BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

DONLEE A. SCHELLENBERG, and TERRY DRAKE, Petitioners, vs. POLK COUNTY, Respondent, and DON KEUN CHAEY, Intervenor-Respondent.	LUBA No. 91-018 FINAL OPINION AND ORDER

Appeal from Polk County.

Janet Atwill, Portland, filed the petition for review and argued on behalf of petitioners. With her on the brief was Bullivant, Houser, Bailey, Pendergrass & Hoffman.

Robert W. Oliver, Dallas, filed a response brief and argued on behalf of respondent.

Wallace W. Lien, Salem, filed a response brief and argued on behalf of intervenor-respondent.

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

REMANDED 08/02/91

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

Opinion by Sherton.

NATURE OF THE DECISION

Petitioners appeal a Polk County Board of Commissioners order approving a 36-hole golf course as a conditional use in an exclusive farm use zone.

MOTION TO INTERVENE

Dong Keun Chaey moves to intervene on the side of respondent in this appeal proceeding. There is no opposition to the motion, and it is granted.

FACTS

The subject property is approximately 520 acres in size, designated Agricultural on the Polk County Comprehensive Plan (plan) map and zoned Exclusive Farm Use (EFU). The subject property contains gently sloping lowlands in the south and east, rising steeply to the north and west. The subject property is comprised of 16 soil types, including ones with U.S. Soil Conservation Service classifications II, III, IV and VI. Record 16, 200. A house and two barns are located on the southwestern corner of the property. The subject property has frontage on State Highway 22 to the south and Perrydale Road to the east.

Land to the east, north and west of the subject property is zoned EFU and contains commercial farms producing grains and grass seed, woodlots, orchards and a large commercial dairy. Record 16, 175, 199-200. Reimer Reservoir is located on the adjacent property to the north.

Land to the south of the subject property is zoned Farm/Forest (F/F)[1] and Acreage Residential - Five Acre (AR-5), and contains small farms and rural residences. Id.

On September 7, 1990, intervenor-respondent (intervenor), owner of the subject property, applied to the county for conditional use approval for a 36-hole golf course. On October 31, 1990, after a public hearing, the county hearings officer issued a decision denying the application.

Intervenor appealed to the board of commissioners. The board of commissioners conducted a de novo review of the hearings officer's decision, including a public hearing held on December 19, 1990. PCZO 122.270, 122.290. The record was left open until 5 p.m. December 21, 1990, for the purpose of accepting additional written statements or evidence. Record 85. On January 2, 1991, the board of commissioners deliberated on the matter, and adopted a tentative oral decision to reverse the hearings officer's decision and approve the conditional use. Record 36. On January 31, 1991, the board of commissioners adopted the challenged order.

FIRST ASSIGNMENT OF ERROR

> "Respondent misconstrued the applicable law and acted in violation of its Comprehensive Plan by

[1]The F/F zone is a natural resource zone. Polk County Zoning Ordinance (PCZO) 138.010.

> approving an application for a conditional use permit in the EFU Zone without adequately addressing relevant, mandatory portions of its Comprehensive Plan."

Under this assignment of error, petitioners argue that six county plan policies are mandatory approval standards for the challenged conditional use approval. Petitioners contend the county incorrectly interpreted these plan policies not to be mandatory approval criteria, and failed to adopt findings demonstrating compliance with these policies.[2]

Determining the intended applicability of comprehensive plan provisions to individual land use decisions has frequently been problematic for this Board. In Von Lubken v. Hood River County, 104 Or App 683, 689, 803 P2d 750 (1990), adhered to 106 Or App 226, rev den 311 Or 349

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[2]Respondent and intervenor-respondent (respondents) contend that under ORS 197.763(1) and 197.835(2), petitioners cannot raise compliance with plan policies other than Agricultural Policies 1.3 and 1.4 in this appeal, because petitioners failed to raise the issue of compliance with these policies in the county proceedings. Petitioners concede they did not raise compliance with these policies as an issue below, but argue that under ORS 197.763(2)(a) they may raise new issues before this Board because the county failed to follow the procedural requirements of ORS 197.763 in the proceedings below. Among the procedural errors petitioners allege is the county's failure to list these four plan policies as applicable criteria in its notice of hearing. ORS 197.763(3)(b).

