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

DENNIS TYLKA and JOYCE TYLKA,)
)
 Petitioners,)
)
 vs.)
)
 CLACKAMAS COUNTY,)
)
 Respondent,)
)
 and)
)
 ROBERT HAWKINS,)
)
 Intervenor-Respondent.)

LUBA No. 97-040
FINAL OPINION
AND ORDER

Appeal from Clackamas County.

Dennis Tylka and Joyce Tylka, Welches, filed the petition for review on their own behalf. Dennis Tylka argued on his own behalf.

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

Robert Hawkins, Milwaukie, filed a response brief and argued on his own behalf.

GUSTAFSON, Chief Administrative Law Judge; LIVINGSTON, Administrative Law Judge, participated in the decision.

AFFIRMED 01/13/98

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

1 Opinion by Gustafson.

2 **NATURE OF THE DECISION**

3 Petitioners appeal the county's approval of a conditional
4 use permit application to park a recreational vehicle (RV) for
5 vacation purposes on a lot zoned recreational residential
6 (RR).

7 **MOTION TO INTERVENE**

8 Robert Hawkins (intervenor), the applicant below, moves
9 to intervene on the side of respondent. There is no
10 opposition to the motion, and it is allowed.

11 **FACTS**

12 The subject property is a 50' by 100' lot, with 50 feet
13 of frontage along the Salmon River. The lot is within the
14 floodplain of the Salmon River, which is a Federal Wild and
15 Scenic River and is within a county-designated Principal River
16 Conservation Area (PRCA). The lot slopes gently east to west
17 down to the river bank.

18 In 1989, the previous owners of the subject property
19 cleared and graded the lot's southeast corner and installed a
20 gravel driveway and parking pad, apparently to enable an RV to
21 park on the property for recreational purposes. Petitioners,
22 who own a dwelling on an adjacent lot, complained by phone to
23 the county that the development was illegal. They did not
24 file a formal challenge of that development with the county.
25 The county investigated, but determined that no permit was
26 required for the work at the site. Nonetheless, the property

1 was not used subsequently for RV camping. The only use of the
2 parking pad reflected in the record is occasional use by
3 fishermen to access the river.

4 Sometime thereafter, intervenor purchased the lot, and,
5 in November 1996, applied for a conditional use permit to park
6 an RV on the subject property while vacationing. A county
7 hearings officer determined that the proposed RV campsite was
8 permitted as a "private noncommercial recreational use" or
9 similar use under the county zoning and development ordinance
10 (ZDO), section 813.01(A) or (E), and approved the
11 application.¹ The hearings officer approved the permit with
12 conditions, among them that intervenor obtain a PRCA permit

¹ZDO 813.01 describes "Service Recreational Facilities" permitted under
ZDO 305.05(A) (5) in relevant part:

"A. Private commercial, noncommercial or nonprofit recreational areas, uses and facilities, including country clubs, lodges, fraternal organizations, swimming pools, golf courses, riding stables, boat moorages, parks and concessions. The setback requirements for principal buildings and swimming pools shall be as follows:

"1. Single Family and Rural Districts: Forty-five (45) feet from any other lot in a residential or rural district.

"2. Multifamily/Resort Districts: Thirty (30) feet from any other lot in a residential district.

"B. City, county, state, federal or municipal corporation uses or buildings.

"* * * * *

"D. Recreational Vehicle Camping Facilities.

"* * * * *

"E. Any other use similar to the above mentioned, as determined by the Hearings Officer." (Emphasis added.)

1 and fire district approval. This appeal followed.

2 **FIRST ASSIGNMENT OF ERROR**

3 **A. First Subassignment of Error**

4 The challenged decision states that:

5 "[s]ubsection 813.01 lists those uses which may be
6 permitted as service recreational uses. Subsection
7 813.01(A) includes 'Private commercial,
8 noncommercial or nonprofit recreational areas, uses
9 or facilities' as permitted service recreational
10 uses. Subsection 813.01(E) provides that service
11 recreational uses include any other use similar to
12 the previously listed uses, as determined by the
13 Hearings Officer. The proposed use is a private
14 noncommercial recreational use, or is similar to a
15 private noncommercial use. Opponents argue that the
16 above findings and conclusions do not properly
17 interpret subsection 813.05(A). This issue, on
18 substantially identical facts, has been previously
19 decided by the County and upheld as correct by LUBA
20 * * * in Tylka v. Clackamas County and Vogue [24 Or
21 LUBA 296 (1992), aff'd 118 Or App 359 (1993) (Tylka
22 II)]." Record 3 (emphasis added).

