

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

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JON DRAKE and LINDA DRAKE,)
and DAVE PHELPS and DIXIE)
PHELPS,)
Petitioners,)
vs.)
POLK COUNTY, JAMES and)
BEVERLEE PETITTI, EUGENE)
and CLOVA PETITTI,)
Respondents.)

LUBA No. 83-069

FINAL OPINION
AND ORDER

Appeal from Polk County.

Scott McArthur, Monmouth, filed the Petition for Review and argued the cause on behalf of Petitioners Drake.

Mark Grider and Asa Lewelling, Salem, attorneys for Petitioners Phelps.

Mark Irick, Dallas, filed the response brief and argued the cause on behalf of Respondents Petitti.

No appearance by Polk County.

BAGG, Chief Referee; DuBAY, Referee; KRESSEL, Referee; participated in this decision.

REMANDED 02/22/84

You are entitled to judicial review of this Order. Judicial review is governed by the provisions of Oregon Laws 1983, ch 827.

1 Opinion by Bagg.

2 NATURE OF THE DECISION

3 This is an appeal of a grant of two conditional use permits
4 by Polk County. The first permit allows Respondents Mr. and
5 Mrs. James Petitti to conduct a business of building and repair
6 of small engines and go-cart parts and chassis on their
7 property. The second allows placement of a second dwelling for
8 farm help on the same property. The property in question is a
9 33 acre parcel in a Timber Conservation (TC) Zone.

10 FACTS

11 One of the applicants is presently employed in an
12 occupation away from his property, but for some years has
13 conducted a business on the property rebuilding go-cart engines
14 and manufacturing go-cart frames. He applied for a conditional
15 use permit to expand the business. In addition, the applicants
16 have arranged to lease approximately 67 acres of adjacent
17 property in order to commercially raise an oil seed crop known
18 as "meadowfoam." The record reveals that meadowfoam is an
19 experimental crop. Mr. Petitti, one of the applicants, needs
20 assistance in the performance of hard physical labor because of
21 a handicap.

22 The Polk County Planning Commission approved these
23 requests, and the Polk County Board of Commissioners upheld the
24 planning commission. The board of commissioners attached a
25 condition, however, that a sound proof enclosure be built
26 around an outside air compressor used in the go-cart operation.

1 Petitioners, who reside on nearby land, filed this appeal
2 following the county actions.

3 HOME OCCUPATION ISSUES

4 Home occupations in Polk County are governed by §110.270
5 and §120.075 of the Polk County Zoning Ordinance. Section
6 110.270 states:

7 "110.270. HOME OCCUPATION. An occupation carried on
8 solely by the resident of a dwelling house as a
9 secondary use, in connection with which no assistants
10 are employed, no commodities are sold other than
11 services, no sounds are heard beyond the premises, and
12 there is no display, advertisement, or sign board
13 except such signs as by this ordinance or the (Marion)
14 (Polk) Sign Code may be permitted in the zone where
15 the home or occupation is situated, including such
16 occupations as dressmaking, lawyer, notary public,
17 public accountant, artist, writer, teacher, musician,
18 home office of a physician, dentist or other
19 practitioner of any of the healing arts, or practices
20 of any art or craft of a nature to be conveniently,
21 unobtrusively, and inoffensively pursued in a family
22 dwelling, provided no structural alterations are made
23 to accomodate [sic] such occupations and the
24 residential character of the building remains
25 unchanged, and not more than one-half of the floor
26 area of 1 story is devoted to such use."

18 The county is required to make findings on the following
19 criteria before it may grant a home occupation request:

20 "120.075. CONDITIONAL HOME-OCCUPATION provided:

21 "(a) The occupation or activity be carried on solely
22 by the resident of a dwelling as a secondary use,
23 in connection with which no assistants are
24 employed.

25 "(b) No structural alterations are made to accommodate
26 such occupations, the residential character of
the buildings and property remains unchanged, and
traffic attracted to the premises be kept at a
minimum.

1 "(c) The business or activity shall be conducted
2 wholly within the home or within a small (not
3 greater than 1/2 the floor area of the house)
4 accessory building, residential in appearance.

