

1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

3
4 DEPARTMENT OF LAND CONSERVATION)

5 AND DEVELOPMENT,)

6)
7 Petitioner,)

8)
9 vs.)

10 CLATSOP COUNTY,)

11)
12 Respondent,)

13)
14 and)

15)
16)
17 DONALD CHESTNUT,)

18)
19 Intervenor-Respondent.)

LUBA No. 95-163

FINAL OPINION
AND ORDER

20
21
22 Appeal from Clatsop County.

23
24 Celeste J. Doyle, Assistant Attorney General, Salem,
25 filed the petition for review and argued on behalf of
26 petitioner. With her on the brief was Theodore R.
27 Kulongoski, Attorney General, Thomas A. Balmer, Deputy
28 Attorney General, and Virginia L. Linder, Solicitor General.

29
30 No appearance by respondent.

31
32 Steven T. Campbell, Seaside, filed the response brief
33 and argued on behalf of intervenor-respondent.

34
35 GUSTAFSON, Referee; LIVINGSTON, Chief Referee,
36 participated in the decision.

37
38 REMANDED 04/01/96

39
40 You are entitled to judicial review of this Order.
41 Judicial review is governed by the provisions of ORS
42 197.850.

1 Opinion by Gustafson.

2 **NATURE OF THE DECISION**

3 Petitioner appeals the county's approval of a
4 comprehensive plan and zoning map amendment.

5 **MOTION TO INTERVENE**

6 Donald Chestnut (intervenor) moves to intervene on the
7 side of respondent. There is no opposition to the motion,
8 and it is allowed.

9 **FACTS**

10 Intervenor owns a 19.87-acre parcel north of and
11 outside the Gearhart Urban Growth Boundary, on the east side
12 of Highway 101. The parcel is zoned RA-2 (Residential
13 Agriculture, 2-acre minimum). The parcel includes, and is
14 bisected by, approximately 5 acres designated LW (Lake and
15 Wetlands). Intervenor applied to the county for a
16 comprehensive plan and zoning map amendment to redesignate
17 approximately 15 of the 19.87 acres to RA-1 (Residential
18 Agriculture, 1-acre minimum).

19 West of the parcel, across Highway 101, is property
20 zoned RA-5 (Residential Agriculture, 5-acre minimum.)
21 Property immediately north of the parcel is zoned RA-2. The
22 zoning to the east is AF-20, EFU and LW. Immediately south
23 of the parcel, toward the Gearhart UGB, is property zoned
24 RA-1. Southwest of the parcel is a subdivision zoned SFR-1
25 (Single-family Residential, 1-acre minimum.)

26 After a public hearing, the planning commission denied

1 petitioner's application. On appeal, the board of
2 commissioners reversed the planning commission and approved
3 the request.

4 This appeal followed.

5 **FIRST ASSIGNMENT OF ERROR**

6 Petitioner contends the county failed to apply or
7 address county comprehensive plan Goal 2b (Goal 2b), and
8 failed to make adequate findings supported by substantial
9 evidence to establish compliance with the county's plan Goal
10 2 (Goal 2).

11 As relevant here, Goal 2 provides as follows:

12 "Residential densities are generally designated
13 through the following additional criteria:

14 "a. Where subdivisions or partitioning or both
15 have occurred in a one acre pattern of
16 development the area will be placed in one of
17 the one acre zones;

18 "b. In areas with a development pattern of two to
19 five acre parcels (some smaller and some
20 larger), the areas will be placed in a two-
21 acre zone."

22 The county recognized that Goal 2 was applicable to
23 this application, and the county staff report specifically
24 found Goal 2b to be applicable. In addition, petitioner
25 raised compliance with Goal 2b during the local proceedings.
26 However, in its findings, the county did not address Goal
27 2b. Rather, the county's findings regarding compliance with
28 Goal 2 state, in full:

29 "This is a logical extension of an existing zone.

1 The zone, although greater density, is still a
2 rural use zone, and no exception to the Goal is
3 required. The goals of the comprehensive plan as
4 well as the Clatsop Plains Community Plan are
5 consistent with this use as provided. This is not
6 resource property." Record 5.

7 Intervenor acknowledges that the county recognized the
8 applicability of Goal 2, but contends the Board of
9 Commissioner's decision demonstrates that it found that the
10 planning staff was incorrect in determining that Goal 2b
11 applies to this parcel. Intervenor contends the county's
12 factual evaluation of Goal 2 is adequate, that the zoning
13 maps clearly demonstrate that the subject parcel is subject
14 to, and in compliance with Goal 2a, and that Goal 2b is
15 inapplicable.

