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

JOHN DOTSON, STEPHEN R. BELL,)
ALLAN and JULIE BUCEY,)
DEBBIE COWAN, DEAN and SANDY)
COWELL, JOHN and FABIANNE HEAD,)
DENNIS and MICHELE FENNELL,)
DOROTHY JOHNSON, JOHN and)
SHARON KNOKE, CINDY LYLE,)
MARK AND VIKI McCONNELL, JIM)
AND LESLIE OLSON, GARRY AND)
SUE PIERCEY, RICHARD and)
DONNA SCHMIDT, MARK and)
DIANE STEINLICHT, TONY and)
JANET WAHLBERG,)

LUBA No. 82-113

FINAL OPINION
AND ORDER

Petitioners,

v.

CITY OF BEND, SKYRIDGE RESORTS,)
INC., RICHARD D. DANIELSON,)

Respondents.

Appeal from the City of Bend.

Paul Speck, Bend, filed a petition for review and argued the cause on behalf of Petitioners.

A. Richard Vial, Portland, filed a brief and argued the cause on behalf of Participant Skyridge Resorts, Inc.

BAGG, Board Member; COX, Board Member, participated in the decision.

AFFIRMED

5/04/83

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), as amended by Oregon Laws 1981, ch 748.

1 BAGG, Board Member

2 NATURE OF THE DECISION

3 The applicant, Skyridge Resort, Inc., applied for and
4 received a conditional use permit to construct a planned unit
5 development in a single-family residential zone in the City of
6 Bend. Petitioners ask the grant be reversed.

7 FACTS

8 The planned unit development is to contain 121 attached
9 units clustered in groups of four to ten units each. Each unit
10 will contain approximately 1100 to 1300 square feet. Some of
11 the units would be sold as condominiums for permanent
12 residences and some others would be sold on a time share
13 basis.¹

14 The property is about 18 acres in size. The city found
15 that the topography is generally steep. The city also found
16 the eastern portion of the property to be "varied with a bench
17 area in the northeastern portion and a very steep drop off in
18 the southeast quadrant." The subject property abuts single
19 family residential property to the south, land zoned for medium
20 density residential use (RM) to the east, and a reservoir site
21 to the north. It is zoned for single-family residential use,
22 urban standard residential (RS). Planned unit developments are
23 conditional uses within the RS zone.²

24 The application was first heard and approved by the Bend
25 hearings officer. The hearings officer's decision was appealed
26 to the Bend urban area planning commission, and the planning

1 commission denied the development on the grounds that it was
2 not compatible with the "character and quality" of the Bend
3 area. The City of Bend Commission reversed the planning
4 commission and granted the approval and this appeal followed.

5 ASSIGNMENT OF ERROR NO. 1

6 "The Bend City Commission erred in granting the
7 conditional use. A resort is not a permissible use in
an RS Zone, even as a planned unit development."

8
9 Petitioners argue a planned unit development may not
10 violate the purposes of the zone in which it is located.³
11 The purpose of the RS zone is to "encourage, accommodate,
12 maintain and protect the suitable environment for family
13 living." Also, subsection "d" of the conditional use criteria
14 requires consistency with the comprehensive plan. See Foonote
15 2, supra. The planned unit development approved here allows
16 for use by out-of-town residents and persons wishing to stay in
17 the area only for a short time. The weekly time share
18 ownership interest offered is akin to a motel, according to
19 petitioners, or to some kind of resort. Petitioners point to
20 an advertisement included in the record that describes the
21 project is a resort. Petitioners argue that the pattern of
22 ownership is not consistent with that found in a residential
23 zone. These differences will negatively impact the family
24 environment that exists now in the area, according to
25 petitioners.

26 Respondent Skyridge Resorts, Inc., argues the Board should

1 defer to the city's interpretation of its ordinance when the
2 city interpretation is not contrary to the express terms of the
3 ordinance, citing Bienz v. City of Dayton, 29 Or App 761, 566
4 P2d 904 (1977). Respondent says the city interpreted its
5 ordinance to allow this use and in doing so found that the
6 proposal complied with applicable standards in the Bend
7 planning ordinances. Respondent points out that petitioners
8 have not alleged the city's interpretation is contrary to the
9 express terms of the ordinances. Respondent characterizes
10 petitioners' argument as one interpreting the purpose section
11 of the planned unit development ordinance, Section 30, to
12 require that any planned unit development be nearly identical
13 to uses already existing in the area. Respondent rejects this
14 interpretation.⁴ Respondent urges the ordinance should be
15 interpreted as a whole to give effect to each individual
16 policy. In so doing, the purposes section of the planned unit
17 development provisions must be read with Subsection (7) of that
18 section listing the standards of approval for a planned unit
19 development.⁵ The standards enunciated do not suggest that
20 any resulting development must be identical to the uses already
21 existing in a particular zone. Respondent urges the uses
22 contemplated are those that are different than those already
23 allowed.