23 Petitioners challenge the emphasized conclusion on the
24 ground that the decision fails to explain the relevant
25 criteria, set out the facts relied upon, and explain the
26 justification for the decision based on the criteria and facts
27 set forth, as required by ORS 215.416(9).² In particular,
28 petitioners argue that the decision does not explain why the
29 proposed use is "similar" to a private noncommercial use. To

²ORS 215.416(9) provides:

"Approval or denial of a permit, expedited land division or limited land use decision shall be based upon and accompanied by a brief statement that explains the criteria and standards considered relevant to the decision, states the facts relied upon in rendering the decision and explains the justification for the decision based on the criteria, standards and facts set forth."

1 the extent the emphasized conclusion is an interpretation of
2 ZDO 813.01(A) and (E), petitioners argue similarly that it is
3 not adequate for review and must be remanded for an
4 explanation of how the proposed use is similar to a private
5 noncommercial use. Weeks v. City of Tillamook, 117 Or App
6 499, 844 P2d 914 (1992).

7 We disagree. The decision adequately explains the
8 criteria and sets out sufficient facts to determine whether
9 those criteria are satisfied. The conclusion is adequate for
10 purposes of ORS 215.416(9) in light of the decision's
11 reference to Tylka II, 24 Or LUBA 296 (1992). Tylka II
12 involved a nearly identical proposal for a personal RV
13 campsite, on a different property than the one at issue here,
14 where we upheld the county's interpretation that the proposed
15 use was a "private noncommercial use" or similar use under ZDO
16 813.01(A) and (E). 24 Or LUBA at 302. For the same reason,
17 we disagree that the county's interpretation of ZDO 813.01(A)
18 and (E) is inadequate for review.

19 The first subassignment of error is denied.

20 **B. Second Subassignment of Error**

21 Petitioners argue that the county's interpretation of ZDO
22 813.01(A) to permit "private noncommercial" recreation uses
23 impermissibly amends that ordinance in the guise of
24 interpretation, to allow a category of personal uses not
25 authorized by ZDO 813.01(A).

26 Petitioners contend that ZDO 813.01(A) does not

1 contemplate the type of personal uses created by the county's
2 interpretation.³ Rather, petitioners argue, the examples
3 provided in ZDO 813.01(A) and each of the other subsections of
4 ZDO 813.01 seem to contemplate large-scale recreational
5 services oriented toward groups rather than personal use.
6 Petitioners point out that ZDO 305.05(5) refers to conditional
7 uses allowed under ZDO 813 as "service recreational
8 facilities," implying that some service is rendered to others.

9 In addition, petitioners note that in Tylka II we agreed
10 with the county that ZDO 813.01(D), which sets out a number of
11 criteria for "Recreational Vehicle Camping Facilities," is
12 intended to regulate large scale RV camping parks rather than
13 personal RV use by the owner of the subject property. 24 Or
14 LUBA at 302. Petitioners argue that the same conclusion
15 should apply to uses permitted under ZDO 813.01(A). Thus,
16 petitioners argue that the decision effectively "amends" ZDO
17 813.01 to add a domain of personal uses not intended by the

³Petitioners also make a related linguistic challenge to the county's interpretation, arguing that the only private use permitted by ZDO 813.01(A) is private commercial recreational uses. Petitioners argue that the adjective "private" in the phrase "private commercial, noncommercial or nonprofit recreational areas, uses and facilities" modifies only the noun "commercial." Thus, petitioners read ZDO 813.01(A) to refer to only two types of recreational uses: (1) private commercial uses, and (2) (public) noncommercial or nonprofit uses. We are not persuaded that ZDO 813.01(A) is limited to private commercial and public noncommercial or nonprofit uses. It is more plausible that the adjective "private" modifies all uses allowed under ZDO 813.01(A), particularly read in context with ZDO 813.01(B), which sets out a broad category of publicly owned uses permitted as conditional uses in the RR zone. Petitioners' reading would create considerable unnecessary overlap between ZDO 813.01(A) and (B). We conclude that an interpretation of ZDO 813.01(A) to permit "private noncommercial" recreational uses is reasonable and correct.

1 drafters or permitted under the plain meaning of the text.

