

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

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JOHN GUSTAFSON, JUNE GUSTAFSON,)
MICHAEL GROSS, RUTH GROSS,)
EARNEST HASTINGS, VIRGINIA)
HASTINGS, GEORGE SMITH, FLOY)
SMITH, RONALD BLAIR,)
Petitioners,)
v.)
CITY OF GRANTS PASS,)
Respondent.)

LUBA NO. 81-012
FINAL OPINION
AND ORDER

Appeal from City of Grants Pass.

Steven Goldberg, Portland, filed a petition for review and argued the cause for Petitioners. With him on the brief were Goldberg & Mechanic.

Allan H. Coon, Grants Pass, filed a brief and argued the cause for Respondent.

William H. Ferguson, Medford, filed a brief and argued the cause for Intervenor.

Cox, Referee; Reynolds, Chief Referee; Bagg, Referee; participated in the decision

Affirmed 7/01/81

You are entitled to judicial review of this Order. Judicial review is governed by the provisions of Oregon Laws 1979, ch 772, sec 6(a).

1 COX, Referee.

2 NATURE OF THE DECISION

3 Petitioners seek review of Respondent City of Grants Pass'
4 decision granting "Conditional Use Permit No. 21-80 and Planned
5 Unit Development Conceptual Approval." The decision involves
6 the proposed residential development of 77 acres of R-1
7 (Residential) land located within the corporate limits of the
8 City of Grants Pass. Planned Unit Developments are a
9 conditional use in an R-1 zone.

10 ALLEGATIONS OF ERROR

11 Petitioners set forth the following as assignments of error:

- 12 (1) "Respondent's findings are inadequate to satisfy
13 the procedures and conditions for approval of a
14 planned unit development set forth in
15 respondent's zoning ordinance."
16 (2) "The decision of approval is violative of
17 respondent's land use hearing rules, and without
18 adequate findings and conclusions to prove
19 compliance with these rules."
20 (3) "Approval of this proposal must be rejected
21 insofar as respondent has failed to specifically
22 address the state-wide planning goals."
23 (4) "Approval of this proposal violates the
24 state-wide planning goals."
25 (5) "The record in this case is replete with findings
26 of fact which are unsupported by any substantial
evidence and are conclusory, and thereby
insufficient to support the conclusions drawn by
respondent."

24 STATEMENT OF FACTS

25 On July 31, 1980, Applicant Gary W. Breeden applied for a
26 conditional use permit to develop Laurelridge Village, a 77

1 acre planned unit residential development in Grants Pass,
2 Oregon. A similar request had been rejected by the Grants Pass
3 City Council in February of 1979. A public hearing before the
4 Grants Pass Planning Commission was held on August 27, 1980.
5 On October 29, 1980, "Findings of Impasse" were made by the
6 Planning Commission wherein it noted that it was simply unable
7 to arrive at a majority decision, and was, therefore, unable to
8 make appropriate findings of fact and conclusions of law.

9 The project applicant appealed to the City Council. A
10 public hearing was held on December 3, 1980, and on December
11 29, 1980, findings and conclusions were adopted approving the
12 conditional use permit, subject to the applicants satisfying
13 various conditions.

14 In general the proposed Planned Unit Development (PUD) will
15 be constructed on a wooded hillside with sloping contours from
16 an elevation of 1570 feet down to 1140 feet. The project as
17 proposed will contain 245 residential units consisting of
18 detached single-family, condominium, patio home and townhouse
19 structures. In addition, the PUD as planned will consist of
20 public common areas, and a dedicated area for a water
21 reservoir. The project will be completed in three phases with
22 100 units in phase one, 99 units in phase two, and 46 units in
23 phase three. The complete development will take from 10 to 25
24 years from start to finish.

25 The Grants Pass planning staff considers this to be "the
26 largest land use planning proposal that has or perhaps will

1 come before the city council." "The precedent set by decisions
2 made will decide the nature of and conditions for other smaller
3 developments" according to the staff report. The Grants Pass
4 city attorney stated at oral argument that this is the first
5 case wherein the city has been required to apply its PUD
6 ordinance.

