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BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

TENLY PROPERTIES CORP., DNK)
PROPERTIES, DOUGLAS WETTER)
STEVE WETTER, LORI DIAZ, BRAD)
and KAMI FRALEY,)
Petitioners,)
vs.)
WASHINGTON COUNTY,)
Respondent,)
and)
H.L. LEWIS CONSTRUCTION,)
Intervenor-Respondent.)

LUBA No. 97-110
FINAL OPINION
AND ORDER

Appeal from Washington County.

Roch Steinbach, Forest Grove, filed the petition for review and argued on behalf of petitioners. With him on the brief was the O'Byrne Law Firm.

No appearance by respondent.

John M. Junkin, Portland, filed the response brief and argued on behalf of intervenor-respondent. With him on the brief was Bullivant Houser Bailey Pendergrass & Hoffman.

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

REMANDED 04/15/98

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 preliminary approval of a
4 subdivision.

5 **MOTION TO INTERVENE**

6 H.L. Lewis Construction (intervenor), the applicant
7 below, moves to intervene on the side of respondent. There is
8 no opposition to the motion, and it is allowed.

9 **REPLY BRIEF**

10 Petitioners move to file a reply brief pursuant to OAR
11 661-10-039, which limits the contents of the reply brief to
12 new matters raised in the respondent's brief.¹

13 Respondent's brief raised one new matter: whether
14 petitioners failed to raise and hence waived a particular
15 argument with respect to the second assignment of error. We
16 grant petitioners' motion to file a reply brief to the extent
17 the reply brief addresses that new matter, and deny it for the
18 remainder of petitioners' reply brief.

19 **FACTS**

20 Intervenor applied for preliminary approval of a 15-lot
21 attached single-family residential subdivision on a 1.33-acre

¹OAR 661-10-039 provides in relevant part:

"A reply brief may not be filed unless permission is obtained from the Board. A request to file a reply brief shall be filed with the proposed reply brief together with four copies as soon as possible after respondent's brief is filed. A reply brief shall be confined solely to new matters raised in the respondent's brief."

1 parcel. The proposed subdivision will extend several hundred
2 feet north and south along a newly created street, Janessa
3 Lane. Both the north and south sections of Janessa Lane are
4 dead-ends. Access to Janessa Lane is from SW Hurrell Lane,
5 which intersects with Janessa Lane at its midway point,
6 forming a three-way intersection.

7 The southern length of Janessa Lane is 170 feet long.
8 The county Community Development Code (CDC) 409-3.7 requires
9 that

10 "[a] dead-end private street exceeding one hundred-
11 fifty (150) feet in length shall have an adequate
12 turn around facility approved by the applicable fire
13 district."

14 A county hearings officer held hearings and approved the
15 subdivision request with conditions. No "turnaround facility"
16 appears on the preliminary site plan intervenor submitted to
17 the county. One condition of approval was that intervenor
18 submit a site plan "stamped by the Fire Marshal approving the
19 final design * * *." Record 10. Petitioners appealed the
20 hearings officer's decision to the county board of
21 commissioners (commissioners), arguing that the decision
22 failed to address the emergency turnaround provisions at CDC
23 409-3.7. Petitioners submitted into the record diagrams of
24 four turnaround designs approved by the local fire district,²

²The four approved turnaround designs include a cul-de-sac with a 90 foot diameter, a T-shaped 'hammerhead' design, a Y-shaped alternative hammerhead design, and an L-shaped alternative hammerhead design. Record 141. The commissioners allowed petitioners to introduce into the record the four turnaround designs, which the decision characterizes as the local fire district's "emergency vehicle turnaround requirements." Record 12.

1 and argued to the commissioners that intervenor's existing
2 site plan is incompatible to some extent with all four
3 turnaround designs. The commissioners rejected petitioners'
4 appeal, approving the hearings officer's decision, and issued
5 supplemental findings stating that

6 "* * * the County has delegated to the applicable
7 fire district the responsibility to determine the
8 adequacy of a turn around for a dead-end private
9 street in excess of 150 feet. The [commissioners]
10 find that CDC 409-3.7 is satisfied by [the
11 condition] that there be 'a site plan stamped by the
12 Fire Marshal approving the final design * * *.'
13 Under the CDC it is incumbent upon the Fire
14 District, not the County, to approve the turn
15 around." Record 13.

