

1 Opinion by Holstun.

2 **NATURE OF THE DECISION**

3 Petitioners appeal a board of county commissioners'
4 decision denying their application for a change in the
5 comprehensive plan map designation for their property.

6 **FACTS**

7 Petitioners own a 10.02 acre parcel located in an area
8 of the county for which an exception to Statewide Planning
9 Goals 3 (Agricultural Lands) and 4 (Forest Land) has been
10 taken. The existing plan map designation is Agriculture and
11 Forest District (AF-10). Petitioners requested that the
12 plan map designation be changed to Agriculture and Forest
13 District (AF-5). The AF-5 designation imposes a 5 acre
14 minimum lot size, whereas the AF-10 designation imposes a 10
15 acre minimum lot size. Washington County Community
16 Development Code (CDC) 346-6.1; 348-6.1.

17 The county denied the request on two bases. First, the
18 county found that the amendment would violate a plan policy
19 of maintaining or improving ground water quantity. Second,
20 the county found the road serving the subject property is
21 inadequate for emergency vehicle access and that a plan
22 policy and implementing strategy concerning public
23 facilities and public health and safety are, therefore, not
24 satisfied. Petitioners challenge both findings.

25 **FIRST, SECOND AND THIRD ASSIGNMENTS OF ERROR**

26 Washington County Comprehensive Plan Rural/Natural

1 Resource Plan Element (hereafter Rural Plan) Policy 6
2 provides as follows:

3 "It is the policy of Washington County to maintain
4 or improve surface and ground water quality and
5 quantity."

6 A number of implementing strategies follow Rural Plan Policy
7 6. As relevant, the implementing strategies provide as
8 follows:

9 "The County will:

10 a. Strive to ensure adequate water supplies for
11 all uses by:

12 "* * * * *

13 "2. Reviewing and revising existing
14 development regulations where necessary
15 or limiting the location or operation of
16 new wells as a condition of development
17 approval, considering advice and/or
18 recommendations received from the State
19 Water Resources Department * * * [.]

20 "* * * * *"

21 In their first three assignments of error, petitioners
22 contend the above implementing strategy requires the county
23 to review and revise existing development regulations and to
24 limit the location or operation of wells in certain
25 circumstances. However, petitioners argue the above
26 implementing strategy does not authorize the county to deny
27 the requested plan map amendment.

28 The county points out the challenged decision explains
29 the Rural Plan requires requests for plan map amendments
30 from AF-10 to AF-5 to demonstrate that the request is "in

1 conformance with the applicable policies and strategies of
2 the following sections of the [Rural] Plan: Natural and
3 Cultural Setting,^[1] Public Facilities and Services, Rural
4 Transportation, and Rural Development * * *"[.]" (Emphasis
5 added.) Record 83; Rural Plan Planning Process Implementing
6 Strategy p(2)(B)(III).²

¹Rural Plan Policy 6 is contained in the Natural and Cultural Setting section of the Rural Plan.

²The structure and wording of Rural Plan Planning Process Implementing Strategy p(2) is awkward:

"Amendments from [AF-10] to [AF-5] shall be based upon:

"A. A mistake in this 1983 Plan; or

"B. The site (area) is within a Physically Developed and Committed Area as defined in this Plan based upon:

"I. The state of development and commitment that existed in July 1, 1983;

"II. Compliance with the intent of the requested land use district; and

"III. Are in conformance with the applicable policies and strategies of the following Sections of the Plan: Natural and Cultural Setting, Public Facilities and Services, Rural Transportation, and Rural Development[.]

"* * * * *"

Because the challenged decision interprets Rural Plan Planning Process Implementing Strategy p(2)(B)(III) as imposing a requirement that plan map amendments from AF-10 to AF-5 conform with applicable policies and strategies of the Rural Plan, and that interpretation is not challenged by petitioners, we do not consider the question further. Even if the question were presented, we note that Rural Plan Planning Process Implementing Strategy "o" provides that "all plan amendments [must be] in conformance with applicable policies and strategies of the Rural/Natural Resource Plan Element." (Emphasis added.)

