

BEFORE THE LAND USE BOARD OF APPEALS MAY 12 4 15 PM '80

OF THE STATE OF OREGON

B & L HOLDINGS, a co-partnership)
consisting of Chris C. Lindseth,)
Elizabeth Jean Lindseth, Ray C.)
Bruce, and Katherine J. Bruce,)

Petitioner,)

vs.)

THE CITY OF CORVALLIS,)
a municipal corporation,)

Respondent.)

LUBA NO. 80-004

FINAL OPINION AND ORDER

Appeal from City of Corvallis.

H. Thomas Evans, Eugene, argued the cause and filed a petition for review on behalf of Petitioner B & L Holdings.

Richard Rodeman, Corvallis, argued the cause and filed a brief on behalf of Respondent City of Corvallis.

Reynolds, Chief Referee; Cox, Referee; Bagg, Referee; participated in the decision.

Affirmed in part,
Reversed in part,
and Remanded.

5/12/80

You are entitled to judicial review of this Order. Judicial review is governed by the provisions of Oregon Laws 1979, ch 772, ch 6(a).

1 REYNOLDS, Chief Referee

2 NATURE OF DECISION

3 Petitioners appeal the city's denial of their application
4 for a building permit and their request for a comprehensive
5 plan amendment. The city denied the building permit because it
6 would have allowed construction of residences permitted under
7 present zoning but inconsistent with the comprehensive plan.
8 The comprehensive plan amendment requesting a change from
9 industrial designation to residential was denied because the
10 city did not believe petitioners had met their burden of proof.

11 Petitioners contend that the city erred in denying the
12 building permit because the city failed to consider the
13 suitability of the property for residential development and
14 also failed to determine whether the comprehensive plan should
15 now be implemented. Petitioners further contend the city erred
16 in denying the comprehensive plan amendment because petitioners
17 rebutted all claims that the property was not suitable for
18 residential development, and no evidence supported the city's
19 determination that the property was not suitable for
20 residential use.

21 STATEMENT OF FACTS

22 Petitioners applied to the city for a building permit to
23 allow residential development on approximately five acres owned
24 by petitioners. The R-3 zoning on the property would have
25 permitted the development, but the city planning department
26 denied the building permit because the comprehensive plan

1 adopted in December of 1978 designated the property for
2 industrial use, and a provision in the comprehensive plan stated
3 that "lands designated for industrial use shall be preserved for
4 that use and protected from incompatible uses." Petitioners
5 appealed the order of denial to the city planning commission.

6 In July of 1979, petitioners applied to the city for a
7 comprehensive plan amendment to allow medium density residential
8 uses on their property. The planning commission considered both
9 the request for a plan amendment and the appeal of the denial of
10 the building permit at its meeting on September 12, 1979. The
11 commission upheld the denial of the building permit and
12 recommended denial of the request for a plan amendment to the
13 city council.

14 The minutes reflect that the denial of the building permit
15 was based solely upon the conflict with the comprehensive plan.
16 The minutes further reflect that the motion to recommend against
17 the comprehensive plan amendment was made "on the basis of the
18 staff report, discussion and facts available." Record 63. No
19 findings of fact were made by the planning commission with
20 respect to the plan amendment, although numerous persons
21 including petitioners testified as to the suitability of the
22 property for residential development. The staff report had
23 recommended denial because of the comprehensive plan's policy
24 statement concerning the shortage of available, appropriate land
25 for industrial development and the need to provide land for
26 industrial purposes, because of the unsuitability of the

1 property for residential development due to its proximity to the
2 Southern Pacific railroad tracks, Highway 99W and the Mill Race
3 (a stream bordering on the southern end of the property), which
4 is subject to flooding, and because the areas surrounding the
5 property were designated in the comprehensive plan for light
6 industrial purposes.

7 The petitioners appealed the denial of the building permit
8 to the city council. The city council considered both the
9 planning commission's denial of the building permit and its
10 recommended denial of the comprehensive plan at a meeting
11 attended by petitioners and city staff. The minutes reflect
12 that these persons testified briefly concerning matters already
13 in the record of the planning commission's hearing. The city
14 council by ordinance denied the comprehensive plan amendment,
15 adopting as its findings of fact the planning department report
16 dated November 26, 1979. This report, consisting of some 41
17 pages, contained a summary of staff's review of the request for
18 a comprehensive plan amendment and the application for a
19 building permit, previous staff reports submitted to the
20 planning commission concerning these matters, and excerpts of
21 minutes of previous planning commission meetings. The city
22 council denied the issuance of the building permit on the basis
23 of the planning commission's interpretation that the
24 comprehensive plan precluded residential development of lands
25 designated for industrial use.

26 / /

1 OPINION ON THE MERITS

2 Petitioners' first assignment of error is that the city
3 erred in denying the building permit solely on the basis that it
4 conflicted with the comprehensive plan. Petitioners' argument
5 is that the comprehensive plan establishes only the maximum
6 intensity of uses of property, not the minimum usage allowable,
7 citing Marracci v. City of Scappose, 26 Or App 131, 552 P2d 552
8 (1976). Petitioners further contend that in order for a city to
9 deny a less intensive use than specified in the comprehensive
10 plan, the city must also decide that it is time to implement the
11 comprehensive plan. This decision, according to petitioners,
12 was not made in this case.

13 The situation which existed in Marracci and the holding of
14 the Court of Appeals, is summarized in the following:

15 "The applicable comprehensive plan contains no
16 timetable or other guidance on the question of when
17 more restrictive zoning ordinances will evolve toward
18 conformity with more permissive provisions of the
19 plan. In such a situation, we hold the determination
20 of when to conform more restrictive zoning ordinances
21 with the plan is a legislative judgment to be made by
22 a local governing body. . . " 26 Or App at 134.

