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

OREGON ELECTRIC SIGN ASSOCIATION, INC.)	
)	
Petitioner,)	LUBA No. 81-135
)	
vs.)	FINAL OPINION
)	AND ORDER
CITY OF BEAVERTON, OREGON,)	
)	
Respondent.)	

Appeal from the City of Beaverton.

Timothy V. Ramis, Portland, and Gary E. Rhoades, Portland, filed the Petition for Review and Mr. Ramis argued the cause on behalf of Petitioner. With Mr. Ramis on the brief were O'Donnell, Sullivan and Ramis.

Eleanore S. Baxendale, Beaverton, filed the brief and argued the cause on behalf of Respondent.

REYNOLDS, Chief Referee; COX, Referee; BAGG, Referee, participated in this decision.

REMANDED 11/29/82

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 REYNOLDS, Chief Referee.

2 INTRODUCTION

3 Petitioner appeals City of Beaverton Ordinance No. 3227
4 amending the city's sign ordinance. Petitioner argues the
5 ordinance should be declared invalid because (1) the findings
6 adopted by the city in support of the ordinance are inadequate,
7 (2) the findings are not supported by substantial evidence, and
8 (3) the decision violates applicable statewide planning goals.
9 The city argues that no findings are necessary, but if
10 necessary, the findings which the city did adopt are adequate
11 because they show the ordinance is consistent with the city's
12 acknowledged plan.

13 FACTS

14 The City of Beaverton adopted Ordinance 3227 after numerous
15 hearings before both the city's Board of Site and Design Review
16 and the city council. Ordinance 3227 amends city Ordinance
17 2050, the zoning ordinance for the City of Beaverton, by adding
18 provisions regulating signs within the City of Beaverton.

19 Ordinance 3227 is prefaced with the following:

20 "WHEREAS, the Beaverton Area General Plan
21 stresses that proper signing is an important part of
22 local planning and encourages reduction of signs in
23 size and number to avoid 'visual chaos;' and

24 "WHEREAS, proliferation of signs creates traffic
25 safety hazards; and

26 "WHEREAS, proper signing is necessary to promote
the economic vitality of the City of Beaverton; and

"WHEREAS, the City Council finds that this
ordinance is consistent with the acknowledged

1 Beaverton Area General Plan; now, therefore,..."

2 The ordinance is divided into a number of sections.

3 Section 181 of Beaverton's Sign Ordinance permits certain signs
4 outright and with no restrictions (e.g., traffic signs).

5 Section 182 permits some signs outright but regulates their
6 size, placement and duration (e.g., construction, garage sale,
7 gas station, window, real estate and non-commercial signs).

8 Section 183 sets forth those signs which are permitted only
9 after a permit review process (e.g., freestanding, wall, time
10 and temperature and electronic message signs). Section 184

11 sets forth those signs banned entirely from the city (e.g.,
12 billboard, flashing and revolving signs). The ordinance

13 contains a permit review process (Section 185) and variance
14 process (Section 189). Section 188 of the ordinance limits

15 signs which may be placed in residential zones, and Section 187

16 sets forth additional regulations for signs in commercial and
17 industrial zones. Finally, Section 190 of the ordinance

18 prescribes a time period within which non-conforming signs must
19 be brought into conformance with the sign ordinance or removed.

20 The Beaverton Area General Plan was acknowledged by LCDC as
21 in compliance with all statewide planning goals prior to

22 adoption of Ordinance 3227. The plan, at pages 111 to 122

23 contains a discussion about community appearance. The

24 discussion mentions problems with the city's appearance and

25 suggests ways of solving these problems. Signage within the

26 city is mentioned as a principal cause of "ugliness" in most

1 commercial areas and

2 "****the greatest cause of visual chaos. Occurring by
3 the hundreds, they completely dominate the appearance
4 of most commercial areas. In many places, there are
5 so many signs that finding one particular place of
6 business is an exercise in color perception and speed
7 reading. Competition for the limited view of the
8 driver is so keen and the roadside so cluttered that
9 signs must become larger and larger to be seen. In
10 some cases, natural chains have designed buildings
11 which have lighted plastic panels or other attention
12 getting devices to help overcome the general
13 background of confusion around their sites." BAGP at
14 115.

