BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

NICK CHAPMAN,
Petitioner,

vs.

MARION COUNTY,
Respondent.

LUBA No. 2009-097

FINAL OPINION
AND ORDER

Appeal from Marion County.

Britt Nelson, Lake Oswego, filed the petition for review and argued on behalf of the petitioner.

Jane Ellen Stonecipher, Marion County Legal Counsel, Marion County, filed the response brief and argued on behalf of respondent.

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

AFFIRMED 01/29/2010

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

Opinion by Bassham

NATURE OF THE DECISION

Petitioner appeals a county decision denying his application for a farm dwelling.

FACTS

The subject property is a 19-acre parcel zoned exclusive farm use (EFU). The predominate soils on the property are Class II and III high value soils. In 2005, the county approved petitioner's application to construct a horse barn or stable, referred to in the record as an "equine facility," which is a permitted structure in the EFU zone. Sometime after construction, however, petitioner converted the structure to a two-bedroom dwelling with a kitchen, cherry wood floors and other residential amenities, and began residing in the structure.

On October 27, 2008, petitioner applied to the county to approve use of the structure as a "dwelling customarily provided in conjunction with farm use" permitted under Marion County Rural Zoning Ordinance (MCRZO) 136.030(A)(1).[1] To satisfy the requirement at

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[1] MCRZO 136.030(A) implements ORS 215.283(1)(e) and OAR 660-033-0135, and includes the following among the uses that may be established in the county's EFU zone:

> "Primary Farm Dwellings. A single-family dwelling customarily provided in conjunction with farm use. The dwelling will be considered customarily provided in conjunction with farm use when:
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> "1. It is located on high-value farmland, as defined in MCC 17.136.140(D) and satisfies following standards:
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> "* * * * *
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> "b. The subject tract produced in the last two years or three of the last five years at least $80,000 in gross annual income from the sale of farm products. In determining gross annual income from the sale of farm products, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract. Only gross income from land owned, not leased or rented shall be counted;
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> "c. The subject tract is currently employed for the farm use that produced the income required in subsection (A)(1)(b) of this section; [and]

MCRZO 136.030(A)(1)(b) that the property have produced at least $80,000 in gross annual income from the sale of farm products, petitioner submitted copies of Schedule F (Profit or Loss from Farming) from his 2006, 2007 and 2008 federal income tax returns, and other records generally showing revenue principally from the sale of hay. On November 21, 2008, the county planning director denied the application, concluding that the evidence petitioner submitted was insufficient to demonstrate the petitioner's 19-acre parcel complies with the $80,000 income requirement. In addition, the planning director found that the permit could not be issued under MCRZO 110.680, citing evidence that petitioner operates a commercial excavation truck for-hire operation from the subject property, without required county land use approval.[2]

Petitioner appealed to the county hearings officer, who conducted a *de novo* hearing on April 22, 2009. On July 2, 2009, the hearings officer issued a decision denying the application, agreeing with the planning director that petitioner failed to demonstrate compliance with the MCRZO 136.030(A)(1)(b) $80,000 income requirement. In addition, the hearings officer found under MCRZO 136.030(A)(1)(c) that petitioner failed to demonstrate that the property is "currently employed for the farm use that produced the income" used to qualify under MCRZO 136.030(A)(1)(b), because in 2008 petitioner changed farm operations and currently derives most of his income from nursery stock. Finally, the hearings officer reviewed an ODOT audit regarding use of petitioner's

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> "d. The proposed dwelling will be occupied by a person or persons who produced the commodities which generated the income in subsection (A)(1)(b) of this section[.]"

[2] MCRZO 110.680 provides, in relevant part:

> "No permit for the use of land or structures or for the alteration or construction of any structure shall be issued and no land use approval shall be granted if the land for which the permit or approval is sought is being used in violation of any condition of approval of any land use action, is in violation of local, state or federal law, or is being used or has been divided in violation of the provisions of this ordinance unless issuance of the permit would correct the violation."

commercial trucks and agreed with the planning director that the permit could not be issued under MCRZO 110.680.

Petitioner appealed the hearings officer's decision to the county board of commissioners. The commissioners considered the appeal at a meeting on August 5, 2009 and voted to deny the appeal and affirm the hearings officer's decision. On August 6, 2009, the commissioners issued a written decision adopting the hearings officer's findings and conclusions as their own. This appeal followed.

