BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

LAWRENCE W. DeBATES, Petitioner, vs. YAMHILL COUNTY, Respondent, and FRANK W. WALKER, Intervenor-Respondent.	LUBA No. 96-100 FINAL OPINION AND ORDER

Appeal from Yamhill County.

Charles Swindells, Portland, filed the petition for review and argued on behalf of petitioner.

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

Michael C. Robinson and Peter D. Mostow, Portland, filed a response brief and argued on behalf of intervenor-respondent.

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

REMANDED 01/03/97

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

Opinion by Livingston.

NATURE OF THE DECISION

Petitioner appeals a decision of the board of county commissioners approving a lot-of-record dwelling.

MOTION TO INTERVENE

Frank W. Walker (intervenor), the applicant below, moves to intervene on the side of the respondent. There is no opposition to the motion, and it is allowed.

FACTS

On January 8, 1996, intervenor, acting on behalf of Perry and Belva Johnson (the Johnsons), applied for a lot-of-record dwelling on a five-acre lot (lot 162) in the county's exclusive farm use (EF-40) zone. Lot 162 is part of the Eola Walnut Groves subdivision, platted in 1908, which includes 230 lots, almost all of which are five acres in size. Sixty-five of the lots contain residences, including the majority of the lots abutting the subject property. The primary agricultural use in the area is orchards, and there is a large forested area to the north. Lot 162 includes soils which qualify it as "high-value farmland," as that term is defined in ORS 215.710.

From 1972 to 1995, the Johnsons owned a tract consisting of lots 162, 140 (five acres) and 163 (1.48 acres). In November, 1995 they conveyed lots 140 and 163 to separate third parties for nominal consideration. As a result, there were no lots owned by the Johnsons adjacent to

lot 162 at the time of the application for a lot-of-record dwelling on lot 162.

After the county planning director approved the application, petitioner appealed to the county board of commissioners, which affirmed the planning director's decision. This appeal to LUBA followed.

FIRST ASSIGNMENT OF ERROR

A. ORS 215.705[1]

Petitioner objects to what he views as the county's circumvention of the statutory scheme limiting lot-of-record dwellings. Petitioner contends the approval of a lot-of-record dwelling on lot 162 violates ORS 215.705(1), which provides, in relevant part:

> "A governing body of a county or its designate may allow the establishment of a single-family dwelling on a lot or parcel located within a farm or forest zone as set forth in this section and ORS 215.710, 215.720, 215.740 and 215.750 after notifying the county assessor that the governing body intends to allow the dwelling. A dwelling under this section may be allowed if:
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> "(a) The lot or parcel on which the dwelling will be sited was lawfully created and was acquired by the present owner:
>
> "(A) Prior to January 1, 1985; or

[1]The challenged decision applies Yamhill County Zoning Ordinance (YCZO) 403.03(G) rather than ORS 215.705. However, since YCZO 403.03(G) is a compilation of the relevant criteria in ORS 215.705(1) and (3), the parties discuss the statute and not the ordinance. We do as well. We note that the scope of our review is not subject to the limitations stated in Clark v. Jackson County, 313 Or 508, 836 P2d 710 (1992), and ORS 197.829(1). Forster v. Polk County, 115 Or App 475, 478, 839 P2d 241 (1992).

"(B) By devise or by intestate succession from a person who acquired the lot or parcel prior to January 1, 1985.

"(b) The tract on which the dwelling will be sited does not include a dwelling.[2]

"(c) The proposed dwelling is not prohibited by, and will comply with, the requirements of the acknowledged comprehensive plan and land use regulations and other provisions of law.

"(d) The lot or parcel on which the dwelling will be sited, if zoned for farm use, is not on that high-value farmland described in ORS 215.710 except as provided in subsections (2) and (3) of this section.[3]

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[2]ORS 215.010(2) and OAR 660-33-020(10) define "tract" as "one or more contiguous lots or parcels under the same ownership."