15 The discussion in the plan notes that if signs along
16 streets only identified businesses, the problem would be
17 substantially reduced. But signs, says the plan, contain

18 "****a host of lesser messages relating to trading
19 stamps, credit cards, prices, certain products sold,
20 etc., etc., etc. These added signs are sprinkled like
21 ornaments on the buildings, on fences, on light poles,
22 on poles supporting the main sign and are often stuck
23 on windows. Standing above the competition in
24 rectangular splendor against the skyline are the
25 billboards, usually advertising something not sold on
26 the site. The competition for space has driven the
27 traffic directional signs and signals to the only
28 clear space left where they can be seen, out over or
29 on the street itself. Not to be outdone, traffic
30 signals are often placed over each traffic lane.
31 Signs to the left, signs to the right, signs above,
32 and signs below. The cycle is complete -- we drive
33 through a tunnel of words."

34 At the conclusion of the discussion on community appearance
35 in the plan are "statements of intent of the plan" which the
36 plan states are "set forth [as] guidelines for the improvement
37 of the appearance of the community." The first two "statements
38 of intent" relate to signs:

1 "1. Sign regulations should be adopted which limit
2 the size, location and number of signs in
3 commercial and industrial areas and have
4 amortization provisions to remove existing signs
5 within a reasonable period of time which do not
6 conform with the regulations.

7 "2. Old or obsolete signs should be removed at the
8 time of a change in use.***"

9 OPINION

10 Petitioner's attack on the adequacy of the city's findings
11 has five subparts. First, petitioner argues the findings are
12 conclusional. Petitioner claims the findings do not state the
13 facts relied upon and do not explain the relevant policy
14 considerations in the plan or explain how relevant policy
15 choices were made. Second, petitioner contends the findings
16 are inadequate because they do not address the LCDC goals.
17 Petitioner argues findings are required which address the
18 statewide goals because Ordinance 3227 implements the city's
19 plan. The absence of findings addressing the goals, according
20 to petitioner, makes meaningful judicial review for goal
21 compliance impossible. Third, petitioner argues the plan
22 policies and the record in the case are not a substitute for
23 adequate findings. There are no plan policies or facts in the
24 record, argue the petitioner, supporting many of the sign code
25 provisions. Petitioner contends the plan policies together
26 with the facts in the record do not show a factual basis for
the sign provisions adopted by the city. Fourth, petitioner
argues the findings are inadequate to meet the requirements of

1 Goals 1 and 2. The city, argues petitioner, provided no
2 feedback to the citizens as to the policy choices made and why
3 certain alternatives were rejected. Fifth, petitioner claims
4 the findings fail to address issues raised by the petitioner.
5 Petitioner contends the findings fail to address the issue of
6 adverse economic consequences which the sign ordinance would
7 cause. (Goal 9) and evidence about the favorable impact on
8 traffic safety which signs can cause (Goal 12).

9 Petitioner's second major area of attack is that the
10 findings which the city did adopt are not supported by
11 substantial evidence in the record. There is no evidence,
12 according to petitioner, Ordinance 3227 promotes the city's
13 economic vitality or would have a positive economic benefit to
14 the city. Petitioner says there is no evidence that signs
15 create traffic hazards. Petitioner contends there is no
16 evidence the ordinance meets Goals 9 and 12.

17 Petitioner's third area of attack, repetitive to some
18 degree of its second area of attack, is that the ordinance
19 violates statewide goals. Petitioner contends the record shows
20 Ordinance 3227 would have negative economic consequences and
21 would not contribute to a healthy and stable economy, in
22 violation of Goal 9. Petitioner argues the record does not
23 show the Goal 2 planning process was followed. The city did
24 not identify conflicting issues, develop inventories and other
25 factual information, evaluate alternative courses of action or
26 evaluate ultimate policy choices. Finally, petitioner contends

1 the record does not show the sign ordinance promotes traffic
2 safety as required by Goal 12.

