1	BEFORE THE LAND USE BO	OARD OF APPEALS
2	OF THE STATE OF	OREGON
3 4 5	MITCHELL JORGENSEN, )	LUBA No. 98-056
6 7	Petitioner, )	FINAL OPINION
8 9	vs. )	AND ORDER
10 11	CLACKAMAS COUNTY, )	(MEMORANDUM OPINION) ORS 197.835(16)
12 13	Respondent. )	
14 15 16	Appeal from Clackamas County.	
17 18 19	Vance M. Croney, Salem, filed the petition for review and argued on behalf of petitioner.	
20 21 22	Susie L. Huva, Assistant County Counsel, Oregon City, filed the response brief and argued on behalf of respondent.	
23 24 25	$\ensuremath{HANNA}\xspace$ , Board Member; GUSTAFSON, Board Chair, participated in the decision.	
26 27	AFFIRMED 07	/30/98
28 29	You are entitled to judicial review of this Order. Judicial review is governed by the provisions of ORS 197.850.	

30

1 Opinion by Hanna.

## 2 NATURE OF THE DECISION

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

## 5 **DISCUSSION**

- 6 Petitioner argues (1) that the county misconstrued one of
- 7 the applicable approval standards by substituting 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); and (2) that
- 11 the county's denial is not supported by substantial evidence
- 12 in the record.
- 13 In challenging a local government's denial of a land use
- 14 application, petitioners carry a heavy burden. Petitioners
- 15 must successfully challenge each of the county's bases for
- 16 denial. In challenging a decision on evidentiary grounds,
- 17 petitioners must establish that only petitioners' evidence can
- 18 be believed and that, as a matter of law, they established
- 19 compliance with each of the applicable criteria. <u>Jurgenson v.</u>
- 20 <u>Union County Court</u>, 42 Or App 505, 510, 600 P2d 1241 (1979);

<sup>&</sup>lt;sup>1</sup>ZDO 401.05(D)(6) provides that the county may approve a lot of record dwelling on high value farmland if:

<sup>&</sup>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; \* \* \*".

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

- Horizon Construction, Inc. v. City of Newberg, 28 Or LUBA 632, 1
- 635; aff'd 134 Or app 414 (1995). 2
- 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
- 8 used in the general nonfarm dwelling approval standard, does
- 9 not mean the hearings officer applied the wrong standard.
- challenged decision applies the appropriate standard, stating: 10
- 11 "The Hearings Officer finds that this parcel can be
- 12 practicably managed for farm use, especially in
- conjunction with adjacent parcels. Furthermore, the only limited condition of this property is its small 13
- 14
- size, and this condition is not an extraordinary 15
- 16 condition in this area \* \* \*." Record 5.
- We find that neither of petitioner's assignments of error 17
- establishes a basis for remand or reversal of the county's 18
- 19 decision, and both are, therefore, denied.
- The county's decision is affirmed. 20