BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

DIANA COLE, Petitioner, vs. COLUMBIA COUNTY, Respondent, and KENNETH LARSON, PATRICIA LARSON, and PORT OF ST. HELENS, Intervenors-Respondent.	LUBA No. 94-071 FINAL OPINION AND ORDER

Appeal from Columbia County.

Michael F. Sheehan, Scappoose, filed the petition for review and argued on behalf of petitioner.

No appearance by respondent.

David B. Smith, Tigard, filed a response brief and argued on behalf of intervenors-respondent Larson.

Mark J. Greenfield, Portland, filed a response brief and argued on behalf of intervenor-respondent Port of St. Helens.

HOLSTUN, Referee; SHERTON, Referee, participated in the decision.

REMANDED 09/20/94

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

Opinion by Holstun.

NATURE OF THE DECISION

Petitioners appeal a county decision granting approval of an application for a conditional use permit

MOTIONS TO INTERVENE

Kenneth and Pattye Larson and the Port of St. Helens move to intervene on the side of respondent in this appeal. There is no opposition to the motions, and they are allowed.

FACTS

The subject property is a 100 foot by 200 foot area within the Scappose Bay Marina, zoned Marine Commercial (C-2). The conditional use permit challenged in this appeal authorizes Water Dependent Construction Activities (WDCA).[1] Intervenors Larson, the applicants below, propose to construct houseboats, boathouses and similar floating structures.

The Columbia County Planning Commission approved the disputed conditional use permit on December 6, 1993. The planning commission's decision was appealed to the Columbia County Board of Commissioners. The board of county

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[1]The Marine Commercial (C-2) zone allows WDCA as a conditional use. Columbia County Zoning Ordinance (CCZO) 834.3. CCZO 834.3 describes WDCA, as follows:

> "Water Dependent Construction Activities (WDCA), including the construction of houseboats, boat houses and other accessory or related construction activities which must be conducted on navigable waterways and which cannot be conducted on land or within an enclosed building or sight obscuring fence and which generally employ fewer than 20 persons."

commissioners held a de novo public hearing in this matter on January 26, 1994. The board of commissioners continued the proceeding to February 9, 1994. At the February 9, 1994 meeting, two of the county commissioners disclosed ex parte contacts with employees of intervenor Port of St. Helens, and the parties were given an opportunity to question the county commissioners concerning those ex parte contacts. The parties were provided an additional opportunity to question the county commissioners concerning the ex parte contacts at a February 16, 1994 meeting. Thereafter, on March 25, 1994, the board of commissioners adopted the challenged decision approving the conditional use permit.

MOTIONS TO DISMISS

We previously denied intervenors' motions to dismiss. Cole v. Columbia County, ___ Or LUBA ___ (LUBA No. 94-071, July 19, 1994).[2] Intervenor Port of St. Helens complains that in doing so, we failed to address specifically the authority cited in support of the motions to dismiss.

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[2]Intervenors' arguments in support of the motion to dismiss essentially are as follows:

> "Intervenors-respondent contend petitioner's petition for review was not filed within the time required by LUBA's rules. Petitioner's record objection was filed 11 days late, on the date the petition for review was due. Intervenors argue that while a timely record objection suspends the deadline for filing the petition for review under OAR 661-10-026(5), an untimely record objection does not. As a consequence, intervenors argue we should consider the time for filing the petition for review as having passed and dismiss this appeal." Cole v. Columbia County, supra, slip op at 1-2.