2 The county responds that ZDO 813.01(A) is intended to
3 apply to both groups and individuals, as evidenced by the
4 reference in ZDO 813.01(A)(1) and (2) to setback limits for
5 buildings and swimming pools in both single-family and multi-
6 family districts. The county also suggests that, even if
7 personal recreational uses are not expressly permitted by ZDO
8 813.01(A), they are "similar" to such uses and thus permitted
9 under ZDO 813.01(E).

10 We concluded under similar facts in Tylka II that:

11 "the county's interpretation that the proposed use
12 is either a private noncommercial recreational use
13 allowed under ZDO 813.01A or a similar recreational
14 use allowed under ZDO 8134.01E is not contrary to
15 the ordinance's express terms or policy." 24 Or
16 LUBA at 302.

17 Tylka II was decided before the Oregon Supreme Court clarified
18 that we do not defer to an interpretation by a hearings
19 officer. Gage v. City of Portland, 319 Or 308, 877 P2d 1187
20 (1994). Thus, the proper standard of review in the present
21 case is not whether the hearings officer's interpretation is
22 contrary to the ordinance's express terms or policy, but
23 rather whether that interpretation is reasonable and correct.
24 McCoy v. Linn County, 90 Or App 271, 752 P2d 323 (1988).

25 Because our conclusion in Tylka II was decided under a
26 different standard, it does not control the present case.
27 Nonetheless, we conclude for the following reasons that the
28 county's interpretation is reasonable and correct.

29 While petitioners make a plausible case that ZDO

1 813.01(A), considered in context, is directed at larger scale
2 recreational uses and facilities providing services to groups,
3 it does not necessarily follow that ZDO 813.01(A) excludes
4 personal recreational use by the owner of the property. It
5 would be a distinct anomaly if more intensive recreational
6 uses such as country clubs, golf courses, concession stands,
7 and RV parks are permitted in the RR zone as conditional uses,
8 but much less intensive personal recreational uses such as
9 intervenor proposes here are not. To the extent there is
10 doubt that such personal recreational uses are permitted under
11 ZDO 813.01(A), we agree with the county that such uses are
12 similar enough to recreational uses authorized by ZDO
13 813.01(A) to be permitted under ZDO 813.01(E).

14 In sum, we agree with the county that personal
15 recreational uses are permitted under ZDO 813.01(A) or (E).
16 The decision does not impermissibly amend the ZDO in the guise
17 of interpretation.

18 The second subassignment of error is denied.

19 **C. Third Subassignment of Error**

20 Petitioners argue that the hearings officer erred in
21 interpreting the ZDO without requiring intervenor to file an
22 application to the county board of commissioners for an
23 interpretation. However, petitioners do not cite, nor are we
24 aware of, any ordinance or provision of law that requires an
25 application for an interpretation before the hearings officer
26 can interpret the ZDO in applying it to a conditional use

1 application.

2 The third subassignment of error is denied.

3 The first assignment of error is denied.

4 **SECOND ASSIGNMENT OF ERROR**

5 **A. First Subassignment of Error**

6 Petitioners argue that ZDO 305.05(A)(11) requires a
7 conditional use permit for any filling, grading or excavation
8 within a stream corridor, and that the county erred in failing
9 to require a conditional use permit for the filling and
10 grading performed on the subject property in 1989 by
11 intervenor's predecessors.⁴ Petitioners argue that the
12 decision essentially legitimizes a prior illegal development
13 project that should have required, but did not receive, a
14 conditional use permit in 1989 when the work was performed.

15 The county responds that the decision properly addresses
16 the actual application before it, which is to park an RV on
17 the property for vacation purposes. The county contends that
18 petitioner had an opportunity to appeal the county's
19 determination in 1989 that no permits were required, and that
20 petitioners cannot now bootstrap the requirements at ZDO
21 305.05(A)(11) into the present appeal.

22 Petitioners cite our decision in Tylka v. Clackamas

⁴ZDO 305.05(A)(11) provides that a conditional use permit is required for

"[a]ny of the following activities: filling, grading, excavating, or clearing of vegetation, or installation of public facilities in stream corridor areas, as defined in [ZDO] 202."

