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

DEPARTMENT OF LAND CONSERVATION)
AND DEVELOPMENT,)
)
Petitioner,)

vs.)

JACKSON COUNTY,)
)
Respondent,)

and)

ROGUE VALLEY MANOR, NAUMES, INC.)
and EVELYNE NYE,)
)
Intervenors-Respondent.)

LUBA No. 96-117

FINAL OPINION
AND ORDER

JACKSON COUNTY CITIZENS' LEAGUE)
and CHRIS N. SKREPETOS,)
)
Petitioners,)

vs.)

JACKSON COUNTY,)
)
Respondent,)

and)

ROGUE VALLEY MANOR, NAUMES, INC.)
and EVELYNE NYE,)
)
Intervenors-Respondent.)

LUBA No. 96-123

Appeal from Jackson County.

Celeste J. Doyle, Assistant Attorney General, Salem, filed a petition for review and

1 argued on behalf of DLCD. With her on the brief was Theodore R. Kulongoski, Attorney
2 General, Thomas A. Balmer, Deputy Attorney General, and Virginia L. Linder, Solicitor
3 General.

4
5 F. Blair Batson, Portland, filed a petition for review and argued on behalf of
6 petitioners Jackson County Citizens' League and Skrepetos.

7
8 No appearance by respondent.

9
10 Gregory S. Hathaway, Portland, filed the response brief and argued on behalf of
11 intervenors-respondent. With him on the brief was Timothy R. Volpert, Christopher C.
12 Brand, and Davis Wright Tremaine.

13
14 HOLSTUN, Board Chair.

15
16 REMANDED

03/26/99

17
18 You are entitled to judicial review of this Order. Judicial review is governed by the
19 provisions of ORS 197.850.

20

1 Opinion by Holstun.

2 **NATURE OF THE DECISION**

3 Petitioners appeal the county's approval of a permit to expand an existing golf course
4 on urban land onto rural land zoned for exclusive farm use (EFU).¹

5 **FACTS**

6 This is the second time this matter has been before us. In DLCD v. Jackson County,
7 33 Or LUBA 302 (1997) (Jackson County I), we described the proposal as follows:

8 "The City of Medford approved a nine-hole golf course on 80 acres in 1994 as
9 part of the expansion of a planned unit development within the city. In 1995,
10 intervenors applied to the county for a permit to add 251 acres to the golf
11 course. The proposed expansion includes 85 acres for nine additional holes,
12 35 acres for a golf learning center and 92 acres for buffers in and around the
13 developed golf course and learning facility. An additional 39 acres is devoted
14 to miscellaneous uses related to the golf course. Six of the nine new holes
15 will be outside of the Urban Growth Boundary (UGB) and three of the nine
16 new holes will be developed within the urban area.

17 "The area of the proposed expansion includes four tax lots (tax lots 100, 101,
18 200 and 800). Tax lot 100 consists of 176.2 acres zoned EFU and is a
19 producing pear orchard. It qualifies as high-value farmland subject to special
20 protection under OAR chapter 660, division 33. Tax lot 101 is a 1.14 acre lot
21 within tax lot 100. It is zoned Farm-5 and is developed with a residence. Tax
22 lot 200 consists of 47.82 acres zoned EFU and is used for grazing and pasture
23 land. Tax lot 800 consists of 25.93 acres zoned EFU and is used for grazing.
24 Tax lots 100, 101 and 800 lie outside the Medford UGB. The existing golf
25 course and proposed expansion are joined only by a short common boundary."
26 33 Or LUBA at 304 (footnotes omitted).

27 In Jackson County I, we concluded that as a matter of law OAR 660-033-0120 and
28 660-033-0130(18) preclude the expansion of an existing golf course on urban land onto rural
29 EFU-zoned land, and reversed the county's decision. Our decision addressed the first
30 assignment of error raised by DLCD and the third assignment of error raised by JCCL. We

¹We refer to petitioner Jackson County Citizens' League and petitioner Skrepetos as JCCL, and petitioner Department of Land Conservation and Development as DLCD. We refer to JCCL and DLCD together as petitioners.

