BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

WILLIAM F. DURIG and JUNE WRIGHT,
Petitioners,

vs.

WASHINGTON COUNTY,
Respondent,

and

TOWNSEND FARMS, INC.,
Intervenor-Respondent.

LUBA No. 2000-185

FINAL OPINION
AND ORDER

Appeal from Washington County.

John M. Junkin and William R. Joseph, Portland, filed the petition for review. William R. Joseph argued on behalf of petitioners. With them on the brief was Bullivant Houser Bailey.

No appearance by Washington County.

Stark Ackerman, Portland, filed the response brief and argued on behalf of intervenor-respondent. With him on the brief was Black Helterline.

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

AFFIRMED 05/01/2001

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

Petitioners appeal a county hearings officer decision approving a request to construct seasonal farmworker housing in the county's exclusive farm use (EFU) zone.

MOTION TO INTERVENE

Townsend Farms, Inc. (intervenor), the applicant below, moves to intervene on the side of respondent. There is no opposition to the motion, and it is allowed.

FACTS

Intervenor operates a large, commercial farm operation based in Troutdale. Intervenor received approval for a special use permit to construct seasonal farmworker housing on one of its EFU-zoned parcels located within Washington County. The subject property includes approximately 29 acres and is located within one mile of the City of North Plains. The appealed decision approves the siting of approximately 33 manufactured homes to house approximately 374 seasonal full-time workers and approximately 17 nonworking family members. An existing dwelling would house additional people connected to the farm operations. The proposal limits the total number of occupants on the property at any time to 425 people.[1] An existing well and a proposed subsurface septic system will provide water and waste treatment.

The Washington County hearings officer approved a similar proposal for the subject property in 1997. Petitioners in the present case appealed the 1997 decision to LUBA. We remanded the 1997 decision on several grounds, including violation of a county comprehensive plan policy that prohibited the approval of new community water systems outside of urban growth boundaries. *Durig v. Washington County*, 35 Or LUBA 196 (1998) (Durig I). The Court of Appeals affirmed our decision, but only found it necessary to reach

[1] The exact number of dwellings and people may vary depending on Occupational Safety and Health Administration (OSHA) rules regarding occupancy and the number of family members per dwelling.

the issue of the comprehensive plan policy concerning community water systems. *Durig v. Washington County*, 158 Or App 36, 969 P2d 401 (1999) (Durig II). The comprehensive plan policy at issue in *Durig I* and *Durig II* has been repealed, and the comprehensive plan no longer prohibits a community water system on the subject property. Intervenor filed a new application rather than proceeding with the prior application on remand. The hearings officer approved the new application over petitioners' objections. This appeal followed.

FIRST ASSIGNMENT OF ERROR

Petitioners argue that there is not substantial evidence to demonstrate a need for 425 seasonal farmworkers, as required by Washington County Community Development Code (CDC) 430-37.2(D)(7).[2] The hearings officer's decision finds that intervenor demonstrated a need for the requested seasonal farmworkers on two grounds. First, the decision relies on evidence from intervenor's controller showing that over 700 seasonal farmworkers were employed during the year 2000 and that intervenor intends to continue its operation at similar levels. Second, the decision relies on a need for workers per acre established by an Oregon State University Experiment Station Report (OSU report) that calculates a need for almost

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[2] As relevant, CDC 430-37.2(D) provides:

> [A d]welling in conjunction with farm use * * * may be allowed provided there is a finding that the proposed dwelling is customarily required to conduct the proposed farm use considering:
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> "* * * * *
>
> "(7) [I]f the full time farm help is of a seasonal nature, the following information shall be provided for review:
>
> "(a) Why seasonal, additional workers are needed;
>
> "(b) Showing of any long term commitment (crop leases or rentals, etc.);
>
> "(c) Health Department approval;
>
> "(8) In the EFU and AF-20 Districts, seasonal farm worker housing shall meet the requirements of ORS 197.685."

