BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

GEORGE GREER, LINDA GREER, DENNIS LYON,
DEBORAH LYON and STEVEN TICHENOR,
Petitioners,

vs.

JOSEPHINE COUNTY,
Respondent,

and

DUANE G. EPPLE,
Intervenor-Respondent.

LUBA No. 99-059

Appeal from Josephine County.

James R. Dole, Grants Pass, filed the petition for review and argued on behalf of petitioners.

No appearance by respondent.

Duane Wm. Schultz, Grants Pass, filed the response brief and argued on behalf of intervenor-respondent.

BASSHAM, Board Member; HOLSTUN, Board Chair; BRIGGS, Board Member, participated in the decision.

REMANDED 11/29/99

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

Opinion by Bassham.

NATURE OF THE DECISION

Petitioners appeal the county's approval of a home occupation permit for an automobile repair business.

MOTION TO INTERVENE

Duane G. Epple (intervenor), the applicant below, moves to appear on the side of respondent. There is no opposition to the motion, and it is allowed.

FACTS

The subject property is a five-acre parcel zoned Residential, 5-acre minimum (RR-5). The property is improved with a single-family dwelling, and is accessed from Bolt Mountain Road, a single-lane, dead-end gravel road. In 1989, intervenor obtained a permit to build a detached garage as an accessory structure to the dwelling. After the garage was built, intervenor began operating a business repairing wrecked automobiles in the garage without obtaining county approval. After neighbors complained, the county ordered intervenor to cease operation of his business on the subject property.

Intervenor then applied to the county for a home occupation permit for commercial restoration of salvaged vehicles for resale. The application proposes that wrecked vehicles would be towed or hauled to the property and stored within the garage, where they will be dismantled and rebuilt. Once rebuilt, the vehicles will be shipped offsite for resale.

The county planning department approved intervenor's permit, which petitioners appealed to the county board of commissioners (commissioners). The commissioners conducted evidentiary hearings on December 3 and 23, 1998. At that time, the board of commissioners consisted of three members: Brock, Haugen, and Borngasser. Commissioner Brock did not attend the December 23, 1998 evidentiary hearing. At that hearing, Commissioners Haugen and Borngasser closed the record, deliberated, and adopted an oral decision to deny petitioners' appeal, approving the permit. Commissioner Borngasser's term

expired December 31, 1998, and he was replaced by Commissioner Iverson. The county's final written decision in this case was issued March 17, 1999, and was signed by Commissioners Brock, Haugen, and Iverson.

This appeal followed.

SECOND ASSIGNMENT OF ERROR

Petitioners argue that the county erred in approving the proposed home occupation permit because substantial aspects of the operation will occur outside the garage, contrary to the requirements of the county's zoning ordinance.

Petitioners explain that the provisions of the county's Rural Land Development Code (RLDC) governing home occupations were adopted in 1994 to implement ORS 215.448(1) (1993). At that time, ORS 215.448(1) (1993) provided, in relevant part:

> "The governing body of a county or its designate may allow, subject to the approval of the governing body or its designate, the establishment of a home occupation in any zone, including an exclusive farm use or forest zone, that allows residential uses, if the home occupation:
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> "* * * * *
>
> "(c) Will be operated in:
>
> "(A) The dwelling; or
>
> "(B) Other buildings normally associated with uses permitted in the zone in which the property is located; * * *"

LUBA has interpreted ORS 215.448(1)(c) (1993) as prohibiting counties from approving home occupations that are conducted in part outside the dwelling or other authorized buildings. *Wuester v. Clackamas County*, 25 Or LUBA 425, 431 (1993); *Stevenson v. Douglas County*, 23 Or LUBA 227, 232 (1992); *Slavich v. Columbia County*, 16 Or LUBA 704, 707 (1988).

In 1995, the legislature amended the quoted portion of ORS 215.448(1) (1993) to provide the following:

> "The governing body of a county or its designate may allow, subject to the approval of the governing body or its designate, the establishment of a home occupation and the parking of vehicles in any zone. However, in an exclusive farm use zone, forest zone or a mixed farm and forest zone that allows residential uses, the following standards apply to the home occupation:
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> "* * * * *
>
> "(c) It shall be operated *substantially* in:
>
> "(A) The dwelling; or
>
> "(B) Other buildings normally associated with uses permitted in the zone in which the property is located; * * *" (Emphasis added).

