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

DONALD G. CAMPBELL,
Petitioner,

vs.

COLUMBIA COUNTY,
Respondent,

and

DEER POINTE MEADOWS, LLC,
Intervenor-Respondent.

LUBA No. 2019-112

FINAL OPINION
AND ORDER

Appeal from Columbia County.

Andrew H. Stamp, Lake Oswego, filed the petition for review and a reply brief and argued on behalf of petitioner. With him on the brief was Andrew H. Stamp, P.C.

Tiffany A. Johnson, Assistant County Counsel, St. Helens, filed a response brief and argued on behalf of respondent.

Timothy V. Ramis, Lake Oswego, filed a response brief and argued on behalf of intervenor-respondent. With him on the brief was Jordan Ramis PC.

RYAN, Board Member; RUDD, Board Chair, participated in the decision.

ZAMUDIO, Board Member, did not participate in the decision.

REMANDED 05/21/2020

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 board of county commissioners denying petitioner's appeal of planning staff decisions approving a building permit and an electrical permit for a space in a mobile home park.

MOTION FOR JUDICIAL NOTICE

Respondent filed a motion seeking that LUBA take judicial notice of the 1996 Columbia County Road Standards (CRS). There is no opposition to the motion and it is allowed.

STANDING

Intervenor-respondent Deer Pointe Meadows, LLC (intervenor) challenges petitioner Dawn Campbell's standing, arguing that the record does not demonstrate that Dawn Campbell "appeared" before the county, as required by ORS 197.830(2) and (9). Petitioner has not responded to intervenor's argument. Accordingly, we conclude that Dawn Campbell lacks standing to appeal the decision, and she is dismissed.

FACTS

The subject mobile home park, Deer Pointe Meadows (Deer Point), is a 46-space mobile home park that is a nonconforming use (nonconforming use or NCU) in the rural residential 5-acre minimum (RR-5) zone. Deer Point's nonconforming use status was established in 1996 after the county conducted a nonconforming use verification evaluation that also approved an expansion of the

existing nonconforming use, to allow a maximum of 46 mobile home units on the subject property, pursuant to Columbia County Zoning Ordinance (CCZO) 1506.[1]

In late 2016, a discharge of septic effluent occurred that caused the county, in early 2017, to suspend new placements of mobile homes on then-vacant spaces until repairs mandated by the Oregon Department of Environmental Quality (DEQ) were completed (the Suspension Letter). Intervenor began engineering work on the repairs and submitted its plan to DEQ in 2017. DEQ in turn required intervenor to submit a request for a land use compatibility statement (LUCS) to the county. The county issued the LUCS, and petitioner appealed the LUCS locally. The board of county commissioners affirmed the county's issuance of the LUCS. In November 2017 the LUCS decision became final (Order 80-2017)

Intervenor commenced construction of the repairs and upgrades in spring 2018 and concluded them in July 2018. In August 2018, the county lifted the temporary suspension of new placements on vacant spaces, and petitioner appealed that decision to LUBA. LUBA concluded that the challenged decision was not a land use decision and that consequently we lacked jurisdiction over the

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[1] Deer Point and petitioner have a long history of disputes regarding the mobile home park, and some of those disputes are summarized in *Campbell v. Columbia County*, 67 Or LUBA 53 (2013) and *Campbell v. Columbia County*, ___ Or LUBA ___ (LUBA No 2018-107, Jan 17, 2019).

appeal. We granted petitioner's motion to transfer the appeal and it was transferred to circuit court in January 2019.

In 2019, intervenor applied for a building permit and an electrical permit to place a mobile home on Space 10, which had been vacant prior to and during the time between the county's suspension of placement of mobile homes on vacant spaces and the time of application. Petitioner appealed the county's issuance of the building permit and electrical permit to the board of county commissioners, and argued that intervenor's right to place a mobile home on Space 10 was discontinued pursuant to CCZO 1506.4, due to lack of occupancy of the space by a mobile home for more than one year.

The board of county commissioners conducted a hearing on petitioner's appeals, and at the conclusion left the record open for submittal of additional evidence. Thereafter, the board of county commissioners deliberated and at the conclusion of the hearing, voted to approve the permits. The board of commissioners subsequently adopted a written decision approving the permits. This appeal followed.

FIRST, SECOND, THIRD AND FOURTH ASSIGNMENTS OF ERROR

Because this appeal involves statutes and local code provisions governing nonconforming uses, we begin with a brief description of relevant portions of the statutes that apply to nonconforming uses in counties, and the relevant provision of the CCZO.

