BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

DONALD WISSUSIK, VIRGINIA WISSUSIK, GEORGE ALEXANDER, DAVID ABBOTT, HOWARD ADAMS, WANDA ADAMS, KEN AUSTIN, RICHARD KOEHLER, CLAIRE ROLF, STEVE TOWN, CINDY SPAIN, MARLA KIMBALL, JAMES SPARKS, FERN SPARKS, BILL GRAHAM, MAGGIE GRAHAM, KENNETH LEWIS, DORIS LEWIS, MICHAEL HUSTON, ALLETA HUSTON, HAROLD HAUGEN, AGNES HAUGEN, and BILL MOARSE,	)	
Petitioners,	)	LUBA No. 90-050
vs.	)	FINAL OPINION AND ORDER
YAMHILL COUNTY,	)	
Respondent,	)	
and	)	
FRED POEHLER,	)	
Intervenor-Respondent.	)	

Appeal from Yamhill County.

Vincent P. Salvi, Portland, filed the petition for review and argued on behalf of petitioners.

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

Allyn E. Brown, Newberg, represented intervenor-respondent.

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

REMANDED 11/13/90

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 personal use airport in the county's Agricultural-Forestry (AF-20) zone.

MOTION TO INTERVENE

Fred Poehler, the applicant below, moves to intervene on the side of respondent. There is no objection to the motion and it is allowed.

FACTS

The subject property is located approximately 4 miles east of the City of Newberg, is zoned AF-20, and consists of approximately 20.69 acres. The soils on the property are Agricultural Class III, Laurelwood Silt Loam.

The challenged order identifies the following additional facts:

> "The land has a 6% downslope to the north. This slope limits the pilot's approach and departure path from/to the north. A safety report written by the Oregon State Aeronautics divisions stated: 'Trees and hills 1500 [feet] to the south and the steep slope of this site will prevent landing to the north or takeoff to the south.' * * *
>
> "Surrounding parcels range in size from 1 acre to over 40 acres in size. Surrounding land uses are characterized by orchards, small woodlots and rural residential use.
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> "There are presently two residences within 1000 feet of the proposed runway. One house is located approximately 200 feet northeast of the end of the

> runway * * *. The other house is situated about 800 feet east of the runway site. * * *." Record 4-5.

After a public hearing, the planning commission split 4-4 on whether to approve intervenor-respondent's (intervenor's) application for a personal use airport. As a consequence of its tie vote, the planning commission voted to refer intervenor's application to the board of commissioners for decision. After a public hearing, the board of commissioners voted to approve the requested conditional use permit. This appeal followed.

MOTION TO FILE REPLY BRIEF

Petitioners move, pursuant to OAR 661-10-039, for permission to file a reply brief in this appeal proceeding.[1] Petitioners' motion and the proposed reply brief identify one allegedly "new" item in the respondent's brief as providing the basis for filing a reply brief. In this regard, petitioners contend as follows:

> "Petitioners hereby move to file the attached Reply Brief pursuant to OAR 661-10-039. Petitioners submit that they object to the Statement of Facts contained in the Respondent's Brief and that new matters raised in the Respondent's Brief need to be addressed for a full and complete Record to be filed before LUBA." Petitioners' Motion to Submit Reply Brief.

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[1]OAR 661-10-039 states:

> "A reply brief may not be filed unless permission is first obtained from the Board. A reply brief shall be confined solely to new matters raised in the respondent's brief. * * *"

> "Respondent cites the record, App C., pg. 27, in support of its statement that the orchard at issue is dead. No such reference can be found therein." Reply Brief 1.

However, petitioners do not explain the importance of this issue or explain why responding to the county's citation to page 27 of Appendix C to the Petition for Review in its response brief furnishes a basis for submitting a reply brief.[2] Further petitioners' motion does not identify any allegedly new matters raised in the response brief.

