BEFORE THE LAND USE BOARD OF APPEALS
OF THE STATE OF OREGON

TINA KING,
Petitioner,

vs.

COLUMBIA COUNTY,
Respondent,

and

TIMOTHY CARLETON and TAMARA CARLETON,
Intervenors-Respondents.

LUBA No. 2023-034

FINAL OPINION
AND ORDER

Appeal from Columbia County.

Charles W. Woodward, IV filed the petition for review and reply brief and argued on behalf of petitioner.

Spencer Q. Parsons filed the joint respondent's and intervenor-respondent's brief.

E. Michael Connors filed the joint respondent's and intervenor-respondent's brief and argued on behalf of intervenors-respondents. Also on the brief was Hathaway Larson LLP.

RUDD, Board Member; ZAMUDIO, Board Member, participated in the decision.

RYAN, board chair, did not participate in the decision.

AFFIRMED 12/11/2023

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

Opinion by Rudd.

NATURE OF THE DECISION

Petitioner appeals a board of county commissioners' approval of an application to site a forest template dwelling.

MOTION TO INTERVENE

Timothy Carleton and Tamara Carleton (intervenors-respondents or intervenors), applicants below, move to intervene on the side of the county. The motion is unopposed and is granted.

FACTS

The subject property is zoned Primary Forest (PF-80). The purpose of the PF-80 zone is "to retain forest land for forest use and to encourage the management of forest land for the growing, harvesting, and processing of forest crops consistent with the Oregon Forest Practices Act." Columbia County Zoning Code (CCZO) 501. Forest template dwellings are allowed uses in the PF-80 zone subject to the administrative review process set out in CCZO 1601. CCZO 502, 504.1.[1]

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[1] CCZO 504.1 implements ORS 215.750. ORS 215.750(2) provides:

> "In western Oregon, 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 forest zone if the lot or parcel is predominantly composed of soils that are:
>
> "(a) Capable of producing 0 to 49 cubic feet per acre per year of wood fiber if:

Intervenors applied to the county for approval to site a forest template dwelling on the subject property. On August 1, 2022, the planning commission held a public hearing on intervenors' application. On September 12, 2022, the planning commission approved the application. On September 26, 2022, petitioner appealed the planning commission decision to the board of commissioners (the board). On December 21, 2022, the board held a public hearing on the appeal, and continued the hearing to January 18, 2023. On

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"(A) All or part of at least three other lots or parcels that existed on January 1, 1993, are within a 160-acre square centered on the center of the subject tract; and

"(B) At least three dwellings existed on January 1, 1993, on the other lots or parcels;

"(b) Capable of producing 50 to 85 cubic feet per acre per year of wood fiber if:

"(A) All or part of at least seven other lots or parcels that existed on January 1, 1993, are within a 160-acre square centered on the center of the subject tract; and

"(B) At least three dwellings existed on January 1, 1993, on the other lots or parcels; or

"(c) Capable of producing more than 85 cubic feet per acre per year of wood fiber if:

"(A) All or part of at least 11 other lots or parcels that existed on January 1, 1993, are within a 160-acre square centered on the center of the subject tract; and

"(B) At least three dwellings existed on January 1, 1993, on the other lots or parcels."

February 22, 2023, the board deliberated and approved the application. The final decision approving the application was adopted March 22, 2023. On April 14, 2023, petitioner appealed the board's decision to LUBA. On April 27, 2023, the county withdrew the decision for reconsideration. OAR 661-010-0021.[2] The county issued public notice and held a hearing on reconsideration and permitted all parties to submit additional testimony and argument. On June 21, 2023, the board considered the additional testimony and evidence and voted to again approve the application. On July 12, 2023, the board adopted Final Order 36-2023 approving the application.[3] This appeal followed.

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[2] OAR 661-010-0021(1) states:

> "If a local government or state agency, pursuant to ORS 197.830(13)(b), withdraws a decision for the purposes of reconsideration, it shall file a notice of withdrawal with the Board on or before the date the record is due or, on appeal of a decision under 197.610 to 197.625, the local government shall file a notice of withdrawal prior to the filing of the respondent's brief. A copy of the decision on reconsideration shall be filed with the Board within 90 days after the filing of the notice of withdrawal or within such other time as the Board may allow."

[3] The Final Order states that the board's findings include:

1. Supplemental Findings attached as Exhibit A to the July 12, 2023, decision.

2. Supplemental Findings dated January 25, 2023, but excluding Attachment 1 thereto, attached as Exhibit B, "to the extent those findings and conclusions are consistent with the Board's decision." Record 15.

FIRST AND SECOND ASSIGNMENTS OF ERROR

A. Background

Because the first and second assignments of error address the same provisions of local and state law and raise closely related issues, we address them together.

