BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

CAMPERS COVE RESORT, LLC,
Petitioner,

vs.

JACKSON COUNTY,
Respondent,

and

SOUTHERN OREGON CITIZENS FOR
RESPONSIBLE LAND USE PLANNING,
SANDY SPEASL and SHELLEY MORRISON,
Intervenors-Respondents.

LUBA No. 2009-117

FINAL OPINION
AND ORDER

Appeal from Jackson County.

Roger Alfred, Portland, filed the petition for review and argued on behalf of the petitioner. With him on the brief was Perkins Coie LLP.

G. Frank Hammond, Medford, Jackson County Counsel, filed the response brief and argued on behalf of respondent.

Pamela Hardy, Bend, filed the response brief and argued on behalf of the intervenors-respondents.

Sydnee B. Dreyer, Medford, filed a brief on behalf of amici curiae Jim Salyer, Jodi Salyer, Gary Whittle, Sandi Whittle, Carl Sieg, Jeanette Sieg, Jim Hill, Charlene Hill, John Mytinger, Angie Mytinger, Jeff Feyerman, Jill Feyerman, Rob Collins, Dea Collins, Tom Hazel, Felicia Hazel, Walter Wilkins, Annette Wilkins, Michael Schooler, Robin Schooler, Jeffrey Wells, Julia Wells, Mike Mahar, and Mary Mahar.

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

AFFIRMED 03/31/2010

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

Petitioner appeals a county nonconforming use determination that verifies the scope and extent of a lakeside resort, but denies requested alterations and expansions.

FACTS

Petitioner is the owner and operator of Hyatt Lake Resort, which is located in the Cascade-Siskiyou National Monument area approximately 21 miles east of the City of Ashland. Hyatt Lake Resort has been in operation adjacent to Hyatt Lake since the mid-1950s. Prior to the adoption of zoning in the 1970s, the facility included tent sites, a number of pull-through recreational vehicle (RV) sites, 22 of which had full electric, water and sewer hook-ups, some with only electric and water, several rental cabins without kitchens, a dock, a sewage treatment system, and other related uses. The resort is located in a forest resource area subject to Statewide Planning Goal 4 (Forest Lands). Under the applicable goals, comprehensive plan and land use regulations, a campground with full hookups is not a permitted use.

In 2007, petitioner applied for a ministerial Type I review to obtain building permits to install 22 "park model" RV units, with decks and stairs, to be installed on 22 campground spaces with full hookups. A "park model" RV unit is a factory-manufactured structure of not more than 400 square feet that is designed to be placed on wheels and pulled to a set up location by tractor rig. The county issued the requested building permits, apparently in the belief that allowing park model RVs to be installed on the 22 pull-through sites did not constitute an alteration or expansion of the nonconforming use. Following issuance of the 22 building permits, a corporation associated with petitioner sold a number of park model RVs

to third parties, and petitioner allowed them to be installed on the 22 RV sites with full hookups, subject to a lease agreement with an initial 25-year term.[1]

In its 2007 application, petitioner also sought building permits for various additional structures and uses, including installation of additional park model RVs, but county staff concluded that a nonconforming use verification and expansion/alteration analysis was required to support the requested additional structures and uses. In 2008, petitioner filed a discretionary "Type III" nonconforming use verification and expansion application, seeking approval of a restaurant, bait shop, fish cleaning station, dump station, fuel pumps, maintenance building dock, pit toilets, three single family dwellings, shower/laundry building, playground, equine facilities, cabanas and garages for the park model RVs, and new sewer connections to 13 existing RV sites. Of particular relevance here is that petitioner sought verification or expansion for a total of 35 RV sites with full hook ups, to be occupied with park model RVs.

