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

RAYMOND A. CORDILL and BARBARA)
J. CORDILL, husband and wife,)
and NICHOLAS R. CORDILL and)
JASON C. CORDILL, minors)
through RAYMOND A. CORDILL,)
their guardian ad litem,)

Petitioners,)

vs.)

THE CITY OF ESTACADA, a)
municipal corporation,)

Respondent,)

CHARLES B. STAUFFACHER and)
PHYLLIS STAUFFACHER, husband)
and wife, EARL E. BALD, JR.)
and EVELYN BALD, husband and)
wife,)

Intervenors.)

LUBA No. 82-063

FINAL OPINION
AND ORDER

Appeal from City of Estacada.

Terrence A. Leahy, Portland, filed the Petition for Review and Frank Josselson, Portland, argued the cause on behalf of Petitioners. With Mr. Leahy on the brief were Wolf, Griffith, Bittner, Abbott & Roberts.

John W. Osburn, Portland, filed a brief but did not argued the cause for Respondent City of Estacada.

Intervenors made no appearance by brief or oral argument.

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

REMANDED

7/21/83

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 Petitioners appeal an amendment to the City of Estacada
4 zoning ordinance. The amendment changes the commercial zoning
5 in such a manner that commercial uses which are conducted
6 wholly within an enclosed building are permitted outright, and
7 commercial uses that are not wholly within an enclosed building
8 are permitted as conditional uses. Before this action, the
9 city's commercial zoning lacked any provision for businesses
10 not conducted wholly within an enclosed building. This
11 ordinance also eliminates two commercial zones and enacts one
12 commercial zone for the city.

13 FACTS

14 In May, 1981, respondent issued intervenors a permit to
15 operate a car wash. Car washes were not included in the list
16 of permitted uses within the commercial zone and were therefore
17 prohibited. There followed a writ of mandamus filed by
18 petitioners herein to force the city to require the intervenors
19 to use their property only in accordance with the city's zone.
20 The effect of such enforcement would be the elimination of the
21 car wash. In May, 1982, the facts of the lawsuit and other
22 matters were brought to the attention of the city council. The
23 council considered the prospect of the lawsuit by the car wash
24 owners, should the city enforce its ordinance against the car
25 wash. Thereafter, the council adopted a motion directing the
26 car wash owners to cease operations.

1 On June 10, 1983, the council considered requests for an
2 amendment to the zoning ordinance so as to permit the car wash
3 and other uses not wholly enclosed within a building. There
4 was some discussion, and the council finally agreed an
5 ordinance would be prepared for review in the future. The
6 minutes of that meeting are as follows:

7 "NON AGENDA

8 "City Manager Clayton Schmitt stated that two requests
9 concerning zoning ordinance section N.153, C-2 be
10 changed to allow self-service and/or tenant car-wash
11 and animal grooming and/or pet grooming to be added to
12 the list of allowable functions. Our present
13 ordinance is specific use with a catch all phrase that
14 allows other types of use. Requests were from Borden
15 M. Grainger and Cadri Enterprises.

16 "City Attorney Paul Schultz, in looking at our
17 comprehensive plan file, we have a zoning ordinance
18 waiting for adoption, that has been studied by the
19 planning commission and sub-committees of the
20 council. In that ordinance the commercial zone simply
21 says that commercial establishments which are
22 conducted wholly within an enclosed building are
23 permitted. It goes on to say governmental uses such
24 as City Hall, Fire Station, Police Station and offices
25 of other governmental agencies are permitted, and as
26 conditional uses, commercial establishments where the
business is not wholly enclosed within a building are
permitted as a conditional use. As are amusement
centers and mobile home parks. That is the ordinance
that has been recommended for adoption. There would
be nothing wrong at this time with adopting this one
section on commercial C-1 zone in lieu of our existing
C-1 zone. After discussion of the ordinance amendment
City attorney stated that the ordinance revisions
would be prepared and ready for review at your next
meeting.

27 "Cm. Tom Gorman made a motion to adjourn the meeting.
28 Cm. Terry Brown seconded the motion, motion carried."
29 Record 3.

30 On June 23, 1982, the city enacted the amendment to the

1 commercial zone. The effect of the amendment was to allow, as
2 conditional uses, those commercial uses that are not housed
3 entirely within a building. The ordinance has the effect of
4 allowing the car wash as a conditional use.