Thus, ORS 215.448(1) now imposes standards only with respect to home occupations in specified zones not relevant here. However, petitioners explain that, consistent with the 1993 version of ORS 215.448(1), the county's code continues to require that the proposed home occupation "not give the outward appearance of a business," and "must be conducted" within a dwelling or accessory building. RLDC 92.020(B), (E). Consequently, petitioners argue that the county's application of RLDC 92.020 must be consistent with ORS 215.448(1) (1993) and *Wuester, Stevenson,* and *Slavich* in allowing only home occupations that are operated entirely within the dwelling or an authorized accessory building. According to petitioners, and as described below in the third assignment of error, the record demonstrates that substantial aspects of the proposed home occupation in this case will occur outside the dwelling and the garage.

Intervenor does not dispute that some aspects of the proposed use will occur outside the garage, but argues that, given the 1995 legislative changes to ORS 215.448(1), the county now has the discretion to interpret the provisions of RLDC 92.020 without regard for the limitations imposed by the earlier version of ORS 215.448(1) as interpreted in *Wuester, Stevenson,* and *Slavich*.

We agree with intervenor that because the legislature amended ORS 215.448(1) in 1995, the county has discretion to interpret the provisions of RLDC 92.020 in a manner that

might otherwise be inconsistent with ORS 215.448(1) (1993) and the cases interpreting that version of the statute. That is because, as relevant to the present case, the statute authorizing counties to allow home occupations no longer imposes any standards limiting a county's exercise of that authority. The county is consequently less constrained in adopting or interpreting standards governing home occupations.[1] Therefore, this assignment of error, which argues that the county *must* apply RLDC 92.020 consistently with the limitations of ORS 215.448(1) (1993) and cases interpreting that statute, does not provide a basis for reversal or remand.

However, we note that, whatever the county's range of interpretative discretion might be, intervenor has not identified anything in the decision constituting a reviewable interpretation of RLDC 92.020 to the effect that home occupations need not be conducted entirely within an authorized structure. On the contrary, as discussed further below in the third assignment of error, the county adopted findings that appear to be consistent with petitioners' view of RLDC 92.020(B) and (E). For example, the county finds compliance with RLDC 92.020(B) based on a determination that "[a]ll Home Occupation activity will be conducted within the garage building, and there will be no visual indication of any Home Occupation activity outside of said building." Record 11. Thus, even though the county is not required to apply RLDC 92.020(B) and (E) consistently with the prior version of ORS 215.448(1) and cases interpreting that statute, it appears that the county has attempted to do so.[2]

The second assignment of error is denied.

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[1]Such an interpretation would still be subject to review for whether it is consistent with the language, purpose, and the policy underlying the local provision being interpreted. ORS 197.829(1)(a) through (c).

[2]The county is entitled to regulate uses such as home occupations more stringently than otherwise required by the current version of ORS 215.448(1). *See Evans v. Multnomah County*, 33 Or LUBA 555, 564-65 (1997) (county can regulate forest template dwellings more stringently than the statute requires).

THIRD ASSIGNMENT OF ERROR

Petitioners contend that the county's findings of compliance with applicable criteria are not adequate or supported by substantial evidence.

A. RLDC 43.030(A)(2)

RLDC 43.030(A)(2) requires a finding that "[t]he proposed use is consistent with the intent and purpose of the Zone in which the property is located and will not exceed the physical capabilities of the land to support the proposal." The purpose of the RR-5 residential zone is to "preserve the rural character of Josephine County while providing areas for rural residential living." RLDC 61.010. The county's finding of compliance with RLDC 43.030(A)(2) states:

> "Home Occupations are authorized [in] the RR-5 zone by Article 61.030(A) RLDC. There is nothing in the record or in the nature of the Home Occupation which suggests that the operation of the Home Occupation will exceed the physical capabilities of the land. The use has very little impact on the land *per se*." Record 10.

Adequate findings must (1) identify the relevant approval standards, (2) set out the facts relied upon, and (3) explain how the facts lead to the conclusion that the request satisfies the approval standards. *Le Roux v. Malheur County*, 30 Or LUBA 268, 271 (1995). Petitioners argue, and we agree, that the county's finding of compliance with RLDC 43.030(A)(2) is inadequate because it fails to explain why the proposed use is consistent with the intent and purpose of the RR-5 zone. The challenged finding does not discuss the intent and purpose of the RR-5 zone, and in pertinent part merely states that home occupations are authorized in the RR-5 zone. However, that home occupations in general are authorized in the RR-5 zone does nothing to explain why this particular home occupation is consistent with the intent and purpose of the zone.

