

1.3.1 Administrative Law – Findings Generally – What Constitutes. Recitals that the planning commission accepted the applicant’s responses to each criterion as findings of fact and, with the findings in the staff report, recommended approval of the application to the governing body, which in turn approved the planning commission’s recommendation, are insufficient to incorporate either the findings in the staff report or the findings prepared by the applicant into the governing body’s final decision. *Jacobus v. Klamath County*, 81 Or LUBA 785 (2020).

1.3.1 Administrative Law – Findings Generally – What Constitutes. References to a staff report during oral deliberations and a city councilor’s motion “to accept staff’s recommendation” are insufficient to incorporate the staff report into the final decision where the city council does not orally approve or adopt the staff report and where the final decision does not mention the staff report, and the city may therefore not rely on the staff report in order to satisfy the requirement that its decision contain adequate findings. *Niederer v. City of Albany*, 79 Or LUBA 305 (2019).

1.3.1 Administrative Law – Findings Generally – What Constitutes. A city council decision that states “[t]he findings of fact in this matter are located in the staff report, incorporated herein as Exhibit A” is sufficient to satisfy the *Gonzalez v. Lane County*, 24 Or LUBA 251, 259 (1992), requirement to indicate an intent to incorporate another document as findings. *Pinnacle Alliance Group, LLC v. City of Sisters*, 73 Or LUBA 169 (2016).

1.3.1 Administrative Law – Findings Generally – What Constitutes. Where a city council decision adopts “a staff report, incorporated herein as Exhibit A,” as findings, but there is no staff report labeled Exhibit A and there are two staff reports the city council could have been referring to, the decision is not sufficient to satisfy the *Gonzalez v. Lane County*, 24 Or LUBA 251, 259 (1992), requirement to identify the document that is incorporated as findings. *Pinnacle Alliance Group, LLC v. City of Sisters*, 73 Or LUBA 169 (2016).

1.3.1 Administrative Law – Findings Generally – What Constitutes. A finding that the decision maker “reviewed” a number of documents is not sufficient to adopt or incorporate those documents as findings to support a decision. *Burgermeister v. Tillamook County*, 73 Or LUBA 291 (2016).

1.3.1 Administrative Law – Findings Generally – What Constitutes. Where additional explanations and legal theories in a decision for why an approval criterion is met are not alternative sets of independently dispositive findings, a petitioner’s failure to challenge those additional explanations and legal theories does not require that LUBA deny an assignment of error that challenges the findings that an approval criterion is met. *Siegert v. Crook County*, 63 Or LUBA 379 (2011).

1.3.1 Administrative Law – Findings Generally – What Constitutes. LUBA will assume that a city council adopted a staff report as findings in its entirety, notwithstanding language purporting to incorporate only findings “that support approving the application,” where all the findings in the staff report support approving the application. *Soares v. City of Corvallis*, 56 Or LUBA 551 (2008).

1.3.1 Administrative Law – Findings Generally – What Constitutes. A purported incorporation of “those portions” of the minutes of hearings that support approval of the application is ineffective, as it fails to adequately identify what testimony or portions of the minutes the

governing body intends to incorporate as findings. *Soares v. City of Corvallis*, 56 Or LUBA 551 (2008).

1.3.1 Administrative Law – Findings Generally – What Constitutes. Where it is possible to read a city council’s findings as incorporating only the conditions of approval proposed in an attached staff report but it is also possible to read the city council’s findings as incorporating the entire staff report as part of the city council’s decision, but it is clear the city intended the latter, LUBA will reject petitioner’s contention that the more limited reading of the city council’s decision is required. *Frewing v. City of Tigard*, 50 Or LUBA 226 (2005).

1.3.1 Administrative Law – Findings Generally – What Constitutes. A local government’s failure to adequately identify documents it intends to incorporate by reference as findings, and its adoption of testimony as findings, are not by themselves a basis for reversal or remand. Instead, the attempted incorporation fails and the city may not rely on such documents or testimony to provide “findings” in support of the decision. If the city has adopted other findings that adequately support the decision, the failed incorporation and improper attempt to adopt testimony as findings are harmless error. *Staus v. City of Corvallis*, 48 Or LUBA 254 (2004).

1.3.1 Administrative Law – Findings Generally – What Constitutes. An attempt to incorporate documents in the record as findings of compliance with the Transportation Planning Rule fails, where the decision purports to incorporate hundreds of pages of minutes and written testimony without adequately identifying those documents, and the incorporation is qualified in a manner that makes it difficult or impossible to understand the facts relied upon and the justification for the decision. *Staus v. City of Corvallis*, 48 Or LUBA 254 (2004).

1.3.1 Administrative Law – Findings Generally – What Constitutes. A decision maker may rely on environmental assessments and technical reports prepared and used by the decision maker in making its decision to demonstrate compliance with findings requirements, notwithstanding that the documents were not formally adopted as findings, where a reasonable person would understand that the decision maker intended to rely on the documents to support its decision. *Witham Parts and Equipment Co. v. ODOT*, 42 Or LUBA 435 (2002).

1.3.1 Administrative Law – Findings Generally – What Constitutes. Where petitioner challenges the adequacy of a local government’s findings, and the challenged decision neither contains findings nor incorporates other documents into the decision as findings, LUBA will remand the decision for adoption or incorporation of necessary findings. *Allen v. Grant County*, 39 Or LUBA 232 (2000).

1.3.1 Administrative Law – Findings Generally – What Constitutes. Oral discussion by the local decision makers reflected in the tape of the hearing does not constitute findings demonstrating compliance with applicable land use standards. *Allen v. Grant County*, 39 Or LUBA 232 (2000).

1.3.1 Administrative Law – Findings Generally – What Constitutes. Oral comments by individual city council members are not findings and cannot constitute a reviewable interpretation of local code provisions. *Breen v. City of Salem*, 37 Or LUBA 961 (2000).

1.3.1 Administrative Law – Findings Generally – What Constitutes. A statement adopted by a planning commission but not incorporated into the city council’s final decision does not constitute a reviewable finding. *Hood River Valley Res. Comm. v. City of Hood River*, 33 Or LUBA 233 (1997).

1.3.1 Administrative Law – Findings Generally – What Constitutes. Where findings adopted by the initial local decision maker interpreted a local ordinance provision, but those findings were *replaced* by findings adopted by the local governing body which do not include an interpretation of the ordinance provision, LUBA must remand the decision to the local government to interpret the provision in the first instance. *Friends of Bryant Woods Park v. Lake Oswego*, 26 Or LUBA 185 (1993).

1.3.1 Administrative Law – Findings Generally – What Constitutes. The findings supporting a challenged decision may consist of several different documents, so long as the local government adequately identifies and specifically adopts those documents as findings. *Neuharth v. City of Salem*, 25 Or LUBA 267 (1993).