It is clear that the county did not identify the four plan policies in question as applicable criteria in its notice of hearing. Record 135, 220. Therefore, if we determine these policies are approval standards for the challenged decision, that determination would also establish the county's notice of hearing failed to comply with ORS 197.763(3)(b) and, therefore, that petitioners may raise compliance with these policies as an issue in this appeal. Neuenschwander v. City of Ashland, ___ Or LUBA ___ (LUBA No. 90-068, October 19, 1990), slip op 18.

(1991), the Court of Appeals stated:

> "* * * It is, of course, correct that not every provision in a comprehensive plan constitutes an approval criterion for specific land use decisions. See Downtown Commun. Assoc. v. City of Portland, 80 Or App 336, 722 P2d 1258, rev den 302 Or 86 (1986); Stotter v. City of Eugene, ___ Or LUBA ___ (LUBA No. 89-037, October 10, 1989). As we explained in Downtown Commun. Assoc., whether a particular plan provision is an approval criterion for conditional use permit applications must be determined from the function that the plan itself assigns to the provision."

In Von Lubken, the Court went on to rely on the following plan language in determining that the plan provision at issue was an approval criterion for land use decisions:

> "When [plan] goals, policies, strategies, land use designations and standards * * * are used to implement a specific statewide Goal requirement [here Goal 3], mandatory language ('shall' and 'will') is used. When mandatory statements are used, they become legally binding on land use decisions. * * *" (Emphasis by the Court.) Id.

Similarly, in Rowan v. Clackamas County, ___ Or LUBA ___ (LUBA No. 89-154, May 9, 1990), slip op 9, we relied on a plan statement that "[g]oals and policies in this plan direct future decisions on land use actions * * *" in concluding that certain plan goals and policies were approval standards for conditional use decisions. (Emphasis in original.)

On the other hand, in Downtown Commun. Assoc., supra, 80 Or App at 341, the Court of Appeals concluded that language in the city comprehensive plan itself clearly

consigned a parking plan (adopted as part of the comprehensive plan) "in its entirety to a non-mandatory status."[3] Also, we have relied on plan provisions identifying certain plan policies as being implemented through particular code provisions as a basis for concluding the policies are not intended to function as approval criteria for individual land use decisions. Benjamin v. City of Ashland, ___ Or LUBA ___ (LUBA No. 90-065, November 13, 1990), slip op 17-18; Miller v. City of Ashland, 17 Or LUBA 147, 162 (1988).

In other instances, where the local plan does not identify how plan provisions are intended to apply to individual land use decisions, we have based our decision on plan provision applicability on the wording and context of the particular plan provision. See e.g., Wissusik v. Yamhill County, ___ Or LUBA ___ (LUBA No, 90-050, November 13, 1990), slip op 11; Bennett v. City of Dallas, 17 Or LUBA 450, 456, aff'd 96 Or App 645 (1989); Pardee v. City of Astoria, 17 Or LUBA 226, 235 (1988).

Thus, in this case we consider first whether the county comprehensive plan contains language which identifies how

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[3]The court found that "the words 'guide' and 'guideline' permeate both the legislative history of the [parking plan's] adoption and the incorporation of the [parking plan] into the comprehensive plan * * *." Downtown Commun. Assoc., supra, 80 Or App at 339. The court concluded that the word "guideline" is a term of art in planning and, unless the context establishes otherwise, its meaning in local planning documents duplicates its statutory definition as being only advisory. ORS 197.015(9).

the plan policies in question are intended to apply to individual conditional use decisions. The "Planning Process" section of the "Background Information" part of the plan includes the following:

> "Role of the Comprehensive Plan
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> "The Comprehensive Plan for Polk County is the official policy guide for decisions on future physical development in the County. It is intended to be a statement of public policy for the guidance of * * * development and conservation of resources within the County. * * * The ultimate purpose of the plan is to provide a body of sound information, public goals, criteria standards, policy guidelines and organizational structure that will enable Polk County to effectively manage the development of its lands and water both now and in the future.
>
> "* * * * *
>
> "Once adopted, the comprehensive plan becomes law. All related ordinances and regulations, and all planning-related decisions, must be in conformance with [the plan] under Oregon law. The Plan, however, allows for flexibility in decision making, as future circumstances are bound to change. * * *" (Emphasis added.) Plan 14-15.

