BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

FRIENDS OF LINN COUNTY,
Petitioner,

vs.

LINN COUNTY,
Respondent,

and

STEVE K. POOLE,
Intervenor-Respondent.

LUBA No. 98-226

Appeal from Linn County.

Melissa M. Ryan, Portland, filed the petition for review on behalf of petitioner. With her on the brief was Miller, Nash, Wiener, Hager & Carlsen LLP. Melissa M. Ryan and Phillip Grillo, Portland, argued on behalf of petitioner.

No appearance by respondent.

Kent L. Hickam, Albany, filed the response brief and argued on behalf of intervenor-respondent.

HOLSTUN, Board Chair; BASSHAM, Board Member; BRIGGS, Board Member, participated in the decision.

REMANDED 12/02/99

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

Opinion by Holstun.

NATURE OF THE DECISION

Petitioner appeals a county decision that approves a conditional use permit for a nonfarm dwelling on a five-acre parcel that is zoned Exclusive Farm Use (EFU).

MOTION TO INTERVENE

Steve K. Poole (intervenor), the applicant below, moves to intervene on the side of respondent. There is no opposition to the motion, and it is granted.

FACTS

Intervenor purchased tax lot 101, the subject property, in 1979. The partition that created tax lot 101 also created tax lots 100, 102, 103 and 104. Intervenor and his wife purchased tax lot 104 in 1981. Intervenor lived on tax lot 104 beginning in 1981, first in a mobile home and later in a home that was constructed on tax lot 104 in 1987.

The challenged decision includes the following description of tax lot 101 and contiguous properties:

> "Tax Lot 101 * * * fronts on Fairview Road with 315 feet of frontage. Contiguous properties [are] zoned EFU * * *. Fairview School abuts the property to the northwest and is a 5.46 acre property. All contiguous properties, except the Fairview School property, include dwellings. Tax Lot 100, 3.40 acres, is planted in trees. Tax Lot 102, 8.39 acres, is used for cattle pasture. Tax Lot 103, 7.05 acres, is used for horse pasture. Tax Lot 104, 7.70 acres, includes marketable Douglas fir and may be used for pasture in the future. Three cuttings of timber have occurred on Tax Lot 104.
>
> "The applicant rents 20 acres of pasture on Tax Lot 2200 for use as rotational pasture. The rented pasture is approximately 1,000 feet south of the subject property on the west side of Fairview Road. The pastures are used for five horses and seven cow/calf pairs. Since purchase of the property in 1979, Mr. Poole has used the property as pasture.
>
> "The property has a special farm use assessment. Improvements on the property include a 60 by 60 foot barn, hay storage structure, chicken shed, domestic well, fencing and cross fencing." Record 6.

The planning commission approved intervenor's application, and petitioner appealed that decision to the county board of commissioners. The board of commissioners denied the appeal and approved the disputed conditional use permit on December 9, 1998. This appeal followed.

FIRST ASSIGNMENT OF ERROR

Petitioner argues the county erred by refusing to accept or consider relevant evidence that opponents offered at the October 28, 1998 board of commissioners hearing in this matter.

At the October 28, 1998 board of commissioners hearing, opponents of the application offered a partial transcript of the planning commission's July 14, 1998 hearing in this matter. That partial transcript included testimony by *intervenor* concerning current and past uses of the parcel and the practicability of farming the parcel. It is undisputed that this was relevant testimony.[1]

The board of commissioners determined that, because it was conducting a *de novo* review, it would not accept the partial transcript. At one point, the board of commissioners apparently considered accepting the transcribed testimony from the planning commission hearing, provided the entire planning commission hearing was transcribed. Record 14; Petition for Review, Appendix C 15. However, at the conclusion of the October 28, 1998 hearing, in considering whether opponents wished to request a continuance to submit a complete transcript of the planning commission hearing, two of the three members of the board of commissioners made it clear that such a transcript would not be considered or accepted if it was submitted. Petition for Review, Appendix C 19. When the opponents were asked again if they wished to request a continuance. They responded: "Not if a

[1]LUBA may remand a decision for a procedural error, only where that procedural error prejudices petitioner's substantial rights. ORS 197.835(9)(a)(B). We understand petitioner to contend that its substantial rights were prejudiced by the board of commissioners' failure to accept the transcript of intervenor's testimony before the planning commission, because that is the only way petitioner could produce that testimony.

transcript will not be accepted. There's no point." *Id*.

