5BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

DAVID STEFAN and JERRY JENSEN, Petitioners, vs. YAMHILL COUNTY, Respondent, and JERALD SMITH, Intervenor-Respondent.	)	LUBA No. 89-118 FINAL OPINION AND ORDER

Appeal from Yamhill County.

David Stefan and Jerry Jensen, McMinnville, filed the petition for review. David Stefan argued on his own behalf.

Timothy Sadlo, and John M. Gray, Jr., McMinnville, filed the response brief and Timothy Sadlo argued on behalf of respondent.

Jerald Smith, McMinnville, represented himself.

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

REMANDED 02/16/90

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

Opinion by Kellington.

NATURE OF THE DECISION

Petitioners appeal an order of the Yamhill County Board of Commissioners approving a conditional use permit for a nonfarm dwelling.

MOTION TO INTERVENE

Jerald Smith, applicant for the development permit below, moves to intervene on the side of respondent. There is no opposition to the motion and it is allowed.

MOTION TO STRIKE

Respondent moves to strike appendix "D" to petitioners' brief, which is an affidavit of one of the petitioners in this appeal. Respondent moves to strike the affidavit on the basis that it contains matters outside of the record.

Petitioners argue that although standing is not an issue, an affidavit submitted for the sole purpose of establishing petitioners' standing should not be subject to a motion to strike.

We agree.[1]

Respondent's motion to strike is denied.

FACTS

The subject property is a vacant 2.3 acre parcel zoned Agricultural/Forestry Large Holding (AF-20), an exclusive

[1]Of course, because petitioners' standing is not an issue, we do not rely on the facts asserted in the affidavit in reaching our decision on appeal.

farm use zone. The subject parcel is forested with cedar, maple, alder and fir trees and has slopes between 20% and 30%. The soils on the subject parcel are agricultural Class IV, Yamhill Silt Loam. The property is triangular in shape. It is bordered by a 697 acre parcel, which is managed for timber production, and Baker Creek Road, a paved county road. The subject parcel is bisected by a stream. The subject parcel has no history of farm or forest tax deferral.

Petitioners own property across Baker Creek Road from the subject property. Additional facts include:

> "Within a one-mile radius of the subject parcel there are currently only 25 dwellings. Fourteen of the dwellings are on parcels that are below the minimum lot size in the area. Across Baker Creek Road to the north, there are nine parcels of approximately 10 acres in size, in seven ownerships. Petitioners own three of those parcels, have their dwelling on one, and do not intend to allow development on the other two. There are two houses on the remaining six parcels * * *." Respondent's Brief 4-5.

The Yamhill County Planning Commission approved intervenor's application for a nonfarm dwelling. Petitioners appealed the decision of the planning commission to the Yamhill County Board of Commissioners. The board of commissioners denied petitioners' appeal and approved intervenor's application.

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."

Under Yamhill County Zoning Ordinance (YCZO) 403.07.D, before the county may approve a nonfarm dwelling in the AF-20 zone, the county must find the proposed nonfarm dwelling:

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

The county findings addressing this standard state:

> "The subject property is comprised of 2.3 acres, is divided by Baker Creek with the northern half of the site relatively flat and the southern half steep. The property is wooded with cedar, maple, alder and some fir trees.
>
> "The soils on the subject property are agricultural class IV, Yamhill Silt Loam with slopes between 20% to 30%. The soil exhibits a severe erosion hazard for cultivation, and in order to minimize erosion through farming, more intensive management practices such as strip cropping, terraces, and diversions are required.
>
> "The subject property is not on farm or forest deferral for tax purposes.
>
> "* * * * *
>
> "Resource uses on properties in the area of the subject property are generally timber production with some pasture land and livestock grazing. Many undeveloped parcels in the area are unmanaged for farm or forest use. * * *

"* * * * *

"The terrain of the land is such that approximately half of the property is too steep for agricultural production or livestock grazing.

"The property consists of only 2.3 acres and is divided by Baker Creek. Use of the property for farm or forest use would be severely limited due to the small size of the tract, together with the fact that Baker Creek creates a physical division between the north and south halves of the property. Additionally, due to set-back requirements associated with the Forest Practices Act, commercial tree farming on the subject property would not be feasible.

"Existing vegetation in the form of maple, alder, and cedar trees limit any realistic use of the property for cultivation or farm use of any kind.

"The subject property has not been on farm or forest deferral for tax purposes. Therefore, the Yamhill County Assessor recognizes the subject property as non-farm in nature.

"The soil characteristics of the property require intensive management practices such as strip cropping, terraces and diversions to guard against the severe erosion hazard that exists on such soils. The size of the property, terrain, existing vegetation, and division of the property by Baker Creek all combine to substantially limit use of the site for farm use and do not warrant the intensive management techniques that would be required to farm the property effectively.

"The State of Oregon Department of Forestry does not believe that the subject property can 'make any viable contribution to the forest land base.' The Forestry Department believes the property is too small to manage as a commercial forest." Record 5-6.

Petitioners contend that the county's findings are inadequate to satisfy YCZO 403.07.D, and even if adequate

that there is not substantial evidence to support those findings. We address petitioners' challenges to the findings and the evidentiary support for the findings separately below.

A. Adequacy of the Findings

Petitioners argue the findings that the subject parcel is generally unsuitable for the production of farm crops and livestock are inadequate. Petitioners contend that under Rutherford v. Armstrong, 31 Or App 1319, 572 P2d 1331 (1977) (Rutherford), small parcel size is irrelevant to a determination of whether a parcel is generally unsuitable for agricultural purposes, unless it is also shown that the parcel could not be sold, leased, or by some other arrangement put to agricultural use. Petitioners contend there are no findings addressing whether the subject land can be sold, leased or otherwise put to profitable agricultural use.[2]

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[2]Petitioners also argue that there is evidence in the record that the subject parcel has been historically used for "the production of alder, maple, cedar, and fir," which petitioners contend is a farm use under ORS 215.203. Petition for Review 8, 9. Citing Norvell v. Portland Area LGBC, 43 Or App 849, 852-53, 604 P2d 896 (1979), petitioners argue that the county was required to address the suitability of the subject land for "the production of alder, maple, cedar and fir" in its findings. The record citation to which petitioners refer is the first page of the county staff report, which states in relevant part:

> "The property is wooded with cedar, maple, alder and some fir trees." Record 50.

