BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

PETER GUTOSKI and JUDY GUTOSKI, Petitioners, vs. LANE COUNTY, Respondent, and DON STAPLETON, Intervenor-Respondent.	LUBA No. 97-194 FINAL ORDER AND OPINION

Appeal from Lane County.

Bill Kloos, Eugene, filed the petition for review and argued on behalf of petitioners. With him on the brief was Johnson, Kloos & Sherton.

Steve Vorhes, Eugene, filed the response brief and argued on behalf of respondent.

Laurence E. Thorp, Springfield, filed the response brief and argued on behalf of intervenor-respondent. With him on the brief was Thorp, Purdy, Jewett, Erness & Wilkinson.

GUSTAFSON, Board Chair; HANNA, Board Member, participated in the decision.

AFFIRMED 03/24/98

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

Opinion by Gustafson.

NATURE OF THE DECISION

Petitioners appeal the county's approval of a zone change from Rural Residential 5-acre minimum (RR-5) to Rural Residential 2-acre minimum (RR-2).

FACTS

The present case is an appeal of the county's decision on remand from the Court of Appeals in Gutoski v. Lane County, 141 Or App 265, 917 P2d 1048 (1995), rev den 324 Or 18 (1996) (Gutoski I). In Gutoski I, the Court of Appeals reversed our decision in Gutoski v. Lane County, ___ Or LUBA ___ (LUBA No. 95-192, March 14, 1996), where we affirmed the county's approval of intervenor's application to rezone his property. We repeat the relevant facts from our first opinion:

> "Intervenor-respondent (intervenor) applied for and was granted approval of a zone change from RR-5 to RR-2 for his four-acre parcel, on which there is presently one residence. The requested zone change would facilitate the addition of one residence on the parcel. The parcel, along with at least eleven smaller, surrounding parcels, was historically designated for agricultural purposes. Like these other parcels, the subject parcel was previously granted a committed exception to Statewide Planning Goal 3 when it was re-designated and zoned RR-5.
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> "Petitioners own a 125-acre parcel adjacent to the subject property, on which they operate an orchard. Petitioners' property is designated and zoned agricultural. The portion of petitioners' property immediately adjacent to intervenor's was proposed for inclusion in the area of the Goal 3 exception, but petitioners succeeded in removing their property from the proposed exception area. All parties recognize inherent conflicts between petitioners' resource uses and adjoining residential uses." Slip op 2-3.

In Gutoski I, the Court of Appeals held that the county erred in failing to apply its comprehensive plan Goal 3, Policy 8 (Policy 8) as an approval criterion. Policy 8 states:

> "Provide maximum protection to agricultural activities by minimizing activities, particularly residential, that conflict with such use. Whenever possible, planning goals, policies and regulations should be interpreted in favor of agricultural activities."

On remand from Gutoski I, a county hearings official conducted hearings, at which petitioners submitted evidence of the type of conflicts its agricultural operations cause with adjacent residences:

> "[Petitioners'] farm operation depends on spraying as a part of its normal operations, and this spray occasionally drifts off the farm property onto adjacent properties. The farm operation occasionally operates at night, causing loud noises and using lights for operation during nighttime operation. The area under and around the filbert trees is cleaned by use of a flail and a mowing machine. This activity raises clouds of dust and causes objects on the ground to be thrown away from the machines at high rates of speed. These thrown objects may be propelled beyond the boundaries of the farm property. The operators of the filbert farm have received complaints from at least one resident of the exception area. * * *" Record II 10.[1]

The hearings official applied Policy 8, and again approved the requested zone change. The hearings official interpreted Policy 8 to permit a conflicting residential use

[1]The record of the proceeding in Gutoski I was incorporated into the record of the proceeding on remand. We refer to the record on remand as "Record II."

as long as it did not force a significant change in or significantly increase the cost of accepted farming practices on petitioners' farm. Petitioners appealed the hearings official's decision to the county board of commissioners (commissioners), which affirmed the hearings official's interpretation of Policy 8 as its own, and adopted the hearings official's decision.

This appeal followed.

FIRST ASSIGNMENT OF ERROR

Petitioners challenge the county's interpretation of Policy 8 as contrary to its express language and contrary to the law of the case.

