

**BEFORE THE LAND USE HEARINGS OFFICER
OF CLACKAMAS COUNTY, OREGON**

Regarding an appeal by Jerome and Carole Rosa of an) **ORDER RE-OPENING**
administrative decision denying an application for a farm) **THE RECORD**
dwelling on a 138-acre parcel located at 10654 S. Wildcat) **Z0485-23**
Road in unincorporated Clackamas County, Oregon) **(Rosa Farm Dwelling)**

A. SUMMARY

1. On December 14, 2023, Jerome and Carole Rosa (the “applicants”) filed an application for approval of single-family dwelling customarily provided in conjunction with a farm use on High Value Farmland. The applicants propose to site the dwelling on a 138-acre parcel in the EFU (Exclusive Farm Use) district, located at 10654 S. Wildcat Road. The legal description of the site is tax lot 00100, Section 11, Township 6 South, Range 1 East of the Willamette Meridian (the “site”). If approved, the dwelling would be occupied by the applicants, the owners of site and the farm operators.

2. On March 13, 2024, the planning director issued a written decision (Exhibit 1) concluding the applicants failed to bear the burden of proof that:

a. The site is currently employed in farm use on which the farm operator earned at least \$80,000 in gross annual income from the sale of farm products. (Section 401.05(C)(5)(a) of the Clackamas County Zoning and Development Ordinance, the “ZDO”); and

b. There is no other dwelling on lands owned by the farm operator that are designated exclusive farm use or for mixed farm/forest use (ZDO 401.05(C)(5)(c)).

3. On March 25, 2024, the applicants filed a written appeal of the planning director’s decision. (Exhibit 20).¹

4. Clackamas County Hearings Officer Joe Turner (the "hearings officer") conducted a duly noticed public hearing to receive testimony and evidence regarding the application. County staff summarized the director’s decision. The applicants and their representative testified at the hearing in support of the appeal. No one else testified orally or in writing in response to the appeal.

5. ZDO 401.05(C)(5)(f) provides “In determining the gross income requirement, the cost of purchased livestock shall be deducted from the total gross annual income attributed to the tract.”

¹ The appeal was not included in the Exhibit list prepared by the County. Therefore, the hearings officer added it as Exhibit 20.

a. In their initial application the applicants submitted evidence of gross income from farm operations, including the value of grazing and hay produced on the site and used in their dairy operation on another property located in Marion County. The applicants did not assert any income generated from the sale of cattle raised on the site. Therefore, the director's decision concluded that ZDO 401.05(C)(5)(f) was met.

b. On appeal the applicants provided evidence of farm income generated by the sale of cattle raised on the property in 2020. However, they did not provide evidence about any costs of purchasing those cattle.

6. This issue was not raised on appeal, because it was not a basis for the planning director's denial. However, because the applicants submitted new evidence regarding the sale of cattle, evidence regarding any costs to purchase the cattle that were sold in 2020 must be deducted from the gross income cited by the applicants.

7. Therefore, the Hearings Officer is reopening the record for the limited purpose of allowing the applicants the opportunity to provide evidence of any costs to purchase cattle whose sale price was included in the gross farm income generated from the site and to allow the County and the public to review and respond to whatever evidence the applicants submit.

8. This open record period is strictly limited to this single issue; what, if any, cost of purchased livestock must be deducted from the total gross annual income generated on the site.

B. DISCUSSION

1. Under ZDO 1303.03.F, every party is entitled to an opportunity to be heard and present and rebut evidence. Nothing in the ZDO precludes keeping the record open after the public hearing, provided the public has an opportunity to respond in writing to any new evidence the applicant introduces.

2. The hearings officer finds that reopening the record to allow all parties to address this issue is warranted to serve the interests of a full and fair understanding of the relevant law, provided the process affords the public a meaningful opportunity to respond to that new evidence.

3. The hearings officer finds that reopening the record to allow all parties an opportunity to submit additional testimony and evidence on this issue is warranted to serve the interests of a full and fair understanding of the relevant law, provided the process affords the public a meaningful opportunity to respond to that new evidence. Therefore, the hearings officer will reopen the record solely for the purpose of accepting additional testimony and evidence on the issue of what, if any, cost of purchased livestock must be deducted from the total gross annual income attributed to the site. No other issues may be raised or addressed during the open record period.

C. ORDER

1. The hearings officer orders the public record to be reopened in the matter of Case No. Z0485-23 (Rosa Farm Dwelling Appeal), subject to the following schedule:

a. For one week, until 3:00 p.m. Friday, June 14, 2024, for all parties to introduce new evidence and testimony addressing ZDO 401.05(C)(5)(f).

b. For a second week, until 3:00 P.M., Friday, June 21, 2024, for all parties to respond in writing to the new evidence; and

c. For a third week, until 3:00 P.M., Friday, June 28, 2024, for the applicant to submit a final argument without introducing any new evidence. The applicant can submit or waive their final argument any time after 3:00 P.M., Friday, June 21, 2024.

2. Any new evidence and testimony must be in writing and must be received by the Department of Transportation and Development by 3:00 P.M. of the relevant closing date.

3. As soon as practicable, Clackamas County shall provide a copy of this Order to all persons who are parties in this matter.

4. The hearings officer will issue a written final order no later than July 5, 2024).

DATED this 5th day of June 2024.



Joe Turner, Esq., AICP
Clackamas County Land Use Hearings Officer

APPEAL RIGHTS

ZDO 1307.14(D)(6) provides that, with the exception of an application for an Interpretation, the Land Use Hearings Officer's decision constitutes the County's final decision for purposes of any appeal to the Land Use Board of Appeals (LUBA). State law and associated administrative rules promulgated by LUBA prescribe the period within which any appeal must be filed and the manner in which such an appeal must be commenced. Presently, ORS 197.830(9) requires that any appeal to LUBA "shall be filed not later than 21 days after the date the decision sought to be reviewed becomes final." This decision will be "final" for purposes of a LUBA appeal as of the date of mailing (which date appears on the last page herein).