

1 Opinion by Holstun.

2 **NATURE OF THE DECISION**

3 Petitioner appeals a county decision granting
4 conditional use approval for a third dwelling on a 3.72 acre
5 parcel.

6 **FACTS**

7 The subject property is located in the Suburban
8 Residential (SR-1) zoning district. The property presently
9 is developed with two residences and a storage shed. The
10 proposed third dwelling is a mobile home, which will utilize
11 an existing well serving the two dwellings already located
12 on the property.

13 Petitioner's property adjoins the subject property.
14 Petitioner's property is improved with a house, garage,
15 storage building and barn. Although petitioner's barn
16 visually screens the existing structures on the subject
17 property from petitioner's house, the proposed dwelling
18 would be visible from petitioner's kitchen window. The
19 proposed dwelling would be located 10 feet from the property
20 line dividing petitioner's and the applicant's property.¹

21 The county hearings officer approved the applicant's
22 request with the following condition:

23 "Prior to occupying the dwelling, the applicant
24 shall obtain necessary permits and construct a 6

¹It appears from the record that the kitchen window is the only window in petitioner's home from which the proposed mobile home would be visible.

1 foot high sight obscuring fence along the boundary
2 common to the subject parcel and the Goodrich
3 property, adjacent to the location of the proposed
4 dwelling such that the dwelling cannot be seen
5 from the kitchen window of the Goodrich
6 residence." Record 6-7.

7 **DECISION**

8 **A. Relevant Approval Standards**

9 Under Jackson County Land Development Ordinance (JCLDO)
10 224.030(1), with conditional use approval, more than one
11 single family dwelling may be placed on parcels in the SR-1
12 zone, provided the density standard of the SR-1 zone is
13 maintained.² JCLDO 260.040 imposes the following relevant
14 conditional use permit approval standards:

15 "In order to grant a conditional use permit, the
16 County must make the following findings:

17 "1) That the permit would be in conformance with
18 the Jackson County Comprehensive Plan for the
19 area, the standards of the district of the
20 Zoning Ordinance in which the proposed
21 development would occur, and the
22 Comprehensive Plan for the county as a whole.

23 "2) That the location, size, design, and
24 operating characteristics of the proposed use
25 will have minimal adverse impact on the
26 livability, value, or appropriate development
27 of abutting properties and the surrounding
28 area.

29 "* * * * *"

30 Petitioner first contends the hearings officer

²JCLDO 224.040 imposes a density limit of one dwelling per acre in the SR-1 zone. The decision challenged in this appeal complies with the SR-1 density requirement.

1 erroneously concluded there were no comprehensive plan
2 provisions applicable to the challenged decision under JCLDO
3 260.040(1).³ Second, petitioner contends the hearings
4 officer failed to adopt adequate findings supported by
5 substantial evidence demonstrating compliance with the
6 requirement of JCLDO 260.040(2) that the proposed
7 development have "minimal adverse impact on the * * * value"
8 of his property. Finally, petitioner contends the hearings
9 officer failed to adopt adequate findings supported by
10 substantial evidence demonstrating compliance with the
11 requirement of JCLDO 260.040(2) that the proposed
12 development have "minimal adverse impact on the livability"
13 of his property. Petitioner identifies impacts on
14 groundwater and the view from his home as adverse impacts on
15 livability.

16 **B. Plan Goals, Policies and Strategies**

17 As we have explained on numerous occasions, particular
18 comprehensive plan provisions may or may not be standards
19 intended to govern land use decision making, depending on
20 the wording and context of the particular plan provisions.
21 Bennett v. City of Dallas, 17 Or LUBA 450, aff'd 96 Or App
22 645 (1989); Pardee v. City of Astoria, 17 Or LUBA 226, 246-
23 47 (1988); McCoy v. Tillamook County, 14 Or LUBA 108, 110-11

³Jackson County's plan and land use regulations have been acknowledged as provided in ORS 197.251. The requirement that individual land use decisions comply with the comprehensive plan is also imposed by statute. ORS 197.175(2)(d); 197.835(6).