This statement is not the equivalent of evidence that the parcel has historically been used for the production of farm crops and livestock as petitioners contend. We disagree with petitioners that the county is

Petitioners state that the subject parcel is presumed to be suitable for the production of farm crops and livestock because the soils are agricultural class IV. Petitioners contend the county's findings do not rebut the presumption that the parcel is suitable for farm use.[3]

Respondent argues that neither Rutherford, nor any of the other cases cited by petitioners, require findings that the subject parcel cannot be leased, sold or by some other arrangement put to agricultural use. Respondent argues that Rutherford and its progeny stand for the principle that where local government relies solely on small parcel size to determine general unsuitability for farm use, it must also find the parcel cannot be sold, leased, or by some other arrangement put to agricultural use. Respondent argues that this principle does not apply in this case because the county's findings here do not depend solely on the size of

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required to make findings specifically addressing the suitability of the subject parcel for "the production of cedar, maple, alder and fir." Petition for Review 9.

[3]Petitioners also complain that the findings that "commercial tree farming" on the property is not "feasible" are inadequate. We understand petitioners to contend that because the neighboring tree farm produces timber, the subject parcel could also produce timber and the findings addressing the suitability of the subject parcel for timber production are inadequate. However, under the applicable approval standard, which requires the subject parcel be "generally unsuitable for the production of farm crops and livestock, the county is not required to make findings addressing the suitability of the parcel for timber production. Futornick v. Yamhill County, 13 Or LUBA 216, 229 (1985). We do not reverse or remand a decision on the basis of findings which are unnecessary to the decision. Moorefield v. City of Corvallis, ___ Or LUBA ___ (LUBA No. 89-045, September 28, 1989), slip op 32. Bonner v. City of Portland, 11 Or LUBA 40 (1984).

the subject parcel to determine general unsuitability for agricultural purposes.

Respondent contends in this case, the county found the subject parcel generally unsuitable for agricultural uses based on a combination of factors which are exacerbated by, but not dependent upon, the small size of the parcel. These factors include that the subject parcel (1) consists of 2.3 acres, half of which is too steep for the production of farm crops and livestock; (2) has not been, and is not now, on farm or forest tax deferral; (3) is bisected by a creek; (4) presents an erosion hazard if cultivated; and (5) is covered with various types of trees. Respondent acknowledges that no one of these factors standing alone would establish that the subject parcel is unsuitable for the production of farm crops and livestock. However, respondent argues these factors taken together do establish that the subject parcel is not suitable for the production of farm crops or livestock, regardless of whether it is combined with other land.

Respondent also argues that these factors, taken together, overcome the presumption that the property is suitable for the production of farm crops and livestock created by the agricultural class IV soils on the property. Hearne v. Baker County, 89 Or App 282, 288, 748 P2d 1016, rev den 305 Or 576 (1988) ("adverse land conditions on one acre of a five acre parcel are likely to have a more

profound effect on its overall suitability for farming than would identical conditions on one acre of a 50 acre parcel"); Futornick v. Yamhill County, 13 Or LUBA at 227 ("the unsuitability criterion can, in theory at least, be satisfied by a combination of factors, none of which is deemed independently sufficient").

Finally, respondent suggests that even if the county was required to make findings addressing whether the subject parcel could be sold, leased or otherwise combined with other parcels for agricultural purposes, the county's findings establish that there are no farm crop or livestock operations adjacent to the subject parcel with which the subject property could be combined.

We note at the outset our understanding of Rutherford, and the line of cases which follow it, is different than respondent's. At issue in Rutherford was a statutory approval standard, similar to the approval standard at issue in this case, requiring that parcels be found "generally unsuitable for for the production of farm crops and livestock" based on certain factors. The Court of Appeals recognized that the statutory standard "generally unsuitable for the production of farm crops and livestock" does not make reference to profitability and is distinguishable from the statutory definition of "farm use," which acknowledges profitability as a factor. The court held:

> "The fact that the property cannot be farmed as an economically self-sufficient farm unit is

> irrelevant if it is otherwise suitable to produce farm crops and livestock." Rutherford, 31 Or App at 1327.

The Court also stated it is inadequate to determine a parcel is not suitable as a farm merely because of small parcel size absent:

> "* * * evidence in the record that the subject * * * parcel cannot be sold, leased or by some other arrangement put to profitable agricultural use." Id. at 1323.

The Court's decision has been interpreted to require that an otherwise suitable, but small, parcel is not considered "generally unsuitable for the production of farm crops and livestock" unless it is also established that the parcel could not be sold or leased to a person who could farm the land. Blosser v. Yamhill County, ___ Or LUBA ___ (LUBA No. 89-084, October 27, 1989), slip op 8, n 3; Walter v. Linn County, 6 Or LUBA 135, 138 (1982). Consequently, where the evidence indicates that a parcel, if larger, may be suitable for agricultural use, the county must determine whether the parcel can, in effect, be made larger by being sold or leased to other agricultural operators. See Futornick v. Yamhill County, 13 Or LUBA at 228. It is only after this determination is made that a county may determine a small parcel is generally unsuitable for farm use.

Under the Rutherford line of cases, small parcel size impacts decisions made under a standard such as YCZO 403.07.D in at least three ways. First, where parcel

size is given as the sole justification for determining a parcel is generally unsuitable for the production of farm crops and livestock, the county must explain whether the parcel could be leased, sold or by some other arrangement put to agricultural use. ORS 215.283(3)(d). Second, where small parcel size is one of several unweighted justifications for determining a parcel is generally unsuitable for the production of farm crops and livestock, it is possible that if the parcel were larger it might be suitable for agricultural uses. Under these circumstances, the county must also explain whether the subject parcel could be leased, sold or by some other arrangement put to agricultural use. Third, where the county determines, regardless of parcel size, that a parcel is unsuited for the production of farm crops and livestock, it is unnecessary for the county to explain whether the unsuitable parcel can be farmed in conjunction with other land.

The county in this case, however, did not determine the subject parcel is unsuitable, regardless of size, for the production of farm crops and livestock. The county determined:

> "* * * use of the property for farm use would be severely limited." Record 8.

The county also determined that:

> "* * * [t]he soil characteristics of the property require intensive management practices such as strip cropping, terraces and diversions to guard against the severe erosion hazard that exists on

> such soils. The size of the property, terrain, existing vegetation, and division of the property by Baker Creek all combine to substantially limit use of the site for farm use and do not warrant the intensive management techniques that would be required to farm the property effectively." Record 7-8.