This subassignment of error is sustained.

B. RLDC 92.020(A)

RLDC 92.020(A) requires a finding that the proposed home occupation "shall be subordinate and incidental to the residential use of the property." The county adopted the following finding of compliance with RLDC 92.020(A):

> "The total square footage devoted to residential use is 3124. The total square footage devoted to the Home Occupation use is 1552. The total hours devoted to residential use are 168 [per week], and the total hours devoted to Home Occupation use are 56 [per week]. The Home Occupation use is therefore subordinate and incidental to the residential use." Record 11 (emphasis omitted).

Petitioners contend that the challenged finding is inadequate because it fails to explain why a simple comparison of square footage and hours leads to the conclusion that the proposed home occupation is "subordinate and incidental" to residential use of the property. Petitioners concede that the challenged finding appears to contain an implicit interpretation to the effect that whether a proposed home occupation is "subordinate and incidental" to the primary use for purposes of RLDC 92.020(A) is a matter of comparing square footage and hours devoted to each use. Petitioners also concede that the county's interpretation is, if adequate, entitled to deference unless it is inconsistent with the text of RLDC 92.020(A). ORS 197.829(1)(a).[3] However, petitioners argue that the county's implicit interpretation is inadequate and not entitled to deference, because it fails to account for factors such as business activities occurring outside the garage, and the hours the garage is available, but not used for, business purposes.

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[3]ORS 197.829(1)(a) provides:

> "The Land Use Board of Appeals shall affirm a local government's interpretation of its comprehensive plan and land use regulations, unless the board determines that the local government's interpretation:
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> "(a) Is inconsistent with the express language of the comprehensive plan or land use regulation; * * *"

Intervenor responds, and we agree, that the county's implicit interpretation of RLDC 92.020(A) is adequate for review, and that petitioners have not demonstrated that that interpretation is inconsistent with the text of that provision, or otherwise "clearly wrong." ORS 197.829(1)(a); *Goose Hollow Foothills League v. City of Portland*, 117 Or App 211, 217, 843 P2d 992 (1992). The county's understanding of RLDC 92.020(A) is adequately expressed in the challenged finding; that the county could have adopted a more nuanced interpretation does not demonstrate that the challenged interpretation is beyond the discretion afforded the county by ORS 197.829(1) and *Clark v. Jackson County*, 313 Or 508, 836 P2d 710 (1992). The inquiry under ORS 197.829(1) and *Clark* is whether we can say that "no person could reasonably interpret the provision in the manner that the local body did." *Huntzicker v. Washington County*, 141 Or App 257, 261, 917 P2d 1051, *rev den* 324 Or 322 (1996). We cannot say that no person could reasonably interpret RLDC 92.020(A) as the county has.

This subassignment of error is denied.

C. RLDC 92.020(B)

RLDC 92.020(B) requires a finding that the proposed home occupation "shall not give the outward appearance of a business." The challenged decision states that:

> "All Home Occupation activity will be conducted within the garage building, and there will be no visual indication of any Home Occupation activity outside of said building. The conditions of approval support this finding." Record 11.

Petitioners argue that the county's finding of compliance with RLDC 92.020(B) is inadequate and not supported by substantial evidence. According to petitioners, the record reflects that substantial aspects of the proposed use will occur outside the dwelling or garage. Petitioners cite to testimony that car haulers and commercial towing rigs will deliver, unload, reload and ship vehicles to and from the facility, and that certain vehicles may be shipped off-site for painting, and then shipped back on-site. Further, chemicals, solvents, paint, and

spare parts will be shipped on and off-site for use, disposal or refurbishing. Petitioners also cite to statements in the original application that intervenor would "strive for a business that is conducted inside the shop" and that "[s]ome parts, if large, etc. will be stored outside, but will be shielded from view if possible," as evidence that at least some aspects of the business will occur outside the garage. Record 174, 177. According to petitioners, there is no evidence to support the county's finding that "all" home occupation activities will be conducted inside the garage, and thus that the home occupation does not "give the outward appearance of a business." RLDC 92.020(B).