600 seasonal farmworkers. Petitioners do not challenge either of these evidentiary bases for the decision.[3]

Petitioners assert that our decision in *Durig I*, which found that intervenor had not demonstrated a need for an additional 407 seasonal farmworkers, should also apply to the present case because the two applications are nearly identical. *Durig I*, 35 Or LUBA at 207. In *Durig I*, intervenor admitted that 130 of the 407 requested workers in that case were needed for future, speculative purposes, and intervenor made no attempt on appeal to address petitioners' criticism of the evidentiary support. 35 Or LUBA at 207. The current findings squarely address the evidentiary basis for a need for all the requested seasonal farmworkers. Record 106-157; 550-573. Substantial evidence is evidence a reasonable person could rely on in reaching a decision. *City of Portland v. Bureau of Labor and Ind.*, 298 Or 104, 119, 690 P2d 475 (1984). We conclude a reasonable person could rely on the testimony of intervenor's controller at Record 106-157 and the OSU worker-per-acre analysis at Record 550-573 to find that intervenor demonstrated a need for the additional 425 seasonal farmworkers.

Petitioners assert numerous other arguments that challenge the hearings officer's findings. However, most of those arguments concern whether there is a need to house seasonal farmworkers *on the subject property* rather than a need for the labor of seasonal farmworkers generally. Given our disposition of the second assignment of error below, such arguments do not provide a basis for reversal or remand.

The first assignment of error is denied.

SECOND ASSIGNMENT OF ERROR

As relevant, ORS 215.213(1)(r) provides:

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[3] In their petition for review, petitioners allege that intervenor sold almost 200 acres of its farmland subsequent to the decision in this case and that the sale affects its need for seasonal farmworkers. That evidence, however, is not included in the record and petitioners have not filed a motion to take evidence not in the record. OAR 661-010-0045. Therefore, we do not consider the alleged sale of 200 acres.

"[T]he following uses may be established in any area zoned for exclusive farm use:

"* * * * *

"(r) Seasonal farmworker housing as defined in ORS 197.675."

Petitioners argue that the county misconstrued the applicable law in approving the disputed seasonal farmworker housing by not requiring an adequate alternative sites analysis under ORS 197.685(2).[4] The crux of this assignment of error involves the interrelationship between ORS 215.213(1)(r) and ORS 197.685, and whether ORS 197.685(2) requires consideration of rural centers and committed lands as alternative sites, *before* approving seasonal farmworker housing on EFU land.

We addressed the issue of whether an alternative sites analysis is required in *Durig I*, where we stated:

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[4] ORS 197.685 provides:

"(1) The availability of decent, safe, and sanitary housing opportunities for seasonal farmworkers is a matter of statewide concern.

"(2) When a need has been shown for seasonal farmworker housing within the rural area of a county, needed housing shall be permitted in a zone or zones with sufficient buildable land to satisfy that need. Counties shall consider rural centers and areas committed to nonresource uses in accommodating the identified need.

"(3) Subsection (2) of this section shall not be construed as an infringement on a local government's prerogative to:

"(a) Set approval standards under which seasonal farmworker housing is permitted outright;

"(b) Impose special conditions upon approval of a specific development proposal; or

"(c) Establish approval procedures.

"(4) Any approval standards, special conditions and procedures for approval adopted by a local government shall be clear and objective and shall not have the effect, either in themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay."

> "We agree with petitioners, and we disagree with the county's decision, to the extent it finds that the hearings officer was not required to consider the ability of 'rural centers and areas committed to nonresource uses' to accommodate the identified need for seasonal farmworker housing. One of the 'requirements' imposed by ORS 197.685 is compliance with ORS 197.685(2), which requires that the county 'consider rural centers and areas committed to nonresource uses in accommodating the identified need [for rural seasonal farmworker housing].'" 35 Or LUBA at 208.

Petitioners argue that under our decision in *Durig I*, the county may only approve seasonal farmworker housing on EFU-zoned land if an alternative sites analysis has been conducted that demonstrates that such housing cannot be accommodated on lands in rural centers or rural areas that are already committed to nonresource use. Petitioners argue that the relevant statutes create a hierarchy of lands that must be considered when seasonal farmworker housing is proposed, whereby rural centers and areas committed to nonresource use must be fully utilized before EFU lands may be considered.

