LAND USE
BOARD OF APPEALS
OCT 27 3 16 PM '89

1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

3 BILL BLOSSER and DAVID LETT,)
4 Petitioners,)
5 vs.)
6 YAMHILL COUNTY,)
7 Respondent,)
8 and)
9 SCOTT HERNANDEZ,)
10 Intervenor-Respondent.)

LUBA No. 89-084

FINAL OPINION
AND ORDER

11 Appeal from Yamhill County.

12 F. Blair Batson, Portland, filed the petition for review
13 and argued on behalf of petitioners.

14 Timothy S. Sadlo and John M. Gray, Jr., McMinnville, filed
15 a response brief and Timothy S. Sadlo argued on behalf of respondent.

16 Rodney C. Adams, Beaverton, filed a response brief and
17 argued on behalf of intervenor-respondent. With him on the brief was Thompson, Adams, DeBast & Ray.

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

19 REMANDED 10/27/89

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

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Opinion by Sherton.

NATURE OF THE DECISION

Petitioners appeal Yamhill County Board of Commissioners Order 89-366 approving a conditional use permit for a nonfarm dwelling on land zoned for exclusive farm use.

MOTION TO INTERVENE

Scott Hernandez moves to intervene on the side of respondent in this proceeding. There is no opposition to the motion, and it is allowed.

FACTS

The subject property is a vacant 3.17 acre parcel zoned Agriculture/Forestry Large Holding (AF-20), an exclusive farm use zone. The parcel consists of Class III and VI soils, with northern slopes of 7% to 60%. The parcel is unused at present, but has been used for growing hay and grazing in the past. The subject parcel is on farm tax deferral.

The parcel is surrounded by property zoned AF-20 and Exclusive Farm Use (E-40). Land uses in the surrounding area include "vineyards, orchards, small woodlots, hay fields and nonfarm [residences]." Record 3. The parcel is bordered on the east by a 2 acre, AF-20 zoned parcel with a nonfarm dwelling, on the north and west by a 47 acre AF-20 zoned parcel,[1] and on the

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[1]The record contains a statement by a county planner that this parcel is "platted into 10 acre lots, which could be recognized in the future as lots of record." Record 7. However, the legal status of any such "plats" is unclear. Assessor's maps in the record do not reflect any division of the 47 acre parcel. Record 32, 40.

south by Breyman Orchards Road. Across Breyman Orchards Road from the subject parcel is an EF-40 zoned commercial vineyard owned by petitioner Blosser.

Intervenor-respondent (intervenor) filed an application for a conditional use permit for a nonfarm dwelling on the subject parcel. After a tie vote on approval of intervenor's conditional use permit application, the county planning commission forwarded the application to the board of commissioners with no recommendation. After a public hearing, the board of commissioners approved the conditional use permit. This appeal followed.

FIRST ASSIGNMENT OF ERROR

> "The respondent's conclusion that the proposed dwelling would be situated upon generally unsuitable land for the production of farm crops and livestock misconstrues the applicable law, does not constitute an adequate finding and is not based on substantial evidence in the whole record."

Yamhill County Zoning Ordinance (YCZO) 403.07.D establishes the following criterion for approval of a nonfarm dwelling in the AF-20 zone:

> "Is situated upon generally unsuitable land for the production of farm crops and livestock, considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of the tract."

The county findings addressing this standard state:

> "The proposed dwelling would be located upon land generally unsuitable for the production of farm crops and livestock considering that:
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> "a. The size of the parcel does not make it practical for commercial agricultural

enterprise. Further, existing residential development and small acreage ownerships on vicinity properties make commercial agricultural use of the subject property impractical.

"b. The soils on the property are moderately to severely steep for agricultural production with inclusions of Class VI agricultural soils. Class VI soils do not fall within the Goal III definition of agricultural land." Record 5.

