BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

JAMES REEDER, JAN REEDER,
and MICHAEL C. ROBINSON,
Petitioners,

vs.

MULTNOMAH COUNTY,
Respondent.

LUBA No. 2009-015

FINAL OPINION
AND ORDER

Appeal from Multnomah County.

Michael C. Robinson and Corrinne S. Celko, Portland filed the petition for review and Roger A. Alfred, Portland, argued on behalf of petitioners. With them on the brief was Perkins Coie LLP.

Jed R. Tomkins, Assistant County Attorney, Portland, filed the response brief and argued on behalf of respondent. With him on the brief was Agnes Sowle, County Attorney.

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

REMANDED 07/24/2009

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 a hearings officer's decision denying a conditional use permit application to expand an existing recreational vehicle (RV) park that is a nonconforming use.

FACTS

The subject property is a 219-acre parcel zoned Multiple-Use Agriculture-20 (MUA-20). Approximately ten acres of the parcel is developed with an RV park with at least 53 RV spaces, a restroom/shower building, a community center, a grocery store and office, caretaker's dwelling, laundry building, an RV storage area, a dwelling and several agricultural buildings. Most or all of the RV spaces have full electrical, water and septic hookups, and many are occupied as permanent residences.

The RV park was originally established in 1952, prior to any zoning regulation of RV parks. The RV Park as originally established contained a limited number of spaces and amenities. In 1958, the county first applied zoning to the subject property that required county approval to establish or expand an RV park. Over the intervening years, the RV park has been expanded to its current size and level of development, in part without obtaining county approval. The only relevant county approval occurred in 1990, when the county approved a design review permit that authorized relocation of 14 RV spaces.

In 2007, petitioners applied for a conditional use permit to expand the RV park by 25 new spaces, to be located west of the existing RV park area. Multnomah County Code (MCC) 37.0560 prohibits the county from approving any development on property that is not in full compliance with all applicable MCC provisions and previously issued permit approvals. Early in the proceedings, county staff raised concerns that much of the existing RV park development, including all but 14 of the existing RV spaces, had not been lawfully established. In response, petitioners requested that the county verify 39 RV spaces as a non-

conforming use, in addition to the 14 approved spaces, for a total of 53 spaces. Petitioners did not request verification of other RV park development, such as the grocery store.

Petitioners submitted a number of documents and photographs to the county documenting the history of the RV park since 1952. In particular, petitioners submitted 10 most recent years of rental receipts (1997 to 2007) in support of their request that the county verify as a nonconforming use 53 RV spaces for year-round residency.

Under ORS 215.130(10) and MCC 34.7215(F), evidence of the existence, continuity, nature and extent of a nonconforming use for a ten-year period immediately preceding the date of application creates a rebuttable presumption that (1) the use, as proven, lawfully existed at the time the use became nonconforming and (2) the use has continued uninterrupted until the date of the application. However, the hearings officer found that other evidence the petitioners submitted in support of the application actually rebutted the presumption that all of the 53 existing RV spaces lawfully existed in 1958 at the time the use became nonconforming or were used for year-round residency at that time. The hearings officer determined that year-round residential use began in 1990, and that petitioners had demonstrated that only seven RV spaces, in addition to the 14 spaces approved for relocation in 1990, were lawful nonconforming uses. In addition, the hearings officer determined that several conditions imposed in the 1990 site review approval had not been complied with.

Pursuant to MCC 37.0560, the hearings officer ultimately denied the conditional use permit application to expand the RV park, due to the unverified nonconforming uses and other violations on the property. This appeal followed.

FIRST ASSIGNMENT OF ERROR

A. First Subassignment of Error (Rebuttable Presumption)

Petitioners argue that the hearings officer misconstrued ORS 215.130 and MCC 34.7215 in (1) finding that the presumption created by the evidence of the most recent 10-

year period had been rebutted and (2) considering evidence of the nature and extent of the nonconforming RV park use more than 20 years prior to the date of application.

Under ORS 215.130(10)(a) and MCC 34.7215(F), a county may allow an applicant for nonconforming use verification to prove the existence, continuity, nature and extent of the use only for the 10-year period immediately preceding the date of application. Such evidence "creates a rebuttable presumption that the use, as proven, lawfully existed at the time the applicable zoning ordinance or regulation was adopted and has continued uninterrupted until the date of application[.]"[1] Once that presumption is established, the

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[1] ORS 215.130 provides, in relevant part:

> "(5) The lawful use of any building, structure or land at the time of the enactment or amendment of any zoning ordinance or regulation may be continued. Alteration of any such use may be permitted subject to subsection (9) of this section. * * *
>
> "* * * * *
>
> 7)(a) Any use described in subsection (5) of this section may not be resumed after a period of interruption or abandonment unless the resumed use conforms with the requirements of zoning ordinances or regulations applicable at the time of the proposed resumption.
>
> "* * *
>
> "* * * * *
>
> "(10) A local government may adopt standards and procedures to implement the provisions of this section. The standards and procedures may include but are not limited to the following:
>
> "(a) For purposes of verifying a use under subsection (5) of this section, a county may adopt procedures that allow an applicant for verification to prove the existence, continuity, nature and extent of the use only for the 10-year period immediately preceding the date of application. Evidence proving the existence, continuity, nature and extent of the use for the 10-year period preceding application creates a rebuttable presumption that the use, as proven, lawfully existed at the time the applicable zoning ordinance or regulation was adopted and has continued uninterrupted until the date of application[.]
>
> "* * * * *
>
> "(11) For purposes of verifying a use under subsection (5) of this section, a county may not require an applicant for verification to prove the existence, continuity, nature and

presumption stands unless rebutted by a preponderance of the evidence in the record. *Lawrence v. Clackamas County*, 164 Or App 462, 468, 992 P2d 933 (1999).

As an additional limit on counties, ORS 215.130(11) prohibits counties from requiring an applicant to "prove the existence, continuity, nature and extent of the use for a period exceeding 20 years immediately preceding the date of application." *See* n 1. MCC 34.7215(G) implements ORS 215.130(11), in substantially identical terms.

Petitioners first argue that the hearings officer erred in finding that the presumption established by ORS 215.130(10)(a) and MCC 34.7215(F), based on 10 most recent years of rental receipts (1997 to 2007), was sufficiently rebutted by other evidence submitted by petitioners, such that the hearings officer can rely on evidence older than 10 years from the date of application to verify the requested 53 RV spaces for year-round residential use.

1. Year-Round Residency

With respect to residential use, the hearings officer relied on exhibits submitted by petitioners, particularly a handwritten chronology with a notation that the RV Park was "open all year starting 1990" and guest registers showing that prior to 1990 almost all RV stays were brief (typically one to two days in length) and seasonal, largely confined to March through September.[2] Record 234. The hearings officer concluded that the evidence clearly showed that prior to 1990 the RV park functioned as a seasonal, short-stay campground rather than a residential community, and therefore petitioners failed to demonstrate that year-round residency is a lawfully established aspect of the nonconforming use. Accordingly, the hearings officer concluded that the RV park must comply with the 30-day limit on occupancy imposed on RV campgrounds in the MUA-20 zone.

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extent of the use for a period exceeding 20 years immediately preceding the date of application."

[2] The exhibits, collectively known as Exhibit H.48, were submitted by petitioners' initial representative. Petitioners' subsequent legal counsel attempted to withdraw Exhibit H.48 from the record, claiming that it is inaccurate. The hearings officer declined the attempt, finding that "most if not all of the material is accurate—just unhelpful to the applicant because it rebuts the presumption * * *." Record 29.

As discussed below, petitioners contend that the hearings officer erred in considering evidence of the existence, continuity, nature and extent of the use prior to 20 years before the date of application (1987 to 2007), pursuant to ORS 215.130(11). We understand petitioners to argue that when ORS 215.130(10)(a) and (11) are read together, in determining whether the presumption established by ORS 215.130(10)(a) is rebutted by a preponderance of the evidence, the hearings officer may consider evidence only from the 20-year period described in ORS 215.130(11). Therefore, petitioners argue, the hearings officer erred to the extent she relied on evidence that predates 1987 to determine that the presumption established under ORS 215.130(10)(a) had been rebutted.

According to petitioners, the evidence the hearings officer relied upon from within the 20-year period from 1987 to 2007, including the handwritten notation and guest registers from 1987 to 1990, fail to overcome the presumption created by ORS 215.130(10)(a), based on the 10 most recent years of rental receipts, that year-round residency is a lawfully established part of the nonconforming use. Petitioners contend that it is not clear who made the handwritten notation that the RV park was "open all year starting 1990," and that the guest registers from the period 1987-1990 are incomplete. Further, petitioners argue that the guest registers from 1987 to 1990 indicate that RV stays sometimes extended into the month of October, contrary to the hearings officer's finding that the RV park was typically occupied from March to September. According to petitioners, the evidence properly relied upon from the record does not rebut, by a preponderance of the evidence, the presumption established under ORS 215.130(10)(a) regarding year-round residency.

It is not clear to us whether ORS 215.130(11) places any temporal limit on the evidence the county can consider for purposes of determining whether the presumption set out in ORS 215.130(10)(a) has been rebutted, and therefore whether the county can require the applicant to prove the existence, continuity, nature and extent of the use for a period up to 20 years. ORS 215.130(11) does not refer to the presumption described in

ORS 215.130(10)(a) and says nothing, at least explicitly, about what evidence the county may or may not consider in determining whether the presumption in ORS 215.130(10)(a) has been rebutted. On the other hand, such a limitation may be implicit in the prohibition on requiring the applicant to prove the existence, etc., of the use for a period exceeding 20 years.

