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

LINDA S. HORACEK and )  
EDWIN A. HORACEK, )  
 )  
Petitioners, )  
 )  
vs. )  
 )  
YAMHILL COUNTY, )  
 )  
Respondent, )  
 )  
and )  
 )  
ROBERT W. DARM, )  
 )  
Intervenor-Respondent.)

LUBA No. 88-121  
FINAL OPINION  
AND ORDER

Appeal from Yamhill County.

Kent Hickam, Albany, filed the petition for review and argued on behalf of petitioners.

Timothy S. Sadlo, McMinnville, filed a response brief and argued on behalf of respondent.

No appearance by intervenor-respondent.

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

REMANDED 05/22/89

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 Petitioners appeal Yamhill County Board of Commissioners  
4 Order 88-731 allowing a secondary dwelling in conjunction with  
5 farm use on a 131 acre parcel zoned for exclusive farm use.

6 MOTION TO INTERVENE

7 Robert W. Darm moves to intervene on the side of respondent  
8 Yamhill County (county) in this appeal proceeding. There is no  
9 opposition to the motion, and it is allowed.

10 FACTS

11 A county decision to allow the subject secondary farm  
12 dwelling was appealed to LUBA in Horacek v. Yamhill County, \_\_\_\_  
13 Or LUBA \_\_\_\_ (LUBA No. 88-052, October 19, 1988) (Horacek I).  
14 The county record in that appeal was incorporated into the  
15 record in this appeal, and shall be cited as "Record I." In  
16 Horacek I, we stated:

17 "Approximately 80 acres of the subject property are  
18 zoned EF-40 [Exclusive Farm Use] and 51 acres are zoned  
19 AF-20 [Agriculture/Forestry]. Intervenor-respondent  
20 (intervenor) owns and operates a commercial mushroom  
21 growing operation on this property. The mushroom  
22 operation occupies approximately ten acres. The  
23 remainder of the property is leased to neighboring  
24 farmers and is used to grow wheat and hay and to graze  
25 cattle.

22 "There are already three mobile home dwellings on the  
23 property. The owner/operator occupies the principal  
24 dwelling. The two secondary dwellings are occupied by  
25 his secretary and mechanic, both of whom are employed  
26 in the mushroom operation. \* \* \*

25 "Intervenor applied for approval of a third secondary  
26 dwelling on the property in order to provide an on-site  
residence for a manager of the mushroom farm. \* \* \*

1 " \* \* \* \* \*

2 \*\* \* \* [T]he record indicates that one of the existing  
3 secondary dwellings on the property was initially  
4 approved in 1982 for occupancy by the plant manager.  
5 \* \* \* The record does not indicate the basis for the  
6 1980 approval of the other secondary dwelling on the  
7 property. \* \* \* Intervenor also testified that after  
8 his manager moved out, he moved his mechanic into the  
9 manager's residence and, after closing his Portland  
10 office, moved his secretary into the other secondary  
11 dwelling. \* \* \*" Horacek I, slip op at 2, 11.

12 In Horacek I, we remanded the county's order allowing the  
13 subject secondary farm dwelling because we sustained  
14 petitioners' assignment of error that there was not substantial  
15 evidence in the record to support the county's decision that  
16 the proposed dwelling is customarily provided in conjunction  
17 with farm use. In that opinion, we stated:

18 "The only evidence in the record which supports the  
19 county's conclusion that an on-site residence for a  
20 manager would customarily be provided at a mushroom  
21 operation the size of intervenor's is the intervenor's  
22 unsubstantiated statement. Furthermore, the two  
23 examples cited by intervenor, Country Fresh Mushrooms  
24 and Kalapooia Mushrooms, are not persuasive. For  
25 instance, it is not known from the record whether  
26 Country Fresh Mushrooms has an owner and mechanic  
living on site, as well as a manager. Also, the  
record indicates only that Kalapooia Mushrooms has two  
persons living on-site running the operation, as does  
intervenor (himself and his mechanic) without the  
additional secondary dwelling for a manager. Finally,  
petitioners' testimony that Mushroom Unlimited and  
Valley Mushrooms do not provide on-site residences for  
their employees was not rebutted or distinguished  
during the county's proceeding.

