



1 Opinion by Gustafson.

2 **NATURE OF DECISION**

3 Petitioners appeal the county's denial of their request  
4 for a temporary special medical hardship permit (temporary  
5 permit).

6 **FACTS**

7 Petitioners own a 3.5-acre parcel in a county forest  
8 zone. There are two residences on the property, a primary  
9 dwelling in which petitioners reside, and a mobile home,  
10 which was placed there under a temporary permit. Petitioner  
11 Finke provides the primary care for his domestic associate,  
12 petitioner Lopatin, who suffers from multiple medical  
13 hardships. Lopatin's son, daughter-in-law and grandchildren  
14 reside in the mobile home, and also provide her additional  
15 care.

16 When petitioners purchased the property, the prior  
17 owner's temporary permit for the mobile home had expired.  
18 Petitioners applied to the county for another temporary  
19 permit, in order to retain the mobile home. In 1992, the  
20 county planning director administratively granted  
21 petitioners a three-year, temporary permit based on  
22 Lopatin's medical hardship. That permit expired in 1995.

23 In 1995, petitioners applied for another temporary  
24 permit, their basis being that petitioner Lopatin's medical  
25 condition has not improved since the 1992 permit was  
26 granted.

1 The county's land development ordinance (LDO) 1204.03  
2 allows special medical hardship permits as follows:

3 "SPECIAL CARE: The Planning Director may approve a  
4 temporary permit \* \* \* for a period of up to three  
5 (3) years, for the use of a mobile home or trailer  
6 house as a residence for the care of a person who  
7 requires special attention because of age or poor  
8 health, provided that the applicant provides  
9 evidence substantiating the following \* \* \*:

10 "A. There exists a need for special attention (a  
11 doctor's statement establishing this need is  
12 appropriate and suggested evidence); and

13 "B. There exists no reasonable housing  
14 alternative, such as nearby rental housing or  
15 adequate housing on the subject property."

16 The county hearings officer found that petitioners  
17 established compliance with 1204.03(A), having established  
18 that petitioner Lopatin has a medical need for special  
19 attention. However, the hearings officer found that  
20 petitioners did not establish compliance with LDO  
21 1204.03(B), and thus denied the application. As an  
22 alternative basis for denial, the hearings officer also  
23 found that temporary permits for medical hardship dwellings  
24 are not permitted under ORS 215.720(3).

25 Petitioners appeal the denial of their application.

26 **FIRST ASSIGNMENT OF ERROR**

27 Petitioners challenge the denial of a new temporary  
28 permit because the hearings officer did not establish that  
29 there has been a change in circumstances since the temporary  
30 permit was granted in 1992. Petitioners argue that

1 regardless of whether the 1992 administrative decision to  
2 grant the permit was legally correct, it must stand because  
3 there has been no change in circumstances since it was  
4 issued and petitioners have relied on the 1992 decision in  
5 making investments on the property.

6 Change in circumstances is not an approval standard in  
7 evaluation of a temporary permit application, so the  
8 hearings officer was not required to evaluate any such  
9 change. Nor is the hearings officer bound by staff  
10 determinations on an earlier, temporary permit. Alexander  
11 v. Clackamas County, 126 Or App 549, 869 P2d 873 (1994).  
12 Petitioners knew or should have known in 1992 that the  
13 permit they were granted allowed only a temporary use, and  
14 that they could not rely on the existence of that permit  
15 beyond its stated, three-year term.

16 Petitioners also argue that petitioner Lopatin's  
17 condition continues to require special attention, a  
18 contention the hearings officer did not dispute. However,  
19 petitioners do not challenge the merits of the hearings  
20 officer's finding that petitioners did not establish  
21 compliance with LDO 1204.03(B).

22 Petitioners bear the burden to establish compliance  
23 with all approval criteria. Petitioners acknowledge they  
24 did not present any evidence before the hearings officer to  
25 establish that no reasonable housing alternative exists that  
26 could meet petitioner Lopatin's need for special attention.

1 Therefore, petitioners have not established compliance with  
2 all mandatory approval criteria, and thus establish no basis  
3 for reversal or remand of the hearings officer's decision.

4 The first assignment of error is denied.<sup>1</sup>

5 The county's decision is affirmed.

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<sup>1</sup>Because petitioners have not established compliance with LDO 1204.03, we do not consider the additional statutory arguments petitioners make under their second and third assignments.