BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

DARRYL C. RAY, KATHERINE RAY, CAROL BECK, DELMAR BECK, DAVID COMPTON, MEREDITH COMPTON, C. ELDON FISHER, EUGENE H. FISHER, RICHARD HOLCOMB and CAROL WHIPPLE, Petitioners,	
vs.	
DOUGLAS COUNTY, Respondent,	LUBA No. 95-237
and	FINAL OPINION AND ORDER
NORMAN YARD and VIVIAN L. YARD, Intervenors-Respondent.	

Appeal from Douglas County.

James S. Coon, Portland, filed the petition for review and argued on behalf of petitioners. With him on the brief was Swanson Thomas & Coon.

No appearance by respondent.

Stephen Mountainspring, Roseburg, filed the response brief and argued on behalf of intervenors-respondent. With him on the brief was Dole, Coalwell & Clark.

LIVINGSTON, Referee; HANNA, Chief Referee, participated in the decision.

REMANDED 02/06/97

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

Opinion by Livingston.

NATURE OF THE DECISION

Petitioners appeal a decision of the county board of commissioners approving a recreational vehicle (RV) campground as a conditional use on land zoned for exclusive farm use.

MOTION TO INTERVENE

Norman and Vivian L. Yard, the applicants below (intervenors), move to intervene in this proceeding. There is no opposition to the motion and it is allowed.

FACTS

The subject property comprises approximately 131 acres zoned Exclusive Farm Use - Crop Land (FC), of which 45 percent is high-value farmland.[1] The proposed "full-service" RV campground would occupy four acres of high-value farmland and would include 40 campsites along the Umpqua River, with showers and a septic system.

After an evidentiary hearing on July 20, 1995, the county planning commission voted to deny the application. Intervenors appealed to the county board of commissioners, which reversed the planning commission's decision and approved the application on July 17, 1996. This appeal

---

[1]The term "high-value farmland" is defined in OAR 660-33-020(8)(a). That definition is imported into the Douglas County Land Use and Development Ordinance (LUDO) by LUDO 3.4.100(5). The challenged decision expressly finds that "high-value farmland" as used in the ordinance is defined in OAR 660-33. Record 7.

followed.

INTRODUCTION

Campgrounds are a permitted conditional use in the county's FC zone.[2] LUDO 3.4.100.[3] Petitioners make five assignments of error, all of which relate to the county's application of a stability standard set forth in LUDO 3.4.150, which provides, in relevant part:

> "* * * Additional criteria which must be met prior to the approval of a conditional use:
>
> "* * * * *
>
> "3. The granting of the permit would not materially alter the stability of the overall land use pattern of the area." (Emphasis added.)

In their briefs, both petitioners and intervenors agree that the appropriate analysis to apply to the emphasized stability standard is found in Sweeten v. Clackamas County,

---

[2]ORS 215.283(2) provides that campgrounds may be established in exclusive farm use zones, subject to the approval of the county's governing body. OAR 660-33-130(19) defines "campground" as

> "* * * an area devoted to overnight temporary use for vacation, recreational or emergency purposes, but not for residential purposes. A camping site may be occupied by a tent, travel trailer or recreational vehicle. Campgrounds authorized by this rule shall not include intensively developed recreational uses such as swimming pools, tennis courts, retail stores or gas stations."

[3]LUDO 3.4.100 sets forth the uses permitted conditionally in the FC zone. Those uses include:

> "Private parks, playgrounds, hunting and fishing preserves, and campgrounds, except that such new uses shall not be permitted on land predominantly composed of high value farmland as defined in OAR 660-33." LUDO 3.4.100(5).

17 Or LUBA 1234, 1245 (1989) and DLCD v. Crook County, 26 Or LUBA 478, 489-92 (1994). Petition for Review 5; Intervenors-Respondents' Brief 2. That analysis requires a three-step inquiry: first, select an area for consideration; second, examine the types of uses existing in the selected area; and third, determine that the proposed use will not materially alter the stability of the existing uses in the selected area.

Sweeten and Crook County both concern the establishment of residential uses on land zoned for exclusive farm use. Both opinions address local code provisions that implement a statutory provision once codified at ORS 215.283(3)(c) and now codified at ORS 215.284(1)(d) and (2)(d): "The dwelling will not materially alter the stability of the overall land use pattern of the area."

