

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

3
4 KEVIN RICHARDS, NATALIE RICHARDS,
5 FOX HOLLOW RANCH, LLC, GARY RICHARDS,
6 SHANNON RICHARDS and MICKEY KILLINGSWORTH,
7 *Petitioners,*

8
9 vs.

01/30/18 AM 3:54 LUBA

10
11 JEFFERSON COUNTY,
12 *Respondent.*

13
14 LUBA No. 2017-103

15
16 FINAL OPINION
17 AND ORDER

18
19 Appeal from Jefferson County.

20
21 Paul D. Dewey, Bend, filed the petition for review and argued on behalf
22 of petitioners.

23
24 David C. Allen, Madras, filed a response brief and argued on behalf of
25 respondent.

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

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30 REMANDED 01/30/2018

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

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NATURE OF THE DECISION

Petitioners appeal a decision approving a relative farm help dwelling on a 119-parcel zoned exclusive farm use (EFU-A1).

FACTS

The subject property is a rectangular 119-acre parcel located approximately two miles south of the city of Madras. The property is developed with a single-family dwelling located in its northeast corner and a shop building located near the middle of the southern border. The property currently supports a hay-growing operation, irrigated by a center-pivot, supplemented by handline and wheel-line irrigation in the corners. To the south, west and north, the property is bordered by a large tract controlled by petitioner Fox Hollow Ranch, LLC.

The property is owned by New Grass, LLC, whose principals are Jennifer DuPont and Jeff DuPont (the Duponts). The DuPonts own several businesses, including two in Madras with a total of 25 employees. In 2011, the DuPonts purchased the subject property under a land sale contract. From 2011 on, the DuPonts farmed the property with one or more of their sons, growing hay, and reported revenue from farm operations through an S corporation, Arrow D. In February 2017, the DuPonts, via New Grass, LLC, acquired title to the property. The DuPonts currently reside in the primary dwelling on the property.

1 In early 2017, the DuPonts bought approximately 100 head of cattle, and
2 grazed them on leased lands located some distance from the subject property,
3 supplemented by hay grown on the subject property. The DuPonts informed
4 the county that they intend to transport the cattle to the subject property in the
5 fall to graze off the aftermath of the hay harvest.

6 In April 2017, the DuPonts, through New Grass, LLC, filed an
7 application for a relative farm help dwelling, to allow their son Jeremy Du Pont
8 to live on the farm and assist with farm operations. The proposed accessory
9 dwelling would be located near the existing shop building. ORS 215.283(1)(d)
10 authorizes the county to approve an accessory dwelling on EFU-zoned land to
11 be occupied by a relative of the farm operator, if “the farm operator does or will
12 require the assistance of the relative in the management of the farm use[.]”
13 OAR 660-033-0130(9), an administrative rule that implements ORS
14 215.283(1)(d) and Statewide Planning Goal 3 (Agricultural Land), adds three
15 qualifications.¹ First, the rule defines “farm operator” as a “person who

¹ OAR 660-0033-00130(9) provides, in relevant part:

“(a) To qualify for a relative farm help dwelling, a dwelling shall be occupied by relatives whose assistance in the management and farm use of the existing commercial farming operation is required by the farm operator. * * * The farm operator shall continue to play the predominant role in the management and farm use of the farm. A farm operator is a person who operates a farm, doing the work and making the day-to-day decisions about such things as planting, harvesting, feeding and marketing.

1 operates a farm, doing the work and making the day-to-day decisions about
2 such things as planting, harvesting, feeding and marketing.” *See* n 1. Second,
3 the rule provides that the farm operator “shall continue to play the predominant
4 role in the management and farm use of the farm.” *Id.* Finally, the rule requires
5 that the farm operator require the assistance of the relative in the management
6 of the “existing commercial farming operation.” *Id.* Jefferson County Zoning
7 Ordinance (JCZO) 301.6(F) implements the administrative rule in substantively
8 identical terms.² All three requirements are at issue in this appeal.

“(b) A relative farm help dwelling must be located on the same lot or parcel as the dwelling of the farm operator and must be on real property used for farm use.

“(c) For the purpose of subsection (a), “relative” means a child, parent, stepparent, grandchild, grandparent, stepgrandparent, sibling, stepsibling, niece, nephew or first cousin of the farm operator or the farm operator’s spouse.”