With regard to finding "a" above, petitioners argue the county erred in relying on small parcel size to demonstrate unsuitability for farm use. According to petitioners, that a parcel is too small to be a commercial farm is irrelevant to its suitability for farm use unless it is shown that the parcel cannot be sold, leased or otherwise put to profitable agricultural use. Rutherford v. Armstrong, 31 Or App 1319, 1326-1327, 572 P2d 1331 (1977); Walter v. Linn County, 6 Or LUBA 135, 138 (1982).

Petitioners further argue that the county's finding that existing development and ownership patterns make commercial agricultural use of the subject property impractical is inadequate because it fails to explain why or how the existing development or ownership pattern make farming impractical or the land unsuitable. Billington V. Polk County, 13 Or LUBA 125, 131 (1985) (findings must explain what the relevant facts are and why they support a conclusion the standard is satisfied). Finally, petitioners point out that we have held that finding a parcel will not support commercial agriculture does not satisfy an approval criterion that the subject property be generally unsuitable for the production of farm crops and livestock.

Sweeten v. Clackamas County, ___ Or LUBA ___ (LUBA No. 89-024, July 27, 1989), slip op 4; Smith v. Baker County, 14 Or LUBA 167, 170 (1985).

With regard to finding "b" above, petitioners argue that finding a parcel contains Class VI soils is an insufficient basis for concluding that a parcel is generally unsuitable for farm use. Bruck v. Clackamas County, 15 Or LUBA 540, 541-542 (1987). According to petitioners, this finding is deficient because it does not explain *why* the property's soil and slope make it unsuitable for farm use. Futornick v. Yamhill County, 13 Or LUBA 216, 227-228 (1985).

Petitioners also argue that the county's determination of suitability is not supported by substantial evidence in the record. Petitioners claim the record contains unrebutted evidence that the property has been used for agriculture in the past, in that a county planner testified that the property had been used for hay production and grazing, and the conditional use permit application shows that the property is under farm tax deferral.[2] Petitioners point out that petitioner Blosser, owner of a neighboring commercial vineyard, testified that the property is suitable for pasture or a small vineyard. Petitioners also point out that intervenor testified before the planning commission that he initially wanted to take only one

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[2]Citing Norvell v. Portland Metropolitan LGBC, 43 Or App 849, 852-853, 604 P2d 896 (1979), petitioners also contend the county erred by failing to address this relevant issue of past agricultural use in its findings.

acre of the property out of farm deferral for a homesite and use the remaining acreage for farm use, and that only a small portion of the property will be used for residential development, with the rest used "for some type of agriculture." Record 25. Petitioners further note that intervenor's attorney acknowledged before the board of commissioners that the property is suitable for pasture.

The county and intervenor (respondents) argue that the county's findings are sufficient to support its conclusion that the subject property is generally unsuitable for farm use. Respondents also argue that even if the county's findings are deficient, under ORS 197.835(9)(b), LUBA may nevertheless affirm the county's decision if evidence in the record clearly supports the county's decision.

The county asserts that the Court of Appeals has recognized that a combination of factors, no one of which would be sufficient alone, can lead to a conclusion of unsuitability. Hearne v. Baker County, 89 Or App 282, 288, 748 P2d 1016, rev den 305 Or 576 (1988). The county also contends that YCZO 403.07.D does not require an entire parcel to be unsuitable for agricultural use, only that the parcel be "generally unsuitable." Endresen v. Marion County, 15 Or LUBA 60, 63 (1986). The county argues that in this case, evidence in the record addressing a combination of relevant factors clearly supports a determination that the subject parcel is generally unsuitable for farm use.

Respondents argue that the record contains evidence not only of the parcel's size, but also of its soils, topography and location. According to respondents, the record shows that 60% of the parcel's soils are not considered agricultural soils under Statewide Planning Goal 3 (Agricultural Lands). Respondents assert intervenor testified that 2/3 of the property has a 60% slope. Respondents also claim that petitioner Blosser testified that only the soil above the steeper slopes on the parcel is suitable for a vineyard. Respondents also maintain the record shows that the parcel is located in an area of mixed uses, including 50 dwellings within a 3/4 mile radius and a nonfarm dwelling next door. The county contends this evidence clearly supports "the county's determination that the lot in question is not suitable for commercial agricultural use, or for _any_ agricultural use." Respondent's Brief 6.