7 SUMMARY

8 Both the petitioner and the City of Grants Pass acknowledge
9 that what the city has attempted to do in this case is to
10 devise a scheme by which a developer can obtain some sense of
11 whether a PUD proposal meets with approval before he must go to
12 the expense of engineering and feasibility studies, drawing of
13 detailed plans, etc. The point of disagreement, however, comes
14 as to whether the City of Grants Pass has achieved that goal.
15 Respondent City in its brief maintains that the planned unit
16 development permit and conditional use permit which are the
17 subject of this appeal are conceptual in nature because a
18 subdivision itself was not approved. It argues that the city
19 council members who voted in favor of this "conceptual
20 approval" understood that the approval was conditioned on the
21 subdivision being approved. The city argues, given the fact
22 that subdivision approval is still necessary and given the
23 numerous conditions placed upon the approval the applicant has
24 nothing more than conceptual approval for his planned unit
25 development.

26 The city readily admits that it has no ordinances which

1 specifically authorize tentative or conceptual approval of a
2 planned unit development. It argues, however, such an
3 ordinance is not necessary in the case presently on appeal
4 because as a matter of law the applicant must submit his
5 development to subdivision approval prior to actual
6 development. Subdivision approval, argues the city, is such
7 that all of the issues raised in petitioners' petition for
8 review will be reviewed by the city prior to any development.

9 While the city seems to feel all it has granted is
10 conceptual approval, the applicant does not entirely agree. He
11 argues that the statewide goals will not have to be again
12 addressed in future hearings on the various development
13 phases. He does admit, however, there will have to be
14 substantial technical information provided and approvals
15 obtained regarding the provision of water, sewer and other
16 public facilities.

17 After reviewing the materials submitted to this Board, we
18 conclude that while there is no specific ordinance allowing
19 conceptual approval of PUDs in the City of Grants Pass, there
20 is nothing that prohibits such conceptual approval. In fact,
21 given the extent of the 16 conditions of approval imposed on
22 the applicant, the city has committed itself to little, if
23 anything, other than to outline in detail what the applicant
24 must do before he can begin construction.

25 We affirm Grants Pass' decision. In so doing, we make
26 specific note we do not agree with applicant's position

1 regarding whether he must again show compliance with the
2 statewide land use goals at later planning stages. The City of
3 Grants Pass made it a condition that the applicant comply with
4 the city's subdivision ordinance before each phase of
5 development is undertaken. Exhibit F to the Grants Pass
6 Subdivision Ordinance provides in pertinent part:

7 "The following evidence and proof by means of
8 submission of facts are required for the approval of
9 subdivision tentative plans and plats, and maps and of
10 minor partition tentative plans:

11 "1. The proposal is in conformance with the
12 following:

13 "A. Applicable Land Conservation and Development
14 Commission goals including but not limited to Goal 1
15 pertaining to citizen involvement; Goal 6 pertaining
16 to air, water and land resources quality; Goal 7
17 pertaining to areas subject to natural disasters and
18 hazards; Goal 10 pertaining to housing; and Goal 11
19 pertaining to public facilities and services."

20 Reading the above in conjunction with condition no. 13 infra,
21 there is no question that applicant must apply the statewide
22 goals at each phase of development.

23 DECISION

24 Petitioners first assert that the city's findings are
25 inadequate to satisfy the procedures and conditions for
26 approval of a planned unit development set forth in the Grants
Pass zoning ordinance. Petitioners argue that Section 31 of
the zoning ordinance establishes requirements and standards
which must be followed. They claim that respondent failed to
follow those requirements in two ways. First, they allege the
required planning commission approval was never obtained.

1 Second, they allege the standards for approval of a PUD set
2 forth in the zoning ordinance have not been satisfied.

3 Section 31 requires that planning commission approval be
4 obtained before any building or other permit shall be issued
5 for a planned unit development project. Provision no. 1 states

6 "Planning Commission Approval Required. Where use is
7 made of the Planned Unit Development process as
8 provided in this section, no building or other permit
9 shall be issued for such development or part thereof
until the Planning Commission has approved said
development."

10 Petitioners argue that this provision creates a condition
11 precedent for the development of a PUD. They reason that
12 unless the planning commission approves the project the PUD can
13 not go forward. They argue the planning commission was unable
14 to make appropriate findings and conclusions of law regarding
15 the proposed PUD and, therefore, did not approve the project.
16 They conclude that the city council did not have authority to
17 consider the proposed PUD application without the planning
18 commission's approval and that the subsequent approval by the
19 city council is, therefore, invalid.