CCZO 506.4 sets out approval criteria applicable to forest template dwellings on land zoned PF-80. CCZO 506.4(D) provides that "the lot or parcel on which the dwelling will be sited" must have been lawfully established and contain no dwelling. CCZO 506.4(A) provides that for dwellings on tracts smaller than 80 acres where the tract is predominantly composed of:

> "1. Soils that are capable of annually producing more than 85 cubic feet per acre of wood fiber if:
>
> > "a. All or part of at least 11 other lots or parcels that existed on January 1, 1993 and are not within an Urban Growth Area are within a 160 acre square centered on the center of the subject tract; and

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3. Findings and conclusions in Supplemental Findings dated December 20, 2022, excluding Attachment 1 thereto, attached as Exhibit C, "to the extent those findings and conclusions are consistent with the Board's decision." *Id.*

4. Findings and conclusions in the December 14, 2022, staff report, including Attachment 1 and its Attachment 5 but excluding all other attachments to Attachment 1, and excluding Attachments 2, 3, 4, and 5 to the December 14, 2022, attached as Exhibit D, "to the extent those findings and conclusions are consistent with the Board's decision." *Id.*

"b. At least three (3) dwellings existed on January 1, 1993 and continue to exist on the other lots or parcels [.]"

CCZO 506.4(A) implements and adopts nearly verbatim ORS 215.750(2)(c). *See* n 1. Only lawfully created parcels may be counted in determining whether the forest template dwelling requirements have been met. *Friends of Yamhill County v. Yamhill County*, 229 Or App 188, 198, 211 P3d 297 (2009). As used in ORS Chapter 215:

"(1) The terms defined in ORS 92.010 shall have the meanings given therein, except that 'parcel':

"(a) Includes a unit of land created:

"(A) By partitioning land as defined in ORS 92.010;

"(B) In compliance with all applicable planning, zoning and partitioning ordinances and regulations; or

"(C) By deed or land sales contract, if there were no applicable planning, zoning or partitioning ordinances or regulations." ORS 215.010.

ORS 92.010(3) provides, in part:

"(a) 'Lawfully established unit of land' means:

"(A) A lot or parcel created pursuant to ORS 92.010 to 92.192; or

"(B) Another unit of land created:

"(i) In compliance with all applicable planning, zoning and subdivision or partition ordinances and regulations; or

> "(ii) By deed or land sales contract, if there were no applicable planning, zoning or subdivision or partition ordinances or regulations."

The PF-80 zoned, 17.52-acre subject property does not contain a dwelling and is capable of producing more than 85 cubic feet per acre of wood fiber. The board approved the forest template dwelling after finding the application complied with CCZO 506.4 and ORS 92.010(3).

Petitioner's first assignment of error is that the board made inadequate findings of compliance with CCZO 506.4 and ORS 92.010(3).[4] Petitioner's

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[4] Petitioner summarizes their first assignment of error as "The [board] misconstrued applicable law and made inadequate findings regarding the application's compliance with [CCZO] 506.4(A)(1)(a) and ORS 92.010(3)." Petition for Review 2. Petitioner argues: "CCZO []506 implements ORS 215.705 – [ORS] 215.755 (state laws governing the criteria for template dwellings in forestland), therefore, the [board's] interpretation and implementation of []506.4 is not entitled to deference" Petition for Review 7-8. Petitioner explains their misconstruction of law argument in their reply brief as:

> "The First and Second Assignments of Error allege that the County misinterpreted [ORS 215.705 – ORS 215.755 and ORS 92.010] by finding compliance because the inadequate findings and insubstantial evidence cited by the County do not demonstrate compliance with those laws. For example, finding compliance with ORS 92.010(3)(a)(B)(i) without demonstrating that the parcel was in fact in compliance with all applicable planning, zoning, and partition regulations is a misinterpretation of the law." Reply Brief 3.

We agree with respondents that petitioner's first assignment of error is a challenge to the adequacy of the board's findings and does not identify a challenged board interpretation. Joint Respondent's Brief 14-15.

second assignment of error is that the board's findings of compliance with CCZO 506.4 and ORS 92.010(3) are not supported by substantial evidence.

Generally, findings must (1) address the applicable standards, (2) set out the facts relied upon, and (3) explain how those facts lead to the conclusion that the standards are met. *Heiller v. Josephine County*, 23 Or LUBA 551, 556 (1992).

We will reverse or remand a land use decision if we determine that the local government made a decision not supported by substantial evidence in the whole record. ORS 197.835(9)(a)(C). Substantial evidence is evidence a reasonable person would rely upon to make a decision. *Dodd v. Hood River County*, 317 Or 172, 179, 855 P2d 608 (1993).