1 County, 22 Or LUBA 166 (1991) (Tylka I) for the proposition
2 that prior allegedly illegal developments can be bootstrapped
3 into a later application. In Tylka I, the applicant developed
4 without a conditional use permit a personal RV campsite within
5 a "stream corridor" on the Salmon river. Six months later the
6 applicant applied for approval of the existing campsite as
7 part of a PRCA permit. In response to objections, the
8 applicant modified the application to move the existing
9 campsite outside the "stream corridor." The county concluded
10 that, as modified, the application did not require a
11 conditional use permit under ZDO 305.05(A)(11), but imposed
12 conditions of approval that required the applicant to remove
13 the gravel placed within the stream corridor and reseed the
14 area. We held that

15 "the portion of the stream corridor area where
16 intervenor has already constructed a driveway and RV
17 parking pad is part of the property which is the
18 subject of this application, and the existing
19 development thereon is integrally related to
20 intervenor's approved proposal. We therefore
21 disagree with the county's position that the
22 hearings officer had no authority over that existing
23 development with the stream corridor area." 22 Or
24 LUBA at 179 (emphasis added).

25 Because the existing development was modified by the approved
26 proposal, we concluded that if on remand the county chose not
27 to require the stream corridor area affected by the existing
28 unauthorized development to be restored to its original state,
29 the county must approve a conditional use permit for any
30 filling, grading or clearing the county allows to remain in
31 effect. Id. at 180.

1 We disagree with petitioners that Tylka I requires in the
2 present case that intervenor obtain a conditional use permit
3 for the gravel RV pad and driveway placed on the site in 1989.
4 In Tylka I, the applicant filed for approval of the existing
5 gravel RV pad and driveway, thereby invoking ZDO 305.05(11).
6 Despite the subsequent modification of the application to
7 avoid ZDO 305.05(11), we found the existing development
8 integrally related to the modified proposal. As distinguished
9 from Tylka I, in the present case, intervenor has filed a
10 discrete application seeking only to use the property as it
11 exists to park an RV for recreational purposes; no
12 modification of the existing parking area is proposed.⁵
13 Because the previous, unappealed development of the parking
14 area is not a part of this approval, the county could not
15 require a conditional use permit for that existing development
16 as part of its evaluation of the proposed use. Nor can
17 petitioners belatedly challenge the 1989 development through
18 an appeal of the county's decision to allow intervenor to use
19 the property for RV parking. The county did not err in
20 failing to require the previous development to comply with ZDO

⁵Although the application does not propose to modify the existing development, the decision does rely on the existing development in determining whether the site is "suitable" for the proposed use, as required by ZDO 1203.01(B). Petitioners have not assigned error to the decision's reliance on the existing development to satisfy ZDO 1203.01(B), nor do they argue that the existing development requires a conditional use permit because of that reliance. Even if petitioners so argue, that argument depends for its success on a demonstration that the existing development was illegal at the time it was developed, i.e., that it required a permit. However, the record before us does not establish as a factual matter that the 1989 development required a permit.

1 305.05(11).

2 This subassignment of error is denied.

3 **B. Second Subassignment of Error**

4 Petitioners argue that the county erred in finding that
5 the application does not propose to create a "structure" and
6 thus does not invoke the setback requirements of ZDO
7 1002.05(B).⁶ Petitioners argue that the gravel RV pad and
8 driveway created in 1989 is a "structure," or, alternatively,
9 that the RV itself is a "structure" for purposes of ZDO
10 1002.05.

11 The word "structure" is defined in the ZDO as "anything
12 constructed or erected, which requires location on the ground
13 or attached to something having a location on the ground."
14 ZDO 202. In Peyton v. Washington County, 17 Or LUBA 92
15 (1988), rev'd on other grounds 95 Or App 37 (1989), we held
16 that sidewalks and footbridges were "structures" under a
17 similar local definition. Petitioners cite Peyton for the
18 proposition that an RV is similarly a "structure" because it
19 is constructed and requires location on the ground.

20 While petitioners may be correct that the 1989
21 construction of the gravel RV pad and driveway constitutes a

⁶ZDO 1002.05(B) provides in relevant part that, in a river or stream corridor:

"The minimum separation distance necessary to maintain or improve upon existing water quality shall be the required setback for buildings or structures proposed alongside of any river or perennial streambed. This distance shall be determined by a site investigation, but will not exceed 150 feet. * * *"

1 "structure" for purposes of ZDO 1002.05(B), that structure is
2 already extant and intervenor does not propose to create it.
3 For the reasons expressed above, we disagree that the 1989
4 development work must be considered as part of intervenor's
5 application. We further disagree that use of an RV as
6 proposed by intervenor constitutes a "structure" for purposes
7 of ZDO 1002.05(B). An RV parked temporarily on a site does
8 not require "location on the ground" in the sense that a
9 building or sidewalk does.