A. ORS 215.130 and CCZO 1506.4

ORS 215.130(5) protects nonconforming uses and provides that 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. * * *"

ORS 215.130(7)(a) provides that a lawful nonconforming use under subsection (5) "may not be resumed after a period of interruption or abandonment * * *."

ORS 215.130(10) in turn provides that:

> "A local government may adopt standards and procedures to implement the provisions of [ORS 215.130]. The standards and procedures may include but are not limited to the following:
>
> "* * * * *
>
> "(b) Establishing criteria to determine when a use has been interrupted or abandoned under subsection (7) of this section[.]"

The language that is now included in subsection (10) was first added to ORS 215.130 in 1997.

The county has adopted provisions into the CCZO that govern nonconforming uses. CCZO 1506.4 provides that:

> "A Non-Conforming Use may be resumed if the discontinuation is for a period less than 1 year. If the discontinuance is for a period greater than 1 year, the building or land shall thereafter be occupied and used only for a conforming use."

B. *Landwatch Lane County v. Lane County (McDougal)*

Landwatch Lane County v. Lane County, 77 Or LUBA 213, *aff'd*, 292 Or App 415, 421 P3d 432 (2018) (*McDougal*) involved a nonconforming school in

the county's EFU zone.[2] The board of county commissioners' decision applied the county code provision governing discontinuance of nonconforming uses, and concluded that the applicant's right to complete construction of the school had not been discontinued because the use of the subject property as a school was not interrupted for more than one year. We affirmed the county's decision. *Id.* at 226. The Court of Appeals affirmed our decision. 292 Or App 415.

In *McDougal*, we explained that "ORS 215.130(7)(a) contains only a general prohibition on resumption of an interrupted nonconforming use, and ORS 215.130(10)(b) leaves it to counties, if they choose, to adopt and apply the criteria and standards for determining whether a nonconforming use has been interrupted." *Id.* at 224-25. We also concluded that the standard of review that we apply to a county governing body's interpretation of criteria and standards for determining whether a nonconforming use has been interrupted may be a deferential one:

> "[a]s long as those adopted local standards are not inconsistent with

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[2] More specifically, *McDougal* involved a vested right to complete establishment of a nonconforming use. Uses for which there are vested rights to develop or complete are "inchoate nonconforming uses." *Fountain Village Dev. Co. v. Multnomah County*, 39 Or LUBA 207, 221 (2000), *aff'd*, 176 Or App 213, 220-24, 31 P3d 458 (2001), *rev den*, 334 Or 411 (2002). Because uses for which there are vested rights to develop or complete are a species of nonconforming use, the statute at ORS 215.130 that protects, regulates, and limits nonconforming uses, and local code provisions governing nonconforming uses, also apply to vested rights, including a determination of whether a vested right has been discontinued.

> ORS 215.130(7)(a), then pursuant to ORS 197.829(1)(a), (b) and (c), we are required to affirm the governing body's interpretation of those standards unless that interpretation is inconsistent with the express language of the code provision, with the purpose for the code provision, or with the underlying policy that provides the basis for the code provision. In addition, we are not required to affirm the governing body's interpretation of its code if the interpretation is 'contrary to a state statute, land use goal or rule that the * * * land use regulation implements.' ORS 197.829(1)(d)." *Id.* at 222-23 (footnote omitted).

C. The County's Decision

The board of county commissioners concluded that the term "discontinuance" as used in CCZO 1506.4 means "a period when a property owner ceases to actually pursue permits or perform substantial efforts to repair the nonconforming use." Supplemental Record 7. In other words, the board of county commissioners concluded that a nonconforming use is not discontinued within the meaning of CCZO 1506.4 if the owner is pursuing permits or performing substantial efforts to repair the use, or responding to appeals of permits issued to perform repairs, because those actions constitute continued use. The board of county commissioners applied that interpretation to the evidence in the record, and concluded that since the time the county suspended occupancy of Space 10 in early 2017, intervenor had actively pursued permits to make repairs to the septic system and made those repairs, and that intervenor demonstrated "sufficient efforts to complete the repairs without ceasing those efforts for a period greater than one year during the temporary suspension." Supplemental Record 8. The board of county commissioners further found:

> "The Board rejects [petitioner's] argument that the one-year time limit period for a discontinuance applies during the time period of active permit applications and appeals because such an application would lead to an unintended and absurd result of allowing a project opponent to force the discontinuance of a [nonconforming use (NCU)] by simply appealing a permit until the one-year time period expired. The Board finds the effect would be that an owner of a NCU would be discouraged from applying for permits for repairs or other routine work and that public policy should encourage the owners of NCUs to obtain permits when necessary to comply with health and safety standards." Supplemental Record 10.

