

1 Opinion by Sherton.

2 **NATURE OF THE DECISIONS**

3 Petitioners appeal county decisions approving (1) a
4 conditional use permit for a gravel driveway and
5 recreational vehicle (RV) parking pad in the Recreational
6 Residential (RR) zone, and (2) location of the gravel
7 driveway and RV parking pad in a Principal River
8 Conservation Area (PRCA).

9 **MOTION TO INTERVENE**

10 Linda Vogue, the applicant below, moves to intervene in
11 this appeal on the side of respondent. There is no
12 objection to the motion, and it is allowed.

13 **FACTS**

14 This is the second time county decisions approving the
15 proposed gravel driveway and RV parking pad have been before
16 this Board.¹ In Tylka v. Clackamas County, ___ Or LUBA ___
17 (LUBA No. 91-080, October 15, 1991) (Tylka I), slip op 2-3,
18 we described the subject property and the proposal as
19 follows:

20 "The subject property is zoned [RR], and lies
21 between a road and the Salmon River. The subject
22 property includes approximately 17,000 sq. ft. and
23 is somewhat irregularly shaped, having 140 ft. of
24 frontage along the road, a property line of
25 approximately 200 ft. paralleling the river, and a

¹We dismissed petitioners' first appeal of a county decision concerning the proposed gravel driveway and RV parking pad because that decision was not a final decision by the county. Tylka v. Clackamas County, 20 Or LUBA 296 (1990).

1 depth of approximately 100 ft. The distance
2 between the property and the river varies from
3 approximately 10 ft., at the end of the property
4 where the driveway and RV parking pad are proposed
5 to be located, to 60 ft.

6 "There are no structures on the property.
7 However, in May 1989, intervenor-respondent
8 (intervenor) constructed a gravel driveway and RV
9 parking pad on the property. The construction
10 included removal of a stump, brush and alder trees
11 6 inches or less in diameter, moving aside
12 boulders and placing 60 cubic yards of crushed
13 rock in the driveway and parking area. The
14 driveway and parking pad are located on the
15 portion of the subject property which is closest
16 to the river. The parking pad is approximately 48
17 ft. by 12 ft. in size, and ranges from 15 to 30
18 ft. from the edge of the river." (Record
19 citations omitted.)

20 On November 29, 1989, intervenor applied to the county
21 planning department for approval of a gravel driveway and RV
22 parking pad in the PRCA of the Salmon River. On June 10,
23 1991, the county hearings officer issued the decision
24 appealed in Tylka I. In Tylka I, we remanded the county's
25 decision. We held, among other things, that the county
26 erred in concluding the proposed use is not subject to
27 regulation under the Clackamas County Zoning and Development
28 Ordinance (ZDO) RR zone. We also concluded "if the proposed
29 use is allowable in the RR zone, it can only be as a
30 conditional use." Tylka I, slip op at 7.

31 On December 30, 1991, intervenor filed an application
32 for a conditional use permit for the proposed use. On
33 March 25, 1992, the county hearings officer held a single,
34 consolidated hearing on both the remanded PRCA approval

1 decision and the new conditional use permit application. On
2 June 22, 1992, the hearings officer issued separate
3 decisions approving the conditional use permit and granting
4 PRCA approval. Both decisions were appealed to this Board
5 and are the subject of this consolidated proceeding.

6 **FIRST ASSIGNMENT OF ERROR**

7 "The County improperly construed the applicable
8 law when it decided that the * * * proposed use is
9 a conditional use in [the RR] zone."

10 **SECOND ASSIGNMENT OF ERROR**

11 "The County improperly construed the applicable
12 law when it decided that the * * * proposed use is
13 a conditional use permitted by ZDO 813.01A or E."

14 The list of conditional uses in the RR zone includes
15 "[s]ervice recreational facilities, see Section 813."
16 ZDO 305.05A(6). The ZDO does not define "service
17 recreational facilities." However, ZDO 813.01 describes the
18 "uses permitted" as service recreational uses, in relevant
19 part, as follows:

20 "A. Private commercial, noncommercial or
21 nonprofit recreational areas, uses and
22 facilities, including country clubs, lodges,
23 fraternal organizations, swimming pools, golf
24 courses, riding stables, boat moorages, parks
25 and concessions. * * *

26 " * * * * *

27 "D. Recreational Vehicle Camping Facilities[.]

