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

JOHN L. DICKSON and JEAN V.)
DICKSON, and the NORWOOD)
COMMUNITY PLANNING)
ORGANIZATION, an unincor-)
porated association,)
Petitioners,)
v.)
WASHINGTON COUNTY, OREGON,)
Respondent.)

LUBA NO. 81-021
FINAL OPINION
AND ORDER

Appeal from Washington County.

Jeffrey P. Foote, Portland, filed the petition for review and argued the cause for petitioners. With him on the brief was John J. Haugh, Portland.

Demar Batchelor, Hillsboro, filed a brief and argued the cause for Intervenor City of Tualatin. With him on the brief was Alan S. Bachman, Assistant County Counsel, Washington County, and Schwenn, Bradley, Batchelor and Brisbee, Hillsboro.

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

REMANDED

6/22/81

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

1 COX, Referee.

2 NATURE OF THE PROCEEDING

3 This is an appeal of a conditional use permit granted by
4 Washington County Board of Commissioners to the City of
5 Tualatin. The permit allows the City of Tualatin to construct
6 a water reservoir.

7 ALLEGATIONS OF ERROR

8 Petitioners assert one assignment of error which is as
9 follows:

10 "The Findings adopted by the Washington County
11 Board of Commissioners are inadequate in that they
12 fail to describe the factual criteria for providing
13 exceptions to LCDC Goal #3 and #4. The findings do
14 not clearly describe the nature and extent of the
15 project allowed, and they were not prepared by the
16 Commission."1

14 FACTS

15 On July 31, 1980, public notice was posted indicating that
16 an application had been filed for a conditional use permit to
17 allow "a water reservoir" and that the hearings authority would

18 "* * * determine whether the subject property
19 qualifies for exception from the requirements of LCDC
20 Goal No. 3 concerning agricultural lands and/or Goal
21 No. 4 concerning forest lands."

21 The notices were mailed to adjacent landowners on August 25,
22 1980. A hearing was held before a hearings officer on
23 September 4, 1980. On September 18, 1980, the hearings officer
24 issued his findings, conclusions and order. He adopted by
25 reference material designated as "findings" in a September 4,
26 1980 Washington County Planning Department staff report as the

1 basis for his order. His order granted the conditional use
2 permit subject to the conditions found in the September 4, 1980
3 staff report.

4 Petitioners herein appealed that decision to the Board of
5 County Commissioners. The notice of public hearing, like the
6 one of July 31, 1980, indicated that a conditional use was
7 being requested for "a water reservoir." Also like the July
8 31, 1980 notice, the issue was described as being to

9 "determine whether the subject property qualifies for
10 exception from the requirements of LCDC Goal No. 3
11 concerning agricultural lands and/or Goal No. 4
concerning forest lands."

12 On January 6, 1981 the Board of County Commissioners voted
13 to approve the conditional use permit subject to staff
14 recommendations and conditions and added a seventh condition.
15 On January 20, 1981, the commission denied petitioners' request
16 for rehearing. The following day, January 21, 1981, the Board
17 of Commissioners issued its "fill in the blanks style" form
18 resolution and order granting the conditional use permit. The
19 form order indicated the conditional use permit was granted for
20 a single water reservoir based on the findings and
21 recommendations of the planning department's staff as described
22 in Exhibit B to the order. Exhibit B is the above mentioned
23 September 4, 1980 staff report. No direct mention is made in
24 the commission's January 21, 1981 form order about the Goal 3
25 and 4 exceptions. The form order appears to have been designed
26 for use with conditional use permit applications because of its

1 pro forma reference to Washington County's Community
2 Development Ordinance, Article II, Chapter 1900. Article II,
3 Chapter 1900 is entitled "Conditional Uses."

4 The only finding relating to the taking of an exception to
5 the statewide goals is found in the staff report which states,
6 under the section entitled "Findings":

7 III M. The applicant has submitted a statement
8 which addresses LCDC Goal #3 concerning
9 agricultural lands. The proposal appears to
be appropriate for an exception to LCDC Goal
#3."

10 In addition, rather than referring to a single water
11 reservoir as does the county's form order, the staff report
12 states under Item III A. of its "findings:"

13 "The applicant is requesting conditional use approval
14 in order to construct two .8 million gallon steel
15 reservoirs constructed at ground level, fifty feet in
16 diameter and 50 feet high. The first reservoir will
be built immediately. The second is anticipated in
1985." Emphasis added.

17 The property is located at the southern terminus of SW 82nd
18 Avenue, approximately 670 feet south of Frobase Road, being Tax
19 Lot 300 on Tax Map T3S, R1W, Section 1, in the Wilsonville
20 area. The property is presently zoned RS-1 (Suburban
21 Residential 40,000 square foot minimum lot size).