A. Law of the Case

In the county's first decision, reversed in Gutoski I, the hearings official interpreted Policy 8 to be applicable only to proposed land use actions on agricultural land. Because the land proposed for rezoning is designated rural-residential, the hearings official did not apply Policy 8 as an approval criterion. Instead, the hearings official applied Goal 2, Policy 11 (Policy 11), which provides criteria for approving the designation and density of rural-residential zones.[2] We affirmed that interpretation as reasonable and

[2]Goal 2, Policy 11 states:

> "Land use designations and densities appropriate for developed and committed areas shall be determined through compliance with other plan policies and the following criteria:

correct. The Court of Appeals reversed, holding that:

> "it would controvert the fundamental purpose of policy 8 to make the availability of the policy's protections depend on whether the conflicts came from one neighboring property instead of another, if the farm is located near a boundary of the agricultural zone. We do not agree with the hearings officer and LUBA's conclusion that policy 8 is inapplicable." 141 Or App at 269.

Petitioners now argue that the Court of Appeals' opinion necessarily determined several points regarding the meaning of Policy 8 and its relationship with Policy 11, and that the county's second decision is inconsistent with those determinations. Petitioners cite the following language from the Court of Appeals' opinion:

> "The objective of policy 8 is to protect agricultural activities against conflicts from other activities, particularly residential.

> "(a) A Rural Residential designation shall be applied to lands which are devoted to rural housing uses as evaluated by the following criteria:
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> "i. existing development pattern and density;
>
> "ii. on-site sewage disposal suitability, or community sewerage;
>
> "iii. domestic water supply availability;
>
> "iv. access;
>
> "v. public services;
>
> "vi. lack of natural hazards;
>
> "vii. effect on resources lands.
>
> "Densities of 1, 2, 5, or 10 acres shall be applied to represent existing development patterns and to limit problems resulting from a negative evaluation of any of the above criteria."
>
> "* * * * *"

> "* * * * *
>
> "* * * Policy 11 itself states that '[l]and use designations and densities appropriate for developed and committed areas shall be determined through compliance with other plan policies and the following criteria[.]' Policy 8, in turn, mandates that, where possible, 'planning goals, policies and regulation should be interpreted in favor of agricultural activities.' Both policies make it clear that they are to be read with reference to each other * * *. Further, policy 8 leaves no doubt that the objective it promotes is one that is generally to be given preference." Id. at 270. (Emphasis in original).

Petitioners argue that the county's interpretation of Policy 8 in the challenged decision conflicts with the Court of Appeal's decision by (1) replacing the "preference" given agricultural activities over conflicting uses with an interpretation freely permitting conflicts with agricultural activities up to a certain threshold (significant change/increased costs); and (2) implementing Policy 8 through Policy 11, rather than as an independent criterion.

We disagree with petitioners that the Court of Appeal's decision resolved the meaning of Policy 8 or its relationship with Policy 11 to the degree suggested by petitioners, or, phrased differently, that the challenged decision is inconsistent with anything the Court of Appeals decided. The language on which petitioners rely is part of the Court of Appeals' reasoning, supporting its conclusion that Policy 8 is an applicable approval criterion. The passage cited does not resolve, nor do we think the Court of Appeals intended it to resolve, how Policy 8 should be applied consistently with

other approval criteria.

B. Interpretation of Policy 8

Petitioners argue that the county's interpretation is inconsistent with the express language of Policy 8 requiring the county to provide maximum protection to agricultural activities, and that, accordingly, we must reverse that interpretation. ORS 197.829(1)(a).[3]

The county interpreted Policy 8 to require the same level of protection for agricultural land in the context of a request to rezone as provided by the county's standards for approving nonfarm dwellings, which require a finding that the nonfarm dwelling will not force a significant change in or significantly increase the cost of accepted farming practices on nearby lands devoted to farm use. The hearings official also read the Court of Appeals' opinion to permit the county to implement Policy 8 through the standards of Policy 11, as long as those standards provided maximum protection to agricultural uses in the event of a "conflict."[4] Essentially,

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[3]ORS 197.829(1)(a) provides:

> "The Land Use Board of Appeals shall affirm a local government's interpretation of its comprehensive plan and land use regulations, unless the board determines that the local government's interpretation:
>
> "(a) Is inconsistent with the express language of the comprehensive plan or land use regulation[.]"

