

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

3
4 NANETTE SITSLER and TIM FERGUSON,)
5)
6 Petitioners,)
7) LUBA No. 91-065
8 vs.)
9) FINAL OPINION
10 CITY OF MILL CITY,)
11) AND ORDER
12 Respondent.)
13
14

15 Appeal from City of Mill City.

16
17 M. Chapin Milbank, Salem, filed the petition for review
18 and argued on behalf of petitioners.

19
20 James L. McGehee, Stayton, filed a response brief and
21 argued on behalf of respondent. With him on the brief was
22 Larimer, McGehee & Meiners.

23
24 KELLINGTON, Chief Referee; HOLSTUN, Referee,
25 participated in the decision.

26
27 AFFIRMED 10/01/91

28
29 You are entitled to judicial review of this Order.
30 Judicial review is governed by the provisions of ORS
31 197.850.

1 Opinion by Kellington.

2 **NATURE OF THE DECISION**

3 Petitioner appeals an order of the City of Mill City
4 Council approving a conditional use permit for a municipal
5 sewerage treatment facility.

6 **FACTS**

7 The subject property is a 12 acre parcel zoned Multiple
8 Family Residential (R-2). The subject property is bounded
9 by a public park on the west, residential development to the
10 south and southwest, vacant land to the east and the Santiam
11 River to the north.

12 The challenged decision explains the nature of the
13 proposal as follows:

14 "The [proposal] involves the construction of a
15 municipal treatment facility including a
16 recirculating gravel filter, recirculation tank, a
17 control building and a subsurface disposal
18 (drainfield) system. The complex would be
19 surrounded with a six foot cyclone fence. Through
20 the proposed system, the solids would remain on
21 site in interceptor tanks and would be removed
22 periodically and treated elsewhere. The liquid
23 which is brought to the plant would be treated
24 through a recirculating gravel filter and disposed
25 of underground. The city has received a Water
26 Pollution Control Facilities * * * permit from the
27 Department of Environmental Quality [DEQ]. * * *

28 "The facility will be built low to the ground.
29 Other than for the control building all structures
30 will be no more than three feet above the ground.
31 The facility will be constructed such that the
32 effluent will be ejected into the sand filter
33 through pipes * * *. Thus the effluent will not
34 come into contact with the surface. Noise and
35 odor are not to be discernible beyond the

1 perimeter of the site. The drainfield area will
2 be completely covered with grass." Record 4.

3 The city applied for the conditional use permit for the
4 municipal sewerage facility on March 19, 1991. The planning
5 commission considered the application and, on April 9, 1991,
6 approved it. Petitioners appealed the planning commission's
7 decision to the city council. The city council conducted a
8 public hearing and, on May 2, 1991, affirmed the decision of
9 the planning commission. This appeal followed.

10 **FIRST ASSIGNMENT OF ERROR**

11 "Respondent failed to adequately answer the
12 concerns of the petitioners with regard to the
13 effect of the 12 acre development on the
14 residential urban development within two blocks of
15 the site * * *."

16 The relevant approval standard for the proposed use is
17 set forth in the Mill City Zoning Ordinance (MCZO) 7.020 as
18 follows:

19 "The decision to approve or deny the conditional
20 use shall be based on the following criteria:

21 (a) The location, size, design, and operation are
22 compatible with and will not adversely affect
23 the livability or appropriate development of
24 abutting properties in the surrounding
25 neighborhood. * * *

26 "* * * * *"

27 In this assignment of error, petitioners argue only
28 that the city failed to address relevant issues they raised
29 during the local hearings concerning odor, percolation
30 difficulties, high groundwater and standing surface water on

1 the subject property.

2 We agree with petitioners that whether the facility
3 will produce odors is a relevant consideration to
4 determining compliance with MCZO 7.020. Accordingly, the
5 city was obliged to address that issue in its findings.
6 Norvell v. Portland Area LGBC, 43 Or App 849, 853, 604 P2d
7 896 (1979).

8 The city did adopt findings addressing whether the
9 proposed facility would emit odors. The city's findings
10 explain the sewage at the facility will be contained within
11 pipes and that "effluent will not come into contact with the
12 surface." Record 4. The challenged decision concludes
13 "noise and odor are not to be discernable beyond the
14 perimeter of the site." Id. Petitioners do not challenge
15 the evidentiary support for these findings. Accordingly,
16 this portion of the first assignment of error provides no
17 basis for reversal or remand of the challenged decision.

18 With regard to percolation difficulties, groundwater
19 and standing surface water, petitioner does not explain how
20 these are relevant to the applicable approval standards.
21 Petitioners simply state:

22 "* * * the existing high ground water and standing
23 surface water problems and the percolation
24 difficulties addressed by petitioners are not
25 addressed in the Findings of Fact. * * *"
26 Petition for Review 3.

27 In the absence of some argument connecting the approval
28 standards of MCZO 7.02 to the conclusions in the petition

1 for review concerning percolation difficulties, high ground
2 water and standing surface water on the subject property,
3 these statements provide no basis for reversal or remand of
4 the challenged decision.

5 The first assignment of error is denied.

6 **SECOND ASSIGNMENT OF ERROR**

7 "Respondent failed to meet the DEQ requirement
8 that a sludge management plan be submitted to that
9 agency within 90 days of August 29, 1990 * * *."

10 Petitioner argues the city has not submitted to DEQ a
11 sludge management plan and that this is error. However,
12 petitioner cites no approval standard requiring the
13 submission of a sludge management plan to DEQ, and does not
14 explain how a sludge management plan is relevant to
15 compliance with MCZO 7.02. Accordingly, this assignment of
16 error provides no basis for reversal or remand of the
17 challenged decision.

18 The second assignment of error is denied.

19 The city's decision is affirmed.