

LAND USE  
BOARD OF APPEALS

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

OCT 2 4 45 PM '86

3	WILMA MCNULTY and	)	
	LINDA SIMPSON,	)	
4		)	LUBA No. 86-050
	Petitioners,	)	
5		)	FINAL OPINION
	vs.	)	AND ORDER
6		)	
	CITY OF LAKE OSWEGO and	)	
7	CHURCH OF JESUS CHRIST OF	)	
	LATTER-DAY SAINTS,	)	
8		)	
	Respondents,	)	

Appeal from City of Lake Oswego.

Barbara Gay Canaday, Lake Oswego, and Barry L. Adamson, Portland, filed the petition for review and Barry L. Adamson argued on behalf of petitioners.

James M. Coleman, Lake Oswego, filed a response brief and argued on behalf of Respondent City.

James H. Bean, Portland, filed a response brief and argued on behalf of Respondent-Participant Church of Jesus Christ of Latter-Day Saints. With him on the brief were Lindsay, Hart, Neil & Weigler.

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

REMANDED 10/02/86

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

Opinion by DuBay.

NATURE OF THE DECISION

This is an appeal from a decision that a proposed Church of Jesus Christ of Latter-Day Saints' Temple complies with the city's Building Design Standards.

FACTS

A conditional use permit allowing the proposed Temple was approved by the city's planning commission in 1984. After the permit was issued, the city's Development Review Board (DRB) approved the design of the Temple in September, 1984. That decision was appealed to this Board. LUBA found the city's approval did not include adequate findings to demonstrate compliance with the Building Design Standards and ordered the decision remanded. See McNulty v. City of Lake Oswego, \_\_\_ Or LUBA \_\_\_ (1986) (LUBA No. 85-101, April 14, 1986)<sup>1</sup> (McNulty I herein).

Descriptions of the site and land uses in the area are stated in our former opinion and will not be repeated here. Details of the building and its design are set forth below.

After the remand order, the city considered the application in three public meetings but received no additional evidence. On May 13, 1986, at a joint hearing of the council and the DRB, public comment was received about the meaning and interpretation of the terms "built environment," "good design" and "complementary" as used in the city's Building Design Standards. At the conclusion of the meeting, definitions of

1 these terms were adopted without amending the Building Design  
2 Standards.

3 On June 10, 1986, the council met to consider the design of  
4 the proposed Temple, using the meanings of terms decided upon  
5 at the May 13 meeting. After hearing testimony on the matter,  
6 the council reaffirmed the decision of the DRB to approve the  
7 Temple design. Findings were later prepared and adopted. This  
8 appeal followed.

9 FIRST ASSIGNMENT OF ERROR

10 Petitioners challenge the city's adoption of an  
11 interpretation of "complementary" as used in the Building  
12 Design Standards. In relevant part, the city's Building Design  
13 Standards is as follows:

14 "2.020 Standards for Approval.

15 "1. Buildings shall be designed and located to  
16 complement and preserve existing buildings, streets  
and paths, bridges and other elements of the built  
environment.

17 "a. Design buildings to be complementary in  
18 appearance to adjacent structures of good design  
with regard to:

- 19 "i. Materials  
20 ii. Setbacks (for retail/commercial part  
specifically)  
21 iii. Roof lines  
22 iv. Height  
v. Overall Proportions"

23 At the May 13 meeting the council adopted the following  
24 interpretation of "complementary" as used in this standard:

25 "Complementary: that the visual aspects of a building  
26 or structural element complete the visual image of the  
universe being considered in an aesthetically pleasing

1 way." Record at 428, 438.

2 Petitioners attack the city's interpretation on three  
3 grounds:

- 4 (1) A definition or interpretation of "complementary"  
5 is not warranted because the term has a clear  
6 meaning in the ordinance.
- 7 (2) The city had no authority to interpret a term  
8 neither questioned by the parties nor discussed  
9 in LUBA's Order on Remand.
- 10 (3) The definition adopted by the city is itself  
11 ambiguous and unintelligible.

12 For reasons discussed below, we reject these challenges.

13 Before taking up petitioners' challenge on its merits, we  
14 first address a jurisdictional challenge to petitioners' right  
15 to assert their first assignment of error. Respondents allege  
16 petitioners may not challenge the city's adoption of  
17 interpretations in this appeal. Respondents contend the  
18 approval of the interpretation on May 13, 1986, was a land use  
19 decision described in ORS 197.015(10)(a)(A) because it  
20 concerned application of the city's development  
21 regulations.<sup>2</sup> According to respondents' theory, petitioners  
22 had only 21 days after May 13 to file an appeal with this  
23 Board.<sup>3</sup> Since this appeal was filed later, respondents  
24 allege petitioners may not challenge the city's adoption of the  
25 interpretation in this proceeding.