[4]The challenged decision states:

> "The easiest way to judge how this plan provision should be applied is to look at the standards that the county set when it applied the Rural Comprehensive Plan policy in other circumstances. Lane Code 16.212(3)(c)(i) allows [nonfarm]

the decision interprets Policy 8 to define a "conflict" as anything that forces a significant change in or significantly increases the cost of accepted farming practices on farm lands. Other, lesser conflicts do not trigger the protections of Policy 8.[5]

Petitioners contend, first, that Policy 8 is unambiguous, and thus the county erred in interpreting it rather than simply applying it by its terms. Goose Hollow Foothills League v. City of Portland, 117 Or App 21, 218, 842 P2d 992 (1992). We disagree. The meaning of Policy 8 as applied to

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> dwellings * * * on land zoned for farm use, provided that the dwelling will not force a significant change in or significantly increase the cost of accepted farming practices on nearby lands devoted to farm use. The provision * * * indicates that the standard for determining when a conflict exists is not the inevitable friction that might occur between any two uses. The conflict about which Goal 3, policy 8 is concerned is a clash of uses that will result in a significant change in or a significant increase in the cost of accepted farming practices."
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> "[Intervenor] argues that Goal 2, policy 11, discussed below, implements the provisions of Goal 3, policy 8, and policy 11's provisions for limiting problems from a negative evaluation of the criteria is the method for providing the protection called for in policy 8. This argument is consistent with the Court of Appeals ruling that both policies are to be read with reference to each other, so long as policy 11 is applied in a manner that meets the requirements of maximum protection to agricultural activities in the event of a conflict. This means that where it is shown that a proposed rezoning will significantly change or significantly increase the cost of agricultural activities, the rezoning must be conditioned to eliminate the possibility of a significant change or significant increase in the cost of accepted agricultural practices." Record II 12-13.

[5]The commissioners adopted the hearings officer's interpretation and provided the following explanation:

> "* * * Under the application of Goal 3, policy 8 used by the Hearings Official, the word conflict in Goal 3, policy 8 means a negative impact that will force a significant change in or a significant increase in the cost of accepted farming practices. There are not two types of conflict; impacts that fall below the threshold of a significant impact are not conflicts within the meaning of Goal 3, policy 8." Record II 23.

the facts of this case and as it interacts with Policy 11 and other aspects of the county's land use regulations is by no means subject to a single plausible answer. Petitioners present one interpretation of Policy 8, stating that:

> "* * * if the County finds that a proposed land use change would pose conflicts for an existing agricultural activity, then the County has an obligation to minimize the activity that would create the conflicts. Where the conflict results from residential development, the County has an obligation to maximize the protections for the agricultural activity by minimizing the residential use. That means the County has an obligation to do whatever it can to avoid the conflicting use." Petition for Review 19 (emphasis added).

We understand petitioners to argue that Policy 8 requires the county to minimize conflicting uses until a conflict no longer exists, in other words, to eliminate conflicts. The logical corollary of that position is that if conflicts cannot be eliminated, the conflicting use cannot be approved.

We disagree that petitioners' interpretation is the only plausible interpretation, or indeed the most plausible interpretation, of Policy 8. To minimize activities that conflict with agricultural use does not necessarily require the elimination of all conflicts or conflicting uses.

When Policy 8 is read in the context of Policy 11 and other provisions of the county's land use ordinance, petitioners' interpretation becomes even less plausible. The county's analysis relies on the fact that nonfarm dwellings are expressly permitted on EFU land, as long as they satisfy various criteria, including that the nonfarm dwelling will not

cause significant change in or significantly increase the cost of farming practices in the area. The decision reasons that Policy 8 can only be consistent with the nonfarm dwelling provisions if it permits conflicts up to a certain threshold, i.e. the point where the conflict causes a significant change in or significantly increased cost to nearby farming practices. If Policy 8 tolerates a certain level of conflict with farm uses from nonfarm dwellings on EFU land, it follows that Policy 8 also tolerates a certain level of conflict with farm uses from dwellings on adjacent lands zoned rural-residential. Petitioners do not address that reasoning, or argue that consistency with other provisions of its land use ordinance is not a legitimate factor in determining the meaning of Policy 8.

Petitioners have not established that the county's interpretation is inconsistent with the express language of Policy 8. ORS 197.829(1)(a).

The first assignment of error is denied.

