



**CROOK COUNTY**  
**AUG 25 2021**  
**PLANNING DEPT**

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**Via Email to: Crook County Community Development**

**Re:** Applicant's Post Hearing Comments – 2<sup>nd</sup> Round  
Site Plan Review. Farm Relative Dwelling  
217-21-000431-PLNG. Patrick Lane.

The applicant submits the following as some of the pertinent facts in this matter:

- 1) The subject property is a rectangular 197.46 acre parcel located approximately 9.6 miles, or 14 minutes from the City of Prineville.
- 2) The property is developed with a single-family dwelling approved in 2020 as a Primary Farm Dwelling located in the southeast corner of the property. To obtain that recent approval, it was determined that the subject property is currently employed for farm use, and that the applicant will be the primary occupant of the dwelling and he will be principally engaged in the farm use of the land.
- 3) There is a large 3456 sq foot hay storage building and a 2112 square feet lean-to in the northeast corner of the property. This constitutes approximately 5568 square feet of storage for farm crop and equipment.
- 4) Applicant has 197 acres of water rights, and 190 acres in crop production. He spent more than \$13,000 for his water rights last year.
- 5) The property currently supports a hay-growing operation, irrigated by a center-pivot, supplemented by a handline and wheel line for the irrigated fields outside of the center pivot. He produces over 750 tons of crop annually. He grows Timothy hay, which is primarily exported to Korea and Southern California, but some is sold to other areas in the Pacific Northwest. He also produces Alfalfa and Orchard Grass Hay which is sold primarily to the central Oregon market but does sell to the Portland area and the California market as well.
- 6) The applicant is the sole member of Lane Land & Livestock, LLC, an Oregon Limited Liability Company, which is a cattle operation also conducted on the subject property. He raises at least 25 cows. The cattle are sold to the local market through Tommy Norton Cattle Company in Madras, Oregon.
- 7) Applicant purchased the property and existing farm operation in 2018, for \$960,000. A substantial portion of the sale price included farm assets as the Real Market Value of the land is much less than the purchase price.
- 8) Applicant testified that he is not employed elsewhere, he works on the farm full time, and has no other source of assistance on the farm as he is a young man who is not married and has no children to assist him.
- 9) While there is no minimum income test to meet for the non-high value farm operation, applicant testified that his income from the farm operation is in excess of \$40,000 per

- year. Applicant testified to the sale of 25 cattle (\$12,000) and over 750 tons of hay (\$100,000 gross revenue) The market price for hay is \$250/ton on average with the range usually \$250-\$330 / ton, and he sells at least 750 tons annually.
- 10) The proposed relative farm help dwelling would be located in a dry area of the property northeast of the irrigation pivot. Applicant stated that the area is the corner/end of the wheel lines which is hard and not very efficient to water. Placing the dwelling there also enhances the efficiency of time it takes to perform the operations of the fields such as changing water, planting, cutting, harvesting.
  - 11) Applicant testified that he makes all of the decisions about the farm operation, including, but not limited to: what crops to plant, when to plant, where to plant, and when and where to market the crops and the price point for sale. He also determines all aspects of the cattle operation. He testified that he is the primary farm operator and will continue to be the primary farm operator.
  - 12) His dad, James, testified that he owns and operates a store in the City of Prineville with his wife and his other son. He testified that he works at the store part time. He testified that he has been helping Patrick with the farm operation and that he is willing and able to assist the applicant with the farm operation, and is happy to do so, but that he is not going to be the primary farm operator. He enjoys assisting his 2 sons in becoming successful.

**Applicant requires assistance:**

The applicant testified that his father, James, is required to assist with the day-to-day operations, and while the applicant is away from the property James is required to feed and tend to the cattle and horses, and move/monitor/repair the irrigation pivot, handlines, and wheel lines as needed. During calving season, he will assist with monitoring the pregnant cows, and the births of calves. During calving season, it is important to closely monitor the cows because with the extreme temperature variations and the significantly cold temperatures the calves can freeze to death, and they need to be promptly tended to stop and/or curve sickness.

Applicant testified that James assists with tending to any emergencies and security issues as well. The property has crops, livestock, and equipment stored outside. When Patrick is away from the property, he needs his dad to perform the requisite security. Patrick testified that he is not away from the property much during the irrigation season (April 15 – October 15) each year, but during the winter months he does take a vacation - usually to Arizona. It is common for Central Oregonian farmers and ranchers to take an extended vacation after the last harvest of the season. Such rest is necessary after working hard, long hours during the hot summer months.

