

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

3
4 SHARON McCULLOCH and PAUL GILSON,)
5) LUBA No. 97-149
6 Petitioners,)
7) FINAL OPINION
8 vs.) AND ORDER
9)
10 WASHINGTON COUNTY,) (MEMORANDUM OPINION)
11) (ORS 197.835(16))
12 Respondent.)

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14
15 Appeal from Washington County.

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17 Clark I. Balfour, Portland, filed the petition for
18 review and argued on behalf of petitioners. With him on the
19 brief was Cable Huston Benedict & Haagensen.

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21 Alan R. Rappleyea, Senior Assistant County Counsel,
22 Hillsboro, filed the response brief and argued on behalf of
23 respondent.

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25 LIVINGSTON, Administrative Law Judge; HANNA,
26 Administrative Law Judge, participated in the decision.

27
28 AFFIRMED 11/21/97

29
30 You are entitled to judicial review of this Order.
31 Judicial review is governed by the provisions of ORS
32 197.850.

1 Opinion by Livingston.

2 Petitioners appeal the county's denial of their
3 application for a committed exception and comprehensive plan
4 amendment to change the existing land use designation of
5 their 12.19-acre parcel from Exclusive Farm Use (EFU) to
6 Agriculture and Forest-5 (AF-5).

7 We adopt the statement of facts in the petition for
8 review at pages 2-3, as complemented by the statement of
9 facts in the response brief at page 1.

10 Petitioners' first assignment of error addresses the
11 county's denial of a committed exception. According to
12 petitioners, the evidence in the record compels a conclusion
13 that the criteria stated in ORS 197.732(1)(b) and OAR 660-
14 04-018(2) and 660-04-028 are satisfied. We disagree.

15 Petitioners contend that farm use on the subject
16 property is not practicable. However, their arguments
17 demonstrate that they misinterpret the definition of "farm
18 use" in ORS 215.203(2) to mean commercial farm use.¹ See
19 1000 Friends of Oregon v. Yamhill County, 27 Or LUBA 508,
20 518 (1994). The appropriate standard is whether the subject
21 property is "capable, now or in the future, of being
22 'currently employed' for agricultural production 'for the
23 purpose of obtaining a profit in money.'" ORS 215.203. The

¹For example, petitioners argue that "the Legislature intended that the primary purpose of profit means a reasonable return, not netting one dollar following expenditure of time, effort and funds * * *." Petition for Review 11.

1 term "profit" does not mean profit in the ordinary sense,
2 but rather refers to gross income. 1000 Friends of Oregon
3 v. Benton County, 32 Or App 413, 426, 573 P2d 651 (1978).
4 See also Rutherford v. Armstrong, 31 Or App 1319, 572 P2d
5 1331 (1987); Brown v. Jefferson County, ___ Or LUBA ___
6 (LUBA Nos. 96-091/96-095, August 18, 1997) slip op 19-20;
7 1000 Friends of Oregon v. Douglas Cty., 4 Or LUBA 24, 31-32
8 (1981).

9 The challenged decision finds that sheep are grazing on
10 the subject property, and correctly states, "[T]his does not
11 have to be a commercial farm to be a use allowed by the
12 goals. Record 14. It correctly finds that petitioners are
13 required to show that less intensive farm and forest uses
14 are impracticable. Record 12. It concludes, based on a
15 brief, but adequate, discussion of evidence, that
16 petitioners have not done so.

17 We will not overturn a local denial of an application
18 on evidentiary grounds unless the evidence is such that a
19 reasonable trier of fact could only say petitioners'
20 evidence should be believed. Thomas v. City of Rockaway
21 Beach, 24 Or LUBA 532, 534 (1993); Schmaltz v. City of Hood
22 River, 22 Or LUBA 115, 119 (1991); McCoy v. Marion County,
23 16 Or LUBA 284, 286 (1987). Petitioners must demonstrate
24 they sustained their burden of proof as a matter of law.
25 Jurgenson v. Union County Court, 42 Or App 505, 600 P2d 1241
26 (1979); Consolidated Rock Products v. Clackamas County, 17

1 Or LUBA 609, 619 (1989). We have reviewed the evidence
2 cited in the petition for review at pages 12-15. This
3 evidence is not sufficient to overturn the county's denial
4 of petitioners' application.²

5 Petitioners make additional assignments of error.
6 However, to support denial of a land use permit, a local
7 government need only establish the existence of one adequate
8 basis for denial. Horizon Construction, Inc. v. City of
9 Newberg, 28 Or LUBA 632, 635, aff'd 134 Or App 414 (1995);
10 Kangas v. City of Oregon City, 26 Or LUBA, 180 (1993);
11 Rozenboom v. Clackamas County, 24 Or LUBA 433, 437 (1993);
12 Garre v. Clackamas County, 18 Or LUBA 877, 881, aff'd 102 Or
13 App 123 (1990). We therefore do not reach petitioners'
14 remaining assignments of error.

15 The county's decision is affirmed.

²Among other things, petitioners conclude, without reference to any evidence, that "the site, part or all, is not of sufficient size or yield capability to entice a neighboring farmer to lease and use the property." Petition for Review 13. Yet their own "impact analysis" shows that tax lot 1200, which is zoned EFU and located south of the subject property, and which contains 18.38 acres, currently supports farm uses, including "field crops, a blueberry plantation, a few fruit trees and a small woodlot." Record 108-09. It is unclear why the subject property could not be farmed with tax lot 1200.