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NATURE OF THE DECISION

Petitioner appeals a county decision that approves a family farm help dwelling on a 70-acre parcel that is zoned Exclusive Farm Use (EFU).

FACTS

Family farm help dwellings are authorized by Polk County Zoning Ordinance (PCZO) 136.040(H).¹ An applicant for a family farm help dwelling under PCZO 136.040(H) must demonstrate that the farm is a “commercial farm operation” and that the relative’s assistance on the farm is “required.” Intervenor Chad Woods was the applicant below.² That application includes the following description of the proposal:

“The dwelling will be the residence of one of our sons or daughters.

“* * * * *

“A second [on-site] dwelling is required to assist in the feeding, health care, calving, and security of our beef cattle herd. We have as many as seventy head of cattle on the place which requires a management presence. In addition, the family member will be involved in haying operations and marketing of farm production.

¹ Family farm help dwellings are authorized by statute (ORS 215.283(1)(e)(A)), administrative rule (OAR 660-033-0120 and 660-033-0130(9)) and county zoning ordinance (PCZO 136.040(H)). We set out the statutory and administrative rule language later in this opinion. PCZO 136.040(H) provides:

“Dwelling for Family Farm Help [OAR 660-33-120 and 660-33-130(9)]. A dwelling for family farm help may be authorized, on the same lot or parcel as the dwelling of the farm operator, where *the dwelling will be occupied by a relative of the farm operator whose assistance in the management and farm use of the existing commercial farm operation is required by the farm operator.* The farm operator shall continue to play the predominant role in the management and use of the farm. 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. As defined in ORS 215.283[(1)(e)(A)], relative means grandparent, grandchild, parent, child, brother or sister of the farm operator, or the farm operator’s spouse, whose assistance in the management of the farm use is or will be required by the farm operator.” (Emphasis added; bracketed reference to administrative rules in original).

² Intervenor Bonnie Woods did not submit a brief or sign the brief that was submitted by intervenor Chad Woods. All references in this appeal to intervenor are to intervenor Chad Woods.

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“* * * * *
“The farm * * * has been [our] primary residence for 15 years. The farm has been used for cattle, dairy and hay production since the 1800’s. The original buildings were replaced by a new house, barn, and outbuildings in 1925. We have been working with the Federal Farm Services Office to develop a farm use plan that meets production needs and lessens the farm operation’s impact on water quality. Part of this plan is to build new livestock wintering and feeding areas, and cross fence the property. We want to build a new residence closer to these areas and use existing farm buildings for hay storage. We would like to keep the existing residence for our son to live in on site to help with the feeding and care of the cattle. We would live in the new residence.”
Record 173-174.

The planning director approved intervenor’s application on June 12, 2002.

Petitioner appealed the planning director’s decision to the board of county commissioners on June 21, 2002. On July 5, 2002, intervenor submitted an additional statement in support of his application in which he makes the following representations:

“* * * This farm is a for profit, family farm operation. The farm consists of 70 acres owned by us and another 68 acres leased, used for purebred and commercial grade cattle production. In addition we rent pasture and hay ground on short term as needed basis. We also sell hay to feed stores, stables, and private individuals.

“My [son Nathan’s] help is needed on the farm. My other children would like to help on the farm, but at this time Nathan is the one seeking to pursue a career in agriculture. At this time we have 36 [purebred] and 34 commercial [crossbred] cattle. I need help in the following [tasks]: [vaccinations], castrations, herding, calving, moving livestock panels, heat detection for artificial insemination, feeding and checking cattle and watching things when I need to be absent overnight. In addition, I need his help when picking up hay out of the field, using the hay elevator to place hay in barns, make hay deliveries to customers and the maintenance of pasture and hay ground. We are also expanding our [purebred] and hay operation. I need Nathan’s on-farm help. I will be responsible for the management and day to day operation of the farm.” Record 132.

On July 24, 2002, petitioner’s attorney sent a letter to intervenor requesting information. Petitioner’s attorney advised intervenor that if the requested information was not provided, he would: “inform the Board of Commissioners of this fact and argue that the reason [intervenor] did not produce the information is that it either did not exist or is adverse

1 to [intervenor], because failure to produce evidence can create a presumption that the
2 evidence is harmful * * *. Record 128. The specific requests in the July 24, 2002 letter are
3 set out below:

4 “1. If your application is granted, will you Mr. Woods, or your son, work
5 for pay anywhere other than on your farm? Will your son be paid
6 wages from you? If so, how much?