5 "(d) No noise, dust or any other offensive action or
6 material be emitted from the premises.

7 "(e) No storage of materials, products, or supplies be
8 conducted outside of the building.

9 "(f) There be sufficient room to load and unload
10 materials, supplies, and products on the
11 premises."

12 FIRST ASSIGNMENT OF ERROR

13 "The Board Erred in Granting the Home Occupation
14 Conditional Use Permit, Because the Use is Not a
15 'Secondary Use' to the Occupancy of a Dwelling.

16 "The 'Secondary Use' language of the Ordinance
17 indicates a home occupation is just that - - a
18 commercial use incidental to the occupancy of a
19 dwelling house. The Petitti proposal is to expand an
20 existing manufacturing use which brings them income of
21 \$18,000.00 per year. (Record P. 180)."

22 Petitioners claim the applicant will derive a substantial
23 portion of his income from the home occupation. For this
24 reason, they argue, the proposal does not constitute a use
25 which is truly secondary to the primary use of the house as a
26 dwelling.

27 The Board understands the "secondary use" language in
28 §110.270 to mean that the primary use of the structure is as a
29 dwelling and not as a business. How much money the occupant
30 makes or how much of his time within the house is spent on the
31 occupation does not determine whether the structure is
32 principally a dwelling. Under the ordinance, a dwelling does

1 not become a manufacturing use simply because it is also used
2 for another purpose, as long as the use is secondary to the use
3 as a dwelling.

4 The First Assignment of Error is denied.

5 SECOND AND FOURTH ASSIGNMENTS OF ERROR

6 "2. The Board Erred in Granting the Home Occupation
7 Conditional Use Permit, Because Commodities Other Than
8 Services are Sold.

9 "Mr. and Mrs. Petitti conduct a 'wholesale operation',
10 sell racing kart accessories such as bracket kits, and
11 build and assemble race car chassis. (Record P. 55,
12 Supplement Record P. 12)."

13 "4. The Board Erred in Granting the Home Occupation
14 Conditional Use Permit Because Use is Not of a Type
15 Defined by Ordinance Section 110.270.

16 "Ordinance 110.270 limits home occupations to such
17 occupations as 'dressmaking, lawyer, notary public,
18 public accountant, artist, writer, teacher, musician,
19 home office of a physician, dentist or practitioner of
20 any of the healing arts, or practices of any art or a
21 craft of a nature to be conveniently, unobtrusively
22 and inoffensively pursued in the family dwelling.'

23 "The use contemplated is a manufacturing use. Mr. and
24 Mrs. Petitti modify and repair racing kart engines,
25 build and assemble racing car chassis, and use
26 numerous large machine tools. (Record P. 55).

"Such is not the type of use contemplated by the
Ordinance."

21 The Polk County Zoning Ordinance defines a home occupation,
22 in part, as one in which "no commodities are sold other than
23 services." Polk County Zoning Ordinance §110.270. Petitioners
24 believe the go-cart accessories are commodities, and the county
25 could not find, as it did, that no commodities other than
26 services will be sold.¹ See Record 10. In its brief, the

1 county asserts that §110.270 must be construed together with
2 §120.075 of the same ordinance. The latter provision appears
3 to recognize that materials, supplies and products may be
4 stored on the premises. See Polk County Zoning Ordinance
5 §120.075(f), supra at 4. The county says these apparently
6 conflicting provisions create an ambiguity necessitating
7 interpretation. The county argues its interpretation of the
8 ambiguous provisions should be upheld. See Ford v Polk County,
9 7 Or LUBA 232 (1983).

10 The county found that no commodities other than services
11 are to be sold by the applicant in connection with this home
12 occupation. Record at 11. The County also found that "the
13 applicant intends to engage said home occupation on a wholesale
14 basis only." Record, p. 10. The findings also recite that the
15 proposed use "constitutes a craft of a nature to be
16 conveniently unobtrusively and inoffensively pursued." Record
17 at 11.