Intervenor argues that ORS 197.685(2) merely provides a *legislative* requirement that counties consider rural centers and areas committed to nonresource use to provide lands that are appropriately zoned for seasonal farmworker housing to meet any identified need for such housing. According to intervenor, the hearings officer properly found that ORS 197.685(2) does not apply to *quasi-judicial* decisions regarding particular applications for seasonal farmworker housing on EFU-zoned land, such as the decision challenged in this appeal.

Initially, petitioners assert that because the present application is nearly identical to the application in *Durig I*, the present case is in essence a continuation of that proceeding. According to petitioners, because this appeal concerns a county decision that responds to LUBA's remand, which in turn was affirmed by the Court of Appeals, the hearings officer was precluded from revisiting the issue of whether an alternative sites analysis is required by ORS 197.685(2). Under the law of the case doctrine, when a case is reopened after a remand from LUBA, the county should not revisit issues that were previously decided on the merits

by the Board. *Beck v. Tillamook County*, 313 Or 148, 153, 831 P2d 678 (1992). However, when the local decision is in response to a new application, even if that application is similar to the application that led to the decision remanded by the Board, the law of the case doctrine does not apply. *Davenport v. City of Tigard*, 27 Or LUBA 243, 246 (1994). As the present decision involves a new application, the law of the case doctrine does not preclude the hearings officer from reconsidering the issue.

Neither is LUBA precluded from reconsidering the issue. Had the Court of Appeals reviewed and affirmed our decision in *Durig I* regarding the alternative sites requirement of ORS 197.685(2) on the merits, then we would likely be bound to apply that interpretation in this case as well. The Court of Appeals, however, did not reach this issue in their decision. *Durig II*, 158 Or App at 37.

The hearings officer found that ORS 197.685(2) does not require an alternative sites analysis as part of a quasi-judicial application for seasonal farmworker housing on EFU-zoned land. Applying a textual and contextual analysis, the hearings officer found the statute to be ambiguous. He therefore reviewed the statute's legislative history. *PGE v. Bureau of Labor and Industries*, 317 Or 606, 610-12, 859 P2d 1143 (1993). The hearings officer's findings state:

> "* * * I find that [the legislative history] clearly indicates that the legislative intent behind ORS 197.685(2) was for counties to adequately provide for seasonal farmworker housing as part of a county-wide process of deciding the zones within which they would allow housing to meet needed housing types. I find that the intent is also clear that rural centers and areas committed to nonresource use were to be considered as areas appropriate for such seasonal farmworker housing, but that this was to be in addition to, and not to the exclusion of, the location of such housing on EFU lands. I find that this legislative history clearly states that the purpose of the legislation was to establish seasonal farmworker housing as an outright permitted use on EFU lands, and to limit discretionary restrictions and obstacles to the siting of such uses. I find, as a result of my review of this legislative history, that the legislature intended ORS 197.685(2) to be applied by counties through a legislative zoning designation process, and that there was no intention to apply its requirements at the time of individual applications for approval of a use." Record 71-72.

We agree with the hearings officer that the text and context of the relevant statutes do not clearly express the intent of the legislature on this question. Specifically, ORS 215.213(1)(r) provides that seasonal farmworker housing is allowed as an outright permitted use in EFU zones. *Brentmar v. Jackson County*, 321 Or 481, 496, 900 P2d 1030 (1995) (uses permitted under ORS 215.213(1) and 215.283(1) are "uses as of right" that are not subject to county regulations that go beyond those set forth in the statutes). Whether ORS 197.685 simply establishes *legislative* planning obligations and powers concerning seasonal farmworker housing, and therefore does not independently establish criteria that must be applied directly in considering an individual application for approval of a particular proposal for seasonal farmworker housing on an EFU-zoned parcel, is not clear from the language of ORS 197.685 and ORS 215.213(1)(r). Therefore, it is appropriate to consider relevant legislative history. *PGE,* 317 Or at 611-12.

