

1 BEFORE THE LAND USE BOARD OF APPEALS
2 OF THE STATE OF OREGON
3

4 FRANK WALKER,)
5)
6 Petitioner,)
7) LUBA No. 94-212
8 vs.)
9) FINAL OPINION
10 CLACKAMAS COUNTY,)
11) AND ORDER
12 Respondent.)
13
14

15 Appeal from Clackamas County.

16
17 Michael C. Robinson, Portland, filed the petition for
18 review and argued on behalf of petitioner. With him on the
19 brief was Stoel Rives Boley Jones & Grey.
20

21 Stacy L. Fowler, Assistant County Counsel, Oregon City,
22 filed the response brief and argued on behalf of respondent.
23

24 KELLINGTON, Referee; HOLSTUN, Chief Referee; SHERTON,
25 Referee, participated in the decision.
26

27 AFFIRMED 03/08/95
28
29

30 You are entitled to judicial review of this Order.
31 Judicial review is governed by the provisions of ORS
32 197.850.

1 Opinion by Kellington.

2 **NATURE OF THE DECISION**

3 Petitioner appeals an order of the county hearings
4 officer denying his applications for a minor partition and
5 farm dwelling.¹

6 **FACTS**

7 The subject property is designated Agricultural on the
8 county comprehensive plan map and zoned Exclusive Farm
9 Use 20 (EFU-20). The subject property includes 57.29 acres,
10 and is comprised of two tax lots. Tax lot 900 is
11 26.74 acres and tax lot 902 is 30.55 acres. Tax lot 900 is
12 improved with a dwelling and is used as a cattle raising
13 operation, including a seasonal feeder/stock operation. Tax
14 lot 902 is primarily planted in Christmas trees.

15 Petitioner proposes to divide tax lots 900 and 902 into
16 two separately developable parcels. Petitioner also
17 requests permission to place a farm management dwelling on
18 tax lot 902. The county planning department denied both
19 requests. Petitioner appealed to the county hearings
20 officer. After a public hearing, the hearings officer
21 affirmed the planning department and denied the requested
22 partition and dwelling. This appeal followed.

¹No party disputes petitioner's farm dwelling application is dependent upon partition approval. If we sustain the county decision denying the requested partition, we need not consider the county decision denying the requested dwelling.

1 **ASSIGNMENTS OF ERROR**

2 The challenged decision determines the proposal fails
3 to conform to Clackamas County Zoning and Development
4 Ordinance (ZDO) 401.09(A)(1), which requires:

5 "All lots created are at least twenty (20) acres
6 in size or as large as the typical commercial farm
7 unit in the area, whichever is larger."²

8 The challenged decision determines the following:

9 "[T]he typical commercial farm in this area is
10 found to be approximately 58 acres in size, larger
11 than the 27 and 30 acre parcels proposed." Record
12 11.

13 Because the proposed parcels are less than 58 acres, the
14 hearings officer rejected petitioner's partition
15 application. The challenged decision establishes the
16 parcels within a one-mile radius of the subject property by
17 drawing a circle from the center of the subject property.
18 Properties within the perimeter of this circle, which are
19 both zoned exclusive farm use and considered a "commercial
20 farm unit," were included in the calculation of typical
21 commercial farm size in the area. As a result, the county
22 included in its calculation the subject 57.29 acre parcel
23 petitioner seeks to divide. The challenged decision
24 specifically excludes three parcels (the York, Easley and
25 Hartford parcels) located within the one-mile radius,

²It is apparent from the challenged decision that the county determines the relevant "area," as that term is used in ZDO 401.09(A)(1), to mean land within a one-mile radius of the subject property. See Record 9.

1 because those parcels are within an area zoned Rural
2 Residential Farm Forest (RRFF-5) which is subject to an
3 exception to Statewide Planning Goal 3 (Agricultural Lands).
4 The hearings officer also excluded one other parcel located
5 within the one-mile radius, the Hayes parcel, because it did
6 not meet county "net income guidelines" for farm operations.

7 The central question we must resolve is whether the
8 hearings officer correctly excluded from his calculation the
9 RRFF-5 zoned parcels within the one-mile radius of the
10 subject property. We owe no deference to the hearings
11 officer's interpretation of the county code. Gage v. City
12 of Portland, 319 Or 308, 877 P2d 1187 (1994); Stroupe v.
13 Clackamas County, ___ Or LUBA ___ (LUBA No. 93-136,
14 September 27, 1994).

15 We agree with the county that it is a correct
16 interpretation of ZDO 401.09(A)(1) to include only EFU-zoned
17 parcels on which commercial agricultural operations exist in
18 determining the typical commercial farm size in the area.
19 While petitioner is correct that land zoned RRFF-5 may be
20 used for "general farm uses" under ZDO 309.03B, nothing
21 requires that parcels zoned RRFF-5 be maintained in sizes
22 large enough to be appropriate for continuation of
23 commercial farms. However, Statewide Planning Goal 3 and
24 ORS 215.780 require that parcel sizes in EFU zones be
25 appropriate for the continuation of commercial farm uses.
26 Further, as stated in the ZDO, the purpose of the EFU-20

1 zone is "[t]o preserve agricultural lands." ZDO 401.01(A).

2 In another context, LUBA concluded that in determining
3 a proposed nonfarm dwelling's compliance with a standard
4 requiring such dwelling not alter the "overall land use
5 pattern of the area," it is appropriate to exclude
6 residentially zoned parcels in determining the overall land
7 use pattern of the agriculturally zoned area. Schaad v.
8 Clackamas County, 15 Or LUBA 70, 77-78 (1986). Similarly,
9 here, to determine the typical commercial farm size in the
10 area of the subject parcel, it is appropriate to consider
11 only those parcels within zoning districts where the parcel
12 sizes must be maintained at an appropriate level for
13 commercial farms.

14 One final point merits comment. Even if petitioner is
15 correct that the Hayes parcel should be included in the
16 calculation and the subject property should not be included
17 in the calculation, the result here would still be the same.
18 This is because even without the subject property, and with
19 the Hayes parcel, the median commercial farm size in the
20 area would be 45-58 acres, clearly a median size larger than
21 the proposed parcel sizes.

22 The assignments of error are denied.

23 The challenged decision is affirmed.