16 This appeal followed.

17 **FIRST AND THIRD ASSIGNMENTS OF ERROR³**

18 Petitioners contend the county has impermissibly deferred
19 compliance with CDC 409-3.7 without first establishing the
20 feasibility of compliance with that provision. Rhyne v.
21 Multnomah County, 23 Or LUBA 442 (1992).

22 Rhyne involved the approval of a 22-space manufactured
23 housing development under a multi-stage approval process. We
24 held in Rhyne that where compliance with an approval standard

We do not understand the county to have determined that the four turnaround designs are the only applicable designs or otherwise to have constrained the applicant or the county as to how the turnaround should be configured. As we note below, intervenor does not concede that the four turnaround designs are part of the local fire district's "emergency vehicle turnaround requirements."

³The first and third assignments of error both challenge the county's deferral the issue of compliance with CDC 409-3.9 to the Fire Marshal. However, the differences between petitioners' arguments under each assignment of error are too subtle to merit separate discussion. Accordingly, we follow intervenor in addressing the first and third assignments of error together.

1 in a multi-stage approval process is subject to conflicting
2 evidence, the county must either (1) find the standard is
3 satisfied or find that it is feasible to satisfy the standard,
4 and delegate responsibility for assuring compliance to staff
5 as part of the second stage; (2) deny the application; or (3)
6 defer determination of compliance until the second stage,
7 conditioned upon providing statutory notice and hearings.⁴

8 Petitioners argue that the county failed to take any of
9 the three options identified in Rhyne. Specifically,

⁴The relevant passages of Rhyne state:

"When conducting a multi-stage approval process for discretionary permits, such as that provided by the county for [planned development] approval, the county is required to assure that discretionary determinations concerning compliance with approval criteria occur during a stage where the statutory notice and public hearing requirements [at ORS 197.763(2), 215.416, and 227.175] are observed. [Citations omitted] Assuming a local government finds compliance, or feasibility of compliance, with all approval criteria during a first stage (where statutory notice and public hearing requirements are observed), it is entirely appropriate to impose conditions of approval to assure those criteria are met and defer responsibility for assuring compliance with those conditions to planning and engineering staff as part of a second stage. * * *

"Where the evidence during the first stage approval proceedings raises questions concerning whether a particular approval criterion is satisfied, a local government essentially has three options potentially available. First, it may find that although the evidence is conflicting, the evidence nevertheless is sufficient to support a finding that the standard is satisfied or that feasible solutions to identified problems exist, and impose conditions if necessary. Second, if the local government determines there is insufficient evidence to determine the feasibility of compliance with the standard, it could on that basis deny the application. Third, if the local government determines that there is insufficient evidence to determine the feasibility of compliance with the standard, instead of finding the standard is not met, it may defer a determination concerning compliance with the standard to the second stage. In selecting this third option, the local government is not finding all applicable approval standards are complied with, or that it is feasible to do so * * *. Therefore, the local government must assure that the second stage approval process * * * provides the statutorily required notice and hearing * * *." 23 Or LUBA at 447-48.

1 petitioners argue that the county delegated responsibility for
2 assuring compliance to the Fire Marshal of the local fire
3 district without requiring intervenor to propose a turnaround,
4 finding that an adequate emergency turnaround is feasible, or
5 assuring that compliance will not be determined without
6 statutory notice and hearings.

7 Intervenor responds that Rhyne is inapposite, because it
8 concerns only discretionary determinations of compliance.
9 According to intervenor, a determination of compliance with
10 the adequate turnaround standard at CDC 409-3.7 is a
11 nondiscretionary technical determination, much like
12 application of a building code standard. Intervenor argues
13 that whether a turnaround is "adequate" for purposes of
14 CDC 409-3.7 is resolved by reference to the requirements of
15 the Uniform Fire Code (UFC) applied by the local fire
16 district, which intervenor analogizes to the building code and
17 characterizes as similarly "technical" and nondiscretionary in
18 nature. Intervenor cites to cases holding that decisions made
19 under building code standards and other objective,
20 nondiscretionary standards are not "land use decisions" as
21 that term is used at ORS 197.015(10)(b)(B). Accordingly,
22 intervenor concludes that the county can properly defer
23 determination of compliance with CDC 409.3.7 without making a
24 finding of feasibility of compliance and without providing
25 second stage notice and hearing.

