



1           Opinion by Holstun.

2           NATURE OF THE DECISION

3           Petitioners appeal a decision by the Clackamas County  
4 hearings officer denying their request for a conditional use  
5 permit for a private commercial amusement park on land zoned  
6 Farm/Forest-10 Acre (FF-10) and designated Rural in the  
7 Clackamas County Comprehensive Plan.

8           FACTS

9           Petitioners propose a private commercial amusement park on  
10 South Ridge Road in an area of Clackamas County known as  
11 Fischer's Mill. The proposed park would be open seven days a  
12 week from 9:00 a.m. to 6:00 p.m. The park would employ five  
13 persons, and petitioners hope to attract 300 park users daily.  
14 Petitioners' property includes approximately seven acres, with a  
15 single family dwelling and barn currently located on the  
16 property.

17           Petitioners' property is located in an area of primarily  
18 rural residential uses, with some noncommercial farms. The  
19 proposed park would be approximately halfway between the  
20 intersections of South Ridge Road with Redland Road and with  
21 Fischer's Mill Road. The distance between these two  
22 intersections is approximately 2 1/2 miles. In excess of 50  
23 residences are located along this 2 1/2 mile stretch of South  
24 Ridge Road.

25           The county planning staff recommended denial of the  
26 conditional use permit, based on impacts on the rural

1 residential atmosphere of the area. The county hearings officer  
2 denied the requested conditional use permit, concluding  
3 increased traffic impacts and noise would violate applicable  
4 approval criteria. This appeal followed.

5 OPINION

6 The relevant approval criteria for the requested  
7 conditional use permit are contained in Clackamas County Zoning  
8 and Development Ordinance (ZDO) 1203 which provides as follows:

9 "1203 CONDITIONAL USE

10 "1203.1 The Hearings Officer may allow a  
11 conditional use, \* \* \* provided that the  
12 applicant provides evidence substantiating  
13 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:

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

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

18 "C. The site and proposed development is  
19 timely, considering the adequacy of  
20 transportation systems, public  
21 facilities and services existing or  
planned for the area affected by the  
use.

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

26 "E. The proposal satisfies the goals and

1 policies of the Comprehensive Plan  
which apply to the proposed use."

2 The hearings officer found ZDO 1203.1(A) and (B) were  
3 satisfied, but concluded petitioners failed to demonstrate the  
4 proposal complies with the remaining criteria in ZDO 1203.1,  
5 quoted above. We turn to the ZDO criteria the hearings officer  
6 found not satisfied.

7 A. ZDO Section 1203.1(C)- Adequate Transportation System

8 The hearings officer's findings concerning ZDO 1203.1(C)  
9 are as follows:

10 "\* \* \* The applicant has not \* \* \* shown that the  
11 transportation network which serves the property is  
12 adequate to accommodate the increased traffic. The  
record establishes that there are no planned  
improvements to the transportation network.

13 "The applicants' primary problem with the  
14 transportation and traffic issue is that there is  
15 nothing in the record which allows the Hearings  
16 Officer to evaluate the impact of the increased  
17 traffic. S. Ridge Road is a narrow country road with  
18 little or no shoulder. There is no traffic count in  
19 the record, but testimony set current traffic flows at  
20 less than 10 cars per hour. 300 visitors at the  
property could easily generate 100 or more vehicle  
round trips, more than doubling the existing traffic.  
In addition, the record shows that this road is used  
for farm vehicles in the summer months, horse riding,  
and pedestrian and bicycle traffic. Testimony further  
indicates that there is currently a high accident rate  
and congestion on access roads to S. Ridge Road.

21 "The record further reveals no means by which the  
22 applicant could control the amount of traffic which  
23 would be brought into the area. The request for up to  
24 300 persons per day represents both the capacity of  
25 the property for required parking, and perhaps for  
26 actual occupancy of the property. However, if the  
venture were to be successful, it is not unreasonable  
to anticipate that additional vehicles, over the 300  
person limit, would arrive at S. Ridge Road. The lack  
of available parking could easily result in parking  
along the roadside or on other properties. This

1 impact cannot be evaluated on the basis of this  
2 record.