SECOND ASSIGNMENT OF ERROR

Petitioners challenge the county's finding that the approval as conditioned will result in conflicts below the "significant change/increased cost" threshold as inadequate and not supported by substantial evidence in the record.

A. Inadequate Findings

Petitioners explain that when a local government makes a finding that an approval standard is met with conditions, it

must also find that the conditions imposed are sufficient to insure the standards will be met. McCoy v. Linn County, 16 Or LUBA 295, 301 (1987), aff'd 90 Or App 271 (1988). Petitioners also note that we have held, with respect to the statutory "no significant change/increased cost" standard at ORS 215.296(1), that county findings must: (1) describe the farm and forest practices on surrounding lands devoted to farm or forest use; (2) explain why the proposed use will not force a significant change in those practices; and (3) explain why the proposed use will not significantly increase the cost of those practices. Brown v. Union County, ___ Or LUBA ___ (LUBA No. 95-246, November 5, 1996), slip op 8.

The decision imposes four conditions: (1) that intervenor build a metal fence along the joint property boundary; (2) that intervenor record a farm easement[6] for the subject property; (3) that any dwelling built on the subject property be set back 100 feet from the property line; and (4) that the deed to the subject property contain a "right-to-farm" warning.[7]

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[6]A "farm easement" waives a residential landowner's right to object to normal, non-negligent farm management activities legally conducted on adjacent farm lands, and grants an easement for resulting impacts on the landowner's property. See Record 122-23.

[7]The challenged decision requires the following language be added to the deed of the subject property:

> "This property is located next to an operational agricultural activity. Normal operation of the agricultural use may result in intrusions on occupants' quiet enjoyment of this property in the form of dust, lights, noise, mist and physical objects. Current law and an easement binding on the owner and occupant

The hearings official imposed these conditions based on the view that Policy 8, as applied through Policy 11, allows conflicts with agricultural activities as long as conditions are imposed that mitigate those conflicts to the point where the conflicting use meets the no significant change/increased cost standard. Petitioners argue that the county fails to explain why these conditions, singly and together, mitigate the impacts below the significant change/increased cost threshold. More specifically, we understand petitioners to argue that the county's analysis is flawed because it fails to identify the significant changes and significantly increased costs imposed on petitioners' farming practices, and thus cannot meaningfully explain how the conditions mitigate those impacts below the threshold.[8]

The evidence in the record pertaining to potential impacts on petitioners' farming practices concerns the

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of this property limit any occupant's ability to complain or take legal action concerning the intrusions." Record II 11.

[8]Petitioners' argument that the county fails to explain how the condition complies with the no significant change/increased cost standard is common to all four conditions, and we address them together. Petitioners make additional arguments only with respect to the "farm easement" condition. Petitioners argue first that the farm easement condition is inadequate to establish compliance with the standard because the record does not contain the terms of the easement. However, petitioners conceded at oral argument that the record does contain a standard farm easement document. Second, petitioners argue that the farm easement condition is fatally flawed because the decision states that the condition "should eliminate the possibility of trespass and nuisance claims." Petitioners contend the county's failure to state that the farm easement condition shall eliminate such conflicts is a failure to find that the condition will ensure compliance with the standard. We disagree. As we discuss below, the county was not required to ensure that the conditions, much less any one condition, eliminate all conflicts. The county's linguistic choice does not have the significance petitioners assign it.

increased possibility of lawsuits by occupants of the subject property seeking damages or an injunction against petitioners. Petitioners submitted into the record a complaint and judgment filed against them by a residential neighbor. The complaint alleges (1) that petitioners deposited various unsightly materials along the common property line; (2) that petitioners erected an unsightly and dangerous metal fence along the property line; and (3) that petitioners operate noisy farm equipment at all hours of the day and night. That complaint sought compensatory damages of $50,000.00 and unspecified punitive damages. It resulted in a jury verdict against petitioners and a judgment of $8,001.00, including an award of punitive damages. Petitioners testified that, as a result of that lawsuit, the operating loan for the farm now must be secured by equipment and the crop, and flailing and chemical spraying have been reduced near the perimeter of the orchard, which reduces the efficiency and productivity of the harvest.