10 This subassignment of error is denied.

11 The second assignment of error is denied.

12 **THIRD ASSIGNMENT OF ERROR**

13 Petitioners challenge the county's determination that the
14 proposed use is not subject to the minimum lot size
15 requirements at ZDO 305.05(A)(8).⁷ ZDO 305.05(A)(8) imposes a
16 one-acre minimum lot size requirement on applications for
17 "guest ranches, lodges, campgrounds, and similar recreation
18 operations * * *."

19 Petitioners argue that the proposed use is a "similar
20 recreation operation" to guest ranches, lodges and campgrounds
21 and thus must comply with the minimum lot size requirement.

⁷ZDO 305.05(A)(8) provides for the following as conditional uses in RR zones:

"Guest ranches, lodges, campgrounds, and similar recreation operations not incidental to a primary use, as determined by the Planning Director, and provided for in Section 813. Standards set forth in Subsection 305.07 [imposing limits on density of development] shall apply to all such uses in addition to a minimum site area requirement of one (1) acre."

1 Petitioners also point to similar requirements in other rural
2 residential and resource zoning districts, as evidence that
3 the ZDO as a whole restricts conditional recreational uses in
4 residential and resource zones to large parcels of land.

5 The county responds that ZDO 305.05(A)(8) is applicable
6 only to group recreational operations, not personal
7 recreational uses like the type proposed here. According to
8 the county, the group-orientation of ZDO 305.05(A)(8) is
9 evident from its reference to density standards at ZDO 305.07.
10 The county also argues that the use proposed here is not an
11 "operation" at all, and thus cannot be "similar" to the group-
12 oriented recreational operations listed in ZDO 305.05(A)(8).

13 The challenged decision does not address the
14 applicability of ZDO 305.05(A)(8), notwithstanding that
15 petitioners argued below that it applied to the proposed use.
16 However, in the absence of local findings of applicability, we
17 may interpret the applicability of challenged provisions in
18 the first instance, pursuant to ORS 197.829(2).⁸ Friends of
19 Indian Ford v. Deschutes County, 31 Or LUBA 248, 256 (1996).
20 Doing so is appropriate in this case. The relevant facts are
21 undisputed, and we are presented with a pure question of law,
22 which the parties have adequately discussed in their briefs.

⁸ORS 197.829(2) provides that

"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 Miller v. Clackamas County, 31 Or LUBA 104, 106 (1996).

2 As petitioners point out, both ZDO 305.05(A)(5) (service
3 recreational facilities) and 305.05(A)(8) refer to ZDO 813 as
4 providing applicable approval criteria, and the types of uses
5 listed at ZDO 305.05(A)(8) and 813.01(A) overlap to some
6 extent. For example, both refer to "lodges." It appears to
7 us that ZDO 305.05(A)(8) lists a subset of particular uses
8 otherwise captured under the broad categories at ZDO
9 813.01(A), and imposes particular density and minimum lot
10 sizes on that subset. We determined above that the use
11 proposed here, a personal RV campsite, fits within the broad
12 category of uses at ZDO 813.01(A) or is similar to those uses.
13 The narrow question here is whether the proposed use also fits
14 within the subset of uses at ZDO 305.05(A)(8), and thus is
15 subject to the additional density and minimum parcel size
16 requirements.

17 We agree with the county that the proposed use does not
18 fit within the subset of uses at ZDO 305.05(A)(8). The
19 proposed use is not a guest ranch, lodge or campground, nor an
20 "operation" similar to those uses, where density and minimum
21 parcel size requirements would be appropriate. We conclude
22 that ZDO 305.05(A)(8) is not an applicable criterion for the
23 proposed use, and the county did not err in failing to apply
24 it.

25 The third assignment of error is denied.

1 **FOURTH ASSIGNMENT OF ERROR**

2 Petitioners argue (1) that the county erred in approving
3 the proposed use as a primary residential use under ZDO
4 305.03, or (2) that it erred in permitting a non-residential
5 recreational use as a primary use, in violation of the intent
6 of the RR zone to preserve residential recreational uses.

