

1                                   BEFORE THE LAND USE BOARD OF APPEALS

2                                   OF THE STATE OF OREGON

3  
4 DEPARTMENT OF LAND CONSERVATION )

5 AND DEVELOPMENT, )

6 )  
7                   Petitioner, )

8 )  
9           vs. )

10 POLK COUNTY, )

11 )  
12                   Respondent, )

13 )  
14           and )

15 )  
16 )  
17 VERN RATZLAFF and MARY JEAN )

18 RATZLAFF, )

19 )  
20                   Intervenors-Respondent. )

LUBA No. 93-140

FINAL OPINION  
AND ORDER

21  
22  
23           Appeal from Polk County.

24  
25           Celeste J. Doyle, Assistant Attorney General, Salem,  
26 filed the petition for review on behalf of petitioner. With  
27 her on the brief were Theodore R. Kulongoski, Attorney  
28 General; Thomas A. Balmer, Deputy Attorney General; and  
29 Virginia L. Linder, Solicitor General.

30  
31           No appearance by respondent.

32  
33           Wallace W. Lien, Salem, represented intervenors-  
34 respondent.

35  
36           SHERTON, Referee; KELLINGTON, Chief Referee; HOLSTUN,  
37 Referee, participated in the decision.

38  
39                   REMANDED                                   06/17/94

40  
41           You are entitled to judicial review of this Order.  
42 Judicial review is governed by the provisions of ORS  
43 197.850.

1 Opinion by Sherton.

2 **NATURE OF THE DECISION**

3 Petitioner appeals a county ordinance changing the  
4 zoning of approximately 276 acres from Farm/Forest Overlay  
5 (F/FO) to Farm/Forest (F/F).

6 **MOTION TO INTERVENE**

7 Vern Ratzlaff and Mary Jean Ratzlaff, the applicants  
8 below, move to intervene in this proceeding on the side of  
9 respondent. There is no opposition to the motion, and it is  
10 allowed.

11 **FACTS**

12 Relevant facts are set out in the petition for review  
13 as follows:

14 "The subject property consists of 4 contiguous  
15 parcels under single ownership and totals 276.36  
16 acres. Approximately two-thirds of the property  
17 is wooded and one-third is under agricultural use.  
18 There are no buildings or other structures on the  
19 property. The property in its entirety is under  
20 farm and forest tax deferrals. It is surrounded  
21 by woodlands and croplands, which are zoned [F/F]  
22 or [EFU]. Residences [on surrounding properties]  
23 are widely dispersed on large tracts except for  
24 the Hollows subdivision, which is located north of  
25 the subject property and which contains several 10  
26 to 30 acre parcels developed for rural residential  
27 [use] and small acreage farming.

28 "The subject property was originally part of a  
29 1000 acre parcel \* \* \* owned by the applicant[s].  
30 Over the past 15 years, that 1000 acres has been  
31 the subject of several partitions and lot line  
32 adjustments, and some portions have been  
33 transferred to different ownership. Those actions  
34 have resulted in confusion over the precise legal  
35 status and description of the subject property.

1 "The subject property was rezoned [F/FO] in 1988  
2 as a result of a Court of Appeals remand requiring  
3 several areas of the County to be rezoned. 1000  
4 Friends [of Oregon v. LCDC (Polk Co.)], 77 Or App  
5 590, 714 P2d 252 (1986)." (Record citations and  
6 footnote omitted.) Petition for Review 2-3.

7 **FIRST ASSIGNMENT OF ERROR**

8 The challenged decision states the proposed zone change  
9 must meet the following standards:

10 "(a) That the proposal conforms with the  
11 Comprehensive Plan text.

12 "(b) That the proposed zoning designation is an  
13 appropriate designation for the property.

14 "(c) That the purpose of the Comprehensive Plan  
15 and Zoning Ordinance will be carried out by  
16 approving the proposal at this time."  
17 Record 23.

