BEFORE THE COLUMBIA RIVER GORGE COMMISSION

CHRIS WOODALL,	)	
	)	
Petitioner,	)	
	)	
v.	)	**CRGC File No.: COA-S-96-1**
	)	**Skamania Co. No.: NSA 95-32**
SKAMANIA COUNTY,	)	
	)	
Respondent,	)	
	)	**DECISION**
and	)	
	)	
RICHARD BASSETT and DAVID PEYTON,	)	
	)	
Intervenor-Respondents.	)	

This case is an appeal by Chris Woodall from a decision of Skamania County upholding the planning director's approval of a mobile home park area in the Columbia River Gorge National Scenic Area. We reverse and remand.

The applicant, Scott Anderson, applied to the County on April 4, 1995 for review of the replacement of ten mobile homes or recreational vehicles. The property, located in a special management area, was subsequently sold to Richard Bassett and David Peyton.[1] The planning director approved the request and Chris Woodall, a neighbor, appealed the decision to the Board of Adjustment. The Board conducted a hearing and upheld the director's approval of the mobile home park. Woodall then filed this appeal with the Gorge Commission.

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[1]They are intervenors in this appeal.

We address the standard of review first.[2] Since the issues presented are primarily legal in nature, our review focuses on whether the decision violates a provision of applicable law and is prohibited as a matter of law, based on the record before us.

The ten-site mobile home area was established in 1969. Since that time, changes have occurred on the property, the nature and extent of which are disputed by the parties. Woodall takes the position that seven of the ten sites have lapsed because they were discontinued and only three are pre-existing under the ordinance. He points to evidence tending to show hookups from seven sites were dismantled as early as 1989 while only three sites were actually maintained. He also emphasizes a real estate listing agreement in 1995 that only referred to three sites on the property.

Woodall contends the governing body treated the entire ten sites as a pre-existing use and, therefore, did not conduct any analysis to determine whether mobile homes are permitted within the

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[2]The Commission shall reverse or remand a land use decision when:

(a) The governing body exceeded its jurisdiction;
(b) The decision is unconstitutional;
(c) The decision violates a provision of applicable law and is prohibited as a matter of law; or
(d) The decision was clearly erroneous or arbitrary and capricious.
(e) The findings are insufficient to support the decision;
(f) The decision is not supported by substantial evidence in the whole record;
(g) The decision is flawed by procedural errors that prejudice the substantial rights of the petitioner(s);
(h) The decision improperly construes the applicable law; or
(i) A remand is required pursuant to 360-60-090(2)(d).

Rule 350-60-220.

land use designation.[3] Simply determining if the placement of each mobile home was consistent with protecting resources (scenic, natural, cultural and recreational) failed to consider whether a mobile home park is an allowed use and therefore, the governing body violated the ordinance and the National Scenic Area Act. Woodall thus argues the governing body's decision is not supported by substantial evidence and that it is based on an error of law.

In response, the governing body and intervenor rely on contrary evidence. A 1974 inventory listed the area as a ten-site mobile home park. Use of at least a portion of the park has remained constant since 1974. Occupancy has fluctuated over the past twenty years but the evidence does not show the site has ever "held more than 10, or less than 1, mobile home". Each of the ten sites has water and electrical service.

The governing body and intervenor contend the property is a ten-site mobile home or recreational vehicle park and, as a pre-existing use, was never discontinued. They also assert that in order to establish discontinuance of a use as a legal proposition, the burden is on Woodall to show the property owner intended to abandon the sites -- a burden that was not met.

While the parties disagree over whether there is substantial evidence to support the decision below, a question of law is paramount here: is the test for review of the use in this case one of "discontinuance" or "abandonment".

In a nutshell, Woodall relies on the language of the ordinance which uses the term "discontinue" as the standard to trigger review

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[3]The land use designation for the property is Special Management Area - Forest.

in determining if the use is allowed. On the other hand, the governing body construes "discontinue" to mean "abandonment", including proof the property owner actually intended to abandon the use.

