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

LANNY J. ROBSON and
JUANITA I. ROBSON,
Petitioners,

vs.

CITY OF LA GRANDE,
Respondent.

LUBA No. 2006-199

FINAL OPINION
AND ORDER

Appeal from City of La Grande.

Lanny J. Robson and Juanita I. Robson, La Grande, filed the petition for review and argued on their own behalf.

Jonel Ricker, La Grande, filed the response brief and argued on behalf of respondent. With him on the brief was Ricker and Roberson.

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

DISMISSED 04/04/2007

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

NATURE OF THE DECISION

Petitioners appeal a city decision that finds that a mushroom buying business is a permitted use in the city’s General Commercial (GC) zone.

FACTS

Petitioners own and operate a motel that abuts the subject property. The property was used as a bulk fuel operation in the past, but that use was discontinued approximately ten years ago. Except for a warehouse building, improvements associated with the bulk fuel operation were removed at that time. Thereafter, except for occasional seasonal use by mushroom buyers, the property has largely been unused. In May of 2005, a number of changes were made to the building on the site. Later, in April 2006, three recreational vehicles (RVs) were connected to electrical outlets on the property. These RVs apparently were used by mushroom operators and their associates. According to petitioners, refrigeration trailers, a refrigeration truck and portable toilets were brought onto the property.

Petitioners complained to the city. Among their complaints about the mushroom business that was being conducted on the subject property in 2006 was their contention that the business is actually an industrial use and is therefore not permitted in the GC zone. Petitioners’ complaint ultimately led to the decision that is before us in this appeal. In a January 10, 2007 Order, we provided the following description of that decision:

“* * * The challenged city council decision agrees with prior decisions by a city planner and the city planning commission that a mushroom buying business is correctly classified as ‘Wholesale, Storage and Distribution-Light,’ a permitted use in the city’s General Commercial zone. [Record 3] The challenged decision rejects petitioners’ contention that a mushroom buying business is an industrial use that is prohibited in the General Commercial zone. The challenged decision also requires that petitioners’ neighbor ‘file a Site Plan Application prior to opening for business in 2007.’ *Id.* The city council adopted the following planning staff caution in support of its decision:

“While considering [petitioners’] concerns, it is important for the discussions to stay focused on the specifics of the appeal,

1 which is the Planning Commission’s decision classifying a
2 mushroom buying business as a permitted use under
3 ‘Wholesale Storage and Distribution-Light.’

4 “‘The [petitioners’] testimony of past RV use, portable toilets,
5 building permits, migrant work camps, and their opinions of
6 what they feel the property owner intends to use the site for are
7 irrelevant to this appeal. Those issues, however, will become
8 relevant at the time that a Site Plan Application is processed by
9 the City.’ Record 7.

10 “We understand the city to have decided in the challenged decision that a
11 business that buys and processes mushrooms is correctly classified as
12 ‘Wholesale, Storage and Distribution-Light,’ which the city found to be a
13 permitted use in the General Commercial zone. The city expressly did not
14 decide whether any specific activities related to the mushroom buying that
15 may have occurred on the property in the past or any specific activities related
16 to mushroom buying and processing that may occur on the property in the
17 future are permitted in the General Commercial zone. We understand the city
18 to have decided that any issues concerning particular future activities and
19 improvements on the neighbor’s property in conjunction with buying and
20 processing mushrooms will be resolved through a separate decision on a site
21 plan for the neighboring property.” *Robson v. City of La Grande*, ___ Or
22 LUBA ___ (LUBA No. 2006-199, Order on Record Objections, January 10,
23 2007), slip op 1-2.

24 We note several additional important facts before turning to petitioners’ assignments
25 of error. Following petitioners’ complaints, the mushroom business operators submitted a
26 site plan application in the fall of 2006 to allow operation of a mushroom business on the
27 property. But that site plan application was later withdrawn and there is no site plan
28 application for the subject property pending before the city at this time. As far as we are
29 informed by the parties, the mushroom business that spawned this controversy and this
30 appeal is no longer operating on the subject property. Finally, it also appears to be
31 undisputed that the year 2003 version of the City of La Grande Land Development Code
32 (LLDC) that applied at the time the city adopted the disputed interpretations no longer
33 applies. Under the year 2006 version of the LLDC, the “Wholesale, Storage and
34 Distribution-Light” use category is no longer a permitted or conditionally permitted category
35 of use in the GC zone.