28 " * * * * *

29 "E. Any other use similar to the above mentioned,
30 as determined by the Hearings Officer."

1 (Emphasis added.)

2 Additionally, ZDO 813.01D(1)-(10) set out comprehensive
3 standards for RV camping facilities, addressing factors
4 including location, campsite number and area, services,
5 parking and access requirements, screening and maintenance.

6 The challenged decision approving a conditional use
7 permit determines that the proposed use qualifies as a
8 service recreational use under either ZDO 813.01A or E:

9 "[ZDO] 813.01(A) includes as uses permitted
10 private, noncommercial recreational uses. The
11 proposed use is a private, noncommercial
12 recreational use. The applicant proposes to
13 establish a gravel access driveway and parking pad
14 for a motor home. The applicant proposes to drive
15 this motor home to the subject property and park
16 it there on an intermittent basis, typically
17 weekends, to enjoy the recreational amenities of
18 the subject property and greater Mt. Hood
19 recreational area. This will enable the applicant
20 to make recreational use of her property.

21 "[ZDO] 813.01(A) does list a number of included
22 private, noncommercial or commercial, recreational
23 areas, uses or facilities. That list does not
24 specifically include the proposed use. However,
25 as stated above, * * * the proposed use does
26 specifically [fall] within the permitted uses.
27 Furthermore, [ZDO] 813.01(E) includes as permitted
28 service recreational uses any other use similar to
29 the above mentioned, as determined by the Hearings
30 Officer. The proposed use is considered to be
31 sufficiently similar to those recreational uses
32 listed in [ZDO] 813.01(A) to be included as a
33 conditional use [under ZDO 813.01(E)].

34 "* * * The applicant does propose to locate a
35 recreational vehicle, as defined in [ZDO 202], on
36 the subject property, but the proposed use does
37 not come within a recreational vehicle camping
38 facility regulated under [ZDO] 813.01(D). That

1 subsection clearly is intended to regulate
2 large-scale camping facilities or campgrounds, and
3 is not directed to the use of property by the
4 owner thereof on an intermittent basis."
5 Record II 3-4.²

6 Petitioners point out that "recreational vehicle
7 camping areas and facilities" are expressly listed as
8 conditional uses in the Transition Timber District (TTD),
9 General Timber District (GTD) and General Timber 40 Acre
10 District (GT-40).³ ZDO 403.06B.12; 404.06B.11; 405.06B.13.
11 Petitioners argue that where a use is specifically permitted
12 in one zoning district and not specifically listed in
13 another, rules of construction indicate the use is not
14 intended to be allowed in the other district. Petitioners
15 further argue the county does not include recreational
16 vehicle camping in the uses identified under ZDO 813.01A.
17 Therefore, according to petitioners, "recreational vehicle
18 camping areas and facilities" are not permitted in the RR
19 zone, except to the extent they are allowed as a special
20 type of service recreational use, in compliance with the

²The local record submitted in Tylka I is included in the local record of the county decisions challenged in this appeal proceeding. In this opinion, we cite the local record submitted in Tylka I as "Record I ___" and the local record subsequently compiled and submitted in this appeal as "Record II ___."

³We note that with regard to each of these districts, the ZDO provides that a conditional use must satisfy standards for that use found in ZDO Section 800. Therefore, recreational vehicle camping facilities in the TTD, GTD and GT-40 zones must comply with the locational and operational standards for recreational vehicle camping facilities set out in ZDO 813.01D.

1 standards for recreational vehicle camping facilities found
2 in ZDO 813.01D.

3 Petitioners also contend our decision in Tylka I
4 concludes the proposed use can only be allowable in the RR
5 zone as a recreational vehicle camping facility under
6 ZDO 813.01D. Petitioners argue that because respondents
7 failed to appeal our decision in Tylka I, they are bound by
8 the "law of the case." Petitioners conclude the challenged
9 decision approving a conditional use permit for the proposed
10 use must be remanded because the county failed to determine
11 that the proposed use satisfies the standards of
12 ZDO 813.01D.