5 Prior to the meeting, the city manager caused notice of
6 this meeting to be posted on the door of the city hall. A copy
7 of the notice was given to the local newspaper, but no news
8 account of the meeting was published because the paper was not
9 published on that date. There was no notice given to
10 interested parties. Petitioner Cordill was an interested
11 party. He had asked a city staff person to notify him of
12 proposals which might allow the car wash to continue and to
13 give him the opportunity to review such a proposal. The record
14 does not reveal whether his request was given to whomever was
15 responsible for giving notice of such proceedings.

16 Petitioners discovered that action might be taken to amend
17 the commercial provisions of the zoning ordinance at the
18 meeting on June 23, 1982. Petitioners attended that meeting.
19 Petitioner Raymond A. Cordill asked, before the ordinance was
20 passed, that he be able to have his attorney review the
21 ordinance. The record does not reveal a response to this
22 request.

23 The amendment was accompanied by no findings. Minutes of
24 the meeting simply recite the ordinance was passed and note Mr.
25 Cordill's presence and his request that he wanted his attorney
26 to review the ordinance. The minutes also show Mr. Cordill

1 wanted to know why the matter was brought up at this particular
2 meeting.

3 FIRST ASSIGNMENT OF ERROR

4 Petitioners' first complaint is that the amendment is not
5 supported by findings. Petitioners cite South of Sunnyside
6 Neighborhood League v. Board of Commissioners, 280 Or 3, 569
7 P2d 1063 (1977), for the proposition that land use decisions
8 must be supported by adequate findings. As there are no
9 findings in support of this amendment, there is no means to
10 review the amendment against applicable land use standards.

11 Respondent City argues specific findings are not
12 necessary. Respondent argues the decision was legislative in
13 character in that the ordinance enacted has city-wide
14 application. Respondent cites to testimony in the record
15 wherein the council, city manager and city attorney discussed
16 the need to adopt such an ordinance.

17 Specific findings of fact are not always necessary in a
18 legislative proceeding, but there must be sufficient
19 information in the record from which a reviewing body can
20 conclude that all applicable criteria have been met. Gruber v.
21 Lincoln County, 2 Or LUBA 180 (1981). Here, we have no way of
22 knowing whether this ordinance meets applicable criteria. We
23 do not even know what the applicable criteria might be. We are
24 cited to no provision of the city zoning ordinance or the
25 city's comprehensive plan that might control uses within
26 commercial zones. We are cited to no plan or ordinance

1 inventory materials that might give a clue as to what matters
2 the city believe applicable to this proceeding.¹ Further,
3 there is no evidence in the record to suggest that the city
4 considered any of the statewide planning goals let alone what
5 goals it felt applicable. In short, there is no discussion of
6 the city comprehensive plan, zoning ordinance or any statewide
7 land use criteria and, therefore, no application of these
8 criteria to this particular amendment. We conclude, therefore,
9 that what evidence there is in the record regarding the reasons
10 for this amendment are not sufficient to show what criteria
11 were applicable and whether or not the ordinance meets the
12 criteria.

13 We sustain this assignment of error.

14 SECOND ASSIGNMENT OF ERROR

15 The second assignment of error alleges the petitioners were
16 afforded no notice nor any opportunity to participate in the
17 proceeding in a meaningful manner. Further, petitioners allege
18 the city council was not impartial. Petitioners break the
19 assignment of error down into two parts, the first complaining
20 that the city has violated Statewide Planning Goal 1 and the
21 second that the city has deprived petitioners of procedural due
22 process.

23 Respondent states it is not required to give specific
24 notice to petitioners of the hearing on the ordinance.
25 Respondent notes that ORS ch 227 and Goal 1 do not impose
26 procedural standards requiring notice to property owners of

1 proposed legislative actions. Respondent argues that notice
2 would be required in the case of single tract amendments or
3 adjudicative hearings, but not in the case of legislative
4 proceedings. Therefore, according to respondent, no particular
5 notice was required of the proceeding as alleged by
6 petitioners.

7 Goal 1 requires that citizens have the opportunity to
8 participate in the planning process.² By the terms of the
9 goal, that process includes adoption of the comprehensive plan
10 and its implementing ordinances and amendments to the
11 comprehensive plan and implementing ordinances. The record in
12 this case does not include the city's citizens involvement
13 program, and the record does not include any evidence that
14 would suggest that the city even considered its citizen
15 involvement program in the adoption of this amendment.³

16 With respect to violation of due process of law, we note
17 the circumstances of the case suggest that while the decision
18 may have broad application within the city, it has an immediate
19 effect on petitioners. Such circumstances suggest the decision
20 may have quasi-judicial qualities. If the decision does have
21 quasi-judicial qualities or is quasi-judicial, then the city
22 owed petitioner notice and the opportunity to present evidence
23 and rebut whatever evidence might be presented to the city
24 council. Smullin v Jackson County, ___ Or LUBA ___ (LUBA No.
25 83-005, 1983). This opportunity, if present, is not shown
26 clearly in this record.

