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BEFORE THE LAND USE BOARD OF APPEALS
OF THE STATE OF OREGON

MICHAEL GIBBONS,)
)
Petitioner,)
)
vs.)
)
CLACKAMAS COUNTY,)
)
Respondent.)

LUBA No. 98-016
FINAL OPINION
AND ORDER

Appeal from Clackamas County.

John A. Rankin, Sherwood, filed the petition for review and argued on behalf of petitioner.

Susie L. Huva, Assistant County Counsel, Oregon City, filed the response brief and argued on behalf of respondent.

HANNA, Board Member; GUSTAFSON, Board Chair, participated in the decision.

AFFIRMED 10/02/98

You are entitled to judicial review of this Order. Judicial review is governed by the provisions of ORS 197.850.

1 Opinion by Hanna.

2 **NATURE OF THE DECISION**

3 Petitioner appeals the county's denial of a home occupation permit renewal for an
4 auto repair business in an exclusive farm use (EFU) zone.

5 **FACTS**

6 Petitioner conducts an auto repair business for which he received a home occupation
7 permit in 1994. That permit was renewed in 1995 and 1996. A county hearings officer
8 denied petitioner's request to renew the home occupation permit for 1997, finding that
9 petitioner's business violates Clackamas County Zoning and Development Ordinance (ZDO)
10 822.05(K)(2), which limits the number of vehicles that may be associated with a home
11 occupation. ¹T ZDO 822.05(K)(2) requires that:

12 "The maximum number of vehicles which are associated with a home
13 occupation and located on the property shall not exceed a total of five (5) at
14 any time, including: employee vehicles; client vehicles; and vehicles to be
15 repaired. Vehicles to be repaired shall be located within an enclosed building
16 or in an area not visible from off the property."

17 The hearings officer interpreted ZDO 822.05(K)(2) to require that vehicles left at the
18 property to be repaired must be kept inside an "enclosed building or in an area not visible
19 from off the property" until the vehicle is picked up by the customer. He also interpreted
20 "vehicles which are associated with a home office" to include vehicles that clients would
21 commonly use when dropping off or picking up vehicles to be repaired. The hearings officer
22 concluded that petitioner's use of the property violates ZDO 822.05(K)(2) because the
23 "vehicles on the property for repair [are not kept] within the enclosed accessory structure
24 utilized for the home occupation" and petitioner "regularly exceeds the five maximum

¹The hearings officer also found that the manner in which petitioner violated ZDO 822.05(K)(2) also established a violation of ZDO 822.05(E). ZDO 822.05(E) provides:

"The character and residential/farm function of the buildings and property shall be maintained by the appropriate use of colors, materials, design, construction, lighting and landscaping."

1 vehicles permitted at any one time." Record 11.

2 The hearings officer also determined that petitioner's business violates ZDO
3 401.04(C)(20) which regulates home occupations in EFU zones, both on high-value farmland
4 and non-high-value farmland. In particular, and as relevant here, that provision restricts
5 home occupations on high-value farmland to those activities of the residents of the dwelling,
6 and then only within the confines of the existing dwelling and structures accessory to the
7 existing dwelling.

8 This appeal followed.

9 **ASSIGNMENTS OF ERROR**

10 In challenging a local government's denial of a land use application, a petitioner must
11 demonstrate that each of the county's bases for denial is incorrect as a matter of law. When
12 challenging the county's findings on evidentiary grounds, petitioner must also establish that
13 only petitioner's evidence can be believed and that, as a matter of law, he established
14 compliance with each of the applicable criteria. Jurgenson v. Union County Court, 42 Or
15 App 505, 510, 600 P2d 1241 (1979); Horizon Construction, Inc. v. City of Newberg, 28 Or
16 LUBA 632, 635; aff'd 134 Or App 414 (1995).

17 Petitioner alleges that the county's decision is incorrect in numerous respects.
18 Petitioner argues that (1) the hearings officer improperly construed the applicable law
19 because its denial is inconsistent with prior approvals granted to petitioner; (2) the hearings
20 officer improperly construed the applicable law because its interpretation is inconsistent with
21 the express language of ZDO 822.05(E); (3) the findings are not supported by substantial
22 evidence because the hearings officer did not adequately consider and discuss petitioner's
23 evidence regarding compliance with ZDO 822.05(E) and 822.05(K); and (4) the hearings
24 officer's interpretation of ZDO 822.05(E) and (K) results in the imposition of conditions for
25 home occupations that are arbitrary and unreasonable.

26 Petitioner contends the hearings officer's interpretation of ZDO 822.05(K)(2) is

1 inconsistent with the plain language of the provision in two respects. First, according to
2 petitioner, once a vehicle is repaired, it is no longer a "vehicle to be repaired." Rather, it
3 becomes a "client vehicle" and need not "be located within an enclosed building or in an area
4 not visible from off the property."

5 The language of ZDO 822.05(K)(2) may be susceptible of several interpretations.
6 However, the county's interpretation of ZDO 822.05(K)(2) as providing that a "vehicle to be
7 repaired" remains a vehicle to be repaired until it is removed from the property is consistent
8 with the plain language of the provision, and we find it to be a reasonable and correct
9 interpretation.²

10 Second, petitioner challenges the hearings officer's interpretation of the first sentence
11 of ZDO 822.05(K)(2) that the second vehicle that clients would commonly use in
12 conjunction with dropping off and picking up "vehicles to be repaired" must also be
13 considered "vehicles which are associated with a home occupation." The question again is
14 whether the county's reading of the first sentence of ZDO 822.05(K)(2) to include drop off
15 and pick up of vehicles is reasonable and correct. While ZDO 822.05(K)(2) may be
16 susceptible to more than one interpretation, the five vehicle limitation plainly applies to
17 "client vehicles," which the hearings officer could reasonably construe to include vehicles
18 driven to petitioner's business to pick up or drop off other vehicles. We agree with the
19 county that the hearings officer's interpretation is reasonable and correct.³

20 ZDO 401.04(C)(20) restricts home occupation activities in EFU zones. Different
21 restrictions apply depending on whether the land is classified high-value farmland or non-

²Our acceptance or rejection of a local hearings officer's interpretation of a local ordinance is determined by whether we believe that interpretation to be reasonable and correct. We consider the local government's interpretation in our review, and give some weight to it if it is not contrary to the express language and intent of the enactment. See McCoy v. Linn County, 90 Or App 271, 752 P2d 323 (1988).

³We do not understand petitioner to argue that his business complies with the five vehicle limitation imposed by ZDO 822.05(K)(2) if drop-off and pick-up vehicles are counted as vehicles associated with a home occupation.

1 high-value farmland. The hearings officer found that the applicant failed to demonstrate that
2 the subject property is not high-value farmland and, thus, did not demonstrate compliance
3 with the use limitations of ZDO 401.04(C)(20) for either high-value farmland or non-high-
4 value farmland.⁴ The applicant's failure to establish compliance with ZDO 401.04(C)(20)
5 provides a third basis for affirming the county's decision.

6 Because we conclude the county's decision expresses at least three bases for denying
7 the permit renewal, we do not reach petitioner's other challenges.

8 The county's decision is affirmed.

⁴Petitioner responds that the county did not adequately advise the applicant of the applicability of ZDO 401.04(C)(20) or provide an adequate opportunity for the applicant to address those criteria. The notices provided in advance of the hearing list ZDO Section 401 as an applicable criterion. Record 118. More importantly, at the hearing the hearings officer explicitly discussed the issue of whether the high-value farmland criteria were applicable and satisfied. The applicant was given the opportunity to request additional time to present evidence and argument concerning the application before the hearing was closed and did not do so.