

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

3
4 JACK G. KAADY,)
5)
6 Petitioner,)
7)
8 vs.)
9) LUBA No. 93-169
10 CITY OF CANNON BEACH,)
11) FINAL OPINION
12 Respondent,) AND ORDER
13)
14 and)
15)
16 TOLOVANA INN UNIT OWNERS)
17 ASSOCIATION,)
18)
19 Intervenor-Respondent.)

20
21
22 Appeal from City of Cannon Beach.

23
24 Jack G. Kaady, Milwaukie, filed the petition for review
25 and argued on his own behalf.

26
27 No appearance by respondent.

28
29 P. Stephen Russell III, Portland, filed the response
30 brief and argued on behalf of intervenor-respondent. With
31 him on the brief was Copeland, Landye, Bennett and Wolf.

32
33 KELLINGTON, Chief Referee; HOLSTUN, Referee; SHERTON,
34 Referee, participated in the decision.

35
36 AFFIRMED 07/06/94

37
38 You are entitled to judicial review of this Order.
39 Judicial review is governed by the provisions of ORS
40 197.850.

1 Opinion by Kellington.

2 **NATURE OF THE DECISION**

3 Petitioner appeals a city council order determining the
4 Tolovana Inn is a motel and, therefore, not subject to city
5 regulations governing the short term rental of dwellings.¹

6 **MOTION TO INTERVENE**

7 Tolovana Inn Unit Owners Association moves to intervene
8 on the side of respondent in this appeal proceeding. There
9 is no objection to the motion, and it is allowed.

10 **FACTS**

11 On February 3, 1992, the city manager wrote a letter to
12 intervenor's manager advising him the Tolovana Inn is not
13 subject to the requirements of city Ordinance No. 92-1.
14 Petitioner learned of the city manager's decision and
15 demanded that Ordinance No. 92-1 be "enforced" against the
16 Tolovana Inn. On July 2, 1992, the city manager wrote
17 petitioner a letter advising him that the Tolovana Inn is
18 not subject to the requirements of Ordinance No. 92-1.
19 Petitioner appealed the city manager's letter, and the
20 appeal was referred to the planning commission.² The
21 planning commission affirmed the city manager's decision,

¹Ordinance No. 92-1 restricts the short term rental of dwellings. In a previous appeal, we affirmed a city decision determining petitioner's single family dwelling is subject to the requirements of Ordinance No. 92-1. Kaady v. City of Cannon Beach, 26 Or LUBA 424 (1994).

²Petitioner appealed to the city council, but the matter was referred to the planning commission by the city manager.

1 and petitioner appealed to the city council. The city
2 council also affirmed the city manager's decision.
3 Thereafter, petitioner instituted a writ of review
4 proceeding in the Clatsop County Circuit Court. On
5 intervenor's motion, the Clatsop County Circuit Court
6 transferred the matter to this Board. In an earlier order,
7 this Board determined it has jurisdiction over the city's
8 decision determining the Tolovana Inn is not subject to the
9 requirements of Ordinance No. 92-1.

10 **DECISION**

11 Ordinance No. 92-1 regulates the "transient occupancy
12 of dwelling units." Ordinance No. 92-1, section 2 provides
13 the following definition:

14 "'Motel * * *' means a structure or part of a
15 structure, containing motel rental units, occupied
16 or designed for occupancy by transients for
17 lodging or sleeping and including the terms
18 'hotel' and 'inn', but shall not include the term'
19 'bed and breakfast establishment' or the transient
20 occupancy of a dwelling unit regulated by this
21 ordinance."

22 Petitioner advances a variety of arguments contending
23 the Tolovana Inn is not a motel and, therefore, is subject
24 to the requirements of Ordinance No. 92-1. However, the
25 city exercised its interpretative discretion in adopting the
26 challenged decision and interpreting the term "motel," as
27 defined by Ordinance No. 92-1, to include the Tolovana Inn.
28 There is nothing contrary to the express words, policy or
29 purpose of Ordinance No. 92-1 in interpreting the term

1 "motel" to include the Tolovana Inn, and we defer to the
2 city's interpretation.³ ORS 197.829; Clark v. Jackson
3 County, 313 Or 508, 836 P2d 710 (1992).

4 Petitioner also argues the city created an exception to
5 the requirements of Ordinance No. 92-1 for the Tolovana Inn,
6 and this alleged exception is not available to other
7 similarly situated establishments. Petitioner contends this
8 poses an equal privileges and immunities problem under
9 Article 1, section 20, of the Oregon Constitution. However,
10 petitioner's argument relies upon the faulty premise that
11 the Tolovana Inn has been granted a special privilege not
12 available to other similarly situated establishments. The
13 Tolovana Inn was granted no exception to the requirements of
14 Ordinance No. 92-1. The city simply determined the Tolovana
15 Inn is a "motel" as that term is defined by Ordinance No.
16 92-1 and, therefore, is not subject to the restrictions on
17 transient occupancy of dwellings that otherwise apply under
18 Ordinance No. 92-1. The Tolovana Inn was not given any
19 privilege not generally available to other similarly
20 situated establishments.

21 Finally, petitioner argues the city erred by failing to
22 reopen the local record to correct a mistake. The city
23 council left the local record open for a period of six

³Petitioner contends a 1971 decision and subsequent planning actions affecting the Tolovana Inn were incorrectly decided by the city. However, the time to appeal the legal correctness of those previous planning actions has long since expired.

1 months. This was an adequate period of time to enable
2 petitioner to prepare his case and to place relevant
3 evidence into the record. We are aware of no requirement
4 for the city to reopen the record to correct an alleged
5 mistake.

6 Petitioner's assignments of error provide no basis for
7 reversal or remand of the challenged decision and,
8 therefore, are denied.

9 The city's decision is affirmed.