



1 Opinion by Holstun.

2 **NATURE OF THE DECISION**

3 Petitioner appeals a county decision interpreting the  
4 Lane Code (LC) and, on the basis of certain interpretations  
5 of the LC, denying his request for mobile home placement  
6 permits.

7 **FACTS**

8 In 1981, the subject property was zoned FF-20 (Farm and  
9 Forest Use, 20 acre minimum parcel size). The FF-20 zone  
10 allowed "tourist parks," "camping vehicle parks" and  
11 "campgrounds" as conditional uses. The FF-20 zone did not  
12 allow mobile home parks, and more than one mobile home per  
13 lot was prohibited. LC 10.105-15(19), (20) and (21) (1981  
14 version).<sup>1</sup> The subject property includes approximately 15  
15 acres. In 1981, there were two mobile homes on the subject  
16 property.<sup>2</sup> On September 9, 1981, a prior owner of the  
17 subject property obtained a conditional use permit  
18 (hereafter 1981 conditional use permit) for a 48-space  
19 tourist park and one additional mobile home within the  
20 tourist park portion of the property.<sup>3</sup>

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<sup>1</sup>The current LC, as well as versions of the LC in effect in 1981 and 1984, are relevant in this appeal.

<sup>2</sup>In addition, at all relevant times, a portion of the property has been used as a youth camp. However, the youth camp operation is not at issue in this appeal.

<sup>3</sup>As relevant, the 1981 conditional use permit was conditioned in three ways. First, completion of the tourist park within 10 years was required.

1           In 1984, the subject property was rezoned RR-10 (Rural  
2 Residential, 10 acre minimum parcel size).<sup>4</sup> By 1989,  
3 petitioner was the owner of the subject property. In 1989,  
4 petitioner obtained a building permit, pursuant to the 1981  
5 conditional use permit, to (1) construct 20 recreational  
6 vehicle spaces, (2) construct some related buildings, and  
7 (3) place the mobile home in the tourist park portion of the  
8 property.<sup>5</sup> In 1990, the county granted a ten-year extension  
9 of the 1981 conditional use permit.

10           By July 1993, petitioner had placed five mobile homes  
11 on the tourist park portion of the subject property, and  
12 these mobile homes were leased for residential purposes.<sup>6</sup>  
13 In August 1993, the county notified petitioner that four of  
14 the five mobile homes in the tourist park portion of the  
15 property would have to be removed, unless petitioner  
16 obtained approval to convert the recreational vehicle spaces

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Second, the allowed mobile home was to be located near the entrance to the 48-space tourist park, at least 500 feet from the other two mobile homes on the subject property and after 24 tourist park spaces were developed. Finally, the tourist park was to remain separate from the existing youth camp.

<sup>4</sup>Several provisions in the RR-10 zone applied to the subject property in 1984 are relevant and are discussed infra.

<sup>5</sup>The findings supporting the challenged decision state the 1989 building permit allowed two mobile homes, but the building permit at Record 302 requests approval for only one mobile home. Whether one or two mobile homes were approved by the 1989 building permit does not appear to be legally significant.

<sup>6</sup>Although we cannot tell for sure, the five mobile homes located on the tourist park portion of the property in 1993 apparently included the two mobile homes that were on the subject property in 1981.

1 to mobile home spaces. To avoid imposition of civil  
2 penalties, petitioner removed the mobile homes from the  
3 tourist park portion of the subject property.

4 Petitioner thereafter sought approval of the four  
5 mobile home placement permits disputed in this appeal.  
6 Petitioner's request was denied on the basis that the  
7 tourist park, as approved, could only contain the one mobile  
8 home authorized by the 1981 conditional use permit. In  
9 administratively denying the requested mobile home placement  
10 permits, the planning department explained petitioner would  
11 have to seek and obtain approval to convert the tourist park  
12 to a mobile home park to place the four additional mobile  
13 homes in the locations requested.

14 Petitioner appealed the administrative denial to the  
15 county hearings officer, alleging the requested mobile home  
16 placement permits should be granted as allowable under the  
17 1981 conditional use permit or because the mobile homes are  
18 an allowable increase of a nonconforming use under the  
19 current zoning of the subject property. The hearings  
20 officer rejected petitioner's contentions and denied the  
21 requested mobile home placement permits. The board of  
22 county commissioners declined to review the hearings  
23 officer's decision, and this appeal followed.

