

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

3  
4 ROBERTA STEWART,  
5 *Petitioner,*

6  
7 vs.

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9 COOS COUNTY,  
10 *Respondent,*

11 and

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13  
14 KAETLYN ROSS,  
15 *Intervenor-Respondent.*

16  
17 LUBA No. 2003-103

18  
19 FINAL OPINION  
20 AND ORDER

21  
22 Appeal from Coos County.

23  
24 Roberta Stewart, Bandon, filed the petition for review and argued on her own behalf.

25  
26 No appearance by respondent Coos County.

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28 David R. Lundgren, Bandon, filed the response brief and argued on behalf of  
29 intervenor-respondent.

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

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34 AFFIRMED

10/22/2003

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

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**NATURE OF THE DECISION**

Petitioner appeals a county decision not to revoke a zoning compliance letter authorizing a home occupation.

**MOTION TO INTERVENE**

Kaetlyn Ross (intervenor), the applicant below, moves to intervene on the side of respondent. There is no opposition to the motion and it is allowed.

**FACTS**

In July 2002, intervenor moved her residence and business from the City of Bandon to her present location approximately three miles southeast of the city on Geiger Creek Road.<sup>1</sup> Intervenor’s property includes 5.16 acres, and is developed with a main dwelling, a guest house and a small parking area. The property is zoned Rural Residential, 5-acre minimum (RR-5). Petitioner’s property is located across Geiger Creek Road from intervenor.

Intervenor advertises herself as a Certified Pilates Instructor, ACE Certified Personal Trainer, Nia Blue Belt, Yuen Energetics and Reike Practitioner. Intervenor offers personal training sessions and group classes, as well as workshops. In a typical week, six group classes and seven personal training sessions are scheduled between the hours of 9:30 AM and 7:00 PM. Intervenor conducts the classes inside her residence, does not have employees, and does not engage in retail sales. Clients travel to the subject property via Geiger Creek Road and park in intervenor’s parking area.

In August 2002, petitioner and other neighbors became concerned about the increase in traffic on Geiger Creek Road. Petitioner asked intervenor whether she had obtained county approval for a home occupation permit. Until that time, intervenor was not aware that a home occupation permit was necessary to conduct her business at her home. Intervenor then

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<sup>1</sup> Geiger Creek Road is a narrow, private road that serves seven properties. It is graded and improved with a gravel surface that varies in width from between 12 and 14 feet.

1 applied with the county for approval of her home occupation. The county issued a zoning  
2 compliance letter approving the home occupation on September 27, 2002.

3 After continued complaints from petitioner and other neighbors, the county initiated a  
4 revocation hearing to determine whether the home occupation permit had been properly  
5 issued. On February 6, 2003, the county planning commission (PC) held a hearing and on  
6 February 13, 2003 voted to allow the home occupation to continue, after concluding that  
7 intervenor had demonstrated that she continued to comply with the county's home  
8 occupation permit requirements. Petitioner and others appealed the PC decision to the board  
9 of county commissioners (BOC), which held a hearing on the appeal on April 24, 2003. On  
10 June 10, 2003, the BOC adopted a decision upholding the PC's decision. This appeal  
11 followed.

12 **INTRODUCTION**

13 ORS 215.448 authorizes counties to allow home occupations and parking of vehicles  
14 in any zone.<sup>2</sup> Under the Coos County Zoning and Land Development Ordinance (CCZLDO),  
15 the planning director is authorized to issue a zoning verification letter allowing a home  
16 occupation, provided the home occupation is allowed within the zoning district where the  
17 home occupation is to be located, and the proposed home occupation falls within the  
18 definition of that term set out in CCZLDO 2.1.200.<sup>3</sup> CCZLDO 4.2.400 Table 4.2c specifies

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<sup>2</sup> ORS 215.448 provides in pertinent part:

“(1) 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. \* \* \*

“\* \* \* \* \*

“(2) The governing body of the county or its designate may establish additional reasonable conditions of approval for the establishment of a home occupation under subsection (1) of this section.”

<sup>3</sup> CCZLDO 2.1.200 defines “Home Occupation” as follows:

1 that a home occupation is allowed within the R-5 zone, subject to CCZLDO 4.2.900,  
2 condition 103. That condition provides that

3            “[T]he county shall review a permit allowing a home occupation \* \* \* every  
4            12 months following the date the permit was issued and may continue the  
5            permit of the use continues to comply with the requirements of the use’s  
6            definitions.”

