

1 NATURE OF THE DECISION

2 This is an appeal of a resolution and order approving a
3 permit to construct a mobile home park on a 20.9 acre site.¹

4 FACTS

5 The proposed mobile home site is zoned R-9. Mobile home
6 parks are allowed in this zone if in compliance with certain
7 criteria in the county's Community Development Code (CDC).²

8 The property is adjacent to Southwest Rigert Road on the south
9 and Southwest 170th Avenue on the east. Both are designated by
10 the county as urban major collector streets. Property to the
11 south is developed with residences on approximately two acre
12 lots.

13 The application was approved by the county hearings
14 official. His decision was appealed to the county
15 commissioners. The commissioners modified the hearings
16 official's decision by adding conditions to the approval.

17 ASSIGNMENT OF ERROR

18 Petitioners allege the county "erred in finding that the
19 applicant had met its burden of proof to show that the approval
20 criteria" were satisfied. Petitioners point to eight sections
21 of the CDC and assert various arguments why the criteria in
22 each section were not met. We discuss each code section in
23 turn.

- 24 1. CDC Section 406. Building, Siting and
25 Architectural Design.

26 Petitioners allege the findings do not show compliance with

1 Section 406-4.2.C. This section provides that structures and
2 use areas shall be arranged for compatibility with adjacent
3 properties and public thoroughfares, considering setbacks,
4 building height, bulk, and landscaping. To accomplish this,
5 Section 406-4.2.C(1) requires that the development will:

6 "(1) Locate and design structures and uses not to
7 obscure or degrade identified scenic views or
8 vistas from adjacent properties and public
thoroughfares, considering setbacks, building
height, bulk and landscaping;"

9 Petitioners charge that the county's findings addressing this
10 code section are inadequate and that no substantial evidence
11 supports the finding of compliance with it. The applicant's
12 landscape plan is the target of this attack.

13 The county relied on the landscape plan as evidence of
14 compliance with Section 406-4.2.C. The county found:

15 "There is no evidence in the record that any scenic
16 views will be obscured or degraded." Record at 96.

17 "The plan has chosen plantings which will, in time,
18 provide a good sight obscuring screen, as well as
19 displaying a variety of growth and color variation.
The plantings will blend well into the existing native
vegetation and enhance it with added color." Rec. (2)
at 76.

20 Petitioners say the landscape plan does not show any
21 plantings to screen the mobile home park from the residences on
22 the high ground to the south.

23 The stated purpose of Section 406 is to ensure
24 compatibility with the surrounding natural and man made
25 environment. In addition to the findings quoted above, the
26 county also found that using nonreflective, earth-tone colored

1 roofs on mobile homes in the park would comply with the
2 compatibility standards in Section 406. A condition requiring
3 such roofs was added to the approval order. The county also
4 found that the site is generally lower in elevation than the
5 surrounding area; that service areas will be buffered from
6 existing dwellings, and that refuse storage areas will be
7 enclosed, screened, and buffered. Record at 96.

8 While these findings satisfy the general compatibility
9 standard in CDC Section 406-4.2(C), the finding addressing the
10 criterion for protection of scenic views and vistas is
11 inadequate. We are unable to determine if the county found no
12 existing scenic views or vistas from neighboring properties or
13 if no degradation of views or vistas will result from the
14 development. In addition, the finding of no evidence that
15 views or vistas will be obscured or degraded is not adequate as
16 a finding that the criterion is satisfied or is not
17 applicable. The county must find that the decision meets
18 relevant criteria. A finding that no evidence shows relevant
19 criteria are unsatisfied does not meet this burden. Audubon
20 Society v. Oregon Dep't. of Fish and Wildlife, 7 Or LUBA 166,
21 180 (1983).

22 We sustain this assignment of error. On remand, the county
23 may clarify its view how, or whether, CDC 406-4.2(C)(1) applies
24 to this decision.

25 2. CDC Section 407. Landscape Design.

26 Petitioners allege failure to provide a plant screen on the

1 south of the property violates the intent and purpose of the
2 landscape design requirements in CDC Section 407-1.2 of the
3 code. This section states:

4 "Provide landscaped areas along roadways and within
5 parking lots in order to facilitate movement of
6 traffic, to break up large areas of impervious
7 surfaces, provide shade, buffer and screen adjacent
8 properties and promote a safe environment with a
9 pleasant appearance."

