BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

DAVID STEFAN and JERRY JENSEN, Petitioners,	)	
vs.	)	
YAMHILL COUNTY, Respondent,	)	LUBA No. 90-124
and	)	FINAL OPINION AND ORDER
JERALD SMITH, Intervenor-Respondent.	)	

Appeal from Yamhill County.

Tom Lowrey, Lake Oswego, filed the petition for review and argued on behalf of petitioners.

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

Jerald Smith, McMinnville, represented himself.

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

AFFIRMED 03/12/91

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 nonfarm dwelling on a parcel zoned Agricultural/Forestry Large Holding (AF-20), an exclusive farm use zone.

MOTION TO INTERVENE

Jerald Smith filed a motion to intervene on the side of respondent. There is no objection to the motion, and it is allowed.

FACTS

This is the second time county approval of intervenor's application for a nonfarm dwelling is before us. In Stefan v. Yamhill County, ___ Or LUBA ___ (LUBA No. 89-118, February 16, 1990) (Stefan I), we outlined the relevant facts:

> "The subject property is a vacant 2.3 acre parcel zoned [AF-20]. 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.
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> "Petitioners own property across Baker Creek Road from the subject property. Additional facts include:
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> > "'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 * * *.

"* * * * *" Stefan I, Slip op 2-3.

We remanded the county's decision in Stefan I, because the county's findings were inadequate to establish that (1) the subject parcel was "generally unsuitable for the production of farm crops and livestock," (2) the proposed dwelling was compatible with farm uses and consistent with the intent of ORS 215.243, (3) the proposal would not "interfere seriously with accepted farming practices on adjacent lands [in] farm use," and (4) the proposed nonfarm dwelling would comply with two comprehensive plan policies.

On remand the county held a further hearing and accepted additional evidence, and again approved intervenor's application. This appeal followed.[1]

FIRST ASSIGNMENT OF ERROR

> "The county misconstrued the applicable law, failed to make findings that the proposed nonfarm/nonforest dwelling would be consistent

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[1]The local record in Stefan I is included in the record of this proceeding. However, all citations in this opinion are to the local record developed subsequent to the remand of Stefan I, and all references to the record are to Record II ____.

> 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."

Petitioners contend the county's findings are inadequate to establish compliance with Revised Comprehensive Plan (plan) policies II(A)(1)(f) (policy 16) and II(B)(1)(a) (policy 17).[2] Petitioners also argue the county's findings that the proposal complies with policies 16 and 17 are not supported by substantial evidence in the whole record.

Petitioners state that these plan policies apply to the proposal as independent approval standards through Yamhill County Zoning Ordinance (YCZO) 1202.02, which requires that nonfarm dwellings be consistent with applicable comprehensive plan policies.[3] Finally, petitioners argue that these policies are applicable because there is nearby land managed for forest use and that it is irrelevant that the subject parcel is not currently managed for farm or forest use. According to petitioners, the issues under plan policies 16 and 17 are whether the county is, by approving

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[2]The parties refer to these policies as policy 16 and 17, respectively, because those are the pages on which the policies are found in the plan. For simplicity, we will refer to these policies in the same manner as the parties.

[3]Petitioners also point out that ORS Chapters 197 and 215 require that land use decisions be consistent, and not conflict, with the comprehensive plan.

the nonfarm dwelling, "cooperating" with nearby timber and woodland owners, and whether the proposed nonfarm dwelling will impair or conflict with the use of the nearby land managed for forest use.

We address the challenged decision's compliance with policies 16 and 17 separately below.

A. Policy 16

Policy 16 provides:

> "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[s] that the land is unsuitable for farming or forestry or, due to ownership, is not currently part of an economic farming or forestry enterprise."

The parties disagree about whether this policy is an approval standard. Because this policy uses the term "shall," petitioners argue it is mandatory. The county argues policy 16 is not an independent approval standard, but rather is satisfied through compliance with the YCZO standards governing approval of nonfarm dwellings.[4]

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[4]In the alternative, the county argues that this policy is inapplicable because the proposed nonfarm dwelling does not constitute "rural area development." The county contends a single nonfarm dwelling does not constitute "rural area development," and that rural area development in this context means more intensive development than a single family dwelling, but less development than required to rise to the level of "urban" development. However, the county cites nothing in either its ordinance or plan to support this interpretation of the phrase "rural area development," and we believe it is an incorrect interpretation of that phrase. McCoy v. Linn County, 90 Or App 271, 275-276 752 P2d 323 (1988). We conclude that "rural area development" includes a single nonfarm dwelling. If the county intends a different interpretation it must amend