26 We disagree with intervenor that compliance with CDC 409-

1 3.7 is a matter of applying nondiscretionary criteria
2 analogous to building code standards.⁵ Intervenor's argument
3 confuses two distinct concepts: (1) whether certain
4 nondiscretionary "technical" standards are land use approval
5 standards and hence whether approval or denial under those
6 standards is a "land use decision"; and (2) whether certain
7 land use approval standards require "technical" solutions for
8 compliance, solutions that can be deferred under some
9 circumstances to the second stage. The second concept is the
10 one discussed in Rhyme and the one implicated here.
11 Intervenor cites no authority that treats these divergent
12 concepts as equivalent or even overlapping in scope or
13 application.

14 The second concept of "technical" standards is rooted in
15 cases such as Meyer v. City of Portland, 67 Or App 274, rev
16 den 297 Or 84 (1984). At issue in Meyer was whether the city
17 properly delegated "technical" details of geologic hazard
18 mitigation to second stage proceedings that provided no notice
19 or opportunity for hearing. The Court of Appeals concluded
20 that substantial evidence supported the city's findings that

⁵Intervenor concedes that the UFC contains no specific objective criteria for turnaround facilities, but argues that the UFC authorizes each fire district to establish its own turnaround criteria and designs based on the size and specifications of its equipment. Intervenor's brief, 9 n.2. Intervenor claims that the application of criteria and designs developed by the local fire district is not discretionary; however, intervenor is hampered in attempting to support that claim because intervenor does not concede that the four turnaround diagrams that the county accepted into the record below comprise or are part of the applicable criteria developed by the local fire district. Id. Thus, intervenor cannot point to anything it claims to constitute the local fire district's criteria, in order to establish that application of those criteria does not involve discretion.

1 solutions to geologic hazard problems were available, and the
2 city could properly defer "detailed technical matters involved
3 in selecting a particular solution to each problem" to the
4 second stage approval process. 67 Or App at 282 n6. Meyer is
5 consistent with Rhyne and contrary to intervenor's position in
6 requiring that, where compliance with a particular standard
7 requires a "technical" solution to an identified problem, the
8 local government must make findings that a solution is
9 feasible before it can defer a determination of compliance
10 with the standard to a second stage that does not provide
11 statutory notice or hearing.

12 We see nothing in the present case that materially
13 distinguishes it from Rhyne and Meyer. The parties agree that
14 CDC 409-3.7 requires an adequate turnaround at the southern
15 end of Janessa Lane, and that the preliminary site plan does
16 not depict a turnaround. The county apparently contemplates
17 (but does not require) that intervenor will prepare a final
18 site plan depicting a turnaround, and submit it to fire
19 district for approval. Petitioners contend that any of the
20 four turnaround designs developed by the local fire district
21 will require lot size adjustments or elimination of one or
22 more lots, potentially affecting compliance with other
23 approval standards such as parking, setbacks, street width and
24 sidewalk requirements. The staff report acknowledges this
25 possibility:

26 "Staff deleted a lot from the original site plan,
27 the subdivision is approved for 15 lots. Not only

1 was this to provide more room for pedestrian space,
2 it was also intended to provide room for a cul-de-
3 sac. If the applicant cannot build the private
4 roadway to both County and Fire Code standards,
5 additional lots would need to be deleted. The final
6 submitted site plan shall meet all County standards
7 or it will never be signed for final approval.
8 Record 70 (emphasis in original).

9 Thus, the county's findings acknowledge that it cannot
10 determine whether the proposed street can be built with a
11 turnaround in compliance with county approval standards, nor
12 what effect a turnaround will have on the project's compliance
13 with other standards. Instead, the county relies on a second
14 stage review by the Fire Marshal (without notice or hearing) to
15 determine whether the turnaround complies with CDC 409-3.7,
16 and, indeed, whether the project will comply with other
17 requirements of CDC. That approach denies petitioners or
18 other participants any meaningful opportunity to address the
19 turnaround and its affect on other aspects of the project,
20 including the final proposed site plan itself.

21 The fundamental difficulty here is the county's failure
22 to require the applicant to submit a proposed turnaround as
23 part of the first stage review. In order for the county to
24 make a meaningful first stage determination that compliance
25 with CDC 409-3.7 is feasible, it is necessary that the county
26 review a proposed turnaround, and hence necessary that the
27 county require the applicant to propose a turnaround. Absent
28 the county's review of the proposed turnaround and a finding
29 of feasibility, the county's deferral to the local fire
30 district to determine compliance with CDC 409-3.7 is a

1 violation of its obligation to assure that discretionary
2 determinations concerning compliance with approval criteria
3 occur during a stage where the statutory notice and public
4 hearing requirements are observed.⁶

5 Intervenor argues next that the county in fact made a
6 finding that the "overall project" is feasible, and thus
7 impliedly determined that compliance with CDC 409-3.7 is
8 feasible. Intervenor cites to the following statement in the
9 staff report:

10 "The required findings can be made for all of the
11 applicable code sections except for the applicant's
12 proposed density. However, when constructed in
13 accordance with the Conditions of Approval,
14 including deletion of one lot, the project will be
15 in compliance with the [CDC] and the Community
16 Plan." Record 81.