² JCZO 301.6(F) provides, as relevant:

“Accessory Farm Dwelling for a Relative. A dwelling on real property used for farm use may be approved if:

- “1. The dwelling will be located on the same lot or parcel as the dwelling of the farm operator;
- “2. The dwelling will be occupied by a relative of the farm operator or the farm operator's spouse, which means a child, parent, stepparent, grandchild, grandparent, step grandparent, sibling, step sibling, niece, nephew or first cousin of either;

1 The DuPont’s application identified Jeff DuPont as the “farm operator.”
2 Record 185. The application stated that Jeremy Dupont’s activities on the farm
3 would include “farming hay” and “raising cattle,” and estimated that Jeremy
4 would spend “30+” hours per week assisting on the farm. *Id.* The application
5 stated that Jeff Dupont’s activities would include “feeding cows, operating
6 equipment [and] selling hay.” *Id.* To demonstrate why assistance was required
7 in the management the farm use the application stated that there is “[t]oo much
8 for 1 person to do by [my]self.” Record 186. The county’s application form
9 requires the applicant for a farm relative dwelling to submit Schedule F from
10 the operator’s federal tax return, or other evidence, to demonstrate that there is
11 an “existing commercial farming operation on the property.” *Id.* The DuPonts
12 submitted tax returns for both Arrow D and Jeremy DuPont. The most recent
13 2015 tax return for Arrow D showed \$24,500 in farm income from “grass hay”
14 and no deductions for farm expenses, other than utilities. Record 214. Jeremy
15 DuPont’s 2015 tax return showed \$49,972 in farm income from “grass hay,”

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- “3. The farm operator does or will require the assistance of the relative in the management of the existing commercial farming operation; and
 - “4. The farm operator will continue to play the predominant role in the management and farm use of the farm. A farm operator is a person who operates a farm, doing the work and making the day-to-day decisions about such things as planting, harvesting, feeding and marketing.”

1 and \$45,273 in farm expenses, including fertilizer, utilities and water. Record
2 209.

3 The county planning director administratively approved the DuPonts'
4 application. Petitioners appealed the planning director's decision to the
5 planning commission, arguing in part that the evidence fails to establish that
6 Jeff DuPont is the "farm operator" of a "commercial farming operation" on the
7 property. Petitioners noted that the DuPonts have no agricultural equipment to
8 harvest or bale hay, and that the \$24,500 in income reported on Arrow D's
9 return appears to represent rental income from a custom farm operator whose
10 equipment petitioners have observed on the property harvesting hay. With
11 respect to Jeremy DuPont's tax information, petitioners argued that that
12 information undermines Jeff DuPont's claim that he qualifies as the "farm
13 operator" as defined at OAR 660-033-0130(9), suggesting that, if anything,
14 Jeremy Dupont is the farm operator.

15 At the hearing before the planning commission, the DuPonts testified
16 that they do not lease the land to other farmers or pay for others to harvest hay,
17 but that Jeremy DuPont works for another farm operator elsewhere and as part
18 of his compensation is able to borrow equipment, which Jeff and Jeremy
19 DuPont then operate to plant and harvest their hay. In addition, Jeff DuPont
20 testified that he requires Jeremy's assistance due to physical limitations related
21 to multiple surgeries on his foot. Finally, Jennifer DuPont testified that for the
22 2015 tax returns the DuPonts allowed Jeremy to claim the majority of the farm

1 income and expenses so that he could demonstrate income to qualify for a loan
2 to buy the farm relative dwelling.

3 The planning commission denied the appeal, in part based on findings
4 that petitioners lacked standing to appeal the planning director's decision.
5 Petitioners appealed the planning commission decision to the county board of
6 commissioners, which held a *de novo* hearing. On October 4, 2017, the
7 commissioners issued the county's final decision denying the appeal and
8 approving the farm relative dwelling, based on new findings addressing the
9 approval criteria. The commissioners' decision did not address petitioners'
10 standing, or expressly adopt or incorporate the planning commission's decision
11 or other documents into the final decision as findings. This appeal followed.

12 **FIRST ASSIGNMENT OF ERROR**

13 As noted, the planning commission denied petitioners' appeal of the
14 planning director's decision based in part on findings that petitioners lacked
15 standing. Record 91. The board of commissioners upheld the planning
16 commission's decision, but did not address the issue of petitioners' standing to
17 file a local appeal. In the first assignment of error, petitioner argues that, to the
18 extent the board of commissioners upheld the planning commission's ruling
19 regarding petitioners' lack of standing to file a local appeal, the board of
20 commissioners erred.