7 The planning director’s September 27, 2002 zoning clearance letter concluding that  
8 intervenor’s business is a home occupation that may be allowed on the subject property was  
9 not appealed and is presumably final.

10            However, CCZLDO 1.3.300 allows the county to revoke any permit or verification  
11 letter:

12            “The Hearings Body or Board of Commissioners may revoke any permit or  
13            verification letter (also referred to as zoning compliance letter or zoning  
14            clearance letter) if it is determined that the permit was issued on erroneous  
15            information or issued in error.”

16 Revocation hearings are conducted pursuant to standard county public hearing procedures  
17 and may be held on motion of the hearings body or BOC or at the request of an interested  
18 person when there is reasonable cause to believe the CCZLDO has been violated.<sup>4</sup>

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“Home occupations constitutes businesses that are operated entirely within a dwelling by a member of the family residing in the dwelling. Home occupations shall not employ more than five (5) full or part-time persons. Examples of home occupations include but are not limited to: beauty shops, engravers, professional offices, etc.

“Home occupations must be conducted in such a manner so as not to give an outward appearance nor outwardly manifest any characteristic of a business in the ordinary meaning of the term. Home occupations must not interfere with existing uses on nearby land or with other uses permitted in the zone in which the property is located. Home occupations shall not involve the retail sale of a product on the premises. Home occupations shall not occupy more than 30% of the usable floor area of the dwelling, nor shall occupations use any detached accessory building. On premise signs advertising home occupations shall not exceed six (6) square feet of copy area.”

<sup>4</sup> CCZLDO 1.3.600 provides:

“A revocation hearing may be held by the Hearings Body or the Board of Commissioners. The Hearings Body or Board of Commissioners may hold a revocation hearing on its own

1 County staff scheduled the revocation hearing before the PC based upon the issues  
2 raised by petitioner to determine whether the zoning clearance sheet was issued in error.<sup>5</sup>  
3 Record Volume I, 42.<sup>6</sup>

4 **FIRST ASSIGNMENT OF ERROR**

5 The revocation hearings before the PC and the BOC were conducted pursuant to the  
6 county’s quasi-judicial public hearing provisions. *See* n 4. CCZLDO 5.7.300(4) establishes  
7 the burden of proof in such hearings:

8 “Each land use decision shall be supported by substantial evidence satisfying  
9 applicable review criteria. The applicant shall be responsible for presenting  
10 said evidence. *The burden of proof rests with the applicant.*” (Emphasis  
11 added.)

12 CCZLDO 5.7.300(4) is consistent with the general principle that an applicant for  
13 quasi-judicial land use approval has the burden of proof throughout the quasi-judicial process  
14 to demonstrate that all applicable approval criteria have been satisfied. *Rochlin v. Multnomah*  
15 *County*, 35 Or LUBA 333, 348 (1998), *aff’d* 159 Or App 681, 981 P2d 399 (1999). The  
16 pertinent question appears to be who is the “applicant” in revocation hearings under the  
17 CCZLDO.

18 The PC interpreted CCZLDO 5.7.300(4) to impose the burden of proof on intervenor,  
19 as the initial applicant for the home occupation permit. Record Volume II, 8. When the  
20 matter was appealed to the BOC, however, the BOC rather clearly shifted the burden of proof

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motion or at the request of an interested person when there is reasonable cause to believe that  
the provisions of this Ordinance have been violated.”

CCZLDO 1.3.500 provides:

“No permit or verification letter shall be revoked without a public hearing held pursuant to  
the provisions of Article 5.7 (Public Hearings).”

<sup>5</sup> Although intervenor’s response brief questions whether there was reasonable cause to hold a revocation  
hearing in the first place, intervenor did not independently appeal the county’s decision and did not file a cross-  
petition for review. Therefore, that issue is not before us.

<sup>6</sup> The county filed a record consisting of two volumes, each of which begins at page one. We therefore  
refer to pertinent parts of the record as Volume I or II, and then cite the page.