Whether a plan policy is an approval standard depends upon the wording and context of the plan provision. Bennett v. City of Dallas, 17 Or LUBA 450, 456 (1989), aff'd 96 Or App 645 (1989); Stotter v. City of Eugene, ___ Or LUBA __ (LUBA No. 89-037, October 10, 1989), slip op 15. This general proposition is expressly stated in the county's plan. The introduction to the county's plan states in relevant part:

> "* * * Goals are general directives or achievements toward which the County wishes to go in the future. Policies are more specific statements of action to move the County towards attainment of those goals. These policies are used in daily decision-making or in the development of ordinances by the county.
>
> "* * * * *
>
> "Implementation of the County goals and policies can occur in several ways. Many are implemented by county ordinance. Other goals and policies will apply to individual issues or proposals put forth by both private and public sectors. Still others will require action dependent upon the county's fiscal resources at the time.
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> "Where certain goals and policies conflict with others, the final decision will require weighing of the merits in order to achieve a balanced decision. Through time, the goals and policies are guides for consistent, reasonable, and balanced land use decisions. Revised Comprehensive Plan, unnumbered introductory pages.

We might agree with the county that policy 16 is fully satisfied through compliance with the YCZO provisions

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its code. Von Lubken v. Hood River County, 104 Or App 683, ___ P2d ___ (1990), adhered to, ___ Or App ___ (March 6, 1991).

applicable to nonfarm dwellings, if the applicable YCZO provisions governing nonfarm dwellings in the the AF-20 zone addressed conflicts between proposed "rural area development" and forest uses as policy 16 requires. However, we find nothing in the YCZO provisions governing approval of nonfarm dwellings addressing interference with, or general unsuitability of the land for, forest operations. The YCZO addresses only conflicts between proposed nonfarm dwellings and farm activities and whether the land proposed for the nonfarm dwelling is suitable for farm operations.

With regard to potential conflicts between proposed nonfarm dwellings and farm operations, compliance with the YCZO provisions governing approval of nonfarm dwellings establishes compliance with policy 16. However, neither the wording nor the context of policy 16 suggests that with regard to forest uses, policy 16 is fully satisfied by compliance with the YCZO provisions governing approval of nonfarm dwellings. Specifically, there are no standards applicable to the AF-20 zone which address (1) potential conflicts between nonfarm dwellings and forest uses, and (2) suitability of land for forest uses. Consequently, policy 16 constitutes an applicable approval standard for nonfarm dwellings in the AF-20 zone with regard to two issues only.

The only challenge petitioners make to the county's findings regarding policy 16, is that the county's findings rely "primarily" upon "the concept that the property is

unsuitable for farming." (Emphasis supplied.) Petition for Review 23. However, we stated above that with regard to general unsuitability for farm uses, policy 16 is satisfied by compliance with the YCZO provisions governing approval of nonfarm dwellings. The requirement that the county determine whether a parcel proposed for a nonfarm dwelling is generally unsuitable for farm use is one of several YCZO approval standards with which compliance must be demonstrated in order for the county to approve a nonfarm dwelling in the AF-20 zone. The county would not be in compliance with the nonfarm dwelling approval standards if the county only, or even "primarily," addressed the general unsuitability standard and not the other YCZO nonfarm dwelling approval standards found in YCZO 403.07.[5]

Next, petitioners argue that the county's decision that the proposed nonfarm dwelling will not "substantially impair or conflict" with nearby forest operations, and therefore, complies with policy 16 is not supported by substantial evidence in the whole record. Petitioners cite evidence they presented below regarding conflicts between human activity and forestry operations. Petitioners contend that in view of the evidence they presented in this regard, it is unreasonable for the county to rely upon the applicant's

[5]We address petitioners' contentions that the county did not satisfy those YCZO approval standards, including the general unsuitability standard of YCZO 403.07(D), in petitioners' assignments of error below.

evidence that such conflicts will not "substantially impair or conflict with the use of * * * forest land" under policy 16.

The county cites evidence submitted by the applicant, some of which is site specific, which supports its findings that the proposed nonfarm dwelling will not "substantially impair or conflict with" nearby forest operations.

We do not believe petitioners' general evidence regarding historic conflicts between human activity and forest operations so undermines the applicant's evidence that such conflicts will not exist in this case, as to make it unreasonable for the county to rely upon the applicant's evidence. Younger v. City of Portland, 305 Or 346, 752 P2d 262 (1988). The choice between conflicting believable evidence belongs to the county, and we do not disturb that choice here. Vestibular Disorder Consult. v. City of Portland, ___ Or LUBA ___ (LUBA No. 89-112, April 6, 1990), slip op 11.