County staff issued a notice of tentative decision that approved most of the requested non-RV site uses, including a nonconforming use verification of 22 existing full hook-up RV sites and 13 existing water and electric RV hook-up sites.[2] The staff decision also approved an expansion of the 13 water and electric RV sites to include sewer connections and installation of 13 new park model RVs. Both petitioner and intervenors appealed the staff decision to the county hearings officer. Petitioner's appeal sought the approval of additional sites and other buildings not at issue here. Intervenors appealed the staff approval of the nonconforming use verification itself.

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[1] Amici curiae are the owners of a number of these park model RVs.

[2] The staff decision found that there was a valid nonconforming use for only two of the three requested single-family dwellings, and denied the verification request for a playground and equine facilities. None of those determinations are at issue in this appeal. The hearings officer denied the proposed cabanas and garages. That also is not at issue in this appeal.

The hearings officer affirmed the staff decision regarding most of the non-RV site aspects of the decision and those aspects are not at issue in this appeal. Regarding the 13 RV sites that staff approved for installation of additional park model RVs with full hook ups, the hearings officer reversed the staff decision, concluding that the proposed expansion/alteration did not comply with code criteria for the expansion/alteration of a nonconforming use, citing concerns regarding fire safety and water quality.

Regarding the 22 RV sites with already installed park model RVs pursuant to the 2007 building permits, the hearings officer concluded that the nature and extent of the lawful nonconforming use did not include installation of park model RVs on those 22 sites. The hearings officer also concluded that installation of park model RV units with full hook-ups on the existing RV sites at the resort would require exceptions to Goal 4, Goal 11 (Public Facilities), and Goal 14 (Urbanization).

Petitioner then appealed the hearings officer's decision to LUBA. The primary issue that the parties focus on in this appeal is the correctness and effect of the hearings officer's conclusions with respect to the 22 park model RVs installed on the site pursuant to the 2007 building permit approvals.

FIRST AND SECOND ASSIGNMENTS OF ERROR

Petitioner argues that the hearings officer lacked authority to render any decision with respect to the 22 park model RVs installed pursuant to the 2007 building permits. According to petitioner, the hearings officer's conclusions with respect to those 22 park model RVs are essentially impermissible collateral attacks on the 2007 building permits, which petitioner contends are final, unappealed land use decisions.

A. Authority

We do not understand petitioner to dispute that the hearings officer properly conducted a non-conforming use verification and determination regarding the 22 RV *sites* that are occupied by park model RVs under the 2007 building permits. It is clear from the

record that both the county and petitioner understood that the 2008 application requested (1) a verification of the historic nonconforming uses and structures on the property, and (2) expansion or alteration of the nonconforming use in certain respects. A nonconforming use verification necessarily determines the nature and extent of historical uses that existed on the date the use became nonconforming. Changes in the nature or extent of uses that occur after that date are not part of the lawful nonconforming use, although those changes in use may or may not have some other lawful basis to exist. Changes in the nature, extent or intensity of a nonconforming use that occur after the date the use became nonconforming will require evaluation and approval as alterations, in order to be lawful. Thus, petitioner's nonconforming use application required the county to determine the nature and extent of the use of the 22 RV sites as of the date the use became nonconforming.[3] In doing so, the hearings officer necessarily distinguished uses that existed as of that date from changes that occurred after that date, such as installation of the park model RVs. To the extent petitioner argues that the hearings officer lacked authority to conclude that the park model RVs are not part of the lawful nonconforming use of the 22 RV sites at issue, we disagree.

B. Collateral Attack

The more difficult question is petitioner's argument that the hearings officer's subsequent analysis of the lawfulness of the 22 park model RVs constitutes a collateral attack on the 2007 building permits. The hearings officer engaged in a lengthy discussion of park model RVs in general and the lawfulness of installing park model RVs served by full hookups in a forest zone campground. In conducting that analysis, the hearing officer discussed at length the 22 full hookup sites on which park model RVs had already been

[3] The parties appear to agree that the most recent critical date is 1998, when administrative rules implementing Goal 4 were amended to prohibit providing sewer, water and electric hookups to individual campground sites in forest zones.

installed, pursuant to the 2007 building permits. The hearings officer acknowledged the problem created by the 2007 building permit approvals:

> "Here the analysis is burdened and confused by several facts: the County did not object to the Applicant's installation of the first 22 park models and allowed the construction of extensive decks and garages as accessory structures without having considered all of the criteria central to the verification and expansion of a nonconforming use. This action tends to give all of the park models and associated improvements an air of legitimacy, and it allowed the owner to proceed without fully understanding the legal context of his development activities. * * *" Record 18.

