



Opinion by Kellington.

**NATURE OF THE DECISION**

Petitioner appeals an order of the Portland City Council approving a conditional use permit for a homeless shelter for women, children and families.

**FACTS**

The subject property consists of 2.3 acres within the city limits zoned Low Density Residential (R-2). The property is developed with a large metal garage and a two-story structure containing a medical office on the lower level and an apartment on the second level. The surrounding land is developed with single family and multifamily residences.

The applicant, Portland Rescue Mission, proposes to place its administrative offices in the existing building. The applicant also proposes to construct two additional "apartment type" residential buildings on the property. Each such residential building will have a capacity sufficient to house 40 people and will also contain a staff room, counselors' offices, counselors' reception area, and areas designated for nursery, general living, laundry, storage and maintenance activities. In addition, the applicant proposes to construct a single story multiple use building on the property which will contain kitchen facilities; a large multipurpose room for dining, chapel, education and recreation; and a smaller classroom for

teaching skills such as child care, hygiene and homemaking to residents of the facility.

The city hearings officer approved the application as a "Residential/Institutional Care Facility" for as many as 80 homeless people. Petitioner appealed the hearings officer's decision to the city council. The city council denied the appeal and approved the application as an "Institutional Care Facility." This appeal followed.

#### **FIRST ASSIGNMENT OF ERROR**

"The City of Portland failed to comply with the applicable law. Specifically, the City erred in concluding that the proposed facility met conditional use criteria stated in the City Code and was an allowable conditional use in an R2 zone."

#### **SECOND ASSIGNMENT OF ERROR**

"The City failed to comply with the provisions of ORS 227.173(2) which require that approval or denial of a permit shall be based upon and accompanied by a brief statement explaining the criteria considered relevant, the facts relied upon when rendering the decision, and a justification for the decision based upon the criteria and facts set forth."

The Portland City Code (PCC) lists "Residential Care Facility" (RCF) and "Institutional Care Facility" (ICF) as conditional uses in the R-2 zone. PCC 33.12.615 defines an RCF as follows:

"'Residential care facility' means an establishment operated with 24-hour supervision for the purpose of and responsibility for providing [both] care and planned treatment or planned training to persons who by reason of their

circumstances or condition require such care and planned treatment or planned training while living as a single housekeeping unit in a dwelling unit. (Emphasis added.)

"\* \* \* \* \*."

The terms "care," "planned treatment" and "planned training" are defined in PCC 33.12.615 as follows:

"(a) 'Care' means services such as supervision, protection, assistance while bathing, dressing, grooming or eating, management of money, transportation, recreation and simple training of self-help skills or assistance with major life activities and the provision of room and board.

"(b) 'Planned treatment' means a systematic and/or individualized program of counseling, therapy, or other rehabilitative procedures or activities provided for a group of persons of similar or compatible circumstances or conditions.

"(c) 'Planned training' means a predetermined sequence of systematic interactions, activities or structured learning situations, designed to meet such residents' specified needs in the areas of physical, social, emotional, and intellectual growth."

PCC 33.12.427 defines an ICF as follows:

"'Institutional Care Facility' means an establishment which provides housing, training, or care to more than 15 people who require such services by reason of their circumstances or condition.

"A facility or institution that is operated for the purpose of providing both care and planned treatment or planned training as defined in [PCC] 33.12.615 is not an 'institutional care facility.'" (Emphases added.)

For purposes of this appeal, the critical aspect of the

above definitions is that while an RCF may provide both "care" and "planned treatment or planned training," as those terms are defined in PCC 33.12.615, an ICF may not.

The city determined the proposed facility would not provide "care" or "planned treatment," but rather would provide only "planned training" and, therefore, is an ICF.<sup>1</sup> The parties agree the proposed facility will provide "planned training." The parties' disagreement in this case centers on whether the proposed facility will provide "care" as defined in PCC 33.12.615, as well as "planned training."<sup>2</sup> The parties agree that if the facility will provide "care" and "planned training," as defined in PCC 33.12.615, it would not qualify as an ICF under PCC 33.12.427.

Petitioner argues the city's findings demonstrate an incorrect interpretation of the term "care" as used in PCC 33.12.615(a). Petitioner argues that the correct interpretation of the PCC 33.12.615(a) definition of the term "care" is that a facility provides "care" if it

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<sup>1</sup>Petitioner also argues the proposed facility is not an RCF because it will not constitute a "single housekeeping unit." However, we agree with the city that it did not approve the proposal as an RCF. Accordingly, we do not consider petitioner's arguments that the proposed facility does not constitute an RCF.

<sup>2</sup>Petitioner contends the proposed facility will also provide "planned treatment." However, whether the proposed facility will provide planned treatment in addition to planned training is irrelevant to whether the facility is an ICF. The relevant inquiry is whether the proposed facility will provide "care" in addition to planned training and/or planned treatment. Consequently, we do not address whether the proposed facility will provide planned treatment.

supplies any of the services listed in that definition. Petitioner also argues the city's findings that the facility will not provide "care" fail to comply with the requirements of ORS 227.173(2) that approval of a permit be supported by findings explaining the applicable standards, stating the facts relied upon, and explaining the justification for the decision.

