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July 21, 2023

P18377-001

Hearings Officer Alan Rappleyea
c/o Multnomah County Land Use Planning Dept.
1600 SE 190th Ave
Portland, OR 97231
lup-hearings@multco.us

Re: *File No. T2-2021-14981 (12424 NW Springville Road Hearing)*
Applicant's Final Argument

Dear Mr. Rappleyea,

In reviewing the surrebuttal materials submitted on July 14, 2023, it is interesting that the only people that seem to be against this application are staff and two land use activists who live 3.2 and 8.1 miles away from the property. In contrast, four of Mr. Reed's immediate neighbors submitted letters of support. LUBA Rec. 700-706. One of these letters is from a farmer who lives next door to the east, Louie Beovich. LUBA Rec. 701. Mr. Beovich has farmed his 93 acres for over 50 years and expressed support for Mr. Reed's application to build a farm dwelling. The Talbot family, who lives across the street, stated that they "watched [the subject property] transformed from abandoned buildings and neglected farmland, into something special, thanks to Scott Reed." LUBA Rec. 704. Neighbor Joe Hazel stated that the Reed Family "will be a great value to our neighborhood and community."

You would think that the County staff would be more appreciative of anybody who wants to work the land as a commercial farm operation. But rather than give Mr. Reed a medal, staff has unfairly opposed him at every opportunity. Fortunately, the Hearings Officer rejected the vast majority of staff's arguments in its initial decision. There are only three issues that remain on remand, and it appears from the hearing that two of those three issues are resolved. The only real bone of contention is staff's demand for proof of past income.

We argued, both to LUBA and on voluntary remand, that the production capacity test does not require that the applicant to show proof of past income. We continue to emphasize that point herein. We understand why the Hearings Officer may have misunderstood the test, because the issues were not briefed as well as they could have been. But the Hearings Officer now has the benefit of detailed legal analysis which makes abundantly clear that the production capacity test is a test that looks to the future, not the past. No proof of past farm income is required. Furthermore, even if such proof is required, the substantial evidence test does not limit the Hearings Officer to accepting only a filed Schedule F.

Having said that, we have also made good faith attempts to satisfy staff that Mr. Reed produces sufficient income to exceed the median potential income of the farms within one mile based on the indicator crops. That median figure is $15,722.15. LUBA Rec. 361. We think there is more than enough unrebutted evidence to show that Mr. Reed's Farm generates more than this amount. In fact, although Mr. Reed admitted at the hearing that ever-increasing raptor predation of the chickens has caused him to redesign the movable enclosures, Mr. Reed continues to believe that he will eventually be able to produce over 500,000 eggs per annum.

I. The Arguments Made By Both Staff and the Opponents Are Premised on Mistaken Idea that OAR 660-033-0135(2) Requires Proof of Past Income Prior to Land Use Approval.

In its submittal dated July 14, 2023, staff states that "[t]he new testimony focuses on compliance with the farm income standard for farm dwellings in MCC 39.4265(B)(3) (2021)." Note that MCC 39.4265(B)(3) is the same as OAR 660-033-0135(2), so from here on we will use the References to the OAR. The problem for staff is that there is no "farm income standard" in MCC 39.4265(B)(3) (2021). Staff has never even attempted to offer any of legal argument supporting their position that OAR 660-033-0135(2) contains a farm income standard.

Perhaps it is not surprising that staff has made no attempt to defend their interpretation. After all, their interpretation is that the "production capacity" test set forth at ORS 660-033-0135(2) requires the same type of proof of past farm income as the "past farm income" test set forth in OAR 660-033-0135(3). But that interpretation makes OAR 660-033-0135(2) essentially superfluous.

Besides the actual working of OAR 660-033-0135(1)-(3), which we discuss in our brief, the best indication of the intent of the law comes from the DLCD publication entitled "Rules for Farm Dwellings, March, 1994." In a key passage copied to the right, DLCD points out that once the determination has been made, that the property in question is a "farm." There are essentially three tests to get a farm dwelling: (1) the "size test," also known as the "large tract dwelling test," (2) the "capacity test," and (3) the "farm income test."