20 In response, the city argues that petitioners'
21 interpretation of provision no. 1 is incorrect. The city
22 points out that under provision no. 8 of section 31 the
23 decision of the planning commission shall be final unless
24 appealed to the city council according to the procedure set
25 forth in Section 37(2) of the Grants Pass Zoning Ordinance.
26 The city argues that to accept petitioners' interpretation of

1 provision no. 1 would be to deny an applicant any right of
2 appeal and make the planning commission the final decision
3 maker in cases where it is unable to make a decision. The city
4 reasons that such an interpretation would amount to an
5 unfettered ability on the planning commission to veto any PUD
6 without appeal rights to the city council itself.

7 We agree with respondent's position. Petitioners' reading
8 of provision no. 1 would effectively prohibit any appeal to the
9 city council in situations where the planning commission is
10 unable to make a decision.

11 Petitioners next allege that the standards for approval of
12 a PUD under Grants Pass' zoning ordinance have not been
13 satisfied. Petitioners point to six standards in the PUD
14 ordinance which they argue must be satisfied with some
15 specificity before a PUD application may be approved. The six
16 standards to which the petitioners make reference are found in
17 section 31 of the Grants Pass Zoning Ordinance. Provision No.
18 7 of Section 31 states:

19 "Standards for Approval. In granting approval for
20 Planned Unit Developments the Commission shall be
guided by the following:

21 "a. The applicant has, through investigation,
22 planning and programming, demonstrated the
23 soundness of his proposal and his ability to
24 carry out the project as proposed and that the
25 construction shall begin within six (6) months of
the conclusion of any necessary action by the
City, or within such longer period of time as may
be established by the Planning Commission.

- 1 "b. The proposal conforms with the general plans of
2 the City in terms of location and general
 development standards.
- 3 "c. The project will accrue benefits to the City and
4 the general public in terms of need, convenience,
5 service, and appearance sufficient to justify any
 necessary exceptions to the regulations of the
 zoning district.
- 6 "d. The project will satisfactorily take care of the
7 traffic it generates by means of adequate
8 off-street parking, access points and additional
 street right-of-way improvements.
- 9 "e. That the project will be compatible with adjacent
10 developments and will not adversely affect the
 character of the area.
- 11 "f. No Planned Unit Development shall be approved in
12 any R-S, R-1, R-2, R-3 or R-4 District if the
13 housing density of the proposed development will
 result in an intensity of land use greater than
 permitted in the R-S, R-1, R-2, R-3 or R-4
 District."

14 Petitioners argue there are no findings and conclusions
15 filed by respondent in this case which specifically address the
16 standards. Petitioners arguments regarding these six standards
17 center around their interpretation of Rockway v. Stefani, 23 Or
18 App 639, 543 P2d 1089 (1979) and Frankland v. City of Lake
19 Oswego, 267 Or 452, 517 P2d 1042 (1973).

20 As regards petitioners' assertion that the six standards
21 for approval set forth supra have not been complied with, we
22 disagree. These "standards" are stated in terms of guidelines
23 for evaluating the proposal. A review of the findings and
24 record in support thereof shows the guidelines were followed.
25 For example, petitioners argue that per standard (a) the
26 applicant failed to show and the city failed to find the

1 project is sound. Inherent in Grant Pass' findings and
2 conditions is a showing that the city reviewed the proposal and
3 assured the soundness of the project by imposing strict
4 conditions which must be met before development will be allowed.

5 The Rockway case, supra, case does not aid the
6 petitioners. Not only was the ordinance that governed the PUD
7 in the Rockway case more stringent than the Grants Pass
8 ordinance, the developer failed to even approach compliance
9 with it.¹ Here the Grants Pass ordinance only calls for a
10 "general development plan" and not a specific development plan
11 of the type petitioners would seemingly like to see.²

12 A review of the record indicates that plans with the
13 specificity required by this relaxed requirement are in
14 existence.

15 The Frankland case, supra, does not aid petitioners because
16 in that case the court based its ruling on the fact that the
17 developer had deviated from the plan which had been approved as
18 part of the PUD. Those are not the facts in this case.

19 CONDITIONAL APPROVAL

20 The remainder of petitioners' concerns can be summarized as
21 their belief that Grants Pass can not allow a PUD to move
22 forward without specific plans which would allow, upon
23 approval, the developer to in effect begin construction
24 immediately. In other words the petitioners feel that by
25 making PUD approval conditioned on future activities of the
26 applicant, the city violated its PUD ordinance. Contrary to

1 petitioners' assertions, Grants Pass' PUD ordinance allows for
2 conditional approval. Specifically, provision no. 8, section
3 31 of the Grants Pass Zoning Ordinance provides in pertinent
4 part:

5 "In taking action, the Commission may approve, approve
6 with conditions, or deny an application as
submitted." (Emphasis added).