SECOND ASSIGNMENT OF ERROR

Under the second assignment of error, petitioner alleges the commissioners committed procedural error in reviewing his appeal, arguing that the commissioners based their denial "on false information." Petition for Review 10. ORS 197.835(9)(a)(B) provides that LUBA may remand a decision where the local government "[f]ailed to follow the procedures applicable to the matter before it in a manner that prejudiced the substantial rights of the petitioner." Because this assignment of error involves alleged procedural error, we address the second assignment of error first.

A. False Information

According to petitioner, at the August 5, 2009 meeting the planning director provided inaccurate information to the commissioners regarding the record and the hearings officer's decision, and presented a misinterpretation of MCRZO 136.030(A)(1)(d) that the commissioners relied upon in choosing to affirm the hearings officer's decision and adopt that decision as the county's final decision.

The county responds, and we agree, that petitioner has not established that any inaccuracy in the planning director's testimony to the commissioners resulted in material prejudice to petitioner's substantial rights. Petitioner identifies only two alleged inaccuracies. In summarizing the hearings officer's decision, the planning director stated that the hearings officer denied the application due to petitioner's "failure to provide any credible evidence

that he meets any of the applicable criteria for establishing a farm dwelling." Record 17. Petitioner points out that in fact the hearings officer found that one of the farm dwelling criteria, MCRZO 136.030(A)(1)(a), was met. However, petitioner has not demonstrated that that misstatement is material or prejudiced his substantial rights. The only farm dwelling criteria that the planning director and commissioners discussed at the August 5, 2009 meeting were those that the hearings officer found were not met. The commissioners affirmed the hearings officer's decision based on those findings. Nothing cited to us in the record suggests that any misstatement regarding other farm dwelling criteria played any role in the commissioners' decision.

Second, petitioner quotes a statement from the planning director that the "applicant did not maintain any records, which could support any farm operations." Record 18.[3] Petitioner argues that this statement is inaccurate, because he in fact submitted records regarding his farm use of the property. However, the county responds, and we agree, that the disputed statement is actually an accurate attribution of a statement made in the ODOT audit: that petitioner did not maintain any records showing that his commercial trucks were used in farm operations. Record 99. It is petitioner's selective quotation from the planning director's testimony that is inaccurate.

The bulk of the second assignment of error is taken up with petitioner's contention that the planning director gave the commissioners an erroneous interpretation of MCRZO 136.030(A)(1)(c), by informing them that under the Oregon Administrative Rule that MCRZO 136.030(A)(1)(c) implements, the property must be currently employed in the same

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[3] The planning director testified, in relevant part:

> "The hearings officer also found the applicant [is] operating a commercial trucking business from the property, based on an [ODOT] audit. The auditor stated that the applicant did not maintain any records, which could support any farm operations. The operation of a commercial trucking business from the property without land use approval does constitute a violation of the ordinance and under section 110.680 of the ordinance the county is prohibited from issuing land use permits when there is an ongoing violation. * * *" Record 18.

farm use that produced the income considered under the MCRZO 136.030(A)(1)(b) income test. Because in late 2008 petitioner switched from growing wheat and hay to growing nursery stock, the planning director opined that petitioner might have to wait two more years to apply again for a farm dwelling, so that the income test can be based on sales from the nursery stock operation that is the farm use currently employed on the property.[4]

Petitioner contends that this interpretation is inconsistent with the definitions of "farm use" at MCRZO 110.223 and ORS 215.203(2)(a), which describe "farm use" in broad terms to include a wide variety of activities. Nothing in those definitions, petitioner argues, suggests that a farmer must maintain his land in a single crop or type of farm use over several years, in order to qualify for a farm dwelling. According to petitioner, the planning director's erroneous interpretation of MCRZO 136.030(A)(1)(c) unduly influenced the commissioners to affirm the hearings officer's decision, and thereby prejudiced petitioner's substantial rights.