17 Intervenor argues that we recognized, in Kenton
18 Neighborhood Assoc. v. City of Portland, 17 Or LUBA 784, 805
19 (1990), that

20 "absent some evidence in the record suggesting a
21 condition cannot be met or that the city questioned
22 the feasibility of a condition, we do not believe
23 that the city is required to specifically find, in

⁶We note that intervenor submitted as part of its application a "Request for Statement of Service Availability" completed by the Fire Marshal's office of the local fire district. Record 246-48. The Fire Marshal did not approve the project, indicating that intervenor must resubmit plans for review addressing certain items checked on a checklist. The checklist covers criteria such as access to buildings, road width, vertical clearance, slope, signage, hydrants, etc. Item 7 on the checklist states: "DEAD END ROADS: Dead end fire apparatus access roads in excess of 150 feet in length shall be provided with an approved turnaround. Diagrams of approved turnarounds are available from the fire district." Record 247. The Fire Marshal's office did not check item 7, although it checked other items. In other words, it appears that the Fire Marshal's office reviewed intervenor's application, and failed to identify that Janessa Lane requires a turnaround. This underscores the problem of deferring approval of the turnaround to the Fire Marshal without first requiring the applicant to propose a turnaround.

1 its decision, that each condition it imposes is
2 feasible. [citation omitted]. Petitioner does not
3 point to any evidence in the record challenging the
4 feasibility of the conditions or suggesting that the
5 city did not believe that the conditions were
6 feasible. In these circumstances, we assume the
7 conditions the city imposed to meet the applicable
8 approval standards were considered by the county to
9 be feasible requirements, without a specific city
10 finding to that effect." 17 Or LUBA at 805, n11
11 (emphasis in original).

12 Intervenor states that overall feasibility of the project is
13 not disputed, nor that a turnaround is feasible, with some
14 reduction in lot size or with elimination of lots. In this
15 circumstance, intervenor suggests that specific findings of
16 feasibility with respect to CDC 409-3.7 are not necessary and
17 that we can assume from the staff report's general finding
18 that all criteria as conditioned can be met that the county
19 considered compliance with CDC 409-3.7 to be feasible.

20 We disagree. Petitioners' local appeal to the county
21 identified a number of problems and conflicts that each of the
22 four identified turnarounds created for intervenor's existing
23 site plan. Doing so is sufficient to avoid the assumption of
24 feasibility stated in Kenton Neighborhood Assoc. The staff
25 report acknowledged that the county cannot tell if
26 intervenor's existing site plan will ultimately comply with
27 the CDC. The fact that another, different site plan might be
28 feasible does not obviate the county's obligation to assure,
29 at the first stage of approval, that the site plan submitted
30 to it complies with applicable provisions of the CDC, or that
31 compliance is feasible.

1 The first and third assignments of error are sustained.

2 **SECOND ASSIGNMENT OF ERROR**

3 Petitioners argue that the county committed a procedural
4 error prejudicial to their rights when it delegated the local
5 fire district the issue of whether any turnaround ultimately
6 proposed is "adequate" for purposes of CDC 409-3.7.⁷

7 Petitioners repeat in this assignment of error many of
8 the same arguments made with respect to the first and third
9 assignments of error. The principal difference we discern is
10 an emphasis on the impropriety of delegating the issue to the
11 local fire district, as opposed to the focus in the first and
12 third assignments of error on the impropriety of deferring the
13 issue to the second stage without making required findings of
14 feasibility. We understand petitioners to argue that CDC 409-
15 3.7 requires the county, not the local fire district, to
16 determine whether any turnaround proposed is "adequate."

17 Intervenor first responds that petitioners failed to
18 raise the issue of improper delegation below, and thus have
19 waived that issue on appeal. ORS 197.763(1).⁸ Petitioners

⁷For ease of reference, we repeat the text of CDC 409-3.7:

"A dead-end private street exceeding one hundred-fifty (150) feet in length shall have an adequate turn around facility approved by the applicable fire district."

