

1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

3
4 DEPARTMENT OF LAND CONSERVATION
5 AND DEVELOPMENT,

6 *Petitioner,*

7
8 and

9
10 FRIENDS OF YAMHILL COUNTY,

11 *Intervenor-Petitioner,*

12
13 vs.

14
15 YAMHILL COUNTY,

16 *Respondent.*

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18 LUBA No. 2002-011

19
20 FINAL OPINION

21 AND ORDER

22
23 On remand from the Court of Appeals.

24
25 Steven E. Shipsey, Salem, represented petitioner.

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27 William K. Kabeiseman, Portland, represented intervenor-petitioner.

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29 Frederic Sanai, McMinnville, represented respondent.

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31 BRIGGS, Board Member; HOLSTUN, Board Chair; BASSHAM, Board Member,
32 participated in the decision.

33
34 REMANDED

11/05/2002

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

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1 Petitioner appealed our decision to the Court of Appeals on that issue. *DLCD v.*
2 *Yamhill County*, 183 Or App 556, __ P3d __ (2002). The court reversed and remanded our
3 decision, holding that:

4 “[T]here is no basis * * * to conclude that a ‘use not allowed by the applicable
5 goal,’ * * * includes uses that specifically *are* permitted by the applicable goal
6 under some circumstances. Rather, a use that is permitted under the applicable
7 goal must conform to the requirements of the goal. It is only when a use is *not*
8 permitted at all under the applicable goal that the exceptions process may
9 come into play.

10 “* * * Here, the property at issue is subject to Goal 3. Goal 3 allows nonfarm
11 dwellings to be built under certain circumstances specified in ORS chapter
12 215. If an applicant wishes to build a nonfarm dwelling on property subject to
13 Goal 3, then the applicant must satisfy the criteria set forth in one of the
14 relevant provisions of ORS chapter 215. The applicant does not have the
15 option of building that dwelling on that property through the exceptions
16 process and rezoning if the applicant fails to satisfy the criteria of ORS
17 chapter 215. That is so because the *type* of use in question—the use of the
18 property for a nonfarm dwelling in this case—is permitted under the relevant
19 goal.” *DLCD v. Yamhill County*, 183 Or App at 562 (emphasis in original).

20 The court then remanded the decision to us with instructions to “remand [the decision] to the
21 county for denial of the application.” *Id.*

22 In accordance with the Court of Appeals’ directive, the county’s decision is
23 remanded.²

² At the conclusion of the initial appeal petitioner, as the prevailing party, filed a cost bill requesting an award of its filing fee and return of its deposit for costs. Petitioner is awarded the cost of its filing fee in the amount of \$175 to be paid by the county. The board will return petitioner’s \$150 deposit for costs.