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BEFORE THE LAND USE BOARD OF APPEALS
OF THE STATE OF OREGON

HERMAN E. SCHNIDRIG,)
)
Petitioner,)
)
vs.)
)
HOOD RIVER COUNTY,)
)
Respondent,)
)
and)
)
MERLE and HAZEL FAULKENDER,)
)
Participants.)

LUBA No. 87-053
FINAL OPINION
AND ORDER

Appeal from Hood River County.

Corinne C. Sherton, Salem, filed a petition for review and argued on behalf of petitioner. With her on the brief were Mitchell, Lang & Smith.

Sally A. Tebbett, Hood River, filed a response brief and argued on behalf of Respondent Hood River County.

BAGG, Referee; DuBAY, Chief Referee; HOLSTUN, Referee, participated in the decision.

REMANDED 10/28/87

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

Opinion by Bagg.

NATURE OF THE DECISION

Petitioner appeals a decision to allow placement of a 1961 Trailerama mobile home on a five acre parcel. Petitioner asks that we reverse the decision.

FACTS

The Trailerama mobile home has a single chassis with hitch for towing and is transported in a single-width form. However, it also includes a full length expansion area or tip-out which can be utilized to provide additional living space. In its single-width configuration, the trailer is approximately eight feet wide and 50 feet long, and when expanded is about 16 feet wide and 50 feet long.

In July 1986, participants asked for a permit for use of the Trailerama on a 57.26 acre agricultural parcel. This request was denied. The planning commission then heard the request on appeal, and it took up the issue of whether the Trailerama was a "double-wide" mobile home or a "single-wide" mobile home. The distinction is important because a double-wide mobile home used as a non-farm dwelling is a permitted use. A single-wide mobile home is not a permitted use.

The planning commission determined that the Trailerama was a double-wide mobile home. That decision was appealed to the county board of commissioners, and the board affirmed the planning commission's decision. This appeal followed.

1 ASSIGNMENT OF ERROR

2 "Respondent improperly construed the applicable law
3 and made a decision not supported by substantial
4 evidence in the whole record in failing to address
5 applicable legal criteria and to adopt adequate
6 findings of fact in making its determination that the
7 Trailorama meets the County definition of a
8 double-wide mobile home."

9 This assignment of error rests on petitioner's view that
10 the Hood River County Zoning Ordinance (HRCZO) defines
11 "single-wide" mobile homes in such a manner as to preclude this
12 approval. Section 16.05.B distinguishes between single-wide
13 and double wide mobile homes as follows:

14 "1. Single-Wide: Single chassis; approximately 14+
15 wide; length, 40-70 feet; can have "tip-outs" or
16 expansion areas for living purposes; except for
17 mobile home parks, single-wides are not permitted
18 outright in any zoning district; they are not
19 considered similar to conventional dwellings, nor
20 are they allowed to replace conventional
21 dwellings; single-wides require either approval
22 by the County Planning Department or a County
23 conditional use permit prior to being placed on a
24 lot or parcel in Hood River County, and they must
25 comply with the definitions in paragraph B. above.

26 "2. Double-Wide: Is the result of the combination or
 joining of two or more chassis or sections;
 length, 40-70 feet; resembles a conventional
 house; affixed to real property by a continuous
 concrete wall foundation or other appropriate
 foundation; are permitted uses in Hood River
 County; are considered conventional dwellings and
 must comply with the definitions in paragraph B.
 above." HRCZO Section 16.05.B.(1), (2).

 Section 16.05.B defines a mobile home to include mobile
 homes manufactured after May 1, 1972 which exhibit an Oregon
 Department of Commerce "insignia of compliance." The ordinance
 also defines mobile home to include mobile homes manufactured

1 after June 5, 1976 exhibiting an Oregon Department of Commerce
2 insignia of compliance indicating conformity with federal
3 housing and urban development construction standards. The
4 Trailorama does not bear either insignia.

5 The county commission adopted the planning commission's
6 order. The planning commission's order states:

7 "The Trailorama is a unique type of mobile home built
8 in 1961 which is single-width when transported but
9 which extends along its full length when installed on
10 site to provide additional living area. The expansion
11 is a full-width tip-out which converts the Trailorama
12 into a double-wide mobile home. Record 8.

13 The planning commission then concluded that the Trailorama is a
14 double-wide mobile home.

15 Petitioner claims the county is mistaken. Petitioner
16 divides the argument into several parts. First, petitioner
17 argues the ordinance definition specifies the single-wide
18 mobile home must have a single chassis. According to
19 petitioner, a double-wide mobile home is formed by joining two
20 or more chassis. Petitioner argues we should accept Webster's
21 Third International Dictionary definition of chassis as "the
22 frame upon which is mounted the body...." Petitioner then
23 argues that the county's order includes no finding specifying
24 how many chassis make up the 1961 Trailorama, but petitioner
25 notes that the Trailorama is a single-width when transported.
26 These facts demonstrate to petitioner that the Trailorama has
only one chassis.