10 The county addressed the landscaping on the south as
11 follows:

12 "The southerly portion of the site is a drainage
13 hazard area which will be maintained in its natural
14 state. This area contains many large Douglas fir and
15 maple trees, along with a dense undergrowth of native
16 plants. This area is to remain as open space. It
17 will provide a good buffer between the park and
18 adjacent residential uses to the south. It will have
19 a minimum depth of 80 feet and a maximum depth of 140
20 feet along S.W. Rigert Road. No existing trees or
21 undergrowth will be removed. In addition, applicant
22 will plant a row of European white birch trees along
23 the southern edge of the mobile home sites where they
24 adjoin the drainage hazard area. These trees will
25 provide both a screening for the natural area and a
26 visual transition from the large Douglas firs and
maples to the smaller species of the interior
landscape plan." Record at 79

Petitioners contend that the proposed landscaping will not
materially change this natural area and therefore cannot
satisfy the landscaping standards of the code.

We disagree. Assuming the purpose clause is an approval
standard, it does not require planted materials in place of
natural growth that fulfills the intended purpose. The
findings describe dense native plants under many large
indigenous trees. The county's conclusion that this natural

1 growth will buffer the park and adjacent residential uses is
2 adequate to support the county's finding that Section 407-1.2
3 is satisfied regarding the southern boundary.

4 Petitioners also say the decision fails to satisfy the
5 landscape design criteria because the order does not insure
6 that each mobile home site will be landscaped according to the
7 submitted landscape plan. The county found:

8 "In order to meet the standard for landscaping
9 materials contained in Section 407-3, the applicant or
10 his designee will ensure that landscaping of each
11 mobile home space shall be equivalent to or superior
12 to that design illustrated on the landscape plan."
13 Record at 12.

14 The final order includes a condition to the approval that
15 implements this finding.

16 Petitioners charge that no standards or guidelines explain
17 what is superior. According to petitioners, the absence of
18 standards will permit landscaping without regard to the code
19 criteria.

20 We agree. The county found the landscape plan complies
21 with the code. The order permits variations from the approved
22 plan. If variations from the plan would not meet code
23 requirements, the finding that the landscape design meets code
24 criteria is defective. We believe the order permits this
25 result. The condition would permit a design that is
26 "equivalent or superior to" the approved design in some respect
not related to the code standards for landscaping. This
condition would permit, for example, landscape materials deemed

1 botanically "equivalent or superior to" the approved materials
2 even though the substituted design would not meet code criteria
3 in other respects. The county's finding that the landscape
4 plan meets code requirements may be negated by such variations
5 from the plan. Accordingly, this subassignment of error is
6 sustained.

7 3. CDC Section 410. Slopes and Grading.

8 Petitioners challenge the evidentiary support for the
9 county's finding that the grading plan submitted by the
10 applicant meets code requirements.

11 CDC Section 410-2.2 requires that all applications for a
12 development permit include a grading plan. The plan must
13 include a soil survey legend, the range of percent slopes and a
14 soil description if no limitations exist. The plan must also
15 include a provision for saving topsoil, a map of ground
16 contours at 2 foot intervals, the site elevations after grading
17 is completed, including modifications to drainage channels, and
18 any required retaining walls or other means of retaining cuts
19 or fills.

20 The county found:

21 "...(T)he applicant has submitted a site plan with
22 contours delineated at two foot intervals. The
23 proposal is designed to minimize the need for site
24 grading. The site plan shows the method proposed for
25 the handling of storm water run-off, location of catch
26 basin and the delineation of the 25 -year high water
boundary. Because the applicant has submitted a
sufficient grading plan,...Section 410-2.2 (is)
satisfied." Record at 102

Respondent does not contend the grading plan submitted by

1 the applicant included the elements listed in CDC Section
2 410-2.2. Instead, respondent argues that because the record
3 contains no evidence the proposed development will require
4 dislocation of topsoil or the construction of retaining walls,
5 the findings need not discuss retaining walls and topsoil
6 retention.

7 However, the findings must show applicable criteria in the
8 code are met. Audubon Society v. Oregon Dep't. of Fish and
9 Wildlife, supra. Nothing in the code regarding grading plans
10 permits a plan that includes less than all of the necessary
11 elements. The map submitted by the applicant shows only one
12 element.³

13 The county did not find that no grading would occur on the
14 property. Indeed, the finding that grading would be minimized
15 implies that some grading will take place. Respondents cite to
16 nothing in the record that provides details about this
17 grading. We conclude that no substantial evidence supports the
18 county's finding that the grading plan complies with the code.

19 4. CDC Section 415 Lighting

20 Petitioners allege the decision misconstrues the code
21 provisions that require submission of a lighting plan. The
22 county found the code provisions inapplicable. Record
23 103-104.

24 The code provides:

25 "Prior to the issuance of a Development Permit for a
26 structure other than a detached dwelling or attached
dwelling of less than three (3) units, an Exterior

1 Lighting Plan shall be submitted in order to determine
2 whether the requirements of this Section (415) have
been met." CDC Section 415-3.

3 Petitioners say the plans for the park include provisions
4 for a recreation building. According to petitioners, this
5 building is a structure other than a detached dwelling or
6 attached dwelling of less than three units as described in
7 Section 415-3.