Burghardt v. City of Molalla, 25 Or LUBA 43, 45 (1991); Gray v. Clatsop County, 21 Or LUBA 583 (1991); Benjamin v. City of Ashland, 19 Or LUBA 600, 602 (1990); Bloomer v. Baker County, 19 Or LUBA 90 (1990); Walker v. City of Beaverton, 18 Or LUBA 712, 721 (1990); Dickas v. City of Beaverton, 17 Or LUBA 578 (1988); Century 21 Properties v. City of Tualatin, 15 Or LUBA 248 (1986); Kellogg Lake Friends v. City of Milwaukie, 16 Or LUBA 1093 (1988); Ramsey v. Multnomah County, ___ Or LUBA ___ (LUBA No. 86-028, July 11, 1986)(unpublished); Westside Neighborhood v. School District 4J, 5 Or LUBA 63 (1982); Sparks v. Independence, 2 Or LUBA 215 (1981). For the reasons set forth below, we adhere to our prior order denying the motions to dismiss.

All but three of the cases cited by intervenors have to do with whether LUBA will consider late-filed record objections. None of the cited cases involve motions to dismiss on the bases that (1) 21 days have passed following receipt of the record by LUBA, and (2) a late-filed record objection should not be sufficient to suspend the deadline for filing the petition for review under OAR 661-10-025(5).[3]

[3]OAR 661-10-030(1) requires that the petition for review be filed within 21 days after the local government record is received by LUBA. However, OAR 661-10-026(5) provides:

> "If an objection to the record is filed, the time limits for all further procedures under these rules shall be suspended. When the objection is resolved, the Board shall issue a letter or order declaring the record settled and setting forth the schedule for subsequent events. Unless otherwise provided by the Board, the date of the Board's letter or order shall be

As we explained in our order denying intervenors' motions to dismiss, had intervenors cited those cases in support of a motion to deny the record objection, or to provide an abbreviated briefing schedule once the record was settled to expedite the appeal, some of those cases might lend support for such requests; they lend no support to intervenors' motion to dismiss.[4]

In Ramsey v. City of Portland, supra, petitioner failed to file either a petition for review or a record objection within 21 days after the local record was received by LUBA. Bloomer v. Baker County, supra, concerned a late-filed petition for review; no late-filed record objection was at issue. We dismissed the appeal in Bloomer on the basis that the petition for review was filed after the 21 day deadline for filing the petition for review had expired. In dicta, we stated in Bloomer that a timely record objection suspends the time for filing a petition for review. Based on this dictum, intervenors contend an untimely record objection cannot suspend the time for filing the petition for review.

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deemed the date of receipt of the record for purposes of computing subsequent time limits."

[4]We assume intervenor Port of St. Helens' citation to Century 21 Properties v. City of Tualatin, 15 Or LUBA 248 (1986) (our opinion on the merits in that case) is in error and that the intended citation is to Century 21 Properties v. City of Tualatin, 15 Or LUBA 605 (1990). The record objection in that case was filed not one day late, as intervenor argues in its motion to dismiss, but rather 11 days late -- the precise circumstance presented in this appeal. No motion to dismiss was presented in that appeal, and LUBA considered the late-filed record objection, concluding the late filing was a technical violation of our rules that did not prejudice the parties' substantial rights.

We reject the contention. As we explained in our order denying the motion to dismiss, "[t]he OAR 661-10-026(5) provision that the filing of a record objection suspends the deadline for further procedures does not depend on the record objection being 'timely' filed." Cole v. Columbia County, supra, slip op at 2. To the extent the dictum intervenors cite in Bloomer can be read to suggest otherwise, we reject the suggestion.

The other case cited by intervenors that does not deal with late-filed record objections is Kellogg Lake Friends v. City of Milwaukie, supra, 16 Or LUBA at 1095-96. That case explains that petitioners' substantial rights under OAR 661-10-005

> "are to 'the speediest practicable review' and 'reasonable notice and opportunity to intervene, reasonable time to prepare and submit their cases, and a full and fair hearing,' not a right to a particular outcome of the appeal proceeding." (Emphasis in original.)

In moving to dismiss rather than to expedite the briefing schedule following resolution of the late record objection, intervenors seek a particular outcome rather than the speediest practicable review. Kellogg Lake Friends v. City of Milwaukie does not support the motions to dismiss.

