

BEFORE THE LAND USE BOARD OF APPEALS  
OF THE STATE OF OREGON

MICHAEL CANFIELD and SUSAN )  
CANFIELD, )  
Petitioners, )  
vs. )  
YAMHILL COUNTY, )  
Respondent, )  
and )  
TROY RECH and ALLISON LARIDON, )  
Intervenors-Respondent. )

LUBA No. 95-152

FINAL OPINION  
AND ORDER

Appeal from Yamhill County.

John Bridges, Newberg, filed the petition for review and argued on behalf of petitioners. With him on the brief was Brown, Tarlow & Berry.

John Pinkstaff, Assistant County Counsel, McMinnville, filed a response brief and argued on behalf of respondent.

Elliott C. Cummins and Carol J. Prause, McMinnville, filed a response brief on behalf of intervenors-respondent. With them on the brief was Cummins, Goodman, Fish & Peterson. Elliott C. Cummins argued on behalf of intervenors-respondent.

GUSTAFSON, Referee; LIVINGSTON, Chief Referee; HANNA, Referee, participated in the decision.

REMANDED 03/13/96

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

1 Opinion by Gustafson.

2 **NATURE OF THE DECISION**

3 Petitioners appeal the county's approval of conditional  
4 use permits for a dog and cat boarding kennel and a home  
5 occupation pet grooming facility.

6 **MOTION TO INTERVENE**

7 Troy Rech and Allison Laridon (intervenors) move to  
8 intervene on the side of respondent. There is no opposition  
9 to the motion, and it is allowed.

10 **FACTS**

11 Intervenors applied to the county for approval of  
12 conditional use permits in order to operate a dog and cat  
13 boarding kennel and a grooming facility on their property.  
14 The subject property is located in the AF-10 zone. The  
15 proposed kennel is listed as a conditional use in the AF-10  
16 zone. The proposed grooming facility is considered a home  
17 occupation; home occupations are also conditional uses in  
18 the AF-10 zone.

19 The subject property is located adjacent to Highway  
20 99W, a state highway, and has shared access with an adjacent  
21 residence onto Highway 99W. A hazelnut orchard adjoins the  
22 property to the west and north. In addition, all  
23 surrounding properties contain residences. As proposed, the  
24 kennel will be located approximately 200 feet from the  
25 nearest residence, to the south. Additional nearby land  
26 uses include a gun range, a rock crushing plant and an

1 exotic animal farm across Highway 99W.

2 At the close of the initial evidentiary hearing before  
3 the county planning commission, at petitioners' request the  
4 record was left open for seven days for the submission of  
5 additional written evidence. The hearing was then continued  
6 for seven days for the limited purpose of deliberations and  
7 decision after the close of the record. Prior to the close  
8 of the record, petitioners submitted additional written  
9 evidence, as well as a videotape.

10 At the continued hearing, planning commission members  
11 expressed reservations about the submission of the  
12 videotape, as going beyond the written evidence permitted.  
13 The planning commission declined to view the videotape  
14 during the hearing, but did not reject it. Following  
15 deliberations, the planning commission approved intervenors'  
16 application. Following the approval, one commissioner moved  
17 to exclude the videotape. However, the county counsel  
18 advised the commissioner that it was already in the record  
19 and could not be removed.

20 Petitioners appealed the planning commission's approval  
21 to the county board of commissioners. In their notice of  
22 appeal, petitioners stated they intended to introduce new  
23 evidence at the appeal hearing. Thereafter, the board of  
24 commissioners apparently held an informal staff briefing, at  
25 which a county planner advised the board of commissioners  
26 that petitioners intended to introduce new evidence at the

1 appeal hearing. According to the county, at that meeting  
2 the board instructed the planner to advise petitioners that  
3 the hearing would be held in accordance with the county's  
4 code, which states that appeal hearings are conducted on the  
5 record, unless the need for a de novo hearing is  
6 established. The record reflects that on May 26, 1996 the  
7 county planner sent petitioners a letter, which reflects  
8 that instruction. In addition, the official written notice  
9 of the appeal hearing stated that the public hearing before  
10 the commissioners would be on the record. According to  
11 petitioners, this deviates from the board of commissioner's  
12 historic practice of holding de novo hearings.