18 Petitioner contends the challenged decision fails to satisfy  
19 each of these standards.

20 **A. Conformance with Comprehensive Plan Text**

21 The Polk County Comprehensive Plan (plan) explains the  
22 F/F and F/FO zones as follows:

23 "It is the specific intent of the Farm/Forest Plan  
24 designation to ensure that land use actions are  
25 consistent with definitions of agricultural and  
26 forest lands contained within the [plan]. The  
27 Farm/Forest Plan designation will be implemented  
28 through the use of the [F/F zone,] which includes  
29 area designated as [F/FO] on the zoning map.

30 "The Farm/Forest Zone Overlay is implemented by  
31 the [F/F] zone and the additional provisions of  
32 the EFU zone for land divisions and farm dwelling  
33 approvals. The [F/F] zone shall be applied to  
34 land where the parcelization pattern was  
35 predominantly less than 80 acres as of October 12,

1        1988. The [F/FO] zone shall be applied to land  
2        where the parcelization pattern is greater than 80  
3        acres located along the perimeter of the  
4        Farm/Forest [plan] designation, or in large block  
5        [sic] within the Farm/Forest [plan] designation."  
6        (Emphasis added.) Plan, pp. 78-79.

7        Petitioner contends the county's findings fail to  
8        demonstrate the parcelization pattern of the subject  
9        property "was predominantly less than 80 acres as of  
10       October 12, 1988," as required by the above emphasized  
11       portion of plan text. Petitioner argues that only one of  
12       the four parcels comprising the subject area is less than 80  
13       acres. According to petitioner, the subject property  
14       constitutes an area "where the parcelization pattern is  
15       greater than 80 acres" and, therefore, should remain zoned  
16       F/FO.

17       The challenged decision does not specifically address  
18       the plan text provision quoted above that limits application  
19       of the F/F zone to areas where "the parcelization pattern  
20       was predominantly less than 80 acres as of October 12,  
21       1988." However, the decision does provide the following  
22       with regard to the size of the parcels comprising the  
23       subject 276 acres:

24       "\* \* \* Of the four parcels, one parcel is split  
25       zoned [F/F] 54 acres and [F/FO] 58 acres. A  
26       second parcel is split zoned 34 acres [F/F] and 50  
27       acres [F/FO]. Of the remaining two parcels, one  
28       parcel is 70.30 acres and one parcel is 93.14  
29       acres. These parcels were created between 1970 and

1 1984 and are legally discrete parcels \* \* \*."<sup>1</sup>  
2 (Citations to County Survey omitted.) Record 21.

3 According to the above quoted finding, the property  
4 that is subject to the proposed zone change from F/FO to F/F  
5 is comprised of four parcels, 108, 84, 70.3 and 93.14 acres  
6 in size, created prior to October 12, 1988. We agree with  
7 petitioner that the findings fail to explain why parcels of  
8 this size constitute an area where the parcelization pattern  
9 is "predominantly less than 80 acres."

10 This subassignment of error is sustained.

11 **B. Appropriate Designation for the Property**

12 Petitioner contends the county's determination that  
13 this criterion is satisfied is based exclusively on the  
14 following finding:

15 " \* \* \* Based upon the previous testimony and  
16 evidence submitted by the applicant[s] regarding  
17 the use of the property and its surrounding  
18 development, the Board [of Commissioners] finds  
19 that the applicant[s have] met the burden of proof  
20 in providing evidence that [the] proposed zoning  
21 designation of [F/F] is an appropriate designation  
22 of the property." Record 23.

23 Petitioner argues this finding is inadequate because it does  
24 not identify the facts relied on by the county and does not  
25 explain how those facts establish that this criterion is  
26 met. We agree with petitioner.

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<sup>1</sup>According to this finding, the portions of the four parcels zoned F/FO total 271.44 acres, rather than 276.36 acres, as is stated elsewhere in the decision. There is no explanation for this apparent discrepancy.

