

BEFORE THE LAND USE BOARD OF APPEALS

Dec 15 4 11 PM '83

OF THE STATE OF OREGON

1 WILLIAM S. WORCESTER, )

2 Petitioner, )

3 vs. )

4 CITY OF CANNON BEACH and )  
5 STEPHEN D. MARTIN, )

6 Respondents. )

7 W. STEPHEN OSBURN, )

8 Petitioner, )

9 v. )

10 CITY OF CANNON BEACH and )  
11 STEPHEN D. MARTIN, )

12 Respondents. )

LUBA No. 83-076

FINAL OPINION

AND ORDER

LUBA No. 83-078

13 Appeal from the City of Cannon Beach.

14 John H. Clough, Portland, filed the Petition for Review and  
15 argued the cause on behalf of Petitioner. With him on the  
16 brief were Ransom & Clough.

17 Steven T. Campbell and William R. Canessa, Seaside, filed  
18 the brief and Mr. Campbell argued the cause on behalf of  
19 Respondent City of Cannon Beach. With them on the brief were  
20 Campbell, Moberg & Canessa, P.C.

21 M.D. Van Valkenburgh, The Dalles, filed the brief and  
22 argued the cause on behalf of Participant-Respondent Stephen D.  
23 Martin. With him on the brief was Timothy V. Ramis, O'Donnell,  
24 Sullivan & Ramis.

25 BAGG, Chief Referee

26 REVERSED

12/15/83

27 You are entitled to judicial review of this Order.  
28 Judicial review is governed by the provisions of Oregon Laws  
29 1983, ch 827.

1 BAGG, Chief Referee.

2 NATURE OF THE DECISION

3 Petitioner William S. Worcester appeals a decision of the  
4 City of Cannon Beach granting a zone change from  
5 Residential-Alternative/Mobile Home (RAM) to  
6 Residential/Trailer (RT). Petitioner Osburn appeals a zone  
7 change from General Commercial (C-2) to Limited Commercial  
8 (C-1). These two zone change appeals are consolidated for the  
9 purpose of this opinion.

10 FACTS

11 The applicant, Stephen D. Martin, requested and received  
12 zone changes from RAM to RT and from C-2 to C-1 on property  
13 within the urban growth boundary and the city limits of Cannon  
14 Beach. These changes were accompanied by an annexation of  
15 other property to the city, a change in the comprehensive plan  
16 and conditional use permits for a recreational vehicle park and  
17 a service station and convenience store. All of these changes  
18 were to facilitate construction of an RV park and associated  
19 uses. Of the approximate 22 acres involved in these actions,  
20 the change from C-2 to C-1 included one half of an acre for  
21 accessories to the proposed RV park, and the change from RAM to  
22 RT applied to approximately six acres. Record, 108. The  
23 property is designated as the "mid-town" area in the city's  
24 comprehensive plan. It is near a Pacific Power & Light  
25 substation.

26 The city council approved the changes on June 22, 1983.

1 The change from RAM to RT was by Ordinance 83-16, and the  
2 change from C-1 to C-2 was by Ordinance 83-17. These appeals  
3 followed.

4 STANDING

5 A. Petitioner Worcester.

6 Petitioner Worcester bases his claim of standing on the  
7 following:

8 "Petitioner is a landowner who resides within sight  
9 and sound of the land. He remonstrated orally before  
10 the Planning Commission (Record at 92) and in writing  
11 to the Planning Commission and City Council (Record at  
12 74), and attended the City Council Hearings on this  
13 matter. He was aggrieved by the decision." Petition  
14 for Review (Worcester) at 1.

15 The City of Cannon Beach challenges this claim of standing  
16 on the ground the "record" is without evidence as to whether or  
17 not the petitioner is within sight and sound of the subject  
18 property. The city also argues petitioner has failed to show  
19 himself to be a party aggrieved "as required by the zoning  
20 ordinance." The Board notes at the outset that petitioner's  
21 demonstration of standing is not dependent upon what appears in  
22 the record of the local government proceeding. Under 1979 Or  
23 Laws, ch 772, §4(b), as amended, the petitioner, in his  
24 petition for review, must state facts showing he is entitled to  
25 standing. Those facts need not appear in the record of the  
26 decision under review. Warren v Lane County, 5 Or LUBA 227,  
229-30 (1982).<sup>1</sup> Also, whether or not petitioner has met  
standing requirements imposed in the city zoning ordinance does  
not control standing to appear before this Board. Overton v

1 Benton County, 61 Or App 667, 658 P2d 574 (1983).<sup>2</sup>

2 Participant Stephen D. Martin argues Petitioner Worcester  
3 failed to allege any facts in the petition for review showing  
4 how he is adversely affected or aggrieved by the city's  
5 decision. In his brief, participant includes the affidavit of  
6 Ronald G. Larson, a registered engineer. Mr. Larson does not  
7 state the nature of his engineering specialty, but the  
8 affidavit says that he has determined by "engineering  
9 principles" that it is not possible for Petitioner Worcester to  
10 be within sight or sound of the subject property. The  
11 affidavit includes no supporting information, and there is no  
12 statement as to how the engineer's conclusions were made.