13 At the public hearing, petitioners objected to the  
14 hearing being on the record, and presented argument as to  
15 why the hearing should be de novo. The board of  
16 commissioners rejected the request. However, one of the  
17 commissioners stated he had viewed, but not listened to, the  
18 videotape, which was part of the record sent to the  
19 commissioners on appeal; and had visited the site on the  
20 morning of the hearing. That commissioner relayed to the  
21 other commissioners his observations from his site visit.  
22 At the close of the public hearing, the board of  
23 commissioners upheld the planning commission's approval.

24 This appeal followed.

25 **FIRST ASSIGNMENT OF ERROR**

26 Petitioners assert the planning commission violated ORS

1 197.763(6) by refusing to accept into the record the  
2 videotape offered by petitioners. According to petitioners,  
3 although the planning commission left the record open for  
4 submission of additional written evidence, under ORS  
5 197.763(6), petitioners were entitled to submit any type of  
6 new evidence, and the planning commission lacked authority  
7 to refuse other than written evidence.

8 This assignment of error is without merit because the  
9 factual premise is incorrect. The disputed videotape was  
10 before both the planning commission and the board of  
11 commissioners, and is part of the record before us.  
12 Petitioners made no apparent objection to the board of  
13 commissioners regarding the submission of the videotape, and  
14 did not object to the record of this appeal on the basis  
15 that the videotape was not part of the local record.<sup>1</sup>

16 The first assignment of error is denied.

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<sup>1</sup>Moreover, the challenged decision is the board of commissioners' approval of intervenor's application. Even if the planning commission refused to accept the videotape into the record, the issue of whether the planning commission had authority to restrict the submission of new evidence to only written evidence is not before us, absent a showing that any alleged error by the planning commission could not have been corrected on appeal to the board of commissioners. Jackman v. City of Tillamook, 29 Or LUBA 391 (1995). Petitioners do not allege that the board of commissioners failed to correct any alleged error of the planning commission and, in fact, assign no error to the board of commissioners' conduct with regard to the videotape. See Woodstock Neigh. Assoc. v. City of Portland, 28 Or LUBA 146, 150 (1994) (where a party has the opportunity to but does not object to a procedural error before the local government, that error cannot be assigned as grounds for remand or reversal in an appeal to LUBA.)

1 **SECOND ASSIGNMENT OF ERROR**

2 Petitioners assert "[t]he county consistently failed to  
3 properly notice hearings as required by state law and local  
4 ordinances."<sup>2</sup> In essence, petitioners argue that the  
5 written notices and oral statements at the commencement of  
6 both the planning commission and board of commissioners'  
7 hearings were contradictory, and because of their  
8 contradictory nature, the notices and statements failed to  
9 adequately provide notice of how the hearings would be  
10 conducted.

11 Petitioners assert that an oral statement at the  
12 commencement of both the planning commission and board of  
13 commissioners' hearings and a document that accompanied the  
14 notice of the commissioners' hearings provided a message  
15 that failure to raise an issue locally would preclude an  
16 appeal to LUBA on that issue. According to petitioners,  
17 this "suggests that a participant can submit evidence or  
18 raise issues at any point during the process at the local  
19 level." Petition for Review 13. Petitioners then assert  
20 that the written notice of the board of commissioners'  
21 hearing contradicts this information, by specifically  
22 stating that the public hearing before the board of  
23 commissioners would be confined to the record. According to

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<sup>2</sup>While petitioners assert that the county's various notices and/or statements also violated local ordinances, petitioners do not explain which ordinances are violated or otherwise substantiate this argument. We find no such violations.

1 petitioners, they "relied upon the reasonable reading of the  
2 notices and concluded that they would be entitled to present  
3 additional evidence when this matter was at the Board, still  
4 within the local level." Petition for Review 15.  
5 Petitioners appear to conclude that either separately or  
6 cumulatively the notices and statements violate ORS  
7 197.763(3)(j), which requires that the written notice  
8 "[i]nclude a general explanation of the requirements for  
9 submission of testimony and procedure for conduct of  
10 hearings."

11 As a threshold, petitioners assign error only to  
12 compliance with ORS 197.763(3)(j). That section does not  
13 address the oral statement required by ORS 197.763(4) (1993  
14 Edition) at the commencement of the local hearing.<sup>3</sup> A  
15 contradiction or ambiguity in the oral statements required  
16 by ORS 197.763(4) (1993 Edition) at the commencement of a  
17 local hearing does not establish a violation of ORS  
18 197.763(3)(j).