3 The City of Beaverton takes a two pronged defense to
4 petitioner's challenge to the ordinance. The city's first line
5 of defense is that no goal findings were required. The city
6 says that the sign regulation, while a valid planning function
7 and properly included in the comprehensive plan "is not a
8 planning and zoning responsibility which the legislature
9 intended to have reviewed for goal compliance." The city's
10 second line of defense is that the city's acknowledged plan
11 satisfies the goals and, therefore, the sign ordinance which is
12 a plan implementation measure should be reviewed only for
13 consistency with the plan. If the sign ordinance is deemed to
14 comply with the plan policies, the city says the ordinance
15 should be deemed to comply with the goals as well.

16 1. Whether Ordinance 3227 is required to comply with
17 statewide goals.

18 The city's position that the goals do not have to be
19 applied in the adoption of Ordinance 3227 assumes that a city
20 is only required to apply the goals when it is exercising its
21 "planning and zoning responsibilities" and that, in adopting
22 the ordinance, the city was not exercising its "planning and
23 zoning responsibilities." The city's position appears to be
24 based upon ORS 197.175(1) which provides:

25 "Cities and counties shall exercise their planning and
26 zoning responsibilities, including, but not limited
to, a city or a special district boundary change...in

1 accordance with...the goals approved under ORS 197.005
2 to 197.430..."

3 We need not decide whether the city is correct in its
4 interpretation of ORS 197.175(1) or in its position that
5 Ordinance 3227 is not an exercise of planning and zoning
6 responsibilities by the city. Ordinance 3227 is a land use
7 regulation, as defined in ORS 197.015(11) and, as such, must
8 comply with the statewide planning goals. A land use
9 regulation is defined in ORS 197.015(11) as follows:

10 "Land use 'regulation' means any local government
11 zoning ordinance, land division ordinance adopted
12 under ORS 92.044 or 92.046 or similar general
ordinances establishing standards for implementing a
comprehensive plan...***"

13 The city has conceded that Ordinance 3227 implements the city's
14 comprehensive plan and, specifically, those statements and
15 policies in the plan set forth previously in the statement of
16 facts section of this opinion. We agree that Ordinance 3227
17 adopts standards for implementing the comprehensive plan's
18 policies relating to community appearance in general and signs
19 in particular. As such, Ordinance 3227 is a land use
20 regulation within the definition of ORS 197.015(11).

21 ORS ch 197 expresses the legislative intent that land use
22 regulations must comply with the statewide planning goals. ORS
23 197.250 provides:

24 "Except as otherwise provided in ORS 197.245, all
25 comprehensive plans and land use regulations adopted
26 by a local government to carry out those comprehensive
plans and all plans, programs, rules or regulations

1 affecting land use adopted by a state agency or a
2 special district shall be in conformity with the goals
3 within one year after the date those goals are
4 approved by the Commission."

5 ORS 197.251 establishes the acknowledgment review process
6 pursuant to which the Land Conservation and Development
7 Commission (LCDC) is required, upon request by a local
8 government, to review that government's plan and implementing
9 ordinances for compliance with the statewide planning goals.
10 See ORS 197.251(2), (5)(a) and (7). ORS 197.320 also imposes
11 upon LCDC the responsibility to order local governments "to
12 take action necessary to bring its comprehensive plan, land use
13 regulation or other land use decisions into conformity with the
14 goals" under certain circumstances.

15 The clear import of the above sections of ORS ch 197 is
16 that land use regulations are to comply with and may be
17 reviewed for compliance with the statewide planning goals. ORS
18 197.605 et seq, pertaining to postacknowledgment procedures and
19 applicable to decisions made after January 1, 1982, clarifies
20 the legislative intent that land use regulations are to be
21 reviewed for compliance with the statewide planning goals,
22 except in limited circumstances. ORS 197.605(2) provides:

23 "An amendment to an acknowledged land use regulations
24 or a new land use regulation is subject to review for
25 compliance with the goals under ORS 197.610 to
26 197.630. However, if the Commission determines under
ORS 197.625(1) that the amendment to an acknowledged
land use regulation or the new land use regulation is
consistent with specific related land use policies
contained in the acknowledged comprehensive plan, the
amendment or new land use regulation shall be

1 considered to be in compliance with the goals."

2 We conclude that Ordinance 3227, as a land use regulation
3 within the meaning of ORS ch 197, must comply with and may be
4 reviewed for compliance with the statewide planning goals.

5 2. Whether compliance with BAGP policies equals goal
6 compliance.