What is a farm?

To be considered a farm, a tract first must be in "farm use." Oregon's land use laws define that term in ORS 215.203. The definition is quite broad. It includes almost every type of crop, orchard, and livestock production.

But just because a tract is in farm use does not mean it's a farm. Consider, for example, the five-acre parcel mentioned above. Raising cattle is a farm use, but the presence of one cow does not make the five-acre parcel a farm.

In contrast, consider a 500-acre tract with rich irrigated soils, producing hundreds of thousands of dollars of crops each year. This surely is a farm. Three main attributes distinguish it from the five-acre parcel that is not:

1. Size — The tract is large enough to demand the attention and labors of at least one household (the occupants of a farm dwelling). It includes enough farmland to make a significant contribution to the area's agricultural economy.

2. Capability — The tract has a combination of soils, water, and other features that makes it capable of producing significant amounts of crops or other farm products in the future.

3. Income — The tract already has produced significant amounts of agricultural products, as measured by its gross income from the sale of such products.

The rules for new farm dwellings are based on these three attributes. They enable planners to get a clear, objective answer to the question "Is this a farm, or is it merely land that is being farmed?" The table on the next page outlines the key standards and shows where they apply. ☞

Note that the "size" test requires no proof of *past or future* farm income. Rather, if the farmer has the necessary acreage, he or she gets the dwelling, so long as the property is a "farm." Likewise, the "production capacity" also does not require proof of *past* income. Rather, it requires a combination of acreage and good soils, water, etc., such that it ranks favorably as compared to farms in a one-mile area. Note that DLCD specifically states that the production capability test grants a farmer the right to build a farm dwelling on a tract that "has a combination of soils, water, and other features that makes capable of producing significant amounts of crops or other farm

products *in the future*." *Id.* (Emphasis added). So again, there needs to be some farm activity, but no proof of past income.

Finally, the income test is for farms that are too small to qualify for the other two tests. DLCD notes that this test is for a tract that "has already produced significant amounts of agricultural products, as measured by its gross income from the sale of such products."

Staff never even bothers to offer an explanation of how its demand for past income is consistent with the language of the statute or the 1994 DLCD publication. Nor can it.

We implore the Hearings Officer to demonstrate more diligence than staff did in this case. The Hearings Officer should compare the precise wording that LCDC used when creating the three different farm dwelling tests. In particular, LCDC was careful with regard to the use of future tense vs. past tense when it enacted the three farm dwelling tests, and this is a strong indication of legislative intent. *See Martin v. City of Albany*, 320 Or 175, 880 P2d 926 (1994) ("The use of a particular verb tense in a statute can be a significant indicator of the legislature's intention."). This chart shows the different usage of past and future tense with regard to farm use:

OAR 660-033-0135(2)(a) Production Capacity Test	OAR 660-033-0135(3) Past Income Test
(C) The subject tract is currently employed for a farm use, as defined in ORS 215.203, *at a level **capable of** producing the annual gross sales* required in paragraph (B) of this subsection;	(a) The subject tract is currently employed for the farm use, as defined in ORS 215.203, on which, *in each of the last two years or three of the last five years, or in an average of three of the last five years, the farm operator **earned** the lower of the following:* *(A) At least $40,000 in gross annual income from the sale of farm products*,
(F) The dwelling will be occupied by a person or persons *who **will be** principally engaged in the farm use of the subject tract*, such as planting, harvesting, marketing or caring for livestock, at a commercial scale	(c) The dwelling will be occupied by a person or persons ***who produced** the commodities that grossed the income in subsection (a) of this section*; and