21 The county concedes that petitioners had standing to file a local appeal,
22 but argues that the planning commission's error on that point was harmless

1 error, because the board of commissioners did not cite standing as a basis to
2 deny petitioners' appeal.

3 We agree with the county that the planning commission's error regarding
4 petitioners' standing to file a local appeal is harmless, given that the board of
5 commissioners disposed of petitioners' local appeal on the merits and did not
6 address or cite standing as a basis for denying the local appeal. As noted, the
7 board of commissioners did not adopt the planning commission's decision as
8 part of its findings or decision. Accordingly, the first assignment of error does
9 not provide a basis for reversal or remand.

10 The first assignment of error is denied.

11 **SECOND ASSIGNMENT OF ERROR**

12 Petitioners argue that the county's findings that (1) the applicant
13 qualifies as a "farm operator," (2) the farm operator "require[s] the assistance"
14 of a relative to manage the farm, and (3) the farm operator will continue to play
15 the "predominant" role in the farm misconstrue the applicable law, are
16 inadequate, and not supported by substantial evidence.

17 **A. Farm Operator**

18 As noted, OAR 660-033-0130(9)(a) defines "farm operator" as "a person
19 who operates a farm, doing the work and making the day-to-day decisions
20 about such things as planting, harvesting, feeding and marketing." Petitioners
21 argue that as a threshold matter the county's decision does not establish that a
22 qualifying "farm operator" runs farm operations on the subject property.

1 First, petitioners argue that the findings fail to identify which person the
2 county believes to be the “farm operator” for purposes of OAR 660-033-
3 0130(9)(a).³ The findings refer only to the “owner,” “owners,” or the
4 “applicants,” without actually identifying the “farm operator” required by the
5 rule. Record 2. Petitioners note that the owner of the property and the
6 applicant is New Grass, LLC, which is a corporation whose listed business
7 purpose is to operate “rental property.” Record 188. Petitioners argue that
8 New Grass, LLC itself cannot possibly qualify as a “farm operator.”
9 Petitioners acknowledge that the county presumably intended to refer to Jeff
10 DuPont, who is identified in the application as the “farm operator,” and who is
11 a shareholder in New Grass, LLC. Record 185.

12 We disagree with petitioners that the fact that New Grass, LLC is the
13 applicant and property owner represents confusion regarding the identity of the
14 “farm operator.” The application states that the farm operator is Jeff Dupont

³ The findings adopted by the board of commissioners on this point are brief:

“FINDING: The owner has identified the need for assistance in the farming operation that the relative will provide. Testimony was provided as to physical limitations by the applicants. The son has been providing assistance on the farm.” Record 2.

“FINDING: The farm owners have claimed and testified that they will continue to play a predominant role in the management and farm use. They live on the farm and have been utilizing their son to help operate the farm.” *Id.*

1 and despite some inconsistent references in the decision it is reasonably clear
2 from the findings that the county evaluated Jeff DuPont as the qualifying “farm
3 operator” required under OAR 661-033-0130(9)(a).

4 Petitioners next argue that, even if Jeff DuPont is understood to be the
5 identified farm operator, Jeff DuPont does not in fact qualify as the farm
6 operator for purposes of OAR 660-033-0130(9)(a). First, petitioners cite to
7 testimony in the record expressing the surmise that the DuPonts do not farm the
8 subject property at all, but instead lease their hay field to a custom farm
9 operator. Petitioners note that the DuPonts own no hay equipment, report
10 income consistent with lease payments, reported few expenses typical of
11 running a hay operation, and provided no record of actually selling hay.
12 Further, petitioners cite their personal observation that a custom farm operator,
13 Oliver Watson Farms, has conducted all planting and harvest activity on the
14 subject property. Record 29. The record includes photographs of equipment
15 marked Oliver Watson Farms allegedly operating on the subject property.
16 Record 31.

17 As noted, the DuPonts responded to this issue in their oral testimony,
18 denying that they lease the subject property or employ other farm operators to
19 plant or harvest the hay.⁴ Instead, the DuPonts testified that Jeremy DuPont is

⁴ Jeff DuPont testified before the planning commission: “The custom haying thing, my son works for another operator and part of his pay is he gets to help the farm with some other equipment. It’s not, we don’t pay for custom work. I was raking the hay when Kevin [Richards] was driving by stacking

1 able to borrow equipment as compensation for his employment with another
2 farm operator elsewhere, and Jeff or Jeremy DuPont operates the borrowed
3 equipment on the subject property.

