

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

MIKE BYRNES, SUE ORLASKE,)
TSAI Y. CHENG, and FRIENDS OF)
IMBRIE FARMSTEAD, a corporation,)
)
Petitioners,)
)
vs.)
) LUBA No. 89-065
CITY OF HILLSBORO,)
) FINAL OPINION
Respondent,) AND ORDER ON REMAND
)
and)
)
PRENDERGAST & ASSOCIATES,)
)
Intervenor-Respondent.)

Appeal from City of Hillsboro.

Scott O. Pratt, Portland, represented petitioners.

Carrell F. Bradley, Hillsboro, represented respondent.

Jack L. Orchard, Portland, represented intervenor-respondent.

HOLSTUN, Referee; SHERTON, Referee; KELLINGTON, Chief Referee, participated in the decision.

REMANDED

01/24/91

You are entitled to judicial review of this Order. Judicial review is governed by the provisions of ORS 197.850.

Opinion by Holstun.

DECISION

Our decision in this case was reversed and remanded by the Court of Appeals. Byrnes v. City of Hillsboro, ___ Or LUBA ___ (LUBA No. 89-065, December 1, 1989), rev'd and remanded 101 Or App 307, adhered to on reconsideration 104 Or App 95 (1990). ORS 197.850(11) requires that this Board "respond to the court's mandate within 30 days." The appellate court judgment became effective December 26, 1990.

Petitioners challenge the city's approval of intervenor-respondent's request to alter an historic site and remove historic structures. In particular, petitioners challenge the city's interpretation and application of the city's Cultural Resource Management Ordinance (CRMO).¹

¹As we explained in our prior decision, CRMO 132(5) provides as follows:

"Application for Alteration, Demolition or Moving a Designated Cultural Resource

- "(a) No designated cultural resource shall be altered, demolished or moved without prior approval of the Planning Commission.
- "(b) Cultural resource owners desiring to alter, demolish or move a cultural resource shall apply for a permit to the Planning Commission and shall provide all information considered necessary by the Planning Commission as part of the application.
- "(c) The Planning Commission shall hold a public hearing and shall evaluate the application with reference to the following actions:
 - "1. the economic or structural necessity of the proposed action;

In our prior decision, we concluded that the evaluation

- "2. the extent of visible modification to the resource;
 - "3. the relationship of the proposed action to the resource's original character;
 - "4. the possibility of any alternative action which would reduce negative impacts on the cultural resource; and
 - "5. in the case of moving or demolition, the scheduling of redevelopment of the resource site.
- "(d) The Planning Commission shall work with the applicant, interested citizens and technical staff to minimize the negative impact of the proposed action, wherever possible.
- "(e) Approval of an application for alteration or demolition may be delayed up to 60 days by the Planning Commission if it deems additional information or consideration with the applicant necessary. Approval of the application may be conditioned to secure interior and/or exterior documentation of the site prior to the proposed action, to preserve selected architectural features and to preserve site landscaping. The Planning Commission may, however, approve an alteration or demolition permit at any time within the 60 day period if it feels the applicant has made an effort in good faith to retain, document, and/or preserve the culturally significant characteristics of the resource.
- "(f) The City Council may extend a demolition delay by an additional 60 days at the request of the Planning Commission or an interested party.
- "(g) Applications for alteration, demolition, or moving permits for a designated cultural resource which are complete and which are in compliance with all other City regulations and ordinances shall not be denied outright. If no action on an application has been taken by the Planning Commission within 60 days of submission of the completed application, the application shall be considered approved.

"* * * * *" (Emphasis added.)

required by CRMO 132(5)(c) must "form the basis for the city's determination concerning which option it will pursue under CRMO 132(5)(e) * * *." Byrnes v. City of Hillsboro, supra, slip op at 19. We also concluded the city's findings addressing CRMO 132(5)(c) were simply summaries of the applicant's responses rather than findings of fact. Additionally, we concluded the city's findings were flawed because they did not relate the findings concerning CRMO 132(5)(c) to the action the city took under CRMO 132(5)(e). We explained that on remand

"the city must (1) adopt findings setting out its evaluation of the considerations identified in CRMO [132(5)(c)]; (2) explain clearly what its decision under CRMO [132(5)(e)] is; and (3) explain why that decision is justified, based on the evaluation required by CRMO [132(5)(c)]." Specifically, if the city elects to impose conditions of approval, the findings must explain how those conditions are justified by the evaluation required by CRMO [132(5)(c)]." Byrnes v. City of Hillsboro, slip op at 21.

However, in remanding the city's decision, we agreed with the city that the options available to the city under CRMO 132(5) in rendering a decision in this matter do not include denial of intervenor-respondent's request. Our interpretation of the CRMO as not including authority to deny the application was based on CRMO 132(5)(g), which provides that such applications "shall not be denied outright." See n 1, supra. The Court of Appeals rejected our interpretation of CRMO 132(5)(g).

"We conclude that the city has authority under section 132(5) to deny the application and that LUBA must expand the scope of its remand accordingly." (Footnote omitted.) Byrnes v. City of Hillsboro, 101 Or App at 312.

Therefore, the scope of our remand is expanded to require that the city consider whether, under CRMO 132(5), intervenor-respondent's application should be denied.

The city's decision is remanded.