

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

FRIENDS OF YAMHILL COUNTY,  
*Petitioner,*

vs.

YAMHILL COUNTY,  
*Respondent,*

and

SCOTT PICKER,  
*Intervenor-Respondent.*

LUBA No. 2023-057

FINAL OPINION  
AND ORDER

Appeal from Yamhill County.

Jeffrey L. Kleinman filed the petition for review and argued on behalf of petitioner. Also on the brief was William F. Paulus.

No appearance by Yamhill County.

Scott Picker represented themselves.

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

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

REMANDED 12/20/2023

You are entitled to judicial review of this Order. Judicial review is

1    governed by the provisions of ORS 197.850.

**NATURE OF THE DECISION**

Petitioner appeals a decision by the board of commissioners approving a permit for up to 18 events on land zoned exclusive farm use.

**FACTS**

Intervenor-respondent (intervenor) owns an approximately 320-acre farm that is zoned exclusive farm use (EFU) and includes a dwelling, a pole barn for cattle, two pole buildings, and three poultry barns. The southern boundary of the property is bordered by the Yamhill River, and the eastern boundary is bordered by the Willamette River. The property includes “farming activities with 4.5-acres of wine grapes, 165-acres of grass seed production, 90-acres of pasture for the [intervenor’s] longhorn cattle and 90-acres of former hazelnut trees recently converted into additional grass production.”<sup>1</sup> Record 18. Intervenor raises longhorn cattle for breeding stock, and also sells longhorn beef from cattle that do not qualify as breeding stock. Record 27, 169.

In February 2023, intervenor applied for permission to conduct on the property up to 18 “weddings, charity auctions, meetings, longhorn auctions and events to support nature/wildlife.” Record 19. Intervenor proposed to

“use [their] longhorn beef on the menu, [their] grapes and other crops will be available for specialty menu items throughout the

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<sup>1</sup> Our calculation of the total acreage identified as in farm use is approximately 349 acres.

1 season. The events will also be able to market our 220 head of  
2 longhorns as there are very few events on the west coast that allow  
3 us to market these large animals.” Record 181.

4 The planning director approved the application, and petitioner appealed the  
5 planning director’s decision to the board of commissioners. The board of  
6 commissioners held a hearing on the appeal and voted to approve the application,  
7 later adopting an order approving the application with findings. This appeal  
8 followed.<sup>2</sup>

## 9 **INTRODUCTION**

### 10 **A. Background**

11 Oregon land use law preserves land for agricultural uses by restricting uses  
12 allowed in EFU) zones to agricultural uses and certain non-farm uses that are  
13 compatible with farming. ORS 215.203.<sup>3</sup> ORS 215.283(4) provides that “[t]he

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<sup>2</sup> After the appeal was filed, the county withdrew the decision for reconsideration pursuant to ORS 197.830(13), and OAR 661-010-0021, and adopted a second decision approving the application. Record 13-38. Petitioner then appealed the reconsidered decision.

<sup>3</sup> ORS 215.203 provides, in part:

“(1) Zoning ordinances may be adopted to zone designated areas of land within the county as exclusive farm use zones. Land within such zones shall be used exclusively for farm use except as otherwise provided in ORS 215.213, 215.283 or 215.284. Farm use zones shall be established only when such zoning is consistent with the comprehensive plan.

“(2)(a) As used in this section, ‘farm use’ means the current employment of land for the primary purpose of obtaining a profit in

1 following agri-tourism and other commercial events or activities that are *related*  
2 *to and supportive of* agriculture may be established in any area zoned for  
3 exclusive farm use[.]” (Emphasis added.) ORS 215.283(4)(a) to (c) then set out  
4 the standards and criteria that apply to three different types of agri-tourism and  
5 other commercial events on EFU land, the maximum number of which is limited  
6 to six events per year, with defined limits on duration and numbers of  
7 participants. For more extensive uses that occur more frequently or for a longer  
8 period, ORS 215.283(4)(d) sets out the standards and criteria, and those events  
9 are limited to a maximum of 18 events per year.

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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. ‘Farm use’ includes the on-site construction and maintenance of equipment and facilities used for the activities described in this subsection. ‘Farm use’ does not include the use of land subject to the provisions of ORS chapter 321, except land used exclusively for growing cultured Christmas trees as defined in subsection (3) of this section or land described in ORS 321.267(3) or 321.824(3).”