We need not decide that issue in the present case, because even if such a limitation were present in the statute, we agree with the county that the evidence from the period from 1987 to 2007 the hearings officer relied upon is sufficient to establish, by a preponderance of the evidence, that year-round residency did not commence until 1990. Petitioners cite nothing in the record suggesting that year-round residency or any RV residential use occurred prior to 1990, and petitioners' critique of the evidence the hearings officer relied upon does little to undermine the hearings officer's conclusions on that point. The record post-dating 1987 supports the hearings officer's finding that prior to 1990 the RV park did not include year-round residency or residential use of RVs. The hearings officer did not err in concluding both that (1) the presumption of year-round residency was rebutted and (2) petitioners failed to establish that year-round residency is a lawful part of the nonconforming use.

2. Number of RV Spaces

With respect to the number of lawful RV spaces, petitioners contend that the hearings officer violated the prohibition in ORS 215.130(11) on requiring the applicant for verification to prove the "nature and extent" of the use for a period exceeding 20 years immediately preceding the date of application. According to petitioners, the hearings officer impermissibly relied on evidence from the period prior to 1987 to limit the number of lawful RV spaces to seven spaces, based on the number of spaces that the hearings officer calculated existed in 1958, the year in which zoning was first applied to the property that made the RV park a nonconforming use. In addition, petitioners argue that any evidence

from 1987 forward that the hearings officer relied upon is not sufficient to rebut the presumption established by ORS 215.130(10)(a) that there are 39 nonconforming RV spaces.

a. ORS 215.130(11)

The hearings officer's decision does not discuss or apply ORS 215.130(11) or MCC 34.7215(G) at all. We agree with petitioners that the hearings officer did not give appropriate effect to the prohibition on requiring the applicant to prove the "nature and extent" of the nonconforming use more than 20 years prior to the date of application. The effect of ORS 215.130(11) is to render "legally irrelevant" evidence regarding the existence, continuity or nature and extent of the use for the period exceeding 20 years from the date of application. *Lawrence v. Clackamas County*, 40 Or LUBA 507, 515 (2001), *aff'd* 180 Or App 495, 43 P3d 1192 (2002) (evidence that a nonconforming use was discontinued more than 20 years prior to the date of the application is legally irrelevant and not a basis to deny the nonconforming use verification).

In its response brief, the county argues that the hearings officer did not err in limiting the number of lawful RV spaces to the seven spaces that the record showed existed in 1957. The county cites *Aguilar v. Washington County*, 201 Or App 640, 645-51, 120 P3d 514 (2005) for the proposition that ORS 215.130(11) does not prohibit a county from requiring proof of the "lawfulness of the use" at the time the use became nonconforming, even if that time was more than 20 years prior to the date of application. In *Aguilar*, the applicants argued that ORS 215.130(11) effectively prohibited the county from requiring them to prove that the nonconforming use was lawful at the time it was established, more than 20 years prior to the date of application. The Court agreed with LUBA and the county, however, that ORS 215.130(11) alters the applicant's evidentiary burden only with respect to the "existence, continuity, nature and extent" of the nonconforming use, and does not alter the burden with respect to the requirement, in ORS 215.130(5), that the applicant prove that use was "lawful * * * at the time of the enactment or amendment of any zoning ordinance or

regulation[.]" *See* n 1. In other words, notwithstanding ORS 215.130(11), an applicant for nonconforming use verification must still show that the use was lawfully established prior to the time the zoning ordinance that prohibited or regulated the use was first applied to the property, even if that date is more than 20 years prior to the date of application for verification.

The county argues that the two fundamental requirements under ORS 215.130(5) and (7) are that the applicant prove that the nonconforming use (1) was lawfully established and (2) has continued uninterrupted since contrary zoning was first applied. According to the county, the Court recognized in *Aguilar* that ORS 215.130(11) affects only the second requirement to prove continuity, but has no impact on the first requirement, to show that the use was lawfully established. The county contends that, under the reasoning in *Aguilar*, because the applicant must prove that the use was "lawfully established" at the time zoning was applied, the applicant must also prove the "nature and extent" of the use at the time zoning is applied. Any expansions that occur after that time for which required approvals were not obtained are not "lawful," the county argues, and therefore cannot be verified as part of a lawful nonconforming use. In other words, the county contends, ORS 215.130(11) affects only the evidentiary burden with respect to continuity, not "nature and extent."