13 Petitioners misinterpret our decision in Tylka I. We
14 stated:

15 " * * * Because the hearings officer erroneously
16 concluded the proposed use is not subject to
17 regulation under the [RR zone], he did not
18 interpret or apply ZDO 305.05A.6 * * *,
19 ZDO 813.01D, or the approval standards for
20 conditional uses found in ZDO 1203. We must,
21 therefore, remand the challenged decision to the
22 county, so it can make determinations on whether
23 the proposed use is a potentially allowable
24 conditional use in the RR zone and, if so, whether
25 the proposed use complies with ZDO 1203 and,
26 if applicable, the standards of ZDO 813.01D.
27 * * *" (Emphasis added.) Tylka I, supra, slip op
28 at 7-8.

29 The language quoted above indicates we left it up to the
30 county to determine in the first instance whether the
31 proposed use is potentially allowable in the RR zone under
32 ZDO 305.05A.6. We did not determine which, if any,

1 subsection of ZDO 813.01 the proposed use falls under, and
2 we directed the county to apply the standards of ZDO 813.01D
3 only if applicable.

4 We must determine whether the county correctly
5 interpreted either ZDO 813.01A or E to encompass the
6 proposed use. In doing so, we are required to defer to the
7 county's interpretation of its zoning ordinance, so long as
8 the proffered interpretation is not "clearly contrary to the
9 enacted language," or "inconsistent with express language of
10 the ordinance or its apparent purpose or policy." Clark v.
11 Jackson County, 313 Or 508, 514-15, ___ P2d ___ (1992).

12 First, we agree with the county that there is no
13 inconsistency between its interpretation of ZDO 305.05A.6
14 and 813.01 and the provisions of the TTD, GTD and GT-40
15 zones. This is not an instance where a type of use is
16 specifically listed in one zoning district and not listed in
17 another zoning district. The RR zone simply allows a
18 broader range of service recreational uses than do the TTD,
19 GTD and GT-40 zones. In the RR zone, any of the service
20 recreational uses listed in ZDO 813.01 are potentially
21 allowable. In the TTD, GTD and GT-40 zones, the only type
22 of allowable service recreational uses is "recreational
23 vehicle camping areas and facilities."

24 Second, we agree with the county that the text of the
25 standards under ZDO 813.01D indicates that subsection is not
26 intended to regulate single RV camping spaces used by the

1 owner of the subject property.⁴ Therefore, we conclude the
2 county's interpretation that the proposed use is either a
3 private noncommercial recreational use allowed under
4 ZDO 813.01A or a similar recreational use allowed under
5 ZDO 813.01E is not contrary to the ordinance's express terms
6 or policy.

7 The first and second assignments of error are denied.

8 **THIRD ASSIGNMENT OF ERROR**

9 "The County improperly construed the applicable
10 law, failed to make findings, and made a decision
11 not supported by substantial evidence in the whole
12 record, [in determining] that the use has 'no
13 potential effects on water surface elevations or
14 on insurable damages.'"

15 The subject property is within the 100-year floodplain
16 of the Salmon River and, therefore, is an "area of special
17 flood hazard," as defined in ZDO 703.03B. ZDO Section 703
18 (Floodplain Management District) establishes standards for
19 development of such areas. ZDO 703.04C and D allow certain
20 recreational uses and residential uses, such as parking
21 areas, in areas of special flood hazard, provided they "do
22 not constitute 'development' as defined in ZDO 703.03C
23 * * *." ZDO 703.04. ZDO 703.03C defines "development" as:

24 "* * * Any man-made change to improved or
25 unimproved real estate, including but not limited
26 to buildings or other structures, mining,

⁴For instance, the ZDO 813.01D standards establish density limitations for RV campsites, require parking spaces to be provided for the manager and employees of the facility, and allow as accessory uses a manager's residence or office, clubhouses and tourist information centers.