1 Yamhill County Zoning Ordinance (YCZO) Section 1013 implements  
2 ORS 215.283(4). In the challenged decision approving up to 18 commercial  
3 events, the county applied YCZO 1013.01(A)(4)<sup>4</sup>, which implements ORS  
4 215.283(4)(d), which provides:

5 “In addition to paragraphs (a) to (c) of this subsection, a county may

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<sup>4</sup> YCZO 1013.01(A)(4) states:

“In the alternative to 1, 2 and 3 above, up to 18 events on a tract may be permitted in a calendar year subject to the following:

- “a. The events or activities are incidental and subordinate to existing commercial farm use of the tract and are necessary to support the commercial farm uses or the commercial agricultural enterprises in the area and;
- “b. Shall comply with Section 1013.01 (A) (3) (b) through (h) above;
- “c. Shall occur on a lot or parcel that complies with the acknowledged minimum lot or parcel size;
- “d. Permits approved under this subsection expire one year from the date of approval;
- “e. Such permits may be renewed at four year intervals subject to:
  - “(i). An application for renewal;
  - “(ii). Public notice and public comment as part of the review process; and
  - “(iii). Demonstration of compliance with conditions of approval and the standards of this subsection.”

1 authorize agri-tourism or other commercial events or activities that  
2 occur more frequently or for a longer period or that do not otherwise  
3 comply with paragraphs (a) to (c) of this subsection if the agri-  
4 tourism or other commercial events or activities comply with any  
5 local standards that apply and the agri-tourism or other commercial  
6 events or activities:

7 “(A) Are incidental and subordinate to existing commercial farm  
8 use of the tract and are necessary to support the commercial  
9 farm uses or the commercial agricultural enterprises in the  
10 area;

11 “(B) Comply with the requirements of paragraph (c)(C), (D), (E)  
12 and (F) of this subsection;

13 “(C) Occur on a lot or parcel that complies with the acknowledged  
14 minimum lot or parcel size; and

15 “(D) Do not exceed 18 events or activities in a calendar year.”

16 **B. Standard of Review**

17 In three assignments of error, petitioner challenges the board of  
18 commissioner’s interpretation of ORS 215.283(4) as implemented in YCZO  
19 1013.01. The assignments of error require us to interpret state law.

20 We review the county’s interpretation of state law and local law that  
21 implements state law to determine whether the county’s interpretation is correct,  
22 with no deference to the county’s interpretation. ORS 197.835(9)(a)(D); *Kenagy*  
23 *v. Benton County*, 115 Or App 131, 838 P2d 1076, *rev den*, 315 Or 271 (1992).  
24 In interpreting a statute, we examine text, context, and legislative history with the  
25 goal of discerning the intent of the governing body that enacted the law. *State v.*  
26 *Gaines*, 346 Or 160, 171-72, 206 P3d 1042 (2009); *PGE v. Bureau of Labor and*  
27 *Industries*, 317 Or 606, 859 P2d 1143 (1993). We are required to correctly

1 interpret the legislature’s intent, independently of the parties’ arguments. *See*  
2 ORS 197.805 (providing legislative directive that LUBA “decisions be made  
3 consistently with sound principles governing judicial review.”); *Weldon v. Bd. of*  
4 *Lic. Pro. Counselors and Therapists*, 353 Or 85, 91, 293 P3d 1023 (2012) (court  
5 has the obligation to correctly construe statutes, regardless of parties’ arguments);  
6 *Stull v. Hoke*, 326 Or 72, 77, 948 P2d 722 (1997) (“In construing a statute, this  
7 court is responsible for identifying the correct interpretation, whether or not  
8 asserted by the parties.”).

#### 9 **FIRST ASSIGNMENT OF ERROR**

10 In its first assignment of error, petitioner argues that the county improperly  
11 construed the applicable law in concluding that the activities proposed in the  
12 application are “related to and supportive of agriculture” as required by ORS  
13 215.283(4). ORS 197.835(9)(a)(D). Petitioner also argues that the county failed  
14 to make adequate findings supported by substantial evidence in approving the  
15 application. ORS 197.835(9)(a)(C).

