

1 Opinion by Holstun.

2 **NATURE OF THE DECISION**

3 Petitioners appeal a decision of the county board of commissioners approving a
4 recreational vehicle (RV) campground as a conditional use on land zoned for exclusive farm
5 use.¹

6 **MOTION TO INTERVENE**

7 Norman and Vivian L. Yard (intervenors), the applicants below, move to intervene in
8 this proceeding. There is no opposition to the motion and it is allowed.

9 **FACTS**

10 This is the second time this matter has been before us. In Ray v. Douglas County, 32
11 Or LUBA 388, 390 (1997) (Ray I), we described the proposal as follows:

12 "The subject property comprises approximately 131 acres zoned Exclusive
13 Farm Use - Crop Land (FC), of which 45 percent is high-value farmland. The
14 proposed 'full-service' RV campground would occupy four acres of high-value
15 farmland and would include 40 campsites along the Umpqua River, with
16 showers and a septic system." (footnote omitted).

17 Under the county's Land Use and Development Ordinance (LUDO) 3.4.100,
18 campgrounds are permitted as a conditional use in the county's FC zone.² The proposed RV
19 campground is also subject to LUDO 3.4.150,³ which provides, in relevant part:

¹ORS 215.283(2) provides that campgrounds may be established in exclusive farm use zones, subject to the approval of the county's governing body. OAR 660-033-0130(19) defines "campground" as

"* * * an area devoted to overnight temporary use for vacation, recreational or emergency purposes, but not for residential purposes. A camping site may be occupied by a tent, travel trailer or recreational vehicle. Campgrounds authorized by this rule shall not include intensively developed recreational uses such as swimming pools, tennis courts, retail stores or gas stations."

²LUDO 3.4.100 sets forth the uses permitted conditionally in the FC zone. Those uses include "[p]rivate parks, playgrounds, hunting and fishing preserves, and campgrounds[.]" LUDO 3.4.100(5).

³The county amended LUDO 3.4.150 sometime in 1997, but applied the pre-1997 version of that provision both in the initial decision and in the decision on remand. All references in this opinion to LUDO 3.4.150 are to the pre-1997 version.

1 "* * * Additional criteria which must be met prior to the approval of a
2 conditional use:

3 "* * * * *

4 "3. The granting of the permit would not materially alter the stability of
5 the overall land use pattern of the area." (Emphasis added.)

6 In Ray I, petitioners and intervenors framed the principle issue to us as whether the
7 county had applied the LUDO 3.4.150(3) stability standard in the manner articulated in
8 Sweeten v. Clackamas County, 17 Or LUBA 1234, 1245 (1989) and DLCD v. Crook
9 County, 26 Or LUBA 478, 489-92 (1994). Both Sweeten and DLCD v. Crook County
10 address local code provisions implementing a statutory requirement now codified at
11 ORS 215.284 regarding establishment of nonfarm dwellings on land zoned for exclusive
12 farm use. Under ORS 215.284(1)(d) and (2)(d), the county may allow a nonfarm dwelling on
13 land zoned for exclusive farm use where it finds "[t]he dwelling will not materially alter the
14 stability of the overall land use pattern of the area." The language of LUDU 3.4.150(3) may
15 have been borrowed from ORS 215.284, but does not implement that statute.

16 Under the standard described in Sweeten and DLCD v. Crook County, the county
17 must select an area for consideration, examine the types of uses existing in the selected area
18 and then, based on the area selected and examination of uses in that area, determine that the
19 proposed use will not materially alter the stability of the existing uses in the selected area.
20 We reviewed the county's decision in Ray I under the Sweeten analysis, and remanded the
21 county's decision because the county had not adequately identified the area it selected for
22 consideration and its decision was unclear concerning the uses that existed in the area.
23 Because the county did not adequately identify the area it chose for consideration, we were
24 unable to complete the remainder of our review of the county's decision. Nonetheless, to
25 assist the county on remand, we reached the remaining assignments of error, explaining why
26 the county's findings to establish that the proposal would not materially alter the stability of
27 the overall land use pattern in the area were inadequate.