4 Despite this issue being raised below, the commissioners' findings do
5 not address the issue, nor adopt any findings addressing whether Jeff DuPont,
6 or some other person or entity, is the "farm operator." See findings quoted at n
7 3.⁵ The findings clearly presume that Jeff DuPont is the farm operator, but
8 there are no findings addressing the evidentiary dispute on this point. We
9 agree with petitioners that if the subject property is leased to another farm
10 operator or the hay operation is otherwise predominantly conducted by
11 someone other than Jeff DuPont, then Jeff DuPont does not qualify as the
12 required "farm operator." Remand is necessary for the county to address this
13 issue in the first instance.

14 **B. Predominant Role**

15 Petitioners also argue that, even presuming the farm operation is not
16 leased or conducted by a third entity, and presuming that Jeff DuPont is
17 evaluated as the farm operator, the record and findings fail to establish that Jeff
18 DuPont will "continue to play the predominant role" in the farm operation

their hay just the other morning." Partial transcript of July 13, 2017 planning
commission hearing, Response Brief App 81.

⁵ We note that the planning commission's decision and staff reports, which
were not incorporated into the board of commissioners' decision, also do not
address this issue. Record 57-60; 81-82; 85-87; 95-98.

1 compared to the role of the relative assisting the operation. Petitioners argue
2 that, if anything, the record suggests that Jeremy DuPont plays the predominant
3 role in the farm operation and must be viewed as the farm operator.

4 The county's farm relative dwelling application requires that the
5 applicant indicate "how many hours per week" both the relative and the farm
6 operator "will be engaged in the farming operation." Record 185. The
7 application states that Jeremy DuPont will work "30+" hours per week on the
8 farm, but does not provide any information regarding how many hours per
9 week Jeff DuPont will be engaged in the farm operation. *Id.* No party cites us
10 to any evidence on that point. While detailed evidence on that point may not
11 be necessary in all cases to establish that the applicant qualifies as a "farm
12 operator" as defined in OAR 660-033-0130(9)(a), in the present case we agree
13 with petitioners that the evidence in the record does not provide a sufficient
14 basis for a reasonable decision-maker to conclude that Jeff DuPont will play
15 the predominant role in the farm operation, and the limited findings on that
16 point, quoted at n 3, are conclusory and inadequate.

17 First, as petitioners note, the undisputed evidence in the record is that the
18 DuPonts own and operate several businesses, including two businesses in the
19 nearby city of Madras employing a total of 25 people. The county argues that it
20 is irrelevant under OAR 660-033-0130(9)(a) whether and to what extent the
21 farm operator is employed off the farm. We disagree that such information is
22 entirely irrelevant. While a person can certainly be employed off a farm and

1 still qualify as a “farm operator” for purposes of OAR 660-033-0130(9)(a), the
2 applicant must establish that the farm operator “continue[s] to play the
3 predominant role” in farm use of the property, and continues to “operate [the]
4 farm, doing the work[.]” These qualifications might not be met if the reason
5 the farm operator requires the assistance of the relative is because the farm
6 operator is substantially employed off the farm and does not have enough time
7 to do the work.

8 **C. Requires the Assistance**

9 To demonstrate that assistance was required, the application states that
10 there is “[t]oo much for 1 person to do[.]” Record 186. That statement can
11 suggest either (1) there is too much work for one farmer on the property, or (2)
12 the farm operator has too little time to do the work required of one farmer.
13 Petitioners, who run hay-growing operations on their adjoining lands,
14 submitted testimony disputing that the hay-growing operation on the property
15 requires anything near 30 hours per week, much less that there is enough work
16 on the property to require the assistance of a relative. Record 131 (“That
17 amount of work has not previously and is not currently being performed by the
18 applicant, the relative or any other individuals on the farm, individually or
19 cumulatively.”). Petitioners also disputed that much work would be required
20 with respect to the limited time cows are grazed on the property after the fall
21 harvest, and further disputed that the applicant can justify a farm relative

1 dwelling on the property based on time or work required on leased grazing
2 lands located some distance from the subject property. Record 130.

3 In oral testimony before the planning commission, Jeff DuPont offered a
4 different basis for the required assistance than that stated in the application,
5 stating that he requires assistance on the farm due to physical limitations
6 related to his foot.⁶ The planning commission cited that testimony as the basis
7 for concluding that the farm operator “does or will require the assistance of the
8 relative in the management of the existing commercial farming operation.”
9 JCZO 301.6(F)(3); Record 92. The board of commissioners did not adopt the
10 planning commission’s findings as its own, but adopted a similar finding,
11 quoted at n 3, that assistance is required due to “physical limitations by the
12 applicants.” Record 2.