These findings determine that the subject property is suitable for the production of farm crops and livestock, but explain that the agricultural uses for which the parcel is suited are not "warranted" due to identified "substantially" limiting factors, including small parcel size. Accordingly, the county must determine whether the subject parcel may be put to agricultural use in combination with agricultural operations elsewhere.[4] In this case, the county's findings recognize that there are properties in the area on which farm crops and livestock are produced, specifically the county identifies pasture land and livestock grazing in the area.[5] We conclude the county's findings are inadequate because they do not establish that there are no nearby parcels producing farm crops or livestock with which the subject parcel might be combined and put to agricultural use. Rutherford, supra; Blosser v. Yamhill County, supra.

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[4]Except as discussed infra, petitioners do not challenge the accuracy or adequacy of the findings on other grounds.

[5]The county's findings state that the neighboring tree farm, bordering the subject property, is in timber production. As we pointed out supra, there is no requirement for the county to make findings determining whether the subject property could be used for timber production, a forest use. Futornick v. Yamhill County, 13 Or LUBA at 229.

Petitioners also contend the findings are inadequate to overcome the presumption that the parcel is generally suitable for the production of farm crops and livestock. Petitioners argue:

> "[t]he county's statement that the parcel contains characteristics which require intensive management practices does not rebut the presumption of suitability and is insufficient to support a finding that [the] parcel is generally unsuitable for farm use. * * * The county must state what percentage of the soils were unsuitable and explain why the property's soils and slope made it unsuitable for farm use, and specifically forest use."[6] Petition for Review 8-9.

We understand petitioners to argue the county's findings are inadequate because they erroneously conclude that the parcel is unsuited for the production of farm crops and livestock on the basis that such production would require intensive management. According to petitioners, the county erred by failing to explain (1) exactly what percentage of soils are unsuitable for the production of farm crops and livestock, and (2) why the soils and slope render the subject parcel unsuited for the production of farm crops and livestock.[7]

However, the county points to other parts of its order

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[6]As we have stated above, the county need not make findings explaining why the subject parcel is unsuitable for forest use.

[7]Throughout their brief petitioners repeatedly point out that the county does not explain why the subject property is not suited for forest use. It appears that this argument underlies petitioners' claim here as well.

in which it explains that half of the soils on the subject property are on steep slopes and are generally unsuitable to produce farm crops and livestock because (1) the soils are subject to a "severe erosion hazard" without intensive management practices, (2) intensive management practices are not "warranted" because of the small size of the parcel, it being bisected by a creek, and other limitations affecting the property.[8]

We disagree with petitioners that the county simply concluded that because the subject parcel requires intensive management it is unsuited for the production of farm crops and livestock. Except for the county's failure to explain why the parcel cannot be put to agricultural use in conjunction with nearby parcels, as noted above, the county has given the explanation petitioners contend it did not. The county found the soils, slope and parcel size, among other things, make the subject parcel generally unsuitable for the production of farm crops and livestock. Petitioners do not explain why, beyond the county's failure to consider the possibility of agricultural use in conjunction with other parcels, these findings are inadequate to explain the basis for the county's conclusion that the property's soil, slope, parcel size and other identified characteristics make

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[8]We assume that the county's finding that half of the property is on steep slopes means 50% of the property is on steep slopes. Petitioners argue only that findings such as these were not made, and do not challenge the accuracy of these apparently overlooked findings.

it generally unsuitable for agricultural purposes. It is petitioners' responsibility to explain the basis upon which we might grant relief, and petitioners have not done so here. Deschutes Development v. Deschutes County, 5 Or LUBA 218, 220 (1982).

This subassignment of error is sustained in part.

B. Evidentiary Support

Under this subassignment of error, petitioners challenge the evidentiary support for the county's findings of general unsuitability. In the previous subassignment of error, we determined the county's findings are adequate except for the failure to consider whether the subject property can be put to agricultural use in conjunction with other property. We, therefore, review the evidentiary support for the findings the county did adopt regarding unsuitability.

Petitioners argue the county findings that the subject property is generally unsuitable for the production of farm crops and livestock are not supported by substantial evidence, in view of evidence in the record that (1) the property has a history of tree production, which petitioners suggest constitutes the "production of farm crops;" (2) the subject property is suitable as a "woodlot," which petitioners contend is a "farm use;" and (3) petitioners made an offer to purchase the subject property "as a part of [their] tree growing operation." Petition for Review 10.

As we have already explained, the evidence cited by petitioners that the property has a history of tree production, even if correct, does not mean the property is suitable for the production of farm crops.

Regarding petitioners' claim that the evidence in the record demonstrates the subject property is suitable as a woodlot, we agree that a woodlot can, under certain circumstances, constitute the "current employment of land for farm use" under ORS 215.203(2)(b)(H).[9] See 1000 Friends v. LCDC (Lane County), 305 Or 384, 399, 752 P2d 271 (1988). However, the court in Rutherford made it clear that the statutory approval standard "generally unsuitable for the production of farm crops and livestock" is not the equivalent of the statutory standards defining "farm use" under ORS 215.203. The question, therefore, is whether use of the subject property as a woodlot constitutes the production of farm crops, as that term is used in YCZO 403.07.D (and ORS 215.213(3)(b); 215.283(3)(d)). However, petitioners have not directed us to any evidence in the record which establishes that the subject parcel is suitable for, or constitutes a woodlot, or evidence that

[9]ORS 215.203(2)(b)(H) states that the current employment of land for farm use includes:

> "Any land constituting a woodlot, not to exceed 20 acres, contiguous to and owned by the owner of land specially valued at true cash value for farm use even if the land constituting the woodlot is not utilized in conjunction with farm use."

even if it is, that such woodlot would produce a "farm crop."[10]

Finally, petitioners argue that the substantiality of the county's evidence that the property is "generally unsuitable" is undermined by certain evidence in the record. Petitioners point to evidence that one of them, a real estate broker, made a conditional "offer" to purchase the subject property and use the subject property in connection with petitioner's forest land. This petitioner's offer to purchase the subject property was transmitted by a letter which states in part:

> "Since we have decided to appeal the [planning commission's decision approving intervenor's nonfarm dwelling] we feel that it is very important to maintain all of the potential forest land as land used in agricultural or forest practices. Since we already manage forest land adjacent to your property, it would be easy to add this to our management system.
>
> "Therefore, I am enclosing what I feel to be a reasonable offer to you in consideration of land values. As a residential parcel, it could be valued from $3,000 to $5,000 per acre if we use some of the surrounding comparables. As timber land only it is a bit more difficult to evaluate due to the small size of the parcel in consideration. The enclosed offer therefore represents a more than generous offer for you in that it represents a value at the highest and best use of the property, if it were possible to be used as a residential parcel, even though we

[10]For instance, petitioners have not shown that the parcel is contiguous to property which is specially valued at true cash value for farm use, which is a statutory requirement for a "woodlot."