"In addition, the record indicates that one of the two  
secondary dwellings already located on the property  
was specifically approved as a residence for the  
manager of the mushroom plant. We have been cited to  
no evidence in the record indicating why the manager  
cannot occupy the dwelling which previously was

1 approved for that purpose. We have been cited to no  
2 evidence in the record establishing that on-site  
3 dwellings at mushroom operations similar to  
4 intervenor's are customarily provided for mechanics  
5 and secretaries. Further, there is no evidence that  
6 the secondary dwellings occupied by those persons were  
7 approved under some other YCZO [Yamhill County Zoning  
8 Ordinance] provision.

9 "We do not believe the above evidence is sufficient to  
10 allow a reasonable decision maker to conclude that a  
11 third secondary dwelling on the subject property would  
12 be a use customarily provided in conjunction with this  
13 type of farm use." Horacek I, slip op at 12-13.

14 After our remand in Horacek I, the county board of  
15 commissioners held a public hearing for submission of  
16 additional evidence and argument concerning the issue that was  
17 the basis for the remand. On December 7, 1988, the board of  
18 commissioners adopted an order and additional findings allowing  
19 the subject secondary farm dwelling and concluding it is  
20 customarily provided in conjunction with farm use. Record II  
21 1-4. This appeal followed.

#### 22 FIRST ASSIGNMENT OF ERROR

23 "The findings of fact adopted by the county subsequent  
24 to the remand are inadequate to sustain the decision."

25 Petitioners argue the county's initial decision allowing  
26 the subject secondary farm dwelling was remanded to the county  
to consider whether four dwellings (for an owner, manager,  
mechanic and secretary) are customarily provided in conjunction  
with mushroom farms similar to intervenor's. Petitioners  
explain the county findings adopted on remand conclude only  
that it is customary for such a mushroom farm to provide

1 on-site housing for a manager, a mechanic, and "other employees  
2 necessary to provide monitoring and maintenance of  
3 mushroom-growing operations." Record II 4. Petitioners argue  
4 the findings are inadequate because they do not establish that  
5 a secretary is such an employee.

6 The county responds that petitioners fail to articulate why  
7 the county's findings are inadequate to support the decision.  
8 The county argues that other findings not challenged by  
9 petitioners explain why it is necessary for the subject  
10 mushroom farm to provide dwellings for various employees.<sup>1</sup>  
11 The county argues the fact that intervenor and his manager,  
12 mechanic and "secretary"<sup>2</sup> each perform specific duties on the  
13 mushroom farm is well-established in the findings. According  
14 to the county, its findings clearly address the types of  
15 personnel that can be housed at the subject mushroom farm, and  
16 clearly state the reasons that dwellings for those persons meet  
17 the "customarily provided in conjunction with farm use"  
18 standard.

19 YCZO 402.02.E.2 and 403.02.E.2 provide that a secondary  
20 dwelling is permitted in the EF-40 and AF-20 zone,  
21 respectively, if the dwelling "is customarily provided in  
22 conjunction with farm use."<sup>3</sup> The Court of Appeals has stated  
23 that such county ordinance standards for permitting farm  
24 dwellings on EFU zoned land, the parallel statutory standard of  
25 ORS 215.283(1)(f), and its alternative analog in  
26 ORS 215.213(1)(g)

1 " \* \* \* are sufficient to protect against the  
2 construction of dwellings which should not be  
3 permitted, and local governments must apply them in a  
4 manner which serves that objective. The local  
5 decision maker must also demonstrate through findings  
6 and statements of reasons or conclusions that  
7 applicable state or local standards have been  
8 satisfied. \* \* \* " Newcomer v. Clackamas County, 92  
9 Or App 174, 758 P2d 450, modified 94 Or App 33 (1988).