3 "Traffic increases will certainly impact the  
4 transportation system. The Hearings Officer is unable  
5 to determine that the system is adequate to  
6 accommodate these increases." Record 3.

7 Respondent cites testimony by property owners in the area and  
8 contends the cited testimony generally supports the above quoted  
9 findings.

10 Petitioners' entire argument challenging the above quoted  
11 findings is as follows:

12 "South Ridge Road is portrayed as a narrow, inadequate  
13 means of travel in the Decision. The county gave no  
14 specific detail as to why they deemed the road narrow,  
15 and in fact no criterion was suggested as to how one  
16 judges whether or not a road is in fact narrow. The  
17 road has been shown to be adequate and there is no  
18 reason to believe that it would not be up to the  
19 minimal increase of approximately 10 cars per hour."  
20 Petition for Review 8.

21 Petitioners also suggest, in the portion of the petition  
22 for review summarizing the relevant facts, that they stated a  
23 "reservation system" would be instituted to assure no more than  
24 300 persons would visit the park each day.<sup>1</sup> Petition for  
25 Review 3-4. Additionally, petitioners complain that the  
26 evidence the county relied on in concluding the transportation  
system was not adequate for the proposed use is largely data  
collected by neighbors and opinion testimony rather than "hard,

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<sup>1</sup>Actually, one of the petitioners stated during the local proceeding that he had not thought about the possibility of attracting more than the planned-for 300 persons and suggested a reservation system might be needed. The petitioner did not, however, explain how such a reservation system might work and the conditional use permit application does not include a proposal for such a reservation system.

1 statistical fact \* \* \*." Petition for Review 4-5.

2 It is not entirely clear whether petitioners challenge the  
3 adequacy of the hearings officer's findings, the evidentiary  
4 support for those findings or both. We will assume petitioners  
5 challenge both the findings and their evidentiary support.

6 Petitioners do not dispute the hearings officer's findings  
7 that the proposal would double traffic, that high accident rates  
8 and congestion exist, or that South Ridge Road "is used for farm  
9 vehicles in the summer months, horse riding, and pedestrian and  
10 bicycle traffic." Record 3. More importantly, petitioners do  
11 not refute the hearings officer's finding that petitioners  
12 failed to carry their burden to show the transportation system  
13 is adequate to accommodate the proposed use.

14 The hearings officer's findings identify the facts or  
15 evidence he relied on, relate the evidence to the applicable  
16 criterion, and explain why, in the hearings officer's view, the  
17 evidence did not show the criterion was met. The hearings  
18 officer's findings concerning ZDO 1203.01(C) are adequate.

19 Turning to the adequacy of the evidence the hearings  
20 officer relied upon, petitioners are correct that it is in large  
21 part testimony provided by the opposing neighbors.<sup>2</sup> Although  
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24 <sup>2</sup>The evidence cited by respondent includes testimony that (1) nearby  
25 Springwater Road is congested in the summer, (2) conflicts would result  
26 with farm equipment on South Ridge Road, (3) the intersection of South  
Ridge Road and Redland Road is dangerous and the site of approximately one  
vehicular accident per month, and (4) South Ridge Road is now a lightly  
traveled twenty foot wide road, without shoulders, on which children now  
ride bicycles and horses. Respondent's Brief 6-7.

1 petitioners clearly disagree with the testimony of the  
2 neighbors, they cite no evidence in the record which contradicts  
3 the evidence the hearings officer relied on. The burden to  
4 demonstrate compliance with ZDO 1203.01(C) is petitioners'. The  
5 hearings officer concluded petitioners failed to carry that  
6 burden. Although the neighbors' testimony does not conclusively  
7 establish that the standard in ZDO 1203.01(C) cannot be met, the  
8 testimony clearly is adequate, in the absence of any  
9 contradictory evidence in the record, to support the hearings  
10 officer's finding that petitioners did not show that ZDO  
11 1203.01(C) is met. See Jurgenson v. Union County Court, 42 Or  
12 App 505, 510, 600 P2d 1241 (1979); Chemeketa Industries Corp. v.  
13 City of Salem, 14 Or LUBA 159, 163 (1985).