1 dredging, filling, grading, paving, excavation, or
2 drilling operations located within the area of
3 special flood hazard. For purposes of [ZDO] 703,
4 development does not include those activities of a
5 type and magnitude which have no potential effects
6 on water surface elevations or on the level of
7 insurable damages, as determined by the Planning
8 Director * * *." (Emphasis added.)

9 In the decision appealed in Tylka I, the county
10 addressed the requirements of ZDO Section 703. The county
11 determined the proposed use is within the recreational and
12 residential uses allowed by ZDO 703.04C and D, but does not
13 require a floodplain management development permit because
14 it does not constitute "development," as defined by
15 ZDO 703.03C. The county found the proposed use is not
16 "development" because "the minimal grading and placement of
17 gravel proposed [will have] no potential effect on water
18 surface elevations or the level of insurable damages."
19 Record I 5. Petitioners did not challenge this
20 determination in Tylka I.

21 The challenged decision approving a conditional use
22 permit for the proposed use includes the following findings:

23 "* * * Development does not include activity which
24 has no potential effect on water surface
25 elevations or on insurable damages. The Hearings
26 Officer has previously found that the proposed use
27 does not constitute development, as defined [in
28 ZDO 703.03C], and that the proposed use does not
29 require a Floodplain Management Development
30 permit, and that the proposed use is a permitted

1 use under [ZDO] 703.04. * * *⁵ Record II 5.

2 Petitioners contend this portion of the challenged
3 decision is not supported by findings or evidence adequate
4 to establish the proposed use will have "no potential effect
5 on water surface elevations or on insurable damages" and,
6 therefore, does not constitute "development" in a floodplain
7 requiring a Floodplain Management development permit.
8 Petitioners argue this issue was not properly before LUBA in
9 Tylka I, because the county had determined the proposed use
10 was not subject to regulation by the ZDO. Therefore,
11 according to petitioners, the county did not finally
12 determine issues regarding the application of ZDO
13 Section 703 in its first decision. Schatz v. City of
14 Jacksonville, 113 Or App 675, 680, ___ P2d ___ (1992).
15 Petitioners also argue that because the county reopened the
16 record on remand, under ORS 197.763(7) they have a right to
17 raise new issues which relate to the new evidence received.

18 In Beck v. City of Tillamook, 313 Or 148, 152-53, ___
19 P2d ___ (1992), the Oregon Supreme Court considered the
20 effect of a LUBA decision remanding a local government

⁵The quoted statements are included in findings addressing ZDO 1203.01B, a conditional use permit approval standard that "the characteristics of the site must be suitable for the proposed use, considering size, location, shape, topography, existence of improvements and natural features." The challenged decision finds the county's previous determination concerning the applicability of ZDO Section 703, among other things, supports a conclusion that the location of the subject property is a suitable characteristic for the proposed use. Petitioners do not challenge, in this or any other assignment of error, the county's determination of compliance with ZDO 1203.01B and, therefore, we do not consider this standard further.

1 decision:

2 "LUBA is to decide all issues that it can, before
3 remanding a case. The effect of ORS 197.835(9) is
4 to allow LUBA to narrow the scope of the remand to
5 those issues that require further exploration.
6 Doing so can avoid redundant proceedings and
7 thereby facilitate the 'policy of the Legislative
8 Assembly that time is of the essence in reaching
9 final decisions in matters involving land use.'
10 ORS 197.805.

11 * * * * *

12 "[ORS 197.763(7)] establishes the process for
13 hearings before local bodies. ORS 197.763(7)
14 provides:

15 "When a local * * * hearings officer
16 reopens a record to admit new evidence
17 or testimony, any person may raise new
18 issues which relate to the new evidence,
19 testimony or criteria for decision-
20 making which apply to the matter at
21 issue.'

22 "In other words, when the record is reopened,
23 parties may raise new, unresolved issues that
24 relate to new evidence. The logical corollary is
25 that parties may not raise old, resolved issues
26 again. When the [local] record is reopened at
27 LUBA's direction on remand, the 'new issues' by
28 definition include the remanded issues, but not
29 the issues that LUBA affirmed or reversed on their
30 merits, which are old, resolved issues."
31 (Footnote omitted.)