1 This subassignment of error is sustained.

2 **C. Purpose of the Comprehensive Plan and Zoning**  
3 **Ordinance**

4 Petitioner contends the only county finding addressing  
5 this criterion is the following:

6 "The Board [of Commissioners] finds that the  
7 purposes of the Comprehensive Plan and Zoning  
8 Ordinance would be carried out by approving the  
9 proposal at this time, and the fact that the [F/F]  
10 zone would provide the opportunity for  
11 intensification of farm operations within the  
12 parcels while continuing the protection of  
13 agricultural goals within the area." Record 24.

14 Petitioner argues this finding is inadequate because it  
15 fails to explain how the proposed zone change from F/FO to  
16 F/F carries out the following purpose of the Farm/Forest  
17 plan designation:

18 "\* \* \* It is also intended that the addition and  
19 location of new structures and improvements will  
20 not pose limitations upon the existing farm and  
21 forest practices in the area \* \* \*." Plan, p. 78.

22 According to petitioner, the county's findings acknowledge  
23 that the subject property will be subject to additional  
24 parcelization if rezoned F/F, and that farm dwellings are  
25 permitted on F/F zoned parcels of 40 acres or more.  
26 Petitioner also argues there are several uses conditionally  
27 allowed in the F/F zone that could significantly impact  
28 existing farm and forest uses in the subject area.  
29 Petitioner contends the county's findings fail to address  
30 how creating the possibility of additional parcelization,  
31 with an attendant increase in development, carries out the

1 purpose of the Farm/Forest plan designation.

2 Petitioner next argues the county's findings are  
3 inadequate because they fail to demonstrate the proposed  
4 zone change carries out the purposes of the plan  
5 Agricultural Lands goals, which include "[t]o preserve and  
6 protect county agricultural lands." Plan, p. 23.  
7 Petitioner points out the plan defines "preserve" as "[t]o  
8 save from change or loss and reserve for a special purpose."  
9 Plan, Appendix C.

10 There is no dispute the subject property is designated  
11 Farm/Forest on the plan map and is agricultural land. We  
12 therefore agree with petitioner that this criterion requires  
13 the county to explain how the proposed zone change carries  
14 out the purpose of the Farm/Forest plan designation and the  
15 plan Agricultural goals. We also agree with petitioner that  
16 the county's findings fail to do this.

17 This subassignment of error is sustained.

18 The first assignment of error is sustained.

19 **SECOND ASSIGNMENT OF ERROR**

20 Petitioner contends the following findings are not  
21 supported by substantial evidence in the whole record:

22 "[The zone change] will not result in any  
23 appreciable increase in costs [of accepted farming  
24 practices] or alter the stability of the land use  
25 pattern in the area." Record 21.

26 "\* \* \* Development of the subject property under  
27 F/F zone regulations will not dramatically  
28 increase the existing level of impact of non-farm  
29 residences upon the agricultural uses in the area

1 of the subject [property]." Record 22.

2 Again, petitioner argues the change to the F/F zone will  
3 allow additional development of the subject property.  
4 Petitioner further argues there is no evidence in the record  
5 concerning the impacts of development of the subject  
6 property under the F/F zone on the subject property or  
7 adjoining EFU-zoned property.

8 Where petitioners contend a challenged decision is not  
9 supported by substantial evidence in the record, LUBA relies  
10 on the parties to provide it with citations to evidence in  
11 the record that supports their positions. Spiering v.  
12 Yamhill County, 25 Or LUBA 695, 717 (1993); see Eckis v.  
13 Linn County, 110 Or App 309, 313 821 P2d 1127 (1991) (LUBA  
14 is not required to search through the record looking for  
15 evidence). Here, no party cites any evidence in the record  
16 supporting the findings challenged by petitioner.

17 The second assignment of error is sustained.

18 The county's decision is remanded.