1 According to respondent, petitioners' challenge under
2 the first three assignments of error erroneously assumes
3 only the implementing strategy applies.³ Respondent
4 contends the decision clearly applies Rural Plan Policy 6
5 directly to the request and explains that Rural Plan Policy
6 6 is violated by the request due to uncertainty about the
7 impact of higher density zoning on groundwater quantity.
8 Respondent further argues that to the extent the first three
9 assignments of error can be read to contend the county
10 should have limited its analysis to determining whether the
11 implementing strategies are met, and that the county erred
12 by directly applying Rural Plan Policy 6, such an argument
13 was not raised below and may not be raised for the first
14 time on appeal to this Board. See Boldt v. Clackamas
15 County, 107 Or App 619, 813 P2d 1078 (1991).

16 We conclude petitioners' challenge under the first
17 three assignments of error is misdirected. Petitioners do
18 not challenge the county's findings that Rural Plan Policy 6
19 is violated by the requested plan map amendment. Rather,
20 petitioners argue the county may not rely on certain
21 implementing strategies as a basis for denying their
22 request. Because the county does not rely on the
23 implementing strategies upon which petitioners argue the

³Respondent also points out petitioners' error is compounded by the fact that they rely on a prior version of the implementing strategy that differs from the one quoted in the text and is no longer in effect.

1 county may not properly rely, the first three assignments of
2 error provide no basis for reversal or remand.

3 We also conclude petitioners do not argue in their
4 petition for review that the county erred by applying Rural
5 Plan Policy 6 directly, rather than relying solely on the
6 implementing strategies.⁴ However, even if petitioners do
7 make that argument, such an argument would be inconsistent
8 with the express language of the Rural Plan which requires
9 conformance with both relevant policies and relevant
10 implementing strategies.

11 The first, second and third assignments of error are
12 denied.

13 **FOURTH ASSIGNMENT OF ERROR**

14 Under this assignment of error, petitioners rely on
15 appellate court cases and cases decided by this Board
16 concluding that requests for development approval may be
17 approved where the applicant adequately demonstrates it is
18 "feasible to comply with all mandatory approval standards."
19 Southwood Homeowners Assoc. v. City of Philomath, 21 Or LUBA
20 260, 272 (1991). See Meyer v. City of Portland, 67 Or App
21 274, 280 n 3, 678 P2d 741 (1984); Bartles v. City of
22 Portland, 20 Or LUBA 303, 310 (1990); Margulis v. City of

⁴We therefore do not consider whether the arguments presented by petitioners during the local proceedings were sufficient to allow them to raise this issue at LUBA.

1 Portland, 4 Or LUBA 89, 98 (1981).⁵ Petitioners contend the
2 county improperly denied their request, based on the mere
3 "possibility" that groundwater quality would be negatively
4 impacted.

5 We fail to see how the above cited cases assist
6 petitioners. An applicant for quasi-judicial land use
7 approval has the burden of demonstrating compliance with
8 applicable approval standards. Fasano v. Washington Co.
9 Comm., 264 Or 574, 507 P2d 23 (1973). The cited cases stand
10 for the proposition that more than the mere possibility of
11 compliance with approval standards is required to grant
12 permit approval. However, it does not follow that the
13 possibility that the additional development which would be
14 allowed by the requested map amendment would violate an
15 applicable standard is insufficient to provide a basis for
16 denial of the request.

17 The burden is on petitioners to demonstrate that the
18 request complies with Rural Plan Policy 6. The county
19 explained in some detail, based on the evidence submitted by
20 the applicants and opponents, that there are significant
21 questions concerning the adequacy of the affected aquifers
22 to support additional development. Record 15-18. The
23 county concluded as follows:

24 "[I]t would be prudent to avoid possibly

⁵We note that all of the cited cases were decided based on the particular comprehensive plan and code language at issue in those cases.