Respondent notes testimony exists in the record before the

1 planning commission that the Trailorama employs a chassis to
2 support each half. Respondent states the planning commission
3 correctly viewed the Trailorama as having two sections, each
4 with a chassis, which conveniently slid together for
5 transportation purposes." Respondent's Brief at 5. Respondent
6 goes on to argue the ordinance does not specify whether the
7 chassis should be counted when viewing the dwelling in its
8 transport state or in its expanded form on a site.

9 The ordinance does not define chassis. Respondent does not
10 cite to the testimony claimed to show that each half of the
11 Trailorama, when extended, is supported by its own
12 undercarriage or frame. The county commission members
13 discussed this issue, and to the extent the planning
14 commissioners' discussion is evidence available to the county
15 commisioners, we agree there is evidence stating each extended
16 half of the Trailorama is supported by its own chassis. Record
17 110-113. Under these circumstances, the interpretation is not
18 contrary to the language of the ordinance and is reasonable.
19 We are therefore bound to sustain it. Alluis v. Marion Co., 64
20 Or App 428, 668 P2d 1242 (1983).

21 Petitioner next challenges the county's conclusion by
22 noting that part of the definition of a single-wide mobile home
23 lists the width of such structures as 14 or more feet.
24 Petitioner states the commission made no finding on the width
25 of the Trailorama and it is therefore impossible to determine
26 whether respondent correctly applied this part of the

1 definition of a single-wide mobile home. Petitioner states
2 that when the Trailorama is extended, each section is eight
3 feet in width making the total structure 16 feet in width.
4 Petitioner opines that a 16 foot width is much closer to the 14
5 foot width described in the definition of a single-width
6 trailer than is "customary" of modern double-wide mobile homes
7 which would equal some 28 feet in width.

8 Respondent notes the ordinance does not limit the width of
9 double-wide mobile homes and leaves the issue of width
10 measurement to the governing body. Respondent disputes
11 petitioner's "unsubstantiated reference" to the "customary
12 width of a modern double-wide mobile home."

13 Again we agree with respondent. Nothing in the ordinance
14 suggests that the width of this particular structure meets or
15 does not meet the definition of a single or double-wide mobile
16 home. Further, we are cited to no evidence in the record
17 illustrating "customary" mobile home widths.

18 Petitioner's next issue is the Trailorama's tip-out or
19 expansion area. Petitioner notes that the ordinance provides a
20 single-wide mobile home can have tip-outs or expansion areas
21 for living purposes, but the ordinance includes no reference to
22 such tip-out or expansion areas for double-wide mobile homes.
23 Petitioner argues the county's conclusion that a full length
24 tip-out converts Trailorama into a double-wide mobile home is
25 contrary to the language of the ordinance. Petitioner's argument
26 is based on the notion that since the definition of single-wide

1 mobile homes includes tip outs, and there is no such reference
2 in the definition of double-wide mobile homes, the Trailerama
3 fits within the county's definition of a single-wide mobile
4 home.

5 Respondent states the planning commission, when viewing all
6 the circumstances of the case, determined that the Trailerama
7 was unique in that its expansion area is not simply for a
8 portion of the mobile home, but for the entire length of the
9 mobile home. We understand respondent to state that the full
10 length tip out feature provides a method for constructing a
11 double-wide mobile home when on site. The fact that the
12 Trailerama uses a tip out rather than a separate unit to
13 provide the double-wide characteristics should not some how
14 convert what is a double-wide mobile home on site to a
15 single-wide mobile home, according to respondent.

16 Nothing in the county's ordinance clearly describes the
17 full length tip-out found here. The county's order calls the
18 Trailerama unique in its tip-out feature, but includes no facts
19 to support this conclusion. Nonetheless, the county's view is
20 not contrary to the language of the ordinance. The county's
21 inclusion of the tip-out as one half of a double-wide mobile
22 home is perhaps somewhat strained in view of the ordinance
23 language, but not unreasonable. We are, therefore, bound to
24 uphold it. Alluis, supra.

25 Petitioner next challenges the county's definition on the
26 ground that the Trailerama does not resemble a conventional

1 dwelling. The ordinance provides that single-wides "are not
2 considered similar to convention dwellings," but that a
3 double-wide "resembles a conventional house." Petitioner
4 argues the order does not include findings on whether the
5 Trailorama resembles or is similar to conventional dwellings.
6 It is therefore impossible, according to petitioner, to
7 determine whether or not respondent correctly applied this
8 aspect of its definition. Petitioner adds the record shows the
9 Trailorama includes stop lights, running lights and a five
10 gallon propane tank, items not consistent with a conventional
11 dwelling. See Record 48,163, 165. Petitioner cites to
12 photographs in the record showing a comparison of the
13 Trailorama and new double-wides. According to petitioner,
14 these photographs show the Trailorama looks much less like a
15 conventional dwelling than a new double-wide.