Additionally, the "Implementation Techniques" part of the plan includes the following:

> "The comprehensive plan is a guide to the growth and development of Polk County for the foreseeable future. The goals and policies, together with the background information and the plan map, constitute public policy for the county. While the plan map is a visible result of the goals and policies spelled out in the plan, it is the policies that contain the decisions to attract, accommodate, divert or discourage growth and development. Every development action should be guided on the basis of policies expressed in the

plan.

"To have any meaning, the comprehensive plan must be implemented. * * *

"Zoning

"The zoning ordinance for Polk County * * * is the most important implementation tool currently utilized by the county. In theory, the zoning ordinance is a legislative expression of the comprehensive plan and must satisfy certain standards set out by state statute.

"[W]hile planning and zoning are clearly interrelated, they are distinctly different. Zoning * * * may be viewed as one [of] the tools of planning in that it involves day-to-day attention to those details of land use control necessary to achievement of major goals of land use planning. Planning provides the body of ideas within which zoning operates and the use of zoning ordinances is one of the devices through which planning goals are achieved. The objectives and goals of planning are phrased in the language of advice and recommendation. In this respect, planning functions as a guide to zoning. * * *" Plan 84-85.

The plan goes on to explain how the county's subdivision code, building code, partitioning ordinance, urban growth boundaries and growth management programs and other programs also implement the comprehensive plan. Plan 85-88.

The only statement in the above quoted provisions that could be interpreted to mean that provisions of the plan are intended to direct or control individual land use approvals is the statement that "all planning-related decisions, must be in conformance with [the plan] under Oregon law." Plan 15. However, we believe this statement simply

recognizes that under ORS 197.175(2)(d), local governments are required to make land use decisions in compliance with their acknowledged comprehensive plans. It does not establish whether provisions of the comprehensive plan must be applied to individual conditional use decisions. See Bennett v. City of Dallas, 96 Or App 645, 649, 773 P2d 1340 (1989); Moorefield v. City of Corvallis, supra, slip op at 8 n 5.

The remainder of the plan text quoted and emphasized above describes the comprehensive plan as being "an official policy guide," a "statement of public policy for the guidance of development," a "guide to [county] development," and "phrased in the language of advice and recommendation." Fairly read, these provisions emphasize that plan policies are intended to guide development actions and decisions, and that the plan must be implemented through tools such as the county zoning ordinance to have effect. The Court of Appeals has held that the terms "guide" and "guideline" are terms of art in planning and, unless the context establishes otherwise, are properly interpreted as indicating an advisory status. Downtown Commun. Assoc., supra; see n 3. We conclude, therefore, that the plan itself establishes that its policies are not approval standards for individual conditional use decisions.[4]

[4]Because the plan policies cited by petitioners are not approval standards for the challenged decision, petitioners' additional allegations

The first assignment of error is denied.

SECOND ASSIGNMENT OF ERROR

> "Respondent improperly construed applicable law by misconstruing the approval criteria set forth in ORS 215.296(1) and PCZO 136.060(j), so reversal or remand is necessary under ORS 197.835(7)(a)(D)."

PCZO 136.060(j) provides, in relevant part:

> "**Conditional Uses.** The following uses may be permitted [in the EFU zone] subject to * * * findings that the proposed use will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use, or significantly increase the cost of such practices.
>
> "* * * * *
>
> "J. Golf courses;
>
> "* * * * *."

This PCZO provision apparently implements ORS 215.296(1), which provides:

> "A use allowed under ORS 215.213(2) or 215.283(2)[5] may be approved only where the local governing body or its designee finds that the use will not:
>
> "(a) Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; or
>
> "(b) Significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use."

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that the county failed to adopt findings addressing these policies provide no basis for reversal or remand. See Moorefield v. City of Corvallis, supra, slip op at 8

[5]ORS 215.213(2)(f) and 215.283(2)(e) list "golf courses" as a nonfarm use which may be established in an exclusive farm use zone.