In _Sweeten v. Clackamas County_, _supra_, and _Smith v. Baker County_, _supra_, we held that finding that a parcel will not support _commercial_ agriculture does not satisfy an approval criterion requiring that the parcel be "generally unsuitable for _the production of farm crops and livestock_." (Emphasis in original.) In this case, finding "a", which addresses the practicality of using the subject parcel for commercial agriculture, similarly does not satisfy the "generally unsuitable for the production of farm crops and livestock"

1 standard of YCZO 403.07.D.[3]

2 Finding "b" states merely that the parcel's soil is
3 "moderately to severely steep for agricultural production" and
4 includes Class VI soils. Record 5. Without an explanation of
5 why these facts lead to the conclusion that the parcel is
6 unsuitable for the production of farm crops and livestock, this
7 finding cannot satisfy YCZO 403.07.D.[4] Sweeten v. Clackamas
8 County, supra, slip op at 5; Futornick v. Yamhill County, 23
9 Or LUBA at 228; Billington V. Polk County, supra.

10 We conclude that the county's findings are inadequate to
11 demonstrate compliance with YCZO 403.07.D. However, under
12 ORS 197.835(9)(b),[5] even though the county's findings are

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14 [3]In addition, we note that even if finding "a" had addressed the correct
15 standard, we would agree with petitioners that the small size of a parcel does not establish unsuitability for farm use unless it is established that the parcel cannot be sold, leased or otherwise put to profitable
16 agricultural use. Rutherford v. Armstrong, supra; Walter v. Linn County, supra. We would also agree with petitioners that a finding simply stating
17 that existing development and ownership patterns make the subject property unsuitable for farm use is impermissibly conclusory because it fails to
18 explain why the existing development or ownership pattern lead to the conclusion that the land is unsuitable. Sweeten v. Clackamas County,
19 supra, slip op at 5; Billington V. Polk County, supra.

20 [4]Finding "b" also states that "Class VI soils do not fall within the Goal III definition of agricultural land." The intent of this statement is
21 unclear. We assume the finding refers to Statewide Planning Goal 3 (Agricultural Lands). Goal 3 defines "agricultural land" in western Oregon
22 to include not only land with predominantly Class I-IV soils, but also "other lands which are suitable for farm use" and land "necessary to permit
23 farm practices to be undertaken on adjacent or nearby lands." (Emphasis added.) Thus, Goal 3 does not establish that soils other than Class I-IV
24 are not suitable for farm use.

25 [5]ORS 197.835(9)(b) provides in relevant part:

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

inadequate, we must affirm the county's determination of compliance with YCZO 403.07.D if the parties identify evidence in the record which clearly supports that determination.

The evidence in the record cited by the parties shows the parcel is 3.17 acres, composed of 40% Class III soils and 60% Class VI soils, with 2/3 of the parcel having a 60% slope, and that there are over 50 dwellings within a 3/4 mile radius of the parcel. Record 7, 22. The parties also cite evidence that surrounding uses are vineyards, orchards, small woodlots, hay fields and nonfarm residences. Record 27. There is also evidence that the parcel has been used for growing hay and grazing in the past and is on farm tax deferral. Record 7, 27, 56. We are cited to testimony in the record by intervenor that his intent is to use a small portion of the parcel for a residence and the rest for "some type of agriculture." Record 25. In addition, there is conflicting testimony in the record from neighboring property owners concerning whether the parcel is suitable for agriculture. Record 8, 10, 23. Finally, there is a statement in the record by intervenor's attorney that the parcel is unsuitable for any use other than a building site or pasture, because the soils are too poor and slope too great

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> 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 * * *."

Prior to amendments to other portions of ORS 197.835 by Oregon Laws 1989, chapter 761, section 13, this provision was codified at ORS 197.835(10)(b).

for other agricultural use. Record 8.