Intervenor responds by citing to a finding by the planning director that the proposed auto body repair business will be "conducted within an existing structure" and is screened by vegetation "from the view of adjacent properties." Record 187-88. If we understand intervenor's response correctly, he does not necessarily dispute that some aspects of the business (delivery, loading and unloading of vehicles and parts, some storage of large parts) will occur outside the existing garage. Rather he argues that those aspects do not "give the outward appearance of a business" within the meaning of RLDC 92.020(B), because such activities are screened by vegetation from the view of adjoining properties. Intervenor may be correct that outdoor activities associated with the proposed business are consistent with RLDC 92.020(B) if those activities are screened from the view of adjoining properties, but the challenged finding of compliance with RLDC 92.020(B) does not take that position. Instead, the county finds unequivocally that "[a]ll Home Occupation activities will be conducted within the garage * * *." We agree with petitioners that the county's finding to that effect is not supported by substantial evidence.

This subassignment of error is sustained.

C. RLDC 92.020(E)

RLDC 92.020(E) requires in relevant part that the home occupation occur in a dwelling or "in an accessory building which is normally associated with uses permitted in the zoning classification of the property."

In addition to the arguments presented in the second assignment of error, petitioners argue that the decision is inconsistent with RLDC 92.020(E) because that provision requires, in essence, that the garage in which intervenor proposes to operate the home occupation consist of a standard, domestic-style garage, limited in size and function to that necessary to meet its accessory role to residential use of the property. Petitioners point out that intervenor's garage is much larger (44 feet by 56 feet) than a "standard" domestic garage, and has been built or modified to include certain structural features, such as sound-proofing, a large vehicle storage shed, and a paint booth, that are not typical of domestic garages. Petitioners submit that the existing garage is not an "accessory building which is normally associated" with the permitted residential use of the property.

Intervenor responds that the existing garage/shop building was originally permitted as an accessory garage to the residential use on the property, and can still be used for that purpose, notwithstanding modifications to the structure to accommodate intervenor's automobile repair business. Intervenor argues that because the garage already exists and requires no structural changes to use it for the proposed home occupation, the record supports a finding of compliance with RLDC 92.020(E).

Petitioners' argument is premised on their understanding of RLDC 92.020(E), to the effect that it allows home occupations in an accessory structure only when that structure is limited in size and design to that needed for its accessory role. While that might be a plausible interpretation of RLDC 92.020(E), the interpretation implicit in intervenor's response, that RLDC 92.020(E) is not concerned with existing accessory structures that are overbuilt or oversize for their accessory function, also seems plausible. The challenged

decision contains no discussion of RLDC 92.020(E), and no discernible interpretation of that provision. Where a necessary interpretation is inadequate or nonexistent, ORS 197.829(2) allows LUBA to interpret local code provisions in the first instance.[4] However, because the purpose of RLDC 92.050(E) is not clear, and is subject to more than one plausible interpretation, it is more appropriate to remand the decision to the county to adopt findings and any necessary interpretations regarding RLDC 92.020(E). *Thomas v. Wasco County*, 30 Or LUBA 302, 313 (1996).

This subassignment of error is sustained.

D. RLDC 92.020(F)

RLDC 92.020(F) prohibits a home occupation from employing "outside storage." However, petitioners note, the challenged decision allows intervenor to store two vehicles and two pieces of heavy equipment outside, in violation of RLDC 92.020(F). Further, petitioners argue, there is evidence that intervenor will continue past practices of storing various items outside the accessory structure, and thus the county's finding of compliance with RLDC 92.020(F) is not supported by substantial evidence.

Intervenor responds that RLDC 92.020(F) must be read in conjunction with RLDC 92.020(K), which provides that "[n]o outside parking or storage of more than 2 vehicles or 2 pieces of heavy equipment (more than 12,000 pounds) used as part of the business is allowed." Intervenor argues that RLDC 92.020(K) expressly permits outside parking and storage of up to two vehicles and pieces of heavy equipment, and the county's finding of compliance with RLDC 92.020(F) is therefore consistent with RLDC 92.020(K). With respect to other outside storage, intervenor points out that he added a storage shed to the

[4]ORS 197.829(2) provides:

> "If a local government fails to interpret a provision of its comprehensive plan or land use regulations, or if such interpretation is inadequate for review, the board may make its own determination of whether the local government decision is correct."

garage to meet storage needs, and has cleaned up the "junk" that neighbors previously complained about.