7 In addition, paragraph 9 of section 31 states:

8 "The Planning Commission on its own motion may revoke
9 any Planned Unit Development approval for
10 noncompliance with the conditions set forth in the
11 order granting the said approval, after first holding
12 a public hearing and giving notice of such hearing as
13 provided in Section 38, 3. The foregoing shall not be
the exclusive remedy, and it shall be unlawful and an
offense punishable hereunder for any person to
construct any improvement in violation of any
condition imposed by the order granting the Planned
Unit Development Approval." (Emphasis added).

14 The City conditioned approval upon the following:

15 "1. Water systems can be designed to serve the PUD
16 within the city's capacity to provide service to
17 the site without diminishing service to other
areas of the city.

18 "2. Sanitary sewer can be extended from present
19 system and can be serviceable and accessible to
20 the city's satisfaction. Adequate collection
21 system capacity and plan capacity must be
22 demonstrated to the city's satisfaction. All
23 utility plans shall be subject to approval by the
City Utility Commission.

24 "3. Roads, driveways and building pads can be
25 constructed according to preliminary grading
26 plan, including anticipated problems and methods
of solution (see item 8), and are consistent with
the city's traffic management plan, as adopted.

"4. Maintenance of open spaces and recreation areas
will be assumed by a mandatory home owners
association.

- 1 "5. Access will be available on the east and south
2 side of development.
- 3 "6. Staged development plan shows developer's ability
4 to carry out projects and phasing of segments
5 shall be submitted for city planning commission
6 approval prior to subdivision.
- 7 "7. Lighting standards in keeping with development
8 design are acceptable to the city.
- 9 "8. Drainage and erosion control plans shall be
10 submitted to the city for its consideration and
11 approval both during construction and as finally
12 constructed.
- 13 "9. Parking planned meets zoning ordinance off-street
14 parking requirements.
- 15 "10. Development shall be consistent with the plan as
16 submitted subject to possible modification. The
17 developer shall submit as a condition of approval
18 a procedure by which modification of the plan
19 will be allowed. The planning commission must
20 review and approve said procedure.
- 21 "11. All land not within subdivision and parcels to be
22 used for non-single family structures shall be
23 subject to site plan review prior to issuance of
24 building permits.
- 25 "12. An informational recording and deed restrictions
26 shall state that each lot is subject to
conditions of development as called out in the
conditions of approval for the planned unit
development. Such language shall be subject to
approval by the City Attorney.
- "13. The approval of this planned unit development and
the conditional use permit issued accordingly
shall lapse and become void unless:
- "a. Within two years of the date these findings
are approved detailed engineering drawings
are submitted pursuant to city ordinance and
policy; and
- "b. Within one year of such engineer's drawings
being submitted, that the preliminary plan
for phase 1 of the development is approved

1 pursuant to the City Subdivision Ordinance;
2 and

3 "c. Within five years of said phase 1 preliminary
4 plan being approved, that the preliminary
5 plans for phase 2 and 3 be submitted for
6 approval pursuant to the City Subdivision
7 Ordinance."

8 "14. If the traffic count on Morgan Lane, between the
9 development and Highland Avenue, should ever
10 exceed 1500 vehicles per day, then no further
11 building permits shall be issued until traffic
12 congestion plans, which will reduce said traffic
13 count, have been finalized and the solution
14 construction commenced.

15 "15. If upon receipt of the Traffic Management Plan,
16 the Council shall choose a new collector loop,
17 see alternative 3 specified in the memorandum
18 attached hereto as Exhibit '2', then in that
19 case, the development shall facilitate each plan,
20 that is, dedicate any right-of-way that might be
21 required on-site and construct such on-site
22 improvement as are required as the planned unit
23 development is developed.

24 "16. The proposal shall include a 30 foot natural
25 screen buffer zone along the east boundary of the
26 proposal."

 Given the extent of the above set forth conditions, the
city has committed itself to little, if anything, other than to
outline in detail what the applicant must do before he can
begin construction. If the applicant complies with the
conditions the PUD can move forward.

COMPLIANCE WITH STATEWIDE GOALS

 It should again be pointed out the applicant must, by
provisions of the Grants Pass Subdivision Ordinance, comply at
the time of tentative plat approval, with the Land Conservation
and Development Commission goals. See discussion supra.