18 Section 110.270 of the Polk County Zoning Ordinance lists
19 examples of the kinds of home occupations permitted. The
20 examples given are uses

21 "such as dressmaking, lawyer, notary public, public
22 accountant, artist, writer, teacher,
23 musician,...physician, dentist...or practices of any
24 art or craft of a nature to be conveniently,
25 unobtrusively and inoffensively pursued in the family
26 dwelling...."

25 Dressmakers and artists, who may practice in home
26 occupations under the ordinance, often produce items for sale.

1 These may be called commodities, but they are items of a
2 different nature than products commonly associated with the
3 manufacturing process. Indeed, the Polk County Zoning
4 Ordinance recognizes manufacturing activities as a separate
5 kind of activity and allows those activities in the Industrial
6 Commercial (IC), Industrial Park (IP), Light Industrial (LI)
7 and Heavy Industrial (IH) Zones. In the IC Zone, fabrication
8 is a permitted use.

9 "Section 151.010. Within any IC Industrial Commercial
10 zone, no building, structure, or premises shall be
11 used, enlarged or designed to be used, erected,
structurally altered, or enlarged except for one or
more of the following uses:

12 "(b) (3) Metal fabricated products manufacture;

- 13 "(a) Cutlery, handtools, and general hardware;
- 14 "(b) Fabricated metal products;
- 15 "(c) Fabricated structural metal products;
- 16 "(d) Fabricated wire products....

17 "(11) Transportation equipment, manufacture and
18 repair:

- 19 "(a) Aircraft and parts;
- 20 "(b) Aircraft and parts dealer, distributor;
- 21 "(c) Boat and watercraft building and repair;
- 22 "(d) Boat and watercraft sales and service;
- 23 "(e) Boat and watercraft moorages and marinas;
- 24 "(f) Motor vehicles and motor vehicle equipment;
- 25 "(g) Manufacture of special use vehicles
(sanitary trucks, vans, etc.);
- 26 "(h) Manufacture of parts and accessories;
- "(i) Motor freight depots;
- "(j) Rental and storage;
- "(k) Repair garage;
- "(l) Body and fender shops;
- "(m) Towing;
- "(n) Service stations;
- "(o) Auto laundries, washing and polishing;
- "(p) Motor cycles, bicycles and parts;

1 (12) Other uses:

- 2 "(a) Metal working equipment and machinery
manufacturing wholly within a building;
3 "(b) Warehouses;
"(c) Wholesale firms;
4 "(d) Utilities - primary equipment and storage
yard...."
5

6 In contrast, the uses permitted in the Timber Conservation
7 (TC) zone are limited to manufacture, production and harvesting
8 of forest products, farm uses and other non-manufacturing
9 uses. See Polk County Zoning Ordinance §176.010, et seq.
10 Further, the conditional uses permitted in a TC Zone do not
11 include manufacturing uses, but include home occupations. Id.,
12 §176.030.

13 Given the apparent manufacturing quality of the proposed
14 use and the fairly restrictive provisions of §110.270 of the
15 zoning ordinance, the county's interpretation of its ordinance
16 to include fabrication of go-carts in the same class of home
17 occupations as those listed in §110.270 of the ordinance can
18 not be sustained. The county's interpretation requires a more
19 complete analysis to explain why this proposed use, which
20 appears to be a manufacturing use (or a use more like those
21 permitted in an industrial zone than those listed in the home
22 occupation ordinance) is similar to a craft or other listed
23 home occupation and involves only the provision of "services."

24 While it may be possible for the county to conclude that
25 go-carts are products like those apparently permitted under the
26 home occupation ordinance, an analysis supporting that

1 conclusion is not present in the findings. The Board believes
2 that if the county wishes to construe its ordinance in this
3 fashion, the findings must explain how that construction
4 carries out ordinance intent. See Springfield Education
5 Association v The School District, 290 Or 217, 621 P2d 547
6 (1980); Theland v Multnomah County, 4 Or LUBA 284 (1981). See
7 also 2A Sands Sutherland, Statutory Construction, §47.18 (3d
8 ed, 1973).

