

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
10 and Development Ordinance (ZDO) 401.05(D)(6);¹ 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. Jurgenson v.
20 Union County Court, 42 Or App 505, 510, 600 P2d 1241 (1979);

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

"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).

1 Horizon Construction, Inc. v. City of Newberg, 28 Or LUBA 632,
2 635; aff'd 134 Or app 414 (1995).

3 The challenged decision establishes that the application
4 fails to comply with ZDO 401.05(D)(6). Petitioners do not
5 establish that the county's basis for denial is wrong, or that
6 only petitioner's evidence can be believed. The hearings
7 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. The
10 challenged decision applies the appropriate standard, stating:

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

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

20 The county's decision is affirmed.