

1 BAGG, Board Member.

2 NATURE OF THE DECISION

3 Petitioner appeals an order of the Polk County Board of
4 Commissioners approving a conditional use permit to place a
5 non-farm dwelling on 4.2 acres of land in an exclusive farm use
6 zone. Petitioner asks the Board to reverse the permit.

7 STANDING

8 Respondent does not challenge petitioner's claim of
9 standing.

10 FACTS

11 The applicant, Mr. Ratzlaff, applied for a conditional use
12 permit to place a non-farm dwelling on property in an exclusive
13 farm use zone in the Bridgeport area of Polk County. The
14 property is southeast of the intersection of Airlie Road and
15 Elkins Road. It is zoned for exclusive farm use and is
16 surrounded by land zoned for exclusive farm use. The property
17 is farmed in conjunction with an adjoining 529 acre parcel. It
18 is adjacent to another 297 acre parcel owned by the applicant.
19 The parcel is made up of SCS Class IIIe soils.

20 The planning commission heard the application and denied it
21 on March 1, 1983. The applicant appealed to the Polk County
22 Board of Commissioners, and the commissioners approved the
23 application on April 20, 1983. This appeal followed.

24 ASSIGNMENTS OF ERROR

25 Petitioner makes three assignments of error as follows:

- 26 1. "The requirements of ORS 215.213(3)(a, b, c, and

1 d) were not met."

2 2. "Respondent failed to consider each of the
3 elements of ORS 215.213(3)(a, b, c and d)."

4 3. "The findings in support of CU 83-5 are vague and
5 conclusory and are not supported by substantial
6 evidence."

7 In sum, petitioner alleges the findings and the evidence in the
8 record do not show the county properly considered each of the
9 requirements in ORS 215.213(3)(a, b, c, and d) for placement of
10 non-farm dwellings in exclusive farm use zones.¹ Petitioner
11 argues the findings are conclusional, do not properly address
12 the criteria and are without support in the record.

13 The county order adopts a staff report which gives basic
14 information such as a property description, surrounding zoning,
15 soil type and available public services. The report also
16 includes a map of the property and a statement of the applicant
17 addressing the criteria in ORS 215.213(3)(a, b, c and d) as
18 follows:

19 "I. a. The property is 4.2 acres in size and is
20 fenced on two sides. It currently is
21 planted to grass for soil cover. Soils are
22 SCS class III with 3-12% slope toward the
23 south and east. There are no existing
24 buildings. The parcel existed long before
25 zoning came into effect.

26 "b. The object would be to build a house and use
the balance of the acreage for the family
livestock, garden and orchard.

"c. Section 136.040 (m) of the Zoning Ordinance
allows as a conditional use a "non-farm"
dwelling subject to ORS 215.213 (a), (b),
(c), and (d) allows establishment of
non-farm dwellings upon approval, provided
that dwelling:

1 "1. Is compatible. This parcel was created long
2 before the EFU zone existed.

3 "2. Does not interfere seriously with accepted
4 farming practices. A dwelling on this
5 property should not interfere with the
6 farming methods used on the adjacent land.

7 "3. Does not alter stability of the land use.
8 There already are two non-farm type
9 dwellings to the south and many more to the
10 north toward Dallas.

11 "4. Is situated upon generally unsuited land for
12 the production of farm crops.
13 "The soil classification is low. In 1982,
14 the land was rented out for wheat
15 production. The crop was so poor that no
16 rent was paid. It is now planted to grass
17 to prevent erosion.

18 "The size of the parcel makes it prohibitive to
19 economically farm. The crops and livestock,
20 raised in the area lend themselves to large
21 acreages. I don't farm the parcel because it is
22 not feasible.

23 "The surrounding houses are on the domestic water
24 system. A house would be far enough away so
25 their wells or property should not be effect or
26 [sic] the public health, safety or welfare. In
fact, the building of a house on the property
would add to the welfare as it would create jobs
and promote sales for buildings materials,
supplies, etc. In the future, more supplies
would probably be needed in the yard and
surrounding acreage."

"III. Tax Lot 400, 200 Wm. McGuire, 1950 Jackson Creek
Drive, Corvallis, Or." Record 9.2

The Board understands this statement to constitute the
county's findings supporting the request. The Board holds the
findings are not adequate to show compliance with ORS
215.213(3)(a, b, c, and d) and, therefore, are not adequate to
show compliance with Section 136.040(m) of the Polk County

1 Zoning Ordinance.

2 The first of the four criteria in ORS 215.213(3) is not
3 even addressed. Stating the "parcel was created long before
4 the EFU zone existed" is not responsive to the matter of
5 whether the non-farm dwelling is compatible with the farm uses
6 described in ORS 215.203(2).³ Further, the finding fails to
7 discuss consistency of the request with Oregon's "agricultural
8 land use policy" as the policy is stated in ORS 215.243. A
9 finding on this matter is required by ORS 215.213(3)(a). The
10 policy, in part, calls for preservation of agricultural land in
11 "large blocks," and it seeks to restrict "conflicts between
12 farm and urban activities and the loss of open space and
13 natural beauties around urban centers occurring as a result of
14 such expansion."

