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BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

SHELDON FIRE & RESCUE, INC.,)
)
 Petitioner,)
)
 vs.)
)
 WASHINGTON COUNTY,)
)
 Respondent.)

LUBA No. 97-230

FINAL OPINION
AND ORDER

Appeal from Washington County.

Frank Josselson, Portland, filed the petition for review and argued on behalf of petitioner. With him on the brief was Josselson Potter & Roberts.

Alan Rappleyea, Washington County Counsel, Hillsboro, filed a response brief and argued on behalf of respondent.

GUSTAFSON, Board Chair; HANNA, Board Member, participated in the decision.

AFFIRMED 05/22/98

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

1 Per curiam.

2 **NATURE OF THE DECISION**

3 Petitioner appeals the county's denial of its request to
4 store emergency vehicles on property zoned Exclusive Farm Use
5 (EFU) as part of a home occupation permit.

6 **FACTS**

7 Petitioner is a corporation that brokers emergency and
8 fire vehicles and equipment to local fire departments and fire
9 districts. Petitioner operates out of a residential dwelling
10 and accessory structure located on a 3.19-acre parcel zoned
11 EFU. The dwelling is occupied by petitioner's chief officer
12 and his family, who are also the sole employees of petitioner.

13 In June 1997, petitioner applied for a home occupation
14 permit to conduct its business from the dwelling on the
15 subject property, and to store emergency vehicles on the
16 subject property. The application describes petitioner's
17 business activities as follows:

18 "Most of the work at our office is done on the
19 telephone and the computer. Sheldon attends trade
20 shows in areas around the state to show demonstrator
21 products with the latest advances in fire apparatus
22 and emergency vehicles. We do not inventory or
23 display vehicles on our property. Demonstrator
24 vehicles are occasionally driven to the customer's
25 location for evaluation. Normal office work
26 includes answering the telephone, accounting,
27 filing, typing and computing. The business is
28 operated from two rooms on the basement level. On a
29 rare occasion, we do get a visitor and any activity
30 associated with the visitor is conducted in the
31 basement, which we have dedicated this space for.
32 * * * The business will be run from the home
33 primarily. A demonstrator vehicle is occasionally
34 stored inside an accessory building out of sight.
35 * * * An occasional practice of washing down a demo

1 vehicle is the only outside activity that would be
2 associated with the business usage outside. * * *
3 We usually have an ambulance demonstrator which is
4 stored inside the accessory building most of the
5 time. Two to six weeks a year we have a fire truck
6 or rescue truck that the manufacturer provides for
7 us as a demonstrator and which we have ample parking
8 for. * * * Our sales are conducted at the customer
9 location so retail sales are limited and would
10 likely occur only on the telephone. * * * Total
11 number of daily customers or visitors is less than 1
12 per day." Record 48-49.

13 The county planning staff referred petitioner's
14 application to a county hearings officer to allow an
15 interpretation of the county's ordinances with respect to
16 storing emergency vehicles on the site. A county hearings
17 officer conducted a hearing and, on October 16, 1997, issued
18 the challenged decision approving the home occupation request
19 but denying the request to store emergency vehicles on the
20 subject property.

21 This appeal followed.

22 **THIRD ASSIGNMENT OF ERROR**

23 Petitioner argues that the county's denial of its request
24 to store emergency vehicles on the subject property
25 misconstrues the applicable county standards.

26 Home occupation permits are governed by the county's
27 Community Development Code (CDC) 430-63.2. The challenged
28 decision finds that petitioner's request to store emergency
29 vehicles on the property violates CDC 430-63.2(B), (C) and
30 (E). Petitioner challenges the city's interpretation and
31 application of all three standards. However, where the county
32 denies a proposed development, the county need only adopt

1 findings, supported by substantial evidence, demonstrating
2 that one or more standards are not met. Duck Delivery Produce
3 v. Deschutes County, 28 Or LUBA 614, 616 (1995); Baughman v.
4 Marion County, 17 Or LUBA 632, 636 (1989). Accordingly, we
5 address only the county's finding that petitioner's
6 application does not comply with CDC 430-63.2(E).

7 CDC 430-63.2(E) provides that:

8 "A Type II Home Occupation shall:

9 "* * * * *

10 "E. When located in a residential, agricultural or
11 forest district, limit any external evidence of
12 an occupation to one (1) identification sign
13 not to exceed twenty (20) feet in area[.]"

14 The staff report states with respect to CDC 430-63.2(E)
15 that:

16 "The applicant states there is no immediate plan for
17 a sign on the site, although one may be added in the
18 future. Staff believes, however, that movement of
19 demonstrator vehicles to and from the site would not
20 be consistent with [CDC 430-63.2(E)]: emergency
21 vehicles are easily distinguishable from personal
22 vehicles, even without the aid of signs advertising
23 the business, and staff believes an ambulance or
24 other emergency vehicle being driven to and from the
25 site serves as external evidence of the brokerage
26 business." Record 24.