19 Moreover, petitioners have not established either a  
20 contradiction in the notices or that the hearing notices in  
21 any way violated ORS 197.763(3)(j). Rather, the essence of  
22 petitioners' argument is that they were confused by the  
23 written notice of the board of commissioners' hearing, as  
24 conflicting with previous notices, which they read to

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<sup>3</sup>ORS 197.763 was amended by the 1995 Oregon legislature. ORS 197.763(4)  
was recodified as ORS 197.763(5).

1 suggest they need not present all their evidence to the  
2 planning commission.

3         Petitioners do not explain which notices they relied  
4 upon, or at what point they relied upon those notices to  
5 conclude they would be able to raise new issues before the  
6 board of commissioners. In any event, petitioners have not  
7 established that, prior to the close of the record before  
8 the planning commission, they were induced by the notice of  
9 the planning commission hearing to understand they were not  
10 required to present all of their evidence prior to the close  
11 of that record. We find no violation of ORS 197.763(3)(j)  
12 in the planning commission's notice. Moreover, even if  
13 there had been some confusion in the planning commission's  
14 notice, the local code provision upon which the board of  
15 commissioner's notice was based existed prior to the  
16 planning commission's hearing. Thus, a reading of the  
17 provisions in the county's code relevant to the board of  
18 commissioners' scope of review would have provided  
19 petitioners accurate information regarding the conduct of  
20 the board of commissioner's hearing, and their need to  
21 present their entire case before the planning commission.

22         The notice of the appeal hearing accurately recited the  
23 county's code provision that appeal hearings before the  
24 board of commissioners are conducted on the record.  
25 Petitioners have not established that the substance of the  
26 county's notice violated ORS 197.763(3)(j).

1           The second assignment of error is denied.

2   **THIRD ASSIGNMENT OF ERROR**

3           Petitioners allege the county should be estopped from  
4 following Yamhill County Zoning Ordinance (YCZO) 1403.03 and  
5 1403.04, which provide that appeals from the planning  
6 commission to the board of commissioners will be heard on  
7 the record, unless a party can establish a need for a de  
8 novo hearing.<sup>4</sup> Petitioners further argue that the board of  
9 commissioners' conduct deprived petitioners of federal and

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<sup>4</sup>YCZO 1403.03 states, in part:

"Unless otherwise provided by the Board under subsection  
1403.04, the review of the decision of the Director, Commission  
or Hearings Office by the Board shall be confined to the record  
of the proceeding \* \* \*."

YCZO §1403.04 states:

"The Board may, at its option, whether or not upon a motion of  
a party, hold a de novo hearing or admit additional testimony  
and other evidence with or without a de novo hearing, if it is  
satisfied that the testimony or other evidence could not have  
been presented upon initial hearing and action. In deciding  
such admission, the Board shall consider:

- "A. Prejudice to parties;
- "B. Convenience of location and evidence at the time of  
the initial hearing;
- "C. Surprise to opposing parties;
- "D. When notice was given to other parties as to the  
attempt to admit; and
- "E. The competency, relevancy, and materiality of the  
proposed testimony and other evidence."

1 state due process rights to be heard.<sup>5</sup> Finally, petitioners  
2 argue they made an adequate showing under YCZO 1403.04 that  
3 they should be entitled to a de novo hearing or at least be  
4 entitled to submit additional traffic-related information  
5 into the record, and that the board of commissioners erred  
6 in denying their request.

7 With regard to petitioners' estoppel argument,  
8 petitioners argue the county has historically ignored YCZO  
9 1403.03 and 1403.04, and in fact a county employee informed  
10 petitioners that the hearing would be de novo. This  
11 argument is without merit. A local government is not  
12 estopped from applying an acknowledged code provision based  
13 on a representation by a county employee that the county has  
14 not consistently applied the provision in the past. Kampii  
15 v. City of Salem, 21 Or LUBA 498 (1991).

16 Petitioners' due process argument is that the county  
17 deprived them of their full right to be heard. Petitioners  
18 allege that the county made its decision to hold the hearing  
19 on the record at an earlier, informal meeting, to which  
20 petitioners did not have notice, and that the board of  
21 commissioners' conduct in allowing petitioners' attorney to  
22 argue why the hearing should be held de novo, after the  
23 decision had already been made only "compounded this farce."

