

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

4 JOHN COOLEY, VERNE JOHNSON, PAT)
5 BROWN, JOHN LINDSAY and LINDSAY)
6 STEVENS,)

7)
8 Petitioners,)
9)

10 vs.)

11) LUBA No. 93-001
12 DESCHUTES COUNTY,)

13) FINAL OPINION
14 Respondent,) AND ORDER
15)

16 and)

17)
18 J BAR J YOUTH SERVICES, INC.,)
19)

20 Intervenor-Respondent.)

21
22
23 Appeal from Deschutes County.

24
25 Robert S. Lovlien, Bend, filed the petition for review.
26 With him on the brief was Holmes Hurley Bryant Lovlien &
27 Lynch.

28
29 No appearance by respondent.

30
31 Alta J. Brady, Bend, filed the response brief on behalf
32 of intervenor-respondent. With him on the brief was
33 Merrill, O'Sullivan, MacRitchie, Petersen, Brady & Dixon.
34

35 HOLSTUN, Referee; SHERTON, Chief Referee, participated
36 in the decision.
37

38 AFFIRMED 05/19/93

39
40 You are entitled to judicial review of this Order.
41 Judicial review is governed by the provisions of ORS
42 197.850.

1 Opinion by Holstun.

2 **NATURE OF THE DECISION**

3 Petitioners appeal a county decision granting
4 conditional use approval for an equestrian event in
5 Deschutes County's Multiple Use Agricultural (MUA-10) zone.¹

6 **MOTION TO INTERVENE**

7 J Bar J Youth Services, Inc. moves to intervene on the
8 side of respondent. There is no opposition to the motion,
9 and it is allowed.

10 **FACTS**

11 The subject property is located outside of and adjacent
12 to the Bend Urban Growth Boundary. Other relevant facts are
13 stated in the intervenor's brief as follows:

14 "The [subject] property * * * is part of the J Bar
15 J Boys Ranch which is operated by J Bar J Youth
16 Services Inc., a non-profit corporation. Zoning
17 in the surrounding area is residential, either as
18 urban reserve within the urban area or as MUA-10,
19 and with some EFU zoning to the east.

20 " * * * * *

21 "The purpose of the J Bar J Boys Ranch is to
22 provide residential schooling, counseling and
23 treatment for troubled boys, ages 12 - 17. The
24 facilities include a group living facility,
25 administrative offices, maintenance facility,
26 dormitory and apartment area, dining hall, paved
27 parking, volleyball court, barn, irrigation pond,
28 lawn and landscaping. The developed portion of
29 the approximately forty acre ranch takes up about

¹Although uses allowable in the county's Exclusive Farm Use (EFU) zone are also allowed in the MUA-10 zone, the MUA-10 zone allows a variety of other uses that are not allowed in the EFU zone.

1 3.5 acres.

2 "The undeveloped area consists of a large cleared
3 pasture area which has been leased in the past for
4 cattle grazing. The Michelob Classic event will
5 temporarily use approximately thirty-one (31)
6 acres of the pasture.

7 "The Michelob Classic is an equestrian hunter-
8 jumper competition. It is a Class A-rated hunter-
9 jumper competition which is regarded as the
10 premier event in Oregon. It is limited to a two
11 week event, with three days allowed at the
12 beginning and end of the event to set up and take
13 down the fencing and other temporarily structures.
14 The actual event competition is conducted
15 Wednesday through Sunday of each of the two
16 weeks." (Record citations omitted.) Intervenor's
17 Brief 1-2.

18 **DECISION**

19 **A. Interpretation of DCZO 18.32.030(I)**

20 Deschutes County Zoning Ordinance (DCZO) 18.32.030
21 lists the following as permissible conditional uses in the
22 MUA-10 zone:

23 * * * * *

24 "B. Semi-public use.

25 * * * * *

26 "I. Private parks, playgrounds, hunting and
27 fishing preserves, campgrounds, motorcycle
28 tracks, rodeo or livestock arenas and other
29 recreational uses.

30 * * * * *." (Emphasis added.)

31 In response to issues raised during the local
32 proceedings concerning whether the Michelob Classic is
33 properly classified as a "use" and, if so, whether it is a

1 use allowable in the MUA-10 zone, the county adopted the
2 following findings:

3 "The Board [of Commissioners] finds that, even
4 apart from any structures that might be involved
5 in the application, pursuant to the definition of
6 'use' in the zoning ordinance, the proposal
7 constitutes a land use subject to regulation by
8 the ordinance. The application basically proposes
9 to hold a once-a-year event on the J Bar J Boys
10 Ranch property. The event would span 2 weeks each
11 year and would occupy 31 acres of property. It
12 would draw at least 400 competitors over the
13 period of the show and 750 spectators over each
14 week period. Given these facts, there is no
15 question that the event constitutes a land use.

