

LUBA Case Summaries October 2023

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● ***Winters v. Tillamook County* (LUBA Nos 2023-027/028/029, Oct 2, 2023)**
(Opinion by Ryan, Board Chair)

Petitioners appealed three separate emails from a county permit technician that rejected three separate applications for new short-term rental permits. Those appeals were consolidated. The county moved to dismiss the appeals on jurisdictional grounds. Held: Petitioners failed to respond to the county's argument that the emails were not final decisions as required by ORS 197.015(10)(a). Dismissed.

● ***Cosner Homes, Inc. v. City of Millersburg* (LUBA No 2023-067, Oct 3, 2023)**
(Opinion by Ryan, Board Chair)

Petitioner appealed a city ordinance repealing the city's land use development code and replacing it with a new development code, amending the comprehensive plan, and adopting a new comprehensive plan land use map and a new zoning map. Held: Petitioner requested that the appeal be dismissed. Dismissed.

● ***Kamstra v. City of Salem* (LUBA No 2023-064, Oct 10, 2023)**
(Opinion by Ryan, Board Chair)

Petitioners appealed a city planning administrator's approval of a lot line adjustment. Held: The parties stipulated to a voluntary remand. Remanded.

● ***McIlwaine v. Douglas County* (LUBA No 2023-032, Oct 10, 2023)**
(Opinion by Ryan, Board Chair)

Petitioners appealed a county board of commissioners approval of a conditional use permit for a 9,280-square-foot horse barn and riding arena as a residential accessory structure on land zoned Rural Residential-5. Held: Petitioners waived the issues that the proposed horse barn and riding arena were not accessory to a single-family dwelling and that the county failed to evaluate all existing adjacent permitted uses or other uses permitted in the zone, under the exhaustion waiver principle articulated in *Miles v. City of Florence*, 190 Or App 500, 79 P3d 382 (2003), *rev den*, 336 Or 615 (2004), because those issues were not raised in petitioners' local appeal statement.

LUBA Case Summaries
October 2023

The county's findings were inadequate to explain why the proposed structure is or may be made compatible with an existing pond on adjacent property regarding impacts to fish and wildlife habitat and drainage. Remanded.

● ***Coopman v. City of Eugene* (LUBA No 2022-056, Oct 12, 2023)**
(Opinion by Zamudio, Board Member)

On remand from the Court of Appeals. Petitioner appealed a city ordinance that approved amendments to the Eugene-Springfield Metropolitan Area General Plan and Eugene Code related to middle housing. Held: The city failed to consider and explain how the ordinance is consistent with Goal 11 (Public Facilities and Services). Remanded.

● ***DLCD v. Yamhill County* (LUBA No 2023-003, Oct 16, 2023)**
(Opinion by Ryan, Board Chair)

Petitioner appealed a county ordinance amending the county zoning code to allow for the establishment of psilocybin manufacturing and service centers within certain unincorporated areas of the county. Held: Petitioner requested that this appeal be dismissed. Dismissed.

● ***1000 Friends of Oregon v. Lake County* (LUBA No 2022-105, Oct 16, 2023)**
(Opinion by Zamudio, Board Member)

Petitioners appealed a board of commissioners decision approving a conditional use permit for a site for the disposal of solid waste on land planned and zoned for agricultural use. Held: ORS 215.283(2)(k) is a nonfarm conditional use that a county may allow in an exclusive farm use (EFU) zone only if the county determines that the use will not significantly affect surrounding lands devoted to farm use under ORS 215.296, the farm impacts test. The decision fails to identify the activities that the county has permitted and the impacts from the approved use. The decision fails to adequately identify the farm uses and practices on surrounding lands. The county's findings are inadequate to support a conclusion that the farm impacts test is satisfied. Where a local government incorporates by reference statutory definitions that allow broader uses than those allowed on EFU-zoned land, and fails to make findings as to how those definitions operate in the context of their decision, those definitions, alone, are not sufficient to explain what uses are being allowed. Remanded.

● ***Friends of Yamhill County v. Yamhill County* (LUBA No 2023-005, Oct 23, 2023)**
(Opinion by Ryan, Board Chair)

Petitioner appealed an ordinance amending the county zoning code to allow for the establishment of psilocybin manufacturing and service centers within certain unincorporated areas of the county. Held: Petitioner requested that this appeal be dismissed. Dismissed.

LUBA Case Summaries
October 2023

● ***Rock Solid Sand and Gravel, LLC v. Umatilla County* (LUBA No 2023-033, Oct 25, 2023)**
(Opinion by Zamudio, Board Member)

Petitioners appealed a county board of commissioners' decision approving amendments to the county's comprehensive plan text and map and zoning map designating the subject property a large significant aggregate site and applying an Aggregate Resource overlay. Held: OAR 660-023-0180(5)(b) requires the county to specify and minimize predicted conflicts. OAR 660-023-0180(5)(b) requires analysis of noise, dust, and other discharges generated by separate activities at different locations on the mining site and explain whether and how those activities will affect conflicting uses within the impact area. The county's decision fails to describe the aggregate mining and processing activities, and what levels of noise, dust, or other discharges that those activities will generate. Because the predicted conflicts were not adequately specified, the county could not properly find that those conflicts could and would be minimized. Where there is evidence in the record that the aggregate use will generate trips not accounted for by the traffic impacts assessment, the county must make findings addressing that evidence to satisfy OAR 660-023-0180(5)(b)(B), that and Statewide Planning Goal 12 (Transportation). OAR 660-023-0180(5)(f) does not delegate to the Department of Geology and Mineral Industries the county's obligation to review a conceptual site reclamation plan, determine the post-mining use, and provide for that use in the comprehensive plan and land use regulations. Remanded.

● ***In-N-Out Burger v. Washington County* (LUBA No 2022-083, Oct 27, 2023)**
(Opinion by Rudd, Board Member)

Petitioner appealed a county hearings officer's decision denying its request for Special Use and Development Review approval for a fast food drive-thru restaurant on a parcel split-zoned Commercial Business District (CBD) and Office Commercial (OC). The CBD zone permits standalone drive-thrus, while the OC zone permits drive-thrus only as accessory uses to Office Commercial Centers. Petitioner proposed locating its restaurant and drive-thru lanes in the CBD-zoned portion of the property, and proposed parking and excess drive-thru vehicle queuing in the OC-zoned portion of the property. Held: The hearings officer did not err in concluding that the use of the OC-zoned portion of the property for drive-thru restaurant uses, including excess drive-thru vehicle queuing, was not allowed as a permitted or accessory use in the OC zone. The hearings officer did not provide an adequate interpretation of the county code to support their conclusion that multiple temporary permits or extensions of temporary permits were not permissible. The hearings officer made inadequate and inconsistent findings concerning whether there was a legal nonconforming use right to conduct petitioner's operations in the OC zone. Remanded.

● ***Petry v. City of Depoe Bay* (LUBA No 2023-070, Oct 30, 2023)**
(Opinion by Ryan, Board Chair)

Petitioner filed a notice of intent to appeal (NITA) that did not comply with LUBA's rules in multiple respects. Petitioner did not file a corrected NITA within the deadline ordered by LUBA. Dismissed.

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