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

MARION COUNTY HOUSING AUTHORITY,)
a public corporation)

Petitioner,)

LUBA NO. 83-031

v.)

FINAL OPINION
AND ORDER

CITY OF WOODBURN,)
a municipal corporation,)

Respondent.)

Appeal from City of Woodburn

Willard E. Fox, Salem, filed a petition for review and argued the cause for Petitioner. With him on the brief were Allen, Stortz, Fox and Susee.

N. Robert Shields, Woodburn, filed a brief and argued the cause for Respondent.

Bagg, Board Member.

Remanded

8/05/83

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 Petitioner appeals the denial of its application to build a
4 32 unit townhouse apartment complex for non-migrant farm labor
5 families. Petitioner asks the Board to reverse the decision
6 and require the City of Woodburn to issue a building permit.

7 FACTS

8 The petitioner applied for approval of its site plan to
9 build a 32-unit, multi-family complex on two acres of land in
10 Woodburn. The project would serve low income farmworker
11 families. The land is designated in the acknowledged
12 comprehensive plan as residential and is zoned multi-family
13 residential.

14 Funding for the project has been approved by the Farmers
15 Home Administration (FmHA). The project would be owned and
16 operated by Marion County Housing Authority and occupied by low
17 income farmworker families entitled to rent subsidies from FmHA.

18 On January 28, 1983, the Woodburn Planning Commission
19 approved petitioner's site plan. The commission found all of
20 the site development requirements contained in Chapter 22 of
21 the Woodburn Zoning Ordinance had been met. Record 19-20, 54.

22 The Woodburn City Council "called up" the commission's
23 approval on February 22, 1982. The approval was discussed at
24 several council meetings from February 22, 1983 to March 14,
25 1983. The approval was reversed by the council on March 14,
26 1983. The city council relied on the Area Housing Opportunity

1 Plan (AHOP) in denying the application. The city held, inter
2 alia, that it had already "accepted its fair share of low
3 income housing as prescribed under A-HOP and the Comprehensive
4 Plan." Record 5. This appeal followed.

5 ASSIGNMENT OF ERROR NO. 1

6 "The City of Woodburn's use of AHOP and general plan
7 policies to deny Petitioner's application for site
8 plan approval constitutes error."

9 Petitioner argues the city comprehensive plan and the site
10 plan review ordinance do not authorize the city to consider
11 whether or not it has accepted a fair share of low income
12 housing. Petitioner argues that AHOP is an intergovernmental
13 agreement directing where money is to be spent, it does not
14 allocate fair share of farmworker or low income housing.
15 Petitioner says AHOP is not a comprehensive plan or ordinance
16 provision; it is not contained in the city's development
17 ordinances. It was adopted by Resolution 701, and Resolution
18 701 simply provides that the city supports AHOP, and agrees to
19 become a participating jurisdiction. The Resolution does not
20 make AHOP part of its land use ordinance body of law, according
21 to petitioner. The Board understands petitioner to conclude
22 that approval of a site plan is mandatory if the site plan
23 complies with relevant provisions of the zoning ordinance.

24 Respondent asserts the city focused on a policy in the
25 Woodburn Comprehensive Plan making it a goal of the city "to
26 insure that adequate housing for all sectors of the community
is provided." Comprehensive Plan, Volume I, p. 27. The plan

1 provides that the city "will accept its regional share of low
2 income housing." The plan policy, however, includes a
3 provision that the policy "is not intended to provide an
4 overabundance of low income housing which would encourage undue
5 migration of low income persons." Comprehensive Plan, Volume
6 I, p. 28. Respondent argues the council simply looked to the
7 AHOP to determine what might be Woodburn's regional share of
8 low income housing. The city's findings recite the applicant
9 was asked how the AHOP housing quota would not be exceeded by
10 the project. The city found no answer and concluded, in its
11 findings, that the applicant did not meet his burden of proof,
12 according to respondent. See Record 5.

13 Resolution No. 701, the document adopting the AHOP, makes
14 no mention of the Woodburn Comprehensive Plan. The Resolution
15 recognizes the city's desire to provide affordable housing for
16 its residents, a desire to promote fair and equal access to
17 housing, and city support for "housing fair share allocation
18 efforts in the Mid-Willamette Valley" The Resolution goes
19 on to resolve that the city will become a participant in AHOP,
20 that the city supports the allocation plan, goals and
21 strategies set forth in AHOP, and that the city supports an
22 application by the Mid-Willamette Valley Council of Governments
23 for funds to implement AHOP. Nowhere does the Resolution state
24 the council believes AHOP to implement or fulfill a housing
25 requirement in its comprehensive plan.

26 It is not clear from the record in this case what the

1 Woodburn Comprehensive Plan means by "regional share" of low
2 income housing. The portion of the plan in the record before
3 the board does not include inventories or assessments that
4 could be compared with those in the AHOP to determine whether
5 the comprehensive plan policy calling for a "regional share" of
6 low income housing is the same as the "fair share" called for
7 in the AHOP. The findings do not assist in this determination
8 either. The city says

9 "[i]t has accepted 'fair share' of low income housing
10 as prescribed under AHOP and the comprehensive plan.
11 The city received its regional share at an accelerated
12 rate prior to many other jurisdictions within the AHOP
13 area." Record 5.

14 This finding does not cite to provisions in the comprehensive
15 plan or AHOP detailing what the City of Woodburn's fair share
16 might be. In short, the criteria in the plan have not been
17 clearly explained and applied in the city's order.¹

18 In short, what is missing is a detailed explanation of
19 housing need as found in the comprehensive plan, a comparison
20 of that need with the need discussed in AHOP (to determine
21 whether they are the same) and an analysis of how this proposal
22 fits into that need.²

23 This assignment of error is sustained.

24 ASSIGNMENT OF ERROR NO. 2

25 "The City of Woodburn erred in denying Petitioner's
26 application for site plan approval because the site
27 plan and project did not violate AHOP."