1 Goal 1 - Citizen Involvement

2 Petitioners' argument is essentially that because of the
3 conditional nature of the PUD approval citizen involvement is
4 denied since no specific plans are in existence yet and,
5 therefore, citizens are unable to review any specific portions
6 of the plan. We do not agree. As above mentioned, the Grants
7 Pass PUD ordinance allows for conditional approval. Condition
8 no. 13, supra, requires compliance with the Grants Pass
9 subdivision ordinance at each phase in the development. The
10 Grants Pass Subdivision Ordinance requires public
11 participation. Specifically, chapter 4, section 4.02 states:

12 "NOTIFICATION AND PUBLIC HEARING. The Planning
13 Commission will review the tentative plan or major
14 partition map at a regularly scheduled public
15 hearing. The hearing will be conducted in accordance
16 with the City's established Land Use Hearing Rules.
17 The newspaper and affected property owners will be
18 notified of the public hearing in accordance with City
19 policy." (Emphasis added).

20 In addition, chapter 5 of the Grants Pass Subdivision Ordinance
21 includes section 5.09 entitled "APPEAL" which states:

22 "Any interested party may appeal the Commission's
23 decision on the Final Plat or Map pursuant to Section
24 8.12 of this ordinance."

25 Section 8.12 provides:

26 "CIVIL RELIEF. When any real property is or is
27 proposed to be used, transferred, sold or disposed of
28 in violation of this Ordinance, the Council, City
29 Manager, City Attorney, the District Attorney or any
30 person whose interest in real property is or may be
31 affected by the violation, may in addition to other
32 remedies provided by law, institute injunction,
33 mandamus, abatement, or other appropriate proceedings
34 to prevent, temporarily or permanently enjoin, abate

1 or set aside such use, transfer, sale disposition,
2 offer, negotiation or agreement."

3 Not only have petitioners already become involved in this land
4 use request, the above cited provisions will assure that
5 Statewide Goal No. 1's requirement of citizen involvement is
6 met.

7 Goal 6 - Air, Land and Water Resource Quality.

8 Petitioners argue that respondent has failed to comply with
9 Statewide Goal No. 6. Petitioners argue there are no findings
10 demonstrating compliance with the dictates of the goal and they
11 once again argue that conditioning approval on the developer
12 providing sufficient evidence of compliance with the goal in
13 the future is not sufficient.

14 The city's findings which directly relate to Goal 6 include
15 by reference the city staff report which addresses potential
16 problems with the sewer system serving the PUD. The report
17 recommends the developer provide (1) information indicating the
18 arrangement proposed for the sewer system, (2) an analysis of
19 the existing sewer system to determine whether it can tolerate
20 the demands of the new development and (3) a general
21 feasibility study that a serviceable system can be constructed
22 on this site. Also findings no. 18, 19, 38, 53, 62, 72 and 77
23 address items relating to Goal 6 compliance. In addition, the
24 PUD is allowed only upon compliance with conditions no. 1,2 and
25 13, supra. Based on the foregoing, respondent has sufficiently
26 complied with goal 6 at this stage of the development plan.

1 Goal 7 - Areas Subject to Natural Disasters and Hazards.

2 Petitioners cite as their concern under this goal potential
3 erosion in the PUD area caused by development on the sloping
4 land. Petitioners recognize that respondent in finding 46 sets
5 forth various ways in which erosion can be controlled and
6 minimized. Yet they argue there are no findings as to how
7 these methods will be specifically employed in the Laurelridge
8 Subdivision. Petitioners argue that under condition no. 8
9 (supra) a drainage and erosion control plan need only be
10 submitted in the future. They argue it is therefore impossible
11 at this point to determine whether or not such a plan will be
12 successful. This again goes back to petitioners basic argument
13 that the conceptual nature of this plan is not allowed by
14 Grants Pass ordinances or the statewide goals. Once again we
15 disagree, respondent has specifically addressed Goal No. 7
16 concerns and made approval conditioned on compliance with
17 condition no. 8, supra. In addition, the city addresses Goal 7
18 concerns in findings no. 8, 10, 13, 37, 46, 47.

19 The respondent considered the requirements of Goal 7. Not
20 only is the goal being complied with through the application of
21 specific conditions but also as we mentioned earlier, through
22 subdivision ordinance provision which requires application of
23 the goals prior to final plat approval of each phase.

