



1 change]. The affidavit then reports the following statements  
2 by Carol Williams:

3 "(a) 'Shang Knight voted to allow the change.'

4 "(b) 'Jerry and I (Carol Williams) voted against it  
5 because of the announced opposition of Jim Ross  
6 the Director of LCDC being against it and the  
7 financial problems the County is now having with  
8 the jail, [sic] the County just doesn't have the  
9 money to spend to fight LCDC; [sic] also, that  
10 the County wants to expend the resources it has  
11 to save the property on the other side of the  
12 Wilson River.'

13 "(c) That if it were not foregoing, [sic] she would  
14 have voted for the allowance of the requested  
15 change." Affidavit of Douglas E. Kaufman at 2.

16 The affidavit recites that Shang Knight and "Jerry" are two  
17 other members of the Tillamook County Board of Commissioners  
18 before whom "the requested zone change" was pending.

19 The affidavit goes on to state that Mr. Kaufman wrote a  
20 letter to the Board of Commissioners. A copy of the letter is  
21 attached to the affidavit. The letter comments that

22 "as a matter of basic fairness to Citadel, I would  
23 request that the true reasons as to the rejection of  
24 Citadel's application be set forth in the findings and  
25 determination which are prepared and signed by your  
26 board. To say that it was denied on lack of merit or  
other grounds, which I suppose will be submitted to  
you by Mr. Affolter, would be thoroughly dishonest and  
contrary to the actual basis upon which your decision  
was made." Letter of Douglas E. Kaufman of March 16,  
1983, at 1.

27 Included also is a copy of a letter from James Ross, Director  
28 of DLCD, discussing zoning for unspecified property in  
29 Tillamook County.

1 Respondent Tillamook County replies that no evidentiary  
2 hearing is necessary. Respondent claims the issue raised by  
3 petitioners is not relevant to the appeal, and attached to  
4 respondent's comments is an affidavit of Commissioner Carol  
5 Williams. The affidavit states, inter alia:

6 "3. That at no time did I meet with one or both of  
7 the other members of the Board of Commissioners to discuss  
8 the proposed zone change except at the public hearings  
9 listed above.

10 "9. That at no time did I speak for any Commissioner  
11 other than myself. That I did not mention the Tillamook  
12 County jail problem in the context of the conversation  
13 about the Citadel property, but in the context of a  
14 general discussion about the county's financial problems.  
15 That the entire conversation regarding the Citadel  
16 property was very brief, and was marked particularly by  
17 Mr. Kaufman's extreme agitation and disappointment.

18 "10. That on April 20, 1983 I voted to sign the  
19 Findings of Fact, Conclusions of Law and Decision to deny  
20 the zone change request, and that I did so for the reasons  
21 stated in the written findings."

22 1979 Or Laws, ch 772, sec 4(7), as amended by 1981 Or Laws,  
23 ch 748, provides that the Board may hold an evidentiary hearing

24 "...in the case of disputed allegations of  
25 unconstitutionality of the decision, standing, ex  
26 parte contacts or other procedural irregularities not  
shown in the record which, if proved, would warrant  
reversal or remand...."

27 LUBA Rule 10 (OAR 661-10-045) provides:

28 "The Board may upon written motion conduct a special  
29 evidentiary hearing when it appears that such a  
30 hearing is necessary to reveal procedural  
31 irregularities not shown in the record and which, if  
32 proved, would warrant reversal or remand of the  
33 decision. The Board shall, based upon the evidence  
34 presented at the hearing, prepare findings of fact  
35 concerning the allegations."

1 The Board has already held that the specifics of such factual  
2 allegations must be made in the petition for review. 1000  
3 Friends of Oregon v Wasco County, 4 Or LUBA 372 (1982). The  
4 petition for review in the instant case includes a statement in  
5 the "Summary of Facts" section of the petition that

6 "members of the Board of Commissioners discussed and  
7 deliberated toward a decision at times and places not  
8 specified in the public notices for the proceeding.  
9 In those discussions, the Commissioners reached a  
10 majority for a decision of denial. The basis for that  
11 decision is not reflected in findings that were  
12 adopted and is not related to any of the relevant  
13 criteria announced during the hearings." Petition for  
14 Review at 2. See also Petition for Review at 6  
15 through 7.

16 Fairly read, the Board understands petitioners to ask for  
17 an evidentiary hearing on two issues. The first issue is Carol  
18 Williams' alleged statements about the case to Mr. Kaufman and  
19 the second is the matter of private deliberations about the  
20 case by the board of commissioners.

21 As to the first issue, the Board does not understand how  
22 Commissioner Williams' statements, if true, warrant reversal or  
23 remand. The statements were made after the time a motion and  
24 vote was taken to prepare written findings but before the time  
25 written findings were approved and signed. It is written  
26 findings that control and form the basis for a decision. An  
27 oral directive made by the board of commissioners to prepare  
28 findings for denial is not the final decision. The reasons for  
29 the decision are in the findings, and the order. See Heilman v  
30 City of Roseburg, 39 Or App 71, 75-76, 591 P2d 390 (1979);

1 Bettis v City of Roseburg, 1 Or LUBA 174 (1980). Any oral  
2 comments are of no effect on the decision. See Sloane v Walsh,  
3 245 N.Y. 208, 156 N.E. 668 (1927).

4 As to the second issue, that of petitioners requested  
5 examination of members of the county commission, the Board  
6 declines to order an evidentiary hearing. There are no  
7 supporting facts alleged in the motion (or, indeed, in the  
8 petition); there is only the allegation that deliberations  
9 outside the times and places mentioned in public notices. Were  
10 the Board to order a hearing based on what has been presented  
11 so far, the Board would expose local governments to general  
12 inquiries based upon hunch or mere assertion of impropriety.  
13 The Board believes no purpose would be served by opening such a  
14 door.

15 Petitioners have moved in the alternative for the taking of  
16 depositions of the county commissioners. This motion is also  
17 denied. The Board believes its power to order the taking of  
18 depositions exists in ORS 183.425. See 1000 Friends of Oregon  
19 v Wasco County, 4 Or LUBA 372 (1982). ORS 183.425 provides:

20 "On petition of any party to a contested case, the  
21 agency may order that the testimony of any material  
22 witness may be taken by deposition in civil  
23 actions....The petition shall set forth the name and  
24 address of the witness whose testimony is desired, a  
showing of the materiality of his testimony, and a  
request for an order that the testimony of such  
witness be taken before an officer named in the  
petition for that purpose." ORS 183.425(1).

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