13 Petitioner Worcester replies with a request to amend the  
14 petition for review to include new allegations supporting  
15 petitioner's claim of standing. In addition, petitioner  
16 submits an affidavit in which petitioner concedes that he is  
17 not within sight of the subject property, but is within sound  
18 of it. Petitioner asserts he can place himself within both  
19 sight and sound by simply moving some 50 feet off the boundary  
20 of his property. Further, Petitioner Worcester reiterated in a  
21 deposition that he could hear activity on the subject property.

22 The Board held a recorded conference call on 11/30/83 at  
23 which time Participant Martin objected, as he had at oral  
24 argument on September 29, to inclusion of any new allegations  
25 of standing.

26 The Board finds Petitioner Worcester has standing to bring

1 this appeal. Petitioner states in the petition for review, in  
2 a supporting affidavit and in his deposition that he resides  
3 within sound of the applicant's property. The Board does not  
4 find the testimony of Mr. Larson, the engineer, convincing.  
5 The engineer's affidavit does not demonstrate that he is  
6 qualified to make conclusions on matters of acoustics, or how  
7 he arrived at his conclusions.

8 In Duddles v City Council of West Linn, 21 Or App 310, 535  
9 P2d 583 (1975), the court stated that one who is within close  
10 proximity of a land use action, "such as within sight or sound"  
11 of the subject property, presumably has standing to bring a  
12 challenge to a land use decision. Duddles, 21 Or App at 328.  
13 In this case, the Board believes it may presume from the  
14 petitioner's allegation that because he is within sound of the  
15 subject property, he is within relatively close proximity.  
16 Certainly, it would have been better had petitioner explained  
17 more fully how it is that he is adversely affected or aggrieved  
18 by this decision. However, the courts and this Board have come  
19 to recognize the "sight and sound" criteria as a kind of  
20 shorthand allegation of close proximity. The Board believes  
21 petitioner's allegation, supported by his affidavit and  
22 deposition, is sufficient.<sup>3</sup> VanVolkinburg v Marion County, 2  
23 Or LUBA 112 (1980); Merrill v VanVolkinburg, 54 Or App 873, 636  
24 P2d 466 (1981).

25 B. Petitioner Osburn.

26 Petitioner Osburn bases his claim for standing on the

1 following:

2 "Petitioner is a landowner who resides within  
3 approximately 1-half mile of the land (within sight  
4 and sound). He remonstrated orally and in writing to  
5 the City Council (Record at 34-36). He was aggrieved  
6 by the decision." Petition for Review (Osburn) at 1.

7 Respondent City of Cannon Beach and Participant Stephen D.  
8 Martin challenge Petitioner Osburn's standing on the same  
9 grounds as the challenge to Petitioner Worcester's  
10 standing.<sup>4</sup> Again, the petitioner responds with a motion to  
11 amend the petition for review, an affidavit and a deposition.  
12 In this case, however, the affidavit submitted by petitioner  
13 contradicts his claim in the petition for review. In the  
14 affidavit, petitioner says he is not within sight and sound of  
15 the subject property. Further, in his deposition taken on  
16 November 19, 1983, Petitioner Osburn states again that he is  
17 not within sight or sound of the subject property.

18 Petitioner's request to amend his petition to include new  
19 claims for standing is denied. The Board is cited to no reason  
20 why petitioner was unable to make accurate and complete claims  
21 for standing in his petition for review. While it is correct  
22 that Board Rule 7(D) allows amendments to petitions for review,  
23 that rule must be balanced against Rule 2 and 1979 Or Laws, ch  
24 772, calling for speedy review of land use decisions. As the  
25 Board stated in Barnes v Polk County:

26 "To allow the requested amendment would not permit  
this Board to accomplish the objectives set forth in  
Procedural Rule 2 of attaining 'the speediest  
practicable hearing and decision on review of land use  
decisions while affording all interested persons

1 reasonable notice and opportunity to participate,  
2 reasonable time to prepare and submit their cases, and  
3 a full and fair hearing.'" Barnes v Polk County, 6 Or  
4 LUBA 220, 224 (1982).

5 Were the Board to liberally allow amendments to petitions for  
6 review, the necessary time extensions could interfere with the  
7 scheduling not only of respondent's brief but also of oral  
8 argument. In some cases, the Board's ability to meet its  
9 deadline for a final opinion and order could be adversely  
10 affected.<sup>5</sup>

11 The Board concludes Petitioner Osburn lacks standing to  
12 bring this appeal. Petitioner's assertions in the petition to  
13 show he is entitled to standing have been contradicted by his  
14 own affidavit and deposition. Further, Petitioner Osburn's  
15 claim of aggrievement in the petition for review is a mere  
16 conclusion of aggrievement without supporting facts. Such  
17 conclusional statements have previously been found insufficient  
18 to confer standing. Jefferson Landfill Committee v Marion  
19 County, 6 Or LUBA 1, (1982), aff'd 65 Or App 319, \_\_\_ P2d \_\_\_  
(1983).

#### 20 INTRODUCTION TO ASSIGNMENTS OF ERROR

21 Before beginning a discussion of the assignments of error,  
22 the Board must address what findings were adopted to support  
23 this decision. Respondent City and the participant say the  
24 Board should consider certain findings in favor of a  
25 conditional use application to be applicable to this rezoning.  
26 Petitioner argues the conditional use findings were not adopted

1 in support of the rezoning, and the Board should disregard  
2 them. We agree.