13 On appeal, petitioners do not dispute that the physical limitations of a
14 farm operator *can* provide a basis to conclude that the farm operator requires
15 the assistance of a relative to manage the farm operation, for purposes of OAR
16 660-033-0130(9)(a). However, petitioners argue that in the present case the
17 vague claim of “physical limitations” is insufficient, and the findings on that
18 point too conclusory, to establish that Jeff DuPont qualifies as a farm operator

⁶ Jeff DuPont stated, in relevant part: “I’ve had three surgeries, um, nine surgeries on my left foot. I can’t go out and, you know, change the water every day, but I do help with it. So, um, we are farmers and we do own the property and I do need the help getting the job done.” Response Brief, App 82.

1 who requires the assistance of a relative to manage the existing commercial
2 farm operation.

3 According to petitioners, the requirement that the farm operator
4 “*continue* to play the predominant role in the management and farm use of the
5 farm” suggests that the farm operator initially was capable of “doing the work”
6 without assistance, but due to health issues, the expansion of farm activities; or
7 other legitimate reasons, now requires assistance to do all the work necessary
8 to run the farm. In the present case, petitioners argue that for whatever reason
9 (whether physical limitations or being too busy running multiple other
10 businesses, or some combination thereof) the record indicates that Jeff DuPont
11 has not been able or willing to “do the work” of running the farm at any point
12 since acquiring the subject property. Petitioners argue that the county can find
13 that the farm operator will “continue to play the predominant role” only if there
14 is evidence that at some point the farm operator in fact conducted the farm
15 operation without substantial assistance and that that role will “continue.” In
16 addition, petitioners argue that there must be some basis to find that going
17 forward the farm operator will play the “predominant role,” and the only
18 findings on that point are conclusory and based only on unsupported assertions.

19 It is not clear to us that the requirement to “continue” the predominant
20 role necessarily requires an applicant who currently has physical limitations to
21 establish that prior to those limitations he or she was capable of running the
22 farm operation without assistance. However, we agree with petitioners that the

1 findings and evidence in the present case are insufficient to establish that Jeff
2 DuPont will “continue to play the predominant role” in the farm operation. As
3 noted above, the application estimated that Jeremy DuPont would work “30+”
4 hours per week on the farm (an estimate that is disputed and not otherwise
5 substantiated). There is no similar estimate of the amount of time or work that
6 Jeff DuPont would contribute, despite an application form that requests that
7 information. To conclude that Jeff DuPont will “continue to play the
8 predominate role,” the county must have before it some evidence to support
9 that conclusion, for example, evidence that Jeff DuPont will contribute more
10 hours to farming the property per week than would Jeremy DuPont, or would
11 otherwise continue to play the “predominant” role compared to the role of the
12 relative assisting the operation. However, no such evidence is cited to us. In
13 fact, as petitioners argue, the 2015 tax records suggest, on their face, that it is
14 Jeremy DuPont who plays the predominant role in the farm operation.⁷ The
15 findings on this point, quoted at n 3, are entirely conclusory.

16 In sum, we agree with petitioners that remand is necessary for the county
17 to adopt more adequate findings, supported by substantial evidence,

⁷ In oral testimony to the board of county commissioners, Jennifer DuPont suggested that the 2015 tax returns were inaccurate in indicating that Jeremy DuPont earned most of the income and incurred nearly all of the expenses of running the DuPont’s hay operation. Response Brief, App 84. That may be so, but on their face the 2015 tax returns appear to show that Jeremy DuPont has a larger role in farm operations than Jeff DuPont.

1 demonstrating that Jeff DuPont qualifies as the “farm operator” for purposes of
2 OAR 660-033-0130(9)(a). In doing so, a related issue may also require
3 resolution. Petitioners cite to testimony that the Arrow D tax returns may
4 encompass farming activities of the DuPont family on several properties in the
5 area, not limited to the subject property, and thus the income and expenses
6 reported on the Arrow D tax returns may not accurately reflect the time and
7 inputs required to manage the hay-growing operation on the subject property.
8 Relatedly, petitioners argue that the cattle grazing operation that the DuPonts
9 started in 2017 on leased land some miles distant from the subject property,
10 should not be counted toward any determinations that the farm operator
11 requires relative assistance, does the work, and continues the predominant role
12 in the farm operation on the subject property. While expressing no opinion on
13 these issues, we agree with petitioners that on remand the county should
14 address them in the first instance, and to the extent necessary determine the
15 scope of the farm operation in question.

