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BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

ADRIENNE VAN NALTS and  
ERNEST VAN NALTS,  
*Petitioners,*

vs.

BENTON COUNTY,  
*Respondent,*

and

CITICASTERS INC.,  
*Intervenor-Respondent.*

LUBA No. 2002-037

FINAL OPINION  
AND ORDER

Appeal from Benton County.

Corinne C. Sherton, Salem, filed the petition for review and argued on behalf of petitioners. With her on the brief was Johnson & Sherton, PC.

No appearance by Benton County.

Gary E. Norman, Albany, filed the response brief and argued on behalf of intervenor-respondent. With him on the brief was Scott & Norman, PC.

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

REMANDED

08/20/2002

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

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**NATURE OF THE DECISION**

Petitioners appeal a county decision that approves a 199-foot AM radio transmission tower on land zoned for exclusive farm use (EFU). The approved site is outside the City of Corvallis urban growth boundary and approximately one-half mile east of the city.

**INTRODUCTION**

Intervenor-respondent Citicasters Inc. (Citicasters) is licensed to operate two AM radio stations, KLOO and KEJO. KLOO’s existing transmitting tower is located at the southern edge of the City of Corvallis. KEJO’s existing transmitting tower is located on the north end of the city, approximately two and three-quarters miles north and one mile east of the KLOO tower. Leases for those towers are expiring, and Citicasters seeks approval of the disputed tower to allow continued broadcasting of KLOO and KEJO.<sup>1</sup>

The siting of a utility facility such as the proposed radio tower on EFU-zoned land is subject to ORS 215.275 which, among other things, requires that an applicant demonstrate that it is not feasible to locate the proposed utility facility on land that is not zoned EFU.<sup>2</sup>

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<sup>1</sup> The proposal includes a 199-foot lattice tower on which both stations would locate their transmission facilities. The facility includes a support building, as well as a buried ground radial cable system, with a diameter of 400 feet.

<sup>2</sup> ORS 215.275 provides, in relevant part:

- “(1) A utility facility established under ORS 215.213 (1)(d) or 215.283 (1)(d) is necessary for public service if the facility must be sited in an exclusive farm use zone in order to provide the service.
- “(2) To demonstrate that a utility facility is necessary, an applicant for approval under ORS 215.213 (1)(d) or 215.283 (1)(d) must show that reasonable alternatives have been considered and that the facility must be sited in an exclusive farm use zone due to one or more of the following factors:
  - “(a) Technical and engineering feasibility;
  - “\* \* \* \* \*
  - “(f) Other requirements of state or federal agencies.”

1 *Jordan v. Douglas County*, 40 Or LUBA 192, 199 (2001); *City of Albany v. Linn County*, 40  
2 Or LUBA 38, 46-47 (2001). In *Jordan* we explained that this alternatives analysis requires  
3 that an applicant make a reasonable effort to identify feasible non-EFU-zoned alternative  
4 utility facility sites, and where another party “identifies an alternative site with reasonable  
5 specificity to suggest that it is a feasible alternative,” that site must also be considered. 40 Or  
6 LUBA at 201. Intervenor misreads our decision in *Jordan* to place the burden on opponents  
7 to demonstrate that an alternative that was not examined by the applicant is a feasible  
8 alternative. The burden to comply with ORS 215.275 rests on the applicant.<sup>3</sup>

9 In the present case, Citicasters pursued a two-step process to eliminate alternatives.  
10 The first step is dictated by Federal Communication Commission (FCC) noninterference,  
11 setback and coverage requirements.<sup>4</sup> By a process of eliminating areas of the city or county  
12 where FCC regulations would prohibit the proposed tower, the geographic area of the city  
13 and county where a tower could *potentially* be sited is thereby identified. In this opinion we  
14 refer to this geographic area as the FCC area.

15 The second step is dictated by the needed physical site characteristics and considers  
16 site availability. Not all sites within the FCC area are available or possess the necessary site  
17 characteristics. The proposed tower needs a relatively level site with sufficient area to  
18 accommodate the 400-foot diameter buried radial cable.