The legislature added ORS 215.213(1)(r) and adopted the seasonal farmworker provisions of ORS 197.675 through 197.685 in 1989, as Senate Bill 735. Senator Larry Hill, a primary sponsor of the bill, explained the purpose of the legislation as follows:

> "'[E]ach county shall provide in its comprehensive plan for areas within which clusters of seasonal farmworker housing can be located, such areas shall include rural centers, areas in which an exception has been taken to an exclusive farm use zone designation, and other areas of existing habitation. So in the earlier sections, we're allowing seasonal farmworker housing on EFU lands. Here, we're saying that the county *must plan, must designate areas* that are suitable, particularly areas where there's already cluster development crossroads or areas of small habitation that have already been built and committed. The county can designate and must designate some of those areas for seasonal farmworker housing. We're trying to provide alternatives where seasonal farmworker housing may be located. Currently, this housing is scattered * * *. This bill recognizes that will probably continue, and in fact, it's desirable to have seasonal farmworker housing available in urban growth boundaries, committed areas outside of urban growth boundaries in the rural area, *and also on EFU zones*.'" Record 98, *quoting* tape recording, Senate Committee on Business, Housing and Finance, SB 735, February 23, 1989, Tape 27, Side A (emphases added).

In a later work session, Senator Hill further discussed the intent of the bill:

"'[ORS 197.675 through 197.685] is also new language, as part of the land use chapter, Chapter 197. It will direct counties, *in their planning process*, to provide that when a need has been shown for seasonal farmworker housing within the rural area of a county, needed housing shall be permitted in a zone or zones with sufficient buildable land to satisfy that need. Counties shall consider rural centers and areas committed to nonresource use in accommodating the identified need. The purpose here is to compel the county, when there is a need, to plan for adequate farm labor housing with an emphasis on the committed lands of the rural, the little strips at intersections, and other little urban nodes that you find in rural areas. Those are committed lands. *That would be in addition to farm labor housing permitted outright on EFU lands*. So this is part of the county planning process on those committed lands.'" Record 98, *quoting* tape recording, Senate Committee on Business, Housing and Finance, SB 735, March 23, 1989, Tape 45, Side B (emphases added).

A subsequent colloquy also demonstrates the intent of the bill:

"Representative Bob Repine: 'Could you give me an idea why you chose to make [seasonal farmworker housing] permitted, instead of conditional?'

"Senator Hill: 'We wanted to give the broadest discretion to the operator to build [seasonal farmworker housing]. And it's my belief that permitted gives broader discretion than conditional. [Requiring conditional use approval] *would allow the county to place conditions upon the structure in EFU zones. And* [permitting seasonal farmworker housing outright] *wouldn't allow special conditions to be placed upon a particular permit*.'

"* * * * *

"Representative Repine: 'The conditional side also, somewhat takes away the neighborhood or the farming district from having some kind of position on saying, okay, we know it's going to be allowed, but we would like to make sure that there was a fence, that there was a buffer, that there were pretty trees, that there was a park.'

"Senator Hill: 'Well * * *.'

"Representative Repine: 'Without those, without the conditional side, you then become permitted and it's, it's just we can put it on the corner of a farm in nowhere and that's the way the neighbors are going to have to face it.'

"Senator Hill: 'Yes, sir, that's correct. Just the same as a barn or a chicken house. That's the intent. *The intent is not to put prohibited requirements on farm labor housing that is built to code, that is seasonal, that is necessary for the operation of the farm*. Rather, to allow it to be built with the fewest restrictions on that land to provide the function of providing clean, decent

> housing for the farm workers in that area.'" Record 99, *quoting* tape recording, House Committee on Housing, and Urban Development, SB 735, May 31, 1989, Tape 109, Side A (emphasis added).

Although the above legislative history is not conclusive, we believe it is sufficient to show that the legislature did not intend that ORS 197.685(2) apply independently to quasi-judicial decisions for seasonal farmworker applications in EFU zones. ORS 197.685(2) clearly requires that counties consider lands in rural centers and committed lands that may be required to meet identified needs for seasonal farmworker housing. However, we agree with the hearings officer and intervenor that the legislative history shows that ORS 197.685 is intended to impose a *legislative* duty to consider non-EFU-zoned lands to provide land that would *supplement* seasonal farmworker housing allowed outright on EFU-zoned land under ORS 215.213(1)(r) and 215.283(1)(r), rather than a precondition of approving such housing on EFU-zoned land. Consequently, no alternative sites analysis is required by ORS 197.685(2) in this case, and the possibility that rural centers or areas committed to nonresource use could accommodate the proposed farmworker housing does not provide a basis for denial. ORS 215.213(1)(r) establishes that seasonal farmworker housing is an outright permitted use on EFU-zoned land. To the extent our decision in *Durig I* is contrary to the foregoing, it is overruled.

