

APPLICANT'S SUPPLEMENTAL BURDEN OF PROOF

Date: August 11, 2021

Applicant: Patrick Lane

Situs: 5715 NW Ryegrass Road
Prineville, Oregon 97754

Record Number: 217-21-000513-PLNG (appeal)
217-21-000431-PLNG (relative farm dwelling)

CROOK COUNTY
AUG 11 2021
PLANNING DEPT



Planning Commission Public Hearing: August 11, 2021

This firm represents the applicant in the above referenced matter. As I was only recently retained to represent the applicant in this matter, I was not able to submit these comments by the August 4, 2021, pre-hearing cutoff. Therefore, I am submitting these comments at the hearing, and to the staff in advance of the hearing.

A. Applicable criteria:

This application is for a relative farm help dwelling under CCC 18.16.015(3). To qualify for a relative farm help dwelling:

(a) A dwelling shall be occupied by relatives whose assistance in the management and farm use of the existing commercial farming operation is required by the farm operator. However, farming of a marijuana crop may not be used to demonstrate compliance with the approval criteria for a relative farm help dwelling. The farm operator shall continue to play the predominant role in the management and farm use of the farm.

(b) A relative farm help dwelling must be located on the same lot or parcel as the dwelling of the farm operator and must be on real property used for farm use.

B. The Appeal filed erroneously argues that an \$80,000 income standard applies

The appeal statement submitted alleged that to establish satisfaction of CCC 18.16.015(3)(a), applicant must meet an \$80,000 minimum income threshold, however, that argument is misplaced. There is nothing in state law or the County Code that applies a minimum income threshold to the relative farm help dwelling application. Therefore, this appeal, as presented, must be denied.

Notably, even if there was an applicable income threshold for dwellings located on non-high value farmland here, the applicable amount would be \$40,000 – not \$80,000. The applicant's income meets and exceeds the minimum threshold established under the Farm Income Standard

for Non-High-Value farmland as set forth in CCC 18.6.025(2)(a). Even though this is not an applicable criterion, this information is supportive of applicant's position that this is a commercial farm operation.

C. Other factors to consider in approving the dwelling:

The appellant's submittal dated August 9, 2021, raises other issues which are addressed below:

1) The farm operation constitutes a "commercial farm operation" – not a hobby or recreational farm

The applicant submits that the farm operation is a "commercial farming operation." State law did not define what qualifies as a "commercial farming operation," and therefore, it is the county's obligation to determine what operations within the County qualify by distinguishing the commercial from the non-commercial – recreational and/or hobby farm operations. *Richards v. Jefferson County*, 79 Or 171 (2019), *Harland v. Polk County*, 44 Or LUBA 420 (2003). To do so, the county will determine what the basic thresholds shall be by considering the law and the facts before it. *Id.* Here, there can be no reasonable dispute that the 197.46 acre parcel is a farm operation for commercial purposes – not hobby or recreational farm use.

The operation has approximately 197 acres of water rights, and 190 of the 197.46 acres are in crop production. Applicant produces over 750 tons of hay annually. As is evident from the aerial photographs in the record, nearly the entire parcel is used for some component of the farm operation.

In prior years, the applicant has grown a mix of Timothy Hay and Orchard Grass. The applicant sells the Timothy Hay to both local Oregon markets, as well as to Korea. The Orchard Grass is primarily sold to the Central Oregon market, with the balance sold to the southern California market. This year the Irrigation District has cut back everyone's water supply, so he has some areas lying fallow and is only growing the orchard grass. The applicant does not grow the crop for recreational or hobby farming or any other non-commercial use, and there is no evidence in the record to support a position to the contrary. In fact, any of the crop consumed on-site is for the benefit of the applicant's Oregon registered cattle business which is further addressed below.