7 Respondent City of Beaverton does not argue that the
8 findings which it adopted comply with the goals. Rather, the
9 city argues that its findings show that the ordinance complies
10 with the acknowledged comprehensive plan and, therefore, with
11 the statewide planning goals. The city argues that legislative
12 policy as evidenced in ORS 197.605 allows a local government to
13 demonstrate compliance with the statewide planning goals by
14 demonstrating compliance with the acknowledged comprehensive
15 plan. The city concedes that ORS 197.605 was not put into
16 affect until January 1, 1982, after Ordinance 3227 was adopted
17 by the city. The city argues, however,

18 "there is no such reason to deny effect to the
19 provision allowing conformance with an acknowledged
20 plan to demonstrate compliance with the goals. This
21 approach is just as valid whether adopted by the
legislature or adopted by LUBA and LCDC as policy."

22 That Ordinance 3227 may comply with the policies in the
23 Beaverton Area General Plan pertaining to community appearance
24 in general and signs in particular does not justify our
25 concluding that the ordinance also complies with the statewide
26 planning goals. First, as petitioner points out and the city

1 concedes, ORS 197.605 allowing LCDC to conclude that a new land
2 use regulation which complies with "specific policies" in an
3 acknowledged comprehensive plan also complies with the goals,
4 did not come into being until January 1, 1982, after Ordinance
5 3227 was adopted. Second, ORS 197.605 is part of the
6 post-acknowledgment review procedure which provides for hearing
7 and review before LCDC, not before LUBA. Thus, to apply ORS
8 197.605 in this proceeding would require that we construe the
9 legislative intent to have the provision apply retroactively as
10 well as to review proceedings conducted by this body and not
11 LCDC. Such a construction of ORS 197.605 stretches legislative
12 intent past the breaking point.

13 There is a second and, perhaps, more fundamental reason for
14 not applying ORS 197.605 in this case. Ordinance 3227 adopts
15 specific standards and procedures governing the location, size
16 and content of signs within the City of Beaverton. The city's
17 plan policies quoted at page 5 of this opinion and which appear
18 at the end of the "Community Appearance" section of the city's
19 plan are general in nature. They simply direct the city to
20 adopt sign regulations limiting the size, location and number
21 of signs in commercial and industrial areas and suggest that
22 older obsolete signs should be removed at the time of a change
23 in use. These policies are not "specific policies" within the
24 meaning of ORS 197.605(2).

25 3. Need for findings.

26 Our disposition of the city's defenses does not, however,

1 mean we must rule in favor of the petitioner. The city does
2 not attempt in its brief to defend its findings against the
3 attack that they are too conclusional in the sense there is no
4 statement of facts relied upon and no explanation of policy
5 choices made by the city. There is also no defense offered to
6 the charge that the findings fail to address issues raised
7 concerning traffic safety and adverse economic consequences.
8 In other words, the City of Beaverton does not appear to attack
9 petitioner's premise that detailed findings of fact and
10 conclusions are required in a legislative proceeding such as
11 this.

12 We have consistently interpreted, with LCDC's concurrence,
13 Goal 2 as imposing on local governments a duty to provide
14 somewhere in the record an explanation of why the governing
15 body believed the particular ordinance under consideration
16 complied with the applicable statewide planning goals. In 1000
17 Friends of Oregon v Marion County Board of Commissioners, 1 Or
18 LUBA 33 (1980), the county's ordinance rezoning 465,000 acres
19 was challenged for having inadequate findings demonstrating
20 consideration of and compliance with statewide planning goals.
21 Petitioner in that case contended the proceeding was
22 quasi-judicial and, as such, findings were required on each
23 issue of fact. We said:

24 "The characterization of the inactment of Ordinance
25 562 as quasi-judicial or legislative is not important
26 to the outcome of this case. Whether quasi-judicial
or legislative, petitioner's argument that findings
are required 'demonstrating consideration of and

1 compliance with statewide planning goals' is still
2 applicable. In order for this Board or the Land
3 Conservation and Development Commission to review the
4 ordinance whether on appeal or during compliance
5 review, there must be evidence in the record to
6 support the conclusions made by the board of
7 commissioners when they applied specific zones to the
8 properties in the county.***

9 "The Board concludes that findings were required in
10 the adoption of this ordinance, or this ordinance must
11 at least reference findings showing that compliance
12 with the goals, in fact, did occur.***" 1 Or LUBA 33
13 at 37-38.

