

1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

3 OREGON COAST ALLIANCE,

4 *Petitioner,*

5
6 vs.

7
8 CURRY COUNTY,

9 *Respondent,*

10
11 and

12
13 ELK RIVER PROPERTY DEVELOPMENT, LLC,

14 *Intervenor-Respondent.*

15
16 LUBA No. 2015-080

17
18 FINAL OPINION

19 AND ORDER

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21 Appeal from Curry County.

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23 Sean T. Malone, Eugene, filed the petition for review and argued on
24 behalf of petitioner.

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26 Shala McKenzie Kudlac, Bandon, filed the response brief and Fred
27 Carleton argued on behalf of respondent. With her on the brief was Carleton
28 Law Offices.

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30 Nick Klingensmith, Eugene, filed the response brief and Bill Kloos
31 argued on behalf of intervenor-respondent. With him on the brief was the Law
32 Office of Bill Kloos, PC.

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

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37 AFFIRMED

01/27/2016

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

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NATURE OF THE DECISION

Petitioner appeals a decision by the county approving a conditional use permit for an 18-hole golf course on property zoned for exclusive farm use (EFU).

MOTION TO INTERVENE

Elk River Property Development, LLC (intervenor), the applicant below, moves to intervene on the side of the respondent. The motion is allowed.

FACTS

The challenged decision is the board of county commissioners' decision on remand from *Oregon Coast Alliance v. Curry County*, __ Or LUBA __ (LUBA No. 2015-006, May 15, 2015) (*ORCA I*). Intervenor proposes to construct an 18-hole golf course on approximately 198 acres of a 354-acre property, known as the Knapp Ranch, which is zoned EFU. In addition, intervenor proposes other accessory buildings, including as relevant here a 10,000-square-foot two-story clubhouse with a restaurant, lounge, pro shop, locker rooms, offices, and storage.

The property is located between Highway 101 and the Pacific Ocean, and abuts the Port Orford urban growth boundary to the south and east. Under OAR 660-033-0130(2)(a), a golf course use that is located within three miles of

1 an urban growth boundary must include no enclosed structures or group of
2 structures that exceed a “design capacity” of 100 people.¹ In *ORCA I*, we
3 remanded the county’s decision because we concluded that the county erred in
4 determining the “design capacity” of the clubhouse based on intervenor’s
5 representations regarding the number of persons who are likely to use the
6 clubhouse under normal operation of the golf course, particularly where the
7 record did not include plans of any sort depicting the design of the clubhouse.
8 *Id.* at slip op 15-16. We held that, in determining the design capacity of the
9 clubhouse:

10 “[A]reas of the clubhouse intended for storage of golf carts, etc.,
11 and not intended primarily for human occupancy or for purposes
12 of assembly also need not be counted toward the 100-person
13 design capacity limitation. However, all areas or structures
14 designed primarily for human occupancy or assembly, including
15 the restaurant and lounge, must be designed for a cumulative
16 capacity of 100 persons or less.” *Id.* at slip op 21-22.
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¹ OAR 660-033-0130(2)(a) provides:

“No enclosed structure with a design capacity greater than 100 people, or group of structures with a total design capacity of greater than 100 people, shall be approved in connection with the use within three miles of an urban growth boundary, unless an exception is approved pursuant to ORS 197.732 and OAR chapter 660, division 4, or unless the structure is described in a master plan adopted under the provisions of OAR chapter 660, division 34.”

1 During the proceedings on remand, intervenor submitted preliminary drawings
2 of the proposed clubhouse, prepared by an architect. Remand Record 139. The
3 county relied on the preliminary drawings and testimony from intervenor to
4 conclude that the “design capacity” of the clubhouse did not exceed 100
5 people.² This appeal followed.

6 **ASSIGNMENT OF ERROR**

7 Petitioner challenges three aspects of the county’s determination.

8 **A. Hallways (First Subassignment of Error)**

9 In this subassignment of error, petitioner argues that the hallways
10 depicted on the preliminary drawings are large and should qualify as “areas for
11 human occupancy or assembly” that, in *OCA I*, we held must be included when
12 determining “design capacity.” The county found:

13 “The Board further agrees with the applicant that hallways are
14 ‘conduits for pedestrian transit’ from one part of the building to
15 the other, and they do not increase the total number of people the
16 building is designed to accommodate. The Board agrees with the
17 applicant’s observation * * * that the portions of the hallways
18 labeled ‘view areas’ are simply hallways that happen to be
19 arranged in a way that maximizes the views of the coast and

² The county imposed a condition of approval that “[c]umulatively, the four proposed buildings (clubhouse, maintenance shop, refreshment kiosk, and reception stand) shall have no more than 100 people allowed inside at any one time, regardless of post-construction ‘occupant loads’ that may be assigned by the fire marshal or other building official.” Remand Record 18.

1 mountains, to enhance the experience for people walking down the
2 hallways, and that nothing in the floorplan indicates these areas
3 are designed for people to linger or assemble there. * * * Because
4 the architect's drawings do not show the hallways playing any role
5 in providing occupancy or assembly, there is no basis to conclude
6 that these spaces must be individually accounted for in the 'design
7 capacity' calculations." Remand Record 14.

8 Intervenor and the county (respondents) respond, and we agree, that the
9 hallways are just that, hallways that provide pedestrian access between the
10 entryway and interior rooms, such as the restaurant. That the hallways have
11 windows that provide views does not establish that they are areas intended or
12 designed for occupancy or assembly.

13 This subassignment of error is denied.

14 **B. Locker Rooms (Third Subassignment of Error)**

15 The county found that each of the mens' and womens' locker rooms have
16 a design capacity of four people. Remand Record 15. Petitioner argues that
17 because the total number of lockers in each locker room is fourteen and the
18 benches for seating in each locker room appear able to seat more than four
19 people, the county's conclusion does not accurately determine the design
20 capacity of the locker rooms. Respondents respond, and we agree, that the
21 county's determination of the design capacity of the locker rooms is correct and
22 supported by the architect's testimony. Petitioner does not explain why the

1 number of lockers or the size of the benches is determinative of the design
2 capacity.

3 This subassignment of error is denied.

4 **C. Decks and Patios (Second Subassignment of Error)**

5 OAR 660-033-0120(2)(a) prohibits the county from allowing an
6 “enclosed structure” with a design capacity greater than 100 people. *See* n 1. In
7 this subassignment of error, petitioner argues that the county erred in failing to
8 include outdoor decks and patios that petitioner concedes are not “enclosed
9 structure[s]” in its calculation of the design capacity of the clubhouse.
10 Respondents respond, and we agree, that the county’s construction of the
11 phrase “design capacity” as excluding outdoor decks and patios that are not
12 “enclosed structures” is consistent with the express language of the rule.³

13 This subassignment of error is denied.

14 The county’s decision is affirmed.

³ The county imposed a condition of approval that “[a]ll non-enclosed areas depicted in the applicant’s drawings, such as patios, are to remain non-enclosed.” Remand Record 18.