26 We reject respondent's claim. Petitioners' challenge is  
not aimed at the motion made and adopted on May 13th. We read  
petitioners' assignment of error as challenging the validity of

1 the city's interpretation of the Building Design Standards as  
2 applied in the order dated July 1, 1986. The notice of intent  
3 to appeal the July 1 order was timely filed. Petitioners'  
4 challenge to the application of the interpretation is properly  
5 before us.

6 We turn to petitioners' claims of error. Petitioners first  
7 contend that the Building Design Standards need no  
8 interpretation. According to petitioners, the city erred by  
9 examining the word "complementary" isolated from the text.  
10 They say the term is not ambiguous when read with related  
11 provisions of Section 2.020(1) of the Building Design  
12 Standards. Petitioners contend the meaning in context is "a  
13 design which preserves, is compatible with, and is not a  
14 wholesale contradiction to the environment in which it is  
15 intended to be sited." Petition at 22. Petitioners also say  
16 that "complementary," in context, means "similar" or  
17 "compatible" because those words can be substituted for  
18 "complementary" without changing the meaning of the standard.

19 Petitioners correctly point out that a jurisdiction may not  
20 circumvent the plain meaning of a statute or ordinance by  
21 interpreting its language to reach a specified result. See for  
22 example, City of Hillsboro v. Housing Development Corp. of  
23 Washington County, 61 Or App 484, 657 P2d 726 (1983). However,  
24 we do not agree with petitioners' that the meaning of  
25 complementary they propose is the only one that the term may be  
26 given under the city's Building Design Standards.

1           Petitioners say the meaning they propose is dictated by the  
2 relationship between "complementary" and the factors listed in  
3 Section 2.020(1), i.e., roof lines, height, and overall  
4 proportions. However, the meaning they propose is not apparent  
5 to us from the use of these terms in the standard. Because a  
6 proposed design must complement the roof lines, height and  
7 proportions of adjacent structures does not suggest that  
8 "complement" has only the meaning advocated by petitioners.

9           We also reject petitioners' suggestion that complementary  
10 means compatible or similar because these words may be  
11 substituted for complementary. This begs the question. The  
12 fact that it may be logically possible to substitute these  
13 words for "complementary" does not mean that "complementary"  
14 can have no other meanings, including the one reflected in the  
15 city's order.

16           The ordinance context fails to disclose a clear meaning of  
17 "complementary." Not surprisingly the testimony given to the  
18 city council advanced a variety of definitions. This lack of  
19 agreement is evidence that the meaning of the ordinance is not  
20 clear on its face. We cannot say that "complementary" has only  
21 one plain meaning in the Lake Oswego Building Design  
22 Standards.<sup>4</sup>

23           Petitioners next allege the city had no authority to  
24 interpret terms in the ordinance after LUBA's Order of Remand.  
25 According to petitioners, the meaning of "complementary" was  
26 never questioned by the DRB or by any party to the dispute,

1 either during the county's approval proceedings or in the first  
2 appeal to this Board. Further, petitioners say LUBA's remand  
3 neither discussed the term nor requested its clarification.  
4 Under these circumstances, petitioners assert the city not only  
5 had no reason to interpret the Building Design Standards, it  
6 had no authority to do so.

7 We disagree with petitioners that the city was prohibited  
8 from interpreting its ordinance as alleged. We know of no  
9 authority preventing any jurisdiction from interpreting  
10 ambiguous terms in its controlling regulations prior to making  
11 final land use decisions.

12 Petitioners' final attack alleges the city's definition of  
13 "complementary" is itself vague and ambiguous, and therefore  
14 inadequate as a standard. Petitioners mount this attack by  
15 questioning the meaning of terms in the city's interpretation,  
16 such as "visual aspects of a building," "structural element,"  
17 and "an aesthetically pleasing way." However, petitioners have  
18 not set forth a legal theory to explain why the city's  
19 interpretation is impermissible. Andersen v. Peden, 284 Or  
20 313, 587 P2d 59 (1978); Warren v. Marion County, 222 Or 307,  
21 357 P2d 257 (1960).

22 The meaning given the term "complementary" by the city is:

23 "...that the visual aspects of a building or  
24 structural element complete the visual image of the  
25 universe being considered in an aesthetically pleasing  
26 way." Record at 15.

The findings further interpret the meaning of

1 "complementary" as used in the Building Design Standards as  
2 follows:

3 "To be complementary a design does not need to be in a  
4 particular style and it does not need to mimic the  
5 materials and forms of the elements of the adjacent  
6 buildings. The standard requires that an  
7 aesthetically pleasing relationship (a complementary  
8 relationship) be created between the on and off site  
9 elements listed which completes the visual image of  
the universe being considered. The Standard  
anticipates that multiple design solutions are  
available for a given site. The Standard does not  
require a specific design in a given circumstance.  
Flexibility and innovation are encouraged by the  
development code." Record at 18.