24 Goal 10 - Housing

25 Petitioners argue the findings of fact are silent on the
26 issue of whether there is any evidence or mention of the type

1 of housing which is now required in the City of Grants Pass or
2 any findings which address the type of housing to be provided
3 by Laurelridge Village necessary.

4 In zoning the subject property for residential development,
5 Grants Pass implicitly found there is a need for residences
6 within the city. In addition, findings no. 4, 5, 6, 24, 33,
7 35, 36, 52, 74, 76 and 84 address petitioners' concerns. For
8 example, finding no. 33 states:

9 "33. The development will provide five distinct types
10 of residential housing. The City of Grants Pass
11 needs a variety of new housing lots with view
12 potential."

13 Finding No. 35 states:

14 "35. 68% of the development is dedicated to detached
15 single family dwellings."

16 Findings no. 76 and 84 state:

17 "76. Residential building sites of these types and
18 sizes and with a view, are needed within the City
19 of Grants Pass.

20 "84. "The development will probably appeal to more
21 older citizens than to young families.

22 Conclusion no. 47 indicates the city's feelings about
23 the housing types being proposed:

24 "The proposed use will encourage adequate housing in
25 terms of price ranges or rental levels, diversified
26 locations, diversified housing types, and diversified
27 densities."

28 Based on the foregoing, we dismiss petitioners' concerns about
29 Statewide Goal No. 10.

30

1 Goal 11 - Public Facilities and Services

2 Petitioner here argues there is no evidence in the record
3 to show whether or not the existing public services will be
4 able to serve the Laurelridge Subdivision adequately. They
5 argue the evidence indicates various public facilities can not
6 serve Laurelridge, and that various improvements and additions
7 to the public utility systems will have to be made. Their
8 argument is, further, that there is no evidence to indicate
9 whether these improvements can be made or will be made in the
10 future. After this, petitioners conclude that Goal 11 has not
11 been satisfied.

12 It is important to note that Goal 11's use of the phrase
13 timely, orderly and efficient arrangement "refers to a system
14 or plan that coordinates the type, location and delivery of
15 public facilities and services in a manner that best supports
16 the existing and proposed land uses." Once again we get back
17 to petitioners' basic concern in this case, whether there can
18 be conditional approval of the PUD. There is nothing in Goal
19 11 that prohibits a local jurisdiction from making a decision
20 conditioned upon compliance with what Goal 11 dictates. The
21 applicant's conditional use permit and planned unit development
22 permit is subject to 16 specific conditions, supra.
23 Specifically, conditions 1, 2, 3, 6, 8, 11, 13, 14, 15 and 16
24 all address the provision of public facilities and services.
25 Petitioners do not argue that the conditions imposed on the
26 applicant, if complied with, fail to assure compliance with

1 Goal 11.

2 As regards schools, the record indicates that there was
3 concern expressed by the Assistant Superintendent of Schools
4 for the City of Grants Pass. The Assistant Superintendent
5 expressed extreme concern about the impact that this
6 development, along with a neighboring High Oaks Subdivision,
7 will have on the school district. Basically his concern is
8 that the school district may not be able to handle the
9 increased enrollment resulting from this subdivision as well as
10 other subdivisions in the area.

11 As we said in Holmstrom v. Marion County, LUBA No. 80-170
12 (Proposed Opinion, 1981), Goal 11 requires a showing that
13 advanced planning has been accomplished explaining how school
14 needs can be met. In this case there appears to be no
15 indication the City of Grants Pass considered the projected
16 enrollment impacts of this PUD. There has neither been
17 consideration of the number of students which will be added by
18 ongoing development within the school district boundary nor the
19 number of students added by this PUD.

20 The findings made by the city concerning the schools are as
21 follows:

22 "24. The development will be constructed in three
23 phases, with phase 1 having 100 units, phase 2
24 having 99 units, and phase 3 having 46 units.

25 "25. The complete development will take ten to
26 twenty-five years from start to finish.

1 "26. Phased development will permit local schools and
2 other municipal services to coordinate new
construction with the development.

3 "27. Highland School and North Middle School are both
4 in close proximity to the development.