Our resolution of *Durig I* was influenced by the additional approval standards that the county applies to seasonal farmworker housing on EFU land. CDC 430-37.2(D)(7) and (8). *See* n 2.[5] In particular, CDC 430-37.2(D)(8) requires that "farmworker housing shall meet the requirements of ORS 197.685." In *Durig I*, we held that one of the "requirements of ORS 197.685" was the alternative sites analysis of ORS 197.685(2). 35 Or LUBA at 208.

[5] The identical provisions were codified at CDC 430-37.2(E)(7) and (8) in *Durig I*.

Given our interpretation of ORS 197.685(2) in this appeal, we do not interpret CDC 430-37.2(D)(8) to independently require an alternative sites analysis.[6]

The second assignment of error is denied.

THIRD ASSIGNMENT OF ERROR

Petitioners challenge the evidentiary support for the hearings officer's finding that the development will have an adequate water supply. CDC 423-11 provides:

> "All development shall be required to have an adequate water supply. Adequacy shall include:
>
> ".1 Adequate supply for the use prior to issuance of a building permit (see Section 501-5.1, Critical Services).
>
> ".2 Outside the UGB, *when any Special Use of Article IV will require an amount of water in excess of what would normally be used if the property were developed for rural homesites*, the following information:
>
> "(A) An explanation of how the water will be supplied; and
>
> "(B) An explanation of the potential impact of the proposed water system on the surrounding properties.
>
> "(C) Approval of a subdivision outside the UGB proposing a community water supply shall be subject to the provisions of Section 423-11.2 A and B." (Emphasis added.)

An existing well that serves the existing dwelling will provide the water supply for the proposal. Wells that use less than 15,000 gallons per day (GPD) are exempt from the requirements to (1) obtain a groundwater permit from the state, and (2) the requirements of CDC 423-11.2 to explain the potential impacts of the proposed water system on surrounding

[6] We do not see that CDC 430-37.2(D)(8) adds any additional approval criteria, other than perhaps to restate the obligation that is already imposed by the statute, and that any standards, conditions, and procedures the county applies to seasonal farmworker housing must be clear and objective and not have the effect of discouraging such housing.

properties.[7] Conflicting evidence was presented on whether the proposed development would require more than 15,000 GPD. Intervenor projected a use of just under 15,000 GPD, county staff projected use of just over 15,000 GPD, and petitioners argued the use would be substantially greater than 15,000 GPD. The hearings officer found that the projected use was just under 15,000 GPD based on OSHA standards and intervenor's experience at other seasonal farmworker facilities. Record 57.

The hearings officer also imposed a condition of approval requiring that use of the well be monitored because the projected use is so close to 15,000 GPD. The condition of approval requires intervenor to (1) demonstrate that a water right permit is not required, (2) obtain a permit, or (3) enter into an agreement with the Oregon Water Resources Department (OWRD) to determine whether a permit is required. The hearings officer relied on the existing well, the projected use of less than 15,000 GPD, and the condition of approval in the event the actual use exceeds the exempt amount to determine that an adequate supply of water is feasible. Record 57. Petitioners assert that the hearings officer's finding that the requirement of CDC 423-11.2(B) does not apply is erroneous and not supported by substantial evidence.

Although the hearings officer found that CDC 423-11.2(B) was not applicable, he also found that the requirement was nonetheless satisfied:

> "I find that opponents have raised an issue regarding compliance with the requirement of CDC 423-11.2 for an explanation of the potential impact of the well on surrounding properties. I find that even though this requirement only applies if the water use exceeds the exempt threshold, that the applicant has submitted such an impact analysis. I find that the analysis has been prepared by Jim Roofener, who has over 28 years of experience in designing and installing water systems. I find that in two letters submitted to the record, Mr.