The evidence described above does not "clearly support" a determination that the parcel is "generally unsuitable land for the production of farm crops and livestock," as required by YCZO 403.07.D.E.

The first assignment of error is sustained.

SECOND ASSIGNMENT OF ERROR

> "The county misconstrued the applicable law, made insufficient findings, and made a decision not supported by substantial evidence in the record as a whole in concluding that the proposed dwelling would not alter the stability of the land use pattern of the area."

YCZO 403.07.C establishes the following criterion for approval of a nonfarm dwelling in the AF-20 zone:

> "Does not materially alter the stability of the land use pattern of the area * * *"

The county's decision includes the following findings relevant to this standard:

> "The surrounding properties range in size from less than 2 acres to over 50 acres. The average size of a property in the area is 12.4 acre [sic] which is below the minimum standard of the 'AF-20' and 'EF-40' zoning districts. Surrounding land uses are characterized by vineyards, orchards, small woodlots, hay fields and nonfarm rural residential." Record 3.

> "The proposed use will not materially alter the stability of the overall land use pattern of the surrounding area in that the parcel is not utilized for agricultural or forestry uses, is not integral to the continued management of adjacent parcels and is not significant in terms of acreage." Record 5.

Petitioners point out that in Sweeten v. Clackamas County, supra, slip op at 14, this Board set out the following

1 three-step inquiry required for determining whether a nonfarm
2 dwelling will materially alter the stability of the overall land
3 use pattern of an area:

4 > "First, the county must select an area for
> consideration. * * * Second, the county must examine
5 > the types of uses existing in the selected area. * * *
> Third, the county must determine that the proposed
6 > nonfarm dwelling will not materially alter the
> stability of the existing uses in the selected area."

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8 Petitioners argue the county's findings are inadequate to
9 satisfy the third step of the inquiry because they do not
10 analyze "whether the proposed dwelling would materially alter
11 [the] land use pattern by tipping the balance of resource and
12 nonresource uses."[6] Petition for Review 12.

13 Petitioners argue that the proper inquiry in determining
14 whether a proposed use will materially alter the stability of
15 the overall land use pattern in an area is whether the proposed
16 use will change the balance between resource and nonresource
17 uses in the area. Grden v. Umatilla County, 10 Or LUBA 37,
18 46-47 (1984). Petitioners contend the existence of nonfarm
19 dwellings in an area does not in itself establish that the
20 addition of another nonfarm dwelling will have no effect on the
21 stability of the area's land use pattern. Endresen v. Marion

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23 [6]Petitioners also assert that the findings are inadequate because they do not "identify the agricultural area being evaluated [and] determine the
24 land use pattern in that area." Petition for Review 12. However, petitioners do not explain why the first finding, which describes parcel
25 sizes and uses of the "surrounding" properties is not adequate to identify the area considered and its land use pattern. It is petitioners'
26 responsibility to provide in their argument the basis upon which we might grant relief. Deschutes Development v. Deschutes County, 5 Or LUBA 218, 220 (1982).

County, 15 Or LUBA at 66. According to petitioners,

> "[w]here there are 'other similarly situated properties in the area for which similar non-farm dwelling applications would be encouraged,' or where there is a 'history of progressive partitioning and homesite development,' the precedential effect of approving the current application on future applications for nonfarm dwellings must be considered. Morley [v. Marion County, ___ Or LUBA ___ (LUBA No. 87-095, February 3, 1988), slip op 9]; McCoy v. Marion County, ___ Or LUBA ___ (LUBA No. 87-063, December 15, 1987), slip op 12; Endresen v. Marion County, 15 Or LUBA [at 66]; Prow v. Marion County, 12 Or LUBA 99, 103 (1984)." Petition for Review 13.