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<sup>3</sup> This does not mean that opponents have no burden to establish that a suggested site has the required characteristics. For example opponents may not simply submit a list of many properties and thereby obligate the applicant to study those sites. However, that is not what happened here. Petitioners identified a total of 16 alternative sites by tax lot number and specified the area of each of those tax lots. Neither the county nor Citicasters took the position below that petitioners’ identification of alternatives was insufficient to locate the properties and determine whether they were suitable alternatives.

<sup>4</sup> FCC regulations require (1) minimum distances between radio stations that broadcast at similar frequencies, (2) that radio broadcast towers be set back from other kinds of existing transmission towers (such as cellular towers) and (3) that radio towers be sited so as to provide coverage to between 80 percent of the station’s service area or, with a waiver, as little as 60 percent of the station’s service area.

1           The alternatives analysis required by ORS 215.275 was complicated in this case  
2 because the FCC areas that Citicasters identified (step one above) changed significantly  
3 throughout the local review process. This, in turn, made the eligible area for potential  
4 alternative sites uncertain. We describe the process the county followed in approving the  
5 disputed tower below before turning to petitioners' assignments of error.

6           **A.     The Corridor**

7           Citicasters' original application explained that to comply with FCC regulations the  
8 proposed tower needs to be located on the east side of Corvallis and within one and one-half  
9 miles of the city limits (the Corridor).<sup>5</sup> The application explained why several properties  
10 that Citicasters examined within the Corridor were either unsuitable or unavailable, and  
11 sought approval for the disputed EFU-zoned site. Before the initial evidentiary hearing in  
12 this matter before the planning commission, petitioners identified a total of 15 alternative  
13 non-EFU-zoned sites within the Corridor and provided their tax lot numbers, zoning and  
14 size. Record 242.

15           **B.     The Rectangle**

16           At the November 6, 2001 planning commission hearing, Citicasters identified a new,  
17 much smaller area that it contended represented the FCC area.<sup>6</sup> Record 208. The parties  
18 refer to this area as the Rectangle. Citicasters took the position that the 15 alternative sites  
19 proposed by petitioners were all unsuitable for one or more reasons. Five sites were rejected,

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<sup>5</sup> Apparently there is no map in the record that accurately depicts the Corridor. However, we understand that the Corridor is the largest of the areas identified as including properties where the disputed tower could potentially be sited and meet FCC noninterference, setback and coverage requirements.

<sup>6</sup> The reasons specified for the smaller Rectangle study area included avoiding interference with other radio stations and the need to serve 80 percent of the stations' service areas. We assume the Corridor area also took these factors into consideration, but we do not know why the Corridor was so much larger than the Rectangle.

1 in whole or in part, because they were located outside the Rectangle.<sup>7</sup> Record 213. Other  
2 sites were rejected as too small, or having site limitations that would preclude development  
3 of the proposed radio tower, or because they were not for lease. Record 212-13. Citicasters  
4 also identified an additional 10 alternative sites, which it rejected as unsuitable alternatives  
5 for various reasons.<sup>8</sup> At this point, as far as we can tell, Citicasters' position was that six of  
6 petitioners' 16 proposed alternative sites were not feasible because they were located outside  
7 the Rectangle and the remaining 10 alternatives located with the Rectangle were not feasible  
8 because they were not for lease or had physical limitations that would preclude siting the  
9 tower on those sites.

10 Following its public hearings, the planning commission approved the application.  
11 Petitioners appealed that decision to the Benton County Board of Commissioners (BOC).

