

1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

3
4 OREGON RAPTOR CENTER, SUSAN)

5 LAFONTAINE and LEE LAFONTAINE,)

6
7 Petitioners,)

LUBA No. 93-031

8
9 vs.)

FINAL OPINION

10
11 CITY OF SALEM,)

AND ORDER

12
13 Respondent.)

14
15
16 Appeal from City of Salem.

17
18 Daniel J. Stotter, Eugene, filed the petition for
19 review and argued on behalf of petitioners.

20
21 Paul A. Lee, Assistant City Attorney, Salem, filed the
22 response brief and argued on behalf of respondent.

23
24 KELLINGTON, Referee; SHERTON, Chief Referee; HOLSTUN,
25 Referee, participated in the decision.

26
27 AFFIRMED 06/02/93

28
29 You are entitled to judicial review of this Order.
30 Judicial review is governed by the provisions of ORS
31 197.850.

1 Opinion by Kellington.

2 **NATURE OF THE DECISION**

3 Petitioners appeal a city determination that a raptor
4 rehabilitation center does not qualify as a home occupation
5 under the Salem Revised Code (SRC).

6 **FACTS**

7 The subject property includes a residence and garage
8 located on a residential lot within a residential
9 subdivision. The subject property is zoned Multi-Family
10 Residential (RM). Properties in the area are generally
11 zoned RM or Single Family Residential. The proposal is to
12 determine whether the existing operation of the Oregon
13 Raptor Center may continue in its present location as a home
14 occupation. If the Oregon Raptor Center is determined to
15 qualify as a home occupation, it would be considered a use
16 permitted outright under the RM zoning district.

17 The challenged decision describes the characteristics
18 of the raptor center as follows:

19 "The Oregon Raptor Center was incorporated in
20 1989, although the center has been operating at
21 this location since 1984. A 1990 Annual Report
22 shows revenues being generated from a membership
23 program, Adopt-A-Raptor program, grants,
24 contributions, and Sales/Demonstrations in the
25 amount of \$5,548.01. Expenses were distributed to
26 raptor housing, veterinary expenses, medical (non-
27 veterinary), raptor food, food animal care,
28 marketing, administration, and miscellaneous
29 category.

30 "According to the material that was submitted to
31 the City by the applicants, the Oregon Raptor

1 Center is a private non-profit corporation and is
2 staffed by unpaid volunteers. The Center serves
3 an area that includes Marion, Benton, Linn,
4 Lincoln, Tillamook, Clackamas, Multnomah, Polk,
5 Yamhill and Washington Counties.

6 "The purpose of the Raptor Center is to
7 rehabilitate sick, injured, and orphaned raptors
8 (birds of prey) for return to the wild; conduct
9 and support research about raptors and their
10 environment; conduct and support public education
11 activities about raptors; and support legislative
12 and governmental actions to protect raptors, other
13 wildlife, and their environment. It is licensed
14 and regulated as a wildlife rehabilitation
15 facility by the Oregon Department of Fish &
16 Wildlife and is also regulated by the U.S. Fish &
17 Wildlife Service * * *.

18 "The information which was provided to the
19 Planning staff indicates that the Center cares
20 [for] from 10-60 raptors at any one time[,]
21 depending upon the season. There are currently 5
22 permanent raptors on the site that are used for
23 educational purposes. During 1990, the Center
24 cared for 105 birds of prey.

25 "Species of raptors that are served by the center
26 include Turkey Vultures, Swainson's Hawks,
27 Ospreys, Northern Harriers, Saw-whet Owls, Barn
28 Owls, Cooper Hawks, Sharpshinned Hawks, Pygmy
29 Owls, Western Screech Owls, Great Horned Owls, Red
30 Tailed Hawks, Rough Legged Hawks and American
31 Kestrels. The raptors are constrained either by
32 fixed leash perches indoors or in cages that meet
33 state and federal standards. According to the
34 applicant, there are 21 active raptor cages on the
35 premises. Small cages, which are located in the
36 inside of the dwelling, range from 3.0 square feet
37 (1.5 by 2.0 feet) to 6.0 square feet (2.0 by 4.0
38 feet) [sic]. Outside cages range from 8.0 square
39 feet (2.0 by 4.0 feet) to a single large cage of
40 154.0 square feet having dimensions of 11.0 by
41 14.0 feet. The doors of the dwelling have locking
42 screen doors and all windows are secured with
43 screening.

1 "According to the applicants, raptors are
2 generally fed frozen food, which includes gophers,
3 mice, chicks, rats, and road killed animals. Road
4 killed wildlife is transported to the site for
5 raptor food by seven individuals who have been
6 authorized by the Department of Fish and Wildlife
7 * * *.

8 "Live mice, chicks, and rats are also kept on site
9 as food for the raptors. The live animals are
10 either kept in glass aquariums, a metal brooder,
11 or a modified mink cage with supplemental metal
12 screening and are 'generally' euthanized prior to
13 feeding to raptors.

14 "Both live food and road killed animals require
15 some degree of preparation which includes cleaning
16 and cutting. According to the applicants, food
17 storage and rearing activities have been inspected
18 and approved by County Health Officials. It is
19 unknown what quantity of food, live or frozen, is
20 stored on site at any one time.

21 "All cages, according to the applicants, are
22 cleaned twice a day with veterinary quality
23 germicidal cleaning agents. Refuge material,
24 which includes food waste, is disposed of in
25 plastic lined, doubled layer garbage bags and
26 removed from the site every week. When dumpsters
27 are full prior to pick up day, refuge material is
28 taken directly to a garbage transfer site or '* *
29 * other arrangements are made for alternative
30 disposal * * *' by volunteers." Record 78-80.