The only local rule concerning submittal of evidence that is cited by any party to this appeal is Linn County Land Development Code (LCLDC) 921.135(I)(5).[2] There is nothing in that code section that authorizes the board of commissioners to refuse to accept or consider relevant written testimony. To the contrary, LCLDC 921.135(I)(5)(h) specifically provides that written testimony may be presented, provided copies are made available to other parties. As we explained in *Silani v. Klamath County*, 22 Or LUBA 734, 739 (1992), a local government may not refuse to accept or consider evidence that is relevant to an approval criterion.

Nothing about the fact that the board of commissioners' hearing is *de novo* allows it

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[2]LCLDC 921.135(I)(5) provides:

> "The hearing authority shall provide opportunity for the presentation of evidence, argument, and testimony from the following persons as closely as possible to the order indicated:
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> "(a) The application as deemed complete, and, in the case of appeal, the notice of intent to appeal and the record on appeal.
>
> "(b) The Director.
>
> "(c) The proponent of the application, followed by other people in support of the proposal.
>
> "(d) The opponents to the proposal, if any.
>
> "(e) Those who do not support or oppose the proposal.
>
> "(f) The proponent shall be allowed an opportunity to rebut opposing evidence and testimony. The rebuttal is the applicant's opportunity to address concerns raised by others providing testimony.
>
> "(g) The hearing authority may ask questions of any person who has testified or of staff at any point during the hearing.
>
> "(h) If any party, at any time before the record is close[d], offers written evidence to the hearing authority, the submitting party shall provide copies of such evidence to all other parties. If the written evidence is too large or too voluminous for reproduction, then the person submitting the written evidence must make it or a reasonable copy thereof available for inspection in a reasonable manner to any person requesting to see it."

to refuse to accept or consider relevant written evidence, simply because it is in the form of a transcript of a prior planning commission hearing. A *de novo* review simply means that the board of commissioners is in no way bound by the planning commission's decision and the board of commissioners makes its decision as though the planning commission decision had not been made.[3] Apparently the board of commissioners creates its own evidentiary record on appeal and is not limited to the evidentiary record before the planning commission in its *de novo* review. However, the fact that the board of commissioners creates its own evidentiary record does not mean it can refuse to accept relevant evidence, simply because that evidence may have been submitted to the planning commission or was generated during the planning commission proceedings. *Furler v. Curry County*, 27 Or LUBA 497, 500-01 (1994). Even if the board of commissioners could require that a complete rather than a partial transcript of the planning commission hearing be provided, to ensure that the testimony is not taken out of context, that option was not given to the opponents of the application in this case.

Intervenor faults the opponents for not offering a complete transcript on October 28, 1998, and for failing to request a continuance to prepare and submit a complete transcript. The short answer to the first contention is that the LCLDC does not require a complete transcript, or at least no party cites a provision that imposes that requirement. The short answer to the latter contention is that the opponents were not required to request a continuance when the board of commissioners made it quite clear that the complete transcript would not be accepted or considered.

The first assignment of error is sustained.

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[3] Black's Law Dictionary defines "*de novo*" as:

"Anew; afresh; a second time. * * *" Black's Law Dictionary 483 (4th ed 1968).

SECOND ASSIGNMENT OF ERROR[4]

Petitioner argues under the second assignment of error that the county erred by allowing county planning staff to present evidence on behalf of the applicant, in violation of LCLDC 921.135(E).[5] According to petitioner, the staff presentation to the board of commissioners "contained testimony of the Applicant from the hearing below, and presented a slide show and other information relating to the Property at the Hearing." Petition for Review 10. Petitioner argues that this staff report resulted in a violation of LCLDC 921.135(E).

Although the precise meaning of LCLDC 921.135(E) is not entirely clear, we agree with intervenor that the evidence identified by petitioner that was included with the staff report and presented with that report does not constitute "documents or testimony [presented by the planning director] on behalf of any person," in contravention of LCLDC 921.135(E). There is an express exception in LCLDC 921.135(E) for documents that were submitted to the planning director before the board of commissioners' hearing. That exception would appear to cover the applicant testimony from the planning commission hearing. The slide

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[4]Because we sustain the first assignment of error, the county will be required to reopen the evidentiary record and allow the partial transcript to be included in the evidentiary record. Under LCLDC 921.135(I)(5)(f), *see* n 2, the applicant must be provided an opportunity to rebut that evidence. This evidence and rebuttal evidence could affect the county's decision and, at the very least, could require that the county adopt additional findings. It does not appear that the second, third, fifth and sixth assignments of error would be affected by the county's actions in response to the first assignment of error on remand. For that reason, we consider those assignments of error. The fourth assignment of error could be affected by the county's proceedings on remand. Nevertheless we address the fourth assignment of error to provide guidance to the county on remand. We do so because we agree with petitioner that the county's findings and the current evidentiary record not only fail to demonstrate compliance with ORS 215.705(2)(a)(C)(i), they demonstrate that the proposal violates that criterion.