[3]Because the proposed dwelling would be sited on high-value farmland, it must meet a perimeter test, as described in ORS 215.705(3), which provides:

> "Notwithstanding the requirements of subsection (1)(d) of this section, a single-family dwelling not in conjunction with farm use may be sited on high-value farmland if:
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> "(a) It meets the other requirements of ORS 215.705 to 215.750.
>
> "(b) The tract on which the dwelling will be sited is:
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> "(A) Identified in ORS 215.710 (3) or (4);
>
> "(B) Not protected under ORS 215.710 (1); and
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> "(C) Twenty-one acres or less in size.
>
> "(c) (A) The tract is bordered on at least 67 percent of its perimeter by tracts that are smaller than 21 acres, and at least two such tracts had dwellings on them on January 1, 1993; or
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> "(B) The tract is bordered on at least 25 percent of its perimeter by tracts that are smaller than 21 acres, and at least four dwellings existed on January 1, 1993, within one-quarter mile of the center of the subject tract. Up to two of the four dwellings may

"* * * * *

"(g) When the lot or parcel on which the dwelling will be sited is part of a tract, the remaining portions of the tract are consolidated into a single lot or parcel when the dwelling is allowed."

The requirement stated in ORS 215.705(1)(b) that the tract on which a proposed lot-of-record dwelling is to be sited not include a dwelling applies to dwellings approvable under ORS 215.705(3). ORS 215.705(3)(a). This requirement and the consolidation requirement in ORS 215.705(1)(g) operate to prohibit approval of a lot-of-record dwelling unless (1) the tract of which the lot is a part contains no dwellings; and (2) all lots within the tract are consolidated at the time of approval, thereby precluding a second lot-of-record dwelling on the tract. ORS 215.705(1)(a) establishes January 1, 1985 as the date by which a lot which is to be the site of a lot-of-record dwelling must have been lawfully created and acquired by either the present owner or a previous owner from whom the present owner acquired the lot by devise or intestate succession.[4] There is no dispute that lot 162 was lawfully

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lie within the urban growth boundary, but only if the subject tract abuts an urban growth boundary."

[4]ORS 215.705(6) contains a broad definition of "owner" that applies to lot-of-record dwellings:

"For purposes of subsection (1)(a) of this section, “owner” includes the wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle,

created and was acquired by its present owners prior to January 1, 1985.

Petitioner notes that the consolidation requirement in ORS 215.705(1)(g) will be ineffective in halting a proliferation of lot-of-record dwellings if the requirement can be avoided simply by breaking up a tract before, rather than after, applying for a lot-of-record dwelling on one of the lots included in the tract. Petitioner maintains that permitting tract divisions without somehow limiting the number of lot-of-record dwellings on the lots included in the tract will frustrate the policy, stated in ORS 215.700(2), to "[l]imit the future division of and the siting of dwellings upon the state's more productive resource land."

OAR Chapter 660, Division 33

OAR 660-33-020 states additional definitions for purposes of implementing the requirements for agricultural land. OAR 660-33-020(4) defines "Date of Creation and Existence" as follows:

> "When a lot, parcel or tract is reconfigured pursuant to applicable law after November 4, 1993,[5] the effect of which is to qualify a lot, parcel or tract for the siting of a dwelling, the date of the reconfiguration is the date of

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> niece, nephew, stepparent, stepchild, grandparent or grandchild of the owner or a business entity owned by any one or combination of these family members."

[5]November 4, 1993 is the date the lot-of-record provisions in ORS 197.705 became effective.

> creation or existence. Reconfigured means any change in the boundary of the lot, parcel or tract."

Petitioner contends that OAR 660-33-020(4) operates to change the date of creation or existence of lot 162 for purposes of ORS 215.705 and OAR 660-33-130(3), the rule that directly implements ORS 215.705. Petitioner maintains that when lots 140 and 163 were conveyed to third parties in November 1995, the boundary of the tract that had included lots 140, 162 and 163 changed. Petitioner contends that under OAR 660-33-020(4), the "date of creation or existence" of all three lots for purposes of ORS 197.705 must be changed from 1972 to November 1995, because the reconfiguration of the tract had the effect of qualifying one or more of the three lots for a dwelling.[6]

