

LAND USE
BOARD OF APPEALS
JAN 9 4 09 PM '86

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

WENDY JANE MCCULLOUGH, CHARLES)
HOFMANN and CANDACE HOFMANN,)
Petitioners,)
vs.)
CITY OF BAKER, OREGON,)
Respondent.)

LUBA No. 85-087
FINAL OPINION
AND ORDER

Appeal from City of Baker.

Martin J. Leuenberger, Baker, filed the petition for review and argued the cause by telephone conference on behalf of petitioners. With him on the brief were Coughlin & Leuenberger, P.C.

No appearance by City of Baker.

No appearance by Respondents-Participants Lloyd Nelson and Janice Nelson.

BAGG, Referee; KRESSEL, Chief Referee; DUBAY, Referee, participated in the decision.

AFFIRMED 01/09/86

You are entitled to judicial review of this Order. Judicial review is governed by the provisions of ORS 197.850.

1 Opinion by Bagg.

2 NATURE OF THE DECISION

3 Petitioners request reversal of a conditional use permit
4 for a chiropractic clinic.

5 FACTS

6 Participants Lloyd and Janice Nelson sought approval for a
7 chiropractic office in a High Density Residential (R-HD) zone.
8 The City of Baker Planning Commission denied the request.
9 Participants appealed the decision to the city council, and the
10 council voted to approve the request.

11 "FIRST ASSIGNMENT OF ERROR

12 "The City failed to appropriately address the criteria
13 required in the comprehensive plan and zoning
ordinances."

14 Petitioners argue the city council failed to show
15 compliance with the comprehensive plan and Section 16.010 of
16 the zoning ordinance.¹ Section 16.010 states the purpose of
17 the conditional use provisions as follows:

18 "Certain types of uses require special consideration
19 prior to their being permitted in a particular
district. The reasons for requiring such special
20 considerations involve, among other things, the size
of the area required for the development of such uses,
21 the affect (sic) such uses have on the public utility
systems, the nature of the traffic problems incidental
22 to the operation of the use, the effect such uses have
on any adjoining land uses and the effect such uses
23 have on the growth and development of the community as
a whole.

24 ". . . the purpose of review shall be to determine
25 that the characteristics of a proposed conditional use
shall be reasonably compatible with the type of uses
26 permitted in surrounding areas . . ."

1 Specific approval criteria for conditional uses are found
2 at ordinance Section 16.100. In pertinent part the standards
3 are as follows:

4 "a) The proposal will be consistent with the
5 comprehensive plan and the objectives of the
6 zoning and subdivision ordinance and other
7 applicable policies of the city.

8 "b) Taking into account location, size, design and
9 operating characteristics, the proposal will have
10 a minimal adverse impact on the (1) livability;
11 (2) value; (3) appropriate development of
12 abutting properties and the surrounding area
13 compared to the impact of development that is
14 permitted outright.

15 "c) The location and design of the site and
16 structures for the proposal will be as attractive
17 as the nature of the use and its setting warrant."

18 Petitioners complain these criteria were not properly addressed.

19 We also understand petitioners to complain that the city
20 did not clearly adopt the findings of approval. Record, pp.
21 1-3. Petitioners base this argument on the following notation
22 in the minutes of the city council meeting:

23 "It was the general concensus that the intent of the
24 motion was to include that the rest of the findings of
25 fact from the Planning Commission be adopted, with the
26 necessary modification." Record, p. 6.

27 Petitioners state there was no motion to include findings of
28 fact approving the conditional use request, nothing showing
29 what findings needed "modification" and what findings were
30 adopted as written.

31 The findings in this case appear in a written order which
32 bears the title "APPEAL TO CITY COUNCIL - DECISION." Record,
33 p. 1. The order states the nature of the application, that a

1 hearing was held, and that particular criteria are relevant to
2 the grant or denial of the request. The order includes a
3 series of findings of fact with conclusions and, finally,
4 grants approval and attaches conditions. It is dated the 7th
5 of October, 1985, and is approved by the mayor. Also appearing
6 in the order is a list of those voting in favor and those
7 voting opposed.

8 While the motion to grant the request may be vague in its
9 adoption of findings, the order is not. The order does not
10 contain conflicting findings from the planning commission, but
11 is consistent within itself. Whether the motion to adopt
12 findings was somewhat unclear is of no consequence where the
13 written order is clear. The city council speaks through the
14 order. See Citadel Corporation v. Tillamook, 9 Or LUBA 61;
15 affd 66 Or App 965, 675 P2d 1114 (1985). We find no error as
16 alleged.

17 Petitioners next claim the city failed to discuss the
18 impact of the clinic on public utility systems, parking, and
19 traffic. They claim all of these matters must be addressed
20 under Section 16.010 of the county ordinance. See page 2,
21 supra.