### 12 **C. The Pie Slice**

13 In December 2001, petitioners submitted additional information in support of their  
14 position that two of their proposed alternatives, the McFadden and City Sites, were feasible  
15 alternatives notwithstanding that they are located outside the Rectangle.<sup>9</sup> On December 18,  
16 2001, Citicasters again revised the FCC area. This three-sided area is referred to as the Pie  
17 Slice. The Pie Slice includes and is somewhat larger than the Rectangle, but is smaller than  
18 the original Corridor.<sup>10</sup> At the December 27, 2001 BOC hearing, Citicasters identified 12

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<sup>7</sup> Petitioners also identified a 16th alternative site, the Office Max site. Apparently Citicasters rejected this site because it was outside the Rectangle, making a total of six sites that were rejected in whole or in part because they were outside the Rectangle. Record 251.

<sup>8</sup> As petitioners point out, it appears that at least eight of these alternative sites are also zoned EFU, and for that reason alone would not constitute alternative non-EFU-zoned sites.

<sup>9</sup> The McFadden Site is also referred to as Tax Lot 200 (Assessor's Map 11 5 26). The December 2001 information concerning the City Site is directed at Tax Lot 400 (Assessor's Map 11 5 26). As we explain later, Tax Lot 500 (Assessor's Map 11 5 26), a second city owned site, adjoins Tax lot 400. We refer to these sites collectively as the City Sites.

<sup>10</sup> Petitioners attach a map with the Rectangle superimposed on the Pie Slice. Petition for Review App 22.

1 additional alternative sites within the Pie Slice and provided a table that identifies problems  
2 with those 12 alternatives and 14 of petitioners' 16 alternatives. Record 70.<sup>11</sup>

3 At the December 27, 2001 BOC hearing, petitioners also submitted additional  
4 evidence, along with a report that questioned two of the boundaries on Citicasters' Pie Slice,  
5 and took the position that the corrected boundaries would produce a significantly larger Pie  
6 Slice (Large Pie Slice). The McFadden Site and City Sites are located within the Large Pie  
7 Slice.<sup>12</sup>

#### 8 **D. The Continued Hearing**

9 At the conclusion of the December 27, 2001 BOC hearing, the BOC at first proposed  
10 to close the record and allow Citicasters 10 days to submit final closing arguments.<sup>13</sup>  
11 However, petitioners and Citicasters requested that the record be held open to allow them to  
12 submit additional evidence. The BOC voted to allow petitioners until January 4, 2002 to  
13 submit additional evidence and to allow Citicasters until January 11, 2002 to submit  
14 additional evidence.<sup>14</sup> The BOC set January 22, 2002 as the date it would deliberate and  
15 adopt its final decision. Record 65.

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<sup>11</sup> Based on our review of the table, it does not address two of petitioners' previously proposed alternatives, Tax Lot 700 (Assessor's Map 11 5 25 B) and Tax Lot 1500 (Assessor's Map 11 4 19 CB). Citicasters had previously taken the position that Tax Lot 700 was physically unsuited because it is too narrow and that Tax Lot 1500 was outside the Rectangle. The table rejects a Tax Lot 1500 (Assessor's Map 11 4 19 C) as being "way too far north." The referenced Assessor's Map for this Tax Lot 1500 is similar to the Assessor's Map for the Tax Lot 1500 that was previously rejected for being outside the Rectangle. The different Assessor's Map references may be a mistake and there may only be one Tax Lot 1500, but we cannot be sure.

<sup>12</sup> Petitioners argue the Large Pie Slice includes additional non-EFU-zoned alternatives, but they do not identify those additional alternatives. Petition for Review 13.

<sup>13</sup> ORS 197.763(6)(e) provides:

"Unless waived by the applicant, the local government shall allow the applicant at least seven days after the record is closed to all other parties to submit final written arguments in support of the application. The applicant's final submittal shall be considered part of the record, but shall not include any new evidence. \* \* \*"

<sup>14</sup> As relevant, ORS 197.763(6) provides:

1           On January 4, 2002, petitioners submitted a supplemental expert report that concludes  
2 that Tax Lot 400 is a feasible location for the proposed tower. On January 11, 2002,  
3 Citicasters did not submit additional evidence. Instead, Citicasters' attorney sent a letter to  
4 the county requesting that the proceeding be continued to February 19 to allow time for  
5 Citicasters to discuss the feasibility of locating the proposed tower on the "sewer treatment  
6 plant property." Record 55.<sup>15</sup> On February 11, 2002, Citicasters submitted two letters and a  
7 memorandum that explains why it believes Tax Lot 400 is an unsuitable site. Among the  
8 reasons given for its unsuitability are access problems caused by an adjoining railroad,  
9 wetlands, and an existing swale, wetlands and interference with the city's current use of the  
10 property. Record 36-39.