The hearings officer then discussed the nature of park model RVs in general, compared to other types of RVs, and the lawfulness of installing fully serviced park model RVs at the proposed density (approximately 10 units per acre) on rural, resource land. Some of the analysis discusses and ultimately rejects petitioner's proposal to condition occupancy of the 22 installed park model RVs, which was apparently offered intended to address staff concerns regarding Goal 14. Ultimately, the hearings officer concluded with respect to the 22 installed park model RVs that:

> "* * * Case law establishes that a park model development such as that at the Resort is not temporary or seasonal and that permanent occupancy of spaces by park models is not consistent with the historic use of the Resort. The absence of a proper analysis of the new development in comparison to the established nonconforming use, results in the conclusion that the [2007] authorization of the 22 park models that have already been installed was not proper. Those units constitute at least an alteration of the nonconforming use." Record 25.

The hearings officer then turned to the question of whether installation of park model RVs could be approved as an alteration of the nonconforming use. This part of the analysis appears to focus, at least initially, on petitioner's proposal to expand or alter the historic nonconforming use to (1) provide sewer connections to the 13 existing partial hookup RV sites and (2) install park model RVs on those 13 sites. The staff decision approved those expansions/alterations, after a legal analysis of the lawfulness of those proposals, and concluding that the sewer connection and installation of park model RVs on the 13 sites

would be lawful if made subject to certain conditions, including a limit on the duration of occupancy. The hearings officer disagreed with the staff's legal analysis, and ultimately denied the proposed sewer connection and installation of park model RVs on the 13 sites, because the hearings officer concluded those alterations would cause a "greater adverse impact" on the surrounding neighborhood than the historic nonconforming RV campground use. As discussed below, under Jackson County Land Development Ordinance (LDO) 11.2.1, the county can approve an alteration to a lawful nonconforming use upon a finding that the alteration causes no greater adverse impact to the neighborhood than the original nonconforming use.

Although it is not entirely clear, the hearings officer apparently viewed the legal analysis of the lawfulness of the proposed installation of park model RVs on the 13 sites to apply equally to the already installed 22 park model RVs. In a later section of the decision captioned "Compliance with Statewide Planning Goals," the hearings officer found:

> "The parties devoted considerable effort with respect to the issue of whether the park model development is required to apply for exceptions from Goals 4, 11 and 14. The conclusions of this Decision support the Opponent's claim that such exceptions are required. The development has urban density; it is residential and the sewer system that serves it requires a Construction Installation permit and is a Community System, and it is located in a forest zone.
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> "Accordingly, the Applicant must file for exceptions to Goals 4, 11 and 14 for the 22 park model units that have already been installed at the Resort." Record 39.

Petitioner does not appear to dispute the merits of the hearings officer's analysis regarding the legal necessity for goal exceptions to install fully-serviced park model RVs on rural forest land at the density proposed here. Petitioner argues, however, that the hearings officer erred in requiring petitioner to file for exceptions to Goals 4, 11 and 14 for the 22 already installed park model units. According to petitioner, that conclusion and similar statements regarding the 22 installed units are in essence collateral attacks on the validity and

finality of the 2007 building permits. Petitioner argues that the 2007 building permits are final land use decisions that cannot be appealed now, or challenged in the course of the present nonconforming use application.

