

PASSED**IN THE BOARD OF COMMISSIONERS OF LANE COUNTY, OREGON**

Order No. 00-8-30-1 (In the Matter of Electing Whether or Not to
 (Hear an Appeal of a Hearings Official's Decision
 (Denying an Application for a Nonfarm Dwelling
 (File PA 00-5620/Smith

WHEREAS, the Lane County Hearings Official has made a decision on application PA 00-5620; and

WHEREAS, the Lane County Planning Director has accepted an appeal of the Hearings Official's Decision to the Board of County Commissioners pursuant to LC 14.515; and

WHEREAS, the Lane County Hearings Official has affirmed her decision on application PA 00-5620; and


WHEREAS, Lane Code 14.600 provides the procedure and criteria which the Board follows in deciding whether or not to conduct an on the record hearing for an appeal of a decision by the Hearings Official; and

WHEREAS, the Board of County Commissioners has reviewed this matter at a public meeting of the Board; NOW

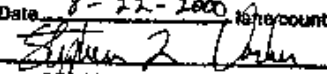
THEREFORE, BE IT ORDERED the Board of County Commissioners of Lane County finds and orders as follows:

1. That the appeal does not comply with the criteria of Lane Code Chapter 14.600(3) and arguments on the appeal should therefore not be considered. Findings in support of this decision are attached as Exhibit "A".
2. That the Lane County Hearings Official decision dated August 2, 2000 is affirmed by the Board of County Commissioners.

DATED this 30th day of August, 2000.


 Chairperson, Lane County Board of Commissioners

APPROVED AS TO FORM

Date 8-22-2000 Lane County

 OFFICE OF LEGAL COUNSEL

FINDINGS IN SUPPORT OF THE ORDER

1. Property involved in this action is identified as tax lot 900, map 19-05-03, located on Briggs Hill Road Road, and zoned Exclusive Farm Use (E-40) within the jurisdiction of the Lane County Rural Comprehensive Plan and Lane Code Chapter 16.
2. In the form of application PA 00-5620, the property owner in April, 2000 requested Lane County Hearings Official approval of a nonfarm dwelling, pursuant to Lane Code 16.212(4)(j) criteria.
3. A hearing before the Lane County Hearings Official was held on July 27, 2000.
4. On August 3, 2000, the Hearings Official issued a decision denying the nonfarm dwelling application.
5. A timely appeal of the Hearings Official decision was filed by the applicant/owner on August 14, 2000. On August 16, the Hearings Official affirmed her decision.
6. The appeal states that the Approval Authority should reconsider the decision in order to allow the submittal of additional evidence not available in the record and addressing compliance with the applicable standards or criteria.
7. In order for the Board to hear arguments on the appeal, Lane Code 14.600(3) requires one or more of the following criteria to be found by the Board to apply to the appeal:
 - *The issue is of Countywide significance.*
 - *The issue will reoccur with frequency and there is a need for policy guidance.*
 - *The issue involves a unique environmental resource.*
 - *The Planning Director or Hearings Official recommends review.*
8. The Board of Commissioners finds that the appeal involves a set of circumstances and a fact pattern particular to the property. The Board further finds no issues of Countywide significance raised in the appeal.
9. The Board of Commissioners finds that the issues associated with this appeal may reoccur within the County on occasion during the application of Lane Code criteria to requests for nonfarm dwellings. However, additional policy guidance from the Board is not necessary in that the Board is satisfied with the reasoning and findings of the Hearings Official with respect to the application of existing Rural Comprehensive Plan Goal Three Policies. No further policy guidance from the Board is necessary at this time.
10. The Board of Commissioners finds that tax lot 900 is a 37-acre parcel which is not a unique environmental resource.
11. Neither the Planning Director nor the Hearings Official recommend review.

12. To meet the requirements of Lane Code 14.600(2)(b), the Board is required to adopt a written decision and order electing to have a hearing on the record for the appeal or declining to further review the appeal.
13. The Board has reviewed this matter at its meeting of August 30, 2000 and finds that the appeal does not comply with the criteria of Lane Code Chapter 16.600(3), and elects to not hold an on the record hearing.

LCOG
Lane Council of Governments

99 East Broadway, Suite 400, Eugene, Oregon 97401-3111 (541) 682-4283 Fax: (541) 682-4099 TTY: (541) 682-4567

August 2, 2000

Mr. Kent Howe
Lane County Land Management Division
Public Service Building
125 East Eighth Avenue
Eugene, OR

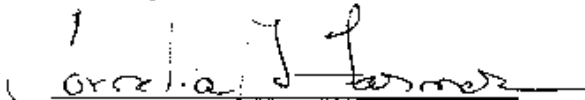
Re: PA 00-5620 (Smith)

Dear Mr. Howe:

Enclosed is the Lane County Hearings Official's decision denying Applicant's request for approval of a nonfarm dwelling in an exclusive farm use zone. The property is located at 26978 Briggs Hill Road, and can also be identified as tax lot 900, assessor's map 19-05-03. The Applicant is Daniel Smith.

Please contact me if you have any questions.