This subassignment of error is denied.

B. Policy 17

Policy 17 provides:

> "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."

The county argues that policy 17 is aspirational only

and does not constitute an independent approval standard. The county contends that the goals to which this policy aspires are intended to be specifically implemented through enactment of zoning and other ordinances.

Alternatively, the county contends if policy 17 is an approval standard, the proposed nonfarm dwelling is not within its scope because the subject parcel is neither grazing nor forest land, and that policy 17 applies only to development approvals on grazing and forest lands.[6] The county also argues that if policy 17 is a relevant approval standard, compliance with it is established through compliance with the approval standards for nonfarm dwellings contained in the YCZO.[7] Finally, the county argues that even if compliance with policy 17 is not established through compliance with the YCZO nonfarm dwelling approval standards, the county adopted findings adequate to

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[6]Specifically, the county argues the challenged findings adequately establish that plan policy 17 is inapplicable because:

> "* * * the subject property is not grazing land, and the presence of forest tree species does not in and of itself make land 'forest land.' The subject property has never been on farm or forest deferral. * * * [T]he property's small size and the presence of Baker Creek preclude any significant contribution to the forest land base." Record II 21.

[7]In this regard, the county cites the following findings :

> "* * * these plan policies and goals are implemented through a demonstration of compliance, via the condition (sic) use process, with the nonfarm dwelling provisions of the YCZO. Thus, nonfarm dwellings that comply with the YCZO also comply with the comprehensive plan policies and Goals." Record II 20.

demonstrate that policy 17 is satisfied. Those findings are as follows:

> "Even were this policy applicable to a condition[al] use permit application for a nonfarm dwelling, the county and the Board [of Commissioners] have done all that they can to comply with the policy by cooperating with government agencies and private timber owners in the context of processing the subject application. No federal forest land is at issue. The Oregon Department of Forestry was contacted during the original proceedings on this matter, and responded that the property was 'best suited as a homesite.' The largest nearby private timber owner, which owns the surrounding 697 acre tree farm, has strongly supported the application. Several area property owners listed in the record as engaging in 'logging,' 'tree farm,' 'pasture,' or cattle' uses signed a petition in favor of the application and stated that the nonfarm dwelling would be compatible with the uses they were making of their property. Only one owner of forest land in the area, Mr. Stefan, has objected to the application. The county's obligation, in this context, to cooperate with Mr. Stefan as an owner of forest land, is fully implemented through Mr. Stefan's ability to participate in the conditional use permit process. Mr. Stefan has, in fact, participated extensively in this process. The Board [of Commissioners], however, has weighed the conflicting evidence submitted and has found that the evidence submitted by the applicant and others in favor of the application is more persuasive." Record II 21.

As stated above, plan policies may or my not be approval standards depending upon their context and how they are worded. Bennett v. City of Dallas, supra; Stotter v. City of Eugene, supra.

While plan policy 17 uses the term "will," we agree with the county that this policy expresses a general

principle to guide the development of implementing land use regulations, but does not itself constitute an approval standard applicable to individual permit applications. Policy 17 essentially states only that the county will cooperate with timber companies and woodland owners toward achieving certain uses of timber and woodlands. We believe that in this context, the county's "cooperation" toward these uses of timber and woodlands is intended to function as general guidance for the enactment of zoning regulations to further those forest and grazing uses.

In the alternative, to the extent that policy 17 is an approval standard, petitioners' only challenge to the adequacy of the county's findings is that "* * * compatibility must be [based] upon the proposed use, not the individual. Due to changes in individual ownership, findings must be [based] upon the proposed use of the land." (Citations omitted.) Petition for Review 10-11.

We do not read the challenged findings, which determine that the county has cooperated with nearby timber and woodland owners, to depend upon the proposed nonfarm dwelling being occupied by the individual applicant in this case. Rather, we understand the county's findings to state that the county discharged any duties it had to "cooperate" with timber and woodland owners, in its evaluation of the proposal, not in evaluating the manner in which the applicant will establish and maintain the proposed dwelling.

Thus, even if policy 17 constitutes an independent approval standard applicable to the proposal, the county's findings are adequate to establish that the county has "cooperated" with timber and woodland land owners within the meaning of that policy.

Petitioners also contend the county's findings of cooperation with timber and woodland owners, toward the "highest aggregate economic, recreational and ecological benefits which these lands can sustain, including timber production, livestock range, fish and wildlife habitat" under policy 17, are not supported by substantial evidence in the whole record.

