

1 Opinion by Sherton.

2 **NATURE OF THE DECISION**

3 Petitioner appeals an ordinance adopting legislative
4 amendments to the text of the Coos County Zoning and Land
5 Development Ordinance (ZLDO). The amendments were adopted
6 to bring the ZLDO into compliance with Oregon Laws 1993,
7 chapter 792 (HB 3661) and 1994 amendments to Statewide
8 Planning Goals 3 (Agricultural Land) and 4 (Forest Lands)
9 and OAR Chapter 660, Divisions 06 and 33, which implement
10 HB 3661.

11 **ASSIGNMENT OF ERROR**

12 The challenged ordinance was adopted by the board of
13 county commissioners and contains the following findings:

14 "The Board of Commissioners of Coos County finds
15 that the adoption of this Ordinance is a land use
16 decision which must be made in compliance with the
17 requirements of the Statewide Land Use Planning
18 Goals. This Ordinance does comply with the
19 Statewide Planning Goals and state law." Record
20 16.

21 No other findings were adopted in support of the challenged
22 ordinance.

23 Petitioner contends ZLDO 5.7.500 (Findings) requires
24 that the board of commissioners adopt findings in support of
25 the challenged decision. ZLDO 5.7.500 provides:

26 "Whenever any official action is taken by the
27 hearings body or Board of Commissioners, findings
28 of fact based on the record shall be made to
29 adequately establish the basis for such official
30 action." (Emphases added.)

1 According to petitioner, the findings required by
2 ZLDO 5.7.500 should, at a minimum, "explain what criteria in
3 the enabling legislation must be satisfied [and demonstrate]
4 the basis for the Board [of Commissioners'] conclusion that
5 the ordinance does in fact comply with the relevant enabling
6 legislation." Petition for Review 3-4.

7 Petitioner argues the above quoted findings are
8 impermissibly conclusory, stating no facts and giving no
9 explanation for why the board of commissioners believes the
10 ordinance complies with the goals and state law. See
11 Andrews v. City of Brookings, 27 Or LUBA 39, 43-44 (1994).
12 Petitioner contends the findings are insufficient to comply
13 with ZLDO 5.7.500, or to allow LUBA to perform its review
14 function. Von Lubken v. Hood River County, 22 Or LUBA 307
15 (1991); League of Women Voters v. Klamath County, 16 Or LUBA
16 909, 913 (1988).

17 The county contends ZLDO 5.7.500 does not apply to
18 legislative decisions. The county argues that legislative
19 amendments to the ZLDO are governed solely by ZLDO
20 Article 1.2 (Amendments), which contains no requirement for
21 findings. According to the county, ZLDO 5.7.500 is located
22 in ZLDO Chapter V (Administration), which governs only
23 quasi-judicial land use decisions. The county points out
24 that certain articles in ZLDO Chapter V, e.g., Articles 5.1
25 (Rezoning), 5.2 (Conditional Uses), 5.3 (Variances) and 5.6
26 (Design and Site Plan Review) clearly cover only

1 quasi-judicial proceedings.

2 The county also argues that regardless of whether
3 ZLDO 5.7.500 applies, petitioners' assignment of error must
4 be denied because petitioner fails to identify the relevant
5 legal standards he contends must be addressed in findings
6 supporting the challenged ordinance. The county argues LUBA
7 has frequently held that absent "allegations that a
8 legislative decision violates particular legal standards, a
9 local government's failure to adopt findings in support of
10 that legislative decision * * * is not, of itself, a basis
11 for reversal or remand of the decision." Oregon City
12 Leasing, Inc. v. Columbia County, 25 Or LUBA 129, 134, rev'd
13 on other grounds 121 Or App 173 (1993). The county argues
14 that when a legislative decision is challenged, LUBA may
15 perform its review function if either (1) the challenged
16 decision is supported by findings demonstrating compliance
17 with applicable legal standards, or (2) respondents' briefs
18 provide argument and citations to facts in the record
19 adequate to demonstrate the challenged decision complies
20 with applicable legal standards. Redland/Viola/Fischer's
21 Mill CPO v. Clackamas County, 27 Or LUBA 560, 564 (1994).
22 According to the county, because petitioner fails to
23 identify any legal standards allegedly violated by the
24 challenged decision, the county is deprived of its right to
25 provide argument and citations to the record to demonstrate
26 compliance with such standards.

1 We have consistently held there is no statutory or
2 administrative law requirement that all legislative
3 decisions be supported by findings.¹
4 Redland/Viola/Fischer's Mill v. Clackamas County, supra, 27
5 Or LUBA at 563; Riverbend Landfill Company v. Yamhill
6 County, 24 Or LUBA 466, 472 (1993); Von Lubken v. Hood River
7 County, supra, 22 Or LUBA at 313. However, where there is a
8 local code provision requiring that findings be adopted in
9 support of legislative decisions, the absence of such
10 findings, or the adoption of purely conclusory findings, can
11 provide a basis for reversal or remand. Andrews v. City of
12 Brookings, supra, 27 Or LUBA at 43.