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<sup>5</sup>Petitioners argue the county's conduct violated both federal and state constitutional due process rights to be heard. Petitioners do not establish a state constitutional due process right on which to base this argument, and we find none.

1 Petition for Review 19.

2 The parties agree that prior to the board of  
3 commissioners' appeal hearing on the challenged decision,  
4 the board of commissioners held a staff briefing on May 26,  
5 1995, at which it instructed staff to inform petitioners  
6 that the appeal hearing would be in accordance with YCZO  
7 1403.03 and 1403.04.<sup>6</sup> However, petitioners cite to no  
8 evidence that the board of commissioners made a decision at  
9 its May 26, 1995 staff briefing to deny petitioners the  
10 opportunity to comply with YCZO 1403.04 during the appeal  
11 hearing. We find no violation of petitioners' federal due  
12 process right to be heard in either the board of  
13 commissioners conducting a staff briefing, or in instructing  
14 its staff to inform petitioners that it would follow its  
15 relevant code provisions in the conduct of the appeal  
16 hearing.

17 Finally, with regard to petitioners' argument that they  
18 made an adequate showing under YCZO 1403.04 for a de novo  
19 hearing, the board of commissioners made the following  
20 finding:

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<sup>6</sup>Pursuant to that instruction, on May 26, 1995 a county planner sent a letter to petitioners, which stated, in relevant part:

"Pursuant to Sections 1403.03 and 1403.04 of the Yamhill County Zoning Ordinance, the appeal hearing will be on the record unless the Board determines that additional testimony or other evidence could not have been presented at the Planning Commission hearings. I am attaching a copy of Section 1403 for your review." Record 38.

1 "This is an appeal of a Planning Commission  
2 decision which approved the application for a  
3 conditional use permit and a home occupation. The  
4 Board is required to review the decision of the  
5 Planning Commission on the record pursuant to YCZO  
6 § 1403.03. The review on the record was  
7 challenged by opponents Michael and Canfield [sic]  
8 who sought to have the Board hold a de novo  
9 hearing pursuant to YCZO § 1403.04.

10 "In order to hold a de novo hearing, YCZO §  
11 1403.04 requires that the Board must be satisfied  
12 that the testimony and other evidence could not  
13 have been presented upon initial hearing and  
14 action, based on certain factors (namely,  
15 prejudice of the parties, convenience of locating  
16 evidence, surprise, when notice was given of the  
17 attempt to admit, and the competency, relevancy  
18 and materiality of the evidence) The Board heard  
19 arguments from attorneys for applicants and  
20 opponents and being fully advised, finds that  
21 opponents failed to demonstrate, by substantial  
22 evidence in the record, that the proffered  
23 evidence in this matter could not have been  
24 presented upon the initial hearing before the  
25 planning commission. Therefore, opponents'  
26 request for a de novo hearing was denied." Record  
27 6.

28 In their petition for review, petitioners' attorney  
29 addresses each of the five factors of YCZO 1403.04 to  
30 conclude that petitioners made an "adequate showing" that  
31 they satisfied each of these factors. However, petitioners  
32 have not established, and the record does not reflect, that  
33 petitioners addressed the factors necessary to compliance  
34 with YCZO 1403.04 before the board of commissioners. A  
35 recitation to this board of how those factors could be  
36 satisfied is insufficient to establish that the county erred  
37 in finding that petitioners did not establish a basis for a

1 local de novo appeal hearing under YCZO 1403.04.

2 Petitioners have failed to establish any error by the  
3 county in either its interpretation of YCZO 1403.04 or its  
4 findings that petitioners failed to establish compliance  
5 with that section.

6 The third assignment of error is denied.

7 **FOURTH ASSIGNMENT OF ERROR**

8 Petitioners contend the county acted beyond its  
9 authority in granting a home occupation permit, since  
10 intervenors applied only for a conditional use permit for a  
11 kennel.

12 The county and intervenors respond that, not only did  
13 petitioners waive their right to raise this issue under ORS  
14 197.763(1) by failing to raise it below, but also that as a  
15 factual matter, petitioners are incorrect. Intervenors'  
16 application was a joint application for both a conditional  
17 use permit and a home occupation permit.

18 With regard to the assertion that petitioners waived  
19 their right to raise this issue, petitioners respond that  
20 the county violated requirements of ORS 197.763 in the  
21 conduct of its local proceedings and, therefore, petitioners  
22 are not precluded from raising new issues on appeal.