Respondent objects to petitioners' motion to file a reply brief. Respondent argues that even if one portion of the appended transcript (Petition for Review, Appendix C, page 27) cited in its brief does not support the fact that the disputed orchard is dead, another portion of the transcript cited in the identical passage of respondents brief does state that the orchard is dead (Petition for Review, Appendix C, page 34). Respondent argues petitioners' proposed reply brief does not respond to any "new" matters which may have been raised by the respondent's brief, but rather it simply supplements the petition for review.

We agree with respondent. Nothing in the motion establishes that the proposed reply brief is responsive to

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[2]Because the cited transcript is attached as an appendix to the petition for review, all parties had an opportunity to review the transcript at the time of their briefs. See Columbia Steel Castings Co. v. City of Portland, ___ Or LUBA ___ (LUBA No. 89-058, July 18, 1990), slip op 8-9.

any new matters contained in respondent's brief. Rather, it appears the proposed reply brief simply embellishes arguments advanced in the petition for review. We conclude a reply brief is unwarranted under OAR 661-10-039. Knapp v. City of Jacksonville, ___ Or LUBA ___ (LUBA No. 90-064, October 31 1990), slip op 6-7.

Petitioners' motion to file a reply brief is denied.

FIRST ASSIGNMENT OF ERROR

> "The county erred in considering the record closed and refusing to consider documents submitted by petitioners prior to the adoption of Order No. 90-161."

The board of commissioners held a public hearing on the proposed personal use airport on March 7, 1990. After that public hearing, the chairman of the board of commissioners stated:

> "O.K., we have received the staff recommendation and now I'll close the hearing and bring the matter to the board for deliberation." Petition for Review, Appendix C, page 41.

Thereafter, the board of commissioners deliberated, made an oral decision to approve the application, and directed the county counsel to prepare written findings reflecting the board's oral decision. On March 13, 1990, petitioners Wissusik submitted a letter to the county commissioners for inclusion in the record. The county explicitly rejected the offered letter, and did not include

it in the record of proceedings submitted to LUBA.[3] We previously determined that the March 13, 1990 Wissusik letter is not a part of the county record because it was specifically rejected. Wissusik v. Yamhill County, ___ Or LUBA ___ (LUBA No. 90-050, Order on Record Objections, June 11, 1990), slip op 6.

Petitioners argue the county erred by refusing to accept the letter submitted by petitioners Wissusik after the conclusion of the public hearing. Petitioners argue that this letter was erroneously rejected by the county because (1) at the request of the county counsel, the record had in fact remained open so that the written findings and deliberations regarding them could be included in the record, and (2) the county failed to inform petitioners of their right under ORS 197.763(3)(j)[4] and ORS 197.763(6)[5] to

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[3]The county included the first page of the disputed letter in the record it submitted with the following note superimposed on that letter:

> "Received March 13, 1990 by Board of Commissioners. Not considered at March 14, 1990 Board session to adopt written Board Order 90-147 because it was received after the record was closed on March 7, 1990. No request by a participant for a continuance or to leave record open had been made prior to close of hearing on March 7, 1990. * * *" Record 11.

[4]ORS 197.765(3)(j) provides:

> "The [written] notice [of hearing] provided by the jurisdiction shall:
>
> "* * * * *

request that the record remain open after the close of the public hearing. Petitioners claim that because the county did not inform them of their right to request the record remain open, they are entitled to have the Wissusik letter considered in by the Board in this appeal.[6]

Petitioners do not request reversal or remand of the challenged decision as the remedy for the county's alleged failure to comply with ORS 197.763(3)(j) and 197.763(6). Rather petitioners simply request that the Wissusik letter be considered by LUBA and included in the LUBA record.

Respondent states the record below was not left open, and the county had no obligation to advise petitioners of any right under ORS 197.763(6) to request that the record remain open. Respondent does not, however, argue in its response brief that under ORS 197.763 and ORS 197.825(2), petitioners are precluded from raising issues advanced in

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> "(j) Include a general explanation of the requirements for submission of testimony and the procedure for conduct of hearings."