16 The county first found that intervenor was not required to demonstrate that  
17 the proposed events on the farm are “related to and supportive of agriculture”  
18 because, in the county’s view, ORS 215.283(4) does not require such a  
19 demonstration. Record 21. Petitioner argues, and we agree, that the county’s  
20 interpretation of YCZO 1013 (and ORS 215.283(4), the statute it implements) is  
21 inconsistent with ORS 215.283(4), which allows the proposed events provided  
22 they are “related to and supportive of agriculture.” As explained above, we



1 review the county's interpretation of local code provisions that implement a  
2 statute to determine whether it is correct, with no deference owed to the county's  
3 interpretation. ORS 215.283(4) provides that "[t]he following agri-tourism and  
4 other commercial events or activities *that are related to and supportive of*  
5 *agriculture* may be established in any area zoned for exclusive farm use[.]"  
6 (Emphasis added.) YCZO 1013 includes nearly identical language. ORS  
7 215.283(4) requires a threshold showing that any of the permissible agritourism  
8 or other commercial events authorized on EFU land be "related to and supportive  
9 of agriculture[.]" whether a single event, six events, or up to 18 events. *Friends*  
10 *of Yamhill County v. Yamhill County*, 80 Or LUBA 135, 156 (2019), *rev'd and*  
11 *rem'd on other grounds*, 301 Or App 726, 458 P3d 1130 (2020). The county's  
12 conclusion to the contrary is inconsistent with ORS 215.284(4).

13       However, the board of commissioners found, in the alternative, that the  
14 proposed events "relate to and support" the agricultural activities on the subject  
15 property. Record 21-24. As noted above, intervenor proposed "Longhorn  
16 Auctions, Charity Events, Weddings, Meetings, Events to support  
17 Nature/Wildlife, [and] Reunions[.] Record 181. Petitioner argues that the  
18 proposed events and activities are not "related to and supportive of agriculture"  
19 because, as petitioner explains it, "[c]harity events relate to fundraising. A  
20 wedding relates to marriage. Meetings and reunions are about getting together.  
21 Events to support nature/wildlife are self-defining." Petition for Review 13.

1 Petitioner also argues that there is nothing in the decision that requires intervenor  
2 to include longhorn beef on a menu for an event.

3 The requirement in ORS 215.283(4) does not seem to us to be particularly  
4 onerous. It requires that an agri-tourism event on property zoned EFU must be  
5 “related to” and “supportive of” “agriculture.” “Related” means “having  
6 relationship : connected by reason of an established or discoverable relation.”  
7 *Webster’s Third New Int’l Dictionary* 1916 (unabridged ed 2002). “Related to”  
8 are contextual words to the term being given effect, which, here, is “agriculture.”  
9 *Kamps-Hughes v. City of Eugene*, 305 Or App 224, 236-37, 470 P3d 429 (2020).  
10 “Supportive,” defined as “furnishing support,” and “support,” defined as  
11 “actively promote the interests or cause of,” also adds context to “agriculture.”  
12 *Webster’s* at 2297. “Agriculture” is not defined in ORS Chapter 215. *Webster’s*  
13 defines “agriculture” as “the science or art of cultivating the soil, producing  
14 crops, and raising livestock \* \* \* and in varying degrees the preparation and  
15 marketing of the resulting products.” *Webster’s* at 44.

16 We disagree with petitioner that the board of commissioners improperly  
17 concluded that the proposed events and activities are related to and supportive of  
18 agriculture. The board of commissioners found that intervenor markets and sells  
19 some of its longhorn cattle beef through “specific individual requests that come  
20 from customers who learn about the cattle at [intervenor’s] events. \* \* \* [T]he  
21 [b]oard finds the testimony and evidence in the record persuasive and credible  
22 that [intervenor’s] events are related to the agriculture (raising longhorns) on the

1 subject property.” Record 22. A condition of approval requires intervenor to  
2 provide promotional materials at each event. Record 16. That is sufficient to  
3 establish that the events are related to and supportive of agriculture within the  
4 plain, ordinary meaning of those words.

5 The first assignment of error is denied.

## 6 **SECOND ASSIGNMENT OF ERROR**

7 In its second assignment of error, petitioner argues that the county  
8 improperly construed the applicable law in concluding that the activities  
9 proposed in the application are “necessary to support the commercial farm uses  
10 or the commercial agricultural enterprises in the area” within the meaning of ORS  
11 215.283(4)(d)(A) and YCZO 1013.01(A)(4)(a). Petitioner also argues that the  
12 county’s findings that the events are necessary to support the commercial farm  
13 uses are not supported by substantial evidence.