1 **FIRST ASSIGNMENT OF ERROR**

2 In their first assignment of error petitioners allege the city council improperly refused
3 to consider a number of issues they wished to raise with regard to whether the mushroom
4 business that was operating on the property in 2006, and improvements that were made to
5 accommodate that business violated various city laws. Petitioners complain:

6 “None of the violations already done to the land and structure was addressed
7 by the ‘City.’ By ignoring the Petitioner’s Appeal, the ‘City’ has violated
8 Petitioner’s right to a full and fair hearing.” Petition for Review 10.

9 However, petitioners do not identify any city legislation that grants them a right to
10 demand a hearing on their allegations that improper improvements have been made to the
11 subject property or that other LLDC requirements were violated by the 2006 mushroom
12 operation. The city considered petitioners’ appeal of the planning department’s and planning
13 commission’s decision that a mushroom business qualified as a “Wholesale, Storage and
14 Distribution-Light” in the GC zone. Petitioners complain that the city council should have
15 considered all of the issues they presented in their appeal, but petitioners do not cite any
16 LLDC or other authority for the proposition that the city council was bound to consider and
17 decide issues that the planning commission expressly declined to rule on.

18 The first assignment of error is denied.

19 **PETITIONERS’ SECOND THROUGH FIFTH AND EIGHTH THROUGH TENTH**
20 **ASSIGNMENTS OF ERROR**

21 In their second assignment of error, petitioners allege the city should not have
22 allowed the mushroom business to operate in 2006. In their third assignment of error,
23 petitioners allege the site plan application that was filed in the fall of 2006 should not have
24 been accepted because it was not submitted by the property owner or the property owner’s
25 authorized representative. In their fourth assignment of error, petitioners allege an electrical
26 permit should not have been issued for the subject property. In their fifth assignment of
27 error, petitioners allege any right to continue a nonconforming use on the subject property

1 has been lost. In their eighth assignment of error, petitioners assign error to a city planner’s
2 reference to the 2006 mushroom operation as a *seasonal* operation. In their ninth assignment
3 of error, petitioners argue that RVs were improperly located on the subject in conjunction
4 with the 2006 mushroom business. In their tenth assignment of error, petitioners allege a city
5 planner’s statement that a building official has inspected the subject property is a
6 misrepresentation.

7 Those arguments all challenge decisions, rulings or statements of the city that are not
8 before us in this appeal. None of those arguments provide a basis for reversing or remanding
9 the city’s decision that a mushroom buying and selling business is allowable in the GC zone,
10 which is the only decision that is before us in this appeal.

11 Petitioners second through fifth and eighth through tenth assignments of error are
12 denied.

13 **SIXTH AND SEVENTH ASSIGNMENTS OF ERROR**

14 In their sixth assignment of error, petitioners contend that a mushroom buying
15 business is not a permitted use in the GC zone, and that the city council erred by concluding
16 that such a use could be allowed as a “Wholesale, Storage and Distribution-Light.”

17 As we have noted above, the year 2003 LLDC which allowed “Wholesale, Storage
18 and Distribution-Light” uses as permitted uses in the GC zone no longer applies. It has been
19 replaced by the year 2006 LLDC which does not allow “Wholesale, Storage and
20 Distribution-Light” uses in the GC zone as either permitted or conditional uses. Therefore, a
21 decision by LUBA in this appeal that the city’ council’s interpretation of the 2003 LLDC is
22 correct or incorrect would have no legal effect. A mushroom business could not be allowed
23 in the current GC zone as a “Wholesale, Storage and Distribution-Light” use in any event.
24 Therefore, the legal question presented in the sixth assignment of error is moot. *See Carmel*
25 *Estates, Inc. v. LCDC*, 51 Or App 435, 439, 625 P2d 1367 (1981) (judicial review of an
26 LCDC order that invalidated a county zone change was rendered moot where county adopted

1 new comprehensive plan and zoning map designations for affected property while the appeal
2 of LCDC's order was pending at the Court of Appeals).

3 In their seventh assignment of error, petitioners allege that the mushroom business is
4 inconsistent with the GC zone purpose statement.

5 Because the mushroom business is no longer allowed in the GC zone as a
6 "Wholesale, Storage and Distribution-Light" use, the question of whether a mushroom
7 business is inconsistent with the GC zone purpose statement is also moot.

8 The sixth and seventh assignments of error are moot.

9 The only legal questions that are properly directed at the only city decision that is
10 before us in this appeal are moot. Therefore, this appeal is dismissed as moot.