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

MICHAEL PAXTON and TYLER MCDONALD,
Petitioners,

vs.

CLACKAMAS COUNTY,
Respondent.

LUBA No. 2026-018

FINAL OPINION
AND ORDER

Appeal from Clackamas County.

Michael Paxton and Tyler McDonald filed the petition for review and reply brief. Tyler McDonald argued on behalf of petitioners.

Caleb Huegel filed the respondent's brief and argued on behalf of respondent.

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

AFFIRMED 06/24/2026

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

Opinion by Wilson.

NATURE OF THE DECISION

Petitioners appeal a hearings officer decision denying their application for alteration of a nonconforming use.

FACTS

Petitioner Michael Paxton (Paxton) owns a building on a .92-acre property on Highway 26 near Sandy, Oregon. In 1946, the building was established as a restaurant and bar prior to any zoning restrictions on the property. The property was first zoned in 1967 as RA-1 (Residential-Agricultural), which did not allow restaurants or bars as permitted uses. In 1974, the county approved the use of the building as a restaurant and bar as a nonconforming use. In 1975, the property was rezoned TT-20 (Timber Transitional), which did not allow restaurants or bars. In 1994, the property was rezoned TBR (Timber), which it remains today, which also does not allow restaurants or bars.

In 2005, the county approved an alteration to the nonconforming use to convert the nonconforming restaurant and bar use to a nonconforming office use for an internet sales company. On March 4, 2024, a fire damaged large portions of the building. On November 1, 2024, Paxton purchased the property. On March 4, 2025, Paxton filed an application for an alteration of the nonconforming use to continue office use of the property and repair damages to the roof and other parts of the building from the fire. The planning director denied the application, and petitioners appealed the decision to the hearings officer. The hearings officer

denied the appeal and affirmed the planning director's denial of the application. This appeal followed.

NONCONFORMING USE BACKGROUND

A nonconforming use is:

> "A use of any building, structure or land allowed by right when established or that obtained a required land use approval when established but, due to a change in the zone or zoning regulations, is now prohibited in the zone." Clackamas County Zoning and Development Ordinance (ZDO) 202.

ZDO 202 implements ORS 215.130(5). Generally, "[a] lawful nonconforming use of land is one that is contrary to a land use ordinance but that nonetheless is allowed to continue because the use lawfully existed prior to the enactment of the ordinance." *Rogue Advocates v. Board of Comm. of Jackson County*, 277 Or App 651, 654, 372 P3d 587 (2016), *rev dismissed*, 362 Or 269, 407 P3d 795 (2017) (internal quotation marks omitted). "Under state and local law, a nonconforming use can continue until abandoned, but alterations or replacements of the use are regulated." *VanSpeybroeck v. Tillamook County*, 221 Or App 677, 681, 191 P3d 712 (2008).

The 2005 decision established office use of the building as a nonconforming use. ZDO 1206.06 concerns restoration or replacement of nonconforming uses following damage or destruction:

> "If a nonconforming use is damaged or destroyed by fire, other casualty, or natural disaster, such use may be restored or replaced consistent with the nature and extent of the use or structure lawfully established at the time of loss, subject to the following conditions:

"A. Alterations or changes to the nature and extent of the nonconforming use as lawfully established prior to the fire, other casualty, or natural disaster shall not be permitted under Subsection 1206.06, but may be permitted pursuant to Subsection 1206.07.

"B. Physical restoration or replacement of the nonconforming use shall be lawfully commenced within one year of the occurrence of the damage or destruction. Lawfully commenced means the lawful resumption of the nonconforming use or the issuance of a land use, building, on-site wastewater treatment system, grading, manufactured dwelling placement, residential trailer placement, plumbing, electrical, or other development permit required by the County or other appropriate permitting agency that is necessary to begin restoration or replacement of the nonconforming use or structures and resumption of the nonconforming use.