23 Petitioners have not established any violations of ORS  
24 197.763 which would relieve petitioners of their obligation  
25 to raise issues for the first time before the county.  
26 Petitioners have not established that they raised this issue

1 below, and cannot raise it here for the first time.<sup>7</sup>

2 The fourth assignment of error is denied.

3 **FIFTH ASSIGNMENT OF ERROR**

4 Petitioners contend the county's approval of the  
5 conditional use permit is not supported by substantial  
6 evidence in the record. Specifically, petitioners assert  
7 first there is not substantial evidence in the record "that  
8 the noise created by the proposed kennel will not  
9 substantially limit or impair the character of the  
10 surrounding area." Petition for Review 22. Second,  
11 petitioners assert the county's finding that the proposed  
12 use is appropriate considering the adequacy of public  
13 facilities and services lacks substantial evidence.

14 The two criteria for which petitioners allege a lack of  
15 substantial evidence are YCZO 1202.02(D) and (E), which  
16 require that the applicant establish:

17 "D. The proposed use will not alter the character  
18 of the surrounding area in a manner which  
19 substantially limits, impairs, or prevents  
20 the use of surrounding properties for the  
21 permitted uses listed in the underlying  
22 zoning district.

23 "E. The proposed use is appropriate, considering  
24 the adequacy of the public facilities and

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<sup>7</sup>Even if petitioners had raised this issue below or could raise it here for the first time, as a factual matter the record reflects that intervenors filed a joint application for a conditional use permit and a home occupation permit. We find no restriction in the county's code on intervenors' ability to file a joint application, or on the county's authority to evaluate these applications jointly.

1 services existing or planned for the area  
2 affected[.] \* \* \*

3 The county's findings explain the basis upon which it found  
4 that the proposed kennel complies with both of these  
5 criteria. Both the county and intervenor cite to additional  
6 evidence in the record that supports the county's  
7 conclusions.

8 As a review body, we are authorized to reverse or  
9 remand the challenged decision if it is "not supported by  
10 substantial evidence in the whole record."  
11 ORS 197.835(7)(a)(C). Substantial evidence is evidence a  
12 reasonable person would rely on in reaching a decision.  
13 City of Portland v. Bureau of Labor and Ind., 298 Or 104,  
14 119, 690 P2d 475 (1984); Bay v. State Board of Education,  
15 233 Or 601, 605, 378 P2d 558 (1963); Carsey v. Deschutes  
16 County, 21 Or LUBA 118, aff'd 108 Or App 339 (1991). In  
17 reviewing the evidence, however, we may not substitute our  
18 judgment for that of the local decision maker. Rather, we  
19 must consider and weigh all the evidence in the record to  
20 which we are directed, and determine whether, based on that  
21 evidence, the local decision maker's conclusion is supported  
22 by substantial evidence. Younger v. City of Portland, 305  
23 Or 346, 358-60, 752 P2d 262 (1988); 1000 Friends of Oregon  
24 v. Marion County, 116 Or App 584, 588, 842 P2d 441 (1992).  
25 If there is substantial evidence in the whole record to  
26 support the city's decision, LUBA will defer to it,  
27 notwithstanding that reasonable people could draw different

1 conclusions from the evidence. Adler v. City of Portland,  
2 25 Or LUBA 546, 554 (1993). Where the evidence is  
3 conflicting, if a reasonable person could reach the decision  
4 the city made, in view of all the evidence in the record,  
5 LUBA will defer to the city's choice between conflicting  
6 evidence. Mazeski v. Wasco County, 28 Or LUBA 178, 184  
7 (1994), aff'd 133 Or App 258, 890 P2d 455 (1995); Bottum v.  
8 Union County, 26 Or LUBA 407, 412 (1994); McInnis v. City of  
9 Portland, 25 Or LUBA 376, 385 (1993).

10 Petitioners advance several arguments as to why  
11 petitioners believe the evidence upon which the county based  
12 its conclusion is either inadequate or insubstantial.  
13 However, while petitioners assert there is evidence in the  
14 record that conflicts with the county's findings,  
15 petitioners refer us to no evidence in the record that  
16 either refutes or undermines the evidence upon which the  
17 county based its conclusion. Without references to evidence  
18 in the record which so undermines the evidence upon which  
19 the county based its conclusion as to compel a conclusion  
20 that a reasonable person could not have reached the county's  
21 conclusion, we cannot find that the county's findings lack  
22 substantial evidence.