Petitioners argue the challenged decision improperly construes the above quoted standards in several respects.

A. Nature of Conditional Use

Petitioners contend the following findings indicate the county erroneously believed it lacked authority to deny conditional use approval for the proposed golf course, but rather could only impose conditions on its approval:

> "* * * A golf course is an allowed conditional use under PCZO 136.060(j). * * *
>
> "* * * * *
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> "* * * [G]olf courses are acknowledged as a permissive use in ORS 215.213(2)(f), 215.213(2)(e), and 215.296(1). * * *
>
> "* * * As previously specified, legislative, statutory and court decisions have affirmed that a golf course is an allowable use in the EFU zone. * * *" (Emphasis by petitioners.) Record 17, 21.

Petitioners argue that approval of a golf course in an exclusive farm use zone is discretionary. See e.g., Von Lubken v. Hood River County, supra, 104 Or App at 689. Petitioners further argue that PCZO 136.060(j) provides the uses listed thereunder "may be permitted" in the EFU zone, not that they "must" or "shall" be permitted.

We agree with respondents that the portions of the findings emphasized above simply recognize that golf courses are allowable, as a conditional use, in the EFU zone under PCZO 136.060(j) and ORS 215.213(2)(f), 215.283(2)(e) and 215.296(1). We see nothing in the county's statements to indicate the county mistakenly believed it lacked authority

to deny the proposed conditional use if the use did not satisfy the approval standards established by PCZO 136.060(j) and ORS 215.296(1).

This subassignment of error is denied.

B. Burden of Proof

Petitioners contend the county's decision misconstrues the burden on the applicant to demonstrate compliance with the approval standards of PCZO 136.060(j) and ORS 215.296(1). Petitioners argue that under these standards, the applicant has the burden of showing affirmatively that no significant impact on farming will be caused by the proposed use. See Platt v. Washington County, 16 Or LUBA 151, 154 (1987), citing Vincent v. Benton Co., 2 Or LUBA 422 (1981). According to petitioners, the following portions of the findings improperly state only that sufficient evidence that there will be impacts on farming practices or their costs does not exist:

> "* * * There is no evidence in this Record that this golf course will force a significant change in accepted farm or forest practices. This use satisfies part one of the approval criteria specified in PCZO 136.060[(j)], and ORS 215.296(1)(a).
>
> "* * * * *
>
> "* * * there is no reason to conclude that the proposed golf course involved in this case will increase the cost of farm or forest practices on surrounding lands devoted to such use. Therefore the approval criterion specified as part two of PCZO 136.060[(j)], and ORS 215.296(1)(b) is satisfied." Record 22.

Petitioners are correct that under PCZO 136.060(j) and ORS 215.296(1), the burden is on the applicant to show the proposed use will force no significant change in accepted farming practices or their cost, and on the county to so find. Platt v. Washington County, supra. However, both portions of the findings quoted by petitioners follow other statements in the findings that there is credible evidence in the record that the proposed use will not force changes in farming practices in the area or increase their cost. When viewed in context, the findings essentially state (1) there is credible evidence in the record that the proposed use will not force changes in farming practices or increase their cost, (2) there is no conflicting evidence in the record that the proposed use will have such effects, and therefore (3) the county concludes the standards of PCZO 136.060(j) and ORS 215.296(1) are satisfied. The findings do not indicate the county misconstrued the burden of proof to demonstrate compliance with PCZO 136.060(j) and ORS 215.296(1).[6] See Washington Co. Farm Bureau v. Washington Co., ___ Or LUBA ___ (LUBA No, 90-154, March 29, 1991), slip op 17.

This subassignment of error is denied.

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[6]Whether the county's findings are adequate in other respects, and are supported by substantial evidence in the record, is addressed under the third and fourth assignments of error, infra.

C. Relevant Issues

Petitioners argue the county misconstrued PCZO 136.060(j) and ORS 215.296(1) as not requiring consideration of several issues which petitioners contend are relevant to those approval standards.