28 Under this assignment of error, petitioner argues the
29 findings do not make it clear what provision of AHOP petitioner

1 violated. See Record 4, 5. Petitioner notes the city found
2 construction of the 32 unit farmworker family housing would
3 violate AHOP because Woodburn's "fair share" and "housing
4 quota" would be exceeded. Petitioner argues the city misused
5 AHOP because AHOP does not say how many assisted housing units
6 should be located in Woodburn, or any other community. AHOP
7 does not identify a fair share or regional share of housing,
8 according to petitioner. Petitioner goes on to say the AHOP
9 guidelines as to how to spend money and where to spend money
10 are not mandatory. See AHOP, Table 19 at page 42, wherein AHOP
11 makes priority rankings for construction of assisted housing.
12 In Marion County, four cities are given a first priority
13 ranking, among the four is the City of Woodburn. Petitioner
14 concludes the AHOP itself does not support Woodburn's denial.

15 Respondent replies that the burden of proof is on the
16 petitioner to show how petitioner met AHOP. Respondent states
17 that the city council believes petitioner did not meet this
18 burden of proof.

19 In this case, the city did not find petitioner to have
20 violated provisions in the comprehensive plan and zoning
21 ordinance controlling multi-family housing developments but
22 relied instead on AHOP. That reliance must be explained.
23 Deters v. Bd. of Commissioners of Clackamas Co., 1 OR LUBA 217
24 (1980); Morrison v. Cannon Beach, 6 Or LUBA 74 (1982). The
25 findings made by the city simply do not explain what facts in
26 the AHOP document were relied upon to show AHOP policies were

1 violated and how the violation results in violation of the
2 Woodburn Comprehensive Plan.³

3 This assignment of error is sustained to the extent it
4 alleges the city failed to adequately explain the reasons for
5 denial of petitioner's request.

6 ASSIGNMENT OF ERROR NO. 3

7 "The City of Woodburn erred in denying Petitioner's
8 application for site plan approval because the site
9 plan and project do not violate the Woodburn
10 Comprehensive Plan."

11 Petitioner here argues the city conclusion that "further
12 acceptance of additional low income housing from the applicant
13 would be in variance with the intent and spirit of the
14 comprehensive plan" is in error. Record 5. As the Board
15 understands the argument, petitioner believes the City of
16 Woodburn Comprehensive Plan encourages adequate housing for all
17 sectors of the community including a "regional share" of low
18 income housing. See Plan, p. 28. Petitioner views its
19 application to help satisfy a substantial need for farm labor
20 housing. Supplying that housing meets the comprehensive plan,
21 according to petitioner.

22 Respondent argues the Woodburn Comprehensive Plan is
23 violated by this proposal. The Board understands this argument
24 to be based upon respondent's view that the city is not
25 required by its comprehensive plan to accept more than its
26 "regional share" of such low income housing. Respondent goes
on to say that even if it is assumed that all other plan

1 criteria and siting criteria are met, it is possible to deny a
2 decision based upon a policy in the plan.

3 The Board held in Assignment of Error No. 1 that the city's
4 reliance on AHOP to show that its "regional share" of low
5 income farm housing has already been met is erroneous. The
6 Board is therefore unable to agree with respondent that the
7 comprehensive plan has been violated by this application. Once
8 the city decides what its "regional share" of this housing is;
9 the city will be in a position to determine whether this
10 application meets the comprehensive plan.

11 ASSIGNMENT OF ERROR NO. 4

12 "The City of Woodburn erred because its denial of
13 Petitioner's application for site plan approval
14 discriminates against low income farm worker families
and violates the equal protection provisions of the
State and Federal Constitutions."

15 The Board understands petitioner's argument to be that the
16 effect of the denial will have a disproportionate effect on
17 Woodburn's Mexican-American population. The city's action must
18 be justified by a compelling interest or it will violate equal
19 protection provisions of the Oregon and Federal Constitutions,
20 according to petitioner.

21 The Board does not reach this issue. The case is to be
22 remanded. Presumably, further proceedings will establish
23 whether the proposal meets the comprehensive plan or does not
24 meet it. Petitioner has not challenged the comprehensive plan
25 as being in violation of the Oregon and Federal Constitutions,
26 and any consideration of constitutional issues should wait

1 until the city properly applies its comprehensive plan and
2 other land use regulations.

3 This matter is remanded to the City of Woodburn for further
4 proceedings not inconsistent with this opinion.

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FOOTNOTES

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The parties have not argued whether "regional share" is defined at any place in the plan or supporting documents. Also, there is no challenge to the term as being impermissibly vague. Without adequate findings and the benefit of the city's explanation of the term, the Board does not know whether the term must be explained before being applied (in further legislation or some other pre-application announcement) or whether the term can be explained through findings supporting its application. See Springfield Ed. Dist. v. The School District, 290 Or 217, 621 P2d 547 (1980), and Marbet v. Portland General Electric Co., 277 Or 477, 561 P2d 154 (1972).

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What AHOP appears to do is to show housing conditions and inventories in various areas. Additionally, the purpose of AHOP must be considered. See AHOP, p. 7, table showing need. On page 41 of AHOP, there is a statement of ranking of suitability for construction. Specific numbers of needed housing units are not shown, but a community ranking is shown. The city has not explained how these figures translate into a finding that the city has met its "regional share" of housing.

15 3

The Board notes also that petitioner introduced evidence at pp. 49 and 50 of the record to show AHOP was not violated by this proposal. The city should have addressed this evidence. Krause v. Josephine Co., 4 Or LUBA 143 (1981).