

Opinion by Holstun.

1
2 NATURE OF THE DECISION

3 Petitioners appeal the county's approval of a conditional
4 use permit for a private college extension campus in the
5 county's Rural Residential Farm/Forest, five acre minimum lot
6 size (RRFF-5) zone.

7 MOTION TO INTERVENE

8 Tokyo College of Commerce moves to intervene on the side of
9 respondent in this proceeding. There is no opposition to the
10 motion, and it is allowed.

11 FACTS

12 The county's approval of intervenor's request for a
13 conditional use permit is before us for the second time. In
14 Highway 213 Coalition v. Clackamas County, __ Or LUBA __ (LUBA
15 No. 88-060, December 15, 1988), we remanded an earlier county
16 decision approving the requested conditional use permit. On
17 remand the county hearings officer accurately summarized the
18 substance of our remand as follows:

19 "* * * The [county's] [d]ecision [was] appealed to
20 LUBA, resulting in an Order of Remand to the county
21 for the limited purposes of determining (1) whether
22 the proposed use constitutes a school, and (2) if so,
23 whether the school is permitted as a conditional use
24 in the RRFF-5 zoning district pursuant to the
25 provisions of subsection 309.05A2 of the Clackamas
26 County Zoning and Development Ordinance (ZDO), and (3)
whether the proposed use violates the Rural Lands
Policies of the Clackamas County Comprehensive Plan
* * *. Remand Record 2.¹

25
26 ¹The record in this proceeding includes the record filed in the prior
appeal proceeding. In this opinion we shall cite the record in the prior

1 The relevant facts stated in our prior decision are as follows:

2 "Intervenor-respondent Tokyo College of Commerce
3 requested a conditional use permit to allow existing
4 structures on a 17 acre site in the county's RRF-5
5 zone to be used as a private college. The proposed
6 use would be an extension campus of the Tokyo College
7 of Commerce, but would not be a school accredited by
8 the State of Oregon.

9 "Courses offered by the Tokyo College of Commerce in
10 Japan include 'computer programming, computer-aided
11 accounting, business management, fashion apparel
12 management, finance, secretarial skills, public
13 relations and bookkeeping." Record 5, 37. Some
14 classes would be offered on the 17 acre site, although
15 the application does not identify the courses to be
16 offered. Students would also take classes at
17 Clackamas Community College and in addition would
18 spend 'a lot of time' on cultural tours in the state
19 of Oregon. Record 5. Approximately 200 to 300
20 students would participate in the program annually.
21 Each group of up to 40 students would be in residence
22 on the site for approximately 6 weeks. Slip op at 3-4.

23 On remand the county accepted additional testimony and
24 written evidence concerning the nature of the proposed use.

25 FIRST ASSIGNMENT OF ERROR

26 "The proposed use is not a 'school' of any kind and is
27 not a use permitted in the RRF-5 zone. In approving
28 the use respondent exceeded its jurisdiction,
29 improperly construed the applicable law and made a
30 decision not supported by substantial evidence in the
31 whole record."

32 Clackamas County Zoning and Development Ordinance (ZDO)
33 Section 309.05.A.2 allows as a conditional use in the RRF-5
34 Zone "[p]ublic and private schools, subject to the provisions of
35 [ZDO] Section 805 and 806."² Under the first assignment of

36 _____
37 proceeding as "Record" and the record compiled on remand and filed in this
38 proceeding as "Remand Record."

39 ² ZDO Chapter 800 establishes special use requirements. ZDO 801.01

1 error petitioners argue the proposal is for something other than
2 a school and, therefore, cannot be approved under ZDO
3 309.05.A.2.

4 In our first decision in this matter we noted the ZDO does
5 not include a definition of "school," although it does define
6 "commercial school" and "private school."³ We stated:

7 " * * * The dictionary definition of the word 'school'⁴
8 and the meaning apparently expressed in the Clackamas
9 County Zoning Ordinance, at a minimum, require that a
10 school include teachers, students and a class
11 curriculum where an orderly exchange of ideas and
12 knowledge or formal instruction occurs."