10 As we noted above, "complementary" as used in the city's  
11 Building Design Standards is not clear and unambiguous. It  
12 follows that the meaning to be given the term is a question of  
13 law for our determination. Gordon v. Clackamas County, 73 Or  
14 App 16, 697 P2d 573 (1985). However, we may defer to a local  
15 government's interpretation that is reasonable and not contrary  
16 to the ordinance. Alluis v. Marion County, 64 Or App 478, 668  
17 P2d 1242 (1983). This is an appropriate case for deference.

18 By their nature, design criteria are not amenable to  
19 precise, quantifiable formulations. The city's interpretation  
20 of its standard is reasonable and not inconsistent with the  
21 design standards.

22 This assignment of error is denied.

23 SECOND AND THIRD ASSIGNMENTS OF ERROR

24 In the second assignment of error petitioners allege no  
25 substantial evidence supports the city's findings that the  
26 proposed Temple satisfies portions of the Building Design

1 Standards. In the third assignment of error petitioners  
2 challenge the city's explanation how the Building Design  
3 Standards is satisfied. We take up petitioners' third  
4 assignment of error first, because if the city's rationale is  
5 legally deficient, there is no point in considering whether it  
6 is supported by substantial evidence.

7 Only two aspects of the design decision are challenged in  
8 the appeal. Petitioners object to the findings concerning  
9 height of the six spires and the lighting of the spires.

10 Petitioners allege the city failed to explain how the 170  
11 foot spires, coupled with upwardly directed lighting until  
12 10:00 p.m. each night, supports the city's conclusion that the  
13 height and lighting of the spires comply with Section 2.020(1)  
14 of the Building Design Standards.

15 Relying on Section 2.020(1)(a) of the Building Design  
16 Standards, petitioners say the city did not explain how the  
17 facts support a finding that the Temple will be "complementary  
18 in appearance to adjacent structures of good design with  
19 respect to...Roof lines...Height...(and) Overall Proportions."  
20 Petitioners claim that compliance with these criteria is  
21 addressed in the city's order by unsupported conclusions, and  
22 by extensive discussion why the standard does not require  
23 similarity of appearance to adjacent structures.

24 In McNulty I, the decision was remanded to the city for  
25 failure to explain how the proposed design meets the Building  
26 Design Standards. For the reasons set for below, we hold the

1 city has not yet demonstrated how the design meets Section  
2 2.020(1)(a) of the Standard, notwithstanding the city's  
3 considerable effort to interpret and clarify terms used in the  
4 standard.

5 Section 2.020(1) of the Building Design Standards requires  
6 that the design and location of new structures complement and  
7 preserve existing buildings, streets and paths, bridges and  
8 other elements of the built environment. Section 2.020(2)  
9 requires that the design and location complement natural land  
10 forms, trees, shrubs and other natural vegetation. We construe  
11 the Building Design Standards to require compliance with each  
12 of these criteria.

13 Using the city's interpretation of "complementary," Section  
14 2.020(1) requires "an aesthetically pleasing relationship"  
15 between the proposed structure and the off-site elements  
16 critical to this decision, i.e., roof lines, height and overall  
17 proportions of adjacent structures of good design. Although we  
18 agree with the city that the standard does not require that  
19 there be a complementary relationship between the proposed and  
20 the existing structures so as to create an attractive overall  
21 picture, the findings do not show compliance (or noncompliance)  
22 with this standard. Instead, the findings conclude that since  
23 the concept of a complementary design permits variation in  
24 design, the Temple complements adjacent structures solely  
25 because it is not like them.

26 The following findings illustrate this approach:

1 "The built environment used for comparison in this  
2 case contains the diverse structural types of one and  
3 two story single-family homes and multi-story office  
4 buildings. A design can complement its built  
5 environment by imitation or by difference. The low  
6 gable and hiproof designs typical of single-family  
7 residences and the flat roof systems of the office  
8 campus buildings were not copied in the design of the  
9 Temple. To copy roof lines and proportions of the  
10 residences or the office buildings would have created  
11 in either case a large white monolith. That design  
12 would be inconsistent with the planning commission  
13 approval. Creating a religious Temple with multiple  
14 spires with design features of single-family home or a  
15 brick office building results in a design which is an  
16 inferior choice because it does not carry out the  
17 image or statement of the Temple and will not allow  
18 the individual elements of the building to be  
19 complementary to the building itself as required by  
20 the standard, and does not properly relate to the  
21 natural environment, particularly tall trees.