The county responds that the above-quoted conclusion is merely *dictum*, and notes that the actual conclusions of law and the specific orders and conditions set out at the end of the hearings officer's decision say nothing about the 22 installed park model RVs. Intervenors respond in relevant part that the hearings officer merely determined that not all of the land use approvals required for the 22 disputed park model RVs have yet been applied for and obtained, and the hearings officer did not purport to invalidate or revoke the 2007 building permits.

The county is correct that the conclusions of law and the order and conditions sections of the decision do not refer to the 22 installed park models at all, and the only park model units mentioned in those sections are the 13 units rejected on the partial hookup sites. Record 40-42. However, it is reasonably clear based on the hearings officer's analysis of the proposal to install 13 new park model RVs on the partial hook up sites that the hearings officer believed (1) the 2007 building permit applications should have triggered a nonconforming use verification review similar to that required for the 13 new park model RVs, (2) had such a review been conducted, staff should have concluded that the proposed installation of 22 park model RVs is properly viewed as an alteration or change in use from one type of nonconforming use to another, and finally, (3) such installations would require exceptions to Goals 4, 11 and 14. In short, it is clear that the hearings officer believed that the 2007 building permits should not have been issued, and were issued in error, or at least issued prematurely.

Given the hearings officer's expressed views on those points, it is not surprising that petitioner believed it necessary to appeal the hearings officer's decision to LUBA and either

challenge the hearings officer's authority and ability to make those views binding or to obtain a ruling from LUBA that those views are *dicta*, and not binding on petitioner or the county.

Although it is a close question, we agree with the county that the hearings officer's statements regarding the 22 installed park model RVs are most accurately understood as non-binding *dicta*, and not as a final binding decision regarding the validity of the 2007 building permits. The legal analysis leading up to those statements was required in any event to resolve petitioner's application to site 13 new park model RVs on the partial hookup sites. The hearings officer appeared to believe that the legal reasoning supporting his conclusion that the 13 new park model RVs could not lawfully be approved as alterations also applied to the 22 units installed in 2007. However, nowhere in the decision does the hearings officer purport to invalidate or revoke the 2007 building permits, or make any binding dispositions regarding the 22 installed park model units. Significantly, as noted, the "conclusions of law" section and the "orders" section of the decision, which sets out a number of conditions, make no mention of the 22 installed units. In the "orders" section, the hearings officer makes very specific dispositions of the various elements of the nonconforming use verification and alteration application, including the proposed 13 new park model RVs. If the hearings officer intended to make some binding disposition with respect to the 22 installed park model RVs, the hearings officer presumably would have set it forth in the orders section, or imposed some condition with respect to the 22 units. The complete absence of such language in the orders or conditions sections strongly suggests that the hearings officer did not intend his legal analysis in the body of the decision to constitute binding dispositions regarding the 22 installed park model units.

Viewed in this light, the above-quoted statement that petitioner "must file for exceptions to Goals 4, 11 and 14 for the 22 park model units that have already been installed at the Resort" is best understood as an advisory statement of the hearings officer's views on what should be done in the future to resolve the legal uncertainties identified in the decision.

We do not understand that statement or similar statements to constitute a binding determination that the 2007 building permit decisions are invalid, or understand the decision to require petitioner to file applications for goal exceptions, as opposed to some other means of resolving any legal uncertainties. Those statements provide no basis for reversal or remand. *See Chackel Family Trust, LLC v. City of Bend*, 53 Or LUBA 385, 399 (2007) (advisory statements in hearings officer's decision regarding compliance with future permit applications are harmless error, where the statements play no role in the decision before the hearings officer and have no binding or presumptive effect on other decisions).

C. Nonconforming Use Criteria

Petitioner also argues under the first assignment of error that the hearings officer erred in concluding that petitioner's application to *expand* the nonconforming use should instead be viewed as a *change* in the nonconforming use, as those terms are used in the county's nonconforming use regulations.

