

LAND USE
BOARD OF APPEALS

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

SEP 20 8 35 AM '88

1
2
3 RONALD B. VERSTEEG,)
4 Petitioner,) LUBA No. 88-042
5 vs.)
6 CITY OF CAVE JUNCTION,) FINAL OPINION
7 Respondent.) AND ORDER

8 Appeal from the City of Cave Junction.

9 Ronald B. Versteeg, Grants Pass, filed the petition for
10 review and argued on his on behalf.

11 No appearance by city.

12 BAGG, Chief Referee; HOLSTUN, Referee; participated in the
13 decision.

14 REMANDED 09/20/88

15 You are entitled to judicial review of this Order.
16 Judicial review is governed by the provisions of ORS 197.850.
17
18
19
20
21
22
23
24
25
26

1 Plan /X /." Record 93.

2 In another place on the form, the city checked a box indicating
3 its conditional use permit was "approved with attached
4 conditions." Record 94. The referenced condition is that the
5 decision is "[a]pproved with the stipulation that the easement
6 in question be resolved before any development of the proposed
7 mobile home park." Record 94.

8 We find nothing in the city's decision, and we are cited to
9 nothing in the record, providing any discussion of the criteria
10 and standards considered and the facts relied upon in making
11 this decision. Because there are no findings to guide us in
12 review of the city's decision, we are unable to perform our
13 review function. Hoffman v. Dupont, 49 Or App 699, 705, 621
14 P2d 63 (1980). The city's failure to adopt findings violates
15 ORS 227.173(2) and the zoning ordinance's requirement for
16 findings. The case must be remanded.

17 The first assignment of error is sustained.

18 ASSIGNMENT OF ERROR No. 2

19 "There is not substantial evidence in the record to
20 support the decision."

21 Petitioner notes ORS 197.835(3) provides that a decision
22 must be consistent with the comprehensive plan and applicable
23 land use regulations. Petitioner states this conditional use
24 permit is a quasi-judicial proceeding, and the burden of
25 showing compliance with the comprehensive plan and land use
26 regulations is upon the person seeking the permit. Petitioner

1 Opinion by Bagg.

2 NATURE OF THE DECISION AND FACTS

3 Petitioner appeals a conditional use permit to allow
4 development of a mobile home park on a five acre tract in the
5 City of Cave Junction. The tract is zoned for single family
6 residential use, and mobile home parks are permitted
7 conditionally within this zoning district.

8 FIRST ASSIGNMENT OF ERROR

9 "The city of Cave Junction failed to comply with the
10 requirements of ORS 227.173(2) and the city's own
ordinance."

11 Petitioner states that ORS 227.173(2) requires that permit
12 approvals

13 "* * * be based upon and accompanied by a brief
14 statement which explains the criteria and standards
15 considered relevant to the decision, states the facts
relied upon in rendering the decision, explains the
16 justification for the decision based on the criteria
standards and facts set forth."

17 This requirement is echoed in the city zoning ordinance which
18 requires that the city make findings of fact showing that the
19 conditional use conforms to the following criteria:

20 "1. Conformity with the Cave Junction Comprehensive
Plan.

21 "2. Compliance with special conditions established by
22 the Planning Commission to carry out the purposes
of this section." Record 63.

23 The written decision does not discuss any criteria,
24 standards or facts relied upon. The city checked off a box on
25 a two page form which simply states:

26 "18. Conformity with the Cave Junction Comprehensive

1 claims there is nothing in this record to show the present
2 decision is consistent with any provisions in the comprehensive
3 plan or zoning ordinance.

4 Again, because the decision lacks findings explaining what
5 evidence the city relied on, we are unable to perform our
6 review function. We will not search the record to determine
7 whether it contains information showing compliance with the
8 comprehensive plan.¹

9 The second assignment of error is sustained.

10 ASSIGNMENT OF ERROR No. 3

11 "Respondent failed to comply with the pre-hearing and
12 post-hearing notice requirement."

13 Petitioner states that ORS 197.762(1)(c) establishes
14 requirements for the content of notice of hearings given in
15 local land use appeal proceedings concerning development of
16 property within an urban growth boundary.² See, City of
17 Corvallis v. Benton County, ___ Or LUBA ___ (LUBA No. 87-115,
18 March 21, 1988). Petitioner says the requirements of the
19 statute applied in this case but were not followed. Petitioner
20 also argues the city failed to give notice of its final
21 decision to parties in the local proceedings, other than
22 petitioner. This failure to provide written notice of the
23 final decision to all parties violates ORS 227.173(3),
24 according to petitioner.

25 After citing the above noted statutes, petitioner concedes
26 that the inadequate hearing notice or notice of the final

1 decision is not an independent basis for reversal or remand
2 under ORS 197.827(11)(b), absent a showing of prejudice to his
3 substantial rights. Petitioner claims the city's failure to
4 give notice to "many of the parties is probably not a basis for
5 reversal as it is difficult to show substantial prejudice to
6 petitioner." Petition for Review at 6. Petitioner then claims
7 the city's action illustrates the city's disregard for minimum
8 requirements imposed by law in a proceeding of this type.

9 As petitioner recognizes, the errors he asserts under this
10 assignment of error are procedural. Even if the city committed
11 notice errors as petitioner suggests, such errors would provide
12 a basis for remand only if petitioner's substantial rights were
13 prejudiced. ORS 197.827(11)(B). Apalategui v. Washington
14 County, 14 Or LUBA 261, 267 (1986); Mason v. Linn County, 13 Or
15 LUBA 1, 4-5 (1985). Petitioner does not allege his substantial
16 rights were prejudiced. Accordingly, the third assignment of
17 error is denied.

18 The decision of Cave Junction is remanded.
19
20
21
22
23
24
25
26

FOOTNOTES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

1

We note, in addition, that the respondent city has not cited us to portions of the record which might show conformity with the plan. See ORS 197.835(10)(b). Without such guidance from respondent, we are not obliged to review the record.

2

ORS 197.672 provides:

"The following shall apply to land use hearings on applications for development of property entirely within an urban growth boundary to be conducted by a local governing body.

"(1) An appeal procedure shall:

"(a) Require an applicant or appellant to raise any issue before the local governing body with sufficient specificity so as to have afforded the governing body, and applicant, if appropriate, an adequate opportunity to respond to and resolve each issue.

"(b) Provide notice of the provisions of this section to:

"(A) The applicant; and

"(B) Other persons as otherwise provided by law.

"(c) The notice shall:

"(A) Describe in general terms the applicable criteria from the ordinance and the plan known to apply to the application at issue;

"(B) Set forth the street address or other easily understood geographical reference to the subject property;

"(C) State the date, time and location of the hearing;

"(D) State that failure to raise an issue in person or by letter precludes appeal and that failure to specify to which criterion the comment is directed precludes appeal based on that criterion; and

"(E) Be mailed at least 10 days before the hearing or administrative decision on the application.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

"(2) At the commencement of a hearing, a statement shall be made to those in attendance that:

"(a) Describes the applicable substantive criteria;

"(b) Testimony and evidence must be directed toward the criteria described in paragraph (a) of the subsection; and

"(c) Failure to address a criterion precludes appeal based on that criterion." ORS 197.762.