Petitioners argue the county's findings are inadequate because they do not address the cumulative impacts of approving the proposed dwelling on the stability of the overall land use pattern in the area, even though there is evidence in the record that there are other similarly situated parcels in the area for which nonfarm dwelling applications could be encouraged. Petitioners point out that county planners testified that the 47 acre property adjoining the subject parcel to the west and north was platted into 10 acre lots which could be recognized as lots of record, and that there are 23 lots in the area "in the same category of developability as [intervenor's] lot." Record 7, 9. Petitioners also cite petitioner Blosser's testimony that no permits for nonfarm dwellings on substandard lots in the area had been issued by the county in the last 10 years, and that by approving the proposed dwelling, "the county would be opening up the door for extensive development of these parcels in the future. [Record] 8-9." Petition for Review 13.

Petitioners concede there is testimony in the record by

intervenor's attorney that the area has a history of development on substandard parcels. Record 9. However, petitioners argue that the evidence does not establish where such development has occurred or how it affected the balance between resource and nonresource uses in the area. Petitioners also contend that testimony by petitioner Blosser establishes that the existing dwellings on substandard lots in the area were built at least 15 years ago, before land use planning laws were in effect and, therefore, are not comparable to the proposed dwelling. Record 23.

The county argues that its findings are adequate to demonstrate compliance with YCZO 403.07.C. The county contends that it was not required to address "cumulative impacts" of approving the proposed dwelling in its findings. The county argues that neither the YCZO nor the cases cited by petitioners require county consideration of cumulative impacts. According to the county, the cases cited by petitioners merely establish that a county "is entitled to consider the effect of approving a nonfarm dwelling * * * conditional use permit against possible future applications." Morley v. Marion County, supra, slip op at 8; McCoy v. Marion County, supra, slip op at 12.

The county also argues that any perceived inadequacy in its findings is cured, under ORS 197.835(9)(b), by the existence of relevant evidence in the record clearly supporting this part of the decision. The county points to petitioner Blosser's testimony that no permits for nonfarm dwellings on substandard

parcels in the area had been approved for 10 years and to petitioner Lett's testimony that he has purchased substandard parcels in the area for vineyard use. Record 8, 24. The county also cites intervenor's testimony that a majority of the substandard parcels in the area are owned by wineries and used as vineyards. Record 24. The county argues this evidence clearly supports a determination that approval of the proposed dwelling will have no material effect on the current stable balance of mixed uses in the area.

Intervenor also cites testimony by a county planner that there are over 50 dwellings in a 3/4 mile radius of the parcel, and argues that a staff-prepared map shows that all dwellings in the EF-40 portion of the area and 1/3 of the dwellings in the AF-20 portion are on substandard parcels. Record 22, 32. Intervenor argues that petitioners are attempting "to convert an area that has been committed to non-farm dwellings on small lots to an agricultural area * * *." Intervenor's Brief 10.

We agree with the county that Morley v. Marion County, supra, McCoy v. Marion County, supra, Endresen v. Marion County, supra, and Prow v. Marion County, supra, (all appeals from county denials of approvals for nonfarm dwellings) do not establish that county findings must always address the "cumulative impacts" of proposed nonfarm development in order to satisfy a "stability of the land use pattern" standard such as YCZO 403.07.C. However, those cases do establish that where (1) there are other similarly situated properties in the area

for which similar nonfarm dwelling applications might be encouraged; or (2) there is a history in the area of progressive partitioning and development of nonfarm residences, the "cumulative impact" or "precedential effect" of approving an additional nonfarm dwelling is an issue relevant to demonstrating compliance with a criterion such as YCZO 403.07.C.

Both this Board and the Court of Appeals have held on numerous occasions that when a relevant issue is adequately raised by evidence and testimony in the record, it must be addressed in the decision maker's findings. Norvell v. Portland Metropolitan LGBC, supra; McCoy v. Linn County, ___ Or LUBA ___ (LUBA No. 87-046, December 15, 1987), slip op 8, aff'd 90 Or App 271 (1988). In this case, there is evidence in the record that there are other similarly situated undeveloped substandard parcels in the area. Testimony in the record focused on the issue of whether approval of the proposed dwelling will have a precedential effect, encouraging applications for, and approval of, nonfarm dwellings on such parcels. Under these circumstances, the county is required to address this issue in its findings. Because the county failed to do so, its findings are inadequate to demonstrate compliance with YCZO 403.07.C.