We begin our analysis by examining the text of the ordinance. Section 22.06.090A.1 provides any use or structure existing on October 15, 1991 may continue as long as it is used in the same manner and for the same purpose as on that date.[4] Section 22.06.090A.2 states if a use is discontinued for one year, it shall

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[4]The complete text of the relevant portion of the ordinance provides as follows:

A. EXISTING USES IN GENERAL MANAGEMENT AREAS

1. Except to the extent specifically set forth below, any use or structure existing on October 15, 1991 may continue so long as it is used in substantially the same manner and for the same purpose as on that date.
2. Replacement or reestablishment of a use or structure discontinued for one year shall be subject to the provisions of this Title.
3. Any uses or structure damaged or destroyed by fire shall be treated as an existing use or structure if an application for replacement in kind and in substantially the same location is filed within one year. Such uses shall be subject to compliance with the provisions of Chapter 22.10 of this Title protecting scenic resources and involving color, reflectivity and landscaping. Replacement of an existing use or structure different in purpose, size or scope shall be subject to the provisions of this Title to minimize adverse effects on scenic, cultural, natural and recreation resources.
4. An existing use or structure may be replaced within one year of discontinuation of the use or structure if the replacement use or structure will be used for the same purpose at the same location, subject to applicable provisions of this Title protecting scenic, cultural, natural and recreation resources.

Skamania County Land Use Ordinance, Section 22.06.090A.

be subject to the provisions of the ordinance. The result is that where a use is discontinued, a determination must take place as to whether any subsequent resumption is an allowed use under the terms of the ordinance.

The meaning of the term "discontinue" or "discontinuance" is the principal legal issue presented in the appeal. In our review of this term, we apply basic rules of construction to the provisions of the ordinance. The words are used in accord with their plain meaning. Cowiche Canyon Conservacy v. Bosley, 118 Wn.2d 801, 828 P.2d 549 (1992). They are construed in a manner that best advances their purpose. Allison v. Housing Authority, 118 Wn.2d 79, 821 P.2d 34 (1991). They are applied so that meaning is given to each part of the ordinance. Clark v. Pacificorp, 118 Wn.2d 167, 822 P.2d 162 (1991).

In general, the word "discontinue" means "to put an end to" or "to cease trying to continue."[5] By coupling this provision with a specific period of one year in the ordinance, an objective standard exists by which to measure the actions of the property owner in question. In contrast, the term "abandonment" means "to withdraw one's support", "to give up by leaving or ceasing to operate or inhabit" or, "to surrender one's claim or right to".[6] This turns more on subjective factors, like intent or state of mind, that are difficult to measure such that the potential for an arbitrary or

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[5]Webster's II, New Riverside University Dictionary, 384, The Riverside Publishing Company (1984).

[6]Id. at 65.

improvident result is high.[7] The term itself offers little guidance.

Beyond the plain language of the ordinance, we also consider its purpose. The purpose is manifest in the pertinent section, which read in its entirety, merely requires review for consistency with the standards of the ordinance.

This purpose makes clear its function is not, first and foremost, to terminate a prior use but rather, to ensure it is evaluated in light of the standards of the ordinance that apply under the land use designation for the property. Without the review and evaluation process, it is not possible to determine the status of the use and the extent to which it is consistent with the requirements in the ordinance.

In addition, our scrutiny encompasses the origin of the term "discontinuance". The management plan uses it and this was a conscious choice. Plan, II-88. The management plan was designed to provide a clear framework for the application of the standards in the ordinance and, in providing certainty and uniformity, ensure the purposes of the National Scenic Area Act are advanced. 16 U.S.C. § 544c(b) ("Applicable law. For the purposes of providing a uniform system of laws, which, in addition to this Act, are applicable to the Commission..."); Columbia Gorge United v. Yeutter, 960 F.2d 110, 112 (9th Cir.), *cert denied*, 113 S.Ct. 184 (1992). ("Under the Act, and the resulting Compact, all land use

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[7]Intent is, by definition, subjective. The term "intent" is defined as "that which is intended" or "the state of mind operative at the time of an action." Webster's II, New Riverside University Dictionary, 635, The Riverside Publishing Company (1984). (emphasis supplied)

within the Columbia River Gorge Scenic Area, whether private, federal or local, will be consistent with the management plan developed by the Commission.")