⁸ORS 197.763(1) provides:

"An issue which may be the basis for an appeal to the Land Use Board of Appeals shall be raised not later than the close of the record at or following the final evidentiary hearing on the proposal before the local government. Such issues shall be raised and accompanied by statements or evidence sufficient to afford the governing body, planning commission, hearings body

1 concede that the issue of delegation did not arise until the
2 county issued its decision and supplemental findings, which
3 for the first time adopted the county's position that CDC 409-
4 3.7 compels it to delegate to the local fire district the
5 determination whether any turnaround proposed is adequate.

6 Intervenor characterizes the county's determination of
7 the delegation issue as an interpretation of CDC 409-37. We
8 have held that a petitioner may challenge a local government's
9 interpretation of its regulations without having raised that
10 issue in the local proceeding, as long as the interpretation
11 first appears in the findings prepared and adopted after the
12 final local evidentiary hearing. Eskandarian v. City of
13 Portland, 26 Or LUBA 98, 115 (1993). Because the county's
14 position regarding delegation first appeared in the challenged
15 decision, we agree with petitioners that the issue of
16 delegation or the county's interpretation of CDC 409-3.7
17 regarding delegation is not waived.

18 Intervenor responds next that because the county's
19 delegation was the result of an interpretation of CDC 409-3.7,
20 we must defer to the county's interpretation of that provision
21 unless it is inconsistent with the express language, policy or
22 purpose of the county's plan or land use regulations. ORS
23 197.829(1).⁹

or hearings officer, and the parties an adequate opportunity to
respond to each issue."

⁹ORS 197.829(1) provides:

1 We repeat the pertinent language from the decision:

2 "The [commissioners] find that pursuant to CDC 409-
3 3.7 the County has delegated to the applicable fire
4 district the responsibility to determine the
5 adequacy of a turn around for a dead-end private
6 street in excess of 150 feet. The [commissioners]
7 find that CDC 409-3.7 is satisfied by [the
8 condition] that there be 'a site plan stamped by the
9 Fire Marshal approving the final design * * *.'
10 Under the CDC it is incumbent upon the Fire
11 District, not the County, to approve the turn
12 around." Record 13.

13 We agree with the county that the passage quoted above
14 contains an interpretation that the local fire district, not
15 the county, is responsible for determining whether the
16 turnaround is adequate and that the county bears no
17 responsibility for that determination.

18 However, for the following reasons we conclude that we
19 owe no deference to the county's interpretation, because the
20 county's delegation is contrary to its obligations under ORS
21 197.763(2) and 215.416 to ensure that compliance with all
22 applicable approval criteria is determined at a stage that

"The Land Use Board of Appeals shall affirm a local government's interpretation of its comprehensive plan and land use regulations, unless the board determines that the local government's interpretation:

- "(a) Is inconsistent with the express language of the comprehensive plan or land use regulation;
- "(b) Is inconsistent with the purpose for the comprehensive plan or land use regulation;
- "(c) Is inconsistent with the underlying policy that provides the basis for the comprehensive plan or land use regulation;
- "(d) Is contrary to a state statute, land use goal or rule that the comprehensive plan provision or land use regulation implements."

1 provides opportunity for notice and hearing. See Hildebrand
2 v. Marion County, 28 Or LUBA 703, 706 (1995).

3 The basic problem with the county's delegation to the
4 Fire Marshal is that it constitutes a complete abdication of
5 the commissioners' responsibilities. The county's
6 interpretation rests, apparently, on the presumption that the
7 local fire district would not stamp the final site plan
8 "approved" without assuring that a turnaround is included in
9 the final site plan, and that any turnaround proposed is
10 "adequate." However, the county's delegation does nothing to
11 assure that any turnaround will ever be proposed, or that the
12 local fire district will even know that a turnaround is
13 required. The county's failure to require applicants to
14 propose a turnaround at the first stage of review may result
15 in the local fire district's failure to identify that streets
16 like Janessa Land require a turnaround.

17 While the county's interpretation purports to delegate
18 the factual determination that any proposed turnaround is
19 "adequate," its effect is to delegate the county's obligation
20 to ensure that private streets over 150 feet in length shall
21 have a turnaround. In other words, the county essentially
22 delegates the entire approval criterion to the local fire
23 district, not a factual determination of whether a proposal
24 intended to satisfy that criterion, found to be feasible, is
25 also technically adequate. The county's approach is
26 inconsistent with the county's statutory obligation to ensure

1 that compliance with applicable approval criteria is
2 determined at a stage that provides opportunity for notice and
3 hearing.