[5]ORS 197.763(6) provides:

> "Unless there is a continuance, if a participant so requests before the conclusion of the initial evidentiary hearing, the record shall remain open for at least seven days after the hearing. * * *"

[6]We infer that petitioners request that this letter be included in the record of this appeal proceeding because the letter contains legal argument on issues which may not otherwise have been raised during the county proceedings below.

the petition for review because they were not raised in the local proceedings.

We agree with the county that nothing petitioners cite establishes that the county left the evidentiary record open after the close of the public hearing. Accordingly, the county was not obliged to accept the disputed Wissusik letter as part of the local record on this basis.[7]

We next turn to petitioners' arguments under ORS 197.763. ORS 197.763(3)(j) requires the county to provide written notice giving a general explanation of the procedures for the conduct of hearings and submission of testimony. We believe that one of the important procedures regarding the conduct of hearings and the submission of testimony is the procedure for making a request that the record of the initial evidentiary hearing remain open, as provided by ORS 197.763(6). It appears, therefore, that petitioners are correct that the county has an obligation to provide a general explanation regarding the ORS 197.763(6) right to request that the record of the initial evidentiary hearing remain open, as one of its obligations under ORS

[7]It is true, however, that if the local government does not specifically reject items submitted after the close of the public hearing and before the final order is adopted, such items do become a part of the record of proceedings below. Wissusik v. Yamhill County, supra, slip op at 4; Eckis v. Linn County, ___ Or LUBA ___ (LUBA No. 89-005, Order on Record Objections, April 20, 1989), slip op 2; Sellwood Harbor Condo Assoc. v. City of Portland, 16 Or LUBA 1021, 1022 (1987).

197.763(3)(j).[8] Ostensibly, a local government's failure to provide this notice would be a procedural error which, if it caused prejudice to the substantial rights of parties, would require reversal or remand of the challenged decision. ORS 197.835(7)(a)(B).

Here, however, petitioners do not request reversal or remand of the challenged decision. Petitioners request simply that the challenged letter be considered by LUBA and included in the record of LUBA's proceedings, so that petitioners cannot be precluded from raising issues contained in the petition for review. However, the letter is a part of the record of our proceedings in this appeal in any case because it is appended to the petition for review.[9] Additionally, because the county does not seek to prevent petitioners from raising any argument contained in the petition for review, we may consider petitioners' arguments in the petition for review without regard to whether those issues were raised below by the disputed letter or otherwise. Accordingly, in this case no purpose is served

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[8]We express no opinion on whether an evidentiary hearing before the board of commissioners should be considered the initial evidentiary hearing under ORS 197.763(6), where the planning commission conducted an evidentiary hearing and the record of the planning commission hearing was apparently a part of the record before the board of commissioners, but the planning commission made no decision regarding the disputed application.

[9]If our decision in this appeal were appealed further, the petition for review and all appendices would be forwarded to the Court of Appeals as a part of our record.

by determining whether the county committed a procedural error which would warrant reversal or remand of the challenged decision.

The first assignment of error is denied.

SECOND ASSIGNMENT OF ERROR

> "The county erred in finding that the proposed use meets the criteria of the Yamhill County Zoning Ordinance No. 310, 1982, as amended * * *."

In this assignment of error, petitioners argue the challenged decision to approve the proposed personal use airport violates Yamhill County Zoning Ordinance (YCZO) 1202.02(B), because the decision does not comply with allegedly relevant Yamhill County Comprehensive Plan Revised Goals and Policies (plan) provisions.[10] Petitioners also argue that the decision to approve the proposal violates YCZO 1202.02(C)-(E) governing conditional uses, and YCZO Chapter 1011 governing public airports and landing strips. Finally, petitioners argue the challenged decision violates provisions of YCZO Chapter 403 regarding the AF-20 zone. We address each of these contentions separately below.

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[10]In approving a conditional use, YCZO 1202.02(B) requires a finding that:

> "The use is consistent with those goals and policies of the Comprehensive Plan which apply to the proposed use."