6 Thus, in approving the secondary dwelling for a farm  
7 manager under YCZO 402.02.E.2 and 403.02.E.2, the county must  
8 demonstrate through its findings and conclusions that an  
9 on-site dwelling for a farm manager is customarily provided in  
10 conjunction with the subject type of farm operation. In  
11 addition, if other dwellings exist on, or have been approved  
12 for, the subject farm property, the county must demonstrate  
13 why, in view of the other existing or approved dwellings, the  
14 applied for dwelling would customarily be provided in  
15 conjunction with the subject farm operation. In other words,  
16 in the circumstances presented by this case, the county must  
17 explain why the manager cannot reside in one of the other  
18 dwellings already on the subject property.

19 In this case, the latter requirement can be met by  
20 demonstrating that the other dwellings on the subject farm  
21 property are also dwellings customarily provided in conjunction  
22 with the subject farm operation.<sup>4</sup> The challenged findings<sup>5</sup>  
23 address this issue as follows:

24 " \* \* \* [M]ushroom farms of a size and level of  
25 mechanization comparable to that of Yamhill County  
26 Mushroom Farms need to have managers, mechanics, and  
other personnel on-site at all times, and \* \* \*  
housing for such personnel is customarily provided

1 on-site by the farm operator.

2 " \* \* \* [I]t is customary for mushroom farms the size  
3 of Yamhill County Mushroom Farms to provide housing  
4 for some or all of their employees on-site.

5 " \* \* \* [I]t is customary for a mushroom farm with the  
6 size and level of mechanization of Yamhill County  
7 Mushroom Farms to have living on-site a farm manager,  
8 a mechanic, and other employees necessary to provide  
9 monitoring and maintenance of mushroom-growing  
10 operations." (Emphasis added.) Record II 3-4.

11 We understand petitioners to argue these findings are  
12 inadequate because they do not establish that a dwelling for a  
13 secretary is customarily provided on a mushroom farm such as  
14 Yamhill County Mushroom Farms (YCMF) and, therefore, do not  
15 explain why one of the secondary dwellings already on the  
16 subject property cannot be used as a residence for the farm  
17 manager.<sup>6</sup>

18 The county does not argue that the references in the above  
19 findings to dwellings for "other personnel" or "some or all of  
20 their employees" being customarily provided on mushroom farms  
21 are adequate to support a decision that a dwelling for the  
22 employee in question is customarily provided on mushroom farms  
23 like YCMF.<sup>7</sup> Rather, we understand the county to argue that  
24 its findings are adequate because the findings quoted at n 1,  
25 and the last finding quoted above, establish that the "other  
26 [necessary] employees" for whom dwellings are customarily  
provided include the "secretary" in question.<sup>8</sup> However, in  
order to do this, the findings must (1) describe the duties and  
responsibilities of the YCMF "secretary;" (2) establish that

1 those duties include "monitoring and maintenance of  
2 mushroom-growing operations;" and (3) explain why the  
3 "secretary" is required to live on-site for those duties to be  
4 carried out, if the owner/operator, manager and mechanic are  
5 also living on-site.

6 The findings cited by the county merely state that mushroom  
7 farms like YCMF need to have "several qualified people on-site  
8 \* \* \* to complete all necessary office work, and to make  
9 managerial decisions \* \* \*," and "[j]ob oversight and  
10 management must be divided among several staff persons to  
11 alternate responsibility 24 hours per day." Record II 3. The  
12 county's findings do not describe the "secretary's" duties, nor  
13 do they establish that those duties involve "monitoring and  
14 maintenance of mushroom-growing operations" at YCMF or that  
15 those duties cannot be carried out with only the  
16 owner/operator, manager and mechanic living on-site.

17 Thus, we agree with petitioners that the county's findings  
18 are inadequate to support its decision. However, under  
19 ORS 197.835(10)(b), we must nevertheless affirm the county's  
20 decision if the parties identify relevant evidence in the  
21 record which "clearly supports" the decision.<sup>9</sup> In this case,  
22 the county identifies, in its response to the second assignment  
23 of error, evidence which it argues demonstrates that the  
24 "secretary" is much more than a secretary, and that it is  
25 essential to the operation of YCMF to have the "secretary," as  
26 well as the owner/operator, manager and mechanic on-site 24



1 hours per day. We will, therefore, consider whether this  
2 evidence "clearly supports" the county's decision.