However, at oral argument the parties agreed that the county's decision rests on its interpretation of a local code provision, LUDO 3.4.150(3). Notwithstanding its similarity to ORS 215.284(1)(d) and (2)(d), LUDO 3.4.150(3) does not implement the statute, which addresses the location of dwellings not in conjunction with farm use on exclusive farm use land. LUDO 3.4.150(3) instead states a local standard for the establishment of a conditional use, a campground, on exclusive farm use land.

FIRST ASSIGNMENT OF ERROR

The challenged decision states:

> "The Board interprets 'the area' [in LUDO 3.4.150(3)] to mean the area of the applicants' property plus the properties identified above as adjacent to the applicants' land.[4] Within that area, the only change will be to the acreage devoted to the campground, approximately four acres. Of the hundred of acres of land in 'the area,' only the few to be devoted to the campground will change use. The Board finds that those few acres will not constitute a material change of the overall land use pattern in the area." (Footnote omitted.) Record 13.

Petitioners contend the county's interpretation of "the area" in LUDO 3.4.150(3) is erroneous and constitutes reversible error. We disagree. This Board is required to defer to a local governing body's interpretation of its own enactment, unless that interpretation is contrary to the express words, purpose or policy of the local enactment or to a state statute, statewide planning goal or administrative rule which the local enactment implements. Gage v. City of Portland, 319 Or 308, 316-17, 877 P2d 1187 (1994); Clark v. Jackson County, 313 Or 508, 514-15, 836 P2d 710 (1992). This means we must defer to a local governing body's interpretation of its own enactments, unless that interpretation is "clearly wrong" or "so wrong as to be beyond colorable defense." Reeves v. Yamhill County, 132 Or App 263, 269, 888 P2d 79 (1995); Zippel v. Josephine County, 128 Or App 458, 461, 876 P2d 854 (1994); Goose Hollow

[4]The decision interprets "adjacent" to mean "abutting or contiguous properties, plus those that are within the notification boundary." Record 9.

Foothills League v. City of Portland, 117 Or App 211, 217, 843 P2d 992 (1992). Although we might construe "the area" differently, we do not find the county's interpretation indefensible, and we defer to it. DeBardelaben v. Tillamook County, 142 Or App 319, 325, ___ P2d ___ (1996). See also Friends of the Metolius v. Jefferson County, 28 Or LUBA 591, 595-96 (1995).

The first assignment of error is denied.

SECOND ASSIGNMENT OF ERROR

The challenged decision states:

> "* * * [T]he Board notes that the area is in the proximity of the Big K Guest Ranch, which includes a campground and RV sites, and whose entrance lies only five miles from the Yard property. BLM has a proposed campground at Sawyer Rapids, which is also nearby. Camping and RV overnight locations are already located in the general area, and the addition of 20 campsites will pose no threat to the stability of the existing land use pattern. The proposed development is too small to have a precedential effect in the area." (Emphasis added.) Record 13-14.

Petitioners contend:

> "Having limited its identification of 'the area' as above to adjoining properties, the county goes on to reason that this limited area 'is in the proximity of' other campground-type facilities. * * * Where the county's findings defining 'the area' for purposes of a stability analysis are unclear, remand is required. Multnomah County v. City of Fairview, 18 Or LUBA 8, 13-14 (1989)."

In Multnomah County v. City of Fairview, the city was required to determine whether a proposed conditional use was consistent with the area's character. Although the city

identified an "area of special concern," it was not clear that the area of special concern was the same area it was considering in applying the consistency standard.

Intervenors argue the county did not err in considering the effects of outside development on the stability of land use patterns in the area. Intervenors miss petitioners' point. The emphasized language in the above-quoted finding actually applies the stability standard to a "general area," in which camping and RV overnight locations -- "the existing land use pattern" -- are already located. The "general area" is different from the area first identified in the county's interpretation of the term "the area."[5] The challenged decision does not consistently identify what area the county considered for purposes of applying the stability standard.

The second assignment of error is sustained.

THIRD ASSIGNMENT OF ERROR

Petitioners first contend that because the county did not consistently identify one area, it could not successfully perform the second step of the Sweeten analysis, which requires an examination of the types of uses existing in the selected area. We agree with petitioners.

