

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

DAVID LARSON and LARSON)
CONSTRUCTION CO.,)
Petitioners,) LUBA No. 94-218
vs.) FINAL OPINION
CITY OF WARRENTON,) AND ORDER
Respondent.)

Appeal from City of Warrenton.

Steven D. Gerttula, Astoria, filed the petition for review and argued on behalf of petitioner.

Jeanyse R. Snow and Harold A. Snow, Astoria, filed the response brief. Jeanyse R. Snow argued on behalf of respondent. With them on the brief was McCallister & Snow.

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

AFFIRMED 03/15/95

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 city council
4 determining a certain use of petitioners' property to be
5 unlawful.

6 **FACTS**

7 In 1974, the subject property was zoned for low density
8 residential uses, and in 1983 the property was rezoned
9 Tourist Commercial (TC). In 1993, the subject property was
10 rezoned Recreational Commercial (RC). Neither a logging nor
11 a construction business is allowed in the TC or RC zoning
12 districts.

13 In 1970, petitioners' predecessor in interest
14 constructed a warehouse on the subject property, which was
15 thereafter used for storage of equipment and activities
16 connected with the operations of a marine construction
17 company. In 1989, petitioners acquired the subject property
18 and established Larson Construction. In 1991, petitioners
19 obtained an administrative decision from the city
20 determining that petitioners' use of the subject property at
21 that time, was substantially the same as the use established
22 by petitioners' predecessor in interest. The 1991 decision
23 determined the scope of the use of the property made by
24 petitioners' predecessor was:

25 "* * * storing and repairing marine construction
26 equipment and as a base of operations for his
27 construction company. Equipment typically seen at

1 the site included trucks, cranes and other earth
2 moving equipment used in marine and land
3 construction." Record 396.

4 The 1991 decision also determined the scope of petitioners'
5 business operations was:

6 "* * * to store and repair trucks and equipment
7 and to base construction operations from." Record
8 400.

9 In 1994, petitioners' neighbors complained to the city
10 about petitioners' business operations, claiming that the
11 use had intensified and had evolved into a logging business.
12 On July 13, 1994, the city planning department determined
13 petitioners' use of the subject property violated the
14 Warrenton Zoning Ordinance. Petitioners appealed that
15 decision to the planning commission, and the planning
16 commission affirmed the planning department decision.
17 Petitioners appealed to the city council. The city council
18 affirmed the planning commission decision and adopted the
19 challenged decision. This appeal followed.

20 **ASSIGNMENTS OF ERROR**

21 Essentially, the challenged decision determines the
22 existing use has intensified and changed from the use
23 administratively approved by the 1991 decision.

24 Petitioners claim the following determination in the
25 challenged decision is erroneous:

26 "A review and analysis of the grandfathered
27 activities of Larson Construction show that the
28 company has expanded its operations to include
29 commercial hauling for hire under [a] PUC 1L
30 license for activities that [were] not part of the

1 approved grandfathered activities." Record 21.
2 Petitioners contend the city erred in determining the
3 existing use is not protected by the 1991 administrative
4 decision, which forms the basis for the "grandfathered
5 activities" referenced above. Petitioners contend the
6 underlying use of the property, approved in 1991, has not
7 changed since that time.

8 The following facts are not in dispute. In 1991,
9 petitioners owned one log truck and transported logs from
10 their own construction sites. In 1993, petitioners
11 advertised to hire log truck drivers, and in 1994,
12 petitioners purchased an additional 3-4 log trucks.
13 Beginning in 1993, petitioners not only hauled their own
14 logs, but also hauled logs belonging to others, for hire.
15 Finally, there is no dispute that the following accurately
16 represents petitioners' recent operations:

17 "Testimony [during the local proceedings] was that
18 'in 1993 the loaded log trucks came in. In 1993
19 [Larson] advertised for truck drivers, the
20 business had grown. The hours became considerably
21 different.' [Record 69.]

22 "[An opponent] then offered evidence relating to
23 Larson's PUC permits as follows:

24 "[The opponent] contacted the PUC and
25 found that in 1989 Larson had a 3-A
26 license issued by the PUC. It is called
27 a private carrier license. With this
28 sort of license Larson can transport
29 anything that is his. In 1989 [Larson
30 Construction] transported sand for
31 others from others' quarries. In [1991]
32 he applied for and received a 1-B

1 permit. This permit allows Larson to
2 transport rock, gravel and lumber.
3 Larson can still transport rock and
4 gravel if it is from his source. In
5 September of 1992 [Larson Construction]
6 was given a 1L license, along with a 1-B
7 permit, which allows [it] to haul logs.
8 [Record 71.]'

9 " * * * * " Respondent's Brief 4.

10 We believe the city correctly determined the current
11 uses of the property are different from those described and
12 approved by the 1991 decision. In particular, petitioners'
13 activities under the 1993 PUC permit, which allows them to
14 haul logs for others for hire, are uses not allowed by or
15 within the scope of the 1991 decision. Further, the city's
16 determinations concerning the 1994 uses of the subject
17 property are supported by substantial evidence in the whole
18 record.

19 Petitioners' assignments of error are denied.

20 The city's decision is affirmed.