A. Compliance with the Plan

We understand petitioners to contend the proposed personal use airport does not comply with following agricultural goals contained in the plan:

> "To conserve Yamhill County's farm lands for the production of farm crops and livestock to ensure that the conversion of farm land to urban use where necessary and appropriate occurs in an orderly and economical manner.
>
> "To conserve Yamhill County's soil resources in a manner reflecting their suitability for forestry, agriculture and urban development and their sustained use for the purposes designated on the County Plan map." Plan 15-16.

Further, we understand petitioners to argue that the proposed personal use airport does not comply with the following agricultural plan policies:

> "Yamhill County will provide for the preservation of farm lands through appropriate zoning, recognizing comparative economic returns to agriculture and alternative uses, changing ownership patterns and management practices, changing market conditions for agricultural produce, and various public financial incentives.
>
> "Yamhill County will continue to support ASCS soil conservation measures and SWCD best management practices designed to protect and improve forest and agricultural land productivity and to prevent unnecessary losses though excavation, striping, erosion and sedimentation." Plan 15-16.

Neither the language nor the context of these plan goals and policies suggest they are intended to operate as mandatory approval standards applicable to individual permit applications. Rather, they contain aspirational language

regarding the county's goals and policies which are to be implemented through adoption of implementing land use regulations. Bennett v. City of Dallas, ___ Or LUBA ___ (LUBA No. 88-078, February 7, 1989), slip op 8, aff'd 96 Or App 645 (1989); Stotter v. City of Eugene, ___ Or LUBA __ (LUBA No. 89-037, October 10, 1989). Because the plan provisions cited by petitioners are not mandatory approval standards applicable to the challenged decision, it is unnecessary for this Board to determine whether the challenged decision complies with these plan provisions. See Thormalen v. City of Ashland, ___ Or LUBA ___ (LUBA No. 90-102, November 5, 1990), slip op 8, 11.

This subassignment of error is denied.

B. YCZO 1202.02(C)-(E)

Petitioners argue that there is not substantial evidence in the whole record to establish that the challenged decision satisfies YCZO 1202.02(C)-(E), which provides as follows:

> "A conditional use may be authorized * * * upon adequate demonstration by the applicant that the proposed use satisfies * * * the following general criteria:
>
> "* * * * *
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> "(C) The parcel is suitable for the proposed use considering its size, shape, location, topography, existence of improvements and natural features;
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> "(D) The proposed use will not alter the character of the surrounding area in a manner which

substantially limits, impairs or prevents the use of surrounding properties for the permitted uses listed in the underlying zoning district; and

"(E) The proposed use is timely considering the adequacy of public facilities and services existing or planned for the area affected by the use."

1. YCZO 1202.02(C)

Petitioners argue the county findings addressing YCZO 1202.02(C) are not supported by substantial evidence in the whole record.[11] Petitioners argue the evidence in the record establishes that for the property to be suitable for a personal use airport, "considerable clearing and grading will be necessary." Petition for Review 7. Petitioners

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[11]Additionally, petitioners argue that the following finding is not supported by substantial evidence in the whole record:

> "The soils on the subject property are Laurelwood silt loam. Soils of this type are rated as Class III agricultural soils. The applicant will allow grass to be grown on the runway and will pasture livestock on the runway. The Board [of Commissioners] finds that the soils will remain in production." Record 4.

However, YCZO 1202.02(C) is an approval standard applicable to proposed conditional uses. The proposed conditional use at issue in this appeal is a personal use airport. Accordingly, the relevant question under YCZO 1202.02(C) is whether there is substantial evidence in the whole record to support the county findings regarding the suitability of the subject land for a personal use airport. The above quoted finding is not directed toward satisfying YCZO 1202.02(C). This finding may have been intended to support the county's determination that the proposal complies with YCZO 1202.02(D). In any event, we believe that the evidence in the record cited by respondent is adequate to demonstrate that the proposed runway does not foreclose the possibility that the airstrip area may also be utilized as pasture, as petitioners assert. Specifically, although the airstrip will be cleared and graded, the necessity for such actions does not mean that the airstrip area will be rendered unsuitable for livestock grazing.

contend "[t]he natural features of the slope of the land argue persuasively against the proposed use." Petition for Review 8.

