

1 BEFORE THE LAND USE BOARD OF APPEALS
2 OF THE STATE OF OREGON
3

4 WALTER WEST, dba MIRA MONTE WEST)
5 GOLF CLUB,)
6)
7 Petitioner,) LUBA No. 92-072
8)
9 vs.) FINAL OPINION
10) AND ORDER
11 CLACKAMAS COUNTY,)
12)
13 Respondent.)

14
15
16 Appeal from Clackamas County.

17
18 John Shonkwiler, Tigard, filed the petition for review
19 and argued on behalf of petitioner.

20
21 Michael E. Judd, Oregon City, filed the response brief
22 and argued on behalf of respondent.

23
24 KELLINGTON, Referee; HOLSTUN, Chief Referee; SHERTON,
25 Referee, participated in the decision.

26
27 AFFIRMED 08/06/92

28
29 You are entitled to judicial review of this Order.
30 Judicial review is governed by the provisions of ORS
31 197.850.

1 Opinion by Kellington.

2 **NATURE OF THE DECISION**

3 Petitioner appeals an order of the county hearings
4 officer denying his conditional use permit application for a
5 36 hole golf course, driving range and clubhouse on a 350
6 acre parcel zoned General Agricultural District (GAD), an
7 exclusive farm use zone.

8 **INTRODUCTION**

9 The challenged decision relies on three grounds to deny
10 petitioner's application. The county concedes petitioner's
11 first and third assignments of error challenging two of
12 those grounds for denial. However, the county does not
13 concede the second assignment of error, which challenges the
14 third basis for denying the application.

15 It is the applicant's burden to establish compliance
16 with each relevant approval standard. Consequently, where
17 the applicant fails to establish compliance with a single
18 approval standard, a decision denying an application must be
19 affirmed. Garre v. Clackamas County, 18 Or LUBA 877, aff'd
20 102 Or App 123 (1990). Accordingly, we determine whether
21 the county properly determined the proposal fails to satisfy
22 Clackamas County Zoning and Development Ordinance
23 (ZDO) 1011.03(B), concerning "high priority" open space, the
24 subject of the second assignment of error.

25 **SECOND ASSIGNMENT OF ERROR**

26 "The hearings officer's findings regarding
27 conflicts between the proposed use and the

1 'wetlands' provision of the ZDO are internally
2 inconsistent, contrary to the law and apply
3 restriction[s] and policies that are not approved
4 criteria."

5 Clackamas County Comprehensive Plan (plan) policy 17.3
6 requires county review of certain conditional use
7 applications, including the subject golf course application,
8 to assure consistency with ZDO section 1000 until a "wetland
9 resource management plan has been adopted." Record 3.
10 There is no adopted wetland resource management plan
11 covering the subject property.

12 ZDO 1011.03(B) provides:

13 "'High Priority' open space^[1] shall be preserved
14 outright, except:

15 "* * * * *

16 "Commercial or industrial developments affecting
17 wetlands or Significant Natural Areas may be
18 allowed * * *."

19 The issue under this assignment of error is whether the
20 proposed golf course is a "commercial" use which may be
21 allowed on "high priority" open space under ZDO 1011.03(B),
22 subject to certain other standards. The challenged decision
23 interprets the term "commercial," as used in ZDO 1011.03(B),
24 to exclude golf courses. Record 3-4. If we agree with the
25 hearings officer that the proposed golf course is not a

¹There is no dispute in this appeal that the subject property contains "high priority" open space. High priority" open space apparently includes wetlands, and there is no dispute that there are wetland areas on the subject property.

1 commercial use, then the decision correctly concludes that
2 the application for the subject golf course must be denied
3 under ZDO 1011.03(B) because it fails to establish that
4 "high priority" open space will be preserved.

5 In Clark v. Jackson County, 313 Or 508, 514-15,
6 ____ P2d ____ (1992), the Supreme Court expressed our scope
7 of review in determining whether a challenged local
8 government decision correctly interprets local ordinance
9 provisions:

10 "Under ORS 197.835(7)(a)(D),^[2] LUBA is granted
11 review authority over a county's interpretation of
12 a local land use ordinance. If a county has
13 construed an ordinance in a manner that clearly is
14 contrary to the enacted language, LUBA acts within
15 its scope of review in finding that the county
16 improperly construed the applicable law. * * *

17 * * * * *

18 "LUBA is to affirm the county's interpretation of
19 its own ordinance unless LUBA determines that the
20 county's interpretation is inconsistent with
21 express language of the ordinance or its apparent
22 purpose or policy. LUBA lacks authority to
23 substitute its own interpretation of the ordinance
24 unless the county's interpretation was
25 inconsistent with that ordinance, including its
26 context."

27 We also interpret local ordinances in a manner which gives
28 effect to all parts. Kenton Neighborhood Assoc. v. City of
29 Portland, 17 Or LUBA 784, 797 (1989).

²ORS 197.835(7)(a)(D) provides LUBA "shall" reverse or remand a challenged decision where it determines the local government "[i]mproperly construed the applicable law * * *."

1 Petitioner argues the term "commercial" use simply
2 means any use operated for profit. Petitioner cites the
3 broad use of the term "commercial" in ZDO 202-8, defining
4 "commercial farms," as establishing the county's intent to
5 define "commercial" uses broadly.³ Petitioner also cites
6 the following permitted uses in the county's Service
7 Recreational District (SRD):

8 "Private commercial, noncommercial or nonprofit
9 recreational areas, uses and facilities, including
10 country clubs, lodges, fraternal organizations,
11 swimming pools, golf courses, riding stables, boat
12 moorages, parks and concessions. * * *"
13 (Emphasis supplied.) ZDO 813.01(A).

