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Question: What deference is given to Benton County's interpretation of its development code?

Answer: When the Board of Commissioners interprets the development code, as long as its interpretation is plausible, LUBA's standard of review is highly deferential to that interpretation.

The Oregon legislature and the state Supreme Court have both answered this question. ORS 197.829 reads:

- (1) The Land Use Board of Appeals shall affirm a local government's interpretation of its comprehensive plan and land use regulations, unless the board determines that the local government's interpretation:
 - (a) Is inconsistent with the express language of the comprehensive plan or land use regulation;
 - (b) Is inconsistent with the purpose for the comprehensive plan or land use regulation;
 - (c) Is inconsistent with the underlying policy that provides the basis for the comprehensive plan or land use regulation; or
 - (d) Is contrary to a state statute, land use goal or rule that the comprehensive plan provision or land use regulation implements.

ORS 197.829 is framed within LUBA's jurisdiction because appeal of land use decisions are made to LUBA.

The Oregon Supreme Court applied and explained the breadth of this statute when it reviewed the City of Medford's interpretation of its development code: "[W]hen a governing body is responsible for enacting an ordinance, it may be assumed to have a better understanding than LUBA or the courts of its intended meaning. * * * [T]hat assumption is equally relevant to * * * the governing body's intention." *Siporen v. City of Medford*, 349 Or. 247, 258 (2010).

The Court found when a local government interprets its own development code, it is "entitled to the deference described in ORS 197.829(1)." *Id.* And the extent of that deference is substantial:

[W]hen a local government plausibly interprets its own land use regulations by considering and then choosing between or harmonizing conflicting provisions, that interpretation must be affirmed, as held in *Clark v. Jackson County*, 313 Or. 508 (1992) and provided in ORS 197.829(1)(a), unless the interpretation is inconsistent with *all* of the "express language" that is relevant to the interpretation, or inconsistent with the purposes or policies underpinning the regulations. (emphasis in original)

Id. at 259.

When LUBA assesses whether an interpretation is "plausible," the standard of review is "highly deferential" to the governing body and the "existence of a stronger or more logical interpretation does not render a weaker or less logical interpretation 'implausible.'" *Mark Latham Excavation, Inc.*

v. Deschutes County, 250 Or. App. 543, 555 (2012), quoted in *Crowley v. City of Hood River*, 308 Or. App. 44, 52 (2020).

Thus, as long as the Benton County Board of Commissioners' interpretation of its development code is plausible, LUBA must defer to that interpretation.