

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

CITY OF IRRIGON,
Petitioner,

and

CITY OF BOARDMAN,
Intervenor-Petitioner,

vs.

MORROW COUNTY,
Respondent.

LUBA No. 2025-056

FINAL OPINION
AND ORDER

Appeal from Morrow County.

Paige Sully filed the petition for review and argued on behalf of petitioner.
Also on the brief was Paige Sully P.C.

Christopher D. Crean filed the intervenor-petitioner's brief and reply brief
and argued on behalf of intervenor-petitioner. Also on the brief were Lydia I.
Fisher and Beery, Elsner & Hammond, LLP.

Daniel Kearns filed the respondent's brief and argued on behalf of
respondent. Also on the brief was Reeve Kearns, PC.

WILSON, Board Member; ZAMUDIO, Board Chair; BASSHAM, Board
Member, participated in the decision.

REVERSED

01/30/2026

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

NATURE OF THE DECISION

Petitioner appeals a county decision approving a conditional use permit to operate a commercial trucking business as a home occupation.

FACTS

The subject property is a 1.09-acre lot zoned Suburban Residential (SR-2A) located in Morrow County adjacent to the City of Irrigon. The applicant's residence is located on the property. The applicant also has been operating a commercial trucking business on the property for the past five years. The commercial trucking business consists of a small number of trucks (the application is for four) that are used during the harvest season at the end of summer and beginning of fall. During the remainder of the year, the trucks are parked on the property. Due to complaints from neighbors, an enforcement action was initiated against the applicant because such commercial uses are not allowed in the SR-2A zone. In response to the enforcement action, at the direction of the county, the applicant applied for a conditional use permit to authorize a commercial trucking business as a home occupation.

The planning commission approved the application and imposed conditions of approval including: (1) limiting the commercial trucking business to four trucks; (2) limiting the hours of operation; (3) limiting the months of operation to September and October; and (4) specifying the permit would be valid

1 for only one year and would not be renewed. Petitioner appealed the decision to
2 the board of commissioners, who denied the appeal and approved the application.

3 This appeal followed.

4 **CITY OF BOARDMAN'S FIRST ASSIGNMENT OF ERROR AND CITY**
5 **OF IRRIGON'S THIRD ASSIGNMENT OF ERROR**

6 We address the City of Boardman's first assignment of error and the City
7 of Irrigon's third assignment of error first, as they are dispositive.¹ The City of
8 Boardman and the City of Irrigon (together, petitioners) argue that the county
9 misconstrued the applicable law by approving a conditional use that is expressly
10 prohibited in the SR-2A zone. ORS 197.835(8) and (9)(a)(D). According to
11 petitioners, commercial trucking businesses are prohibited uses in the SR-2A
12 zone, and therefore they cannot be authorized as a conditional use home
13 occupation.

14 Morrow County Zoning Ordinance (MCZO) 3.051(D)(3) provides that
15 home occupations are potential conditional uses in the SR-2A zone, so long as
16 the approval criteria for conditional uses are satisfied.² MCZO 6.050 – Standards

¹ The City of Irrigon adopted and incorporated the City of Boardman's first assignment of error as its third assignment of error.

² MCZO 3.051(D)(3) provides:

“Conditional Uses Permitted. In an SR-2A Zone, the following uses and their accessory uses are permitted when authorized in accordance with the requirements set forth in Article 6 (Conditional Uses).

1 Governing Conditional Uses provides: “A conditional use shall comply with the
2 standards of the zone in which it is located and the standards set forth in this
3 subsection.”

4 MCZO 3.051(E)(2) provides under “Limitations on Uses”:

5 “In Suburban Residential 2A Two Acre (SR-2A) Zone, commercial
6 trucks and trucking businesses are not an allowed use.

7 “a. A landowner may be allowed to use a truck or tractor unit as
8 personal transportation to the resident parcel. No more than
9 one (1) truck or tractor unit is allowed per parcel.”

10 Petitioners argue that a conditional use must comply with the standards of
11 the subject zone and, under MCZO 3.051(E)(2), the commercial trucking
12 business home occupation is prohibited and cannot be approved. According to
13 petitioners, the prohibition against commercial trucking businesses may not be
14 avoided by calling the commercial trucking business a home occupation. The
15 county argues that the provision allowing home occupations and the provision
16 prohibiting commercial trucking business renders the code ambiguous and the
17 county is entitled to resolve the ambiguity by allowing such home occupations.

18 The county’s findings state:

19 “The primary use of the property is residential, and the limited
20 seasonal commercial truck operation is secondary to the primary
21 residential use of the property. The application does not seek

“* * * * *

“3. Home Occupations[.]”