24 Respondent rejects the claim that this development is
25 similar to a motel or destination resort. Respondent says
26 there is no reasoning to support such a conclusion, and

1 respondent says the newspaper add describing the proposed
2 development as a resort is not relevant. What is relevant, to
3 respondent, is the use of the property, and the use of the
4 property is to be residential. Also, this use is not a
5 commercial enterprise as a resort is a commercial enterprise.
6 No commercial activities are to be conducted on these premises,
7 and there are no rental units.

8 We do not find the city to have violated its code by
9 granting a conditional use for a planned unit development in
10 the RS zone. We do not read the code to limit planned unit
11 developments to structures that are identical or nearly so to
12 those already existing or allowed in a particular zone.

13 Further, we do not find that this proposed development is a
14 "resort". There is not a definition of "resort" in the code,
15 but we believe the term is meant in its popular meaning of

16 "2(2) a popular place of entertainment or
17 recreation." (Websters' 3rd Int. Dict, 1976).

18 As we understand the proposal from the record, the planned unit
19 development is to provide living space, full time and for fixed
20 periods of time, not entertainment or recreation.

21 The first assignment of error is denied.

22 ASSIGNMENT OF ERROR NO. 2

23 "The Bend City Commission failed to make adequate
24 findings to indicate the basis upon which the proposed
25 use was allowed in the RS zone."

26 Petitioners argue the planned unit development must conform
to the general purpose and intent of the zone, and the RS zone

1 is intended for single-family usage. Petitioners recite the
2 city commissioners concluded that because the resort was to be
3 buffered and screened, and because the traffic pattern provided
4 for transport of people around the local neighborhood, there
5 would be no impact on the local neighborhood. Petitioners
6 argue that there is a difference between claiming a use is
7 compatible because it doesn't affect another use and saying it
8 is compatible because uses compliment one another and fulfill
9 the purposes of the zone in which they are located.
10 Petitioners liken this theory to creating special enclaves.
11 Petitioners argue the enclaves will not provide for uniformity,
12 and will not, as the ordinance requires, "encourage,
13 accommodate, maintain and protect the suitable environment for
14 family living."⁶

15 Petitioners next argue the terms "planned unit development"
16 and "resort" are not defined in the ordinance and must,
17 therefore, be interpreted, citing Springfield Education Assn.
18 v. The School District, 290 Or 217, 621 P2d 547 (1980).
19 Petitioners urge the city was required to determine the scope
20 of these terms and decide whether or not they included a
21 facility of this kind, particularly when the facility is
22 advertised as a resort and includes a time-share feature.

23 Petitioners support their argument with the view that the
24 findings that are present do not meet the test of showing what
25 the city did. Petitioners complain the findings are
26 conclusional at best.

1 Respondent argues it is unnecessary to make findings
2 showing compliance with the general purpose and intent of the
3 zone. Section 30 of the ordinance, the purposes section, is
4 only a guide. It is sufficient for the city to consider
5 whether the proposed development complies with enunciated
6 standards. Baxter v. Monmouth City Council, 51 Or App 853,
7 858, 627 P2d 500 (1981). Respondent then takes issue with
8 petitioners' claim that the city must address the matter of
9 compatibility. Respondent appears to be saying there was no
10 citation to conflicting evidence on the issue of
11 compatibility. Respondent also claims even if there are
12 findings stated in a conclusional fashion, it is appropriate to
13 state findings in conclusional form where there is no
14 substantial evidence from opponents addressing relevant
15 criteria, citing Publishers Paper Company v. Benton County, 6
16 Or LUBA 182 (1982).

17 On the matter of whether or not the city was required to
18 make findings on its interpretation of the ordinance,
19 respondent claims the term "planned unit development" is an
20 exact term because standards for approval of planned unit
21 developments are set out in the ordinance. Respondent argues
22 the city was not required to define its term, all the city
23 needed to do was determine whether the standards had been met.
24 Respondent argues the city met this burden.