We agree with intervenor that allowing specified outside storage pursuant to RLDC 92.020(K) does not violate RLDC 92.020(F), and that the county's finding of compliance with RLDC 92.020(F) is supported by substantial evidence, insofar as it pertains to the vehicles and heavy equipment allowed by RLDC 92.020(K). With respect to other outside storage, intervenor does not dispute that the application contemplates storage of "large pieces" outside the garage. Record 177. Accordingly, we agree with petitioners that the county's decision is inconsistent with RLDC 92.020(F) and not supported by substantial evidence to the extent it allows outside storage of items not listed in RLDC 92.020(K).

This subassignment of error is sustained, in part.

E. RLDC 92.020(H)

RLDC 92.020(H) provides:

> "No home occupation shall require alteration of the structure or involve construction features or the use of electrical or mechanical equipment that would change the character of the structure under the Uniform Building Code [UBC]."[5]

The county found compliance with RLDC 92.020(H) based on a planning staff interpretation of that provision that the commissioners adopted as their own:[6]

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[5]Petitioners explain that, under the UBC, each building is classified "according to its use or the character of its occupancy, as set forth in Table 3-A, as a building of one of [several] occupancy groups." UBC § 301 (1997); Record 58. Table 3-A lists a domestic garage under Group U. Automotive repair shops are either Group S, if work is limited to exchange of parts and maintenance not requiring an open flame or welding, or Group H. Because the proposed use involves welding, petitioners argue, it must be classified as Group H, which is deemed hazardous and which requires special construction standards. Intervenor's brief does not dispute petitioners' explanation of the UBC.

[6]The county's finding of compliance with RLDC 92.020(H) states:

> "The record supports satisfaction of this criteri[on]. Michael Snider of the Planning Department explained the administration of this provision and advised the Board that it is satisfied. His explanation and interpretation of same is hereby adopted." Record 12.

> "[Staff] opined that *what it really means is, that if the structure is going to change such that the category or classification of use changes, and therefore the Building and Safety requirements change because of that, that the Home Occupation has to comply with those as a condition of approval for the Home Occupation permit*. * * * [Staff] went on to explain that they have approved many Home Occupations that would not be permitted or would not be renewable under the current code if [RLDC 92.020(H)] were strictly interpreted." Record 43 (emphasis added).

If we understand the county's interpretation correctly, the county believes that RLDC 92.020(H) allows the county to approve a home occupation in a structure that was not built to UBC standards for that use, as long as the county imposes as a condition of approval that the applicant alter the structure to satisfy the pertinent UBC requirements for that use.[7] If that is the county's interpretation of RLDC 92.020(H), we agree with petitioners that the county's interpretation is inconsistent with that provision. Indeed, such an interpretation is diametrically opposed to the text of that provision, which *prohibits* home occupations that require alteration to a structure in a manner that changes the character of the structure under the UBC. No person could reasonably construe RLDC 92.020(H) in the manner the county has, to allow what that provision plainly prohibits. ORS 197.829(1); *Huntzicker*, 141 Or App at 261.[8]

At oral argument, intervenor contended that, because county staff has applied its interpretation of RLDC 92.020(H) in other cases, the county is required to continue applying

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[7]It is possible that the county's finding of compliance with RLDC 92.020(H) is based on the county's implicit determination that the *existing* garage requires no alteration in order to comply with UBC standards applicable to Group H automobile repair facilities. However, the challenged finding merely states that "[t]he record supports satisfaction of this criteri[on]." Record 12. If the county intended to find compliance with RLDC 92.020(H) based on a determination that the existing garage requires no alteration under the UBC, the county's finding is inadequate to express that position. In addition, intervenor points to no evidence in the record suggesting that the existing garage complies with UBC provisions applicable to the proposed automobile repair business.