D. First Through Fourth Assignments of Error

In these combined assignments of error, petitioner argues that the board of county commissioners improperly construed CCZO 1506.4 in concluding that the nonconforming use of Space 10 had not been discontinued for more than one year. ORS 197.835(9)(a)(D) provides that LUBA will reverse or remand a decision that "improperly construed the applicable law." Petitioner seeks reversal of the county's decision. Petition for Review 1, 45.

We understand petitioner to argue that the board of county commissioners' interpretation of the word "discontinuance" in CCZO 1506.4 as allowing the county to consider intervenor's efforts to complete mandated health and safety repairs through design and engineering activities, pursuing permits, and responding to appeals as factors in determining whether a nonconforming use has been discontinued for more than "one year" is contrary to ORS 215.130(7)(a), because the interpretation is inconsistent with the plain, dictionary meaning of the word "interruption." Petitioner quotes the definition of interruption and argues that intervenor's use of Space 10 was "interrupted" under the plain,

ordinary meaning of the term because Space 10 was not occupied for more than one year.[3]

Intervenor and the county (together, respondents) disagree with petitioner's position that in order to be consistent with the term "interruption" in ORS 215.130(7), the county must interpret the term "discontinue" in CCZO 1506.4 to be synonymous with "interruption."[4] Respondents also respond that the county's interpretation of the word "discontinuance" in CCZO 1506.4 is not contrary to the plain meaning of the word "interruption," and is required to be affirmed under ORS 197.829(1).

We disagree with respondents on their first point. In *McDougal*, we assumed for purposes of the opinion that the term "discontinued" in Lane County's code was synonymous with the term "interrupted" in ORS

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[3] *Webster's Third New Int'l Dictionary* defines "interruption" to mean in relevant part "**4 :** temporary cessation: intermission, suspension." 1182 (unabridged ed 2002).

[4] The board of county commissioners adopted somewhat contradictory findings that:

> "The Board acknowledges that CCZO 1506 was adopted to implement ORS 215.130, and that CCZO 1506 cannot be applied or interpreted in a manner that conflicts with ORS 215.130.
>
> "* * * * *
>
> "The Board finds that the term 'discontinuance' is a type of interruption that does not have the exact same meaning as interruption." Supplemental Record 6-7.

215.130(7)(a). 77 Or LUBA at 219 n 4. That was so because in order for a county governing body's interpretation of the county's standards and criteria that it has established pursuant to the grant of authority in ORS 215.130(10)(b) to be reviewed under the deferential standard of review in ORS 197.829(1), that interpretation may not be "contrary to a state statute * * *." ORS 197.829(1)(d).

However, although we disagree with respondents' position on their first point, we conclude that petitioner has not established that the board of county commissioners' interpretation of the word "discontinue" in CCZO 1506.4 is contrary to the term "interruption" in ORS 215.130(7)(a). Petitioner quotes the dictionary definition of "interruption." *See* n 3; Petition for Review 13. The board of county commissioners' decision quotes the dictionary definition of "discontinue" as: "**1 a :** to break off **:** give up **:** terminate **:** end of operations or existence of **:** cease to use b *obs* **:** to cease to attend, frequent, or occupy **c :** to break the continuity of." Supplemental Record 7.[5]

The board of county commissioners then applied the definition of "discontinuance" to the evidence presented by intervenor and concluded that a property owner that is actively pursuing permits to complete repairs and upgrades required for health and safety reasons, and who is actively responding to appeals of those permits, has not discontinued the nonconforming use. Petitioner has not

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[5] *Webster's Third New Int'l Dictionary* also defines "discontinuity" as a "**1 :** lack of continuity or cohesion **:** disunion of parts **2 :** a break in continuity **:** gap." *Id.* at 646.

established that the county's interpretation and application of "discontinuance" is contrary to the meaning of the word "interruption."