23 Assuming, for the sake of argument, that the residential
24 zoning of the property in the case before us was less intensive
25 or more restrictive than the comprehensive plan's industrial
26 designation, the situation presented in this case is not akin
to that which existed in Marracci. In the present case, the
comprehensive plan itself made its provisions designating land
for industrial use effective at the time the plan was adopted.

1 Section 45.1 states that

2 "[L]ands designated for industrial use shall be
3 preserved for that use and protected from incompatible
4 uses."

5 We agree with the city that it would be inconsistent with this
6 policy to allow residential development of land designated in
7 the comprehensive plan for industrial purposes.

8 In their second assignment of error, petitioners contend
9 that the city council's denial of the requested comprehensive
10 plan amendment is not supported by substantial evidence in the
11 record. We do not reach this issue, however, for the reasons
12 advanced by the Court of Appeals in Hill v. Union County
13 Court, ___ Or App ___, ___ P2d ___ (1979). In that case, the
14 Court of Appeals refused to review for substantial evidence the
15 county court's denial of approval of a subdivision plan for the
16 reason that the findings of fact adopted by the county court
17 were themselves inadequate:

18 "****None of the eight 'findings of fact' relied upon
19 by defendants³ are actually findings of fact. They
20 include recitations of evidence like those which we
21 held, in Graham v. Oregon Liquor Control Commission,
22 20 Or App 97, 530 P2d 858 1975), to be inadequate as
23 findings of fact; conclusions as to the law and as to
24 ultimate facts for which the underlying facts are
25 neither given nor apparent from the record; and a
26 reference to 'the principles set forth' in a decision
27 of this court, clearly not a finding of fact.

28 "The role of adequate findings of fact is vital.
29 As stated in South of Sunnyside Neighborhood League v.
30 Board of Commissioners of Clackamas County, 280 Or 1,
31 21, 569 P2d 1063 (1977)):

32 'No particular form is required, and no
33 magic words need be employed. What is
34 needed for adequate judicial review is a

1 clear statement of what, specifically, the
2 decision-making body believes, after hearing and
3 considering all the evidence, to be the relevant
and important facts upon which its decision is
based. Conclusions are not sufficient.'

4 See also Roseta v. County of Washington, 254 Or 161,
5 170, 458 P2d 405 (1969); Fasano V. Washington County
6 Commissioners, 264 Or 574, 507 P2d 23 (1973); Green v.
7 Hayward 275 Or 693, 552 P2d 815 (1976). Applying
this standard to the present case, the findings of the
County Court are insufficient." (footnote omitted).

8 In the present case the city council adopted as its
9 "findings of fact" a 41 page report of the planning
10 department. This report, as previously noted, contains staff
11 reports concluding that the comprehensive plan amendment should
12 be denied, excerpts of minutes from planning commission
13 hearings at which considerable testimony and evidence was
14 received supporting the amendment, and a staff summary
15 consisting of three pages outlining the background of the
16 proceedings and offering a "summary of staff review". No where
17 does the city council set forth a clear, concise statement of
18 what it believed, after a review of all the evidence, to be the
19 relevant and important facts. What it did instead was to adopt
20 as its "findings" essentially the entire record of the
21 proceedings before it.

22 The findings of fact of the city council are equally
23 deficient in that they fail to set forth the relevant standards
24 which were to guide its decision. The board may infer from
25 much of the discussion in the 41 page "findings" of the city
26 council that one standard was that the proposed change to

1 residential use must be consistent with the comprehensive
2 plan's policies and goals. See also Sunnyside Neighborhood
3 League v. Clackamas Co. Comm., 280 Or 3, 569 P2d 1063 (1977).

4 Much discussion in the staff reports and testimony concerned
5 whether the property would serve the goals and policies of the
6 comprehensive plan relative to residential needs of the
7 community.

8 The board may also infer that another standard was whether
9 the property was suitable for residential development, as much
10 of the discussion in the "findings" centered upon the effect of
11 the property's proximity to railroad tracks and a stream which
12 was allegedly subject to flooding.

13 Regardless of what the board may reasonably infer from the
14 discussion in the record, the city council cannot leave the
15 actual standards, if any, which it used in making its decisions
16 to speculation or conjecture. Without a clear statement of the
17 standards which are to guide its decision-making, meaningful
18 judicial review of its decision is not possible. Without
19 stated standards, or some reference in the decision as to where
20 the relevant standards may be found, the board cannot know
21 whether facts which are found are "relevant and important":

22 "Findings are important only insofar as they
23 relate to the objectives and policies to which the
24 planning government is committed by its plan or by
25 state law, goals or guidelines. Consequently findings
26 must make clear what these objectives or policies are
as applied in the concrete situation. Thereafter,
findings must describe how or why the proposed action
will in fact serve these objectives or policies.***"
Sunnyside Neighborhood v. Clackamas Co. Comm., supra,
280 Or at 22-23.

1 Without an adequate statement of the important and relevant
2 facts and without a statement of or reference to the standards
3 which the city used to guide its decision making, the board
4 cannot review for substantial evidence the city council's
5 ordinance denying the comprehensive plan amendment. This case
6 must, therefore, be remanded to the city for the entry of
7 proper findings.

8 The decision of the city to deny the building permit is
9 affirmed. The decision to deny the comprehensive plan
10 amendment is reversed and remanded to the city for further
11 proceedings not inconsistent with this opinion.

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26