As COLW correctly points out, the applicant is the sole member and operator of Lane Land & Livestock, LLC, an Oregon registered limited liability company. This cattle operation consists of at least 25 cattle, or 13 pair. The applicant sells his cattle to the local market via Tommy Norton Jr. Cattle Co., an Oregon registered domestic business corporation located in Madras, Oregon. While 25 cattle may not be a large cattle operation, the County can still find that the cattle operation and crop production are a "commercial farm operation where they constitute the primary source of income for the operator. *See Harland v. Polk County*, 44 Or LUBA 420 (2003)

There can be no reasonable argument that the operation that consists of at least 13 pair or 25 cattle constitutes a hobby farm or the raising of cattle for merely personal or recreational use. Of

course, raising cattle requires hay be available for consumption, however, it would be illogical to plant 190 acres of hay just to raise 25 cattle for fun. Obviously, such an operation is for the sole purpose of farming. "Farm use" is defined in state law as the "current employment of land for the primary purpose of obtaining a profit in money by: (a) raising, harvesting and selling crops. (b) Feeding, breeding, managing or selling livestock [] or the produce thereof..." ORS 215.203. Accordingly, the applicant has been granted farm tax deferral by the Crook County Tax Assessor. Again, there is not a single shred of evidence that this operation is for merely a personal consumable hobby or for recreational fun.

As set forth in Appellant's Exhibit C, the applicant applied for and received approval for a primary farm dwelling, and a 90'x110' hay barn and pump house on the subject property in 2020. To obtain approval, it was determined that in fact the parcel is currently employed for farm use, and that the applicant will be the primary occupant of the dwelling and he will be principally engaged in the farm use of the land.

The Appellant's Exhibit B further supports applicant's argument that the subject operation is more than a hobby farm. According to appellant, applicant paid \$960,000 for the property in 2018. However, the Crook County Property Summary Report reflects a real market value as of January 1, 2021 as \$187,000. Such a disparity in the valuations of the property indicate that in fact the purchase price of the property included more than the structures and the land. In fact, as is common in the sale of a commercial farm operation, the sale price included the purchase of a large-scale farming operation.

2) "Farm Operator to play predominant role in management of the farm."

Turning to the second prong of subsection (a), the farm operator is required to continue to play a predominant role in the management and farm use of the farm, OAR 660-033-0130(9) CCC 18.16.015(3). OAR 660-033-0130(9) adds the following language to the last sentence of (a): "a farm operator is a person who operates a farm, doing the work and making the day-to-day decisions about such things as planting, harvesting, feeding and marketing." While the County Code, as acknowledged by DLCD, does not include this language, it is guidance for the County in determining that the applicant is, in fact, "a farm operator."

Here, the applicant will continue to play the prominent role in the farm operation. He owns the property, lives on-site, and runs the day-to-day operations. As was true when he received approval for the primary farm dwelling, "The Applicant states that he will take care of all irrigation and upkeep of fencing and irrigation equipment (pivot, wheel lines, hand lines...). The Applicant states that he will manage the custom haying on the property. He also has livestock that require him to feed on a daily basis during the winter."

When the farm operator is the "property owner who retains the right to control when, whether and what crops are planted," this indicates "significant involvement in farm operations." *Kenagy v. Benton County*, 22 Or LUBA 356 (1992) Here, the applicant makes all of those decisions. The applicant will continue to play the predominant role in the management of the farm. He

determines the crops to be planted, the schedule of all operations (planting, harvesting, grazing, sale) He determines the market and negotiates the price. He determines the irrigation schedule, location, repairs and maintenance. He will continue to play the same predominant role in the management and farm use of the farm.

Some of the facts that LUBA has considered useful in determining the that the “farm operator” will “continue to play a predominant role” in farm operations are addressed below:

While difficult to quantify the exact computation because there are no time sheets or timecards for the applicant and his father, the applicant estimates that his dad contributes approximately 40% toward the farm operation, with the applicant contributing the other 60% toward the farm operation. In addition to the other farm operations engaged in by the applicant, there is a substantial amount of work required to move the irrigation pipe, wheel lines, and fixing pivots on the 197.46 acre parcel. It takes them both approximately 3 hours every morning and 3 hours every evening during the irrigation season April 15 through October 15. Of course, if there are any repairs or other issues that arise during that process, excess time is required. As anyone who has engaged in a commercial farm operation of this size knows, the applicant, as the owner/operator is never done working, but his dad works approximately 40 hours a week, while the applicant works no less than 70 hours a week (over 10 hours a day, 7 days a week). Of course, a farm operation of this size takes no less than 110 hours of time for all that is involved to make a profit.