As the county correctly notes, the hearings officer denied the application in part for noncompliance with MCRZO 136.030(A)(1)(c), because "[t]he property has been used to cultivate hay, wheat, raise horses, and now appears to be devoted to nursery stock. Thus, the subject tract is not currently employed for the farm use that generated the required income." Record 9. The planning director correctly reported this basis for denial to the commissioners. Record 18 ("The hearings officer also found the property is not currently employed for farm

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[4] The planning director stated, in response to a question from a commissioner regarding whether the commission should allow petitioner to submit additional evidence:

> "* * * Even if the applicant was able to provide the income for 2008 and 2009, the fact [is] that the land is not in the same type of farm use (hay and wheat) as it was previously. He has converted it now to nursery stock. The OARs require that it be in the same farm use at the time the approval was obtained as the farm use that was on the property before. Even if the applicant were able to meet the income test he still would not be able to meet the requirements that it be in the same farm use that produced the income on the property. * * * [N]ow that the property is in nursery stock, the applicant might have to wait and produce the products and come back to make an application at a future date. He added that this was probably the most viable approach in this case." Record 19.

use that generated the claimed income, which is required by the Oregon Administrative Rules"). Petitioner does not appear to recognize that the interpretation he argues is erroneous stems not from the planning director but from the hearings officer's decision, and that the planning director only elaborated on the hearings officer's interpretation, in response to a question from one of the commissioners. The planning director appears to have accurately conveyed the gist of the hearings officer's interpretation to the commissioners. Petitioner has not demonstrated that there was any inaccuracy, much less procedural error, in the planning director's testimony on this point.

To the extent petitioner's arguments can be understood as a challenge to the hearings officer's interpretation of MCRZO 136.030(A)(1)(c), petitioner has not demonstrated that the hearings officer misconstrued the applicable law. ORS 197.835(9)(a)(D) (LUBA may remand where the local government "[i]mproperly construed the applicable law"). Both MCRZO 136.030(A)(1)(c) and OAR 660-033-0135(7)(a), the administrative rule it implements, requires that the subject property be currently employed for "the farm use" that produced the required $80,000 in gross annual income.[5] The use of the definitive article "the" followed by the restrictive clause beginning "that produced" strongly suggests that the intent of the rule is to ensure that the farm use for which the property is "currently employed" at the time a farm dwelling is approved is the same farm use that produced the requisite income during the applicable time period. Had the rule been intended to permit a farm dwelling as long as the property was currently employed for *any* farm use, it would have been worded very differently.

Because the hearings officer denied the application on other grounds, and we have no focused argument on this point, we have no occasion to determine whether OAR 660-033-

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[5] OAR 660-033-0135(7)(a) provides that on land identified as high-value farmland, a farm dwelling may be approved if "[t]he subject tract is currently employed for the farm use, as defined in ORS 215.203, that produced at least $80,000 in gross annual income from the sale of farm products in the last two years or three of the last five years[.]"

0130(7)(a) must be understood to limit the "current" farm use to *exactly the same farm use* that was used to generate the requisite income in the applicable previous years. It may be that a property would be "currently employed for the farm use, as defined in ORS 215.203, that produced at least $80,000 in gross annual income from the sale of farm products in the last two years or three of the last five years" within the meaning of OAR 660-033-0130(7)(a), notwithstanding minor differences in the farm use over those years. At some point in the continuum of change, however, the farm use in which the property is currently employed will cease to be the farm use that generated the requisite income. That is the case here, since the current nursery stock operation is not even substantially similar to the hay and wheat operation petitioner claims was present on the property before. Thus even if it were sufficient that the current farm use be substantially similar to the farm use that generated the requisite income in the other years, petitioner would not qualify.

It is perhaps worth noting that both the farm use definition in ORS 215.203(2)(a) and the OARs implementing Goal 3 (Agricultural Lands) distinguish between different types of farm use.[6] The first sentence of ORS 215.203(2)(a) lists several distinct categories of farm use: (1) raising, harvesting and selling crops, (2) 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, (3) any other agricultural or horticultural use or animal husbandry

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[6] ORS 215.203(2)(a) provides, in relevant part:

> "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 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, storage and disposal by marketing or otherwise of the products or by-products raised on such land for human or animal use. 'Farm use' also includes the current employment of land for the primary purpose of obtaining a profit in money by stabling or training equines including but not limited to providing riding lessons, training clinics and schooling shows. 'Farm use' also includes the propagation, cultivation, maintenance and harvesting of aquatic, bird and animal species that are under the jurisdiction of the State Fish and Wildlife Commission, to the extent allowed by the rules adopted by the commission. * * *"

or any combination thereof. The subsequent sentences set out additional categories of activities that qualify as "farm use." We note that growing wheat and hay almost certainly fits under the first category listed in the first sentence, raising cattle clearly falls within the second category, while growing nursery stock is likely viewed as a "horticultural" use under the last category. *See also* OAR 660-033-0020(8)(b) (defining "high-value" farmland in relevant part to include land growing "perennials," which includes "nursery stock," but does not include "seed crops, hay, pasture, or alfalfa"). One could argue that OAR 660-033-0130(7)(a) is satisfied if the property is currently employed in a farm use that is within the same general type of farm use that generated the required income, and a switch from one type of crop to another, or one livestock breed to another, would not disqualify a farm dwelling, while a switch from a seed crop to a cattle operation or an orchard might. However, we need not and do not speculate further on this subject. Any resolution on this point must await the proper case.

B. Notice and Participation

The second assignment of error also includes the following one-sentence argument: "Petitioner was not notified of the date that the Board of Commissioners would be considering his application for review of the Hearings Officer's Order and, as such, Petitioner was denied the opportunity to appear and be heard on the matter." Petition for Review 11. Petitioner does not elaborate on this argument, other than to suggest that if he had participated in the meeting before the commissioners he could have corrected misinformation provided by the planning director.

The county responds that the appeal before the commissioners was conducted pursuant to MCRZO 122.120(c), which provides:

> "The board shall review the action of the planning commission or hearings officer and may refer the matter back to the planning commission or hearings officer for further consideration, in which case the planning commission or hearings officer shall conduct such further investigation if it is deemed advisable and report its findings to the board. The board may summarily, after

> considering the application and appeal and finding that the facts therein stated do not warrant any further hearings, affirm the action of the planning commission or hearings officer and deny the appeal. If the board is of the opinion that the facts in the case warrant further action, the board shall give notice of the time and place of such hearing in the same manner as set forth in MCC 17.111.030. After the hearing, the board may reverse or affirm or may impose such conditions as the facts warrant and may grant a variance, and its decision or determination shall be final. Any hearing may be continued from time to time."[7]

According to the county, the commissioners' decision whether to grant an appeal is discretionary and not subject to review.[8] The county also argues that, under MCRZO 122.120(c), the county may summarily affirm the hearings officer's decision without providing notice, holding a hearing or providing the appellant the opportunity to present oral testimony or argument. The county argues that having the planning director testify to the Board and present a recommendation whether to summarily affirm the underlying decision or conduct a hearing is consistent with ORS 215.422(4), which provides that communication between the governing body and staff is not an *ex parte* contact.

Petitioner does not mention, much less challenge, MCRZO 122.120(c), or provide any focused argument regarding why the procedures under which the commissioners considered

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[7] MCRZO 122.120(c) is part of the MCRZO that deals with variances. It is not clear why that code section provides the applicable procedures for an appeal of a hearings officer's decision that does not involve a variance, but for purposes of this opinion we assume the county is correct that MCRZO 122.120(c) controls.

[8] We have some question whether the county correctly characterizes the commissioners' decision as deciding only whether to "grant an appeal." The commissioners affirmed and adopted the hearings officer's decision on its merits, apparently because they agreed with the hearings officer that petitioner had failed to meet his burden of proof. *See* Record 20 ("Commissioner Carlson moved that the board uphold the hearings officer's decision and deny the appeal because the applicant didn't meet the criteria for a primary farm dwelling on the subject property * * *.") We also have some question whether MCRZO 122.120(c)'s "summary affirmance" procedure is consistent with ORS 215.422(1), which authorizes and to some extent limits local land use appeals to county governing bodies. ORS 215.422(1)(a) provides that the "procedure and type of hearing" shall be prescribed by the governing body, which suggests that where the governing body in fact provides a local appeal—reviews and resolves the merits of an appeal, as opposed to deciding whether or not to grant an appeal—it must provide a hearing, although the governing body may choose the "type" of hearing. That choice presumably includes having an evidentiary hearing at which new evidence can be presented, or an on-the-record hearing, limited to the evidence already in the record, that allows only argument from the parties. There may be other permissible choices, but it is not easy to read ORS 215.422(1)(a) to authorize the governing body to conduct a local appeal on the merits that does not include a "hearing" of some kind.