Even if he leaves central Oregon for a short vacation during the winter months, that is not inconsistent with OAR 60-033-0130(9) because as the farm operator he continues to perform the executive or decision-making functions, even if during that time most of the physical tasks are

performed by the relative. *See Richards*, at 25. This is consistent with when a farm operator suffers physical limitations which requires a relative to perform the work. Applicant testified that he has twice broken his foot now and had to wear a boot cast. He had the cast on at the site visit and hearing, and it was clear that his ability to walk and move around was severely limited. He testified that during such times, he requires assistance with more of the work-related tasks because of his physical limitations. It takes much longer to move irrigation equipment around because walking takes much longer. As applicant testified, even during the time he is away from the property, he is still directing the day-to-day needs of the farm, marketing his crops, and as a business owner he is always conducting business.

During the irrigation season he must be away from the property sometimes for the transport and sale of crops and livestock or other farm-related activities. During such times his dad is required to perform the necessary work and provide security. He testified that he has no one else that can help him. He said that when something breaks or there is an emergency, his dad is needed to assist him with repairs and/or to run to town and grab the essential parts while applicant stays behind and continues to work on the issue or emergency. He also said that the repair and replacement of equipment parts and wheels for irrigation lines requires more than one person. He said that the wheels can weigh more than 350 pounds and it is impossible to do make any such repair or replacement of such heavy equipment alone. He testified that having someone that can run to town and grab the necessary supplies and materials while he stays and works on the farm is required because a round trip to town takes no less than an hour which significantly interferes with completing work that needs to be done on-site.

While the applicant testified that for some tasks it is nice or convenience to have assistance, he has also submitted substantial information concerning several tasks that assistance is required for. He does not have any assistance from a spouse, friends, or children to help him with any of the farm operations – so as he testified he requires the assistance of his father, who is very happy to assist in his sons business. The 197 acre farm operation consisting of cattle and crop production is a huge job for 1 person. It requires the assistance of his dad to accomplish all that he needs to do to maintain a productive farm operation.

The goal of the relative farm housing is to allow for available, affordable, labor to assist with the farm operation. To meet that need, the legislature has allowed for relatives to occupy the farm property. There is no requirement that the assistance be full time or a certain number of hours, but on an as needed – as required – basis. That is exactly what the applicant has proposed within the spirit and intent of the law.

**Applicant, is the Farm Operator will continue to play predominate role:**

Applicant, Patrick Lane, is the “farm operator.” He is the one who operates the farm, does the work, and makes the day-to-day decisions about such things as planting, harvesting, feeding and

marketing, repairs, maintenance, purchases, equipment sales and purchases, fertilizer, weed control, and all other such decisions necessary to conduct the farm operation on the property.

Accordingly, Applicant has submitted testimony concerning the ratio of hours that he expects his father will assist with the farming operations and the hours that applicant invests toward the farm operation. His father is expected to contribute no more than 40% of the overall hours required for the commercial farm operation. As is addressed in the record, James has another business that he is engaged in and works at part-time in town. Accordingly, there is substantial evidence that Applicant will continue to be the predominant farm operator, with his father as his assistant.

### **Commercial Farm Operation**

Neither the County Code nor the Oregon Administrative Rule which it implements define “existing commercial farming operation” for purposes of this analysis. To determine whether the operation constitutes a “commercial farm operation” for purposes of this analysis, LUBA has identified 2 safe harbor provisions which, if met, “then a county could safely conclude, without more analysis, that the farm operation is also a “commercial farming operation” for purposes of approving a “relative farm help dwelling” under OAR 660-033-0130(9).

Accordingly, the county must consider whether the farm operation meets or exceeds the local thresholds for a “commercial agricultural enterprise” or the farm operation is productive enough to qualify for a primary dwelling, and whether the operation is sufficient to qualify for an accessory dwelling. Applying the 3 “safe harbor” provisions here:

- A. Here, the property exceeds the minimum of 160 acres to qualify it for a primary farm dwelling. Accordingly, the applicant recently obtained approval for a primary farm dwelling under the standards of CCC 18.16.025. The applicant has demonstrated that the parcel is currently employed for farm use, applicant is the primary occupant of the dwelling, and is principally engaged in farm use of the land.
- B. In addition, the applicant testified that his gross revenue from the farming operation exceed the minimum \$40,000 income threshold to qualify for a primary farm dwelling.
- C. The applicant could obtain an accessory farm dwelling under CCC 18.16.030 as the gross annual income from the sale of farm products pursuant to CCC 18.16.030 exceeds the minimum of \$40,000 required.