22 The city's order recites that there is a building on the
23 site which is now used as a residence, there are residences to
24 the north and west, and there is a service station to the
25 south. The order says the office will use the existing
26 building with no changes except for the addition of a

1 handicapped access ramp and a sign. Record, p. 2. The
2 findings explain that the office is on Main Street which is
3 paved and 64 feet in width.

4 The findings describe the area of the proposed use and its
5 characteristics. The findings are responsive to the approval
6 criteria found at Section 16.100(b)(c) which call, in general,
7 for compatibility with the surrounding area. There is no need
8 for findings on issues not addressed in the approval criteria.

9 Petitioners' reliance on Section 16.010 is misplaced.
10 Section 16.010 is the "description and purpose" subsection of
11 the conditional use ordinance. It furnishes a guide to
12 interpretation of Section 16.100, but we see nothing in Section
13 16.010 which calls for specific findings of fact on particular
14 proposed conditional use permit characteristics. The standards
15 for granting conditional use permits are found in Section
16 16.100, not in Section 16.010. We therefore reject
17 petitioners' challenge.

18 As to parking, the city found parking in the street to be
19 preferable "as off-street parking would tend to detract from
20 the appearance of the residential area." Record, p. 2 The
21 finding is responsive to ordinance Section 16.100(b). We do
22 not understand the ordinance to require more of the city on
23 this issue.

24 With respect to traffic, the city's order notes

25 "(t)hat the office will generate approximately 30 cars
26

1 per day additional traffic in the immediate
2 neighborhood. Given the present traffic pattern in
3 the area, the additional 30 cars will have no adverse
4 impact." Record, p.3.

5 This finding also is responsive to the city's approval criteria
6 at Section 16.100(b). The matter of traffic is pertinent to
7 whether the proposed use will have an "adverse impact on the
8 (1) livability..." of the surrounding area. We therefore
9 reject petitioners' challenge.

10 The first assignment of error is denied.

11 "SECOND ASSIGNMENT OF ERROR

12 "The findings in the decision, if assumed to be
13 properly adopted, are not supported by the evidence in
14 the record."

15 Petitioners challenge several findings as being unsupported
16 by evidence in the record. Many of the findings cited are not
17 critical to the decision. That is, the findings complained of
18 do not address applicable approval criteria. For example,
19 petitioners attack Finding 9 which states that Campbell Street
20 is a four lane, undivided highway. While adequate traffic
21 circulation may be relevant to applicable conditional use
22 approval criteria, whether or not a particular street is a four
23 lane, undivided highway is not a critical fact. However,
24 certain findings do appear to be important to the decision.
25 For example, findings concerning the appearance of the proposed
26 use and its impact on the residential area are important
27 considerations to the grant of a conditional use permit. See
28 Section 16.100(b).

1 Petitioners claim nothing in the record supports Finding
2 No. 10 (that off-street parking would tend to detract from the
3 appearance of the residential area). We reject this attack.
4 Read in entirety, the finding approves on-street parking and
5 explains the choice of on-street over off-street parking.
6 There is evidence about this issue in the minutes of the city
7 council's and the planning commission's meetings. We see no
8 reason why the alternative not selected must be predicated on
9 evidence in the record. Further, petitioners do not claim the
10 findings about on-street parking are not supported by
11 substantial evidence. Where the findings recite basic facts
12 for which evidentiary support exists in the record (in this
13 case, testimony), it is petitioners' obligation to tell us how
14 those facts do not support the findings. Petitioners have not
15 done so.²

16 Traffic is an important issue under Section 16.100(b).
17 Petitioners complain there is no substantial evidence to
18 support the city's conclusion that patient traffic will not
19 result in an adverse impact to the neighborhood.

20 We have already noted that the city has made findings on
21 traffic. There is evidence to support the city's findings.
22 The applicant testified before the planning commission that he
23 counted 24 cars in a 15-minute period at about 9:00 a.m. There
24 will be a maximum of 30 patients a day. Assuming one
25 automobile per patient, the city found there will be a maximum
26 of 30 additional cars a day, (business hours are from 8:00 a.m.

1 to 6:00 p.m.). These facts furnish substantial evidence for
2 the city's conclusion that the additional traffic will cause no
3 adverse impact. Home Builders Association of Metropolitan
4 Portland v. Metropolitan Service District et al, 54 Or App 60,
5 633 P2d 1320 (1981).

6 We find the city's order to be supported by substantial
7 evidence.

8 The second assignment of error is denied. The city's grant
9 of a conditional use permit is sustained.

FOOTNOTES

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4 Petitioners do not explain the violation of the city's
5 comprehensive plan. As a consequence, we make no statement on
6 compliance with the plan.

7 2
8 We note in addition that the applicants' testimony
9 furnishes an evidentiary basis for the city's conclusion. See
10 Record, pp. 15 and 16 which includes the applicants' testimony
11 before the planning commission.
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