14 We attempted to clarify the Goal 2 findings requirement
15 enunciated in 1000 Friends of Oregon v Marion County, supra, in
16 Gruber v Lincoln County, 2 Or LUBA 180 (1981). Petitioners in
17 that case challenged the county's comprehensive plan and zone
18 designation for their property as part of the adoption of the
19 county's comprehensive plan and zoning ordinance. With respect
20 to the need for findings showing the basis for the county's
21 decision to designate the petitioners' property RR-5 (5 acre
22 minimum) as opposed to RR-1 and 2 (1 acre minimum), we said:

23 "We believe it important at this point to note again
24 that these plan and zone designation actions are
25 legislative actions. While we have said that
26 'findings' are needed to show compliance with
27 applicable criteria whether the land use act be
28 legislative or quasi-judicial (1000 Friends of Oregon
29 v Marion County, 1 Or LUBA 33 (1980)), we do not mean
30 to say that a broad legislative enactment must contain
31 a list of justifications for each and every property
32 designation, we view the need for 'findings' in a plan
33 adoption to be met when the record shows facts and
34 policies which, when read together, show a factual
35 base for particular land use designations." 2 Or LUBA
36 180 at 187.

37 In Gruber v Lincoln County, supra, we also addressed the

1 county's responsibility under Goal 1 to provide feedback to its
2 citizenry about concerns expressed by the citizens during
3 hearings on the adoption of a land use regulation. We said:

4 "We do not believe that a concise statement in the
5 form of written findings as to why a particular
6 designation was chosen over another is always required
7 in order to comply with Goal 1. A document as large
8 and inconclusive as a comprehensive plan is bound to
9 excite the anger of persons in the community. The
10 Board does not believe it is possible for a
11 jurisdiction to answer specifically with written
12 findings each concern raised by a citizen or a group
13 of citizens during the plan adoption process. What is
14 required, however, is a record which demonstrates that
15 citizens' concerns were heard and considered and shows
16 why those concerns were or were not ultimately
17 reflected in the comprehensive plan.

18 "What is missing here is the record of the 'rationale'
19 used to choose RR-5 zoning over more intensive
20 zoning. We do not find a discussion in the plan or
21 the record of the county's belief that the RR-5 zoning
22 was needed as a buffer for adjacent forest uses. We
23 understand that 'rationale' only from the county
24 council's brief. Where, as here, there is an
25 articulate challenge to a proposed designation and
26 there is no plan policy controlling the decision and
eliminating competing choices for land use
designations, the 'rationale' for the particular
decision must be evidenced someplace in the plan or in
supporting documents (i.e, the record)." 2 Or LUBA
180 at 187, 188.

19 In Lima v Jackson County, 3 Or LUBA 78 (1981), petitioners
20 appealed the legislative designation of their properties as
21 part of the adoption by Jackson County of its comprehensive
22 plan and zoning ordinance. Petitioners challenged the decision
23 for lacking an adequate factual basis under Goal 2. We
24 addressed Goal 2's requirement for an adequate factual base as
25 follows:
26

1 "***As we stated in Gruber v Lincoln County, Or
2 LUBA ____ (LUBA No. 80-008) in a broad legislative plan
3 enactment proceeding such as this one, we will not
4 require a local jurisdiction to make specific findings
5 of fact as to each individual piece of property
6 affected by the plan enactment. What must appear,
7 however, is enough facts in the record to show that
8 when the facts are compared with plan policies, the
9 reader is led to the conclusion that the county acted
10 properly in designating the property as it has. That
11 is, there must be enough facts in the record such that
12 when compared with plan policies, the compliance of
13 the county's decision with applicable goals is
14 evident." 3 Or LUBA 78 at 85-86.