Sincerely,



Cornelia G. Farmer
Lane County Hearings Official

**LANE COUNTY HEARINGS OFFICIAL
REQUEST FOR A SPECIAL USE PERMIT ALLOWING A NONFARM
DWELLING ON LAND ZONED EXCLUSIVE FARM USE**

Application Summary

Daniel S. Smith, 26978 Briggs Hill Road, Eugene, OR 97405. Request for a nonfarm dwelling on a 37.45 acre parcel with a base zoning of E-40.

Parties of Record

Daniel S. Smith
Thomas I. Miller, Agent

Application History

Hearing Date: July 27, 2000

Decision Date: August 3, 2000

Appeal Deadline

An appeal must be filed on or before **August 14, 2000** using the appeal form that accompanies this decision. The appeal will be considered by the Lane County Board of Commissioners.

Statement of Criteria

OAR 660-33-020
OAR 660-33-130(4)(e)
ORS 215.213(3)
ORS 215.236(2)-(3)
ORS 215.243
ORS 214.253
Lane Code 16.212(4)(j), (5), (8), (1)

Findings of Fact

1. The property subject to this application, hereinafter referred to as the "subject property," is an approximately 37.45 acre parcel located on Briggs Hill Road and also identified as Assessor's Map 19-05-03, lot 900. The subject property is designated Agricultural lands by the Lane County Rural Comprehensive Plan and is designated E-40/RCP.
2. The subject property was formed as a result of a lot line adjustment between two legal lots. Based upon staff comments that the adjustment had resulted in the reduction of a legal lot from 58.77 acres to 37.7 acres which is less than the 40 acre minimum lot size

permitted in the zone, Applicant reconfigured the adjustment so that the 58.77 acre lot is reduced to 40 acres, the minimum allowed, and two legal lots resulted from the lot line adjustment. Per the tax assessor, this 40 acre lot is now designated as lot 500, assessor's map 19-05-02 and the subject property is designated as tax lot 900, assessor's map 19-05-03.

3. The subject property ranges from level to steeply sloping terrain. The eastern portion of the subject property is wooded. The central portion of the subject property is an undulating, westward sloping hay pasture. The western portion of the subject property contains wetlands identified on the National Wetlands Inventory and is within the 100-year flood hazard area. Nighswander Creek traverses the property and is identified as a Class I stream on the Crow Quadrangle Wildlife Habitat Maps. The hay pasture is cut by the neighboring property owner to the south who also grazes some of his cattle on the property. Neither the neighboring property owner nor the subject property owner receive any monetary compensation for this use.
4. The subject property is surrounded by land zoned EFU-40, Exclusive Farm Use. Briggs Hill Road forms the western boundary of the property. To the west across Briggs Hill Road, are tax lot 500, which is 31.39 acres, and tax lot 1000, which is 26.67 acres, both of which are zoned E-40 and are developed with residences. Tax lot 500, which, pursuant to the lot line adjustment referred to in Finding No. 2 is 40.00 acres in area, borders the subject property to the north and is developed with applicant's residence and workshop. North of this parcel is tax lot 502 which is 29.91 acres, is zoned E-40 and is also developed with a residence. To the east, a narrow portion of tax lot 300, borders the subject property. This parcel is zoned E-40 and is used as a portion of a cattle and timber operation. Further east is property zoned F-1, non-impacted forest land. To the south is a single parcel, tax lot 100 which is 145.51 acres and is zoned E-40. This parcel contains no dwelling units and is used to graze cattle and is part of a larger farming operation. Grapes are grown on nearby properties, with westward facing properties, such as the subject property, being less suitable for grape production due to reduced sunlight exposure and spring frost zones.
5. Applicant requests approval to construct a dwelling and a workshop on the subject property. The residence is not intended to be used in conjunction with farm use.
6. The subject property has access from Briggs Hill Road, which borders the subject property on the west, by an existing accessway and culvert across the creek. Other services are available to the subject property as follows: fire services are available from Lane County Fire District #1; police services are available through Lane County and the State of Oregon; school services are available through the Crow-Applegate-Lorane School District #66; power is available from Lane Electric; telephone through USWest, and sewer and water are proposed from an on-site well and an individual sewage disposal system.
7. Six types of soil have been identified on the subject property. These are: #11c Bellpine silty clay loam (classification IIIe, 1% of the property, .34 acres); #52B Hazelair medium

silty clay loam, (classification IIIe, 15% of the property, 5.62 acres); #52D Hazelair silty clay loam (classification IVe, 16% of the property, 6.21 acres); #73 Linslaw loam (classification IIIw, 9% of the property, 3.37 acres); #98 Noti loam, (classification IVw, 31% of the property, 11.73 acres); #125c Steiwer loam (classification IIIe, 10% of the property, 3.65 acres); and #135F Willakenzie clay loam (classification VIc, 18% of the property, 6.83 acres).

8. Five dwellings exist within one-quarter mile of the subject property's boundaries. Three of the dwellings are on properties immediately to the north of the subject property and two are located across Briggs Hill Road. The evidence indicates that the Applicant's dwelling to the north is a farm-related dwelling, but does not show whether the other residences are farm related or non-farm residences.
9. The subject property is assessed by the Lane County Department of Assessment as Exclusive Farm Use zoned farm land and has an agricultural tax deferral.