1 approval of any new structures or modifications to existing
2 structures. The application also does not propose a stand-alone
3 commercial trucking operation, which is prohibited in the SR-2A
4 Zone under [MCZO] 3.051(E)(2), as the proposal is for a home
5 occupation that is secondary/accessory to the [applicant's] primary
6 residential use of the property. The applicant will be conducting the
7 home occupation within the existing buildings, with truck parking
8 outside of the existing structures, as shown on the applicant's site
9 plan. The Planning Commission imposed conditions intended to
10 limit operations and site improvements to be consistent with the
11 residential setting and primary use of the property." Record 80.

12 The county's interpretation draws a distinction between "stand-alone"
13 commercial trucking businesses and home occupation commercial trucking
14 businesses. According to the county, home occupation commercial trucking
15 businesses are permissible despite the MCZO 3.051(E)(2) prohibition on
16 commercial trucking businesses.

17 Under ORS 197.829(1), as construed in *Siporen v. City of Medford*, 349
18 Or 247, 259, 243 P3d 776 (2010), LUBA must defer to a local governing body's
19 interpretation of its comprehensive plan and land use regulations, unless the local
20 government's interpretation is inconsistent with the express language, purpose,
21 or underlying policy of the comprehensive plan or land use regulation. *Crowley*
22 *v. City of Hood River*, 294 Or App 240, 244, 430 P3d 1113 (2018). In *Crowley*,
23 an appeal that involved the city council's interpretation of the city's
24 comprehensive plan, the Court of Appeals explained: "Whether the city's
25 interpretation of its comprehensive plan is inconsistent with the plan, or the
26 purposes or policies underlying that plan, depends on whether the interpretation
27 is plausible, given the interpretive principles that ordinarily apply to the

1 construction of ordinances under the rules of *PGE v. Bureau of Labor and*
2 *Industries*, 317 Or 606, 610-12, 859 P2d 1143 (1993), as modified by *State v.*
3 *Gaines*, 346 Or 160, 171-72, 206 P3d 1042 (2009).” *Id.* (internal quotation marks
4 and brackets omitted). The standard of review under ORS 197.829(1) and
5 *Siporen* is “highly deferential” to the local government, and the “existence of a
6 stronger or more logical interpretation does not render a weaker or less logical
7 interpretation implausible.”” *Mark Latham Excavation, Inc. v. Deschutes County*,
8 250 Or App 543, 555, 281 P3d 644 (2012).

9 We agree with petitioners that the county’s interpretation is inconsistent
10 with the express language of the MCZO. MCZO 3.051(E)(2) does not just
11 prohibit commercial trucking businesses as a primary or “stand-alone” use, it
12 prohibits “commercial trucks and commercial trucking businesses” as any kind
13 of “allowed use.”

14 The county attempts to demonstrate an ambiguity between MCZO
15 3.051(D)(3), which allows home occupations, and MCZO 3.051(E)(2), which
16 prohibits commercial trucking businesses. We do not see any ambiguity,
17 however, between the two provisions. MCZO 3.051(B) lists the “Uses Permitted
18 Outright” in the SR-2A zone, and commercial trucking businesses are not a use
19 permitted outright. MCZO 3.051(C) lists the “Uses Subject to Administrative
20 Review” in the SR-2A zone, and commercial trucking businesses are not a use
21 subject to administrative review. MCZO 3.051(D) lists the “Conditional Uses
22 Permitted” in the SR-2A zone, and the only potential way to permit a commercial

1 tucking businesses is as a home occupation under MCZO 3.051(D)(3).³ In other
2 words, the only possible way of allowing a commercial trucking business in the
3 SR-2A zone would be as a home occupation.

4 MCZO 3.051(E)(2) prohibits commercial trucking business as an allowed
5 use. Given that the only way a commercial trucking business could even be
6 potentially allowed in the SR-2A zone is as a home occupation, the only time
7 MCZO 3.051(E)(2) could even be applicable is (as in the present case) to prohibit
8 commercial trucking businesses as home occupations. In other words, if MCZO
9 3.051(E)(2) does not apply to prohibit commercial trucking businesses as a
10 home occupation then it would never apply and would be completely superfluous.
11 The county cites cases that defer to local government interpretations when there
12 is an ambiguity or conflicting ordinance provisions. While that is correct, in the
13 present case there is no ambiguity to resolve or conflicting ordinances to
14 harmonize. MCZO 3.051(E)(2) prohibits commercial trucking businesses, and
15 the county's interpretation to allow a commercial trucking businesses as a home
16 occupation is inconsistent with the express language of the MCZO.