> realize that under the current zoning standards, it does not qualify for such residential use. * * *" (Emphasis added.) Record 21.

Considered in the light most favorable to petitioners, this offer is one to purchase the property for "timber land," which we have already stated is irrelevant to compliance with YCZO 403.07.D because timber production is a forest use. We do not regard this offer as evidence which undermines the reasonably detailed evidence in the record supporting the challenged findings that the subject parcel is generally unsuitable for the production of farm crops and livestock. The choice between conflicting reasonable evidence belongs to the county, and we have no basis to disturb that choice here. Von Lubken v. Hood River County, __ Or LUBA ___ (LUBA No. 89-023, September 8, 1989), slip op 23.

There is evidence in the record to support the county's determinations that the parcel (1) is on steep slopes; (2) has soil which would erode if cultivated; (3) is bisected by a creek; (4) is not assessed at true cash value for farm use; (5) is covered with various trees; and (6) is 2.3 acres in size. We conclude the county findings that the parcel by itself is generally unsuitable for production of farm crops and livestock are supported by substantial evidence in the whole record. Younger v. City of Portland, 305 Or 346, 360, 752 P2d 262 (1988).

This subassignment of error is denied.

The first assignment of error is sustained, in part.

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 overall stability of the land use pattern of the area."

YCZO 403.07.C requires the county to find that the proposed nonfarm dwelling:

> "[d]oes not materially alter the stability of the overall land use pattern of the area."

The county made the following findings addressing this standard:

> "(10) Across Baker Creek Road to the northeast of the subject property are 9 parcels of approximately 10 acres in size. The 9 parcels are in seven separate ownerships. There are three dwellings on the parcels.
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> "(11) Resource uses on properties in the area of the subject property are generally timber production with some pasture land and livestock grazing. Many undeveloped properties in the area are unmanaged for farm or forest use. Within a one mile radius of the subject property there are 25 dwellings. Of these 25 dwellings, 14 are on ownerships that are below the minimum parcel size requirement of the AF-20 zone and are, therefore, considered non-farm dwellings.
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> "* * * * *
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> "The [county] finds that the establishment of a non-farm dwelling on the subject property will not materially alter the stability of the overall land use pattern of the area for the following reasons:

"(i) No new parcels are being created as a result of this application. The applicant's property has been in existence since 1967.

"(ii) The overall land use pattern of the surrounding area includes 14 existing non-farm dwellings and substandard size parcels within one mile of the subject property. The addition of one non-farm dwelling on the subject 2.3 acre property will not materially alter the stability of the overall land use pattern of the area. Each application must be measured on the impacts which it creates on the overall land use pattern of the area. While it may be possible that the [county] could find in subsequent applications for non-farm dwellings that additional development in the area would alter the stability of the overall land use pattern, the [county] concludes in this application that a non-farm dwelling on the subject property would not materially alter the stability of the overall land use pattern of the area.

"(iii) With the exception of the adjoining tree farm, much of the surrounding area is unmanaged for farm or forest use." Record 4-7.

In Sweeten v. Clackamas County, ___ Or LUBA ___ (LUBA No. 89-024, July 24, 1989), applying a similar Clackamas County code provision, we explained the three part inquiry necessary for determining whether a nonfarm dwelling will materially alter the stability of the overall land use pattern of the area as follows:

"First the county must select an area for consideration. The area selected must be reasonably definite including adjacent land zoned for exclusive farm use. Second, the county must examine the types of uses existing in the selected

> area. In the county's determination of uses occurring in the selected area, it may examine lot or parcel sizes. However, area lot or parcel sizes are not dispositive of, or particularly relevant to, the nature of the uses occurring on such lots or parcels. It is conceivable that an entire area may be wholly devoted to farm uses notwithstanding that area parcel sizes are relatively small. Third, the county must determine that the proposed nonfarm dwelling will not materially alter the stability of the existing uses in the selected area." Sweeten v. Clackamas County, slip op at 14.

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

Petitioners argue that the proper inquiry in determining whether a proposed use will materially alter the stability of the overall land use pattern in the area is whether the proposed use will change the balance between resource and nonresource uses in the area. Grden v. Umatilla County, 10 Or LUBA 37, 46-47 (1984). Petitioners contend the existence of nonfarm dwellings in an area does

[11]Petitioners also claim that the county's findings are inadequate because they do not "identify the agricultural area being evaluated [and] determine the land use pattern in that area." Petition for Review 12. However, petitioners do not explain why the above-quoted findings identifying a one mile radius surrounding the property as the area the county evaluated, and the land uses within that one mile radius, do not identify the agricultural area being evaluated and determine the land use pattern in the area. It is petitioners' responsibility to explain a basis upon which we might grant relief, and petitioners have not done so.

not, of itself, establish that the addition of another nonfarm dwelling will have no effect on the stability of the area land use pattern. Endresen v. Marion County, 15 Or LUBA 60, 66 (1986). 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." (Citations omitted.) Petition for Review 12-13.

Citing Blosser v. Yamhill County, supra, petitioners argue that the county's findings are inadequate because there are no findings which address the cumulative impacts of approving the proposed dwelling on the stability of the overall land use pattern in the area. Petitioners state that one of them:

> "offered expert testimony as a real estate broker that * * * [r]ural residences raise land values and increase the costs of purchasing or leasing the land for farm and/or forest practices. Therefore the stability of the overall land use pattern of the surrounding area is substantially affected. Each land owner would be stopped from acquiring new land at farm and/or forest prices due to the new usage of the land in the area. * * *" Petition for Review 13.

Petitioners contend evidence in the record establishes that there are other similarly situated parcels in the area for which nonfarm dwelling applications could be encouraged

by this approval.[12] Petitioners acknowledge that the subject 2.3 acre parcel is much smaller than the "average size parcel in the area," but state that other parcels are similarly situated as follows:

> "[t]he parcels across Baker Creek Road are approximately 10 acres in size and there are 9 in total. Out of those 9 parcels, three are owned by one [of petitioners] * * * and there is only one residence on all of the three parcels with no intent to add to the density of the area.
>
> "On the remaining 6 parcels there are only two houses that have been constructed * * *. Through conversations with several of the owners of the remaining lots, there is presently no intention to build a residence on the parcels * * *" Petition for Review 14.