1 (1985); Hummel v. City of Brookings, 13 Or LUBA 25, 35
2 (1984). Even where plan provisions are intended to operate
3 as approval criteria for some types of land use decisions,
4 they may not be intended as approval standards for all types
5 of land use decisions. For example, plan goals or policies
6 may impose standards governing adoption or amendment of land
7 use regulations or zoning maps, but not apply as standards
8 governing individual permit decisions. See Stotter v. City
9 of Eugene, 18 Or LUBA 135, 165-67 (1989); Miller v. City of
10 Ashland, 17 Or LUBA 147, 167-69; Urquhart v. LCOG and City
11 of Eugene, 14 Or LUBA 335, 347, rev'd on other grounds, 80
12 Or App 176 (1986).

13 The Jackson County Comprehensive Plan includes "Goals,"
14 "Findings," "Policies," and "Implementation Strategies." The
15 introductory portion of the plan makes it clear that these
16 provisions, particularly policies and implementation
17 strategies, may or may not be criteria for individual permit
18 decisions. Plan 2-3.

19 As noted above, the hearings officer concluded that no
20 plan provisions apply to the disputed permit decision.
21 Petitioner cites a number of plan provisions which he
22 contends the hearings officer erred in not addressing in the
23 decision. We consider below each of the plan provisions
24 cited by petitioner.

25 **1. Rural and Suburban Lands Goal**

26 The Rural and Suburban Lands element of the plan

1 includes a goal and 12 findings. Each finding is followed
2 by one or more policies and implementation strategies. The
3 Rural and Suburban Lands Goal is clearly intended to govern
4 more specific areawide plans and is not intended to govern
5 individual permit decisions such as the one challenged in
6 this appeal.⁴

7 **2. Rural and Suburban Lands Density Policy**

8 The following policy is set out under finding 1 of the
9 Rural and Suburban Lands section:

10 "IT IS THE POLICY OF JACKSON COUNTY TO REDUCE AND
11 REALLOCATE THE OVERALL ALLOWABLE DENSITY AND
12 INTENSITY OF RURAL AND SUBURBAN LANDS TO THE
13 EXTENT NECESSARY TO MINIMIZE FURTHER DEGRADATION
14 OF AIR QUALITY, REDUCE ENERGY CONSUMPTION AND
15 REDUCE THE LONG-RANGE COST OF PROVIDING PUBLIC
16 FACILITIES AND SERVICES." Plan 512.

17 We conclude the above policy is directed at the
18 county's planning efforts and land use regulations, not
19 individual permit decisions.

20 **3. Rural and Suburban Lands Narrative**

21 Petitioner next contends the hearings officer erred by
22 failing to address water supply and water quality issues
23 addressed "in the narrative for the Goal of the Rural &

⁴The goal provides in part:

"GOAL: TO ALTER THE COURSE OF RURAL AND SUBURBAN LAND
DEVELOPMENT THROUGH A PHASED AND ON-GOING PROCESS OF SPECIFIC
GEOGRAPHIC AREAWIDE PLANS WHICH WILL CREATE AN ORDERLY AND
EFFICIENT RURAL AND SUBURBAN LAND USE PATTERN ON LANDS NOT
DESIGNATED FOR URBAN NOR FOR AGRICULTURAL OR FOREST USE.
* * *" Plan 509.

1 Suburban Lands Element." Record 20.

2 We cannot determine to what portion of the Rural and
3 Suburban Lands Element petitioner is referring. Petitioner
4 may be referring to the Introduction/Background section of
5 the element. Plan 509-11. If so, there is nothing in that
6 section of the plan establishing water supply or water
7 quality criteria.

8 **4. Plan and Zoning Map Criteria**

9 The plan includes a chapter establishing criteria for
10 adopting and amending the comprehensive plan map and zoning
11 map.⁵ Petitioner contends the challenged decision violates
12 plan and zoning map criteria for the Suburban Residential
13 map designation. Petitioner specifically alleges the
14 challenged decision violates a criterion requiring that
15 lands designated Suburban Residential be adequately served
16 by public facilities. The plan and zoning map criteria
17 govern adoption and amendment of the county's plan and
18 zoning map, not individual permit decisions.