1. Water

Petitioners argue PCZO 136.060(j) and ORS 215.296(1) require the county to consider all issues having a bearing on whether the proposed use will force a significant change to accepted farm or forest practices or significantly increase the cost of such practices. Petitioners contend the county improperly construed these standards as not requiring it to address water resource and water rights issues. Petitioners argue that use of water resources is essential to accepted farming practices, and that the record shows the proposed golf course's use of water from Reimer Reservoir or other surface sources would force significant changes in accepted farming practices on surrounding properties.

Respondents argue that the essence of petitioners' objections with regard to water related issues is their position that previously issued water rights to Reimer Reservoir are no longer valid or cannot be used for the proposed use. Respondents contend the county properly concluded it has no jurisdiction to decide the existence, ownership or application of water rights. According to the

county, this area has been preempted by the state, and authority vested exclusively in the Water Resources Commission. ORS 536.220.

Petitioners are correct that PCZO 136.060(j) and ORS 215.296(1) require the county to consider all issues relevant to whether the proposed use will force a significant change in accepted farm or forest practices on surrounding lands or significantly increase the cost of such practices. We turn to the county's findings to determine whether the county interpreted these standards to exclude consideration of water use issues relevant to accepted farming practices.

The findings initially state, as relevant:

> "* * * The [county] finds it is not the proper forum to adjudicate the validity of water rights, and must presume a permit or certificate is valid until the proper forum declares it to be invalid, and it hereby does so with respect to Applicant's asserted rights. The [county] also finds substantial evidence that Applicant's use of water will not interfere with accepted farming practices in the area." (Emphasis added.) Record 19.

A subsequent portion of the findings states:

> "During the course of this long and involv[ed] land use case, a number of other issues were raised. Although these issues are either not relevant or material to the criteria upon which this matter is ultimately decided, or have already been generally addressed in the findings and conclusions, comment is appropriate." (Emphasis added.) Record 22.

The findings go on to discuss the water rights issue, reassert the county's position that it does not have

jurisdiction to decide such disputes, and state that evidence on the validity of water rights is not relevant to the applicable approval criteria. Record 23. The findings also conclude there are sufficient water resources on the subject site to serve the proposed use. Id.

We do not believe the county misconstrued PCZO 136.060(j) and ORS 215.296(1) as not requiring consideration of the effect of water use by the proposed golf course on accepted farming practices on surrounding properties. The decision includes findings on water use by the proposed golf course and specifically states the county found the "[a]pplicant's use of water will not interfere with accepted farming practices in the area." Record 19. The decision does not state that water resource or water rights issues are irrelevant to the applicable standards.[7]

This subassignment of error is denied.

2. Other Issues

Petitioners contend the county misconstrued its obligation under PCZO 136.060(j) and ORS 215.296(1) to consider issues concerning impacts of the proposed use on traffic (including liability for accidents), property values and taxation. Petitioners argue the county erroneously

[7]The decision does state that the county lacks jurisdiction to determine the validity of existing water rights, must presume they are valid and, therefore, evidence concerning the validity of water rights is not relevant to the approval criteria. To the extent these statements affect the adequacy of the county's findings on the water resource issue, their validity will be addressed under the third assignment of error.

found these issues are not relevant to the cited approval criteria.

Respondents do not contend the issues cited by petitioners are inherently irrelevant to compliance with PCZO 136.060(j) and ORS 215.296(1) as a matter of law. Rather, respondents argue that to the extent these issues may be relevant to the approval criteria, the county adequately addressed them in its findings.

The county's decision does state that traffic, property values and taxation are not relevant to the applicable approval criteria. Record 22, 24. However, the decision also adopts findings addressing the impacts of the proposed use on traffic, property values and taxation. The decision concludes the proposed use "will not have an adverse or detrimental effect on traffic in the area." Record 23. The decision also concludes that construction of the proposed use "will not directly, indirectly or proximately result in an increase in property values [and hence taxes] in the area." Record 25.

We agree with respondents that even if the decision incorrectly states that the traffic, property value and taxation issues are not relevant to the approval criteria, there is no basis for reversal or remand of the decision unless petitioners establish that the findings adopted by the county addressing these issues are inadequate to comply

with the applicable approval standards.[8]

This subassignment of error is denied.

The second assignment of error is denied.

