BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

DIRK KNUDSEN,
Petitioner,

vs.

WASHINGTON COUNTY,
Respondent,

and

BEAVERTON SCHOOL DISTRICT #48,
Intervenor-Respondent.

LUBA No. 2000-137

FINAL OPINION
AND ORDER

Appeal from Washington County.

William C. Cox, Portland, and Gary P. Shepherd, Portland, filed the petition for review. Gary P. Shepherd argued on behalf of petitioner.

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

Jack L. Orchard, Portland, filed a response brief and argued on behalf of intervenor-respondent. With him on the brief was Ball Janik LLP.

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

AFFIRMED 02/27/2001

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

Opinion by Briggs.

NATURE OF THE DECISION

Petitioner appeals a hearings officer's decision approving a development plan for an elementary school.

MOTION TO INTERVENE

Beaverton School District #48 (intervenor), the applicant below, moves to intervene on the side of respondent.[1] There is no opposition to the motion, and it is allowed.

FACTS

The subject property is an 8.39-acre parcel zoned Residential-6 units per acre (R-6). Temporary classrooms for a kindergarten are located in the western portion of the property. Residential lots adjoin the property on three sides. Some of these lots are developed with single-family homes. On the south side, a middle school is located across NW Skycrest Parkway, which provides access to the proposed elementary school.

Intervenor's proposal includes a 72,000-square-foot, two-story building located in the center of the subject property, with its front doors facing east. The main access to the property for buses, students and staff is located on the south side of the property. In addition, intervenor initially proposed to locate 92 parking spaces and a student drop-off/loading area on the eastern third of the property. Of the 92 parking spaces, 12 were head-in parking spaces facing the dwellings to the east. An ingress-only access was proposed at the southeast corner of the property, adjacent to petitioner's property.[2] Intervenor also proposed to install slatted cyclone fencing and a 12-foot-wide landscaped area along its eastern property line as a buffer

[1]Although both the county and intervenor submitted response briefs, their responses to the assignments of error are essentially the same. Therefore, we refer to them as "respondents."

[2]At oral argument, respondents explained that the latest development plan submitted to the county pursuant to the hearings officer's decision eliminates the easternmost ingress-only access.

from the residential dwellings to the east. In addition, intervenor proposed a landscaped area in the center of the eastern parking lot in order to preserve existing trees.

The county hearings officer reviewed the application and approved the site plan, with modifications to address issues raised by neighbors regarding the impact the proposed development plan would have on the neighborhood. Specifically, the hearings officer required that the 12 head-in parking spaces on the eastern boundary be removed and replaced with parallel parking spaces and a wider landscaped buffer. He required a movable gate to block vehicle access to the eastern parking area during non-school hours, and required that a solid fence be constructed to shield residents of the dwellings to the east from headlight glare, noise and fumes from the parking and drop-off/loading areas.

This appeal followed.

FIRST ASSIGNMENT OF ERROR

Washington County Community Development Code (CDC) provides that certain developments, including the proposed elementary school, must comply with development standards set out in CDC 406. CDC 406-2 provides, in relevant part, that the development plan for the elementary school:

> "In addition to the requirements of [CDC] 406-1, all * * * structures and site plans shall:
>
> "* * * * *
>
> ".5 *Arrange structures and use areas for compatibility* with adjacent developments and surrounding land uses, using the following design and siting techniques:
>
> "* * * * *
>
> "B. *Orient major service activity areas* (e.g., loading and delivery areas) of the proposed development *away from existing dwellings*[.]" (Emphasis added.)

Petitioner argues that the county's decision fails to comply with this standard, because a major service activity area is located adjacent to the dwellings to the east.

Petitioner contends that the words "orient" and "away" in CDC 406-2.5.B clearly mean that major service areas cannot be located adjacent to existing dwellings. Petitioner points to portions of the hearings officer's decision where the hearings officer describes the eastern access, the eastern parking area and the student drop-off/loading area as cumulatively having the attributes of a "major service activity area." If that is the case, petitioner argues, CDC 406-2.5.B is satisfied only if the school district relocates the parking area and the student drop-off/loading area to another portion of the site.

Respondents provide two responses to petitioner's argument. First, respondents argue that the provisions of CDC 406-2.5.A-C are not mandatory criteria. According to the county, the CDC requires that a proposal be compatible with adjacent developments. In respondents' view, CDC 406-2.5.B is merely one of three strategies that the county could use to ensure compatibility and, therefore, any failure to comply with CDC 406-2.5.B does not provide a basis for reversal or remand.

We reject that argument. CDC 406-2.5.B is clearly a mandatory design and siting requirement. As written, it requires that an applicant demonstrate that a proposed development plan will "orient major service activity areas * * * away from existing dwellings."

The hearings officer's decision concludes that the terms "orient" and "major service activity areas" are "inherently vague." Record 22. While the decision does not explicitly interpret those terms, we believe that the hearings officer adopted an implicit interpretation that is sufficiently articulated for our review. *Alliance for Responsible Land Use v. Deschutes Cty.*, 149 Or App 259, 942 P2d 836 (1997), *rev dismissed* 327 Or 555 (1998). We review the hearings officer's interpretation of CDC 406-2.5.B to determine whether it is reasonable and correct. *Gage v. City of Portland*, 319 Or 308, 317, 877 P2d 1187 (1994).