1 did not reach the remainder of petitioners' assignments of error. Intervenors-respondent
2 appealed our decision to the Court of Appeals. DLCD v. Jackson County, 151 Or App 210,
3 948 P2d 731 (1997) (Jackson County II). The Court of Appeals reversed and remanded our
4 decision to us, stating:

5 "[T]he language of [OAR 660-033-0130](18) itself is unambiguous, and
6 cannot plausibly be read as limiting the expansions of golf courses that it
7 authorizes on EFU land to those circumstances where the existing golf course
8 is also located on land that is zoned EFU. Rather, the plain import of the text
9 of the section is that * * * any existing golf course, regardless of the zoning or
10 quality of land on which it is located, qualifies for expansion onto EFU and
11 high-value farmland to which it is contiguous." Id. at 221.

12 We now consider those assignments of error that we have not yet resolved.

13 **FIRST ASSIGNMENT OF ERROR (JCCL)**

14 Uses allowed by ORS 215.283(2), such as golf courses, are subject to
15 ORS 215.296(1), which in relevant part requires a finding that the proposed use will not
16 "[f]orce a significant change in accepted farm or forest practices on surrounding lands
17 devoted to farm or forest use[.]"² Petitioner JCCL contends that the proposed golf course
18 violates ORS 215.296(1) because it is surrounded by 92 acres of land that, as part of the
19 proposed expansion, will be taken out of agricultural use and employed as buffers for the
20 golf course. According to JCCL, the 95 acres of nonagricultural buffers should be
21 considered "surrounding lands" for purposes of ORS 215.296(1). If so, JCCL argues, the
22 county's finding of compliance with ORS 215.296(1) is not supported by substantial

²ORS 215.296(1) provides that:

"A use allowed under ORS 215.213(2) or 215.283(2) may be approved only where the local governing body or its designee finds that the use will not:

- "(a) Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; or
- "(b) Significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use."

1 evidence, because the complete cessation of agricultural activities on those lands must
2 constitute a "significant change" in farm practices on those lands.

3 Intervenor respond that JCCL failed to raise this issue below and thus has waived it
4 pursuant to ORS 197.763 and 197.835(3). ORS 197.763(1) requires that issues "be raised
5 and accompanied by statements or evidence sufficient to afford the governing body * * * and
6 the parties an adequate opportunity to respond to each issue."

7 In reply, JCCL argues that the issue of compliance with ORS 215.296(1) and whether
8 the buffers constitute "surrounding lands" for purposes of that statute was raised at record
9 pages 86-87, 94-95 and 137-38. We disagree. Two of the three record cites contain
10 comments regarding the buffer lands, but do not contain any suggestion that those buffer
11 lands might constitute "surrounding lands" for purposes of ORS 215.296(1). The first
12 comment, made in a letter by a representative of JCCL, states:

13 "Jackson County Emergency Ordinance No. 96-13 of Chapter 218.050(24)
14 allows the expansion of a golf course on to High Value Farm Land (existing
15 orchard) consistent with the requirement of 218.100(3)(D) and (v) including
16 buffering from adjacent farm land as needed. This buffering may include
17 trees, netting, fencing, or other devices found to be adequate and necessary by
18 the Planning Director. However, the golf course will significantly change the
19 farming operations of the adjacent orchards (High [Value] Farm Land) even
20 with buffering between the orchards and the golf course." Record 86.

21 The second comment is in a letter submitted by DLCD, stating:

22 "[T]he applicant responds that it has adequately addressed the issue of
23 'compatibility' with adjacent and nearby farm uses as required by ORS
24 215.296 and OAR 660-033-0130(5). However, the applicant's 'Farming
25 Practices Impact Analysis' contains only [conclusory] statements that a 200 to
26 300 foot buffer around the proposed course will avoid any conflicts with
27 adjacent farm uses. There is nothing that explains how those buffers will be
28 adequate or appropriate to keep errant golf balls out of adjacent farm areas.
29 Nor is there any explanation to show that the proposed buffers will be
30 adequate to screen the effects of the operation or maintenance of the course,
31 such as fertilizers or pesticides or water run-off, from interfering with adjacent
32 farm uses and practices.'" Record 94-95.

1 Both of these comments are directed at impacts on farm lands outside the buffer
2 lands, not on farm practices on the buffer lands. The third record entry does not mention the
3 buffer areas at all.

