

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

3  
4 STEVE DOOB,  
5 *Petitioner,*

6  
7 vs.

8  
9 JOSEPHINE COUNTY,  
10 *Respondent,*

11 and

12  
13 MULTI/TECH ENGINEERING  
14 SERVICES, INC.,  
15 *Intervenor-Respondent.*

16  
17 LUBA No. 2000-073

18  
19 FINAL OPINION  
20 AND ORDER

21  
22 Appeal from Josephine County.

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24 Steve Doob, Merlin, filed the petition for review and argued on his own behalf.

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26 No appearance by Josephine County.

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28 James R. Dole, Grants Pass, represented intervenor-respondent.

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30 BASSHAM, Board Chair; BRIGGS, Board Member; HOLSTUN, Board Member,  
31 participated in the decision.

32  
33 REMANDED

34 01/11/2001

35  
36 You are entitled to judicial review of this Order. Judicial review is governed by the  
37 provisions of ORS 197.850.

**NATURE OF THE DECISION**

Petitioner appeals a county decision approving a manufactured home park (MHP).

**MOTION TO INTERVENE**

Multi/Tech Engineering Services, Inc. (intervenor), the applicant below, moves to intervene on the side of respondent. There is no opposition to the motion, and it is allowed.

**FACTS**

The challenged decision is the county’s decision on remand from LUBA. *Multi/Tech Engineering v. Josephine County*, 37 Or LUBA 314 (1999). We repeat the relevant facts from that decision:

“The subject property is an 8.38-acre parcel designated Moderate Density Residential under the county’s comprehensive plan and zoned Single and Two-Family Residential (R-2). The property is located within the City of Grants Pass Urban Growth Area (UGA), but outside the city limits. Development within the UGA is governed by the City of Grants Pass Urban Growth Area Zoning Ordinance (UGAZO).

“Petitioner filed an application with the county to site a 55-unit manufactured home park (MHP) on the property. An MHP is listed as a conditional use in the R-2 zone, “subject to Mobile Home Park Development Guidelines [Guidelines] within the City and urbanizing area.” UGAZO 116.03(m). The Josephine County Urban Area Planning Commission approved petitioner’s application with conditions. The planning commission’s decision was appealed to the county board of commissioners, who conducted a *de novo* evidentiary hearing. On March 13, 1999, the board of commissioners reversed the planning commission’s decision, thus denying the application.” 37 Or LUBA at 315 (footnote omitted).

In *Multi/Tech Engineering*, we remanded the county’s decision, because it denied intervenor’s application based on UGAZO conditional use criteria that did not constitute “clear and objective criteria and standards for the placement and design of mobile home or manufactured dwelling parks,” in violation of ORS 197.480(5). We concluded that ORS 197.480(5) applied to the proposed MHP in the R-2 zone, because the county had failed to conduct the inventory and need analysis required by ORS 197.480(1) and (2), and had

1 failed to provide for MHPs as an allowed use in any of the residential zones in the urban  
2 growth area. Consequently, we held that the county can apply only “clear and objective  
3 criteria and standards.”

4 On remand, the county board of commissioners conducted hearings and, on April 5,  
5 2000, approved the application based on design criteria in the Guidelines. This appeal  
6 followed.<sup>1</sup>

7 **FIRST AND THIRD ASSIGNMENTS OF ERROR**

8 Petitioner argues that the county erred in failing to address a clear and objective  
9 criterion in the Guidelines that requires MHPs to be equipped with fire hydrants with a  
10 minimum flow of 500 gallons per minute (fireflow).<sup>2</sup> According to petitioner, the issue of  
11 compliance with this criterion was raised below, but is not addressed by the county’s  
12 decision. Further, petitioner argues that the fireflow system for the proposed MHP is based  
13 on private wells rather than a municipal water system, and that there is no substantial  
14 evidence that the proposed well-based system can supply the required fireflow. Because the  
15 proposed MHP cannot comply with the fireflow criterion, petitioner argues, it is prohibited  
16 as a matter of law, and the county’s decision must be reversed.

17 We agree with petitioner that the fireflow criterion in the Guidelines is a clear and  
18 objective criterion that would appear to be applicable to the proposed MHP, and that the  
19 county’s decision does not address it. However, petitioner has not demonstrated that the

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<sup>1</sup>We are informed that subsequent to the county’s decision, the City of Grants Pass acquired the subject property for eventual use as a park. However, the county-approved permit for an MHP is still valid, apparently, and no party has moved to dismiss this appeal as moot.

<sup>2</sup>The Guidelines require in relevant part that:

“\* \* \* The water service to the [MHP] shall [include] fire hydrants in locations designated by the Fire Chief or his designated representative, and installed as part of the required initial improvements of the [MHP], and located, in any event, so that all parts of each mobile home or structure [are] within five hundred (500) feet from a fire hydrant, as fire hose would be laid, with a minimum flow of five hundred (500) gallons per minute with a twenty (20) pound residual.” Record 124.