[7] ORS 537.545(1)(d) provides that groundwater use for "[s]ingle or group domestic purposes in an amount not exceeding 15,000 gallons a day" is exempt from obtaining a groundwater permit from the state. The hearings officer's decision appears to treat the "amount of water in excess of what would normally be used * * * for rural homesites" to also be anything in excess of 15,000 GPD, and neither party disputes the use of this amount for triggering the requirements of CDC 423-11.2.

> Roofener described the wells in the area and the aquifers that they draw from. I find that he concluded that the applicant's well is drawing from a huge aquifer that stretches for miles, and that he did not expect any adverse impact on other wells in the area. I find that Mr. Roofener's testimony is credible based upon his experience and profession. I further find that the opponents have submitted no specific evidence of impacts, but merely raised questions and offered speculations. * * *" Record 57-58.

We believe petitioners have a valid point that continuing to add additional wells that draw from the same aquifer may eventually have an adverse impact on the properties that rely on the aquifer. However, we cannot say that a reasonable person could not rely upon intervenor's expert's opinion to find that *this* proposed water system would have no adverse impact on surrounding properties. The choice between conflicting evidence belongs to the local government, and the fact that petitioners disagree with that choice provides no basis for reversal or remand. *McGowan v. City of Eugene*, 24 Or LUBA 540, 546 (1993).[8]

The third assignment of error is denied.

FOURTH ASSIGNMENT OF ERROR

Petitioners challenge the evidentiary support for the hearings officer's finding that obtaining Department of Environmental Quality (DEQ) approval of the septic system is feasible. CDC 423-10 provides that:

> "All development shall comply with the State Department of Environmental Quality Water Quality Standards for all runoff, drainage and wastewater."

The hearings officer relied upon evidence submitted by intervenor's experts: a registered sanitarian, an engineer, and a soils scientist. Record 54-56. A local government may rely on the opinion of an expert if, considering all the relevant evidence in the record, a

[8] Petitioners also appear to allege that the hearings officer improperly delegated a decision on the feasibility of obtaining a groundwater permit to the OWRD. Initially, we agree with intervenor that petitioners failed to raise this issue below and are precluded from raising the issue on appeal. ORS 197.763(1). We also note that obtaining a groundwater permit is not an approval criterion for the application; the CDC merely requires that there be an adequate supply of water. CDC 423-11. The hearings officer's decision finds that there is an adequate supply based upon the existing well and a "huge aquifer that stretches for miles." The condition of approval regarding a potential groundwater permit merely requires the applicant to follow the proper state procedures for utilizing what the hearings officer found to be an adequate supply of water.

reasonable person could have chosen to rely on the expert's conclusions. *Bates v. Josephine County*, 28 Or LUBA 21, 29 (1994). Although petitioners raise many plausible concerns regarding the septic system, the choice between conflicting evidence belongs to the local government. For each argument raised by petitioners regarding the proposed septic system, the hearings officer rejects the argument based on evidence submitted by intervenor's three experts.[9] We cannot say that a reasonable person could not rely upon intervenor's experts' testimony to find that DEQ approval is feasible.

The fourth assignment of error is denied.

FIFTH ASSIGNMENT OF ERROR

Petitioners argue that the hearings officer misconstrued the applicable law by finding that the EFU zone yard setbacks and minimum yard separation requirements are measured from the property lines to the nearest building rather from each individual building. Petitioners also argue that the hearings officer misconstrued the applicable law by failing to treat the application as a manufactured dwelling park and failing to require compliance with the relevant manufactured dwelling park approval criteria.

A. EFU Zone Setbacks and Yard Requirements

CDC 340-8 provides the setback requirements and minimum lot widths in EFU zones. The application satisfies the requirements if the setbacks are measured from the property lines to the nearest point of a building, but not if the setbacks are also required between individual buildings. The hearings officer's findings state:

> "I do not agree with the assertion that the CDC requires that setbacks under this section be measured from each individual manufactured dwelling. I find and interpret the definitions in the CDC to clearly intend that the required yards be measured from the property line to the closest building. I further find

[9] Although there is substantial evidence to support the hearings officer's decision in any event, we agree with intervenor that petitioners did not raise below any issue concerning failure of a soils report update to address changes to the septic system or any issue concerning an alleged drainage hazard created by a nearby culvert. ORS 197.763(1); ORS 197.835(3).