4 Whether an issue has been sufficiently raised for purposes of ORS 197.763(1)
5 depends on whether the decision maker and the parties are afforded a fair opportunity to
6 respond to the issue. See Boldt v. Clackamas County, 107 Or App 619, 623, 813 P2d 1078
7 (1991). An issue is waived if it is not sufficiently raised to enable a reasonable decision-
8 maker to understand the nature of the issue. Craven v. Jackson County, 29 Or LUBA 125,
9 132, aff'd 135 Or App 250, 898 P2D 809 (1995).

10 We do not believe a reasonable decision-maker or party would have understood that
11 the quoted comments raise the issue that the buffer lands that are part of the golf course were
12 subject to ORS 215.296(1) analysis as surrounding lands. Consequently, we agree with
13 intervenors that this issue was waived, and we consider it no further.

14 The first assignment of error is denied.

15 **SECOND ASSIGNMENT OF ERROR (JCCL)**

16 Jackson County Land Development Ordinance (LDO) 218.100, which establishes
17 standards for conditional uses in exclusive farm use zones, provides that:

18 "(1) Uses may be approved only when the following findings can be made:

19 "A) The use will not force a significant change in accepted farm or
20 forest practices on surrounding lands devoted to farm or forest
21 use;

22 "B) The use will not significantly increase the cost of accepted
23 farm or forest practices on lands devoted to farm or forest use;

24 "C) The use will not cause a decrease in income or a reduction in
25 acreage available for any farm use on adjacent lands[.]"

26 In setting forth the decisional criteria, the challenged decision does not list LDO
27 218.100(1)(C). However, intervenors do not contest its applicability to the proposal.

28 JCCL contends that the county erred in failing to make findings on LDO 218.100(1)

1 (C), and that there is not substantial evidence in the record to support a conclusion that the
2 criterion is met. JCCL argues that:

3 "The approval of the golf course on tax lot 100 will cause a reduction in the
4 acreage available for pear production available to the orchards on tax lots 700,
5 1100 and 1200 to the north of the property; the approval of the golf course
6 will also cause a reduction in the acreage available for pear production
7 available to the orchard to the south.

8 "The approval of the golf course on tax lot 800 will also cause a reduction in
9 the acreage available to tax lots 900, to the north, and 800, to the east, for
10 grazing." JCCL Petition for Review 11 (record citations omitted).

11 If we understand JCCL correctly, it contends that orchards and grazing operations on
12 adjacent lands use or could use some of the tax lots within the subject property for their
13 agricultural operations, and consequently that conversion of those tax lots to nonagricultural
14 uses will cause a "reduction in acreage available for any farm use on adjacent lands" in
15 violation of LDO 218.100(1)(C).

16 Intervenor's concede that the county did not mention or make findings of compliance
17 with LDO 218.100(1)(C) in its decision. However, they argue that the county made findings
18 regarding other criteria that are adequate to demonstrate compliance with
19 LDO 218.100(1)(C). Intervenor's cite to several excerpts from the record in which language
20 from LDO 218.100(1)(A) and (B) is used and points to a staff report which states that LDO
21 218.100(1) will be met because "provision of wide buffers is the chief argument that existing
22 farm uses will be able to continue unhindered." Record 108. Intervenor's conclude:

23 "It is axiomatic that a use which will have no adverse affect on agriculture and
24 surrounding areas and which will not increase the cost of such agriculture will
25 neither cause a decrease in income or a reduction in acreage available for farm
26 use on adjoining lands satisfies the subject criteria." Intervenor's Response
27 Brief 13.

28 Further, intervenor's dispute JCCL's premise that approval of the proposed golf course
29 will cause "reduction in acreage" on any adjacent properties, stating that the record citations

1 JCCCL provides do not show that "approval of the golf course here would cause a reduction in
2 acreage on any of the surrounding properties." Intervenor's Response Brief 13, n 6.

3 In the absence of findings regarding LDO 218.100(1)(C), pursuant to
4 ORS 197.835(11)(b) we may affirm the county's decision where the parties identify evidence
5 in the record that "clearly supports" a finding of compliance with LDO 218.100(1)(C).³
6 However, intervenors do not invoke our authority under ORS 197.835(11)(b) or point to any
7 evidence in the record clearly supporting a finding of compliance with LDO 218.100(1)(C).
8 Instead, intervenors invoke ORS 197.829(2). Under that statute, where the local government
9 fails to make an adequate interpretation of a local provision, LUBA may make its own
10 interpretation of that local provision and determine whether the challenged decision is
11 correct.⁴ Opp v. City of Portland, 153 Or App 10, 14, 955 P2d 768, rev den 327 Or 620
12 (1998). We understand intervenors to invite us to interpret LDO 218.100(1)(C) as being
13 satisfied by the same evidence and findings that the county relied upon to demonstrate
14 compliance with LDO 218.100(1)(A) and (B).