22 DECISION

23 Petitioners attack respondent's findings in part on the
24 general grounds they are inadequate because it is unclear
25 whether the commission decided that one or two reservoirs can
26 be built in the area. In addition, petitioners attack the

1 findings on the grounds that they do not reveal what, if
2 anything, the county found to be the facts and do not fully
3 explain why those facts lead to the decision it made, whatever
4 that decision might be. We agree with the petitioners and
5 remand this case to Washington County.

6 The controlling law in the area of findings is set forth
7 in, among other cases, those of Sunnyside Neighborhood v.
8 Clackamas Co. Comm., 280 Or 3, 569 P2d 1063 (1977) and Home
9 Plate v. OLCC, 20 Or App 188, 530 P2d 862 (1975). The court in
10 Sunnyside Neighborhood, supra, held that while there is no
11 particular form required, certain substance must nevertheless
12 be evident before findings can be deemed adequate. The court
13 held:

14 "What is needed for adequate judicial review is a
15 clear statement of what, specifically, the decision-
16 making body believes, after hearing and considering
17 all the evidence, to be the relevant and important
18 facts upon which its decision is based. Conclusions
19 are not sufficient." 280 Or 3 at 21.

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21 "Findings are important insofar as they relate to
22 the objectives and policies to which the planning
23 government is committed by its plan or by state law,
24 goals or guidelines. Consequently, findings must make
25 clear what these objectives or policies are as applied
26 in the concrete situation. Thereafter, findings must
27 describe how or why the proposed action will in fact
28 serve these objectives or policies." 280 Or 3 at 22.

29 In Home Plate the Court of Appeals stated:

30 "If there is to be any meaningful judicial scrutiny of
31 the activities of an administrative agency - not for
32 the purpose of substituting judicial judgment for
33 administrative judgment but for the purpose of
34 requiring the administrative agency to demonstrate
35 that it has applied a criteria prescribed by statute

1 and by its own regulations and has not acted
2 arbitrarily or on an ad hoc basis - we must require
3 that its order clearly and precisely state what it
4 found to be the facts and fully explain why those
5 facts lead it to the decision it makes. Brevity is
6 not always a virtue. * * *" 20 Or App 189 at 190.

7 It is not clear from the county's order whether it is
8 approving one or two reservoirs. The confusion undoubtedly has
9 arisen by the hasty use of a form order. We may be able to
10 assume that the approval is for two reservoirs since the record
11 indicates that the City of Tualatin asked for two when it
12 applied for the conditional use permit. We cannot be entirely
13 sure, however, whether the commission, in fact, decided only to
14 allow one water reservoir at this time. To hold that two
15 reservoirs were what the county wished to approve would require
16 that we rewrite the order. In so doing we could be accused of
17 substituting our judgment for that of a local government.

18 As regards the statewide goals, the notices of public
19 hearing generally describe the criteria to be applied, i.e.
20 whether the property qualified for exceptions to goals 3 and
21 4. Those criteria, however, are not addressed in the findings
22 of the staff and hence, the Board of Commissioners. Not only
23 are the criteria not developed but the factual basis for
24 exceptions to goals 3 and 4 are absent. The only reference to
25 goal 3 is that set forth supra. There is no mention whatsoever
26 of goal 4. Nowhere does the county precisely state what it
found to be the facts and fully explain why those facts led it
to its final decision. The county, by adopting Staff Finding

1 III M. supra, seems to be merely recognizing the applicant
2 submitted a statement regarding Goal 3.

3 In 1000 Friends of Oregon v. Benton County, 32 Or App 413,
4 575 P2d 651 (1978), the court looked at the findings and
5 indicated that it was unable to determine whether goal 3 even
6 applied in the situation. See generally: Twin Rocks v.
7 Rockaway, 2 Or LUBA 36 (1980); Lee v. City of Portland, ____ Or
8 LUBA ____ (LUBA NO. 80-142, 1981). In this case we don't know
9 for sure whether goals 3 and 4 apply because the only finding
10 regarding soil class is located in the September 4, 1980 staff
11 report. Finding III D. states that "soil and census material
12 is included in the case file." We don't know what the County
13 believes to be the soil class of this property because it
14 didn't determined the soil class. It merely recognized that
15 there is a case file containing relevant material.

16 We need go no further. The county's findings are
17 inadequate and we remand the decision for further action
18 consistent with this opinion.

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FOOTNOTES

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Petitioners were asked by this Board whether their allegation of error was such that they meant for this issue to be sent to LCDC for review as per Oregon Laws 1979, ch 772, sec 6. Petitioners said they were not intending that this be an allegation of goal violation but rather that the findings were insufficient as a matter of law.