19 **5. Public Facilities and Services Element**

20 Petitioner finally argues the county erred by not
21 addressing and finding compliance with the policy and
22 implementation strategy following finding 7 in the Public
23 Facilities and Services Element set forth below:

24 "POLICY: THE ABSENCE OR PRESENCE OF PUBLIC

⁵The county has a unified plan and zoning map.

1 FACILITIES SHOULD BE WEIGHED AND EVALUATED AGAINST
2 OTHER DEVELOPMENT CONCERNS SO IT DOES NOT RECEIVE
3 DISPROPORTIONATE EMPHASIS.

4 "IMPLEMENTATION STRATEGY: Review legislative
5 and quasi-judicial land use actions in light of
6 the intent of the above policy." Plan 484.

7 Petitioner's argument concerning the above quoted
8 policy and implementation strategy is based on a misreading
9 of those plan provisions. Petitioner argues the above
10 provisions are violated because the hearings officer
11 inadequately addressed his concerns about possible impacts
12 on groundwater. We address petitioner's arguments
13 concerning groundwater impacts under the livability
14 criterion of JCLDO 260.040(2), infra. The point of the
15 above public facility policy is that the presence or lack of
16 such facilities not be overemphasized. Petitioner does not
17 argue the hearings officer overemphasized such
18 considerations. Rather, petitioner argues to the contrary
19 that the presumably related consideration of impacts on
20 groundwater was underemphasized. Thus, even if the cited
21 plan provisions apply, petitioner's arguments do not support
22 a conclusion that the provisions are violated.

23 **6. Conclusion**

24 As explained above, the first four plan provisions
25 cited by petitioner are inapplicable to the challenged
26 conditional use permit decision. Assuming the public
27 facilities plan provisions cited by petitioner might apply
28 to the challenged decision, petitioner fails to explain how

1 the plan provision was violated by the challenged decision.
2 For these reasons, petitioner's allegations that plan goals,
3 policies and implementation strategies are violated by the
4 challenged decision provide no basis for reversal or remand.

5 **C. Adverse Impact on Property Value**

6 JCLDO 260.040(2) requires that the "location, size,
7 design, and operating characteristics" of the proposed
8 dwelling "will have minimal adverse impact on the * * *
9 value" of petitioner's property. Petitioner contends the
10 hearings officer's findings are inadequate to demonstrate
11 this requirement of JCLDO 260.040(2) is met and that there
12 is not substantial evidence in the record to support such a
13 finding.

14 The hearings officer found the area is characterized by
15 mixed types of land use and that there was no evidence the
16 proposed residence would have more than a minimal impact on
17 the value of petitioner's property. The hearings officer's
18 findings also cite the imposed condition requiring a sight
19 obscuring fence and evidence submitted by the county
20 assessor's office, in concluding there would be no more than
21 a minimal adverse impact on the value of adjoining
22 properties.⁶ The record also includes testimony that other
23 mobile homes sited in the area have not adversely affected
24 the value of adjoining properties.

⁶Petitioner questions whether a six foot high fence will be high enough to visually screen petitioner's view of the proposed dwelling.

1 There are several problems with the hearings officer's
2 findings and the evidence supporting those findings. First,
3 contrary to the hearings officer's finding, there was
4 testimony by a real estate broker, submitted at petitioner's
5 request, that the proposed dwelling would adversely affect
6 the value of petitioner's property.⁷

7 Second, the county assessor's office simply stated that
8 it has just completed its six year periodic appraisal of the
9 area and that while the value of petitioner's property might
10 be affected by sales of nearby properties, it would not be
11 affected by the proposed development. Although the
12 appraised market value assigned to petitioner's property by
13 the county assessor's office for tax purposes may not be
14 immediately affected by the proposed development, that does
15 not mean there will be only a minimal adverse impact on the
16 "value" of petitioner's property, in the sense that term is
17 used in JCLDO 260.040(2). Even though the county assessor
18 may only revise its estimate of the appraised value of
19 petitioner's property based on comparable sales, the value

⁷We note the real estate broker did not explicitly testify that the adverse impact on the value of petitioner's property would be more than minimal. In view of that omission, and the lack of any obvious connection between the broker's ultimate conclusion that the proposed dwelling would have an adverse impact on the value of petitioner's property and the reasoning that led the broker to that conclusion, we agree with respondent's argument that the letter does not constitute substantial evidence that the minimal adverse impact on property value standard of JCLDO 260.040(2) is violated. However, it is the respondent's and the applicant's burden to assure that the evidentiary record is sufficient to demonstrate that JCLDO 260.040(2) is satisfied.

