

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

3
4 CLIF KENAGY and LOIS KENAGY,)
5)
6 Petitioners,)
7)
8 vs.)
9)
10 BENTON COUNTY,)
11)
12 Respondent,)
13)
14 and)
15)
16 DENNIS RANTA and JUDY RANTA,)
17)
18 Intervenors-Respondent.)

LUBA No. 91-097

FINAL OPINION
AND ORDER

19
20
21 Appeal from Benton County.

22
23 Peter Livingston, Portland, filed the petition for
24 review and argued on behalf of petitioners.

25
26 Candace Haines, Corvallis, filed a response brief and
27 argued on behalf of respondent.

28
29 Dennis Ranta and Judy Ranta filed a response brief and
30 argued on their own behalf.

31
32 KELLINGTON, Referee; HOLSTUN, Chief Referee; SHERTON,
33 Referee, participated in the decision.

34
35 AFFIRMED 11/19/91

36
37 You are entitled to judicial review of this Order.
38 Judicial review is governed by the provisions of ORS
39 197.850.

1 Opinion by Kellington.

2 **NATURE OF THE DECISION**

3 Petitioners appeal a county order approving a farm
4 related dwelling for a relative on a parcel zoned Exclusive
5 Farm Use (EFU).

6 **MOTION TO INTERVENE**

7 Dennis Ranta and Judy Ranta filed a motion to intervene
8 on the side of respondent. There is no objection to the
9 motion, and it is allowed.

10 **FACTS**

11 The subject parcel is approximately 37 acres in size.
12 Currently, there is one dwelling on the parcel, and it is
13 occupied by the property owner. There is a fenced pasture
14 area, consisting of approximately 9 acres, behind the
15 existing residence. At various times, the owner of the
16 property has had some cattle in this pasture area, and there
17 is currently a horse pastured there. The property owner
18 leases approximately 23 acres of the subject parcel to
19 lessees who farm this portion of the property, and the
20 property owner has done this for a number of years. The
21 property owner retains authority to approve the kinds of
22 crops the lessees plant on the 23 acre parcel.

23 The owner of the property wishes to establish a second
24 dwelling on the subject parcel for his son and daughter-in-
25 law. The county approved the request, and this appeal
26 followed.

1 **FIRST ASSIGNMENT OF ERROR**

2 "The Benton County Board of Commissioners erred in
3 finding that Ranta's ownership of the property was
4 a factor to consider in deciding if he were [sic]
5 a farm operator."

6 **SECOND ASSIGNMENT OF ERROR**

7 "The Benton County Board of Commissioners erred in
8 finding that Ranta's involvement in 'decisions
9 relating to farm operations' as shown by the
10 record qualify him as a farm operator pursuant to
11 ORS 215.283(1)(e) and BCC 55.115(2)."

12 Benton County Code (BCC) 55.115(2) provides that a
13 second farm related dwelling is permissible in the county's
14 EFU zone if, among other things, the dwelling is for a
15 relative of the farm operator.¹ However, the BCC does not
16 define the term "farm operator."

17 Petitioners state, and it is not disputed, that in
18 determining that the owner of the subject parcel is a "farm
19 operator," the county considered the fact of ownership of
20 the subject property. Petitioners argue that ownership of
21 property is irrelevant to whether a person is a farm

¹The BCC also requires the county to determine that the relative's assistance is or will be required in the operation of the farm. ORS 215.283(1) states a similar requirement, which the Court of Appeals has termed as the "critical criterion." Hopper v. Clackamas County, 87 Or App 167, 172, 741 P2d 921 (1988). However, petitioner raises no issue, in any of the assignments of error, concerning whether the relative's assistance is or will be required in the operation of the farm. Because this issue is not raised, we do not consider it. Deschutes Development v. Deschutes County, 5 Or LUBA 218, 220 (1982).

1 operator.²

2 We disagree. Websters Third New International
3 Dictionary defines the term "operator" as follows:

4 "One that produces a physical effect or engages
5 himself in the mechanical aspect of any process or
6 activity. * * *"

7 Here, it is undisputed that the property owner requires
8 his lessees to obtain his approval of the crops they will
9 plant on the subject parcel. Record 90. It is also
10 undisputed that the property owner has maintained livestock
11 and fruit trees on the balance of the parcel which is not
12 leased.³ Therefore, the owner "engages himself in the
13 mechanical aspect" of the farming activities on his
14 property. We believe the property owner's involvement in
15 the farm operations occurring on his land are significant
16 enough for him to qualify as a "farm operator" under BCC

²Petitioners also cite a definition of "farm operator" from the 1987 Census of Farm Agriculture, Volume I, Bureau of the Census, Geographic Area Series, Part 37, Oregon State and County Data (1989), Appendix A, A-4 (census definition). However, we have not been furnished a copy of the document containing this census definition and cannot discern the purposes for which the definition is used. Further, petitioners do not contend the census definition is incorporated into the county's code. We have no basis to conclude that the census definition is the "ordinary meaning" of the term "farm operator."

³Petitioner characterizes the property owner's livestock and fruit tree related activities as consistent with any "rural residential" dweller. That may be true. However, to determine whether the property owner is a farm operator, we look to the totality of the farming operation on the subject property, including the leased 23 acre parcel over which the property owner retains control to direct what crops are planted, the pasture behind his home on which he has maintained cattle, and the property owner's fruit trees.

1 55.115(2).⁴

2 One further point merits comment. Petitioner contends
3 that under Hopper v. Clackamas County, supra, the property
4 owner must establish that he has a "significant involvement"
5 in the farm operations. Petitioner reads this statement in
6 the Hopper decision out of context. In Hopper, the issue
7 was not whether the property owner was a farm operator, but
8 rather, whether the relative would replace the property
9 owner. However, the Court of Appeals made it clear in
10 Hopper, that in this context (whether the relative would
11 replace the farm operator), the amount of time the farm
12 operator spends on farm operations after the relative begins
13 to provide help is not the important inquiry. Rather, the
14 question is whether, after considering the assistance to be
15 provided by the relative, the farm operator will continue to
16 have some "significant involvement in farm operations."
17 Hopper, supra, 87 Or App at 172. To the extent that
18 significant involvement in farm operations is relevant to
19 determining whether a person is a farm operator in the first
20 instance, we believe the level of farming operation
21 involvement of the property owner here is "significant" in
22 the sense that he retains the right to control when,
23 whether, and what crops are planted.

⁴Although we do not reach this issue, see n 1 supra, we question whether the property owner's involvement in the farm operations on his property is sufficient to require the assistance of a relative.

1 The first and second assignments of error are denied.

2 The county's decision is affirmed.

3