Respondent argues that the county is not required to address whether there are other parcels in the area which are similarly situated because that issue was not adequately raised below.[13] Respondent also argues that this Board's decision in Blosser v. Yamhill County, supra,

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[12]Petitioners also argue that approval of the proposed nonfarm dwelling will encourage parcelization of the area. However, petitioners have not cited evidence which shows that "progressive parcelization" is occurring. Petitioners claim that the county has rezoned some parcels in the area from "40 acre zoning" to "20 acre zoning," that "* * * already there is quite a bit of division going on and things being changed from 40 acre zones down to 20 acre zones." Petition for Review 14; Record 89, see also Record 91. However, this evidence does not establish "progressive parcelization" has occurred in an EFU zone. No new parcels are contemplated by the proposal, and the subject parcel has been owned by intervenor since 1967.

[13]Respondent also notes that this appeal is distinguishable from Blosser v. Yamhill County, supra, where both the planning staff and the petitioner testified there were significant numbers of similarly situated parcels in the area.

establishes that the issue of "precedential effect" or "cumulative impacts" of proposed nonfarm development is relevant to determining compliance with a "stability of the land use pattern" criterion such as YCZO 403.07.C only 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 * * *." Blosser v. Yamhill County, slip op at 14-15.

Respondent also points out that the subject parcel is much smaller than other undeveloped parcels in the area and, accordingly, the subject parcel and other undeveloped parcels in the area are not similarly situated.

Respondent argues in the alternative that the county did make findings regarding precedential effect or cumulative impact in the above-quoted findings (ii) and (iii). Respondent argues these findings represent the county's interpretation of the following requirement from the decision of this Board in Blosser v. Yamhill County, supra, slip op at 15:

> "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."

There is evidence in the record that there are six other parcels approximately ten acres in size in the identified area which are not developed with residences. Under these circumstances, we agree that the issue of "precedential" or "cumulative" effect on similarly situated parcels is relevant and was adequately raised. Blosser v. Yamhill County, supra.

However, we also agree with respondent that it did adopt findings addressing the issue of precedential or cumulative effect. Petitioners do not argue the findings the county cites as addressing precedential effect do not adequately do so. Petitioners argue only that the county failed to make findings addressing this issue. Petitioners fail to explain how these findings are inadequate.

We also agree with the county that it did consider whether approval of the proposed nonfarm dwelling would affect the existing balance between resource and nonresource uses in the area. In the area identified for consideration, the county found there are 25 dwellings, 14 of which are nonfarm dwellings on parcels below the minimum parcel size for the AF-20 zone. The county identified the resource uses in the area as timber production on all sides of the subject property, and "some pasture land and livestock grazing." Record 4. Reading the county's findings as a whole, the findings establish there is a mixed pattern of forestry,

agriculture and nonfarm dwellings in the identified area which will not be materially altered by approval of the subject nonfarm dwelling.

We believe these findings are adequate to show the county considered the area's balance between resource and nonresource uses.

This subassignment of error is denied.

B. Evidentiary Support

Petitioners do not argue the record lacks evidence to support the county's findings. Rather, petitioners contend that the county should have drawn different conclusions from the evidence in the record. Just as the choice between reasonable conflicting evidence belongs to the county, the choice between different reasonable conclusions, based on undisputed evidence in the whole record, also belongs to the county. We believe that the county's conclusions are among those reasonable conclusions which could be drawn from the evidence in the record. Accordingly, we conclude the challenged county findings of compliance with YCZO 403.07.C are based on substantial evidence in the whole record.

This subassignment of error is denied.

The second assignment of error is denied.

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 requires findings that a proposed nonfarm dwelling:

> "[i]s 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 of compliance with this standard:

> "The subject property is bordered * * * by a single 697 acre parcel owned by CGC Tree Farm, currently in timber production. [The] president of CGC Tree Farm, has indicated that establishment of a dwelling on applicant's property would not interfere with management of the CGC Tree Farm for continued timber production. In a letter submitted to the Board of Commissioners, [the CGC president] stated that 'we would more than welcome a neighbor of [intervenor's] quality and demeanor,' and would just as soon have a few good neighbors up there; they make good watchmen.'
>
> "* * * * *
>
> "Resource uses on properties in the area of the subject property are generally timber production with some pasture land and livestock grazing. Many undeveloped properties in the area are unmanaged for farm or forest use. Within a one mile radius of the subject property there are 25 dwellings. Of these 25 dwellings, 14 dwellings are on ownerships that are below the minimum parcel size requirement of the AF-20 zone and therefore are considered nonfarm dwellings.
>
> "* * * * *
>
> "The applicant is currently the fire chief in the City of McMinnville. He testified that because of precautions he will take in the construction of the dwelling and irrigation of the subject property, the possibility of fire originating on

> the subject property is nearly nonexistent. The precautions include ceiling sprinkler systems, a sprinkler system to specifically protect the roof and outdoor sprinkler systems to irrigate the entire property.
>
> "* * * * *
>
> "The [county] finds that a nonfarm dwelling on the subject property is compatible with farm uses because the terrain, vegetation, and general location of the subject property provides sufficient buffering between the proposed building site and area farm uses. The owner of the neighboring tree farm has submitted written testimony in support of the establishment of a nonfarm dwelling by the applicant and had indicated that a neighbor on the property would be welcome as a watchman for the tree farm, thereby assisting in the operation of the tree farm." Record 4-6.

We address the county's findings of compliance with YCZO 403.07.A regarding (1) compatibility with farm uses, and (2) consistency with the purposes of ORS 215.243, separately below.

A. Compatibility with Farm Uses

Petitioners argue that the county's findings are inadequate to show compatibility with farm uses. According to petitioners,

the county's findings do not list the farm uses in the area and do not explain how the proposed nonfarm dwelling will be compatible with those identified farm uses.

The county argues that petitioners persist in ignoring findings which are relevant to the county's decision. Respondent contends that the above-quoted findings do

identify the farm uses in the area, namely grazing and pasture land. Respondent also argues the findings, read as a whole, do explain how the proposed nonfarm dwelling will be compatible with those identified farm uses. Respondent states the findings establish that the 697 acre parcel which adjoins the subject parcel on two sides is devoted to timber production.[14] Respondent contends this establishes that there are no adjacent farm uses with which the subject nonfarm parcel might be incompatible. Respondent contends that the county's findings adequately explain that farm uses in the area will be adequately buffered from the proposed nonfarm dwelling, due to distance, terrain and vegetation.[15]

We agree with the county that its findings, read as a whole, establish the farm uses in the area are not adjacent to the subject parcel. However, the findings do not explain the relationship between the location of the farm uses in the area and the subject parcel. Without such an explanation, the county's findings are inadequate to

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[14]Respondent also contends, and petitioners do not dispute, that while there are no findings specifically addressing the uses occurring on petitioners' land located across the county road from the subject parcel, the record clearly supports findings that the resource uses occurring on petitioners' parcels involve timber management. We agree that the record "clearly supports" a determination that the parcel across the county road from the subject parcel is in "timber management." Additionally, we note there is nothing to suggest that the timber management occurring on petitioners' land is a "farm use," as that term is defined in ORS 215.203.