11           Although the January 4, 2002 and February 11, 2002 submittals apparently  
12 constituted the anticipated additional evidence that was to be submitted following the  
13 December 27, 2001 hearing, a second round of documents were submitted. First, petitioners

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- “(a) Prior to the conclusion of the initial evidentiary hearing, any participant may request an opportunity to present additional evidence, arguments or testimony regarding the application. The local hearings authority shall grant such request by continuing the public hearing pursuant to paragraph (b) of this subsection or leaving the record open for additional written evidence, arguments or testimony pursuant to paragraph (c) of this subsection.
  - “(b) If the hearings authority grants a continuance, the hearing shall be continued to a date, time and place certain at least seven days from the date of the initial evidentiary hearing. An opportunity shall be provided at the continued hearing for persons to present and rebut new evidence, arguments or testimony. If new written evidence is submitted at the continued hearing, any person may request, prior to the conclusion of the continued hearing, that the record be left open for at least seven days to submit additional written evidence, arguments or testimony for the purpose of responding to the new written evidence.
  - “(c) If the hearings authority leaves the record open for additional written evidence, arguments or testimony, the record shall be left open for at least seven days. Any participant may file a written request with the local government for an opportunity to respond to new evidence submitted during the period the record was left open. If such a request is filed, the hearings authority shall reopen the record pursuant to subsection (7) of this section.”

<sup>15</sup> Material later forwarded to the county makes it clear that the discussions concerned Tax Lot 400 and did not concern Tax Lot 500.

1 submitted additional documents on February 12, 2002 and February 15, 2002. In those  
2 documents petitioners express surprise that the city was unwilling to provide a portion of Tax  
3 Lot 400 that would be large enough to accommodate the proposed tower. Petitioners also  
4 took the position that the adjacent Tax Lot 500 is large enough to accommodate the proposed  
5 tower, meets FCC requirements, has unimpeded access and no wetland issues. Record 32-  
6 34.

7 On February 19, 2002, the BOC again considered the application. On that day,  
8 Citicasters submitted a two-page memorandum with attached maps. The memorandum and  
9 map respond to petitioners' February 12, 2002 and February 15, 2002 submittals. The  
10 memorandum identifies several reasons why Tax Lot 500 would not be a feasible alternative.  
11 The memorandum also responds to petitioners' February 15, 2002 contentions concerning  
12 Tax Lot 400. The BOC accepted all the documents that had been submitted after the  
13 December 27, 2001 hearing and made an oral decision to approve the application.  
14 Thereafter, the BOC adopted its written decision on March 12, 2002, and approved the  
15 application. This appeal followed.

16 **SECOND ASSIGNMENT OF ERROR**

17 Benton County Development Code (BCDC) 51.840(1) requires that the BOC  
18 "conduct a public hearing pursuant to [BCDC] 51.705 to 51.725 prior to deciding an appeal."  
19 BCDC 51.720(5) substantially duplicates ORS 197.763(6)(a) through (c). See n 14.  
20 Petitioners contend the county was proceeding under the BCDC equivalent of ORS  
21 197.763(6)(b) and that the February 19, 2002 hearing was a continued hearing at which the  
22 BOC accepted new evidence in the form of Citicasters' February 19, 2002 faxed  
23 memorandum. Petitioners contend the county committed reversible error by not providing  
24 petitioners an opportunity to submit evidence to rebut that memorandum.