THIRD ASSIGNMENT OF ERROR

> "Respondent Polk County made inadequate findings under the applicable approval criteria of ORS 215.296(1) and PCZO 136.060(j) as to no significant change in accepted farm or forest practices and no increase in the cost of such practices."

Petitioners contend the county's findings are inadequate to demonstrate compliance with PCZO 136.060(j) and ORS 215.296(1) because they do not (1) describe the farm and forest practices on surrounding lands, (2) explain why the proposed use will not force a significant change in those practices, and (3) explain why the proposed use will not significantly increase the cost of those practices. See Stefansky v. Grant County, 12 Or LUBA 91, 93-94 (1984); Resseger v. Clackamas County, 7 Or LUBA 152, 155-57 (1983).

Respondents contend the Stefansky and Resseger decisions are not applicable to this case. Respondents argue these cases concerned nonfarm use approval standards equivalent to that in ORS 215.283(3)(b):

> "Does not interfere seriously with accepted farming practices, as defined in ORS 215.203(2)(c), on adjacent lands devoted to farm use[.]"

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[8]The adequacy of the county's findings is addressed under the third assignment of error.

According to respondents, PCZO 136.060(j) and ORS 215.296(1) are significantly different from ORS 215.283(3)(b) because they are not framed in the negative and are not site specific. Respondents point out that under PCZO 136.060(j) and ORS 215.296(1), the county must examine changes in farming practices and the financial impacts thereof, whereas under ORS 215.283(3)(b) the county would be looking for "serious interference" with such practices. Respondents also argue that "[t]here is a vast difference between 'surrounding' lands and 'adjacent' lands."[9] Respondent/Intervenor's Brief 31.

Respondents also maintain the county's findings address every issue raised by the opponents of the proposed use, and adequately explain the facts relied upon by the county. Respondents further argue that the county may demonstrate that the requirements of PCZO 136.060(j) and ORS 215.296(1) are met through the imposition of conditions. ORS 215.296(2). According to respondents, even if the county's findings are themselves inadequate in some way, such a defect would be cured by the lengthy conditions imposed by the county. However, respondents cite only the following condition:

> "The golf course shall be operated and maintained in a manner that will not force a significant

[9]Respondents do not, however, indicate what they believe this difference to be.

> change in established farm or forest practices on surrounding lands devoted to farm or forest use, or substantially increase the cost of such practices." Record 26.

Finally, respondents argue that even if the county's findings are inadequate, this Board must nevertheless affirm the county's decision because respondents identify evidence in the record which clearly supports the decision. ORS 197.835(9)(b).[10]

We have repeatedly held that ORS 215.283(3)(b) and equivalent local approval standards require county findings which (1) describe the accepted farming practices on adjacent lands devoted to farm use; and (2) explain why the proposed use would not seriously interfere with those practices. Blosser v. Yamhill County, ___ Or LUBA ___ (LUBA No. 89-084, October 27, 1989), slip op 24; Sweeten v. Clackamas County, 17 Or LUBA 1234, 1247-48 (1989); Billington v. Polk County, 13 Or LUBA 125, 131-32 (1985); Stefansky v. Grant County, supra. The standards of PCZO 136.060(j) and ORS 215.296(1) are structurally similar to that of ORS 215.283(3)(b), in that each requires a county to

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[10]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 part of the decision supported by the record * * *."

determine certain impacts of a proposed nonfarm use on accepted farming practices in a certain area.

We have also stated with regard to the findings necessary to support a determination of compliance with a local approval standard similar to ORS 215.296(1) that "[i]n order to make such a showing, there must be evidence about the nearby [farm] uses and an analysis of how the proposed use impacts these properties."[11] Platt v. Washington County, supra. We agree with petitioners that in order to demonstrate compliance with PCZO 136.060(j) and ORS 215.296(1), county findings must (1) describe the farm and forest practices on surrounding lands devoted to farm or forest use, (2) explain why the proposed use will not force a significant change in those practices, and (3) explain why the proposed use will not significantly increase the cost of those practices. See Washington Co. Farm Bureau v. Washington Co., supra, slip op at 9 n 6. We address the adequacy of the county's findings to satisfy these requirements below.[12]

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[11]The local standard at issue in Platt used the term "nearby lands devoted to farm use," rather than the term "surrounding lands devoted to farm or forest use" used in PCZO 136.060(j) and ORS 215.296(1).