The hearings official addressed that evidence as follows:

> "First, the suit that the [petitioners] hold up as evidence of the degree of threat is distinguishable. The suit alleged several acts that do not correspond with the activities that the [petitioners] described as their regular farming practices. Furthermore, since the suit the legislature has passed several laws, ORS 30.930 to 30.947, that offer considerable protection to the farming operation, including the possibility of recovering attorney fees and costs in the event they are wrongfully sued.
>
> "Second, limitations that the [petitioners] have already placed on their farming practices because of the proximity of other residences in the area do not count in the calculation of impacts because of the proposed zone density change. The exceptions area

already contains 12 dwellings, several of which are close to the natural resource land, and at least one of which is as close as any dwelling that would result from the proposed increase in density on the subject property. The only concern that is relevant to this decision is impacts that might affect the [petitioners'] farming practices as a result of the proposed zone density change and possible addition of a dwelling.

"* * * * *

"Having found a potential compatibility problem between the proposed increase in density and [petitioners' farm] the question is whether there are measures that can be taken to mitigate the problem. The answer is yes. A metal fence constructed along the boundary of the subject property will deal with most, if not all, of the objects thrown from the flailing operations. Even objects that might penetrate the fence will lose much of their force as they do so. Requiring any dwelling located on the subject property to be set back from the boundary of the farm will also deal with some of the problems. Requiring the owner to sign a farm operations easement should eliminate the possibility of trespass and nuisance claims not only from the flailing operations, but from all the other operations that might create dust or may otherwise be annoying, such as spraying, running at night and so forth. * * *

"The [petitioners] did not produce substantial evidence of any actual negative effect that the proposed rezoning would have. These concerns were all speculative, based at most on what some other property owner did under different circumstances. The [petitioners] did not show that <u>this</u> proposed rezoning would force any significant change in their operations. The only hint of a significant increase in the cost of operations was speculation that they might have to pay damages or pay the cost of defending themselves from a nuisance suit. * * *

"* * * * *

"The conditions imposed as a part of the approval of the request for rezoning assure that any compatibility problems will be mitigated and the agricultural activities on the adjacent property will be protected. These conditions allow the proposal to achieve compliance with the requirements

of the [plan]." Record II 15-17 (emphasis in original).

For the following reasons, we conclude that the above findings adequately explain how the conditions imposed mitigate

the level of conflicts to ensure that the no significant changes/increased cost standard is met.

Petitioners identified two types of changes and costs: (1) the possibility of nuisance and trespass suits against them from occupants of the subject property; and (2) reduction in flailing and chemical spraying near residences, reductions petitioners have already made. The county reasons that the proposed rezoning will not cause any change at all to petitioners' farm practices, above those changes already made, and that the only significantly increased costs identified were speculative concerns about possible lawsuits. The county explains that those concerns are not substantial, because the prior lawsuit alleged activities distinguishable from the farm operations petitioners describe as accepted farming practices. The county then explains how the conflicts giving rise to petitioners' concerns of potential litigation can be mitigated to reduce those conflicts, and thus the risk of litigation. It finds, essentially, that the conditions imposed will reduce the identified conflicts and that remaining conflicts, so reduced, will not force a significant change or significantly increase the cost of petitioner's farm practices.

Petitioners do not appear to contend that the four conditions will not reduce conflicts to some degree, or that the four conditions are not responsive to the identified changes and costs. Rather, we understand petitioners to argue that the conditions imposed will not eliminate conflicts or

the possibility of litigation against petitioners, and that, short of eliminating conflicts, the county must quantify how much the conditions will reduce those conflicts, and determine at what point the reduced conflicts fall below the significant change/increased cost threshold.

We disagree that the county's obligation to explain its findings extends so far. In applying the no significant change/increased cost standard, the local government is not required to perform the impossible task of proving a negative; rather, it must affirmatively consider the impacts of a proposed use on farm or forest practices, and in so doing, consider whether the use will force a significant change or significantly increase the cost of those practices. Mission Bottom Assoc. v. Marion County, ___ Or LUBA ___ (LUBA No. 96-057, September 26, 1996), slip op 8. We conclude that the county has adequately explained in the present case why the proposed use, as conditioned, will not force a significant change or significantly increase the cost of petitioners' farm practices.

This subassignment of error is denied.