25 Although the February 19, 2002 BOC hearing was referred to as a "continuance," it is  
26 relatively clear that the BOC decision on December 27, 2002, was to hold the record open



1 under ORS 197.763(6)(a) to allow petitioners to submit additional written evidence on  
2 January 4, 2002. Apparently, rather than require Citicasters to request an opportunity to  
3 submit evidence thereafter under ORS 197.763(6)(c), the BOC provided that Citicasters  
4 could submit additional evidence on January 11, 2002.<sup>16</sup> While the evidence that Citicasters  
5 ultimately submitted later on February 11, 2002, was not limited to evidence responding to  
6 petitioners' January 4, 2002 submittal, petitioners were allowed to submit additional  
7 documents on February 12 and 15, 2002, that responded to Citicasters' February 11, 2002  
8 submittal. Citicasters' February 19, 2002 submittal simply responded to the evidence and  
9 arguments that petitioners submitted on February 12 and 15.

10 The statutory procedures that allow the county to hold the record open and permit  
11 other parties to request an opportunity to submit a response to any such new evidence were  
12 not followed with precision in this case. Nevertheless, we conclude that is what the county  
13 was attempting to do, and any deviations from that statutory procedure did not, in our view,  
14 prejudice any party's substantial rights. Under ORS 197.763(6)(c), Citicasters was entitled  
15 to request an opportunity to respond to any new evidence that petitioners submitted during  
16 the period the record was being held open. The BOC did not err by failing to provide  
17 petitioners an opportunity for surrebuttal. Petitioners do not argue that the February 19, 2002  
18 memorandum goes beyond responding to their February 12, and 15, 2002 submittal. Even if  
19 it did, as Citicasters points out, petitioners were present at the February 19, 2002 hearing and  
20 did not request an opportunity for surrebuttal at that time and did not make such a request  
21 during the weeks that followed before the BOC adopted its final written decision in this  
22 matter on March 12, 2002. Given that failure to request an opportunity to submit surrebuttal

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<sup>16</sup> As petitioners recognize in making their arguments under this assignment of error, the February 19, 2002 BOC hearing was for the purpose of receiving the intervening written submittals of the parties and making a final decision. It was not the kind of continued evidentiary hearing that is envisioned under ORS 197.763(6)(b), because the parties were not provided an opportunity to present additional oral or written evidence at the February 19, 2002 hearing.

1 evidence, petitioners may not now assign error to the BOC's failure to provide that  
2 opportunity.

3 The second assignment of error is denied.

4 **FIRST ASSIGNMENT OF ERROR**

5 Petitioners contend that the BOC's findings are inadequate to demonstrate that the  
6 identified alternative sites in this matter are not feasible alternatives to siting the proposed  
7 tower on the subject EFU-zoned property. The BOC's findings are as follows:

8 "Based on all of the engineering information submitted by the applicant and  
9 the appellant in the file in this case, it is apparent that the proposed radio  
10 broadcast tower has very specific location needs. It must be located in a  
11 relatively small geographic area north and east of the city of Corvallis. It is  
12 also apparent from all of the engineering data submitted that any property  
13 used for this facility must be configured so that it will accommodate the tower  
14 and the ground radial system in order for the tower to function as required.

15 "These two parameters significantly limit the type and location of real  
16 property that will accommodate the applicant's needs. Prior to the appeal in  
17 this case by the Van Nalts, the applicant had done a search of available sites,  
18 and had been unable to find any other available site that was not also in an  
19 exclusive farm use zone. After the matter was appealed, the Van Nalts  
20 submitted numerous other proposed sites, and some information from an  
21 expert they had hired. In response to those proposals, the applicant made  
22 additional investigations and considerations of those sites, and responded to  
23 each of those proposals with documents from the parties in control of those  
24 sites \* \* \*. All of the documents submitted by both the applicant and the  
25 appellant that bear on these proposed sites have been reviewed and  
26 considered.