14 In *Friends of Yamhill County*, we construed the requirement in ORS  
15 215.283(4)(d)(A) that the applicant demonstrate that the activities proposed are  
16 “‘necessary to support’ either the commercial farm uses or the commercial  
17 agricultural enterprises in the area” to require that an applicant demonstrate that  
18 “the events are essential in order to maintain the existence of either the  
19 commercial farm or the commercial agricultural enterprises in the area.” 80 Or  
20 LUBA at 156. Here, the board of commissioners found that “[intervenor] has  
21 demonstrated that the agri-tourism events are essential to maintaining the  
22 existence of the commercial longhorn cattle use of the subject farm.” Record 27.

1 The board of commissioners relied on evidence in the record that the beef from  
2 the longhorn cattle operation on the property is difficult to market and sell and  
3 that selling the beef in a general auction results in a significant economic loss per  
4 cow. Record 27-28. The board of commissioners relied on intervenor's testimony  
5 that "they cannot run a profit for their beef cattle operations by following the  
6 normal processes in the cattle industry." Record 28.

7 Petitioner argues, and we agree, that where it is undisputed that multiple  
8 farm uses are occurring, the board of commissioners improperly construed ORS  
9 215.283(4)(d)(A) to allow it to evaluate only a discreet, single farm use on the  
10 property. Petition for Review 20-21. As noted, the approximately 320-acre  
11 property includes as farm uses 90 acres of former hazelnut trees being converted  
12 into grass seed production, 165 acres of grass seed, and four and one-half acres  
13 of wine grapes, in addition to the 90 acres of longhorn cattle breeding and beef  
14 sale farm use. *See* n 1. "The commercial farm uses" as that phrase is used in ORS  
15 215.283(4)(d)(A) include all farm uses occurring on the property. In evaluating  
16 a single farm use on a 320-acre property on which multiple farm uses are  
17 occurring, the board of commissioners did not determine whether the proposed  
18 events are "essential in order to maintain the existence of \* \* \* the commercial  
19 farm." *Friends of Yamhill County*, 80 Or LUBA at 156.

20 Relatedly, petitioner argues that there is not substantial evidence in the  
21 record to support the county's conclusion that the proposed activities are essential

1 to maintaining either the longhorn cattle breeding farm use or the existence of the  
2 commercial farm as a whole. We agree.

3 First, petitioner points out that intervenor could conduct sale of its cattle  
4 for beef on the property without need for approval under ORS 215.283(4)(d)(A),  
5 because the sale of cattle qualifies as a “farm use” permitted outright on land  
6 zoned EFU. ORS 215.203(2)(a) (identifying the sale of livestock as a farm use).  
7 Petitioner also points out that intervenor’s longhorn cattle farm use includes two  
8 components – breeding for breeding stock and sale of longhorn beef – and that  
9 the county’s findings are that the longhorn operation includes those two  
10 components. Record 27. Petitioner points out that intervenor’s testimony is that  
11 the development and sale of cattle for breeding stock is the primary cattle  
12 operation, while the sale of beef from cattle that are not suitable for breeding is a  
13 secondary operation. Record 169.

14 We agree with petitioner. The county relied on intervenor’s testimony that  
15 selling the cows that are “determined not to be suitable for as registered long horn  
16 cattle” at an off-site auction resulted in a loss on each cow of \$400, and that  
17 “selling portions of a longhorn cows directly to consumers, in either quarter,  
18 halves or wholes, and then having a mobile butcher process the meat for the  
19 customer, is the only way they can run a profit with their longhorn *beef*

1 operation.” Record 27-28 (emphasis added).<sup>5</sup> However, the county’s findings do  
2 not identify any evidence in the record regarding the profitability of the longhorn  
3 cattle breeding operation, or of the other farm uses on the property. Absent any  
4 findings or evidence regarding those other farm uses, we agree with petitioner  
5 that the county’s findings that the events are “necessary to support the  
6 commercial farm uses,” that is, “essential in order to maintain the existence of  
7 \* \* \* the commercial farm” are not supported by substantial evidence in the  
8 record. ORS 215.283(4)(d)(A); *Friends of Yamhill County*, 80 Or LUBA at 156.