5 While the findings do indicate some consideration of school
6 impact, the city failed to make findings sufficient to indicate
7 how it is going to meet what, if any, increase in school
8 enrollment results from this development. Under normal
9 situations such a failure to deal with the problems of school
10 capacity would be a basis for this Board to remand the
11 decision. However, in this situation such a remand would be of
12 little effect or do little to assist in solving the concern
13 about schools. The city's grant of the PUD permit is
14 conditioned upon the developer going through, prior to approval
15 of any one of the three phases, the subdivision ordinance
16 (Condition 13, supra). As we mentioned earlier, the
17 subdivision ordinance requires that the developer meet the
18 dictates of the statewide goals and in this case Statewide Goal
19 11 which requires consideration of impact on schools.
20 Therefore, while the city did not properly make findings
21 regarding the impact this subdivision will have on the schools,
22 that error will be correctible without remand by this Board.
23 That error will need to be addressed at the time of approval of
24 each of the development's three phases as is required per
25 condition no. 13, supra.

1 Goal 12 - Transportation

2 Here again petitioners are concerned the impact of the
3 Laurelridge Subdivision on the city's transportation system has
4 not been properly addressed and that no provision have been
5 introduced to deal with this impact. Our answer to this
6 allegation of error is the same as the other ones. The city's
7 findings of fact and conditions of approval indicate the
8 transportation concerns were addressed. The conditions, if
9 complied with will ensure that Goal 12's dictates will be met.
10 Specifically, findings 21, 22, 23, 32, 68, 83, 87, 88 and 89
11 address transportation problems. In addition, conditions 3, 5,
12 14 and 15, supra, have been placed on the development.

13 For the reasons we have set forth, we find Goal 12 has been
14 adequately considered and will again be considered pursuant to
15 condition 13 supra.

16 Goal 2 - Land Use Planning

17 Here petitioners are once again arguing that in order to
18 comply with the goals the land use proposal submitted by
19 applicant in this case must be more specific. The petitioners
20 use this goal as a vehicle to summarize the concerns which are
21 evident throughout their brief. To the extent that the
22 petitioners' concerns under their Goal 2 argument are reflected
23 in their prior arguments on the goals, we refer to the
24 discussions on the goals, supra. To the extent the petitioner
25 is here arguing there is a lack of substantial evidence in the
26 record, we refer to the following section of this opinion.

1 SUBSTANTIAL EVIDENCE

2 Petitioners argue

3 "The record in this case is replete with findings of
4 fact that are unsupported by any substantial evidence
5 and are conclusory, and thereby insufficient to
6 support the conclusions drawn by respondent."

7 While the petitioners entitle this an attack on the
8 substantiality of the evidence, their brief once again repeats
9 their basic concern that Grants Pass can not grant a PUD permit
10 without having considerably more detailed information and plans
11 than now exist.

12 A review of the findings petitioners are attacking reveals
13 that they fall into basically two categories. In the first
14 category are those findings which are merely surplusage and do
15 not control the outcome of this case. An example is finding
16 no. 50 which states:

17 "There are no fishing areas within the development
18 site."

19 The facts clearly reveal that this is urban land,
20 residentially zoned, located on a hillside. It is not
21 surprising to this Board that there are no fishing areas within
22 the development site considering the slope and nature of the
23 property. Whether there is substantial evidence in the record
24 to support Finding 50 is of no consequence because it does not
25 control the outcome of the case regardless of its accuracy.

26 The second category of findings that the petitioners
27 contest as being unsupported by substantial evidence are those

1 which have been dealt with as part of our discussion in prior
2 portions of this opinion. An example of this type is finding
3 no. 53 which states:

4 "City water and city sewer systems will serve the
5 development."

6 As we have stated earlier utilities and their availability are
7 dealt with by conditions imposed upon the developer by the
8 city. Before the applicant can turn the first spade full of
9 dirt, there must be proof, pursuant to conditions of approval,
10 that city water and city sewer systems will be sufficiently
11 available to meet the development needs.

12 Another example of this category of finding is no. 76 which
13 states:

14 "Residential building sites of these types and sizes,
15 and with a view, are needed within the City of Grants
Pass."

16 The need for residential property was determined when the city
17 zoned this property residential. The mere fact that a
18 conditional use permit is necessary to build a PUD does not
19 change the character of the zone.

20 Petitioners also are attacking the findings alleging they
21 are conclusory in nature. For example, petitioners attack
22 finding no. 15 which states: "Common area open spaces are
23 provided." Petitioners argue there is no finding as to exactly
24 what percentage of the development site will be utilized by
25 these common area open spaces or any finding as to what
26 percentage would be adequate or necessary in this kind of

1 development. The sketches in the record show open space and
2 indicate the proposed layout of the development. In addition,
3 the entire matter must go through subdivision ordinance review
4 several times, i.e. once for each phase. At that point the
5 exact percent figures can be arrived at. Since the subdivision
6 ordinance guarantees public participation, petitioners will have
7 an opportunity to have their questions answered.