FIRST ASSIGNMENT OF ERROR

There is no dispute that two members of the board of commissioners engaged in improper ex parte contacts with employees of intervenor Port of St. Helens, after the

evidentiary record was closed on January 26, 1994.[5] Petitioner argues the actions taken by the county, once the occurrence of those ex parte contacts was disclosed, were inadequate. Petitioner contends the board of commissioners was biased and erroneously refused to appoint a hearings officer to decide this appeal.

ORS 215.422(3) provides as follows:

> "No decision or action of a planning commission or county governing body shall be invalid due to ex parte contact or bias resulting from ex parte contact with a member of the decision-making body, if the member of the decision-making body receiving the contact:
>
> "(a) Places on the record the substance of any written or oral ex parte communications concerning the decision or action; and
>
> "(b) Has a public announcement of the content of the communication and of the parties' right to rebut the substance of the communication made at the first hearing following the communication where action will be considered or taken on the subject to which the communication related."

Intervenors contend petitioner fails to demonstrate how the county's actions with regard to the ex parte contacts are inadequate to comply with the requirements of ORS 215.422(3).

As noted earlier, when the county commissioners were advised by attorneys for the parties that the contacts with

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[5]Petitioner also suggests ex parte contacts may have occurred with employees of intervenors Larson, but offers no substantiation for that suggestion. We do not consider this suggestion further.

intervenor Port of St. Helens' employees constituted improper ex parte contacts, the evidentiary record was reopened and attorneys for the parties were permitted to question the county commissioners concerning those ex parte contacts at the February 9, 1994 meeting. In addition, the parties were given an opportunity to further question the county commissioners concerning those ex parte contacts, and to present rebuttal evidence at a meeting held a week later, on February 16, 1994.[6] However, petitioner's request that she be allowed to question employees of intervenors concerning the ex parte contacts was refused by attorneys for intervenors. Petitioner's request that the county order intervenors to allow their employees to be questioned concerning the ex parte contacts was also denied.

Petitioner cites alleged inconsistencies between statements made by the county commissioners on February 9 and February 16 concerning their ex parte contacts, and contends that in view of these inconsistencies and the commissioners' reluctant agreement to allow the parties an opportunity to question them about the ex parte contacts and to present rebuttal evidence, petitioner should have been

[6]Although petitioner's attorney questioned the county commissioners at both the February 9, 1994 and February 16, 1994 meetings, no rebuttal evidence was offered by petitioner's attorney.

allowed to question the persons with whom the county commissioners had ex parte contacts.[7]

The problem with petitioner's argument under this assignment of error is that the remedial steps petitioner sought before the county are not required by either ORS 215.422(3) or the CCZO, and petitioner does not explain why the actions the county did take are inadequate to comply with ORS 215.422(3). As intervenors correctly note, there is no statutory or CCZO requirement that petitioner be allowed to directly question persons who may have had ex parte contacts with a local decision maker.

Under ORS 215.422(3), petitioner's rights in this case are twofold. First, petitioner is entitled to disclosure on the record of the substance of the ex parte communications. Second, petitioner is entitled to "rebut the substance of the communication at the first hearing following the communication where action will be considered or taken on the subject to which the communication related."

A. Adequacy of Ex Parte Contacts Disclosure

The substance of the ex parte communications was disclosed on the record on February 9 and February 16, 1994. Petitioner offers no explanation for why she believes the

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[7]We assign no legal significance to the commissioners' expressions of surprise and annoyance upon being informed that their visit to the site and contacts with intervenor Port of St. Helens' employees constituted ex parte contacts. The only relevant question under this assignment of error is whether the steps taken by the county were adequate to comply with the requirements of ORS 215.422(3).

disclosures on February 9 and February 16 are not accurate and complete, other than to cite an inconsistency between the disclosures on those dates and to speculate that the disclosures may not be complete or accurate.

