

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

4 MARK A. RICHARDS and WILLIAM)
5 HAMMER III,)
6)
7 Petitioners,)
8)
9 vs.)
10)
11 MARION COUNTY,)
12)
13 Respondent,)
14)
15 and)
16)
17 MICHAEL RICH and DAYNA RICH,)
18)
19 Intervenors-Respondent.)

LUBA No. 91-162
FINAL OPINION
AND ORDER

20
21
22 Appeal from Marion County.

23
24 Mark A. Richards, Silverton, filed the petition for
25 review and argued on his own behalf.

26
27 Jane Ellen Stonecipher, Salem, filed a response brief
28 and argued on behalf of respondent.

29
30 Donald M. Kelley, Silverton, filed a response brief and
31 argued on behalf of intervenors-respondent.

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

35
36 AFFIRMED 02/06/92

37
38 You are entitled to judicial review of this Order.
39 Judicial review is governed by the provisions of ORS
40 197.850.

1 Opinion by Holstun.

2 **NATURE OF THE DECISION**

3 Petitioner Richards (hereafter petitioner) appeals a
4 county decision granting approval for a farm-related
5 dwelling on a 23 acre parcel zoned Farm Timber (FT).¹

6 **MOTION TO INTERVENE**

7 Michael Rich and Dayna Rich, the applicants below, move
8 to intervene on the side of respondent in this appeal.
9 There is no opposition to the motion, and it is allowed.

10 **FACTS**

11 The relevant facts are set out in respondent Marion
12 County's brief as follows:

13 " * * * The applicants will raise beef cattle and
14 grow herbs and spices on the property. The farm
15 products will be sold to the DeShaw House Co.,
16 which operates the Silver Falls Conference Center.
17 The applicants are the owners and managers of The
18 DeShaw House Co.

19 "The property contains Class II and III soils.
20 There is a spring fed pond and applicants will
21 construct a water system. Applicants will also
22 fence the property, build a pole barn to store hay
23 for the livestock and build a greenhouse for
24 growing herbs and spices.

25 "Applicants will raise the cattle from calves.
26 They will build a herd of 16 to 24 head." (Record
27 citations omitted.) Respondent's Brief 1-2.

28 **DECISION**

29 The petition for review does not include separate

¹Petitioner William Hammer III did not file a petition for review.

1 assignments of error as required by our rules.
2 OAR 661-10-030(3)(d).² The closest petitioner comes to
3 stating a basis for alleging error is the following
4 statement:

5 "The county did not receive adequate or complete
6 proof for a legally acceptable and profitable
7 commercial business from respondents, Michael and
8 Dayna Rich." Petition for Review 5.

9 In the FT zone a "single-family dwelling customarily
10 provided in conjunction with farm use" is a permitted use.
11 Marion County Zoning Ordinance (MCZO) 139.020(c). However,
12 approval of such dwellings is subject to the requirements of
13 MCZO 139.040(a), which provides, in relevant part, as
14 follows:

15 * * * * *

16 "(2) The property on which the dwelling will be
17 located must be in farm use and the dwelling

²Petitioner's failure to separately state assignments of error and specifically relate the argument contained in the petition for review to assignments of error makes our review in this matter more difficult. As we explained in Freels v. Wallowa County, 17 Or LUBA 137, 141 n 1 (1988):

"The requirement for separate assignments of error is important. The assignments of error should identify precisely what the petitioner believes the local government did wrong so that the parties and LUBA can understand the issue to be resolved before considering arguments advanced for resolving the issue in a particular way."

While the failure to set out assignments of error does not warrant striking the petition for review or dismissing the appeal, we limit our review to alleged errors that are clearly presented in the petitioner's argument. Eckis v. Linn County, 110 Or App 309, 311, ___ P2d ___ (1991); Freels v. Wallowa County, *supra*, 17 Or LUBA at 140; Schoonover v. Klamath County, 16 Or LUBA 846, 853 n 4 (1988); Standard Insurance Co. v. Washington County, 16 Or LUBA 30, 33 (1987).

1 be in conjunction with the farm use based on
2 [MCZO] 139.040(e); and

3 "(3) The property and improvements shall
4 constitute a commercial farm enterprise as
5 determined by an evaluation of the factors in
6 139.040(f)."