14 Petitioner argues this list establishes that golf courses
15 are commercial uses under the ZDO.

16 We agree with the county that petitioner's construction
17 of the term "commercial" use would absorb the industrial use
18 category, a separate use category listed in the ZDO.⁴ The
19 ZDO definition of commercial farm adds little to
20 petitioner's argument that a golf course is a commercial
21 use. The ZDO definition of commercial farm relates to
22 whether a farming operation is one the county will consider

³Petitioner also contends that ZDO 503.03 lists golf driving ranges as uses allowed in the county's General Commercial (C-3) zone. However, the version of ZDO 503.03 which petitioner cites bears the date "6/84" and has been revised. Because the golf course application was filed on August 15, 1991, the ZDO adopted December 31, 1990 (1990 ZDO) applies. The 1990 ZDO does not list driving ranges as allowed uses in the C-3 zoning district.

⁴ZDO 601-606 are industrial zoning districts authorizing various profit oriented businesses.

1 to be for profit. There is nothing about the ZDO
2 definition of a commercial farm which attempts to establish
3 what a "commercial" use is.

4 Additionally, ZDO 813.01(A), quoted above, does not
5 support petitioner's position. ZDO 813.01(A) simply states
6 that certain uses, which could be private commercial,
7 private noncommercial or private nonprofit uses, are
8 permissible in the SRD zone. While ZDO 813.01(A) may
9 suggest it is possible that a particular golf course could
10 be a commercial use, it does not say that all golf courses
11 are necessarily commercial uses.⁵

12 Finally, the purposes of the county's commercial zones
13 are instructive. For example, the county's C-3 zone is to:

14 "A. Provide for * * * areas to meet county
15 residents' shopping needs for a wide range of
16 good[s] and services located in areas
17 accessible by transit and automobile.

18 "B. Provide for transit and pedestrian oriented
19 mixed use areas consistent with the policies
20 of the [plan].

21 "C. Provide for the sale of large-scale items in
22 areas with good transportation access and
23 minimal conflict with other uses."
24 ZDO 503.01.

⁵We note that the Rural Commercial zone conditionally allows "service recreation" uses, which presumably include at least some of the uses allowed in the SRD zoning district. However, the Rural Commercial zone also lists as conditionally permitted uses "churches and religious institutions," as well as public schools. Consequently, that service recreation uses are conditionally allowed in the Rural Commercial zone does not establish that golf courses are necessarily commercial uses.

1 The purpose of the Community Commercial zone is to:

2 "* * * provide for the local shopping needs of
3 several neighborhoods in locations easily
4 accessible to those neighborhoods by local transit
5 service, automobile, bicycle and walking." ZDO
6 502.01.

7 The purpose of the Rural Tourist Commercial District is to:

8 "* * * provide for the orderly development of
9 commercial establishments to serve the retail
10 commercial needs of the residents of the Mt. Hood
11 Community, as well as the many tourists who
12 annually visit this area of the County."
13 ZDO 504.01.

14 The purpose of the Rural Commercial zone is to:

15 "* * * accommodate local shopping needs, recognize
16 and protect the historic character of rural
17 centers, while preserving and protecting the
18 agricultural or forestry character of the
19 surrounding areas." ZDO 505.01

20 The purpose of the Neighborhood Commercial zone is to:

21 "* * * provide for convenience commercial needs of
22 residential neighborhoods in locations easily
23 accessible to these neighborhoods with minimal
24 negative impacts."⁶ ZDO 501.01.

25 Essentially, the purposes of the county's commercial
26 zones, as listed above, are to provide for retail oriented
27 needs in areas characterized by good transportation
28 services. Such needs and services are not identified with
29 the particular golf course proposed here. The hallmark of
30 the proposed golf course is facilitating the playing of the

⁶Similar objectives are stated for the county's Office Commercial and Retail Commercial zones.

1 game of golf. No one suggests that the proposed golf course
2 itself provides for retail shopping needs, or that it is in
3 a location characterized by good transportation services.
4 Accordingly, the county's interpretation of its own
5 ordinance is not "inconsistent with express language of the
6 ordinance or its apparent purpose or policy." Clark v.
7 Jackson County, supra. We conclude the county correctly
8 determined the proposed golf course is not a commercial use
9 and, therefore, is subject to ZDO 1011.03(B), and that the
10 county properly denied petitioner's application.

11 The second assignment of error is denied.

12 **FOURTH ASSIGNMENT OF ERROR**

13 "The Hearings Officer's findings are not supported
14 by substantial evidence in the record as a whole."

15 This assignment challenges the evidentiary support for
16 the bases for denial at issue in the first and third
17 assignments of error. In view of the county's concessions
18 concerning those assignments, no purpose is served in
19 reviewing these evidentiary arguments. Petitioner also
20 repeats his legal arguments that a golf course is a
21 commercial use as he defines that term. Petitioner cites
22 evidence in the record to establish that the golf course
23 meets his definition of "commercial" use. However, as
24 explained above, we reject petitioner's definition of
25 commercial use. Consequently, that there is evidence in the
26 record supporting petitioner's position that the golf course
27 meets his definition of commercial use, provides no basis

1 for reversal or remand of the challenged decision.

2 The fourth assignment of error is denied.

3 The county's decision is affirmed.