As we have pointed out on previous occasions, the "production capacity" test is written in future tense, whereas the "past income" test is written in the past tense. Whereas the production capacity test looks to the future by requiring that the person who occupies the dwelling "*who will be principally engaged in the farm use of the subject tract,*" the "past income" test looks to the past by requiring the dwelling to be occupied by the person "*who produced the commodities that grossed the income in subsection (a) of this section.*" When the legislature uses different terms in related statutes, the court presumes that the legislature intended different meanings. *PGE v. BOLI*, 317 Or at 611; *State v. Guzek*, 322 Or 245, 906 P2d 272 (1995); A promulgating body's use of "different terms in related portions" of its enactments generally signifies that "different meanings

likely were intended." *State v. Adams*, 315 Or 359, 365, 847 P2d 397 (1993); *DLCD v. Curry County*, 132 Or App 393, 888 P2d 592 (1995). Pre-*PGE*, the court also employed this maxim. *See, e.g.*, *State v. Adams*, 315 Or 359, 847 P2d 397 (1993); *Emerald PUD v. Pacific Power & Light Co.*, 76 Or App 583, 711 P2d 179 (1985), *aff'd*, 302 Or 256, 269, 729 P2d 552 (1986).

As previously discussed, OAR 660-033-0135(2)(a)(G) states:

> *(G) If no farm use has been established at the time of application, land use approval shall be subject to a condition that no building permit may be issued prior to the establishment of the farm use required by paragraph (C) of this subsection.*

Unfortunately, the Hearings Officer previously read OAR 660-033-0135(2)(a)(G) as only having applicability where a farm use has not yet been established. The Hearings Officer stated:

> The Hearings Officer finds that this section is not applicable. This section is used for an applicant that has not begun a farm operation yet. Here we have an established farm use that should be able to produce definitive evidence through the submittal of its Schedule F.

Rec. 17. Fortunately, the Hearings Officer is presented with a unique opportunity to correct its prior mistake. The Hearings Officer was previously not provided with good briefing on the topic, but that is no longer the case. *See* Exhibit R.1, (LUBA Brief) R.10. and R.11 (LUBA Brief Exhibits).

To recap: the Hearings Officer unfortunately conflated the two tests. To get there, he simply read the first clause of OAR 660-033-0135(2)(a)(G) in isolation and concluded that this subsection did not apply since the applicant clearly had an existing operational farm use. This is incorrect. As DLCD Notes, having some sort of a "farm" operation is a perquisite for the application (i.e. one cow is not a farm), but it does not have to a farm that produces any specific level, and it does not have to be the same type of farm operation that will produce the income in the future.

Perhaps the quickest way to misread a statute is to read it in isolation. The Oregon Supreme Court has often admonished practitioners that "text should not be read in isolation but must be considered in context." *Stevens v. Czerniak*, 336 Or 392, 401, 84 P3d 140 (2004). As Oregon courts have noted, "[i]t is true that the context of a statute or statutory scheme can sometimes reveal an ambiguity in a particular phrase that, standing alone, appears to have a clear meaning. *See Dennehy v. City of Portland*, 87 Or App 33, 40 (1987)." *Southwood Homeowners Ass'n v. City Council of Philomath*, 106 Or App 21, 24 (1991). The meaning of subsection 0135(2)(a)(G) only becomes clear when it is read in its broader statutory context, including the caselaw that interpreted their predecessor language.

Furthermore, the Hearings Officer read an unwarranted implied negative into OAR 660-033-0135(2)(a)(G). The Hearings Officer found that this section is used for an applicant that has not begun a farm operation yet, and since Petitioner has a farm operation, that this section simply does not apply. LUBA Rec. 17. In this regard, he viewed the operation of OAR 660-033-

0135(2)(a)(G) as presenting a binary choice: either the applicant *does not* have an existing farm, in which case subsection 0135(2)(a)(G) applies, or the applicant *does* have an existing farm operation, in which subsection 0135(2)(a)(G) does not apply. In the latter situation, the Hearings Officer viewed OAR 660-033-0135(2)(a)(C) as requiring proof of past income to show that the "current employment" test is met. That is incorrect.

The Hearings Officer's error comes into clear focus upon consideration that if the law had intended that binary choice that he suggested, Petitioner could have simply stopped farm production prior to the submittal of the application, and thereby availed itself of subsection 0135(2)(a)(G). Of course, that would advance no apparent purpose, and it is more correct to interpret subsection 0135(2)(a)(G) as encompassing a situation where a farm use exists, but it is not yet at the level where it is "capable of producing the annual gross sales required by [OAR 660-033-0135(2)(a)(B)]."