Respondent cites evidence in the record supplied by an aeronautics specialist establishing that the subject land is suitable as a personal use airport once grading and clearing activities are completed, and so long as takeoff and landing approaches avoid particular areas of the property.

There is nothing to suggest the proposed grading and clearing activities cannot or will not be accomplished. Similarly, there is nothing to suggest landing and takeoff approaches cannot avoid those areas on the subject property deemed unsatisfactory for those purposes. While petitioners may draw different conclusions from the evidence relied upon by the county, petitioners have not established that the evidence relied upon by the county does not support the county's position that the subject property is suitable for a personal use airport, and we believe that the county's evidence is adequate to support its conclusion in this regard. See Douglas v. Multnomah County, ___ Or LUBA ___ (LUBA No. 89-086, January 12, 1990), slip op 17; see also Kellogg Lake Friends v. City of Milwaukie, 16 Or LUBA 755, 765 (1988); Ash Creek Neighborhood Ass'n v. City of Portland, 12 Or LUBA 230, 237-238 (1984).

This subassignment of error is denied.

2. YCZO 1020.02(D)

Petitioners argue that during the hearings below, the county failed to consider issues they raised and evidence they submitted concerning whether the proposed use will negatively impact adjacent uses. Further, petitioners argue that the proposed use will negatively impact adjacent uses because of the applicability of YCZO Chapter 1011.

a. Compliance with YCZO Chapter 1011

Petitioners contend the proposal violates YCZO 1202.02(D) because, as a result of the requirements of YCZO Chapter 1011, it will impair the uses of surrounding properties. Petitioners argue that the standards in YCZO Chapter 1011 for public airports and landing strips would restrict the height of trees and agricultural uses on adjacent properties.

Respondent argues that the proposed personal use airport is not within the regulatory scope of YCZO Chapter 1011. Respondent argues that YCZO 1011.01 merely:

> "* * * alert[s] nonpublic airports, private landing strips and heliports that there may be other applicable regulations which may be imposed by other agencies such as the FAA or the Oregon Aeronautics Division." Respondent's Brief 13.

YCZO 1011.01 provides as follows:

> "Areas of Concern. There are 3 public airport or landing facilities in the county which come under the provisions of this section. * * * Areas of concern around each of these facilities are delineated on the official zoning map as the Airport Overlay District. Nonpublic use, private

> landing strips and heliports are not delineated but may still be subject to applicable regulations."

YCZO 1011.02 provides standards and requirements applicable only to improvements to public airports and landing strips. Specifically, YCZO 1011.02 states:

> "The following standards shall apply to all landing field and public airport improvements, and to improvements in all adjacent properties affected by such standards as delineated on the Official Zoning Map * * *." (Emphasis supplied.)

We agree with respondent that YCZO Chapter 1011 does not purport to establish any requirements for private use airstrips such as the one proposed in this case. YCZO 1011.01 simply states that notwithstanding its inapplicability to private use airports, there may be other requirements which apply to such private use airports.

Additionally, we agree with respondent that YCZO 1011.01 is correctly interpreted as expressly excluding nonpublic landing strips from delineation as an "Area of Concern," which triggers the requirement for an Airport Overlay District plan and zone designation. YCZO 1011.01 does not purport to establish a basis for the county to impose requirements on private use airstrips.

Similarly, we believe YCZO 1011.02 does not contain any standards applicable to private use airstrips. It regulates only public airports and landing strips. There is no dispute that the proposed use is not a public airport or public landing strip.

In sum, the county had no obligation to address the requirements of YCZO Chapter 1011, or whether its requirements would impair the uses of surrounding properties, because the proposed use is not within the regulatory scope of YCZO Chapter 1011.