Decision

THE REQUEST FOR A DWELLING NOT IN CONJUNCTION WITH A FARM USE, ON PROPERTY ZONED E-40, IS DENIED.

Justification for the Decision (Conclusion)

I. APPLICABLE OREGON ADMINISTRATIVE RULES

Chapter 660, Division 33 of Oregon Administrative Rules contains the provisions applicable to dwellings on land zoned for farm use. The most recent amendment to the rules went into effect June 1, 1998. OAR 660-33-120 Table 1 permits single-family residential dwellings, not provided in conjunction with farm use on land zoned for farm use, subject to the restrictions of OAR 660-33-130(4).

OAR 660-033-0020

"(1)(a) "Agricultural Land" as defined in Goal 3 includes:

(A) Lands classified by the U.S. Soil Conservation Service (SCS) as predominately Class I-IV soils in Western Oregon and I-VI soils in Eastern Oregon;"

The subject property is located in Western Oregon. Eighty-two percent of the property is in classified as Class I through IV soils and is agricultural land.

OAR 660-33-130(4)(e):

"Counties that have adopted marginal lands provisions before January 1, 1993, shall apply the standards in 215.213(3)-(8) for non-farm dwellings on lands zoned exclusive farm use that are not designated marginal or high-value farmland."

Lane County adopted marginal lands provisions before January 1, 1993. Two types of soils on portions of the property have been designated high-value soils. The lands on the portion of the subject property where applicant proposes locating a nonfarm dwelling are zoned for exclusive

farm use but are not designated marginal or high-value farmland. The applicable standards of ORS 215.213(3)-(8) apply and are discussed below. These standards are implemented in Lane County by the approval criteria cited in 16.212(4)(j) and (5), which are also addressed below.

II. APPLICABLE STATE STATUTES

ORS 215.213(3):

"In counties that have adopted marginal lands provisions under ORS 197.247 (1991 Edition), a single-family residential dwelling not provided in conjunction with farm use may be established on a lot or parcel with soils predominantly in capability classes IV through VIII as determined by the Agricultural Capability Classification System in use by the United States Department of Agriculture Soil Conservation Service on October 15, 1983. A proposed dwelling is subject to approval of the governing body or its designate in any area zoned for exclusive farm use upon written findings showing all of the following:"

Lane County has adopted marginal lands provisions in accordance with ORS 197.247. The subject property is composed of six soil types. Forty seven percent of the subject property is classified as Class IV and an additional 18% is classified as Class VI, so that a total of 65% of the subject property has soils in capability classes IV through VIII. Thus, soils on the lot are predominately in capability classes IV through VIII and the subject property meets a threshold criteria for a non farm dwelling. A non-farm dwelling is not subject to approval, however, unless written findings also show compliance with ORS 215.213(a), (b) and (c).

ORS 215.213(3)(a):

"The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming practices on nearby lands devoted to farm use."

Nearby lands are devoted to farm uses such as vineyards, hay production, grazing lands and some timber production. Applicant proposes to locate the dwelling near the center of the site, on a portion of the property used as a hay pasture and used seasonally for the grazing of about 10 head (or 1/30th) of the neighboring farmer's herd of cattle. Prior to the lot line adjustment, most of the subject property was part of the property to the north which is owned by Applicant, and has tax deferral status but aside from use by the neighboring farmer has not been devoted to farm use. The neighboring farmer testified that the primary benefit of cutting the hay and grazing on this property is fire prevention, not a monetary benefit, and that the location of a dwelling on the subject property would not increase the cost of his farming practices.

Other potential impacts upon adjacent or nearby agricultural activities may include the following:

Fire -- The subject property receives fire protection from Lane County Fire District #1. It would be situated approximately 1/8 of a mile from the nearest farm related dwelling to the north. At present, the neighboring farmer mows grasses on the subject property as a fire prevention measure. Timber resources on the eastern portion of the property would be accessible with the

construction of a year-round roadway providing improved access for emergency vehicles. Any fire hazard to farm uses from the proposed non-farm dwelling can be considered minimal.

Transportation Impacts -- The proposed use would rely upon a public road, Briggs Hill Road, for access. The roadway has ample travel capacity to accept the estimated maximum of 10 additional daily vehicle trips associated with the proposed nonfarm dwelling. Otherwise, traffic from the subject property is expected to have no impact upon resource management activities.

Trespass and Vandalism -- Applicant opines that a residence on the subject property will help deter area vandalism, although none has been experienced. Furthermore, either Applicant or the Hinman Vineyards owns the majority of the property in the subject valley and full time permanent employees are always present as they tend vineyards and other tasks. Area trespass or vandalism is not expected to increase if a nonfarm residence is located on this property.

Nuisance Lawsuits—Applicant agrees to execute a “Farm and Forest Management Easement” and waiver of right to object to farm or forest practices within the area. If the application were to be approved, applicant would be required to record a farm and forest easement subjecting the residential use of the subject property to normal and accepted agricultural practices in the area.