It may be that the Hearings Officer was attempting to apply the familiar interpretive principle of *expressio unius est exclusio alterius* (the expression of one thing implies the exclusion of others). *See, e.g., Waddill v. Anchor Hocking, Inc.,* 330 Or. 376, 381–82 (2000) (applying canon). *Fisher Broadcasting, Inc. v. Dept. of Rev.,* 321 Or 341, 353 (1995) (same). However, that negative inference is not compelled by the language when properly read in context, and the interpretive inference gives way to other, more direct, and contrary evidence of legislative intent.

The Hearings Officer lost sight of the fact that "[t]he cardinal rule for the construction of a statute is to ascertain from the language thereof the intent of the lawmakers as to what purpose was to be served, or what object was designed to be attained." *Whipple v. Houser*, 291 Or 475, 632 P2d 291 (1981). The purpose of the "production capability" test is to provide a limited opportunity to a certain class of farmer (*i.e*. one who owners less than 160 acres but more than the median acreage in his area) to obtain a farm dwelling before it has a proven track record of farm income. Most obviously, the purpose of OAR 660-033-0135(2) is not furthered by limiting the application of subsection 0135(2)(a)(G) to only the situations where no farm use is occurring on-site. Under the Hearings Officer's analysis, a farmer who puts one potato in the ground doesn't qualify, while a farmer who has yet to do so does. That interpretation does not advance any Goal 3 policy.

To the contrary, under the "production capability" test, the farm dwelling may be allowed even though the farm use is only partially up and running, when it is clear that that the property will support a higher level of operational capability. Likewise, the farm dwelling may be allowed even though an existing farm use is operational, but the applicant proposes a different farm use to demonstrate the capability of meeting the "currently employed" criterion. *Compare Rebmann*, 19 Or LUBA at 310-11 (applying OAR 660-05-030(4), which was the version of the "currently employed" criterion in effect from 1986-1993).

Given the applicable law, the Hearing Officer must conclude that Petitioner's 84.43-acre property, which features mixed class II-VI soils, is an easy shoe-in approval under the production capacity test, because it is so much larger than the median farms in area capable of making over $10,000 in the sale of farm products.[1] Rec. 361 (showing the median gross income capability

[1] Petitioner adroitly noted that "if your subject farm is significantly bigger than neighboring farms, you are always going to pass the test." LUBA Rec. Tape from Hearing, Min. Ctr. 52:00.

based on indicator crops of farms in the area ($15,722.15) and comparing it to the applicant's tract ($26,722.14). He would have then determined the level of farm activity that would need to be "established" on the subject property to reach the level required by subsection 0135(2)(a)(B)&(C), and fashioned an appropriate condition requiring that level of farm establishment prior to the issuance of the building permit. That could have entailed a condition requiring some easily verified benchmark such as proof of the establishment of an egg farm capable of producing some set number of eggs, etc. In this regard, we have stated that we are willing to provide the final Schedule F when it is filed with the IRS, along with proof of filing.

The bottom line is this: given the statutory context, no reasonable attorney would argue that the production capacity test requires proof of past income.

II. The Evidence Provided by the Applicant is Both Substantial and Unrebutted.

1. Staff and the Opponents Both Mistakenly Believe that a Tax Preparer is an "Auditor" Who "Reviews the Data for Accuracy."

Staff previously stated that it wanted to see the applicant's Schedule F. The applicant previously stated that his 2023 taxes would not be submitted to the IRS until September 2023, so a draft Schedule F is all we can provide at this time. The applicant submitted a draft Schedule F for 2022 prepared by the farm's accountant. Exhibit S.3. The important thing to take away from the draft Schedule F is that it matches the financial information previously provided to the Hearings Officer at Exhibit R2, R3, and R6. The accountant acknowledged receipt of this information and indicated his willingness to prepare the Schedule F based on this undisputed data. This same accountant prepares the rest of Mr. Reed's returns, which, as Mr. Reed noted, are quite complex and encompass over 100 pages.

