

1 Opinion by Kellington.

2 **NATURE OF THE DECISION**

3 Petitioner appeals a county order approving a
4 conditional use permit for a nonresource dwelling on 32.56
5 acres of land in the Farm/Forest (F-F (40)) zone, and
6 subject to the Columbia River Gorge (CRG) overlay zone.

7 **MOTION TO INTERVENE**

8 Arline Clinkenbeard, the applicant below, moves to
9 intervene on the side of respondent in this appeal
10 proceeding. ORS 197.830(6)(b)(A) and OAR 661-10-050(1)
11 provide that the applicant for development approval has
12 standing to intervene in an appeal filed with this Board.
13 The motion to intervene is allowed.

14 **FIRST ASSIGNMENT OF ERROR**

15 "The governing body exceeded its jurisdiction and
16 violated a provision of applicable law when it
17 decided that [Wasco County Zoning
18 Ordinance] 5.020(J) no longer applied to the
19 subject parcel."

20 Wasco County Zoning Ordinance (WCZO) 5.020(J) requires
21 a determination that:

22 "The applicant has a bona fide intent and
23 capability to develop and use the land as proposed
24 and has some appropriate purpose for submitting
25 the proposal, and is not motivated solely by such
26 purposes as the alteration of property values for
27 speculative purposes."

28 On January 15, 1992, WCZO 5.020(J) was repealed. However,
29 intervenor's application was submitted before that date, on
30 July 27, 1991. The county court determined that

1 WCZO 5.020(J) does not apply to the proposal.

2 Petitioner contends the county court erred in
3 determining that WCZO 5.020(J) is inapplicable to the
4 proposal.

5 ORS 215.428(3) provides, in relevant part:

6 "* * * approval or denial of the application [for
7 a permit] shall be based upon the standards and
8 criteria that were applicable at the time the
9 application was first submitted." (Emphasis
10 supplied.)

11 There is no dispute that at the time the application was
12 first submitted, WCZO 5.020(J) was a standard applicable to
13 the approval of the proposal nonresource dwelling.
14 Accordingly, the county erred in determining WCZO 5.020(J)
15 is inapplicable.

16 The first assignment of error is sustained.

17 **SECOND ASSIGNMENT OF ERROR**

18 "The governing body exceeded its jurisdiction and
19 failed to make adequate findings when it ignored
20 multiple provisions of relevant local ordinance."

21 **THIRD ASSIGNMENT OF ERROR**

22 "The county misconstrued the applicable law in
23 failing to make a finding that the proposed use is
24 not incompatible with farm or forest uses in the
25 area, and does not interfere with the farm or
26 forest practices [under WCZO 11.020(B)(1)]. There
27 is also no substantial evidence in the record to
28 support such a finding."

29 The challenged decision consists of the findings
30 adopted by the county court. However, as petitioner points
31 out, this decision fails to address several of the relevant

1 mandatory approval standards contained in the Wasco County
2 Zoning Ordinance (WCZO). Specifically, there are no
3 findings addressing WCZO 11.020(B)(1), (2) and (4) or
4 WCZO 5.020(A), (B), (E), (G), (H), (I) and (J),¹ all of

¹WCZO 11.020(B)(1), (2) and (4) require:

- "1. The proposed non-farm or non-forest dwelling is not incompatible with farm and forest uses in the area, and does not interfere with the farm or forest practices."
- "2. The proposed non-farm or non-forest dwelling is not inconsistent with the farm and forest use policies as provided for in the Comprehensive Plan."
- "4. The substandard lot-of-record shall have a sufficient area and otherwise be capable of being served by a domestic water supply and sewage disposal system approved by the appropriate sanitary authority."

WCZO 5.020 provides, in relevant part:

- "A. The proposal is consistent with the goals and objectives of the Comprehensive Plan and implementing Ordinances of the County.
- "B. Taking into account location, size, design and operational characteristics of the proposed use, the proposal is compatible with the surrounding area and development of abutting properties by outright permitted uses.
- ** * * * *
- "E. The effects of noise, dust and odor will be minimized during all phases of development and operation for the protection of adjoining properties.
- ** * * * *
- "G. The proposed use will not adversely affect the air, water, or land resource quality of the area.
- "H. The location and design of the site and structures for the proposed use will not significantly detract from the visual character of the area.

1 which appear to be mandatory approval standards applicable
2 to the proposed nonresource dwelling.²

3 The second and third assignments of error are
4 sustained.

5 **FOURTH ASSIGNMENT OF ERROR**

6 "The county misconstrued the applicable law, made
7 insufficient findings, and made a decision not
8 supported by substantial evidence in the record as
9 a whole in concluding that the proposed dwelling
10 would not alter the overall stability of the land
11 use pattern of the area [under WCZO
12 11.020(B)(3)]."