B. Preservation of Error

ORS 197.835(3) limits issues that may be raised at LUBA "to those raised by any participant before the local hearings body as provided by ORS 197.195 or 197.797, whichever is applicable." OAR 661-010-0030(4)(d) provides that the petition for review shall set forth each assignment of error and for each assignment of error "demonstrate that the issue raised in the assignment of error was preserved during the proceedings below." The petition for review contains the following statements under the headings "Preservation of Assignment of Error":

> "The First Assignment of Error was preserved below at [Record] 333-34, 503-07, and 772-780. *See* ORS 197.835(3); *see also League of Women Voters v. City of Corvallis,* 63 Or LUBA 432 (2011)[;] *Columbia Riverkeeper v. Clatsop County,* 58 Or LUBA 190, 213

(2009.)." Petition for Review 4.

> "The Second Assignment of Error was preserved below at [Record] 333-34, [Record] 503-07, and [Record] 772-780. *See* ORS 197.835(3); *see also League of Women Voters v. City of Corvallis*, [63 Or LUBA 432]; *Columbia Riverkeeper*, 58 Or LUBA 190]." Petition for Review 16.

The county and intervenors (collectively, respondents) argue that petitioner has not met their burden to establish that the first and second assignments of error have been preserved. Joint Respondent's Brief 11, 27. In summary, respondents argue:

> "All * * * of [p]etitioner's assignments of error suffer from the same fatal flaws. Petitioner failed to demonstrate [they] preserved [their] arguments below. Petitioner repeatedly block cites to entire documents without any explanation of where the issues were raised in those documents. LUBA is not required to comb the record and [r]espondents' substantial rights are prejudiced because they are required to comb the record and guess where the issues were raised." Joint Respondent's Brief 1.

In their reply, petitioner responds that their citations:

> "are to three individual letters in the record where the errors were addressed across two, five, and nine pages respectively, not over one hundred pages as in [*H2D2 Properties v. Deschutes County*, 80 Or LUBA 528 (2019)]. *Central Oregon Landwatch v. Deschutes County*, ___ Or LUBA ___ (LUBA Nos 2023-006/009, July 28, 2023) (slip op at 55) ('[a] petitioner must quote or *point to a specific page*, passage, or portion of an audio recording to demonstrate where an issue was raised * * *') (emphasis added). Indeed [p]etitioner[] cited to specific evidence in the record detailing the most concise statements of these interrelated errors rather than including voluminous cites to less concise statements of error made by various parties throughout the record, thereby avoiding [intervenor's] alleged prejudice of combing through the record."

Reply Brief 1-2.

Petitioner cites a total of 16 pages of testimony submitted by 1000 Friends of Oregon as evidence of preservation of their first and second assignments of error. Petitioner fails to provide any explanation of where within those pages the assignments of error raised are preserved. As we recently explained in *Rosewood Neighborhood Association v. City of Lake Oswego*, ___ Or LUBA ___, ___ (LUBA No 2023-035, Nov 1, 2023) (slip op at 7), petitioner has an affirmative obligation to establish preservation of error. We agree with respondents that petitioner has not met their burden to demonstrate that the first and second assignments of error were preserved. We also conclude that petitioner fails to set out a basis for reversal or remand for the reasons set out below.

C. Adequacy of Findings

1. Overview

As explained above, CCZO 506.4 requires that the board determine that the subject property was lawfully created and that there are at least eleven lawfully created properties within the forest template. The board explained in its findings:

> "On April 8, 1963, Columbia County adopted the first 'Subdivision Regulations for Columbia County' which addressed the requirements and procedures of subdividing land. Prior to this date, Columbia County did not have any planning, zoning and/or subdivision or partition ordinances that would be applicable when 'creating' parcels. The 1963 Subdivision Regulations for Columbia County established a definition and procedure for subdividing land and any property created which met the definition of a subdivision, required approval from the Columbia County Planning Commission

in order to be created legally at that time." Record 19.

The 1963 Subdivision Ordinance included a definition of "subdivide land," stating

> "To partition a parcel of land into four or more parcels of less than five acres each for the purpose of transfer of ownership or building development, whether immediate or future, when such parcel exists as a unit or contiguous units under a single ownership as shown on the tax roll for the year preceding the partitioning." Record 19.

The following table identifies the properties for which petitioner argues that the findings that the properties were lawfully created are inadequate and not supported by substantial evidence and summarizes the alleged inadequacy.[5]

Finding Number	**Tax Lot Number**	**Record page**	**Basis for Petitioner's Assignment of Error**
1	7315-00-00300	20	Petitioner asserts county failure to evaluate compliance with state subdivision law
2	7315-B0-2500 (Subject Property)	20	See above
17	7310-C0-01000	23	See above
10	7315-B0-01000	22	See above

[5] This table is created to assist LUBA in tracking petitioner's argument. *See* Petition for Review 10-15 (petitioner's arguments regarding inadequacy of findings).