We disagree. The evidence petitioners cite simply conflicts with the evidence relied upon by the county. We do not believe petitioners general evidence so undermines the applicant's evidence as to make it unreasonable for the county to rely upon the applicant's evidence. As we stated above regarding policy 16, the choice between conflicting believable evidence belongs to the county, and we are not persuaded there is any reason to disturb that choice here.

This subassignment of error is denied.

The first assignment of error is denied.

SECOND ASSIGNMENT OF ERROR

> "The county failed to follow required procedures therefore prejudicing petitioners by prohibiting petitioners from presenting evidence regarding (1) the farm use of petitioner's parcels in combination with the subject parcel and (2) the

> relationship, for the purpose of addressing the compatibility question, of petitioner's parcels with the subject parcel."

As we understand it, petitioners assert the county rejected evidence of farm uses they employ on property they own. Petitioners state:

> "* * * Petitioner [Stefan] tried to present evidence concerning his farm usage but such evidence was denied by the county. Petitioners would have presented written and oral evidence concerning the farm parcels including receipts for purchases and sales of rhododendrons, evidence concerning orchard production, truck gardens, cattle raising, grazing lands, fern production, azaleas, woodlots, and timber production." (Citations omitted.) Petition for Review 24.

In an earlier order resolving petitioners' record objections, we determined that the county did not reject any evidence petitioners offered below. Specifically, we stated:

> "The * * * minutes indicate (1) at the July 25, 1990 hearing, the county considered limiting the scope of its proceeding by excluding evidence regarding farm use occurring on petitioners' property, but instead set up a procedure allowing all written evidence to be submitted for a determination on August 8, 1990 regarding its acceptability, (2) petitioners submitted evidence in response to the county's invitation, and (3) on August 8, 1990, all of the evidence which petitioners offered was accepted." (Emphasis in original.) Stefan v. Yamhill County ___ Or LUBA ___ (LUBA No. 90-124, Order on Record Objections, December 20, 1990), slip op 9.

We see no reason to disturb this determination here.

Petitioners also argue the county improperly limited their oral presentation to 15 minutes. Petitioners contend

that the 15 minute limitation was improper because county failed to provide notice of this time limitation. Petitioners maintain that the county's failure to provide notice of this time limitation violates ORS 197.763(3)(j), which provides:

> "The following procedures shall govern the conduct of quasi-judicial land use hearings conducted before a local governing body * * * on application for a land use decision * * *
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> "* * * * *
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> "(3) The notice provided by the jurisdiction shall:
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> "* * * * *
>
> "(j) Include a general explanation of the requirements for submission of testimony and the procedure for the conduct of hearings."

The county's notice did not provide a general explanation of the requirements for submission of testimony and for the conduct of hearings other than the statement:

> "Written and oral testimony or evidence will be received before or during the hearing solely on the following issues * * *." (Record II 236.)

The failure of the county to identify in its notice of hearing the general procedure for the conduct of hearings is at most a procedural violation of ORS 197.763(3)(j). We are empowered to reverse or remand a decision on the basis of a procedural error if such error "prejudiced the substantial rights of the petitioner." ORS 197.835(7)(a)(B). As we understand it, the only prejudice petitioners claim from the

failure of the notice to outline the procedures for the conduct of the hearing is that they were unaware of the 15 minute deadline for the presentation of oral argument. Petitioners state that one or both of them were "unable to present his argument in that amount of time." Petition for Review 25.

The county's minutes reflect the following dialog between county representatives and Mr. Stefan during the July 25, 1990 public hearing:

> "[Petitioner Stefan] renewed his objection to the time limit stating that the [county commission and counsel] had spent much of his testimony time discussion [sic] procedures. Mr. Stefan was granted additional time, to which he stated the time allowed was still insufficient to address the issues at hand. * * *"
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> "Request for continuance was discussed at this time. [It was moved] to continue the issue to August 1, 1990 * * * for the sole purpose of receiving written testimony[, and] a further continuation until August 8, 1990, [was recommended] for counsel to review testimony and determine relevance, and oral testimony regarding admitted written testimony to be heard on August 15, 1990 * * * with oral arguments to be limited to 45 minutes per applicant and appellant, to include rebuttal remarks." Record II 214.