LDO 11.2.1 governs alterations of nonconforming uses, and includes provisions on "alteration," "change in use," and "expansion or enlargement."[4] LDO 11.2.1 presumably

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[4] LDO 11.2.1 provides in pertinent part:

> "An alteration of a nonconforming use may include a change in the use that may or may not require a change in any structure or physical improvements associated with it. An application for an alteration of a nonconforming use must show either that the use has nonconforming status, as provided in Section 11.8, or that the County previously issued a determination of nonconforming status for the use and the use was not subsequently discontinued as provided in Section 11.2.2. A nonconforming use, once modified to a conforming or less intensive nonconforming use, may not thereafter be changed back to any less conforming use.
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> "A) Change in Use
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> "Applications to change a nonconforming use to a conforming use are processed in accordance with the applicable provisions of the zoning district. (See Chapter 6.) Applications to change a nonconforming use to another, no more intensive nonconforming use are processed as a Type 2 review. The application must show that the proposed new use will have no greater adverse impact on the surrounding neighborhood.
>
> "B) Expansion or Enlargement

implements ORS 215.130(5) and (9), which permit "alterations" of a lawful nonconforming use, and defines "alteration" as either a change in the use of no greater adverse impact to the neighborhood, or a change in the structure or physical improvements of no greater adverse impact to the neighborhood. The statute does not distinguish between different kinds of alteration. Under LDO 11.2.1, the same basic criterion applies to alterations, changes in use, and expansions; in each case, the applicant must show that the change will have no greater adverse impacts on the surrounding neighborhood. However, for a change in use from one nonconforming use to another nonconforming use, LDO 11.2.1(A) additionally limits the new nonconforming use to one "no more intensive" than the old nonconforming use.

Petitioner cites to a passage in which the hearings officer discusses the proposal to provide sewer connections and install 13 new park model RVs on the 13 partial hookup sites, at Record 26. In that passage, the hearings officer explains that he views the proposed park model installation not as a mere expansion for purposes of LDO 11.2.1(B)(1)(b) or (c), but rather a change in one type of nonconforming use (seasonal, temporary occupancy of RV campground sites, served by partial utilities) to a different nonconforming use (semi-permanent high-density residential development, served by full utilities), and therefore a

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"1) A nonconforming use, other than a single-family dwelling (see Section 11.4), aggregate, mining, or rural industrial use operation (see subsection (C) below), may not be expanded or enlarged except as provided under (2) below. For purposes of this Section, to 'expand' or 'enlarge' means:

"a) To replace a structure, in which a nonconforming use is located, with a larger structure;

"b) To alter the use in a way that results in more traffic, employees, or physical enlargement of an existing structure housing a nonconforming use; or

"c) An increase in the amount of property being used by the nonconforming use.

"2) Limited expansion of a nonconforming use may be approved, through a Type 3 review, provided such expansion includes improvements to the existing use to a degree that the existing use, including the proposed expansion, complies with or is more in conformance with the development standards of Chapter 9, and will have no greater adverse impacts on the surrounding neighborhood."

change in use subject to LDO 11.2.1(A). The hearings officer went on to conclude that the proposed change in use fails under LDO 11.2.1(A), because it is obviously "more intensive" than the old use and also has "greater adverse impacts to the neighborhood," based on fire safety and water quality impacts.

Petitioner does not explain why the hearings officer is obligated to characterize the application in the same way as petitioner characterized it in the application, or apply the approval criteria that petitioner believes are applicable. It is not at all clear to us that the hearings officer erred in viewing the proposal as changing from one type of nonconforming use to another. In any case, even if the hearings officer erred in proceeding under LDO 11.2.1(A), one of the reasons he denied the requested 13 new park model RVs was because the application did not show, as LDO 11.2.1(A) requires, that the change "will have no greater adverse impact on the surrounding neighborhood." As noted, under both ORS 215.130(9) and LDO 11.2.1, all types of alterations, expansions and changes to nonconforming uses must satisfy the "no greater adverse impacts on the surrounding neighborhood" standard. That basis for denial applies equally under LDO 11.2.1(A) or (B). As discussed below, petitioner does not challenge the hearings officer's dispositive finding that the proposed 13 new park model units have a greater adverse impact on the surrounding neighborhood than the historic nonconforming use. Therefore, even if the hearings officer erred in applying LDO 11.2.1(A) instead of (B), it would be a harmless error.