3 Ordinance No. 83-16 enacted on June 21, 1983 and signed by  
4 the mayor the next day rezones the subject property from RAM to  
5 RT. The ordinance states it is based on the findings and  
6 recommendations of the planning commission, the findings  
7 proposed and accepted by the city council (an apparent  
8 reference to findings prepared by the applicant) and on records  
9 and files in the custody of the city recorder. Record at 4.  
10 There is no reference to the findings supporting the  
11 conditional use permit.

12 There is a letter of transmittal to the city council from  
13 the planning commission dated March 28, 1983. Record at 45.  
14 The memorandum recites that the planning commission voted to  
15 approve the zone change in question here. The memorandum  
16 states there are findings and conclusions attached and they  
17 include:

18 "Proposed Findings and Conclusions In the Matter of  
19 the Proposed Zone Change, Changing RAM to RT, and the  
20 Addendum to Proposed Findings and Conclusions (Zone  
21 Change RAM to RT); Proposed Findings and Conclusions  
In the Matter of the Annexation of Property Adjacent  
to Elkland Village Subdivision to the City of Cannon  
Beach." (Emphasis in original).

22 The memorandum says these documents were adopted by the city  
23 planning commission as findings of fact to support the zone  
24 change. There is no mention of the adoption of any findings in  
25 support of a conditional use application.

26 The general language in the ordinance purporting to include



1 "the records and files in the custody of the City Clerk" is not  
2 sufficient to specifically incorporate the conditional use  
3 permit findings. See Record at 4. The Board does not believe  
4 a general reference to a file or a collection of documents  
5 constitutes findings. Findings are required to show what facts  
6 the city council believed were true and how those facts add up  
7 to a showing of compliance with all applicable criteria.  
8 Sunnyside Neighborhood League v Clackamas County, 280 Or 3, 569  
9 P2d 1063 (1977), Harrell v. Baker Co. Court, 5 Or LUBA 192, 196  
10 (1982). Here, the city clearly adopted the findings made to  
11 support the zone change and the applicant's findings on the  
12 annexation. The Board takes the reference about the files in  
13 the custody of the city recorder to be a recitation of what  
14 constitutes the record, not specific findings to support this  
15 land use decision.

16 The Board therefore declines to consider as part of this  
17 zone change appeal the findings submitted by Respondent City  
18 and Participant Martin entitled "Findings For Conditional Use  
19 Permit To Allow Use of Recreational-Vehicle Park (RV) In the RT  
20 Zone."

21 ASSIGNMENT OF ERROR NO. 1

22 "The City erred in granting applicant's request for a  
23 zone change from Residential-Alternative/Mobile Home  
24 (RAM) Zone to Recreational/Trailer (RT) Zone and  
adopting Ordinance No. 86-16."

25 A. Alleged Violation of The Comprehensive Plan.

26 Petitioner argues the first zoning ordinance criterion for

1 a zone change is that the change must conform to the intent of  
2 the comprehensive plan. See City of Cannon Beach Zoning  
3 Ordinance, §2.040. Petitioner points to Midtown Policy No. 4  
4 in the city's comprehensive plan and says the policy is  
5 violated by this rezoning. Midtown Policy No. 4 is as follows:

6 "The area north of Elk Creek Road on the east side of  
7 US 101 (south of the Elk Creek Wetlands)  
8 shall be designated residential with an emphasis on  
9 low income housing alternatives [(]which could include  
10 mobile homes.) Standards shall be included in the  
11 zoning ordinance to buffer the surrounding residential  
12 area from adjacent commercial users. Developers shall  
13 provide alternative access in the northerly portion of  
14 this zone." City of Cannon Beach Comprehensive Plan  
15 at 16.