23 The fifth assignment of error is denied.

24 **SIXTH ASSIGNMENT OF ERROR**

25 Petitioners contend the county's approval of a home  
26 occupation conditional use permit is not supported by

1 substantial evidence in the record. Specifically,  
2 petitioners argue that the approval lacks substantial  
3 evidence to establish compliance with specified provisions  
4 of YCZO 1004.01. YCZO 1004.01 requires, in relevant part:

5 "The following standards and limitations shall  
6 apply to home occupations:

7 \* \* \* \* \*

8 "D. The home occupation will not interfere with  
9 existing uses on nearby land or with other  
10 uses permitted in the zone in which the  
11 property is located.

12 "E. No more than one (1) home occupation shall be  
13 permitted in conjunction with any dwelling or  
14 parcel. Activities which are substantially  
15 different in nature shall be considered  
16 separate home occupations.

17 \* \* \* \* \*

18 "I. A home occupation shall not generate noise,  
19 vibration, glare, fumes, odor, electrical  
20 interference or other disturbance beyond what  
21 normally occurs in the applicable zoning  
22 district.

23 "J. A home occupation shall not generate traffic  
24 or parking beyond what normally occurs in the  
25 applicable zoning district.

26 "K. Off-street parking spaces shall be provided  
27 for clients or patrons up to a maximum of  
28 three (3) spaces and shall not be located in  
29 any required yard."

30 **A. Noise**

31 Petitioners first argue there is not adequate evidence  
32 in the record to address the impact of noise on surrounding  
33 properties to satisfy YCZO 1004(D) and (I). According to

1 petitioners, while YCZO 1004(D) essentially mirrors the  
2 requirement for conditional uses under YCZO 1202, YCZO  
3 1004(I) is "more strenuous," and "requires that there be no  
4 interference with the uses that commonly occur in the zone  
5 due to noise." Petition for Review 26 (Emphasis in  
6 original.)

7 Petitioners have misread the requirement of YCZO  
8 1004(I). That standard does not preclude any noise  
9 interference with uses in the zone, Rather, it requires  
10 that a home occupation not generate noise "beyond what  
11 normally occurs in the applicable zoning district."  
12 Accordingly, the county was not, as petitioners urge,  
13 obligated to find that there would be no noise impact from  
14 the proposed use.

15 Petitioners' complaint is that the county has not  
16 adequately addressed petitioners' concerns regarding noise.  
17 Petitioners also argue that "there is no way that this noise  
18 [from the grooming facility] will not [have an] impact on  
19 the surrounding landowners as they attempt to enjoy the  
20 peacefulness and solitude of their rural properties."  
21 Petition for Review 27. Petitioners do not, however, cite  
22 to evidence in the record to undermine or refute the  
23 county's findings, or the factual evidence upon which they  
24 are based.

25 The county found that the proposed grooming facility  
26 will not generate noise beyond that which is typical in the

1 surrounding AF-10 zone. The county and intervenors have  
2 cited to specific evidence in the record to support that  
3 conclusion, including evidence of several surrounding  
4 allowed uses, and the noise generated by those uses.  
5 Without reference to evidence in the record that so  
6 undermines or refutes the county's findings to compel an  
7 opposite result, we cannot conclude that the county's  
8 findings lack substantial evidence.

9 This subassignment of error is denied.

10 **b. Number of Home Occupations**

11 Petitioners next argue that there is a lack of  
12 substantial evidence to support the county's conclusion that  
13 the requested home occupation satisfies YCZO 1004.01(E),  
14 which requires that "no more than one (1) home occupation  
15 shall be permitted in conjunction with any dwelling or  
16 parcel." According to petitioners, either the boarding  
17 kennel and the grooming facility are separate home  
18 occupations, which are not allowed under YCZO 1004.01(E) or  
19 the grooming operation is part of the proposed kennel, and  
20 is not allowed as a conditional use in the AF-10 zone.

21 While petitioners characterize this argument in terms  
22 of substantial evidence, what petitioners actually argue is  
23 that the county misinterpreted its code in permitting both  
24 the conditional use permit for the boarding kennel and the  
25 home occupation conditional use permit for a grooming  
26 facility.