"C. The nonconforming use status of the use to be restored or replaced, and the nature and extent of the nonconforming use, shall be verified pursuant to Subsection 1206.05."

ZDO 1206.07(B) provides the approval criteria for alterations not required by law, as in the present appeal. ZDO 1206.07(B)(2) requires that the "nonconforming use status of the existing use, structure(s), and/or physical improvements is verified pursuant to Subsection 1206.05." Thus, ZDO 1206.06(C) and 1206.07(B)(2) both require the nonconforming use to be verified under ZDO 1206.05, which provides:

"Verification of nonconforming use status requires review as a Type II application pursuant to Section 1307, Procedures, and shall be subject to the following standards and criteria:

"A. The nonconforming use lawfully existed at the time of the adoption of zoning regulations, or a change in zoning regulations, which prohibited or restricted the use, and *the nonconforming use has not been subsequently abandoned or discontinued.* Once an applicant has verified that a nonconforming use was lawfully established, an applicant need not prove the existence, continuity, nature, and extent of the nonconforming use for a period exceeding 20 years immediately preceding the date of application for verification; or

"B. *The existence, continuity, nature, and extent of the nonconforming use for the 10-year period immediately preceding the date of the application is proven.* Such evidence shall create a rebuttable presumption that the nonconforming use, as proven, lawfully existed at the time of, and has continued uninterrupted since, the adoption of restrictive zoning regulations, or a change in the zoning or zoning regulations, that have the effect of prohibiting the nonconforming use under the current provisions of this Ordinance." (Emphases added.)[1]

ZDO 1206.04(A) concerns discontinuation of a nonconforming use:

"If a nonconforming use is discontinued for a period of more than 24 consecutive months, the use shall not be resumed unless the resumed use conforms to the requirements of this Ordinance and other regulations applicable at the time of the proposed resumption."

Therefore, in the present case, petitioners were required to verify the nonconforming use pursuant to ZDO 1206.05, including that it had not been discontinued, and, if the nonconforming use is verified, to demonstrate that

[1] ZDO 1206.05(A) and (B) implement ORS 215.130(11) and (10).

"[p]hysical restoration or replacement of the nonconforming use [was] lawfully commenced within one year of the occurrence of the damage or destruction" pursuant to ZDO 1206.06(B).

The hearings officer denied the application finding that (1) the nonconforming office use had been discontinued for more than 24 months and thus the use could not be verified pursuant to ZDO 1206.05, and (2) petitioners had not demonstrated that, even if the use had not been discontinued, the restoration or replacement of the nonconforming use was commenced within one year of the damage or destruction. We "will affirm a decision denying an application as long as there is one valid basis for denial." *Hood River Valley PRD v. Hood River County*, 67 Or LUBA 314, 328 (2013). Therefore, petitioners must demonstrate that both of the hearings officer's bases for denial were in error.

FIRST, THIRD, AND FOURTH ASSIGNMENTS OF ERROR

Petitioners' first, third, and fourth assignments of error challenge the hearings officer's first basis for denial – that petitioners did not verify the nonconforming use because it had been discontinued.

A. First Assignment of Error

Petitioners argue that the hearings officer misconstrued the 2005 decision in four ways and that the hearings officer erred in not acknowledging the finality of the 2005 decision.

1. Scope of the Nonconforming Use Within the Building

Petitioners argue that the hearings officer misconstrued the applicable law by not treating the 2005 decision as a final land use decision that cannot be relitigated. Initially, petitioners argue that the hearings officer improperly considered whether the 2005 decision limited the nonconforming use to the first floor of the building rather than the entire building. According to petitioners, the 2005 decision verified a nonconforming use for the entire building and the hearings officer erred by analyzing the first and second floors separately.

