

1 Opinion by Sherton.

2 **NATURE OF THE DECISION**

3 Petitioner appeals a county board of commissioners
4 decision approving a home occupation permit for a metal
5 fabrication business.

6 **MOTION TO INTERVENE**

7 Daniel G. Johnson, the applicant below, moves to
8 intervene in this proceeding on the side of respondent.
9 There is no opposition to the motion, and it is allowed.

10 **FACTS**

11 The subject property is a 2.5 acre parcel zoned Farm
12 Resource (FR). Access to the subject property is from Pine
13 Cone Dr., an unmaintained county road approximately 1/2 mile
14 in length. The property presently contains a nonfarm
15 dwelling, two barns, a utility building and a metal shop.
16 Intervenor-respondent (intervenor) has conducted a metal
17 fabrication business on the subject property since 1985
18 without the required home occupation permit. The planning
19 department staff report describes the metal fabrication
20 business as follows:

21 "* * * The business requires welding, cutting,
22 bending and machining of various metal pieces.
23 The * * * work includes making stairs, railings,
24 trailers, septic tank covers, pick-up racks,
25 gates, and ornamental fixtures. Because of the
26 size of the items being fabricated and the type of
27 work being performed, some limited amounts of the
28 work appear to be conducted outside of a building.
29 The type and size of the stock of materials makes
30 storage within an enclosed building a major
31 undertaking. * * * Deliveries of stock will be

1 very infrequent but will require deliveries by a
2 truck that is greater than 2.5 tons." Record 82.

3 Properties to the west, north and east of the subject
4 property are zoned Exclusive Farm. The property adjoining
5 the subject property to the east is a vacant 64.5 acre
6 parcel owned by the county parks department. The property
7 to the south of the subject parcel, across Pine Cone Dr., is
8 zoned Rural Residential - 5 Acre Minimum (RR-5) and is owned
9 by petitioner.

10 Initial review of intervenor's home occupation permit
11 application was by the county planning commission. At a
12 public hearing held on August 5, 1991, the planning
13 commission rejected certain photographs offered as evidence
14 by petitioner. Record 63-64, 70-71. On August 26, 1991,
15 the planning commission issued a decision denying the home
16 occupation permit application.

17 Intervenor appealed the planning commission's decision
18 to the board of commissioners. The board of commissioners
19 conducted a de novo review of the planning commission's
20 decision, including a public hearing held on December 11,
21 1991. On January 22, 1992, the board of commissioners
22 issued the challenged decision approving the home occupation
23 permit application.

24 **MOTION TO DISMISS**

25 Intervenor moves for dismissal of this appeal
26 proceeding on the ground that the petition for review
27 "contradicts the truth of the testimony found in the

1 Record." Motion to Dismiss 1. Intervenor contends
2 petitioner has given false testimony and made false
3 accusations against intervenor and county officials.

4 If the petition for review contains false statements or
5 includes arguments that lack evidentiary support in the
6 record, it may provide no basis for reversal or remand, in
7 which case the challenged decision would be affirmed. Thus,
8 even if intervenor is correct in his contentions, they
9 provide no basis for dismissing this appeal.

10 The motion to dismiss is denied.

11 **PRELIMINARY ISSUE**

12 The petition for review does not contain assignments of
13 error set forth under separate headings, as is required by
14 OAR 661-10-030(3)(d). Therefore, we will only consider
15 those arguments set forth in the petition for review which
16 are stated clearly enough to afford intervenor an
17 opportunity to respond. Eckis v. Linn County, 110 Or App
18 309, 311, 821 P2d 1127 (1991); Bjerk v. Deschutes County, 17
19 Or LUBA 187, 194 (1988); Schoonover v. Klamath County, 16
20 Or LUBA 846, 848 n 4 (1988).

21 **DECISION**

22 **A. Impartial Tribunal**

23 Petitioner argues the planning commission and board of
24 commissioners subjected him to public ridicule and showed
25 favoritism toward intervenor and his proposal. We
26 understand petitioner to contend he was denied the impartial

1 tribunal to which he is entitled under Fasano v. Washington
2 Co. Comm., 264 Or 574, 507 P2d 23 (1973).

3 In establishing actual bias or prejudgment on the part
4 of a local decision maker, the burden is on petitioner to
5 show the decision maker was biased or prejudged the
6 application and did not reach its decision by applying
7 applicable standards based on the evidence and argument
8 presented. Oregon Worsted Company v. City of Portland, ___
9 Or LUBA ___ (LUBA No. 91-117, December 13, 1991); Waite v.
10 Marion County, 16 Or LUBA 353, 357 (1987); Oatfield Ridge
11 Residents Rights v. Clackamas Co., 14 Or LUBA 766, 768
12 (1986); Schneider v. Umatilla County, 13 Or LUBA 281, 283-84
13 (1985).

14 We have reviewed the evidence in the record cited by
15 the parties regarding petitioner's claims that his treatment
16 by the county decision makers reflects bias. We do not
17 agree with petitioner that the record indicates the county
18 decision makers were not impartial or did not reach their
19 decision by applying applicable standards to the evidence
20 and argument presented.