9 The Second Assignment of Error is sustained.

10 THIRD ASSIGNMENT OF ERROR

11 "Sounds are Heard Beyond the Premises.

12 "The Department of Environmental Quality inspected the
13 property on April 15, 1983, and indicated that sounds
14 were noticeable at the Petitti property line and at
15 the Phelps residence. (Record P. 28). Some
16 modifications were necessary to bring the noise
emissions within the DEQ standards. (Record P. 29).
However, the Ordinance does not require that the noise
be kept below DEQ minimums, but that no sounds be
heard beyond the premises."

17 We understand petitioners to view the imposition of a
18 condition requiring that the compressor be soundproofed as not
19 sufficient to satisfy the noise criterion because there has
20 been no showing that "no sounds" will be emitted from the
21 premises.

22 The county notes again an apparent conflict between two
23 sections of the same ordinance. Section 110.270 appears to
24 require a finding that no noise will travel beyond the premises
25 at all, while §120.075(d) only requires that no "offensive"
26 noise be emitted from the premises.

1 The county found that no offensive noise would be heard
2 beyond the premises. The evidence to support this finding
3 consists of a letter from the Department of Environmental
4 Quality and the testimony of two witnesses. The letter simply
5 states that the noise emissions from the current operation are
6 within DEQ standards. Record at 28-29. There is nothing in
7 the letter to suggest noises from the home occupation (the
8 compressor) will be inoffensive and will not travel beyond the
9 premises.

10 The witnesses said they were unable to hear any offensive
11 noise. However, the DEQ report was based on decibel
12 measurements and did not discuss whether or not the noises were
13 offensive. There is no evidence in the record to which we are
14 cited that the noises emitted are offensive. The only evidence
15 on the quality of the noise was made by persons who apparently
16 favor this proposed conditional use and claim that no offensive
17 noises are generated.

18 Under these circumstances, we believe the county was
19 entitled to conclude that no offensive noises would stem from
20 the applicants' conduct in pursuing his home occupation.

21 It remains, however, to determine whether a use which
22 generates noise but no offensive noise can be approved under
23 the ordinance. The county interpreted the ordinance to permit
24 noises from a home occupation to go beyond the premises,
25 providing they are not offensive. There is an apparent
26 contradiction between §110.270 and §120.075 of the ordinance.

1 The former is absolute and the latter is relative. The Board
2 believes the county is best suited to resolve the conflict. We
3 find the county's interpretation reasonable. Alluis v Marion
4 County, 7 Or LUBA 98 (1982).

5 The Third Assignment of Error is denied.

6 FIFTH ASSIGNMENT OF ERROR

7 "The Board Erred in Granting the Conditional Use
8 Permit for Home Occupations Because Structural
9 Alterations Must Be Made to Accomodate [sic] the
10 Occupation.

11 "Mr. and Mrs. Petitti propose to expand their shop
12 building an additional 30 feet. (Record P. 55). The
13 Conditional Use granted by the Board of Commissioners
14 requires that the air compressor located outside the
15 shop building be entirely enclosed within a
16 sound-insulated enclosure. (Record P. 2)."

17 The county found that any change to the shop building would
18 occur only to accommodate farm machinery and farm vehicles.
19 While the county order does not grant any enlargement of the
20 facility, the Board is unable to understand the meaning of the
21 finding. Is the county stating that the home occupation will
22 crowd out the farm equipment, necessitating enlargement of the
23 structure to accommodate the farm implements? If so, then the
24 county may be authorizing, in a roundabout fashion, an addition
25 to a farm related building which will be used to house a
26 non-farm use.

Under the Polk County ordinance, no alteration of the
structure housing the home occupation is permitted; the
county's findings suggest that the county may be violating this
ordinance provision. Because this case is to be returned on

1 other grounds, the Board believes further explanation of the 30
2 foot addition is necessary. Again, we note the county is not
3 granting the addition at this time, but the findings about the
4 addition suggest the county may be contemplating permitting an
5 addition in a manner not allowable under its ordinance.