We disagree with the county that ORS 215.130(11) is limited to or affects only the burden of proof with respect to continuity. The issue in *Lawrence* was whether the applicant was required to prove continuity for the period exceeding 20 years prior to the application, while in *Aguilar* the issue was whether the applicant was required to prove that the use was lawful at the time zoning was applied. However, nothing cited to us in either set of opinions suggests that ORS 215.130(11) is concerned only with the question of proving continuity, or that the question of the "nature and extent" of the use is subsumed into the question of whether the use was lawfully established. "Nature and extent" was not an issue in either *Lawrence* or *Aguilar*.

ORS 215.130(11) prohibits counties from requiring that an applicant for a nonconforming use verification prove the "existence, continuity, [or] nature and extent" of the nonconforming use more than 20 years prior to the date of application. "[N]ature and extent" are listed separately from both "existence" and "continuity," and all three matters are clearly subject to the prohibition. Under the county's view of ORS 215.130(11), the prohibition on requiring the applicant to prove the "nature and extent" of the use for the period exceeding 20 years before the date of application has little or no meaning or effect. We therefore reject that view, as inconsistent with the plain language of the statute.

To give effect to the language of ORS 215.130(11), the county can require the applicant to prove the "nature and extent" of the use only for the 20 year period preceding the date of application. Thus, evidence that the nonconforming use was, for example, expanded 25 years prior to the date of application without obtaining required approvals would not be a basis for the county to refuse to verify that expansion, in determining the nature and extent of the nonconforming use. As a practical matter, that means that any expansions that the applicant demonstrates existed 20 years prior to the date of application are part of the "nature and extent" of the nonconforming use, even if evidence is available indicating that those expansions were made without required approvals more than 20 years ago but after the use became nonconforming.

Under the foregoing reading of ORS 215.130(11), the nature and extent of the use as it existed up to 20 years prior to the date of application takes on considerable importance, in circumstances where the rebuttable presumption authorized by ORS 215.130(10)(a) is rebutted. In the present case, that means the county cannot require petitioners to prove the "nature and extent" of the RV park, including the number of RV spaces in existence, prior to the year 1987. As far as we can tell, the only evidence from the period prior to 1987 that the hearings officer relied upon to reject RV spaces involves 15 spaces along the riverfront, which the record shows were developed in 1967 without county approval, and were rejected

for that reason. Record 31-33. Therefore, we agree with petitioners that the hearings officer erred in rejecting those 15 riverfront spaces.[3]

For the remainder of the rejected RV spaces, the hearings officer relied heavily on evidence from the 1990 site design approval, particularly comparisons between the 1990 site plan at Exhibit H.33 and the existing conditions of the site, as shown on two maps submitted by petitioners. We discuss petitioners' challenge to those findings below.

b. Evidence Regarding Number of RV Spaces

Petitioners contend that the evidence the hearings officer relied upon is not sufficient to rebut by a preponderance of the evidence the presumption created by ORS 215.130(10)(a) with respect to the number of RV spaces.

As explained above, it is not clear whether ORS 215.130(11) limits the evidence the county can consider for purposes of determining whether the presumption established under ORS 215.130(10)(a) has been rebutted to evidence related to the 20-year period described in ORS 215.130(11). However, even if the county is so limited, we agree with the county that the evidence cited to us in the record from the period 1987 to 2007 supports the hearings officer's findings that the presumption is rebutted, with respect to the number of RV spaces, and therefore the hearings officer did not err in requiring petitioners to prove the number of RV spaces that existed within the 20-year period beginning in 1987.

As noted, the hearings officer relied heavily on a comparison between a 1990 site plan and two park maps reflecting 2007 conditions. The 1990 site plan was submitted to support a 1990 application to relocate 14 RV spaces and a picnic area. As petitioners note, the 1990 site plan at Exhibit H.33 does not show specific RV spaces, unlike the park map at Exhibit N.3.g (showing the 53 requested RV spaces) and the park map at Exhibit A.13

[3] However, we understand the hearings officer to find, based on notations on the 1990 site plan, that the 15 riverfront spaces did not have utility hookups in 1990, and the existing hookups to those sites were installed after 1990, apparently without county approval. Record 33. Petitioners do not challenge that finding.

(showing 63 existing spaces). However, the 1990 site plan at Exhibit H.33 has labels for specific areas of the RV park that are demarcated by the internal road network. For example, one area is labeled "Existing RV Parking and Hook-ups (To Be Abandoned) New Picnic Area." The hearings officer compared the 1990 site plan to Exhibit N.3.g, which shows the location of the 53 RV spaces for which petitioners request verification. Exhibit N.3.g shows that two RV spaces currently exist in that area, but the hearings officer concluded based on the 1990 site plan that all RV spaces in that area were required to be removed by the 1990 decision, and therefore disallowed those two RV spaces. Record 31-32.