The county and intervenor (respondents) respond that OAR 660-33-020(4) does not apply to the application for a lot-of-record dwelling on lot 162, because the reconfiguration of the tract did not qualify lot 162 for a dwelling: lot 162 was already qualified for a dwelling. They note that the boundaries of lot 162 were not changed by the sales of lots 140 and 163, and therefore, under OAR 660-

[6]This contention is based on the surmise that one or more of the transferees of lots 140 and 163 are related to the Johnsons in such a way that the transferees may be considered owners under ORS 215.705(6) and thus entitled to their own lot-of-record dwellings. Because the record is insufficient to permit us to confirm or reject petitioner's surmise, we are unable to address arguments based on those applications.

33-020(4), the date of creation or existence of lot 162 was not changed either. Finally, they maintain that petitioner's interpretation of OAR 660-33-020(4), as it involves the interrelationship between the date of creation or existence of lots, parcels and tracts, conflicts with ORS 215.705, because under petitioner's interpretation, the sale of any part of a tract would disqualify the entire tract from the siting of even one dwelling, and a requirement not found in the statute is added by the rule.[7]

C. Discussion

We start with respondents' last argument, and examine whether OAR 660-33-020(4) could have the meaning petitioner advocates without violating ORS 215.705. As respondents point out, agency rule-making authority is subject to specific limitations. An agency cannot adopt rules that are inconsistent with the applicable statute. ORS 183.400(4)(b). ORS 215.304(3) restates this maxim specifically with respect to the Land Conservation and Development Commission (LCDC) and ORS 215.705.[8]

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[7]Respondents make a supplemental argument that restricting the construction of dwellings on lots of record in reliance on petitioner's interpretation of OAR 660-33-020(4) would violate ORS 92.017, which provides that "a lot or parcel lawfully created shall remain a discrete lot or parcel." Because petitioner's interpretation of ORS 215.705, if correct, would create an exception to ORS 92.017 based on ORS 215.705, we reject respondents' argument.

[8]ORS 215.304(3) provides:

The petition for review does not squarely address the issue of LCDC's authority to adopt a rule that requires what petitioner contends OAR 660-33-020(4) requires when read together with ORS 215.705 and OAR 660-33-130(3). However, at oral argument, petitioner relied on Meltebeke v. Bureau of Labor and Industries, 322 Or 132, 140-42, 903 P2d 351 (1995), which examines "the scope of a broad delegation to an administrative agency for rulemaking." Id. at 142 n12. We understand petitioner to contend certain statutes (perhaps ORS 197.040 and ORS 197.245, which generally authorize LCDC to adopt and amend goals and rules to carry out ORS chapters 195, 196 and 197) provide a broad delegation of the sort described in Meltebeke. See Springfield Education Assn. v. School Dist., 290 Or 217, 223, 621 P2d 547 (1980). See also Newcomer v. Clackamas County, 94 Or App 33, 37, 764 P2d 927 (1988) (LCDC may refine and adopt consistent supplements to an adjudicative standard); DLCD v. Polk County, ___ Or LUBA ___ (LUBA No. 96-036, September 10, 1996).

Respondents argue in essence that ORS 215.705 is sufficiently precise and comprehensive that it leaves no

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"Any portion of a rule inconsistent with the provisions of ORS 197.247 (1991 Edition), 215.213, 215.214 (1991 Edition), 215.288 (1991 Edition), 215.317, 215.327 and 215.337 (1991 Edition) or 215.705 to 215.780 on March 1, 1994:

"(a) Shall not be implemented or enforced; and

"(b) Has no legal effect."

interstices to be filled by LCDC rules. Respondents rely on the approach taken by the Court of Appeals in Lane County v. LCDC, 138 Or App 635, 910 P2d 414, on reconsideration 140 Or App 368, ___ P2d ___, rev allowed 324 Or 305 (1996). Lane County holds that certain challenged provisions of OAR 660-33-120, 660-33-130, and 660-33-135 are invalid because of inconsistencies with ORS 215.213. As the Court of Appeals explained, the challenged provisions are invalid because "they flatly prohibit what the legislature has * * * permitted." 138 Or App at 644.