It is apparent that during the July 25, 1990 hearing, petitioner Stefan requested, and was granted by the county, additional time to present testimony and argument. It is also apparent that the July 25, 1990 public hearing was continued for a period of 21 days to August 15, 1990 and that petitioners had that period of time to arrange their

oral testimony and remarks into a 45 minute presentation. The only prejudice petitioners identify is that they were not aware prior to the July 25, 1990 hearing that their presentations would be limited to 15 minutes, and that 15 minutes is not a long enough period of time to present oral argument. Petitioners do not explain, and we do not see, why any possible prejudice was not cured by the county's provision of an additional 45 minutes for the presentation of petitioners' oral argument, together with a 21 day continuance of the public hearing during which time petitioners could prepare their presentations. In sum, we do not believe that the failure of the county's notice of public hearing to identify a 15 minute time limitation for the presentation of oral testimony and argument caused any prejudice to petitioners' substantial rights.

The second assignment of error is denied.

THIRD ASSIGNMENT OF ERROR

> "The county made insufficient findings and made a decision not supported by substantial evidence in the record as a whole in concluding the subject property is unsuitable for the production of farm crops and livestock through combination with agricultural operations elsewhere."

YCZO 403.07(D) requires that the county only approve a nonfarm dwelling on EFU zoned land if the land is "generally unsuitable for the production of farm crops and livestock."

Petitioners argue the county's findings of compliance with this standard are inadequate.

The county's findings regarding the subject property's general unsuitability for the production of farm crops and livestock are, in part, as follows:

> "Because the Board [of Commissioner's] previous order included small size as one of several unweighted justifications for its determination that the property was generally unsuitable for agricultural use, LUBA was forced to assume that small size was a necessary component of the Board [of Commissioner's] ultimate finding that the property was generally unsuitable for agricultural use. The Board [of Commissioners], however, intended small size to be only one of many reasons for its determination, not a necessary reason. Accordingly, based on the previous record in this matter, the Board [of Commissioners] concludes that the property is generally unsuitable for the production of farm crops or livestock regardless of the property's small size. That is, even were the property combined with another farm operation, it would still be generally unsuitable for the production of farm crops or livestock for the reasons previously explained: the southern half of the property is too poorly drained, too subject to erosion, and the northern half is too poorly drained, too subject to flooding from Baker Creek, and too wooded to be suitable for any agricultural use. The property's small size and division by Baker Creek simply exacerbate these problems.
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> "* * * * * " Record II 5.

In addition, the county's findings note that the subject property is shaded from the trees located on the surrounding tree farm. Id.

In Stefan I, we stated:

> "Under the Rutherford [v. Armstrong], 31 Or App 1319, 572 P2d 1331 (1977) (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. 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. 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." (Emphasis in original.) Stefan I, supra, slip op at 10.

Under the Rutherford analysis, the above quoted county findings are adequate to establish the subject parcel falls within the third category noted above. The county's findings are adequate to establish that the subject property is not suitable for the production of farm crops and livestock, under any circumstances, regardless of whether it could be combined with other properties.

Petitioners next argue that the above quoted findings, and other findings regarding the weight given to petitioners' evidence, are not supported by substantial evidence in the record as a whole. The county's findings addressing petitioners' evidence, state in part:

> "Opponent David Stefan has submitted testimony and other evidence on this issue that conflicts somewhat with that submitted by the applicant. Mr. Stefan has made an offer to the applicant to purchase the subject property in order to raise rhododendrons and endangered plant species such as

cobra lilies and pitcher plants. * * * In addition, Mr. Stefan submitted cost data, apparently from 1975, on the growing of 'field grown rhododendrons.' No information was submitted regarded expected revenues from sales of rhododendrons and other plants.

This is the second offer that Mr. Stefan has made to purchase the applicant's property. The first offer was * * * to purchase the property for forest management in conjunction with adjacent property that he owns that is also in forest management. Before LUBA, Mr. Stefan argued he would utilize the parcel as a 'woodlot' and therefore intended to make farm use of the property. Also before LUBA, Mr. Stefan submitted an affidavit setting forth the farm uses that he conducts on his property. That affidavit stated that he and his partner, Mr. Jensen, 'raise a truck garden, fruit trees, grapes and berries, ferns greenhouse plants and have leased out acres for the grazing of cattle.' No mention was made of rhododendrons or endangered species, nor did the original offer to purchase the property mention rhododendrons or endangered species. Mr. Stefan's second offer to the applicant was dated * * * four days before the Board [of Commissioner's] remand hearing in this matter. That offer states: '[W]e have been very active <u>over the past few years</u> in the raising of rhododendrons, both common and new species. * * * Your parcel would be excellent for the continuation of our farming practices.' * * * In addition, the Board [of Commissioners] note that Mr. Stefan recently sold 55.41 acres of his property. He explained that he nonetheless needs the applicant's 2.3 acres for expanding his rhododendron and endangered species operations because the 2.3 acres have water. The Board [of Commissioners] note that the same water runs though the land owned by Mr. Stefan across Baker Creek Road from the subject property * * * The Board [of Commissioners] finds that Mr. Stefan's offers to purchase the applicant's property were not made in good faith and were not for the purpose of using the parcel to produce farm crops and livestock, but for the sole purpose

of advancing a Rutherford argument to defeat the application for a nonfarm dwelling. * * *