This subassignment of error is denied.

b. Forestry

Petitioners argue they submitted evidence that the proposed use would limit the scope of permissible forestry uses which might otherwise occur on adjacent property owned by petitioner Koehler. Specifically, petitioners state:

> "Mr. Richard Koehler testified that his property is 300 feet from the Applicant's. He stated he wished to grow trees on the property and that he did not want to be told that his ability to do so would be compromised by the Applicant's landing rights." (Citations omitted.) Petition for Review 8.

Respondent argues that nothing in the challenged order, or in any of the county's regulations, limit petitioner Koehler's ability to grow trees due to the presence of an adjacent personal use airport. Furthermore, respondent argues that it did address petitioner Koehler's very general concerns that the proposed personal use of an airport might interfere with the use of his property by imposing a 200 foot set back from that property.

Petitioners do not identify any regulation or any other basis for the concern expressed by petitioner Koehler that he might be "told" he could not grow trees on his property

as a result of the proposed private use airport. To the extent this contention is based on petitioners' arguments that YCZO Chapter 1011 provides a basis for the county to impose restrictions on Mr. Koehler's tree growing activities, as we stated above YCZO Chapter 1011 does not have that effect. Additionally, petitioners do not explain why the 200 foot set back imposed is inadequate to address petitioner Koehler's concerns. In view of the nonspecific nature of petitioner Koehler's concerns regarding impacts of the proposed use on his ability to grow trees, we believe the county adequately addressed those concerns by imposing a 200 foot setback from his property line.

This subassignment of error is denied.

c. Bird Raising

Petitioners argue they submitted evidence that the proposed use would negatively affect bird raising on adjacent property, including the raising of turkeys, ducks and geese. This argument appears to be based, in part, on petitioners' erroneous perception that YCZO Chapter 1011 provides a basis for the county to limit bird rearing operations near a private airstrip such as the one at issue in this appeal.[12] Petitioners also argue the county failed to respond to the following testimony:

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[12]As we stated above, we agree with the county that YCZO Chapter 1011 does not provide authority for county regulation of the activities of a property owner who is adjacent to a private use airport. Accordingly, YCZO Chapter 1011 does not limit any of the petitioners' ability to raise birds

> "* * * I find that the site is also incompatible with our desire to raise waterfowl. My breeder has assured me that low flying airplanes would create all manner of havoc with ducks, geese and turkeys. And if we do continue to pursue our endeavors with raising [birds] I'm concerned that we might have a problem with [sic] that regard. In conclusion basically it is my feeling that he is imposing a nonfarm, nonagricultural related hobby interest on the surrounding neighbors. He says that he wants to be [a] good neighbor, and if that is true, I would suggest that he [should] * * * acquiesce to the will of the majority of the neighbors * * *." Petition for Review, Appendix C, page 26.

Respondent points out that YCZO 1020.02(C) does not require that no impact result from a proposed conditional use. Rather, YCZO 1202.02(C) provides that the proposed conditional use must not "alter the character of the surrounding area in a manner which substantially limits, impairs or prevents the use of surrounding properties for the permitted uses listed in the underlying zoning district." (Emphasis supplied.) Respondent contends that there is substantial evidence in the whole record that the proposed use will not substantially limit, impair or prevent permitted uses or surrounding properties.

Respondent cites the following evidence from an aeronautics expert, as supportive of the county's conclusion that the proposed use will not substantially alter the character of the surrounding area:

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on their property and, as such, provides no authority for reversal or remand of the challenged decision.

> "* * * On the issue of animals and birds and waterfowl particularly, I wish that airplanes did disturb waterfowl. The Salem Airport where we're based, is literally surrounded, at all times of the year now, by all kinds of birds. The McMinnville Airport, there is turkey farming in the immediate vicinity of it and they have significant operations and significant noise impacts and I am unaware, at least, that any turkey growers are having any problems with the airport and airport activity there, which is a completely different situation. * * *" Petition for Review, Appendix C, page 36.