While we agree with petitioners that the 2005 decision verified a nonconforming use that was not limited to separate floors, we also agree with the county that petitioners misconstrue the hearings officer's decision. The hearings officer did not revisit the 2005 decision. On the contrary, the hearings officer found that while the 2005 decision verified a nonconforming use for the entire building, the use of the second floor had been discontinued because office use of the second floor ceased for at least 24 months:

> "The upstairs portion of the site was occupied as a residence in May 2015 * * *, the rear of the building was occupied as a residence between June 2, 2015, and January 27, 2020 * * *, and the entire ground floor of the structure was occupied as a residence prior to the fire on March 4, 2024 * * *.
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> "* * * * *
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> "Illegal residential use of a portion of the building would not terminate the nonconforming office use, provided the office use continued in other portions of the building. * * * However, *the evidence in the record demonstrates that the residential use*

> *displaced and precluded any office use of the upstairs portion of the building* in 2011, in the rear of the building between June 2, 2015, and January 27, 2020, and the entire ground floor in 2024.
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> "Given the above, the hearings officer finds that *the applicant failed to sustain its burden of proof that the nonconforming office use of the site was not '[d]iscontinued for a period of more than 24 consecutive months* . . ." (ZDO 1206.06(4)(A)) during the ten year period immediately preceding the date of the application . . ."(ZDO 1206.05(B)), i.e., between March 4, 2015, and March 4, 2025, the date this application was submitted. Therefore, the hearings officer must find that the nonconforming office use of the site was discontinued [and] may not be resumed." ZDO 1206.04(A)." Record 16 (emphases added).

The hearings officer did not find that the 2005 decision bifurcated the nonconforming use between floors. Instead, the decision explains that the nature and scope of the 2005 nonconforming use was discontinued in various portions of the building during certain periods. The hearings officer did not misconstrue the scope of the nonconforming use verified in the 2005 decision.

2. Nature of the Nonconforming Use

Petitioners argue that the hearings officer misconstrued the 2005 decision by restricting the nature of the nonconforming use to the specific use in 2005 – an internet sales office. According to petitioners, the 2005 decision verified a nonconforming use for all service commercial uses. Petitioners assert that Hood Alternative Medical Center LLC (Hood Medical) operated an office use in the building between 2014 and 2020. Petitioners argue that the hearings officer erred by concluding that Hood Medical's use of the property was not sufficient to continue the nonconforming use

We agree with the county that petitioners misconstrue the hearings officer's decision. The hearings officer did not find that any use other than an internet sales office was not a continuation of the nonconforming use. Instead, the hearings officer found that petitioners had not established that Hood Medical operated an office out of the building:

> "[Hood Medical] listed the site as its principal place of business between October 9, 2014, and December 10, 2020. * * * However, there is no evidence in the record that [Hood Medical] used the site as an office, as opposed to a medical clinic, retail sales of alternative medicines, or other non-office uses.
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> "The [2005 decision] approved use of the site as an office use for internet sales. * * *
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> "The Code distinguishes between offices, healthcare offices and outpatient clinics, various types or retailing, commercial storage, and commercial services. * * *
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> "If [Hood Medical] used the site as an 'office,' that use would be sufficient to continue the established nonconforming office use. However, use of the site as a 'medical center,' a medical office, clinic, retail sales of alternative medicines, or other non-office uses would have required County approval of an alteration of the nonconforming office use to allow these uses on the site. Absent such approval, failure to use the site as an office would discontinue the nonconforming office use.
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> "Therefore, absent some evidence demonstrating that [Hood Medical] used the site as an office, rather than a medical center or other use, between 2014 and 2020, the hearings officer must find that the nonconforming office use of the site was discontinued during this period and may not be resumed." Record 14 (footnote omitted).

The hearings officer found that the evidence submitted in support of Hood Medical's use of the building, that the property was its principal place of business, was not sufficient to demonstrate any use of the property, including office use. The hearings officer did not misconstrue the 2005 decision by requiring petitioners to demonstrate continuance of an internet sales company.[2]

3. Documentation of Use

Petitioners argue the hearings officer misconstrued the 2005 decision by requiring "tenant-level operational documentation." Petition for Review 22. We understand petitioners to argue that because the 2005 decision was not detailed and did not require specific documentation beyond a narrative and hand-drawn map, requiring petitioners to provide detailed information regarding each occupant of the property was improper.