7 “2. How much time is your son currently spending working on your farm?

8 “3. In your May 22, written explanation you make reference to IRS Form
9 1040 and Schedule F. Please provide copies of those documents.
10 Please feel free to blackout information set forth in those documents
11 not directly related to the farming operation.

12 “4. Your July 5, [2002] written explanation states that you have 36
13 purebred cattle. Please provide copies of the registrations for those
14 purebred cattle and copies of the documents that must accompany the
15 sale of purebred cattle for any such cattle you have sold from or
16 purchased for your farm.

17 “[5] Please send me a copy of the lease for the 68 acres you indicated in
18 your July 5, [2002] statement that you lease. If you do not have a
19 written lease, please provide a copy of your check for each lease
20 payment you have made for [those] 68 acres. The same request is
21 made for the pasture and hay ground you indicated you rent on a short-
22 term as needed basis, either for a copy of the lease or copies of your
23 checks for each lease payment you have made for those properties.

24 “[6] Copies of the receipts and/or invoices for all hay you sold in 2001 and
25 2002 to feed stores, stables, and private individuals.

26 “[7] How many calves [do] you expect to be produced, on average, from
27 your 70 head of cattle?” Record 128-129.

28 Intervenor responded to petitioner’s attorney’s July 24, 2002 letter with a July 27,
29 2002 letter in which he contends that petitioner’s attorney has a conflict of interest because
30 the attorney’s law firm represented intervenor on a variety of matters in the past, including
31 legal work in 2001 concerning the subject 70 acres. Record 118. Intervenor has not directly
32 responded further to petitioner’s attorney. Intervenor instead submitted a number of letters

1 directly to the county in support of his application. One of those letters from a tax service
2 states:

3 “We have filed Mr. and Mrs. Woods’ tax returns for the past several years and
4 Mr. Woods’ income has been listed only on Schedule F of the Federal Tax
5 Forms 1040.” Record 78.³

6 Two other letters indicate the author of the letter purchased grass, hay, alfalfa, or straw from
7 intervenor.⁴ Four other letters state that in the past intervenor sold cattle to, purchased cattle
8 from, or both sold cattle to and purchased cattle from the authors of the letters.⁵ Record 82-
9 85. Finally, intervenor submitted what appears to be a confidential National Agricultural
10 Statistics Service form in which intervenor estimates the number of tons of alfalfa and all
11 other hay he harvested in calendar year 2001 and sold between July 1, 2001 and June 30,
12 2002. Record 80.⁶

³ Internal Revenue Service (IRS) Form 1040, Schedule F is entitled “Profit or Loss from Farming.” We understand the tax service letter to take the position that the farm was Mr. Woods’s exclusive source of income “for the past several years.” The tax service letter does not disclose the amount of that income. Apparently Mrs. Woods works at a hospital, and this nonfarm employment is her sole source of income.

⁴ One of those letters from “the Feed Store” states intervenor has been its “sole provider of grass hay, alfalfa, and straw since * * * 1999.” Record 79. That letter does not indicate how much hay, alfalfa and straw the Feed Store purchased from intervenor. The other letter states intervenor supplied six tons of hay per month to a horse farm. Record 81.

⁵ The letter at Record 82 states “[i]n [M]arch of 2002 [intervenor] purchased all of my registered calves and yearling heifer calves.” That letter does not state how many cattle intervenor purchased. The letter at Record 83 states that the author sold intervenor 16 “[c]ows, replacement heifers and yearling bulls” in 2000. The copy of the letter at Record 84 is faint and very difficult to read. It indicates that the author bought cattle from and sold cattle to intervenor and that intervenor rented the author’s pasture in the past. The letter at Record 85 states the author has known intervenor since 1984 and sold intervenor eight purebred heifers “in 1989 to add to his purebred herd.” The author of that letter goes on to state that intervenor is “knowledgeable in the purebred cattle business that requires a lot more time (at least twice the time) as commercial cattle.”

