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

STEVE DOOB,)
)
Petitioner,)
)
vs.)
)
CITY OF GRANTS PASS,)
)
Respondent,)
)
and)
)
COMMUNITY DEVELOPMENT)
CORPORATION OF JOSEPHINE)
COUNTY,)
)
Intervenor-Respondent.)

LUBA No. 98-006
FINAL OPINION
AND ORDER

Appeal from City of Grants Pass.

Steve Doob, Merlin, filed the petition for review and argued on his own behalf.

Ulys Stapleton, City Attorney, Grants Pass, filed a response brief and argued on behalf of the respondent.

Ben Freudenberg, Grants Pass, filed a response brief and argued on behalf of intervenor-respondent.

GUSTAFSON, Board Chair; HANNA, Board Member, participated in the decision.

REMANDED 05/26/98

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

1 Opinion by Gustafson.

2 **NATURE OF THE DECISION**

3 Petitioner appeals the city's approval of a planned unit
4 development (PUD).

5 **MOTION TO INTERVENE**

6 The Community Development Corporation of Josephine County
7 (intervenor), the applicant below, moves to intervene on the
8 side of respondent. There is no objection to the motion, and
9 it is allowed.

10 **FACTS**

11 Intervenor proposes to develop a 40-lot PUD within the
12 city limits of Grants Pass. The proposed PUD abuts Harbeck
13 Road to the east and an unimproved portion of G.I. Lane to the
14 south. G.I. Lane intersects with Harbeck Road at the
15 property's southeast corner. The city's Master Transportation
16 Plan identifies G.I. Lane as a through collector street
17 between Harbeck and Williams Highway, west of the property.
18 However, G.I. Lane is currently not improved west of Harbeck
19 Road and ends in a dead-end at or immediately west of the
20 property.

21 As a condition of approval, the city planning commission
22 recommended that G.I. Lane be improved, as described in the
23 Master Transportation Plan, from Harbeck Road to Williams
24 Highway. The city council rejected that recommendation,
25 proposing instead that the city establish a Local Improvement
26 District (LID) to complete the improvements. As a condition

1 of approval, the city's decision requires intervenor to
2 participate in an LID, if one is created. Alternatively, if
3 the LID is not created and G.I. Lane is not fully improved,
4 the decision is conditioned upon intervenor completing half
5 street improvements on that portion of G.I. Lane abutting the
6 subject property.

7 Petitioner appeals the city's approval of the PUD.

8 **SECOND ASSIGNMENT OF ERROR**

9 Petitioner challenges the adequacy of the city's findings
10 regarding compliance with Grants Pass Land Development Code
11 (GPLDC) 18.043(3), which requires that the city find that

12 "[t]he proposed street plan affords the most
13 economic, safe, efficient, and least environmentally
14 damaging circulation of traffic possible under the
15 existing circumstances."

16 The city's finding of compliance with this criterion
17 states:

18 "City Council's Finding: SATISFIED, subject to the
19 conditions of approval. As noted under Criterion 2,
20 one of the conditions is that all or a portion of
21 G.I. Lane be constructed. The portion of Harbeck
22 Road that fronts the east property line also will be
23 developed to urban street standards with curb,
24 gutter and sidewalk.

25 "The streets within the Planned Unit Development
26 will be private and maintained by a homeowner's
27 association. There will be one direct access to the
28 extension of G.I. Lane. There will be two accesses
29 to the Harbeck Village Apartment project to the
30 north, which in turn has a direct access to Harbeck
31 Road." Record 5.

32 Petitioner contends GPLDC 18.043(3) mandates a comparison
33 of other possible street plans to determine whether the
34 proposed configuration is "the most economic, safe, efficient,

1 and least environmentally damaging" of all possible
2 configurations. Petitioner alleges the city failed to
3 complete this mandatory comparison. Petitioner also alleges
4 the city erroneously failed to consider the two contingencies
5 of whether G.I. Lane remains a dead-end street fronting the
6 PUD, or is extended through a LID to Williams Highway.
7 Finally, petitioner alleges the city failed to require a
8 traffic study which, according to petitioner, the Oregon
9 Department of Transportation (ODOT) requested and, therefore,
10 the city was required to complete in order to comply with this
11 criterion.

12 The city and intervenor respond that the finding of
13 compliance with GPLDC 18.043(3) is adequate and based upon
14 substantial evidence in the record. They also respond that
15 even if there are deficiencies in the findings themselves, the
16 record contains evidence that clearly supports the city's
17 conclusion. Intervenor and the city cite to numerous places
18 in the record that, they argue, contain evidence that supports
19 the city's conclusion that the approval criteria are
20 satisfied. We understand them to argue that if we find the
21 findings to be inadequate, under ORS 197.835(11)(b) this Board
22 should nonetheless affirm the city's decision.

23 The Supreme Court first articulated the now well-
24 established standard for evaluating the adequacy of local
25 findings in Sunnyside Neighborhood v. Clackamas Co. Comm., 280
26 Or 3, 21, 569 P2d 1063 (1977):

1 "No particular form is required, and no magic words
2 need be employed. What is needed for adequate
3 judicial review is a clear statement of what,
4 specifically, the decision-making body believes,
5 after hearing and considering all the evidence, to
6 be the relevant and important facts upon which its
7 decision is based. Conclusions are not sufficient."