27 "The potential alternative site most vigorously pursued by the appellants is a  
28 site (tax lots 400 and 500 on Assessor's Map 11-[5]-26) owned by the City of  
29 Corvallis \* \* \* adjacent to \* \* \* the City of Corvallis Sewage Treatment Plant  
30 facility. Based on information provided by the Van Nalts, the applicant  
31 further investigated the feasibility of this site.

32 "Written testimony was submitted \* \* \* on behalf of the applicant, in response  
33 to the Van Nalts' testimony, citing reasons why this site would not work. The  
34 City of Corvallis property contains Injector Vehicle Loading Stations and  
35 associated plumbing [and] would not allow sufficient space for the radio  
36 tower's ground radial system. Also, an earthen berm creates unlevel ground  
37 which is unsuitable for the tower, and power lines and a large number of trees

1 in the area would not allow proper placement of the tower and ground radial  
2 system.

3 “\* \* \* The [BOC] concludes that the City of Corvallis site was considered,  
4 and will not meet the siting requirements of the proposed tower. The [BOC]  
5 concludes that all reasonable alternatives to the proposed site have been  
6 considered, and that the proposed tower must be sited on EFU land for  
7 reasons of technical and engineering feasibility and a lack of suitable urban  
8 and non-resource land. The application meets the requirements of this  
9 criterion.” Record 22-23.

10 **A. Tax Lots 400 and 500**

11 With regard to the City Sites, Tax Lots 400 and 500, we believe the above-quoted  
12 findings are adequate to explain that the county relied on the evidence submitted by  
13 Citicasters on February 11, 2002 and February 19, 2002, to reject those sites as feasible  
14 alternatives. Although the features specifically noted in the findings closely parallel the  
15 features cited in the February 19, 2002 memorandum regarding Tax Lot 500 only, that same  
16 memorandum also addresses petitioners’ criticisms of Citicasters’ earlier memorandum  
17 concerning Tax Lot 400. The county’s failure to recite specific aspects of the memoranda  
18 addressing Tax Lot 400 is not a basis for remand in our view. By the time the county  
19 adopted its decision, everyone, including petitioners, had recognized that the portion of Tax  
20 Lot 400 that was available for lease would not accommodate the tower and its 400-foot  
21 diameter radial cable system.<sup>17</sup>

22 **B. The Remaining Alternatives**

23 We do not necessarily agree with petitioners that the BOC was obligated to resolve in  
24 any final way the precise location of the FCC area. Therefore, we do not believe it is  
25 necessarily error that neither Citicasters nor the BOC ever really responded to petitioners’  
26 arguments in favor of a larger Pie Shape. In fact, Citicasters’ and the BOC’s decision to

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<sup>17</sup> We address petitioners’ evidentiary challenge to the county’s findings regarding Tax Lots 400 and 500 later in this opinion.

1 consider Tax Lots 400 and 500 suggest that they decided to assume that alternatives in the  
2 Large Pie Shape must be considered.

3 Citicasters does not really dispute that the county's findings offer no specific  
4 explanation for why each of petitioners' proposed alternatives are infeasible. Instead,  
5 Citicasters argues that the county is not obligated to adopt findings specifically addressing  
6 each of those alternatives. Citicasters also argues that Record 30-31 and 88-90 show that  
7 each site was not a feasible site. While it might be that the BOC need not adopt findings  
8 specifically addressing each of petitioners' proposed alternatives, if the record in this appeal  
9 in fact showed that each of those alternatives is not feasible, we do not agree with Citicasters  
10 that the cited pages of the record do so.