Accepted farming practice is defined in ORS 215.203(c) as “a mode of operation that is common to farms of a similar nature, necessary for the operation of such farms to obtain a profit in money, and customarily utilized in conjunction with farm use.” Any impact on accepted farm practice in the area would be minimal and would not significantly affect the mode or cost of farming on nearby lands. The application is consistent with this criterion.

ORS 215.213(3)(b):

“The dwelling is situated upon generally unsuitable land for the production of farm crops and livestock, considering the terrain, adverse soil or land conditions, drainage and flooding, location and size of the tract. A lot or parcel shall not be considered unsuitable solely because of its size or location if it can reasonably be put to farm use in conjunction with other land.”

The unsuitability standard is a stringent one and is part of a legislative strategy to preserve farm land.

An EFU zone is designed to preserve the limited amount of agricultural land to the maximum extent possible. It constitutes a substantial limitation on other uses of rural land. See ORS 215.243. . . In order to achieve this purpose, the legislature has imposed substantial restrictions on the construction of non-farm dwellings in EFU zones. See ORS 215.213(3); ORS 215.283(3). The clear intent is that non-farm dwellings be the exception and that approval for them be difficult to obtain.

Cherry Lane, Inc. v. Board of County Commissioners, 84 Or. App. 196, 199, n.3, 733 P.2d 488 (1987).

The test is not whether the individual lot can be farmed economically, but whether it can reasonably be put to agricultural use in conjunction with other land. Stefan v. Yamhill County, 18 Or LUBA 820 (1990). "The fact that the property cannot be farmed as an economically self-sufficient farm unit is irrelevant if it is otherwise suitable to produce farm crops and livestock." Rutherford v. Armstrong, 31 Or App 1319, 572 P.2d 1331 (1977).

Here, the subject property contains a variety of terrain and drainage conditions from steeply wooded slopes to undulating pasture to flatter wetland areas. The soils, predominately classifications III and IV, are defined and identified by the Oregon Administrative Rules, 660-33-020 and 660-33-030, as agricultural lands. The central portion of the site contains lands classified as class IIIw and IIIe. The existing hay pasture is located in this central portion of the site which is also where Applicant proposes siting the dwelling. Applicant states that due to its location on the east side of the road, the subject property is less suitable for the production of grapes, the agricultural activity in which Applicant is primarily engaged, than property on the west side of the road because of reduced sunlight exposure and spring frost zones. The property is currently on farm deferral. Hay grows on the property and is cut by the neighboring farmer who also grazes a small portion of his herd on the property for approximately one month per year. The property does not produce any economic profit from farming and none of the property is currently cultivated. Applicant urges the conclusion that the subject property is unsuitable land for the production of farm crops and livestock.

With regard to the subject property, ORS 215.203(2)(b)(E) states that current employment of land for farm use includes "Wasteland, in an exclusive farm use zone, dry or covered with water, neither economically tillable nor grazeable, lying in or adjacent to and in common ownership with a farm use land and which is not currently being used for any economic purpose." If other portions of the property were in farm use, the fact that the property contains wet soils does not make the property "unsuitable" for farm use. Examining nearby land, it is evident that nearby lands are suitable for farm uses such as vineyards, hay production and grazing. Immediately adjacent, the land to the east is used as part of a cattle and timber operation and the land immediately to the south is part of a 500 acre cattle ranch. The subject property has been and can be used in conjunction with the land to the south. The neighboring farmer to the south testified that his adjacent land is used for cattle grazing and that every 10 years or so it is necessary to replant the fields. He also testified that cattle can graze on the wetland areas during some parts of the year. Applicant testified that property to the west and to the north is used for grape production, although he emphasized that the properties on the east side of the road were less suitable for grape production than those on the west side of the road.

All of these factors show that the property is not "generally unsuitable land for the production of farm crops and livestock," particularly if used in conjunction with other land. For a nonfarm residence to be subject to approval in a farm zone, Applicant must prove that the land is "generally unsuitable" for farming. Applicant has not satisfied this criterion.

ORS 215.213(3)(c):

"Complies with such other conditions as the governing body or its designate considers necessary."

Additional conditions are not applied because this application is denied.

ORS 215.236(2):

"The governing body or its designate shall not grant final approval of an application made under ORS 215.213(3) or 215.284 (1), (2), (3) or (4) for the establishment of a dwelling on a lot or parcel in an exclusive farm use zone that is, or has been, receiving special assessment without evidence that the lot or parcel upon which the dwelling is proposed has been disqualified for special assessment at value for farm use under ORS 308.370 or other special assessment under ORS 308.765, 321.257 to 321.381, 321.730 or 321.815 and any additional tax imposed as the result of disqualification has been paid."

If the non-farm dwelling were to be approved, removal of the farm tax deferral would be a condition of approval.

ORS 215.236(3):

"The governing body or its designate may grant tentative approval of an application made under ORS 215.213(3) or 215.284 (1), (2), (3) or (4) for the establishment of a dwelling on a lot or parcel in an exclusive farm use zone that is specially assessed at value for farm use under ORS 308.370 upon making the findings required by ORS 215.213(3) or 215.284 (1), (2), (3) or (4). An application for the establishment of a dwelling that has been tentatively approved shall be given final approval by the governing body or its designate upon receipt of evidence that the lot or parcel upon which establishment of the dwelling is proposed has been disqualified for special assessment at value for farm use under ORS 308.370 and any additional tax imposed as the result of disqualification has been paid."