However, under ORS 197.835(9)(b), we are nevertheless required to affirm this part of the county's decision if the evidence in the record identified by the parties clearly supports a determination of compliance with YCZO 403.07.C. In this case, the evidence in the record identified by petitioners

and respondents is not really conflicting, rather the parties emphasize different aspects of the evidence and draw different conclusions. The evidence shows that there is a mixed pattern of farm uses and nonfarm dwellings on smaller parcels in the area surrounding the subject parcel. Record 22, 27, 32. The record also indicates that most of the existing nonfarm dwellings in the area were built over 15 years ago, many of these originally as farm dwellings, before the smaller lots were created. Record 23. The record further shows that additional nonfarm dwellings on small parcels have not been approved in the area for the past 10 years. Record 8. However, there are approximately 23 small undeveloped parcels in the area similarly situated to the subject parcel. Record 9.

We believe different conclusions could reasonably be drawn from the evidence identified in the record described above regarding the precedential or cumulative effect of the proposed dwelling on the stability of the land use pattern of the area surrounding the subject parcel. In such a circumstance, the evidence identified does not "clearly support" a determination of compliance with YCZO 403.07.C.

The second assignment of error is sustained.

THIRD ASSIGNMENT OF ERROR

> "The county's determination that the proposed use would be compatible with the purposes of the AF-20 zoning district and surrounding farm and forest uses misconstrues the applicable law, is based on insufficient findings and is not supported by substantial evidence in the record as a whole."

YCZO 403.07.A establishes the following criterion for approval of a nonfarm dwelling in the AF-20 zone:

> "Is compatible with farm uses described in Subsection 403.02(A) and is consistent with the intent and purposes set forth in ORS 215.243 * * *"

The county's decision includes the following findings relevant to this standard:

> "* * * Surrounding land uses are characterized by vineyards, orchards, small woodlots, hay fields and nonfarm rural residential." Record 3.

> "The proposed use is compatible with the purpose of the 'AF-20' Zoning District and with surrounding farm and forest uses in that establishment of a dwelling on the subject parcell [sic] will not remove land used for the production of crops, livestock and forest products." Record 4.

A. Compatibility with Farm Uses

Petitioners argue the above quoted finding is inadequate to show compatibility with farm uses. According to petitioners, to satisfy the compatibility requirement of YCZO 403.07.A the findings must identify the other farm uses in the area and explain how the proposed nonfarm dwelling would be compatible with those uses. Sweeten v. Clackamas County, supra, slip op at 9.

Intervenor argues that under the YCZO, uses listed as conditional in a zoning district are necessarily compatible uses in that particular zoning district. Intervenor argues that YCZO 403.07.A must be interpreted together with YCZO 1202.01, the purpose statement of the YCZO conditional use section, to give meaning to both. According to intervenor, these provisions

1 must be read together to make "uses specified as conditional
2 uses for a specific zone * * * compatible so long as the other
3 prerequisites are met." (Emphasis in original.) Intervenor's
4 Brief 12.

5 Respondents further argue that any inadequacy in the
6 county's findings is cured by the existence of relevant evidence
7 in the record clearly supporting this portion of the decision.
8 The county contends that the record shows clearly what farm uses
9 exist in the area of the subject parcel. Record 8, 9, 10, 16,
10 22, 24. Respondents also contend the record shows there are
11 already numerous farm and nonfarm dwellings in the area.
12 Record 32. Intervenor also claims that a letter in the record
13 from a neighboring property owner shows the farm uses in the
14 area and establishes that the proposed dwelling may well improve
15 the area. Record 17.

16 YCZO 1202.01 provides the following purpose statement for
17 the YCZO Conditional Use Criteria and Requirements section:

18 "The purpose of a conditional use is to provide for
19 those uses which possess unique and special characteristics making impractical their inclusion as outright permitted uses in the underlying zoning
20 district. Such uses shall not be incompatible with the type of uses permitted in surrounding areas.
21 Location and operation of designated conditional uses shall be subject to review and authorized only by
22 issuance of a conditional use permit."