11 explains:

12 "Special uses are uses such as those included in this section
13 which, due to their public convenience and necessity and their
14 effect upon the surrounding area, are always subject to
15 particular conditions and standards which differ from or exceed
16 those required of other uses in the same district. * * *"

15 ZDO Section 805 establishes special standards for "PUBLIC SCHOOLS" and
16 "PRIVATE AND PAROCHIAL SCHOOLS OFFERING CURRICULA SIMILAR TO PUBLIC
17 SCHOOLS." ZDO 806 establishes special standards for "PAROCHIAL AND PRIVATE
18 SCHOOLS."

17 ³ The ZDO defines commercial school as follows:

18 "A building where instruction is given to pupils in arts,
19 crafts or trades, and operated as a commercial enterprise as
20 distinguished from schools endowed and/or supported by
21 taxation." ZDO Section 202

20 The ZDO Defines private school as follows:

21 "Includes private kindergartens, nurseries, play schools and
22 church related schools." ZDO Section 202

23 ⁴ We quoted in our earlier opinion the following definition of "school"
24 from Webster's Third New International Dictionary:

24 "school * * * 1a(1): an organized body of scholars and
25 teachers associated for pursuit and dissemination of knowledge
26 * * * 2a: an organized source of education or training * * *
b: a place where instruction is given: (1) a place where
lectures are held * * *."

1 ** * * * *

2 "If the applicant seeks approval of a conditional use
3 permit for a school, there must be more of a showing
4 than is presented in this record that the activity
5 proposed is properly viewed as a school.
6 Specifically, the applicant must show, and the county
7 [must] find, that the use is more than a dormitory for
8 students who will attend classes as [sic] Clackamas
9 Community College and more than a home base for
10 cultural tours of the county and state by visiting
11 students." Slip op. 7.

12 On remand the county hearings officer found:

13 "The applicant's proposal * * * contains a facility
14 (building) which is large enough and is adapted to
15 house the expected number of students and faculty,
16 with areas set aside for classroom instruction. * * *
17 The proposed use will involve the participation of
18 both faculty and students. The testimony and
19 documentary evidence offered by the applicant * * *
20 demonstrates that up to 40 students and faculty from
21 Japan (with an average of five faculty) will utilize
22 the property in time spans of up to six weeks.
23 Additional teachers will be retained locally to
24 supplement the Japanese faculty where appropriate or
25 necessary.

26 "Finally, the proposal includes a class curriculum
27 designed to create an orderly exchange of ideas and
28 knowledge through formal instruction and a less formal
29 living experience. The applicant has indicated its
30 intention to offer courses of study at the subject
31 property which include resort management, advertising,
32 business administration, computer accounting,
33 secretarial office automation and business accounting.
34 Other courses of study may be offered which the
35 Hearings Officer has not specifically noted. The six
36 week average terms (for want of a more descriptive
37 word) will include classroom instruction on site and
38 at Clackamas Community College (CCC), as well as tours
39 of Oregon and other areas, where appropriate to the
40 course of study. Typically, there will be six 70
41 minute, instructional hours per five day week, with
42 physical education and sports activities required.
43 Exhibits 10R, 11R and 12R [Remand Record 360-385] are
44 accepted by the Hearings Officer as a statement of
45 intended instruction, with a tentative, but typical,
46 schedule of subjects and a descriptive daily schedule
47 of sessions, lectures and available audit classes at

1 CCC.

2 "The Hearings Officer further finds that the courses
3 of study to be offered on the subject property are an
4 integral part of the overall courses of study offered
5 by the applicant, the Tokyo College of Commerce and
6 the Tokyo College of Law. Full credit will be given
7 to students who participate in the activities and
8 instructional classes to be offered on the subject
9 property. No one has suggested that the applicant is
10 not a 'school' in Japan. In fact, it is a school,
11 offering two-year courses of instruction in as many as
12 500 different disciplines. The record is replete with
13 documentation of this fact.

14 "The Hearings Officer further accepts as expert
15 testimony * * * the statement from the Office of
16 Educational Policy and Planning for the State of
17 Oregon that the proposed use of the subject property
18 is clearly an educational unit of the Tokyo school, in
19 that it provides part of the curricular experience for
20 its students and is directly involved in activities
21 that result in academic credit.