6	7315-B0-1300	21	Petitioner asserts county failure to provide evidence that the property is not associated with the creation of three or more parcels under five acres in size
10	7315-B0-01100	22	See above
9	7315-B0-00300	21	See above
12	7315-B0-00300	22	See above
13	7315-B0-00100	23	See above
14	7315-B0-00200	23	See above
15	7315-BO-00400	23	See above
16	7310-CO-01100	23	See above
7	7315-BO-01600	21	See above
7[6]	7315-BO-01200	21	See above
11	7315-BO-0300	22	Argues decision incorrectly identifies the first deed book entry for the property

[6] Petitioner also argues that the finding does not state the lot size. Petitioner does not explain the relevance of the specific lot size to the finding that the property was lawfully created given the board's conclusion that the property was not associated with the creation of three or more lots less than five acres in size and therefore was not subject to the 1963 Subdivision Ordinance. Record 21.

7	7315-BO-01600	22	See above

2. Adequacy of Findings Regarding State Subdivision Laws

Petitioner argues that the board's decision adopts inadequate findings. First, petitioner argues "state planning, zoning, subdivision, or partition laws must * * * be analyzed, however they were not. For example, the first statewide subdivision law was passed in 1947." Petition for Review 10-11. Petitioner maintains that the board erred in adopting Findings 1, 2, 10, and 17 because it failed to consider whether the creation of any of the properties relied upon as part of the template test violated state law and, thus, was not lawfully created.

We have held that a petitioner does not provide a basis for reversal or remand where they fail to challenge all relevant findings. *Oakleigh-McClure Neighbors v. City of Eugene*, 70 Or LUBA 132, 148 (2014), *rev'd and rem'd on other grounds*, 269 Or App 176, 344 P3d 503 (2015). Respondents argue that this assignment of error provides no basis for remand because it focuses on findings related to individual properties and does not challenge relevant findings addressing "the applicable planning, zoning and subdivision or partition ordinances or regulations." Joint Respondent's Brief 19. Specifically, respondents point to the board's findings that the 1963 Subdivision Ordinance established the county's first subdivision regulations, quoted above. Respondents emphasize that the county found that, prior to April 8, 1963, "Columbia County did not have any planning, zoning and/or subdivision or partition ordinances and regulations that would be applicable when 'creating' parcels." Record 19. That

finding does not address whether there were any applicable state subdivision laws when the subject parcels were created and whether the divisions of land that created those parcels were consistent with state law. Thus, we do not agree with respondents that the above finding is dispositive such that petitioner was required to address it.

However, respondents also argue, and we agree, that petitioner fails to adequately develop this argument for review and this argument provides no basis for remand. In their reply, petitioner responds that "the burden of proof is on the applicant to prove compliance, not on the [p]etitioner to prove noncompliance." Reply Brief 4 (citing *Wilson v. Washington County,* 63 Or LUBA 314 (2011)). We agree that intervenor bears the burden of proof of compliance with applicable criteria. Petitioner does not, however, explain what provision of state law the county was required but failed to consider and, by extension, what burden of proof intervenor failed to meet. Adequate findings of fact do not

> "impos[e] legalistic notions of proper form or set[] an empty exercise for local governments to follow. No particular form is required, and no magic words need be employed. What is needed for adequate judicial review is a clear statement of what, specifically, the decisionmaking body believes, after hearing and considering all the evidence, to be relevant and important facts upon which its decision is based. Conclusions are not sufficient." *Sunnyside Neighborhood v. Clackamas Co. Comm.*, 280 Or 3, 21, 569 P2d 1063 (1977).

The board is not required to include words to the effect that no other laws apply where no other potentially applicable law has been identified. Accordingly,

petitioner has not developed their argument that the board misconstrued the law in Findings 1, 2, 10, and 17. *Deschutes Development v. Deschutes Cty*, 5 Or LUBA 218, 220 (1982).

This subassignment of error is denied.

3. Adequacy of Findings That Certain Parcels Existed on January 1, 1993

CCZO 506.4(A)(1)(a) requires that the board determine that "All or part of at least 11 other lots or parcels that existed on January 1, 1993 and are not within an Urban Growth Area are within a 160 acre square centered on the center of the subject tract[.]" Petitioner argues that the county's findings of compliance with CCZO 506.4(A)(1)(a) are inadequate because they fail to explain how the properties were lawfully established pursuant to ORS 92.010(3) or cite facts demonstrating compliance with the approval standards. Petition for Review 9. Petitioner points to the county's finding that certain properties were conveyed by deed after the 1963 adoption of county subdivision regulations and that

> "there is no evidence that [identified properties are] associated with the creation of three or more parcels all of which were also under 5-acres in size. Therefore, [s]taff finds that this conveyance did not meet the definition of the term 'Subdivide Land' as defined in the 1963 Subdivision Regulations of Columbia County." Petition for Review 11 (quoting findings at Record 20, emphasis omitted).