Now staff states that a *draft* Schedule F is not good enough, even though it is accompanied by a letter from an accountant stating that he is using the same farm income data that the applicant submitted to the hearings officer to prepare the Schedule F. Exh. T3. However, there is no serious question the income data is truthful. At this point, we know that Line 2 (Farm Income) of the Schedule F will not change, because we have provided the Hearings Officer with all of the existing evidence on which the draft Line 2 was derived. Exhibit R2, R3, and R6. If the Hearings Officer is concerned that Mr. Reed is going to somehow pull the "ole' switch-a-roo" and file a different Schedule F with the IRS, the Hearings Officer can add a condition of approval allowing the County to withhold the building permit until the final Schedule F is submitted – and require that the final Schedule F set forth the same number is Line 2 as the draft submitted as Exhibit R7. County should accept that data.

Carol Chesarek, who is obviously unfamiliar with how tax preparers operate, acts bewildered when she states that "the largest egg producer in Multnomah County could not provide his CPA with receipts or invoices for use in preparing his Schedule F." Exhibit T.2. The short answer is that Mr. Reed's farm operation takes a "back to the basics" approach: the sales are all done with cash or checks, and the accounting is all done by pen and paper…. just like in the old days. There is nothing unusual or illegal about that approach.

Furthermore, both staff and Ms. Chesarek confuses the job of a bookkeeper with the job of a tax preparer. A tax preparer is someone who has an IRS Preparer Tax Identification Number (PTIN), and is therefore authorized to prepare federal tax returns. At least with regard to complex returns, a tax preparer is typically an enrolled agent or CPA. These professionals do not look through receipts or otherwise compile financial data from their client, as Ms. Chesarek asserts. Rather, the tax preparer is typically provided information in the form of spreadsheets or tables, and the tax preparer uses that data to generate the tax forms. See Exhibit 1. Importantly, a tax preparer is not an income auditor – they do not verify that the income numbers they are provided are correct. If they get bad data from the client, the return they prepare will be wrong.

Having said that, a tax professional does have a duty to not knowingly or recklessly file fraudulent returns. As a result, they will sometimes make inquiries of their client's income if, for example, the "income" numbers are grossly out of whack as compared to the "lifestyle" numbers. In this regard, the mantra of the tax professional is "know your client," and honest tax preparers will not work for the mob, drug dealers, or others who seek to launder ill-begotten money. But short of that, a tax preparer will not be in the field counting eggs or counting cash receipts from clients. For this reason, the Schedule F is really only a "check" in the sense that it is crime to file a fraudulent tax return. But here, the income numbers match up quite nicely with the asserted number of chickens, which is to say that a flock of three hundred laying hens can easily generate $40K+ in egg sales. So fraud is not a valid concern.

Staff states:

> Additionally, although it was not discussed in the prior hearing, submission of Schedule F is not the only means by which an applicant may demonstrate compliance with farm income test criteria. Other types of financial documentation may be accepted. For example, as an alternative to Schedule F, a financial statement prepared by a Certified Professional Accountant demonstrating sufficient farm income under the code could suffice.

Exhibit R.7. That is precisely what Exhibit S-3 seeks to accomplish. While it is true that the letter from the accountant states that they "have not audited, reviewed, or otherwise verified the information you have provided," that will still be true when the final Schedule F is submitted to the IRS. In short, it is simply beyond the scope of the services provided by a tax preparer. Therefore, staff takes away an incorrect conclusion when it states that "[t]he CPA letter acknowledges receipt of the Applicant's farm sales data, but the accountant notes that they have not reviewed the data for accuracy, as the Applicant's 2022 tax return is not final." Exh. T3. In that sentence, staff tacitly admits that it believes that "reviewing the data for accuracy" is part of the accountant's charge, but that is simply wrong. What the accountant is telling Mr. Reed in that letter (and by extension, the Hearings Officer) is that the tax preparer's role is not to verify income data.

