

1 Opinion by Kellington.

2 **NATURE OF THE DECISION**

3 Petitioner appeals a city design commission decision
4 denying his application for design review for construction
5 of a concrete warehouse.

6 **FACTS**

7 Petitioner applied for a building permit and design
8 review approval to construct a 10,000 square foot warehouse
9 building to house industrial copper and brass scrap
10 operations in the city's Central Employment - Design Overlay
11 (EXd) zone. The proposed warehouse is a permitted use in
12 the EXd zone, subject to design review under Portland City
13 Code (PCC) chapter 33.825 and design guidelines adopted
14 pursuant to PCC 33.420.050.

15 On March 29, 1991, the planning department rendered an
16 administrative decision denying petitioner's request for
17 design review approval on several bases. On April 17, 1991,
18 petitioner appealed the administrative decision.
19 Petitioner's appeal was forwarded to the city's design
20 commission. The record does not disclose when the design
21 commission actually met to review petitioner's appeal.¹
22 There are no minutes of the design commission meeting in the
23 record.

24 The only indication of the design committee's decision

¹The record does indicate a hearing was scheduled before the design commission for June 20, 1991.

1 on petitioner's appeal is a document entitled "Notification
2 of Design Commission Action on June 20, 1991." Record 1.
3 This document does not purport to either incorporate by
4 reference any findings or adopt any findings. Further, the
5 notice of decision is not signed by any member of the design
6 commission. The notice of decision does indicate the nature
7 of the design commission's review of petitioner's appeal as:

8 "Adjustment to ground floor window requirement
9 (Note: The applicant originally requested an
10 adjustment to the ground floor window requirement.
11 The adjustment was denied in the [planning
12 department's] decision. At the time of the
13 appeal, the applicant modified his proposal with
14 the addition of art work so as to conform with the
15 ground floor window regulation.)" Record 1.

16 Finally, the notice of decision states the action of the
17 design committee was "denial of design review of the
18 project." Record 1. This appeal followed.

19 **ASSIGNMENTS OF ERROR**

20 Petitioner argues, among other things, that the city
21 erroneously (1) required the proposed warehouse building to
22 include second floor windows, (2) applied historic district
23 standards, and (3) applied provisions of the city's central
24 city plan² to deny his application.

25 The city responds by arguing, among other things, the
26 challenged decision (1) does not require second floor
27 windows, (2) does not apply historic district requirements,

²The central city plan is a part of the city's comprehensive plan.

1 (3) properly applied the provisions of the central city
2 plan.

3 ORS 197.835(9)(a) provides:

4 "Whenever the findings, order and record are
5 sufficient to allow review, * * * the board shall
6 decide all issues presented to it when reversing
7 or remanding a land use decision * * *."

8 There are no findings adopted by or incorporated by
9 reference into the challenged decision of the design
10 commission. The city argues that under PCC 33.730.020(I)(6)
11 and (7),³ since the design commission adopted no findings of
12 its own, it adopted by default the planning department's
13 administrative decision.⁴ However, we see nothing in

³PCC 33.730.020(I)(6) and (7) provide:

"(6) Appeal decision. The review body may adopt the decision report of the Director, modify it, or reject it based on information presented at the hearing and in the record.

"a. The Hearings Officer will make a written decision in the form of a report and mail notice of the decision within 17 days of the decision.

"b. Other review bodies. Other review bodies will make all deliberations and decisions at the hearing.

"(7) Amended decision report. If the review body modifies or rejects the decision report, an amended report with findings supporting the decision must be prepared. For review bodies other than the Hearings Officer, the Director will prepare the amended decision report and mail notice of the decision within 17 days of the hearing. The report must comply with 33.730.090, Reports and Record keeping."

⁴We decline the city's invitation that we listen to the tapes of the proceedings below to figure out what the design commission decided below.

1 PCC 33.730.020(I)(6) or (7) to lend support to such an
2 interpretation. Therefore, we conclude the design
3 commission did not adopt the findings in the planning
4 department's administrative decision.⁵

5 What findings, if any, the design committee adopted to
6 support the challenged decision is critical to evaluating
7 petitioner's assignments of error for a number of reasons,
8 not the least of which is the fact that the parties disagree
9 about what the city decided. Here, we cannot tell what the
10 design commission decided or why. The findings are simply
11 inadequate to allow review of the city's decision.

12 The city's decision is remanded.

⁵We note that even if we were to view the planning department's administrative decision, or the June 10, 1991 memorandum from a city planner to the design commission as containing findings supporting the design commission's decision, we still cannot tell from either of those documents why the city denied petitioner's design review application, or what the city requires of petitioner to meet relevant standards. Further, the findings included within those documents are inconsistent. The findings in the earlier administrative decision appear to address a different proposal than that addressed in the findings contained in the memorandum to the design commission.