25 The city did make findings that we believe are relevant to
26 whether this proposed development is consistent with the

1 purposes of the RS zone.

2 "The City Commission finds that the proposed
3 development will have minimal impact on surrounding
4 properties due to the separation of the site from the
5 local streets and the minimum 100 foot setback buffer
6 along the southwest corner of the site."

7 "Further, the City Commission finds that the overall
8 density for the area is relatively low and the
9 proposal is for the maximum density as allowed by the
10 general plan. There will be an increase in human
11 activity, however, the developer has proposed a
12 natural buffered area between the proposed project and
13 the existing homes. The general livability in the
14 area should be maintained with proper buffering and
15 screening. Indeed, the scale and coverage of the
16 proposed use will have minimal impact on the
17 surrounding lands because the site building coverage
18 will be minimized by clustering units and use of
19 common open space and because large buffered yards
20 will be provided around the entire site." Record 4, 5.

21 The findings taken together show the city gave "consideration"
22 to "compatibility" in terms of "scale, coverage, and density"
23 and traffic impacts. See Footnote 2, supra. The findings also
24 show the city found the proposal would conform with the general
25 purpose and intent of the RS zone.⁷ The general purpose and
26 intent of the RS zone is

27 "to provide for the most common urban residential
28 densities in places where community sewer services are
29 or will be available and to encourage, accommodate,
30 maintain and protect a suitable environment for family
31 living."

32 The above quoted finding explains how it is that the city
33 believes a suitable environment for family living will be
34 maintained. We do not think it necessarily wrong or
35 unreasonable for the city to tie livability to protecting an
36

1 area with buffering and screening. We are unwilling to say, as
2 we understand petitioners to urge, that buffering and screening
3 are not appropriate considerations when deciding whether a
4 project is or can be made a "suitable environment for family
5 living," or whether it can be made compatible in terms of
6 "scale, coverage and density."

7 As to whether or not the city was required to go through an
8 analysis of what is meant by planned unit development, we
9 conclude the city was not so required. We believe the
10 standards included under approval criteria for planned unit
11 developments and the cross reference to the approval criteria
12 of conditional uses is sufficient to explain to applicants and
13 opponents what the ordinance requires and what kinds of uses
14 will be allowed. We do not believe the city has to go into an
15 analysis of the meanings of terms where, in application, what
16 will and will not be approved under the terms is made clear.
17 In short, we believe standards may fill in where definitions
18 are lacking.

19 The second assignment of error is denied.

20 ASSIGNMENT OF ERROR NO. 3

21 The third assignment of error was withdrawn by petitioners
22 at oral argument.

23 ASSIGNMENT OF ERROR NO. 4

24 "The Commission erred in failing to explain how the
25 proposed development was consistent with the Bend
26 Urban Area Comprehensive Plan."

1 Petitioners argue the zoning ordinance requires the
2 applicant to demonstrate compliance with the comprehensive
3 plan. According to petitioners, the findings here only show
4 the project is consistent with the density, location and
5 development standards in the plan. Petitioners claim the
6 statements are not supported. Petitioners also argue the City
7 Commission did not address questions and issues raised by the
8 urban area planning commission. As we understand the argument,
9 petitioners would have the City Commission answer those
10 questions or objections made clear by the planning commission,
11 a subordinate city body.

12 Respondent argues it is the comprehensive plan which
13 embodies policies, determinations and guiding principles, and
14 the zoning ordinance provides detailed means of giving effect
15 to such policies. When a local governing body finds a proposed
16 use complies with the standards established in the zoning
17 ordinance, it must necessarily find that the use is consistent
18 with the comprehensive plan. Detailed findings showing
19 compliance with the plan are not required, therefore, according
20 to respondent. Respondent cites to portions of the findings in
21 which the city commission does list reasons it believed the
22 development conformed to the plan of the city in terms of
23 location and development standards. Respondent takes issue
24 with petitioners' claim that the city was obliged to address
25 matters discussed by the planning commission. Respondent urges
26 the city is not required to address every statement made by a

1 lower land use body.

