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

JEFF HUIRAS and LANA HUIRAS,)
)
Petitioners,)
)
vs.)
)
CLACKAMAS COUNTY,)
)
Respondent.)

LUBA No. 94-204

FINAL OPINION
AND ORDER

Appeal from Clackamas County.

Jon S. Henricksen, Gladstone, filed the petition for review and argued on behalf of petitioners.

Stacy L. Fowler, Assistant County Counsel, Oregon City, filed the response brief and argued on behalf of respondent.

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

REMANDED 02/21/95

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

1 Opinion by Kellington.

2 **NATURE OF THE DECISION**

3 Petitioners appeal an order of the county hearings
4 officer determining he lacked authority to consider
5 petitioners' local appeal.

6 **FACTS**

7 On September 7, 1993, the county planning department
8 advised petitioners the automobile repair business being
9 conducted on petitioners' property was unlawful. In that
10 letter, the county invited petitioners to either discontinue
11 those uses of subject property, file an application to
12 legitimize those uses, or appeal the determination that the
13 automobile repair business was unlawful within 15 days,
14 pursuant to Clackamas County Zoning and Development
15 Ordinance (ZDO) 1305.01K. Thereafter, the county and
16 petitioners exchanged several letters concerning
17 petitioners' use of their property.

18 On April 6, 1994, the county filed a formal code
19 violation complaint against petitioners' use of their
20 property. On May 6, 1994, during a hearing on the code
21 violation, petitioners and the county entered into an
22 agreement. Under that agreement, the planning department
23 would issue a determination that no lawful nonconforming use
24 of petitioners' property exists, and petitioners could
25 appeal that determination to the county hearings officer and
26 obtain a final county determination concerning petitioners'

1 alleged nonconforming use. Under the terms of the
2 agreement, on May 18, 1994, the county planning director
3 determined no nonconforming use of petitioners' property
4 exists. Petitioners appealed the planning director's
5 May 18, 1994 letter to the hearings officer.

6 The hearings officer refused to consider petitioners'
7 appeal because he determined the planning director had no
8 authority to issue the May 18, 1994 decision and that the
9 planning department's September 7, 1993 letter decision was
10 the county's final decision on the matter. This appeal
11 followed.

12 **ASSIGNMENT OF ERROR**

13 The issue is whether the hearings officer correctly
14 interpreted the ZDO to mean the planning director lacked
15 authority to adopt the May 18, 1994 decision and, therefore,
16 the hearings officer lacked jurisdiction to hear
17 petitioners' local appeal.¹ At the outset, we note the
18 challenged decision is adopted by the hearings officer and
19 not the county governing body. Our review of a hearings
20 officer's interpretation of a local code is to determine
21 whether the interpretation is reasonable and correct. Gage
22 v. City of Portland, 319 Or 308, 860 P2d 282 (1993); McCoy

¹The challenged hearings officer decision contains findings speculating how the hearings officer might have resolved the issue of whether petitioners possess a nonconforming use, if he had jurisdiction to consider the local appeal. However, no party argues these findings provide a separate basis for affirming the challenged decision.

1 v. Linn County, 90 Or App 271, 752 P2d 323 (1988).

2 The ZDO provisions interpreted by the hearings officer
3 are ZDO 1305.1.K and 1303.13. The hearings officer's
4 interpretation of ZDO 1305.1.K and 1303.13 is correct if
5 those code provisions contain a limitation on the planning
6 director's authority to issue the May 18, 1994 decision.
7 See Rustrum v. Clackamas County, 16 Or LUBA 369, 372 (1988).

8 ZDO 1303.13 concerns limitations on the "refiling of an
9 application." ZDO 1303.13 does not apply here because the
10 May 18, 1994 decision was not made in response to the
11 refiling of an application. The county's prior September 7,
12 1993 decision was issued without any application having been
13 filed. ZDO 1305.1.K authorizes the hearings officer to
14 consider appeals of planning director decisions and states
15 that appeals of a planning director decision to the hearings
16 officer must be filed within 15 days of "a letter of final
17 action" by the planning director. Here, even if the
18 hearings officer is correct that the September 7, 1993
19 letter was a letter of final action by the planning
20 director, that has no bearing on the nature of the May 18,
21 1994 decision petitioners' seek to appeal. The May 18, 1994
22 decision is also a final action by the planning director,
23 and that letter decision goes so far as to purport to be
24 such and to direct that appeals of the letter decision may
25 be filed with the hearings officer.

26 In sum, we see nothing in either ZDO 1305.1.K or

1 1303.13 establishing the planning director lacked authority
2 to adopt the May 18, 1994 decision. While we recognize the
3 planning director was not required to adopt the May 18, 1994
4 decision and could have relied on petitioners' failure to
5 appeal the September 7, 1993 decision, that is not what
6 occurred here. The planning director chose to adopt the May
7 18, 1994 decision. Further, that decision was adopted
8 pursuant to an agreement of the parties to the effect that
9 they would be bound by the hearings officer's determination
10 concerning whether petitioners possess a nonconforming use.
11 The hearings officer's determination that the planning
12 director lacked authority to adopt the May 18, 1994 decision
13 is incorrect.

14 The assignment of error is sustained.

15 The county's decision is remanded to the hearings
16 officer to consider petitioners' appeal.

17