BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

VIJAY SARATHY,
Petitioner,

vs.

WASHINGTON COUNTY,
Respondent,

and

TUALATIN VALLEY FIRE & RESCUE,
Intervenor-Respondent.

LUBA No. 2011-065

FINAL OPINION
AND ORDER

Appeal from Washington County.

Andrew H. Stamp, Lake Oswego, filed the petition for review and argued on behalf of petitioner.

No appearance by Washington County.

Timothy V. Ramis, Lake Oswego, filed the response brief and argued on behalf of intervenor-respondent. With him on the brief were Damien R. Hall and Jordan Ramis PC.

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

REMANDED 11/10/2011

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

Opinion by Ryan.

NATURE OF THE DECISION

Petitioner appeals a decision by the county approving an application to site a fire station on a two-acre residentially-zoned property.

MOTION TO INTERVENE

Tualatin Valley Fire & Rescue (intervenor), the applicant below, moves to intervene on the side of the county. There is no opposition to the motion and it is allowed.

FACTS

Intervenor applied to site and build a 10,111-square foot fire station on a two-acre property that is zoned Residential Six Units Per Acre (R-6), located at the intersection of NW Thompson Road and NW Evergreen Street. The proposed fire station includes fire truck bays, a shop, an emergency services room, four dorm rooms, a dayroom, an exercise room, men's and women's full lavatories, a kitchen, dining room, laundry room, an office, a lobby and a community room. Access to the station is proposed to be taken from both NW Thompson Street and NW Evergreen Street.

Public buildings such as fire stations are allowed uses in the R-6 zone, provided they meet special use standards for public buildings set out at Washington County Development Code (CDC) Section 430-103. CDC 303.4-11. CDC 430-103.3 provides in relevant part that inside the urban growth boundary:

> "[P]ublic buildings shall have access onto a collector or arterial level street except for satellite buildings or stations in residential districts which:
>
> "A. Generate no more trips than a residential use in the same district or, in the Institutional District, no more than the adjacent Residential District;
>
> "B. Require no special outside lighting;
>
> "C. Require no sirens to sound at or near the site."

There is no dispute that the proposed fire station will not have access onto a collector or arterial level street, but rather will access only local streets, NW Evergreen Street and NW Thompson Street. Record 39. However, the hearings officer found that the exception in CDC 430-103.3 for "satellite buildings or stations in residential districts * * *" allowed the fire station to be approved. This appeal followed.

SECOND ASSIGNMENT OF ERROR

As explained above, CDC 430-103.3(A) allows "satellite buildings or stations in residential districts" as long as they generate no more trips than "a residential use in the same district." The hearings officer concluded that CDC 430-103.3(A) was satisfied because the number of trips that would be generated by the new fire station (between 50 and 60 average daily trips (ADT)) was fewer than the maximum number of trips that would be generated if the two-acre property was developed with the maximum number of detached dwellings possible under the property's R-6 zoning (114 ADT). Record 44-45. In the second assignment of error, petitioner argues that the hearings officer misconstrued the meaning of CDC 430-103.3(A)'s requirement that the proposed fire station generate "no more trips than *a residential use*" on the site (emphasis added). According to petitioner, the phrase "a residential use" means that the satellite building or station can generate no more trips than a single residence on the property would otherwise generate. Petitioner argues that CDC 430-103.3(A) unambiguously requires the proposed public building to generate no more trips than "a" residential use, and the common meaning of "a" when it is used as an indefinite article is "one." Therefore, petitioner argues, the correct comparison of the number of trips should be the number of trips generated from one residence on the site, or approximately 10 ADT. Petitioner argues that by interpreting CDC 403-103.3(A) to allow the proposal so long the expected trips from the proposal do not exceed the number of trips that would be generated by the hypothetical maximum number of detached dwellings on the two-acre property under R-6 zoning, the hearings officer improperly inserted words into CDC 430-

103.3(A) contrary to ORS 174.010 (in statutory interpretation, the court is not to omit what has been inserted, and when possible should adopt statutory construction that will give effect to all particulars of a statute).

Petitioner also points to the legislative history of CDC 430-103.3(A) in support of his contention. According to petitioner, that legislative history demonstrates that the county for the first time in 1985 chose to allow some public buildings to be sited on properties in residential districts and take access from local streets, as long as those buildings were limited in their traffic, visual and noise impacts so that they remained compatible with the residential district. According to petitioner, that legislative history suggests that the county ensured traffic compatibility by providing that the traffic that could be generated by the building could be no more traffic than would be generated if the property was developed with a residence.

Intervenor responds that the hearings officer's conclusion is consistent with the CDC's employment in other sections of the code of the word "use" to refer to broad categories of uses, such as "residential" or "commercial," and its employment of the word "unit" to refer to a single residence. Intervenor argues that if the correct measurement for traffic generation was no more than the trips that would be generated by a single residence, the county would have used the phrase "a residential unit" or "a dwelling." Intervenor also points to minimum density requirements that would require residential development of the property at a level that would generate more traffic than a single residence on the property in support of the argument that the hearings officer correctly interpreted CDC 430-103.3(A) to allow consideration of traffic generated by maximum residential development of the property.