16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49  
50  
51  
52  
53  
54  
55  
56  
57  
58  
59  
60  
61  
62  
63  
64  
65  
66  
67  
68  
69  
70  
71  
72  
73  
74  
75  
76  
77  
78  
79  
80  
81  
82  
83  
84  
85  
86  
87  
88  
89  
90  
91  
92  
93  
94  
95  
96  
97  
98  
99  
100  
101  
102  
103  
104  
105  
106  
107  
108  
109  
110  
111  
112  
113  
114  
115  
116  
117  
118  
119  
120  
121  
122  
123  
124  
125  
126  
127  
128  
129  
130  
131  
132  
133  
134  
135  
136  
137  
138  
139  
140  
141  
142  
143  
144  
145  
146  
147  
148  
149  
150  
151  
152  
153  
154  
155  
156  
157  
158  
159  
160  
161  
162  
163  
164  
165  
166  
167  
168  
169  
170  
171  
172  
173  
174  
175  
176  
177  
178  
179  
180  
181  
182  
183  
184  
185  
186  
187  
188  
189  
190  
191  
192  
193  
194  
195  
196  
197  
198  
199  
200  
201  
202  
203  
204  
205  
206  
207  
208  
209  
210  
211  
212  
213  
214  
215  
216  
217  
218  
219  
220  
221  
222  
223  
224  
225  
226  
227  
228  
229  
230  
231  
232  
233  
234  
235  
236  
237  
238  
239  
240  
241  
242  
243  
244  
245  
246  
247  
248  
249  
250  
251  
252  
253  
254  
255  
256  
257  
258  
259  
260  
261  
262  
263  
264  
265  
266  
267  
268  
269  
270  
271  
272  
273  
274  
275  
276  
277  
278  
279  
280  
281  
282  
283  
284  
285  
286  
287  
288  
289  
290  
291  
292  
293  
294  
295  
296  
297  
298  
299  
300  
301  
302  
303  
304  
305  
306  
307  
308  
309  
310  
311  
312  
313  
314  
315  
316  
317  
318  
319  
320  
321  
322  
323  
324  
325  
326  
327  
328  
329  
330  
331  
332  
333  
334  
335  
336  
337  
338  
339  
340  
341  
342  
343  
344  
345  
346  
347  
348  
349  
350  
351  
352  
353  
354  
355  
356  
357  
358  
359  
360  
361  
362  
363  
364  
365  
366  
367  
368  
369  
370  
371  
372  
373  
374  
375  
376  
377  
378  
379  
380  
381  
382  
383  
384  
385  
386  
387  
388  
389  
390  
391  
392  
393  
394  
395  
396  
397  
398  
399  
400  
401  
402  
403  
404  
405  
406  
407  
408  
409  
410  
411  
412  
413  
414  
415  
416  
417  
418  
419  
420  
421  
422  
423  
424  
425  
426  
427  
428  
429  
430  
431  
432  
433  
434  
435  
436  
437  
438  
439  
440  
441  
442  
443  
444  
445  
446  
447  
448  
449  
450  
451  
452  
453  
454  
455  
456  
457  
458  
459  
460  
461  
462  
463  
464  
465  
466  
467  
468  
469  
470  
471  
472  
473  
474  
475  
476  
477  
478  
479  
480  
481  
482  
483  
484  
485  
486  
487  
488  
489  
490  
491  
492  
493  
494  
495  
496  
497  
498  
499  
500  
501  
502  
503  
504  
505  
506  
507  
508  
509  
510  
511  
512  
513  
514  
515  
516  
517  
518  
519  
520  
521  
522  
523  
524  
525  
526  
527  
528  
529  
530  
531  
532  
533  
534  
535  
536  
537  
538  
539  
540  
541  
542  
543  
544  
545  
546  
547  
548  
549  
550  
551  
552  
553  
554  
555  
556  
557  
558  
559  
560  
561  
562  
563  
564  
565  
566  
567  
568  
569  
570  
571  
572  
573  
574  
575  
576  
577  
578  
579  
580  
581  
582  
583  
584  
585  
586  
587  
588  
589  
590  
591  
592  
593  
594  
595  
596  
597  
598  
599  
600  
601  
602  
603  
604  
605  
606  
607  
608  
609  
610  
611  
612  
613  
614  
615  
616  
617  
618  
619  
620  
621  
622  
623  
624  
625  
626  
627  
628  
629  
630  
631  
632  
633  
634  
635  
636  
637  
638  
639  
640  
641  
642  
643  
644  
645  
646  
647  
648  
649  
650  
651  
652  
653  
654  
655  
656  
657  
658  
659  
660  
661  
662  
663  
664  
665  
666  
667  
668  
669  
670  
671  
672  
673  
674  
675  
676  
677  
678  
679  
680  
681  
682  
683  
684  
685  
686  
687  
688  
689  
690  
691  
692  
693  
694  
695  
696  
697  
698  
699  
700  
701  
702  
703  
704  
705  
706  
707  
708  
709  
710  
711  
712  
713  
714  
715  
716  
717  
718  
719  
720  
721  
722  
723  
724  
725  
726  
727  
728  
729  
730  
731  
732  
733  
734  
735  
736  
737  
738  
739  
740  
741  
742  
743  
744  
745  
746  
747  
748  
749  
750  
751  
752  
753  
754  
755  
756  
757  
758  
759  
760  
761  
762  
763  
764  
765  
766  
767  
768  
769  
770  
771  
772  
773  
774  
775  
776  
777  
778  
779  
780  
781  
782  
783  
784  
785  
786  
787  
788  
789  
790  
791  
792  
793  
794  
795  
796  
797  
798  
799  
800  
801  
802  
803  
804  
805  
806  
807  
808  
809  
810  
811  
812  
813  
814  
815  
816  
817  
818  
819  
820  
821  
822  
823  
824  
825  
826  
827  
828  
829  
830  
831  
832  
833  
834  
835  
836  
837  
838  
839  
840  
841  
842  
843  
844  
845  
846  
847  
848  
849  
850  
851  
852  
853  
854  
855  
856  
857  
858  
859  
860  
861  
862  
863  
864  
865  
866  
867  
868  
869  
870  
871  
872  
873  
874  
875  
876  
877  
878  
879  
880  
881  
882  
883  
884  
885  
886  
887  
888  
889  
890  
891  
892  
893  
894  
895  
896  
897  
898  
899  
900  
901  
902  
903  
904  
905  
906  
907  
908  
909  
910  
911  
912  
913  
914  
915  
916  
917  
918  
919  
920  
921  
922  
923  
924  
925  
926  
927  
928  
929  
930  
931  
932  
933  
934  
935  
936  
937  
938  
939  
940  
941  
942  
943  
944  
945  
946  
947  
948  
949  
950  
951  
952  
953  
954  
955  
956  
957  
958  
959  
960  
961  
962  
963  
964  
965  
966  
967  
968  
969  
970  
971  
972  
973  
974  
975  
976  
977  
978  
979  
980  
981  
982  
983  
984  
985  
986  
987  
988  
989  
990  
991  
992  
993  
994  
995  
996  
997  
998  
999  
1000

Petitioner claims the applicant's findings do not address this  
policy.