Petitioner argues that these findings fail to cite to evidence in the record that three or more parcels were not created from a parent property in the year proceeding partitioning. Petitioner maintains that the finding is conclusory and that the record

lacks a chain of title for the parent parcel, or evidence that there was no parent parcel.

Respondents argue that petitioner has failed to address the board's finding that:

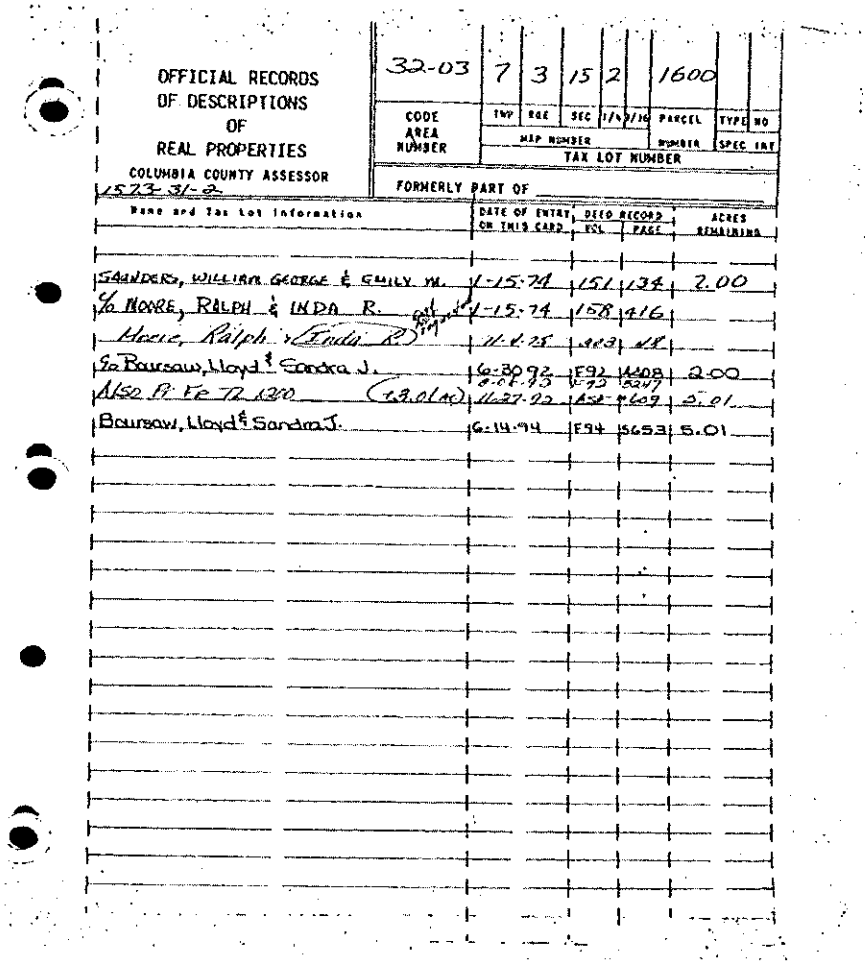
> "The [b]oard received testimony that the record lacks adequate evidence that the parcels relied on by [s]taff in its finding are 'lawfully established unit of land' as defined by ORS 92.010(3) (hereinafter referred to as 'lawful units'). In response to that contention, [s]taff submitted evidence into the record establishing conclusively that the parcels did indeed qualify as lawful units. The [b]oard rejects continued assertions that [s]taff's findings do not constitute adequate findings to support its decision. Indeed, the [b]oard notes that [s]taff thoroughly and methodically went through each of the parcels relied on to support [intervenor's] application making individualized findings addressing each ultimately relied upon and why each qualified as a lawful unit. The [b]oard finds that [s]taff's findings are the opposite of '[i]ncomplete and overly conclusory findings.' As to the evidence supporting those findings, the [b]oard finds there is clearly substantial evidence in the record that supports those findings, not least of which are the actual deeds themselves. Although assertions have been made that the findings are inadequate and the record does not support those findings, the [b]oard humbly disagrees and rejects those assertions." Record 16.

We agree with respondents that petitioner has failed to address a relevant finding that county staff completed an exhaustive review of the deed records. Absent such a challenge, we assume for purposes of this decision that the finding is adequate. Petitioner has not set out a basis for reversal or remand. *Oakleigh-McClure Neighbors*, 70 Or LUBA at 148. Petitioner has not established that findings 6, 7, 9, 10, 12 through 16 are inadequate.

This subassignment of error is denied.