Similarly, the 1990 site plan shows that an area near a nut dryer building was the location of the then-existing septic system, with no indication that any RV spaces were located there, unlike other areas on the plan, where "RV parking (existing)" is carefully denoted. Exhibit N.3.g. depicts eight RV spaces currently in the area near the nut dryer building. The hearings officer concluded that this area was not used for RV parking until after 1990, and accordingly disqualified those eight spaces. Record 32.

Petitioners contend that the evidence the hearings officer relied upon does not rebut, by a preponderance of the evidence, the presumption created under ORS 215.130(10)(a) that the 53 RV spaces depicted on Exhibit N.3.g existed at all relevant times. According to petitioners, the 1990 site plan was drawn for the simple purpose of relocating 14 RV spaces and a picnic area, and was not intended to depict the specific location or number of all then-existing RV spaces. Petitioners argue that the 1990 site plan simply labels certain areas "RV parking (existing)" without depicting or enumerating specific RV spaces, and without such information there is not a sufficient basis for the hearings officer to reject any of the 53 RV spaces depicted on Exhibit N.3.g.

The county responds, and we agree, that the hearings officer did not err in relying on the 1990 site plan to find that the presumption petitioner established under ORS 215.130(10)(a) was rebutted by a preponderance of the evidence, with respect to the

number of RV spaces. The 1990 site plan depicts each area, road, building and natural feature on the site, even those areas not affected by the proposed relocation, and there is nothing cited to us that suggests it was not intended to be an accurate depiction of existing and proposed development at that time. That the 1990 site plan does not depict and number specific RV spaces as do the current park maps does not particularly undermine its probative value regarding 1990 conditions. The hearings officer concluded that all of the areas labeled "RV parking (existing)" included all of the RV spaces claimed in Exhibit N.3.g in the corresponding areas demarcated by the internal road network. Conversely, the hearings officer concluded that no RV spaces were authorized to remain under the 1990 site design decision in those areas where existing RV spaces were explicitly relocated or abandoned. Petitioners do not cite to anything in the record suggesting otherwise, or indeed offer any specific challenge to the hearings officer's findings and calculations with respect to particular RV spaces.

Based on the portions of the record cited to us, we believe that a reasonable decision maker could conclude that it is more probable than not that the 1990 site plan accurately depicts the areas with then-existing and authorized and relocated RV spaces. Based on the 1990 site plan it is reasonably clear that a number of the RV spaces claimed on Exhibit N.3.g did not exist in 1990 and now exist contrary to the 1990 site design approval. That is sufficient to rebut by a preponderance of the evidence the presumption established under ORS 215.130(10)(a) based on the ten most recent years, as well as to support the hearings officer's findings regarding the number of lawful nonconforming RV spaces, with the exception of the 15 riverfront spaces discussed above.

In sum, we agree with petitioners that the hearings officer erred in failing to give effect to ORS 215.130(11), but disagree with petitioners that the hearings officer erred in finding that the evidence in the record rebutted, by a preponderance of the evidence, the presumption established under ORS 215.130(10)(a).

The first subassignment of error is sustained, in part.

B. Second Subassignment of Error (ORS 197.522)

Under this subassignment of error, petitioners challenge the hearings officer's decision to deny the requested RV Park expansion for 25 new RV spaces, under MCC 37.0560, which prohibits the county from approving a development approval on property that is not in full compliance with the MCC or previous permit approvals.[4]

The hearings officer's decision lists 11 alleged code compliance issues present on the subject property, most related to the nonconforming RV park. The hearings officer concluded that the limited nature of petitioners' nonconforming use verification request could not correct all alleged code and permit violations, and therefore MCC 37.0560 prohibited approval of the conditional use permit application to expand the RV park.[5]

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[4] MCC 37.0560 provides, in relevant part:

> "Except as provided in subsection (A), the County shall not make a land use decision or issue a building permit approving development, including land divisions and property line adjustments, for any property that is not in full compliance with all applicable provisions of the Multnomah County Land Use Code and/or any permit approvals previously issued by the County.
>
> "(A) A permit or other approval, including building permit applications, may be authorized if:
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> "(1) It results in the property coming into full compliance with all applicable provisions of the Multnomah County Code. This includes sequencing of permits or other approvals as part of a voluntary compliance agreement[.]"