11 Record 30-31 is Citicasters' February 19, 2002 memorandum and it deals only with  
12 Tax Lots 400 and 500. We assume Citicasters' citation to Record 88-90 is a mistake and that  
13 the intended reference is to Record 212-14.<sup>18</sup> That document was submitted on November 6,  
14 2001. As we have already noted, that document rejects a number of sites because they are  
15 located outside the Rectangle. As this case evolved, the Pie Slice and Large Pie Slice  
16 replaced the Rectangle as the FCC area, and it is not clear whether the reasoning for rejecting  
17 various alternatives on November 6, 2001, survived that change in the FCC area. Citicasters  
18 does not cite Record 67-70, which Citicasters submitted in December 2001 to address  
19 alternative sites in the Pie Slice. In response to that submittal, petitioners apparently  
20 conceded that eight of their original 16 proposed alternative sites were properly rejected as  
21 feasible alternatives.<sup>19</sup> We have already concluded that the county's findings are adequate to  
22 explain why the City Sites (Tax Lots 400 and 500 (11 5 26)) were rejected. That leaves six

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<sup>18</sup> The Record in many places has different pagination.

<sup>19</sup> These include Tax Lot 600 (Assessor's Map 11 5 26), Tax Lot 1100 (Assessor's Map 11 5 24 CC), Tax  
Lots 300, 400, 500 (Assessor's Map 11 4 19 BD), Tax Lot 1200 (Assessor's Map 11-5-25 A), Tax Lot 1400  
(Assessor's Map 11 5 25 A), Tax Lot 700 (Assessor's Map 11 5 25 B). Record 80.

1 alternatives where there are no findings explaining why they were rejected, and there is  
2 conflicting evidence concerning the feasibility of using those sites for the proposed tower.

3 The BOC did not adopt findings explaining why those alternatives were rejected.  
4 Under ORS 197.835(11)(b) we may overlook deficient findings, where the parties identify  
5 evidence that clearly supports the decision. Citicasters does not identify such evidence. The  
6 evidence that the parties cite and that we have been able to locate that supports a finding of  
7 infeasibility is either questionable in view of subsequent events or there is conflicting  
8 evidence. That evidence does not “clearly support” the challenged decision. *Waugh v. Coos*  
9 *County*, 26 Or LUBA 300, 307-08 (1993). Accordingly, we must remand the county’s  
10 decision so that it may adopt findings that explain why the six alternative sites that remain in  
11 dispute are infeasible alternatives.<sup>20</sup>

12 The first assignment of error is sustained in part.

### 13 **THIRD ASSIGNMENT OF ERROR**

14 Petitioners contend that the county’s findings rejecting the City Sites (Tax Lots 400  
15 and 500) as infeasible alternative sites are not supported by substantial evidence. Petitioners  
16 contend that the only evidence supporting the county’s decision concerning Tax Lot 500 is  
17 the February 19, 2002 memorandum with attached maps. That memorandum identifies a  
18 number of reasons why the proposed tower cannot be sited on Tax Lot 500. We believe the  
19 memorandum is evidence that a reasonable person could rely on to conclude that Tax Lot  
20 500 is not a feasible alternative site for the disputed tower.

21 Petitioners argue that the February 19, 2002 memorandum refers only to Tax Lot 500  
22 and does not address the feasibility of Tax Lot 400. Petitioners are mistaken. The latter part  
23 of the memorandum addresses petitioners’ criticism of the evidence Citicasters submitted on

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<sup>20</sup> These sites include Tax Lot 200 (Assessor’s Map 11 5 26); Tax Lot 1600 (Assessor’s Map 11 4 19 CB); Tax Lot 1500 (Assessor’s Map 11 4 19 CB), Tax Lot 1600 (Assessor’s Map 11 5 25); Tax Lot 1308 (Assessor’s Map 11 5 25); and the Office Max site.

1 February 11, 2002, explaining its position that Tax Lot 400 is not a feasible alternative site  
2 for the disputed radio tower. Viewing that part of the memorandum with the earlier  
3 explanation for why Tax Lot 400 is not a feasible alternative, we conclude that a reasonable  
4 person could rely on that evidence to conclude that Tax Lot 400 is not a feasible alternative.

5 The third assignment of error is denied.

6 **CONCLUSION**

7 The county's decision is remanded. The county must explain why the six alternatives  
8 identified in footnote 20 above are not feasible alternatives to the EFU-zoned property.