8 In Le Roux v. Malheur County, 30 Or LUBA 268 (1995), we
9 explained the requirement for adequate findings as follows:

10 "The county's * * * findings must (1) identify the
11 relevant approval standards, (2) set out the facts
12 relied upon, and (3) explain how the facts lead to
13 the conclusion that the request satisfies the
14 approval standards. Sunnyside Neighborhood v.
15 Clackamas Co. Comm., 280 Or 3, 20-21, 569 P2d 1073
16 (1977). See also Penland v. Josephine County, 29 Or
17 LUBA 213 (1995); Reeves v. Yamhill County, 28 Or
18 LUBA 123 (1994); Hart v. Jefferson County, 27 Or
19 LUBA 612 (1994). In addition, when, as here, a
20 party raises issues regarding compliance with any
21 particular approval criteria, it is incumbent upon
22 the local government to address those issues.
23 Hillcrest Vineyard v. Bd. of Comm. Douglas Co., 45
24 Or App 283, 293, 608 P2d 201 (1980); Collier v.
25 Marion County, 29 Or LUBA 462 (1995). Moreover,
26 when the evidence is conflicting, the local
27 government may choose which evidence to accept, but
28 must state the facts it relies on and explain why
29 those facts lead to the conclusion that the
30 applicable standard is satisfied. Moore v.
31 Clackamas County, 29 Or LUBA 372 (1995)." Le Roux,
32 30 Or LUBA at 271[.]

33 ORS 197.835(11)(b) allows us to overlook inadequate
34 findings when "the parties identify relevant evidence in the
35 record which clearly supports the decision or a part of the
36 decision."¹ However, the threshold for establishing that

¹ORS 197.835(11)(b) states, in full:

"Whenever the findings are defective because of failure to recite adequate facts or legal conclusions or failure to adequately identify the standards or their relation to the facts, but the parties identify relevant evidence in the record which clearly supports the decision or a part of the decision,

1 evidence "clearly supports" a decision is high. As we have
2 explained, "where the relevant evidence in the record is
3 conflicting, or provides a reasonable basis for different
4 conclusions, such evidence does not 'clearly support' the
5 challenged decision." Waugh v. Coos County, 26 Or LUBA 300,
6 307 (1993).

7 We agree with petitioner that the city's finding is
8 inadequate to establish compliance with GPLDC 18.043(3). An
9 initial problem with the city's finding of compliance with
10 this criterion is that it neither explains how the city
11 interprets its criterion nor responds to the stated
12 requirements of the criterion. Although we do not necessarily
13 agree with petitioner's assumed interpretation of the
14 requirements of GPLDC 18.043(3), without an interpretation by
15 the city, we cannot fully perform our review function.²

16 The city's failure to provide an interpretation of GPLDC
17 18.043(3) also precludes us from determining whether the
18 evidence upon which intervenor and the city rely compels a

the board shall affirm the decision or the part of the decision supported by the record and remand the remainder to the local government, with direction indicating appropriate remedial action."

²In the absence of an interpretation of a local provision in the city's findings, under ORS 197.829(2) this Board may provide such an interpretation in the first instance. See Opp v. City of Portland, 153 Or App 10, ___ P2d ___ (1998); Alliance for Responsible Land Use v. Deschutes County, 149 Or App 259, ___ P2d ___ (1997). However, when the purpose of the provision is unclear or subject to numerous interpretations, we have declined to provide that initial interpretation. See Thomas v. Wasco County, 30 Or LUBA 302 (1996); Canby Quality of Life Comm. v. City of Canby, 30 Or LUBA 166 (1995). Because GPLDC 18.043(3) is subject to numerous interpretations, and because the city is in the best position to interpret that provision, we decline to provide that interpretation here.

1 conclusion that the evidence in the case "clearly supports"
2 findings of compliance with GPLDC 18.043(3). See Canby
3 Quality of Life Comm., 30 Or LUBA at 173 (LUBA will not both
4 fashion an interpretation of a local code provision, then
5 review the record in search of evidence that supports that
6 interpretation). Moreover, regardless of interpretation, the
7 evidence to which we have been cited does not appear to be
8 responsive to the criterion. At most, that evidence provides
9 additional support for the factual assertions recited in the
10 finding. However, those facts alone do not respond to the
11 language of that criterion, and we cannot determine from them
12 that "the proposed street plan affords the most economic,
13 safe, efficient, and least environmentally damaging
14 circulation of traffic possible under the existing
15 circumstances."

16 The second assignment of error is sustained.

17 **FIRST, THIRD, FOURTH, FIFTH, SIXTH AND SEVENTH ASSIGNMENTS OF**
18 **ERROR**

19 In petitioner's remaining assignments of error, he
20 alleges numerous deficiencies in the city's process and in its
21 evaluation of the proposed PUD. However, none of those
22 assignments of error merit any discussion and none provide any
23 basis for remand or reversal of the city's decision. These
24 assignments of error are denied.

25 The city's decision is remanded.