"* * * * *

"The evidence submitted by Mr. Stefan from The Berry Botanical Garden states that rhododendrons, pitcher plants, and cobra lilies can be grown on the subject property with sufficient management. This evidence is contradicted by evidence submitted by the applicant from a commercial nurseryman who visited the property and who is familiar with the nearby properties. The nurseryman concluded that the property would be unsuitable for growing rhododendrons and other ornamental plants, either alone or in combination with any nearby agricultural operations, because of the physical characteristics of the property identified above, which could preclude profitable cultivation.

"In weighing this conflicting evidence, the Board [of Commissioners] find the evidence submitted by the applicant more persuasive. The testimony of the applicant's nurseryman is consistent with evidence submitted by the applicant from farmers and other knowledgeable persons that the property is generally unsuitable for producing farm crops or livestock, either alone or in combination with other agricultural uses. The applicant's evidence also directly addresses whether farm crops or livestock could be produced on the property. The evidence submitted by Mr. Stefan suggests to the Board [of Commissioners] only that, with sufficient effort, rhododendrons and endangered plant species such as cobra lilies and pitcher plants would grow on the property; it does not persuade the Board [of Commissioners] that these plants could be grown on the property as farm crops. The Board [of Commissioners] note that, with sufficient effort, any plant, including rhododendrons, could be grown anywhere in the State. * * * Moreover, there are many properties in the State on which rhododendrons, pitcher plants, cobra lilies, and other plants can be grown or are being grown, both naturally and as landscaping. The existence of such plants or

> their ability to grow and survive on these properties does not in and of itself make these plants farm crops or the properties on which they grow generally suitable for the production of farm crops, as the Board [of Commissioners] h[ave] interpreted the use of these terms in YCZO 403.07.D. In addition, the Board [of Commissioners] note that the applicant's nurseryman and other persons who submitted evidence in support of the applicant on this issue actually visited the property. * * * Finally, the Board [of Commissioners] conclude that evidence regarding the costs of producing 'field grown rhododendrons' is without any probative value. There is nothing to suggest that these costs, which appear to be from 1975 surveys, were derived from operations on properties similar to the applicant's (indeed the fact that these are 'field grown rhododendrons' suggests otherwise), and the cost estimates are not accompanied by any evidence of expected returns from the growing of rhododendrons." (Emphasis in original.) (Record II 6-8.)

If the county's findings that the subject property is generally unsuitable for the production of farm crops and livestock regardless of size are supported by substantial evidence in the whole record, it is irrelevant whether the subject parcel may be combined with other land, as it cannot be made suitable in any event. Accordingly, we review the county's determination that the parcel is generally unsuitable for the production of farm crops and livestock regardless of the subject parcel's size, for substantial evidence in the whole record.

It is undisputed that the subject parcel is steep, bisected by a steam, subject to flooding, poorly drained, shaded by the neighboring tree farm, and surrounded by the

neighboring tree farm and Baker Creek Road. The only evidentiary dispute regarding to the county's determination that the parcel is itself unsuitable for the production of farm crops and livestock, is whether the parcel is suitable for the production of rhododendrons and other ornamental plants, as petitioners contend. The evidence is conflicting on this point.

The county's findings demonstrate it chose not to believe or give a great deal of weight to portions of petitioners' evidence, and chose to give greater weight to the applicant's evidence. The county is entitled to weigh the evidence, choose the most believable, and reach a conclusion on the basis of all of the evidence in the record. We do not disturb the county's conclusions regarding the weight and value of evidence unless we determine that it is unreasonable for the county to rely upon certain evidence, in view of its quality and the quality of the contrary evidence. Younger v. City of Portland, supra. Petitioners' evidence does not so undermine the applicant's evidence that it is unreasonable for the county to rely upon the applicant's evidence. We conclude the county's findings that the subject parcel is generally unsuitable for the production of farm crops and livestock, regardless of whether it could be combined with a larger parcel, are supported by substantial evidence in the whole record.

The third assignment of error is denied.

FOURTH 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 that nonfarm dwellings must be "compatible with farm uses * * * and consistent with the intent and purposes set forth in ORS 215.243."

