

1 COX, Board Member.

2 NATURE OF PROCEEDING

3 Petitioners request that this Board reverse the land use
4 decision of Respondent Polk County entitled "In the Matter of
5 the Application of Terry and Jennelle Chrisman", Case No.
6 82-1. The contested decision permits Applicants Chrisman to
7 place a mobile home as a dwelling on property zoned for
8 exclusive farm use (EFU).

9 ALLEGATIONS OF ERROR

10 Petitioners present four allegations of error which include

11 (1) "The Board's decision violates the objectives,
12 policies and provisions found in Oregon Revised
13 Statutes Ch. 215."

14 (2) "The zoning ordinance provision relied upon by
15 the Board does not provide for a dwelling upon
16 EFU zoned land."

17 (3) "The Board's decision violates the policies and
18 provisions of Polk County's Comprehensive Plan
19 and Zoning Ordinance."

20 (4) "The decision violates Goal 3 and OAR 660-05-025."

21 FACTS

22 The applicants' request to the Polk County Board of
23 Commissioners was to place a mobile home on approximately 11
24 acres of land in an EFU zone of rural Polk County. The mobile
25 home would be the primary residence for applicants and their
26 family. The 11 acre parcel has been in farm production for
many years, with the primary crop being cereal grains (wheat,
oats and hay). The record indicates the parcel has been
sharecropped with a farmer in the area who farms this property

1 as a part of a much larger farm operation. The site is
2 currently unimproved.

3 In addition, applicants plan to operate a backhoe service
4 from the property servicing the needs of area residents. The
5 applicants propose to institute a Holstein Replacement
6 operation consisting of 22 head on the 11 acre site. A
7 barn/farm building is planned to accommodate the holstein
8 operation. The grain crops historically grown on the property
9 would apparently no longer be raised.

10 Parcels in the immediate area range upwards from five acres
11 with the average parcel within one square mile of the subject
12 parcel being 59 acres. The surrounding area is comprised of
13 EFU zoned land and a mixture of commercial and hobby farms,
14 with grains and pasturing being the primary farm activities.

15 This is not the first time this Board has seen these
16 applicants attempt to place their mobile home adjacent to the
17 homesite of Mr. Chrisman's parents. In Billington v. Polk
18 County and Terry Chrisman, 4 Or LUBA 263 (1981), we ruled that
19 the county's decision to grant the applicants a conditional use
20 permit to place a non-farm residence on a one-acre lot was in
21 error and the matter was remanded to Polk County. Since that
22 decision, the applicants have apparently acquired an additional
23 ten acres from Mr. Chrisman's parents as a result of a lot line
24 adjustment. Soils on the subject property are entirely U. S.
25 Soil Conservation Service Class II.

26 Initially the Chrismans' application was for siting a

1 mobile home to be used in conjunction with a proposed farm use
2 consisting of grain growing and some livestock raising. The
3 planning director denied applicants' request based in part on a
4 staff report which indicated that the type of farm operation
5 proposed by applicants required 260-300 acres to be an
6 economical farm unit. The same staff report indicated to the
7 planning director that the applicants' proposed 11 acre "farm
8 use" was substantially smaller than the average parcel size in
9 the area. In addition, according to the planning director's
10 order denying applicants' request, the applicants' statement
11 was unclear whether they intended to actively farm the property
12 or continued to sharecrop with the neighboring farmer. The
13 planning director concluded based on the evidence before him
14 that the proposed dwelling was primarily for residential use
15 and operation of the applicants' construction business. The
16 planning director concluded any agricultural use on the
17 property would be peripheral to those other uses.

18 By the time applicants had appealed the planning director's
19 decision to the Board of Commissioners, through the planning
20 commission, the stated purpose for use of the property had
21 changed materially. The applicants were then claiming, as they
22 do now, that they would be using the property to raise holstein
23 heifers for sale to the dairy industry. The question of
24 whether this change in intention constituted a new request, was
25 not presented to the Board of Commissioners and is not an issue
26 before this Board.

1 DECISION

2 First Assignment of Error

3 Petitioners claim that "[t]he Board's decision violates the
4 objectives, policies and provisions found in Oregon Revised
5 Statutes Ch. 215."

6 Specifically petitioners cite this Board to ORS 215.203,
7 215.213, and 215.243. They claim the policies set forth in ORS
8 215.243 were not complied with and that ORS 215.203 and 215.213
9 were not met because there is no substantial evidence that the
10 placement of the mobile home as a residence on the property is
11 necessary to achieve a primary purpose of farming the land as a
12 means of obtaining a profit in money or that the applicants are
13 currently employing the land as a "farm use" within the meaning
14 of ORS 215.203(2)(a).

15 We find it necessary only to address petitioners' arguments
16 regarding 215.203(2)(a) because we find that Polk County failed
17 to apply that statutory provision to its decision. It is
18 inherent in our order that the contested decision likewise
19 fails to address statewide policy set forth in ORS
20 215.243(2).¹ ORS 215.203 states:

21 "Adoption of zoning ordinances establishing farm use
22 zones; definitions for ordinances.