Petitioner also argues that the county's interpretation of CCZO 1506.4 is not entitled to any deference under ORS 197.829(1) and *Siporen v. City of Medford*, 349 Or 247, 243 P3d 776 (2010), for two reasons. First, petitioner argues that our decision in *McDougal* was incorrect. We disagree, and adhere to our holding in *McDougal*.[6]

Second, petitioner argues that because CCZO 1506.4 was adopted in 1984, prior to the legislature's enactment of ORS 215.130(10)(b) in 1997, CCZO 1506.4 does not "implement" ORS 215.130(7)(a). According to petitioner, in order to avail itself of ORS 215.130(10)(b), the county was required, after 1997, to adopt standards and criteria to "determine when a use has been interrupted or abandoned under subsection (7)." In response, respondents point out that nothing in the express language of ORS 215.130(10)(b) requires the county to adopt new legislation to establish standards and criteria pursuant to ORS 215.130(10)(b), and nothing in the statute prevents the county from relying on code provisions that were previously adopted to implement ORS 215.130(7).[7] We agree.

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[6] Moreover, the Court of Appeals affirmed our decision. 292 Or App 415. LUBA is bound by Court of Appeals' precedent and must adhere to it.

[7] The text of ORS 215.130(7)(a) in 1984 was the same as it is today. Subsequent amendments to ORS 215.130(7) renumbered (7) as (7)(a).

Finally, citing *Goose Hollow Foothills League v. City of Portland*, 117 Or App 211, 218, 843 P2d 992 (2002), petitioner argues that the county's interpretation is a de facto amendment of the CCZO "in the guise of [an] interpret[ation.]" In *Goose Hollow Foothills*, LUBA and the Court of Appeals concluded that the city council's interpretation of a city code provision that unqualifiedly prohibited a use in one plan subdistrict to allow the use in all other subdistricts within the plan district was an impermissible exercise in interpretation. The court cited other cases that had held that "to amend legislation de facto or to subvert its meaning in the guise of interpreting it, is not a permissible exercise." *Id.* (citing *1000 Friends of Oregon v. Wasco County Court*, 299 Or 344, 703 P2d 207 (1985); *West Hills & Island Neighbors v. Multnomah Co.*, 68 Or App 782, 683 P 2d 1032, *rev den*, 298 Or 150 (1984)).

Here, the board of county commissioners' interpretation of the single term "discontinuance," and its application of that interpretation to the evidence in the record is not an interpretation that departs so profoundly from the text as to constitute, in practical effect, an amendment to the CCZO. It does not subvert the meaning of the term "discontinuance," and is not an amendment of CCZO 1506.4. Further, it is within the county's discretion to interpret the term "discontinuance" in the context of its evaluation of evidence in the record regarding whether a nonconforming use has been discontinued.

Finally, petitioner argues "this case also presents an issue of substantial evidence," but does not develop any argument supporting that single sentence. Petition for Review 8.

In sum, we reiterate that ORS 215.130(7)(a) does not direct counties as to how to determine whether "interruption" has occurred. ORS 215.130(10)(b) allows counties to establish standards and criteria to assist in making that determination. Applying CCZO 1506.4 is the county's method of determining when and how a nonconforming use may be interrupted. The county properly interpreted the undefined term "discontinuance" in CCZO 1506.4 by resorting to the dictionary definition, and applied the interpretation to conclude that the evidence in the record established that the use of Space 10 was not discontinued because during the time that Space 10 has been unoccupied, intervenor abided by the county's suspension order, pursued permits for repairs that are required for health and safety reasons, and responded to appeals of permits that were issued to authorize those repairs. The county's interpretation of the term "discontinuance" is not contrary to ORS 215.130(7)(a), and we affirm it. ORS 197.829(1).

The first, second, third, and fourth assignments of error are denied.

FIFTH AND SIXTH ASSIGNMENTS OF ERROR

Like the first four assignments of error, petitioner's fifth and sixth assignments of error are combined in a single section in the petition for review

and include a combined argument in support of these assignments of error.[8] Much of the argument in support of these assignments of error restates petitioner's arguments in support of his first through fourth assignments of error, and we reject those arguments for the same reasons we rejected them above.

As far as we can tell, in these assignments of error, petitioner argues that a partial discontinuance of 13 spaces in the 46-space mobile home park has occurred because, as petitioner views it, each space in Deer Point is a separate nonconforming use, and therefore the vacancy of 13 spaces for a period of more than one year means that intervenor has lost its nonconforming use right in those vacant spaces. The board of county commissioners interpreted the phrase "nonconforming use" as "the business of operating a 'mobile home park,' not the residential use of the land." Supplemental Record 25.