1 contributing to the further decline of the
2 groundwater quantities in this area, which would
3 be inconsistent with [Rural Plan] Policy 6 * * *
4 by amending the plan to allow even more
5 development in the area than is already allowed,
6 until it is conclusively demonstrated that
7 groundwater levels in the local aquifers are not
8 declining." Record 18.

9 Simply stated, the county determined that in view of
10 the uncertainty concerning the quantity of groundwater
11 available to support additional residential development in
12 this area, it could not conclude that changing the plan map
13 designation for the subject property to allow development in
14 addition to that currently allowed is consistent with Rural
15 Plan Policy 6. We can find no reason to fault those
16 findings.

17 Petitioners also suggest the burden imposed by the
18 county is impossible to satisfy, and therefore
19 unconstitutional, since it is economically infeasible to
20 conduct the detailed groundwater studies necessary to
21 demonstrate conclusively that there will not be some
22 detrimental impact on the quantity of groundwater.

23 Even if we agreed that it would be economically
24 infeasible to conduct the groundwater studies required to
25 demonstrate compliance with Rural Plan Policy 6 in this
26 case, we do not agree the challenged decision would
27 therefore be unconstitutional. Petitioners offer no
28 explanation for their theory that the decision is
29 unconstitutional. Chemeketa Industries Corp. v. City of

1 Salem, 14 Or LUBA 159, 166 (1985); Mobile Crushing Company
2 v. Lane County, 11 Or LUBA 173, 182 (1984). We are aware of
3 no constitutional requirement that a local government assure
4 that it is economically feasible for all possible
5 applications for land use approval for particular properties
6 to demonstrate compliance with all approval standards.

7 The fourth assignment of error is denied.

8 **FIFTH ASSIGNMENT OF ERROR**

9 Under this assignment of error, petitioners challenge
10 the evidentiary support for the county's determination that
11 the requested plan map amendment violates Rural Plan Policy
12 6. Petitioners particularly complain that the quality of
13 the evidence supporting their application is clearly
14 superior to the contrary evidence submitted by opponents,
15 which they describe as "[a]pocryphal and anecdotal * * *."
16 Petition for Review 23.

17 Regardless of how one categorizes or describes the
18 testimony of the opponents, that evidence, when considered
19 with the testimony submitted on behalf of the applicants, is
20 such that a reasonable person could conclude that the
21 proposed plan map amendment would negatively impact ground
22 water quantity and thereby be inconsistent with Rural Plan
23 Policy 6. We have explained on numerous occasions that
24 local government land use decisions may be based on other
25 than expert testimony. Sellwood Harbor Condo. Assoc. v.
26 City of Portland, 16 Or LUBA 505, 515 (1988); McCoy v.

1 Marion County, 16 Or LUBA 284, 290 (1987); Hinzpeter v.
2 Union County, 16 Or LUBA 111, 117 (1987). In this case, as
3 respondent notes, the opponents' testimony is bolstered by
4 uncertainties inherent in determining groundwater adequacy -
5 - uncertainties which are conceded and reflected in the
6 evidence submitted on behalf of the applicants.

7 We conclude the county's decision that petitioners
8 failed to carry their burden of proof with regard to
9 compliance with Rural Plan Policy 6 is supported by evidence
10 on which a reasonable person would rely. Clearly,
11 petitioners have failed to demonstrate they have carried
12 their burden on this point as a matter of law. Jurgenson v.
13 Union County Court, 42 Or App 505, 600 P2d 1241 (1979).

14 The fifth assignment of error is denied.

15 **REMAINING ASSIGNMENTS OF ERROR**

16 The county's decision denies petitioners' request for a
17 plan map amendment. That decision must be sustained if
18 there is a single adequate basis for denying the request.
19 See e.g. Portland City Temple v. Clackamas County, 11 Or
20 LUBA 70, 78 (1984); Weyerhaeuser v. Lane County, 7 Or LUBA
21 42, 46 (1982). Thus, even if the other basis given by the
22 county for denying the request is faulty in some way, that
23 would provide no basis for reversal or remand. We therefore
24 do not consider petitioners' remaining assignments of error.

25 The county's decision is affirmed.