[5]LCLDC 921.135(E) provides:

> "Except for written materials submitted to the Director prior to the hearing, the Director shall not present documents or testimony on behalf of any person at any time. Each person is responsible to submit any document, evidence or testimony which that person wishes to have included in the record. This limitation does not apply when the County is the applicant."

show apparently was intended to familiarize the board of commissioners with the property and its setting. We do not believe such a slide presentation violates LCLDC 921.135(E).

The second assignment of error is denied.

THIRD ASSIGNMENT OF ERROR

The challenged nonfarm dwelling was approved under LCLDC provisions that implement special statutory provisions at ORS 215.705 for parcels that were (1) created before 1985, and (2) acquired by the present owner before 1985. ORS 215.705 allows counties to approve nonfarm dwellings in EFU zones on such pre-1985 parcels, provided certain criteria are met. One of those statutory criteria requires that the "tract" upon which the dwelling will be sited must not include an existing dwelling.[6] Because tax lot 104 already has been improved with a dwelling, petitioner contends that ORS 215.705(1)(b) prohibits approval of the disputed dwelling. Petitioner argues that the county erred in concluding that tax lots 101 and 104 do not constitute a single "tract."

The record establishes that, on the date the application was submitted in this matter and for most of the time the application was pending before the county, intervenor owned tax lot 101 and intervenor and his ex-wife jointly owned tax lot 104, which is improved with a

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[6]As relevant, LCLDC 933.708 requires that the proposed nonfarm dwelling meet the requirements of ORS 215.705. ORS 215.705(1) provides:

> "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 * * *. A dwelling under this section may be allowed if:
>
> "(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; * * *
>
> "* * * * *
>
> "(b) The tract on which the dwelling will be sited does not include a dwelling.
>
> "* * * * *"

dwelling. Pursuant to intervenor's divorce decree, tax lot 104 was required to be sold. Intervenor and his ex-wife conveyed tax lot 104 to Michael D. Healy and Kimberlie K. Healy on October 30, 1998, nine days before the challenged decision was adopted by the board of commissioners.

ORS 215.010(2) defines "tract" as "[o]ne or more contiguous lots or parcels under the same ownership." The only tax lot other than tax lot 101 that is arguably owned by intervenor is tax lot 104. However, the record establishes that tax lots 101 and 104 never were in the same ownership. Intervenor owns tax lot 101; and until October 30, 1998, intervenor and his ex-wife jointly owned tax lot 104. Therefore tax lots 101 and 104 never were in the same ownership and do not constitute a "tract" within the meaning of ORS 215.705(1)(b) and ORS 215.010(2). Because tax lots 101 and 104 were never a tract, the challenged decision does not violate ORS 215.705(1)(b).

The third assignment of error is denied.

FOURTH ASSIGNMENT OF ERROR

ORS 215.705(2)(a)(C) sets out three criteria that must be satisfied to approve a nonfarm dwelling on a pre-1985 parcel that contains high-value farmland, and the county has adopted substantially similar requirements in the LCLDC.[7] The first of those three approval criteria requires that the county find that the 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 in its physical setting that do not apply generally to other land in the vicinity." ORS 215.705(2)(a)(C)(i); LCLDC 933.708(B)(3)(a). Petitioner argues that the county (1) misconstrued the legal requirement imposed by this criterion, (2) adopted inadequate findings in support of its conclusion that the criterion is met, and (3) in concluding that the standard is met adopted a decision that is not supported by substantial evidence.

[7]Petitioner challenges the county's findings of compliance with each of these three approval criteria in its fourth, fifth and sixth assignments of error.

A. Improper Construction of the Law

Petitioner first argues that the county's findings that the subject property lacks a source of water for irrigation and has rocky soils constitutes an improper finding that the soils on the property are not "high-value farmland" as that term is defined by ORS 215.710. We do not read the county's decision to find that the subject property is not high-value farmland; and, for that reason, we reject this subassignment of error.