Petitioners are correct that this evidence conflicts with testimony by one of petitioners' bird breeders that low flying aircraft cause "all manner of havoc" with birds. Although the evidence cited by petitioners is believable evidence regarding the impact of aircraft on birds, so is the evidence cited by respondents. The choice between conflicting believable evidence belongs to the county, and we will not disturb that choice here. Younger v. City of Portland, 305 Or 346, 360, 752 P2d 262 (1988); Vestibular Disorders Consult. v. City of Portland, ___ Or LUBA ___ (LUBA No. 89-112, April 6, 1990).

This subassignment of error is denied.[13]

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[13]Petitioners also assert that the proposal allows the applicant unrestricted flying privileges because "nothing in the conditional use permit would [stop the applicant] from taking off and landing 20 times a day if he chose to do so." Petition for Review 9. However, as respondent points out, the definition of a personal use airport presupposes a limited use as follows:

> "* * * a personal use airport is defined as an airstrip restricted, except for emergencies, to the use by the owner or his invited guests, on an infrequent and occasional basis, and

3. YCZO 1202.02(E)

As quoted above, YCZ0 1202.02(E) requires a determination that the "proposed use is timely considering the adequacy of public facilities and services existing or planned for the area affected by the use."

Petitioners argue that the following finding of compliance with YCZO 1202.02(E) is not supported by substantial evidence in the whole record with regard to adequacy of fire protection service:

> "The proposed use is appropriate considering the adequacy of public facilities and services existing or planned for the area affected in that the runway will be constructed by the applicant and will not require a costly extension of services to the area." Record 7-8.[14]

Petitioners cite the following testimony and claim it establishes that the public service of fire protection

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> by commercial aviation activities in connection with agricultural or forestry operations. No aircraft may be based or stored at a personal use airport except those owned or controlled by the owner of the airstrip." YCZO 403.03(K).

Petitioners offer no reason to believe that the proposed use will be used as often as they state in the quoted portion of the petition for review. Even if it were used that frequently, petitioners do not explain how that would substantially limit, impair or prevent the permitted uses listed in the underlying zoning district on the surrounding properties. We agree with respondent that the approval of a personal use airport authorizes only a very limited use. Petitioner has not identified any approval standard which requires the county to impose conditions on the approval of the proposed personal use airport. Accordingly, the county's failure to condition the proposed use in the manner urged by petitioners does not supply any basis for reversal or remand of the challenged decision.

[14]While it is unclear, we do not understand petitioners to challenge the adequacy of the finding itself.

cannot be timely or adequately provided to serve the proposed use:

> "[Ms. Wissusik] * * * When we bought [our] property the Fire Marshall came out with Allstate Insurance and said that the road to our property was too narrow and that we needed at least a 20 foot turnaround space to get the equipment up there. We'd be real upset if they are down at the bottom of the hill and they can't get the equipment to us. * * * When we brought up the safety issue, that was one of the things that we really questioned. We are from southern California and I have been in various serious fire situations that occurred in areas such as this, because I've lived in areas like this. You get a fire started up in the canyon and you've got 4 minutes and that's according to the fire department. I don't know what this fire department says, but I know that we addressed the issue with the Fire Marshall, Phil Picard, and he said he would not go on record. But he did say that it was an issue, that it was a problem, and he doesn't know whether or not he can get his equipment to us fast enough. * * *
>
> "[Mr. Bishop] Excuse me, are you talking about your house or are you talking about this property?
>
> "[Ms. Wissusik] Specifically to that property area. Whether or not he can get the equipment to it fast enough." Petition for Review, Appendix C, page 22.

Respondent argues that it submitted a request for comment to Washington County and to the Newberg Rural Fire District and that neither fire service provider responded. Respondent argues it cannot force the fire district to respond to the county's requests for information. Respondent contends that the lack of service provider

responses is substantial evidence that those providers can supply the particular service.