We agree with the county that petitioners misconstrue the hearings officer's decision. The hearings officer explained that it was petitioners' burden to establish that the use had not been discontinued:

> "* * * [T]he applicant must demonstrate that the nonconforming use continued without interruptions 24 months or more. (ZDO 1206.04(A)).
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> "* * * * *

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[2] Even if the hearings officer had misconstrued the 2005 decision to require too specific a use of the property, the decision found that *no* specific use of the property by Hood Medical had been established.

> "The applicant asserts that the following businesses used the building on the site for office purposes during the following periods:
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> "* * * * *
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> "However, the applicant did not submit documentation demonstrating whether and how these businesses were operating at the subject property." Record 12-13.

The hearings officer explained that it was petitioners' burden to establish the existence, continuity, nature, and extent of the nonconforming use. Record 12. The hearings officer then concluded that petitioners had not demonstrated how the building had been used by the businesses petitioners asserted used the building. The hearings officer merely required petitioners to carry their burden under the ZDO, and concluded they had not met that burden. The fact that in issuing the 2005 decision the county did not require detailed information about the then-proposed office use does not absolve petitioners from satisfying their burden under the ZDO. The hearings officer's conclusion that some documentation was required to meet this burden was not based on a misconstruction of the 2005 decision.

4. Office Use Versus Storage Use

Petitioners argue that the hearings misconstrued the 2005 decision by finding that "office related storage" use of the second floor of the building after the fire was not a continuation of the office use verified by the 2005 decision. According to petitioners, storage of office materials is part of office use rather

than a different use that was not allowed under the 2005 decision. The hearings officer stated:

> "[The upstairs portion of the building] was being used for storage at the time of the fire. * * * [The previous owner] used this portion of the building for 'office related storage' after the fire. * * * The applicant also used the upstairs 'to store office furniture, filing cabinets, and business materials.' * * * However, storage of business documents, equipment, etc. does not convert the area where such storage is occurring to an office use. As noted [earlier], the Code distinguishes between office and storage uses. Therefore, the hearings officer finds that use of the building for 'office related storage' is insufficient to continue the previously established nonconforming office use on the site." Record 17.

While we tend to agree with petitioners that "office related storage" use is accessory to or a component of office use rather than a separate unallowed use, this finding goes towards the hearings officer's second basis for denial – that restoration or replacement of the nonconforming use was not commenced within one year of the damage or destruction. As we explain later, we agree with the county that petitioners did not establish that the nonconforming use had not been discontinued before the fire. Therefore, we need not address petitioners' arguments regarding the second basis for denial.

5. The Findings Are Not Inconsistent

Finally, petitioners argue that the hearings officer's findings are inconsistent because they challenge the finality of the 2005 decision. As explained earlier, the hearings officer did not misconstrue the finality of the 2005 decision. The hearings officer merely addressed whether petitioners had

established that the nonconforming use verified in the 2005 decision had been continued. The findings are not inconsistent.

The first assignment of error is denied.

B. Third Assignment of Error

Petitioners argue that the hearings officer misconstrued the applicable law regarding verifying the nonconforming use.[3] As quoted earlier, ZDO 1206.05(B) provides:

> "*The existence, continuity, nature, and extent of the nonconforming use for the 10- year period immediately preceding the date of the application is proven. Such evidence shall create a rebuttable presumption* that the nonconforming use, as proven, lawfully existed at the time of, and has continued uninterrupted since, the adoption of restrictive zoning regulations, or a change in the zoning or zoning regulations, that have the effect of prohibiting the nonconforming use under the current provisions of this Ordinance." (Emphases added.)