24 **FIRST AND SEVENTH ASSIGNMENTS OF ERROR**

25 Petitioner contends the hearings officer erred by  
26 failing to disclose completely certain ex parte contacts

1 between the hearings officer and petitioner. Petitioner  
2 also contends the hearings officer improperly failed to  
3 disclose in sufficient detail his prior relationship with  
4 petitioner, which petitioner suggests demonstrates the  
5 hearings officer was not impartial in this matter. Finally,  
6 petitioner contends the hearings officer's knowledge of  
7 county civil penalty proceedings against petitioner and a  
8 pending civil legal action brought by petitioner against the  
9 county as a result of those civil penalty proceedings, along  
10 with certain language in the challenged decision, show the  
11 hearings officer was not impartial.

12 **A. Ex Parte Contacts and Past Relationship**

13 With regard to the alleged ex parte contacts, we fail  
14 to see how petitioner's substantial rights could possibly be  
15 violated by the hearings officer's failure to fully disclose  
16 all ex parte contacts petitioner himself may have had with  
17 the hearings officer. The purpose of requiring that  
18 decision makers disclose ex parte contacts is to provide  
19 parties not privy to such ex parte contacts an opportunity  
20 to rebut the substance of those ex parte contacts. Here,  
21 petitioner's substantial rights could not have been  
22 prejudiced by any lack of completeness in the hearings  
23 officer's disclosure of ex parte contacts, because  
24 petitioner was aware of the exact nature of those ex parte  
25 contacts. Toth v. Curry County, 22 Or LUBA 488 (1991).  
26 Petitioner also had an opportunity to object to the

1 completeness of the hearings officer's ex parte contact  
2 disclosures, and to rebut the substance of those ex parte  
3 contacts. Petitioner failed to do so and may not now  
4 complain about the completeness of the hearings officer's ex  
5 parte contact disclosures. Younger v. City of Portland, 15  
6 Or LUBA 210, 232, aff'd 86 Or App 211 (1987), rev'd on other  
7 grounds 305 Or 346 (1988). Moreover, the portions of the  
8 record cited by petitioner tend to show the ex parte  
9 contacts in question consisted of the hearings officer  
10 simply attempting, within permissible bounds, to assist  
11 petitioner in understanding the local appeal process. We  
12 question whether such discussions amount to ex parte  
13 contacts.

14 We turn to petitioner's suggestion that the hearings  
15 officer's past relationship with petitioner and failure to  
16 fully disclose the content of his ex parte communications  
17 with petitioner show the hearings officer was impermissibly  
18 biased against petitioner. The test for showing a decision  
19 maker is improperly biased is set forth in the 1000 Friends  
20 of Oregon v. Wasco County Court, 304 Or 76, 742 P2d 39  
21 (1987).

22 In one of petitioner's earlier motions for evidentiary  
23 hearing, he alleges he and the hearings officer's father  
24 were teaching colleagues at the same junior high school and  
25 that the hearings officer and his brother were students at  
26 that junior high school. Petitioner offers no explanation

1 for how this prior relationship supports his undeveloped  
2 suggestions of bias by the hearings officer. Petitioner's  
3 allegations concerning the alleged prior relationship  
4 between the hearings officer and petitioner do not come  
5 close to providing a basis for questioning the hearings  
6 officer's impartiality. See Spiering v. Yamhill County, 25  
7 Or LUBA 695, 701-02 (1993); Southwood Homeowners Assoc. v.  
8 City of Philomath, 22 Or LUBA 742 (1992); Kittleson v. Lane  
9 County, 20 Or LUBA 286 (1990); Wait v. Marion County, 16 Or  
10 LUBA 353, 357-58 (1987).

11 **B. Civil Penalty Proceedings, Civil Lawsuit and**  
12 **Decision Language**

13 The language used by the hearings officer in the  
14 challenged decision is not such that it demonstrates bias or  
15 prejudice.<sup>7</sup> See Carsey v. Deschutes County, 21 Or LUBA  
16 118, aff'd 108 Or App 339 (1991). Neither do we believe the  
17 hearings officer's knowledge of the civil penalty  
18 proceedings or petitioner's pending lawsuit against the  
19 county and various county staff persons demonstrates the  
20 hearings officer was prejudiced against petitioner. At  
21 least petitioner offers no reason to conclude the civil

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<sup>7</sup>For example the hearings officer rejected petitioner's allegations that the local proceedings in this matter deprived him of due process rights guaranteed under the Fourteenth Amendment to the United States Constitution as "groundless." Record 55. Other arguments by petitioner based on the United States Constitution were rejected as "without merit." Record 56.

1 proceedings or pending lawsuit biased the hearings officer  
2 in this matter.