his appeal violated any applicable law. Petitioner makes no effort to identify anything in the county's code or elsewhere that required the county to provide him notice and opportunity to participate in the proceedings before the commissioners. Accordingly, petitioner's one-sentence, undeveloped argument under this assignment of error does not provide a basis for reversal or remand. *Deschutes Development v. Deschutes County*, 5 Or LUBA 218, 220 (1982) (LUBA will not develop arguments on behalf of a party).

The second assignment of error is denied.

FIRST, FOURTH AND FIFTH ASSIGNMENTS OF ERROR

These three assignments of error challenge the evidentiary sufficiency for the hearings officer's conclusion that petitioner failed to demonstrate compliance with the MCRZO 136.030(A)(1)(b) requirement that the subject property "produced in the last two years * * * at least $80,000 in gross annual income from the sale of farm products."

In challenging a denial of a land use permit on evidentiary grounds, the petitioner cannot simply point to evidence supporting the application and argue that the local government should have or could have relied on that evidence and approved the application. To overturn a local government's denial on evidentiary grounds, the petitioner must demonstrate that the evidence supporting the application is such that a reasonable person could only conclude that the applicable criteria are satisfied. *Tigard Sand and Gravel, Inc. v. Clackamas County.*, 33 Or LUBA 124, 138, *aff'd* 149 Or App 417, 943 P2d 1106, *adhered to on recons* 151 Or App 16, 949 P2d 1225 (1997) (citing *Jurgenson v. Union County Court*, 42 Or App 505, 600 P2d 1241 (1979)). With that in mind, we turn to petitioner's arguments regarding the evidence.

Petitioner testified that hay grown on his property in 2007 and wheat and nursery stock grown on his property in 2008 yielded revenues in excess of $80,000 in those years. With respect to year 2007, the hearings officer found not "credible" petitioner's testimony

that sale of hay grown on 14 acres of the property in 2007 yielded $86,017.50.[9] The hearings officer noted that petitioner's 2007 Schedule F indicated a farm expense of $83,491 for

[9] The hearings officer found with respect to the year 2007 income:

> "The applicant's 2007 gross income, as provided by the 2007 Schedule F is $104,627. The applicant's 2008 gross income, as provided by the 2008 Schedule F, is $129,215. Therefore, the federal income tax documents provided by the applicant indicate that for the last two years, the applicant has earned $80,000 in gross annual income from the sale of farm products. The baseline income is established, but it must also be determined whether the income was produced from the subject tract.
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> "The applicant testified that in 2007, he planted and harvested wheat and hay. In 2008, the applicant planted and harvested wheat. The applicant further testified that the wheat and hay sold in the years 2007-2008 were all grown on the subject property.
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> "On the 2007 Schedule F, the applicant indicates that his farm expenses include hay purchased in the amount of $83,491. 2007 was the year that the applicant states that hay was a crop grown on the property. The file contains copies of receipts for hay sold in 2007.
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> "* * * * *
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> "The hay receipts for 6-10 and 8-25 indicate that the hay was delivered to the racetrack in Portland. The 7-9 receipt indicates that the hay was 'erosion bales delivered to Woodburn.' The 8-25 receipt indicates that the hay was delivered to Cascade Locks. These receipts total $86,071.50, and as stated, the amount meets the $80,000 baseline required in the ordinance.
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> "The Planning Division posits that the price per ton of alfalfa hay received by the applicant exceeded the average sales price for Marion County. However, the receipts indicate that much of the hay was delivered outside of Marion County, and this may account for the higher price.
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> "The Planning Division also posits that the applicant's yield per acre of alfalfa hay significantly exceeds the average yield per acre. The Commodity Reports from the Oregon State University Oregon Agricultural Information Network (OAIN) indicates that the average yield of grass hay for Marion County was 2.8 tons per acre for 2006 and 2007. The USDA National Agricultural Statistics Service estimated that for the year 2007, one acre could yield 3 tons of alfalfa hay.
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> "The applicant stated that 14 acres of his property was planted with hay. If all of the hay sold by NC Farm & Ranch, LLC (as indicated in the applicant's receipts) was grown on the subject property, the applicant was able to yield over 10.75 tons per acre, which is two to four times the average yield estimated by the OAIN and the USDA Agricultural Statistics.
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> "The amount of alfalfa hay yielded per acre by the applicant is excessively high compared with Marion County and national averages. This fact, in addition to the 2007 Schedule F expenses listed as 'Hay Purchased' in the amount of $83,491 strongly indicates that the gross income reported for the year 2007 was not from the sale of farm products generated on the subject property. The applicant's testimony that the hay sold was grown on his land is not credible in light of the questionably high yield per acre of alfalfa hay and the expense of 'Hay Purchased' on the 2007 Schedule F." Record 8-9.