Petitioners next contend the "county simply failed to

[5]Throughout this opinion we use the terms "the area" and "the general area" (or variants thereof) in quotation marks to indicate which is being discussed.

describe, let alone analyze, the overall land use pattern in any area." (Emphasis added.) Petition for Review 6. Intervenors disagree, citing findings at Record 8, 10-11, 13-15, and 17 to support their contention that the county's findings adequately describe and analyze "the area." These findings make clear the intervenors' property is used to raise cattle and hay and for "agricultural production." Record 8, 13. Petitioners' property is used, at least in part, for sheep farming. Record 17. Certain properties are zoned Exclusive Farm Use-Grazing (FG), Farm Forest (FF) and FC, and on these properties various farm activities take place, such as chemical spraying, fertilization, field burning and the operation of farm machinery. Record 10.

In DLCD v. Crook County, 26 Or LUBA at 491, we stated that what is required under Sweeten "is a clear picture of the existing land use pattern" in the area. Although the challenged decision discusses some uses on certain properties, it is unclear from the county's findings whether the discussion of uses is complete with respect to those properties and whether the properties discussed are the sole properties in "the area." Even as to "the area," the requisite clear picture does not emerge.

The third assignment of error is sustained.

FOURTH ASSIGNMENT OF ERROR

Petitioners contend the county's analysis supporting its conclusion that the proposed use will not materially

alter the stability of the existing uses in "the area" is insufficient as a matter of law. Because the area being analyzed is not sufficiently clear, as discussed above, we agree with petitioners.

Nevertheless, we discuss petitioners' arguments concerning the insufficiency of the county's analysis in order to facilitate the proceedings on remand. The county's findings with respect to stability are quoted above. The county concludes that there will not be a material change in the land use pattern in "the area" for two reasons: first, the small acreage to be devoted to the RV campground, compared to the hundreds of acres of land in "the area"; and second, the proximity of a campground and RV sites at the Big K Guest Ranch and of a proposed BLM campground at Sawyer Rapids.

Intervenors argue the county's findings in its stability analysis are predicated on its compatibility analysis, which concludes that the "campground can be made compatible with uses on adjacent properties by imposing conditions of approval." Record 11. The conditions address dogs that might chase livestock, traffic impacts, possible complaints about farm practices, pollution of the Umpqua River and trespassing, littering and vandalism.[6] We

[6]The challenged decision states, "As to trespassing, littering and vandalism, the Board finds no serious risk of these things occurring so long as the applicants impose campground rules against them. The Board

understand the reliance in the findings on the relatively small size of the proposed campground to relate to compatibility. Petitioners do not challenge the conclusion that compatibility may be achieved through imposing these conditions.

However, while compatibility is one prerequisite to the stability of existing uses, it does not ensure stability. For example, if "the area" develops a reputation for scenic RV campgrounds, the number of visitors may grow, creating still more demand for RV campgrounds which may eventually displace and replace existing uses.

Intervenors make two additional arguments that we find unpersuasive. The first is that in a competitive environment, additional development is discouraged. Petitioner cite to nothing in the record that supports this argument.

Intervenors' second argument is that the proposed development will not materially alter the stability of the overall land use pattern in the area because the county considers each new application on its own merits. That argument, if accepted, would always defer consideration of development trends to the next application. Yet consideration of development trends is important to an analysis of the stability of the existing land use pattern.

---

imposes the adoption of such rules as a condition of approval." (Emphasis added.) Record 12-13.

The difficult challenge is to determine when the stability of the existing land use pattern is being materially altered.

Both parties discuss Morley v. Marion County, 16 Or LUBA 385, 391 (1988), which was an appeal of the denial of an application for a nonfarm dwelling as a conditional use. In Morley we concluded, with respect to the possible destabilizing effect of a nonfarm dwelling, that unless there was a history of progressive partitioning and homesite development in the area or similarly situated properties in the area for which similar nonfarm dwelling applications would be encouraged, there was no basis for a finding that approval of one nonfarm dwelling would set a precedent that would by itself materially alter the stability of the existing uses in the selected area. See also Stefan v. Yamhill County, 18 Or LUBA 820, 836 (1990) (issue of precedential effect or cumulative impacts of proposed nonfarm development is relevant to determining compliance with a "stability of the land use" criterion). Although the present case concerns the approval of a conditional use and concerns an RV campsite, not a nonfarm dwelling, the principle discussed in Morley applies to this case as well: evidence of a history of similar development approvals or of similarly situated properties where comparable applications would be encouraged by the approval of this application would support the conclusion that approval of this

application could materially alter the stability of the existing uses in the selected area. Thus the findings concerning the development of a campground on BLM land at Sawyer Rapids and the proximity of a campground at the Big K Guest Ranch do not, of themselves, support the conclusion that the proposed campground will not destabilize existing uses.[7]

The fourth assignment of error is sustained.