A. "Orient * * * away from existing dwellings"

In his decision, the hearings officer concludes that the student drop-off/loading area is

not oriented towards the dwellings to the east because it is "situated south of the school site (i.e., not facing the homes east of the site) and [is] separated from the nearest dwellings by about 160 feet." Record 23. In addition, the hearings officer concluded that the designated area for parents to drop off their children is not oriented towards the dwellings to the east because it is separated by distance and by a "substantial treed island" and other landscaping. *Id*. We believe that these conclusions make it relatively clear that the hearings officer interpreted the phrase "orient * * * away from existing dwellings" to mean siting in such a way as to direct impacts away from existing dwellings.

Petitioner argues that the dictionary meanings of "orient" and "away" make it plain that the hearings officer's interpretation is incorrect, and that the only proper interpretation of the operative phrase is to locate away from existing dwellings.

We look at the text and context of the words to determine their meaning. *PGE v. Bureau of Labor and Industries*, 317 Or 606, 610, 859 P2d 1143 (1993). *Webster's Third New Int'l Dictionary*, 1591 (unabridged ed 1981) defines "orient" to mean "to direct toward" or "place in relation to." These definitions of the word "orient" embrace two distinct concepts. The first is *directional* and relates to the activity itself without regard to where the activity is placed on the site. For example, a building's front door could be oriented to the north, even if the building is located next to the southern property line. The second is *locational* and relates solely to where the activity is located on the site. For example, a building could be oriented on the northwest corner of the site by placing the building in the northwest corner, no matter which direction the front door faces.

The word "away" is defined in this context to mean "at a little distance," or "in another direction; *esp* **:** in the opposite direction." *Id*. at 152. These definitions, like the above definitions of "orient," permit "awayness" to be achieved by (1) physically locating the activity in the area of the site away from the adjoining dwellings or (2) directing the

activity away from the adjoining dwellings, even if it is located in close proximity to the adjoining dwellings.

It is not disputed that the area for parents to drop off and pick up students is physically located in close proximity to the adjoining dwellings. It is not oriented away from the dwellings in a locational sense. The only question is whether the drop-off and pick-up activity is directed away from the adjoining dwellings, even though it is sited close to those dwellings. The hearings officer's findings and rationale are somewhat difficult to follow. This is probably attributable to the difficulty of applying the concept of directional orientation to a major service activity that lacks a clear unidirectional referent (such as a front door) that can be oriented in a particular direction. Fairly read, the hearings officer's decision solves this problem by focusing on the "impacts" of the activity and requiring that those impacts be sufficiently buffered so that they are directed away from the adjoining dwellings.[3] The hearings officer's approach is susceptible to the criticism that it essentially makes an "orient away" criterion into a "mitigation" criterion. Nevertheless, the approach employed by the hearings officer is not an unreasonable approach to give the operative language "orient" and "away" both locational and directional meanings. Failing to do so, and giving the words the meaning that petitioner suggests is required, would be subject to the criticism that it changes the word "orient" to the word "locate."

We believe that the hearings officer's interpretation is a reasonable and correct interpretation of the phrase "orient * * * away from existing dwellings." Therefore, the hearings officer's determination that, as modified, the parking areas and the student drop-off area are oriented away from existing dwellings because they do not face the dwellings to the east, or are separated by distance or an intervening object such as a wall or landscaping that buffers any offsite impacts, is sufficient to satisfy CDC 406-2.5.B.

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[3]Since the ultimate legal standard under CDC 406-2.5 is compatibility, there is logic in focusing on impacts and attempting to redirect those impacts so that effects on adjoining dwellings will be mitigated.

B. "Major service activity areas"

Respondents argue that the hearings officer also determined that particular activities that might otherwise be characterized as "major service activit[ies]" can be mitigated to such an extent that they are no longer major. Respondents argue that the hearings officer's decision can be sustained on this alternative basis.

We have already concluded that the hearings officer's interpretation of "orient * * * away" and his conclusion that the areas that may be considered "major service activity areas" are oriented away from existing dwellings are sufficient to satisfy CDC 406-2.5.B. We therefore need not consider whether the hearings officer sufficiently described the alternative theory that respondents identify.

The first assignment of error is denied.

SECOND ASSIGNMENT OF ERROR

Petitioner argues that the findings the county adopted regarding CDC 406-2.5.B are not supported by substantial evidence. In particular, petitioner argues that there is no evidence in the record to show that a solid fence and the other mitigating measures imposed by the hearings officer will block or mitigate light, noise and fumes.

Respondents contend that, as a whole, the hearings officer's determination that the proposed school will be compatible with adjacent developments and surrounding land uses is supported by substantial evidence. According to respondents, it is not necessary to provide evidence regarding air quality and noise because the solid wall and additional landscaping will lessen those impacts and thereby achieve compatibility.

CDC 406-2.5 does not require that impacts from a proposed use be eliminated—only that the proposed use will be compatible with adjacent development and surrounding land uses. Opponents testified that the limited landscape buffer and the cyclone fencing that intervenor originally proposed would not prevent light, noise and exhaust fumes from drifting over to the adjacent dwellings. In response, the hearings officer imposed conditions

that reduced the intensity of the proposed activity, increased the landscaping and required a solid wall. With those modifications and conditions, the hearings officer concluded that the proposed development will satisfy CDC 406-2.5.

Recognizing the subjective nature of the compatibility standard in CDC 406-2.5, we believe that there is substantial evidence in the record to demonstrate that the proposal, as modified, will be compatible with adjacent development. The second assignment of error is denied.

The county's decision is affirmed.