1 Whether this action is legislative or quasi-judicial, it is
2 clear that the record does not show compliance either with Goal
3 1 or with the due process protections as articulated in Fasano
4 v. Board of County Commissioners of Washington County, 264 Or
5 574, 507 P2d 23 (1973). If the city considers this matter
6 again, we believe the city must insure that the provisions of
7 Goal 1 are met or the city follows the dictates of its charter
8 and ordinances to insure the due process of law is afforded the
9 parties.

10 This assignment of error is sustained.

11 Assignments of error 3, 4 and 5 were withdrawn at oral
12 argument.

13 The decision of the City of Estacada is remanded for
14 proceedings not inconsistent with this opinion.

FOOTNOTES

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Petitioners do not challenge potential litigation as a reason for an enactment. However, we believe the city must say, someplace, what the applicable criteria (or reasons) are. It has not even said the enactment is for legal reasons.

2
Goal 1 provides for citizen influence in the planning process.

"Citizen Influence - To provide the opportunity for citizens to be involved in all phases of the planning process. Citizens shall have the opportunity to be involved in the phases of the planning process as set forth and defined in the goal and guidelines for Land Use Planning, including Preparation of Plans and Implementation Measures, Plan Content, Plan Adoption, Minor Changes and Major Revisions in the Plan and Implementation Measures."

3
We assume the city has a citizen involvement program.



STATE OF OREGON

INTEROFFICE MEMO

7.2

TO: MEMBERS OF THE LAND CONSERVATION AND DEVELOPMENT COMMISSION DATE: 06/27/83

FROM: THE LAND USE BOARD OF APPEALS

SUBJECT: CORDILL, et al v CITY OF ESTACADA
LUBA No. 82-063

Enclosed for your review is the Board's proposed opinion and order in the above captioned appeal.

This case is about a change in the City of Estacada's zoning ordinance. The change has the affect of allowing certain uses not previously allowed. There is some question as to whether the change is legislative or quasi-judicial, but we do not believe it necessary to answer that question. Our holding is simply that the record does not show the county to have applied Goal 1 or the provisions of its citizen involvement program (assuming it has one), or afforded the petitioners due process of law.

The Board is of the opinion that oral argument will not assist the commission in its understanding or review of the statewide goal issues involved in this appeal. Therefore, the Board recommends that oral argument before the commission not be allowed.



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

RAYMOND A. CORDILL and BARBARA)
J. CORDILL, husband and wife,)
and NICHOLAS R. CORDILL and)
JASON C. CORDILL, minors)
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their guardian ad litem,)

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and wife, EARL E. BALD, JR.)
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wife,)

Intervenors.)

LUBA No. 82-063

PROPOSED OPINION
AND ORDER

Appeal from City of Estacada.

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

REMANDED

6/27/83

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.

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

RAYMOND A. CORDILL AND)
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HUSBAND AND WIFE,)
AND NOCHOLAS R. CORDILL AND)
JASCON C. CORDILL,)
MINORS THROUGH)
RAYMOND A. CORDILL,)
THEIR GUARDIAN AD LITEM,)

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A MUNICIPAL CORPORATION,)

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CHARLES B. STAUFFACHER AND)
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AND WIFE, EARL E. BALD, JR. AND)
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Intervenors.)

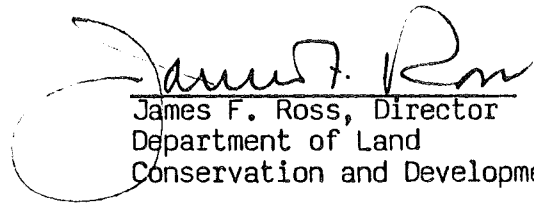
LUBA No. 82-063

LAND CONSERVATION AND
DEVELOPMENT COMMISSION
DETERMINATION

The Land Conservation and Development Commission hereby approves the
recommendation of the Land Use Board of Appeals in LUBA 82-063.

DATED THIS 19 DAY OF JULY, 1981.

FOR THE COMMISSION:



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

JFR:RE:llt
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