1 to petitioner. Petitioner argues that the BOC erred in shifting the burden of proof to her.  
2 According to petitioner, intervenor is the “applicant” in this proceeding and, therefore,  
3 intervenor bears the burden throughout the local proceedings of demonstrating that her  
4 business falls within the county’s definition of “home occupation.”

5 The BOC concluded that petitioner is the “applicant,” because she appealed the PC’s  
6 decision not to revoke intervenor’s home occupation permit, stating:

7 “\* \* \* During her initial application for a Zoning Compliance Letter,  
8 [intervenor] bore the burden of proving that her business met the requirements  
9 of a home occupation. Then, during the Planning Commission’s revocation  
10 hearing, [intervenor] again was shouldered with the burden of proving that the  
11 initial Zoning Compliance Letter had not been issued in error. Now, the  
12 petitioner[] seek[s] our review of the Planning Commission’s decision and  
13 ask[s] that we reverse this decision. Thus, the burden of proof [now] shifts to  
14 \* \* \* petitioner[] to demonstrate by substantial evidence that [intervenor’s]  
15 business fails to meet the definition of a home occupation set forth in the  
16 CCZLDO.” Record Volume II, 8.

17 “As noted previously, \* \* \* petitioner[] bear[s] the burden of proving that  
18 [intervenor’s] business fails to meet the standards necessary to qualify as a  
19 home occupation. \* \* \*” Record Volume II, 12.

20 The BOC’s findings are somewhat confusing. However, unlike more typical land use  
21 proceedings, where it is generally obvious who is the applicant and therefore who has the  
22 burden of proof, the revocation proceedings that led to the challenged decision was initiated  
23 by petitioner, who believes that the county erred in its earlier decision to permit the home  
24 occupation. In that situation, we do not believe that, as a matter of law, the county must  
25 require the successful permit applicant to again carry the ultimate burden of demonstrating  
26 compliance with the criteria that led to approval of the initial permit. The county could, as it  
27 apparently did here, conclude that the proponent of the revocation has the ultimate burden of  
28 demonstrating that the home occupation permit was issued in error.

29 The first assignment of error is denied.

1 **SECOND ASSIGNMENT OF ERROR**

2 Petitioner challenges the county’s interpretation and the evidentiary support for  
3 CCZLDO 2.1.200(4) and (5).<sup>7</sup>

4 **A. CCZLDO 2.1.200(4)**

5 CCZLDO 2.1.200(4) provides:

6 “[Home occupations] must be conducted in such a manner so as not to give an  
7 outward appearance, nor outwardly manifest any characteristic of a business  
8 in the ordinary meaning of that term.”

9 According to petitioner, the increase in traffic on Geiger Creek Road makes it  
10 obvious that some sort of business is occurring on intervenor’s property. Petitioner argues  
11 that it was petitioner’s initial observations of activity on the property that led to the  
12 revocation proceeding. According to petitioner, those observations demonstrate that the  
13 home occupation is being conducted in such a way as give an outward appearance of a  
14 business. Petitioner emphasizes that the number of additional trips or the types of activity  
15 occurring on the property may not demonstrate the “outward appearance” of a business in a  
16 more populated area. However, petitioner argues, in this very rural area, with a single-lane  
17 graveled road used for access for a small number of residences, the business is very  
18 noticeable. Petitioner argues that CCZLDO 2.1.200(4) should be interpreted to prohibit a  
19 home occupation if *any* aspect of the home occupation would lead to a conclusion that  
20 business activities are occurring on the property.

21 In its decision, the BOC rejected petitioner’s interpretation. Instead, the BOC  
22 interpreted CCZLDO 2.1.400(4) to allow for some business-related features, such as a small  
23 sign and business-related parking, provided that the activities of the home occupation as a

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<sup>7</sup> CCZLDO 2.1.200 is not broken down into individual subsections. *See* n 3. The parties, however, both at the local level and here, treat CCZLDO 2.1.200 as though it had nine separate subsections, with each subsection setting out an individual approval criterion. We similarly adopt the parties’ designations for purposes of addressing the second assignment of error.