22 "The proposed use cannot be accurately described as a
23 dormitory for students who will attend classes at CCC
24 and/or a home base for cultural tours of the county
25 and state by visiting students. As discussed above,
26 the Hearings Officer finds that the applicant will
operate a school on the property with a significant
number of instructional hours on site. Classes at CCC
and cultural or educational tours are merely a part of
the the course of studies offered. * * *" Remand
Record 3-4.

18 Petitioners argue:

19 "First the primary use of the site emphasizes tours
20 and recreational activities and short instructional
21 courses of only 6 weeks make academics secondary. The
22 'internationalization' and 'resort management'
23 components speak for themselves. This is basically a
24 scheme for Japanese students to visit Oregon, take a
25 few hours of classes and spend the majority of their
26 time touring and having a good time. Although [the
applicant] did give a breakdown of their curriculum,
basically it is resort type things along with American
Culture. (i.e., fairly low grade and limited in the
numbers of classes, secretarial skill, resort
management, and lots of field trips.) Students only
stay six weeks, a few weeks on campus and almost as
much time off campus in Disneyland, Los Angeles, San

1 Diego and other places.

2 "Second, the proposed use is a somewhat unique
3 concept, and it is difficult to give a name to it.
4 Although it may not be just a 'boarding house,' or
5 just a 'dormitory' or just a 'base for tours,' it
6 nevertheless is definitely not a 'school' as that term
7 is commonly understood." Petition for Review 19.

8 Petitioners go on to complain that a construction of the
9 term "school" broad enough to include the proposal "would open a
10 pandora's box under which virtually any 'place where lectures
11 are held' could be viewed as a 'school'." Petition for Review
12 23. Citing Williams, American Planning Law, Sec. 76.22 (1975)
13 petitioner contends we should interpret the reference to public
14 and private schools in the ZDO "to exclude * * * special schools
15 which are outside the normal educational progression." Petition
16 for Review 22.

17 Respondent contends the operation proposed is a school
18 within the meaning of that term as it is used in the ZDO.
19 Respondent notes "even most American colleges have expanded
20 beyond the 'three Rs', and frequently offer overseas studies
21 programs." Respondent's Brief 5.

22 We do not understand petitioners to dispute that the
23 Tokyo College of Commerce in Japan is a school. The proposed
24 use is an extension campus of that school. We agree with
25 petitioners that the proposed school is somewhat unique (e.g.
26 short study terms, limited to foreign students only, limited
 curriculum, substantial time spent off campus). However, these
 features, in and of themselves, do not mean the proposed use is
 not a school.

1 The record supports the hearings officers findings that
2 academic courses will be offered at the facility and in some
3 cases classes begun in Japan will be completed at the Clackamas
4 County facility. The fact that the proposed extension campus
5 will also include cultural and recreational tours does not mean
6 it is not a school. We believe the hearings officer's findings
7 are adequate to demonstrate the proposed use is a school within
8 the meaning of that term as it is used in the ZDO.

9 Finally, we also agree with respondent that the hearings
10 officer's construction of the term "school" is consistent with
11 other related sections of the ZDO. Particularly, as pointed out
12 above at n 2, ZDO Section 805 specifies special standards for
13 public schools and for those private schools offering curricula
14 similar to public schools. ZDO 806 specifies different special
15 standards for other private schools. We agree with the county
16 that ZDO Section 806 apparently envisions private schools
17 having curricula different than the curricula offered in public
18 schools. These provisions support the hearings officer's
19 broader construction of the term "school" and undercut
20 petitioner's argument that the term "school" must be limited to
21 schools which fit neatly into the "normal educational
22 progression."

23 The first assignment of error is denied.

24 SECOND ASSIGNMENT OF ERROR

25 "If the proposed use is a 'school,' then it is not a
26 'private school' but a 'commercial school' which is
 not authorized in the RRF-5 zone. The County

1 improperly construed the applicable law and exceeded
its jurisdiction by approving this application."

2 The hearings officer determined the proposed school is a
3 private school as opposed to a public school or a commercial
4 school. Although the ZDO does not include a definition of
5 public school, it does, as noted above, define "private school"
6 as follows:

7 "SCHOOL, PRIVATE: Includes private kindergartens,
8 nurseries, playschools, and church-related schools."
ZDO 202.