1 of petitioner's property (as measured by the price a willing
2 purchaser would pay for the property) clearly may be
3 influenced by development on adjoining properties. To the
4 extent the hearings officer suggests otherwise, we reject
5 the suggestion.

6 Finally, although there is testimony in the record that
7 mobile homes have been sited in the area without significant
8 adverse effects on adjoining property values, there is no
9 way to determine whether the circumstances presented in
10 those cases are sufficiently similar to the present case to
11 constitute substantial evidence of the likely impact of the
12 proposed dwelling on the value of petitioner's property.⁸

13 Based on the above, we agree with petitioner that the
14 hearings officer's findings are inadequate to demonstrate
15 the proposed dwelling will have a minimal adverse impact on
16 the value of petitioner's property. As noted above, the
17 findings are erroneous in one regard and do not logically
18 support the ultimate legal conclusion of minimal adverse
19 impact on the value of abutting properties. We also
20 conclude the evidentiary record is insufficient to support a
21 finding, one way or the other, concerning whether the
22 proposed development will have more than a minimal adverse

⁸It is the relatively close proximity of the proposed dwelling to petitioner's existing residence that petitioner contends results in a more than minimal adverse impact on the value of his property. Petitioner contends this adverse impact could be avoided by siting the proposed dwelling at a different location on the subject property.

1 impact on the value of petitioner's property, such that
2 JCLDO 260.040(2) is violated. Because respondent and the
3 applicant have the evidentiary burden and that burden was
4 not carried, the decision must be remanded.

5 **D. Adverse Impact on Livability**

6 Petitioner contends the impacts of the proposed
7 development on the view from his property and groundwater
8 are such that the requirement of JCLDO 260.040(2) that the
9 proposed development have no more than a minimal adverse
10 impact on the livability of abutting properties is violated.
11 We have construed similar code requirements to require that
12 the county first determine the qualities or characteristics
13 constituting the livability of abutting properties. See
14 Murphey v. City of Ashland, ___ Or LUBA ___ (LUBA No. 89-
15 123, May 16, 1990), slip op 28; McCoy v. Linn County, 16 Or
16 LUBA 295, 301-02 (1987), aff'd 90 Or App 271 (1988). After
17 these determinations are made, the local government must
18 establish that the proposed use will not have the proscribed
19 adverse effects on those qualities or characteristics.⁹

20 **1. Views**

21 Although the hearings officer's findings do not address

⁹The code requirement at issue in McCoy v. Linn County required that there be "no adverse impacts" on abutting properties. The code requirement at issue in Murphey v. City of Ashland, like JCLDO 260.040(2), simply required that such adverse impacts be "minimal." While the ultimate legal standard in McCoy v. Linn County is more stringent than in Murphey v. City of Ashland or this case, the analysis required is similar.

1 the qualities or characteristics constituting the livability
2 of abutting properties in the detail our decisions in
3 Murphey v. City of Ashland and McCoy v. Linn County suggest
4 is desirable, it is clear the hearings officer recognized
5 that adverse impacts on the views from petitioner's property
6 must be addressed under JCLDO 260.040(2). The hearings
7 officer found that the view of the proposed development from
8 petitioner's kitchen resulted in a minimal adverse impact on
9 the livability of petitioner's property. In adopting that
10 finding, the hearings officer relied on the condition set
11 out earlier in this opinion requiring a "6 foot high sight
12 obscuring fence" along the boundary between the applicant's
13 property and petitioner's property "adjacent to the proposed
14 dwelling such that the dwelling cannot be seen from the
15 kitchen of the Goodrich residence." Record 6-7.