4. Adequacy of Deed Book Entry Description in Findings

Petitioner also argues that the record shows that the decision Findings 7 and 11 incorrectly identify the first Deed Book entry for tax lot 1600 and tax lot 300. For example, petitioner argues that "the record shows that the first deed for the property was Deed Book 151 Page 134, not Deed Book 158 page 416 as alleged in the Decision." Petition for Review 19 (citing Record 547); *see also* Petition for Review 11. An example of one of the Deed Book entries is provided below:



OFFICIAL RECORDS OF DESCRIPTIONS OF REAL PROPERTIES
COLUMBIA COUNTY ASSESSOR
1523 31-2

32-03 | 7 | 3 | 15 | 2 | 1600
CODE AREA NUMBER | TWP | RGE | SEC | 1/4 | 1/16 | PARCEL NUMBER | TYPE | NO
MAP NUMBER | TAX LOT NUMBER | SPEC INT
FORMERLY PART OF

Name and Tax Lot Information	DATE OF ENTRY ON THIS CARD	DEED RECORD VOL	DEED RECORD PAGE	ACRES REMAINING
SAUNDERS, WILLIAM GEORGE & EMILY M.	1-15-74	151	134	2.00
% MOORE, RALPH & INDA R.	1-15-74	158	416	
Moore, Ralph & Linda R.	11-4-25	983	48	
% Bourseau, Lloyd & Sandra J.	6-30-92 8-04-93	E92 V-93	4408 0247	2.00
Also P. Pc 72 130 (13.01 AC)	11-27-92	452	609	5.01
Bourseau, Lloyd & Sandra J.	6-14-94	E94	5653	5.01

Record 547. Respondents argue this is harmless error because the board did not rely on the Deed Book numbers for the dates of the deeds:

> "The deed for Lot 1600 demonstrates that it was conveyed on May 11, 1965, which is the date the [b]oard relied on for its findings. App 10; Rec[ord] 50. The deed for finding 11 demonstrates that it was conveyed on July 12, 1967, which is the date the [b]oard relied on for its findings. App 11; Rec[ord] 66." Joint Respondent's Brief 25.

Respondents also argue:

> "So long as LUBA determines the [b]oard correctly concluded that three or more of the parcels [p]etitioner is challenging were in existence on January 1, 1993, the [b]oard's decision must be affirmed because there would be at least 11 parcels within the template area that existed as of January 1, 1993." Response Brief 16-17.

Findings 7 and 11 conclude that creation of the properties described therein occurred after the adoption of the 1963 Ordinance. The referenced 1965 and 1967 deeds were therefore potentially subject to the 1963 Ordinance. Petitioner alleges that there were prior Deed Book entries, but we agree with respondents that petitioner does not explain why prior Deed Book entry pages in the record change the outcome of the board conclusion that the lots were lawfully created. Petitioner fails to develop their argument and does not provide a basis for reversal or remand.

Further, the board concluded that there were 22 parcels within the template, including the subject property, in existence on January 1, 1993. If we disregard the two parcels with the incorrect "first" Deed Book number entries, the board will still have found that the subject property and more than 11 parcels

within the template were in existence on January 1, 1993. Where an error in a finding is not critical to the local government's ultimate conclusions, the error does not provide a basis for reversal or remand. *Hunt v. City of the Dalles*, 78 Or LUBA 509, 515 (2018), *aff'd*, 296 Or App 761, 438 P3d 489 (2019). We agree with respondents that reference to the Deed Books is harmless error and does not establish a basis for reversal or remand.

We conclude that the county's findings of compliance are not inadequate.

D. Substantial Evidence

Petitioner's second assignment of error is that the decision is not supported by substantial evidence. In order to prevail on a substantial evidence challenge, a petitioner must identify the challenged findings and explain why a reasonable person could not reach the same conclusion based on all the evidence in the record. *Stoloff v. City of Portland*, 51 Or LUBA 560, 568 (2006).

As we stated above, the findings challenges in the first assignment of error and the substantial evidence challenges in the second assignment of error are closely related. "[W]e generally analyze findings challenges first, because our resolution of the findings challenge frequently affects our resolution of the evidentiary challenge or makes it unnecessary to decide the evidentiary challenge." *Wal-Mart Stores, Inc. v. City of Bend*, 52 Or LUBA 261, 277-78 (2006) (citing *Friends of Linn County v. Linn County*, 37 Or LUBA 844, 856 (2000); *1000 Friends of Oregon v. Columbia County*, 27 Or LUBA 474, 476

(1994); *Holliday Family Ranches v. Grant County*, 10 Or LUBA 199, 205 (1984)).

