

1 Opinion by Kressel.

2 NATURE OF THE DECISION

3 Petitioner appeals denial of his applications for two
4 "special care" permits. One permit would authorize temporary
5 placement of a mobile home on petitioner's land to house his
6 invalid mother. The other would authorize a second temporary
7 mobile home for persons providing care for her.

8 FACTS

9 Petitioner owns a 37 acre farm. Prior to 1983, the
10 property was occupied by a 2,000 square foot residence, a two
11 bedroom mobile home and an additional structure used
12 occasionally as a dwelling. Some time in 1983, petitioner
13 purchased two mobile homes and moved them onto the property.
14 Thereafter, county officials advised him the additional mobile
15 homes exceeded density limitations established by the Clackamas
16 County Zoning Ordinance. Petitioner then applied for the two
17 "special care" permits.

18 The applications were filed under §1204.03 of the Clackamas
19 County Zoning Ordinance. That provision authorizes the
20 planning director to approve a temporary permit for up to
21 three years "...for the use of a mobile home or trailer house
22 as a residence for the care of a person who requires special
23 attention because of age or poor health..."¹ The ordinance
24 sets forth the following approval standards:

25 "A. There exists a need for special attention (a
26 doctor's statement establishing the need is
appropriate and suggested evidence); and

1 "B. There exists no reasonable housing alternative,
2 such as nearby rental housing or adequate housing
3 on the subject property." Section 1204.03,
Clackamas County Zoning Ordinance.

4 In August 1983, the Clackamas County Planning Director
5 denied the applications.² In a letter to petitioner the
6 director made the following findings:

7 "1. There exists a reasonable housing alternative, in
8 the form of adequate housing on the subject
9 property. While a doctor's statement
10 substantiating the applicant's mother's need for
11 care has been submitted to this file, the
12 applicant has submitted no information detailing
13 why existing on-site housing is not a suitable
14 alternative to the establishment of an additional
15 residential unit. Through conversation with the
16 county Code Compliance Division, County Soils
17 Division, and nearby property owners, the
18 Planning staff has determined there are at least
19 three residences currently on the property, in
20 addition to the two additional residences
21 proposed through this application and file no.
22 1056-82-ST. The applicant has submitted no
23 information to this office indicating why these
24 existing residences are not suitable alternatives
25 to the establishment of an additional
26 residence." Record at 2.

18 Petitioner appealed the director's decision to the
19 Clackamas County Board of County Commissioners. At a hearing
20 held on September 28, 1983, the director reiterated the
21 position outlined in the above quoted letter. Although
22 conceding a medical need had been established, he recommended
23 denial of the permits because petitioner had failed to
24 demonstrate the unavailability of reasonable housing
25 alternatives on the property. According to the director, the
26 site was already occupied by three dwelling units, two of

1 which were rentals. He explained his decision in these terms:

2 "The question is are there alternatives to placing two
3 additional residences, that is mobile homes on this
4 property to provide for that care and the staff on the
5 basis of our...of the evidence we have before us and a
6 field investigation has determined that the applicant
7 has not demonstrated that [sic] is any other
8 alternative other than placing Mr. Sanders' mother in
9 the mobile home on the property and an additional
10 person to care for his mother on that property...that
11 is there is no explanation why the Mr. Sanders' mother
12 cannot reside in the home with Mr. and Mrs. Sanders or
13 one of the other renters or between all of them those
14 people can provide needed care for Mr. Sanders'
15 mother." Record at 8.

16 The director's position was echoed by neighbors of petitioner,
17 who argued existing housing was adequate to meet the special
18 medical need. Record at 14-15.

19 At the hearing before the county commission, petitioner
20 disputed the planning director's version of the facts, as well
21 as the director's characterization of the reasonableness of
22 meeting the medical need with existing housing. According to
23 petitioner, the structures on the property (other than the two
24 new mobile homes) were either fully occupied or not suitable
25 for occupancy. The structures consisted of a 2,000 square foot
26 house, a two bedroom mobile home and an "out building,"
described as having no kitchen, heat or water facilities. As
outlined below, petitioner argued none of these could
reasonably be considered available for housing his invalid
mother or her caretaker.

According to petitioner, at the time of the county's
September 1983 hearing the large house was fully occupied by

1 petitioner's daughter, her husband and their two children.³
2 Record at 18. The preexisting mobile home was stated to be
3 occupied by a farm caretaker and his family. Id. Occupancy of
4 the third structure (the "out building") was said to be limited
5 to occasional use by petitioner's adult sons. Id.