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[8] Petitioner's fifth and sixth assignments of error are:

> "The County Misapplied Applicable Law and Made a Decision Not Supported by Substantial Evidence in the Whole Record by Holding that the Partial Discontinuance Doctrine Does Not Apply to Deer Pointes' Repairs, and By Holding that ORS 215.130(5) Prohibits the County from interpreting CCZO 1506.4 in the Manner that Requires Repairs To Be Completed in One Year.
>
> "The Sporadic and Intermittent Use Doctrine Does Not Apply to Deer Pointe, Because the Interruption Was Caused by the Failure To Comply with The Terms of a DEQ WPCF Permit, Not Because of any Inherent Fluctuations in Occupancy Due to Natural Business Cycles." Petition for Review 29.

We reject petitioner's argument for a few reasons.[9] First, we concluded above that the board of county commissioners properly concluded that the use of Space 10 was not discontinued within the meaning of CCZO 1506.4 because during the time intervenor abided by the county's suspension order and the space was unoccupied, it pursued permits and repairs. Accordingly, even if we agreed with petitioner that Space 10 is a separate nonconforming use, that argument alone would not provide a basis for reversal because the county correctly concluded that use of Space 10 was not discontinued for more than one year.

Second, and in the alternative, we also disagree with petitioner's premise that each individual space in the mobile home park is a separate nonconforming use. Petitioner relies on *Jordan v. Columbia County*, 42 Or LUBA 341 (2002) to support his premise. But the facts of *Jordan* are very different from the facts here. Jordan involved nonconforming use of a property zoned RR-5. The property included a shooting range, a firearms safety training facility and until 1990, a clubhouse.[10] The clubhouse was destroyed by a fire in 1990 and events that were previously held in the clubhouse were thereafter held in other existing structures. In 1991, the operators of the property installed a new septic system in order to

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[9] The challenged decisions are also limited to a single space, Space 10, and accordingly, petitioner's arguments that challenge the nonconforming use status of other vacant spaces are beyond the scope of our review.

[10] It is not clear from the decision whether the property that was at issue in *Jordan* ever sought or received a county decision verifying the nature and extent of the nonconforming use.

rebuild the clubhouse. Between 1991 and 2001, the operators engaged in fundraising efforts to secure funds to rebuild the clubhouse, and in 2001, applied for site design review to construct a new clubhouse. The petitioners appealed the county planning commission's decision approving site design review, and argued that any right to reconstruct the clubhouse under ORS 215.130(6) had been lost when the applicant ceased moving forward with reconstruction activities for a period of approximately 10 years.[11] We explained that nonconforming use rights are subject to partial loss through discontinuance, and concluded that the right to rebuild the clubhouse granted in ORS 215.130(6) was lost through discontinuance. In *Jordan*, the nonconforming uses on the property were the aggregated but discrete uses of a shooting range, firearms training facility and clubhouse and as such, the right to continue one of those discrete uses could be lost. Here, the verified nonconforming use is one unified mobile home park.

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[11] ORS 215.130(6) provides:

> "Restoration or replacement of any use described in subsection (5) of this section may be permitted when the restoration is made necessary by fire, other casualty or natural disaster. Restoration or replacement shall be commenced within one year from the occurrence of the fire, casualty or natural disaster. If restoration or replacement is necessary under this subsection, restoration or replacement shall be done in compliance with ORS 195.260(1)(c)."

The 1996 verification of the nonconforming use verified the "mobile home park" commercial enterprise as the nonconforming use. Accordingly, vacancy of individual spaces in the entirety of the mobile home park business does not lead to a discontinuance of the lawful nonconforming use status of those spaces, any more than a vacant apartment in a nonconforming use apartment building would lead to a partial discontinuance of the apartment building's nonconforming use status. As the board of county commissioners explained:

> "Mobile homes and RVs are frequently moved in and out of mobile home parks. Once a space becomes vacant, the owner typically begins to look for a new renter via advertising, online and/or with signage. Just because a space is vacant does not mean the space is not available. Similar to someone who owns a strip mall, and has one storefront that is available to rent, does not mean the owner has forever abandoned the use of that storefront. Quite the contrary, the owner is actively working to attract a new client to the business. The same goes for a mobile home park where the business is renting out spaces for people to place their mobile homes and RVs. A vacant space in a mobile home park does not constitute discontinuance of the business. It is very common for spaces to sit vacant awaiting new renters." Supplemental Record 27.