3 The first and seventh assignments of error are denied.

4 **SECOND AND FIFTH ASSIGNMENTS OF ERROR**

5 Petitioner contends the county erred in concluding the  
6 1981 conditional use permit does not allow placement of  
7 mobile homes on the subject property, that the proposal is  
8 not allowable in the RR-10 zone as an existing mobile home  
9 park and that he is not entitled to have a "combination  
10 park" on the subject property.

11 **A. 1981 Conditional Use Permit**

12 As noted previously, the 1981 conditional use permit  
13 approved a 48-space "tourist park." At the time the 1981  
14 conditional use permit was approved, LC 10.020 (1981  
15 version) defined "tourist park," as follows:

16 "All campgrounds, picnic parks, camping vehicle  
17 parks and all other establishments rented or kept  
18 for rent to any person for a charge or fee paid or  
19 to be paid for the rental or use of the facilities  
20 or offered free in connection with securing the  
21 trade or patronage of such person or for indirect  
22 benefit to the owner in connection with a related  
23 business."

24 The hearings officer adopted findings identifying the  
25 LC definitions of several of the operative terms in the  
26 above definition of "tourist park."<sup>8</sup> The hearings officer

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<sup>8</sup>According to the hearings officer, LC 10.020 (1981 version) defined "campgrounds," "camping vehicle parks" and "camping vehicle" as follows:

1 explained why he did not interpret "campgrounds," "camping  
2 vehicle," or "camping vehicle parks" as allowing placement  
3 of mobile homes for long-term residential use. The hearings  
4 officer also explained that the broader concept of "all  
5 other establishments rented or kept for rent to any persons  
6 for a charge or fee paid or to be paid for the rental or use  
7 of the facilities" does not include "mobile homes" or  
8 "mobile home parks." The hearings officer reasoned that  
9 since "mobile homes" and "mobile home parks" are separately  
10 defined and allowed by the LC, they are not included within  
11 the more general concept of "tourist parks."

12 Petitioner does not specifically challenge the hearings  
13 officer's findings. We find the hearings officer's  
14 interpretation is reasonable and correct. McCoy v. Linn  
15 County, 90 Or App 271, 752 P2d 323 (1988).<sup>9</sup> We therefore

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"Campgrounds. Any lot, tract or parcel of land under the same ownership where two or more campsites are located which provide facilities for living in any manner other than in a permanent building constructed of wood, etc."

"Camping Vehicle Parks. Any place where two or more camping vehicles are parked within 500 feet of one another on a lot, tract or parcel of land under the same ownership."

"[Camping Vehicle.] A vehicle or structure equipped with wheels for highway use and which is intended for human occupancy and is not being used for residential purposes, but for vacation and recreational purposes. If occupancy of a vehicle or structure exceeds 45 days in any 12 month period, it shall be presumed that said vehicle or structure is being used for residential purposes." Record 57.

<sup>9</sup>The board of commissioners declined to review the hearings officer's decision. Therefore, since the hearings officer's interpretation was not adopted by the governing body, we do not extend the interpretational

1 agree with the hearings officer that the 1981 conditional  
2 use permit does not authorize a tourist park where mobile  
3 homes may be sited for long-term residential use. In fact,  
4 the 1981 conditional use permit specifically approved only  
5 one mobile home (in addition to the two existing mobile  
6 homes on the subject property). As previously explained,  
7 the 1981 conditional use permit imposed a number of  
8 limitations on the additional mobile home it approved. It  
9 is clear that the 1981 conditional use permit did not  
10 authorize a mobile home park.<sup>10</sup>

11 **B. Mobile Home Park Existing in 1984**

12 Petitioner's second argument is based on the current  
13 RR-10 zoning of the subject property. Petitioner contends  
14 current RR-10 zoning allows a mobile home park. Although  
15 the RR-10 zone does not allow new mobile home parks, it does  
16 allow certain existing mobile home parks to continue. LC  
17 16.231(2)(n) (current version) allows as a permitted use  
18 "[a] mobile home park lawfully existing on a property prior  
19 to February 29, 1984." The hearings officer determined the  
20 requested mobile home placement permits could not be allowed  
21 on the theory that petitioner's operation constitutes an  
22 existing mobile home park under LC 16.231(2)(n). The

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deference required by ORS 197.829 and Clark v. Jackson County, 313 Or 508,  
836 P2d 710 (1992). Gage v. City of Portland, 319 Or 308, \_\_\_ P2d \_\_\_  
(1994).

