

1 Opinion by Kellington.

2 In Skydive Oregon, Inc. v. Clackamas County, _____ Or
3 LUBA _____ (LUBA Nos. 92-067 and 92-217, May 11, 1993), slip
4 op 2-3, this Board stated the following facts:

5 "The subject property consists of 40 acres and is
6 zoned Rural Residential Farm Forest (RRFF-5). To
7 the east of the subject property is a residential
8 subdivision. To the south is a small heliport and
9 another residential subdivision. To the west of
10 the subject property is agricultural land. To the
11 north of the subject property are agricultural
12 operations and residential uses.

13 "A 1969 conditional use permit allows the subject
14 property to be used as a 'public air park.' The
15 property is developed with an airport and certain
16 aircraft related businesses. A building on the
17 property houses the disputed recreational
18 parachuting center.

19 "In 1988, a conditional use permit was approved
20 for the recreational parachuting center on the
21 subject property. Condition 10 of that
22 conditional use permit limited the duration of the
23 1988 permit to a period of three years.

24 "In 1991, the county planning director advised
25 petitioner that petitioner's 1988 conditional use
26 permit expired, and that another conditional use
27 permit was necessary to continue operation of the
28 recreational parachuting center. Petitioner
29 appealed the planning director's determination
30 that the 1988 conditional use permit had expired
31 and also disputed the county's authority to
32 regulate any aspect of petitioner's recreational
33 parachuting center business.

34 "The county hearings officer affirmed the decision
35 of the planning director and determined the 1988
36 conditional use permit expired by its own terms.
37 The hearings officer also determined that the
38 county had authority to require petitioner to
39 obtain another conditional use permit to continue

1 operating the recreational parachuting center.

2 "Hereafter, petitioner sought conditional use
3 approval for the recreational parachuting center.
4 The hearings officer approved the application for
5 a conditional use permit, subject to several
6 conditions of approval. Three of those conditions
7 are the subject of this appeal. One condition
8 limits the duration of the conditional use permit
9 to 5 years. One condition requires that parachute
10 landings occur on the subject property and no
11 other property. One condition requires that
12 petitioner promptly pay, from a policy of
13 insurance, for damage to properties resulting from
14 parachuting activities, regardless of negligence,
15 and requires an automatic fine in the amount of
16 \$100 to be levied against petitioner for any
17 parachute landing which is not on the subject
18 property." (Footnotes omitted.)

19 We affirmed the challenged decision in all respects,
20 except that we remanded the decision based on the invalidity
21 of a portion of Condition 7. Condition 7 states in its
22 entirety:

23 "The applicant shall obtain and keep on file at
24 all times a bond or other security, or a policy of
25 insurance acceptable to the county, which assures
26 payment to surrounding property owners for any
27 damage resulting from flying or skydiving
28 activities on the subject property. It is the
29 specific intent of this condition that the
30 applicant be strictly liable for any damage
31 resulting from these activities, and that the form
32 of security provides for prompt payment for any
33 damage, including not less than \$100 as liquidated
34 damages for any trespass by people or equipment."
35 Record 7.

36 We determined the portion of Condition 7 requiring
37 petitioner to be strictly liable for property damage which
38 results from its recreational parachute jumping activities

1 to be a permissible condition of approval. However, we also
2 determined the portion of Condition 7 requiring the payment
3 of a fine for trespass landings on other properties to be
4 impermissible.

5 In Skydive Oregon, Inc. v. Clackamas County, 122 Or
6 App 342, 348-49, ____ P2d ____ (1993), the court of appeals
7 determined:

8 "[t]he county has no authority to establish a
9 standard of tort liability, and * * * it has
10 purported to do that through the language in
11 condition 7 making 'the applicant strictly liable
12 for any damages resulting from those activities.'
13 The conditions under which strict liability may
14 arise have been statutorily and judicially
15 developed. It is beyond the county's legislative
16 power to alter, supplement or codify them.
17 Furthermore, 'strict liability' is a concept that
18 applies to specific theories of liability; it does
19 not apply generally to every act of a particular
20 business or party, as the condition would have it
21 do. With the exception of the strict liability
22 provision and the part of the condition that LUBA
23 held invalid, we find no fault with condition 7 or
24 with the other conditions petitioner challenges.

25 "Because it struck part of condition 7, LUBA's
26 disposition was remand 'for the county to
27 determine whether the proposal was approvable
28 without' that part of the condition. Our opinion
29 requires the deletion of another part of the
30 condition and thereby adds to the matters for the
31 county to consider on remand." (Footnote
32 omitted.)

33 Accordingly, the challenged decision is remanded for
34 the county to determine the proposal's approvability after
35 the portions of Condition 7 we struck down, and the other
36 portion struck down by the court, are removed.

1 The county's decision is remanded.