If a non-farm dwelling were to be approved, removal of the deferral tax would be a condition of approval.

ORS 215.243:

"The Legislative Assembly finds and declares that:

This provision of state law is expressly made a criteria by Lane Code 16.212(5)(a).

ORS 215.243 (1): "Open land used for agricultural use is an efficient means of conserving natural resources that constitute an important physical, social, aesthetic and economic asset to all of the people of this state, whether living in rural, urban or metropolitan areas of the state."

The subject property is used for the cutting of range grass and for grazing. It also contains wasteland and timbered areas. The open land used for agricultural use is a means of conserving natural resources. For purposes of interpreting the term "agricultural use" the Hearings Official interprets the term "agricultural use" as a use related to the production of farm crops and livestock,

and distinguishes it from "farm use" as defined in 216.203, which has a monetary component. A non-farm dwelling on the property would diminish or eliminate the potential for agricultural use and would be contrary to this criterion.

ORS 215.243(2):

"The preservation of a maximum amount of the limited supply of agricultural land is necessary to the conservation of the state's economic resources and the preservation of such land in large blocks is necessary in maintaining the agricultural economy of the state and for the assurance of adequate, healthful and nutritious food for the people of this state and nation."

The subject property is "agricultural land" as defined OAR 660-33-020. The proposed dwelling on the subject property would cause a loss of agricultural land for siting the dwelling, and would make it more difficult to use the subject property for the raising of crops and livestock. The proposal is not consistent with this standard.

ORS 215.243(3):

"Expansion of urban development into rural areas is a matter of public concern because of the unnecessary increases in costs of community services, conflicts between farm and urban activities and the loss of open space and natural beauty around urban centers occurring as the result of such expansion."

No urban development will occur on the subject property. This criterion is met because its concerns are not applicable.

ORS 215.243(4):

"Exclusive farm use zoning as provided by law, substantially limits alternatives to the use of rural land and, with the importance of rural lands to the public, justifies incentives and privileges offered to encourage owners of rural lands to hold such lands in exclusive farm use zones."

This standard is applicable to the extent that it recognizes that exclusive farm use zoning substantially limits alternatives to the use of rural land, such as limiting the location of non-farm dwellings, and that owners are often offered incentives and privileges to hold rural lands in EFU zones. The legislature imposed especially stringent controls on non-farm residential uses in farm zones.

ORS 215.253(1):

"No state agency, city, county or political subdivision of this state may exercise any of its powers to enact local laws or ordinances or impose restrictions or regulations affecting any farm use land situated within an exclusive farm use zone established under ORS 215.203 or within an area designated as marginal land under ORS 197.247 (1991 Edition) in a manner that would restrict or regulate farm structures or that would restrict or regulate farming practices if conditions from such practices do not extend into an adopted urban growth boundary in such manner as to interfere with the lands within the urban growth boundary. 'Farming practice' as used in this subsection shall have the meaning set out in ORS 30.930."

If the subject application were to be approved, it would be with the condition of executing and recording an easement protecting the area's farm and forest practices so as to be consistent with this provision.

ORS 215.253(2):

"Nothing in this section is intended to limit or restrict the lawful exercise by any state agency, city, county or political subdivision of its power to protect the health, safety and welfare of the citizens of this state."

This section permits the counties to set more stringent requirements to protect the public health, safety and welfare. Lane County's requirements are discussed elsewhere in this opinion.

No other Oregon Revised Statutes appear to apply to this request.

APPLICABLE PLAN POLICIES

Goal Three Agricultural Lands Policy #3:

"Reserve the use of the best agricultural soils exclusively for agricultural purposes."

The subject property is zoned for exclusive farm use consistent with this policy.

Goal Three Agricultural Lands Policy #5:

"Use planning and implementation techniques that reflect appropriate uses and treatment for each type of land."

Applicant reasons that the narrow linear configuration of the subject property makes it inadequate for farming and an appropriate spot for a non-farm dwelling. However, the Lane Code 16.212(4)(j)(iii) provides that "[a] lot or parcel shall not be considered unsuitable solely because of its size or location if it can reasonably be put to farm use in conjunction with other land." The subject property is predominately agricultural lands, is zoned for exclusive farm use, and despite its linear configuration which resulted from the recent property line adjustment can reasonably be put to farm use in conjunction with other land. The exclusive farm use zoning is an appropriate planning and implementation technique for this type of land.

Goal Three Agricultural Lands Policy #8:

"Provide maximum protection to agricultural activities by minimizing activities, particularly residential, that conflict with such use. Whenever possible planning goals, policies and regulations should be interpreted in favor of such agricultural activities."