During the summer, the cattle are turned out for grazing, but during the winter, the cattle must be fed. The applicant does leave during a few months in the winter, during which time his father handles the daily feeding. As addressed in *Harland v. Polk County*, 44 Or LUBA 420 (2003), it is not required that the relative’s assistance be required full-time, but rather part-time and/or during times when the only farm operator cannot be present is adequate to establish that the relative’s assistance is “required” under the code.

It is helpful that appellant submitted Exhibit E which is the Prineville Men’s Wear Co., Secretary of State Annual Report filed September 8, 2020, and Exhibit F, the Oregonian article concerning Jim and Cathy Lane’s store. The documents demonstrate that applicant’s father, Jim Lane, is principally involved in the retail store located on main street in Prineville, which, according to Google Directions, is approximately 9 miles away, or a 15-minute drive one-way, from the subject property. Accordingly, it does not compute that he would, at the age of 70 years old, now also take on this commercial farming operation to become the primary farm operator in addition to his principal role at the store in town. Rather, he is willing to assist the applicant in the operation to the extent required, but nothing more.

3) Applicant requires assistance

The third prong of the analysis is whether the applicant requires the assistance of his father. There is no minimum threshold of contribution required of the relative, but even a “nominal” amount of assistance can be sufficient to support a finding that the relative’s assistance is

required. See *Kenagy v. Benton County*, 23 Or LUBA 328 (1992). Here, the level of assistance does exceed what would constitute “nominal,” however, the farm operator will continue to have “significant involvement” in the farm operations as required. *Kenagy v. Benton County*, 23 Or LUBA 328 (1992)

Appellant tries to make the case that the Applicant is involved in various other “off-farm business” and therefore cannot be the principal farm operator, and therefore that is the basis as to why he requires the assistance of his father. The appellant is trying to make the case that the dicta from *Richards v. Jefferson County*, 77 Or LUBA 152 (2018) applies here. Therein, LUBA stated that the requirement that the applicant establish that he will “continue to play a predominant role” in farm use of the property “may not be met if the reason the applicant requires the assistance of the relative is because the applicant is substantially employed off the farm and does not have enough time to conduct farm operations.” However, the applicant does not require the assistance of the relative because of some off-farm employment. The applicant is not employed anywhere else. While he does engage in the hobby of team roping, his occasional participation is for recreation and sport, it is not employment.

In support of this argument, Appellant submits a newspaper article from 2016 that mentioned that the applicant worked in the family retail store at that time. However, in response to the allegation that the Applicant is currently involved in running the retail business, there is no credible evidence in the record to support this claim, and it is absolutely false. It is common knowledge that a newspaper article is almost never a credible source of evidence, but in this case, it is even more egregiously misplaced because the article is from 2016 – nearly 5 years ago. What is clearly evident is that the applicant purchased the million-dollar operation in 2018 and obtained a primary farm dwelling approval thereafter. He has not worked in the store in approximately 5 years, and he is not listed as any officer or agent of the retail corporation.

There is no evidence to support the argument that the Applicant is engaged in any “off-farm business” or retail operation which is the real cause for the basis of his claim that he requires assistance with the farm operation, nor is there evidence to support appellants claim that accordingly applicant cannot be the principal farm operator. This argument is based solely on speculation and conjecture and is factually unsupported and absurd.

There are no advanced age or health limitations that prevent applicant’s father from assisting in the farm operations.

D. Conclusion

The applicant’s burden of proof has established that he requires the assistance of his father on the farm. It is not required that an applicant establish that the relative’s assistance is required full-time. Where an applicant identifies varied tasks that the relative will perform and takes the position that the relative’s assistance will be particularly needed during times when the only farm operator cannot be present, the applicant adequately establishes that the relative’s assistance is “required” under the code. *Harland v. Polk County*, 44 Or LUBA 420 (2003).

Respectfully submitted,

Lisa Andrach

Lisa Andrach