21 This subassignment of error is denied.

22 **B. Rejection of Photographs**

23 Petitioner contends the planning commission, at its
24 August 5, 1991 hearing, improperly rejected certain
25 photographs of the subject property, adjoining properties
26 and Pine Cone Dr., which petitioner attempted to submit.

1 According to petitioner, at the May 13, 1991 planning
2 commission hearing, when he originally submitted the
3 photographs in question, he testified in detail about the
4 location and date of each photograph.

5 Intervenor argues the planning commission properly
6 rejected petitioner's photographs because there was no way
7 to substantiate the locations, date and conditions when the
8 photographs were taken. Record 62-63.

9 Assuming, without deciding, that the subject
10 photographs constitute relevant evidence, their rejection by
11 the planning commission is at most, a procedural error. A
12 procedural error provides a basis for reversal or remand
13 only if it prejudices petitioner's substantial rights.
14 ORS 197.835(7)(a)(B); Forest Park Estate v. Multnomah
15 County, 20 Or LUBA 319, 331 (1990); Murphey v. City of
16 Ashland, 19 Or LUBA 182, 189, aff'd 103 Or App 238 (1990).

17 Under Fasano v. Washington Co. Comm., supra, a
18 participant in a quasi-judicial land use proceeding has a
19 substantial right to submit evidence. In this case,
20 although the board of commissioners conducted a de novo
21 evidentiary hearing on the subject application, petitioner
22 did not attempt to submit the photographs in question to the
23 board of commissioners. In these circumstances, we do not
24 believe petitioner's substantial right to submit evidence
25 was prejudiced.

26 This subassignment of error is denied.

1 **C. Adequacy of Findings**

2 Petitioner contends the findings supporting the
3 challenged decision fail to address a number of relevant
4 issues which he raised in the proceedings below. The issues
5 mentioned by petitioner include fire safety, road safety,
6 impacts on public land, impacts on the access to and value
7 of petitioner's property and intervenor's residency on the
8 subject property. Petitioner also mentions issues
9 concerning the characteristics of intervenor's metal
10 fabrication business, such as the existence of outdoor work
11 and storage, the use of large trucks, having the appearance
12 of a business and the presence of retail customers.

13 Findings must (1) identify the relevant approval
14 standards, (2) set out the facts which are believed and
15 relied upon, and (3) explain how those facts lead to the
16 decision on compliance with the approval standards.
17 Sunnyside Neighborhood v. Clackamas Co. Comm., 280 Or 3,
18 20-21, 569 P2d 1063 (1977); Vizina v. Douglas County, 17
19 Or LUBA 829, 835 (1989); Bobitt v. Wallowa County, 10
20 Or LUBA 112, 115 (1984). Additionally, findings must
21 address and respond to specific issues relevant to
22 compliance with applicable approval standards that were
23 raised in the proceedings below. Norvell v. Portland Area
24 LGBC, 43 Or App 849, 853, 604 P2d 896 (1979); White v. City
25 of Oregon City, 20 Or LUBA 470, 477 (1991); Grover's Beaver
26 Electric v. City of Klamath Falls, 12 Or LUBA 61, 66 (1984).

1 In this case, the challenged decision identifies
2 relevant approval criteria from the Josephine County
3 Comprehensive Plan and the Josephine County Zoning
4 Ordinance. Record 9-12. However, the challenged decision
5 does not identify the facts relied upon by the decision
6 maker. Rather, it summarizes the evidence in support of and
7 in opposition to the subject application. Record 6-8.
8 Statements which merely summarize the evidence in the
9 record, and do not state what the decision maker believes to
10 be true, are not adequate findings of fact. Eckis v. Linn
11 County, 19 Or LUBA 15, 22 (1990); Hershberger v. Clackamas
12 County, 15 Or LUBA 401, 403 (1987).

13 The challenged decision includes a section titled
14 "Findings." In addition to stating home occupations are
15 recognized by the comprehensive plan as a positive means for
16 providing for small local businesses and are allowed under
17 an administrative permit in the FR zone, this section
18 provides:

19 "C. The home occupation is not injurious to
20 neighboring lands or residents as there are
21 few residences in the immediate area.

22 "* * * * *

23 "E. The home occupation meets the criteria set
24 forth in the Josephine County Comprehensive
25 Plan and Zoning Ordinance." Record 12.

26 These conclusory statements of compliance with the
27 applicable standards do not provide the necessary
28 explanation of the basis for the county's determinations of

1 compliance with the applicable approval standards. Vizina
2 v. Douglas County, supra; DLCD v. Klamath County, 16 Or LUBA
3 23, 29 (1987); McNulty v. City of Lake Oswego, 15 Or LUBA
4 16, 24 (1986), aff'd 83 Or App 275 (1987). Finally, the
5 findings do not respond to relevant issues raised by
6 petitioner below.

7 This subassignment of error is sustained.

8 The county's decision is remanded.