

1 Opinion by Kellington.

2 **NATURE OF THE DECISION**

3 Petitioners appeal a decision of the city council
4 approving a conditional use permit for a factory outlet
5 shopping center.

6 **DECISION**

7 This appeal is before us on remand from the court of
8 appeals. Citizens for Responsible Growth v. City of
9 Seaside, 116 Or App 275, ____ P2d ____ (1992) (Citizens
10 III).¹ The court of appeals held that this Board erred by
11 determining that two city comprehensive plan policies, 5.12
12 and 5.16,² do not constitute applicable approval standards

¹The remand results from the court of appeals' decision on reconsideration. In its initial review, the court of appeals affirmed our decision in Citizens for Resp. Growth v. City of Seaside, 23 Or LUBA 100 (1992) (Citizens I). Citizens for Responsible Growth v. City of Seaside, 114 Or App 233, ____ P2d ____ (1992) (Citizens II).

²We do not have copies of plan policy 5.12 or 5.16 referred to in the court's decision in Citizens III. Neither are those policies referred to or quoted in the petition for review or respondents' briefs submitted to this Board. From this it appears that the court of appeals meant to refer to policy 5.1.2 and 5.1.6, although we cannot be certain. Policy 5.1.2 provides as follows:

"Continued support should be given to the upgrading and revitalizing of the Broadway core area. The Urban Renewal District is seen as an important means of achieving this goal."

Policy 5.1.6 provides as follows:

"The city, through the Comprehensive Plan and Zoning Ordinance, shall protect the very limited amount of industrial sites in the Urban Growth Area."

In Citizens I, we determined that plan policy 5.1.2 is not stated in mandatory terms and, therefore, the city's failure to establish compliance

1 for the proposal.

2 Petitioners argued to the court of appeals that these
3 two plan policies constitute approval standards applicable
4 to the proposal, and the city applied those standards in
5 reaching the challenged decision. Intervenor-respondent
6 (intervenor) argued to the court of appeals that those plan
7 policies are not applicable approval standards and that the
8 city did not apply them in the challenged decision.

9 The court of appeals held:

10 "There is a factual component to the question
11 about which the appearing parties disagree. The
12 record lends some support to both positions.
13 Petitioners' bases for contending that the city
14 concluded that the plan policies were applicable
15 and applied them are tenuous, but we are not
16 prepared to say that the record conclusively
17 refutes their argument as a matter of law. This
18 court does not make factual determinations in
19 reviewing land use cases. Therefore, we remand to
20 LUBA to make the necessary factual determinations
21 and to resolve, in the first instance, any
22 questions of law that are relevant to the
23 disposition of the appeal in light of those facts.
24 See Dept. of Land Conservation v. Coos County, 115
25 Or App 145, ____ P2d ____ (1992). * * * We * * *
26 do not imply that LUBA may not remand the case to
27 the city to make appropriate factual or legal
28 determination[s]. Larson v. Wallowa County, 116

with that standard provided no basis for reversal or remand of the
challenged decision. Citizens I, supra, 23 Or LUBA at 111. We also
determined that policy 5.1.6, while stated in mandatory terms:

"* * * is correctly interpreted to apply to planning and zoning
map designation decisions. Here, the subject land is largely
zoned for industrial use and shopping centers are listed as
conditional uses in the M-1 industrial zone. We believe the
plan and zone designations of the property are designed to
implement the requirement expressed in policy 5.1.6." Id.

1 Or App 96, _____ P2d _____ (1992)."³ Citizens III,
2 116 Or App at 277-78.

3 We cannot tell whether the city interpreted policies
4 5.1.2 or 5.1.6 to be approval standards applicable to the
5 challenged decision. This Board may not interpret the
6 city's plan in the first instance. Rather, it is the city's
7 responsibility to interpret its own enactments in the first
8 instance. Weeks v. City of Tillamook, 117 Or App 449, 454,
9 ____ P2d _____ (1992).

10 The city's decision must be remanded in any event for
11 the reasons set out in our decision in Citizens I, and
12 affirmed by the court of appeals in Citizens II and Citizens
13 III. We also remand the challenged decision to the city so
14 that it may interpret policies 5.1.2 and 5.1.6 and determine
15 whether and how they apply to the proposal.

16 The city's decision is remanded.

³The court of appeals rejected all of petitioners' other challenges to our decision in Citizens I.