22 "By the choice of a different style, the designer has  
23 chosen to relate the form to the natural environment.  
24 The tall thin spires, thin in relation to the  
25 building's overall proportions, serve to break up the  
26 proportions of the building and serve to highlight the  
proportions of the surrounding trees." (Emphasis  
supplied) Record at 21.

"Since the most difficult and probably impossible  
design task faced by this applicant would be to try  
and make a Temple look like a house, an office  
building or a tree, it makes good, practical design  
sense to complement by difference and not copy those  
existing elements of the environment." Record at 22.

These findings explain why the design does not mimic  
adjacent structures. The findings also state the design is  
intended to relate to the natural environment. However,  
neither these nor other findings explain how the Temple design,  
with respect to roof lines, height and proportions, creates an  
aesthetically pleasing relationship with adjacent development  
of good design.

1 The findings emphasize the relationship between the Temple  
2 spires and the spire-like form of nearby trees. This reflects  
3 the designers choice to relate the Temple's form to the natural  
4 environment, as the findings explain, and as required by  
5 Subsection 2.020(2) of the standards. The Building Design  
6 Standards, however, do not emphasize one criterion over  
7 another. Compliance with Section 2.020(1)(a) of the Standards  
8 is not made unnecessary by the fact that the design meets other  
9 standards.

10 We note that the city addressed Section 2.020(1) in the  
11 final order. For example, the city found:

12 "The Site and Vicinity Section from north to south,  
13 the typical north section and the site plan,...show  
14 that the building is designed and located to create a  
complementary relationship with adjacent residences as  
well as the office campus." Record at 20.

15 "The materials approved for the Temple are  
16 complementary to the structure itself and the  
structure is complementary to existing buildings,  
17 streets, paths, and other elements of the built  
environment." Record at 22.

18 "The Temple design complements and preserves the  
19 natural and built environment. It is complementary to  
adjacent buildings of good design." Record at 24.

20 The problem with these findings, however, is that they  
21 merely state conclusions that the Temple design meets the  
22 standard by echoing the language in the Building Design  
23 Standards. They do not explain how the facts lead to the  
24 conclusion that the standard is met.<sup>5</sup> Conclusional findings  
25 of this kind do not show compliance with approval criteria.  
26 Sunnyside Neighborhood v. Clackamas Co. Comm., 280 Or 3, 569

1 P2d 1063 (1977).

2 Section 2.020(1)(a) demands more than a conclusional  
3 reference to adjacent structure of good design. It requires  
4 findings setting forth the facts and reasons forming the basis  
5 for a conclusion that the necessary standards have been met.  
6 That these findings may of necessity reflect subjective  
7 judgements does not render them unnecessary. The city's design  
8 ordinance sets the standard. Our function is to ascertain  
9 whether the standard has been applied and satisfied. We cannot  
10 do so in this instance.

11 We express no opinion whether the Temple design does or  
12 does not comply with the city's standards. That function is  
13 for the city council. To carry out that function the city must  
14 explain how the design is "complementary in visual appearance  
15 to adjacent structures of good design with regard to...Roof  
16 lines...Height...(and) Overall Proportions."

17 The third assignment of error is sustained.

18 Because we find the city failed to explain how the proposed  
19 design complies with Section 2.020(1)(a) of the Building Design  
20 Standards, we do not address petitioners' evidentiary challenge  
21 in their second assignment of error. No purpose is served by  
22 reviewing the evidentiary support for inadequate findings.

23 Remanded.  
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FOOTNOTES

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1  
Petitioners' challenge in LUBA No. 85-101 on grounds the findings concerning compliance with the Design Standards are not supported by substantial evidence was not discussed in the final opinion. Because the Board concluded the findings on this issue were inadequate, review of the evidentiary support for the findings was deferred.

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2  
ORS 197.015(10)(a)(A) provides in relevant part that a land use decision subject to our review is:

"A final decision or determination made by a local government...that concerns the...application of:

\* \* \*

"(iii) A land use regulation."

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3  
"A notice of intent to appeal a land use decision shall be filed not later than 21 days after the date the decision sought to be reviewed becomes final." ORS 197.830(7).

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4  
Websters Third New International Dictionary (1966 Ed.) defines "complement" as "something that fills out and makes perfect." This definition gives little assistance in determining if "complementary" has a plain meaning in the Lake Oswego Building Design Standards.

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5  
The findings do explain how the materials of the Temple "allow(s) the Temple to accent or complete the picture of diverse buildings and elements that was approved by previous land use decisions." Record at 23. However, this explanation does not address the specific criteria that are basic to petitioners' challenge, i.e., the design aspects of height, roof line and overall proportions.