17 As petitioners point out, even if there were a contradiction in the code,
18 allowing commercial trucking businesses in a zone that prohibits commercial
19 trucking businesses fails to follow statutory rules of construction under ORS
20 174.020(2), which requires that particular intent controls over a more general

³ There are no other types of permissible uses in the SR-2A zone.

1 provision.⁴ The specific language of MCZO 3.0510(E)(2) prohibiting
2 commercial trucking businesses in the SR-2A zone controls over the general
3 language that allows home occupations under MCZO 3.051(D)(3).

4 The county also argues that the more stringent requirements for home
5 occupations and the conditions of approval limiting the scope of the commercial
6 trucking business create an ambiguity or conflict in the MCZO. As explained
7 earlier, we do not see that there is an ambiguity or a conflict. Furthermore, MCZO
8 3.051(E)(2)(a) allows the use of a commercial truck as “personal transportation
9 to the resident parcel,” but only allows one commercial truck per parcel.
10 Therefore, the use of more than one commercial truck or the use of any
11 commercial trucks for other than personal transportation violates the ordinance.
12 The contention that a “limited” commercial trucking business as a home
13 occupation creates an ambiguity or conflict in the MCZO because it violates
14 MCZO 3.051(E)(2) less than a “stand-alone” commercial trucking business is
15 unpersuasive. Any commercial trucking business violates the express language
16 of MCZO 3.051(E)(2).

17 While we agree with petitioners that the county misconstrued the
18 applicable law, we also understand the pragmatic reasons why the county made
19 its decision. The planning commission noted that the applicant was “one of more

⁴ ORS 174.020(2) provides: “When a general provision and a particular provision are inconsistent, the latter is paramount to the former so that a particular intent controls a general intent that is inconsistent with the particular intent.”

1 than a dozen commercial truck operators under code enforcement action for
2 utilizing residential property * * * without the appropriate land use approvals.”
3 Record 217. Planning commission minutes demonstrate that when asked about
4 the consequences if the application was not approved, staff conceded that the
5 alternative would be initiating enforcement under a correction plan and that
6 correction plans had been very successful in the past. Record 113. Much of the
7 discussion before the planning commission did not involve the application or the
8 approval criteria, but rather the availability, location and cost of alternative places
9 to conduct a commercial trucking business, and the impact on the applicant if a
10 correction plan were implemented.

11 The staff report for the board of commissioners conceded that a
12 commercial trucking business home occupation is not allowed in the SR-2A zone
13 and treated the conditional use approval as a workaround:

14 “This CUP application was submitted in response to code
15 enforcement contact for code and zoning ordinance violations. This
16 permit was proposed as a temporary path forward that would help
17 rectify these violations by strictly allowing the applicant a defined
18 timeframe to relocate his trucks to an appropriately zoned location.”
19 Record 97.

20 As petitioners point out, the county’s decision to restrict the conditional
21 use permit to a year with no opportunity for renewal, rather than a standard
22 conditional use permit that under MCZO 6.050(G)(8) “shall be reviewed every
23 12 months following the date the permit was issued and may continue the permit
24 if the home occupation continues to comply with the requirements of this

1 section,” implicitly recognizes that commercial trucking business uses are not
2 allowed in the SR-2A zone.

3 The county clearly did not want to put the applicant (and others)
4 immediately out of business, but instead wanted to give the applicant time to find
5 an appropriate location for his commercial trucking business. The decision was
6 made on August 25, 2025, almost immediately preceding the September/October
7 window for the applicant’s trucking business (as evidenced by the condition of
8 approval restricting the use to September and October). The county’s decision,
9 therefore, had the effect of allowing the applicant to continue his business for the
10 2025 harvest but required him to relocate for the 2026 harvest, as even if this
11 decision were affirmed the conditional use permit would expire before the
12 September/October harvest for 2026. In other words, the county’s decision
13 achieved its intended effect – the applicant was able to conduct his business last
14 fall but must find a new appropriate location for 2026. Nonetheless, the county
15 misconstrued the applicable law.

16 Intervenor-petitioner’s first assignment of error and petitioner’s third
17 assignment of error are sustained.⁵

⁵ The assignment of error also included arguments that the proposed use did not satisfy the approval criteria for a home occupation even if commercial trucking business home occupations were allowed in the SR-2A zone. We do not reach those arguments.

1 Under OAR 661-010-0071(1)(c), LUBA will reverse a land use decision
2 when the “decision violates a provision of applicable law and is prohibited as a
3 matter of law.” MCZO 3.051(E)(2) prohibits any commercial trucking business
4 in the SR-2A zone. Therefore, the decision violates the applicable law and is
5 prohibited as a matter of law.

6 The county’s decision is reversed.