We review the hearings officer's decision to determine whether it correctly interprets and applies the applicable law. *McCoy v. Linn County*, 90 Or App 271, 275, 752 P2d 323 (1988). The methodology described in *State v. Gaines*, 346 Or 160, 165-73, 206 P3d 1042

(2009), and *Portland Gen. Elec. Co. v. Bureau of Labor & Indus.*, 317 Or 606, 610-11, 859 P2d 1143 (1993), instructs us to focus initially on the text and context of the relevant code provisions, with due consideration of any relevant legislative history.

We agree with petitioner that the hearings officer's interpretation impermissibly inserts words into CDC 430-103.3(A) contrary to the interpretative principle embodied in ORS 174.010. The phrase "a residential use" simply cannot be read as the hearings officer read it to mean the maximum number of detached residences possible under the property's R-6 zoning. As we discuss in more detail below in our resolution of the first assignment of error, the use of the word "satellite" in the main section of CDC 430-103.3 in describing a narrow exception for some public buildings or stations in residential districts provides context for interpreting the phrase "a residential use" more narrowly than the hearings officer did. As we discuss below, if the use of the word "satellite" is to have any meaning at all, it presumably means a lesser but functionally similar version of a presumably larger, or functionally more important, main building. But under the hearings officer's interpretation, CDC 430-103.3(A) does not impose a limit on the traffic that a satellite building could generate; it simply requires location of a sufficiently large vacant property. Further, we agree with petitioner that the legislative history of CDC 430-103.3(A) supports interpreting the phrase "a residential use" in a more limited way than the hearings officer did. In 1985, the county enacted the current version of CDC 430-103.3. Prior to that enactment in 1985, the county required *all* public buildings to have access to arterial or collector streets. The 1985 version included for the first time an exception for public buildings located in residential districts that are "satellite buildings or stations * * * which [g]enerate no more trips than a residential use in the same district * * *." The legislative history of that enactment provides that the change was enacted to "make[] provision for a satellite building which may not require access to a collector or arterial if it meets the specific, provided standards *to maintain compatibility with uses or types of streets*." Record 614 (emphasis

added.) That history tends to suggest that the county decided to allow some public buildings to be developed on residential lots in residential districts *and* take access from local streets abutting those lots only if the traffic impacts to the local street from allowing those buildings in residential districts were no greater than the traffic impacts to the local street from developing a residence on the property. There is no suggestion in that legislative history that the county contemplated measuring traffic impacts from the proposed public building according to the maximum developable density of a property. We agree with petitioner that the hearings officer incorrectly interpreted CDC 430-103.3(A) in determining whether the proposed fire station would generate "no more trips than a residential use in the same district." CDC 430-103.3(A) requires the hearings officer to determine whether the proposed fire station would generate no more trips than a residence on the site would generate.

The second assignment of error is sustained.

FIRST ASSIGNMENT OF ERROR

In the first assignment of error, petitioner challenges the hearings officer's conclusion that the proposed fire station is a "satellite building or station" under CDC 430-103.3(A). According to petitioner, the proposed fire station is not a "satellite building or station" of the type that the exception in CDC 430-103.3 was intended to allow to be sited on a local street in a residential district. According to petitioner, the phrase "satellite * * * station" means a station that serves the same purpose as but is smaller than and ancillary to a larger, full-service fire station. Petition for Review 19.

The hearings officer concluded that the proposed station qualifies because it is "an office or building that is located away from the main office, and depends on or is controlled by the main office." Record 43. She reached that conclusion by relying in part on a 2011 decision on a different application for a fire station (the 2011 decision) that the hearings

officer found provided "context," and in part on a dictionary definition of satellite.[1] She also reviewed the legislative history of CDC 430-103.3, described above in our resolution of the second assignment of error, and concluded that the proposed fire station was a "satellite building or station:"

> "[L]ooking solely at the physical size of a station completely ignores the purpose and function of the station. The legislative history emphasizes the purpose and function of a 'satellite building or station,' not the square footage. This purpose and function of 'a satellite building or station' as described in the legislative history coincides with the ordinary meaning of the term 'satellite' as discussed above." Record 42.

Petitioner argues that the phrase "satellite building or station" is textually ambiguous, and that the hearings officer's interpretation of the phrase ignores relevant dictionary definitions of the word "satellite" and ignores relevant context found in CDC 430-103.3(A). Petitioner argues that the hearings officer used a dictionary definition of "satellite" that is broader than the context of the entire provision suggests should have been used. Petitioner argues that the context provided by reading all of the provisions of CDC 430-103.3 together supports a determination that the proposed fire station is not a "satellite building or station," and points to the "no more trips than a residential use in the same district" phrase used in CDC 430-103.3(A) as an indication that the county intended to allow only public buildings with minimal traffic impacts to be sited on local streets. Petitioner argues that the hearings officer's interpretation fails to give effect to that context.