D. Conclusion

For the reasons set out above, we disagree with petitioner that the hearings officer's decision collaterally attacks or invalidates the 2007 building permits. As far as we can tell, nothing in the decision orders the applicant to take any action with respect to the 22 installed park model RVs, or changes the legal status of those 22 units. Those units retain whatever legal status they have under the 2007 building permits. The hearings officer clearly believed that the 2007 building permits were issued improperly, or at least prematurely, and that goal

exceptions will ultimately be necessary to make installation of those units fully lawful. However, we do not understand the hearings officer's decision to make any binding dispositions with respect to the 22 installed units, and the ultimate fate of those 22 units is not resolved by this decision. It is probably most accurate to say that the hearings officer, as a consequence of his analysis of the 13 proposed new park model RVs, brought to light a potential legal uncertainty regarding the 22 installed units that was always present. As we note in discussing the third assignment of error, the county may be called upon to resolve that legal uncertainty at some point, but the challenged decision does not do so.

The first and second assignments of error are denied.

THIRD ASSIGNMENT OF ERROR

Under the third assignment of error, petitioner argues that even if the hearings officer's conclusions regarding the 22 park model RVs are correct, it has "vested right" to continue occupancy of the 22 full hookup sites with the installed park model RVs under the reasoning in *Clackamas County v. Holmes*, 265 Or 193, 508 P2d 190 (1973), given the fact that the county issued the building permits and petitioner and amici expended considerable funds in reliance on those building permits.

That theory was not presented to the hearings officer, and the hearings officer made no vested rights determination. It may be that petitioner will advance that theory, or a similar theory, in an application for a vested rights determination, or in proceedings initiated by petitioner, amici, or the county. At some point in the future, the county may be called upon to resolve the issue of whether the 22 installed park model units may lawfully remain on those sites under one or more legal theories, but the challenged decision does not address or resolve that question, and we decline to resolve it in the first instance.

We do not reach the third assignment of error.

FOURTH ASSIGNMENT OF ERROR

Petitioner argues that the hearings officer committed procedural error by accepting and relying upon new evidence submitted by opponents regarding water quality impacts, which was improperly submitted during an open record period that was limited to rebuttal evidence.

The disputed evidence is a letter at Record 347-50 from a consultant retained by the opponents to evaluate potential wastewater and septic impacts on Hyatt Lake, which is adjacent to the resort. The hearings officer cited the letter in concluding that the "prospect of sewage pollution [from park model development] is an adverse impact which is greater than that posed by the historic RV park nonconforming use." Record 33.

The letter is dated July 27, 2009, but was date-stamped as received by the county on July 28, 2009, one day after the close of the first open record period, which was open for submission of any relevant evidence. Petitioner contends that the letter was technically submitted on the first day of the second open record period, which was limited by the hearings officer's order to evidence and arguments rebutting submittals made during the first open record period, which ended July 27, 2009. Because the letter is not rebuttal of any evidence submitted during the first open record period, petitioner argues, the hearings officer erred in accepting and relying on the letter.

We assume without deciding that the July 27, 2009 letter includes new evidence and is not limited to rebuttal of evidence submitted during the first open record period. We also assume that it was improperly accepted during the second open record period that was limited to rebuttal evidence. Even with those assumptions, petitioner has not established that any procedural error on that point prejudiced its substantial rights or warrants reversal or remand. ORS 197.835(9)(a)(B). As intervenors point out, the hearings officer relied in part of the July 27, 2009 letter to conclude that park model development would likely cause greater adverse impacts on Hyatt Lake from wastewater and septic discharges, compared to the

historical RV campground use. Record 31-33. However, intervenors note, the hearings officer also concluded that "[f]ire is the potential adverse impact of greatest concern," and devoted several pages of findings leading to the conclusion that park model development significantly increases the risk of fire over the historical RV campground use. Record 34-36. The hearings officer appears to have denied the proposed 13 new park model units for that reason alone.