8 The remainder of the petitioners' arguments follow the same
9 detail that we have above described. They are an attempt to
10 further their case that insufficient detail exists to support
11 the granting of a PUD. We find it unnecessary to go into
12 further detail.

13 Affirmed.

1 FOOTNOTES

2 1

3 Clackamas County's Ordinance provided:

4 "There shall be included as a part of the application
5 an accurate map drawn to a scale of not less than
6 one-hundred (100) feet to the inch showing the boundaries
7 of the site, names and dimensions of all streets bounding
8 or touching the site; the proposed location and horizontal
9 and vertical dimensions of all buildings and structures
10 proposed to be located on the site; proposed location and
11 dimensions of open space within the site; proposed public
12 dedications, if any, within the site; location dimensions
13 and design of off-street parking facilities showing points
14 of ingress to and egress from the site; the location,
15 direction and bearing of any major physiographic features
16 such as railroads, drainage canals, shore lines, and
17 existing topographic contours at intervals of not less than
18 five (5) feet together with proposed grading, drainage and
19 landscaping." Rockway v. Stefani, 23 Or App at 643.

20 2

21 Section 31 of the Grants Pass Zoning Ordinance, paragraph 5
22 states:

23 "All applications shall be accompanied by a general
24 development plan drawn to scale showing the use or
25 uses, dimensions and locations of proposed structures
26 and of areas to be reserved for vehicular and
27 pedestrian circulation, parking, public uses (if any),
28 landscaping and other open spaces, and drawings and
29 sketches demonstrating the design and character of the
30 proposed uses and the physical relationships of the
31 uses. Such other pertinent information shall be
32 included as may be considered necessary by the
33 Planning Commission to make a determination that the
34 contemplated arrangement or use makes it necessary and
35 desirable to apply regulations and requirements
36 differing from those ordinarily applicable under this
37 Ordinance. The Planning Commission may request
38 recommendations from the Site Approval Committee
39 pertaining to any particular application, provided,
40 however, the Planning Commission shall not be bound by
41 these recommendations." (Emphasis added)

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

3 JOHN GUSTAFSON, JUNE GUSTAFSON,)
4 MICHAEL GROSS, RUTH GROSS,)
5 EARNEST HASTINGS, VIRGINIA)
6 HASTINGS, GEORGE SMITH, FLOY)
7 SMITH, RONALD BLAIR,)

8 Petitioners,)

9 v.)

10 CITY OF GRANTS PASS,)

11 Respondent.)

LUBA NO. 81-012

PROPOSED OPINION
AND ORDER

12 Appeal from City of Grants Pass.

13 Steven Goldberg, Portland, filed a petition for review and
14 argued the cause for Petitioners. With him on the brief were
15 Goldberg & Mechanic.

16 Allan H. Coon, Grants Pass, filed a brief and argued the
17 cause for Respondent.

18 William H. Ferguson, Medford, filed a brief and argued the
19 cause for Intervenor.

20 Cox, Referee; Reynolds, Chief Referee; Bagg, Referee;
21 participated in the decision

22 Affirmed

6/9/81

23 You are entitled to judicial review of this Order.
24 Judicial review is governed by the provisions of Oregon Laws
25 1979, ch 772, sec 6(a).
26



STATE OF OREGON

INTEROFFICE MEMO

TO: MEMBERS OF THE LAND CONSERVATION
AND DEVELOPMENT COMMISSION

DATE: 6/9/81

FROM: THE LAND USE BOARD OF APPEALS

SUBJECT: GUSTAFSON V. GRANTS PASS

Enclosed for your review is the Board's proposed opinion and final order in the above captioned appeal.

This case involves both goal and non-goal issues. We affirm the decision of Grants Pass. Review of the goal issues can be accomplished by concentrating on page 1 through page 6, line 17 and page 13, line 22 through to the end. The petitioners' allegations of error were extensive which has resulted in a very long Board opinion. In an attempt to decrease the opinion's length, reference is made to Grants Pass' findings by number only. We are attaching to this cover memo a copy of the Grants Pass order, findings, conclusions and conditions to aid the Commission's review of the opinion.

The Board is of the opinion that oral argument would not assist the commission in its understanding or review of the statewide goal issues involved in this appeal. Therefore, the Board recommends that oral argument before the commission not be allowed.



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