

1 Opinion by Sherton.

2 **NATURE OF THE DECISION**

3 Petitioner appeals the adoption of an ordinance
4 amending provisions of the City of Seaside Zoning Ordinance
5 (SZO) relating to vacation rental dwellings.

6 **FACTS**

7 On February 11, 1992, the city adopted an ordinance
8 amending the SZO by adding a definition of "vacation rental
9 dwelling" and adding "vacation rental dwellings" to the list
10 of conditional uses allowable in the Residential Medium
11 Density (R-2), Residential High Density (R-3), Resort
12 Residential (R-R) and Residential/Commercial (R-C) zones.¹
13 The 1992 ordinance also added to the SZO a new section 6.137
14 establishing standards and procedures for granting permits
15 for vacation rental dwellings. SZO 6.137(3) provided that
16 in the R-2 and R-3 zones, all vacation rental dwelling
17 permit applications "must be complete and on file prior to
18 September 1, 1992 * * * in order for permits to be issued
19 prior to May 1, 1993." SZO 6.137(2)(h) provided that
20 vacation rental dwelling permits are personal in nature and
21 are not transferable, except to an heir or devisee pursuant
22 to a will or the state intestate statutes. The 1992
23 ordinance was not appealed.

¹SZO 1.030 defines "vacation rental dwelling" as follows:

"A single family dwelling, duplex or triplex which is rented or
hired out for a period of less than 30 days. * * *"

1 On September 19, 1993, the city adopted the challenged
2 ordinance. The challenged ordinance amends SZO 6.137(2)(h)
3 to read:

4 "Any property owner may apply for a vacation
5 rental dwelling permit at any time, following the
6 procedures as outlined below. Permits are not
7 transferable. Upon transfer of the property, the
8 new owner, if he or she so desires, may apply for
9 a permit following procedures as outlined below."
10 (Emphasis added.)

11 The challenged ordinance also amends SZO 6.137(3) to delete
12 the time limit for filing vacation rental dwelling permit
13 applications for R-2 and R-3 zoned properties. The city did
14 not adopt any findings in support of the challenged
15 ordinance.

16 **ASSIGNMENTS OF ERROR**

17 Petitioner contends the effect of the challenged
18 ordinance is to delete SZO provisions that restrict the
19 number of vacation rental dwellings allowed in R-2 and R-3
20 zones. Petitioner argues the city's decision is
21 inconsistent with several provisions of the City of Seaside
22 Comprehensive Plan (plan), and the city erred by failing to
23 adopt findings addressing the compliance of the challenged
24 ordinance with these plan provisions. The plan provisions
25 in question include (1) portions of plan section 3.1.2
26 (Residential) concerning the city's medium density and high
27 density residential designations, (2) a portion of plan
28 section 4.0 (Housing) concerning provision of housing for
29 low income senior citizens and employees of tourist oriented

1 businesses, and (3) a portion of plan section 15.1 (Land Use
2 Controls) concerning insuring adequate space for various
3 land uses.

4 The challenged decision is legislative, rather than
5 quasi-judicial, in nature. No statute or appellate court
6 case requires that all legislative land use decisions be
7 supported by findings. Von Lubken v. Hood River County, 22
8 Or LUBA 307, 313 (1991). However, in order for this Board
9 to perform its review function, it is necessary either that
10 legislative land use decisions be accompanied by findings
11 demonstrating compliance with relevant legal standards or
12 that respondent explain in its brief how the challenged
13 legislative decision complies with applicable legal
14 standards. Riverbend Landfill Company v. Yamhill County, 24
15 Or LUBA 466, 472 (1993); Von Lubken v. Hood River County, 22
16 Or LUBA at 314.

17 Additionally, this Board may not itself interpret local
18 enactments to determine what constitutes the local approval
19 standards for, and how those standards apply to, a
20 challenged decision. Under Gage v. City of Portland, 123 Or
21 App 269, ___ P2d ___ (1993), and Weeks v. City of Tillamook,
22 117 Or App 449, 453-54, 844 P2d 914 (1992), this Board is
23 required to review a local government's interpretation of
24 its own enactments and may not interpret the local
25 government's enactments in the first instance.

26 The challenged decision is an amendment to an

1 acknowledged land use regulation and, therefore, must comply
2 with the city's acknowledged comprehensive plan.
3 ORS 197.175(2)(d); 197.835(5)(a). Petitioner argues the
4 challenged decision fails to comply with several provisions
5 of that plan. The challenged decision includes no findings
6 identifying applicable comprehensive plan provisions and
7 explaining why the challenged decision is consistent with
8 those provisions. In the absence of such findings, the
9 challenged decision is inadequate to enable us to review
10 petitioner's arguments.

11 The assignments of error are sustained.

12 The city's decision is remanded.