[12]We agree with respondents that ORS 215.296(2) allows the county to demonstrate that the approval standards of PCZO 136.060(j) and ORS 215.296(1) will be satisfied through the imposition of conditions. However, the condition cited by respondents simply restates the approval criteria as a condition. A local government's failure to adopt findings adequate to demonstrate compliance of a proposed use with applicable approval criteria is not cured by imposing a condition that requires the criteria to be met in the future. Vizina v. Douglas County, 16 Or LUBA

A. Description of Farm and Forest Practices on Surrounding Lands Devoted to Farm or Forest Use

The county's findings state land to the east, north and west of the subject property contains commercial farms producing grains and grass seed, woodlots, orchards and a large commercial dairy. Record 16, 175. The findings state land to the south of the subject property contains small farms. Id. In addition, there are findings which state that various farmers in the area testified that they believed the proposed use would or would not significantly affect their farming practices. See e.g., Record 20, 22, 176, 182. However, the findings do not indicate where these farmers' farms are located or describe the accepted farming practices on these farms. The only finding which actually addresses accepted farming practices in the area is the following:

> "There is no aerial spraying being done on the subject property or any property contiguous to the subject property, or in the immediate vicinity of the subject property, nor has aerial spraying been utilized as a farm or forest practice in this area." Record 20.

We conclude the findings are inadequate to demonstrate compliance with PCZO 136.060(j) because they do not identify the "surrounding lands devoted to farm or forest use" and do not describe the "accepted farming practices" occurring on

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936, 942 (1988). Furthermore, ORS 215.296(2) also requires that conditions imposed pursuant to that subsection be clear and objective. The condition cited by respondents does not satisfy this requirement. See Washington Co. Farm Bureau v. Washington Co., supra, slip op at 11.

such lands, except with regard to establishing that aerial spraying is not being utilized as a farm or forest practice in the "area" of the subject property. We must, therefore, determine whether the parties identify evidence in the record regarding this issue which clearly supports the county decision. ORS 197.835(9)(b).

We have reviewed the evidence in the record cited by the parties. That evidence identifies the owners of the property adjoining the subject property to the east (Wall), north (Lawson) and west (Hoekstre). Record 60-61. There is also incomplete information in the record about the farming practices on these properties -- e.g., that Wall maintains a dairy farm, hauls silage on local roads and sprays chemicals to control weeds[13] (Record 69, 113-114); Lawson has cattle and plans to use water from the Reimer Reservoir for additional cattle, wildlife and irrigating alfalfa (Record 52-55, 80-81); Hoekstre irrigates alfalfa (Record 70). Other farmers with property in the area are mentioned in the record, but the record does not indicate the location of their farms or yield more than a hint as to their farming practices. See e.g., Record 74, 77, 80, 147, 156.

We conclude the evidence identified in the record does not clearly support the identification of surrounding lands

[13]We note that this statement in a letter by Wall casts some doubt on the evidentiary support for the finding, quoted supra in the text, that there is no aerial spraying in the area.

devoted to farm or forest use and description of accepted farming practices on such lands, as required by PCZO 136.060(j) and ORS 215.296(1). This subassignment of error is sustained.

B. Explanation of Why the Proposed Use Will Not Force a Significant Change in or Increase the Cost of Such Accepted Farming Practices

Petitioners contend the findings are inadequate because they fail to explain why the proposed use will not force a significant change in or increase the cost of accepted farming practices in the surrounding area.

Without an adequate identification of the accepted farming practices on surrounding lands, the county's findings cannot explain why the proposed use will not cause a significant change in or increase the cost of such practices. Here, the county's findings describe some expected impacts of the proposed use, but do not relate those impacts to accepted farming practices in the area. In that regard, the findings simply contain conclusory statements that "farmers" testified that the proposed use would not force any changes in or increase the cost of their farming practices. Record 20, 22. These findings are inadequate to demonstrate compliance with PCZO 136.060(j) and ORS 215.296(1).