B. Substantial Evidence

Petitioners identify several findings that they contend are not supported by substantial evidence in the record. Substantial evidence is evidence a reasonable person would rely upon to reach a conclusion, notwithstanding that different reasonable people could draw different conclusions

from the evidence. Adler v. City of Portland, 25 Or LUBA 546 (1993). Some of petitioners' arguments merely repeat arguments addressed above, or are directed at the county's reasoning rather than lack of supporting evidence in the record. We address the following evidentiary challenges:

Petitioners first challenge the county's finding that the lawsuit cited by petitioners is distinguishable from the present case because the lawsuit alleged several acts that do not correspond to petitioners' regular farming practices. Petitioners argue that the lawsuit alleges similar conflicts, specifically noisy operation at night. We disagree. The gravamen of the lawsuit was allegations of intentional misconduct on the part of petitioners, particularly placing debris along the property line and deliberately erecting an unsightly and dangerous metal fence in order to offend the plaintiffs and diminish the value of their property. See generally Record II 93-95. No such conflicts are suggested here. The only overlapping allegation involves noisy operation of machinery. The county's finding that the prior lawsuit is distinguishable is supported by substantial evidence.

Second, petitioners argue that the record is devoid of evidence supporting the county's findings that the metal fence "will deal with most, if not all, of the objects thrown from the flailing operation" and that the 100-foot setback will "deal with some of the problems." Record II 16. Petitioners

concede that the metal fence will stop some flying debris, but dispute there is evidence that the fence will deal with "most" of the flying debris. The only evidence on the degree of protection afforded by a metal fence is petitioners' testimony:

> "* * * If we are going to end up with a fence it has to be a solid fence. * * * [I]t should be metal similar to the one I built on the other side of the property. Mostly because I am going to damage that fence by farming around it. A metal fence withstands that sort of equipment damage.
>
> "The other question is a fence, a fence is nice, its something, its some shield but its not everything * * *. Two hundred miles per hour, that's as slow as anything is going to come out of [the flail.] * * * You can't see things coming out of the flail. And it will go through this metal fence. A metal fence is better than nothing but things will still go through it." Testimony of Pete Gutoski, June 15, 1995, Tape 2, Side A).

A reasonable person could understand from the foregoing that a metal fence will not stop some of the objects thrown by the flail. That is consistent with the county's finding that the metal fence will stop "most" of the flying debris.

Similarly, petitioners concede that a setback will mitigate conflicts to some degree, but dispute there is evidence that the 100-foot setback imposed as a condition of approval here will "deal with some of the problems" to any appreciable degree. The county's finding did not attempt to quantify, nor did it need to quantify, the degree of mitigation the setback contributes. We conclude that the county's findings regarding the metal fence and the setback are supported by substantial evidence.

This subassignment of error is denied.

The second assignment of error is denied.

THIRD ASSIGNMENT OF ERROR

Petitioners argue that the county committed a procedural error when it adopted its interpretation of Policy 8 to incorporate the significant change/increased cost standard, and then refused to reopen the evidentiary record without allowing petitioners to submit evidence directed at that standard. According to petitioners, the focus of evidence and argument below was the external impacts of farming operations on the subject property rather than any changes or increased costs to those farming operations from the proposed use.

We acknowledged in Heceta Water District v. Lane County, 24 Or LUBA 402 (1993), that the local government may be required to reopen the evidentiary hearing where the local government (1) changes to a significant decree an established interpretation of an approval standard, (2) the change makes relevant a different type of evidence that was irrelevant under the old interpretation, and (3) the party seeking to submit evidence responsive to the new interpretation identifies what evidence not already in the record it seeks to submit. See 24 Or LUBA at 418-19.

In the present case, petitioners do not argue that the county has changed an established interpretation, nor do they identify what responsive evidence not already in the record they seek to submit. As the county and intervenor point out,

the meaning of Policy 8 was an intensely debated issue in both proceedings below. Where the interpretation of a local provision is a matter of first impression for the local government, the participants should have realized that a variety of interpretations might be adopted, and should have presented their evidence accordingly. Wicks v. City of Reedsport, 29 Or LUBA 8, 19 (1995). In fact, it appears that petitioners did submit evidence relevant to the impacts of residential development on their farming operations, in the form of the prior lawsuit and testimony about the changes and costs resulting therefrom. Petitioners do not identify what other type of evidence they would submit in another evidentiary hearing. For these reasons, we conclude that the county did not commit a procedural error in refusing to reopen the evidentiary record.

The third assignment of error is denied.

The county's decision is affirmed.