Under ZDO 1206.05(B), an applicant need only verify the nonconforming use for the 10-year period before the date of the application to create a rebuttable presumption that the nonconforming use was lawfully established and has continued since the use became nonconforming. That presumption, however, may be rebutted if the county or opponents submit evidence that the nonconforming use was either not lawfully established or was discontinued more

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[3] Petitioners also allege that the hearings officer committed a procedural error. As the county points out, however, the assignment of error does not identify any alleged procedural error.

than ten years before the date of the application. We understand petitioners to argue that the hearings officer did not properly follow this two-step process. According to petitioners, the hearings officer "skipped the two-step procedure [the ZDO and case law] require – never making the threshold determination, never shifting the burden, and adjudicating continuance under an applicant-only sufficiency standard the ordinance does not authorize." Petition for Review 33. The hearings officer, however, did address whether petitioners met their burden under the first step of the process – and found that they did not. After reviewing the evidence submitted by petitioners regarding use of the building for the past ten years, the hearings officer found:

> "Given the above, the hearings officer finds that the applicant failed to sustain its burden of proof that the nonconforming office use of the site was not '[d]iscontinued for a period of more than 24 consecutive months . . .' (ZDO 1206.04(A)) *during 'the 10-year period immediately preceding the date of the application . . .'* (ZDO 1206.06(B)), i.e., between March 4, 2015, and March 4, 2025, the date this application was submitted. Therefore, the hearings officer must find that the nonconforming office use of the site was discontinued [and] may not be resumed. ZDO 1206.04(A)." Record 16 (emphasis added).

The hearings officer correctly determined that petitioners bore the burden of establishing the continuity of the nonconforming use for the ten-year period preceding the application. The hearings officer reviewed the evidence submitted by petitioners and determined that they had not met that burden. Given that the hearings officer determined that petitioners had not met their burden, there was no need to proceed to the second step to determine whether the county could

establish discontinuance beyond the ten-year period.[4] The hearings officer did not skip the two-step process. The hearings officer applied the first step, and when petitioners failed at the first step there was no need to continue to the second step.

The third assignment of error is denied.

C. Fourth Assignment of Error

Petitioners argue that the hearings officer's conclusion that the use was discontinued is not supported by substantial evidence. Substantial evidence is evidence that a reasonable person would rely on in making a decision. *Dodd v. Hood River County*, 317 Or 172, 179, 855 P2d 608 (1993). In reviewing the evidence, LUBA may not substitute its judgement for that of the local decision maker. Rather, LUBA must consider all the evidence to which it is directed, and determine whether based on that evidence, a reasonable local decision maker could reach the decision that it did. *Younger v. City of Portland*, 305 Or 346, 358-60, 752 P2d 262 (1988).

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[4] The hearings officer discussed use of the building more than ten years before the date of the application. Record 15. The hearings officer appears to have been responding to evidence submitted by petitioners regarding that time frame. As the hearings officer found that petitioners had not met their burden to establish the use was continued during the ten-year period, any discussion prior to the ten-year period is surplusage as the hearings officer did not rely on periods before the ten-year period to find that the nonconforming use had been discontinued. Thus, any error in those findings provides no basis for remand.

Petitioners argue that the hearings officer never determined a specific 24-month period when the nonconforming use was discontinued. According to petitioners, absent a finding of a specific 24-month period of discontinuance the decision is not supported by substantial evidence. While petitioners are correct that there must be a 24-month period of nonuse to constitute discontinuance, the burden is on petitioners to show that during the 10-year period preceding the application the use was not discontinued – not for the hearings officer to demonstrate that the use was discontinued. In other words, petitioners must demonstrate that there were no 24-month periods of nonuse within the initial 10-year period, rather than the hearings officer demonstrating that there was a specific 24-month period of nonuse. The hearings officer found that petitioners had not satisfied that burden:

> "The applicant, not the County, bears the initial burden of proving that the nonconforming use continued without interruptions exceeding 24 consecutive months. Therefore, contrary to applicant's assertions, the issue is NOT '[w]hether the nonconforming use ceased entirely for a defined, continuous 24-month period[,]' * * * nor must the evidence establish '[w]hat ceased, where it ceased. [and] for how long . . .' * * * The issue is whether the applicant demonstrated that the nonconforming use 'continued without interruption[s]' of more than 24 consecutive months. * * *
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> "The applicant repeatedly attempts to reframe the standard through negative construction, arguing that there must be '[p]roof of a specific, unbroken period of total cessation' * * * and 'That inquiry requires findings supported by substantial evidence of complete cessation of use . . .' * * * However, the applicant is incorrect. ZDO 1206.04(A) and [case law] require that the applicant demonstrate that the use was not '[d]iscontinued for a period of more than 24

consecutive months . . .'" Record 12 (emphasis in original).

Petitioners do not address, let alone attempt to challenge this finding. The hearings officer properly allocated the burden of proof and found that petitioners had not satisfied that burden. The hearings officer was not required to identify a specific 24-month window where the use was discontinued. While the decision could be clearer, the hearings officer found that petitioners did not establish the nonconforming use was not discontinued for *any* of the 10-year period preceding the application. In other words, petitioners failed to establish a continuous nonconforming use of the building during the 10-year period preceding the application.

Petitioners raise a number of arguments that the hearings officer's findings are inconsistent. Initially, petitioners argue that the findings are inconsistent because the hearings officer favorably cited *Coonse v. Crook County*, 22 Or LUBA 138 (1991), but then did not follow the reasoning of that case. The hearings officer cited *Coonse* to explain that illegal (residential) use of a portion of the building would not prevent the nonconforming use from continuing in other portions of the building. Record 16. The hearings officer also found that there was no water service to the building between 2010 and 2013. According to petitioners, considering evidence of the lack of water service runs afoul of *Coonse*. While we agree with the county that the lack of water service could constitute evidence of discontinuance of the nonconforming use, as discussed earlier, the 2010 to 2013 time period precedes the 10-year window that petitioners

were required to demonstrate lack of discontinuance. Even if the hearings officer had inconsistently applied *Coonse*, that finding is mere surplusage and is not necessary for the hearings officer's conclusion that the use had been discontinued between 2015 and 2025.

Petitioners argue that the hearings officer did not properly consider ORS 215.130(7)(d), which provides that a use "is not considered interrupted or abandoned for any period while a federal, state or local emergency order temporarily limits or prohibits the use or the restoration or replacement of the use." According to petitioners, because emergency COVID orders were in effect from March 2020 to April 2023, the hearings officer could not consider the fact that there was no business registration for the property between 2020 and 2024.

The county argues that this argument was not preserved below and may not be raised at LUBA. ORS 197.797(1).[5] We agree with the county that this issue was not raised below and is waived. Even if the issue were preserved, however, it is of no assistance to petitioners. The hearings officer did not rely on

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[5] ORS 197.797(1) provides:

> "An issue which may be the basis for an appeal to the Land Use Board of Appeals shall be raised not later than the close of the record at or following the final evidentiary hearing on the proposal before the local government. Such issues shall be raised and accompanied by statements or evidence sufficient to afford the governing body, planning commission, hearings body or hearings officer, and the parties an adequate opportunity to respond to each issue."

the lack of business registration to find that the use had been discontinued. He merely found that business registration by itself was not sufficient to establish that the use had been continued. Petitioners have not explained how any emergency orders limited or prohibited the use or the restoration or replacement of the nonconforming use.

