

SEP. 3 7 55 AM '81

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

1
2
3 ADVANCE HEALTH SYSTEMS,)
INC.,)
4 Petitioner,)
5 v.))
6 WASHINGTON COUNTY, RICHARD)
7 JOHNSON, ROD MOORE, WAYNE)
8 HILLIARD, and THOMAS TATUM,)
 Responents.)

LUBA NO. 81-048

FINAL OPINION
AND ORDER

9 Appeal from Washington County.

10 Jess M. Glaeser, Portland, filed the Petition for Review
11 and argued the cause on behalf of Petitioner. With him on the
12 brief were Gilbertson, Brownstein, Sweeney, Kerr & Grim.

13 John M. Junkin, Hillsboro, filed the brief and argued the
14 cause on behalf of Respondent Washington County.

15 Michael J. Lilly, Portland, filed the brief and argued the
16 cause on behalf of Respondent-Participants Johnson, Hilliard,
17 Moore and Tatum. With him on the brief were Spears, Lubersky,
18 Campbell and Bledsoe.

19 REYNOLDS, Chief Referee; COX, Referee; BAGG, Referee;
20 participated in the decision.

21 REMANDED

22 9/03/81

23 You are entitled to judicial review of this Order.
24 Judicial review is governed by the provisions of Oregon Laws
25 1979, ch 772, sec 6(a).
26

1 REYNOLDS, Chief Referee.

2 INTRODUCTION

3 Petitioner Advance Health Systems, Inc., appeals Washington
4 County's denial of petitioner's request for a conditional use
5 permit. The permit, if granted, would have enabled petitioner
6 to expand the Raleigh Hills Treatment Center to add office
7 space for administrative personnel and staff. The permit would
8 also authorize additional off-street parking.

9 The permit was initially heard by the Washington County
10 Planning Commission which granted the permit. Residents in
11 close proximity to the center appealed the planning
12 commission's decision to the Washington County Board of
13 Commissioners. The Board of Commissioners reversed the
14 decision of the planning commission and denied the permit.

15 The findings and conclusions adopted by the Board of
16 Commissioners, which the parties agree formed the basis for the
17 denial,¹ were as follows:

18 "FINDINGS"

19 "1. The proposals submitted by the applicant
20 constitute a request for expansion of the hospital
21 which is not a 'minor adjustment' as contemplated in
22 Washington County Zoning Ordinance sec [sic] 1907, and
which has a significant adverse impact on neighboring
property owners.

23 "2. A conditional use permit would be required
24 to expand the hospital in the manner proposed by the
applicant.

25 "3. The applicant failed to prove that the
26 expansion of the hospital was consistent with the
policy of preserving the dominantly urban low-density
residential development pattern in the area.

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2 "4. The applicant also failed to prove that any
3 public need for the services of the hospital would
4 best be met by expansion of the current facility at
5 this time and in its present location rather than
6 expanding the facility in other areas or relocating
7 the hospital."

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10 "CONCLUSIONS"

11 "Therefore the Board concludes:

12 "1. That the applicant failed to meet its burden
13 of proof to show that the proposed expansion of the
14 hospital is consistent with the Raleigh Hills/Garden
15 Home Community Plan Policy to preserve the dominantly
16 urban low-density residential development pattern of
17 the area.

18 "2. That the applicant failed to meet its burden
19 of proof by showing that the expansion of the hospital
20 meets a public need which can best be met by
21 conditional use at this time and in this place.

22 "Consequently, the applicant failed to meet its
23 burden of proof as set forth in Washington County
24 Zoning Ordinance sec [sic] 1902-1, and its application
25 must, therefore, be denied."

26 In addition to the above, Exhibit "B" referenced by the
27 resolution and order of the Board of Commissioners also
28 includes what appears to be an entry in the minutes of the
29 Board of Commissioners hearing on the conditional use permit.

30 This entry reads as follows:

31 "Because, in the applicant's testimony it was
32 pointed out the demands on the facility in 1974 were
33 obviously not the demands on it in 1981, it has simply
34 outgrown its original intent, they have not been a
35 good neighbor until recently, the property is RU-3, it
36 is a conditional use permit as ruled by County Counsel
37 and it is a business infringing on residential
38 property, Commissioner Fisher moved to support the
39 appellants on their case to deny the conditional use
40 permit for the applicant, based on the appellants'
41 findings (allegations) in their notice of review,
42 seconded by Commissioner Hays; carried 3-0 (Dagg and

1 Warren absent). The appellant was asked, within one
2 week, to submit to County Counsel additional findings
based on the comments of the Commissioners this date."