With respect to Findings 6, 7, 9, 10, 12, 13, 14, 15, and 16, petitioner argues that "findings state: '*there is no evidence* that [the property at issue] is associated with the creation of three or more parcels all of which were also under 5-acres in size." Petition for Review 17 (emphasis added, quoting Record 20-23).[7] In *Doty v. City of Bandon*, we explained that "absent some reason to doubt [staff testimony] or require more detail, we cannot say that a reasonable person could not rely on the staff testimony, to support a finding of [code and statute compliance]." 49 Or LUBA 411, 421 (2005). As we explained above, petitioner does not address the board's finding that staff conducted an exhaustive review of the deed records and determined that the record did not contain evidence that the referenced lots were subject to the 1963 Subdivision Ordinance. Petitioner does not address the referenced evidence of a staff search of the records and does not establish that the finding is not supported by substantial evidence. Petitioner also does not explain why the board was required to include a statement of the tax lot's size when it determined that the Tax Lot 1200 was not created in violation of the 1963 Subdivision Ordinance.

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[7] The substantial evidence challenge referencing Finding 10 is as the finding relates to Tax Lot 7315-B0-01100 and Finding 7 as it relates to Tax Lot 7315-B0-01600.

Petitioner also argues that Findings 7 and 11 are unsupported by substantial evidence because they refer to incorrect Deed Book entry numbers as relating to the first deed for the properties. For the reasons discussed above, we conclude that petitioner does not adequately develop this assignment of error and that the reference to the incorrect Deed Book entry numbers is harmless error.

Lastly, petitioner argues that Finding 2 is not supported by substantial evidence because "There is no parent deed to demonstrate that the conveyance did not violate the Section (1)(13) of the 1963 Ordinance or evidence that the subject property was not created out of another property." Petition for Review 17. Finding 2 is:

> "Tax Lot 7315-B0-02500, the subject parcel, was conveyed in Deed Book 138 Page 795 from Arthur H. Lewis and Mildred A. Lewis to Charles R. Holden and Mary F. Holden on January 16, 1959. This conveyance occurred prior to the 1963 Subdivision Regulations for Columbia County therefore meets the definition of a lawfully established unit of land in ORS 92.010(3)." Record 20.

Petitioner is required to explain why a reasonable person could not reach the same conclusion as the board based on the evidence in the record. *Stoloff*, 51 Or LUBA at 568. Petitioner does not explain how the lack of a parent deed or evidence that the subject property was not created out of another parcel is relevant evidence where the board found that the lot was created before the adoption of the subdivision ordinance.

To summarize, petitioner's substantial evidence argument provides no basis for remand because the argument (1) does not address the board's reliance

in its findings on evidence that planning staff performed an exhaustive deed record search in order to verify that certain properties were lawfully created, or (2) address board findings that the evidence established that the subject property was created before and therefore was not subject to the Subdivision Ordinance, or (3) explain the relevance of the board's two erroneous citations of Deed Book Entry Pages given that the two affected properties are not necessary for the board to find that the subject property and 11 lawfully created parcels within the template were lawfully created.

The first assignment of error is denied.

The second assignment of error is denied.

THIRD ASSIGNMENT OF ERROR

CCZO 506.4(B) provides:

> "If the tract under subsection (A) of this section abuts a road that existed on January 1, 1993, the measurement may be made by creating a 160-acre rectangle that is one mile long and one-fourth mile wide centered on the center of the subject tract and that is to the maximum extent possible, aligned with the road."

Petitioner's third assignment of error is that the board's findings that siting the dwelling on the subject property is consistent with CCZO 506.4(B) are inadequate and not supported by substantial evidence. Petition for Review 21. Respondents argue, as they did in their response to the first and second assignments of error, that petitioner has not met their burden to establish that the assignment of error was preserved. Joint Respondent's Brief 36.

The Petition for Review contains the following statement:

> "The Third Assignment of Error was preserved at [Record] 335-41, [Record] 622-26, [Record] 696 and [Record] 707-11. *See also League of Women Voters v. City of Corvallis*, [63 Or LUBA 432 (2011);] *Columbia Riverkeeper v. Clatsop County*, [58 Or LUBA 190]." Petition for Review 21.

Petitioner identifies 18 record pages where they assert that the third assignment of error was preserved. Petitioner provides no explanation of where within these 18 pages the assignment of error was preserved. The one citation to a single page is to a sketch of a sewer plan and petitioner does not explain its relevance to the assignment of error. For the reasons explained in our resolution of the first and second assignments of error, we agree with respondents that the third assignment of error has not been preserved.[8] The third assignment of error is denied.

We also agree with respondents that petitioner has not developed this assignment of error. Petitioner maintains that the evidence relied upon by the

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[8] Respondents also argue that the issue raised in petitioner's third assignment of error is different than the issue related to the road raised by petitioner below. Respondents maintain:

> "Petitioner's argument below was very different than [their] argument on appeal, which [they] did not mention for obvious reasons. Petitioner argued below that the County illegally edited the maps and documents that reference Homeaway Road as part of a conspiracy to defraud the public and over-up prior misdeeds." Joint Respondent's Brief 41 (citing Record 335-41).

