1	BEFORE THE LAND USE BOARD OF APPEALS
2	OF THE STATE OF OREGON
3	
4 5	MITCHELL JORGENSEN,)
5) LUBA No. 98-056 Petitioner,)
7) FINAL OPINION
8	vs.) AND ORDER
9	
10 11	CLACKAMAS COUNTY,) (MEMORANDUM OPINION)) ORS 197.835(16)
12	Respondent.
13	-
14	Numeral forem Clashaman Country
15 16	Appeal from Clackamas County.
17	Vance M. Croney, Salem, filed the petition for review and
18	argued on behalf of petitioner.
19 20	Quaio I Iluvo Aggiatort Courty Courgol Orogon City
20 21	Susie L. Huva, Assistant County Counsel, Oregon City, filed the response brief and argued on behalf of respondent.
22	Tited ene responde siter and argued en senair er respondene.
23	HANNA, Board Member; GUSTAFSON, Board Chair, participated
24	in the decision.
25 26	AFFIRMED 07/30/98
27	
28	You are entitled to judicial review of this Order.
29	Judicial review is governed by the provisions of ORS 197.850.
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Opinion by Hanna.

2 NATURE OF THE DECISION

3 Petitioner appeals the county's denial of his application4 for a lot of record dwelling on high value farmland.

5 DISCUSSION

Petitioner argues (1) that the county misconstrued one of 6 7 applicable approval standards by substituting the an 8 "unsuitability" test customarily applied to nonfarm dwelling 9 applications for the "impracticability" test imposed by Zoning and Development Ordinance (ZDO) 401.05(D)(6);¹ and (2) that 10 11 the county's denial is not supported by substantial evidence in the record. 12

In challenging a local government's denial of a land use 13 application, petitioners carry a heavy burden. Petitioners 14 must successfully challenge each of the county's bases for 15 16 denial. In challenging a decision on evidentiary grounds, petitioners must establish that only petitioners' evidence can 17 be believed and that, as a matter of law, they established 18 19 compliance with each of the applicable criteria. Jurgenson v. Union County Court, 42 Or App 505, 510, 600 P2d 1241 (1979); 20

The county's "lot of record" approval standards implement the statutory provisions at ORS 215.705(2).

 $^{^{\}rm 1}{\rm ZDO}$ 401.05(D)(6) provides that the county may approve a lot of record dwelling on high value farmland if:

[&]quot;The County Hearings Officer determines that: 1) The lot or parcel cannot practicably be managed for farm use, by itself or in conjunction with other land, due to extraordinary circumstances inherent in the land or its physical setting that to not apply to other land in the vicinity; * * *".

<u>Horizon Construction, Inc. v. City of Newberg</u>, 28 Or LUBA 632,
635; aff'd 134 Or app 414 (1995).

3 The challenged decision establishes that the application fails to comply with ZDO 401.05(D)(6). Petitioners do not 4 establish that the county's basis for denial is wrong, or that 5 only petitioner's evidence can be believed. 6 The hearings officer's occasional use of the word "suitability," a term 7 8 used in the general nonfarm dwelling approval standard, does 9 not mean the hearings officer applied the wrong standard. The challenged decision applies the appropriate standard, stating: 10

"The Hearings Officer finds that this parcel can be practicably managed for farm use, especially in conjunction with adjacent parcels. Furthermore, the only limited condition of this property is its small size, and this condition is not an extraordinary condition in this area * * *." Record 5.

We find that neither of petitioner's assignments of error establishes a basis for remand or reversal of the county's decision, and both are, therefore, denied.

20 The county's decision is affirmed.