13 WCZO 11.020(B)(3) requires:

14 "The proposed non-farm or non-forest dwelling does
15 not materially alter the stability of the over-all
16 land use pattern in the area nor substantially add
17 to the demand for increased use of roads or other
18 public facilities and services[.]"

19 In an unrelated case, Veach v. Wasco County, ___ Or
20 LUBA ___ (LUBA No. 92-024, June 21, 1992), slip op 5-6, we
21 stated the following concerning the proper interpretation of
22 WZCO 11.020(B)(3):

"I. The proposal will preserve areas of historic value,
natural or cultural significance, including
archaeological sites, or assets of particular interest to
the community.

"J. The applicant has a bona fide intent and capability to
develop and use the land as proposed and has some
appropriate purpose for submitting the proposal, and is
not motivated solely by such purposes as the alteration
of property values for speculative purposes."

²In addition, there are no findings addressing WCZO 3.790(D), (E) and
(F), requirements applicable to the proposal under the CRG overlay zone
provisions.

1 "Interpreting a nearly identical 'stability'
2 standard in an exclusive farm use zone, we
3 determined a three part analysis is required.
4 First, the county must identify an area for
5 consideration. Second, the county must identify
6 what farming practices occur in the identified
7 area. Third, the county must explain how the
8 proposal will affect those farm practices.
9 Sweeten v. Clackamas County, 17 Or LUBA 1234,
10 1246 (1989). This analysis also applies to
11 WCZO 11.020(B)(3). However, because the F-F(40)
12 zone is both a farm and forest zone, the second
13 and third steps of the analysis must include
14 identification of forest practices and
15 consideration of how the proposal will affect
16 those forest practices."

17 The county's findings of compliance with
18 WCZO 11.020(B)(3) are inadequate. Specifically, the
19 findings fail to identify farm and forest zoned parcels and
20 uses in an identified area. Further, the findings fail to
21 explain whether the proposal disturbs the stability of the
22 identified land use pattern in the identified area.

23 The fourth assignment of error is sustained.

24 **FIFTH ASSIGNMENT OF ERROR**

25 "The county misconstrued the applicable law, made
26 conclusory findings, and made a decision not
27 supported by substantial evidence in the record as
28 a whole in concluding that public services should
29 not be significantly burdened."

30 WCZO 5.020(C) requires that the proposed nonresource
31 dwelling:

32 "* * * not exceed or significantly burden public
33 facilities or services available to the area,
34 including, but not limited to roads, fire and
35 police protection, sewer and water facilities,
36 telephone and electrical service, or solid waste
37 disposal facilities."

1 The challenged decision contains the following findings of
2 compliance with this standard:

3 "The proposed single family dwelling will not
4 require service by a public water or sewage
5 disposal facility. The existing access road,
6 Proctor Road, is in place. Although it does not
7 meet the road design standards as outlined in
8 'Fire Safety Design Standards for Roads,' the
9 ordinance does not require that. As for the
10 existing private access drive leading to the
11 subject property, it is a preexisting road and its
12 maintenance is left up to land owners. The
13 private road requirements of [WCZO] Chapter 21
14 cannot be retroactively imposed. Electrical
15 services are already available to the parcel.
16 According to the applicant the parcel currently
17 supports the needed services. The property is in
18 the service boundaries of the Mosier Rural Fire
19 Protection District, a taxing district, and is
20 patrolled by the Wasco County Sheriff's Office.
21 Considering the scale of the development, one (1)
22 single family dwelling, the above services should
23 not be significantly burdened." (Emphasis
24 supplied.) Record 9.

25 Petitioner challenges these findings of compliance with
26 WCZO 5.020(C) with regard to fire protection services and
27 roads.

28 In order to demonstrate compliance with WCZO 5.020(C),
29 the county must identify the existing level of public
30 services and facilities in an area available to serve a
31 proposal, and determine whether the proposal will either
32 "exceed" or "significantly burden" those available public
33 facilities and services. Veach v. Wasco County, supra, slip
34 op at 9. At most, the findings in the challenged decision
35 simply determine that because the proposal is within a rural

1 fire protection district, the fire protection district
2 "should not be significantly overburdened" and that an
3 access road is "in place" and private roads are privately
4 maintained. Record 9.

5 We agree with petitioner that the county's findings of
6 compliance with WCZO 5.020(C) are inadequate to satisfy that
7 standard. The county's findings fail to identify the
8 existing level of service provided to the area by either
9 roads or the fire district. The findings fail to determine
10 whether the proposal will exceed the capacity of the
11 existing area roads or will significantly burden such
12 existing roads. Further, the findings fail to determine
13 whether the proposal will either exceed the ability of the
14 fire district to provide the existing level of service to
15 the proposed dwelling or significantly burden the fire
16 district to provide the existing service levels. Veach v.
17 Wasco County, supra, slip op at 8-10.

18 The fifth assignment of error is sustained.

19 The county's decision is remanded.