4 Finally, the county's delegation does not recognize that
5 any turnaround conforming to the local fire district design
6 standards may require changes in the existing site plan that
7 affect compliance with other legal criteria. That is, the
8 manner in which the county delegates one legal criterion to
9 the local fire district essentially precludes the county from
10 establishing that the project complies with other applicable
11 criteria.

12 For these reasons, we determine that the county's
13 decision to delegate the issue of compliance with CDC 409-3.7
14 to the local fire district is contrary to the county's
15 statutory obligations to ensure that compliance with
16 applicable approval criteria is determined at a stage offering
17 opportunities for notice and hearing.

18 The second assignment of error is sustained.

19 **FOURTH ASSIGNMENT OF ERROR**

20 Petitioners argue that the county misconstrued CDC 409-
21 3.3(A) in determining that the southern leg of Janessa Lane
22 serves only eight dwellings. CDC 409-3.3(A) is a matrix
23 requiring different street standards depending on how many
24 "functions" the street supports. If the street supports nine
25 or more units, it must have a minimum pavement width of 24
26 feet, and curbs and sidewalks on both sides. CDC 409-

1 3.3(A)(9). If the street supports eight or fewer "units," it
2 need have a minimum pavement width of only 22 feet, and a curb
3 and sidewalk on only one side. CDC 409-3.3(A)(8).

4 Petitioners contend that nine units border the 170 feet
5 length of Janessa Lane's southern leg, and thus the county
6 must apply the stricter street standards required by CDC 409-
7 3.3(A)(9). The county found that one of the nine units, unit
8 3, has frontage both on Janessa Lane and on the intersection
9 of Janessa Lane and SW Hurrell Lane, but that unit 3 has
10 access (a driveway) only into the intersection. The decision
11 states that:

12 "it is the finding of the [commissioners] that unit
13 3 will not access the southern reach of the private
14 road but rather the internal intersection. The
15 application satisfies CDC 409-3.3 by requiring the
16 southern reach of the private street to be 22 feet
17 with sidewalk on one side (CDC 409-3.3(A)(8))."
18 Record 14.

19 Both petitioners and intervenor initially contend that
20 the meaning of the term "function" in CDC 409-3.3(A) is
21 unambiguous, and hence that no interpretation is necessary or
22 permissible. Goose Hollow Foothills League v. City of
23 Portland, 117 Or App 211, 217, 843 P2d 992 (1992). However,
24 both parties posit plausible but different meanings for the
25 term, petitioners equating "function" with "number of units
26 bordering a street," and the county and intervenor equating
27 "function" with "number of units accessing a street," that is,
28 driveways entering the street. We conclude that the term
29 "function" is not unambiguous, and further that the county's

1 discussion of CDC 409-3.3(A) constitutes an interpretation of
2 that provision.

3 Petitioners next contend that the county's interpretation
4 adds terms to CDC 409-3.3(A), i.e. "access" or "service," and
5 thus impermissibly amends that provision under the guise of
6 interpretation. DLCD v. Tillamook County, ___ Or LUBA ___
7 (LUBA No. 96-181, April 21, 1997). We disagree. "Access" or
8 "service" to a street is within the plausible range of meaning
9 denoted by the "function" of a street for purposes of CDC 409-
10 3.3(A). The county's interpretation of CDC 409-3.3(A) does
11 not impermissibly add terms to that provision.

12 Finally, petitioners state that the county staff
13 calculated the length of the southern leg of Janessa Lane by
14 summing the frontage of all the units bordering Janessa Lane,
15 including the entire frontage of unit 3. Petitioners contend
16 that the county is somehow bound by that calculation in
17 determining whether, for purposes of CDC 409-3.3(A), the
18 "function" of Janessa Lane includes unit 3 or not. Intervenor
19 responds that the county staff's calculation was for purposes
20 of CDC 409-3.7, i.e. to determine whether the southern leg of
21 Janessa Lane exceeds 150 feet and thus triggers the turnaround
22 requirement. We agree with intervenor that the staff
23 calculation of street length for purposes of CDC 409-3.7 does
24 not force the county to determine that unit 3 is within the
25 "function" of the southern leg of Janessa Lane, for purposes
26 of CDC 409-3.3(A).

1 The fourth assignment of error is denied.

2 The county's decision is remanded.

3