with farm use, or
14 by remanding this case to Respondent for such a
15 determination. Respondent believes its EFU resources
16 would be seriously compromised by acceptance of
17 Petitioners' argument and the precedent it would
18 establish for the evaluation of conditional use
19 applications in the future." Respondent's Brief 8.

20 Respondent claims the tasting facility will provide ample
21 opportunity to promote customers' understanding and
22 appreciation of the wine and enhance sales. It is not
23 essential, according to respondent, that petitioners establish
24 a full service restaurant open to persons who may have no
25 interest in wine whatever. Respondent argues the activity
26 attendant to a wine tasting room is different from that of a
full service restaurant.⁸ The restaurant can operate quite
independently of the farm product, the wine. The proposed wine
tasting room, however, is clearly linked to the wine produced
by the proposed winery.

22 We agree with respondents. The county expressly found the
23 restaurant as proposed to be inconsistent with the intent and
24 purpose of the EFU zone. Specifically the county found the
25 conditions it imposed were necessary to make the restaurant a
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1 "subordinated and auxiliary use incidental to the winery
2 operation." Record 7. Without such conditions, the county
3 concluded the restaurant would not be consistent with the
4 intent and purpose of its EFU zone. We can find no basis for
5 faulting the county's reasoning.

6 The second assignment of error is denied.

7 THIRD ASSIGNMENT OF ERROR

8 "There is insufficient evidence in this record to
9 support Polk County's condition requiring Petitioners
to pave over 800 feet of Farmer Road."

10 Petitioners make two challenges under this assignment of
11 error. Petitioners first challenge the county's compliance
12 with PCZO 119.060 and 119.070(c). These provisions require the
13 county board to adopt findings showing conditions imposed must
14 be necessary for the public health, safety and welfare or to
15 protect persons working or residing in the area or to protect
16 property or improvements. Petitioners argue there are no
17 findings of fact or conclusions in the final order addressing
18 these requirements. Petitioners are mindful that there is a
19 reference in the county's order to the engineer's report, but
20 petitioners claim the engineer's report itself is not part of
21 the county's order and, even if it were, it would be
22 insufficient as a finding because it does not address the
23 criteria in the zoning ordinance. In addition, petitioners
24 complain that there are no findings supporting imposition of
25 the conditions. That is, there are no findings explaining how
26 much traffic will be involved, what type of traffic it will be,

1 where it will be going, where it might be coming from, and how
2 that traffic will negatively impact public health, safety and
3 welfare.

4 Second, petitioners complain that even if the county had
5 made the findings necessary to require petitioners to pave some
6 800 feet of Farmer Road, the record does not contain
7 substantial evidence to support the required findings.

8 Petitioners argue the new winery and related facilities will
9 have access only to Highway 99W at a point 1500 feet southwest
10 of the intersection of 99W and Farmer Road. There is no other
11 access proposed, and there is no access at all directly onto
12 Farmer Road. Petitioners say the winery activity will take
13 place in the southwest portion of the property only, nowhere
14 near Farmer Road. Petitioners argue that the proposed winery
15 will create no increase in use of Farmer Road warranting the
16 required improvement.

17 Petitioners are correct that the county order lacks the
18 findings required by its ordinance. The ordinance states that
19 the planning commission (and on review the county board) may
20 impose conditions only after the planning commission

21 "has determined that such conditions are necessary for
22 the public health, safety or general welfare, or
23 protect persons working or residing in the area, or
the protection of property or improvements in the
area."

24 The county simply failed to make this finding, and because of
25 this failure, we are required to remand the decision.

26 We do not believe a simple reference to the county

1 engineer's report is sufficient to incorporate that report in
2 the county's order. There is no clear indication in the order
3 that the county intended to adopt the roadmaster's April 14,
4 1988 report as part of its order. The statement at page 7 of
5 the record that there "is sufficient information within the
6 county engineer's report to support the paving of Farmer Road
7 from its intersection with Highway 99 through the intersection
8 of Farmer and Cadle Roads," is a reference to evidence, not an
9 adoption of findings by incorporation.