We agree with respondents that ORS 215.705(1) and (3) precisely state comprehensive criteria that govern when a lot-of-record dwelling may be allowed on a lot such as lot 162. OAR 660-33-020(4) cannot be interpreted to prohibit what the statute otherwise allows. ORS 215.705(1) states specifically that it is the "governing body of a county" (not LCDC) which "may allow" a lot-of-record dwelling. While ORS 215.705(5) allows counties considerable discretion in imposing additional restrictions on permitting lot-of-record dwellings, petitioner does not contend the county has done so. The challenged decision finds the proposed dwelling is not prohibited by the county's comprehensive plan and the YCZO. Record 5. Petitioner does not challenge that finding in this assignment of error.

The tract comprising lots 140, 162 and 163 was "reconfigured," as the term is used in OAR 660-33-020(4),

when lots 140 and 162 were transferred in November 1995, because the boundary of the tract was changed. However, the date of creation or existence of the tract has no significance in this case. ORS 215.705 mentions only the date of creation or existence of the lot or parcel. Lot 162 was lawfully created and acquired by its present owner prior to January 1, 1985. At the time of application, it did not include a dwelling. It therefore met the threshold requirements stated in ORS 215.705(1)(a) and (b).[9]

Moreover, we agree with respondents that ORS 215.705 cannot be interpreted or supplemented by agency rule to provide that the reconfiguration of the tract through the sale of one or more lots extinguishes the right to build a dwelling on at least one of the lots of record within the original tract. Yet that is what petitioner's suggested

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[9]We agree with petitioner that by failing to require that a tract proposed for a lot-of-record dwelling have been created or established and acquired by the owner by a date certain, ORS 215.705 facilitates avoidance of the consolidation requirement stated in ORS 215.705(1)(g) and, in so doing, may frustrate the policy stated in ORS 215.700. However, the Court of Appeals has described that policy broadly as "to authorize dwellings in resource zones in certain circumstances where they could not previously have been allowed." Craven v. Jackson County, 135 Or App 250, 255, 898 P2d 809, rev den 321 Or 512 (1995). ORS 215.705(1) and (3) implement the policy in ORS 215.700, and what they demand (or don't demand) is not ambiguous. If more is required to implement the policy, it is up to the legislature to amend the implementing statute. See Craven; Younger v. Jackson County, ___ Or LUBA ___ (LUBA No. 96-031, November 12, 1996), slip op 7; Parsons v. Clackamas County, ___ Or LUBA ___ (LUBA Nos. 96-039/040/041, October 30, 1996), slip op 8.

Because we find ORS 215.705 to be unambiguous, we do not reach the legislative history discussed in the briefs. See PGE v. Bureau of Labor and Industries, 317 Or 606, 611, 859 P2d 1143 (1993)

interpretation of OAR 660-33-020(4) would require.[10]

The first assignment of error is denied.

SECOND ASSIGNMENT OF ERROR

Petitioner contends the county did not apply a mandatory policy (hazard policy) found at Yamhill County Comprehensive Plan (YCCP) Section 1 B.1.c., which states:

> "All proposed rural area development and facilities:
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> "* * * * *
>
> "2) Shall not be located in any natural hazard area, such as a floodplain or area of geologic hazard, steep slope, severe drainage problems or soil limitations for building or sub-surface sewage disposal, if relevant;
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> "* * * * *"

Petitioner points out that one criterion for approval of a lot-of-record dwelling, stated in YCZO 402.03(G)(4), is that

> "[t]he [lot-of-record] dwelling is not prohibited by, and complies with the Comprehensive Plan and other provisions of this ordinance and other provisions of law, including but not limited to floodplain, greenway, and airport overlay restrictions."