1 whole does not give the outward appearance of the dwelling being used primarily for  
2 commercial rather than residential purposes.<sup>8</sup>

3 Under ORS 197.829(1), *Clark v. Jackson County*, 313 Or 508, 836 P2d 710 (1992),  
4 and *Church v. Grant County*, 187 Or App 518, 524, 69 P3d 759 (2003), LUBA must sustain  
5 a local government’s interpretation of its own legislation unless that interpretation is  
6 inconsistent with the express language of the plan or regulation, is inconsistent with the  
7 purpose of the plan or regulation, is inconsistent with the underlying policy providing the  
8 basis for the plan or regulation, or is contrary to a state statute, land use goal or rule that the  
9 comprehensive plan provision or land use regulation implements.<sup>9</sup> In reviewing a local

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<sup>8</sup> The BOC’s findings interpreting CCZLDO 2.1.200(4) state, in relevant part:

“\* \* \* [P]etitioner[] allege[s intervenor’s] business is conducted in such a manner so as to give an outward appearance and/or outwardly manifest the characteristics of a business in the ordinary meaning of the term. \* \* \*

“Before we can consider the evidence in this case, we must first determine what is meant by these terms.

“\* \* \* \* \*

“\* \* \* [P]etitioner[ argues] for a strict and literal interpretation of the ‘outward appearance’ language that would require us to disqualify a business for showing literally any outward appearance. [Intervenor] has argued, and the Planning Commission agreed, that such a literal interpretation would render meaningless the language allowing up to five employees and on-premise advertising signs.

“\* \* \* \* \*

“\* \* \* [W]e find that the ordinance does not prohibit a home occupation from giving any outward appearances [of a business.] \* \* \*[U]nder the ordinance[,] a home occupation is prohibited from manifesting characteristics of a business that, when considering the totality of the circumstances, give the outward appearance that the premises [are] being used primarily for commercial rather than residential purposes. Thus, where a business utilizes an on-premise sign of no more than six square feet of copy area, employs no more than five employees who must commute to and from the business, and receives clients during the course of the day, it will not be disqualified from meeting the definition of a home occupation under the ‘outward appearance’ standard. In fact, such characteristics would presumably be unavoidable for businesses such as beauty shops and professional offices, two home occupations expressly endorsed by the CCZLDO definition of a home occupation.” Record Volume II, 8-10.

<sup>9</sup> ORS 197.829(1), provides, in relevant part:



1 government’s interpretation, we consider both the text and context of the ordinance at issue.  
2 *PGE v. Bureau of Labor and Industries*, 317 Or 606, 610-612, 859 P2d 1143 (1993); *Beaver*  
3 *State Sand and Gravel v. Douglas County*, 43 Or LUBA 140, 143-44 (2002), *aff’d* 187 Or  
4 App 241, 65 P3d 1123 (2003).

5 As the BOC recognized, CCZLDO 2.1.200 specifically allows for up to five  
6 employees, for on-premises signage, and for parking on the premises. CCZLDO 2.1.200  
7 specifically identifies beauty shops, engravers, and professional offices as examples of home  
8 occupations. Under petitioner’s proffered interpretation, it would be difficult or impossible to  
9 approve the types of businesses with the number of employees, signage and parking that is  
10 expressly authorized by CCZLDO 2.1.200. The authorized home occupations, signs,  
11 employees and parking would almost always exhibit some characteristics of a business.  
12 While the county perhaps could have interpreted its home occupation requirements in the  
13 manner petitioner advocates, that interpretation is not compelled by the text or context of the  
14 home occupation provisions. The interpretation the BOC did adopt is not inconsistent with  
15 *Clark, Church*, or ORS 197.829(1).

16 Petitioner also argues that the county’s findings with respect to CCZLDO 2.1.200(4)  
17 are not supported by substantial evidence. According to petitioner, the evidence shows that  
18 the increase in traffic traveling to intervenor’s property is clear evidence of business activity  
19 on intervenor’s property, in that the travel occurs during business hours, and at relatively  
20 constant intervals. The county concluded, based on other evidence, that the number of

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“[LUBA] 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:

- “(a) Is inconsistent with the express language of the comprehensive plan or land use regulation;
- “(b) Is inconsistent with the purpose for the comprehensive plan or land use regulation;
- “(c) Is inconsistent with the underlying policy that provides the basis for the comprehensive plan or land use regulation[.]”