23 In addition YCZO 1202.02.D establishes the following approval
24 criterion applicable to all conditional uses:

25 "The proposed use will not alter the character of the surrounding area in a manner which substantially
26 limits, impairs or prevents the use of surrounding

1 properties for the permitted uses listed in the underlying zoning district."

2 We agree with intervenor that the above emphasized language
3 in YCZO 1202.01 should be interpreted together with that of
4 YCZO 1202.02.D and 403.07.A, to give effect to each. However,
5 we believe the only interpretation of these provisions which is
6 reasonable and gives effect to each is that in order to be
7 approved, a conditional use must be _shown_ to be compatible with
8 the types of uses permitted in the zone, through compliance with
9 YCZO 1202.02.D and other related criteria applicable to the
10 particular conditional use, such as YCZO 403.07.A.

11 In order to demonstrate compliance with YCZO 403.07.A, the
12 county's findings must identify the farm uses in the area
13 surrounding the subject parcel, and must explain how the
14 proposed nonfarm dwelling will be compatible with the identified
15 farm uses. _Sweeten v. Clackamas County_, _supra_. The first
16 finding quoted above purports to identify the farm uses in the
17 surrounding area, and petitioners do not explain why this
18 finding is insufficient to satisfy the standard in this regard.
19 The county's findings do not, however, explain how the proposed
20 use will be compatible with these surrounding uses. Not
21 occupying land currently used for the production of crops,
22 livestock or forest products does not establish compatibility.
23 Accordingly, the county's findings are inadequate to demonstrate
24 compliance with the compatibility requirement of YCZO 403.07.A.

25 Furthermore, the only evidence identified in the record
26 relevant to how the proposed use will be compatible with

surrounding farm uses are (1) statements by intervenor that he is willing to accept the nuisances of agricultural methods as part of a rural lifestyle, and (2) testimony by petitioner Blosser that even if intervenor is compatible with nearby farm uses, there is no guarantee that intervenor will always own the property, and new owners may not be as compatible. Record 8, 9.

The proposed use is a nonfarm dwelling. The county's determination that the proposed use is compatible with surrounding farm uses must be based on the nature of the proposed use, not a particular resident. The evidence identified in the record does not clearly support a determination of compliance with the compatibility requirement of YCZO 403.07.A.

This subassignment of error is sustained.

B. Consistency with ORS 215.243

Petitioners argue the county's findings are inadequate to show consistency with the purpose and intent of ORS 215.243, since they do not identify that policy or explain how the facts satisfy that policy. Petitioners also argue the record does not contain substantial evidence to support a determination that allowing the proposed dwelling is consistent with ORS 215.243.

The county argues that its comprehensive plan policies are "presumably equivalent to, or more restrictive than, the State's policy set out in ORS 215.243, on [sic] they would not be acknowledged." Respondent's Brief 11. The county also argues that there is evidence in the record which clearly supports a

county determination of consistency with the policy of ORS 215.243.

Acknowledgment of a county's comprehensive plan by the Land Conservation and Development Commission (LCDC) establishes only that the plan complies with the Statewide Planning Goals, not that the plan complies with state statutes. ORS 197.015(1); McKay Creek Assoc. v. Washington County, ___ Or LUBA ___ (LUBA Nos. 89-027 and 89-028, September 18, 1989), slip op 5. Thus, absent a demonstration that county plan policies incorporate all relevant provisions of ORS 215.243, the county cannot rely on findings of compliance with plan policies to demonstrate compliance with ORS 215.243. The county makes no such demonstration.

The county's findings do not identify the relevant provisions of ORS 215.243 and explain why they are satisfied and, therefore, are inadequate to satisfy YCZO 403.07.A. Furthermore, the parties do not identify evidence in the record which clearly supports such a determination.

This subassignment of error is sustained.

The third assignment of error is sustained.

FOURTH ASSIGNMENT OF ERROR

> "The county misconstrued the applicable law in failing to make a finding that the proposed use would not interfere seriously with accepted farming practices on adjacent lands devoted to farm use. There is also no substantial evidence in the record to support such a finding."

