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

3	ED HEWITT,)	
)	
4	Petitioner,)	
)	LUBA NO. 82-079
5	v.)	
)	FINAL OPINION
6	CITY OF BROOKINGS,)	AND ORDER
)	
7	Respondent,)	
)	
8	and)	
)	
9	HARRIS BEACH PROPERTIES, INC.)	
)	
10	Intervenor-Respondent.))	

11 Appeal from City of Brookings.

12 Peter M. Linden, Grants Pass, filed a petition for review
13 and argued the cause for Petitioners. With him on the brief
was Donald F. Myrick.

14 John C. Babin, Brookings, filed a brief for Respondent.
15 With him on the brief were Coutrakon, Hoselton & Babin.

16 Intervenor-Respondent did not appear.

17 Cox, Board Member; Bagg, Board Member; participated in the
decision.

18 Remanded 1/17/83

19 You are entitled to judicial review of this Order.
20 Judicial review is governed by the provisions of Oregon Laws
1979, ch 772, sec 6(a), as amended by Oregon Laws 1981, ch 748.

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1 COX, Board Member.

2 NATURE OF PROCEEDING

3 Petitioner seeks review of an August 11, 1982 decision by
4 the Brookings City Council allowing a planned development
5 overlay zone to be applied to property owned by Harris Beach
6 Properties, Inc. The overlay zone allows a Planned Unit
7 Development (PUD) to be built on a site that is presently zoned
8 residential low density. The specific property involved in the
9 decision appears to be what is known as phase 1 of a larger
10 development proposed by the applicant.

11 ALLEGATIONS OF ERROR

12 In general, petitioner argues that the August 11, 1982
13 order is defective because the City failed to state what
14 criteria were applicable and failed to make legally sufficient
15 findings to explain its decision.

16 FACTS

17 Applicant Harris Beach Properties, Inc. owns some 23 acres
18 located within the city limits of Brookings. The property lies
19 adjacent to and on the north of Harris Beach State Park. The
20 means by which a PUD is allowed in the City of Brookings is via
21 a process similar to a zone change. Rather than an actual
22 change of zone, however, "overlay zone" is applied to existing
23 zones. The existing zone on the subject property is
24 residential, low density and the overlay zone procedure is
25 applicable in this case. Section 4.310 of Brookings Zoning
26 Code Ordinance 216 sets forth standards which regulate the

1 granting of a PUD zone of the type requested.

2 DECISION

3 Petitioner's arguments are two fold. First, petitioner
4 argues Respondent City violated ORS 227.173(2) which provides:

5 "Approval or denial of a permit application shall be
6 based upon and accompanied by a brief statement that
7 explains the criteria and standards considered
8 relevant to the decision, states the facts relied upon
9 in rendering the decision and explains the
10 justification for the decision based on the criteria,
11 standards and facts set forth." (Emphasis added).

12 The petitioner identifies the contested action as a zone change
13 and according to the record, the City of Brookings treats the
14 application of an "overlay zone" as a zone change. This Board
15 has previously held that ORS 227.173(2) does not apply to zone
16 changes because zone changes are not within the statute's
17 definition of permit. Constant v. Lake Oswego, 5 Or LUBA 311,
18 317 (1981). Petitioner's first argument is therefore
19 dismissed.¹

20 Petitioner next argues that even if ORS 227.173(2) does not
21 apply, Oregon case law requires satisfactory findings. We
22 agree with petitioner that the county has failed to make the
23 findings legally necessary to support and explain its
24 decision. As we held in Harrell v. Baker County, 5 Or LUBA 192
25 (1982) citing Sunnyside Neighborhood v. Clackamas County, 280
26 Or 3, 569 P2d 1063 (1977), findings are important only insofar
as they relate to the objectives and policies to which the
deciding jurisdiction is committed by state law, statewide
goals and its comprehensive plan. Consequently, findings

1 should not only identify those objectives or policies but also
2 describe how and why the proposed action will in fact serve
3 those objectives or policies. In this case, as in Harrell, the
4 Brookings City Council did not explain how the few facts it did
5 find serve the applicable objectives.

6 In addition to our holding in Harrell, this Board has held
7 in numerous cases, consistent with holdings of the Oregon
8 Supreme Court and Oregon Court of Appeals, that before an
9 adequate review of a land use action can be made on appeal,
10 sufficient findings of fact must exist. The "findings"
11 contained in the Brookings City Council order are for the most
12 part conclusions as to the law and as to ultimate facts. The
13 underlying factual basis for the conclusions are not set out.
14 The few "facts" identified are not tied into the ultimate
15 conclusion required by the standard to be applied.

16 For example, the City Council identifies Brookings City
17 Ordinance No. 216, Section 4.130 as applicable to the request.
18 Section 4.310 is over four full pages in length and contains a
19 "purpose" statement, "general requirements," and mandatory
20 "procedure[s]". In part, the "procedure" section requires a
21 determination that:

- 22 "1. There are special physical conditions or
23 objectives of development which the proposal will
24 satisfy so that a departure from standard
25 ordinance requirements can be warranted.
- 26 "2. Resulting development will not be inconsistent
with either the comprehensive plan or the zoning
objectives of the city.

- 1 "3. The area around the development can be planned to
be in substantial harmony with the proposed plan.
- 2 "4. The plan can be completed within a reasonable
3 period of time.
- 4 "5. Any proposed commercial or industrial development
can be justified economically.
- 5 "6. The streets within and outside the planned
6 development are adequate to support the
7 anticipated traffic.
- 8 "7. Proposed utility and drainage facilities are
adequate for the population densities and type of
9 development proposed and will not create major
10 problems outside the planned area." Section
4.130(3)(c)(6)

11 After a general summary of Section 4.130 "purpose" and
12 "general requirements" provisions to which no factual
13 application was made, the City merely makes some conclusional
14 remarks. In their entirety those remarks are:

15 "As indicated in the History of Action,
Attachment 'C', Mr. Anderson and his representatives
16 have met and corresponded on numerous occasions
regarding his plan and the City's engineering
17 concerns. A PD proposal allows the applicant more
flexibility in the design of his project yet City
18 standards and specifications must be met to protect
the residents of the project and the City.

19 "Through letter dated July 19, 1982, Attachment
20 'D', City staff identified the remaining items to be
addressed prior to staff's recommendation to Council
21 that the plan be approved.

22 "A revised set of plans were received and
reviewed by staff prior to the July 27, 1982 meeting.
23 Based on the revised plans, staff's recommendation to
the City Council, under memorandum dated July 27,
24 1982, was that the request be granted with certain
stipulations."
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26 These "findings" are conclusional summaries of prior activities

1 and not findings within the court's definition of that term.
2 See Hill v. Union County, 42 Or App 883, 601 P2d 905 (1979);
3 Green v. Hayward, 275 Or 693, 552 P2d 815 (1976); Home Plate,
4 Inc. v. OLCC, 20 Or App 188, 530 P2d 862 (1975); Scappoose
5 Drainage District v. Columbia County, 2 Or LUBA 174 (1981);
6 Cannady v. Roseburg, 2 Or LUBA 134 (1980); B & L Holdings v.
7 Corvallis, 1 Or LUBA 115 (1980).

8 Based on the fact that insufficient findings, as a matter
9 of law, exist in this case, we remand it for further
10 proceedings not inconsistent with this decision.

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FOOTNOTE

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¹ We note the city did include a list of the criteria it believed applicable to the decision.