Also in his combined arguments under the fifth and sixth assignments of error, petitioner challenges the county's finding that "sporadic and intermittent" use of spaces in the mobile home park is consistent with the nature of the mobile home park business. Supplemental Record 24-25. Petitioner argues "the line of cases governing 'sporadic and intermittent' businesses beginning with *Polk County v. Martin*, 292 Or 69 [, 636 P2d 952] (1981) have no applicability here." Petition for Review 38. That is so, petitioner argues, because while the normal

business operations of a mobile home park have fluctuations in occupanc, intervenor's negligent operation of the mobile home park and the resulting failure of the septic system was the cause of the county's decision to suspend occupancy.

Respondents respond that the board of county commissioners correctly considered the sporadic and intermittent use doctrine as one factor in concluding that the mobile home park in its entirety, and not individual spaces, is the nonconforming use. While we tend to agree with petitioner that the sporadic and intermittent use principle does not really provide support for the county's conclusion that the entire mobile home park is the nonconforming use because the sporadic and intermittent use doctrine relates to the potential interruption of a use, rather than establishes the nature and extent of the use itself, the 1996 verification decision does provide independent support for that conclusion. Petitioner's arguments in this section of the fifth and sixth assignments of error do not provide a basis for reversal of the decision.

The fifth and sixth assignments of error are denied.

SEVENTH ASSIGNMENT OF ERROR

In the seventh assignment of error, petitioner challenges the county finding that rejected petitioner's arguments that "the right to continue a NCU under ORS 215.130(5) and alter the use in order to comply with health and safety requirements 'has no applicability here,'" and concluded that the arguments were a collateral attack on issues previously resolved. Supplemental Record 8-10.

This assignment of error relates to the November 2017 board of county commissioners' decision approving a LUCS issued by the planning department to DEQ for intervenor's proposed septic system repairs (Order 80-2017). In Order 80-2017, the county concluded that ORS 215.130(5) prohibited the county from placing a limit on the time to complete the required septic repairs. Record 786-87. Petitioner argues that the challenged decision is inconsistent with Order 80-2017 and the Suspension Letter because Order 80-2017 and the Suspension Letter placed conditions on continuation of the nonconforming use, prohibiting occupancy of 13 spaces.

Petitioner does not explain why, even if we accept his argument that the findings at Supplemental Record 8-10 are inconsistent with Order 80-2017 and the Suspension Letter, his arguments provide a basis for reversal of the decision. Petitioner does not establish that Order 80-2017 or the Suspension Letter are "applicable law" or that the county "improperly construed" those prior decisions. ORS 197.835(9)(a)(D). Accordingly, petitioner's arguments in the seventh assignment of error do not provide a basis for reversal of the decision.

The seventh assignment of error is denied.

EIGHTH AND NINTH ASSIGNMENTS OF ERROR

During the proceedings before the board of county commissioners, petitioner argued that the county must apply ORS 446.095(1), the Uniform Fire Code (UFC), and County Road Standards (CRS) to the subject building and

electrical permits.[12] The board of county commissioners found "[t]he Board rejects [petitioner's] arguments that the County must apply ORS 446 and the Oregon Uniform Fire Code to the Building Permit and Electrical Permit applications as part of a land use process because the statute and code are not land use regulations." Supplemental Record 10. In his eighth and ninth assignments of error, and in his reply brief, petitioner argues that the board of county commissioners improperly construed those provisions when it failed to apply those provisions to its decision to approve the building and electrical permits. ORS 197.835(9)(a)(D).

Respondents respond that "LUBA lacks jurisdiction" over the assignments of error because ORS 446.095, the UFC and CRS are not "[l]and use regulations" as that term is defined in ORS 197.015(11).[13] Intervenor's Response Brief 6-7; Respondent's Response Brief 37-39. However, there is no dispute that the

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[12] ORS 446.095(1) provides that "[t]he owner or operator of a mobile home or manufactured dwelling park shall:

> "(1) Construct well-drained and hard-surfaced park streets at least 20 feet in width, unobstructed and open to traffic within the mobile home or manufactured dwelling park. If the owner or operator permits parking of motor vehicles on the park streets, the owner or operator shall construct the park streets at least 30 feet in width."