It is not disputed that under YCZO 1202.02(E), fire protection is a relevant "public facilit[y] and servic[e]" which must be determined to be adequate to serve the proposed personal use airport. The parties do not cite any evidence in the record which supports respondent's conclusion that adequate fire protection services are available to serve the proposed use. The fact that the county submitted a request for comment to affected fire protection service providers and that such providers did not object to the proposal, does not constitute substantial evidence to support the county's conclusion that fire protection services are either planned or available to serve the proposed use.[15]

This subassignment of error is sustained.

C. Compliance with YCZO Chapter 403

Petitioners argue that the proposed use does not comply with a portion of the purpose section for the AF-20 zone which provides:

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[15]We do not determine whether the failure of a service provider to respond to a request for comments might constitute substantial evidence of adequate public facilities and services under YCZO 1202.02(E), if the request for comments or the YCZO expressly provided that facilities and services would be presumed adequate if no response were received by the county. However, such is not the case here. In view of petitioner Wissusik's testimony that adequate fire service is not available, the lack of comment from the fire marshall is insufficient to demonstrate that adequate fire protection services are available.

> "* * * Uses of land which do not provide for a sustained production of crops, livestock and forest products or for the proper conservation of soil or water resources and fish and wildlife habitat shall be limited or prohibited. * * * " YCZO 403.01.

The purpose statement of the AF-20 district is followed by specific criteria applicable to permitted and conditional uses. Many of the uses authorized as permitted or conditional uses would not necessarily provide for the sustained production of crops, livestock or forest products.[16] Reading the purpose statement together with the balance of YCZO Chapter 403, we conclude respondent is correct that YCZO 403.01 does not establish that all conditional uses in the AF-20 zone must be related to agriculture. If this were the case, few of the conditional uses listed in the AF-20 zone could be approved.

We further conclude that neither the language nor context of the YCZO 403.01 purpose statement establishes that it is intended to operate as an approval standard relevant to individual permit applications. The county is not required to adopt findings of compliance with YCZO 403.01.

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[16]For example, the following uses are permitted in the AF-20 zone: warehouses, mobile home storage and geothermal exploration. YCZO 403.02. The following are conditional uses in the AF-20 zone: nonfarm dwellings, extraction and development of oil, natural gas and geothermal resources, municipal and community water supply systems, municipal and community sewer systems, and certain utility facilities. YCZO 403.03.

Petitioners also argue that the proposed use does not comply with YCZO 403.03 (Conditional Uses) because both a personal use airport and a 80 ft. x 80 ft. hangar are contemplated, and YCZO 430.03 does not allow construction of associated buildings which are unnecessary for the personal use airport itself.

Respondent points out that the definition of personal use airport includes "* * * associated hangars, maintenance and service facilities. * * *" YCZO 403.03(K). (Emphasis supplied.) Additionally, the county states that the challenged decision does not approve any hangar, and that only the personal use airport itself is approved. Respondent argues that if and when a hangar is sought, it may only be approved if it is "associated" with the personal use airport, as required by YCZO 403.03(K).

Petitioners provide no citations to the record to establish that the hangar they allege to be contemplated is either proposed by, or approved in, the challenged decision. As far as we can tell, the challenged decision does not approve a hangar of any size. Our review is limited to determining the correctness of and evidentiary support for the challenged decision. Accordingly, we cannot review whether a particular size of hangar has been properly approved, when no hangar approval is granted by the challenged decision.

This subassignment of error is denied.

The second assignment of error is sustained, in part.[17]

The county's decision is remanded.

[17]Throughout petitioners' arguments under this assignment of error, they assert the county erred by failing to impose desired conditions of approval. However, petitioners do not explain why imposition of the urged conditions of approval are required to meet any approval standard. Rather, petitioners assert that the evidence establishes that the proposed use will have certain impacts that petitioners wish to have ameliorated by the imposition of conditions. However, the county's failure to impose conditions of approval desired by the applicant's neighbors does not supply a basis for reversal or remand of the challenged decision.