Petitioner also argues that the hearings officer erred in relying on the 2011 decision as "context," because such a decision is not context for interpreting CDC 430-103.3(A).

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[1] The hearings officer found:

> "Webster's Third New International Dictionary provides several definitions for 'satellite.' One such definition applies here, and is consistent with [the 2011 decision]:
>
> > "Satellite, *adj*. 1. of, relating to, or being a satellite…3.a. being in close proximity or association; ADJACENT, ANCILLARY. b. of a correlative nature." Record 40.

Petitioner argues that CDC 430-103.3(A) is an exception to the general rule that public buildings must be located on arterials and collectors, and as such, it should be construed narrowly.

Finally, petitioner points to legislative history of the enactment of CDC 430-103.3, and additionally points to evidence in the record regarding a 1984 application by intervenor's predecessor for a variance to site a much smaller fire station than the proposed station in a residential district, and the county's quasi-judicial decision approving that application. According to petitioner, that application and quasi-judicial decision are relevant legislative history because the decision ultimately led to the enactment of CDC 430-103.3. Record 246.

Intervenor responds that the hearings officer's interpretation of the term is supported by the text of the code provision and the dictionary definition of "satellite" that she relied on.[2] Intervenor also argues that CDC 430-103.3(A) is an independent standard that intervenor must satisfy in order to site the fire station on a local street in a residential district and as such, is not relevant context to interpret the phrase "satellite building or station." Finally, intervenor responds, the legislative history of the enactment of CDC 430-103.3 does not support petitioner's interpretation of the phrase. Intervenor also challenges petitioner's characterization of the 1984 application by intervenor's predecessor as "context" or legislative history of the enactment in 1985 of the current version of CDC 430-103.3 and argues that in any event, the record of a 1984 quasi-judicial decision is not legislative history of a legislative enactment that occurred over a year after the quasi-judicial decision was rendered.

It is not clear exactly what the county meant when it used the phrase "satellite building or station," and it will admittedly be difficult for the county to come up with a workable definition given the ambiguities in the phrase. It may be that when the county

[2] Intervenor also argues that as used in the phrase "satellite building or station," the word "or" is used disjunctively and the adjective "satellite" does not modify the word "station." We reject that argument.

chose to limit the types of satellite buildings and stations in residential districts by directly limiting the traffic, noise and visual impacts under CDC 430-103.3(A) through (C), it became unnecessary to further refine what the county mean by the phrase "satellite building or station." The hearings officer's interpretation of the phrase as meaning "an office or building that is located away from the main office, and depends on or is controlled by the main office," gives some meaning to that phrase, as far as it goes, and is not inconsistent with the text of CDC 430-103.3 and the dictionary definition of "satellite." Further, that interpretation is also not inconsistent with the context provided by the other provisions of CDC 430-103.3, and the legislative history of CDC 430-103.3 does not conclusively resolve the issue one way or the other.[3]

That said, we generally agree with petitioner that the use of the word "satellite" and the definition quoted by the hearings officer suggests that the county intended to allow buildings and stations that are functionally related (i.e. "correlative"), but "ancillary," to a more important building or station that performs the same essential function. *See* n 2. As we understand the hearings officer's interpretation, the satellite building and the primary building could serve very different functions. Evidence in the record suggests that the "main office" for intervenor's operations in the present case is a large regional headquarters that provides administrative services but no firefighting services, whereas the proposed station is one of the intervenor's standard, full-featured fire stations, the main function of which is to provide fire fighting services. If that is the case, then we question whether there is a functional, correlative relationship between intervenor's main office and the proposed fire station that would qualify the fire station as a "satellite building or station" that is ancillary to the main office. Remand is necessary for the hearings officer to explain, how the proposed

[3] We tend to agree with petitioner that the 1984 application for a fire station by intervenor's predecessor and the county's quasi-judicial decision on that application provide relevant context for interpreting CDC 430-103.3, because it is reasonably clear from the record that the application and decision had some bearing on the 1985 amendments to the CDC that introduced the "satellite building or station" concept for the first time.

station is functionally related to intervenor's main office, such that it can properly be viewed as a "satellite building or station."

The first assignment of error is sustained.

CONCLUSION

OAR 661-010-0071 provides in relevant part that LUBA shall reverse a land use decision when the decision "violates a provision of applicable law and is prohibited as a matter of law," but LUBA shall remand a land use decision for further proceedings when the decision "improperly construes the applicable law, but is not prohibited as a matter of law." OAR 661-010-0071(1)(c), 661-010-0071(2)(d). Petitioner requests that we reverse the hearings officer's decision.

We will reverse a local government's decision only when it is wrong as a matter of law and cannot be corrected by additional proceedings on remand. *Cedar Mill Creek Corr. Comm. v. Washington County*, 38 Or LUBA 333, 342 (2000); *19th Street Project v. City of The Dalles*, 20 Or LUBA 440, 449 (1991). We are not prepared to hold as a matter of law that the decision cannot be corrected on remand. *DLCD v. Wallowa County*, 37 Or LUBA 105, 121 (1999).

The county's decision is remanded.