2. <u>Mr. Foster is Incorrect to Assert that a "Survey of Retail Egg Prices is Immaterial."</u>

In his letter dated July 11, 2023, Mr. Foster states that a "survey of retail egg prices is immaterial." Exh. T.1. That is simply not true. We submitted that evidence to make sure we did not face the same problem as the hay farmer in *Chapman v. Marion County*, 60 Or LUBA 377

(2010). In that case, the applicant applied for a farm dwelling using the past income test as the basis for the approval. The applicant claimed to have generated $80,000 a year from hay grown on 19 acres, but those numbers simply did not add up based on the size of the property and the retail price of hay. Here, in contrast, the evidence proposed by the applicant shows that it is feasible to generate $40,000.00 in egg sales a year from roughly 300 hens. The purpose of the evidence of the retail price of eggs to show that it is reasonable to sell farm-raised eggs at $6.00 a dozen. So Mr. Foster's testimony provides no basis for a denial.

Mr. Reed previously submitted photographs showing dozens of chickens in the pasture on the subject property. Rec. 324. On remand, Mr. Reed submitted receipts showing the purchase of 101 chicks on May 18, 2021, another 300 chicks on August 19, 2021, and 250 chicks on March 16, 2022. Why anyone would buy 651 vaccinated chicks over a ten-month period of time if they are not raising them for profit is incomprehensible. Ms. Cheserak suggests, comically, that Mr. Reed might be "donating" the eggs for a tax deduction, or feeding them to pigs that don't exist, or plowing them into the ground as fertilizer. *See* Chesarek Letter dated July 7, 2023, at p. 2. Exh. R.13. Getting even more imaginative, Ms. Chesarek suggests that perhaps Dr. Stacy Reed gives the eggs away to her dermatology clients. We are somewhat surprised that Ms. Chesarek did not suggest that Mr. Reed gives the eggs away to space aliens. In any event, Ms. Chesarek's speculations do not constitute substantial evidence.

Mr. Reed's Schedule F also shows that he purchased $9,529 worth of feed in 2023 for their goats and chickens. That equates to roughly 10,000 lbs of food every 6 months. Ms. Chesarek's theory appears to be that the Reeds purchase all of these chicks and all of this food in order to give away the resulting eggs, which makes no sense.

3. <u>Mr. Foster's Analysis of the Applicant's 2014 Tax Return is Not Relevant to the Scope of the Remand.</u>

We provided a copy of the previously-submitted 2014 Schedule F for the sole purpose of demonstrating that Ms. Chesarek was lying when she stated that "the applicant has consistently refused to provide proof of commercial income for years." Mr. Reed stopped providing these forms because the County proved to be incompetent in handling confidential, sensitive information.

Mr. Foster attempts to attack the veracity of the Schedule F, which is pointless. That Schedule F is not material to the remand other than to show that Mr. Reed has been experimenting with different ways to make farm income on the property since at least 2013.

Staff also misrepresents the truth when it states that the "[t]he Applicant's new testimony includes a Schedule F (2014) <u>*filed by a previous property owner*</u> for a former beef and dairy operation * * *." Exh, T.3. Staff should not lie about things that are so easily proven false, because the 2014 Schedule F itself lists the "proprietor" as "Scott L. Reed," who is obviously not a "previous owner." Of course, we had to redact the social security number because staff can't be trusted to handle confidential materials. It is unclear why staff would seek to misrepresent the record to the Hearings Officer, but if it is an honest mistake, staff needs to admit that on the record.

It is true that Mr. Reed did buy the property in June of 2014, but recall that he leased the property for over a year prior to that. Also recall that this farm had sat idle for roughly 30 years prior to the time Mr. Reed bought it. Since that time, Mr. Reed has been recognized by his peers to the extent that he has been elected to the board of the Multnomah County Farm Bureau. If Mr. Reed was truly not farming, the County's most active farmers surely would not have elected him to this position.