7 The county denies that the decision approves the proposed
8 use as a primary use. The passage in the decision that
9 petitioners cite mentions primary uses listed at ZDO 305.03
10 only for the purpose of illustrating the character of the
11 surrounding area, in order to determine whether the proposed
12 use would substantially impair those primary uses. We agree
13 with the county that the decision does not approve the
14 proposed use as a primary use under ZDO 305.03.

15 We also agree that the decision does not, as petitioners
16 contend, interpret non-residential recreational use as a
17 primary use. The decision approves a conditional non-
18 residential recreational use, as permitted by ZDO 305.05(A)(5)
19 and 813.01(A).

20 The fourth assignment of error is denied.

21 **FIFTH ASSIGNMENT OF ERROR**

22 Petitioners argue that the 1989 grading and clearing
23 constitutes a "development" within a flood plain as defined by
24 of ZDO 703.03(C), and thus the county erred in not requiring a
25 floodplain development permit under ZDO 703 and 1002.05.

26 We determined above that the county properly considered

1 only the application before it, and did not err in refusing to
2 require a conditional use permit for the 1989 grading and
3 clearing. It follows that the county properly refused to
4 require a floodplain development permit under ZDO 703 for the
5 1989 grading and clearing.

6 The only criteria in ZDO 703 that petitioners link to use
7 of the site by an RV, as opposed to the 1989 grading and
8 filling, is an allegation that parking an RV on the site will
9 increase the level of insurable damages, because the RV could
10 be swept away by a flood and cause damage to itself or other
11 property.

12 On this point, the challenged decision states that "there
13 is no potential effect on the level of insurable damages as a
14 result of this use." Record 6. The county argues that this
15 finding is well supported by evidence in the record, and is
16 specifically addressed in the conditions the decision imposes
17 that prohibit leaving the RV parked unattended overnight,
18 allow it be parked on the site only occasionally, and only for
19 recreational use. We agree with the county that the
20 conditions imposed, combined with the inherent portability of
21 RVs, satisfies the requirement in ZDO 703 that the use will
22 not increase the level of insurable damages. The county's
23 finding is supported by substantial evidence, and it did not
24 err in not requiring a floodplain development permit.

25 The fifth assignment of error is denied.

1 **SIXTH ASSIGNMENT OF ERROR**

2 Petitioners argue that there is not substantial evidence
3 in the record to support the finding that the proposed use
4 will not alter the character of the surrounding area in a
5 manner that substantially limits or impairs the primary uses
6 in the RR zone. ZDO 1203.01(D).⁹

7 The challenged decision states with respect to this
8 criterion:

9 "The subject property and the surrounding area are
10 zoned RR. The primary uses of the RR zoning
11 district are * * * generally residential and
12 recreational uses.

13 The proposed [RV] use will be somewhat out of
14 character with the existing primarily single family
15 residential uses in the area, some of which are
16 permanent dwellings and some of which are vacation
17 homes. However, substantial evidence in this record
18 establishes that it is common for pickups and other
19 vehicles to park on the subject property to achieve
20 access to the Salmon River for fishing. Approval of
21 this use will not alter the character of the area.

22 Any adverse impacts will not be sufficient to
23 substantially limit or impair the use of surrounding
24 properties for the residential and recreational uses
25 authorized by the RR zoning district. The only
26 adverse use identified in this record is the visual
27 impact of the [RV] on properties to the west and
28 south, across Manape Drive. The extent of these
29 visual impacts are mitigated by existing vegetation
30 between the proposed site for the [RV] and the
31 dwelling to the west. Other surrounding residential
32 uses are sufficiently removed by distance or
33 screened by vegetation as to result in no visual
34 impacts from this use. The occasional parking of a

⁹ZDO 1203.01(D) permits a conditional use on a finding that

"[t]he proposed use will not alter the character of the surrounding area in a manner which substantially limits, impairs, or precludes the use of surrounding properties for the primary uses listed in the underlying district."

1 smaller [RV] on the subject property is not so out
2 of scale of character with this area that the mere
3 sight of it could substantially limit or impair
4 surrounding residential uses. * * * This use will
5 not generate noise beyond the sounds of people on
6 the property for occasional recreational purposes,
7 similar to the noise generated by other residential
8 users in this area. A condition of approval will
9 prohibit the use of a portable generator on this
10 property. * * * This criterion is satisfied."
11 Record 4-5 (emphasis added).