16 The second assignment of error is sustained, in part.

17 **THIRD ASSIGNMENT OF ERROR**

18 OAR 660-033-0130(9)(a) and JCZO 301.6(F)(3) both require that to
19 qualify for a relative help dwelling, the applicant must demonstrate that the
20 farm operator requires assistance in the management of the “existing
21 commercial farming operation.” Neither the rule nor the code defines
22 “commercial farming operation.” Petitioners argue that the OAR 660-033-

1 0020 and JCZO 105(B) include definitions of a similar phrase, “commercial
2 agricultural enterprise.”⁸ Under the rule and code, the phrase “commercial
3 agricultural enterprise” serves a particular purpose under OAR 660-033-0100,
4 which allows counties to approve farm parcels smaller than the statutory
5 minimum based on findings that the smaller parcels would maintain the
6 commercial agricultural enterprise in the county.

7 Although the phrase “commercial agricultural enterprise” and the phrase
8 “commercial farm operation” serve different purposes under the rule, we have
9 held that a county may consider, in approving a farm relative dwelling under
10 OAR 660-033-0130(9), whether the farm operation in question meets the
11 thresholds for a “commercial agricultural enterprise.” *Harland v. Polk County*,
12 44 Or LUBA 420, 434 (2003) (“If the farm is of sufficient scale and

⁸ OAR 660-033-0020(2) provides:

“(a) ‘Commercial Agricultural Enterprise’ consists of farm operations that will:

“(A) Contribute in a substantial way to the area's existing agricultural economy; and

“(B) Help maintain agricultural processors and established farm markets.

“(b) When determining whether a farm is part of the commercial agricultural enterprise, not only what is produced, but how much and how it is marketed shall be considered. These are important factors because of the intent of Goal 3 to maintain the agricultural economy of the state.”

1 productivity to satisfy [the requirements for a “commercial agricultural
2 enterprise”], we believe the farm could clearly be viewed as a commercial farm
3 operation.”). This consideration supports a conclusion that the farming
4 operation on the subject property is properly viewed as a commercial farming
5 operation, since the minimum parcel size in the EFU-A1 zone is 80 acres and
6 the subject 119-acre site exceeds that minimum.

7 We also commented in *Harland* that the county could consider whether
8 the farm operation would qualify to site a primary dwelling in conjunction with
9 farm use, under the standards at OAR 660-033-0135. *Id.* at 434 n 12. This
10 consideration might or might not support a determination that the property is
11 properly viewed as a commercial farm operation, depending on which test is
12 applied to evaluate a dwelling in conjunction with the farm use. *See* JCZO
13 301.6(A) (“Large Tract” test for parcels over 160 acres); JCZO 301.6(B)
14 (“Income Test” for parcels generating a minimum gross annual income,
15 depending on soil quality); and JCZO 301.6(C) (“Median Test” for parcels
16 larger than the median size of farm tracts capable of generating at least \$10,000
17 in annual gross sales, and producing or capable of producing at least the
18 median level of annual gross sales).

19 Petitioners argued below that, no matter who runs it, the hay-growing
20 operation on the subject 119-acre property is too small and unproductive to
21 constitute a “commercial farm operation” under any definition. Petitioners also
22 disputed that the applicants’ use of the property to graze up to 100 cattle after

1 the hay harvest for a limited time period contributes to a conclusion that the
2 farm operation constitutes a “commercial farm operation.”

3 The board of commissioners adopted no findings whatsoever on whether
4 the farm operation constitutes an “existing commercial farm operation” for
5 purposes of OAR 660-033-0130(9)(a) and JCZO 301.6(F)(3). There is no
6 attempt in the application materials or in the commissioners’ findings to
7 address whether a commercial farm operation exists on the subject property.
8 We agree with petitioners that remand is necessary for the county to address
9 that question in the first instance and adopt adequate findings, supported by
10 substantial evidence, evaluating whether there is an existing commercial farm
11 operation on the subject property.

12 The third assignment of error is sustained.

13 The county’s decision is remanded.

Certificate of Mailing

I hereby certify that I served the foregoing Final Opinion and Order for LUBA No. 2017-103 on January 30, 2018, by mailing to said parties or their attorney a true copy thereof contained in a sealed envelope with postage prepaid addressed to said parties or their attorney as follows:

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Dated this 30th day of January, 2018.

Kelly Burgess
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Kristi Seyfried
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