

1 Opinion by Holstun.

2 **NATURE OF THE DECISION**

3 Petitioner challenges a county decision determining
4 that an aircraft hanger located on his property is not an
5 "accessory structure" within the meaning of the Coos County
6 Zoning and Land Development Ordinance (CCZLDO).

7 **MOTION TO INTERVENE**

8 Gary Femling, Ronald Patton, Richard Sears and Boyd
9 Williamson move to intervene on the side of respondent in
10 this matter. There is no opposition to the motion, and it
11 is allowed.

12 **FACTS**

13 The subject property is an approximately 1.12 acre
14 parcel zoned Rural Residential (RR-2). The subject property
15 and twelve other parcels are located around a private
16 landing strip known as Sunny Hill Airport. Several of these
17 other parcels are improved with residences and aircraft
18 hangers. Most of the other parcels, like the subject
19 property, are subject to an easement across which the
20 landing strip is located.

21 Petitioner has constructed a 60' X 80' "pole building"
22 which is 24' high. The building is used as an aircraft
23 hangar where petitioner stores aircraft and a vintage
24 automobile collection. There is no residence located on the
25 subject property.

1 **DECISION**

2 The petition for review includes two assignments of
3 error. Because petitioner bears the burden of proof in the
4 county proceeding, and the county's decision denies
5 petitioner's request for zoning clearance, only one
6 sustainable basis for the decision is required. See e.g.
7 Portland City Temple v. Clackamas County, 11 Or LUBA 70, 78
8 (1984); Weyerhaeuser v. Lane County, 7 Or LUBA 42, 46
9 (1982). For the reasons explained below, the challenged
10 decision provides at least one sustainable basis for the
11 county's decision, and we therefore affirm the decision.

12 Accessory uses are allowable in the RR-2 zone.
13 CCZLDO 3.1.300 provides, in part, that "[s]tructures
14 customarily accessory to the lawfully established principal
15 use shall be allowed in all cases unless otherwise
16 specifically prohibited or restricted." CCZLDO 2.1.200
17 defines an accessory structure or use as one which:

18 "(1) is subordinate to and serves a principal
19 structure or principal use, (2) is subordinate in
20 area, extent, or purpose to the principal
21 structure or principal use served, (3) contributes
22 to the comfort, convenience or the necessity of
23 occupants of the principal structure or principal
24 use, and (4) is located on the same lot, parcel or
25 tract as the principal structure or principal use;
26 unless otherwise permitted or conditionally
27 permitted by this Ordinance. Examples of
28 accessory structures and uses are private garages,
29 storage sheds, play houses, swimming pools, and
30 parking for a recreational vehicle, boat, log
31 truck or other vehicle."

32 The county's findings explain that petitioner's

1 aircraft hangar is not properly viewed as an accessory
2 structure or use because there is no principal use of the
3 property to which the aircraft hangar could be viewed as
4 accessory. The findings conclude "the [aircraft hangar] is
5 not accessory to a residence but is the parcel's primary
6 structure and primary use[.]" Record 12. Petitioner offers
7 two responses to the county's finding.

8 **A. The Proposed Dwelling**

9 Petitioner first complains that the above
10 interpretation reads the CCZLDO as requiring that the
11 principal use be constructed before the accessory use.
12 Petitioner argues that a residence is planned for the
13 subject property at some time in the future. Petitioner
14 contends it is erroneous to construe CCZLDO 2.1.200 and
15 3.1.300 as limiting accessory structures and uses to cases
16 where the principal use of the property already exists.¹

17 We reject petitioner's argument. The county is well
18 within its interpretive discretion under Clark v. Jackson
19 County, 313 Or 508, 836 P2d 710 (1992). Interpreting CCZLDO
20 2.1.200 as requiring that the principal use or structure
21 exist before an accessory structure or use may be approved
22 is not inconsistent with the language of that code

¹We note that petitioner does not contend that an application for approval of a dwelling is pending or was pending at the time the challenged decision was rendered. Therefore, neither the county nor we are presented with a case where there are contemporaneous requests for approval of principal and accessory structures.

1 provision. Similar regulatory requirements in other land
2 use contexts have been interpreted similarly. See Matteo v.
3 Polk County, 11 Or LUBA 259, 263 (1984) and OAR 660-05-
4 030(4) (requiring establishment of the farm use that
5 justifies a dwelling customarily provided in conjunction
6 with farm use, prior to approval of such a dwelling).

7 **B. The Airport**

8 Petitioner next suggests the Sunny Hill Airport can be
9 viewed as the principal use of the subject property, and the
10 hangar may be viewed as an accessory use to the airport.

11 We reject that argument as well. Petitioner does not
12 argue that airports are an allowed use in the RR-2 zone, and
13 respondent argues they are not an allowed use.² It is clear
14 from the decision that the county does not view the Sunny
15 Hill Airport as a principal use of the subject property. As
16 respondent notes, while the subject property and a number of
17 other properties are subject to an easement for the airport
18 runway, the subject property is not zoned for airport use
19 and the airport is not properly viewed as a principal use of
20 the subject property simply because the runway crosses a
21 small part of the property. According to respondent, the
22 runway easement is no different than an easement for a
23 roadway, and the disputed hangar is no more an accessory use
24 to the runway than a garage is an accessory use to a roadway

²Presumably, the Sunny Hill Airport is a preexisting nonconforming use.

1 easement.

2 We agree with respondent.

1 The county's decision is affirmed.³

³Respondent also based its decision on findings addressing the large size of the existing hangar as compared to other aircraft hangars in the area. Because we agree with respondent that the county's decision that the hangar cannot be approved prior to establishment of the principal use to which the use is accessory, we need not and do not consider other bases for the county's decision.