14 Petitioners' challenges to the hearings officer's findings  
15 of noncompliance with ZDO 1203.01(C), and the evidentiary  
16 support for those findings, are rejected.

17 B. ZDO 1203.01(D) and (E)- Character of the Surrounding  
18 Neighborhood

19 As noted earlier in this opinion, the hearings officer's  
20 denial of the conditional use permit was based on his findings  
21 that the criteria of ZDO 1203.01(C), (D) and (E) were not met.  
22 Because we reject petitioners' challenge to the hearings  
23 officers' finding of noncompliance with ZDO 1203.01(C), we are  
24 required to sustain the hearings officer's decision, even if his  
25 findings of noncompliance with ZDO 1203.01(D) and (E) are not

1 adequate or supported by substantial evidence in the record.<sup>3</sup>  
2 McCoy v. Marion County \_\_\_ Or LUBA \_\_\_ (LUBA No. 87-063,  
3 December 15, 1987), slip op 3; Portland City Temple v. Clackamas  
4 County, 11 Or LUBA 70, 78 (1984); Weyerhaeuser v. Lane County, 7  
5 Or LUBA 42, 46 (1982).

6 Petitioners' challenges to the hearings officer's findings  
7 that the petitioners failed to carry their burden of proof  
8 concerning the criteria of ZDO 1203.01(D) and (E) suffer the  
9 same defects we identified above in rejecting their challenges  
10 to the findings concerning ZDO 1203.01(C). Petitioners do not  
11 explain why the hearings officer's findings are inadequate.<sup>4</sup>  
12 Petitioners generally dispute the evidence supporting the  
13 hearings officer's findings but do not cite evidence that  
14 contradicts the evidence relied upon by the hearings officer in  
15 concluding petitioners failed to carry their burden of proof.

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18 <sup>3</sup>ZDO 1203.01(D), quoted supra, requires the proposal "not alter the  
19 character of the surrounding area \* \* \*." ZDO 1203.01(E) requires that the  
20 proposal satisfy "the goals \* \* \* of the comprehensive plan that apply to  
21 the proposed use." The hearings officer found the proposal conflicted with  
the comprehensive plan goal "[t]o perpetuate the rural atmosphere."  
Record 4. Petitioners do not dispute that the goal cited by the hearings  
officer is applicable to the proposed use.

22 <sup>4</sup>Petitioners do dispute a portion of the hearings officer's findings  
23 concerning ZDO 1203.01(D) in which he stated the petitioners had not  
24 demonstrated the increased noise attributable to petitioners' proposal  
25 would comply with Oregon Department of Environmental Quality (DEQ) noise  
26 requirements would be violated. However, the hearings officer also found  
that the evidentiary record does not establish "that the noise will not  
substantially limit the use of surrounding properties for rural residential  
uses." Record 3. Petitioners do not explain why this finding is  
insufficient to support the hearings officer's ultimate conclusion that  
ZDO 1203.01(D) is not met.

1           The evidentiary record clearly does not support a  
2 conclusion that petitioners met their burden under these  
3 criteria as a matter of law. We, therefore, have no basis upon  
4 which to reverse or remand the county's decision.

5           The county's decision is affirmed.  
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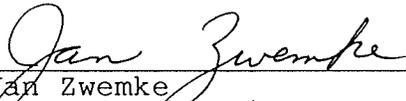
CERTIFICATE OF MAILING

I hereby certify that I served the foregoing Final Opinion and Order for LUBA No. 89-073 on October 4th, 1989, by mailing to said parties or their attorney a true copy thereof contained in a sealed envelope with postage prepaid addressed to said parties or their attorney as follows:

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Dated this 4th day of October, 1989.

  
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