Petitioner does not challenge the findings at Record 34-36 or explain why those findings are not a sufficient basis to conclude that the 13 new park model units cannot be approved as lawful alterations to the historic nonconforming use. Accordingly, even if the hearings officer erred in considering the July 27, 2009 letter, that letter had a bearing only on water quality impacts, not fire safety. In this circumstance, petitioner has not established that any procedural error in considering the July 27, 2009 letter prejudiced its substantial rights, and petitioner's arguments under this assignment of error do not provide a basis for remand.

The fourth assignment of error is denied.

FIFTH ASSIGNMENT OF ERROR

In his general legal analysis of the lawfulness of installing park model RVs on sites historically used as an RV campground, the hearings officer states at one point that "[p]ark models are not recreational vehicles for purposes of land use planning." Record 22. Citing *Baxter v. Coos County*, 58 Or LUBA 624 (2009) (*Indian Point II*) and *Oregon Shores Conservation Coalition v. Coos County*, 55 Or LUBA 545, *aff'd* 219 Or App 429, 182 P3d 325 (2008) (*Indian Point I*), the hearings officer ultimately concluded that "[c]ase law establishes that a park model development such as that at the Resort is not temporary or seasonal and that permanent occupancy of spaces by park models is not consistent with the historic use of the Resort." Record 25.

Petitioner challenges the statement that "[p]ark models are not recreational vehicles for purposes of land use planning," arguing that that statement is too broad, that the *Indian*

Point cases are distinguishable, and that park model RVs are properly considered "recreational vehicles" for all purposes, including land use planning. Petitioner notes that the state building code defines park model RVs as "recreational vehicles," and that the Oregon Department of Health, the state agency responsible for licensing RV parks, treats park model RVs as recreational vehicles.

We see no obvious connection between how the state building code defines recreational vehicle, and how the *use* of a recreational vehicle is treated under Oregon's statewide planning goals, administrative rules, and implementing land use planning regulations. Goals 3, 4, 11 and 14 singly and together limit how recreational vehicles of any kind can be used on rural land. The hearings officer's point seems to be that, given the nature, construction and intended use of park model RVs, such recreational vehicles are more likely to be used in ways that are prohibited by Goals 3, 4, 11 or 14 than other types of recreational vehicles. That much we do not understand petitioner to dispute. The record reflects that park model RVs are typically transported by semi-trailer rig to the site and are permanently or semi-permanently installed on foundations at the site, much like a small manufactured dwelling. It seems significant that installation of a park model RV requires a building permit. In that respect, and others, park model RVs differ from a self-propelled or pull-behind recreational vehicle typically used for RV camping. The latter are easily capable of being used in compliance with land use restrictions, such as that in OAR 660-006-0025(4)(e)(A), that limit campgrounds on forest lands to "overnight temporary use for vacation, recreational or emergency purposes" and that limit vehicle occupancy of a campsite to 30 days. Park model RVs, by virtue of their construction and semi-permanent installation, are not easily capable of being used in compliance with such restrictions.

In any case, while the hearings officer's statement that park model RVs are not "recreational vehicles" for purposes of land use planning may not be technically accurate, petitioner has not established that any inaccuracy warrants reversal or remand. The hearings

officer denied the proposed 13 park model RVs because he concluded they would create more adverse impacts than the historic nonconforming use, not because he believed they did not qualify as "recreational vehicles." Petitioner's arguments under this assignment of error do not provide a basis for reversal or remand.

The fifth assignment of error is denied.

The county's decision is affirmed.