32 We agree with the county that whether the proposed use
33 constitutes development as defined by ZDO 703.03C and,
34 consequently, whether a Floodplain Management Development
35 permit is required for the proposed use, are "old issues"
36 that were resolved in Tylka I. Petitioners' argument
37 appears to be based on a misperception that issues

1 concerning the application of ZDO Section 703 could not be
2 resolved in Tylka I because the county erroneously believed
3 the proposed use was not subject to regulation under any
4 portion of the ZDO. In fact, as discussed supra, the county
5 mistakenly believed the proposed use was not subject to
6 provisions of the RR zone regulating permitted and
7 conditional uses and, therefore, failed to determine whether
8 the proposed use is allowed under the RR zone as a
9 conditional use and complies with applicable conditional use
10 standards. In the decision appealed in Tylka I, the county
11 made determinations regarding application of other ZDO
12 provisions to the proposed use, including ZDO 703
13 (Floodplain Management District). Petitioners did not
14 challenge these determinations in Tylka I and are precluded
15 from challenging them in this appeal.

16 The third assignment of error is denied.

17 **FIFTH ASSIGNMENT OF ERROR**

18 "The County made a decision not supported by
19 substantial evidence in the whole record, failed
20 to make findings and improperly construed
21 applicable law by finding that the proposed use
22 [is] outside the area designated as the stream
23 corridor pursuant to the definition [in ZDO] 202."

24 ZDO 305.05A.12 requires a conditional use permit for
25 "filling, grading, excavating, or clearing of vegetation
26 * * * in stream corridor areas, as defined in [ZDO] 202."⁶

⁶Additionally, the definition of stream corridor in ZDO 202 requires consideration of seven factors listed in ZDO 1002.05B.

1 The county decision challenged in Tylka I included a
2 determination that "the stream corridor of the Salmon River
3 at the subject property includes the stream bed and a
4 50-foot buffer of natural vegetation." Record I 4. That
5 decision concluded the proposed use does not require a
6 conditional use permit pursuant to ZDO 305.05A.12, based on
7 the imposition of conditions requiring a 50-foot setback
8 from the vegetation line along the Salmon River, removal of
9 gravel already placed within this setback and reseeding of
10 the setback area. Record I 8.

11 In Tylka I, petitioners did not challenge the county's
12 determination that the stream bed and 50-foot buffer of
13 natural vegetation constitutes the "stream corridor," as
14 defined in ZDO 202. Rather, petitioners argued that even if
15 the county's identification of the stream corridor is
16 correct, a conditional use permit is required because
17 intervenor had admittedly removed vegetation, graded and
18 filled within this area. LUBA agreed with petitioners that
19 the conditions of approval originally imposed were not
20 sufficient to avoid the requirement for a conditional use
21 permit under ZDO 305.05A.12, and held the county must either
22 require approval of a conditional use permit or require the
23 identified stream corridor area to be restored to its
24 original state. Tylka I, supra, slip op at 17-19.

25 In the decision granting PRCA approval challenged in
26 this appeal, the county noted it had "previously determined

1 that the stream corridor [as defined in ZDO 202] of the
2 Salmon River at the subject property includes the stream bed
3 of that river and extends 50 feet from the vegetation line
4 along the Salmon River." Record II 12c. The county chose
5 not to require a conditional use permit pursuant to
6 ZDO 305.05A.12, but rather imposed a condition requiring
7 restoration of the stream corridor area as close as possible
8 to its original state. Record II 12c-12d.

9 As we understand it, petitioners now contend the
10 county's identification of the stream bed and 50-foot buffer
11 of natural vegetation as the "stream corridor" of the Salmon
12 River at the subject property does not comply with ZDO 202
13 and 1002.05B. However, we agree with the county this is an
14 "old issue" that was resolved in Tylka I, and petitioners
15 are precluded from raising it in this appeal.

16 The fifth assignment of error is denied.

17 **SEVENTH ASSIGNMENT OF ERROR**

18 "The County made a decision not supported by
19 substantial evidence in the whole record, failed
20 to make findings and improperly construed the
21 applicable law by allowing development to occur in
22 a wetland area."