<sup>10</sup>As respondent points out, neither the FF-10 zone in effect in 1981 nor the RR-10 zoning applied to the subject property in 1984 allow new mobile home parks as a permitted or conditional use.

1 hearings officer's decision is based on the definition of  
2 "mobile home park" in LC 16.090 (current version). The  
3 current definition of "mobile home park, as relevant,  
4 requires that there be "four or more mobile homes \* \* \*  
5 located within 500 feet of one another on a lot, tract or  
6 parcel of land under the same ownership \* \* \*." Petitioner  
7 contends the hearings officer should have applied the  
8 definition of "mobile home park" in effect in 1989, when the  
9 RV spaces were developed, and that the definition in effect  
10 in 1989 only required that there be two mobile homes on the  
11 subject property.

12 As far as we can tell, the same definition of mobile  
13 home park was in effect in 1981, when the 1981 conditional  
14 use permit was approved, in 1984, when the subject property  
15 was zoned RR-10, and in 1989, when the disputed spaces were  
16 developed. As defined in each of those years, two mobile  
17 homes on a single parcel constituted a mobile home park, not  
18 four as required under the current version of the LC.

19 However, even if the hearings officer applied the wrong  
20 definition of "mobile home park" as that term is used in  
21 LC 16.231(2)(n) (current version), that would only mean the  
22 two mobile homes existing on the subject property should be  
23 allowed to continue as a "mobile home park," on the sites

1 they occupied when the property was zoned RR-10 in 1984.<sup>11</sup>  
2 If petitioner wishes to relocate those mobile homes or site  
3 additional mobile homes or do both (as appears to be the  
4 case in this appeal), the existence of a two-unit "mobile  
5 home park," as that term is defined in LC 16.231(2)(n)  
6 (current version) does not provide a basis for doing so.

7 **C. Combination Parks**

8 Petitioner's third argument is that his proposed  
9 development should have been approved as a "combination  
10 park" or the county's decision should be remanded so that  
11 the county may include provisions for "combination parks" in  
12 the LC and the county comprehensive plan.<sup>12</sup> If we  
13 understand petitioner correctly, parks that include both  
14 mobile homes and recreational vehicles in fact exist legally  
15 in some counties, exist illegally in other counties, and are

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<sup>11</sup>Petitioner does not contend any of the mobile homes he seeks site location permits for are located on the sites occupied by two of the mobile homes in 1984, when the subject property was rezoned RR-10.

<sup>12</sup>The State of Oregon Building Codes Agency rules in effect in 1987 included the following definition of "combination park:"

"[A] park which includes facilities for two or more types of recreation parks or a combination of a recreational park, organizational camp or mobile home park." OAR 814-29-050 (1987).

Respondent points out state level regulation of tourist facilities, recreation parks and organizational parks is now provided by the Oregon Health Division and Department of Consumer and Business Services. ORS 446.310 to 446.350; 455.680; OAR Chapter 918, Division 650. However, the current definition of "combination park" is the same as contained in OAR 814-29-050 (1987), quoted above. OAR 918-650-005(9).

1 regulated by the state as "combination parks." From this,  
2 petitioner contends the county should be required to adopt  
3 plan and code provisions that reflect reality and erred by  
4 not recognizing his development as a "combination park" and,  
5 on that basis, issuing the requested mobile home placement  
6 permits.

7 Without expressing any view concerning the merits of  
8 "combination parks," we simply note that petitioner's  
9 argument about what the county should adopt as part of its  
10 comprehensive plan or the LC is of no assistance in this  
11 appeal. The relevant question is what the current plan and  
12 LC do allow. While state agencies may define and regulate  
13 combination parks, petitioner cites no rule or statute which  
14 obligates Lane County to amend its comprehensive plan and  
15 code to allow "combination parks." Therefore, unless and  
16 until the county does so, it is legally irrelevant that some  
17 cities and counties may allow such "combination parks" and  
18 that state agencies regulate such "combination parks" when  
19 they are allowed by applicable city or county plans and land  
20 use regulations.

21 **D. Remaining Arguments**

22 Finally, petitioner contends a senior county plans  
23 examiner told him that mobile homes could be placed on the  
24 subject property. However, petitioner provides no  
25 explanation for why the senior plans examiner's statement,  
26 assuming it was made as petitioner represents, would bind

1 the county in this proceeding to issue the requested mobile  
2 home placement permits.

3 Petitioner also suggests the mobile home placement  
4 permits he seeks should have been allowed because his  
5 development qualifies as a nonconforming use and he has a  
6 vested right to complete the development including mobile  
7 homes. Petitioner's nonconforming use and vested right  
8 arguments are not sufficiently developed to merit review.