9 The above definition actually is a nonexhaustive list of
10 examples of private schools and is not particularly helpful in
11 determining the scope of the term "private school."⁵
12 Apparently, the hearings officer interpreted the term private
13 school broadly to include all schools that are not public
14 schools. We have no reason to question the broad construction
15 of the term private school adopted by the hearings officer.

16 The hearings officer noted the ZDO explicitly provides for
17 "commercial schools" which are defined as

18 "[a] building where instruction is given to pupils in
19 arts, crafts, or trades, and operated as a commercial
enterprise as distinguished from schools endowed
and/or supported by taxation." ZDO Section 202.

20 Commercial schools are allowed in the C-1 and C-2 commercial
21 zoning districts but are not listed as a conditional use in the
22 RRF-5 zone. The hearings officer reasoned that commercial
23 schools are a particular type of private school and are not
24

25
26 ⁵For example, church-related schools could include everything from a
limited special purpose elementary school to a university.

1 allowed in zoning districts authorizing private schools unless
2 those districts also expressly authorize commercial schools.
3 The hearings officer decided, therefore, that if the proposed
4 school is a commercial school, it is not allowed in the RRF-5
5 zone as a conditional use.

6 The hearings officer determined, however, for two reasons
7 the proposed school is not a commercial school. First, the
8 hearings officer concluded "the Tokyo College of Commerce and
9 the Tokyo College of Law offer courses of study greatly
10 exceeding 'arts, crafts and trades.'" Remand Record 4. Second,
11 the hearings determined neither the Tokyo College of Commerce
12 nor the Tokyo College of Law are operated for profit and,
13 therefore, are not commercial enterprises.

14 Petitioners contend the Tokyo College of Commerce is a
15 business or vocational school and offers instruction in "trades"
16 within the meaning of the ZDO definition of commercial school.
17 Webster's Third New International Dictionary defines trade as
18 follows:

19 "Trade * * * 3a: The business one practices or the
20 work in which one engages regularly: one's calling:
21 gainful employment: means of livelihood: OCCUPATION
22 as (1) an occupation requiring manual or mechanical
23 skill and training: a craft in which only skilled
24 workers are employed * * * b: A workman engaged in a
25 trade * * *"

26 We find the dictionary definition of trade to be of limited
assistance in this matter. Further, none of the parties suggest
a principled way to assign meaningful parameters to the term
"trades" as used in the definition of commercial schools in the

1 ZDO.

2 We agree with the interpretation apparently adopted by the
3 county, that commercial schools do not include schools offering
4 the broader range of courses typically offered at community
5 colleges, even though community colleges may also offer some
6 classes properly categorized as classes in arts, crafts or
7 trades. We interpret the definition of commercial schools to
8 include commercial enterprises which offer classes limited to
9 arts, crafts, manual or mechanical skills or general office,
10 clerical or secretarial skills.

11 Turning to the school at issue in this proceeding, our
12 review is somewhat complicated by the fact the bulk of the
13 material in the record describing the Tokyo College of Commerce
14 and Tokyo College of Law is in Japanese and no translation is
15 provided for much of that material. However, from the
16 translations provided at Remand Record 219, 223 and 369-385 we
17 agree the Tokyo College of Commerce and Tokyo College of Law
18 appears to resemble more closely a two year community college
19 than a vocational and trade school.⁶

20
21 ⁶ The record indicates that the the two year course of instruction at
22 the Tokyo College of Commerce requires 800 hours of instruction per year
23 and that second year students are permitted to take the same national exams
24 for public officials that are given to graduates of four year colleges.
25 Remand Record 219, 223. We also note that the State of Oregon Office of
Educational Policy and Planning stated in a letter that it appeared the
Tokyo College of Commerce "is the equivalent of the type of college in the
United States that could be authorized to confer associate degrees."
Record 145.

26 The relevatively limited course offering at the extension Clackamas
County campus of the Tokyo College of Commerce does not affect our

1 Because we conclude the proposed school will not offer
2 instruction in "arts, crafts or trades" and therefore does not
3 satisfy one of the two definitional requirements for a
4 "commercial school" in the ZDO, we need not determine whether
5 the school is "operated as a commercial enterprise."