> that the manufactured dwellings are not proposed to be placed on separate lots, with separate property lines around them, but will all be on the subject site, which is a single parcel. Therefore, I find that the CDC only requires that the yard setback requirements be measured to the closest building points, not from all separate buildings, and that, as discussed above, the Site Plan shows that these setback requirements have been met." Record 19-20.

The hearings officer read the yard setback requirements in conjunction with the definition of "yard" at CDC 106-219, which provides in pertinent part:

> "Yard (Setback). An open space on a lot or parcel which is unoccupied or unobstructed by buildings or other structures from the ground upward * * *. *Required yards shall be measured from the property line*, sidewalk, or easement for public travel, whichever is closest, *to the building line* of the lot or parcel a building will be constructed on * * *."[10]

No deference is due the hearings officer's interpretation. *Gage v. City of Portland*, 319 Or 308, 317, 877 P2d 1187 (1994); *Watson v. Clackamas County*, 129 Or App 428, 431-32, 879 P2d 1309 (1994). We consider whether the hearings officer's interpretation is reasonable and correct. *McCoy v. Linn County*, 90 Or App 271, 275-76, 752 P2d 323 (1988); *Stroupe v. Clackamas County*, 28 Or LUBA 107, 111 (1994). The definitions of types of yards in CDC 106-219 all reference the distance between a lot line and a building. Neither CDC 340-8 nor 106-219 expressly requires or implicitly suggests that the measurements apply between individual buildings on a single parcel. In fact, it would be difficult, if not impossible, to reconcile the definitions in CDC 106-219 with a requirement to achieve such setbacks between buildings. Petitioners' only support for their position is their argument that the hearings officer's interpretation violates the purpose of the entire CDC to "provide for the health, safety and general welfare of the citizens of Washington County." CDC 102. Petitioners provide no explanation for why the hearings officer's decision violates this purpose, and we do not see that it does. We find that the hearings officer's interpretation is reasonable and correct.

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[10] The definitions for front yard, rear yard, and side yard also measure between the property line and the nearest building. CDC 106-219.1-.3.

B. Manufactured Dwelling Park Standards

CDC 430-77 defines a manufactured dwelling park as:

> "[A] parcel under single ownership on which two * * * or more manufactured dwellings are occupied as residences. The manufactured dwelling sites are usually rented. * * *"

Petitioners argue that the proposed seasonal farmworker housing application fits this definition and should be required to meet the siting approval criteria of the CDC for manufactured dwelling parks. Intervenor responds that it is proposing seasonal farmworker housing using manufactured dwellings, but that fact does not transform the proposal into a manufactured dwelling park. The hearings officer's decision states:

> "As an initial matter, I find that the manufactured dwelling and manufactured dwelling park criteria do not apply to this application. I find that the referenced manufactured dwelling park standards are only intended to apply in urban areas. I find that the seasonal farmworker housing use of the manufactured dwellings is very different from a typical manufactured dwelling park (e.g., the dwellings will be used for less than nine months of the year, and they are occupied by multiple families and unrelated individuals) so that standard manufactured dwelling park considerations may not be appropriate to the proposed seasonal farmworker housing use. *I find the applicant is not requesting approval of a manufactured dwelling park, nor is a manufactured dwelling park even allowed in the EFU district.* I find the applicant is applying for approval of seasonal farmworker housing (which <u>is</u> an allowed use in the EFU district), and just happens to be proposing that such housing be provided in the form of manufactured dwellings. I find that because it is a 'seasonal farm worker housing' use that is being approved, and because a 'manufactured dwelling park' use as contemplated by the CDC is not permitted in the EFU district (meaning that the requirements for such parks are not designed for application in EFU district situations), that the approval criteria applicable to a 'manufactured dwelling park' are not applicable to this application." Record 80 (emphasis added; underline emphasis in original).