15 The findings are not responsive to the second of the four
16 criteria calling for non-interference with "accepted farming
17 practices" as defined in ORS 215.203(2)(c).⁴ There is no
18 explanation of what effect the dwelling will have on farming
19 methods used on adjacent land. There is no discussion of what
20 farming methods are used on adjacent land.

21 The statement in response to the third of the four criteria
22 in ORS 215.213 is similarly not responsive. The fact that
23 there are non-farm dwellings to the south and north (with no
24 statement of how far to the south or north) does not explain
25 whether the placement of a new non-farm dwelling will alter
26 land use stability in the area. The record shows the area to

1 be in farm use. On its face, addition of a non-farm dwelling
2 in the area is a potential disruption of farm use and requires
3 a more detailed explanation than that which appears in these
4 findings.

5 The fourth finding, explaining the property is not suited
6 for the production of farm crops because of "low" soil
7 classification and history of poor production is not sufficient
8 to show compliance with ORS 215.213(3)(d). Even if the Board
9 includes the related statement, supra, that "the size of the
10 parcel makes it prohibitive to economically farm," the finding
11 still does not explain why the property is not suited for the
12 production of crops. The county's own findings show the
13 property to be within SCS Class I-IV soils. By definition,
14 those soils qualify the property as "agricultural land." See
15 LCDC Goal 3 and the definition of "agricultural land."⁵
16 There is no explanation of why this property can not be
17 combined with other agricultural land for the production of
18 crops. In short, there is nothing to explain why this property
19 is not suitable for the production of farm crops. Walter v
20 Linn Co., 6 Or LUBA 135 (1982); Rutherford v Armstrong, 31 Or
21 App 1319, 572 P2d 1331 (1977).

22 Petitioner's assignments of error are sustained. The
23 decision is reversed.

FOOTNOTES

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3 1

ORS 215.213(3) states:

"Single-family residential dwellings, not provided in conjunction with farm use, may be established, subject to approval of the governing body or its designate in any area zoned for exclusive farm use upon a finding that each such proposed dwelling:

"(a) Is compatible with farm uses described in ORS 215.203(2) and is consistent with the intent and purposes set forth in ORS 215.243;

"(b) Does not interfere seriously with accepted farming practices, as defined in ORS 215.203(2)(c), on adjacent lands devoted to farm use;

"(c) Does not materially alter the stability of the overall land use pattern of the area;

"(d) Is situated upon generally unsuitable land for the production of farm crops and livestock, considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of the tract;"

16 2

The Board does not know why this paragraph is numbered as "III." There is no "II" evident in the document.

19 3

ORS 215.203(2)(a) states:

"As used in this section, 'farm use' means the current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops or by the feeding, breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural use or animal husbandry or any combination thereof. 'Farm use' includes the preparation and storage of the products raised on such land for human use and animal use and disposal by marketing or otherwise. It does not include the use of

1 land subject to the provisions of ORS chapter 321,
2 except land used exclusively for growing cultured
3 Christmas trees as defined in subsection (3) of this
4 section."

4

ORS 215.203(2)(c) states:

5 "As used in this subsection, 'accepted farming
6 practice' means a mode of operation that is common to
7 farms of a similar nature, necessary for the operation
8 of such farms to obtain a profit in money, and
9 customarily utilized in conjunction with farm use."

5

10 "AGRICULTURAL LAND - In western Oregon is land of
11 predominately Class I, II, III and IV soils and in
12 eastern Oregon is land of predominately Class I, II,
13 III, IV, V and VI soils as identified in the Soil
14 Capability Classification System of the United States
15 Soil Conservation Service, and other lands which are
16 suitable for farm use taking into consideration soil
17 fertility, suitability for grazing, climatic
18 conditions, existing and future availability of water
19 for farm irrigation purposes, existing land use
20 patterns, technological and energy inputs required, or
21 accepted farming practices. Lands in other classes
22 which are necessary to permit farm practices to be
23 undertaken on adjacent or nearby lands, shall be
24 included as agricultural land in any event.

25 "More detailed soil data to define agricultural land
26 may be utilized by local governments if such data
permits achievement of this goal."