[5] The hearings officer's decision states, in relevant part:

> "* * * The permit requested by the applicant does not propose measures sufficient to correct all code violations that exist on the subject property. As a result, I cannot approve this application.
>
> "County staff and the applicant's attorneys have worked hard to try to address code compliance issues by proposing changes to other parts of the property that are beyond the scope of the land use application submitted by the applicant. I appreciate their efforts but believe that the development proposed by the permits requested by the applicant must result in the subject property coming into full compliance with the County code. The applicant has made it clear that the pending permit applies to the expansion area only—not to the existing manufactured home park or the store. I do not think that it is legally possible for the County and/or the applicant to 'grow' the originally submitted application to include corrections that,

Petitioners contend that all of the alleged noncompliance issues could have been addressed by either granting permit approvals to correct violations or imposing conditions of approval requiring petitioners to seek and obtain required permits. For example, with respect to the laundry building, petitioners argued that they agreed to seek any permits necessary to authorize use of the existing building for RV-park related uses. Similarly, with respect to the RV storage area, petitioners agreed to seek a permit or approval for that storage area, as an accessory use to the RV park. Petitioners argue that instead of denying the RV park expansion application, the hearings officer should have approved the application, either with all required permits to correct identified violations, or subject to conditions requiring petitioners to obtain the necessary permits. We understand petitioners to argue that such an approval would result "in the property coming into full compliance with all applicable provisions of the Multnomah County Code," as authorized under MCC 37.0560(A)(1).

In addition, petitioners argue that, regardless of MCC 37.0560(A)(1), the hearings officer was obligated by ORS 197.522 to approve the application subject to "reasonable conditions * * * to make the proposed activity consistent with the [comprehensive] plan and applicable regulations."[6]

> themselves, require additional and different land use approvals than those requested in the land use application. I believe the code intends that the expansion application seek all required land use approvals for those parts of the RV park that are not grandfathered. I also believe that the application must include the convenience store in the pending application for me to determine that approval of the submitted application will result in the property coming into full compliance with the code. In light of my view of this code language, I find that I do not have the ability to authorize land uses not requested in the submitted application such as the 10-lot RV storage lot or establishment of the Reeder Beach RV store and, therefore, cannot make a land use decision to approve the proposed expansion application." Record 35.

[6] ORS 197.522 is codified as part of the statutes governing moratoria, and provides:

> "A local government shall approve an application for a permit, authorization or other approval necessary for the subdivision or partitioning of, or construction on, any land that is consistent with the comprehensive plan and applicable land use regulations or shall impose reasonable conditions on the application to make the proposed activity consistent with the plan and applicable regulations. A local government may deny an application that is inconsistent with the comprehensive plan and applicable land use regulations and that cannot be made consistent through the imposition of reasonable conditions of approval."

The county responds that ORS 197.522 does not apply where there is no declared or *de facto* moratorium under ORS 197.520 or 197.524. In the alternative, the county argues that even if ORS 197.522 applies outside the context of a declared or *de facto* moratorium, petitioners have not demonstrated that petitioners proposed any reasonable conditions of approval to ensure that the application complies with MCC 37.0560.

The hearings officer interpreted MCC 37.0560 to require that an applicant seek to correct all code or permit violations as part of the application under consideration, including all permits approvals that may be required, and that MCC 37.0560(A)(1) did not authorize approval of the application based on the applicant's willingness to seek subsequent or future permit approvals to correct violations. The hearings officer noted that MCC 37.0560(A)(1) allows the "sequencing of permits or other approvals as part of a voluntary compliance agreement," but that no voluntary compliance agreement had been developed for the property. Record 36. We understand the hearings officer to conclude that, absent such a voluntary compliance agreement to resolve violations based on "sequencing of permits or other approvals," MCC 37.0560(A)(1) does not allow the county to approve development on property with code violations, unless all violations are fully resolved as part of the application. Petitioners do not specifically challenge that interpretation or explain why it is erroneous, and we do not see that it is.

Petitioners assert that they requested necessary permit approvals for the laundry, etc., as part of the current application, but petitioners cite to no indication that they actually filed applications for required permits or submitted the information that would be necessary for the hearings officer to review such applications, if filed. The county argues, and it appears to be the case, that the permits necessary to legalize most or all of the existing code violations would be discretionary conditional use permits, subject to additional standards and evidentiary submittals, and presumably requiring additional notice to persons entitled to notice of such permits. If that is the case, we do not see that a bare request to approve all

permits necessary to correct code violations as part of the RV park expansion application is sufficient to satisfy MCC 37.0560.

With respect to ORS 197.522, we have previously questioned whether ORS 197.522 is intended to apply, or can be lawfully applied, outside the context of a declared or *de facto* moratorium. *Oien v. City of Beaverton*, 46 Or LUBA 109, 126 n 6 (2003). That issue is squarely raised in this appeal, and we agree with the county that ORS 197.522 does not apply outside the context of a declared or *de facto* moratorium under ORS 197.520 or 197.524.

