

1 Opinion by Sherton.

2 **NATURE OF THE DECISION**

3 Petitioners appeal a county decision that a mobile home
4 located on their property is not a nonconforming use.

5 **FACTS**

6 In June, 1967, when the subject property was unzoned,
7 petitioners began living in a mobile home (hereafter
8 1967 mobile home) on the subject property. In
9 December 1967, the subject property was zoned Rural
10 (Agricultural) Single Family Residential (RA-1). At that
11 time, the 1967 mobile home became a nonconforming use,
12 because mobile homes were not allowed in the RA-1 zone other
13 than in mobile home parks. In 1969, a second mobile home
14 (hereafter Frontier mobile home), was placed on the property
15 and put to residential use, in violation of the RA-1 zoning.

16 In 1974, petitioners replaced the 1967 mobile home with
17 a newer model mobile home (hereafter 1969 mobile home), to
18 be used as a residence by petitioner Allen Morris's elderly
19 mother. The parties agree that at this time, the 1969
20 mobile home assumed the nonconforming use status of the 1967
21 mobile home which it replaced.

22 In 1976, the RA-1 zoning district was amended to allow
23 a residential mobile home on an individual parcel as a
24 conditional use. On July 14, 1978, petitioners filed an
25 application for a conditional use permit authorizing
26 replacement of the Frontier mobile home with a double-wide

1 manufactured home. Shortly thereafter, petitioners also
2 filed an application for a temporary permit authorizing use
3 of the 1969 mobile home as a temporary residence to provide
4 care to petitioner's elderly mother. The planning director
5 approved a one-year temporary permit for that purpose on
6 October 13, 1978. This temporary permit was repeatedly
7 renewed by petitioners until it expired in 1991, after the
8 death of petitioner's mother.

9 On November 15, 1978, the county hearings officer
10 issued a decision approving the conditional use permit for
11 replacement of the Frontier mobile home by the double-wide
12 manufactured home (1978 conditional use permit decision).¹
13 That decision includes the following condition:

14 "There shall be only one (1) residence on the
15 subject property." Record 15.

16 The 1978 conditional use permit decision was not appealed.

17 Some time after this, the subject property was rezoned
18 Transitional Timber District (TT-20). There is no dispute
19 that the TT-20 zone allows the establishment of a dwelling,
20 of whatever type, only in limited circumstances that do not
21 apply here.² On February 23, 1994, after a public hearing,
22 the county hearings officer issued a decision determining

¹Apparently, the Frontier mobile home was removed from the property after the double-wide manufactured home was installed.

²The parties agree the double-wide manufactured home is now a nonconforming use in the TT-20 zone, under the terms of the 1978 conditional use permit decision.

1 the 1969 mobile home is not a nonconforming use. This
2 appeal followed.

3 **ASSIGNMENT OF ERROR**

4 Petitioners contend the issuance of a conditional use
5 permit for the double-wide manufactured home could not
6 abrogate the nonconforming use status of the 1969 mobile
7 home, which was not the subject of the conditional use
8 permit application. Petitioners further contend the
9 conditional use permit approval condition stating "there
10 shall be only one residence on the subject property" could
11 not terminate petitioners' nonconforming use right to use
12 the 1969 mobile home as a residence. Petitioners argue
13 nonconforming use rights are protected from restrictive
14 conditions of an unrelated permit, just as they are
15 protected from restrictive provisions of subsequent zoning
16 regulations. Petitioners also argue that because the
17 conditional use permit condition in question exceeded the
18 county's authority, they were not required to contest the
19 condition at the time it was imposed. See Eklund v.
20 Clackamas County, 36 Or App 73, ___ P2d ___ (1978) (court
21 found a vested right to complete a subdivision, and that
22 boundary commission had no authority to disapprove water
23 system, despite condition requiring boundary commission
24 approval imposed by county when extension for final plat
25 approval was granted).

26 Petitioners next argue the nonconforming use status of

1 the 1969 mobile home cannot have been abandoned or waived.
2 According to petitioners, they had no intent to terminate
3 residential use of the mobile home, and did not know the
4 nonconforming use right existed, when the 1978 conditional
5 use permit was issued. Petitioners further argue the county
6 coerced them into obtaining a temporary permit for the 1969
7 mobile home, by telling them the mobile home was illegal.