[8]In any case, as petitioners point out, even if the county's interpretation of RLDC 92.020(H) were within the county's discretion under ORS 197.829(1) and *Clark*, the county failed to act consistently with that interpretation by either (1) requiring that intervenor demonstrate that the existing garage complies with the UBC standards relevant to the proposed use, or (2) conditioning its approval on altering the garage to meet those standards. The only pertinent condition imposed merely states that "[a]ny alteration of the existing structure used for the home occupation must be approved by the Planning Director." Record 16.

that interpretation in this case, regardless of its merits. Intervenor cites to *Holland v. City of Cannon Beach*, 154 Or App 450, 962 P2d 701, *rev den* 328 Or 115 (1998), for the proposition that, having adopted an interpretation of RLDC 92.020(H), the county cannot now "change the goal-posts" by reinterpreting that provision. However, *Holland* involved a standard that the city treated as inapplicable during all points of the proceedings before the city until the decision was remanded by the Court of Appeals, at which point the city sought to apply that standard as a basis to deny the application. The Court of Appeals held that the city's actions violated ORS 227.178(3), which requires that approval or denial of an application be based upon the standards and criteria that were applicable at the time the application was first submitted. There is no question in this case that RLDC 92.020(H) was applicable at the time the application was submitted and throughout the proceedings below. As construed in *Holland*, ORS 227.178(3) constrains a local government's ability to change interpretations regarding the *applicability* of its approval criteria, but we do not read *Holland* as constraining reinterpretations of the *meaning* of indisputably applicable standards. *See Alexanderson v. Clackamas County*, 126 Or App 549, 552, 869 P2d 873, *rev den* 319 Or 150 (1994) (in the absence of any indication that different interpretations are the product of a design to act arbitrarily or inconsistently from case to case, a county hearings officer is not bound to follow the previously applied interpretations of planning staff). Even if *Holland* does so, we perceive nothing in that case that requires LUBA or the Court of Appeals to affirm an interpretation, no matter how long-standing, that is inconsistent with the express text of the relevant provision and "clearly wrong."

This subassignment of error is sustained.

F. RLDC 92.020(M)

RLDC 92.020(M) provides that "[n]o significant sight, sound, smell, vibration, traffic, or other impacts associated with the operation of the home occupation shall be detectable outside of the property lines." The county's finding of compliance with RLDC

92.020(M) states that: "The conditions of approval require compliance with this criterion. The standard does not mean that all impacts shall be eliminated." Record 13.

Petitioners argue that the county's finding is inadequate, because it relies solely on the tautology that RLDC 92.020(M) is met because the conditions of approval require that it be met. According to petitioners, the county cannot *establish* that the proposed use complies with criteria such as RLDC 92.020(M) by simply imposing a condition of compliance with that criterion. Petitioners argue that the county must first determine whether the proposal can comply with the criterion, as conditioned, and then impose conditions to ensure that compliance. *Meyer v. City of Portland*, 67 Or App 274, 678 P2d 741, *rev den* 297 Or 82 (1984); *Thomas*, 30 Or LUBA at 311; *Rhyne v. Multnomah County*, 23 Or LUBA 442 (1992).

Further, petitioners argue, the county's finding fails to explain why the proposed use complies with RLDC 92.020(M), particularly given evidence that operation of the business in the past has created visual, noise and odor impacts on adjoining properties, and the lack of any basis to determine that such impacts will or can be ameliorated. Although the challenged finding states that all impacts need not be eliminated under RLDC 92.020(M), petitioners argue that the finding merely states the obvious and fails to explain why the identified impacts are not "significant" within the meaning of RLDC 92.020(M).

Intervenor cites to general findings in another part of the challenged decision, as supporting the county's finding of compliance with RLDC 92.020(M):

> "The authorization of the permit will not be detrimental to the character of the adjoining land uses and will not infringe upon their continued uses. This home occupation is an auto body repair business to be conducted within an existing structure. The structure has been sound insulated to contain noise, all vehicles and parts will be stored within the existing structure, any chemicals used will be stored in an approved fire proof cabinet, disposal of toxic chemicals will be through a licensed chemical disposal company, and painting will be done off site in an approved paint booth under a contract of use agreement. The applicant will use personal vehicles in pick-up and delivery of parts and vehicles. Hand tools, power tools, air tools, welder, compressor and vacuum will be located and used in the shop. Occasionally, UPS may deliver a part

> and a car hauler may deliver a vehicle. The hours of operation will be from 8 a.m. to 8 p.m. Monday through Saturday and on rare occasion Sunday. The business is an owner operated business. Employees are family members that live at the property. The added traffic will be minimal because the nature of the business is to work on long term projects (projects that take approximately 2 months to complete). The applicant's property consists of 5.00 acres. The structure is surrounded by trees and bushes that adequately buffer and screen the structure and business from the view of adjacent properties.
>
> "* * * * *
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> "*It is determined that approval of this home occupation permit will not have significant detrimental impacts on the neighborhood* * * *[.]" Record 14-15 (emphasis added).