A. Application of Blondeau

Relying on our opinion in Blondeau v. Clackamas County, 29 Or LUBA 115 (1995), respondents contend that application

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[10]The petition for review states that simultaneous applications were made for lot-of-record dwellings on lots 140 and 163. However, those applications are not in the record, and we do not decide here how approving a lot-of-record dwelling on lot 162 would affect the other applications by the Johnsons' grantees, one of whom may claim to qualify for a lot-of-record dwelling.

of YCCP Section 1 B.1.c. is precluded by the adoption of Oregon Laws 1993, chapter 792 (hereafter HB 3661), including the lot-of-record provisions now codified in ORS 197.705, after acknowledgment of YCCP Section 1 B.1.c.. In Blondeau, Clackamas County denied an application for a lot-of-record dwelling on the grounds that it failed to satisfy first, a local zoning code requirement that a proposed nonfarm dwelling be situated on land generally unsuitable for the production of crops and livestock; and second, applicable plan goals to preserve agricultural lands and to protect agricultural lands from conflicting uses. It was clear from the facts in Blondeau that Clackamas County had not legislatively restricted lot-of-record dwellings, as permitted by ORS 215.705(5), but had instead denied the application on the basis of plan provisions intended to protect agricultural land that were acknowledged before HB 3661 became effective. We stated:

> "[W]hat we must determine here is whether it is consistent with ORS 215.705 to deny a lot of record dwelling because of noncompliance with a ZDO standard previously adopted to implement ORS 215.283(3)(d) (1991)[11] or previously adopted

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[11]ORS 215.283(3)(1991 Edition) provides, in relevant part:

> "Subject to ORS 215.288, single-family residential dwellings, not provided in conjunction with farm use, may be established, subject to approval of the governing body or its designate in any area zoned for exclusive farm use upon a finding that each such proposed dwelling:
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> "* * * * *

plan policies generally requiring protection of agricultural land." Id. at 122.

We then explained:

"ORS 215.705(1)(c) does not explicitly limit the acknowledged plan and land use regulation provisions with which lot of record dwellings must comply. However, ORS 215.705(1)(c) must be interpreted together with ORS 215.705(5), which allows a county to adopt by ordinance certain standards that would allow it to deny a lot of record dwelling otherwise approvable under other provisions of ORS 215.705. The standards a county may adopt pursuant to ORS 215.705(5) specifically include one of the former statutory standards for nonfarm dwellings in an exclusive farm use zone, ORS 215.283(3)(c) (1991) (does not materially alter the stability of the overall land use pattern of the area). ORS 215.705(5)(b). There would be no need to specifically authorize the adoption of such standards under ORS 215.705 if, under ORS 215.705(1)(c), a county could deny a proposed lot of record dwelling because it failed to comply with regulations previously adopted to implement ORS 215.283(3) (1991).

"In addition, the legislative history of HB 3661 * * * indicates a legislative intent that lot of record dwellings not be required to comply with plan and code provisions inherently inconsistent with the act's intent to allow dwellings on certain lots of record, even those lots composed of good agricultural soils. Prior to the enactment of ORS 215.705, counties' acknowledged plans and regulations included provisions implementing the requirement of ORS 215.283(3)(d) (1991) that nonfarm dwellings not be allowed on land suitable for the production of farm crops and

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"(d) Is situated upon generally unsuitable land for the production of farm crops and livestock, considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of the tract; and

"* * * * *"

> livestock, and many included provisions generally requiring the protection of agricultural soils. If ORS 215.705(1)(c) requires lot of record dwellings to comply with such criteria, then no lot of record dwellings could be approved until counties amend their plans and regulations to reflect the provisions of ORS 215.705." Id. at 122-23.

Respondents argue that Blondeau invalidates any plan or zoning code provisions that limit lot-of-record dwellings unless those provisions are expressly adopted (or readopted) under ORS 215.705. We disagree. Our reasoning in Blondeau was expressly limited to situations where regulations or plan policies adopted prior to the effective date of HB 3661 that were intended to protect agricultural land conflict with the provisions in HB 3661 that are intended to permit lot-of-record dwellings regardless of their effect on agricultural land. As we noted, the underlying objective of these regulations and plan policies has effectively been overruled by HB 3661.