15 We decline intervenors' invitation. Exercise of our authority under ORS 197.829(2)
16 is not appropriate where relevant facts are disputed, the purpose of the local provision is
17 unclear or the local provision is subject to a number of conflicting interpretations. Miller v.
18 Clackamas County, 31 Or LUBA 104, 106 (1996); Thomas v. Wasco County, 30 Or LUBA

³ORS 197.835(11)(b) provides in relevant part:

"Whenever the findings are defective because of failure to recite adequate facts or legal conclusions or failure to adequately identify the standards or their relation to the facts, but the parties identify relevant evidence in the record which clearly supports the decision or a part of the decision, the board shall affirm the decision or the part of the decision supported by the record * * *."

⁴ORS 197.829(2) provides:

"If a local government fails to interpret a provision of its comprehensive plan or land use regulations, or if such interpretation is inadequate for review, the board may make its own determination of whether the local government decision is correct."

1 302, 313 (1996). In the present case, LDO 218.100(1)(C) is subject to at least two plausible
2 conflicting interpretations. It might apply, as intervenors appear to suggest, only where the
3 proposed use results in the reduction of acreage on adjacent lands. Or it might apply, as
4 JCCL appears to suggest, where the proposed use results in the reduction of acreage on the
5 subject property that is available for use in conjunction with farm uses on adjacent lands.
6 Further, there are no findings and the parties appear to dispute whether orchards and grazing
7 operations on adjacent lands use or could use some of the tax lots within the subject property
8 for farm uses.⁵ Accordingly, we conclude that is appropriate to remand the decision to the
9 county to make findings with regard to LDO 218.100(1)(C) and render any necessary
10 interpretations in the first instance.

11 The second assignment of error is sustained.

12 **FOURTH ASSIGNMENT OF ERROR (JCCL)**

13 **SECOND ASSIGNMENT OF ERROR (DLCD)**

14 Petitioners assert that the proposed golf course is an inherently urban rather than a
15 rural use because it an extension of the existing planned unit development within an urban
16 growth boundary that contains 1,096 dwelling units, 16,000 square feet of commercial office
17 space, and the existing nine-hole golf course. Accordingly, petitioners contend that the
18 county was required to make findings of compliance with or take an exception to Goal 14
19 (Urbanization).

20 The difficulty with petitioners' argument is that petitioners fail to establish why Goal
21 14 applies to this permit decision. Absent circumstances not present here, the statewide
22 planning goals are not generally applicable to decisions applying acknowledged
23 comprehensive plan provisions and land use regulations. ORS 197.646; 197.835(5); Byrd v.
24 Stringer, 295 Or 311, 316-17, 666 P2d 1332 (1983). Petitioner DLCD suggests that because

⁵For example, it appears that the owners of an adjacent orchard may own some of the tax lots within the subject property. Record 103-04.

1 it raised below the possible applicability of Goal 14, the county was obligated to make
2 findings demonstrating that the proposed use is rural, or take an exception to Goal 14.
3 However, as intervenors point out, this Board has held that uses allowed by statute in EFU
4 zones are not subject to the additional requirement that the use be rural or that an exception
5 to Goal 14 be taken. Washington Co. Farm Bureau v. Washington Co., 17 Or LUBA 861,
6 878 (1989). Thus, absent some explanation for why Goal 14 is applicable or could be
7 applicable to the challenged conditional use permit application, the mere fact that a party
8 raised the issue of compliance with Goal 14 below does not obligate the county to make
9 findings regarding Goal 14. See East Lancaster Neigh. Assoc. v. City of Salem, 30 Or
10 LUBA 147, 158 (1995) (A local government is not required to make findings addressing
11 criteria that it has found to be inapplicable); Moore v. Clackamas County, 26 Or LUBA 40
12 (1993) (county must adopt findings addressing apparently applicable standards).