2 Petitioners are incorrect that the city has failed to
3 address the plan of the city in terms of "locations and general
4 development standards." The city addressed these standards at
5 pages 4-5 of the record. Petitioners have not precisely
6 explained how it is that the findings are not adequate. We
7 believe the city is entitled to conclude in its findings that
8 required plan policies have been met as long as there are facts
9 stated showing how compliance was achieved. Statements of
10 compliance with the comprehensive plan need not be made at all
11 where specific development standards control. We think
12 reference to the comprehensive plan need only be made where
13 there is a question as to whether or not specific developments
14 standards have been met or whether the manner in which an
15 applicant meets those standards complies with the comprehensive
16 plan. Just because an ordinance says a development must comply
17 with the comprehensive plan does not mean the applicant must
18 address each and every provision in the plan where his proposal
19 is governed by particular development standards enacted under
20 the policies contained in the plan.

21 We also agree with respondent that the city is not required
22 to address the statements of a lower land use body. The city
23 is required to address legitimate concerns raised in
24 proceedings before it. It need not address matters found by a
25 planning commission or hearings officer. Hearings officers and
26 planning commissions are not parties urging particular views or

1 facts upon the city commission. The city's obligation is to
2 address the facts that are presented to it, not the opinions of
3 other bodies. We are cited to nothing in the city ordinance
4 requiring the city commission to address hearings officer and
5 planning commission findings and conclusions. The city
6 commission conducted a de novo review, and the issues the city
7 was required to consider would have to have been presented at
8 that proceeding.

9 ASSIGNMENT OF ERROR NO. 5

10 "The Commission failed to make a specific finding that
11 the resort development was consistent with the
12 purposes of the Zoning Ordinance, as well as all other
13 applicable criteria."

14 Petitioners complain that Section 29(3) of the code
15 requires a conditional use permit may be granted only when the
16 city finds that the proposal "meets all the criteria of this
17 section, as well as all other applicable criteria in this
18 ordinance." Petitioners say again that one of the criteria is
19 that the use will be consistent with the purposes of the
20 ordinance, and the city commission failed to address policy
21 questions raised because of "definitional ambiguities" in the
22 ordinance. Petitioners are referring to arguments made under
23 assignment of error no. 2 that "resort" and "planned unit
24 development" are not sufficiently defined in the ordinance so
25 as to allow approvals.

26 Petitioners also note that under Section 30(7)(a), an
applicant is required to demonstrate financial ability to

1 proceed with this project. Petitioners argue there was no
2 finding on this requirement other than a simple statement that
3 the applicant had been insured interim financing at a low
4 interest rate. See Record 5.

5 Respondent argues that the matter of interpretation of the
6 ordinance does not exist. The city found the development met
7 the standards of the ordinance, and that showing is
8 sufficient. Respondent adds that the financial ability of the
9 applicants is assured not only by the finding mentioned above,
10 but also through the city's requirement of bonds to insure
11 completion of the project. See Record 6. Respondent argues
12 these findings are sufficient to show the applicant has the
13 ability to carry out the project.

14 As stated in assignment of error 1, we do not believe the
15 city has an obligation in this case to explain "resort" and
16 "planned unit development." The city has development standards
17 that are sufficiently detailed to enable applicants and others
18 to know what is expected.

19 As to the applicant's ability to carry out the project, we
20 note the city made the following finding.

21 "The applicant has indicated that the interim
22 financing will be assured at a low interest rate and
23 that reservation sales are being marketed at this
24 time. Wildish Construction Company is the financial
25 backer of the project and will be bonded to insure
26 project completion. Additional information is
available with the applicant's burden of proof
regarding planning and programming information. The
developer has indicated that construction of the site
will occur as soon as possible after final approval.
If a start-up date of more than six months after

1 approval is anticipated, a request for a longer
2 timetable must be made to the Planning Director for
approval."

3 We are not entirely sure what "additional information is
4 available with the applicant's burden of proof regarding
5 planning and programming information" means, but we see nothing
6 in petitioners' assignment of error that challenges the facts
7 in this finding. The statement the applicant has claimed
8 financing will be assured, without more, is sufficient to hold
9 that the project will go forward. We do not believe the city
10 is required to detail the applicant's financing unless facts
11 are brought forward to show that applicant's assurance of
12 financing is subject to question. We are cited to no such
13 facts.

14 Assignment of error no. 5 is denied.

15 The decision of the City of Bend is affirmed.
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FOOTNOTES

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3 1
4 We understand time share to be an ownership interest
5 limited to use for fixed time periods during the year.

