

1 Opinion by Holstun.

2 **NATURE OF THE DECISION**

3 Petitioner appeals a county decision approving a home
4 occupation permit for an automobile repair business.

5 **FACTS**

6 On October 7, 1991, the county advised the applicant in
7 this matter that his automobile repair business was in
8 violation of the Clackamas County Zoning and Development
9 Ordinance (ZDO). The applicant was advised to cease
10 operation or seek appropriate land use permit approval. On
11 October 23, 1991, the applicant applied for a permit to
12 allow operation of the business as a home occupation. On
13 October 13, 1992, the county planning department denied the
14 application. Following a local appeal of that decision, the
15 county hearings officer approved the application on January
16 4, 1993. That decision was appealed to LUBA, and was
17 remanded to the county. Wuester v. Clackamas County, 25 Or
18 LUBA 425 (1993) (Wuester I).

19 Following the remand in Wuester I, the county conducted
20 an additional hearing. On January 10, 1994, the county
21 hearings officer approved the application a second time.
22 That decision is appealed in this proceeding.

23 **FIRST ASSIGNMENT OF ERROR**

24 The applicant continued to operate the automobile
25 repair business throughout the local proceedings leading to
26 both the decision challenged in Wuester I and the local

1 proceedings leading to the decision challenged in this
2 appeal. Petitioner contends the hearings officer exceeded
3 his authority under the ZDO by authorizing a home occupation
4 permit for a period in excess of one year.¹

5 Petitioner contends the original permit approval
6 granted by the county in the January 3, 1993 decision
7 challenged in Wuester I expired one year later on January 3,
8 1994. According to petitioner, the hearings officer's
9 January 10, 1994 decision extends the January 3, 1994
10 decision for a period in excess of one year and, therefore,
11 exceeds his authority under the above quoted ZDO
12 provisions.²

¹ZDO 822.07(E) provides that "[a]ll home occupation permits shall be valid for a period of one (1) year from [the] initial date of approval." ZDO 822.08 provides that home occupation permits may be renewed annually "for a period of one (1) year," provided the home occupation complies with certain standards. ZDO 822.07(F) provides that a home occupation permit "becomes null and void" if it is not renewed.

²Petitioner appears to assume the original permit approval must have continued in effect since the applicant continued to operate the home occupation following our remand in Wuester I. From this, petitioner also appears to assume the decision challenged in this appeal extended that original decision.

Respondent explains the applicant's decision to continue operation of his home occupation, despite the lack of an approved permit following our remand in Wuester I, does not mean the original permit approval survived our remand in Wuester I. Neither does the decision challenged in this appeal extend the original approval. Rather, the decision challenged in this appeal is the county's second attempt to approve the requested home occupation permit. Respondent explains it did not institute circuit court proceedings against the applicant following our remand in Wuester I to stop continued operation of the home occupation, because the applicant continued to seek permit approval.

1 Respondent argues the approval granted by the county's
2 original decision did not become null and void one year
3 later, under ZDO 822.07(F). Rather, respondent contends the
4 original approval granted by the hearings officer on January
5 3, 1993 expired on June 9, 1993, when LUBA remanded the
6 January 3, 1993 decision in Wuester I. According to
7 respondent, the hearings officer's second decision approving
8 the challenged home occupation permit application on January
9 10, 1994 is a separate decision, not an extension or renewal
10 of the original January 3, 1993 decision.

11 We agree with respondent. The hearings officer granted
12 initial approval for a period of one year on January 4,
13 1993. That initial approval ended on June 9, 1993 when we
14 remanded that decision in Wuester I. The hearings officer's
15 second approval on January 10, 1994 does not purport to be
16 an extension of the original January 4, 1993 decision.
17 Rather it is a second decision approving the disputed
18 application for approval of a home occupation. Under
19 ZDO 822.07(F), see n 1, supra, the hearings officer's second
20 decision will expire on January 10, 1995, unless it is
21 renewed pursuant to ZDO 822.08. The hearings officer's
22 January 10, 1994 decision does not, as petitioner contends,
23 improperly grant approval for a home occupation for a period
24 of more than one year.

25 The first assignment of error is denied.

1 **SECOND AND THIRD ASSIGNMENTS OF ERROR**

2 Petitioner contends the hearings officer failed to
3 adopt findings either demonstrating compliance with Oregon
4 Department of Environmental Quality (DEQ) noise standards
5 for new commercial and industrial uses or demonstrating that
6 those standards are inapplicable. Petitioner also argues
7 the record in this matter does not show those DEQ standards
8 are met.

9 Respondent presents a twofold response. First,
10 respondent contends that although ZDO 822.05(F) imposes
11 specific noise limitations on home occupations, neither that
12 section nor any other ZDO provision lists compliance with
13 applicable DEQ standards as a requirement for approval of a
14 home occupation permit.³ Respondent contends the hearings
15 officer's consideration of the DEQ noise standards and
16 imposition of a condition of approval that those standards
17 be satisfied does not make DEQ noise standards approval
18 criteria for the disputed home occupation permit where the
19 ZDO does not establish those standards as applicable
20 approval criteria for such permits.

21 Second, respondent argues petitioner did not raise
22 compliance with the DEQ noise standards as an issue in

³Petitioner does not cite any ZDO provisions establishing that DEQ noise standards are criteria for approval of a home occupation permit.

1 Wuester I.⁴ Because petitioner failed to do so, respondent
2 contends the issue was not within the scope of our remand in
3 Wuester I, and petitioner may not raise the issue in his
4 challenge of the county's decision on remand. Mill Creek
5 Glen Protection Assoc. v. Umatilla Co., 88 Or App 522, 526-
6 27, 746 P2d 728 (1987); Portland Audubon v. Clackamas
7 County, 14 Or LUBA 433, aff'd 80 Or App 593 (1986); see Beck
8 v. City of Tillamook, 313 Or 148, 153 n 2, 831 P2d 678
9 (1992).

10 We agree with respondent on both points.

11 The second and third assignments of error are denied.

12 The county's decision is affirmed.

⁴Petitioner's eighth assignment of error in Wuester I challenged the decision's compliance with ZDO 822.05(F), which establishes a requirement that the noise created by home occupations not exceed 60 decibels between certain hours. Neither that assignment of error nor any other assignment of error in Wuester I raised an issue concerning compliance with DEQ noise standards.