

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

JAN 6 12 46 PM '88

3 FRED J. MARINEAU and YVONNE)
4 MARINEAU,)
5 Petitioners,)
6 vs.)
7 CITY of BANDON and CARL and)
8 JUDY DENSMORE, representatives)
9 of the conservatorship of VERN)
10 BROWN,)
11 Respondents.)

LUBA No. 87-090
FINAL OPINION
AND ORDER

11 Appeal from the City of Bandon.

12 Roger Gould, Coos Bay, filed a petition for review and
13 argued on behalf of petitioners.

14 Jerry Lesan, Coos Bay, filed a response brief and argued on
15 behalf of Respondent-Participant Densmore. With him on the
16 brief was Chandler, Lesan, Stokes & Finneran.

17 BAGG, Chief Referee; HOLSTUN, Referee; SHERTON, Referee,
18 participated in the decision.

19 AFFIRMED 01/06/88

20 You are entitled to judicial review of this Order.
21 Judicial review is governed by the provisions of ORS 197.850.
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1 Opinion by Bagg.

2 NATURE OF THE DECISION

3 Petitioners appeal the city's approval of a conditional use
4 permit to construct a 21 unit motel. The proposed motel is to
5 be located west of Beach Loop Road on a bluff overlooking the
6 ocean. The facility will consist of 21 units.

7 FACTS

8 This case is here for the third time. In Marineau v. City
9 of Bandon, ___ Or LUBA ___ (LUBA No. 86-101, April 17, 1987),
10 we remanded a conditional use permit for the same motel
11 project. We found the city's findings were not adequate to
12 support its conclusion that the proposed development was
13 compatible with the "scenic view," as required by the city's
14 zoning ordinance. We returned the case to the city to explain
15 its scenic view criterion and test the proposed development
16 against that criterion.

17 Following the remand, the city council met and adopted new
18 findings. The city again granted the conditional use permit.
19 Petitioners appealed the decision in Marineau v. City of
20 Bandon, ___ Or LUBA ___ (LUBA No. 87-044, August 12, 1987). By
21 agreement of the parties, the case was remanded.

22 Following the second remand, the city council considered
23 additional evidence and issued new findings affirming the prior
24 approval on September 29, 1987. This appeal followed.

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1 FIRST ASSIGNMENT OF ERROR

2 "Respondent BANDON erred in interpreting its ordinance
3 No. 3.720, referring to compatibility with the scenic
4 view, by finding that 'scenic view', as used in the
5 ordinance, refers only to the view afforded to the
6 general public when traveling Beach Loop Road along
7 the bluff."

8 Section 3.720(2) of the Bandon Zoning Ordinance (BZO)
9 includes a requirement as follows:

10 "The structure is designed to be compatible with or
11 enhances the scenic view."

12 The city found the proposed motel meets this standard.

13 In its findings affirming its prior approval, Respondent
14 City characterized our first remand as requiring the city to

15 "1. Identify what scenic views it considered in this
16 ordinance subsection;

17 "2. Identify what facts have been found to support
18 the conclusion that the structure will be
19 compatible with such views;

20 "3. Explain why the facts that have been found
21 support that conclusion." Record 14.

22 The city found that the view of the ocean from the bluff is
23 a tourist attraction and that tourists view the ocean by
24 driving through the city on Beach Loop Road. The city stated
25 "it is important that tourist commercial related businesses be
26 located near the scenic attraction along Beach Loop Road."
27 Record 15. The city went on to find that its comprehensive
28 plan indicates the bluff "affords a fine view" of the ocean,
29 beaches and offshore rocks. City of Bandon Comprehensive Plan
30 (plan), Chapter IV-14. The city also cites a plan policy
31 providing that the scenic quality of the bluff is to be

1 preserved "by controlling the design, setting and size of all
2 developments west of Beach Loop Road while not necessarily
3 restricting the type of use." Plan, V-12. From these and
4 other related plan policies, the city concluded as follows:

5 "It is apparent from a review of the pertinent
6 sections of the Plan and implementing ordinances that
7 the scenic view sought to be protected by the
8 subsection of the Ordinance here under consideration
9 is the scenic view of the Pacific Ocean, beach and
10 offshore rocks. It is the view afforded to the
11 general public traveling Beach Loop Road along the
12 bluff which is to be considered." Record 17.

13 The city specifically rejected the position asserted by
14 petitioners that the bluff itself is part of the scenic view to
15 be protected. The city noted its plan refers to the scenic
16 quality of the bluff. However, the city stated that the
17 reference to the scenic quality of the bluff was not meant to
18 expand the concept of the protected scenic view to include the
19 view looking east at the bluff from the beach, "rather it is
20 the view from the bluff looking west that is critical." Record
21 17.