The parties cite considerable evidence in the record concerning the potential impacts of the proposed use. However, in the previous section we determine neither the

findings nor the evidence are adequate to identify the accepted farming practices on surrounding lands devoted to farm use. Without such identification of accepted farming practices, it is not possible for the evidence cited to clearly support a determination that the proposed use will not force a significant change in or increase the cost of accepted farming practices in the surrounding area.

This subassignment of error is sustained.

The third assignment of error is sustained.

FOURTH ASSIGNMENT OF ERROR

> "Respondent's Decision and Findings Approving the Conditional Use Permit are Not Supported by Substantial Evidence in the Whole Record."

Petitioners argue that the county findings addressing compliance with PCZO 136.060(j) and ORS 215.296(1) are not supported by substantial evidence in the whole record. ORS 197.835(7)(a)(C).

Under the third assignment of error, supra, we determine the county's findings are inadequate to comply with PCZO 136.060(j) and ORS 215.296(1). Because the findings are inadequate, no purpose would be served by determining whether they are supported by substantial evidence. Benjamin v. City of Ashland, supra, slip op at 15-16; DLCD v. Columbia County, 16 Or LUBA 467 (1988); McNulty v. City of Lake Oswego, 14 Or LUBA 366, 373 (1986).

The fourth assignment of error is denied.

FIFTH ASSIGNMENT OF ERROR

> "Respondent Committed Procedural Error by Relying Upon New, Critical Evidence and Denying Petitioners the Opportunity to Rebut this Evidence, Which Substantially Prejudiced their Substantial Rights."

Petitioners contend the county board of commissioners considered new relevant evidence concerning traffic impacts, property values and taxes during the board's deliberations on January 2, 1991, after the record had been closed on December 21, 1990.[14] Petitioners argue that remand is necessary where parties are prejudiced by the introduction of relevant evidence without an opportunity for rebuttal. Flynn v. Polk County, 17 Or LUBA 68, 71-74 (1988). Petitioners recognize that under earlier decisions of this Board, in order to obtain remand on the basis of a procedural error, the party seeking remand must show that it made a timely objection to the procedural error below. Younger v. City of Portland, 15 Or LUBA 616 (1987). However, petitioners argue that in this case, they had no opportunity to raise an objection, because the evidence in question was received after the record had closed, at a

[14]The record shows that at the January 2, 1991 board of commissioners meeting, the county Public Works Director testified about traffic accidents at the Highway 22/Perrydale Road intersection. Record 34-35. In addition, one of the commissioners stated he asked the county Assessor to do some research on the effect of the proposed use on property values, and the Assessor reported back to him that the value of the farmland surrounding the proposed golf course would not change, so long as it remains zoned EFU. Record 36.

forum where there were no opportunities for public testimony.

Respondents argue that even if a procedural error as alleged by petitioners did occur, petitioners waived their right to object to such procedural error before this Board because they failed to object below. Respondents contend petitioners were present at the January 2, 1991 meeting, and could have objected to the receipt of new evidence or asked for an opportunity for rebuttal.

This Board has frequently held that where a party has the opportunity to object to a procedural error before the local government, but fails to do so, that error cannot be assigned as a basis for reversal or remand of the local government's decision in an appeal to LUBA. Torgeson v. City of Canby, ___ Or LUBA ___ (LUBA No. 89-087, Order on Motion for Evidentiary Hearing, March 29, 1990); Miller v. City of Ashland, supra, 17 Or LUBA at 153; Meyer v. City of Portland, 7 Or LUBA 184, 190 (1983), aff'd 67 Or App 274, rev den 297 Or 82 (1984); Dobaj v. City of Beaverton, 1 Or LUBA 237, 241 (1980).

Respondents allege petitioners were present at the January 2, 1991 board of commissioners meeting where the alleged procedural error occurred. We do not understand petitioners to deny that allegation, but rather to argue that they had no opportunity to object to the error at that meeting because the record had been closed previously and

there was no scheduled opportunity for public input. However, we do not agree that petitioners may be excused from making objections to procedural errors on such grounds. So long as petitioners were present at the January 2, 1991 meeting, a fact which is not denied, the burden was on them to make their objections known to the decision making body.

The fifth assignment of error is denied.

The county's decision is remanded.