8 The challenged decision states that prior to the 1978
9 temporary permit and conditional use permit decisions, the
10 1969 mobile home was a nonconforming use and the Frontier
11 mobile home was an illegal use. The decision goes on to
12 explain the basis for the county's conclusion that the 1969
13 mobile home is no longer a nonconforming use:

14 "The action of [petitioners] in 1978 to obtain a
15 conditional use permit under the RA-1 zoning
16 district, authorizing the replacement of their
17 Frontier [mobile home] with a double-wide mobile
18 home [changed] the status of the land use on the
19 subject property. With approval of the
20 conditional use permit, the [double-wide] mobile
21 home was lawfully located on the property pursuant
22 to the conditional use permit, and subject to the
23 conditions of approval attached to the conditional
24 use permit. Any protected nonconforming use to
25 maintain a [mobile home] on the subject property
26 was lost through abandonment at that time.
27 Furthermore, Condition of approval #6 specifically
28 provided that there could only be one dwelling on
29 the subject property * * *.

30 "The action of [petitioners] in 1978 to obtain a
31 temporary permit for the 1969 [mobile home] as a
32 temporary residence for Mr. Morris' mother for
33 care and assistance [changed] the status of that
34 [mobile home]. As of the approval of the
35 temporary permit, the [1969 mobile home] was

1 lawfully located on the subject property, subject
2 to the terms and conditions of the temporary
3 permit." (Emphasis added.) Record 8.

4 The above findings explain that after the issuance of
5 the 1978 conditional use and temporary permits, use of the
6 double-wide manufactured home as a residence was lawful
7 under the conditional use permit and use of the 1969 mobile
8 home as a residence for Mr. Morris' elderly mother was
9 lawful under the temporary permit. In particular, we
10 understand the emphasized portion of the second paragraph
11 quoted above to determine the 1969 mobile home is no longer
12 a nonconforming use because petitioners sought and obtained
13 approval of a temporary permit, making the use lawful under
14 county zoning regulations.³ This is consistent with the
15 county's definition of "nonconforming use" as "[a] dwelling,
16 structure or use which was legally established prior to the
17 adoption of any provision of this ordinance with which the
18 building, structure or use does not comply." (Emphasis
19 added.) Clackamas County Zoning and Development Ordinance
20 (ZDO) 202. After petitioners obtained the temporary permit
21 (which they renewed for over ten years), use of the 1969
22 mobile home as a residence was in compliance with the ZDO.

³We conclude bringing use of the 1969 mobile home into compliance with county zoning regulations through obtaining a temporary permit, in itself, is a sufficient basis for determining the 1969 mobile home is no longer a nonconforming use. Therefore, we do not determine whether the 1978 conditional use permit approval condition limiting the subject property to one residence could affect or did affect the nonconforming use status of the 1969 mobile home.

1 Nevertheless, petitioners contend that even though use
2 of the 1969 mobile home was in compliance with the ZDO from
3 1978 through 1991, the nonconforming use status of the 1969
4 mobile home should still exist, because petitioners never
5 intended to terminate residential use of the mobile home,
6 were unaware of its nonconforming use status and were
7 improperly coerced by the county into obtaining the
8 temporary permit. However, the parties cite no evidence in
9 the record that reflects improper "coercion" on the part of
10 the county, and petitioners' actions in 1978 are
11 inconsistent with their arguments here.

12 The record shows petitioners were aware that a county
13 permit was not required for the 1969 mobile home because it
14 was "grandfathered in." Record 51-52. The record further
15 shows that in 1978, what petitioners desired was to place
16 the double-wide manufactured home on their property as their
17 permanent residence and to continue use of the 1969 mobile
18 home as a residence to provide care for Mr. Morris' elderly
19 mother. Record 54-56. The record indicates petitioners
20 knew the county interpreted the RA-1 zone not to allow more
21 than one residence on the property.⁴ Record 27, 31.
22 Petitioners chose to achieve their desired ends by obtaining

⁴The challenged decision includes an interpretation of the RA-1 zone as allowing only one single-family dwelling per lot or parcel. Record 8-9. Petitioners dispute that interpretation. However, we believe the county's interpretation of the RA-1 zone in this regard is well within the interpretive discretion afforded it by ORS 197.829 and Clark v. Jackson County, 313 Or 508, 836 P2d 710 (1992).

1 a conditional use permit for the manufactured home and
2 continuing to use the 1969 mobile home under a temporary
3 permit, rather than to retain their right to use the 1969
4 mobile home as a nonconforming use.

5 The assignment of error is denied.

6 The county's decision is affirmed.