Blondeau establishes that if a county wishes to limit lot-of-record dwellings to protect agricultural lands, it cannot simply dust off its old plan policies and land use regulations implementing ORS 215.283(3)(d), but must legislatively adopt new policies and regulations pursuant to ORS 215.705(5).[12] Id. at 123-24 n9. The holding in

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[12]ORS 215.705(5) provides:

> "A county may, by application of criteria adopted by ordinance, deny approval of a dwelling allowed under this section in any

Blondeau does not apply to YCCP Section 1 B.1.c., which does not appear to have been adopted under ORS 215.283(3) (1991 Edition) or any other statutory provision intended to protect agricultural land. YCCP Section 1 B.1.c. is directed at all development, not at nonfarm dwellings. Its apparent purpose is as much to protect future development from natural hazards as to protect resource lands from development. Therefore, it is not superseded by ORS 215.705.

There is another reason that YCCP Section 1 B.1.c. cannot be disregarded in reliance on Blondeau. As petitioner notes, YCZO 402.03(G)(4) specifically adopts as a criterion for a lot-of-record dwelling that it is "not prohibited by, and complies with the Comprehensive Plan and other provisions of [the YCZO] and other provisions of law, including but not limited to floodplain, greenway, and airport overlay restrictions." Blondeau makes clear that the legislative adoption of standards governing lot-of-record dwellings is permitted by ORS 197.705(5). To the

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area where the county determines that approval of the dwelling would:

"(a) Exceed the facilities and service capabilities of the area;

"(b) Materially alter the stability of the overall land use pattern in the area; or

"(c) Create conditions or circumstances that the county determines would be contrary to the purposes or intent of its acknowledged comprehensive plan or land use regulations."

extent that standards governing development generally may apply to lot-of-record dwellings, YCZO 402.03(G)(4) reaffirms the applicability of those standards.

B. Waiver

Respondents contend that consideration of this assignment of error is beyond the scope of our review under ORS 197.835(3), which limits issues to those raised by any participant below the local hearings body.[13] Petitioner maintains first, that several participants below did raise the issues of natural hazards, drainage and sewage; and second, that since the county did not give notice that YCCP Section 1 B.1.c. was an applicable criterion, ORS 197.835(4)(b) permits petitioner to raise new arguments based on that criterion.[14]

First, if participants below did adequately raise the

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[13]ORS 197.835(3) provides: "Issues shall be limited to those raised by any participant before the local hearings body as provided by ORS 197.195 or 197.763, whichever is applicable."

[14]ORS 197.835(4) provides, in relevant part:

"A petitioner may raise new issues to the board if:

"* * * * *

"(b) The local government failed to follow the requirements of ORS 197.763 (3)(b), in which case a petitioner may raise new issues based upon applicable criteria that were omitted from the notice. However, the board may refuse to allow new issues to be raised if it finds that the issue could have been raised before the local government; or

"* * * * *"

issue of the location of the subject property in a natural hazard area or "area of geologic hazard, steep slope, severe drainage problems or soil limitations for building or sub-surface sewage disposal," then this issue is within our scope of review. See Record 15, 16, 147, 156-57.

Second, there is no dispute that the county's notice did not mention YCCP Section 1 B.1.c., or that ORS 197.763(3)(b) requires such mention if indeed YCCP Section 1 B.1.c. is a relevant criterion. Under ORS 197.835(4)(b) a petitioner may raise new issues before this Board if "[t]he local government failed to follow the requirements of ORS 197.763(3)(b), in which case a petitioner may raise new issues based upon applicable criteria that were omitted from the notice." However, ORS 197.835(4)(b) also allows this Board to "refuse to allow new issues to be raised if [we find] that the issue could have been raised before the local government."

It is possible that because the county's notice did not mention YCCP Section 1 B.1.c., the participants below were not informed of its existence or possible applicability. If they were not so informed, they could not have raised YCCP Section 1 B.1.c. with the specificity the county contends is necessary to avoid waiver. Therefore, petitioner may raise new issues associated with YCCP Section 1 B.1.c. before this Board.

