



1 Opinion by Kressel.

2 NATURE OF THE DECISION

3 Petitioners appeal the county's denial of a conditional use  
4 permit for construction and operation of a dog kennel.

5 FACTS

6 In February, 1984 petitioners applied for a permit to  
7 construct a kennel on an 8.6 acre lot in a rural  
8 residential/farm forest zone. On March 14, 1984 the board of  
9 county commissioners held a hearing on the application and  
10 approved it, subject to a number of conditions designed to  
11 reduce its adverse impacts on the surrounding property.

12 A request for rehearing was allowed one week after the  
13 approval was granted. The request alleged the applicants had  
14 previously operated a kennel in another jurisdiction, contrary  
15 to their testimony at the March 14 hearing. It was also  
16 alleged the license for that facility had been revoked.

17 The county commission reheard the matter on May 9, 1984.  
18 Testimony from the applicants and neighbors opposing the permit  
19 was received. At the conclusion of the rehearing, the  
20 commission voted to reverse the previous decision. A final  
21 order denying the permit "...for the reason it would have an  
22 adverse impact on the neighborhood" was executed on May 21,  
23 1984. Record at 1.

24 ASSIGNMENTS OF ERROR

25 The claims presented in this pro se petition can be  
26 summarized as follows: (1) The decision to rehear the

1 application was based on incorrect information about the  
2 facility previously operated by applicants; (2) the county  
3 commission should have approved the application subject to  
4 protective conditions, rather than deny it and (3) the  
5 commission denied the request based on the erroneous conclusion  
6 applicants had intentionally provided misleading testimony at  
7 the March 14 hearing.

8 We take up each of these contentions below.

9 1. Decision to Allow Rehearing

10 Section 13.04.09 of the Clackamas County Zoning Ordinance  
11 authorizes the governing body to "rehear a matter before it  
12 either on its own motion or upon a petition for rehearing  
13 submitted within 10 days of its action..." As noted earlier,  
14 an opponent of the permit filed a timely rehearing request,  
15 alleging (1) one of the applicants had mislead the commission  
16 when he testified he had not previously conducted a kennel  
17 operation, and (2) in fact, a kennel license issued to  
18 applicants in another jurisdiction had been revoked. Record at  
19 38.

20 Petitioners urge us to overturn the county's decision on  
21 grounds the factual claims made in the rehearing request were  
22 false. Even if we accept petitioners' version of the facts,  
23 however, we still find no error in the county's decision to  
24 rehear the case. The ordinance gives the governing body broad  
25 discretion in acting on rehearing requests. Nothing in the  
26 text cited to us requires the commission to verify factual

1 allegations before granting a rehearing.<sup>1</sup> Under these  
2 circumstances we find no error.

3 2. Disagreement With the County's Decision

4 Petitioners next advance a variety of reasons why the  
5 county should have conditionally approved the permit instead of  
6 denying it. In making these points, however, petitioners  
7 misunderstand the function we perform as a reviewing tribunal.  
8 We are not authorized to overturn decisions by local government  
9 officials merely because other courses of action might have  
10 been taken. Our function is considerably narrower. The  
11 legislature has set forth the specific bases on which we may  
12 reverse or remand challenged land use decisions. See ORS  
13 197.835. Petitioners' arguments exceed the scope of this  
14 statute and therefore must be denied.

15 3. Reasons for the County's Decision

16 The final contention is that the county commission  
17 misunderstood petitioners' March 14 testimony about the  
18 facility they previously operated and therefore erroneously  
19 concluded they were not credible. Petitioners evidently  
20 believe a different decision would have been reached had the  
21 county commission correctly understood a distinction made in  
22 their testimony.

23 Although the record of the May 9 hearing indicates one  
24 commissioner did question the applicants' credibility, the  
25 final order does not mention the issue. The order justifies  
26 the decision solely on the ground the proposed use would "have

1 an adverse impact on the neighborhood." Record at 1. As we  
2 have stated on another occasion, our review of land use  
3 decisions must focus on the final order actually adopted by the  
4 local tribunal, not on comments made by individual tribunal  
5 members with respect to their votes. Citadel Corp. v.  
6 Tillamook Co., \_\_\_ Or LUBA \_\_\_, LUBA No. 83-049 (September 13,  
7 1984), Slip Op. at 8-9; aff'd 66 Or App 965, 675 P2d 1114  
8 (1984). Petitioners present no challenge to the adequacy of  
9 the county's order. We therefore cannot sustain this challenge.

10 Based on the foregoing, the county's decision is affirmed.

FOOTNOTES

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If petitioners intend to raise a claim of procedural error in connection with the rehearing decision, we note the record does not support them. They were given notice of the commission's intent to consider the rehearing request. Accordingly, they are not in a position to claim they had no opportunity to bring their version of the facts to the county commission's attention.

Apart from the above point, we are unable to agree with petitioners' characterization of the allegations in the petition for rehearing. The record indicates petitioners did operate a dog care facility in another jurisdiction and that their application for license renewal had been denied. Record at 7-18.