B. Inadequate Findings and Lack of Substantial Evidence

The county's findings addressing the criterion imposed by ORS 215.705(2)(a)(C)(i); LCLDC 933.708(B)(3)(a) explain:

> "The property is not within an irrigation district. The property does not have groundwater irrigation rights. The soil has a high occurrence of surface and subsurface cobbles eight to twelve inches in diameter. There is no recollection of tillage of the land within the boundary of Tax Lot 101. Mr. Poole stated that due to the presence of the rock it is possible but not practical, 'without murdering yourself to do it,' [to] produce high yield crops. In oral testimony Mr. Poole gave an example that with technology the moon could be farmed; however it is not practicable.
>
> "Physical barriers (ravine and road) and committed development (Fairview School), restrict the property from practicable use in conjunction with contiguous and nearby properties. Rocky soils, would require excessive input for intensive agricultural activities. Tax Lot 101 has a combination of limitations including: a small, approximate 4.5 acre, area available for farming; rocky soils; abuts a ravine subject to erosion and flooding; no irrigation; adjacent to committed development; and separated from property to the south by Fairview Road." Record 7.

The county makes no attempt to reconcile the above findings with other findings that recognize that the subject property has been used for pasture, in conjunction with 20 acres located 1,000 feet south of the property, since 1979. Although those findings state that the subject property been managed "for private use, not for the purpose of obtaining a profit," for at least part of that time the property has been granted farm use assessment, which requires that the property be put to farm use. Record 6. To qualify as a "farm use," under the statutory definition of that term at ORS 215.203(2), and to qualify for farm use assessment,

the subject property must be "currently employed" for agricultural production "for the purpose of obtaining a profit in money." The term "profit" in the ORS 215.203 definition of farm use "does not mean profit in the ordinary sense, but rather refers to gross income." *1000 Friends v. Benton County*, 32 Or App 413, 426, 575 P2d 651 (1978); *Brown v. Jefferson County*, 33 Or LUBA 418, 433-34 (1997); *Greenwood v. Polk County*, 11 Or LUBA 230, 235 (1984). Similarly, the test in determining whether a property can "practicably be managed for farm use," within the meaning of ORS 215.705(2)(a)(C)(i), must be based on whether the property can generate the gross income that would establish that the subject property is in farm use and therefore may qualify for farm use assessment. The county apparently recognizes one concept of "profit" for purposes of determining whether the property is in "farm use," and therefore subject to preferential property tax assessment, and a different, higher concept of "profit" in considering whether the subject property "cannot practicably be managed for farm use," within the meaning of ORS 215.705(2)(a)(C)(i). There is no basis in statute for drawing such a distinction.

In view of the fact that the subject property has in fact been put to pasture use in conjunction with 20 acres located to the south of the property and received farm use assessment, the county's findings are not sufficient to explain why the ravine, road frontage, lack of irrigation and rocky soils make the subject property impracticable for farm use. It is irrelevant that the subject parcel may not be suitable for intensive, cultivated agriculture if it can be and has been put to pasture use in the past with nearby property and has received farm use assessment based on that farm use.

The fourth assignment of error is sustained.

FIFTH ASSIGNMENT OF ERROR

The second of the three approval criteria imposed by ORS 215.705(2)(a)(C) requires that "[t]he dwelling will comply with the provisions of ORS 215.296(1)." ORS

215.705(2)(a)(C)(ii); LCLDC 933.708(B)(3)(b). ORS 215.296(1) imposes the following requirements:

> "A use * * * may be approved [under this section] only where the local governing body or its designee finds that the use will not:
>
> "(a) Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; or
>
> "(b) Significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use."

Petitioner presents a three-part argument concerning ORS 215.705(2)(a)(C)(ii) and LCLDC 933.708(B)(3)(b): (1) that the county misconstrued the law, (2) that the county's findings are inadequate, and (3) that the county's findings are not supported by substantial evidence.

A. Improper Construction of the Law

Petitioner argues that the county improperly construed ORS 215.296(1) as requiring that it consider only "commercial farms." Although we agree with petitioner below that the county inadequately considered the potential impact of the proposal on accepted farm and forest practices on surrounding lands devoted to farm or forest use, we do not agree that the county improperly interpreted ORS 215.296(1) in the way petitioner alleges.

This subassignment of error is denied.