Record pages 335-41 contain single spaced type and as we explain above, we will not comb through them.

board is insufficient to establish that the road abutting the subject property existed on January 1, 1993. Petitioner states that the board relied upon the following to find that CCZO 506.4(B) was met:

> "With respect to compliance with the provision, and specifically addressing the existence of a road on January 1, 1993, the Decision relied on the following analysis and finding of compliance:
>
> > "'Planning Staff verified that the Columbia County Public Works Department's December 2021 update of the *Official Names of Roads in Columbia County* lists Homeaway Road as an existing private road. Section 506.4(B) does not specify if the road is a public or private road; it only specifies that the road must have existed on January 1, 1993. The official Columbia County Address Maps also verify that Homeaway Road was in existence in July 1984 when the Columbia County Board of Commissioners adopted the first County Zoning Ordinance.'
> >
> > "'Finding 1. Consequently, Staff finds that Homeaway Road existed on January 1, 1993, as a lawfully established road[.]'" Petition for Review 21-22 (citing Record 787, 803).

Petitioner maintains that the evidence relied upon by the board is inadequate because

> "a list of names from 2021 is wholly irrelevant as to the existence of a road in 1993. While an address map may show that there was a Homeaway Road on a map in 1984, the map does not provide documentation as to the lawful creation of the road as alleged by the [board], and it does not provide an official classification of whether Homeaway Road is a public road, a private road, or just a named private driveway or easement." Petition for Review 22.

Petitioner also argues that the finding does not explain the criteria used by the board to determine whether a road exists and therefore is inadequate.

Petitioner argues that there is no evidence Homeaway Road was lawfully created but does not identify any specific criteria they assert the board was required to consider in determining whether a road existed. Similarly, petitioner does not develop their argument that a county document identifying roads within the county, updated in 2021, and stating that Homeaway Road existed as a private road in 1984, is not a reference upon which a reasonable person would rely to conclude that a lawful private road exists. Petitioner provides no explanation of the origin or history of the county document and does not develop an argument that the board's reliance on the county document was unreasonable.

Petitioner argues that there is contrary evidence in the record where Homeaway Road is not shown, including surveys showing an easement as opposed to a road. Petition for Review 22. As respondents point out, the board's findings included a discussion of roads. Joint Respondent's Brief 39-40. These include citations to the County Road Standards Ordinance definitions, including:

> "Roads are classified in several categories:
>
> "Driveway: The most basic road is a driveway from a public road which serves as an access to a residence, business, or property. A driveway may serve up to two lots or parcels. * * *
>
> "Private Road: A private road is privately maintained and may have controlled access if approved by the local fire authority. Up to six parcels may be served by a public road." Record 790 (emphasis and underscoring omitted).

Petitioner does not develop an argument that an easement is not sufficient to establish a private road. "In evaluating the sustainability of the evidence in the

whole record, we are required to consider whether supporting evidence is refuted or undermined by other evidence in the record, but cannot reweigh evidence." *Wilson Park Neigh. Assoc. v. City of Portland*, 27 Or LUBA 106, *rev'd and rem'd on other grounds*, 129 Or App 33, 877 P2d 1205, *rev den*, 320 Or 453 (1994) (citing *Younger v. City of Portland*, 305 Or 346, 358-60, 752 P2d 262 (1988); *1000 Friends of Oregon v. Marion County*, 116 Or App 584, 588, 842 P2d 441 (1992)). Petitioner argues that a 2021 tax assessor's map does not show a road and that there is an "email from County not seeing an LDS naming referral in County files." Petition for Review 21 (citing Record 758). We understand "LDS" to refer to the county's Land Development Services Department.[9] Petitioner does not explain why the county was required to rely on a tax assessor's map, what an "LDS naming referral" is or its relevance to the question before the county, or address other evidence in the record of the existence of a road.[10] Respondents also direct our attention to qualifying statements in the documents identified by petitioner, including a statement on the tax map that it is to be used for tax purposes only and a statement in the email that an LDS naming referral was not found, directing the inquirer to confirm with LDS. LDS ultimately confirmed the

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[9] See reference to "Land Development Services" at Record 781.

[10] For example, respondents explain that "[t]he record includes a July 27, 1982[,] staff memorandum to the County Board regarding a nearby mobile home park that states that the 'parcel will have frontage on Price Road and Homeaway Park Road.'" Joint Respondent's Brief 40 (citing Record 463).

existence of the road at the relevant point in time. We agree with respondents that the evidence identified by petitioner does not refute or undermine that relied upon by the board.

The third assignment of error is denied.

The decision is affirmed.