

1 Opinion by DuBay.

2 NATURE OF DECISION

3 Petitioners appeal the county's decision granting a
4 conditional use permit for a personal use airport on land zoned
5 for farm use.

6 FACTS

7 The applicant, Don Whitaker, Inc., solely owned by Don
8 Whitaker, owns the 91.52-acre parcel zoned for Exclusive Farm
9 Use--Grazing. The corporation is in the logging business. It
10 owns one airplane used by Don Whitaker to view timber sales and
11 to carry equipment and parts for the logging business.

12 The planning commission approved the application for a
13 personal use airport. Petitioners are neighbors who appealed
14 the decision to the county commissioners. The commissioners
15 held a de novo hearing and affirmed the approval of the
16 conditional use permit.

17 ASSIGNMENT OF ERROR

18 Petitioners' sole assignment of error alleges the county
19 misinterpreted the law to allow the proposed airport on land
20 zoned for exclusive farm use. ORS 215.213(2)(h) and the county
21 ordinance each allow personal use airports subject to
22 reasonable standards on land zoned for exclusive farm use.
23 Petitioners claim the proposed airport use is not a personal
24 use airport.

25 The statutory definition is as follows:

26 "(h) Personal-use airports for airplanes and

1 helicopter pads, including associated hangar,
2 maintenance, and service facilities. A personal-use
3 airport as used in this section means an airstrip
4 restricted, except for aircraft emergencies, to use by
5 the owner, and, on an infrequent and occasional basis,
6 by invited guests, and by commercial aviation
7 activities in connection with agricultural
8 operations...." ORS 215.213(2)(h).¹

9 Petitioners contend that use of the airstrip in connection
10 with the owner's logging business is neither a personal use nor
11 a commercial aviation activity in connection with agricultural
12 operations. Respondents contend that the proposed use is for a
13 personal use airstrip as defined in the statute. We agree with
14 respondents.

15 The statute authorizes the owner of exclusive farm use land
16 to use it for a "personal use" airstrip. Refinements of
17 "personal use" to narrow the allowable purposes for aircraft
18 flights might be possible. For example, the legislature might
19 have intended to allow only recreational, instructional, farm
20 or nonfarm business, commercial, or even charitable aviation
21 uses. However, the legislature has not yet chosen to
22 articulate such refinements to the principal type of aviation
23 use permitted by the statute, viz., personal use of an airstrip
24 by the owner and occasional guests.²

25 The county found the owner of the airstrip has one
26 airplane. He uses the plane to examine forest lands and to
27 transport equipment parts for his logging business. These
28 facts led the county to characterize the use as a personal use
29 airstrip as described in the statute and county ordinances. We
30 find no error in this conclusion.

1 We must reject petitioners' claim that the statute
2 impliedly excludes the proposed use because it is commercial in
3 nature yet not a "commercial aviation activity in connection
4 with agricultural operations" described in ORS 215.213(2)(h).
5 The statute allows commercial aviation activities in connection
6 with farming in addition to personal use by the airstrip
7 owner. Allowance of this additional use category does not
8 restrict the scope of the principal type of use allowed by the
9 statute. The county concluded the proposed strip is for the
10 personal use of the owner.³ That conclusion was not an
11 erroneous interpretation of the applicable law.

12 The assignment of error is denied.

13 Affirmed.

1 Bagg, Dissenting.

2 I am not convinced that ORS 215.283(2)(g) authorizes the
3 kind of use allowed by the county's decision. As I understand
4 ORS 215.203 to ORS 215.337, agricultural lands are to be used
5 for agricultural purposes. The legislature has provided for
6 certain exceptions, however. One such exception is the
7 personal use airport.⁴ Because the policy is to preserve
8 agricultural lands for agricultural uses, exceptions to the
9 policy should be strictly construed. See 2A Sands Sutherland,
10 Statutory Construction, Section 5806 (4th Ed., 1984).

11 I read the statute to permit a personal use airport in an
12 Exclusive Farm Use zone when the aircraft serves a farm use or
13 the personal convenience of the owner. Aircraft use in
14 furtherance of a nonfarm enterprise is not a personal use to
15 the farm owner (be he individual or corporate) but is a
16 business use which most properly belongs on an unrestricted
17 airport.

18 The majority's interpretation is consistent with the
19 wording of the statute. However, I fear it may open the door
20 to creation of airports in futherance of business uses that
21 have nothing to do with farm use. This possibility offends the
22 state agricultural lands policy, in my view.

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FOOTNOTES

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4 Section 3.3.100-10 of the Land Use and Development
5 Ordinance for Douglas County is essentially identical to ORS
6 215.213(2)(h). The ordinance description of the allowed use is:

7 "10. Personal-use airports for airplanes and
8 helicopter pads, including associated hangar,
9 maintenance and service facilities. A personal-use
10 airport as used in this section means an airstrip,
11 restricted except for aircraft emergencies, to use by
12 the owner, and, on an infrequent and occasional basis,
13 by his invited guests, and by commercial aviation
14 activities in connection with agricultural
15 operations...."

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19 Petitioners and respondent each cite the legislative
20 history of ORS 215.213(2)(h), enacted as 1975 Or Laws, Chapter
21 551, Section 1 (SB 497). The minutes of hearings and testimony
22 at the hearings on SB 497 do not clearly show the legislative
23 intent. Testimony of rural airstrip users, mostly farmers,
24 showed aircraft are used in farm operations and for personal
25 transportation and, in at least one instance, in connection
26 with logging. This part of the EFU statute appears to have
27 been based on proposed amendments to regulations of the
28 Transportation Commission. See Ex. 9 to minutes of meeting on
29 May 21, 1975, and Ex. 7 to minutes of meeting on May 28, 1975,
30 House, State and Federal Affairs Committee. Other than the
31 agency's proposed definition, the minutes include no statement
32 regarding the kinds of aviation uses intended to be allowed in
33 EFU zones. We are therefore hard-pressed to construe the law
34 in the narrow (and ill-defined) manner advocated by petitioners
35 and endorsed by the dissent herein.

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39 The order includes conditions restricting airstrip use to
40 200 annual daytime operations by the owner's one airplane and
41 invited guests on an infrequent and occasional basis. In
42 addition, the conditions prohibit flight activities for
43 compensation or hire except in connection with agricultural
44 operations.

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48 Aircraft used in conjunction with a farming operation would

1 seems permissible as a farm use. A 1975 Attorney General
2 Opinion suggests otherwise, however. See ___ Op Atty Gen ___
(Opinion No. 7167, May 16, 1975).

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