YCZO 403.07.B establishes the following criterion for

approval of a nonfarm dwelling in the AF-20 zone:

> "Does not interfere seriously with accepted farming practices on adjacent lands devoted to farm use. As used in this subsection, accepted farming practice means a mode of operation that is common to farms of a similar nature, necessary for the operation of such farms to obtain a profit in money, and customarily utilized in conjunction with farm use * * *"

The county's decision includes the following finding:

> "The proposed use will not alter the character of the surrounding area in a manner substantially limiting, impairing, or preventing the use of surrounding properties for permitted uses listed in the 'AF-20' Zoning District in that several dwellings have been established on adjacent and nearby parcels with no apparent adverse impacts to farm uses, and approval of the request would not result in the removal of lands from crop, livestock, or forestry production." Record 4.

Petitioners assert the county failed to adopt a finding specifically addressing YCZO 403.07.B. Petitioners argue that the finding quoted above is inadequate to demonstrate compliance with YCZO 403.07.B because it does not identify existing and potential future farming practices on adjacent lands or analyze how the dwelling would interact with the identified farm uses. Sweeten v. Clackamas County, supra, slip op at 17.

Petitioners also argue that the county erred in failing to address evidence in the record that the proposed use would interfere with existing and future farming practices in the area. According to petitioners, such evidence includes petitioner Lett's testimony about the use of sprayers and propane cannons in vineyards in the area and his concern that rural residents would be likely to complain about such noises.

Record 24. Petitioners also cite petitioner Blosser's testimony that intervenor's affidavit recognizing existing farm and forest practices is not a deed restriction and would give surrounding agricultural operations no protection against law suits or harassment against accepted farming practices by residents of nonfarm dwellings. Record 13.

The county argues that the finding quoted above is equivalent to a finding that the proposed use would not "interfere seriously with accepted farming practices on adjacent lands devoted to farm use." The county contends that not "substantially limiting, impairing, or preventing" is equivalent to not interfering seriously.

The county also argues that even if its findings are inadequate, evidence in the record clearly supports a determination of compliance with YCZO 403.07.B. ORS 197.835(9)(b). The county argues that uses of neighboring properties were discussed in the record. Record 8, 9, 10, 16, 22, 24. The county points out petitioner Blosser is the owner of neighboring property, and argues petitioner Blosser clearly identified in the record the uses of his property. Record 23.

The county argues that in Schaad v. Clackamas County, 15 Or LUBA 70 (1986), this Board rejected a challenge to a determination of compliance with a standard similar to YCZO 403.07.B, even though there was evidence in the record of complaints and disputes by residents of nonfarm dwellings concerning existing farm practices. The county argues that in

this case there is no evidence in the record that there has ever been a complaint or dispute by nonfarm residents of the area concerning farm activities, even though there are 50 dwellings within a 3/4 mile radius of the subject property. The county further asserts that there is unrebutted evidence in the record from a neighborhood resident that there have been no complaints from area residents concerning farm uses in the area. Record 9.

Even if we accepted the county's argument that the finding quoted above could be interpreted to address the standard of YCZO 403.07.B, the county's findings would nonetheless be inadequate because nowhere do they describe the accepted farming practices on adjacent lands or explain why the proposed use would not seriously interfere with those practices. Sweeten v. Clackamas County, supra; Billington v. Polk County, 13 Or LUBA at 131-132; Stefansky v. Grant County, 12 Or LUBA 91, 94 (1984). Furthermore, the evidence in the record cited by the parties does not clearly identify the accepted farming practices occurring on adjacent lands in farm use. In particular, no evidence is identified in the record concerning whether the 47 acre parcel adjoining the subject parcel to the west and north is in farm use and, if so, what accepted farming practices are in use there. Without such evidence, the evidence identified in the record does not clearly support a determination of compliance with YCZO 403.07.B.

The fourth assignment of error is sustained.

The county's decision is remanded.