The term was also used in the interim guidelines which preceded the management plan. The guidelines provided that "a use or development discontinued for more than one year" required review for consistency with the purposes and standards of the National Scenic Area Act. IIIA, Interim Guidelines, United States Department of Agriculture Forest Service (1987). The guidelines were promulgated by the Forest Service pursuant to the mandate of the Act and reflect the importance of the national interest in the National Scenic Area. 16 U.S.C. § 544h(a). See Tucker v. Columbia River Gorge Commission, 73 Wn. App. 74, 867 P.2d 686 (1994); Columbia River Gorge United v. Yeutter, *supra*. ("Moreover, and perhaps most important, the area itself is unique in that it consists of portions of two states bisected by a navigable waterway. In such an area, virtually all activities affecting the land, the economy, the environment, or the resources have interstate ramifications.")

Even without the federal origins of the "discontinuance" standard, our decision in this case is firmly grounded on the plain wording and the purposes of the ordinance discussed above. In relying on the precise terms used in the ordinance, we fulfill our appellate role. Our function is properly limited to one of judicial review. See Chevron v. Natural Resources Defense Council, 467 U.S. 837 (1984). We decline the invitation to add new language to the provisions of the ordinance.

Moreover, our analysis does not end there. Where the parties offer competing views of the meaning of the terms of the ordinance, we examine them against the backdrop of the purposes and standards of the National Scenic Area Act itself. The purposes require protection and enhancement of the scenic, cultural, recreational, and natural resources of the Scenic Area. 16 U.S.C. § 544a(1). The standards require protection of agricultural lands, forest lands, open space and other resources as well. 16 U.S.C. § 544(d).

The consideration of the purposes and standards in the National Scenic Area Act further emphasizes why decisions made under the ordinance must adhere to them and guide our review. The implementation of the development review process that offers the greatest opportunity for evaluation of impacts to the resources of the Gorge, consistent with the text of the ordinance and the management plan, is preferred over one that does not. This precautionary principle simply ensures that development activities preceding adoption of the ordinance are not elevated to a special status that thwart the review requirements of the National Scenic Area Act.

For these reasons, we hold the governing body's application of the abandonment standard in its decision conflicts with the requirements of the ordinance. We also hold that by placing the burden of proof on Woodall to show abandonment, the decision below is in error. We reverse and remand based on Rule 350-60-220(c), (g) and (h).

In reaching this result, we also rely on the prior decisions of the Commission which result in review of development in a manner that complies with the terms of the ordinance in question. See

Friends v. Skamania County and Nature Friends Northwest, CRGC No. COA-S-95-01 (November 16, 1995) ("The fidelity to the precise provisions of the National Scenic Area Act and the legislative history revealed in prior decisions of the courts of Washington and Oregon in interpreting the law underscore the standard we must adhere to in this appeal." Friends, 9).

We are also mindful of our earlier decisions under the interim guidelines which, as we found in Friends v. Skamania County and Mills, CRGC no. COA-S-95-02 (June 27, 1996), are instructive. However, we have not previously decided if the Commission is required to reach the same result in resolving a question of law arising under an ordinance that was also dealt with in a prior decision based on the interim guidelines. We do not determine that question today because the result here is grounded on the ordinance before us and the analysis of this case, not the interim guidelines.[8]

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[8]There are additional grounds for our decision in this case. First, the Columbia River Gorge Compact ensures the standards of the National Scenic Area Act govern the disposition of this case because the Gorge Compact, as a contract, transcends prior state law as Congress intended. RCW 43.97 et seq.; Green v. Biddle, 80 Wheat. 1 (1823); State ex rel Dyer v. Sims, 341 U.S. 22 (1950); Seattle Master Bldrs. Ass'n v. Pacific Northwest Elec. Power Planning & Conservation Council, 786 F.2d 1359 (9th Cir. 1986), *cert denied*, 479 U.S. 1059 (1987). Second, in the event there is a conflict between the standards of the National Scenic Area Act and prior state law, pre-emption occurs. Columbia Gorge United v. Yeutter, supra, at 115. In addition, we note the argument that prior state law supersedes the National Scenic Area Act and the Gorge Compact has been rejected. As the federal court determined in Klickitat County v. Columbia River Gorge Commission, 770 F. Supp. 1419 (E.D. Wash. 1991), state law does not apply unless it was specifically reserved in the Gorge Compact.

However, in light of the text of the ordinance, in the context of the National Scenic Area Act, we find it is unnecessary to rely on these additional grounds in the disposition of this case.

Dated this 7th day of January, 1997.

ROBERT THOMPSON
Chair
Columbia River Gorge Commission