1 additional trips generated by intervenor’s business did not rise to the level of showing an  
2 “outward appearance” or “manifest characteristics” of a business because the vehicles did not  
3 all travel on Geiger Creek Road at the same time. In addition, there is evidence that  
4 intervenor does not post a sign advertising the business on the property, as would otherwise  
5 be allowed under the ordinance, and activities are all conducted within intervenor’s  
6 residence, which is set back some distance from Geiger Creek Road. The county could, based  
7 on that evidence, conclude that intervenor’s business does not violate the “outward  
8 appearance” standard as the BOC interpreted it.

9 **B. CCZLDO 2.1.200(5)**

10 CCZLDO 2.1.200(5) provides:

11 “Home occupations must not interfere with existing uses on nearby land, or  
12 other uses permitted in the zone in which the property is located.”

13 Petitioner argued before the county that the county’s “interference” standard includes  
14 the interference local residents encounter on Geiger Creek Road with the intervenor’s clients  
15 as they travel on the road to intervenor’s property. In particular, petitioner argued that the  
16 increased traffic on Geiger Creek Road interferes with her use of her property because, at  
17 times, she has had to slow down or stop along the side of the road to allow intervenor’s  
18 clients to pass. In addition, petitioner argues that the increase in traffic, and the associated  
19 need to pull off the road to let others pass, has caused deterioration to the road. Finally,  
20 petitioner argues that the dust generated by the additional traffic interferes with the permitted  
21 agricultural use of her land.

22 The BOC found that the use of Geiger Creek Road by intervenor’s clients constituted  
23 a *de minimus* impact on neighboring properties that did not rise to the level of “interference”  
24 as that term is used in CCZLDO 2.1.200(5). The BOC concluded that the number of vehicles  
25 using the road to reach intervenor’s property did not unreasonably delay travel on the road,

1 did not cause an large amount of dust, and did not otherwise limit the activities that could  
2 otherwise be conducted on neighboring properties.<sup>10</sup>

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<sup>10</sup> The BOC's findings state, in relevant part:

“\* \* \* [W]e find that petitioner[] occasionally pass[es intervenor's] students while traveling \* \* \* along Geiger Creek Road. Geiger Creek Road is a private road that is governed by a series of private easements. Along some parts of the road it is difficult for two vehicles to pass, especially if one of the vehicles is large. On occasion, one of the passing vehicles is required to either encroach by several inches upon the shoulder of the road or pull into one of the few driveways along the road, so that the other vehicles may pass. By all accounts, this occurs no more than a few times each month. The road is unable to be widened in some areas due to the topography of the area and petitioner[ is] \* \* \* opposed to widening the road in any event.

“We do not believe that these facts support [petitioner's] allegation that [intervenor's] business impermissibly interferes with [her] use of [her] land. First, as we have discussed, Geiger Creek Road is a private road governed by private easements. Issues relating to the use and development of this road are private matters to be worked out among the various easement holders and irreconcilable differences between these holders are the proper consideration of the civil courts, not [the BOC]. Second, this alleged interference relates primarily to the petitioner[s] use of the private road, not [petitioner's] use of [her] land. Third, where travel by [intervenor's] students is clearly within the right-of-way of Geiger Creek Road, the fact that this travel sometimes encroaches the shoulder of the road cannot be the basis for finding any interference with land use.” Record Volume II, 11-12.

“\* \* \* We [also] find that \* \* \* petitioner \* \* \* uses a portion of her land to grow an organic garden. Within an RR-5 zone, agricultural uses are allowed outright, whether they be for profit or not for profit. [Petitioner] grows organic strawberries in her garden, and testified that she relies on these strawberries and other produce fro her garden for sustenance. This past summer, the weather was particularly dry in Coos County. Vehicles traveling on most unpaved roads in the County generated an above-average amount of dust. [Petitioner] testified that due to the proximity of Geiger Creek Road to her garden, this road dust settled onto her strawberries. Apparently, strawberries cannot be washed prior to being frozen and preserved, and [petitioner] testified that she was unable to harvest and preserve her strawberries this past winter as she has in the past.

“Dust from Geiger Creek Road is generated because the road is unpaved. \* \* \* [Petitioner] testified that [she is] opposed to improving and paving the road. Students began visiting [intervenor] at her home shortly after she moved to Geiger Creek Road in late summer 2002. In addition to [intervenor] and her students, five other RR-5 zone residences and at least one forest-zoned property is served by Geiger Creek Road. There is some commercial traffic that uses Geiger Creek Road to travel to and from the forest-zoned property.