Petitioner goes on to explain the RAM Zone was designed to  
be consistent with Midtown Policy No. 4. The purpose of this  
zone is

"to provide an area in which conventional residential  
uses, alternative low cost housing and mobile homes  
can be established at moderate to higher  
densities..." City of Cannon Beach Zoning Ordinance,  
§3.060.

In contrast, the RT Zone has as its purpose the provision of  
areas "for the overnight parking of recreational vehicles,  
restrooms, and other support uses...." City of Cannon Beach  
Zoning Ordinance, §3.100. The RT Zone provides for mobile  
homes as conditional uses.

Petitioner then goes on to tie the alleged violation of  
Midtown Policy No. 4 to a violation of the housing policies in

1 the City of Cannon Beach Comprehensive Plan. Because the RT  
2 Zone does not allow low income housing as a permitted use,  
3 petitioner argues the effect of granting the zone change is to  
4 remove five acres of land from the inventory of lands  
5 designated for emphasis on low income housing. Petitioner  
6 alleges this change violates the following provisions of the  
7 comprehensive plan:

8 "The City encourages the development of low cost  
9 housing.

10 "Through its zoning ordinance, the city shall be  
11 committed, to providing areas for high density  
12 housing, for mobile homes, and for special housing  
13 needs of the elderly, students, and artists."

14 \* \* \*

15 "The city recognizes the importance of residential  
16 neighborhoods, and the need to protect them from  
17 unnecessary traffic and other disruptions." City of  
18 Cannon Beach Comprehensive Plan at 20.

19 Petitioner notes the applicant has said he will rezone other  
20 property for mobile homes, but petitioner says no such action  
21 has been taken to rezone other areas for this purpose.

22 In the addendum to the proposed findings and conclusions in  
23 support of the zone change, the city lists the following  
24 criteria:

25 "1. The change conforms with the intent of the  
26 Comprehensive Plan.

"2. The land is physically suitable for the intended  
use, in terms of slope, geology, flood hazard and  
other considerations.

"3. Resource lands are protected, including wetlands  
and forest lands.

1 "4. Negative impact on adjacent uses or neighborhoods  
2 are minimal or can be minimized, including  
3 traffic, noise, lighting, public facility  
4 adequacy, visual appearance.

5 "5. The area to be changed is adjacent to a similar  
6 zone, or is situated so that its isolation does  
7 not adversely affect surrounding uses." City of  
8 Cannon Beach Zoning Ordinance §2.040.

9 Under the first of these criteria, conformity with the  
10 intent of the comprehensive plan, the city finds that the  
11 intent of the comprehensive plan is set forth on pages 4 and 5  
12 of the plan. The city's findings then simply recite that the  
13 findings specifically address these policies.<sup>6</sup>

14 Notwithstanding this declaration, the findings do not talk  
15 about the plan beyond the claim that the findings address plan  
16 intent. However, neither the city nor Participant Martin claim  
17 the specific policies of the plan (beyond the intent statement)  
18 are not applicable. The Board will, therefore, review the  
19 decision for compliance with the plan policy cited by  
20 petitioner, Midtown Policy No. 4.

21 The city's zone change findings on housing state as follows:

22 "Pages 20 and 27 of the Zoning Ordinance set forth the  
23 uses permitted in a RAM Zone, which include  
24 residential uses, alternative low cost housing and  
25 mobile homes and with a conditional use permit a  
26 cluster housing. The purpose of a R-T Zone is to  
27 provide recreational vehicles, camping and with a  
28 conditional use permit, a recreational vehicle park."  
29 Record at 27.

30 The Board finds nothing in this finding that addresses low  
31 cost housing or mobile homes as a potential means of achieving  
32 a low cost housing goal or any matter in Midtown Policy No.

1 4.<sup>7</sup>

2 The findings in support of the annexation and incorporated  
3 into the zone change findings address housing policies as  
4 follows:

5 "This proposal encourages the development of lower  
6 cost housing in that the higher density that is of  
7 greater number of dwelling units per acre provided by  
8 mobile home sites and lower cost land development  
9 reduces housing costs.

10 "This proposal does recognize the importance of  
11 residential neighborhoods and does protect this  
12 neighborhood from unnecessary traffic and other  
13 disturbances such as noise, commerce, etc. A review  
14 of the preliminary plans will show that there is  
15 adequate access throughout the entire project."

16 This finding is somewhat unclear to the Board, but the  
17 first paragraph appears to be a statement justifying  
18 designation of annexed territory for mobile home use. It is  
19 the Board's understanding that certain of the annexed property,  
20 approximately five acres, is designated RAM. See Brief of  
21 Respondent City at 3. This finding, then, does not address  
22 Midtown Policy 4, but rather addresses other housing issues.

23 The Board finds the city has failed to make any findings  
24 explaining how it is that a comprehensive plan policy calling  
25 for residential zoning on the subject property, Midtown Policy  
26 No. 4, is met by a rezoning of the property for recreational  
vehicle use. Indeed, it appears Midtown Policy No. 4 requires  
residential zoning and therefore prohibits this zone  
change.<sup>8</sup> Because this action is contrary to a specific plan  
provision, this decision must be reversed. See Philippi v

1 Sublimity, 294 Or 730, 662 P2d 325 (1983); Sunnyside  
2 Neighborhood League v Clackamas Co, 280 Or 3, 569 P2d 1063  
3 (1977)..