6 2
7 The purpose of the urban standard residential district is
8 "The RS district is intended to provide for the most
9 common urban residential densities in places where
10 community sewer services are or will be available and
11 to encourage, accommodate, maintain and protect a
12 suitable environment for family living."

13 Other conditional uses in the RS zone are condominiums.

14 Applicants for a conditional use must meet the following
15 criteria:

16 "General Conditional Use Permit Criteria. A
17 Conditional Use Permit may be granted only upon
18 findings by the Planning Commission that the proposal
19 meets all of the criteria in this section, as well as
20 all other applicable criteria contained in this
21 Ordinance. The general criteria are:

22 "(a) That the location, size, design and operating
23 characteristics of the proposed use are such that
24 it will have minimal adverse impact on the
25 property value, livability and permissible
26 development of the surrounding area.
27 Consideration shall be given to compatibility in
28 terms of scale, coverage, and density, to the
29 alteration of traffic patterns and the capacity
30 of surrounding streets, and to any other relevant
31 impact of the proposed use.

32 "(b) That the site planning of the proposed use will,
33 as far as reasonably possible, provide an
34 aesthetically pleasing and functional environment
35 to the highest degree consistent with the nature
36 of the use and the given setting.

37 "(c) If the use is permitted outright in another zone,
38 that there is substantial reason for locating the
39 use in an area where it is only conditionally
40 allowed, as opposed to an area where it is

1 permitted outright.

2 "(d) That the proposed use will be consistent with the
3 purposes of this Ordinance, the Comprehensive
4 Plan, Statewide Goals, and any other statutes,
5 ordinances or policies may be applicable."

6 3

7 The purpose of a planned unit development is as follows:

8 "The purpose of Planned Unit Development Approval is
9 to allow and to make possible greater variety and
10 diversification in the relationships between buildings
11 and open spaces in planned building groups, while
12 insuring compliance with the purposes and objectives
13 of the various zoning district regulations and the
14 intent and purpose of this ordinance."

15 4

16 We note that the city code does not define planned unit
17 development. It appears the city is relying on what it must
18 feel is a common understanding of the term. We make no comment
19 as to whether the city must include a definition of planned
20 unit development in its ordinance as it was not raised as an
21 issue.

22 5

23 The standards for approval are as follows:

24 "Standards for Approval. In granting approval for
25 Planned Unit Developments, the Commission shall be
26 guided by the following:

27 "(a) The applicant has, through investigation,
28 planning and programming, demonstrated the
29 soundness of his proposal and his ability to
30 carry out the project as proposed, and that the
31 construction shall begin within six months of the
32 conclusion of any necessary action by the City,
33 or within such longer period of time as may be
34 established by the Planning Commission.

35 "(b) The proposal conforms with the general plans of
36 the City in terms of location and general
37 development standards.

38 "(c) The project will accrue benefits to the City and
39 the general public in terms of need, convenience,

1 service and appearance sufficient to justify any
2 necessary exceptions to the regulations of the
zoning district and Subdivision Ordinance."

3 "(d) The project will satisfactorily take care of the
4 traffic it generates by means of adequate
5 off-street parking, access points and additional
street right-of-way and improvements and any
other traffic fatalities required.

6 "(e) The project will be compatible with adjacent
7 developments and will not adversely affect the
character of the area.

8 "(f) The project will satisfactorily take care of
9 sewer and water needs consistent with City policy
and plans.

10 "(g) A Planned Unit Development shall not be approved
11 in any 'R' District if the housing density of the
12 proposed development will result in an intensity
of land use greater than permitted by the
Comprehensive Plan."

13 _____
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14 Fairly read, petitioners are not only attacking the
15 proposals' conformity to the plan but also to subsection (a) of
the conditional use criteria. See Footnote 2, supra.

16 _____
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17 See Neso Properties v. Tillamook, _____ Or LUBA _____
18 (83-004, 1983). We remanded that decision because the county
19 failed to explain what it meant by compatibility. Here,
20 petitioners seem to conclude that a compatibility standard
exists in the purposes section of the RS zone. We do not
21 agree. The "compatibility" standard is found in conditional
use criteria. See Footnote 2, supra. The standard is not
absolute. That is, the city is only required to consider
compatibility "in terms of scale, coverage, etc."