⁶ The report is unsigned and undated. It indicates that intervenor harvested 847 tons of hay in 2001 and sold 861 tons of hay between July 1, 2001 and June 30, 2002. The report also estimates the number of tons of hay sold for each of the twelve months beginning July 2001 through June 2002. Those monthly estimates total 6,276 tons. There is nothing in the form itself that explains the difference between the 861 tons of hay that intervenor says he sold between July 1, 2001 and June 30, 2002 and the total individual monthly hay sales estimates that add up to 6,728 tons of hay sold. It may be that all but 861 tons of the estimated 6,728 tons of hay that intervenor says he sold during that period were purchased elsewhere and resold by intervenor.

1 Petitioner’s attorney sent a second letter to intervenor on August 27, 2002. In that
2 letter he first explains his view that his representation of petitioner does not constitute a
3 violation of Oregon State Bar ethical rules. The letter repeats the earlier request for a copy of
4 intervenor’s IRS Form 1040 Schedule F and for a copy of the leases for any leased farm
5 property. In addition the letter asks intervenor to identify the source of the hay referenced in
6 the letters noted above and requests documentation of the amount of hay produced on the 70
7 acres in 2001 and 2002.⁷

8 Petitioner’s attorney submitted both the July 24, 2002 and August 27, 2002 letters
9 into the record at the September 25, 2002 board of county commissioners’ hearing in this
10 matter. Petitioner’s attorney also submitted testimony by a county cattle and hay farmer,
11 who took the position that intervenor’s farm is not a “commercial farm operation” and that
12 the son’s assistance is “not required.” Record 68-69. Petitioner also submitted a letter from
13 an Oregon State University Extension Service employee who opined, based on information
14 that petitioner supplied, that “year round” “on the premises” help for a farm of the scale of
15 intervenor’s “is not typical.” Record 67.⁸ Finally, petitioner submitted a letter and a
16 neighbor submitted a letter in which they state that for the past 12 to 15 years intervenor
17 raised no hay on the 70 acres and has done a poor job of tending the pasture and the cows on
18 the 70 acres. Record 74-75.

19 In response to the above, intervenor submitted a four-page letter. In part, that letter
20 responds in kind to criticisms of intervenor’s past management practices, pointing out that

⁷ Apparently the source of the hay is potentially relevant, because any income that intervenor realized from purchasing hay from others and reselling that purchased hay could not be considered part of the farm’s income for purposes of determining if it qualifies as a commercial farm. Record 199.

⁸ The extension service employee estimated that labor requirements should be “on the order of ten hours per cow per year, or in this case about 700 hours a year, 12-14 hours per week.” Record 67. One of the letters submitted by intervenor takes the position that purebred cattle require twice as much work as crossbred cattle. *See* n 5 Because intervenor’s herd includes purebred cattle, intervenor disputes the 700-hour per year labor requirement estimate.

1 some of those who criticized intervenor have also had similar problems with their farm
2 operations. Record 45-48. The letter also argues that the significant improvements that have
3 been made recently on the 70 acres are at least partially attributable to their son's help, which
4 intervenor contends supports his request for approval of the family farm help dwelling.
5 Record 46. The letter also notes that intervenor hopes to replace some or all of their
6 crossbred cattle with purebred cattle, which require more hours of labor. In response to
7 questions raised about whether intervenor actually has 70 head of cattle, the letter explains:

8 "On July 25, 2002, [a] county [planner] made an on-farm visit taking photos.
9 I did not know he was looking for total numbers of cattle. He photographed
10 26 of the 40 cows that were on this property at that time. The cows were
11 dispersed and some were out of sight in shaded areas and barns. The other 30
12 cattle were on rented pasture. In answer to [petitioner's attorney's] question,
13 'WHERE'S THE BEEF?' we found it difficult to line all the cattle up for a
14 group photo." Record 48.

15 The board of commissioners' decision approving the application concludes that
16 intervenor's farm is a "commercial farm operation." Record 199. The decision describes the
17 farm as including 26 to 70 head of cattle and describe those cattle as being made up of "36
18 purebred cattle and 34 commercial crossbred cattle." *Id.* The board of commissioners found
19 that intervenor "identified a need for help with the existing farming practices that would
20 require assistance in the future." *Id.* This appeal followed.