Property to the west, across Briggs Hill Road, is predominately vineyards owned and managed by the applicant. Applicant states that the slopes on the east side of the road are less suitable for grape production due to reduced sunlight exposure and spring frost zones. Agricultural land south of the subject property is used to graze cattle and property to the east is used for cattle and for timber production. The subject property is located on agricultural land in an exclusive farm use zone with existing agricultural uses on the subject property and on neighboring properties. Residential uses are specifically recognized as conflicting with agricultural activities and this recognition is reflected

in ORS 215.213(3) discussed above and in the comparable Lane Code section. The proposed non-farm dwelling would conflict with the agricultural activities and is inconsistent with this policy.

Goal Three Agricultural Lands Policy #12:

"Regard nonagricultural uses within or adjacent to agricultural lands as being subject to the normal and accepted agricultural practices of that locality."

If the application for a non-farm dwelling were to be approved, the applicant would be required to record a farm and forest easement subjecting the residential use of the subject property to normal and accepted agricultural practices of the area.

Goal Three Agricultural Lands Policy #13:

"No County policy shall be construed to exclude permitted and specially permitted nonfarm uses, as defined in ORS Chapter 215.213, from the EFU zones. Implementing ordinances shall provide for such uses, consistent with the statutory requirements. . . ."

As discussed above, nonfarm dwellings may be permitted by ORS 215.213(3) if certain criteria are satisfied. The proposed non-farm dwelling does not comply with those statutory requirements and therefore this policy is satisfied.

Goal Three Agricultural Lands Policy #15:

"Lane County recognizes ORS 215.253 shall apply on land zoned Exclusive Farm Use."

The applicable standards of ORS 215.253 are considered under the appropriate section above.

Goal Five, Water Resources Policy #3:

Adequacy of water supply, particularly those relying on groundwater sources, shall be a major concern in reviewing major land use changes. For the purpose of applying this policy, major land use changes shall be any application reviewed by the Hearings Official or Planning Commission.

The subject property is not located within a designated Lane County groundwater quantity limited area. An examination of 31 well logs within the evaluation area shows an average flow of 15.25 gallons per minute at an average well depth of 196.48 feet. Adjacent and nearby residences which are reliant upon groundwater resources also demonstrate adequate groundwater capacity.

Goal Seven, Natural Disasters and Hazards Policy #2:

Development shall be commensurate with the type and degree of any natural hazard(s) present, and appropriate safeguards against flooding, ponding, landslides, land slippage, erosion or other natural hazards applicable shall be assured.

A portion of the subject property exists within a 100-year floodplain. No other natural hazards have been identified with respect to the subject property.

APPLICABLE LANE CODE CRITERIA

Lane Code 16.212(4)(j) states that the Hearings Official may approve a special use permit for a dwelling not in conjunction with a farm use if the following four criteria are met:

Lane Code 16.212(4):

"... [S]ubject to prior approval of the Hearings Official pursuant to LC 14.300 and pursuant to compliance with the below approval criteria of this subsection and LC 16.212(5)."

The public hearing before the Hearings Official for this application was conducted in accordance with Lane Code 14.300, and the remaining standards of Lane Code 16.212(4) and Lane Code 16.212(5) are considered below.

Lane Code 16.212(4)(j)(i):

"The dwelling or mobile home is situated upon a legal lot with soils predominantly in capability classes IV through VIII as determined by the Agricultural Capability Classification System in use by the United States Department of Agriculture Soil Conservation Service on Oct. 12, 1983."

The subject property is a legal lot with 65% of its soils in capability classes IV through VIII, satisfying this criterion.

Lane Code 16.212(4)(j)(ii):

"The dwelling or mobile home, or the activities associated with the dwelling or mobile home, will not force a significant change in or significantly increase the cost of accepted farming practices on nearby lands devoted to farm use."

If the application were to be approved, the applicant would be required to record a farm and forest easement subjecting the residential use of the subject property to normal and accepted agricultural practices of the area. The comparable statutory provision, ORS 215.213(3)(a), is discussed above. The same considerations apply here and support a conclusion that this criterion is satisfied.

Lane Code 16.212(4)(j)(iii):

"The dwelling or mobile home is situated upon generally unsuitable land for the production of farm crops and livestock, considering the terrain, adverse soil or land conditions, drainage and flooding, location and size of the tract. A lot or parcel shall not be considered unsuitable solely because of its size or location if it can reasonably be put to farm use in conjunction with other land."

This standard was considered above in regard to the nearly identical provisions in state law. The stringency of the unsuitability standard under state law is reinforced by Goal Three, Policy 8 which specifically identifies residential activities as conflicting with agricultural activities and requires that maximum protection be provided "to agricultural activities by minimizing activities, particularly residential, that conflict with [agricultural activities]." The considerations discussed in regard to state law apply here. This criterion is not satisfied.

Lane Code 16.212(4)(j)(iv):

"The approval of a dwelling or mobile home shall comply with the provisions of ORS 215.236, 1983 Replacement Part, regarding establishment of the nonfarm residence; procedures; disqualification for farm use valuation; and additional tax or penalty."

The relevant criteria of ORS 215.236 have been considered above.

Lane Code 16.212(5)(a):

"Compatibility of the use or activities associated with the use with the Agricultural Lands Policies of the Rural Comprehensive Plan Policies, ORS 215.243 and the purpose of this zone."