13 JCCL cites to language in OAR 660-014-0040(2), which governs incorporation of
14 cities on undeveloped rural lands, for the proposition that counties cannot authorize "new
15 urban development on rural land" without taking an exception to Goal 14. However, JCCL
16 fails to explain why a rule governing the incorporation of cities is relevant to an application
17 for a conditional use permit for a use allowed in rural zones, or why that rule or the cited
18 language makes Goal 14 applicable in the present case.

19 JCCL's fourth assignment of error and DLCD's second assignment of error are
20 denied.

1 **FIFTH ASSIGNMENT OF ERROR (JCCL)**

2 Petitioner argues that the challenged decision violates the Urbanization Policies of the
3 Jackson County Comprehensive Plan, and their implementing regulation, LDO 260.040(4),
4 by authorizing the expansion of an urban use outside the urban growth boundary.⁶

5 **A. Urbanization Policies**

6 LDO 260.040(1) provides that in order to grant a conditional use permit, the county
7 must find that the permit would be in conformance with county's comprehensive plan.
8 According to JCCL, the Urbanization Policies in the county's comprehensive plan "prohibit
9 urban development outside urban growth boundaries" and require that "urban uses must
10 occur within urban growth boundaries." JCCL Petition for Review 22. JCCL asserts that the
11 proposed golf course expansion is an urban use because it is part of an urban use, the existing
12 planned urban development and existing golf course, and it is being extended from urban
13 lands inside an urban growth boundary to rural lands. Consequently, JCCL argues, the
14 proposed use is inconsistent with the county's Urbanization Policies. In the alternative,
15 JCCL argues that even if it is less than certain that the proposed use is an urban use, the
16 decision should be remanded to the county to address whether the proposed use is urban in
17 character and thus whether it is consistent with the Urbanization Policies.

18 Intervenor's respond that JCCL's arguments regarding compliance with the county's
19 Urbanization Policies were not raised below and thus are waived. ORS 197.763; 197.835(3).
20 JCCL responds that the county failed to list the Urbanization Policies as applicable criteria in
21 the notice required by ORS 197.763, and thus, pursuant to ORS 197.835(4), petitioner may
22 raise new issues to LUBA regarding the criteria omitted.⁷ Intervenor's do not dispute that the

⁶JCCL combines this argument with its argument in its fourth assignment of error, that Goal 14 is applicable to the challenged decision. We address those arguments separately because our resolution of the fourth and fifth assignments of error rest on different bases.

⁷ORS 197.835(4) provides in relevant part:

1 county failed to list the Urbanization Policies as applicable criteria on the notice required by
2 ORS 197.763, nor do intervenors contend that there is a basis for the Board to find that the
3 issue could have been raised before the county. Accordingly, we agree with JCCL that the
4 issue of compliance with the county's Urbanization Policies has not been waived.

5 On the merits, intervenors argue that LDO chapter 218 expressly permits the
6 development and expansion of golf courses on EFU land, and suggests that in light of such
7 provisions the Urbanization Policies in the county's comprehensive plan cannot be read to
8 prohibit golf courses on rural land in the present circumstances. Intervenors' argument
9 misses JCCL's point. That golf courses are permitted on EFU land says nothing regarding
10 whether the existing golf course constitutes an urban use because of its location and links
11 with residential and commercial development within the City of Medford, and, if so, whether
12 expansion of that existing urban use across the urban growth boundary onto rural land is
13 consistent with the county's Urbanization Policies.

14 We agree with JCCL that remand is necessary for the county to determine whether
15 the existing use constitutes an urban use given its location and links with urban uses within
16 the city, and, if so, whether expansion of that urban use onto rural land violates the county's
17 Urbanization Policies.

18 This subassignment of error is sustained.

19 **B. LDO 260.040(4)**

20 LDO 260.040(4) requires that in order to approve a conditional use permit, the county
21 must find that:

"A petitioner may raise new issues to the board if:

- "(a) The local government failed to list the applicable criteria for a decision under ORS 197.195(3)(c) or 197.763(3)(b), in which case a petitioner may raise new issues based upon applicable criteria that were omitted from the notice. However, the board may refuse to allow new issues to be raised if it finds that the issue could have been raised before the local government[.]"

1 "The proposed use will either provide primarily for the needs of rural
2 residents and therefore requires a rural setting in order to function properly or
3 the nature of the use requires a rural setting, such as an aggregate operation,
4 even though the use may not provide primarily for the needs of rural
5 residents."