1           The proposed grooming facility is allowed in the AF-10  
2 zone, as a home occupation; home occupations are allowed as  
3 conditional uses. The proposed kennel is also a conditional  
4 use; it is not a home occupation. We find no error in the  
5 county's interpretation of its code in finding that the  
6 proposed grooming facility is the only home occupation  
7 proposed for this site.

8           This subassignment of error is denied.

9           **c.    Parking Spaces**

10          Petitioners next argue there is not substantial  
11 evidence to support the conclusion of compliance with YCZO  
12 1004.01(K), which requires provision of off-street parking  
13 spaces "up to a maximum of three (3) spaces." Petitioners  
14 argue that the county found that while the grooming facility  
15 would have only three spaces, "the county indicates that if  
16 more are needed, parking spaces provided for the kennel can  
17 be used." Petition for Review 28. Petitioners do not cite  
18 to the findings or the record for support for this  
19 assertion, nor do can we find any. Rather, what the county  
20 found was:

21           "Off-street parking spaces will be provided for  
22 clients or patrons up to a maximum of three (3)  
23 spaces and will not be located in any required  
24 yard. There is adequate parking space available.  
25 While the grooming facility is limited to three  
26 spaces maximum, additional parking area may be  
27 made available for the kennel, if approved. \* \* \*"  
28 Record 13.

29          This statement merely acknowledges that the proposed

1 kennel may have more parking spaces than allowed for the  
2 grooming facility. It does not find that the proposed  
3 grooming facility may have more spaces than allowed by YCZO  
4 1004.01(K).

5 This subassignment of error is denied.

6 **d. Traffic**

7 Finally, petitioners argue there is a lack of  
8 substantial evidence to support the county's conclusion of  
9 compliance with YCZO 1004.01(J), which requires that "[a]  
10 home occupation shall not generate traffic or parking beyond  
11 what normally occurs in the applicable zoning district."  
12 Petitioners argue:

13 "Even without the cumulative effect of having a  
14 kennel with this grooming facility, it is obvious  
15 that the grooming facility will generate traffic  
16 beyond that normally occurring in this zone.  
17 Prior to this application, the subject property  
18 was a residence.

19 \* \* \* \* \*

20 "The County fails to present any evidence to  
21 support their finding that the home occupation  
22 will not generate traffic or parking beyond which  
23 normally occurs in the AF10 zoning district."  
24 Petition for Review 28-29.

25 The county's finding of compliance with YCZO 1004.01(J)  
26 states:

27 "The home occupation will not generate traffic or  
28 parking beyond what normally occurs in the AF-10  
29 zoning district. It will be accessible from  
30 Highway 99, which is a heavily traveled highway.  
31 Record 13.

32 As intervenors correctly note, petitioners' comparison

1 of the traffic generated by the proposed facility to the  
2 traffic generated by the previous residence is inapposite.  
3 The standard requires a comparison of the traffic or parking  
4 generated by the proposed use to the traffic or parking that  
5 normally occurs in the AF-10 district.<sup>8</sup>

6 The problem with the county's findings, however, is  
7 that there is no such comparison. There is no factual  
8 support in the county's findings to establish the basis upon  
9 which the county reached its conclusion. In addition, the  
10 only evidence in the record cited by either the county or  
11 intervenor to support the county's conclusion is a summary  
12 statement in the staff report that [t]he grooming facility  
13 will not generate a greater amount of traffic than what  
14 normally occurs along Highway 99." Record 83. This  
15 statement does not factually substantiate compliance with  
16 the requirement of YCZO 1004.01(J).

17 This subassignment of error is sustained.

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<sup>8</sup>YCZO 501.02 describes the permitted uses in the AF-10 zone to include:

- "A. Farm uses, as follows: The current employment of land, including that portion of such lands under building supporting accepted farming practices, for the raising, harvesting and selling the crops; or for the feeding, breeding, management and sale off, or the production of livestock, poultry, furbearing animals, or honey bees; or for dairying and the sale of dairy products and other agricultural or horticultural use of animal husbandry; or for any combination thereof. Farm use includes the preparation, storage and marketing of the products raised on such land for man's use and animal use;

"\* \* \* \* \*"

1           The sixth assignment of error is sustained, in part.

2           The county's decision is remanded in order for the  
3 county to determine whether and how the requested  
4 conditional use permit for the proposed home occupation  
5 complies with YCZO 1004.01(J).