“As noted previously, [petitioner] bear[s] the burden of proving that [intervenor's] business fails to meet the standards necessary to qualify as a home occupation. Where [petitioner has] alleged that [intervenor's] students have generated dust by driving on Geiger Creek Road, and that this dust has impermissibly interfered with [petitioner's] ability to conduct a permitted use on her property, \* \* \* petitioner[] must produce substantial evidence to support this conclusion. Presumably, this would require, at the very least, some evidence linking the dust generated by the students' cars to the dust found on her strawberries. However, even this might not be sufficient where the evidence demonstrates that there were other possible

1           Petitioner challenges the evidentiary evidentiary bases for the findings quoted at n 10.  
2           Based on that evidence before it, the BOC could conclude that the intervenor’s business does  
3           not violate CCZLDO 2.1.200(5). The evidence the BOC relied upon included testimony by  
4           intervenor’s clients and other users of the road about the times that they had had to stop to  
5           allow other vehicles to pass; testimony and evidence regarding other dust generators,  
6           including logging trucks and construction vehicles traveling over Geiger Creek Road to reach  
7           other properties; and testimony that intervenor’s business did not interfere with residential  
8           activities on neighboring property. Petitioner’s evidence does not so undermine the evidence  
9           the BOC relied upon as to render the BOC’s reliance on the evidence it did unreasonable.

10           The second assignment of error is denied.

### 11           **THIRD ASSIGNMENT OF ERROR**

12           Petitioner argues that the county misconstrued the applicable law and that the  
13           decision is not supported by substantial evidence because it failed to take into account traffic  
14           and road impacts. Specifically, petitioner argues that the county erred by: (1) concluding that  
15           Geiger Creek Road was not under its jurisdiction; (2) failing to consider impacts of traffic  
16           and the road on existing uses; and (3) failing to consider the county’s Transportation System  
17           Plan (TSP).

18           The portions of the record cited to us by petitioner do not support petitioner’s  
19           assertion that the county views the road as being outside of its regulatory jurisdiction. Rather,  
20           that evidence shows that the county concluded that it cannot impose conditions of approval  
21           that require right-of-way dedication or street improvements over private roads. As the

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sources of the dust in addition to the students’ cars. A review of the record before us shows that [petitioner] failed to meet [her] burden on this issue.

“Based on our review of the evidence, we find that it is unnecessary to consider the parties’ disparate views regarding how the [BOC] should interpret the ‘interference’ standard. Assuming, *arguendo*, [petitioner’s] view that any interference, no matter how *de minimus*, disqualifie[s] a business from meeting the definition of a home occupation, petitioner[ has] failed to prove by substantial evidence an interference caused by [intervenor’s] business. Therefore, we find against petitioner[] on this point.” Record II, 12-13.

1 findings quoted in n 10 indicate, the county did consider the impacts of traffic on use of the  
2 road and use of adjoining properties, and found that traffic generated by the home occupation  
3 does not interfere with existing uses, including use of the road.

4         Petitioner also argues that the county did not consider the impacts the home  
5 occupation may have on other existing uses besides traffic and agriculture. CCZLDO  
6 2.1.200(5) requires that the home occupation not interfere with existing uses. However, as  
7 we explained in our discussion under petitioner’s second assignment of error, the county did  
8 consider the other existing uses in the zone that were brought to the BOC’s attention, but  
9 concluded that the home occupation did not unreasonably interfere with those uses.  
10 Petitioner does not identify any issues raised below regarding other types of existing uses  
11 that the BOC failed to address.

12         Petitioner also argues that the county misconstrued the law by not considering the  
13 county TSP in making its decision. Petitioner, however, does not explain how the TSP  
14 provides independent approval criteria in a revocation hearing on a home occupation permit,  
15 and we do not see that it does. To the extent petitioner argues that traffic and road impacts  
16 must be considered in the decision, those issues are addressed under the second assignment  
17 of error. Petitioner’s arguments under the third assignment of error provide no grounds for  
18 reversing or remanding the decision.

19         The third assignment of error is denied.

20         The county’s decision is affirmed.