6 However, LDO 260.040(4)(A) provides for waiver of LDO 260.040(4) in three instances,
7 one of which the hearings officer found to be applicable here. LDO 260.040(4) may be
8 waived when:

9 "The applicant substantiates to the satisfaction of the County, that one or more
10 suitable alternative urban sites are not available, and the proposed location is
11 central to the likely area of service for the proposed use[.]"

12 With respect to this exception, the challenged decision states:

13 "Suitable alternative urban sites are not available and the proposed location is
14 central to the likely area of service for the proposed use. From the evidence,
15 the Hearings Officer concludes that there are no alternative urban sites
16 (already within the city) which are available for the proposed expansion of
17 Quail Point Golf Course. To the west of the existing golf course, applicants
18 are stymied by Interstate Highway 5. Property to the north is developed with
19 single and multi-family residential housing. Immediately to the east of the
20 existing course lies Rogue Valley Manor. Property further south is likewise
21 outside the existing urban area.

22 "Additionally, the likely area of service for Quail Point Golf Course is near
23 the existing nine holes. That is, the record shows that if Quail Point Golf
24 Course is to expand, it must be in the immediate vicinity of the existing golf
25 course rather than elsewhere." Record 34.

26 JCCL argues that the hearings officer's characterization of the proposed use and the
27 "likely area of service" are not supported by substantial evidence. According to JCCL, the
28 "service" being provided by the proposed expansion is not the six holes of golf and the golf
29 learning center to be located outside the Medford UGB but rather the 18-hole facility as a
30 whole. JCCL notes that the City of Medford identified alternative urban sites for an 18-hole
31 golf course, and argues that the hearings officer erred in failing to evaluate those sites in
32 determining whether alternative urban sites were available. Further, JCCL argues that the
33 undisputed evidence in the record shows that the golf course is designed to draw visitors

1 from Jackson County and indeed the entire Rogue Valley and thus the hearings officer erred
2 in concluding that the proposed expansion must be located adjacent to the existing facility in
3 order to be central to the "likely area of service."

4 Intervenor's respond that the hearings officer determined the "proposed use" for
5 purposes of LDO 260.040(4) to be expansion of the existing golf facility, not creation of a
6 new 18-hole course, and thus the hearings officer correctly limited the alternative sites
7 analysis to sites near to the existing facility. We agree with intervenors that the hearings
8 officer made that determination, at least implicitly, and that that determination constitutes an
9 interpretation of LDO 260.040(4). Alliance for Responsible Land Use v. Deschutes County,
10 149 Or App 259, 265-66, 942 P2d 836 (1997), rev dismissed 327 Or 555 (1998).

11 Although JCCL's argument is framed as a substantial evidence challenge, that
12 challenge turns on the interpretative issue, because if the hearings officer is correct regarding
13 the meaning of LDO 260.040(4) as applied in this context, then the record unquestionably
14 supports the findings regarding the lack of alternative urban sites to expand the existing
15 facility. In reviewing a hearings officer's interpretation of local ordinances, our task is to
16 determine whether that interpretation is reasonable and correct. McCoy v. Linn County, 90
17 Or App 271, 752 P2d 323 (1988); Moore v. Clackamas County, 29 Or LUBA 372, 377
18 (1995). We conclude that, where an applicant applies to expand an existing use subject to
19 LDO 260.040(4), it is reasonable and correct to interpret that provision as limiting the
20 requisite alternative site analysis to locations where the existing use can expand. Under that
21 interpretation, it is irrelevant if alternative urban sites exist on which to locate a new 18-hole
22 golf course, because that is not the use for which intervenors applied.

23 We also agree with intervenors' response that, even if JCCL is correct that the "area
24 of service" is the county as a whole or the Rogue Valley, the facility is centrally located to
25 serve that area, and thus JCCL's argument to the contrary provides no basis to reverse or
26 remand the challenged decision.

1 This subassignment of error is denied.

2 The fifth assignment of error is sustained in part.

3 **SIXTH ASSIGNMENT OF ERROR (JCCL)**

4 LDO 260.040(2) requires that a conditional use permit satisfy several criteria
5 including the following:

6 "* * * the location, size , design, and operating characteristics of the proposed
7 use will have minimal adverse impact on the livability, value, or appropriate
8 development of abutting properties and the surrounding area."

