BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

LAVONNE WOMELSDORF,
Petitioner,

vs.

JACKSON COUNTY,
Respondent,

and

CURTIS L. JOHNSON and ANN JOHNSON,
Intervenors-Respondents.

LUBA No. 2010-043

FINAL OPINION
AND ORDER

Appeal from Jackson County.

Michael W. Franell, Medford, filed the petition for review and argued on behalf of petitioner.

No appearance by Jackson County.

Curtis L. Johnson, Eagle Point, filed the response brief and argued on his own behalf. Ann Johnson represented herself.

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

AFFIRMED 08/26/2010

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

Opinion by Ryan.

NATURE OF THE DECISION

Petitioner appeals a decision approving a nonfarm dwelling on land zoned exclusive farm use (EFU).

MOTION TO INTERVENE

Curtis L. Johnson and Ann Johnson (intervenor), the applicants below, move to intervene on the side of respondent in the appeal. The motion is allowed.

FACTS

The subject property is a 10.64-acre parcel zoned EFU and is owned and operated as part of the 80-acre Reese Creek Ranch, a ranch that offers boarding and training of horses, among other activities. The subject property is located at the southernmost end of three ranch parcels and has access to Butte Falls Highway, where access is proposed to the dwelling via a driveway extending from the highway to the homesite. Portions of the subject property are used for grazing in conjunction with the other ranch parcels.

Intervenor applied for approval of a nonfarm dwelling on the subject property, and proposed to site the dwelling in the northeast portion of the property, approximately 100 feet from the property line of petitioner's property that is located to the east of the subject property. The planning department approved the application. Petitioner appealed the decision to the hearings officer, and he approved the application. This appeal followed.

FIRST ASSIGNMENT OF ERROR

Jackson County Land Development Ordinance (LDO) 4.2.6(H)(1) provides that a nonfarm dwelling may be approved if "[t]he dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming or forest practices on nearby lands devoted to farm or forest use." In her first assignment of error, petitioner argues that the hearings officer erred in failing to address the

impacts that approving a nonfarm dwelling will have on operations on the adjacent Reese Creek Ranch parcels under LDO 4.2.6(H)(1).

The hearings officer's decision combined its discussion of LDO 4.2.6(H)(1) with its discussion of a similarly worded LDO provision, LDO 4.2.3(A), which allows the county to issue a permit for a nonfarm dwelling if the dwelling use "[w]ill not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use." Record 6-8. Although that combined discussion is somewhat difficult to follow, the hearings officer explained that the application provided an analysis of three properties adjacent to the subject property, including the two other parcels that comprise the ranch. According to the hearings officer, the two other Ranch parcels are used for grazing and horse pasturing, and the proposed dwelling site does not produce forage suitable for grazing due to the soils, so that removing the dwelling site from availability for grazing together with the other ranch parcels will not force a significant change in or significantly increase the cost of those grazing practices. Record 7. The hearings officer agreed with intervenors' analysis of the farm practices on the other ranch parcels and concluded that the proposed dwelling will not cause a significant change in accepted farming practices nor significantly increase the costs of those practices. Record 8. Petitioner does not address or discuss any of the hearings officer's findings regarding LDO 4.2.6(H)(1) or explain why the findings at Record 6-8 are inadequate to explain why LDO 4.2.6(H)(1) is met. Absent any explanation as to why the hearings officer's findings regarding LDO 4.2.6(H)(1) are inadequate, petitioner's argument provides no basis for reversal or remand of the decision.

We also understand petitioner to argue that an accepted farm practice on nearby lands devoted to farm use is leasing of property for grazing. Petitioner contends that if a nonfarm dwelling is approved on the subject property parcel then the parcel cannot be leased for grazing, and for that reason the overall cost of farming in the area will increase. However, the criterion that petitioner cites is concerned with significant increases in costs to accepted

farming practices or significant changes in accepted farm practices caused by the dwelling. It does not require the county to address the indirect and speculative possibility that the owner of the dwelling may decide in the future not to lease any portions of the subject property that may have been available for leasing for grazing in the past.

The first assignment of error is denied.

SECOND ASSIGNMENT OF ERROR

In her second assignment of error, we understand petitioner to argue that because the proposed driveway will be located on land that is suitable for farming, the dwelling cannot be approved. Petitioner cites and quotes a portion of our decision in *Wetherell v. Douglas County*, 51 Or LUBA 699, *aff'd* 209 Or App 1, 146 P3d 343 (2006) (*Wetherell I*), where we concluded that driveways and access roads were not automatically allowed to be sited on portions of a property that are suitable for farm use merely because the proposed dwelling will be situated on a portion of the property that is not suitable for farm use. *Id*. at 716. However, that holding was expressly overruled by our decision in *Wetherell v. Douglas County*, 56 Or LUBA 120 (2008), which petitioner does not cite.[1] Accordingly, absent a developed argument as to why the location of the driveway on land that is suitable for farming prevents the dwelling from being approved, the assignment of error provides no basis for reversal or remand.

The second assignment of error is denied.

The county's decision is affirmed.

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[1] We held:

> "[W]e agree with intervenor that our decision in *Wetherell I* went too far in including access roads or driveways as accessory improvements that must be located on the portion of the property that is generally unsuitable. * * * Thus, we conclude that we erred in *Wetherell I* to the extent we held that driveways or access roads serving the proposed nonfarm dwelling must be located on the portion of the parcel that is generally unsuitable for farm use.* * *" *Id*. at 137.