6 Petitioner's proposal was to house his mother in one of the
7 new mobile homes.⁴ Record at 8a. He claimed his mother's
8 mental and physical condition made it preferable that she
9 occupy a separate living unit. Record at 18. Petitioner's
10 daughter and her family were to serve as the mother's
11 caretakers. They would continue to occupy the 2,000 square
12 foot house. Record at 20. Although the record is unclear on
13 the point, it appears petitioner and his wife planned to occupy
14 the second new mobile home during the life of the requested
15 permits. Record at 18.

16 The factual debate over the possibilities for accommodating
17 petitioner's mother and persons providing care for her on the
18 property prompted the Clackamas County Commissioners to conduct
19 a site inspection. Thereafter, they resumed the hearing and
20 voted unanimously to deny the permit requests. Record at 3.
21 Petitioner was allowed 60 days to remove the two mobile homes.
22 Id.

23 FIRST ASSIGNMENT OF ERROR

24 Petitioner first challenges the form of the county's final
25 order. According to him, the order is deficient because it
26 does not specifically refer to the two special care permits at

1 issue, but refers only to a single permit. Such a vague order,
2 in petitioner's view, "...should not be allowed to stand as
3 written and signed." Petition at 3.

4 We are not clear as to the legal significance petitioner
5 ascribes to the alleged defect in form. The county's order is
6 not vague. Although in places it refers only to a single
7 permit, the document concludes as follows: " NOW, THEREFORE, IT
8 IS HEREBY ORDERED that the temporary permits requested are
9 denied." Record at 1 (emphasis added). There is no doubt the
10 order concerns both applications filed by petitioner.⁵

11 This assignment of error is denied.

12 SECOND ASSIGNMENT OF ERROR

13 Petitioner next challenges the county's findings, which
14 consist of the planning director's August 1983 letter denying
15 the permit requests. Petitioner first argues there are no
16 findings. This absence of findings is allegedly because the
17 director's letter, although referred to as an exhibit in the
18 final order, was neither attached to the final order when it
19 was filed with the county clerk, nor sent to petitioner.

20 Second, petitioner generally charges the findings required by
21 §1204.03(A) and (B) of the ordinance "...are simply not there,
22 and conclusions drawn from inadequate findings must fail."

23 Petition at 4.

24 We do not accept either of petitioner's contentions. The
25 record indicates the original order signed by the Clackamas
26 County Commission and recorded with the county clerk included

1 the letter containing the findings. Record at 1-2. Assuming
2 the county failed to send petitioner a copy of the
3 letter-exhibit, we are not aware of why such an omission would
4 constitute legal error in this case. See Whitesides Hardware
5 v. City of Corvallis, ____ OR LUBA ____ (LUBA No. 83-040,
6 1983); Goose Hollow Foothills League v. City of Portland, 3 Or
7 LUBA 256 (1981).

8 With respect to the general charge the required findings
9 under the ordinance "are simply not there," we are again unable
10 to agree with petitioner. The order does contain findings. In
11 any case, since other aspects of the petition challenge the
12 county's findings with greater specificity, we proceed no
13 further under this assignment of error.

14 THIRD ASSIGNMENT OF ERROR

15 Petitioner next claims the county's order is defective
16 because it does not negate the existence of special medical
17 need. Indeed, the county found such a need had been
18 established. Record at 1. However, petitioner's argument does
19 not provide any basis for reversal or remand because it
20 addresses only one of the two standards for permit approval
21 under §1204.03. The county could not lawfully issue the
22 requested permits unless both standards (medical need and
23 unavailability of reasonable housing alternatives) were
24 satisfied. Weyerhaeuser v. Lane County, 7 Or LUBA 42, 46
25 (1982). Here the county denied the permits under the second
26 standard. In the next assignment of error we discuss the

1 adequacy of the findings and the sufficiency of the supporting
2 evidence in connection with that standard.

3 This assignment of error is denied.

4 FOURTH ASSIGNMENT OF ERROR

5 Petitioner contends the county's order makes no findings
6 that reasonable housing alternatives exist to meet his mother's
7 need for special care. Further, he insists the record is
8 replete with evidence establishing the contrary, i.e., that
9 on-site housing "...is not adequate for the proven purpose."
10 Petition at 5.