6 Petitioners' complaints about the structure to enclose the
7 air compressor are misplaced. Enclosing the air compressor,
8 which is outside the shop building, hardly seems to be an
9 alteration to the shop building itself. Even if we assume the
10 shop building is part of the dwelling, no alteration is
11 proposed or allowed by the conditional use permit, only a
12 soundproofing enclosure of a structure that is outside of the
13 building.

14 The Fifth Assignment of Error is sustained, in part.

15 SIXTH ASSIGNMENT OF ERROR

16 "The Board Erred in Granting the Home Occupation
17 Conditional Use Permit Because the Business Will Not
18 Be Conducted Wholly Within the Home or Within a Small
(Not Greater Than 1/2 the Floor Area of the House)
Accessory Building, Residential in Appearance.

19 "The house has a square footage of 1565 square feet.
20 The shop has square footage of 720 square feet.
(Record P. 55). Mr. and Mrs. Petitti propose to
21 expand the shop building another 30 feet to the rear.
(Record P. 56). The shop building is not a 'small
22 accessory building, residential in appearance', but is
a 'fabricated metal building of a type commonly seen
23 in this area. The floor is a cement slab.' (Record
P. 56).

24 "Obviously, the 'residential character of the
25 building' will not remain unchanged as required by
Ordinance Section 110.270."

26

1 Here, petitioners say the building does not fall within the
2 limits of the Polk County Zoning Ordinance requirement that the
3 use be pursued in a family dwelling. The Board notes that
4 while §110.270 seems to require that any home occupation be
5 pursued in a family dwelling, §120.075 allows the use to be
6 conducted within the home

7 "or within a small (not greater than 1/2 the floor
8 area of the house) accessory building, residential in
appearance."

9 The county found that this home occupation

10 "will be conducted in an existing shop building which
11 is constructed of fabricated metal. It has a concrete
12 slab floor. It is fully insulated, wired and plumbed
13 to meet building code requirements. It contains 720
14 square feet. It is presently used by the applicant as
a farm equipment repair shop, as well as an area
within which he engages in his hobby involving
go-karts [sic] and go-kart [sic] engines." Record 10.

15 While the Board does not agree with petitioners that the use
16 will occupy a structure which is larger than 1/2 of the square
17 footage of the dwelling, the Board is unable to find anything
18 in the findings that considers whether this metal building is
19 "residential in appearance." Without a finding that the
20 building does possess such character, and an explanation of how
21 the finding carries out ordinance intent, a criterion present
22 in Polk County Zoning Ordinance §120.075(c) has not been met.
23 Approval of the permit requires satisfaction of all criteria.
24 Hannan v Yamhill County, 6 Or LUBA 83 (1982).

25 The Sixth Assignment of Error is sustained.

26 In sum, if the county desires to proceed further with the

1 grant of this home occupation permit, it must explain in some
2 detail how the proposed home occupation fits within the
3 provisions of §110.270 and §120.075 of the zoning ordinance.
4 The county should pay particular attention to whether the
5 proposed use is one which is a home occupation or is more in
6 the nature of manufacturing use. Also, the county must clarify
7 the discussion of the proposed 30 foot extension on the
8 accessory building as discussed under the Fifth Assignment of
9 Error.

10 We now turn to the challenge to the permit allowing a farm
11 dwelling on the site.

12 CHALLENGES TO THE CONDITIONAL USE FOR A SECOND DWELLING

13 Within the Timber Conservation Zone, an additional dwelling
14 or mobile home is permissible as a conditional use. The
15 ordinance states as follows:

16 "(k) Additional dwellings or mobile homes for farm or
17 forestry help customarily provided in conjunction
18 with farm or forestry use for the use of persons
working full time in carrying out the farm or
forestry use on the property.

19 "(l) Justification for an additional dwelling pursuant
20 to this section shall be based on a demonstrated
need for additional full time help based on crops
grown and parcel sizing.

21 "(2) A dwelling approved under this section shall not
22 constitute a second dwelling for the purpose of
23 obtaining a special exception under Section
24 176.040(B) of the Polk County Zoning Ordinance."
Polk County Zoning Ordinance §176.040, as amended
by Ordinance No. 291.