23 "(1) Zoning ordinances may be adopted to zone
24 designated areas of land within the county as
25 exclusive farm use zones. Land within such zones
26 shall be used exclusively for farm use except as
provided in ORS 215.213. Farm use zones shall be
established only when such zoning is consistent with
the comprehensive plan.

1 "(2) (a) As used in this section, 'farm use' means
2 the current employment of land for the primary purpose
3 of obtaining a profit in money by raising, harvesting
4 and selling crops or by the feeding, breeding,
5 management and sale of, or the produce of livestock,
6 poultry, fur-bearing animals or honeybees or for the
7 dairying and the sale of dairy products or any other
8 agricultural or horticultural use or animal husbandry
9 or any combination thereof. 'Farm use' includes the
10 preparation and storage of the products raised on such
11 land for human use and animal use and disposal by
12 marketing or otherwise."² (Emphasis added)

13 In reviewing Polk County's decision, we find the county has
14 failed to make findings that indicate applicants will be in
15 compliance with the above quoted statutory provisions. The
16 findings of Polk County are merely a recitation of material in
17 the record and do not indicate that a residence is necessary to
18 continue operation of the current farm use on the property,
19 i.e. production of cereal grains (wheat, oats and hay). The
20 "findings" regarding the proposed use of the property as a
21 "Holstein Replacement" operation are not findings at all but
22 merely recitations of what the applicants propose to do. For
23 example, finding no. 3 states:

24 "The applicant has devised a detailed farm management
25 program, with the assistance of the OSU Extension
26 Service, to intensify use of the 11 acres. The
27 applicant proposes to institute a Holstein Replacement
28 operation, consisting of 22 head, on the site. A
29 barn/farm building will be built on the site to
30 accommodate this operation. The applicant has
31 experience in this type of operation."

32 Finding no. 4 states:

33 "The applicant proposes to place a mobile home on the
34 property for himself and his family to live. The
35 applicant will operate a backhoe service from his
36 property, servicing the needs of area residents for
37 water management."

1 In those "findings," the only ones applicable to the use
2 proposed by the applicants, there is no indication that in
3 order to operate the site as a "Holstein Replacement operation"
4 the mobile home is necessary.

5 Also, the use of the term "current employment" of the land
6 includes the definition of "accepted farming practice." See
7 Footnote 2. Accepted farming practice means "a mode of
8 operation that is common to farms of a similar nature,
9 necessary for the operation of such farms to obtain a profit in
10 money, and customarily utilized in conjunction with farm use."
11 There is nothing in the county's findings to indicate that a
12 mobile home needs to be placed on 11 acres in order to allow an
13 unproven use of those acres to be instituted. There are no
14 findings indicating that "farms of a similar nature" even exist
15 in the county on 11 acres.

16 While this Board would like to accommodate petitioners by
17 answering each of their allegations of errors separately, we
18 are unable to go beyond what we have already stated. As we
19 have held in numerous cases, without findings explaining the
20 decision, this Board can do nothing but remand the decision.

21 This case is remanded to Polk County for further
22 proceedings not inconsistent with this opinion.

FOOTNOTES

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ORS 215.243(2) states:

4 "(2) The preservation of a maximum amount of the
5 limited supply of agricultural land is necessary to
6 the conservation of the state's economic resources and
7 the preservation of such land in large blocks is
8 necessary in maintaining the agricultural economy of
9 the state and for the assurance of adequate, healthful
10 and nutritious food for the people of this state and
11 nation.

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10 2

ORS 215.203(2)(b) and (c) state:

11 "(b) 'Current employment' of land for farm use
12 includes (A) land subject to the soil-bank provisions
13 of the Federal Agricultural Act of 1956, as amended
14 (P.L. 84-540, 70 Stat. 188); (B) land lying fallow for
15 one year as a normal and regular requirement of good
16 agricultural husbandry; (C) land planted in orchards
17 or other perennials prior to maturity; (D) any land
18 constituting a woodlot of less than 20 acres
19 contiguous to and owned by the owner of land specially
20 valued at true cash value for farm use even if the
21 land constituting the woodlot is not utilized in
22 conjunction with farm use; (E) wasteland, in an
23 exclusive farm use zone, dry or covered with water,
24 lying in or adjacent to and in common ownership with a
25 farm use land and which is not currently being used
26 for any economic farm use; (F) land under dwellings
customarily provided in conjunction with the farm use
in an exclusive farm use zone; and (G) land under
buildings supporting accepted farm practices.

21 "(c) As used in this subsection, 'accepted
22 farming practice' means a mode of operation that is
23 common to farms of a similar nature, necessary for the
24 operation of such farms to obtain a profit in money,
25 and customarily utilized in conjunction with farm use."
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