1 proposed MHP cannot comply with the fireflow criterion, or that the decision is prohibited as

1 a matter of law. OAR 661-010-0071(1). Remand is appropriate to allow the county to  
2 address the fireflow criterion in the first instance.<sup>3</sup>

3 The first and third assignments of error are sustained.<sup>4</sup>

4 **SECOND ASSIGNMENT OF ERROR**

5 Petitioner argues that the county’s decision violates a section of the Guidelines that  
6 states:

7 “The location of [MHPs] are limited by the Zoning Ordinance to the R-3  
8 District (Low Density Multiple-Family Residential), [and the] R-4 District  
9 (High Density Multiple-Family Residential) \* \* \*. Record 19.

10 According to petitioner, the foregoing is a clear and objective criteria or standard that  
11 the county erred in failing to address. Further, petitioner argues, had the county applied this  
12 standard, it would have led necessarily to denial of the application, because the criterion  
13 allows MHPs only in the R-3 and R-4 zones, not the R-2 zone.

14 As we explained in *Multi/Tech Engineering*, the UGAZO lists MHPs as conditional  
15 uses in the R-2 and R-3 zones, and does not list them as permitted uses in any residential  
16 zone. 37 Or LUBA at 322. The cause for the apparent discrepancy between the UGAZO  
17 and the Guidelines on this point is unclear. The Guidelines are standards adopted by the City  
18 of Grants Pass and are applicable to county-approved development within the UGA only by  
19 virtue of UGAZO 116.03(m) and 132.23.<sup>5</sup> It may be that the above-quoted language from

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<sup>3</sup>Petitioner takes issue here and elsewhere with a statement in the staff report on remand to the effect that ORS 197.480(5)(c) prohibits the county from denying an application for an MHP even if that application would violate a clear and objective standard. Record 56. Petitioner argues that the staff report misreads ORS 197.480(5)(c) and that if the proposed MHP cannot comply with the fireflow requirement, the county may deny the application. We tend to agree with petitioner that the staff report reads ORS 197.480(5)(c) too broadly. However, because the challenged decision does not adopt or appear to act upon the staff report’s reading of ORS 197.480(5)(c), we need not and do not reach that issue.

<sup>4</sup>The first assignment of error also challenges the lack of findings addressing language in the Guidelines that is at issue in the second assignment of error. We address that aspect of the first assignment of error in our discussion of the second assignment of error.

<sup>5</sup>UGAZO 132.23 provides in relevant part:

1 the Guidelines reflects the city’s current or a superseded zoning scheme. In any case, the  
2 UGAZO is presumably the controlling document with respect to what uses are allowed in the  
3 zones defined by the UGAZO, and in any conflict between the UGAZO and the Guidelines,  
4 the former prevails. Further, UGAZO 132.23 does not require compliance with all  
5 provisions in the Guidelines, only those items in the Guidelines listed as “shall.” *See e.g.* the  
6 fireflow requirement discussed above. The above-quoted language from the Guidelines is  
7 not an item listed as “shall,” and is thus not an approval standard. The county did not err in  
8 failing to address or comply with that language.

9 Petitioner also argues under this assignment of error that until the county conducts the  
10 inventory and needs analysis required by ORS 197.480, and thus determines the extent and  
11 type of “needed housing” in the county, it has no basis for allowing MHPs in the R-2 zone or  
12 any residential zone in the UGA. Petitioner argues that there is some evidence in the record  
13 that there is no need for additional MHPs in the UGA, and that the county errs in approving  
14 an additional MHP as “needed housing” under ORS 197.480 without determining if there is  
15 in fact any need for it.

16 Petitioner is undoubtedly correct that if the county had conducted the inventory and  
17 needs analysis required by ORS 197.480, and made a determination of “needed housing” in  
18 the county, nothing in the statute compels the county to provide for additional MHPs beyond  
19 those necessary to satisfy the identified need for that type of housing. By the same token,  
20 however, nothing in ORS 197.480 prohibits the county from approving more MHPs than  
21 may be found to be necessary. More importantly, as our decision in *Multi/Tech Engineering*  
22 indicates, the UGAZO provides for MHPs in the R-2 zone, and ORS 197.480(5) requires that  
23 where MHPs are provided for, only clear and objective criteria may be applied to them. The

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“A [MHP] shall comply with both the State’s mobile home park standards and with the items listed as ‘shall’ in the [Guidelines]. In evaluating the plan for the proposed [MHP], the [county reviewing authorities] shall use said Guidelines and shall consider items listed as ‘should’ in the Guidelines as recommended standards.”

1 county's failure to conduct the inventory and needs analysis required by ORS 197.480 does  
2 not waive the county's obligation to approve or deny the application under its code and  
3 statute, or otherwise prohibit the county from approving the proposed MHP, if it complies  
4 with applicable clear and objective criteria.

5 The second assignment of error is denied.

6 The county's decision is remanded.