We agree with the hearings officer. The disputed application is for seasonal farmworker housing, not a manufactured dwelling park. Petitioners assert that ORS 197.685(3) and (4) contemplate counties applying precisely these kinds of approval criteria. *See* n 4. However, ORS 197.685 merely *allows* counties to adopt additional approval criteria that do not discourage needed farmworker housing. The statute does not *require* counties to

adopt such additional approval criteria, and it certainly does not require that the county apply the approval criteria for manufactured housing parks in the absence of legislation that makes those criteria applicable. Whatever the county's latitude to amend the CDC to make the manufactured dwelling park requirements apply to seasonal farmworker housing, it is clear that the county has not yet done so.

The fifth assignment of error is denied.

SIXTH ASSIGNMENT OF ERROR

Petitioners argue that the hearings officer misconstrued the applicable law in finding that the proposed seasonal farmworker housing does not violate numerous county comprehensive plan policies restricting urban uses on agricultural land. Petitioners also argue that the hearings officer's decision that other county comprehensive plan policies are not violated is not supported by substantial evidence.

A. Urban Use of Agricultural Land

According to petitioners, the proposed seasonal farmworker housing is an urban use on agricultural land which violates a number of county comprehensive plan policies designed to implement Goal 14 (Urbanization).

Initially, intervenor asserts that petitioners did not raise the issue of compliance with the county comprehensive plan policies regarding urban uses on agricultural land, and that they are precluded from raising the issue on appeal. ORS 197.763(1). At oral argument, petitioners referred us to a letter in the record submitted by attorneys for the City of North Plains in opposition to the proposal. We do not see that the letter adequately raises, or even mentions, county comprehensive plan policies regarding urban uses on agricultural land. Although the cited letter does raise an issue of compliance with Goal 14, the hearings officer found that Goal 14 does not apply to the decision because the application must be measured against the county comprehensive plan rather than the goals. Record 77-78.

Absent circumstances that are not present in this case, the statewide planning goals are generally not applicable to decisions applying acknowledged comprehensive plan provisions and land use regulations. ORS 197.646; 197.835(5); *Byrd v. Stringer*, 295 Or 311, 316-17, 666 P2d 1332 (1983). Petitioners must do more than merely raise an issue concerning compliance with Goal 14 to raise an issue concerning compliance with particular local comprehensive plan policies that may implement Goal 14. Because petitioners failed to raise any issue concerning the comprehensive plan policies cited in the petition for review, they may not raise the issue for the first time at LUBA. ORS 197.763(1); ORS 197.835(3).[11]

B. Provision of Public Services

The only issue of compliance with a comprehensive plan policy that was raised below and preserved for appeal regards Plan Policy 22, Strategy a, which is mirrored by CDC 501-9.2, which provides:

> "[I]mpact on the following public facilities shall be considered: school, fire, police protection and public roads."

Petitioners allege that adequate police protection and school services do not exist.

The CDC merely requires the hearings officer "consider" the impact on public facilities. The code does not require that the county assure that any particular level of services is available. *Durig I*, 35 Or LUBA at 209. Contrary to petitioners' assertions, the hearings officer did consider police protection and schools. The hearings officer found that the impact on schools would be minor as the proposed number of nonworking family members, who could attend school during only part of the year, is only 17. Record 67. The hearings officer acknowledged the concerns of the City of North Plains regarding police protection but disagreed with its conclusions. The hearings officer found that intervenor prohibits alcohol on the property, provides its own security force, and keeps family units

[11] Petitioners do not argue they should be allowed to raise issues concerning the cited plan policies, notwithstanding their failure to raise the issues below, for any of the reasons set forth at ORS 197.835(4).

together at the housing it provides, all of which reduce the need for police protection. Furthermore, the hearings officer found that since the seasonal farmworkers were generally being relocated from areas within the same police protection area, the demand for police services would not change. A reasonable person could rely upon the evidence the hearings officer relied upon to find that Plan Policy 22, Strategy a and CDC 501-9.2 are satisfied.

The sixth assignment of error is denied.

The county's decision is affirmed.