[15]Respondent also argues that the proposed nonfarm dwelling will be compatible with the farm uses in the area because extensive fire protection measures are contemplated, including roof and outside sprinklers.

establish that the proposed nonfarm dwelling is compatible with the farm uses in the area.

This subassignment of error is sustained.

B. Consistency with the Purposes of ORS 215.243

Petitioners argue that the county made no findings concerning whether the proposed nonfarm dwelling will be consistent with the purposes of ORS 215.243.

Respondent does not dispute the county failed to adopt findings specifically addressing consistency of the proposed nonfarm dwelling with ORS 215.243. However, respondent contends that under ORS 197.835(9)(b), there is evidence in the record which "clearly supports" such a determination.[16] Respondent argues that ORS 215.243(3) which states, in part, that "[e]xpansion of urban development in rural areas is a matter of public concern," does not apply here because no "urban expansion" is contemplated.[17]

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

> "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 a part of the decision supported by the record * * *."

[17]Respondent points out: (1) the subject parcel is "7 miles northwest of the City of McMinnville," (2) "the applicant has requested a conditional use permit to establish a dwelling on a 2.3 acre parcel in an area zoned AF-20," and (3) "the current density in the area (a one mile radius containing 25 dwellings) calculates to one dwelling per 100 acres." Respondent's Brief 24.

Regarding ORS 215.243(4), which provides that the state offers incentives to encourage holding rural land in EFU zones, respondent argues because intervenor has never taken advantage of the incentives and privileges the state offers to encourage holding land in exclusive farm use, the policy of ORS 215.243(4) is not relevant. Respondent argues that if ORS 215.243(4) is relevant then the county's findings, read as a whole, "clearly support" a determination that the proposed nonfarm dwelling is consistent with the policy.

Regarding ORS 215.243(2), which requires the preservation of agricultural land in large blocks, respondents argue, among other things, that (1) no new parcels are being created by the proposed approval, (2) the parcel is not a part of a large block of agricultural land, and (3) intervenor has owned the subject parcel since 1967.

Finally, respondent argues that ORS 215.243(1) is a "declaration" and not a policy with which the county must find the proposal is consistent.[18] The county, in its brief, contends that as a "declaration," ORS 215.243(1) is irrelevant to the appealed decision.

In Blosser v. Yamhill County, supra, slip op at 21, we

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[18]ORS 215.243(1) provides:

> "[o]pen land used for agricultural use is an efficient means of conserving natural resources that constitute an important physical, social, aesthetic and economic asset to all of the people of this state, whether living in rural, urban or metropolitan areas of the state."

stated compliance with the YCZO 403.07.A requirement that the proposed nonfarm dwelling be found consistent with the policies of ORS 215.243 requires the county to explain which of the policies of ORS 215.243 are relevant and to address the relevant policies. The county did not make findings addressing ORS 215.243 and, specifically, made no findings determining which policies of ORS 215.243 are relevant to the subject application. The provision of ORS 197.835(9)(b) which requires that we affirm a decision where evidence in the record is identified "clearly supporting" the decision, is difficult to apply here, where the county is required both to determine the relevancy of policies and to address the policies deemed relevant. Although the evidence identified in this case may constitute substantial evidence to support findings that the proposed nonfarm dwelling is consistent with the purposes of ORS 215.243, we are unable to conclude that this evidence "clearly supports" such a determination, in the absence of any findings addressing ORS 215.243.[19]

This subassignment of error is sustained.

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[19]Additionally, we note respondent's argument that ORS 215.243(1) is a "declaration," rather than a "policy" with which YCZO 403.07.A requires consistency, is erroneous. If respondent's analysis were correct, none of the policies of ORS 215.243 would apply in any case because ORS 215.243 begins with the same phrase applicable to all of the policies of ORS 215.243: "[t]he legislative assembly finds and declares that: * * *" (Emphasis supplied.) Additionally, all of the policies of ORS 215.243 are written as "declarations" and we find no basis to distinguish these policies from one another on the basis that some are "declarations" and others are not.

C. Evidentiary Support

Petitioners argue that there is no evidentiary support for findings that approval of the proposed nonfarm dwelling is consistent with the policies of ORS 215.243. However, no purpose would be served by reviewing the evidentiary support for findings which do not exist.

This subassignment of error is denied

The third assignment of error is sustained in part.

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 requires the county to adopt findings that the proposed nonfarm dwelling:

> "[d]oes 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." (Emphasis supplied.)

The county adopted the following findings of compliance with this standard:

> "[the county] finds that a nonfarm dwelling on the subject property will not interfere seriously with accepted farming practices on adjacent lands for the reasons identified in the [county's] finding that the nonfarm dwelling is compatible with farm use. Many other adjacent parcels are approximately 10 acres in size and are unmanaged

> woodlots. Residential activities on the subject property will not interfere with adjoining parcels." Record 6.

Petitioners contend that this finding is inadequate because it fails to identify existing and potential farming practices on adjacent lands, and fails to explain that the proposed dwelling will not significantly interfere with those farming practices. Petitioners also argue the county failed to address relevant issues raised below regarding the chemical spraying which may be necessary to area timber operations and regarding dogs associated with nonfarm residential development. Petitioners state that there are adjacent properties on which livestock is raised, but do not explain where those properties are in relation to the subject parcel.

Respondent argues it is significant that YCZO 403.07.B applies only to "farm uses" occurring on "adjacent" lands. According to respondent, all of the lands adjacent to the subject parcel, including the 10 acre parcels across the county road, are in forest use, and there is no farm use or accepted farming practices on any adjacent lands with which the proposed nonfarm dwelling could seriously interfere.[20]

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[20]The county argues the use of the term "adjacent" is unintended to mean adjoining as follows:

> "[p]lease note that the reference to 'adjacent' parcels in the finding is a typographical error, and should have referred to 'area parcels' as demonstrated by the record." Respondent's Brief 27.

