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

MARGARET A. ELLIS REVOCABLE)
LIVING TRUST by CLIFF ELLIS,)
Co-Trustee,)
)
Petitioner,)
)
vs.)
)
CITY OF BEND,)
)
Respondent.)

LUBA No. 94-141

FINAL OPINION
AND ORDER

Appeal from City of Bend.

Robert S. Lovlien, Bend, filed the petition for review and argued on behalf of petitioner. With him on the brief was Holmes Hurley Bryant Lovlien & Lynch.

Ronald L. Marceau, City Attorney, Bend, filed the response brief and argued on behalf of respondent.

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

REMANDED 11/30/94

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

1 Opinion by Kellington.

2 **NATURE OF THE DECISION**

3 Petitioner appeals a decision of the city commission
4 denying its application for a zone change.¹

5 **FACTS**

6 Petitioner applied for a zone change for two city lots,
7 from Urban Standard Density Residential (RS) to Urban Medium
8 Density Residential (RM). The subject property is
9 designated Urban High Density Residential (RH) on the city
10 comprehensive plan. The applicant proposes to construct a
11 tri-plex and a two-car garage for each of the tri-plex
12 units.

13 The subject property is currently vacant and is located
14 at the end of a dead-end street. A medical office and
15 clinic is located to the east and northeast of the subject
16 property. To the south of the subject property, across an
17 alley, is a city park. Lots developed with single family
18 dwellings abut the subject property to the north and west.

19 The hearings officer recommended approval of the
20 application. Neighbors appealed the hearings officer's
21 decision to the city commission. The city commission denied
22 petitioner's application, and this appeal followed.

23 **ASSIGNMENT OF ERROR**

24 "The City of Bend Commission's 'Finding and

¹The city commission is the city's governing body.

1 Decision' does not adequately identify the
2 relevant approval standards and set out the facts
3 which [it] believed and relied upon and explain
4 how those facts led to the decision with respect
5 to the approval standards."

6 We agree with petitioner that the challenged decision
7 is inadequate in several respects. First, the composition
8 of the challenged decision is not discernible. The one-page
9 decision of the city commission states:

10 "The City Commission finds that substantial
11 changes will be produced in this neighborhood if
12 the zone change is allowed. * * * The City
13 Commission adopts all of the findings contained in
14 the hearings' officer's March 25, 1994 FINDINGS
15 AND RECOMMENDATION consistent with this finding by
16 the City Commission, and rejects those findings
17 inconsistent with this [sic] findings.

18 " * * * * *

19 "Based upon these findings and conclusions, the
20 Bend City Commission rejects the recommendation of
21 the hearings officer that the City of Bend adopt a
22 resolution of intent to rezone the applicant's
23 property from RS to RM. * * *" Record 5.

24 The hearings officer's decision is composed of sixteen pages
25 of detailed findings approving the subject application. We
26 cannot tell, from the findings quoted above, which portions
27 of the hearings officer's decision are incorporated in the
28 challenged decision. If a local government decision maker
29 incorporates all or portions of a separate document by
30 reference into its findings, it must clearly (1) indicate
31 its intent to do so, and (2) identify the document or
32 portions of the document so incorporated. Gonzalez v. Lane
33 County, 24 Or LUBA 251 (1992). The city did not do so here.

1 Second, the challenged decision simply concludes the
2 proposal may not be allowed, as follows:

3 "[S]ubstantial changes will be produced in this
4 neighborhood if this zone change is allowed.
5 These changes include increased traffic generated
6 by the applicant's project, and changes from the
7 single family dwelling character of the
8 neighborhood to the higher density use
9 contemplated by the applicant's project. These
10 changes would be inconsistent [with] an orderly
11 transition from the existing uses in the
12 neighborhood and would not respect the integrity
13 of the neighborhood. * * *" Id.

14 The challenged decision does not identify the standards
15 applicable to the proposal, the facts relied upon or relate
16 the facts relied upon to the applicable legal standards, as
17 required by ORS 227.173(2). Recently, the court of appeals
18 underscored that the function of ORS 227.173 is to require a
19 challenged decision to identify the standards and criteria
20 applicable to an application for development approval. BCT
21 Partnership v. City of Portland, 130 Or App 271, 277, _____
22 P2d _____ (1994). Further, the challenged decision is
23 defective because it does not inform the applicant of the
24 steps it must take to gain approval of its application or
25 alternatively, of the standards the application does not
26 meet. See Commonwealth Properties, Inc., v. Washington
27 County, 35 Or App 387, 582 P2d 1384 (1978). This is
28 particularly important here, where the subject property is
29 designated High Density Residential in the plan, is
30 currently in the city's lowest density residential zoning
31 district, and the proposal is to change the zoning to a

1 medium density residential zoning district.

2 Petitioner's assignment of error is sustained.

3 The city's decision is remanded.