13 Here, the findings adopted as part of the challenged
14 ordinance are mere conclusions and are inadequate to satisfy
15 ZLDO 5.7.500. Consequently, if ZLDO 5.7.500 applies to
16 legislative ZLDO amendments adopted by the board of
17 commissioners, the challenged decision must be remanded for
18 adoption of adequate findings. However, the challenged

¹We have also concluded that where a specific challenge is made to a legislative decision, findings may be necessary to enable LUBA to perform its review function or to satisfy the requirement of Goal 2 (Land Use Planning) for an adequate factual base. See 1000 Friends of Oregon v. City of North Plains, 27 Or LUBA 372, 377, aff'd 130 Or App 406 (1994); League of Women Voters v. Klamath County, supra. The county is correct, however, that even where a specific challenge to a legislative decision is made, it is also possible that respondents may be able to defend against such a challenge through argument in their briefs and citations to plan, provisions, code provisions and evidence in the record. Redland/Viola/Fischer's Mill v. Clackamas County, supra, 27 Or LUBA at 564; see Gruber v. Lincoln County, 2 Or LUBA 180, 187 (1981). However, petitioner makes no specific challenge to the subject ordinance in this appeal.

1 decision does not itself interpret ZLDO 5.7.500. Therefore,
2 we must first determine whether we have authority to make
3 the initial interpretation regarding the applicability of
4 ZLDO 5.7.500.²

5 Under Gage v. City of Portland, 319 Or 308, 316-17, 877
6 P2d 1187 (1994), and Clark v. Jackson County, 313 Or 508,
7 514-15, 836 P2d 710 (1992), LUBA is required to give
8 considerable deference to a local governing body's
9 interpretation of local enactments.³ Under Weeks v. City of
10 Tillamook, 117 Or App 449, 453-54, 844 P2d 914 (1992), this
11 means that in reviewing a decision adopted by the local
12 governing body, LUBA must review the governing body's
13 interpretation of local code provisions and may not
14 interpret the local code in the first instance.
15 Additionally, to be reviewable by LUBA, a local government's
16 interpretation of its code must be provided in the
17 challenged decision or in supporting findings, not in the
18 local government's brief. Eskandarian v. City of Portland,
19 26 Or LUBA 98, 109 (1993); Miller v. Washington County, 25
20 Or LUBA 169, 179 (1993). Thus, unless there is "no possible
21 rational dispute" regarding the correct interpretation of

²In Andrews, there was no dispute that the code requirement for findings applied to legislative, as well as quasi-judicial, land use decisions.

³Our review of local government interpretations of comprehensive plans and land use regulations is now governed by ORS 197.829. However, the Court of Appeals has stated that it interprets ORS 197.829 to mean what the Supreme Court, in Gage, interpreted Clark to mean. Watson v. Clackamas County, 129 Or App 428, 431-32, 879 P2d 1309, rev den 320 Or 407 (1994).

1 ZLDO 5.7.500, we must remand the challenged decision to the
2 county to interpret ZLDO 5.7.500 in the first instance.
3 Gage v. City of Portland, 123 Or App 269, 274-75, 860 P2d
4 282 (1983), rev'd other grounds 319 Or 308 (1994); see Towry
5 v. City of Lincoln City, 26 Or LUBA 554, 560 (1994).

6 ZLDO 5.7.500 specifically refers to "any official
7 action" of the board of commissioners. This section is part
8 of ZLDO Article 5.7 (Public Hearings). Nothing in
9 Article 5.7 explicitly provides that Article 5.7 applies
10 only to quasi-judicial proceedings. Neither does
11 Article 1.2 explicitly provide that it governs legislative
12 amendments to the ZLDO. Further, although ZLDO 1.2.600
13 indicates that both the planning commission and board of
14 commissioners are required to hold public hearings on a
15 proposed ZLDO text amendment, nothing in ZLDO Article 1.2
16 establishes procedures for such hearings.

17 Based on the above, we conclude that petitioner's
18 suggested interpretation of ZLDO 5.7.500 is not untenable,
19 and that nothing in the language of ZLDO 5.7.500, or in
20 other ZLDO provisions, establishes unequivocally that
21 ZLDO 5.7.500 is inapplicable to legislative actions by the
22 board of commissioners. Therefore, we must remand the
23 challenged decision to the county to determine whether
24 ZLDO 5.7.500 is applicable to the challenged legislative
25 decision and, if so, to adopt the required findings.

26 The assignment of error is sustained.

1 The county's decision is remanded.