C. Applicability of YCCP Section 1 B.1.c.

We first address respondents' contention the challenged decision contains a finding, supported by substantial evidence, addressing YCCP Section 1 B.1.c. and concluding it was satisfied. To support their contention, respondents point to the following finding:

> "The Board finds that the dwelling is not prohibited by, and complies with the Comprehensive Plan and other provisions of this ordinance and other provisions of law, including but not limited to floodplain, greenway, and airport overlay, as required by YCZO § 1402.03G(4). The Comprehensive Plan does not prohibit lot of record dwellings on agricultural land. Lot of record dwellings on agricultural land are allowed by state statute (ORS 215.705) and administrative rule (OAR 660-33-130). The property is not within the floodplain, greenway or airport overlay districts. Setbacks, height limitations, etc. will be enforced at the time of the building permit request." Record 5.

Findings must (1) identify the relevant approval standards, (2) set out the facts which are believed and relied upon, and (3) explain how those facts lead to the decision on compliance with the approval standards. Sunnyside Neighborhood v. Clackamas Co. Comm., 280 Or 3, 20-21, 569 P2d 1063 (1977); Heiller v. Josephine County, 23 Or LUBA 551 556 (1992). Additionally, findings must address and respond to specific issues, raised in the proceedings below, that are relevant to compliance with applicable approval standards. Hillcrest Vineyard v. Bd. of Comm. Douglas Co., 45 Or App 285, 293, 608 P2d, 201 (1980); Norvell v. Portland Area LGBC, 43 Or App 849, 853, 604 P2d

896 (1979); Skrepetos v. Jackson County, 29 Or LUBA 193, 208 (1995); McKenzie v. Multnomah County, 27 Or LUBA 523, 544-45 (1994); Heiller, supra, 23 Or LUBA at 556 (1992).

Assuming YCCP Section 1 B.1.c. is an applicable criterion, the above-quoted finding is insufficient to address it. The finding neither identifies the criterion, relates it to facts believed and relied upon nor explains how those facts lead to a decision on compliance with approval standards. Intervenor urges us to use our authority under ORS 197.829(2) and ORS 197.835(11)(b) to interpret YCCP Section 1 B.1.c., make our own determination that the challenged decision is correct, and, if YCCP Section 1 B.1.c. applies, conclude that evidence in the record supports the necessary findings.[15] As we stated in Marcott Holdings, Inc. v. City of Tigard, 30 Or LUBA 101,

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[15]ORS 197.829(2) provides:

> "If a local government fails to interpret a provision of its comprehensive plan or land use regulations, or if such interpretation is inadequate for review, the board may make its own determination of whether the local government decision is correct."

ORS 197.835(11)(b) provides:

> "Whenever the findings are defective because of failure to recite adequate facts or legal conclusions or failure to adequately identify the standards or their relation to the facts, but the parties identify relevant evidence in the record which clearly supports the decision or a part of the decision, the board shall affirm the decision or the part of the decision supported by the record and remand the remainder to the local government, with direction indicating appropriate remedial action."

122-23 (1995), ORS 197.829(2) and ORS 197.835(11)(b) allow us to remedy oversights and imperfections in local government land use decisions. However, we need not take over the responsibilities of local governments, such as the interpretation of comprehensive plans and land use regulations, the preparation of adequate findings and the weighing of evidence. See also Squires v. City of Portland, ___ Or LUBA ___ (LUBA No. 95-187, July 1, 1996), slip op 12 n4; Canby Quality of Life Committee v. City of Canby, 30 Or LUBA 166, 173 (1995); Waugh v. Coos County, 26 Or LUBA 300, 306-08 (1993).

In the absence of a reviewable interpretation concerning the applicability of YCCP Section 1 B.1.c., we review to determine if it establishes approval criteria pertinent to the subject application. O'Mara v. Douglas County, 25 Or LUBA 25, 32, rev'd on other grounds, 121 Or App 113, rev'g Court of Appeals, aff'g LUBA, 318 Or 72 (1993). The briefs contain extensive arguments on this issue, none of which is conclusive in view of the governing body's broad discretion in interpreting the applicability of its plan and land use regulations. See DeBardelaben v. Tillamook County, 142 Or App 319, 325, ___ P2d ___ (1996). There is more than enough uncertainty concerning the applicability of YCCP Section 1 B.1.c. to require we remand the challenged decision to the county for an interpretation.

The second assignment of error is sustained.

The county's decision is remanded.