8 Petitioners are correct. The plans show plan and elevation
9 views of a recreation building near the north boundary of the
10 park. The code does not exclude recreation buildings from the
11 lighting requirements of CDC Section 415.

12 This subassignment of error is sustained.

13 5. CDC Section 417 Irrigation

14 The CDC requires automatic sprinkler systems when required
15 landscaping exceeds 1000 square feet. In addition, the code
16 provides:

17 "Hose bibs and manually operated methods of irrigation
18 may be approved by the Review Authority based upon
19 written verification, submitted by a registered
Landscape Architect, that the alternatives can satisfy
the intent and purpose of the irrigation standards."

20 Petitioners allege the decision approves manual irrigation
21 methods for some of the landscaping without the written
22 verification required by the code.

23 The county found that an automatic, underground irrigation
24 system would be installed for the Recreation Area of the park,
25 and that plantings along the perimeter will be watered by
26 manual methods. The findings note that the applicant's

1 landscape architect verified in writing that the alternatives
2 will satisfy the intent and purpose of the irrigation
3 standards.

4 The written statement referred to is a letter from the
5 landscape architect dated November 5, 1985. The letter
6 describes the proposed methods of watering, i.e., an automatic
7 system for the recreation area and manual methods for plantings
8 along the perimeter, except for the native growth. In his oral
9 testimony, the landscape architect said the letter addressed
10 the irrigation standards. He also affirmed that the methods
11 described in the letter will be adequate to maintain shrubs and
12 trees on the perimeter

13 The landscape architect's letter and testimony is not
14 sufficient to convince a reasonable mind that the requirements
15 of CDC Section 417 have been met. The letter makes no
16 reference to the irrigation standards nor the ability of the
17 alternative watering methods to satisfy the intent of purpose
18 of the irrigation standards. The intent and purpose of the
19 irrigation standards is:

20 "to insure healthy and proper growth habits of plant
21 materials, accelerate the desired effects of required
22 landscaping, reduce maintenance and promote longevity
of plant materials." CDC Section 417-1.

23 The landscape architect testified only that the manual methods
24 would maintain the shrubs and trees. The irrigation standards
25 state an intention and purpose to do more. We conclude the
26 letter and testimony is not sufficient to convince a reasonable

1 mind that the landscape architect has verified in writing what
2 the code requires.

3 6. CDC Section 430-77 Mobile Home Park.

4 Petitioners allege the plan for the park fails to comply
5 with the requirement for an internal walkway system which
6 connects each mobile home with park facilities or the street
7 system. See CDC Section 430-77.13. Petitioners say the plan
8 shows a walkway near the southern boundary of the park that is
9 separated from Southwest Rigert Road by a steep drainage and
10 ends without connecting to a public street.

11 We find no error. Petitioners interpret the code provision
12 to apply to a sidewalk adjacent to a street inside the park.
13 Assuming petitioners' interpretation is correct,⁴ the sidewalk
14 extends along the streets inside the park to their intersection
15 with Southwest 170th Ave., a public road. This subassignment
16 of error is denied.

17 7. CDC Section 501 Public Facility and Service
18 Requirements.

19 Petitioners allege the findings fail to address two
20 criteria in CDC Section 501 with respect to roads and streets
21 serving the property. CDC Section 501-5.2 provides:

22 "An applicant shall ensure that within five(5) years
23 of occupancy an adequate level of Arterial and Major
24 Collector roads will be available to the proposed
development with adequate defined for essential
services as:

25 "(1) The Major Collector or Arterial road can be
26 maintained through routine maintenance procedures
for a period of at least five(5) years;

1 * * *

2 "(6) Roads and intersections will operate at a Level
3 of Service "D" or better at all times with the
4 exception of a twenty (20) minute period in any
5 peak hour when Level of Service "E" operation
6 will be tolerated...."

7 The county found that both Southwest 170th Avenue and
8 Southwest Rigert Road are classified as urban major
9 collectors. Record at 112. Addressing the requirement that
10 major collector roads need no more than routine maintenance for
11 five years, the county found that both streets have a wearing
12 surface and structural life expectancy of at least five years
13 and that both have roadway widths meeting county standards.
14 Record at 112. These findings are adequate to show compliance
15 with Section 501-5.2(B)(1).

16 The county found compliance with the Level of Service
17 Standards in Section 501-5.2(B)(6) by reference to Table 2 of a
18 traffic impact analysis submitted by the applicant. Table 2 in
19 the report shows the calculated Level of Service for the
20 intersection of Southwest 170th Avenue and Hart Road, an
21 intersection north of the proposed mobile home park. Record at
22 494, LUBA No. 86-006. The findings do not explain the
23 relationship between that intersection and the intersection of
24 Southwest 170th Avenue and Southwest Rigert Road, streets
25 adjacent to the property. The traffic impact analysis was not
26 adopted as a finding by the county. The findings, therefore,
fail to set forth the facts relied upon and an explanation why
those facts support the decision. See Home Plate, Inc. v.