21 **FIRST, SECOND AND THIRD ASSIGNMENTS OF ERROR**

22 In his first, second and third assignments of error, petitioner challenges the board of
23 county commissioners' conclusions that three of the requirements of PCZO 136.040(H) are
24 met. Specifically, petitioner challenges the county's conclusions that (1) intervenor's farm is
25 a "commercial farm operation," (2) intervenor's son's assistance is required on the farm, and
26 (3) intervenor will "continue to play the predominant role in the management and use of the
27 farm." Petitioner contends that those conclusions are inadequately explained in the decision
28 and are not supported by substantial evidence.

1 **A. Family Member’s Assistance is Required and Farm Owners’ Role**
2 **Remains Predominant**

3 Petitioner’s challenge to the second and third of the just-noted county conclusions is
4 based almost entirely on the county’s selection of words in the decision and testimony that
5 was offered below on petitioner’s behalf that intervenor’s farm is not of sufficient scale to
6 require full-time or year-round assistance from intervenor’s son.

7 The county described the son’s assistance as “needed” rather than “required,” and
8 described intervenor’s role in the farm operation as “significant involvement,” rather than the
9 “predominant role.” In his second assignment of error, petitioner argues that this choice of
10 words is fatal.

11 Although PCZO 136.040(H) requires that the son’s assistance must be “needed,” and
12 that intervenor must retain the “predominant” role, in view of the evidence in the record, we
13 do not believe the county’s choice of words is significant. There is certainly evidence in the
14 record that the son’s year-round full-time help is not essential for the farm to continue
15 operation, and we do not understand intervenor to argue that it is. However, PCZO
16 136.040(H) does not require that intervenor establish that the son’s full-time assistance is
17 required year-round. The applicants identified varied tasks the son is to perform on the farm
18 and noted that his assistance would be particularly important during times when intervenor
19 cannot be present. Petitioner makes no direct challenge to those assertions. As intervenor
20 advances in age, it is reasonable to expect that those absences might become more frequent,
21 and the need for the son to assist in the more strenuous farm tasks would become more
22 pronounced. We conclude that the county’s findings are adequate to demonstrate that the
23 son’s assistance is “required” on the farm, within the meaning of PCZO 136.040(H)..

24 The county’s finding that intervenor will retain “significant involvement in the farm
25 operation” is conclusory and is not the same as a finding that the intervenor will play “the
26 predominant role in the management and use of the farm,” which is what PCZO 136.040(H)
27 requires. However, petitioner cites nothing in the record that even remotely suggests that

1 intervenor will not continue to be predominantly responsible for running the farm or that his
2 son's role will be anything more than a secondary role.

3 The second assignment of error and the parts of the first and third assignments of
4 error that challenge the evidentiary basis of the county's decision regarding whether
5 intervenor's son's assistance is required and whether intervenor will continue to be
6 predominantly responsible for running the farm are denied.

7 **B. The Requirement that Intervenor's Farm be a Commercial Farm**

8 The county's findings explaining why the county concluded that intervenor's farm is
9 a commercial farm operation are set out below:

10 "The Board [of Commissioners] finds that [it] has the authority to determine if
11 a farm operation is a commercial farm operation on a case-by-case basis. The
12 Board [of Commissioners] conducted a site visit of the subject property on
13 September 11, 2002. The Board [of Commissioners] reviewed the testimony
14 and other evidence in the record. The Board [of Commissioners] finds that
15 the definition of 'farm use' * * * in PCZO 110.223 includes '[t]he
16 employment of land for the primary purpose of obtaining a profit in money.'
17 The Board [of Commissioners] finds that the 70.06-acre subject property was
18 fenced and cross-fenced for cattle production. The Board [of Commissioners]
19 finds that the 70.06-acre subject property, located within the Exclusive Farm
20 Use Zoning District, pastures between 26 and 70 head of cattle to be bred and
21 sold for profit. The Board [of Commissioners] finds that a minimum acreage
22 requirement does not determine whether a farm operation is a commercial
23 farm operation. In addition, the Board [of Commissioners] finds that an
24 acreage requirement is not an applicable criterion for approval of [a] family
25 farm help dwelling. Polk County agrees that hay purchased and later sold by
26 Mr. Woods cannot be counted as farm income, for purposes of the definition
27 of farm use. Mr. Woods did clarify in his testimony that he purchases low-
28 grade hay for cattle and produces and sells high-grade hay to horse owners.
29 The selling of the high-grade hay that Mr. Woods produced in farming is a
30 farm use, and, if sold or used as part of the existing commercial cattle
31 operation, would be part of a commercial farm operation. The Board [of
32 Commissioners] finds that a minimum income threshold does not determine if
33 a farm operation is commercial, or if farm help is required, and is not a
34 criterion for a family farm help dwelling. The Board [of Commissioners]
35 finds that, based on testimony in the record, there is an existing extensive
36 market for purebred and commercial grade cattle. However, considering
37 marketing strategies and costs of production are not necessary based on the
38 applicable criteria, and proprietary matters of the applicant. Based on these
39 findings the Board [of Commissioners] concludes that the 70.06-acre subject