3 The county identifies the following testimony by intervenor  
4 with regard to the duties of the "secretary" and the need to  
5 have the "secretary" reside on-site:

6 "She has picked up most of the office responsibility  
7 my father had. She calculates payroll, makes  
8 decisions on which bills will be paid and when, she  
9 orders materials, calculates the bills for our  
10 clients. She is the only person other than myself who  
11 is able to sign company checks. She also handles all  
12 government reports, taxes, and is my only backup for  
13 sales. She is an indispensable member of our  
company. \* \* \* Jan is available when I'm gone or on  
weekends or special occasions when checks need to be  
made for cash deliveries or unexpected termination of  
employees. She is also taking evening and night phone  
coverage and we have installed a farm phone in her  
house, for when problems arise with delivery or  
(unclear) sales." Record II 17-18.

14 Petitioners do not dispute the facts set forth in this  
15 testimony, but rather disagree that they support a conclusion  
16 that the "secretary" must reside on-site for monitoring and  
17 maintenance of mushroom growing operations. Petitioners argue  
18 that the real reason for the "secretary" living on-site is  
19 personal, citing the following portion of intervenor's  
20 testimony omitted from that cited by the county and quoted  
21 above:

22 " \* \* \* My father maintained an office in Portland,  
23 located close to his home, from which he sold the  
24 mushrooms. Jan relocated to live within walking  
25 distance of the office so that she could be close to  
26 home in case of medical emergencies which might arise  
with her husband Burge who has heart problems. It was  
impossible for me to make the two hour round trip to  
Portland and maintain the work load I had on the  
farm. I decided to relocate the office to the farm.

1        However, Jan couldn't commute because it would  
2        distance her from her husband in case of emergency. I  
3        had available at the time a house my father had been  
4        occupying as a second home and temporary office. I  
5        offered to move Jan and her husband to that location,  
6        thereby allowing greater freedom and flexibility from  
7        a 7 day work week, 24 hour day operation. \* \* \* "  
8        Record II 17-18.

9        The portions of intervenor's testimony identified by the  
10       parties are sufficient to support a finding concerning the  
11       actual duties of the "secretary," including a finding that her  
12       duties include those of an accountant and office manager.  
13       However, they do not clearly support determinations that those  
14       duties include "monitoring and maintenance of mushroom-growing  
15       operations" or that the "secretary" is required to live on-site  
16       for those duties to be carried out, particularly if the  
17       owner/operator, manager and mechanic also live on-site.<sup>10</sup>

18       The first assignment of error is sustained.

19       SECOND ASSIGNMENT OF ERROR

20       "The findings of fact adopted subsequent to the remand  
21       are not supported by substantial evidence."

22       Petitioners argue there is no evidence in the record to  
23       support a finding that "mushroom farms customarily provide  
24       on-site housing for secretaries." Petition for Review 6.  
25       Petitioners argue that the record does not demonstrate that  
26       mushroom farms in Oregon similar to YCMF provide multiple  
27       on-site residences for employees such as secretaries.

28       We are authorized to reverse or remand the county's  
29       decision allowing the subject secondary farm dwelling if the

1 county made a decision not supported by substantial evidence in  
2 the whole record. ORS 197.835(8)(a)(C); Sellwood Harbor Condo  
3 Assoc. v. City of Portland, \_\_\_ Or LUBA \_\_\_ (LUBA No. 87-079  
4 and 87-080, April 1, 1988). As we explained in our discussion  
5 of the first assignment of error, supra, the county's decision  
6 in this case is based on its finding that is customary for a  
7 mushroom farm like YCMF to provide an on-site dwelling for  
8 employees "necessary to provide monitoring and maintenance of  
9 mushroom-growing operations," and on an implied conclusion that  
10 the "secretary" in question is such an employee. Record II 4.  
11 The county's decision is not based on a finding that mushroom  
12 farms customarily provide on-site dwellings for secretaries.  
13 See n 2, supra. Thus, even if we agreed with petitioners'  
14 arguments under this assignment of error, it would not provide  
15 a basis for reversing or remanding the county's decision.