The county findings quoted above identify "adjacent" lands which are in forest use. Other county findings identify farm uses in the area of the proposed nonfarm dwelling. We have stated under the first and second assignments of error that the county's findings are inadequate to establish the relationship between the location of the identified agricultural uses in the area and the subject parcel.

The meaning of the term "adjacent" is critical to this assignment of error. If adjacent means that the property in farm use must abut the subject property, then the county's findings appear adequate, since it is not seriously disputed that there are no properties in farm use which "abut" the subject property. However, if the term "adjacent" means "nearby," then the county's findings are inadequate to show that there are no nearby properties in farm use, as explained above.

The YCZO does not define the term "adjacent." While it is not clear from the county's order how the county interprets the term "adjacent" in this context, the county's order and respondent's brief suggest that it interprets

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The record shows that the subject parcel is surrounded by forested land on two sides and on the third side by a county road. The parcels to which we understand the county's order refers, are across the county road from the subject parcel.

adjacent to mean nearby.[21] We believe this is be a reasonable and correct interpretation of the meaning of the term "adjacent" in this context. McCoy v. Linn County, 90 Or App 271, 275-276, 752 P2d 323 (1988).

However, under this interpretation of "adjacent," the county's findings are inadequate to satisfy YCZO 403.07.B. The findings do not establish either (1) there are no properties near the subject parcel which are in farm use, or (2) the proposed nonfarm dwelling will not significantly interfere with nearby farm uses.

The fourth assignment of error is sustained.

FIFTH ASSIGNMENT OF ERROR

> "The county misconstrued the applicable law, failed to make findings that the proposed nonfarm dwelling would be consistent with the goals and policies of the comprehensive plan to protect forest and agricultural land, and the record did not contain substantial evidence showing that such goals and policies have been satisfied."

In order to approve a conditional use, YCZO 1202.02.B requires the county to determine:

"[the] use is consistent with those goals and

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[21]YCZO 210.01.F states that the terms used in the YCZO are to be given their "ordinary" meaning. The dictionary meaning of the term "adjacent" is the following:

> "not distant or far off * * * nearby but not touching * * * relatively near and having nothing of the same kind intervening; having a common border; abutting, touching; living nearby * * *" Webster's Third New International Dictionary (1981).

policies of the comprehensive plan which apply to the proposed use."[22]

Petitioners cite several Yamhill County Comprehensive Plan (plan) goals and policies regarding protection of forest land and argue these goals and policies are applicable. Petitioners argue under YCZO 1202.02.B, the county was required to determine whether the proposed nonfarm dwelling is consistent with those goals and policies.[23]

Respondent did not adopt findings specifically addressing the plan goals and policies cited by petitioners. Respondent asserts, without explanation, that the plan policies and goals petitioners cite simply do not apply to the proposed nonfarm dwelling. Respondent also argues in the alternative, that if these plan goals and policies do

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[22]In addressing YCZO 1202.02.B, the county determined:

> "A nonfarm dwelling is consistent with those goals and policies of the comprehensive plan which apply to the proposed use. In this context the [county] finds that the 'rural area development' goal of the Yamhill County Comprehensive Plan has been satisfied because the application is 'appropriately, if not uniquely, suited to the area or the site proposed for development, and is furnished with adequate access and adequate public services and will not require the extension of costly services normally associated with urban centers." Record 9.

Petitioners do not challenge this finding.

[23]Petitioners also cite language in the plan which explains some of the justifications for a particular plan policy, but which is not a plan policy or goal itself. However, YCZO 403.07.A requires consistency with plan policies and goals only. We will not reverse or remand a decision on the basis of findings addressing inapplicable parts of the plan. Moorefield v. City of Corvallis, supra.

apply, the county made adequate findings that the proposal is consistent with those goals and policies. We address each policy or goal cited by petitioners separately below:

A. Conservation, Preservation and Management of Resources

Petitioners argue the county did not address the following plan goal, which states it is a goal of Yamhill County to:

> "* * * conserve and manage efficiently the county's resources, thereby ensuring a sustained yield of forest products, adequate forest products, adequate grazing areas for domestic livestock habitat for fish and wildlife, protection of forest soils and watershed, and preservation of recreational opportunities." Plan 98.

Respondent argues that the findings cited supra in this opinion, to the effect that the president of the adjacent tree farm opined that the proposed nonfarm dwelling would not interfere with the tree farm, as well as the following findings, demonstrate the proposed nonfarm dwelling is consistent with this plan goal:

> "[a] Protection Unit Forester for the Forestry Department of the State Of Oregon, submitted a letter to the Yamhill County Planning Department on July 12, 1989 and stated that the subject property is 'too small to make any viable contribution to the forest land base, and by itself is not of sufficient size to manage as a commercial forest. It is our opinion that the property is best suited as a home site. Record 4.
>
> "* * * * *
>
> "Richard Mishaga, who has an MS degree in wildlife

biology and a PhD in ecology, submitted written testimony assessing the wildlife habitat on the subject property. He completed his wildlife assessment of the property by conduction systematic walking transects throughout the entire 2.3 acre parcel, by reviewing aerial photographs of the property, and by examining habitat characteristics on adjacent lands. He found several common bird species, but few indications of mammalian activity. Along Baker Creek, he found only raccoon tracks. No signs of past or recent beaver activity were noted. Occasional blacktailed deer tracks were observe, but no Roosevelt elk signs were evident. He 'observed no unique habitat characteristics or features for wildlife.' He stated that 'the property does not now support and probably has not supported beavers for a substantial number of years. Roosevelt elk may occasionally travel through this property during their normal wanderings; however, there are no characteristics of the habitat in the vicinity of the property that would attract elk directly or satisfy critical habitat requisites for the species. Also the presence of roads on two sides of this relatively small piece of habitat would further discourage any significant deer and elk usage on or adjacent to the property." Dr. Mishaga concluded that (1) the wildlife potential and habitat value of the Baker Creek Road property is not unique and (2) the construction of a residential dwelling will not significantly impact wildlife habitat in general or beaver and elk populations in particular in the vicinity of the homesite.

"* * * * *

"Restrictions imposed by the Forest Practices Act requiring set-backs from Baker Creek, which bisects the subject property, make commercial forestry operations impractical on the 2.3 acre subject property." Record 4-5.

These findings are adequate to address consistency between the proposed nonfarm dwelling and the above-quoted

plan goal. Petitioners do not explain why these findings are inadequate.

This subassignment of error is denied.