4. Ms. Chesarek Confuses an Egg Retailer with an Egg Wholesaler.

Ms. Chesarek points out the obvious when she states that "retail egg prices are not identical to wholesale prices, so are not relevant to proof of farm income." Exhibit T.2. Apparently, Ms. Chesarek mistakenly believes that the farm income test requires that a farmer be a wholesaler. However, even assuming the applicant was applying under the farm income test, which he isn't, the farm income test does not operate the way she believes. Barring the implicit requirement that the gross income be derived from honest good-faith market-level transactions (as opposed to, say, for example, an undisclosed source paying $500,000 for a Hunter Biden painting), there is no prohibition on the sale being "wholesale vs retail." Here, Mr. Reed sells eggs at retail for $6.00 per dozen, and for many of his customers, that price includes free delivery.

III. Exhibit 1 & Precautionary Motion To Take New Evidence.

Exhibit 1 is not new evidence; rather, it is merely analysis intended to correct the mistaken argument and assumption made by staff and opponents when they assert that the draft Schedule F is not sufficient because it does not involve the "verification" of information provided by a client by a tax professional. ORS 197.796(9) defines "Argument" as "assertions and analysis regarding the satisfaction or violation of legal standards." Evidence is defined as facts, documents, data or other information offered to demonstrate compliance or noncompliance with the standards believed by the proponent to be relevant to the decision, per OAR 197.797(9)(b). The Schedule F is the evidence, and this attached letter merely involves a discussion of how to correctly interpret that evidence.

If the Hearings Officer believes that Exhibit 1 constitutes evidence, then we request the record be reopened to accept this letter. All parties have a statutory right to rebut evidence presented by other parties. *Fasano v. Washington Co. Comm.*, 264 Or 574, 507 P2d 23 (1973). Where parties are denied the opportunity to rebut evidence that is relevant to applicable approval standards, their substantial rights can be prejudiced. *Caine v. Tillamook County*, 25 Or LUBA 209, 214 (1993); *Friends of the Hood River Waterfront v. City of Hood River*, __ Or LUBA __ (LUBA No. 2012-050, March 13, 2013). In this regard, ORS 197.797(6)(c) sets forth rules intended to prevent prejudice to the parties:

> If the hearings authority leaves the record open for additional written evidence, arguments or testimony, the record shall be left open for at least seven days. Any participant may file a written request with the local government for an opportunity to respond to new evidence submitted during the period the record was left open. If such a request is filed, the hearings authority shall reopen the record pursuant to subsection (7) of this section.

IV. Conclusion.

In conclusion, we ask that the Hearings Officer consider the legal analysis presented here and make a decision consistent with applicable law, rather than basing his decision off an out-of-context misunderstanding of the relevant OAR. While two people that live far away from the farm and have never visited it feel very strongly about preventing the construction of a family home there, we hope that the Hearings Officer will understand that all requirements and regulations have been met, and side with the neighbors that surround and support the farm and this application (as shown in exhibits D2 through D5) over the persistent misunderstandings and conspiracy theories presented by Ms. Chesarek and Mr. Foster.

Thank you for your attention and diligence in this matter.

Sincerely,

VIAL FOTHERINGHAM LLP

/s/ *Andrew H. Stamp*

Andrew H. Stamp
Attorney for the Applicant

ASTA\nbro
Enclosure
cc : Client

RF Associates llc
CERTIFIED PUBLIC ACCOUNTANTS

July 21, 2023

Scott & Stacy Reed
13305 NW Cornell Road, Suite C
Portland, OR 97229

Re: 2022 Schedule F – Profit or Loss From Farming

Dear Mr. Reed,

You have brought to our attention that County staff reviewed our July 7, 2023 letter and brought up issue with our statement that we have not audited, reviewed or otherwise verified the information you have provided, especially given that the tax returns have not been filed. Based on that narrative, it does appear there is a misunderstanding of the role of a tax preparer.

As a tax preparer, our role is to rely on information furnished by our clients in completing their tax filings. We may rely in good faith without verification upon information furnished by the client. With said, we are required to exercise due diligence in preparing and filing tax returns and make reasonable inquiries if any information furnished to us appears to be incorrect, incomplete, or inconsistent with other facts or assumptions.

If you have any questions, feel free to email me at tbethell@rfacpas.com.

Thank you,

Taylor Bethell, CPA
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