The essential inquiry under this assignment of error is whether the hearings officer's findings that petitioners did not establish that the use was not discontinued during the 10-year period preceding the application is supported by substantial evidence. The hearings officer found that petitioners had not established continued use of the building during the 10-year period preceding the application by any of the purported users of the building:

> "There is no evidence demonstrating any use of, or association with, the site by Parkland Property Management Inc., other than the fact that [the previous owner] owned both Parkland Property Management Inc. and the site between December 7, 2012, and December 19, 2018, when he sold the site to Rockport Crain LLC, which he also owns. There is no other evidence associating Parkland Property Management Inc. with the site, let alone any evidence demonstrating that Parkland Property Management Inc. used the site as an office. [The previous owner] testified that the building was used as office space through July 31, 2024. However, he failed to specify when such 'office space' use began and which person(s) or business(es) were using the building as 'office space' and there is no indication in his letter that Rockport Crain LLC used the site as an office.
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> "Hood Alternative Medical Center LLC listed the site as its principal place of business between October 9, 2014, and December 10, 2020. * * * However, there is no evidence in the record that Hood Alternative Medical Center LLC used the site as an office, as

opposed to a medical clinic, retail sales of alternative medicines, or other non-office uses.

"* * * * *

"Rockport Crain LLC listed the site as one of two addresses for its registered agent, [the previous owner]. * * * [The previous owner] owned both the site and Rockport Crain LLC between December 19, 2018, and November 1, 2024, when he sold the site to the applicant. However, there is no other evidence associating Rockport Crain LLC with the site, let alone any evidence demonstrating that Rockport Crain LLC used the site as an office. [The previous owner] stated that the site was used as office space through July 31, 2024. But he does not indicate when that office use began and there is no statement that *Rockport Crain LLC* used the site as an office. Rockport Crain LLC's business registry records list its principal place of business in Washougal, Washington.

"Based on the applicant's timeline Parkland Property Management Inc.'s use of the site overlapped with Hood Alternative Medical Center LLC's use of the site between October 9, 2014, and October 5, 2018, Parkland Property's use of the site overlapped with Hood Alternative Medical Center LLC and Rockport Crain's use of the site between October 5, 2018, and December 10, 2020, and Parkland Property's use of the site continued to overlap with Rockport Crain's use of the site after Hood Alternative Medical Center LLC was dissolved on December 10, 2020. * * * However, there is no evidence to support the inference in the applicant's timeline that all of these entities simultaneously used the site for office purposes during this period.

"The applicant submitted Google Maps images of the site showing vehicles parked on the site in August and September 2007, May 2018, October 2022, and August 2023, a 'business sign in driveway' in April 2009 * * *, landscape materials placed on the site in October 2021, and a handmade 'flags for sale' sign and a painted flag outside the building in October 2022. * * * However, these photos are insufficient to show that the building was being used as an office at those times." Record 13-15.

The hearings officer found the evidence did not demonstrate that discontinuance did not occur for any of the purported users of the building prior to the current owner. Petitioners argue that businesses registration, commercial assessment of the property, and the previous owner's notarized statement demonstrate that the use was not discontinued. Even assuming petitioners' evidence supports the proposition that use was not discontinued, there is conflicting evidence on whether the use was not discontinued for 24 months during the preceding ten years. The choice between conflicting evidence is for the local decision maker to make, not LUBA. *Younger*, 305 Or at 360. A reasonable person could find, based on the evidence and reasoning cited by the hearings officer, that the use was discontinued for more than 24 months between 2015 and 2025. The hearings officer's decision is supported by substantial evidence.

The fourth assignment of error is denied.

SECOND ASSIGNMENT OF ERROR

Petitioners argue that the hearings officer erred in determining that, even if the nonconforming use had not been discontinued, the restoration or replacement of the nonconforming use was not commenced within one year of the damage or destruction. As we will affirm a denial as long as there is one valid basis for denial, and the failure of petitioners to establish that the nonconforming use was not discontinued is a valid basis for denial, we need not reach the second assignment of error. *Hood River Valley PRD*, 67 Or LUBA at 328.

We do not reach the second assignment of error.

The county's decision is affirmed.