Petitioner also argues the city's decision that the proposed facility will not provide "care" is not supported by substantial evidence in the record. According to petitioner, the proposed facility will provide residents with services such as supervision, protection, management of money, transportation, recreation and training in simple self-help skills, as well as the provision of room and board. According to petitioner, because these are services listed in the PCC 33.12.615(a) definition of "care," the evidence in the record establishes the proposed facility will provide "care."

The city argues the term "care" as defined in PCC 33.12.615(a) in the context of an RCF, relates to the kind of care required by individuals with significant physical or mental limitations, necessary to ensure their health and safety. Similarly, the city contends the phrase in PCC 33.12.427 "care \* \* \* as defined in [PCC] 33.12.615" used in the context of an ICF, does not apply to the incidental services the proposed facility will provide to

the otherwise healthy and competent homeless people who will reside there.

In Tournier v. City of Portland, 16 Or LUBA 546, 558 (1988), we interpreted the term "care" as used in the RCF and ICF provisions of the PCC. In the context of a challenge to a decision approving a homeless shelter substantially similar to the one at issue in this appeal, we stated:

"The city interprets the distinction between 'care' as defined in the code RCF definition and as used in the ICF definition as being one of degree, with RCF-type 'care' being the type of care required by individuals with significant physical or mental limitations, necessary to ensure their health and safety. We believe the city's interpretation of the distinction between RCF and ICF 'care' is consistent with the code's language and intent and is a correct interpretation of the code." (Citations omitted.)

This reasoning is equally applicable to this case. The PCC uses the term "care" differently in describing the distinct functions of an RCF and an ICF. An RCF is an establishment which provides "care" to persons who require the kinds of services listed in PCC 33.12.615(a), as well as the provision of room and board. On the other hand, an ICF exists for the purpose of providing "housing, training or care." The definition of ICF states that a facility operated for the "purpose of providing" planned training and "care," as defined in PCC 33.12.615, is not an ICF. Services which rise to the level of "care" as defined in PCC 33.12.615(a) are ones which are necessary to ensure the

health and safety of the population to be served because of some physical or mental "circumstance or condition." Consequently, the city's interpretation of the phrase "care \* \* \* as defined in [PCC] 33.12.615," used in the PCC 33.12.427 definition of an ICF, as meaning services necessary to ensure health and safety because of a physical or mental impairment, is a correct interpretation of the letter and intent of PCC 33.12.427.

The next question is whether the city's findings are adequate to explain that the proposed facility will not provide "care \* \* \* as defined in [PCC] 33.12.615." The city's findings state the following:

"The facility will serve up to 80 persons in two residential buildings to be built in two phases. Each residential building will contain two dormitory rooms that house six persons each; a toilet/shower facility for the dormitory residents; 10 rooms with a sink and a shared bath; two complete two bedroom apartments; and staff and common space. A multipurpose building with a kitchen and classroom is also proposed.

"The facility will provide 24-hour supervision and planned training in basic life skills to homeless women and children in a transitional housing program. Emergency housing will be available for up to seven days for some families. The proposed office space is accessory to the residential care facility in that it will only serve the staff and residents on-site.

"\* \* \* \* \*

"Based on the applicant's description of the program, it appears that planned training will be offered rather than care or treatment. Thus, both housing and training will be provided. The

definition of an institutional care facility says that it does not include facilities that provide both care and training. However, housing is discussed separately from care. Therefore, a facility that provides housing and training should still fit within the definition of an institutional care facility. Because care is not being provided, this facility does not appear to be an RCF." Record 39-40.

These findings are inadequate because they fail to explain the basis for the city's decision that the proposed facility will not provide "care." However, under ORS 197.835(9)(b), we must affirm the challenged decision if the evidence in the record "clearly supports" a determination that the proposed shelter will not provide "care \* \* \* as defined in [PCC] 33.12.615." The city cites evidence in the record which describes the proposal. (Record 125-128.) The only service the population to be served by the proposed facility requires, because of their condition of being homeless, is housing. The facility is proposed to be operated for the purpose of providing housing. The services to be provided by the proposed facility which are also listed under the PCC 33.12.615(a) definition of "care" (e.g., transportation, training in self-help skills, and security) are simply incidental to the facility's primary purpose of providing housing. Petitioner cites no particular circumstance or condition inherent in being homeless which establishes that homeless people cannot arrange for their own transportation, education and security, and we are not aware of any such circumstance or

condition.

In sum, we believe the evidence cited by the city "clearly supports" a determination that the proposed facility will not provide services to the residents necessary to ensure their health and safety because of "significant physical or mental limitations." The evidence cited by petitioner does not establish that the services to be provided to the residents of the proposed facility are required on account of such residents' physical or mental impairments and, therefore, does not undermine the evidence cited by the city. Accordingly, the evidence "clearly supports" a determination that the proposed facility will not provide "care \* \* \* as defined in [PCC] 33.12.615."

Where there is evidence in the record to "clearly support" a decision, there is necessarily "substantial evidence" in the record to support the decision as well. Beck v. City of Tillamook, \_\_\_ Or LUBA \_\_\_ (LUBA No. 89-096, January 8, 1990), slip op 20. Accordingly, petitioner's evidentiary challenge provides no basis for reversal or remand of the challenged decision.

The first and second assignments of error are denied.

The city's decision is affirmed.