

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

3
4 JERRY H. DERRY and PAUL W. TAMM,)
5)
6 Petitioners,)
7)
8 vs.)
9)
10 DOUGLAS COUNTY,)
11)
12 Respondent,)
13)
14 and)
15)
16 STEVEN BUSCH,)
17)
18 Intervenor-Respondent.)

LUBA No. 94-109
FINAL OPINION
AND ORDER

19
20
21 On remand from the Court of Appeals.

22
23 Jerry H. Derry, Oakland, represented himself.

24
25 Paul E. Meyer, County Counsel, Roseburg, represented
26 respondent.

27
28 David Stoll, Roseburg, represented intervenor-
29 respondent.

30
31 KELLINGTON, Referee; SHERTON, Referee, participated in
32 the decision.

33
34 AFFIRMED 03/22/95

35
36 You are entitled to judicial review of this Order.
37 Judicial review is governed by the provisions of ORS
38 197.850.

1 Opinion by Kellington.

2 **NATURE OF THE DECISION**

3 Petitioners appeal a county order determining that a
4 proposal to raise a number of pigs in confined areas is a
5 use similar to a farm use and, therefore, a use permitted
6 outright in the county's Exclusive Farm Use (EFU) zoning
7 district.

8 **FACTS**

9 The challenged decision is on remand from the court of
10 appeals' decision in Derry v. Douglas County, 132 Or App
11 386, ___ P2d ___ (1995). We take the facts from the our
12 previous decision in the matter:

13 "The subject property is a 7.63 acre parcel
14 planned and zoned EFU. The subject parcel abuts
15 the municipal boundaries of the City of Oakland.
16 Intervenor has conducted a pig operation on the
17 subject property for some time. Intervenor
18 requested permission from the county planning
19 department to construct several buildings for
20 raising a large number of pigs in confined places.

21 "* * * * *

22 "[T]he county planning commission conducted an
23 evidentiary hearing on the proposal. After the
24 public hearing, the planning commission determined
25 the proposed pig operation does not constitute a
26 feedlot and, therefore, does not require
27 conditional use approval. Petitioners appealed
28 the planning commission decision to the board of
29 commissioners. Only two of the three county
30 commissioners voted on the application after the
31 hearing. These two commissioners each voted
32 differently on the application -- one voted to
33 sustain the planning commission decision and the
34 other voted to overturn it. In the challenged
35 decision, the board of commissioners determines

1 the legal effect of the one-to-one vote is to
2 sustain the planning commission's decision that
3 intervenor's proposal does not constitute a
4 feedlot. Because of this determination, the board
5 of commissioner's decision appends the planning
6 commission decision as the county's decision on
7 the merits of the proposal. * * * (Footnote
8 omitted.) Derry v. Douglas County, ____ Or LUBA
9 ____ (LUBA No. 94-109, November 1, 1994), slip op
10 2-3.

11 We determined the planning commission decision was not
12 entitled to the deference owed to decisions adopted by local
13 governing bodies under ORS 197.829, Gage v. City of
14 Portland, 319 Or 308, 860 P2d 282 (1993), and Clark v.
15 Jackson County, 313 Or 508, 515, 836 P2d 710 (1992). The
16 court of appeals disagreed with our determination in this
17 regard.

18 **DECISION**

19 The issue is whether intervenor's pig operation is a
20 feedlot. Douglas County Land Use and Development Ordinance
21 (LUDO) 1.090 defines the term "feedlot" as follows:

22 "Any structure, pen or corral wherein cattle,
23 sheep, horses, goats and swine are maintained in
24 close quarters for the purpose of fattening such
25 livestock for shipment to market." (Emphasis
26 supplied.)

27 If intervenor's operation is not a feedlot, then it is
28 a use similar to a farm use and the county's decision that
29 it is a use permitted outright in the EFU zone must be
30 affirmed. On the other hand, if intervenor's operation is a
31 feedlot, then intervenor must secure a conditional use
32 permit for his pig operation. Our disposition of the

1 previous appeal was based on our interpretation of the above
2 emphasized language in LUDO 1.090. However, the court of
3 appeals determined the interpretation in the challenged
4 decision that intervenor's operation is not a feedlot,
5 because pigs are not fattened for shipment to market within
6 the meaning of LUDO 1.090, is not clearly wrong and must be
7 sustained. Derry v. Douglas County, supra, 132 Or App at
8 392. Therefore, petitioners' arguments concerning other
9 parts of the definition of feedlot in LUDO 1.090 cannot
10 affect our disposition of this appeal. If intervenor's pigs
11 are not fattened for shipment to market, then intervenor is
12 not conducting a feedlot, and the challenged decision must
13 be affirmed.

14 The county's decision is affirmed.