25 Petitioners raise three challenges to the county's approval of
26 a permit under the above ordinance.

1 SEVENTH ASSIGNMENT OF ERROR

2 "The Board Erred in Granting the Conditional Use
3 Permit for a Second Dwelling for Farm or Forest Help
4 Because the Person Occupying the Property Will Not be
5 Working Full-Time in Carrying Out the Farm or Forest
6 Use on the Property.

7 "By their application, Mr. and Mrs. Petitti admitted
8 that the farm help will have to work off the place to
9 make income. (Record P. 48).

10 "At the hearing before the Board of Commissioners, the
11 applicant Beverlee Petitti stated:

12 "As has been stated to you, it will be a two to
13 three year period before the full financial load
14 will be able to be carried, his salary will not
15 be able to be paid fully from the farm until the
16 land is fully developed. So for the first two or
17 three years we are expecting that he will have to
18 have a part time job as a gas station attendant,
19 or anything else. The only thing that we can
20 offer to him as an inducement is the free rent,
21 to have his mobile home parked on our farm until
22 we can get some wages coming in.' (Record P.
23 23)." (Emphasis in original).

24 The conditional use permit for the second dwelling refers
25 to a particular individual and says the person will be working
26 on a full time basis. The finding states his "full time" work
will be as "that term is used in conjunction with agricultural
labor." Record 6. The county does not explain what it means
by this finding, but we understand the county to imply that
full time farm work is not the same as full time non-farm work.

While the Board can appreciate that the Polk County Board
of Commissioners understands that full time farm work means
something other than full time work in other occupations, the
basis of this understanding is not explained in the findings.
It is not clear whether the "full time" requirement in the

1 ordinance is met by whatever "full time" work the county
2 understands the farm hand will provide. We believe an
3 explanation is necessary (supported by substantial evidence in
4 the record) showing that the requirement for full time
5 assistance as explained in the ordinance is met by this
6 proposal. In making such an explanation, the county will of
7 course have to define what the term means as it is used in the
8 ordinance, how much work will be performed on the property and
9 whether the ordinance and the proposal are consistent with each
10 other. Unless and until that analysis is made, the grant of
11 the second dwelling can not be upheld.

12 The Seventh Assignment of Error is sustained.

13 EIGHTH ASSIGNMENT OF ERROR

14 "The Board Erred in Granting the Second Dwelling
15 Conditional Use Permit Because There is No
16 Demonstrated Need for Additional Full Time Help Based
on the Crops That Are Now Being Grown Or the Size of
the Parcel.

17 "The Ordinance is clear that a second dwelling will be
18 permitted on a farm or in a forest area only where
19 there is a present need for the help. Further, the
20 need must be based upon the size of the property, and
21 crops then being grown on the property. The
22 application (Record P. 47, 48) indicates that there is
23 little, if any, current agricultural activity on the
24 property. Mr. and Mrs. Petitti would like to develop
the property. But because the property is not
producing any revenue at the present time, the only
way they can get farm help is by paying the farm
employee free rental space for his mobile home.
(Record P. 23). In any event, the proposed meadowfoam
corp is speculative in nature, there is no established
market for it, and it is, at best, an experimental
crop. (Record P. 176-177)."

25

26

1 The county found:

2 "(9) The applicant proposes to clear and prepare his
3 property and the adjacent leased property for
4 the introduction of a crop known as 'meadow
5 foam', a task which will extend over a period of
6 approximately three years. It will involve
7 brush clearing, the installation of drain tile,
8 the construction of fencing, eradicating noxious
9 growth, tilling and preparing the soil for the
10 introduction of meadow foam seed, the
11 construction of a [sic] earthen pond for the
12 impoundment of water and other ordinary farm
13 activities.

8 "(10) Rick Olds has accepted employment from the
9 applicant to assist him in instituting and
10 conducting the major part of the work and labor
11 required in placing the applicant's property and
12 his leased land into crop production. The said
13 Rick Olds is married. His presence on the
14 applicant's property and leased premises on a
15 full time basis would enhance and promote the
16 productive use of the applicant's property.