12 Petitioners dispute these findings, arguing first that
13 the record conclusively shows that there is "little or no
14 visual screening" between the RV campsite and the adjacent
15 residences. Record 344. However, the decision did not find
16 or need to find that vegetation screened the RV site entirely
17 from the view of adjacent residences. Rather it found that
18 existing vegetation mitigated the extent of the RV site's
19 visual impacts. That finding is supported by substantial
20 evidence in the record.

21 Second, petitioners challenge the finding that
22 nonadjacent residential uses are sufficiently removed by
23 distance or screened by vegetation as to result in no visual
24 impacts, arguing that the RV campsite is visible from the only
25 road leading into the area, and thus visible to all residents
26 of the neighborhood as they drive past. We agree with the
27 county that ZDO 1201.01(D) is directed at conditional uses
28 which substantially limit, impair or preclude the use of
29 surrounding properties for the primary uses in the RR zone.
30 Petitioners do not establish how seeing the RV campsite while
31 driving past it substantially limits or impairs residential or

1 vacation use of surrounding properties within the meaning of
2 ZDO 1201.01(D).

3 Third, petitioners argue that the RV campsite's
4 visibility from the road and hence to all potential home
5 buyers in the neighborhood will cause loss of property value
6 to surrounding properties. The county responds that potential
7 loss of property value is not an appropriate consideration
8 under ZDO 1203.01(D). We agree with the county that potential
9 loss of property value does not affect the use of surrounding
10 properties for residential and other primary uses within the
11 meaning of ZDO 1203.01(D), and thus the decision did not err
12 in failing to consider potential loss of property values.

13 Fourth, petitioners challenge the finding that the
14 proposed use will not generate noise beyond the sounds of
15 recreational uses on surrounding properties, arguing that the
16 noise emanating from an RV campsite is different in type and
17 louder in volume than noises emanating from residences nearby.
18 According to petitioners, an RV of the size proposed here can
19 be used only for sleeping; most other activities must be
20 performed outdoors, creating an ongoing "outdoor yard party,"
21 unlike the activities typical of surrounding residential and
22 vacation properties. The county responds that the noise
23 concerns raised below involved use of portable electric
24 generators, which the decision addresses by prohibiting the
25 use of generators. We agree with the county that, with that
26 condition, there is substantial evidence in the record to

1 support the finding that the proposed use will not create
2 noise beyond sounds of recreational uses on surrounding
3 properties.

4 Finally, petitioners argue that they raised the issue of
5 fire safety and change in development patterns, but that the
6 decision did not address these issues. The county must
7 address issues raised in the proceedings below that are
8 relevant to compliance with applicable approval standards.
9 Winkler v. City of Cottage Grove, 30 Or LUBA 351 (1996).

10 With respect to fire safety, the decision imposes as a
11 condition that intervenor obtain the local fire district's
12 approval regarding fire safety and compliance with all
13 applicable state and local fire regulations. Notwithstanding,
14 petitioners argue that the state and local fire authorities do
15 not have authority to regulate recreational campfires on
16 private land, and therefore that the decision does not address
17 the risk of fire from campfires. We disagree. The decision
18 finds that fire protection is provided by the local fire
19 district. That finding addresses the risk of fire, by
20 whatever source. Moreover, petitioners have not established
21 that the risk of fire, from any source, is relevant to ZDO
22 1203.01(D), which is directed at whether the proposed use will
23 "alter the character" of the surrounding area by substantially
24 limiting or impairing primary uses. Petitioners' concern that
25 a campfire may cause a forest fire that burns down neighboring
26 houses is not a relevant consideration in determining whether

1 the proposed use will "alter the character" of the surrounding
2 area by limiting or impairing primary uses.

3 With respect to future development patterns, petitioners
4 assert that the surrounding area has many similar small
5 undeveloped lots that, following this decision, could be
6 developed into RV campsites, substantially altering the
7 current residential character of the area. However,
8 petitioners do not establish that the future development
9 pattern is an issue relevant to ZDO 1203.01(D), which requires
10 only a finding that the "proposed use" will not alter the
11 character of the area by limiting or impairing primary uses.
12 Even if future development patterns are within the scope of
13 ZDO 1203.01(D), petitioners' concerns are directed solely at
14 loss of potential market value. Petitioners do not establish
15 that development of other RV campsites in the area would limit
16 or impair residential and other primary uses. The county did
17 not err in failing to address the issue of development
18 patterns.

19 The sixth assignment of error is denied.

20 The county's decision is affirmed.