B. Inadequate Findings and Lack of Substantial Evidence

As we have explained on numerous occasions, this statutory standard set out at ORS 215.296(1)(a) requires findings that "(1) describe the accepted farming practices on adjacent lands devoted to farm use; and (2) explain why the proposed use would not seriously interfere with those practices." *Schellenberg v. Polk County*, 21 Or LUBA 425, 439 (1991) (and cases cited therein). The county adopted the following relevant finding addressing ORS 215.296(1):

> "Within the one-half mile evaluation area no commercial farms were observed on a site visit. The predominant farm use within the evaluation area is raising livestock and limited harvesting of hay. The livestock use is characterized by

> small numbers of animals per property with unimproved pasture. An absence of farms was observed. Existing farming and forest practices would continue unchanged with the approval of the proposed dwelling on Tax Lot 101. A small commercial nursery is located outside the evaluation area near the north end of Fairview Road and the intersection with Highway 20. A 164 acre parcel approximately one mile northeast of the subject property and adjacent to the Santiam River is used for irrigated row crops. No comments, opposing the proposal, were received from adjacent property owners." Record 7-8.

These findings do not "describe the accepted farming practices on adjacent lands devoted to farm use." While the findings specifically recognize that "[t]he predominant farm use within the evaluation area is raising livestock and limited harvesting of hay," the findings simply identify farm uses without identifying the accepted farming *practices* that are associated with these farm uses and, therefore, do not explain why the proposal will not force a "significant change in" or "significantly increase the cost of" those practices.[8]

The fifth assignment of error is sustained.

SIXTH ASSIGNMENT OF ERROR

The third of the criteria that must be addressed under ORS 215.705(2)(a)(C) requires that the county find that "[t]he dwelling will not materially alter the stability of the overall land use pattern in the area." ORS 215.705(2)(a)(C)(iii); LCLDC 933.708(B)(3)(c). The three-step analysis that is required to address this statutory criterion is set out in *Sweeten v. Clackamas County*, 17 Or LUBA 1234, 1245-46 (1989):

> "First, the county must select an area for consideration. The area selected must be reasonably definite including adjacent land zoned for exclusive farm use. Second, the county must examine the types of uses existing in the selected area. In the county's determination of the uses occurring in the selected area, it may examine lot or parcel sizes. However, area lot or parcel sizes are not dispositive of, or even particularly relevant to, the nature of the uses occurring on such lots or parcels. It is conceivable that an entire area may be wholly devoted to farm uses notwithstanding that area parcel sizes are

[8]As noted under our discussion of the first subassignment of error under this assignment of error, we do not understand the county's findings to have concluded that only changes in or increases in cost of "commercial" farming practices must be considered under ORS 215.296(1). The county's findings simply fail to describe the accepted farming practices associated with the livestock and hay production farming uses that are identified.

> relatively small. Third, the county must determine that the proposed nonfarm dwelling will not materially alter the stability of the existing uses in the selected area."

A. Area Selected for Consideration

The county selected the area located within one-half mile of the subject property as the evaluation area under ORS 215.705(2)(a)(C)(iii) and LCLDC 933.708(B)(3)(c). Petitioner argues that the county failed to justify its selection of a one-half mile evaluation area. Petitioner also argues, based on findings that identify certain commercial farms outside the one-half mile evaluation area, that the county failed to identify a reasonably definite area for evaluation. The county's findings are as follows:

> "An approximate one-half mile radius evaluation area was used to review land use and the broad type of farm uses. The evaluation area was chosen because of: topography, steep hill area to the northeast and southwest; the south Santiam River located at the base of the northeast butte area; McDowell Creek Road to the north and Fairview road to the south both major county collector roads; multi-laned Highway 20 located to the south; railroad located to the south and in close proximity to Highway 20, and zoning changes from EFU to Farm/Forest (F/F), Rural Residential (RR-2.5 and RR-5) and Heavy Industrial (HI). A 51.29 acre industrial use, Willamette Industries Fairview Mill, is located on the south, southwest side of Fairview Road, visible and audible from Tax Lot 101. The residential and industrial areas are within the Lebanon planning and exception area." Record 8.

We fail to see why the above findings are not sufficient to explain why a one-half mile radius from the subject property was used to identify the area for evaluation of the stability of the overall land use pattern. Fairly read, the findings explain that the area was selected to coincide with topographic and other natural barriers as well as constructed barriers. While there may be reasons why selecting an evaluation area based on those barriers is inappropriate, petitioner does not identify why that is the case here.