The disclosures on February 16 were more complete than the disclosures on February 9. However, we do not necessarily agree with petitioner that the disclosure by commissioner Sykes on February 9 that his visit was "unannounced" is inconsistent with his disclosure on February 16 that he was accompanied on his visit by intervenor Port of St. Helens' marina manager. Nevertheless, even if the disclosures on February 9 and February 16 are inconsistent to some degree, that does not mean the disclosures on those two dates, taken together, were insufficient to constitute the "public announcement of the content of the [ex parte] communication" required by ORS 215.422(3).

As intervenors point out, petitioner was given opportunities to question the county commissioners on both of those dates and does not explain why those opportunities failed to result in adequate disclosure of the substance of the ex parte communications. Neither has petitioner filed a motion for evidentiary hearing with this Board to present

evidence that the county commissioners' ex parte contact disclosures were inadequate to comply with ORS 215.422(3).[8]

We conclude petitioner fails to demonstrate that the disclosure of ex parte contacts in this matter was inadequate to comply with ORS 215.422(3).

B. Adequacy of Opportunity to Rebut Ex Parte Contacts

Although the initial disclosure of the ex parte contacts came during the February 9, 1994 board of commissioners meeting after the evidentiary hearing had been closed, the board of commissioners withdrew its oral decision adopted earlier in that meeting to approve the conditional use permit, and reopened the evidentiary hearing to disclose the ex parte contacts and allow rebuttal.

The ex parte contacts occurred after the evidentiary record was closed on January 26, 1994. The evidentiary record was reopened on February 9, 1994 and remained open until February 16, 1994 for purposes of announcing the ex parte contacts and providing the parties an opportunity to rebut those ex parte contacts. This action by the board of commissioners complies with the requirement of ORS 215.422(3) that the "announcement of the content of the

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[8]Under ORS 197.830(13)(b):

> "In the case of disputed allegations of * * * ex parte contacts or other procedural irregularities not shown in the record which, if proved, would warrant reversal or remand, [LUBA] may take evidence and make findings of fact on those allegations. * * *"

communication and of the parties' right to rebut the substance of the communication [be] made at the first hearing following the communication where the action will be considered[.]" See Horizon Construction, Inc. v. City of Newberg, 114 Or App 249, 254, 834 P2d 523 (1992) (explaining requirements of parallel city statutory ex parte contact provisions).

Petitioner's primary argument under this assignment of error is that the county erred by not ordering that intervenors' employees submit to questions concerning the ex parte contacts. As already noted, no statute or CCZO provision requires the county to order intervenors' employees to submit to such questions, and the county did not err by refusing petitioner's request for such an order.

Petitioner complains that requiring her to inquire into and rebut the ex parte contacts at the February 9, 1994 hearing did not allow sufficient time to effectively identify the nature and rebut the substance of those ex parte contacts. However, the county continued the evidentiary hearing to February 16, 1994, to allow the parties additional time to inquire into and rebut the ex parte contacts. Petitioner makes no attempt to explain why allowing the parties until February 16, 1994 did not provide a sufficient amount of time to provide the opportunity for rebuttal required by ORS 215.422(3).

We conclude the county's actions with regard to the ex parte contacts were sufficient to comply with ORS 215.422(3).

C. Bias

It is not entirely clear whether our conclusion that the county complied with ORS 215.422(3) is sufficient to dispose of petitioner's contention that the county commissioners were biased in this matter and improperly denied her request that the board of commissioners recuse itself and appoint a hearing officer to decide this appeal.[9] To the extent the question of improper bias survives our conclusion that the county complied with ORS 215.422(3), petitioner does not come close to the demonstration required to show actual bias on the part of the county commissioners. See 1000 Friends of Oregon v. Wasco County Court, 304 Or 76, 742 P2d 39 (1988).

The first assignment of error is denied.

SECOND ASSIGNMENT OF ERROR

Petitioner contends the challenged conditional use permit authorizes portable toilets, which violate provisions of applicable law concerning bathroom facilities.