Petitioners cite particular county findings and argue that they are inadequate. Citing Blosser v. Yamhill County, ___ Or LUBA ___ (LUBA No. 89-084, October 27, 1989), petitioners claim that to satisfy the compatibility criterion, "there must be a discussion that identifies the other farm uses in the area and explains how the nonfarm dwelling would be compatible with the identified uses."[8] Petition for Review 38. Additionally, petitioners contend the county's findings do not discuss the relationship between the farm uses identified in the area and the subject parcel.[9] Finally, petitioners argue that the findings do

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[8]Petitioners also argue the county failed to consider compatibility between the proposed nonfarm dwelling and petitioners' tax lots 4509-800, 900 and 1100. However, the county's findings do address compatibility between these tax lots and the proposal. See Record II 11-12.

[9]Petitioners also state that the findings establish that the county improperly shifted to them the burden of establishing that YCZO 403.07(A) is not satisfied, rather than on the applicant to establish that YCZO 403.07(A) is satisfied.

not explain how approval of the proposed nonfarm dwelling is consistent with the intent and purposes of ORS 215.243.[10]

The county cites findings in which it appears to have undertaken the kind of compatibility analysis under YCZO 403.07(A) that petitioners claim it failed to perform. The findings cited by the county explain that the subject property is unique as it is buffered from farm uses in the area by distance, topography and vegetation, and that the subject parcel has never been put to farm use since its creation in 1967, and conclude it is generally unsuitable for farm uses as a result of these factors. The findings also explain that the proposal will not drive up land values because no division of land is contemplated or approved, and

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The challenged order does not reflect that the county shifted the burden to petitioners. The findings state:

> "The opponents have not presented any evidence that would rebut the applicant's affirmative showing * * *. They have presented no evidence -- or even suggested -- any specific respect in which the proposed dwelling would interfere with any identified farm use in the area, including their own alleged uses. * * * Given the buffering * * * as well as the evidence presented by the applicant, the Board finds that these and other potential problems identified by the opponents will not result in any incompatibility between the proposed nonfarm dwelling and farm uses in the area." Record II 10

We read these findings as explaining why the county was not persuaded by petitioners' evidence. The findings do not state that petitioners had the burden of establishing the relevant approval standards were not met in the first instance. We believe the findings establish that the county determined the proposal complies with YCZO 403.07(A), based on the evidence presented by the applicant, and not adequately refuted by petitioners.

[10]Short of asserting that the findings are conclusory and the statements quoted above from the petition for review, petitioners provide little explanation of why they believe the findings are inadequate.

that the proposal will not result in extension of additional public services to the area. Petitioners do not explain why these findings are inadequate to satisfy YCZO 403.07(A), and we do not believe that they are. Additionally, the county also cites findings addressing consistency between the proposal and the intent and purpose of ORS 215.243. These findings are not conclusory, as petitioners contend. The findings adequately explain the relationship between the proposal and the intent and purpose of ORS 215.243.

Next, petitioners argue that the county's findings of compliance with YCZO 403.07(A) are not supported by substantial evidence in the whole record. Petitioners contend that four letters and a petition submitted by neighboring property owners in support of the proposal, do not constitute substantial evidence upon which the county may reasonable rely in concluding that the proposal is "compatible" with farm uses in the area.

We might agree with petitioners that the county's decision on compatibility is not supported by substantial evidence if the letters and petition were the only evidence relied upon by the county to establish compatibility between the proposal and farm uses in the area. However, the county relies upon a great deal of evidence other than the letters and petition themselves in making its determination of compatibility, not the least of which is the unique geographical and topographical buffering features of the

subject property. Consequently, it does not matter whether the letters and petition would constitute substantial evidence in support of the county's determination regarding the compatibility standard.

Petitioners next argue that petitioner Stefan, a real estate broker, submitted evidence:

> "* * * that farm land valued at $100 to $500 per acre as farm land recently sold for up to $5,000 per acre. Further, evidence was given to support that such increased pricing was far in excess of typical appreciation and that such increases are a direct result of farm and forest land being turned into residential land. Farmers cannot afford farm or forest land when it is sold at residential prices." (Record citations omitted.) Petition for Review 42-43.

The county contends the evidence petitioners refer to does not establish that approval of the proposed nonfarm dwelling will increase the price of farm or forest land and that the proposed nonfarm dwelling will be incompatible with the area farm uses. The county argues this evidence does not undermine the county's decision in this case.