9 In the present case, it appears that petitioner's concern
10 with the "findings" adopted by the City of Beaverton is that
11 there is no explanation by the city as to why it believes its
12 sign ordinance complies with its comprehensive plan policies or
13 complies with the statewide planning goals. Petitioner does
14 not believe the record in this case is adequate to provide the
15 road map by which anyone can tell how it is the city determined
16 this ordinance complies with statewide Goal 9 or Goal 12, or
17 how it is this ordinance implements the sign policies contained
18 in the community appearance section of the city's plan. There
19 was, for example, considerable testimony from the business
20 community about adverse economic consequences to their
21 businesses if the sign ordinance were adopted. The city did
22 not respond to this testimony anywhere in the record or in
23 written findings. It did not explain and the record does not
24 reveal why it believed Goal 9 would be complied with if this
25 ordinance were adopted. The preamble to the ordinance makes
26 the bald statement that this ordinance will promote the

1 economic vitality of the city, yet the city has not pointed us
2 to any place in the record where there is evidence to support
3 this conclusion.

4 Petitioner also expressed its belief to the city that signs
5 do not cause traffic safety problems. Petitioner has argued
6 before us that the sign ordinance adopted by the city was not
7 needed for the city to establish a safe and efficient traffic
8 system. Petitioner argues that at least the justification for
9 this ordinance based on Goal 12 is not apparent from the
10 record. Respondent has, again, not pointed us to any place in
11 the record where the rationale for this decision based on Goal
12 12 appears.

13 There is no requirement in legislative land use decisions
14 in general that findings of fact be adopted setting forth the
15 reasons for a particular decision. We have consistently
16 interpreted Goal 2 as imposing on local governments a duty to
17 provide an explanation someplace, either in written findings or
18 in the record in the proceeding, why the governing body
19 believed applicable goal criteria have been met. There is no
20 such explanation provided by the City of Beaverton in this
21 case.¹ We conclude, therefore, that the purpose of Goal 2,
22 which is to provide an adequate factual base for all land use
23 decisions, and the purpose of Goal 1, which is to provide, in
24 part, feedback to citizens, have been violated, and that this
25 ordinance must be remanded to the City of Beaverton for further
26 proceedings not inconsistent with this opinion.

Page REMANDED.

FOOTNOTE

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1 After Ordinance 3227 was appealed to this Board, the City of Beaverton adopted Resolution 2362 clarifying the reasons why the ordinance is consistent with the BAGP. Petitioner has objected to our consideration of the resolution. We need not resolve petitioner's objection in view of our holding that whether or not the record shows the ordinance complies with the plan, the adoption of Ordinance 3227 violates Goals 1 and 2.

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BEFORE THE
LAND CONSERVATION AND DEVELOPMENT COMMISSION
OF THE STATE OF OREGON


OREGON ELECTRIC SIGN)
ASSOCIATION, INC.)
)
Petitioner,)
)
v.)
)
CITY OF BEAVERTON, OREGON,)
)
Respondent.)

LUBA NO. 82-135
LCDC Determination

The Land Conservation and Development Commission hereby approves
the recommendation of the Land Use Board of Appeals in LUBA Case
No. 82-135.

Dated this 22 day of November, 1982.

For the Commission:


James F. Ross, Director
Department of Land Conservation
and Development

JFR:DB:af
2005B-6/7B

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

3 OREGON ELECTRIC SIGN)
ASSOCIATION, INC.,)
4 Petitioner,)
5 LUBA No. 81-135
6 vs.)
CITY OF BEAVERTON, OREGON,)
7 ORDER ON STANDING
8 Respondent.)

9 INTRODUCTION

10 On September 17, 1982, the Board conducted an evidentiary
11 hearing as authorized by 1979 Or Laws, ch 772, sec 4 (7), as
12 amended by 1981 Or Laws, ch 748. The purpose of the hearing
13 was to receive evidence pertaining to the truth or falsity of
14 petitioner's allegations that its members' interests will be
15 adversely affected or its members will be aggrieved by the
16 city's sign ordinance which is the subject of this appeal.

17 Petitioner offered written as well as oral testimony of
18 Robert Fulton, president of OESA and owner of Security Signs,
19 Inc., a member of petitioner. The city objected to portions of
20 the written testimony, which objections were sustained by the
21 Board. Petitioner introduced oral testimony of Mr. Fulton to
22 cure the objections. Respondent introduced written testimony
23 of two city employees: Linda Davis, City Planning Director, and
24 Nadine Smith, City Planner. Based upon this testimony, we make
25 the following findings of facts and conclusions.