The compatibility of the proposed use with the Plan policies and the provisions of ORS 215.243 have been considered above. The purposes of the Exclusive Farm Use zone are contained in Lane Code 16.212(1), and are considered below. In light of the conclusions of these several analyses, the proposal does not satisfy this criterion.

Lane Code 16.212(5)(b):

"The use, or activities associated with the use, will not force a significant change in or significantly increase the cost of accepted farming or forestry practices on nearby lands devoted to farm use."

Similar criteria, found in ORS 215/213(3)(a) and in Lane Code 16.212(4)(j)(ii), have been addressed above. As stated in that analysis, the neighboring property owner to the south, who cuts hay on the subject property and allows his cattle to graze there, testified that the subject property is not an integral part of his farm operation and that loss of this property would not be an economic detriment. If the application were to be approved, the applicant would be required to record a farm and forest easement subjecting the residential use of the subject property to normal and accepted agricultural practices of the area. Thus, the application satisfies this criterion.

Lane Code 16.212(5)(c):

"The use, or activities associated with the use, complies with other conditions considered necessary by the Approval Authority in order to meet the applicable approval criteria."

If the application were to be approved, the applicant would be required to record a farm and forest easement subjecting the residential use of the subject property to normal and accepted agricultural practices of the area and to comply with such other conditions as are necessary to ensure compliance with applicable approval criteria. Because the application is denied, additional conditions are not applied.

Lane Code 16.212(5)(d):

"The above criteria (a) and (c) shall not be applicable to uses identified under LC 16.212(4)(b) above if such uses are also subject to review under Willamette Greenway requirement LC 16.254(3)."

This does not apply since the proposed use is not located within the Willamette River Greenway.

Lane Code 16.212(8)(a):

"The Approval Authority shall balance the setback standards of LC 16.212(8)(a) with the siting requirements and application approval criteria specified elsewhere in LC 16.212 in order to minimize adverse impacts upon forest uses and to assure optimal siting of proposed residences consistent with the purposes of the E zone.

...

(ii) Residences to be sited upon all other tracts shall be sited as follows:

- (aa) Where possible, in consideration of the dimensions and topography of the tract, at least 500 feet from adjoining lines of property zoned F-1 and 100 feet from adjoining lines of property zoned F-2 or EFU.**
- (bb) On the least valuable farm or forest areas of the tract or located near residences on other tracts."**

The closest forest zoned land is divided from the subject property by a strip of taxlot 300 and thus is not adjoining. Where possible, the residences are to be sited at least 100 feet from EFU zoned lands, which abut the subject property on the north, south and east, and sited on the least valuable farm or forest areas of the tract or located near residences on other tracts. The subject property is approximately 600 feet wide at the location proposed for the non-farm dwelling. The nearest residence would be approximately 1/8 of a mile away. Attachment C shows that the proposed dwelling would be located on soils in class IIIe, which is not the least valuable farm area on the tract, and which places the residence in the area where agricultural activity has traditionally occurred. As shown on Attachment C, the location of the proposed dwelling is likely to interfere with continued agricultural and grazing activity on the subject property and on the property to the north. The proposed location does not assure optimal siting of the proposed residence consistent with the purposes of the E-zone which are "to provide areas for the continued practice of commercial agriculture, guarantee the preservation and maintenance of areas so classified and minimize activities that may be incompatible with commercial agriculture." Thus, this criterion is not satisfied.

Lane Code 16.212(8)(b):

"**Property Line Setbacks. No structure other than a fence or sign shall be located closer than:**

- (i) 20 feet from the planned right-of-way of a State road, County road or a local public access road specified in Lane Code Chapter 15; and**
- (ii) 20 feet from an existing right-of-way of a State road, County road or a local public access road; and**
- (iii) 10 feet from all other property lines except as provided below."**

The rough "Site Conditions Schematic" attached to the application as "Attachment C" shows the proposed dwelling situated more than 20 feet from the existing road, and there is no evidence that any other roads are planned. In addition, the subject property is approximately 600 feet wide, providing ample room for applicant to meet the 10 foot setback requirement. This criterion is satisfied.

Lane Code 16.212(1):

"Purpose. The purpose of the Exclusive Farm Use (E-RCP) Zone is to provide areas for the continued practice of commercial agriculture, guarantee the preservation and maintenance of areas so classified and minimize activities that may be incompatible with commercial agriculture. The Exclusive Farm Use Zone is to be applied to land designated as agricultural by the Rural Comprehensive Plan.

It is the County's policy to protect forestry and agricultural operations from conflicting land uses. Nothing in this section is intended to interfere with normal forestry or agricultural management or practices that might result in conditions such as noise, dust, smoke, visual impacts or odors for temporary periods of time. Existing or proposed nonforest or nonfarm uses (i. e. dwellings) within the Exclusive Farm Use Zone must recognize that the intent of the Zone is to protect resource management activities and that, in the event of conflict between residential uses and farm forestry or forestry practices, this Chapter will be interpreted in favor of these resource management practices."