1 property, which pastures between 26 and 70 head of cattle to be bred and sold
2 for profit, constitutes a commercial farm operation[.]” Record 199.

3 There are a number of problems with the above-quoted findings. First, the findings
4 never define the operative term “commercial farm operation,” and that term could mean a
5 number of different things. Second, it is unclear whether the county is relying on leased
6 property, in addition to the 70.06-acre subject property, to conclude that intervenor’s farm is
7 a commercial farm operation. Third, the findings suggest that the county may believe that
8 any “farm use,” as the PCZO defines that term, is necessarily a “commercial farm operation”
9 within the meaning of PCZO 136.040(H). Fourth the findings make no attempt to assign a
10 value to the amount of hay that the farm sells. Finally, the findings reject as irrelevant farm
11 size and farm income, without clearly identifying the factors that the county believes *are*
12 *relevant*.

13 As we explain later in this opinion, to the extent the county’s decision can be read to
14 find that all farm uses are properly viewed as commercial farm operations, that finding is
15 erroneous. Nevertheless, even with that erroneous suggestion and the other above-noted
16 problems, we reject petitioner’s challenge to the county’s conclusion that intervenor’s farm
17 qualifies as a commercial farm operation. At their core, the county’s findings conclude that a
18 70-acre farming operation that (1) includes some additional unspecified number of rented
19 acres of pasture; (2) raises from 26 to 70 head of cattle, some of which are purebred and
20 some of which are crossbred; and (3) grows and sells high grade hay is a commercial farm
21 operation. For the reasons explained below, we see no error in those core findings or their
22 evidentiary support.

23 ORS 215.283(1)(e)(A) authorizes construction of a dwelling on EFU-zoned parcels to
24 house a relative of the farm operator, where the “operator * * * require[s] the assistance of
25 the relative in the management of the farm use.”⁹ ORS 215.283(1)(e)(A) does not expressly

⁹ The dwelling authorized by ORS 215.283(1)(e)(A) is as follows:

1 require that the farm use for which assistance is required must be a commercial farm.
2 OAR chapter 660, division 33 is the Land Conservation and Development Commission's
3 (LCDC's) rule concerning agricultural land. The table that is associated with
4 OAR 660-033-120 identifies dwellings for relatives as a use that is allowed subject to certain
5 specified standards. One of those specified standards is OAR 660-033-130(9)(a), which,
6 among other things, requires that the farm use be an "existing commercial farm operation."¹⁰

7 However, OAR 660-033-130(9)(a) does not explain what it means by "commercial
8 farm operation" or define that term. The term "commercial farm operation" is also not
9 defined in the OAR chapter 660, division 33 general definitions at OAR 660-033-0020.
10 PCZO 136.040(H) essentially duplicates, and clearly was adopted to implement,
11 OAR 660-033-130(9)(a). PCZO 136.040(H) also does not define the term "commercial farm
12 operation."

13 The term "commercial farm operation" is ambiguous and could have a number of
14 different meanings. There is no dispute that intervenor's farm is a "farm use" as ORS
15 215.203(1) and PZCO 110.223 define that term.¹¹ The more difficult question is whether

"A dwelling on real property used for farm use if the dwelling is occupied by a relative of the farm operator or the farm operator's spouse, which means a child, parent, stepparent, grandchild, grandparent, stepgrandparent, sibling, stepsibling, niece, nephew or first cousin of either, if the farm operator does or will require the assistance of the relative in the management of the farm use and the dwelling is located on the same lot or parcel as the dwelling of the farm operator."