10 We now turn to the question of the adequacy of the evidence
11 to support the paving condition. The county roadmaster report
12 of April 14, 1988 states in part as follows:

13 "As can be seen from the winery location map [Record,
14 p. 33], Farmer Road is a major link between Flynn
15 Vineyards and nine other vineyards and wineries.
16 Therefore, there will be a traffic impact on Farmer
17 Road due to the conditional use. This traffic will be
18 a different type of traffic than the current
predominately farm use. The impact of an increase in
traffic type and volume is of concern primarily
between Highway 99W and Cadle Road, where the
roadgrades are too steep to be maintained with a rock
surface.

19 "The recommended conditions are based on standards
20 outlined in the AASHTO design guide to collector
21 status, which is the classification of Farmer Road as
stated by the Polk County Land Use Plan,
transportation element." Record 32.

22 Petitioners argue that the majority of visitors will come
23 by way of Highway 99W and not use Farmer Road. In support of
24 this position, petitioners included a tabloid which petitioners
25 claim demonstrates the majority of visitors will use Highway
26 99W.

1 Respondent argues the tabloid is not on point because it
2 does not take into account the existence of petitioners'
3 proposed facility. Respondent notes that visitors to the
4 proposed facility would find Farmer Road the most direct route
5 to Glen Creek and other wineries to the north shown on the map.

6 Petitioners dispute this claim. Petitioners assert that
7 wine tour routes are by their nature arbitrary. Where one
8 begins and finishes depends upon what one wishes to see, and
9 there is no evidence in the record to substantiate respondent's
10 claim that traffic to west Salem vineyards will originate at
11 petitioners' vineyard and use Farmer Road exclusively to get to
12 the other vineyards. Also, even if the roadmaster's suggested
13 routing of wine tour traffic is correct, petitioners claim the
14 condition still fails because there is no evidence to show how
15 much traffic would be involved, what type of traffic it would
16 be, where it would be going, where it might be coming from and
17 how the traffic would negatively impact public health, safety
18 and welfare. In addition, it is not clear how the paving
19 condition would protect persons working or residing in the
20 area, protect property or otherwise support public health,
21 safety and welfare.⁹

22 Respondent county is entitled to rely on the opinion of its
23 engineer as to traffic flows and impacts. See Meyer v.
24 Portland, 7 Or LUBA 184, 196 (1983), aff'd 67 Or App 274, 678
25 P2d 741, rev den 297 Or 82 (1984). The county roadmaster
26 produced a report which claims that the use will impact Farmer

1 Road because of its access to Cadle Road and because of
2 attraction of tourists from the adjacent wineries. The
3 roadmaster's report includes a map showing that Farmer Road is
4 a link between Flynn Vineyards and the other nine vineyards,
5 and the roadmaster concludes there will be a traffic impact
6 because of this logistical fact. The roadmaster claims that
7 the road grades are too steep to be maintained with a rock
8 surface, thus the recommendation for paving.

9 We cannot say, as petitioners suggest, that the evidence in
10 the record is such that a reasonable decision maker could not
11 find the disputed condition is necessary to protect public
12 safety or persons or property in the area. See BenjFran v.
13 Washington County, 14 Or LUBA 758, 761 (1986) (concluding a
14 condition must further a planning policy or goal but "[t]he
15 evidence need not prove the need for a condition * * *").

16 Although we reject petitioners' argument that the
17 evidentiary record is such that the county is precluded from
18 making the disputed finding, neither can we overlook the
19 county's failure to adopt those findings under ORS
20 197.835(10)(6).¹⁰ The evidence the county cites us to is, we
21 believe, evidence a reasonable person could rely on to find the
22 paving condition is necessary. However, the evidence the
23 county cites is not evidence which "clearly supports" that
24 conclusion, as ORS 197.835(10)(6) requires for us to affirm a
25 county decision lacking essential findings. See Bright v. City
26 of Yachats, ____ Or LUBA ____ (LUBA No. 87-048, October 17, 1988).