1 FINDINGS OF FACT

2 Oregon Electric Sign Association (OESA) is an organization
3 consisting of 20 members who are sign makers and sign users.
4 Its members have manufactured, installed and owned a large
5 portion of the signage within the City of Beaverton and expect
6 to continue to do so in the future.

7 Member sign manufacturers lease or sell signs to
8 customers. A lease agreement typically is for a five year
9 period. Leases are often renewed for additional five year
10 periods at a reduced rental rate. It is not uncommon for a
11 rental agreement, with renewals, to extend over a 20 year
12 period. Thus, the useful life of a sign may be as much as 20
13 years or more in duration, although the "average" useful life
14 of signs in the city may be less than 20 years.¹ A sign
15 manufacturer typically will recover the full cost of the sign
16 in the first three years of the lease agreement. Payments
17 under the remainder of the initial five year lease term allow
18 the manufacturer to recover costs of maintaining the sign
19 pursuant to the lease agreement for the full five years.
20 Renewal agreements, although at a reduced rate to the customer
21 (typically 60% of initial lease payment), continue to be
22 profitable for the manufacturer.

23 OESA members who sell signs to customers sometimes enter
24 into maintenance agreements with the sign purchasers pursuant
25 to which, for a monthly fee, the members agree to perform the
26 maintenance on the sign. These maintenance agreements are

1 profitable to sign manufacturers.

2 Negotiations with a potential customer for a sign contract
3 (whether lease or outright purchase) in 80% of the cases begin
4 with the sign manufacturer-member preparing a proposed design
5 and submitting a bid. Once the potential customer chooses a
6 design, a fixed price is agreed upon and a contract (lease or
7 purchase) is executed. The design or structural composition of
8 the sign may be altered by the Board of Site and Design Review
9 (BSDR) if the sign is one which must be submitted to the city
10 for review by BSDR. If changes are required by the BSDR, and
11 if the changes will cost more to implement than the original
12 design on which the fixed bid was based, the sign manufacturer
13 will be required under the terms of the fixed price contract to
14 absorb the additional cost. It is possible for sign
15 manufacturers to amend their contracts, however, to provide
16 that if the BSDR requires changes, the additional costs, if
17 any, resulting from these changes would be added to the cost of
18 the lease or purchase price. The only cited instances where
19 the BSDR has required changes in design of signs submitted for
20 review under the new ordinance were because the proposed design
21 conflicted with a master sign plan for the property.²

22 A sign manufacturer usually will have a sign designer on
23 staff who designs a sign for a customer. Sign manufacturers
24 believe their designs and the quality of their signs are a
25 reflection upon themselves and bring credit or discredit to
26 their companies. Sign manufacturers view their signs to be a

1 form of advertising as the name of the sign manufacturer
2 usually appears on the sign.

3 Inflatable signs and flags have been sold to customers
4 within the City of Beaverton in the past. It is reasonable to
5 assume a market for these signs would exist in the City of
6 Beaverton in the future if they were not banned by the city's
7 ordinance.

8 Sign manufacturers are sometimes requested to make
9 additions or alterations to existing signs. If the existing
10 sign is non-conforming, no changes or additions can be made
11 under the city's ordinance. When no change can be made, sign
12 manufacturers lose business they might otherwise have. If the
13 existing sign conforms to the city's ordinance, any changes or
14 additions to the sign must stay within the sign ordinance size
15 limitations. Potential customers who have existing, conforming
16 signs may be precluded by the ordinance from having those signs
17 expanded. Sign manufacturers, in turn, will lose business they
18 might otherwise have without the sign ordinance size
19 limitations.

20 Some signs within the city will be required to be removed
21 under the ordinance before the end of their useful life. It is
22 reasonable to assume, based on custom within the industry, that
23 sign manufacturers would be able to derive addition income from
24 these signs through renewal or maintenance agreements if the
25 signs did not have to be removed.

26 If a customer's preferred design is not allowed by the

1 ordinance, the customer may drop his plans for a manufactured
2 sign altogether rather than go to a sign design which would be
3 allowed under the ordinance.