11 Our reading of the county's findings (quoted at p. 3,
12 supra) leads us to conclude they are adequate to support permit
13 denial under §1204.03(B) of the ordinance. The findings
14 indicate there are already three residences on the property.
15 They also advise the applicant that he had failed to establish
16 why none of the three residences were reasonably available to
17 accommodate petitioner's invalid mother. We believe the
18 findings satisfied the county's obligation to briefly set forth
19 the facts and to explain its reasons for denial. ORS
20 215.416(7); Weyerhaeuser v. Lane County, supra, 7 Or LUBA at
21 47. Although greater detail might be preferable, the findings
22 sufficiently explain why petitioner's burden of proof had not
23 been carried. This is all the law requires. Id.

24 Apart from challenging the findings made by the county
25 under §1204.03(B), petitioner also directs our attention to
26 evidence tending to show the on-site housing referred to in the

1 findings is not adequate to meet the established need.
2 Petition at 5. It is not clear whether petitioner is here
3 asking us to reweigh the evidence presented to the county, is
4 contending the findings relied on by the county are not
5 supported by substantial evidence, or is claiming the county
6 failed to completely address the relevant criteria.⁶ In any
7 event, however, we cannot sustain his position.

8 This Board is not authorized to second guess the judgments
9 made by local decisionmakers with respect to the credibility of
10 evidence presented at land use hearings. As the court of
11 appeals has stated, "Where the record includes conflicting
12 believable evidence that conflict is to be resolved not by the
13 court but by the lower tribunal which may choose to weigh the
14 evidence as it sees fit." Christian Retreat Center v.
15 Washington County, 28 Or App 673, 679, 560 P2d 1100 (1977).
16 See also, Ford v. Polk County, 7 Or LUBA 232, 243 (1983).
17 Indeed, under ORS 197.830(12), we are bound by any finding of
18 fact made by the local government "...for which there is
19 substantial evidence in the whole record." Substantial
20 evidence consists of evidence which a reasonable mind might
21 accept as adequate to support the findings challenged.
22 Christian Retreat Center v. Washington County, supra.

23 Our review of the evidence in this case indicates ample
24 support for the findings made by the county. The planning
25 director provided a description of the three residences
26 existing on the property at the initial hearing. Record at 7.

1 Corroborative statements were provided by neighbors who opposed
2 the permits. Record at 16-17. Moreover, the site visit
3 conducted by the county commissioners, which evidently verified
4 the director's findings, lends weight to the decision.

5 As noted earlier, the ordinance in question grants the
6 county commissioners substantial leeway in determining whether
7 the existing dwellings on the site constitutes reasonable
8 housing alternatives. We cannot say the county's judgment on
9 this question is not supported by substantial evidence.

10 In light of the foregoing, we deny this assignment of error.

11 FIFTH ASSIGNMENT OF ERROR

12 Petitioner next argues the county based its decision on
13 improper considerations. In support of this argument, he
14 refers to a comment by a member of the county commission that
15 "...if we approve this, we're really just creating a little
16 city out there...." Record at 4. Petitioner contends the
17 applicable county ordinance does not permit a decision based on
18 such a consideration.

19 The county's decision as reflected in its final order is
20 the critical subject of inquiry in cases coming before this
21 Board. Comments by decisionmakers which are not reflected in
22 the final order are irrelevant to the question of the
23 sufficiency of the order. Petitioner has cited no authority
24 which would support reversal or remand as a consequence of the
25 quoted comment.

26 We deny this assignment of error.

FOOTNOTES

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We note the ordinance can be read to authorize only a single special care residence in a given case. However, it appears the county assumed two residences would potentially be authorized: one for the medically needy person and the other for a caretaker. We are not called upon in this case to determine whether the county's apparent assumption is correct.

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The letter of denial refers only to a single application, No. 1057-82-ST. However, the parties evidently assumed both applications were affected. The appeal concerned both applications.

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Petitioner indicated at one point in the hearing that the large house was also occupied by his invalid mother, but the record is unclear on the point.

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Evidently, one of the new mobile homes of concern to the county was occupied by petitioner and his wife as of September 1983. The other was vacant. Record at 18.

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Another portion of the order states: "This is a request for a temporary permit to use a mobile home as a temporary residence for the applicant's mother and a temporary permit to use a mobile home as a temporary residence for a person who would provide care for the applicant's mother." Record at 1 (emphasis added). Nor is there any doubt that petitioner was on notice that both permits were denied. Such notice was provided to his legal counsel at the county commission hearing of October 12, 1983. Record at 4-5.

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We reject this last potential claim. Without a complaint as to what criteria the county failed to address, we are left to wander through county plans, ordinances, and records to find error. We decline to do so and will not review vague allegations of error.

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