B. Cooperation between County and Timber/Woodland Owners

Petitioners contend that the following goal in the Revised Goals and Policies, Yamhill County Comprehensive Land Use Plan (revised plan) was not addressed:

> "Yamhill County will cooperate with Federal and State agencies, large private timber owners and small woodland owners to manage the forest and grazing lands for the highest aggregate economic, recreational and ecological benefits which these lands can sustain, including timber production, livestock range, fish and wildlife habitat." Revised plan 17.

Respondent argues that the county's findings establish that the county has "cooperated" with the CGC Tree Farm, in the sense that the president of CGC Tree Farm supported intervenor's application for a nonfarm dwelling. Respondent argues petitioners are incorrect in assuming that the phrase "cooperate * * * with small woodland owners," as used in this revised plan goal, equates to giving small woodland owners veto power over county land use actions. Respondent argues the use of the term "cooperate" does not imply the county forfeits to others its responsibility and authority to make land use decisions.

We agree with the county's interpretation that the term "cooperate," as that term is used in the revised plan, does

not require the county to give a veto power over county land use decisions. Similarly, this policy does not authorize the county to delegate any decision making authority. However, the county does not identify findings which address, or evidence which "clearly supports," a determination that either (1) this revised plan goal does not apply, or (2) that the proposed nonfarm dwelling is consistent with this revised plan goal. Accordingly, we agree with petitioners that the county has not adequately complied with YCZO 1202.02.B with regard to this revised plan policy.

This subassignment of error is sustained.

C. Conflicts Between Rural Development and Resource Uses; Unsuitability Determinations

Finally, petitioners state the county did not address consistency between the proposed nonfarm dwelling and the following policy of the revised plan:

> "No proposed rural area development shall substantially impair or conflict with the use of farm or forest land, or be justified solely or even primarily on the argument that the land is unsuitable for farming or forestry or due to ownership, is not currently part of an economic farming or forestry enterprise." Revised plan 16.

Respondent argues this is a general plan policy which is fully implemented by the specific approval standards in YCZO 403.07.A-D. Respondent argues its findings addressing YCZO 403.07.A-D show the proposal is compatible with this plan policy. Respondent also contends that in any event, it

did not determine the subject parcel is generally unsuitable for the production of farm crops or livestock, either "solely" or "primarily" based on the size of the parcel. Finally, respondent states that petitioners fail to explain why the findings adopted by the county in this case to demonstrate compliance with YCZO 403.07.A-D do not establish compatibility between the proposed nonfarm dwelling and this policy.

This plan policy has a broader scope than YCZO 403.07.A-D. The plan policy addresses the suitability of the subject land for, and compatibility of proposed uses with, forest uses, while YCZO 403.07.A-D addresses only suitability of subject land for, and compatibility between, a proposed nonfarm dwelling and agricultural uses. Furthermore, this plan policy is more strict than YCZO 403.07.A-D. While YCZO 403.07.A-D, fairly read, may not permit a determination of unsuitability for farming solely on the basis of size, nothing in YCZO 403.07.A-D prevents a determination of unsuitability for farming attributable primarily to small parcel size. We disagree with respondents that this plan policy is fully implemented by YCZO 403.07.A-D. Additionally, we have determined that the county's findings are inadequate to satisfy some of the requirements of YCZO 403.07.A-D.

We conclude the county erred in failing to adopt findings that this policy is inapplicable or that the the

proposed nonfarm dwelling is compatible with this policy.

This subassignment of error is sustained.

The fifth assignment of error is sustained, in part.

SIXTH ASSIGNMENT OF ERROR

> "The county failed to follow required procedures in a manner that prejudiced the petitioners by failing to provide the petitioners an opportunity to effectively rebut the new evidence provided by the intervenor-respondent during the board of commissioners' public hearing on August 9, 1989. The petitioners were unable to provide expert witnesses as an effective rebuttal to the new evidence given by the intervenor respondent because they were given only 23 minutes for their presentation and rebuttal."

Petitioners state the intervenor submitted two letters at the hearing before the county commissioners, one letter regarding wildlife habitat on the subject property and another letter regarding the suitability of the subject property for timber production. Petitioners contend that these documents were from "experts." Petitioners state that they are not experts on forestry or wildlife and were not "capable of effectively rebutting [intervenor's] expert witnesses." Petition for Review 28. Petitioners complain the county denied petitioners' right to rebut this evidence by failing to grant petitioners' request for a two week continuance to submit rebuttal evidence to intervenor's expert letters.[24] Petitioners argue their right to rebut is

[24]Petitioners also make a nonspecific claim that their constitutional "due process" right to rebut evidence, was violated. We do not entertain

based on YZCO 1402.03 which states that the Rules of Procedure for the Conduct of Hearings Relating to Land Use Matters (rules) govern the procedure to be employed for county land use hearings. These rules provide in relevant part:

> "* * * interested parties are * * * entitled to * * * rebut evidence * * *"

Respondents argue petitioners were given an adequate opportunity to rebut the evidence presented at the hearing. Specifically, respondent contends that the county commissioners recessed the hearing for 23 minutes in order to give petitioners an opportunity to rebut the two disputed letters. Respondents contend this provided petitioners an adequate opportunity to rebut the two and three page letters at issue. Citing Jensen v. Clatsop County, supra, and Greenwood v. Polk County, 11 Or LUBA 230 (1984), respondent contends the county commissioners had the discretion to to deny petitioners' request for extra time for rebuttal. Finally, respondent argues, in part:

> "[p]etitioners had from publication of notice on May 19, 1989, through August 16, 1989, to accumulate expert testimony and otherwise develop the record." Respondent's Brief 34.

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undeveloped claims that a county's actions deny "due process." Kegg v. Clackamas County, 15 Or LUBA 239, 247, n 10. (1987). However, to the extent petitioners have adequately developed a constitutional challenge here, the result in this case is the same. See Jensen v. Clatsop County, 14 Or LUBA 776, 793-794 (1986) (there is no constitutional right to postponement of hearing to rebut evidence presented at hearing, where right to rebut was afforded at the hearing).

We agree with respondent. Where petitioners had adequate notice of the hearing, and were not surprised by a modified application or by newly applicable standards, we see nothing in YCZO 1402.03 which requires the county to continue its hearings to provide more time to develop a rebuttal. Petitioners' opportunity to rebut the two disputed letters was adequate to comply with YCZO 1402.03. Jensen v. Clatsop County, supra;, Greenwood v. Polk County, supra.

The sixth assignment of error is denied.

The county's decision is remanded.