7 Under the above provisions of MCZO 139.040(a), the
8 county was required to make two determinations. First, the
9 county was required to determine the challenged dwelling is
10 a dwelling "in conjunction with farm use," applying the
11 factors provided in MCZO 139.040(e).³ Second, the county
12 was required to determine whether the proposal is for a
13 "commercial farm enterprise," applying the factors in MCZO
14 139.040(f).⁴

³MCZO 139.040(e) provides as follows:

"* * * When determining whether a proposed dwelling is 'customarily provided in conjunction with farm or forest use' the following factors shall be considered: 1) size of the entire farm or forest unit including all contiguous land in the same ownership, 2) types of farm or forest crops and acreage for each type, 3) operational requirements for the particular farm or forest use, 4) the number of other permanent or temporary dwellings on or serving the entire farm or forest unit, 5) number of owners/employees/workers on the farm or forest unit, permanent and seasonal, and 6) extent and nature of the work to be performed by occupants of the proposed dwellings."

⁴MCZO 139.040(f) provides, in relevant part, as follows:

"* * * When determining whether [an] existing or proposed parcel is a commercial farm or forest enterprise, the following factors shall be considered:

"Soil productivity, drainage, terrain, special soil or land conditions, availability of water, type and acreage of crops grown, crop yields, number and type of livestock, processing and marketing

1 Nowhere in the petition for review does petitioner
2 specifically challenge the adequacy of, or the evidentiary
3 support for, the county's findings addressing the MCZO
4 provisions requiring that the proposed dwelling qualifies as
5 a "dwelling customarily provided in conjunction with farm *
6 * * use" and that the proposed use constitutes a "commercial
7 farm enterprise." Moreover, although the only approval
8 granted by the challenged decision is for a single-family
9 dwelling in conjunction with farm use, petitioner stated at
10 oral argument in this matter that he does not contest
11 approval of a dwelling. Rather, petitioner's concern is
12 with the proposed livestock operation.

13 As far as we can tell, petitioner argues the county
14 failed to require sufficient evidence from the applicants to
15 demonstrate that their proposed farm use will be successful
16 or profitable.⁵ Petitioner is also concerned that the

practices, and the amount of land needed to
constitute a commercial farm or forest unit.
Specific findings shall be made in each case for
each of these factors."

⁵The following arguments in the petition for review are illustrative:

"[T]he county has legally failed to require complete and
concise information * * * to prove * * * that this is not just
a commercial business but a profitable, and secure long term
commercial farm enterprise." Petition for Review 5.

"What about quality of the calves? Do they know what breed to
buy for USDA Choice meats? If they have cows bred, what are
the breeding fees[?] Are they rotating their cows in a few
years to maintain quality of the breed necessary for 'Choice
USDA Quality Approved' meat[?]" Petition for Review 8.

1 proposed farm enterprise may have adverse environmental
2 consequences on his adjoining property. However, under the
3 approval criteria applicable to the challenged decision
4 (i.e. the decision to approve a single-family dwelling in
5 conjunction with farm use), these arguments are irrelevant.
6 Although the county must find that the proposed farm use is
7 commercial in nature, the county is not required by MCZO
8 139.040(a), or the other MCZO sections cited therein, to
9 establish that the particular proposed commercial farm use
10 will be successful in the short or long term, the applicants
11 have some particular level of farming expertise or the
12 proposed farm enterprise will not have adverse environmental
13 impacts on adjoining properties.

14 In conclusion, the county found that the proposed
15 livestock and greenhouse operation constitutes a "commercial
16 farm enterprise" and that the proposed dwelling is provided
17 "in conjunction" with that use. Because petitioner's
18 arguments are directed at the prospects of the farm
19 enterprise for success and its potential impacts, and not at
20 the findings supporting the decision to approve the
21 requested dwelling, petitioner's arguments provide no basis
22 for reversal or remand of the challenged decision.

23 The county's decision is affirmed.

"[The applicants] state that they will use only USDA Choice meats. Do they realize the enormous percentage of waste and the criteria for obtaining 'USDA Choice'? Do they realize the cost for obtaining such quality?" Petition for Review 8-9.