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

AMBROSE PETER OTT, STEPHANIE RAE OTT,
BOB ELDER and DIANE ELDER,
Petitioners,

vs.

LAKE COUNTY,
Respondent.

LUBA No. 2007-032

FINAL OPINION
AND ORDER

Appeal from Lake County.

William Hugh Sherlock, Eugene, filed the petition for review. With him on the brief was Hutchinson, Cox, Coons, DuPriest, Orr & Sherlock, PC.

No appearance by Lake County.

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

REVERSED 06/26/2007

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

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NATURE OF THE DECISION

Petitioners appeal a decision by the county approving a conditional use permit for a non-farm dwelling and a home occupation.

FACTS

The subject property is a 28.31-acre parcel zoned A-1 and is composed predominantly of Class VI soils. The A-1 zone is an exclusive farm use zone. See ORS 215.203 through 215.311. The property is bordered by state highway 31 on the north, by private property on the southeast and west, and by publicly owned land on the southwest. The property has been used for grazing of livestock.

The applicants applied for a conditional use permit to (1) construct a non-farm dwelling and (2) operate a log home kit construction business as a home occupation on 3 to 4 acres of the property. The proposed log home kit manufacturing business includes a log storage yard and a fabricating facility that is separate from the dwelling. The planning commission approved the application, and petitioners appealed to the board of commissioners. The board of commissioners affirmed the planning commission’s decision. This appeal followed.

FIRST ASSIGNMENT OF ERROR

Single-family non-farm dwellings are permitted in A-1 zones, subject to the criteria set forth in Lake County Zoning Ordinance (LCZO) Sections 24.19 and 24.20. LCZO Section 24.20(A) provides that the land upon which a non-farm dwelling is proposed must not be comprised predominately of Class I through Class VI soils.¹

¹ LCZO Section 24.20 provides in relevant part:
“In addition to the provisions set forth in Section 24.19, the land upon which a non-farm dwelling is proposed in an A-1 or A-2 zone shall meet the following criteria:
“(A) Is not predominately soils of SCS Capability Class I through VI; * * *.”

1 The county found that the application complied with LCZO Section 24.20, finding
2 that notwithstanding its predominant Class VI soil classification, the property is generally
3 unsuitable for livestock production and farm crops due to its terrain, size, and shape.²
4 However, whether the property has features that limit its suitability for farm crops or
5 livestock production is not the relevant question in applying LCZO 24.20(A). The relevant
6 question under LCZO 24.20(A) is whether the subject property “[i]s not predominately soils
7 of SCS Capability Class I through VI[.]” As noted above, the record establishes that the
8 property is predominantly comprised of Class VI soils. Record 24. Therefore, the proposal
9 does not comply with LCZO 24.20(A), and the county’s finding that the application complies
10 with LCZO 24.20(A) was error.

11 The first assignment of error is sustained.

12 **SECOND ASSIGNMENT OF ERROR**

13 In their second assignment of error, petitioners allege that the county erred in finding
14 that the applicant’s log home kit manufacturing facility qualified as a home occupation under
15 ORS 215.448 and LCZO 24.06. ORS 215.448(1) allows a home occupation in an EFU zone
16 if the home occupation is operated in the dwelling or other buildings normally associated
17 with uses in an EFU zone.³ Similarly, LCZO 24.06 allows a home occupation as an
18 accessory use to the primary use of the property, subject to certain criteria.⁴

² The county found:

“The specific site for the residence is on a hill with ‘Eglirim very stony loam, 2 to 30 percent slopes’ soil classification which classifies the ‘Major Use’ as livestock grazing. However, the terrain, size and shape of the property does not permit the property to maintain much more than a small amount of livestock. * * * The County finds that the land is generally unsuitable for the production of farm crops and livestock considering the terrain, soil conditions, shape and size of the parcel.” Record 24-25.

³ ORS 215.448 provides in relevant part:

“(1) The Governing body of a county or its designate may allow, subject to the approval of the governing body or its designate, the establishment of a home occupation and the parking of vehicles in any zone. However, in an exclusive farm use zone, forest

1 In *Holsheimer v. Columbia County*, 28 Or LUBA 279 (1994), *aff'd* 133 Or App 126,
2 890 P2d 447 (1995), we reversed a county decision that approved a paving company's
3 storage of trucks and paving materials for transport to job sites as a home occupation. We
4 rejected the county's attempt to separate the paving company's business into distinct parts in
5 an attempt to use the administrative and office functions of the business occurring in the
6 dwelling to qualify the entire paving business as a home occupation. We noted that the
7 activities on the premises necessitated the constant movement of vehicles and equipment to
8 off-site job locations, and that the activities were not limited to the structure where the
9 storage took place. We found that the proposed use was contrary to ORS 215.448(1) as a
10 matter of law, because the paving operations occurred outside the prescribed structures. *Id.* at
11 284.

12 In the present case, the county found that the log home kit manufacturing facility
13 qualified as a home occupation because the majority of the work of selling of the log home

zone or a mixed farm and forest zone that allows residential uses, the following standards apply to the home occupation:

“* * * * *

“(c) It shall be operated substantially in:

“(A) The dwelling; or

“(B) Other buildings normally associated with uses permitted in the zone in which the property is located * * *.”

⁴ LCZO Section 24.06 provides in relevant part:

“Home Occupation: When permitted as a Conditional Use and conducted as an accessory use to the primary use, a home occupation may be permitted subject to the following standards and limitations.

“* * * * *

“(C) Will be operated in the owner/operator/resident's dwelling, or in other buildings normally associated with uses permitted in the zone in which the property is located.

“(D) Shall not interfere with existing uses on nearby land or with other uses permitted in the zone in which the property is located. * * *”

1 kits is completed in the dwelling.⁵ However, the county erred in focusing on the
2 administrative and sales functions of the business that would be conducted inside the
3 dwelling, and essentially disregarding the manufacturing operation occurring on 3 to 4 acres
4 of the property. The manufacturing site where the homes would be constructed, dismantled
5 and then removed by truck is a significant part of the business activity that must be
6 considered in determining whether the proposal can be approved as a home occupation. The
7 construction and dismantling of the dwellings and the constant transport of the materials for
8 the log home kits to and from the property is a significant part of the proposal. Those
9 activities are not conducted in the dwelling or any structure normally associated with uses in
10 an EFU zone. Under ORS 215.448(1) and LCZO 24.06, the log home kit manufacturing
11 facility is not a home occupation, and the county's approval of the application for a home
12 occupation was error. *See also Wuester v. Clackamas County*, 25 Or LUBA 425, 431 (1993)
13 (home occupations may not be conducted outside the dwelling or buildings normally
14 associated with permitted uses in the zone); *Stevenson v. Douglas County*, 23 Or LUBA 227,
15 232 (1992) (parking of repossessed vehicles outside the dwelling or buildings normally
16 associated with uses in the applicable zone is not a home occupation under the applicable
17 code provision).

18 The second assignment of error is sustained.

19 The county's decision is reversed.

⁵ The county's finding states:

“* * * The County finds that a place to build log home kits qualifies as a home occupation because the majority of the work for selling of the log home kits is done from the dwelling, that being computer work, internet sales, telephone marketing, etc. The kits are built outside of the home but are then dismantled, sold, and removed from the property.” Record 10.