"Purchased Hay." The hearings officer further noted that if all the hay sold in 2007 was grown on the subject property, the applicant achieved yields of 10.75 tons per acre, two to four times the average yield for farms in Marion County. These facts suggested to the hearings officer that the reported gross income of $86,017.50 from the sale of hay was not from hay grown on the property.

With respect to 2008, petitioner testified that he derived income from the sale of wheat and nursery stock. However, the hearings officer found that he provided no receipts or documentation for the sale of wheat or nursery stock in 2008.[10]

Under the first assignment of error, petitioner argues simply that he "provided ample evidence at the April 22, 2009 hearing to show that he had adequate income to meet the criteria of the ordinance for a primary farm dwelling." Petition for Review 9. However, petitioner does not discuss the evidence he submitted or even provide any citations to evidence in the record. That unsupported argument falls far short of demonstrating, as petitioner must, that a reasonable decision maker could only believe the evidence supporting the application and that such evidence establishes compliance with each of the applicable criteria.

The only other cognizable argument in the first assignment of error is a challenge to a finding on MCRZO 136.030(A)(1)(d), which requires that the proposed dwelling will be occupied by the persons who produced the commodities which generated the income

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[10] The hearings officer found with respect to 2008:

> "The applicant's 2008 Schedule F states that his gross income was $129,125. The applicant testified that in 2008, he planted wheat. There are no receipts or documentation evidencing the sale of any wheat. The applicant submitted eight receipts (Exhibit 2) that document the sale of nursery stock. However, these receipts are dated March and April, 2009, and therefore, do not document income received in 2008. The applicant has submitted no credible evidence to establish that the $129,125 gross income of 2008 was generated on the subject property.
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> "Although the applicant grossed the income required by the ordinance, the applicant has not provided credible evidence that the reported gross income was from the sale of farm products generated on the property. The criteria in MCRZO 136.030(a)(1)(B) is not met." Record 9.

identified in MCRZO 136.030(A)(1)(b). *See* n 1. The hearings officer found that "[b]ecause the dwelling cannot lawfully be established as a primary farm dwelling, the applicant cannot occupy the dwelling. The criteria in MCRZO 136.030(A)(1)(d) cannot be met at this time." Record 9. Petitioner argues that that reasoning is circular and that MCRZO 136.030(A)(1)(d) does not require that the dwelling be otherwise permitted or qualified under MCRZO 136.030(A)(1)(b), merely that the dwelling be occupied by the farmer of the subject property. However, MCRZO 136.030(A)(1)(d) is clearly derivative of MCRZO 136.030(A)(1)(b), and cannot meaningfully be evaluated for compliance until the applicant qualifies a dwelling under (1)(b). The hearings officer did not err in concluding that the dwelling cannot be lawfully occupied as a farm dwelling until it qualifies under all the applicable criteria.

In the fourth assignment of error, petitioner challenges the hearing officer's finding that petitioner's testimony that the hay sold in 2007 was grown on his land is "not credible." Petitioner first objects that the hearings officer considered information regarding the average yield and price of hay in Marion County, and that such information was not submitted at the April 22, 2009 hearing. The county responds that the information, found at Record 148-52, was part of the planning file, which was made part of the record at the hearing. Record 4. The county argues that petitioner does not explain why it is error to consider that information. We agree with the county. Petitioner has not explained why the hearings officer's review is confined to information submitted at the hearing, or why the hearings officer erred in considering the information at Record 148-52.

