

1 Opinion by Kellington.

2 **NATURE OF THE DECISION**

3 Petitioner appeals a county order approving a
4 conditional use permit for a farm dwelling on a 77 acre
5 parcel zoned A-4 Timber-Grazing (A-4).

6 **MOTION TO INTERVENE**

7 Gregory Tsiatsos and Doris J. Tsiatsos move to
8 intervene on the side of respondent in this appeal
9 proceeding. There is no objection to the motion, and it is
10 allowed.

11 **FACTS**

12 Intervenors are the applicants below. They own the
13 subject parcel and also approximately 3,600 acres of ranch
14 property several miles away. Currently, two or three horses
15 graze on the subject property. Other members of
16 intervenors' family own 2,200 acres across the road from the
17 subject property. Ranching activities occur on these 2,200
18 acres.

19 The planning commission approved intervenors'
20 application for a conditional use permit for a farm dwelling
21 on the subject property. Petitioner appealed to the board
22 of county commissioners. The board of county commissioners
23 affirmed the decision of the planning commission, and this
24 appeal followed.

25 **FIRST ASSIGNMENT OF ERROR**

26 "[The] County * * * misconstrued the term
27 'necessary.'"

1 Union County Zoning Ordinance (UCZO) 5.03(4)(A)
2 provides standards for approving a farm dwelling in the A-4
3 zone. UCZO 5.03(4)(A) provides, in part:

4 "The following uses may be established in an A-4
5 zone as conditional uses * * *:

6 "A. Dwellings * * * which are necessary for and
7 accessory to a farm use. Prior to issuing
8 any permits for a farm dwelling, it shall be
9 demonstrated that the farm dwelling is
10 necessary for and accessory or incidental and
11 secondary in nature to existing farm uses on
12 the property."

13 The county approved the proposed farm dwelling on the
14 basis that it is "[n]ecessary for and accessory to a farm
15 use." The county construed the phrase "necessary for and
16 accessory to" as follows:

17 "* * * convenient, useful, appropriate, suitable,
18 proper or conducive to the end sought." Record 9.

19 Petitioners point out that the phrase "necessary for
20 and accessory to" has been construed in the context of
21 Statewide Planning Goal 4 (Forest Lands) to require more
22 than a showing of mere "convenience." Petitioners argue the
23 county incorrectly interpreted and applied UCZO 5.03(4)(A).

24 The "necessary for and accessory to" standard adopted
25 by UCZO 5.03(4)(A) appears, at least in part, to have been
26 established to comply with Goal 4.¹ Accordingly, it is

¹The purpose statement for the A-4 zone states the following:

"The A-4 Timber-Grazing Zone is intended to conserve and
maintain agriculture and forest land in accord with the

1 appropriate to interpret UCZO 5.03(4)(A) in a manner
2 consistent with the interpretation of those terms provided
3 by the appellate courts of this state. As we stated in Dodd
4 v. Hood River County, ___ Or LUBA ____ (LUBA No. 91-116,
5 February 24, 1992), slip op 7-8:

6 "* * * The appellate courts have made it very
7 clear that the 'necessary and accessory'
8 requirement is a significant limitation on the
9 approval of permits for construction of single
10 family dwellings on lands planned and zoned for
11 forest uses in accordance with Goal 4. In 1000
12 Friends of Oregon v. LCDC (Lane County), 83 Or
13 App 278, 282-83, 731 P2d 457 (1987), on
14 reconsideration, 85 Or App 619, 737 P2d 975, aff'd
15 305 Or 384 (1988), the Court of Appeals explained
16 its understanding of the 'necessary' component of
17 the 'necessary and accessory' requirement as
18 follows:

19 "'* * * The dictionary definition [of
20 necessary] is 'that cannot be done
21 without: that must be done or had:
22 absolutely required.' Webster's Third
23 New International Dictionary 1511
24 (1976). That definition is compatible
25 with LCDC's use of 'necessary' and with
26 Goal 4's requirement that forest lands
27 be preserved for forest uses. Lane
28 County's criteria would allow dwellings
29 which can be done without, need not be
30 had and are not absolutely required for
31 a forest use; they therefore do not
32 comply with the goal.

Timber-Grazing Land Use Plan classification provisions."
UCZO 5.01.

We have not been provided with a copy of the county comprehensive plan. However, it appears from the above quoted purpose statement that the A-4 zone is intended to satisfy both Goal 3 (Agricultural Lands) and Goal 4 (Forest Lands).

1 '''* * * Living on the land may help
2 deter arsonists, and thereby enhance
3 production, but that fact does not
4 render a forest dwelling necessary. For
5 a forest dwelling to be necessary and
6 accessory to wood fiber production, it
7 must, at least, be difficult to manage
8 the land for forest production without
9 the dwelling. The purpose of the
10 dwelling must be to make possible the
11 production of trees which it would not
12 otherwise be physically possible to
13 produce. * * *'

14 "On review, the Oregon Supreme Court explained the
15 question of whether a dwelling may properly be
16 approved on lands subject to protection under
17 Goal 4 did not turn so much on the meaning of the
18 terms 'necessary and accessory' as on whether the
19 relationship between a proposed dwelling (a
20 nonforest use) and forest uses of the property is
21 such that the dwelling may nevertheless be
22 considered a forest use. 1000 Friends of Oregon
23 v. LCDC (Lane County), 305 Or 384, 752 P2d 271
24 (1988). LCDC argued in that case that the
25 requirement in the county's plan for a forest
26 management plan provided an adequate substitute
27 for a case by case 'necessary and accessory'
28 finding in approving requests for approval of
29 dwellings on forest land. The Supreme Court
30 rejected the adequacy of the forest management
31 plan to assure the required connection between the
32 dwelling and forest uses, explaining as follows:

33 '''* * * LCDC must show the necessary
34 legal connection between the policy of
35 conserving forest land for forest uses
36 and allowing dwellings on forest land.
37 Goal 4 sets a high standard when it
38 requires that '[e]xisting forest uses
39 shall be protected unless proposed
40 changes are in conformance with the
41 comprehensive plan.' This court is not
42 prepared to suggest that no dwelling
43 could be considered necessary and
44 accessory to a forest use, but we cannot

1 agree that allowing a dwelling on some
2 part of a lot simply because it may
3 enhance forest uses on the remainder of
4 the lot protects existing forest uses to
5 the extent required by Goal 4. Id. at
6 396.'" (Footnote omitted.)

7 The county's interpretation of the phrase "necessary
8 for and accessory to" in UCZO 5.03(4)(A) is incorrect in
9 view of the Supreme Court's decision in 1000 Friends of
10 Oregon v. LCDC (Lane County).² The county applied a less
11 stringent interpretation of the "necessary for and accessory
12 to" standard allows a dwelling that is simply convenient for
13 farm uses of property, and this is error.

14 Petitioner's first assignment of error is sustained.

15 **SECOND ASSIGNMENT OF ERROR**

16 "[The] County's decision was not supported by
17 substantial evidence, and [the] County failed to
18 make adequate findings of fact."

19 Petitioner argues the county's determination that the
20 subject property is currently in farm use, is not supported

²The county's A-4 zone is somewhat unusual. While the A-4 zone was apparently adopted to comply with Goal 3 and Goal 4, it makes no provision for dwellings in conjunction with forest uses. Yet, it applies the "necessary for and accessory to" standard (which is a Goal 4 standard for forest dwellings) to farm dwellings. We note that the "necessary for and accessory to" standard is not required by statute to be applied to applications for farm dwellings in an exclusive farm use zone. Specifically, ORS 215.283(1)(f) authorizes a county to allow " * * * dwellings and other buildings customarily provided in conjunction with farm use." However, if the county wishes to apply this statutory standard for the approval of farm dwellings, it must amend its code to do so. We note that in the absence of an amendment to the UCZO (and perhaps to the county comprehensive plan) making it clear that the A-4 zone is not a Goal 4 zone, it appears that the newly amended Goal 4 rules (OAR 660-06-000 et seq) might also apply to applications for dwellings in the A-4 zone.

1 by substantial evidence in the whole record.

2 We determine above that the county incorrectly
3 interpreted UCZO 5.03(4)(A). Accordingly, no purpose is
4 served in reviewing the evidentiary support for a decision
5 which is based on an erroneous legal interpretation.

6 One further point merits comment. Petitioner argues
7 that in order to constitute a farm use of property, the
8 county must determine that the farm is a "commercial" farm.
9 This is incorrect. UCZO 1.08 and ORS 215.203(2)(a) both
10 define farm use as follows:

11 "* * * 'farm use' means the current employment of
12 land for the primary purpose of obtaining a profit
13 in money by raising, harvesting and selling crops
14 or the feeding, breeding, management and sale of,
15 or the produce of, livestock, poultry, fur-bearing
16 animals or honeybees or for dairying and the sale
17 of dairy products or animal husbandry or any
18 combination thereof. 'Farm use' includes the
19 preparation and storage of the products raised on
20 such land for human use and animal use and
21 disposal by marketing or otherwise. 'Farm use'
22 also includes the propagation, cultivation,
23 maintenance and harvesting of aquatic species. It
24 does not include the use of land subject to the
25 provisions of ORS chapter 321, except land use
26 exclusively for growing cultured Christmas trees
27 as defined in subsection (3) of this section or
28 land described in ORS 321.267(1)(e) or
29 321.415(5)."

30 So long as the county determines that the proposed
31 dwelling is "necessary for and accessory to" farm uses on
32 the subject property as defined above, it is unnecessary to

1 also determine that the farm is a "commercial" farm.³

2 The second assignment of error is denied.

3 **THIRD ASSIGNMENT OF ERROR**

4 "[The] County erroneously gave weight to
5 applicants' plans to establish farm use."

6 As we understand it, petitioner argues the county
7 erroneously based its determination that the proposed
8 dwelling is "necessary for and accessory * * * to existing
9 farm uses of the property" on the fact that the dwelling
10 will be the headquarters for ranching operations elsewhere.
11 Because we determine, supra, that the county incorrectly
12 interpreted and applied the "necessary for and accessory to"
13 standard, it would serve little purpose to address this
14 assignment of error.

15 The third assignment of error is denied.

16 The county's decision is remanded.

17

³At oral argument, intervenors suggested that UCZO 5.03(4)(A) provides alternative tests, that one must either show the proposed farm dwelling is necessary and accessory to an existing farm use of land or that it is incidental and secondary in nature to that use. We disagree. UCZO 5.03(4)(A) requires that a farm dwelling be (1) "necessary for," and (2) "accessory or incidental and secondary in nature to" existing farm uses. Thus, it is only the "accessory" part of the test that may be satisfied by showing the proposal is "incidental and secondary."