ORS 197.522 was introduced as Senate Bill 1184 and later enacted into law as Section 4, Oregon Laws 1999, Chapter 838, and codified at ORS 197.522 in the section of the Oregon Revised Statutes titled "Moratorium on Construction and Land Development." The relating clause for SB 1184 identified the subject of the bill as "relating to moratorium on land development." The relating clause of an act serves as the "title" for the purposes of Article IV, Section 20 of the Oregon Constitution (the "single-subject" requirement). *State v. Fugate*, 332 Or 195, 207, 26 P3d 802 (2001).[7] The single-subject requirement limits every legislative act to one subject that is expressed in the title, and conversely renders "void" any subject embraced in the legislation that is not expressed in the title. The single subject of SB 1184 is "moratorium on land development." If ORS 197.522 is interpreted to broadly apply to any land development permit outside the context of a moratorium, it would appear to run afoul of the single-subject requirement.

To the extent the scope of ORS 197.522 remains ambiguous on this point, we note that the legislative history of SB 1184 includes no suggestion that the legislature intended that Section 4 of SB 1184 to be applied outside the context of a moratorium. Section 4 was

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[7] Article IV, section 20, of the Oregon Constitution provides, in relevant part:

> "Every Act shall embrace but one subject, and matters properly connected therewith, which subject shall be expressed in the title. But if any subject shall be embraced in an Act which shall not be expressed in the title, such Act shall be void only as to so much thereof as shall not be expressed in the title."

added late in the legislative proceedings, and the legislative history is somewhat confusing.[8] Nonetheless, all of the legislative discussion of Section 4, and of SB 1184 as a whole, concerned moratoria, and there is nothing indicating that the legislature contemplated that Section 4 should be applied outside the context of a moratoriam. In fact, the legislative history suggests otherwise. A representative of the Department of Land Conservation and Development (DLCD) testified in support of the bill and commented on an early version of Section 4 that "when we are talking about conditions here, we are talking about conditions that 'concern [inadequate public] facilities.'" Testimony of Bob Rindy, House Committee on Water and Environment, June 17, 1999, Tape 209, Side A. The DLCD representative suggested conceptual amendments to that version of Section 4 to make it "clear that what we are talking about here is the narrow sense about permits that have to do with the shortage of facilities and not the broader situation." *Id.* The subsequent amendments to Section 4 were apparently intended to respond to those comments. One of the bill's main proponents stated that "[w]ith regard to the changes that Mr. Rindy suggested in [Section 4], we have no problems with those." *Id*. In sum, the legislative history available to us suggests that the legislature intended Section 4 to apply only in circumstances where the local government would otherwise deny the permit application due to inadequate public facilities, *i.e.*, in the context of a declared or *de facto* moratorium.

The second subassignment of error is denied.

The first assignment of error is sustained, in part.

SECOND ASSIGNMENT OF ERROR

As explained above, the hearings officer concluded that petitioners failed to demonstrate that residential use of RV spaces is part of the lawful nonconforming RV park use, and we have affirmed that conclusion. The hearings officer opined, accordingly, that

[8] For example, Section 4 was originally Section 3, and the discussion reflects some confusion over that change.

occupancy of RV spaces is therefore subject to the one-month limit on occupancy of RV campground spaces under the MUA-20 zone.[9]

Under the second assignment of error, petitioners argue that the one-month occupancy restriction in the MUA-20 zone for RV campgrounds is inconsistent with ORS 197.493(1), which provides:

> "A state agency or local government may not prohibit the placement or occupancy of a recreational vehicle, or impose any limit on the length of occupancy of a recreational vehicle, solely on the grounds that the occupancy is in a recreational vehicle, if the recreational vehicle is:
>
> "(a) Located in a manufactured dwelling park, mobile home park or recreational vehicle park;
>
> "(b) Occupied as a residential dwelling; and
>
> "(c) Lawfully connected to water and electrical supply systems and a sewage disposal system."

Petitioners contend that the Reeder Beach RV Park is a "recreational vehicle park" as that term is defined at ORS 197.492(2), and therefore the county is prohibited from imposing any limit on the length of occupancy of an RV within the park.[10]

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[9] MCC 34.2830 and MCC.6015(A)(2) permit as a conditional use a "[c]amp, campground or recreational vehicle park" in the MUA-20 zone. MCC 34.005 defines "recreational vehicle park" as "[a]ny place where two or more vehicles designed and used for temporary human occupancy are located within 500 feet of each other on a lot, parcel or tract which is rented or kept for rent for periods of one month or less."

[10] ORS 197.492(2) provides:

"'Recreational Vehicle Park'

"(a) Means a place where two or more recreational vehicles are located within 500 feet of one another on a lot, tract or parcel of land under common ownership and having as its primary purpose:

"(A) The renting of space and related facilities for a charge or fee; or

"(B) The provision of space for free in connection with securing the patronage of a person.