6 The second assignment of error is denied.

7 THIRD ASSIGNMENT OF ERROR

8 The County improperly construed the applicable law,
9 violated its Rural Lands policies in its comprehensive
10 plan, violated statewide Goals 2 and 14 and OAR 660-
11 04-018(2) and exceeded its jurisdiction by approving
12 an urban use in a rural area. Absent a new exception,
13 urban uses are not permitted within the RRF5-5 zone.
14 No exception was noticed, taken or approved in this
15 proceeding.

16 Simply stated, petitioner complains under the third
17 assignment of error that the county's decision allows an urban
18 use of rural property in violation of Goal 14, OAR 660-04-016(2)
19 (concerning planning and zoning for goal exception areas) and
20 numerous Plan goals and policies. At least since the Oregon
21 Supreme Court's decision in 1000 Friends of Oregon v. LCDC
22 (Curry County), 301 Or 447, 724 P2d 268 (1986), it has been
23 clear that Goal 14 requires that urban uses be located within
24 urban growth boundaries. Whether a proposed use is urban is
25 determined on a case-by-case basis considering relevant factors
26 identified by the appellate courts and this Board. Hammack v.
Washington County, __ Or LUBA __ (LUBA No. 87-037, September 11,

conclusion that the school is not properly classified as a commercial school.

1 1987), aff'd 89 Or App 40 (1987). Goal 14 generally does not
2 apply directly to land use decisions subject to an acknowledged
3 comprehensive plan and land use regulations.⁷ After
4 acknowledgement, the prohibition in Goal 14 against locating
5 urban uses on rural land is carried out by complying with plan
6 policies and land use regulation requirements adopted to comply
7 with Goal 14 and achieve acknowledgment under ORS 197.251.

8 In petitioners' initial appeal, they alleged the county's
9 approval violated Goal 14 (urbanization), OAR 660-14-018(2) and
10 rural plan policies 1.0 and 13.0.⁸ In our prior decision in
11 this proceeding, we rejected petitioners' challenges based on
12 Goal 14 and OAR 660-04-018(2) concluding it was the county's
13 acknowledged plan and land use regulations, not the goal or
14 OAR-660-04-018(2) which governs the county's decision. Hwy 213
15 Coalition v. Clackamas County, supra, slip op 10. We remanded
16 the county's decision to consider whether the proposed use
17 violates the plan policies cited by petitioners in their first
18 appeal. Because we rejected petitioner's Goal 14 and OAR 660-
19 04-018(2) allegations in the first appeal, those issues may not

20
21 ⁷ Amendments to acknowledged comprehensive plans and land use
22 regulations are subject to compliance with the Goals. ORS 197.830(4).

23 ⁸ Petitioners also referred in their first appeal and refer in this
24 proceeding to the introductory paragraph to the Rural section of the Plan
25 which provides:

26 "Rural lands are those which are outside the Urban Growth
Boundaries and are suitable for sparse settlement, small farms
or acreage homesites with no or hardly any public services and
which are not suitable, necessary or intended for urban,
agriculture or forest use."

1 be raised again in this appeal of the county's decision on
2 remand. In this appeal petitioners also allege violation of a
3 number of other plan provisions in addition to Policies 1.0 and
4 13.0.⁹ These policies were not raised during petitioner's first
5 appeal and they may not be raised for the first time in this
6 appeal proceeding. Portland Audubon Society v. Clackamas
7 County, 14 Or LUBA 433, aff'd 80 Or App 593 (1986); Mill Creek
8 Glen Protec. Assn. v. Umatilla County, 15 Or LUBA 563, aff'd 88
9 Or App 522 (1987); Hearne v. Baker County, ___ Or LUBA ___ (LUBA
10 No. 87-030, October 21, 1987), aff'd 89 Or App 282 (1988). We
11 limit our review under the third assignment of error to
12 petitioner's allegation that the decision violates Rural
13 Policies 1.0 and 13.0.⁹ Rural Plan Policies 1.0 and 13.0

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15
16 The above quoted language is substantially identical to the definition
of rural lands in the statewide planning goals.

17 ⁹ Although petitioner does not cite ZDO 1203 "conditional uses," plan
18 goals and policy may apply to conditional uses by virtue of ZDO 1203.01
which provides:

19 "1203 CONDITIONAL USE

20 "1203.01 The hearings Officer may allow a conditional use,
21 after a hearing conducted pursuant to Section 1300, provided
22 that the applicant provides evidence substantiating that all
the requirements of this Ordinance relative to the proposed use
are satisfied, and demonstrates that the proposed use also
satisfies the following criteria:

23 "A. The use is listed as a conditional use in the
24 underlying district.