1 On remand from LUBA, the county planning commission conducted proceedings
2 limited to the issues sustained in Ray I. The planning commission approved the proposed
3 RV campground. The planning commission approval was appealed to the county board of
4 commissioners, who adopted the planning commission's interpretation of LUDO 3.4.150(3)
5 and affirmed the planning commission's decision.

6 This appeal followed.

7 **ASSIGNMENT OF ERROR**

8 Petitioners argue that on remand the county misconstrued LUDO 3.4.150(3) in ways
9 inconsistent with case law interpreting the Sweeten standard, and that, even if that case law is
10 not controlling, the county's interpretation of LUDO 3.4.150(3) is inconsistent with the terms
11 of that provision and clearly wrong. ORS 197.829(1); Goose Hollow Foothills League v.
12 City of Portland, 117 Or App 211, 217, 843 P2d 992 (1992).⁴

13 In the challenged decision, the county followed the analytical formula described in
14 Sweeten. However, it interpreted LUDO 3.4.150(3) in a manner that is arguably inconsistent
15 with the third step of the Sweeten analysis, as described in that case and in its progeny.⁵ The

⁴ORS 197.829(1) provides:

"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; or
- "(d) Is contrary to a state statute, land use goal or rule that the comprehensive plan provision or land use regulation implements."

⁵ In DLCD v. Crook County, ___ Or LUBA ___ (LUBA No. 96-230, March 26, 1998) we explained that the statutory stability standard requires an analysis of the development trends in the area and a determination of whether the proposed use will encourage similar uses on similarly situated properties in the area. We stated:

1 pertinent portions of the planning commission decision state:

2 "The 'overall land use pattern' is composed of and defined by the existing land
3 uses on the properties in the impact area. In view of the emphasis the
4 ordinance gives to 'alter' by the modifier 'materially,' an impact 'materially
5 alters the stability' if it is shown that the land use patterns on more than one-
6 third of the acreage in the impact area are more likely than not to fall out of
7 resource (or other present) use as a direct material or substantial economic
8 causal consequence of the proposed use.

9 * * * * *

10 "For the purposes of this LUDO section, if a proposed use is not predicted to
11 change the land use on more than one-third of the acreage in the impact area
12 by direct material or substantial economic causal effect, then the proposed use
13 does not materially alter the stability of the overall land use pattern in the
14 impact area." Record 7-8 (emphasis in original).

15 On appeal to the county board of commissioners, the commissioners adopted the
16 planning commission's interpretation of LUDO 3.4.150(3), with one exception, stating:

17 "While we adopt the Planning Commission's reasoning, we interpret LUDO to
18 set a quantitative standard of less than one-third.

19 "We interpret 'materially alter the stability' to mean some significant level of
20 alteration that is surely greater than that shown in this application, but we do
21 not determine as a precedent what that percentage level is at this time, except
22 to state that the standard is at least 2% and may be more. * * *

23 "Since the proposed development has less than a 2% effect on materially
24 altering the stability of the overall land use pattern of the area, it meets the
25 pertinent approval criterion."⁶ Record 20 (emphasis added).

"[T]he basic purpose of evaluating the land use pattern and the development trends in an area is to determine how stable the current land use pattern is and hence what steps are necessary to protect its stability." *Id.* at slip op 12.

Similarly, in *Hearne v. Baker County*, ___ Or LUBA ___ (LUBA No. 97-146, March 18, 1998), slip op 14, we explained that:

"If the cumulative effect of historical, current and projected nonfarm development is to materially alter the stability of the land use pattern, then the stability pattern is not met."

⁶The apparent basis for the two percent figure is that the proposal affects less than two percent of the land in the impact area.

1 Petitioners argue that the Sweeten analysis governs this case, and thus the county
2 erred in interpreting LUDO 3.4.150(3) in ways that, petitioners contend, are inconsistent with
3 Sweeten. Petitioners argue that the county is obligated to follow the Sweeten analytical
4 formula because that framework became the "law of the case" when the parties agreed in Ray
5 I that Sweeten was the appropriate formula for analysis.⁷ We understand petitioners to
6 invoke the principle discussed in Beck v. City of Tillamook, 313 Or 148, 153, 831 P2d 678
7 (1992) (on appeal of a decision on remand, parties may not raise issues that were resolved in
8 the first appeal).