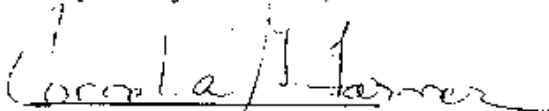
If the application were to be approved, a condition of approval would require the applicant to execute and record a farm and forest practices easement. Applicant has not proved, however, that such a condition of approval would be sufficient to meet the purpose of this zone. For instance, approval of the nonfarm dwelling would not "provide areas for the continued practice of commercial agriculture," would not "guarantee the preservation and maintenance of areas [classified for Exclusive Farm Use]" and would not "minimize activities that may be incompatible with commercial agriculture." In fact, applicant's argument in favor of the application is that the property is not valuable farmland. Viewed as a whole, however, the subject property is not generally unsuitable for agricultural use particularly in conjunction with other nearby agriculturally zoned and used properties. The policy of the state and the county is to preserve the agricultural use. Although the subject property may not be as valuable for the production of grapes as property across Briggs Hill Road, it can reasonably be put to farm use in conjunction with adjacent properties. The property to the south is used for grazing and the subject property can be put to farm use in conjunction with that property. The proposed use is inconsistent with this criterion.

No other Lane Code provisions appear relevant to this application.

Conclusion

The Applicant has not met its burden of proving that the application is consistent with the criteria for approval. Therefore, the application is denied.

Respectfully Submitted,



Cornelia G. Farmer

Lane County Hearings Official

LCOG
Lane Council of Governments
99 East Broadway, Suite 400, Eugene, Oregon 97401-3111 (541) 682-4283 Fax: (541) 682-4099 TTY: (541) 682-4567

August 16, 2000

Mr. Kent Howe, Director of Planning
Lane County Land Management Division
125 E. 8Th Ave.
Eugene, OR 97401

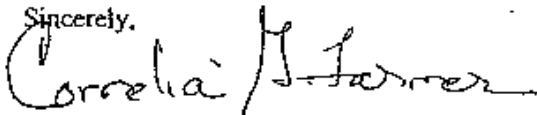
Re: *Appeal of Hearings Official denial of the Smith request (PA 00-5620) for a nonfarm dwelling within an exclusive farm use zone.*

Dear Mr. Howe:

I have received an appeal of my August 2, 2000 decision in PA 00-5620 denying the Daniel Smith request for a nonfarm dwelling within an exclusive farm use zone on tax lot 900, assessor's map 19-05-03. Upon my review of this appeal, I find that the allegations of error are not sufficiently persuasive to warrant a reconsideration of my decision.

Accordingly, on the authority of Lane Code 14.535(1), I shall affirm my August 2, 2000 decision without further consideration. Please advise interested parties of this decision.

Sincerely,



Cornelia G. Farmer
Lane County Hearings Official

RECEIVED BY
LAND MANAGEMENT

AUG 14 2000

AM 7,8,9,10,11,12,1,2,3,4,5,6

APPLICATION FOR AN APPEAL OF A
DECISION BY THE HEARINGS OFFICIAL
(Thoroughly Complete by Typing or Printing)



1. Name of Appellant DANIEL S. SMITH Phone 687-1866
 Mailing Address 26978 BRIGGS HILL ROAD 97405
 (Street) (State) (Zip)
 Appellant's Representative THOMAS I. MILLER Phone 345-9455
 Mailing Address 1232 PIPER LANE EUGENE, OR. 97401
 (Street) (State) (Zip)

2. Attach a copy of the decision being appealed. The Dept. File No. for the decision being appealed is: 00-5620

3. Attach check(s) for \$2,450 covering the appeal fees, payable to Lane County. (SEE REVERSE SIDE FOR IMPORTANT FEE INFORMATION)

4. The deadline date by which this appeal must be submitted to and received by the Lane County Land Management Division is: August 14, 2000. (This deadline date stated in Hearings Official decision.)

5. Check one of the boxes below to identify your party status with the right to appeal the Hearings Official decision:

- a. I am the owner or contract purchaser of the subject property;
- b. I am the applicant for the subject application;
- c. I made an "appearance" in the proceeding by submitting oral or written testimony into the record. (An appearance does not include a name or address on a petition.)

6. Attach to this form a written explanation that addresses each of the following, three standards:

- 1. An explanation of the reasons why you believe the decision of the Hearings Official was in error or why you believe the Hearings Official should reconsider the decision;
- 2. an identification of one or more of the following general reasons for the appeal or request for reconsideration:
 - (a) The Hearings Official exceeded his or her jurisdiction;
 - (b) The Hearings Official failed to follow the procedure applicable to the matter;
 - (c) The Hearings Official rendered a decision that is unconstitutional;
 - (d) The Hearings Official misinterpreted the Lane Code or Manual, State Law or other applicable criteria; or
 - (e) The Hearings Official should reconsider the decision in order to allow the submittal of additional evidence not available in the record and addressing compliance with the applicable standards or criteria; and
- 3. Detailed information in support of your explanations

Your appeal shall be rejected by the Director if it does not include all required fees and the above mentioned information.

Signature of Applicant or Applicant's Representative
[Handwritten Signature]

Date 8/9/00