16 Where a local government identifies a particular
17 provision as an applicable approval standard, it must
18 demonstrate in its findings that the application complies
19 with the identified standard. Gettman v. City of Bay City,
20 28 Or LUBA 116 (1994). Those findings of compliance must
21 state the facts the local government relies on and explain
22 why those facts lead to the conclusion that the standard is
23 satisfied. Reeves v. Yamhill County, 28 Or LUBA 123 (1994),
24 rev'd on other grounds, 132 Or App 263 (1995). In addition,
25 findings must address specific issues raised by a party
26 below, which are relevant to compliance with applicable
27 approval standards. Hillcrest Vineyard v. Bd. of Comm.
28 Douglas Co., 45 Or App 283, 293, 608 P2d 201 (1980); Norvell

1 v. Portland Area LGBC, 43 Or App 849, 853, 604 P2d 896
2 (1979); Moore v. Clackamas County, 29 Or LUBA 372 (1995);
3 Collier v. Marion County, 29 Or LUBA 462 (1995); McKenzie v.
4 Multnomah County, 27 Or LUBA 523, aff'd 131 Or App 177
5 (1994).

6 When the findings are inadequate, ORS 197.835(11)(b)
7 requires this Board to affirm a local government's
8 conclusion if "the parties identify relevant evidence in the
9 record which clearly supports the decision or a part of the
10 decision." However, our obligation under ORS 197.835(11)(b)
11 applies only when evidence cited by the parties "clearly
12 supports" the local decision. In addition, that statute
13 does not supersede the local government's obligation to
14 respond in its findings to specific issues raised in the
15 local proceedings that are relevant to compliance with
16 applicable approval standards. Canby Quality of Life v.
17 City of Canby, ___ Or LUBA ___ (LUBA No. 95-059, October 31,
18 1995), slip op 10.

19 Petitioner specifically raised the issue of compliance
20 with Goal 2b during the local proceedings. The county's
21 findings do not address that issue and are, therefore,
22 inadequate.

23 Even if the applicability of Goal 2b had not been
24 specifically raised below, the county's findings regarding
25 Goal 2 in general are inadequate for our review. The
26 county's conclusory finding that the application complies

1 with Goal 2 includes no interpretation of the goal, no
2 identification of facts upon which the county relied in
3 reaching its conclusion, and no application of the facts to
4 the goal. Moreover, intervenor has cited no evidence in the
5 record that compels the conclusion that the application
6 complies with Goal 2. Neither the evidence nor the findings
7 indicate how the county interprets the applicability of Goal
8 2 to this application. Rather, intervenor's argument
9 appears to be that the county's conclusory finding regarding
10 compliance with Goal 2 makes the county's reasoning
11 apparent. We cannot reach that conclusion.

12 Petitioner urges that we reverse rather than remand the
13 county's decision "because on the facts of this case the
14 county cannot demonstrate that the application complies with
15 Goal 2b." Petition for Review 6. (Emphasis in original.)
16 Just as we cannot agree with the county, and determine
17 conclusively that the surrounding area has a one-acre
18 pattern of development, making the parcel subject to Goal
19 2a, likewise we cannot agree with petitioner and
20 conclusively determine that the area has a development
21 pattern of two to five acres, making it subject to Goal 2b.
22 There remains a significant factual issue for the county to
23 consider and decide on remand.

24 The first assignment of error is sustained.

25 **SECOND ASSIGNMENT OF ERROR**

26 Petitioner generally challenges the remainder of the

1 county's findings as unresponsive to the applicable
2 criteria, conclusory and not supported by substantial
3 evidence. However, petitioner specifically challenges
4 compliance with only the county's Housing Policy 4, Housing
5 Policy 2 and Energy Conservation Goal. With regard to each
6 of these criteria, the county has summarily concluded they
7 are satisfied, with no factual or legal analysis.

8 Intervenor responds that the degree of specificity
9 petitioner argues is lacking in the findings is not
10 appropriate given the type of application at issue. Since
11 the subject request is for a comprehensive plan amendment,
12 and not a specific development proposal, intervenor argues
13 specific development information is neither relevant nor
14 required.

15 The subject application is not a development proposal,
16 and it is unlikely that compliance with the comprehensive
17 plan provisions in question requires a specific development
18 proposal. However, the county has determined that these
19 provisions are applicable approval criteria for the subject
20 application. Accordingly, the county must interpret them
21 and explain how they are satisfied, based on the facts
22 of this record. Conclusory statements that criteria are
23 satisfied, without explanation of what the criteria require
24 or reference to and evaluation of facts in the record, are
25 insufficient to demonstrate compliance with those criteria.

26 The second assignment of error is sustained.

1 The county's decision is remanded.