Intervenor argues that the county's findings must be read as a whole, and that any inadequacies in the county's finding of compliance with RLDC 92.020(M) are redressed by the above-quoted finding.

We agree with petitioners that the county's finding of compliance with RLDC 92.020(M) is inadequate, in large part because it establishes compliance with that provision by simply imposing a condition of compliance, without any attempt to demonstrate that the proposed use, as conditioned, can comply with RLDC 92.020(M). We also agree that the challenged finding is inadequate because it fails to discuss whether identified noise, sight and odor impacts are detectable at the property line and if so whether they are "significant." Intervenor may be correct that the county's findings must be read as a whole, and that inadequacies in the county's finding of compliance with RLDC 92.020(M) may be redressed by other findings. However, although the converse might be true, a finding that there are no "significant detrimental impacts on the *neighborhood*" is not equivalent to a finding that there are no such impacts *detectable at the property line*. We agree with petitioners that the county's findings, even taken as a whole, are inadequate to demonstrate compliance with RLDC 92.020(M).

This subassignment of error is sustained.

G. RLDC 92.020(O)

RLDC 92.020(O) requires that

> "No materials or commodities shall be delivered to or from the property which are of such bulk or quantity as to require delivery by a commercial vehicle or trailer (exceeding 2.5 tons GVW [Gross Vehicle Weight]) not including a licensed parcel service or United States Mail."

The county's finding of compliance with RLDC 92.020(O) merely states that "[t]he record reflects that this criterion will be satisfied. The conditions of approval assure compliance." Record 13. Petitioners contend that the county's finding of compliance is conclusory and inadequate, and that nothing in the record demonstrates compliance with RLDC 92.020(O). Petitioners point out that, as defined at ORS 801.298, "GVW" or "Gross Vehicle Weight," means "the value specified by the manufacturer as the maximum loaded weight of a single or a combination vehicle." Petitioners cite to testimony that large car haulers routinely deliver wrecked vehicles to the property, and notes that the application itself concedes that car haulers will be used to carry severely damaged vehicles to the work site. According to petitioners, "GVW" as defined by ORS 801.298 means the loaded weight of the hauler and the wrecked car. *See* ORS 801.330 (defining "loaded weight"). Petitioners cite to evidence that the weight of a car hauler loaded with even a small wrecked vehicle would weigh more than 2.5 tons.

Intervenor responds that he will personally tow most of the cars delivered to the site, and that the occasions on which car haulers are needed to deliver untowable cars will be rare. In any case, intervenor argues, the conditions of approval require compliance with RLDC 92.020(O), and those conditions are adequate to ensure no violations of that provision occur.

We agree with petitioners that the county's finding of compliance with RLDC 92.020(O) is conclusory and inadequate, particularly given the applicant's own evidence that the proposal involves the occasional delivery of vehicles in a manner that may violate that provision. The condition of approval that intervenor cites to merely imposes compliance with

RLDC 92.020(O) as a condition of approval and, as such, is inadequate to establish that the proposed use can comply with that criterion.

This subassignment of error is sustained.

The third assignment of error is sustained, in part.

FIRST ASSIGNMENT OF ERROR

Petitioners argue that the county committed a procedural error prejudicial to their substantial rights because, of the three commissioners who signed the final written decision, only one attended each of the evidentiary hearings and participated in the December 23, 1998 oral decision to deny petitioners' appeal.

We need not resolve whether petitioners are correct that the same majority of commissioners that participate in the evidentiary hearings and in an oral vote on the merits of the application must also sign and adopt the final written decision. Our resolution of the third assignment of error requires remand for the county to adopt adequate findings of compliance with several applicable criteria, along with any necessary interpretations of law. In doing so, the present board of commissioners must conduct additional proceedings which may or may not include new evidentiary proceedings, but which in any case will entail review of the record compiled before the previous board. Petitioners do not contend that such review is inadequate to cure the error or prejudice to petitioners' substantial rights, if any, which resulted from the change in the board's personnel between the oral decision and adoption of the final written decision.

The first assignment of error is denied.

The county's decision is remanded.