Second, petitioner argues that the hearings officer failed to consider his testimony that he augmented the soil and took two cuttings of hay from his property in 2007 and 2008, and that he sold some of his hay to businesses outside the Willamette Valley, where it fetched higher prices. Again, petitioner does not provide any record citations regarding this testimony. Petitioner is apparently referring to his oral testimony at the hearing, but does not offer any assistance in locating that testimony on the audio recordings in the file or provide

transcripts or partial transcripts. In any case, the hearings officer's findings did note that some of the hay receipts indicated that hay was sold outside Marion County, and that may account for higher prices than typical for Marion County. Record 9. With respect to the quantity of hay produced in 2007 and 2008, petitioner does not indicate that his oral or written testimony included any estimates or documentation of how much hay was actually produced on the property in those years. Given the undisputed fact that he purchased $83,491 of hay in 2007, the lack of evidence regarding how much hay was produced on the property, and the extremely high per-acre yields that would be required to produce on the subject property the amount of hay sold, it was not unreasonable for the hearings officer to question petitioner's unsupported claims that he produced on the property and sold $86,071.50 worth of hay in 2007. Petitioner has not demonstrated that only the evidence supporting the application can be believed or that the record viewed as a whole establishes that his property complies with the $80,000 requirement.

With respect to 2008, petitioner does not dispute the finding that he submitted no documentation at all regarding the production or sale of hay or wheat, or for that matter any other commodity produced on the subject property and sold in 2008. In any case, because petitioner's burden under MCRZO 136.030(A)(1)(b) is to demonstrate that the last two years' worth of income meets the $80,000 threshold, even if petitioner met that burden with respect to 2008, for the reasons set out above the hearings officer did not err in concluding that petitioner failed to meet that burden with respect to 2007.

Finally, under the fifth assignment of error, petitioner argues that the hearings officer erred in failing to consider his testimony that he generated income from sale of nursery stock in 2008. The hearings officer found that the only documentation petitioner provided with respect to sales of nursery stock related to sales in 2009. With respect to 2008, petitioner does not identify anything in the record that documents sales of nursery stock or quantifies how much of the gross farm income identified on petitioner's 2008 Schedule F was derived

from sale of nursery stock.[11] And, again, even if such evidence were in the record and the total of sales of products generated on the property exceeded $80,000, as explained above petitioner failed to satisfy the burden of proof with respect to year 2007, and therefore any error the hearings officer made with respect to year 2008 revenues does not provide a basis for reversal or remand.

The first, fourth and fifth assignments of error are denied.

THIRD AND SIXTH ASSIGNMENTS OF ERROR

The third and sixth assignments of error challenge the hearings officer's finding that, under MCRZO 110.680, the county cannot issue a farm dwelling permit in any event, based on evidence, including the ODOT audit, indicating that petitioner operates an unpermitted commercial trucking business from the subject property. *See* n 2.

To support a decision for denial, the county need establish the existence of only one adequate basis for denial. *Wal-Mart Stores, Inc. v. Hood River County*, 47 Or LUBA 256, 266, *aff'd* 195 Or App 762, 100 P3d 218 (2004). We have already concluded that the hearings officer did not err in denying the farm dwelling application under MCRZO 136.030(A)(1)(b). Therefore, petitioner's arguments under MCRZO 110.680 do not provide a basis for reversal or remand.

The third and sixth assignments of error are denied.

The county's decision is affirmed.

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[11] We note that under the second assignment of error, petitioner makes a similar argument, that the hearings officer failed to consider petitioner's testimony regarding income derived from sale of cattle and horses. The county responds that the record indicates that the horses on the property are petitioner's personal horses, and that income derived from cattle stems in part from leasing calves to rodeos, which is not farm income. The county also notes that under MCRZO 136.030(A)(1)(b) the cost of acquiring livestock must be deducted from the total gross income. Whatever the case, petitioner does not cite to any documentation or evidence of how much revenue, if any, was derived from the sale of cattle or horses in 2007 or 2008, for purposes of MCRZO 136.030(A)(1)(b).