[13] ORS 197.015(11) defines "[l]and use regulation" to mean "any local government zoning ordinance, land division ordinance adopted under ORS 92.044 or 92.046 or similar general ordinance establishing standards for implementing a comprehensive plan."

challenged decision is a "land use decision" because the board of county commissioners applied various provisions of the CCZO in making its decision. Accordingly, we understand respondents to essentially argue that petitioner's arguments under the eighth and ninth assignments of error are outside of LUBA's scope of review under ORS 197.835(9). While we agree with respondents that ORS 446.095, the UFC, and the CRS are not "[l]and use regulations," LUBA's scope of review is set out at ORS 197.835, and ORS 197.835(9)(a)(D) expressly authorizes LUBA to reverse or remand a decision where the local government "[i]mproperly construed the applicable law." The "applicable law" is not limited to land use regulations. *Beaumont-Wilshire Neighbors v. City of Portland*, 68 Or LUBA 393, 401 (2013). Petitioner's assignments of error that challenge the board of county commissioners' finding that ORS 446.085, the UFC, and the CRS do not apply to the building and electrical permits are within LUBA's scope of review.

Respondents do not respond to petitioner's arguments except to argue that the board of county commissioners correctly found that the subject laws do not apply to the building and electrical permit applications because those laws are not "land use regulations." We rejected above the board of county commissioners' sole justification—that they are not land use regulations—for not applying those provisions to the applications for building and electrical permits. Absent any other explanation, it is not clear to us why the subject laws do not

apply to the applications for building and electrical permits. Accordingly, petitioner's eighth and ninth assignments of error are sustained.

DISPOSITION

LUBA's rules of procedure require that a petitioner specify in the statement of the case part of a petition for review the "nature of the land use decision or limited land use decision and the relief sought by petitioner." OAR 661-010-0030(4)(b)(A). Petitioner seeks only reversal of the decision.[14] Petition for Review 1, 45. Respondent responds that remand is the appropriate remedy if LUBA sustains any of petitioner's assignments of error.

ORS 197.835(9) provides that LUBA shall "reverse or remand" a land use decision if, as relevant here, LUBA finds that the local government "[i]mproperly construed the applicable law." ORS 197.835(9)(a)(D). ORS 197.835(1) requires LUBA to "adopt rules defining the circumstances in which it will reverse rather than remand a land use decision or limited land use decision that is not affirmed." LUBA has adopted those rules at OAR 661-010-0071 (land use decisions) and OAR 661-010-0073 (limited land use decisions). OAR 661-010-0071(1)(d) provides that LUBA shall reverse a decision when "[t]he decision violates a

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[14] Petitioner argues:

> "Petitioners seek a reversal, on the grounds that the issuance of a placement permit to re-occupy Space 10 and 12 other discontinued non-conforming uses is prohibited as a matter of law. There is no interpretation of state law that can result in an affirmable decision under this particular set of undisputed facts." Petition for Review 1.

provision of applicable law and is prohibited as a matter of law," while OAR 661-010-0071(2)(d) provides that LUBA shall remand a decision when "[t]he decision improperly construes the applicable law, but is not prohibited as a matter of law."

Our decision to reverse or remand is not limited to the disposition requested by the parties, but is based on "what the nature of the assigned and established error demands." *McKay Creek Valley Ass'n. v. Washington County*, 114 Or App 95, 99, 834 P 2d 482, *adh'd to as modified on recons*, 116 Or App 299, 841 P2d 651 (1992), *rev den*, 317 Or 396 (1993); *Rockbridge Capital v. City of Eugene*, 288 Or App 320, 324 n 2, 405 P3d 185 (2017) (LUBA's ability to grant the relief it deemed proper in light of the nature of the error was not constrained by the disposition requested by the parties). Petitioner's arguments in the two assignments of error that we sustain, the eighth and ninth assignments of error, do not establish that the county's decision approving the building and electrical permits is "prohibited as a matter of law." Accordingly, petitioner's arguments provide no basis for *reversal* of the decision. Rather, the arguments establish that the county "improperly construed" ORS 197.835(9)(a)(D) in concluding that it was not required to apply ORS 446.095(1), the UFC or the CRS to the applications because those provisions are not "land use regulations." The established errors in the eighth and ninths assignments of error require remand to the county to address whether ORS 446.095(1), the UFC and the CRS apply, and if they apply, to determine whether they are satisfied.

The county's decision is remanded.