BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

CHARLES D. RALSTON and TONI L. RALSTON,	)	
Petitioners,	)	LUBA No. 91-179
vs.	)	FINAL OPINION AND ORDER
CLACKAMAS COUNTY,	)	
Respondent.	)	

Appeal from Clackamas County.

Charles D. Ralston, Beavercreek, filed the petition for review. Charles D. Ralston and Toni L. Ralston argued on their own behalf.

Gloria Gardiner, Oregon City, filed the response brief and argued on behalf of respondent.

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

AFFIRMED 01/27/92

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 hearings officer denying their application for approval of a partition and two nonforest dwellings.

FACTS

The subject property consists of approximately 14 acres and is zoned Transitional Timber (TT). Petitioners sought approval to divide the subject parcel into two parcels, consisting of 4.5 and 9 acres each, and permission to place a nonforest dwelling on each parcel thus created. The planning department denied petitioners' application, and they appealed to the hearings officer. The hearings officer also denied petitioners' application, and this appeal followed.

FIRST ASSIGNMENT OF ERROR

> "The Clackamas County land use hearings officer erred in finding the decision to deny the division of property into two parcels and establish a residence not in conjunction with a forest use on each parcel."

Petitioners' application was denied on the basis of, among other things, failure to comply with ZDO 405.05(A)(4). Under ZDO 405.05(A)(4), in order to approve a nonforest dwelling in the TT zone, the county must determine the nonforest dwelling will be:

> "* * * situated upon generally unsuitable land for the production of farm and forest products, considering the terrain, adverse soil or land

> conditions, drainage and flooding, vegetation, location and size of the tract[.]"

As we understand it, petitioners challenge the evidentiary support for the county's determination that this standard is not satisfied.

In order to overturn, on evidentiary grounds, a local government's determination that an applicable approval standard is not met, it is not sufficient for petitioners to show there is substantial evidence in the record to support their position. Rather, the "evidence must be such that a reasonable trier of fact could only say petitioners' evidence should be believed." Morley v. Marion County, 16 Or LUBA 385, 393 (1988); McCoy v. Marion County, 16 Or LUBA 284, 286 (1987); Weyerhauser v. Lane County, 7 Or LUBA 42, 46 (1982). In other words, petitioners must demonstrate that they sustained their burden of proof of compliance with the applicable standard as a matter of law. Jurgenson v. Union County Court, 42 Or App 505, 600 P2d 1241 (1979); Consolidated Rock Products v. Clackamas County, 17 Or LUBA 609, 619 (1989). Further, if the evidence establishes that at least one of the approval standards are not satisfied, the county's decision will be affirmed, even if the county erroneously found that other approval standards are not met.

We have examined all of the evidence cited by the parties and conclude petitioners have not met this heavy burden with regard to the ZDO 405.05(A)(4) requirement that the subject land be "generally unsuitable * * * for the

production of farm and forest products."

There is no dispute that the soils on the subject property are predominantly soils having a Douglas fir site index of 2 and 3 and a United States Soil Conservation Service agricultural rating of Class IIe-IVe, and that this indicates suitability for production of both timber and agricultural products. Further, there is no dispute that at least seven to twelve acres of the subject parcel are suitable for timber production. There is evidence the property was logged in 1970, and that petitioners recently removed cedar from the subject property. Other parcels in the area are also zoned TT and are suitable for the production of timber. Further, there are three Christmas tree farms to the west of the subject property, and a forested 60 acre parcel is also located to the west of the property.

The first assignment of error is denied.

SECOND ASSIGNMENT OF ERROR

> "The Clackamas County staff member * * * erred in his findings and decisions by basing his findings and decision upon Parcel 4S, 3E, Sec. 6c Tax Lot 1300, and not the correct Parcel 4S, 3E, Sec. 8cc Tax Lot 700."

Petitioners contend the planning department's decision was flawed because it was based on erroneous information supplied by a staff person. As we understand it, petitioners discovered the planning department's decision was based on allegedly erroneous information after the

planning department's decision was made, but prior to the hearing before the hearings officer.

There is no dispute that petitioners were afforded a de novo hearing before the hearings officer. Petitioners had an adequate opportunity to present their case to the hearings officer and to submit new evidence. Further, they had an adequate opportunity to explain why the planning department's decision was, in their view, wrong. Accordingly, that the planning department's decision may have been based on erroneous information is irrelevant and provides no basis for reversal or remand of the challenged hearings officer decision.

The second assignment of error is denied.

The county's decision is affirmed.