23 Petitioners contend ZDO 305.07B prohibits development
24 in "wetlands," as that term is defined in ZDO 202.
25 Petitioners argue the challenged decisions violate this ZDO
26 provision because the subject property contains wetlands.
27 The challenged decision approving a conditional use permit
28 includes a finding that "[t]here is no substantial evidence

1 in this record establishing the existence of wetlands on
2 this property." Record II 5. Petitioners contend this
3 finding is not supported by substantial evidence in the
4 record.

5 The decision challenged in Tylka I states:

6 "Subsection 305.07(B) of the ZDO does prohibit
7 development within a wetland, except as may be
8 otherwise authorized by the ZDO. The site for the
9 proposed access drive and gravel parking area is
10 not a wetland, as defined by Section 202 of the
11 ZDO. * * *

12 "[Petitioners' attorney] conceded that the subject
13 property does not constitute a wetland.
14 [T]estimony as to the lack of wetland soils,
15 wetland vegetation or surface water outside the
16 stream bed of the Salmon River establishes that
17 the subject property does not contain a wetland
18 area.

19 "This prohibition does not apply." Record I 5.

20 Petitioners did not challenge the above quoted determination
21 in Tylka I.

22 The decision approving a conditional use permit
23 challenged in this appeal states:

24 "Testimony and other evidence points to the
25 possibility of the location of wetlands on the
26 subject property as limiting development as
27 proposed. The Hearings Officer has previously
28 concluded that there are no wetlands on the
29 subject property. There is no substantial
30 evidence in this record establishing the existence
31 of wetlands on this property."⁷ (Emphasis added.)

⁷These statements are also found in findings addressing the conditional use permit approval standard ZDO 1203.01B. However, as explained in n 5,

1 Record II 5.

2 The issue of whether the subject property contains
3 "wetlands," as defined by ZDO 202 is an "old issue" that was
4 resolved in Tylka I. It is uncertain whether the county
5 could reopen this issue on remand, even if it wished to do
6 so. See Beck v. City of Tillamook, supra (when the record
7 is reopened on remand, parties may not raise old, resolved
8 issues again); but see Schatz v. City of Jacksonville, supra
9 (LUBA may require local governments to resolve certain
10 questions before making a new decision on remand, but it
11 cannot prevent them from considering other questions).
12 However, we believe the above quoted findings from the
13 decision challenged in this appeal, read in context,
14 indicate the county relied on its previous determination
15 that the subject property does not contain wetlands. That
16 determination cannot be challenged in this appeal.

17 The seventh assignment of error is denied.

18 **FOURTH ASSIGNMENT OF ERROR**

19 "The County made a decision not supported by
20 substantial evidence in the whole record, failed
21 to make findings and improperly construed the
22 applicable law by finding that a 50 [sic 60] foot
23 buffer strip would be adequate to meet the
24 requirement of [ZDO] 704.05."

25 ZDO 704.05A imposes the following requirement in a
26 PRCA:

petitioners do not challenge, in this or any other assignment of error, the county's determination of compliance with ZDO 1203.01B.

1 "A buffer or filter strip of existing vegetation
2 shall be preserved along all river banks. The
3 depth of this buffer strip need not exceed 150
4 feet, and shall be determined by evaluation of the
5 following:

6 "1. The character and size of the proposed
7 development and its potential for adverse
8 impact on the river;

9 "2. The width of the river;

10 "3. The topography of the area;

11 "4. The type and stability of the soils; and

12 "5. The type and density of the existing
13 vegetation."