3 OPINION

4 Petitioner sets forth four assignments of error in its
5 Petition for Review. Only one of these assignments of error
6 remains relevant in view of respondents' position as to the
7 limited nature of the findings and conclusions adopted by
8 Washington County in support of its denial (see footnote 1).
9 That assignment of error is that Washington County's findings
10 pertaining to consistency of the conditional use permit with
11 the county's policy of preserving the predominantly urban low
12 density residential development pattern in the area and the
13 finding with respect to public need are not supported by
14 substantial evidence in the record.

15 In Hill v. Union County Court, 42 Or App 883, 601 P2d 905
16 (1979). The county appealed the Circuit Court's determination
17 on a writ of review that the county's findings in support of a
18 denial of a tentative subdivision plan approval were not
19 supported by substantial evidence in the record. The Court of
20 Appeals agreed with the result reached by the Circuit Court but
21 for a different reason. The Court of Appeals refused to
22 examine the question of whether there was substantial evidence
23 in the record to support the findings because it determined
24 that the "findings" were not actually findings of fact:

25 " * * * They include recitations of evidence like those
26 which we held, in Graham v. Oregon Liquor Control
Commission, 20 Or App 97, 530 P2d 858 (1975), to be

1 inadequate as findings of fact; conclusions as to the
2 law and as to ultimate facts for which the underlying
3 facts are neither given nor apparent from the record;
and a reference to 'the principles set forth' in a
decision of this court, clearly not a finding of fact.

4 "The role of adequate findings of fact is vital.
5 As stated in South of Sunnyside Neighborhood League v.
Board of Commissioners of Clackamas County, 280 Or 1,
6 21, 569 P2d 1063 (1977):

7 "'No particular form is required, and no
8 magic words need be employed. What is needed for
9 adequate judicial review is a clear statement of
10 what, specifically, the decision-making body
believes, after hearing and considering all the
evidence, to be the relevant and important facts
upon which its decision is based. Conclusions
are not sufficient.'" 42 Or App 883 at 887.

11 See also ORS 215.416(6).

12 In the present case, the county made the following two
13 findings which support its denial of the requested conditional
14 use permit:

15 "3. The applicant failed to prove that the expansion
16 of the hospital was consistent with the policy of
17 preserving the dominantly [sic] urban
low-density residential development pattern in
the area.

18 "4. The applicant also failed to prove that any
19 public need for the services of the hospital
20 would best be met by expansion at the current
21 facility at this time and in its present location
rather than expanding the facility in other areas
or relocating the hospital."

22 Based upon our review of the record in this case, we conclude
23 there was evidence offered by both proponents and opponents on
24 the questions of the permit's consistency with the low density
25 preservation policy and public need for the expansion. The
26 county's findings, however, do not say what evidence it

1 believed or why it believed the evidence it did. In the
2 absence of such a discussion in the findings, the findings are
3 impermissibly conclusory and inadequate to support the county's
4 denial.

5 Respondents argue that unless we can say from a review of
6 the record that the applicant in this case proved as a matter
7 of law that it was entitled to the requested change, Washington
8 County was entitled to simply say in its findings that the
9 applicant "failed to prove" a required element of his case and
10 that would be a sufficient "finding" to support denial.

11 Respondents cite Jurgenson v. County Court for Union County, 42
12 Or App 505, 600 P2d 1241 (1979), as support for their
13 proposition. Jurgenson, however, involved an issue dissimilar
14 from that involved in the present case. Jurgenson was
15 concerned with the level of substantial evidence needed to
16 support a denial. Jurgenson held that unless the reviewing
17 court can say that the proponent of change sustained his burden
18 of proof as a matter of law, there would be sufficient evidence
19 in the record to support a denial.

20 The level of evidence to support a denial is, however, a
21 different question from whether the findings made by the
22 governing body are adequate to support the decision made. We
23 do not reach the question of whether there exists substantial
24 evidence to support the findings made. As previously
25 mentioned, the findings are conclusory, failing to state what
26 the county found to be the facts and why those facts were

1 believed as opposed to other facts.

2 For the foregoing reasons, the decision of Washington
3 County denying the applicant's conditional use permit is
4 remanded for further proceedings not inconsistent with this
5 opinion.

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FOOTNOTE

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1 The resolution and order adopted by the Board of Commissioners referenced an Exhibit "B" attached to the resolution and order. Exhibit "B" contained two documents: "Notice of Review" which was the basis for the appeal of the planning commission's decision to the Board of Commissioners, and "proposed findings and conclusions" which were submitted by the respondents herein (appellants below). The parties to this appeal, however, have agreed that the document entitled "Notice of Review" was not actually intended by the county's resolution and order to form a basis for the county's decision.