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[9]ORS 215.422(3), quoted in full above in the text, provides in part:

> "No decision or action of a planning commission or county governing body shall be invalid due to ex parte contact or bias resulting from ex parte contact with a member of the decision-making body, if [the requirements of ORS 215.422(3) are satisfied]." (Emphasis added.)

CCZO 1503.5 sets forth criteria that must satisfied to grant a conditional use permit. CCZO 1503.5(E) requires:

> "The site and proposed development is [sic] timely, considering the adequacy of the transportation systems, public facilities, and services existing or planned for the area affected by the use[.]"

The existing facility is serviced by a portable toilet. Petitioner contends that in the circumstances existing at the subject property, applicable state agency administrative rules prohibit portable toilets and require provision of flush toilets.[10]

As an initial point, CCZO 1503.5(E) requires that there will be adequate public facilities for the proposed use, it does not require the county to find that the existing portable toilets comply with the cited state agency rules, or that the applicants have already obtained any state agency approvals that may ultimately be required. In construing the requirement imposed by code language similar to that in CCZO 1503.5(E), we explained the approving body is required to identify "an available method for providing adequate sewage disposal and domestic water service to the proposed development which is reasonable certain to comply with applicable standards and produce the desired result."

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[10]Petitioner contends OAR 340-71-330(3) requires that portable toilets be set back 50 feet from all water sources. In addition, petitioner argues OAR 437-02-141 requires that flush toilets be provided in places of employment, such as the one authorized by the challenged conditional use permit.

Foland v. Jackson County, 18 Or LUBA 731, 776, aff'd 101 Or App 632 (1990), aff'd 311 Or 167 (1991).

The county responded to petitioner's contentions concerning the adequacy of the existing portable toilets:

> "The [board of commissioners] finds that in Final Order DR 16-93, which the opponents did not appeal to the [board of commissioners], the [planning commission] granted design review approval to Mr. Larson 'contingent on approval of waste disposal arrangements, whether on the facility or at the marina, by the County Sanitarian.' The Board incorporates that order by reference herein in this order. The [board of commissioners] finds that this condition of design review approval contains sufficient latitude for the County Sanitarian to require either an on-site flush toilet or a portable toilet, depending on what DEQ rules require. Because this condition of approval is sufficiently broad to ensure that sewage will be property disposed of, the [board of commissioners] finds and concludes that the WDCA can provide for appropriate sewage disposal and it rejects * * * argument to the contrary." Record 23.

Petitioner does not contend that flush toilets cannot be installed at the subject property or that more than flush toilets will be required to provide adequate sewage disposal facilities which comply with state agency rules. The challenged decision explains that flush toilets will be required if necessary to comply with state agency rules. The challenged decision sufficiently explains why the proposal will be served by adequate sewerage facilities and, therefore, complies with CCZO 1503.5(E).

The second assignment of error is denied.

THIRD ASSIGNMENT OF ERROR

The C-2 zone allows a number of permitted uses and uses permitted under prescribed conditions. CCZO 832, 833. CCZO 834 lists three conditional uses: single-family dwellings, utility facilities necessary for public service, and WDCA. The standards for approval of conditional uses in the C-2 zone are set forth at CCZO 835:

"Standards

".1 The standards which apply in the C-4 District shall apply in the C-2 District.

".2 Standards for Water Dependent Construction Activities (WDCA):

"[Four separate standards are set forth. One of those standards requires that the use be set back 250 feet from existing houseboats and is addressed in the fourth assignment of error. The remaining standards are not at issue in this appeal.]

".3 Criteria for Approval of WDCAs: In approving a WDCA the Commission shall make the following findings:

"[Four separate criteria are set forth. None of these criteria are at issue in this appeal.]