16 The record shows the petitioner's kitchen window is the
17 only window from which the proposed dwelling would be
18 visible.¹⁰ As noted earlier, we have some question whether
19 a six foot fence will be high enough so that the proposed
20 dwelling cannot be seen from petitioner's kitchen window,
21 but we understand the condition to impose both requirements.
22 Therefore, if a fence taller than six feet high is needed so
23 that the dwelling cannot be seen from petitioner's kitchen

¹⁰A picture of the view from petitioner's kitchen window is included in the record. Record 23. That view includes petitioner's barn, a gravel roadway, a utility pole, scattered trees, brush, a structure some distance away and hills in the distance.

1 window, the taller fence is required by the condition.

2 Although the hearings officer's findings could be more
3 detailed, we conclude they are adequate. The hearings
4 officer found that with the required sight obscuring fence,
5 petitioner will not be able to see the proposed dwelling
6 from his kitchen window. The hearings officer conditioned
7 the approval on provision of such a sight obscuring fence
8 and found that petitioner's livability interest in the view
9 from his kitchen window would therefore be minimally
10 adversely affected by the proposed dwelling. We recognize
11 that reasonable persons may have different opinions
12 concerning what is accurately characterized as a minimal
13 adverse affect on the livability of petitioner's property.
14 However, we conclude the hearings officer's finding is
15 within the discretion permitted under JCLDO 260.040(2) and
16 is adequately supported by the evidentiary record.

17 **2. Groundwater**

18 We determined in another appeal that impacts on
19 groundwater are a relevant consideration in determining
20 whether a proposal will have more than a minimal adverse
21 impact on livability and appropriate development of abutting
22 properties under JCLDO 260.040(2). Kirkpatrick v. Jackson
23 County, ___ Or LUBA ___ (LUBA No. 91-046, September 4,
24 1991). Here the hearings officer recognized that impacts on
25 groundwater are a relevant consideration under JCLDO
26 260.040(2). The hearings officer's findings are somewhat

1 conclusory, but they do address the adequacy of wells on the
2 subject property and adjoining properties. Although the
3 findings lack the kind of detail and specificity we have
4 required in the past when addressing livability standards
5 such as JCLDO 260.040(2), we may overlook such inadequacies
6 where, as here, the evidentiary record clearly shows the
7 standard is met. ORS 197.835(9)(b); Kirkpatrick v. Jackson
8 County, supra.

9 Although groundwater is apparently a concern in the
10 area, all of the testimony concerning the performance of
11 wells in the area was to the effect that the flow of water
12 from wells has not been affected by development. In
13 addition, the proposed development will not result in an
14 additional well, but rather will utilize the existing well
15 on the subject property which includes a 1,500 gallon
16 holding tank and has performed adequately in the past.

17 In view of the above, we conclude the record is
18 adequate to clearly demonstrate that any adverse impacts on
19 the livability of abutting properties and surrounding area
20 attributable to groundwater impacts will be no more than
21 minimal. Petitioner's arguments to the contrary are
22 rejected.

23 **E. Shifting of the Burden of Proof**

24 Citing several places in the decision where the
25 hearings officer noted a lack of evidence that particular
26 standards were violated, petitioner contends the hearings

1 officer improperly shifted the burden of proof from the
2 applicant to petitioner.

3 The hearings officer may have made incorrect statements
4 about the absence of evidence supporting a determination of
5 noncompliance with approval standards, and adopted findings
6 not supported by substantial evidence in the record.
7 However, this does not mean the hearings officer
8 impermissibly shifted the burden of proof. When the cited
9 statements are viewed in context, they are simply
10 observations about the state of the evidentiary record.

11 **F. Summary and Conclusion**

12 For the reasons explained in our discussion under
13 section C above, we sustain petitioner's allegations
14 concerning the inadequacy of the findings and evidentiary
15 support concerning the requirement of JCLDO 260.040(2) that
16 the proposed development have a minimal adverse impact on
17 the value of abutting properties. Petitioner's remaining
18 allegations are rejected.

19 The county's decision is remanded.