4 B. Other Zone Change Criteria.

5 Petitioner next argues the fourth criterion for a zone  
6 change found at §2.040 of the zoning ordinance requires:

7 "Negative impact on adjacent uses or neighborhoods is  
8 minimal or can be minimized, including traffic, noise,  
9 appearance." City of Cannon Beach Zoning Ordinance,  
§2.040.

10 Petitioner argues the zone change does not provide for adequate  
11 protection from noise, traffic, lights, "transient influences"  
12 and other disruptions.

13 The city's findings on this criterion are as follows:

14 "The location of the property for the proposed zone  
15 change is such that it will minimize traffic and noise  
16 for the area it serves, and will further minimize  
17 traffic and noise, as well as congestion, for the  
18 midtown and downtown area of the city. This property,  
designed for a recreational vehicle park, will provide  
spaces for recreational vehicles that otherwise would  
congest the midtown and downtown areas, as well as the  
residential areas.

19 "Seventeen exhibits being photographs numbered 1  
20 through 17, which photographs were taken by Gary L.  
21 Krohn on the 22nd day of March, 1983, give visual  
22 evidence of the congestion that can be relieved by  
23 this zone change. Traffic with these vehicles will be  
24 minimized by the ability to park them in a  
recreational vehicle park, which will then relieve  
25 traffic congestion on the streets of downtown areas.  
The recreational vehicle park, through the conditional  
26 use process, will be subject to review by the Planning  
Commission, to provide adequate visual appearance to  
meet the standards required for Cannon Beach. All  
public facilities - water, sewer, utilities, police  
protection and fire protection - are immediately

1        accessible and available to the area proposed for a  
2        zone change." Record at 28.

3        The Board does not believe this finding addresses §2.040.  
4        The city appears to be saying that having a place to park  
5        recreational vehicles will somehow relieve traffic within the  
6        city. The city fails to address how traffic generated by uses  
7        in the RT Zone differs from that generated in the RAM Zone, and  
8        whether that traffic will have any adverse affect on the  
9        neighborhood. There is also no analysis of the traffic  
10       patterns that might be created by recreational vehicles going  
11       to and from the site and whether the impact will be minimal or  
12       can be minimized. The Board believes such an analysis is  
13       necessary in order to adequately address petitioner's concerns  
14       about traffic and noise in relation to §2.040. Gruber v  
15       Lincoln County, 2 Or LUBA 180 (1981).

16       Petitioner turns next to the fifth criterion for a zone  
17       change found at §2.040 of the ordinance. This section provides:

18       "The area to be changed is adjacent to a similar zone,  
19       or is situated so that its isolation does not  
20       adversely affect surrounding uses." City of Cannon  
21       Beach Zoning Ordinance, §2.040.

22       Petitioner argues that except for a small parcel of land zoned  
23       C2, the surrounding property is zoned RAM and for low density  
24       residential use (Residential Very Low Density Zone, RVL).

25       The fifth criterion is addressed by the city in the  
26       following manner:

      "The present zone is RAM set forth on page 20 of the

1 Zoning Ordinance. The adjacent property uses are the  
2 proposed recreational vehicle park, mobile home  
3 subdivision, and commercial sub-station across the  
4 county road to the south. This proposed zone change  
5 allows a recreational vehicle park, as well as all the  
6 uses of the RAM Zone in which the mobile home  
7 subdivision is located. The zone change offers no use  
8 that is incompatible with adjacent areas." Record at  
9 28.

6 This finding is in error insofar as it states the proposed  
7 zone allows all the uses in the RAM Zone. As noted earlier,  
8 the RAM Zone allows mobile homes as permitted uses, while the  
9 RT Zone permits mobile homes only as conditional uses. See  
10 Footnote 6, supra. Therefore, since the fifth criterion  
11 requires the use to be adjacent to a similar zone or be  
12 situated so its isolation from similar zones does not adversely  
13 affect surrounding uses, the city must explain how it is this  
14 use will not adversely affect surrounding uses. There is no  
15 such explanation. An unsupported conclusion that the zone  
16 change does not offer a use that is incompatible with adjacent  
17 areas is insufficient explanation.<sup>9</sup>

18 ASSIGNMENT OF ERROR NO. 2

19 "The City erred in failing to make specific findings  
20 of fact and conclusions of law with respect to  
21 specific policies set forth in the Comprehensive Plan,  
22 to wit: Policy No. 4 of the Midtown Section, which  
23 policy was placed at issue in the proceedings before  
24 the City and findings with respect to the potential  
25 violation of L.C.D.C. Goal No. 10 and in failing to  
26 make adequate findings with respect to three criteria  
for the zone change as required by Section 2.040 of  
the Zoning Ordinance." Petition for Review at 10.

25 In the first part of Assignment of Error No. 2, petitioner  
26 restates his arguments under Assignment of Error No. 1. The



1 Board therefore does not believe it necessary to repeat its  
2 discussion.

3 The second part of this assignment of error claims a  
4 violation of Statewide Planning Goal 10, the housing goal.<sup>10</sup>

5 Petitioner argues the change adversely affects the city's  
6 ability to provide low income housing and thereby violates Goal  
7 10. Goal 10 requires an inventory of buildable lands and  
8 requires that plans

9 "encourage the availability of adequate numbers of  
10 housing units at price ranges and rent levels which  
11 are commensurate with the financial capabilities of  
12 Oregon households and allow for flexibility of housing  
13 location, type and density." LCDC Goal 10.