9 The second assignment of error is sustained.

### 10 **THIRD ASSIGNMENT OF ERROR**

11 ORS 215.283(4)(d)(B) requires an applicant to demonstrate that ORS  
12 215.283(4)(c)(E) is met. ORS 215.283(4)(c)(E) requires that the proposed  
13 agritourism events or activities “[m]ay not, in combination with other agri-  
14 tourism or other commercial events or activities *authorized in* the area, materially  
15 alter the stability of the land use pattern in the area[.]” (Emphasis added.) The  
16 statute thus requires an applicant to provide evidence sufficient to demonstrate  
17 that the cumulative impacts of the proposed events combined with other  
18 authorized agritourism and commercial events or activities in the area will not

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<sup>5</sup> The county also relied on intervenor’s testimony that in intervenor’s opinion, “the only way to make a profit with their longhorn beef operation is through direct sales from such agri-tourism events, which will include an annual on-site auction.” Record 28.

1 materially alter the stability of the land use pattern. YCZO 1013.01(A)(3)(g)  
2 implements ORS 215.283(4)(c)(E) in nearly identical language.

3         Petitioner first challenges the board of commissioners' finding that YCZO  
4 1013.01(A)(3)(g) is a local standard that has no analog in state law.<sup>6</sup> Record 31.  
5 Petitioner argues that the board of commissioners' conclusion that YCZO  
6 1013.01(A)(3)(g) is a local standard with no analog in state law is wrong, and we  
7 agree with petitioner. As explained above, the local standard implements ORS  
8 215.283(4)(c)(E). We review any interpretations of state law to determine  
9 whether they are correct.

10         Petitioner next argues that the board of commissioners' findings that the  
11 proposed activities will not materially alter the stability of the land use pattern in  
12 the area are inadequate, and not supported by substantial evidence. For the  
13 reasons explained below, we agree.

14         Petitioner argues that there is no evidence in the record identifying "the  
15 area." Petitioner points out that the findings at Record 32 identify "the greater  
16 area north of the Yamhill River and [w]est of the Willamette River[,]" and argues  
17 that that area includes most of the county's wine country, which includes multiple  
18 commercial activities that the findings do not mention. Petition for Review 31.

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<sup>6</sup> The board of commissioners interpreted the standard to require the proposal "not to, either in combination with other *permitted* agri-tourism or other commercial events or activities in the area, materially alter the stability of the land use pattern in the area." Record 31 (emphasis in original).

1 We understand petitioner to argue that if “the area” is essentially the county’s  
2 wine country, then the identification of “other agri-tourism and other commercial  
3 events or activities authorized in the area” is incomplete and inaccurate. ORS  
4 215.283(4)(c)(E).

5 Petitioner also argues that the board of commissioners improperly  
6 identified farm uses rather than commercial activities. We agree. The findings  
7 refer to “farm uses in the surrounding area,” rather than commercial uses, and  
8 conclude that based on intervenor’s consultation with “all of his neighbors who  
9 are farmers,” the proposed events will not interfere with those farm uses or  
10 “cause[] them to alter their land use patterns or practices.” Record 31. As  
11 explained below, that is not the correct analysis.

12 Petitioner next argues, and we agree, that the board of commissioners’  
13 finding that no farmers from the area opposed the application is not substantial  
14 evidence that the standard is met, and improperly shifted the burden to petitioner  
15 to demonstrate that the standard was *not* met. Record 32. Petitioner also argues  
16 that the board of commissioners improperly construed ORS 215.283(3)(c)(E) in  
17 considering only one *nonagricultural* commercial activity, the Del Mar Villa,  
18 when the statute requires consideration of “other agritourism or other commercial  
19 events or activities authorized in the area.” Record 32. Again, we agree.

20 The statute requires an applicant to (1) identify “the area,” (2) identify  
21 “other agri-tourism or other commercial events or activities authorized in the  
22 area,” (3) identify the land use pattern in the identified area, and then (4) establish



1 that the proposed events, in combination with other authorized agri-tourism or  
2 other commercial events, will not materially alter the stability of that land use  
3 pattern. The board of commissioners' conclusion that "the surrounding area will  
4 remain predominantly in agricultural and rural residential use if the application  
5 is approved" is not responsive to the standard. Record 33.

6 The third assignment of error is sustained.

7 The county's decision is remanded.