13 "(11) The work to be performed by the said Rick Olds
14 is the type of work customarily provided in
15 conjunction with farm use activities.

15 "(12) The said Rick Olds, while maintaining outside
16 employment for an indefinite time in the future,
17 will be working full time, as that term is used
18 in connection with agricultural labor, for the
19 applicant in carrying out the farm use which the
20 applicant intends to conduct on his premises."
21 Record 5-6.

20 The Board does not believe the ordinance has to be read as
21 restrictively as petitioners urge. It is reasonable to regard
22 the preparation of land in order to grow a crop to be a part of
23 growing and harvesting a crop. The petitioners do not point to
24 anything in the record to suggest the county is wrong when it
25 says the property requires full time work for a period of some
26 three years to adequately prepare it for the meadowfoam

1 experimental enterprise. Also, petitioners do not challenge
2 this aspect of the decision on the basis that it is not
3 supported by substantial evidence. The fact the meadowfoam is
4 an experimental crop does not mean it is not a crop. The Board
5 notes again, however, that the explanation of whether this crop
6 requires "full time" work provided by an individual living on
7 the property is a separate issue. See our discussion under the
8 Seventh Assignment of Error, supra.

9 The Eighth Assignment of Error is denied.

10 NINTH ASSIGNMENT OF ERROR

11 "The Board Erred in Granting its Second Dwelling
12 Conditional Use Permit Because The Second Dwelling is
Flatly Prohibited by the Comprehensive Plan.

13 "Notwithstanding the County's conflicting ordinances,
14 its Comprehensive Plan at Section 2.3 states:

15 "'Polk County will limit residential uses within
16 designated forest lands to one dwelling unit for the
owner.'" (TR Supp. 62)."

17 The county replies to this assignment of error by stating
18 that the second dwelling is not a residential use but is a use
19 specifically allowed for the purpose of furthering a forestry
20 or farming operation. In other words, the use is provided in
21 conjunction with a farm use and therefore permissible under the
22 plan.

23 Section 2.3 of the policy section of the forest lands
24 provisions of the Polk County Comprehensive Plan provides as
25 follows:

26

1 "2.3 Polk County will discourage the development of
2 non-forest uses within designated forest lands.
3 Land division will be permitted only when the
4 proposed division complies with all applicable
5 requirements of the zoning and petitioning
6 ordinances, and is consistent with all of the
7 following criteria:

8 "a. Any residential uses which might occur on a
9 proposed parcel will not seriously interfere with
10 usual forest management practices on adjacent
11 forest land;

12 "b. The creation of smaller parcels and the
13 subsequent development of any residential uses
14 upon them will not materially alter the stability
15 of the areas land use pattern;...."

16 These provisions do not prohibit all second dwellings on
17 farm or forest land. Further, the Board is unable to find a
18 provision in the comprehensive plan which, as claimed by
19 petitioners, prohibits the dwelling unit.

20 The Ninth Assignment of Error is denied.

21 The Conditional Use Permit No. 83-11 for the grant of a
22 home occupation is remanded for further proceedings not
23 inconsistent with this order.

24 The conditional use permit for a second dwelling,
25 Conditional Permit No. 83-10, is remanded for further
26 proceedings not inconsistent with this opinion. At a minimum,
the county must explain what is meant in its ordinance by the
term "full time help" and whether the proposal meets that
standard.

FOOTNOTES

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1 A "commodity" is "...something useful or valued esp when regarded as an article of commerce...2.a. an economic good; esp a product of agriculture, mining or, sometimes manufacture as distinguished from services...b. an article of commerce...." Websters 3d New International Dictionary, 1961.

2 The fact that the building is an adjunct to the farm operation does not make it permissible under the home occupation provision in the ordinance. The Board notes that within the timber conservation (TC) Zone, buildings normally in conjunction with farm uses or timber uses are permitted. There is no mention in the TC Zone of buildings to house other manufacturing uses. That is, while the TC Zone may recognize home occupations, it does not recognize manufacturing occupations occurring within a separate structure normally used in conjunction with a timber operation.