16 "The * * * Staff report listed [DCZO 18.32.030(B)
17 and (I), quoted supra, as] possible applicable
18 uses for the proposal. * * *

19 " * * * * *

20 "The staff report found that the proposed
21 equestrian facility would be similar to both of
22 these uses without specifying whether any of these
23 uses applied in particular.

24 "The Hearing Officer made no specific findings as
25 to which use in the MUA-10 zone the proposal fell
26 into, although * * * it appears that the Hearing
27 Officer may have found that the use fell into
28 [DCZO] 18.32.030(B). Applicant contends that the
29 use falls within the [DCZO 18.32.030(I)] 'rodeo or
30 livestock arena' use, and the Board [of
31 Commissioners] agrees.

32 "The Board [of Commissioner] finds that the
33 concession stands and exhibits by corporate
34 sponsors and certain equipment manufacturers are
35 incidental to this particular event and fall
36 within the described rodeo or livestock arena
37 use." Record 2-3.

38 Petitioners do not challenge the quoted interpretation
39 of the DCZO as insufficient to provide a basis for review by

1 this Board. See Weeks v. City of Tillamook, 117 Or App 449,
2 453-54, ___ P2d ___ (1992); Larson v. Wallowa County, 116 Or
3 App 96, ___ P2d ___ (1992). In the absence of such a
4 challenge, we conclude that it is a sufficient
5 interpretation for our review.

6 The DCZO does not include definitions of the terms
7 "rodeo" or "livestock arena."² Therefore, those terms are
8 to be construed in accordance with their plain and ordinary
9 meaning. See Sarti v. Lake Oswego, 106 Or App 594, 809 P2d
10 701 (1991); Clatsop County v. Morgan, 19 Or App 173, 176,
11 526 P2d 1393 (1974). "Rodeo" is defined in Websters Third
12 New International Dictionary 1967 (1981) as including:

13 "[A] public performance that features esp.
14 contests in bareback bronco riding, calf roping,
15 saddle bronco riding, steer wrestling and Brahma
16 bull riding * * *: an assembly or contest likened
17 to a rodeo."

18 "Arena is defined in Websters Third New International
19 Dictionary 115 (1981) as including:

20 "[A] central area or open space within an
21 enclosure used for public entertainment * * *"

22 Our scope of review of local government interpretations
23 of their own land use regulations is limited. Clark v.
24 Jackson County, 313 Or 508, 836 P2d 710 (1992). Where code
25 language is susceptible of more than one reasonable

²DCZO 18.04.030 defines "livestock" as follows:

"Domestic animals of types customarily raised or kept on farms
for profit or other productive purposes. * * *."

1 interpretation, the choice between those reasonable
2 interpretations is for the local government. Id. This
3 Board is to affirm a local government's interpretation of
4 its own land use regulations, unless that interpretation is
5 "clearly wrong." Goose Hollow Foothills League v. City of
6 Portland, 117 Or App 211, ___ P2d ___ (1992); West v.
7 Clackamas County, 116 Or App 89, ___ P2d ___ (1992); Cope v.
8 City of Cannon Beach, 115 Or App 11, 836 P2d 775 (1992).

9 The county's interpretation is not clearly wrong. The
10 definition of "rodeo" encompasses rodeo-like events. While
11 petitioners identify some dissimilarities between a
12 conventional rodeo and the Michelob Classic, the county's
13 rather detailed description of the proposed event, part of
14 which is quoted supra, is sufficient to support the county's
15 conclusion that the Michelob Classic is a contest like a
16 rodeo. Moreover, the DCZO definition of "livestock" and
17 above quoted definition of "arena" are clearly broad enough
18 to encompass the disputed use. The county's interpretation
19 of DCZO 18.32.030(I) as encompassing the disputed use is
20 affirmed.

21 **B. Similar Use Ruling**

22 Petitioners also contend there is sufficient doubt
23 concerning the correct interpretation of the DCZO in this
24 matter that the applicants "should have made application for
25 a similar use ruling before the Deschutes County Planning
26 Commission prior to the filing of this application."

1 Petition for Review 7.

2 It is not clear whether petitioners assign the
3 intervenor's failure to seek a similar use ruling as a basis
4 for remand. To the extent that they do, intervenor contends
5 the issue was not raised below and is therefore waived. ORS
6 197.763(1); 197.835(2); Boldt v. Clackamas County, 107 Or
7 App 619, 813 P2d 1078 (1991).

8 Petitioners fail to provide citations to the record
9 establishing that this issue was raised during the local
10 proceedings. Accordingly, the issue is waived and we do not
11 consider it further.³ Coyner v. City of Portland, 23 Or
12 LUBA 79, 82 (1992).

13 The county's decision is affirmed.

³Even if the issue were not waived, petitioners do not identify the DCZO provisions governing similar use determinations, contend that such determinations are mandatory or in any other way explain why the intervenor's failure to seek a similar use determination would provide a basis for reversal or remand.