4 CONCLUSIONS

5 We have used a two part test to determine whether a
6 person's interests are adversely affected or a person is
7 aggrieved within the meaning of 1979 Or Laws, ch 772, sec 4(2),
8 as amended by 1981 Or Laws, ch 748. That test is:

9 (1) Whether a petitioner may be impacted by the
10 decision, and

11 (2) Whether the alleged injury resulting from the
12 impact is reasonably likely to in fact occur.
See Warren v Lane County, ___ Or LUBA ___ (Final
Opinion, 6/23/82, Slip Op at 11).

13 We believe that the foregoing facts demonstrate that at
14 least one and probably many of petitioner's members will be
15 impacted by the city's sign ordinance. A summary description
16 of the city's sign ordinance was set forth in our prior order
17 (Evidentiary Hearing), dated August 5, 1982.³ OESA members
18 cannot sell certain signs within the city because they are
19 banned. OESA members must conform their sign designs to the
20 restrictions in the ordinance. Even then, the designs may be
21 further modified by the BSDR. OESA members are further
22 impacted in their ability to enter into renewals and
23 maintenance agreements. These profitable agreements will be
24 available to OESA members in lesser quantities and over shorter
25 periods than without the ordinance's requirements that
26 non-conforming signs be removed within a certain period.


1 The impact to petitioner's members is reasonably likely to
2 be adverse. The city has argued that petitioner's members may
3 avoid injury by amending their lease agreements or otherwise
4 changing their customary business practices. We believe,
5 however, where a business must alter an otherwise lawful
6 business practice because of the passage of an ordinance, that
7 business is adversely affected by the ordinance within the
8 meaning of our statute. This adverse effect is particularly
9 true here because the change (amending lease/sale agreements)
10 will likely entail additional legal fees to petitioner's
11 members. OESA members are adversely impacted by the sign
12 ordinance to the extent their freedom to design signs and to
13 advertise with their signs is restricted by the ordinance.

14 Even if petitioner's members alter their business
15 practices, they will still be precluded from entering into
16 profitable renewal or maintenance agreements on signs that will
17 be removed before the end of their useful life. The evidence
18 establishes that for members who will be precluded from
19 entering into renewal agreements because of the time limits on
20 non-conforming signs, there is a reasonable likelihood such
21 members will lose profits they otherwise would receive.

22 In summary, the sign ordinance may interfere with
23 petitioner's members' businesses. It is reasonably likely such
24 interference will adversely affect petitioner's members
25 economically. Petitioner has demonstrated its members will be
26 adversely affected or its members will be aggrieved by the

1 passage of the ordinance which is the subject of this appeal.
2 We, therefore, conclude that petitioner, as the organization
3 formed to represent the interests of its members, has
4 representational standing to bring this appeal.

5 Dated this 8th day of October, 1982.

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9 Michael D. Reynolds
Chief Hearings Referee

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FOOTNOTES

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3 ¹
4 Nadine Smith testified, based on a random, unscientific
5 sampling of more than 50 signs that the average period of time
6 a sign is used before it is changed is 6.8 years.

7 ²
8 As we understand it, a multi-unit commercial development
9 will submit a master sign plan for approval to the BSDR. If
10 approved, this plan will control size, design and other
11 features of a sign for all commercial establishments within the
12 development. The master sign plan may be amended, but
13 amendment requires BSDR approval.

14 ³
15 "Beaverton's sign ordinance is divided into a number
16 of sections. Section 181 of Beaverton's Sign
17 Ordinance permits certain signs outright and with no
18 restrictions (e.g., traffic signs). Section 182
19 permits some signs outright but regulates their size,
20 placement and duration (e.g., construction, garage
21 sale, gas station, window, real estate and
22 non-commercial signs). Section 183 sets forth those
23 signs which are permitted only after a permit review
24 process (e.g., freestanding, wall, time and
25 temperature and electronic message signs). Section
26 184 sets forth those signs banned entirely from the
city (e.g., billboard, flashing and revolving signs).
The ordinance contains a permit review process
(Section 185) and variance process (Section 189).
Section 188 of the ordinance limits signs which may be
placed in residential zones, and Section 187 sets
forth additional regulations for signs in commercial
and industrial zones. Finally, Section 190 of the
ordinance prescribes a time period within which
non-conforming signs must be brought into conformance
with the sign ordinance or removed." Id at 5.