The county determined that land prices may be driven up as petitioners contend when divisions of farm land are approved for nonfarm purposes, not upon the approval of a nonfarm dwelling on a unique and previously divided parcel which is determined to be generally unsuitable for farm use. Record II 10. We agree with the county that petitioner Stefan's evidence regarding farmland prices does not undermine the county's decision that in this case the

proposed nonfarm dwelling is compatible with farm uses in the area.[11] We conclude the county's determination that the proposed nonfarm dwelling is compatible with area farm uses is supported by substantial evidence in the whole record.

The fourth assignment of error is denied.

FIFTH 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."

Petitioners argue the findings are inadequate to establish compliance with YCZO 403.07(B), which requires that a proposed nonfarm dwelling:

> "* * * not seriously interfere with accepted farming practices on adjacent lands devoted to farm use. * * *"

Petitioners argue the county misconstrued the term "adjacent" as used in YCZO 403.07(B) to mean "abutting" as opposed to meaning "nearby."

Petitioners are correct that this Board did determine

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[11]Petitioners also complain the county failed to "give substantial weight to the evidence submitted by petitioners." Petition for Review 44. However, determining the weight to be assigned to particular evidence is the function of the county decision maker and not this Board. When presented with a substantial evidence challenge, this Board is required to review the county's decision to determine whether, in view of the entire record, the conclusions drawn are reasonable.

the term "adjacent" used in YCZO 403.07(B) means "nearby."[12] However, the county points out that it made an alternative determination that if the term "adjacent," as used in 403.07(B), means "nearby," then the proposed dwelling will not interfere seriously with "nearby" farming practices. As far as we can tell, in its order the county applied, albeit in the alternative, precisely the interpretation of YCZO 403.07(B) which petitioners contend the county did not.

Next, petitioners argue the county's findings are inadequate because in determining the proposed nonfarm dwelling will not seriously interfere with nearby farm uses, the county relied upon the findings that the proposal satisfies the compatibility standard of YCZO 403.07(A). Petitioners interpret these findings to state that the

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[12]The issue of what the term "adjacent" means under YCZO 403.07(B) was determined in Stefan I as follows:

> "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 * * *.
>
> "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 adjacent to mean nearby. We believe this is a reasonable and correct interpretation of the meaning of the term 'adjacent.' (Citations omitted.) Stefan I, slip op at 33.

We adhere to this determination of the meaning of the term "adjacent." The county is free to amend its ordinance if it chooses.

compatibility standard of YCZO 403.07(A) is equivalent to the "will not seriously interfere" with nearby farm uses standard of YCZO 407.03(B).

We do not interpret the county's findings to state that the two standards are the same. The disputed findings state:

> "* * * [T]he Board [of Commissioners] finds, based on the original findings and the findings presented in section 2 of these supplemental findings, that the proposed nonfarm dwelling would not seriously interfere with accepted farming practices on nearby lands devoted to farm use. The Board [of Commissioner's] determination that the proposed nonfarm dwelling is compatible with farm uses in the area includes the Board [of Commissioners] determination that the proposed nonfarm dwelling will not interfere seriously with any accepted farming practices associated with those uses. Those specific practices are also identified in section 2 of those findings." Record II 20.

We understand these findings to state that in its analysis of whether the proposed nonfarm dwelling is compatible with nearby farming operations, the county also addressed whether the proposed nonfarm dwelling will seriously interfere with those farm operations. Indeed, many of the findings addressing the compatibility standard also address whether there will be "interference" with and conflicts between the proposed nonfarm dwelling and the identified nearby farming operations. Other than stating that the findings of compatibility under YCZO 403.07(A) are used as findings regarding the serious interference standard

of YCZO 403.07(B), petitioners do not explain why these findings are inadequate. So long as the findings address all relevant approval standards, which they do, there is nothing inherently wrong with utilizing the findings in one section of an order to support those in another section of an order.[13] It is well established that findings need not take any particular form and no magic words need be employed. Sunnyside Neighborhood Assoc. v. Clackamas Co. Comm., 280 Or 3, 21, 569 P2d 1063 (1977).

The fifth assignment of error is denied.

The county's decision is affirmed.

[13]Of course, where a local government fails to adopt any findings of compliance with an applicable approval standard and simply relies upon other unrelated findings to support its decision, the county's findings are inadequate with respect to the standards which is not addressed. Sweeten v. Clackamas County, ___ Or LUBA ___ (LUBA No. 89-024, July 27, 1989), slip op 4. However, here the county did address both the proposal's "compatibility" with nearby farm uses as required under YCZO 403.07(A) and whether the proposal would cause serious interference with those farm uses as required by YCZO 403.07(B). The county simply addressed these issues together. We see nothing wrong with this procedure.