"(b) Does not mean:

"(A) An area designated only for picnicking or overnight camping; or

Although the hearings officer found it a close question, she concluded that the RV park is not a "recreational vehicle park" within the meaning of ORS 197.492(2) and therefore not subject to ORS 197.493(1), because the definition at ORS 197.492(2) excludes "[a]n area designated only for picnicking or overnight camping[.]" The hearings officer noted that the only residential use allowed in the MUA-20 zone is one single family dwelling per lot of record, and no high density residential use is allowed at all. She also noted that a "recreational vehicle park" allowed as a conditional use in the MUA-20 zone is clearly intended for temporary, recreational occupancy, not residential use, and concluded therefore that an RV park allowed as a conditional use in the MUA-20 zone is an "area designated only for picnicking or overnight camping," not for residential use. In addition, the hearings officer found that "[t]he County's 30-day occupancy limit on occupancy of a recreational vehicle is not applied 'solely on the grounds that the occupancy is in a recreational vehicle.' Rather, the County applies the limit in order to assure that the park is a campground-type use." Record 22.

Petitioners argue that the county definition of "recreational vehicle park" and the MUA-20 provisions limiting RV parks to temporary occupancy are simply inconsistent with ORS 197.492, and do not provide a basis to conclude that petitioners' RV park is in an area "designated only for picnicking or overnight camping." According to petitioners, the county has never designated Reeder Beach RV Park "only for picnicking or overnight camping." With respect to the hearings officer's finding that the occupancy limit is not applied "solely on the grounds that the occupancy is in a recreational vehicle," petitioners argue that the one-month occupancy limit is part of the MCC 34.0005 definition of "recreational vehicle park" and specifically applies only to RVs, not campground-type uses.

"(B) A manufactured dwelling park or mobile home park.

In support of their argument, petitioners cite legislative history at Record 146-49 indicating that ORS 197.492, adopted in 2005, was intended to allow RVs in RV parks to be occupied "for unlimited lengths of time, as long as certain basic safety standards and other protections are observed," because RVs are "a significant source of affordable housing in our state." Record 148.

ORS 197.492(2)(b) excludes from the definition of "recreational vehicle park" an "area designated only for picnicking or overnight camping." That exclusion is apparently intended to distinguish areas authorized to provide only temporary "campground-type" accommodations from areas authorized to provide longer-term occupancies, and to make the former not subject to the definition. It is not clear what is required for an area to be "designated only for picnicking or overnight camping," within the meaning of ORS 197.492(2)(b). According to the hearings officer, general zoning restrictions on high-density residential uses on rural lands can result in such a designation. Petitioners contend that such designations must be a limitation applied specifically to a particular facility. Because one of the main themes of the statewide land use system of which the MUA-20 zone is a part is to limit residential intensity on rural lands, and we see little indication in the text, context or legislative history of ORS 197.492 to suggest that the legislature intended to undermine that theme, we conclude along with the hearings officer that an "area designated only for picnicking or overnight camping" includes zoning districts such as the MUA-20 zone that limit residential density on rural lands, in part by allowing "recreational vehicle parks" only as temporary, recreational uses.

That conclusion is supported by other text and context, and is consistent with the legislative history cited to our attention. As the hearings officer noted, ORS 197.492 prohibits the county from imposing occupancy limits on RV use "solely on the grounds that the occupancy is in a recreational vehicle." That obviously suggests that occupancy limits may be imposed for other reasons, and that the intent of ORS 197.492 is to prohibit local

governments from singling out RVs with respect to residential use. In other words, the apparent intent of ORS 197.492 is to permit residential use of RVs in manufactured dwelling parks, mobile parks, and RV parks on similar terms to manufactured dwellings, mobile homes and similar accommodations, in areas where the local government otherwise allows residential uses. The legislative history petitioners cite is consistent with that view, indicating that the target of the proposed legislation was occupancy limits that were sometimes imposed on RVs but not other accommodations due to alleged "health concerns" with the residential use of RVs. Record 148. Nothing in the text or legislative history of ORS 197.492 suggests that the legislature intended to prohibit occupancy limits that are imposed to ensure compliance with zoning prohibitions on urban residential uses in rural areas, or to require that local governments allow residential RV parks in rural zones where no such high density uses, in any kind of structure, is allowed under the statewide planning system.

Accordingly, we agree with the hearings officer that an RV park in the MUA-20 zone is not a "recreational vehicle park" as defined at ORS 197.492, and that the county occupancy limit is not inconsistent with the statute.[11]

The second assignment of error is denied.

The county's decision is remanded.

[11] The definition of "recreational vehicle park" at MCC 34.0005 is specific to the Sauvie Island/Multnomah Channel Rural Plan Area, and apparently does not apply to any areas of the county that may be within an urban growth boundary or otherwise permissibly zoned for high density residential uses. We need not consider whether the occupancy limit embedded in that definition would be inconsistent with ORS 197.492, if applied to prohibit residential use of RVs in a manufactured dwelling, mobile home, or RV park that is, for example, within an urban area that is designated for residential use.