14 There is an additional comment, which the Board does not  
15 take to be an assignment of error, that the "spirit" of the  
16 citizen involvement goal, Goal 1, and the land use planning  
17 goal, Goal 2, place a burden on a local government to prepare  
18 findings of fact that are tailored to the specific case before  
19 it. Petitioner claims the findings are inadequate to show the  
20 city adequately applied applicable criteria.

21 On June 5, 1980, the comprehensive plan and implementing  
22 ordinances for the City of Cannon Beach were acknowledged by  
23 LCDC as being in compliance with statewide planning goals. The  
24 property subject to this rezoning is within the urban growth  
25 boundary and the city limits of the City of Cannon Beach as  
26 they existed at the time of acknowledgment. This rezoning is,  
therefore, controlled by the provisions of the city's  
acknowledged comprehensive plan and implementing ordinances.

1 While the Board believes this action may be a "small tract  
2 zoning map amendment," it is not subject to review for goal  
3 compliance by this Board under the provisions of ORS 197.605.  
4 In order for LUBA to review a small tract zoning amendment  
5 under an acknowledged comprehensive plan, the amendment would  
6 have to meet three conditions:

7 "A small tract zoning map amendment is subject to  
8 review for compliance with the goals in the manner  
9 provided in Sections 4 to 6, Chapter 772, Oregon Laws  
1979, as amended by Sections 35 to 36(a), Chapter 748,  
Oregon Laws 1981, if:

10 (A) The amendment applies to land outside an  
11 acknowledged urban growth boundary;

12 (B) The local government has a comprehensive plan  
13 that was acknowledged before July 1, 1981; and

14 (C) The acknowledged comprehensive plan has not been  
15 reviewed under ORS 197.640." ORS 197.605(4)(a).

16 Because this zone change occurred within the city's  
17 acknowledged urban growth boundary, the decision does not meet  
18 ORS 197.605(4)(a)(A). LUBA's review, therefore, is limited to  
19 consideration of whether the rezonings comply with the city's  
20 comprehensive plan. LUBA is not able to review these decisions  
21 against statewide planning goals and dismisses petitioner's  
22 allegation of goal violation.<sup>11</sup>

23 The decision of the City of Cannon Beach rezoning certain  
24 property from RAM to RT is reversed.

25 The challenge to the city's decision to rezone certain  
26 property from C2 to C1 is dismissed because Petitioner Osburn  
lacks standing to bring the appeal.

FOOTNOTES

1  
2  
3 1

In Warren, the Board said:

4 "The facts alleged in the petition need not be  
5 supported by evidence in the record or in documents  
6 outside the record. If the facts alleged are  
7 disputed, the Board may 'take evidence' to determine  
8 whether the facts alleged are true. 1979 Or Laws, ch  
9 772, section 4(7), as amended. If the evidence had to  
already exist in the record, Section 4(7), allowing  
the Board to 'take evidence' would not make sense.  
Moreover, requiring that the evidence to support  
standing appear in the record:

10 '...is unworkable because either standing might  
11 not have been an issue before the inferior  
12 tribunal or, if an issue, might have been  
13 determined by the inferior tribunal in a  
14 different standard than...applicable once the  
matter reaches the court system. Duddles v City  
Council of West Linn, 21 Or App 310, 328, 535 P2d  
583 (1975).'" Warren, 5 Or LUBA at 229-230.

15 2

16 The Board does not understand the city to argue petitioner  
17 failed to exhaust available remedies before the city governing  
18 body. This failure may preclude a petitioner from appealing to  
19 the Land Use Board of Appeals, but no such failure exists here.

18 3

19 The Board is not troubled by the fact that the petitioner  
20 is not within sight and sound of the subject property. In the  
21 Duddles case, the court used sight or sound as a means of  
expressing proximity to the subject property.

22 4

23 In addition, respondent and participant argue that because  
24 Mr. Osburn is a member of the Cannon Beach Planning Commission,  
25 he is precluded from bringing an appeal from a decision of the  
26 city council. Because of the Board's holding that Petitioner  
Osburn does not have standing on other grounds, the Board does  
not reach this question (this review proceeding is conducted  
under the provisions of 1979 Or Laws, ch 772, §4(3), as  
amended, and the Board does not find the provisions of 1983 Or

1 Laws, ch 827 §32(9) to apply).

2  
3 5

4 The Board notes the 90 day time limit applicable in this  
5 case under the provisions of 1979 Or Laws, ch 772, §4(8), as  
6 amended, is no longer in effect. The Board now has a 77 day  
7 time limit based upon the time of transmittal of the record in  
8 the proceeding on review. Because timing of the final opinion  
9 and order is based upon the filing of the record, an event  
10 which occurs before amendments to petitions, the resulting  
11 additional time for a fair response by respondents will cut  
12 severely into the Board's time to prepare an order on the  
13 merits.