¹⁰ OAR 660-033-0130(9)(a) provides:

"To qualify [for a dwelling described in ORS 215.283(1)(e)(A), the] dwelling *shall be occupied by persons whose assistance in the management and farm use of the existing commercial farming operation is required by the farm operator.* The farm operator shall continue to play the predominant role in the management and farm use of the farm. 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." (Emphasis added).

¹¹ ORS 215.203(2)(a) defines "farm use," in part, as follows:

"[F]arm use' means the current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops or the feeding, breeding, management

1 petitioner’s farm use is also properly viewed as a commercial farm operation. As an initial
2 point, a “commercial farm operation,” is clearly something different from a “farm use,” as
3 that term is defined at ORS 215.203(2)(a) and 308A.056. Stated differently, the relatively
4 minor level of agricultural activity that might qualify a property for preferential agricultural
5 assessment is not necessarily sufficient to qualify as a commercial farm operation within the
6 meaning of OAR 660-033-0130(9). The question is how much more or what else is
7 required? LCDC’s rule does not provide a clear answer to that question.

8 While LCDC has not defined “commercial farm operation,” it uses similar concepts
9 in other places in OAR chapter 660, division 33. For example, OAR 660-033-0020(2)
10 provides the following definition of commercial agricultural enterprise:

11 “(a) ‘Commercial Agricultural Enterprise’ consists of farm operations that
12 will:

13 “(A) Contribute in a substantial way to the area’s existing
14 agricultural economy; and

15 “(B) Help maintain agricultural processors and established farm
16 markets.

17 “(b) When determining whether a farm is part of the commercial
18 agricultural enterprise, not only what is produced, but how much and
19 how it is marketed shall be considered. These are important factors
20 because of the intent of Goal 3 to maintain the agricultural economy of
21 the state.” OAR 660-033-0020(2)

22 The term “[c]ommercial [a]gricultural [e]nterprise,” as defined at OAR 660-033-
23 0020(2) is principally used in OAR 660-033-0100, which in relevant part allows a county to
24 adopt a minimum parcel size that is smaller than the statutory minimum where the smaller
25 parcel is consistent with maintaining the “commercial agricultural enterprise” in the county
26 or within an area of the county. Neither OAR 660-033-0020(2) nor OAR 660-033-0100 has

and sale of, or the produce of, livestock, poultry, fur-bearing animals or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural use or animal husbandry or any combination thereof.” PCZO 110.223 adopts a similar definition of “farm use.”

1 a direct bearing on the meaning of “commercial farm operation” in OAR 660-033-
2 0130(9)(a). The question of whether a particular parcel size supports a farm operation that
3 contributes to and helps maintain the “commercial agricultural enterprise” in the area is
4 similar to the question of whether a particular farm operation is a “commercial farm
5 operation.” For that reason we conclude that one way the county could have gone about
6 establishing that intervenor’s farm operation is a “commercial farm operation,” for purposes
7 of OAR 660-033-0130(9), would have been to establish that the farm operation (1)
8 “[c]ontributes in a substantial way to the area’s existing agricultural economy, and (2)
9 “[h]elps maintain agricultural processors and established farm markets.” If the farm is of
10 sufficient scale and productivity to satisfy meet those requirements, we believe the farm
11 could clearly be viewed as a commercial farm operation.”¹²

12 However, because LCDC did not define the term “commercial farm operation” in
13 OAR 660-033-0130(9) or draft the rule to expressly provide that only those farm operations
14 that make up the county’s “[c]ommerical [a]gricultural [e]nterprise are eligible for a family
15 farm help dwelling, we do not believe it is appropriate to assume that LCDC intended to
16 *require* that county’s derive a definition of “commercial farm operation” from OAR 660-
17 033-0020(2).¹³ Rather, we conclude that LCDC intended to allow the county some
18 discretion in distinguishing “hobby” or “recreational” farms from those farms that rise to the
19 level of a commercial farm operation. If LCDC did not intend that county have such

¹² We also note that OAR 660-033-0135 establishes standards that county’s must apply in approving dwellings that are customarily provided in conjunction with farm use. That rule includes a \$10,000 annual gross sales standard that we described as LCDC’s threshold for “small commercial farms” for purposes of that rule. *Friends of Linn County v. Linn County*, 39 Or LUBA 627, 637 (2001). We see no reason why the county could not have looked to this minimum annual gross sales standard for guidance.

