

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

FRIENDS OF YAMHILL COUNTY and JOYCE DAMMAN,  
*Petitioners,*

vs.

YAMHILL COUNTY,  
*Respondent,*

and

CHRISTIAN DeBENEDETTI,  
*Intervenor-Respondent.*

LUBA No. 2018-144

FINAL OPINION  
AND ORDER

Appeal on remand from the Court of Appeals.

Jeffrey L. Kleinman, Portland, represented petitioners.

Timothy S. Sadlo, McMinnville, represented respondent.

Dean N. Alterman, Portland, represented intervenor-respondent.

RYAN, Board Member; RUDD, Board Chair, participated in the decision.

ZAMUDIO, Board Member, did not participate in the decision.

REMANDED

03/31/2020

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

2 **NATURE OF THE DECISION**

3 Petitioners appeal a decision by the board of county commissioners  
4 approving a permit for up to 18 commercial beer tasting events per year on  
5 property zoned for exclusive farm use.

6 **FACTS**

7 The subject property is comprised of approximately 21.5 acres and is  
8 zoned Exclusive Farm (EF-20). The primary agricultural use of the property is a  
9 10-acre filbert orchard. The property is currently developed with a residence,  
10 guest house, and a historic barn from which intervenor-respondent (intervenor)  
11 operates a brewery and tasting room with outside seating.

12 In 2017, the county approved intervenor's application to hold up to 18  
13 commercial events per year on the property in association with the brewery,  
14 pursuant to the county code provisions that implement ORS 215.284(4)(d)(A).  
15 That approval period was one year, and the approval decision provided that it  
16 could be renewed for an additional four-year period. In March 2018, intervenor  
17 applied for a renewal for up to 18, 72-hour events per year for beer tastings, with  
18 a new proposal for food to be provided by an outside caterer or food cart. The  
19 county approved the application.

20 Petitioners appealed the county's decision to LUBA. *Friends of Yamhill*  
21 *County v. Yamhill County*, \_\_\_ Or LUBA \_\_\_ (LUBA No 2018-144, Aug 2,  
22 2019) (*FOYC I*). In our decision, we sustained the portions of petitioners' two

1 assignments of error that argued that the county improperly construed ORS  
2 215.283(4)(d)(A) when it concluded that intervenor had established that the  
3 events were “necessary to support the commercial farm uses or the commercial  
4 agricultural enterprises in the area.”

5         However, we denied the portions of petitioners’ two assignments of error  
6 that argued that the county improperly construed ORS 215.283(4)(d)(A) when it  
7 concluded that intervenor had established that the events were “incidental and  
8 subordinate to existing commercial farm use of the tract” by comparing the  
9 number of days of commercial events to the number of days of commercial  
10 farming activity on the property. *FOYC I*, \_\_\_ Or LUBA at \_\_\_ (slip op at 22-  
11 23). After examining the text, context and legislative history of the statute, we  
12 concluded that “[n]othing in the text, context, or legislative history of ORS  
13 215.283(4)(d)(A) suggests to us that the county may not rely on a comparison of  
14 the number of days of activities to determine that commercial activities are less  
15 significant than the commercial farming activities on the property.” *Id.*

16         Petitioners appealed our decision to the Court of Appeals. *Friends of*  
17 *Yamhill County v. Yamhill County*, 301 Or App 726, \_\_ P3d \_\_ (2020) (*FOYC*  
18 *II*). The Court of Appeals agreed with petitioners that LUBA erred in concluding  
19 that the county properly construed the phrase “incidental and subordinate” in  
20 ORS 215.284(4)(d)(A) to rely on a comparison of the frequency of events with  
21 the frequency of commercial farming activity occurring on the property. The  
22 court held:

1            “[W]e conclude that the legislature intended the phrase ‘incidental  
2            and subordinate to existing commercial farm use of the tract’ to  
3            carry its established, technical meaning in the context of Oregon’s  
4            land-use laws. The inquiry involves a consideration of any relevant  
5            circumstances, including the nature, intensity, and economic value  
6            of the respective uses, that bear on whether the existing commercial  
7            farm use remains the predominant use of the tract.” *Id.* at 739.

8            The court concluded that the county erred in focusing on the frequency of events  
9            to the exclusion of the other relevant factors that “bear on whether the existing  
10           commercial farm use remains the predominant use of the tract.” *Id.*

11           Accordingly, we sustain the remaining portions of petitioners’ two  
12           assignments of error, and remand the decision to the county on that additional  
13           basis, with instructions to apply ORS 215.284(4)(d)(A) in a manner consistent  
14           with the court’s decision in *FOYC II*.

15           The county’s decision is remanded.