14  
15 6

16 The finding states:

17 "The intent of the Comprehensive Plan is set forth on  
18 pages 4 and 5 of the Plan, in its stated 'Purpose' and  
19 'Preamble.' The proposed findings and conclusions  
20 with reference to annexation are incorporated in these  
21 findings and speak specifically to this criteria.  
22 Pages 20 and 27 of the Zoning Ordinance set forth the  
23 uses permitted in a RAM Zone, which include  
24 residential uses, alternative low cost housing and  
25 mobile homes and with a conditional use permit a  
26 cluster housing. The purpose of an R-T zone is to  
provide recreational vehicles, camping and with a  
conditional use permit, a recreational vehicle park."

27  
28 7

29 The Board notes, however, that the RT Zone includes as a  
30 conditional use mobile homes on 5,000 square foot lots. See  
31 §3.100 of the Zoning Ordinance. The zone also allows any use  
32 permitted conditionally or outright in an R2 Zone. *Id.* A  
33 permitted use in a RT Zone includes a two family dwelling. The  
34 purpose of the R2 Zone is to provide an area of "moderate  
35 density (11 units per net acre)...." *Id.* The difference,  
36 then, between the RAM Zone and the RT Zone with respect to  
mobile homes is simply that mobile homes are permitted outright  
in the RAM Zone and permitted only conditionally in the RT Zone.

37  
38 8

39 The Board notes in this regard that the city's eight  
40 residential zones are clearly distinct and separate from the  
41 city's commercial, recreation and recreation/trailer (RT)  
42 zone. Further, the comprehensive plan's housing policies are  
43 clearly distinct from its "recreation, open space, natural,  
44

1 visual and historic resources" policies. The Board finds  
2 nothing in the housing policies to suggest a recreational  
3 vehicle zone, though it may include housing as a conditional  
4 use, meets the housing policy. Clearly, the city's residential  
5 zones are meant to comply with housing policies, and had the  
city intended this particular area for mixed uses, the plan  
would have said so. The Board concludes zoning this property  
for recreational vehicle use may require an amendment to the  
comprehensive plan to change Midtown Policy No. 4.

6  

---

9

7 The Board notes in this regard that the proceeding here is  
8 a zone change. It is not a conditional use, and the criteria  
9 for a zone change are applicable, not the criteria for a  
10 conditional use. See §6.070 of the city's zoning ordinance.  
11 It is only necessary, therefore, that the city discuss  
compatibility of RT uses generally with the surrounding zone  
and surrounding uses. It is not necessary for the city to  
specifically articulate how this proposal meets a zone change  
criteria unless the city intends to approve the zone change  
only for this development and not for any RV use.

12  

---

10

13 "GOAL: To provide for the housing needs of citizens of the  
14 state.

15 "Buildable lands for residential use shall be  
16 inventoried and plans shall encourage the availability  
17 of adequate numbers of housing units at price ranges  
18 and rent levels which are commensurate with the  
financial capabilities of Oregon households and allow  
for flexibility of housing location, type and  
density." Statewide Planning Goal 10.

19  

---

11

20 There are other remedies. ORS 197.320(1)(f) allows the  
21 commission to issue an enforcement order where a local  
22 government engages in a pattern or practice of decision making  
23 which violates an acknowledged plan. Also, the commission can  
call the city's plan and ordinance up for review under ORS  
197.640 (the parties have advised the city's plan and  
ordinances have not yet been given a periodic review).

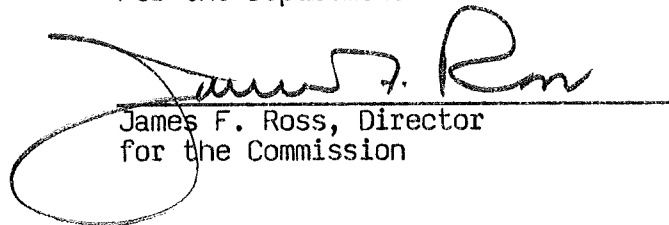
BEFORE THE LAND CONSERVATION AND DEVELOPMENT COMMISSION  
OF THE STATE OF OREGON

WILLIAM S. WORCESTER,	)	
	)	
Petitioner,	)	
vs.	)	LUBA NO. 83-076
	)	
CITY OF CANNON BEACH and	)	
STEPHEN D. MARTIN,	)	L.C.D.C.
Respondents	)	
	)	
W. STEPHEN OSBURN,	)	DETERMINATION
	)	
Petitioner,	)	
v.	)	LUBA NO. 83-078
	)	
CITY OF CANNON BEACH and	)	
STEPHEN D. MARTIN	)	
	)	
Respondents.	)	

The Land Conservation and Development Commission approves the recommendation of the Land Use Board of Appeals in LUBA No. 83-074 and No. 83-078.

DATED THIS 22 DAY OF NOVEMBER, 1983

For the Department

  
James F. Ross, Director  
for the Commission

RE:ad  
6461B/  
D11/21/83



STATE OF OREGON

Agenda Item 5.2

TO: MEMBERS OF THE LAND CONSERVATION AND DEVELOPMENT COMMISSION      DATE: 11/01/83

FROM: THE LAND USE BOARD OF APPEALS

SUBJECT: WORCESTER v CANNON BEACH  
LUBA No. 83-076

OSBURN v CANNON BEACH  
LUBA No. 83-078

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

This is the first case in which the Board has been asked to consider what is arguably a small tract zoning amendment to an acknowledged comprehensive plan. However, the Board does not believe it has the authority to review this amendment for compliance with statewide planning goals because one of the three criteria allowing Board review in ORS 197.605(4)(a) has not been met.

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.



Contains  
Recycled  
Materials