When the farm operation supporting the primary farm dwelling is sufficient to qualify the property for an accessory farm dwelling, then LUBA has opined that the county could safely conclude, without more, that the farm operation qualifies as a “commercial farming operation” for purposes of a relative farm assistance dwelling.

Notably, the statutory minimum 80-acre minimum parcel size and 160 acres have been, in effect,

legislatively deemed consistent with maintenance of a commercial agricultural enterprise. Here, the applicant's acreage twice exceeds the 80-acre minimum, and is more than the 160 acre minimum. This provides some support for the conclusion that the farm operation on the property which occupies all usable portions of the property at an appropriate level of intensity, is a commercial farming operation. Under the reasonable farmer standard, the areas that are not in crop production are being utilized for livestock, horses, and storage, because it would not be reasonable to produce crops on the small areas outside of the pivots and there is no irrigation equipment in those areas.

Because LCDC has not defined the term it is for the County to articulate the thresholds that separate a "commercial" from a non-commercial farming operation. Because it is an undefined term, counties have some discretion to determine the thresholds for a "commercial farming operation" as applied within the county within a particular local area or agricultural sector. *Richards v. Jefferson County*, LUBA 2018-117. If the county chooses not to employ one of the safe harbors discussed above, the county then **must** determine the thresholds that apply. *Id.* The determination constitutes a mixed question of fact and law, subject to LUBA's review for legal error and substantial evidence.

LUBA's stated that as a legal matter, what distinguishes an existing "commercial" farming operation from its noncommercial counterparts is largely a matter of scale and intensity, and goes on to state: "roughly speaking, we believe a commercial farming operation is one that is of sufficient scale and intensity that would induce and require a reasonable farmer to devote the majority of his or her working hours to operating a farm on the subject property." Here, applicant testified that he devotes **all** of his working hours to operating the farm. He has no other employment. As the owner/operator of the farm, he is engaged in operations full-time, which during irrigation season can easily be a minimum of 10-12 hour days, 7 days a week.

### **Conclusion:**

In sum, the county must:

- 1) identify the farm operator: Patrick Lane
- 2) Identify whether the farm operator continues to play "the predominant role" in the farming operation - yes, He will continue to manage and control the decisions concerning all aspects of the farm operation.
- 3) Determine whether the farm operator "does or will require the assistance" of a relative to manage the farm operation - yes. The obligations and duties of the farm operation require the assistance of a second person as addressed above.
- 4) Whether the farm operation qualifies as a "commercial farming operation." - yes. The applicant engages in a commercial cattle and crop operation. His livestock and crops are sold into the commercial market for profit locally, interstate, and international.





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He satisfies the criteria for a farm-related dwelling on the property by meeting both the acreage and income thresholds. He also could qualify for an accessory dwelling as the income standards are met.

Again, LUBA opined that a typical case involving a relative farm help dwelling would find that the dwelling is justified based on claims that the scale or intensity of the farm operation requires more work than a single farmer engaged in a commercial farming operation can reasonably perform. This is such the case. This is a large operation with 197 acres of water rights, and at least 750 tons of hay produced annually, and also has a livestock cattle component. There is too much work for one farmer. Having the assistance to move irrigation water lines, wheels, pivots, and assist with repairs, maintenance, emergencies, and in the monitoring of the irrigation and livestock is required as one farmer cannot do it all. This is not a case where the assistance is hypothetical or based upon a future expectation, rather, this is a case where it has been demonstrated that the assistance is required and has been ongoing for years.

Based upon the substantial evidence in the record, the applicant has satisfied the applicable criteria. Substantial evidence is evidence in the whole record that a reasonable person would rely upon to conclude compliance with approval criteria. *Richards*, at 18, citing to *Dodd v. Hood River County*, 317 Or 172, 179 (1993); *Younger v. City of Portland*, 305 Or 346, 351-52 (1988). T

Very truly yours,

*Lisa Andrach*

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