¹³ Similarly, because LCDC did not expressly or impliedly incorporate the \$10,000 annual gross sales standard from OAR 660-033-0135, we do not believe the city is required to apply that standard to determine if intervenor’s farm is a commercial farm operation.

1 discretion, the rule can easily be amended to add a definition of commercial farm operation
2 that eliminates that discretion.

3 While 26 to 70 cattle is not a large cattle operation, a reasonable person could
4 conclude, as the county apparently did, that a cattle operation of that size with both purebred
5 and crossbred cattle is more than a hobby associated with a rural residence. Although we
6 know from the record that intervenor’s wife works off the farm and we do not know from the
7 record how much income intervenor derives from the farm, the tax service letter that
8 intervenor submitted is substantial evidence that *all* of intervenor’s income is derived from
9 the farm.¹⁴ While it is a reasonably close question, we conclude the county’s findings are
10 sufficient to establish that intervenor’s farm use is also a “commercial farm operation,” as
11 that term is used in OAR 660-033-0130(9) and PCZO 136.040(H).

12 The first, second and third assignments of error are denied.

13 **FOURTH ASSIGNMENT OF ERROR**

14 Petitioner’s fourth assignment of error is unclear. Petitioner appears to challenge the
15 following county finding, which appears in the earlier more extensive quotation of the
16 county’s findings addressing the “commercial farm operation” requirement:

17 “The Board finds that the definition of ‘farm use’ * * * in PCZO 110.223
18 includes ‘[t]he employment of land for the primary purpose of obtaining a
19 profit in money.’”¹⁵

20 Petitioner argues the county erred by applying the PCZO 110.223 definition of “farm use” in
21 determining whether intervenor’s farm qualifies as a “commercial farm operation” without
22 listing PCZO 110.223 as an applicable criterion. Petitioner complains that he was given no

¹⁴ Intervenor could have eliminated any suspicion that the farm is the exclusive source of his income by submitting a copy of IRS Form 1040 Schedule F. However, his reluctance to do so is understandable and his refusal to do so is not fatal, given the tax service’s representation, which no one offers any reason to question.

¹⁵ We do not set out the PCZO 110.223 definition of “farm use,” which is similar to the ORS 215.203(2)(a) definition of farm use.

1 prior notice that the county apply that definition and that PCZO 110.223 is addressed for the
2 first time in the board of county commissioner’s final decision.

3 The legal significance of the county’s finding that intervenor’s farm is a farm use is
4 far from clear. As we have already explained, if the finding is read to say that all farm uses
5 are also “commercial farm operations,” within the meaning of PCZO 136.040(H), the finding
6 is clearly erroneous. However, we do not read the county’s decision to adopt that position.
7 The county simply found that intervenor’s farm qualifies as a farm use. Although petitioner
8 clearly disputes the county’s conclusion that intervenor’s farm is a “commercial farm
9 operation,” we do not understand petitioner to dispute that intervenor’s farm is a “farm use,”
10 as PCZO 110.223 and ORS 215.203(2)(a) define that term. The finding that intervenor’s
11 farm is a “farm use” has little bearing on whether intervenor’s farm is a “commercial farm
12 operation.” The county goes on to describe the farm and ultimately concludes that it has
13 characteristics that make it a commercial farm. We do not understand the county to have
14 relied exclusively or predominantly on the fact that intervenor’s farm is a “farm use,” as that
15 term is defined by PCZO 110.223 , in concluding that intervenor’s farm is a commercial farm
16 operation. We conclude that the county’s failure to provide prior notice that it would apply
17 PCZO 110.223 to determine whether intervenor’s farm qualifies as a farm use, provides no
18 basis for remand.

19 The fourth assignment of error is denied.

20 The county’s decision is affirmed.