9 JCCL argues that the hearings officer's findings addressing this criterion are
10 inadequate because they fail to address a body of evidence demonstrating the adverse impact
11 of the proposed use on the appropriate development of the surrounding area. Specifically,
12 JCCL cites to testimony from the City of Medford that the proposed golf course expansion,
13 linked as it is with urban uses within the urban growth boundary, would essentially preempt
14 the city's ability to decide where the city's future urban growth should occur. According to
15 JCCL, city officials testified that the proposed use would convert the subject property from a
16 low priority for urbanization under Goal 14 (due to its high-value farmland) to a higher
17 priority, with the consequence that, when the city expands the urban growth boundary, the
18 area surrounding the subject property stands a greater chance of being selected for
19 urbanization than otherwise.

20 The hearings officer did not address the city's concerns in the context of
21 LDO 260.040(2), but at the end of the challenged decision responded to those concerns as
22 follows:

23 "The City of Medford expressed concern over the potential loss of control
24 over future urban development. Others testified that developments such as
25 that proposed by the applicant should be deferred until regional land use
26 planning policies can be developed.

27 "The Hearings Officer concludes that the subject application can only be
28 judged based upon approval standards presently in effect. The Hearings
29 Officer is aware of no approval standard or authority under which this

1 application can be denied merely because it calls for development, as a golf
2 course, of land outside Medford's urban growth boundary. Whether the
3 subject property is included in the urban growth boundary in the future is --
4 and will remain -- a decision to be made by the City of Medford.

5 "Similarly, while a future regional land use plan might include provisions
6 bearing on applications of this sort, the simple fact is that no such plan
7 currently exists and applicants are entitled to a decision on their application
8 under existing approval standards. * * *" Record 34-35.

9 If we understand JCCL's argument correctly, it contends that LDO 260.040(2),
10 specifically the requirement that the "location, size, design and operating characteristics of
11 the proposed use have minimal adverse impact on * * * appropriate development of * * * the
12 surrounding area," is a standard that authorizes denial of the proposed use where, as here,
13 evidence suggests it may impact the appropriate development of the city.

14 Intervenor's respond that "appropriate development of the surrounding area" refers to
15 development contemplated by the current planning designations and zoning of the property
16 within the area, and does not refer to potential future changes in designations and zoning,
17 even if those changes are triggered or made more likely by the impacts of the proposed use.
18 Because the hearings officer did not recognize the applicability of LDO 260.040(2) to the
19 city's concerns, the challenged decision contains no interpretation of that provision. Neither
20 petitioners nor intervenors invoke our authority under ORS 197.829(2) to determine, in the
21 absence of an adequate interpretation, whether the county's decision is correct. Even if the
22 parties had done so, it is doubtful that the present occasion is an appropriate one to exercise
23 that authority. Both parties present plausible, but radically conflicting interpretations of
24 LDO 260.040(2). If petitioners' view of LDO 260.040(2) is correct, then we agree with
25 petitioners that the county's findings are inadequate because the county failed to apply
26 LDO 260.040(2) in addressing the city's concerns. Accordingly, we remand the issue to the
27 county to determine, in the first instance, the meaning of LDO 260.040(2) and whether it
28 must apply that provision in addressing the city's concerns.

29 The sixth assignment of error is sustained.

1 **SEVENTH ASSIGNMENT OF ERROR (JCCL)**

2 Under LDO 218.100(2)(D), a "golf course" is defined as a nine or 18-hole regulation
3 golf course. LDO 218.050(28) allows the county to authorize "golf courses" on agricultural
4 lands. JCCL argues that the six holes approved on land outside the urban growth boundary
5 do not constitute a "golf course" under the code definition, and thus the county erred in
6 approving the expansion of the existing facility outside the urban growth boundary.

7 Intervenor respond that this issue was not raised below and thus is waived under
8 ORS 197.763(1). JCCL does not identify any place in the record where this issue was raised.
9 Rather, petitioner suggests that the general discussion of whether the proposed expansion is
10 an urban use encompasses petitioner's argument regarding whether the county approved a use
11 that meets the code definition of "golf course." We disagree. No reasonable decision-maker
12 could discern from the arguments regarding whether the proposed expansion is an urban use
13 the issue that JCCL raises under this assignment of error.

14 The seventh assignment of error is denied.

15 The county's decision is remanded.