14 In the decision challenged in Tylka I, the county found
15 a 50 foot vegetation preservation buffer satisfied
16 ZDO 704.05A. Record I 6. Petitioners challenged that
17 determination on evidentiary grounds. There was no dispute
18 that the sole evidentiary support for the challenged
19 determination was a county planner's report. In Tylka I,
20 slip op at 15, we sustained petitioners' evidentiary
21 challenge, stating in part:

22 "Substantial evidence is evidence a reasonable
23 person would rely upon in reaching a decision.
24 City of Portland v. Bureau of Labor and Ind., 298
25 Or 104, 119, 690 P2d 475 (1984); Douglas v.
26 Multnomah County, 18 Or LUBA 607, 617 (1990).
27 While the planner's report addresses the five
28 factors of ZDO 704.05A, it does not constitute
29 evidence that consideration of these [factors]
30 would lead a reasonable person to conclude that
31 under ZDO 704.05A, a 50 ft. vegetation
32 preservation buffer should be required on the
33 subject property. The only two reasons given by
34 the planner's report for requiring a 50 ft.
35 vegetation preservation buffer * * * are not

1 relevant to ZDO 704.05A. * * *"

2 On remand, the county determined that a 60 foot
3 vegetation preservation buffer would satisfy ZDO 704.05A.
4 Record II 12d. The county incorporated into its findings a
5 planning staff report analysis specifically addressing the
6 five factors of ZDO 704.05A. Record II 218-21. Once again,
7 there is no dispute that this staff report is the only
8 evidence in the record supporting the county's decision.

9 Petitioners challenge the adequacy of the findings and
10 their evidentiary support. Petitioners argue neither the
11 decision nor the supporting evidence explains how
12 consideration of the five factors of ZDO 704.05A leads to
13 the conclusion that a 60 foot, rather than 6 foot or
14 260 foot, vegetation preservation buffer is warranted under
15 ZDO 704.05A.

16 The staff report incorporated into the county's
17 findings by reference explains why consideration of the five
18 factors listed in ZDO 704.05A leads to the conclusion that a
19 60 foot buffer strip of existing vegetation along the Salmon
20 River is sufficient. The staff report also constitutes
21 evidence that consideration of these factors would lead a
22 reasonable person to conclude that under ZDO 704.05A, a
23 60 foot vegetation preservation buffer should be required
24 along the Salmon River at the location of the subject
25 property. Nothing more is required.

26 The fourth assignment of error is denied.

1 **SIXTH ASSIGNMENT OF ERROR**

2 The Mt. Hood Community Plan (MHCP) is part of the
3 county's comprehensive plan, and is applicable to the
4 subject area. Petitioners contend a number of provisions in
5 the 1976 MHCP establish that the vegetative buffer along the
6 Salmon River should be at least 100 feet wide. However, the
7 1976 MHCP was replaced by the 1982 MHCP, which does not
8 contain the language referred to by petitioners. The 1976
9 MHCP was only "retained as resource and background documents
10 for the [1982 MHCP]." Clackamas County Court Order No.
11 82-1525 (August 5, 1982). We therefore agree with the
12 county that the 1976 MHCP does not establish approval
13 standards for the challenged decisions.

14 Petitioners also contend ZDO 1203.01 requires the
15 applicant to provide evidence substantiating that the
16 requirements of the ZDO have been satisfied. Petitioners
17 argue that because intervenor's application contains no
18 evidence addressing the criteria of ZDO 704.05A for
19 establishment of a vegetation preservation buffer, the
20 application must be rejected as incomplete and can provide
21 no basis for a county determination of compliance with
22 ZDO 704.05A.⁸

⁸Petitioners also refer to ZDO 1002, which contains factors to be used in identifying the width of a "stream corridor." However, for the reasons explained under the fifth assignment of error, supra, the width of the stream corridor at the subject property was resolved in Tylka I and cannot be raised in this appeal.

1 Petitioners apparently refer to a statement in
2 ZDO 1203.01 that the hearings officer may approve a
3 conditional use "provided that the applicant provides
4 evidence substantiating that all the requirements of [the
5 ZDO] relative to the proposed use are satisfied * * *." The
6 county apparently does not interpret this provision as
7 preventing the hearings officer from considering evidence in
8 support of a conditional use permit application that is not
9 found in the application itself. We agree with the county.
10 Additionally, lack of substantial evidence in an application
11 does not provide grounds for this Board to reverse or remand
12 a decision. This Board is authorized to reverse or remand a
13 county decision on evidentiary grounds only if it is not
14 supported by substantial evidence in the whole record.
15 ORS 197.835(7)(a)(C).

16 The sixth assignment of error is denied.

17 The county's decision is affirmed.