Petitioner contends CZO 835.1 above requires that the challenged WDCA, as a conditional use in the C-2 zone, demonstrate compliance with the standards set forth in the C-4 zone. Petitioner contends the county erred by failing

to demonstrate the proposed WDCA complies with those standards.[11]

The county interpreted CCZO 835.1 as applying to the other conditional uses allowed in the C-2 zone, but not to WDCA. The county explained its interpretation:

> "CCZO 835.1 and 835.2, when read together, are ambiguous and susceptible of different interpretations. While CCZO 835.1 provides that the standards which apply in the C-4 zone shall apply to the C-2 District, the [board of commissioners] finds (1) that this section predated the amendment to CZO 830 through 835 authorizing WDCAs in the C-2 zone, and (2) that unlike all other uses allowed in the C-2 zone, WDCAs are controlled by the specific standards in CCZO 835.2 which the [board of commissioners] added when it amended the Zoning Ordinance to allow WDCAs, rather than by the standards identified in CCZO 835.1. The [board of commissioners] concludes that the only standards applicable to WDCAs are those in CCZO 835.2, and it concludes that the standards in CCZO 835.1 do not apply to WDCAs. It finds this interpretation to be consistent with the language in its zoning ordinance and with the purpose and policy underlying its amendments to CCZO 830 through 835 to allow WDCAs in the C-2 zone. The [board of commissioners] specifically notes that CCZO 831 was amended in 1993 to recognize that WDCAs cannot be located on land. It further finds that the standards contained in CCZO 814 and 815 generally make little sense when applied to structures located over water as opposed to structures located on land, thereby lending further support

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[11]Actually, the C-4 zone sets forth both "Criteria for Approval" (CCZO 814) and "Standards" (CCZO 815). Petitioner contends both CCZO 814 and 815 apply. Those criteria and standards impose a number of requirements concerning lot size and coverage, setbacks, access, public water and sewer service, building height, off-street parking and landscaping.

> to its interpretation that those standards do not apply to WDCAs. Accordingly, the [board of commissioners] rejects [petitioner's] arguments that the requirements in CCZO 814 [and 815] are applicable[.]" Record 23.

Petitioner points out that the record does not show the provisions specifically addressing WDCA postdate CCZO 835.1 and argues that even if they do, there is no reason why CCZO 835.1 cannot be applied consistently with CCZO 835.2 and 835.3. Petitioner contends there is no ambiguity.

Petitioner next points out there is no reason why the presence of specific standards and criteria in CCZO 835.2 and 835.3 renders the general standards of CCZO 835.1 inapplicable. Petitioner also disputes the county's contention that the standards that would be made applicable by CCZO 835.1 "make little sense when applied to [WDCAs]." Record 23. Petitioner contends that although some of those standards would not apply to WDCA, some could be applied to WDCA.

The county's interpretation has the weaknesses petitioner identifies. However, our standard of review of the board of commissioners' interpretation of the CCZO is limited. ORS 197.829; Clark v. Jackson County, 313 Or 508, 836 P2d 710(1992). We reverse a local governing body's interpretation of its own land use regulations only where we conclude the interpretation is "clearly wrong." Goose Hollow Foothills League v. City of Portland, 117 Or App 211,

843 P2d 992 (1992); West v. Clackamas County, 116 Or App 89, 840 P2d 1354 (1992).

In a case posing a similar zoning ordinance construction issue, we held a city erroneously construed generally applicable zoning ordinance requirements as not applying to rent-controlled housing for which the code provided special provisions for increased housing density. Langford v. City of Eugene, 26 Or LUBA 60, 71 (1993), rev'd 126 Or App 52 (1994). We explained that it would be inconsistent with the zoning ordinance not to apply provisions governing housing generally, where they could be applied consistently with the increased density provisions. In reversing our decision, the Oregon Court of Appeals noted that no provision of the city's zoning ordinance purported to make the special increased housing density provisions for rent-controlled housing the exclusive criteria for approval of such housing. However, the court of appeals explained that LUBA nevertheless erred in rejecting the city's construction of its zoning ordinance as providing that rent-controlled housing is a type of use governed exclusively by the increased housing density provisions and, therefore, not subject to any zoning ordinance provisions applicable to housing generally. The court of appeals explained:

> "[W]here the local interpretation consists of a decision about which of two or more arguably applicable approval criteria in its legislation

> applies to a particular use, the local interpretation will seldom be reversible under the Clark standard. Dept. of Land Conservation v. Crook County, 124 Or App 8, 860 P2d 907 (1993); Friends of the Metolius v. Jefferson County, 123 Or App 256, 860 P2d 278, on recon 125 Or App 122, 866 P2d 463 (1993)." Langford v. City of Eugene, 126 Or App 52, 57, 867 P2d 535 (1994).