16 The second assignment of error is denied.

17 The county's decision is remanded.

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FOOTNOTES

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The findings which the county argues are relevant and unchallenged are the following:

"\* \* \* Because it is not highly mechanized, a mushroom farm the size of Yamhill County Mushroom Farms needs to have several qualified people on-site to insure that room temperatures are correct, to repair mechanical problems, to complete all necessary office work, and to make managerial decisions. \* \* \* Job oversight and management must be divided among several staff persons to alternate responsibility 24 hours per day.

"\* \* \* \* \*

"\* \* \* The evidence submitted establishes, and the Board [of county commissioners] finds, that mushroom farms of a size and level of mechanization comparable to that of Yamhill County Mushroom Farms need to have managers, mechanics, and other personnel on-site at all times \* \* \* ." (Emphasis in Respondent's Brief.) Record II 3-4.

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The county also argues that the characterization of the employee housed in one of the existing secondary farm dwellings as a "secretary" is inaccurate, given significant additional testimony submitted on remand concerning the nature of this employee's duties on the mushroom farm. The county, in its first decision, referred to this employee as a "secretary/accountant." Record I 3. We used the term "secretary" in Horacek I primarily because that was the term used by intervenor himself. Record I 21, 22. For continuity and convenience, we continue to use the term "secretary" to refer to this employee in this decision. However, we note that any determination which we must make concerning the nature of this employee's duties on the mushroom farm will be based on the county's findings or the evidence in the record, as appropriate, not on the fact that this employee is referred to as a "secretary."

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We note that the YCZO imposes additional requirements on the approval of secondary dwellings in EF-40 and AF-20 zones which are not at issue in this case.

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Other acceptable bases for establishing that the farm manager cannot reside in another dwelling located on the subject farm property include demonstrating that the the other dwelling was approved under the county ordinance for a different purpose. In this case, the county has not made such findings. In fact, as previously noted, the record indicates that one of the secondary dwellings already located on the subject property was approved by the county as a dwelling for a farm manager.

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Petitioners did not specifically cite the first two of the three findings quoted in the text below in their argument challenging the adequacy of the county's findings. However, we consider petitioners' challenge to encompass these findings as well since they are substantially the same as the finding petitioners did cite. Horacek I, slip op at 5; Kellogg Lake Friends v. City of Milwaukie, \_\_\_ Or LUBA \_\_\_ (LUBA No. 88-022, June 24, 1988), slip op 10.

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Petitioners do not challenge the adequacy of the findings to demonstrate that dwellings for an owner/operator, manager and mechanic are customarily provided on a mushroom farm such as intervenor's.

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Indeed, if they were, then they would also be adequate to support a decision that an on-site dwelling is customarily provided for any employee of a mushroom farm. We believe such an interpretation would be contrary to the court's admonition that the "customarily provided in conjunction with farm use" standard must be applied in a manner consistent with the state's objectives for protecting farm land.

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The county may argue that its findings with regard to need for certain employees to reside on-site at YCMF, quoted at n 1, supra, are themselves sufficient to satisfy YCZO 402.02.E.2 and 403.02.E.2. However, we note that under these YCZO and the parallel statutory provisions, it is whether a dwelling is customarily provided in conjunction with the farm use, not whether it is needed, which is the applicable criterion. Matteo v. Polk County, 14 Or LUBA 67, 77 (1985).

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9 ORS 197.835(10)(b) provides, in relevant part:

"Whenever the findings are defective because of failure to recite adequate facts or legal conclusions \* \* \* 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."

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10 With regard to support for a determination that her duties require the "secretary" to live on-site, we note that the only duties cited as being carried out outside of normal office hours are (1) being available when the owner is absent and checks "need to be made for cash deliveries or unexpected termination of employees," and (2) providing evening and night telephone coverage "when problems arise with delivery or \* \* \* sales." Record II 17-18. The evidence does not demonstrate that the "secretary" must reside on-site to perform either of these functions, or that an owner/operator, manager and mechanic living on-site could not carry out these functions.