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June 23, 2023

Multnomah County Land Use Planning
1600 SE 190th Avenue
Portland, OR. 97231

Submitted by e-mail:
lup-hearings@multco.us

Re: LUBA No 2022-097 (Remand Proceeding)
Case File T2-2021-14981
12424 NW Springville Road

>> Please enter this letter into the record for the remand hearing June 23, 2023.

Dear Hearings Officer,

Please keep the record open for at least 2 weeks after this hearing so the public can respond to information you receive during the hearing.

Multnomah County Code 39.4265 requires that all the standards in (B) (3) are met. The language in (B) says “the following standards are met:” – standards is plural, not singular, and the letter section (a) through (g) are joined by the word “and.”

Multnomah County Code 39.4265 (B) (3) says:

(B) Customary Farm Dwelling: A dwelling, including a mobile or modular home customarily provided in conjunction with a farm use as provided in MCC 39.4225(C) is not allowed unless the following standards are met:

(3) Not high-value farmland soils, capable of producing the median level of annual gross sales. On land not identified as high-value farmland a dwelling may be considered customarily provided in conjunction with farm use if:

(a) The subject tract is at least as large as the median size of those commercial farm or ranch tracts capable of generating at least \$10,000 in annual gross sales that are located within a study area which includes all tracts wholly or partially within one mile from the perimeter of the

subject tract [the median size of commercial farm and ranch tracts shall be determined pursuant to OAR 66-33-135 (3)]; and

(b) The subject tract is capable of producing at least the median level of annual gross sales of county indicator crops as the same commercial farm or ranch tracts used to calculate the tract size in subsection (a) of this section; and

(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 subsection (b) of this section; and

(d) The subject lot or parcel on which the dwelling is proposed is not less than ten acres; and

(e) Except as permitted in ORS 215.283(1)(p) (1999 Edition) (i.e. seasonal farmworker housing) there is no other dwelling on the subject tract; and

(f) The dwelling will be occupied by a person or persons who will be principally engaged in the farm use of the land, such as planting, harvesting, marketing or caring for livestock, at a commercial scale; and

(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 subsection (c) of this section.

The applicant argues that they only need to show potential, not current commercial farm income, but this would render (f) meaningless. Anyone can promise future income, but the dwelling can't be removed if the commercial farm income is never realized.

LUBA says, in *Forster v. Polk County*, 24 Or LUBA 476 (1993) that "we adhere to our prior conclusion that under OAR 660-05-030(4), a dwelling customarily provided in conjunction with farm use may not be approved until the farm use which justifies such a dwelling exists on the subject property." Future promise of farm income is not adequate.

The applicant has still not provided Schedule F or verified third party support for his claim of commercial farm income. The eggs, if they exist, could be donated for a tax deduction, fed to his pigs, or plowed into the soil as fertilizer. They could be given away to clients of his wife's dermatology practice (remembering the old Les Schwab "free beef" tire promotions).

Anyone can invent a table of egg production. Egg production does not prove commercial sales for farm income. Web sites proclaiming sales of animals (all apparently sold for cash only?) do not prove actual sales.

Requiring Schedule F, or the other forms of proof of commercial farm income is required to qualify for a farm dwelling. These proofs are commonly provided and should not be a burden.

If the applicant cannot prove farm income to meet (c), then they necessarily fail at (f) because they have not demonstrated commercial scale farming, just a hobby farm.

I believe this permit must be denied unless the applicant provides proof of adequate commercial farm income to the standards required by the county (Schedule F or other proof as has been documented as allowed by the county).

If you consider allowing the permit can be conditioned using (g), you must have a basis to determine that compliance with the farm income standard is feasible. But since we have no proof of commercial farm income, the applicant has not demonstrated feasibility.

The applicant has consistently refused to provide proof of commercial farm income for years – why should we expect him to provide it in the future?

If you decide that the permit can be conditioned using (g), the Forster decision cited above requires that where approval is conditioned on future farm income that when the farm income condition is applied there must be yet another hearing with notice. This would just kick the can down the road with no apparent benefit to anyone, including the applicant.

The applicant has constructed expensive looking farm buildings and a very wide, paved “farm road” all the way across the property. He is unwilling to provide basic proofs of commercial farm income in any amount. This looks like a hobby farm operated for income tax deductions and pretty pictures for family Christmas cards, not a commercial farm. There is nothing wrong with that, but it doesn’t meet the standards required for a farm dwelling in Multnomah County.

In Exhibit H.3 (page 20 of the PDF) the applicant says:

The highlighted section below shows that the Reed’s method of production and sales does not require an egg handlers license because they are “selling and delivering” their “own eggs directly to an individual customer.”

The applicant also says in H.3 (p. 21) that he is selling eggs primarily “to the local St. Pius X community in Cedar Hills.” I have good friends with granddaughters who graduated from St. Pius X school. They spoke to several people at the church and school, including people in the administration, and none had heard of Mr. Reed or his eggs. That is hearsay evidence and certainly doesn’t prove that Mr. Reed isn’t selling his eggs to people who attend the church, but it seems unlikely that he could be sell the volume of eggs he claims to be producing to that community without it being widely known.

In Exhibit R.2, the applicant shows egg production of 8874 ("good" eggs) in June of 2022. That works out to 739 dozen eggs. That is a large quantity of eggs to be delivering to individual (not commercial) customers. Given about 22 work days in a month, that would mean selling 33 dozen eggs each work day to individuals in the community, perhaps rivaling daily egg sales at local grocery stores. Perhaps they now have an egg handling license and have expanded their sales outside the church community?

I mention these points simply to demonstrate why it is important to have the required proof of commercial farm income and not simply rely on statements from the applicant.

The applicant has not met the requirements for proof of commercial farm income at the level required to qualify for a dwelling permit, despite being given many opportunities to do so. This permit should be denied.

Thank you for your consideration.

Carol Chesarek