In essence, the county's findings in this case explain that the county views WDCA as particular uses subject exclusively to the standards and criteria set forth in CCZO 835.2 and 835.3, which deal specifically with WDCA, and not subject to the standards generally applicable to conditional uses in the C-2 zone by virtue of CCZO 835.1. The criteria and standards set out at CCZO 835.2 and 835.3 regulate a variety of aspects of WDCA. The county's interpretation that CCZO 835.2 and 835.3 are the only criteria and standards applicable to WDCA under CCZO 835, while not expressly stated anywhere in the CCZO, is not otherwise inconsistent with the language of CCZO 835. Langford v. City of Eugene, supra, 126 Or App at 57-58. That interpretation passes the "clearly wrong" test, as explained in Court of Appeals' decision in Langford v. City of Eugene, supra.

The third assignment of error is denied.

FOURTH ASSIGNMENT OF ERROR

As noted in the preceding assignment of error, CCZO 835.2(A) provides "WDCA shall not be permitted within 250 feet of existing houseboats or on-shore residential

development." The county's findings addressing this criterion are as follows:

> "The [board of commissioners] heard from Thelma Bonar and Mr. Sheehan that the WDCA is located less than 250 feet from the nearest houseboat. Mr. Sheehan argued and submitted affidavits to the effect that the WDCA was located only about 150 feet away from the nearest houseboat. However, the [board of commissioners] heard contrary evidence from Marina Manager Mike Jones that the structures to which these opponents were referring were not houseboats. Mr. Jones testified that there are only two houseboats at the marina each of which is well past 250 feet from the WDCA. The Board finds Mr. Jones to be an expert on this issue, believes Mr. Jones' testimony, and finds that no houseboat is located within 250 feet of the WDCA." Record 22.

The affidavits referenced in the above quoted findings identify several structures within 250 feet of the proposed facility which the affiants contend are houseboats. Mr. Jones did testify that there were only two houseboats and that they were more than 250 feet from the subject property. Mr. Jones also submitted a map on which he identified two structures as houseboats and another structure as an "old store." The "old store" apparently is one of the structures the affiants contend are houseboats.[12] Record 242.

The primary issue is the meaning of the term "houseboat," as that term is used in CCZO 835.2(A). As

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[12]According to petitioner, Mr. Jones considered unoccupied houseboats as not constituting houseboats within the meaning of CCZO 835.2(A). We are unable to locate any place in the record where Mr. Jones took that position, and there is no indication that the board of commissioners adopted that interpretation. We express no position on its merits.

petitioner correctly notes, that is a question of interpretation and a question of law. Petition for Review 28. That question must be answered before the county may reasonably rely on the testimony of Mr. Jones that there are no houseboats within 250 feet of the proposed facility.

The affiants identify several structures that they believe are houseboats. The county's position concerning those structures is not explained. As the challenged decision stands, the board of commissioners simply relies on Mr. Jones' unexplained conclusion that there are only two houseboats in the marina and that they are more than 250 feet from the proposed use. The county must explain its understanding of the term "houseboat," as that term is used in CCZO 835.2(A). The scope of that term in the context in which it appears is not obvious, and no party cites a CCZO definition of that term. Once the operative term is defined, the county will be in a position to adopt findings addressing the issues raised by the affiants concerning the structures within 250 of the proposed use that they contend are houseboats.

The fourth assignment of error is sustained.

The county's decision is remanded.