25 "B. The characteristics of the site are suitable for
26 the proposed use considering size, shape, location,
topography, existence of improvements and natural
features.

1 provide as follows:

2 "1.0 The following areas may be designated Rural:

- 3 a. Areas which are presently developed, built
4 upon or otherwise committed to sparse
5 settlement or small farms with no or hardly
any public services available."

6 "13.0 The Rural (Agricultural) two-acre (RA-2),
7 Rural Residential Farm/Forest five-acres (RRFF-5) and
8 the Farm Forest ten-acres (FF-10) zoning districts
9 maintain the character of Rural areas and implement
10 the goals and policies of this plan for residential
11 uses in Rural areas; these zoning districts and any
12 other zoning district developed in the future, which
13 implements these goals and policies, should be applied
14 in Rural areas. These zones shall be applied as
15 follows: [The ZDO then specifies criteria for applying
16 each zone]."

11 A. Rural Policy 1.0

12 Petitioner does not explain why Policy 1.0 is violated by
13 the county's decision. As we have explained on numerous
14 occasions, provisions such as ZDO Section 1203.01.E do not
15 automatically make every goal, policy, objective, etc. contained
16 in the comprehensive plan an approval standard. See e.g.,
17 Bennett v. City of Dallas, ___ Or LUBA ___ (LUBA No. 88-078,
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20 "C. The site and proposed development is timely,
21 considering the adequacy of transportation systems,
public facilities and services existing or planned
for the area affected by the use.

22 "D. The proposed use will not alter the character of
23 the surrounding area in a manner which
24 substantially limits, impairs, or precludes the use
of surrounding properties for the primary uses
listed in the underlying district.

25 "E. The proposal satisfies the goals and policies of
26 the Comprehensive Plan which apply to the proposed
use." (Emphasis added.)

1 February 7, 1989), aff'd 96 Or App 645 (1989).

2 Respondent contends Policy 1.0 is merely a description of
3 the kinds of areas that may be designated Rural, not an approval
4 standard applicable to conditional use permit decisions. We
5 agree, and this subassignment of error is denied.¹⁰

6 B. Rural Policy 13.0

7 Petitioner next contends the proposed use violates Rural
8 Policy 13.0 because it is not limited to the needs of the
9 surrounding area, see e.g., City of Sandy v. Clackamas County, 3
10 LCDC 139 (1979); Conarow v. Coos County, 2 Or LUBA 190 (1981),
11 and therefore it is an urban use.

12 Respondent answers that Policy 13.0 is not an approval
13 standard applicable to the county's conditional use permit
14 decision. Rather, respondent argues, "this policy provides
15 guidance on which zone to apply to a given area, rather than
16 what uses are allowed in any particular zone." Respondent's
17 Brief 11.

18 We agree with respondent. Policy 13.0 is a policy
19 governing application of the RA-2, RREF-5 and FF-10 zoning
20 districts to particular properties. Policy 13.0 is not an
21 approval standard applicable to conditional use permit
22

23 _____
24 ¹⁰ Similarly, petitioner does not explain why the county's decision
25 violates the introductory paragraph to the rural section of the plan. We
26 agree with the county that the descriptive introductory paragraph is not an
approval standard applicable to the conditional use permit decision
challenged in this proceeding.

1 decisions.¹¹

2 This subassignment of error is denied.

3 The third assignment of error is denied.¹²

4 The county's decision is affirmed.

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20 _____
21 ¹¹ In view of our decision that Policies 1.0 and 13.0 are the only
22 policies properly raised by petitioners in this appeal proceeding, we need
23 not and do not determine whether the proposed school is properly viewed as
an urban use or whether other plan policies, goals or other provisions of
the county's ZDO or Plan may be violated by the proposed school.

24 ¹² Petitioners suggest in one place under their argument under the third
25 assignment of error that the city's decision violates the exception taken
26 for the property to allow rural use of the land. Petitioners neither
explain why that exception is violated by the county's decision nor provide
us with a copy of the exception. We will not develop petitioners' argument
on this point.