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BEFORE THE LAND USE BOARD OF APPEALS  
OF THE STATE OF OREGON

JOHN ANDREWS, LAVERNA ANDREWS, )  
D. ELLEN BABIN, JAMES CAPON, )  
SHIRLEY EPPERSON, POLLY KEUSINK, )  
RICHARD KEUSINK, VIRGINIA MANLEY, )  
JOANNA YAX, GLENNA YOUNGMAN, and )  
WILLIAM YOUNGMAN, )  
Petitioners, ) LUBA No. 93-198  
vs. ) FINAL OPINION  
CITY OF BROOKINGS, ) AND ORDER  
Respondent. )

Appeal from City of Brookings.

John C. Babin, Brookings, filed the petition for review. With him on the brief was Babin & Keusink.

Martin E. Stone, Coquille, filed the response brief. With him on the brief was Slack, Stone, Trew & Cyphers.

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

REMANDED 03/18/94

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

1 Opinion by Kellington.

2 **NATURE OF THE DECISION**

3 Petitioner appeals an ordinance amending the City of  
4 Brookings Land Development Code (LDC) to list non-profit  
5 rehabilitation training centers as a conditional use in some  
6 of the city's residential zones.

7 **FACTS**

8 Bay Area Rehabilitation Center, Inc. (BARC) sought a  
9 comprehensive plan amendment and zone change from  
10 Residential (R-1-6) to Commercial (C-3) for certain  
11 property. BARC proposed to operate a small retail thrift  
12 store and workshop for goods produced by mentally and  
13 physically challenged people. On September 7, 1993, the  
14 city planning commission unanimously recommended denial of  
15 the application for the comprehensive plan amendment and  
16 zone change. On September 30, 1993, acting on the planning  
17 commission's recommendation, the city council denied the  
18 proposed plan amendment and zone change.

19 However, on its own motion, the city council directed  
20 staff to prepare an amendment to the LDC to list non-profit  
21 rehabilitation training centers as a conditionally allowed  
22 use in some of the city's residential zones. The staff  
23 drafted such an ordinance and submitted it to the planning  
24 commission. On October 13, 1993, the planning commission  
25 recommended denial of the city council initiated LDC  
26 amendment. On November 1, 1993, the city council approved

1 the challenged ordinance amending the LDC to list non-profit  
2 rehabilitation training centers as a conditionally permitted  
3 use in some of the city's residential zones. This appeal  
4 followed.

5 **SECOND AND THIRD ASSIGNMENTS OF ERROR**

6 **A. Preliminary Issue**

7 Petitioners argue the findings adopted in support of  
8 the challenged decision do not identify relevant approval  
9 criteria or facts and fail to explain how the relevant facts  
10 lead to a conclusion that the relevant approval criteria are  
11 met.<sup>1</sup> Petitioners also contend the challenged decision is  
12 not supported by substantial evidence.

13 The city argues that the challenged decision is  
14 legislative in nature and, therefore, neither findings nor  
15 substantial evidence is required to support the decision.  
16 We first determine whether the challenged decision is  
17 legislative or quasi-judicial in nature, before turning to  
18 the merits of petitioners' contentions under these  
19 assignments of error.

20 In Strawberry Hill 4-Wheelers v. Benton Co. Bd. of  
21 Comm., 287 Or 591, 602-03, 601 P2d 769 (1979), the Oregon  
22 Supreme Court identified three factors to be considered in  
23 determining whether a local government decision is

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<sup>1</sup>Petitioners also contend the challenged decision fails to address and respond to specific issues they raised below. However, petitioners do not identify the issues they believe the city should have responded to, and we do not consider this aspect of the second assignment of error further.

1 quasi-judicial. Those factors may be summarized as follows:

2 1. Is "the process bound to result in a  
3 decision?"

4 2. Is "the decision bound to apply preexisting  
5 criteria to concrete facts?"

6 3. Is the action "directed at a closely  
7 circumscribed factual situation or a  
8 relatively small number of persons?"

9 Each of the these factors must be weighed, and no single  
10 factor is determinative. Estate of Paul Gold v. City of  
11 Portland, 87 Or App 45, 740 P2d 812, rev den 304 Or 405  
12 (1987); McInnis v. City of Portland, \_\_\_\_\_ Or LUBA \_\_\_\_\_  
13 (LUBA No. 93-135, March 3, 1994); Leonard v. Union County,  
14 24 Or LUBA 362, 369 (1992).

15 We are aware of no local or other law that would  
16 require the application for the challenged land use  
17 regulation amendment initiated by the city council to result  
18 in a decision. As far as we can tell, the city council  
19 could have abandoned the entire enterprise at any point.  
20 The first factor listed above is not present in this case.

21 With regard to the second factor, it seems inevitable  
22 that nearly every legislative decision will be "bound to  
23 apply preexisting criteria to concrete facts" to a certain  
24 extent. The second factor is present in this case because  
25 amendments to acknowledged zoning ordinances must comply  
26 with any relevant criteria established in the Statewide  
27 Planning Goals (goals) and the comprehensive plan.  
28 ORS 197.175(2)(a); ORS 197.835(5); see also McInnis v. City

1 of Portland, supra, slip op at 6-7.

2       Turning to the third factor, it is relatively clear the  
3 impetus for the challenged decision was a particular  
4 proposal for a particular non-profit rehabilitation training  
5 center. However, whether the impetus for a challenged  
6 decision was a particular development proposal is of little  
7 or no relevance in determining the nature of the challenged  
8 decision itself. See McInnis v. City of Portland, supra,  
9 slip op at 7-8. Here, the challenged decision applies to  
10 several different city residential zones. It does not apply  
11 only to a discrete piece of property. Therefore, the third  
12 Strawberry Hill factor is not present in this case.