We also reject petitioner's argument that references to commercial farms outside the one-half mile evaluation area in other findings render the one-half mile study area something other than reasonably definite. The references to these commercial farms are included in a different part of the county's decision addressing whether the proposal will have impacts on

accepted farming practices, not in the findings addressing ORS 215.705(2)(a)(C)(iii) and LCLDC 933.708(B)(3)(c). *See* discussion under the fifth assignment of error. Those references do not make the identified one-half mile evaluation area insufficiently definite.

This subassignment of error is denied.

B. Identification of Existing Land Uses in the Evaluation Area

As we explained in *DLCD v. Crook County*, 26 Or LUBA 478, 491 (1994), what is required under the statutory standard that is set out in ORS 215.705(2)(a)(C)(iii) is a "clear picture of the existing land use pattern, the stability of that existing land use pattern, and an explanation for why introducing [the proposed use into the] area will not materially alter that stability."[9] Petitioner argues that the county's findings focus improperly on lands that are not zoned for exclusive farm use and fail to provide the requisite "clear picture of the existing land use pattern." *DLCD v Crook County* at 491.

The county adopted the following findings:

> "Rural residential zoning districts, RR-2.5 and RR-5, are located to the north of Tax Lot 101. These residential zoning districts have minimum lot size requirements of 2.5 and 5.0 acres. The residential area consists of 46 properties with dwellings on 45 properties. Under current lot size requirements, seven of the 46 properties within the rural residential districts could be partitioned to create a maximum of 10 new authorized units of land.
>
> "The evaluation area does not have a recent pattern of pre-85 high-value farmland dwelling approvals. As depicted on 1981, 1991 and 1996 aerial photographs, many of the existing resource dwellings were established prior to the current and use regulations. *There are seven properties within the resource zoning districts without dwellings. Under current regulations, the properties within the F/F and EFU zoning districts could not be partitioned to create smaller tracts.*" Record 8 (emphasis added).

The threshold problem with the above findings is that they focus almost exclusively on the non-EFU zoned properties in the evaluation area. The required focus under the

[9]The statutory standard at issue in *DLCD v. Crook County* was a local code requirement based on *former* ORS 215.283(3)(c), which required that nonfarm dwellings "not materially alter the stability of the overall land use pattern in the area[.]"

statutory standard set out at ORS 215.705(2)(a)(C)(iii) is precisely the opposite. *Schaad v. Clackamas County*, 15 Or LUBA 70, 77-78 (1986). *Schaad* makes it very clear that the focus must be on the agriculturally zoned area. It is the land use stability of the overall land use pattern on those agriculturally zoned lands that must be preserved. In the findings quoted above, the focus is clearly and improperly on the non-EFU zoned property.

The county's findings do recognize that there are some EFU-zoned parcels that contain farm dwellings and other EFU-zoned parcels that have not yet been developed with farm or nonfarm dwellings. However, beyond that observation, the findings make no attempt to explain why approval of the dwelling at issue in this appeal will not encourage development of more non-farm dwellings on the remaining seven farm parcels that are not improved with dwellings. While it may be that much of the land within the evaluation area is already developed with houses, that says nothing about whether additional houses may be introduced into the evaluation area without upsetting the stability of remaining farm uses. *DLCD v. Crook County* at 492.

In summary, the findings make no attempt to (1) describe the land use pattern on the EFU-zoned land, (2) describe the stability of that land use pattern, or (3) explain why the proposed dwelling will not materially alter that stability. For that reason, the findings are inadequate.

This subassignment of error is sustained.

C. Findings and Substantial Evidence

Petitioner's remaining arguments include an argument that the county's findings are inadequate to comply with ORS 215.416(9) and that the challenged decision is not supported by substantial evidence.

We have already agreed with petitioner under subassignment of error 6(B) that the county's findings addressing ORS 215.705(2)(a)(C)(iii) and LCLDC 933.708(B)(3)(c) are inadequate. Petitioner's arguments under this subassignment of error do not provide an

additional basis for remand. Moreover, because we have already determined that the county findings addressing ORS 215.705(2)(a)(C)(iii) and LCLDC 933.708(B)(3)(c) are defective in the ways identified in subassignment of error 6(B), no purpose would be served by reaching petitioner's arguments that those findings are not supported by substantial evidence. *DLCD v. Columbia County*, 15 Or LUBA 302, 305 (1987); *McNulty v. City of Lake Oswego*, 14 Or LUBA 366, 373 (1986), *aff'd* 83 Or App 275, 730 P2d 628 (1987).

Subassignment of error C is denied.

The sixth assignment of error is sustained, in part.

The county's decision is remanded.