

SEP 9 3 25 PM '86

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

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3 WILLIAM C. SMITH and)
SHIRLEY L. SMITH,)
4) LUBA No. 86-044
Petitioners,)
5) FINAL OPINION
vs.) AND ORDER
6)
MARION COUNTY,)
7)
Respondent.)
8

9 Appeal from Marion County.

10 William C. Smith and Shirley L. Smith, Woodburn, filed a
11 petition for review and argued on their own behalf as
petitioners.

12 Janet McCoy, Salem, filed a response brief and argued on
13 behalf of Marion County.

14 BAGG, Referee; DuBay, Chief Referee; Kressel, Referee;
15 participated in the decision.

16 AFFIRMED 09/09/86

17 You are entitled to judicial review of this Order.
18 Judicial review is governed by the provisions of ORS 197.850.
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1 Opinion by Bagg.

2 NATURE OF THE DECISION

3 Petitioners appeal denial of a conditional use permit to
4 place an additional dwelling in conjunction with farm use on
5 their property near Woodburn, Oregon.

6 OPINION

7 Petitioners applied to Marion County for a permit to place
8 a second farm dwelling on their property. The Marion County
9 Zoning Ordinance requires that a request for a second farm
10 dwelling must be supported by facts showing (1) that the land
11 is in farm use and (2) that the proposed dwelling will be in
12 conjunction with that farm use. The county ordinance includes
13 several criteria to determine whether or not the property is
14 indeed in farm use and the dwelling will in fact be in
15 conjunction with the farm use. See Marion County Zoning
16 Ordinance, Section 136.040(d)(f).

17 The county hearings officer (and the county commission on
18 appeal) found that the property was not in farm use, but only
19 that the applicants were planning to place it in farm use. The
20 county concluded petitioners were not entitled to the permit
21 for the second farm dwelling.

22 On appeal to LUBA, petitioners state that the objections
23 raised in the hearings officer's order and in the county
24 commission's decision have all been satisfied. That is,
25 petitioners assert the property is now in farm use, and they
26 now qualify for a second dwelling under the Marion County

1 Code.

2 This Board reviews the record of the local government
3 decision to determine whether or not the decision meets
4 applicable standards and is supported by substantial evidence
5 in the whole record. See ORS 197.835. Unless a petitioner
6 alleges some procedural irregularity or unconstitutionality of
7 the decision, a petitioner can not supplement the county's
8 record with new evidence. ORS 197.830(11). There is no
9 allegation warranting consideration of new evidence in this
10 case. Petitioners would require us to review the county's
11 decision against facts not in evidence before the county. We
12 can not do so.

13 The petitioners may be able to seek a new conditional use
14 permit from the county, if the facts now support them.
15 However, in this appeal, they do not present assignments of
16 error that would allow us to grant relief from the challenged
17 permit denial.

18 The county's decision is affirmed.
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