9 The difficulty with petitioners' argument is that, even if the principle described in
10 Beck applies in the present context, nothing in our opinion in Ray I resolved whether the
11 county must, on remand, apply LUDO 3.4.150(3) consistently with the statutory stability
12 standard under Sweeten. Our holding in Ray I was limited to the first step of the Sweeten
13 analysis, identification of the impact area. As we explained in Ray I, our discussion of the
14 county's analysis of the last two steps of its stability standard was for the purpose of
15 "[facilitating] the proceedings on remand." 32 Or LUBA at 394. We did not determine that
16 the county must apply LUDO 3.4.150(3) consistently with the last two steps of the Sweeten
17 analysis, nor that the meaning of LUDO 3.4.150(3) is identical to the meaning of the
18 statutory stability standard, as interpreted in Sweeten and its progeny. Accordingly, nothing
19 in Ray I prohibited the county from interpreting LUDO 3.4.150(3) in a different manner than
20 the statutory stability standard has been interpreted by this Board.

21 Accordingly, we turn to petitioners' alternate argument that the county's interpretation
22 of LUDO 3.4.150(3) is clearly wrong and thus reversible under ORS 197.829(1) and the
23 standard articulated in Goose Hollow Foothills League.

24 Petitioners contend that the county's interpretation of LUDO 3.4.150(3) is "clearly

⁷The county was a party to the Ray I review proceedings before LUBA, but did not submit a response brief or participate in those proceedings.

1 wrong" because, under that interpretation, the county merely counts up the number of acres
2 that will change use within the study area as a direct result of the proposed use, and expresses
3 that number as a percentage of the acreage in the study area. If that percentage is fairly low,
4 then the county will conclude that the proposed use will not "materially alter the stability of
5 the overall land use pattern in the area." Petitioners argue that this myopic, mechanical
6 approach considers only short-term effects and does nothing to consider the stability of the
7 land use pattern in the area. According to petitioners, any meaningful application of the
8 stability standard must consider relevant land use trends and the role the current application
9 plays in those trends.

10 Intervenor responds that the county's interpretation of LUDO 3.4.150(3) is not
11 inconsistent with the express language of that provision and is thus affirmable under ORS
12 197.829(1)(a). Intervenor argues that the terms "materially alter the stability of the overall
13 land use pattern" are inexact, and that the city's interpretation is a reasonable interpretation of
14 that phrase. According to intervenors, the county's interpretation of LUDO 3.4.150(3) has
15 two aspects. The county interpreted the requirement that land use stability not be
16 "materially" altered to mean that there is not a "significant level of alteration." Under that
17 interpretation, the county concluded that a two percent level of alteration does not constitute
18 such a "significant level of alteration." Second, the county adopted a standard focused on
19 direct immediate causal impacts of the proposed development on nearby lands. Intervenor
20 contend that both aspects of the county's interpretation are consistent with the terms of
21 LUDO 3.4.150(3).

22 This Board is required to defer to a local governing body's interpretation of its own
23 enactment, unless that interpretation is contrary to the express words, purpose or policy of
24 the local enactment or to a state statute, statewide planning goal or administrative rule which
25 the local enactment implements. ORS 197.829(1); Gage v. City of Portland, 319 Or 308,
26 316-17, 877 P2d 1187 (1994). In Huntzicker v. Washington County, 141 Or App 257, 261,

1 917 P2d 1051, rev den 324 Or 322 (1996), the Court of Appeals explained that a local
2 government's interpretation of a local provision is "clearly wrong" when "no person could
3 reasonably interpret the provision in the manner that the local body did."

4

1 We cannot say that no person could reasonably interpret LUDO 3.4.150(3) in the
2 manner the county has. The phrase "materially alter the stability" of the overall land use
3 pattern necessarily connotes a temporal period and a certain scope of causative impact for
4 analysis. It is not outside the range of reasonable interpretations of that phrase to focus, as
5 the county does, on immediate, significant, short-term effects, rather than on the longer-term
6 historical context, the development trends and any cumulative impacts. Accordingly, we
7 defer to the county's interpretation.

8 The assignment of error is denied.

9 The county's decision is affirmed.