FIFTH ASSIGNMENT OF ERROR

Petitioners contend the county's findings with respect to campsites at the Big K Guest Ranch and the proposed BLM campground at Sawyer Rapids are not supported by substantial evidence.[8] As discussed above, we question whether these findings support the county's conclusion that the proposed campground will not destabilize existing uses. Nevertheless, we discuss petitioners' evidentiary challenge because it highlights an apparent factual misunderstanding on the part of the county.

In response to petitioners' contention concerning the Big K Guest Ranch, intervenors point to statements in a letter from intervenors:

"One of the largest ranches in the County, The Big

---

[7]The factual basis for these findings is challenged in the fifth assignment of error.

[8]These findings are quoted above in our discussion of the second assignment of error.

> K, is located 3 miles west of [intervenors' property]. It is a working ranch, it also contains a large lodge, cabins, an excellent restaurant, all recreation oriented. No apparent problems have occurred here by mixing farming and recreation. It does not seem reasonable that our proposed RV site would not be as compatible as the Big K just because it is not located 4 miles from the highway (only 1/2 mile)." (Emphasis in original.) Record 333.

Intervenors note that under LUDO 1.090, a campground is a short-term recreation area that need not have campsites, including RV sites.[9]

The challenged decision specifically finds that the Big K Guest Ranch "includes * * * RV sites." Record 13. That finding, which seems important to the county's rationale that existing development has created a land use pattern in the "general area" with which the proposed development is consistent, is not supported by the above-quoted letter or any other evidence to which we are cited.

With respect to the BLM campground, the challenged decision states, "BLM has a proposed campground at Sawyer

---

[9]LUDO 1.090 defines "campground" as:

> "An area designed for short-term recreational purposes and where facilities, except commercial activities such as grocery stores and laundromats, are provided to accommodate that use. Space for tents, campers, recreational vehicles, and motor homes are allowed and permanent open air shelters (adirondacks) may be provided on the site by the owner of the development. In the exclusive farm use zones intensively developed recreation uses such as swimming pools, tennis courts, retail stores or gas stations shall not be allowed."

We are not required to decide here whether LUDO 1.090 is consistent with OAR 660-33-130(9), which is quoted above in note 2.

Rapids, which is also nearby." Record 13. Intervenors respond to petitioners' substantial evidence challenge by pointing to the following statements in the record:

> "A 15 space BLM campground does exist approximately 4 miles upstream from [intervenors'] property. Additionally, since the existing facility is full much of the time, BLM is planning an additional 25 spaces at this site." Record 181. (Letter from intervenors.)

> "The Bureau of Land Management has plans for further development of their property across the river from the [intervenors'] property and also on the other side of the river down from Bullock Bridge. That prompted a telephone call from [the speaker, Doug Robertson] to [the then-director of BLM]. Because of budget constraints the plans that BLM had at that time were put on hold and he assured me that any further plans to develop any more camping sites and so on, before they proceeded they would make the county aware of any and all of those plans." Testimony of Doug Robertson, Tape of Hearing before the County Board of Commissioners, May 14, 1996, Tape 1."

We understand from these statements that there are <u>two</u> BLM sites. From the zoning map included in the record as Staff Exhibit 9, Sawyer Rapids appears to be about 12 miles in a straight line from the subject property. If the reference in the challenged decision to the "proposed campground" is to the Sawyer Rapids campground, what is proposed is actually an expansion to 40 sites of an existing 15-site campground at a far greater distance from the subject property than the findings say. The plans for camping sites on the second BLM property, across the river from intervenors' property, are just plans. Neither BLM

site supports the county's finding that existing development has created a land use pattern in the "general area" with which the proposed development is consistent.

The fifth assignment of error is sustained.

The county's decision is remanded.