16 Respondent discounts the stops lights, running lights and
17 propane tank, noting that they are only some of the attributes
18 of the Trailorama considered by the planning commission.
19 Respondent notes the unit doubles in width when installed, has
20 cathedral ceilings and argues the photographs show the
21 Trailorama does indeed resemble a conventional dwelling and not
22 a single-wide mobile home.

23 The county made no findings discussing this portion of its
24 definition. The appearance of the structure was an issue
25 before the county, and we believe it necessary that the county
26 make findings explaining what the county believes about this

1 criterion. This omission requires a remand.

2 Petitioner next argues the ordinance provides that a
3 double-wide is "affixed to real property by a continuous
4 concrete wall foundation or other appropriate foundation." The
5 ordinance lacks specifications for foundations of single-wide
6 trailers. Petitioner claims the findings do not establish what
7 foundation the Trailerama has had for the past 25 years, but
8 petitioner argues it is clear from the record that the
9 Trailerama is on its own wheels and cinder blocks. According
10 to petitioner, these facts show the structure is not on a
11 regular foundation.

12 Respondent argues a double-wide is required to be affixed
13 to the property by a continuous foundation. Respondent claims
14 the requirement of a foundation is a set-up requirement, not a
15 feature defining whether a particular unit is a single-wide or
16 a double-wide mobile home.

17 We agree with respondent. The foundation requirement is
18 not a feature distinguishing one variety of manufactured
19 dwelling from another.

20 Petitioner next notes the ordinance definitions of
21 double-wide and single-wide mobile homes include a statement
22 that each must "comply with the definitions in paragraph B
23 above." Paragraph B defines a mobile home as a structure
24 manufactured after May 1, 1972 and bearing an insignia of
25 compliance by the Department of Commerce or one manufactured
26 after June 5, 1976 and bearing a similar insignia of

1 compliance. Because the Trailerama was built in 1961, the
2 structure cannot comply with the provisions of Paragraph B,
3 according to this view. We understand petitioner's argument to
4 be that the Trailerama is not a "mobile home" within the
5 definition of the ordinance and therefore is not entitled to
6 double-wide mobile home status no matter what it looks like.

7 Respondent argues the planning commission, after hearing,
8 "made certain that owners of mobile homes manufactured
9 prior to 1972 would receive full and fair
10 consideration before the governing body."
11 Brief of Respondent at 8.

12 Respondent states this action was brought to the attention
13 of the board of commissioners during the appeal of the planning
14 commission action. One of the county commission members noted
15 that when all the circumstances are considered, the Trailerama
16 comes closer to satisfying the criteria for double-wide mobile
17 homes than a single-wide. According to respondent, Section
18 4.00 of the ordinance allows the governing body to use its
19 discretion to allow uses not otherwise provided for in the
20 ordinance after a hearing. We understand respondent to argue
21 that the county utilized this provision to find that the
22 Trailerama is a similar use and therefore should be allowed.

23 Because the county ordinance restricts consideration of
24 mobile homes to those made after 1972 or 1976, we agree with
25 petitioner that the Trailerama does not fall within county
26 ordinance provisions controlling mobile homes. We agree with
respondent, however, that the structure may be treated as a

1 mobile home after proper application of Section 4.0 of the
2 ordinance.

3 Section 4.00 of the ordinance provides as follows:

4 "No structure or lot shall hereafter be used or
5 occupied and no structure or part thereof shall be
6 erected, moved, reconstructed, extended, enlarged, or
7 altered contrary to the provisions of this ordinance
8 provided, however, that a proposed use or structure
9 not expressly listed under "conditional uses" may be
considered by the Planning Commission or Planning
Director as a conditional use if said use or structure
is consistent with the subject zone and/or with other
conditional uses listed in the subject zone."

10 We understand this provision authorizes the planning
11 commissioner/planning director to consider the proposed use as
12 a conditional use. The county did not go through a conditional
13 use procedure to arrive at the conclusion that the Trailerama
14 was a double-wide mobile home, yet its ordinance appears to
15 require such procedure be followed. We conclude that the
16 county did not properly avail itself of Section 4.00 in this
17 case. Therefore, the county's conclusion that the Trailerama
18 is a mobile home under its ordinance is erroneous. This error
19 requires a remand. OAR 661-10-070(1)(b)(C).

20 Lastly, petitioner complains ordinance definitions reflect
21 a "long standing county policy of removing and phasing-out
22 single-wide mobile homes." Record 77, 81-82, 146. Petitioner
23 argues that because the logical application of this ordinance
24 can only result in a determination that the Trailerama is a
25 single-wide mobile home, we must reverse the decision.

26 We disagree. The county's interpretation of its ordinance

is, as we have noted, in some respects incomplete or incorrect,
our ruling does not necessarily mean the county cannot
correctly apply its ordinance to approve the proposed use.

The decision of Hood River County is remanded.