9 The second and fifth assignments of error are denied.

10 **THIRD AND FOURTH ASSIGNMENTS OF ERROR**

11 The hearings officer found that "sufficient water and  
12 sewer sanitary service may not [be available to the subject  
13 property]." Record 64. He also acknowledged the adverse  
14 effects the decision would have on renters who wish to live  
15 on the property, but found "these effects do not obviate the  
16 need for the existence and enforcement of land use laws for  
17 the good of the general public \* \* \*." Record 63-64.  
18 Petitioner challenges the evidentiary support for both  
19 findings.

20 Petitioner fails to identify any approval standard to  
21 which the above findings are relevant, and respondent  
22 contends neither finding is critical to the decision in this  
23 matter. We agree with respondent. Non-critical statements  
24 in a decision, such as the ones quoted above, provide no  
25 basis for reversal or remand. See Bonner v. City of  
26 Portland, 11 Or LUBA 40, 52 (1984).

1           The third and fourth assignments of error are denied.

2       **SIXTH ASSIGNMENT OF ERROR**

3           The hearings officer found petitioner has obtained  
4 permission to increase a nonconforming use on other  
5 property, but that such approval "does not create any right  
6 to such an increase here, especially where no such right has  
7 even been applied for." Record 61.

8           Petitioner's challenge to this finding is difficult to  
9 follow. It appears that petitioner contends certain mobile  
10 homes have been placed on spaces originally approved as  
11 recreational vehicle spaces in another development owned by  
12 petitioner, and petitioner believes this shows the county  
13 has an arbitrary policy of approving such mobile homes in  
14 one place but denying them in another.

15           As respondent correctly points out, petitioner does not  
16 explain why the factual circumstances at the other park  
17 cited by petitioner are such that decisions rendered  
18 concerning mobile home permits at that other park have any  
19 bearing on the challenged decision. The finding itself  
20 seems to suggest the action at the other park was an  
21 expansion of a nonconforming use, and points out (apparently  
22 correctly) that petitioner here is not seeking to expand a  
23 nonconforming use under LC provisions for expanding a  
24 nonconforming use.

25           The remaining arguments presented under this assignment  
26 of error provide no basis for reversal or remand.

1           The sixth assignment of error is denied.

2       **EIGHTH ASSIGNMENT OF ERROR**

3           Petitioner contends various aspects of the civil  
4 penalty proceedings the county brought against him were  
5 improper and violated his constitutional rights because his  
6 development was treated differently than other similarly  
7 situated facilities.

8           The county's notice of civil penalty, and the fines the  
9 county potentially could levy pursuant to its civil penalty  
10 provisions, led to petitioner's removal of the mobile homes  
11 placed in the approved tourist park. While the county's  
12 civil penalty proceedings appear to have been the impetus  
13 for petitioner submitting the disputed mobile home placement  
14 permit applications, the civil penalty proceedings are not  
15 before us in this appeal. Petitioner did not seek review of  
16 the notice of civil penalty under the local appeal  
17 procedures to contest civil penalties and, therefore, did  
18 not seek review of the ultimate resolution of any such local  
19 appeal before seeking judicial review or review before this  
20 Board.

21           Instead, petitioner submitted applications for the  
22 disputed mobile home placement permits. The county's  
23 decision denying those mobile home placement permits is  
24 before LUBA, the civil penalty proceedings that led to the  
25 applications for those mobile home placement permits are not  
26 before LUBA in this appeal. Therefore, petitioner's

1 arguments that the county committed various legal errors and  
2 violated his constitutional rights in those civil penalty  
3 proceedings provide no basis for reversal or remand of the  
4 decision challenged in this appeal.

5 We do not express any view on whether this Board would  
6 have jurisdiction to review a final local decision  
7 concerning imposition of civil penalties under the LC, where  
8 local appeals were properly pursued. However, because  
9 petitioner did not exhaust local remedies available to  
10 challenge the civil penalties, LUBA does not have  
11 jurisdiction to consider petitioner's arguments concerning  
12 the county's civil penalty proceedings. ORS 197.825(2)(a)  
13 (LUBA jurisdiction limited to those cases where the  
14 petitioner has exhausted all remedies available by right  
15 before petitioning LUBA for review); Lyke v. Lane County, 11  
16 Or LUBA 117, 123, aff'd 70 Or App 82 (1984).

17 The eighth assignment of error is denied.

18 The county's decision is affirmed.