1 OLCC, 20 Or App 188, 530 P2d 862 (1975).

2 This subassignment of error is sustained in part.

3 8. CDC Section 502 Sidewalk Standards.

4 Petitioners last attack the decision for failure to meet
5 design element No. 7 of the Community Plan for the area of the
6 proposed mobile home park. The design element states:

7 "[A]ll new subdivisions, attached unit residential
8 developments and commercial developments shall provide
9 for pedestrian/bicycle paths which allow public access
10 through or along the development and connect adjacent
developments and/or shopping areas, schools, public
transportation and park recreation sites."

11 The hearings officer, in his order dated September 12,
12 1985, found that sidewalks along both Southwest Rigert and
13 Southwest 170th are necessary for public safety. His findings
14 also cite Design Element No. 7. The county's decision on
15 review adds the following condition to the approval:

16 "Applicant will obtain a sidewalk permit to construct
17 a sidewalk to County standards along S.W. 170th Avenue
18 frontage, and along S.W. Rigert Road frontage if line
19 and grade can be established (CDC 502-6). In the
20 alternative, if adequate line and grade cannot be
21 established along S.W. Rigert Road, applicant shall
build a six-foot asphalt footpath through the drainage
hazard area along S.W. Rigert Road, as shown in
applicant's landscape plan. Said footpath shall
connect to the sidewalk constructed along S.W. 170th
Avenue." Record at 13.

22 Petitioners charge this condition fails to meet relevant
23 criteria for two reasons. First, petitioners say the walkway
24 shown on the landscape plan is separated from Southwest Rigert
25 Road by the drainage area and ends at the property line.
26 According to petitioners, this location does not provide access

1 to Southwest Rigert Road as the county regulations require.

2 Second, petitioners allege that permission to build an asphalt
3 walkway violates the sidewalk standards defining sidewalks and
4 pedestrian walkways as made of concrete. Petitioners also
5 charge that the county failed to follow the code procedures for
6 variances before approving the asphalt alternative to the
7 concrete sidewalk standards.

8 We agree with petitioners' claim that the city failed to
9 follow its variance procedures in approving an alternate
10 construction material for the required sidewalk.

11 Whether the county erred in approving an alternate location
12 north of the steep drainage area is a more difficult question.
13 Design Element No. 7 is the only locational criterion cited by
14 petitioners.⁵ It applies to "subdivisions, attached unit
15 residential developments and commercial developments." Mobile
16 home parks are not listed. We are reluctant to add words to
17 the ordinance that are plainly not there. Accordingly we do
18 not construe Design Element 7 to apply to the present
19 proposal.⁶

20 We find that the county misconstrued the provisions of its
21 ordinance by failing to follow the procedures to obtain a
22 variance when it approved the asphalt walkway. Petitioners'
23 claim that the alternate location of the walkway violates
24 Design Element No. 7 is denied. We hasten to add that we
25 express no opinion whether the alternate location of the path
26 complies with any locational criteria other than Design Element

1 No. 7 cited by petitioners.

2 The decision is remanded.

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FOOTNOTES

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4 The county's approval of the mobile home park is before
5 the Board for the second time. The first appeal ended with a
6 voluntary remand. The record filed in that appeal, LUBA No
7 86-006 is referred to as Record (1). The record of county
8 proceedings after the remand is referred to as the Record (2).

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10 After the application for the permit was filed, the county
11 amended the CDC. The amendment included the following
12 provision:

13 "All applications filed under (the prior ordinance)...
14 shall continue to be processed pursuant to the provisions
15 of the former Ordinance, except procedures, until a final
16 decision is rendered by the County or the application is
17 withdrawn." Sec.110-2, Ordinance 293.

18 All references to the CDC in this opinion are to the prior
19 ordinance, unless otherwise specified.

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21 The two-foot contours are shown on a combined drawing of
22 the Landscape plan, Storm Drainage plan, Parking plan, Grading
23 plan, and Master plan.

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25 Other interpretations of CDC 430-77-13 are possible. The
26 provision may describe a system of walkways connecting each
individual mobile home to the street system rather than
pedestrian walks along the streets. On remand the county will
have the opportunity to state its interpretation of the
ordinance if it deems the petitioners' interpretation is in
error.

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28 Design Element No. 7 was also referred to in Finding 6 of
29 the September 12, 1985, order of the hearings officer.
30 However, Finding 6 was not adopted by any later order of the
31 hearings officer or the county commission.

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CDC 502-6 requires construction of new sidewalks for the full frontage of the lot or parcel as a prerequisite to issuance of a certificate of occupancy. This provision does not require construction of sidewalks adjacent to existing streets.