27 The challenged decision adopts the above excerpt from the
28 staff report to support its findings, and states with respect
29 to CDC 430-63.2(E):

30 "The hearings officer agrees with the Staff analysis
31 that the storage of an ambulance on the Site, even
32 on an infrequent basis, violates the provisions of
33 [CDC 430-63.2(E)], for the reason set forth in the
34 Staff Report." Record 10.

1 Petitioner disputes first the decision's implicit
2 determination that parking the ambulance and sometimes a fire
3 truck on the subject property is part of petitioner's
4 business. According to petitioner, it is undisputed that the
5 emergency vehicles are used only to demonstrate at offsite
6 locations. Petitioner contends that the onsite storage or
7 movement of the emergency vehicles on the subject property is
8 not part of petitioner's business operations, and hence is not
9 "external evidence" of its business.

10 The county responds that we rejected a similar argument
11 in Holsheimer v. Columbia County, 28 Or LUBA 279, 283 (1994),
12 aff'd 133 Or App 126 (1995). In Holsheimer, we held that the
13 parking of trucks used for a paving business is part of a
14 single integrated business for purposes of the home occupation
15 statutes at ORS 215.448(1) and corresponding local
16 provisions.¹ 28 Or LUBA at 283.

17 We agree with the county that the parking, storage and
18 washing of emergency vehicles on the subject property are part
19 of petitioner's business for purposes of the criteria at
20 CDC 430-63.2, which are based on the standards at ORS
21 215.448(1). That the emergency vehicles are not demonstrated
22 or sold on the subject property does not detract from the fact
23 that their storage on the subject property and movement to and

¹Following the Court of Appeals decision in Holsheimer, ORS 215.448(1) was amended to provide that a county may allow a home occupation that is "operated substantially" within the dwelling or accessory structure. ORS 215.448(1)(c). The parties do not address the impact, if any, of that statutory change on the present case.

1 from the subject property serve petitioner's business and are
2 properly considered part of that business. To the extent
3 petitioner articulates a substantial evidence challenge to the
4 county's determination, we conclude that substantial evidence
5 supports the county's conclusion that the petitioner's
6 proposed use of the emergency vehicles on the property is part
7 of its business.

8 Petitioner next argues that the hearings officer and
9 staff misinterpreted the terms of CDC 430-63.2(E).
10 Particularly, petitioner disputes the decision's finding that
11 movement of the emergency vehicles to and from the accessory
12 building constitutes impermissible "external evidence" of the
13 home occupation. Petitioner reads CDC 430-63.2(E) as a
14 limitation only on the size of signs advertising the business,
15 not a limitation on any "external evidence" of the home
16 occupation.

17 The hearings officer and staff determined that the
18 movement of the emergency vehicles to and from the subject
19 property constitutes "external evidence" of petitioner's
20 business within the meaning of CDC 430-63.2(E). We agree with
21 petitioner that the challenged decision contains a reviewable
22 interpretation of CDC 430-63.2(E).

23 We owe no deference to the interpretation of the hearings
24 officer and planning staff in this case. Gage v. City of
25 Portland, 319 Or 308, 317, 877 P2d 1187 (1994). We review the
26 hearings officer's interpretation of CDC 430-63.2(E) to

1 determine whether it is reasonable and correct. North
2 Portland Citizens v. City of Portland, ___ Or LUBA ___ (LUBA
3 No. 96-097, October 2, 1996), slip op 7.

4 The plain terms of CDC 430-63.2(E) limit "any external
5 evidence of an occupation" to one small sign. CDC 430-63.2(E)
6 is not, as petitioner contends, concerned solely with signage.
7 The county's reading of CDC 430-63.2(E) as requiring no
8 external evidence of a home occupation other than a small sign
9 is consistent with other provisions of CDC 430-63.2,
10 particularly CDC 430-63.2(B), which requires that the home
11 occupation be "operated entirely within a residential
12 structure or permitted accessory structure." We conclude that
13 the hearings officer's interpretation of CDC 430-63.2(E) is
14 reasonable and correct. Under the county's interpretation,
15 the storage and movement of emergency vehicles on the property
16 constitute "external evidence" of a home occupation. The
17 county correctly concluded that petitioner's request to store
18 emergency vehicles on the property violates CDC 430-63.2(E).

19 The third assignment of error is denied.

20 Because we affirm the county's determination that
21 petitioner's application to store emergency vehicles on the
22 subject property does not comply with CDC 430-63.2(E), we need
23 not address petitioner's arguments and assignments of error
24 directed at the county's findings with respect to other
25 criteria. Baughman v. Marion County, 17 Or LUBA at 636.

26 The county's decision is affirmed.