13       The only Strawberry Hill factor present here is that  
14 "the decision [is] bound to apply preexisting criteria to  
15 concrete facts." However, we have stated that lesser weight  
16 should be attributed to this factor, where the challenged  
17 decision establishes new policies for the local government.  
18 McInnis v. City of Portland, supra, slip op at 9. Clearly,  
19 the addition of non-profit rehabilitation training centers  
20 as a conditional use in some of the city's residential zones  
21 establishes a new policy for the city. We conclude the  
22 challenged decision is legislative in nature.

23       **B. Merits**

24       As an initial point, no statute, statewide planning  
25 goal or administrative rule requires that local governments  
26 adopt findings in support of legislative land use decisions.

1 Von Lubken v. Hood River County, 22 Or LUBA 307 (1991).  
2 Neither is there any statutory requirement that such  
3 decisions be supported by substantial evidence. Alexiou v.  
4 Curry County, 22 Or LUBA 639 (1992). However, as we have  
5 explained on several occasions, findings may be necessary to  
6 permit this Board to perform its review function. See Von  
7 Lubken v. Hood River County, supra; League of Women Voters  
8 v. Klamath County, 16 Or LUBA 909, 913, (1988); Tides Unit  
9 Owners Assoc. v. City of Seaside, 11 Or LUBA 84, 89-90  
10 (1984); 1000 Friends of Oregon v. Marion County Board of  
11 Commissioners, 1 Or LUBA 33, 37 (1980). Where the local  
12 government does not adopt findings explaining why a  
13 challenged legislative land use regulation amendment  
14 complies with applicable approval criteria, LUBA relies upon  
15 the responding parties to provide argument and citations to  
16 the record to assist the resolution of petitioners'  
17 allegations.

18 Although, for the reasons stated above, we agree with  
19 the city that the challenged decision is legislative rather  
20 than quasi-judicial in nature, that distinction is not  
21 dispositive of these assignments of error. This is because  
22 of certain local decisional requirements provided in the  
23 city's code and explained in detail below.

24 LDC 144.050(D) provides, in part, as follows:

25 "Findings of Fact. In order for the city council  
26 to adopt an ordinance for an amendment to [the  
27 LDC], findings must be made, and adopted as a part

1 of said ordinance that are adequate to support the  
2 amendment proposal. The findings must be factual  
3 and must be supported by substantial evidence  
4 submitted into the record. It must be found that  
5 the amendment complies with and conforms to the  
6 comprehensive plan goals, policies, and  
7 generalized land use map. It may be further  
8 necessary to provide evidence that the proposed  
9 amendment is in conformance with statewide  
10 planning goals and policies when a more specific  
11 direction is provided by the goals than the  
12 comprehensive plan."

13 LDC 144.050(D) does not distinguish between legislative and  
14 quasi-judicial amendments to the LDC.<sup>2</sup>

15 The findings adopted by the city do not identify the  
16 plan goals and policies that govern the challenged  
17 decision.<sup>3</sup> Neither do the findings identify applicable  
18 statewide planning goals, or explain why none of the Goals  
19 apply.<sup>4</sup> Respondent speculates in its brief that there may  
20 not be any relevant criteria in the comprehensive plan.  
21 Respondent goes on to point out the findings do address  
22 certain comprehensive plan and LDC requirements, without

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<sup>2</sup>The city does not argue that it interprets LDC 144.050(D) to be inapplicable to legislative amendments. As we understand it, the city does not dispute that the challenged decision must be supported by findings and substantial evidence. However, we understand the city to contend the nature of the challenged decision means that its findings may be less detailed.

<sup>3</sup>The findings simply conclude that the ordinance "complies with and conforms to the Comprehensive Plan goals, policies and generalized land use map." Record 14.

<sup>4</sup>Even if LDC 144.050(D) did not specifically require that the city assure amendments to the LDC comply with the statewide planning goals, ORS 197.175(2)(a) imposes that obligation.

1 specifically identifying the source of those requirements.

2 We conclude the city's findings are inadequate to  
3 satisfy its obligation under LDC 144.050(D) to explain why  
4 the challenged decision complies with any relevant  
5 comprehensive plan, LDC and statewide planning goal  
6 requirements.

7 LDC 144.050(D) also requires that those findings be  
8 supported by substantial evidence. However, until the city  
9 adopts the required findings, we cannot consider whether  
10 those findings are supported by substantial evidence.

11 The second and third assignments of error are  
12 sustained.

13 **FIRST ASSIGNMENT OF ERROR**

14 "The City of Brookings exceeded its jurisdiction  
15 in adopting ordinance No. 93-0-446.Q."

16 Petitioners argue the city council's authority to enact  
17 ordinances amending the LDC is limited by LDC 144.060.  
18 Petitioners contend that under LDC 144.060, the city council  
19 lacks authority to enact an ordinance unless the planning  
20 commission recommends approval. LDC 144.060 provides:

21 "The specific findings made by the city council,  
22 upon the recommendation of the planning  
23 commission, to adopt an ordinance for an amendment  
24 to this code, comprehensive plan text and /or map  
25 must be factual and supported by substantial  
26 evidence. \* \* \*" (Emphasis supplied.)

27 Petitioners' reading of LDC 144.060 appears to  
28 improperly read in a word that is not present, in that  
29 nothing in LDC 144.060 says anything about a positive

1 recommendation. However, because the challenged decision  
2 must be remanded in any event, the city will have an  
3 opportunity to address this interpretive issue. See Gage v.  
4 City of Portland, 123 Or App 269, 274, 860 P2d 282, on  
5 reconsideration 125 Or App 119 (1993).

6 The first assignment of error is sustained.

7 The city's decision is remanded.