31 The city planning commission determined the raptor
32 center constitutes a home occupation under the SRC. The
33 city council took review of the planning commission
34 decision. After a public hearing, the city council reversed
35 the planning commission, and determined the raptor center
36 does not qualify as a home occupation under the SRC. This
37 appeal followed.

1 **FIRST ASSIGNMENT OF ERROR**

2 "Respondent erred in determining that [the Oregon
3 Raptor Center] does not comply with SRC
4 124.020(g)."

5 SRC 124.020(g) limits the amount of space that may be
6 devoted to a home occupation as follows:

7 "The total floor area of buildings on the
8 premises, including accessory buildings, devoted
9 to the home occupation shall not exceed 25 percent
10 of the habitable space of the dwelling prior to
11 establishment of the home occupation."

12 Petitioners argue the city incorrectly determined that
13 the floor area devoted to the raptor center exceeds 25% of
14 the total habitable space of the residence. Petitioners
15 contend the city failed to properly interpret SRC 124.020(g)
16 in its decision. Petitioners argue there are reasonable
17 interpretations of SRC 124.020(g) with which the raptor
18 center complies. According to petitioners, "the total floor
19 area of buildings * * * devoted to the home occupation"
20 should be interpreted to mean floor area in buildings which
21 are "devoted" to the home occupation. Under this
22 interpretation, floor area used for raptor center activities
23 in the dwelling itself would not be included in the
24 calculation required by SRC 124.020(g), because the dwelling
25 itself is not "devoted" to the raptor center. Petitioners
26 alternatively contend SRC 124.020(g) should be interpreted
27 to mean that not more than "25 percent of the habitable
28 space [in] the dwelling" can be used for the home
29 occupation.

1 This Board is required to defer to a local government's
2 interpretation of its own ordinances, so long as the
3 proffered interpretation is not clearly wrong. Clark v.
4 Jackson County, 313 Or 508, 515, 836 P2d 710 (1992); West v.
5 Clackamas County, 116 Or App 89, 94, ____ P2d ____ (1992).
6 The city interprets SRC 124.020(g) in its findings at
7 Record 23-24. These findings indicate the city interprets
8 "the total floor area of buildings on the premises * * *
9 devoted to the home occupation" to require it to identify,
10 within the buildings located on the subject property
11 (including the garage), the total amount of floor area
12 "devoted" to raptor center activities. The findings further
13 explain this total floor area cannot be greater than 25% of
14 the habitable space in the dwelling. There is nothing in
15 the words, policy or context of SRC 124.020(g) to suggest
16 that the city's interpretation is erroneous. Therefore, we
17 must defer to it.

18 Petitioners also argue the city's determination of the
19 amount of habitable space in the dwelling is not supported
20 by substantial evidence in the whole record.¹ Petitioners
21 specifically argue there is no basis for the city to reduce
22 the total area of the dwelling by 20-30% in determining the
23 amount of habitable space.

¹Petitioners do not challenge the evidentiary support for the city's determination concerning the total floor area devoted to raptor center activities.

1 SRC 111.090(a) defines "habitable space" as follows:

2 "* * * space in a structure for living, sleeping,
3 eating, or cooking. Bathrooms, toilet
4 compartments, closets, halls, storage or utility
5 space, and similar areas, are not considered
6 habitable space."

7 The city utilized county tax assessor records to
8 determine the total amount of space within the residence is
9 2,396 square feet. The city determined the amount of
10 "habitable space" as follows:

11 "To estimate the 'habitable space' as defined
12 under SRC 111.090(a) and determine the area that
13 can be devoted to a home occupation [on the
14 subject property], the total floor area of the
15 County Assessor's figures must be reduced by 20 to
16 30% to account for the non-habitable area
17 (hallways, bathrooms, closets, etc.) leaving
18 approximately 1,600 to 1,900 square feet of
19 'habitable area.' Therefore, the space used by
20 the Oregon Raptor Center for rehabilitating birds
21 of prey is estimated to be between 30 to 36
22 percent of the total habitable area of the single
23 family structure, which exceeds the standards for
24 a home occupation." Record 24.

25 It is well established that a staff report can contain
26 evidence upon which a decision maker may rely. McGowan v.
27 City of Eugene, 18 Or LUBA 299, 306-07 (1989), aff'd 102 Or
28 App 512 (1990); McConnell v. City of West Linn, 17 Or LUBA
29 502, 514 (1989); Scott v. City of Portland, 17 Or LUBA 197,
30 202 (1988). Here, the January 11, 1993 staff report
31 provides evidentiary support for the city's determination of
32 the amount of habitable space in the dwelling, explaining
33 that the total floor space of 2,396 square feet should be
34 reduced by 20-30% to account for non-habitable areas.

1 Record 12. We conclude the city's determination that the
2 raptor center fails to comply with SRC 124.020(g) is
3 supported by substantial evidence in the whole record.

4 The first assignment of error is denied.

5 **OTHER ASSIGNMENTS OF ERROR**

6 Petitioners challenge the city's other bases for
7 determining the raptor center does not meet the SRC
8 standards for a home occupation.

9 The challenged decision determines the requested use of
10 the property for a home occupation is denied because the
11 raptor center does not satisfy the SRC standards for a home
12 occupation. It is well established that to support a
13 decision denying proposed development, a local government
14 need only adopt adequate findings supported by substantial
15 evidence that the proposal fails to meet at least one
16 applicable standard. See Garre v. Clackamas County, 18 Or
17 LUBA 877, aff'd 102 Or App 123 (1990). We sustain above the
18 challenged decision's determination that the raptor center
19 fails to comply with SRC 124.020(g). Therefore, no purpose
20 is served in reviewing petitioners' other assignments of
21 error.

22 The city's decision is affirmed.

23