1 The third assignment of error is sustained in part.

2 The decision is remanded.

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FOOTNOTES

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⁴ Petitioners also requested and received approval for office space and living quarters.

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⁶ Although petitioners claim the record was closed on May 11, 1988 and that the county considered the disputed memoranda after that date, petitioners did not object to the county's inclusion of its memoranda in the record submitted to LUBA pursuant to OAR 661-10-025.

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¹⁰ As noted supra, Farmer Road is to be improved pursuant to Condition 9.

¹² 4
ORS 215.422(4) provides as follows:

¹³ "A communication between county staff and the planning
¹⁴ commission or governing body shall not be considered
¹⁵ an ex parte contact for the purposes of subsection (3) of this section."

¹⁶ Subsection (3) provides that no decision or action of a
¹⁷ planning commission or county governing body shall be
¹⁸ invalidated because of ex parte contact providing the person
¹⁹ receiving the contact places the substance of the contact on the record, makes a public announcement of the communication and advises parties of the right to rebut the substance of the communication.

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²¹ In Dickas v. City of Beaverton, 92 Or App 168, ___ P2d ___
²² (1988), the court said it agreed with our view that
²³ communications between staff and the governing body were not ex parte communications within the meaning of ORS 227.180(3). The court went on to say

²⁴ "[w]e agree * * * that * * * under ORS 227.180, a
²⁵ party has no right to rebut anything sent by a city
²⁶ employee after the governing body hearing to members of its governing body. Petitioner was therefore not prejudiced by the exclusion of the letter from the

1 record, by not being appraised of its content or by
2 not being afforded an opportunity to respond." 92 Or
App at 172-3. (Footnote omitted).

3 In Dickas, there was no assertion that any evidence was
4 communicated to the governing body after closure of the
governing body's hearing. Further, in Dickas, the city did not
5 include the staff communication in the record submitted to
LUBA. We do not understand the Court of Appeals' opinion to
6 state that new matters of fact may be provided to the governing
body after the close of its hearing and included in the record
7 without affording parties to the proceeding the opportunity to
respond to such new matters of fact.

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9 Petitioners cite Craven v. Jackson County, Or LUBA ____
10 (LUBA No. 88-023, July 18, 1988) in which we ruled that a
winery which uses grapes grown offsite is a commercial activity
11 in conjunction with farm use. That case does not help
petitioners because it deals with only one activity, the
12 production of an agricultural product. While the winery in the
Craven case included a tasting room, it did not include food
service open to the public in a restaurant setting.

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14 The county found the dining area is designed for
15 approximately 75 persons, with ample parking provided to
support this use. The restaurant would be used during regular
16 business hours and have a fixed menu. Record 5.

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18 The county did not determine whether the proposed
restaurant property could be viewed as a commercial activity in
19 conjunction with farm use. The county's decision rests on its
interpretation and application of PCZO 136.010. The county's
20 argument expressed in its brief and quoted at pg. 10, supra,
suggests, however, that such a restaurant may not be viewed by
21 the county as a commercial activity in conjunction with farm
use.

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23 Petitioners also argue there is no cause and effect
24 relationship between increased traffic and establishment of the
winery. If traffic on Farmer Road does increase as a result of
25 construction of the winery, petitioners claim it will be the
result of traffic generated by the other wineries, not just
26 petitioners' winery.

ORS 197.835(10)(b) provides:

"Whenever the findings are defective because of failure to recite adequate facts or legal conclusions or failure to adequately identify the standards or their relation to the facts, but the parties identify relevant evidence in the record which clearly supports the decision or a part of the decision, the board shall affirm the decision or the part of the decision supported by the record and remand the remainder to the local government, with direction indicating appropriate remedial action."