

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

3
4 DAVID R. STEVENSON,
5 *Petitioner,*

6
7 vs.

8
9 JEFFERSON COUNTY,
10 *Respondent.*

11
12 LUBA No. 2007-002

13
14 FINAL OPINION
15 AND ORDER

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17 Appeal from Jefferson County.

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19 William Hugh Sherlock, Eugene, filed the petition for review and argued on behalf of
20 petitioner. With him on the brief was Hutchinson, Cox, Coons, DuPriest, Orr & Sherlock,
21 PC.

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23 No appearance by Jefferson County.

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25 HOLSTUN, Board Member; BASSHAM, Board Chair; RYAN, Board Member,
26 participated in the decision.

27
28 REVERSED

04/13/2007

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

NATURE OF THE DECISION

Petitioner appeals a county decision that approves a nonfarm dwelling on a 38-acre parcel zoned for exclusive farm use (EFU).

FACTS

The subject property is zoned Range Land (RL). The RL zone is one of three EFU zones in the county. The subject 38-acre parcel was created on October 7, 1993. An application for approval to construct a nonfarm dwelling on the subject property was approved in 1996 but expired without a dwelling being constructed. The current application was submitted on November 2, 2004. The Community Development Director denied the application. The board of county commissioners subsequently took up the matter and approved the application. This appeal followed.

FIRST ASSIGNMENT OF ERROR

The challenged decision sets out the relevant approval criteria. Record 1. Among the criteria listed as applying to the decision are ORS 215.284(2) and Jefferson County Zoning Ordinance (JCZO) Section 302(D). Petitioner contends the disputed nonfarm dwelling does not satisfy either of those approval criteria.

ORS 215.284(2) authorizes approval of nonfarm dwellings in EFU zones if certain statutory criteria are satisfied. Among those statutory criteria is ORS 215.284(2)(c), which requires that the proposed nonfarm “dwelling will be sited on a lot or parcel created before January 1, 1993.” As we have already mentioned, the parcel was created on October 7, 1993. Because the proposed dwelling will not “be sited on a lot or parcel created before January 1, 1993,” the proposal does not satisfy the statutory requirement in ORS 215.284(2)(c).

JCZO Section 302(D) lists the types of dwellings that are permissible in the RL zone. Nonfarm dwellings are not listed.

1 The challenged decision does not expressly address either ORS 215.284(2)(c) or
2 JCZO Section 302(D). Instead, the decision explains that the owners of the subject property
3 asked a prior county community development director in the year 2000 if a nonfarm dwelling
4 could be constructed on the subject property. Apparently, based on amendments to the JCZO
5 that had recently been adopted in 1999, the property owners were told at that time that the
6 property would qualify for a nonfarm dwelling. However, those 1999 amendments were
7 appealed and remanded and are no longer in effect. The challenged decision explains “[t]he
8 Board [of County Commissioners] finds that, as a matter of fairness and because of the
9 incorrect information the County provided, the applicants should be allowed to construct a
10 dwelling on the property.” Record 2.

11 Even if it is accurate to characterize the advice the property owners were given in the
12 year 2000 as “incorrect,” that inaccurate advice would not provide a basis for failing to apply
13 the criteria that now must be satisfied to approve the disputed nonfarm dwelling application.
14 *See Reagan v. City of Oregon City*, 39 Or LUBA 672, 677 (2001) (“any assurances that an
15 applicant may receive from planning staff in a pre-application conference about what
16 approval criteria may apply in the future cannot be anything more than an educated guess”).
17 Because nonfarm dwellings are not allowed in the RL zone and the disputed application
18 violates ORS 215.284(2)(c), the county’s decision must be reversed.

19 The first assignment of error is sustained.¹

20 The county’s decision is reversed.

¹ Because our resolution of the first assignment of error requires that we reverse the county’s decision, we need not and do not consider petitioner’s second and third assignments of error.