22 Petitioners acknowledge that a local government's
23 interpretation of its own comprehensive plan is "ordinarily
24 given some weight and will be accepted by LUBA and the courts
25 unless clearly contrary to the express language of the
26 ordinance. Meland v. Deschutes County, 10 Or LUBA 52, 55
(1984)." Petition for Review at 4. See also, Alluis v. Marion
County, 64 Or App 478, 481, 668 P2d 1242 (1983). However,
according to petitioners, the city's interpretation of the

1 "scenic view" criterion in its conditional use ordinance is
2 contrary to the express language and intent of the
3 comprehensive plan. Petitioners argue the city's action in
4 approving this conditional use permit is therefore in violation
5 of ORS 197.175(2) (d) which requires each city (and county) to
6 make land use decisions in compliance with its acknowledged
7 comprehensive plan and land use regulations.

8 Petitioners cite inventories of the comprehensive plan
9 which mention the bluff as an attractive area for residential,
10 tourist commercial and recreation use within the city and
11 further recognize the ocean beach as a prime recreational
12 asset. See Plan IV-22, IV-24 and IV-11. Petitioners cite
13 Outstanding Scenic Views and Sights inventory statements
14 providing:

15 "Several portions of the plan address this subject.
16 The 'geographic setting' and 'tourism, recreation and
17 retirement' sections point out the outstanding natural
18 setting of Bandon and its attraction for tourists and
19 retirees. The views and sights are related to the
20 ocean, the beaches and the estuary. Several
21 viewpoints exist for these sights; most significantly
22 three state viewpoints located along Beach Loop Road.
23 The major conflict with the scenic views is continued
24 residential and tourist commercial development of the
25 bluff. The same qualities that make the bluff a
26 scenic attraction also make it a prime site for
development." Plan at IV-19.

22 Finally, petitioners note the plan's goal for the Bandon
23 Bluff:

24 "To preserve the scenic quality of the Bandon Bluff by
25 controlling the design, setting and size of all
26 development west of Beach Loop Road while not
necessarily restricting the type of use." Plan,
Special Areas-Goals, V-12.

1 Petitioners argue review of the comprehensive plan shows
2 that the bluff itself is a scenic feature to be protected.
3 Therefore, any development must be measured against its effect
4 on the view of the bluff, not just on the view from the bluff.

5 We believe the city's interpretation of its ordinance is
6 reasonable and not contrary to the express terms of its
7 comprehensive plan or zoning ordinance. The references in the
8 comprehensive plan cited by petitioners do not clearly indicate
9 that the bluff itself is a scenic view to be protected. The
10 comprehensive plan repeatedly speaks of development along the
11 bluff and the view of the natural ocean setting from the
12 bluff. The only reference cited by petitioners supporting the
13 position the bluff itself is to be considered as a scenic view
14 is the plan goal mentioning the bluff's "scenic quality." Plan
15 at V-12, supra. This provision, however, need not be read to
16 include view of the bluff as a protected scenic view. Indeed,
17 considering the context of this provision, and the rest of the
18 comprehensive plan provisions cited, it appears that the
19 "scenic quality of the Bandon Bluff" referred to in the goal is
20 the bluff's function as a vantage point from which to view the
21 beach and ocean.

22 We conclude, therefore, the city was not obliged under
23 BZO 3.720(2) to consider the view of the bluff from the beach
24 as asserted by petitioners.

25 The first assignment of error is denied.

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1 SECOND ASSIGNMENT OF ERROR

2 "Bandon erred in granting the conditional use permit
3 to DENSMORES in that it failed to support with
4 adequate findings of fact its conclusion that the
5 proposed development is compatible with the scenic
6 view."

7 Petitioners argue that because the city mistakenly
8 interpreted "scenic view" in its ordinance as being limited to
9 the view of the ocean and beach from the bluff, the findings do
10 not adequately support the conclusion that the proposed
11 development is compatible with the scenic view. Petitioners
12 appear to argue the city failed to consider the relationship
13 between the proposed use and existing structures located in the
14 vicinity. Petitioners challenge the following finding:

15 "The policies and objectives of the Plan do not
16 require that compatibility review of a proposed
17 conditional use along Beach Loop Road be considered in
18 relation to the existing structures located in the
19 vicinity although, as development progresses, it
20 should be apparent that the application of the
21 standards and criteria we have outlined in approving
22 future structures will result in a compatibility among
23 structures." Record 21.

24 Petitioners conclude that this project threatens the
25 character of the bluff, and the city's failure to consider the
26 project from all potential viewing points and against other
27 structures is error.

28 Respondent argues there is no requirement that the design
29 of the structure be compared with nearby structures.

30 Respondent points out that there are two separate zones
31 controlling development in the coastal portion of the city.
32 The CD-1 Zone, in which the proposed motel is located,

1 regulates the bluff, whereas the CD-2 Zone regulates the jetty
2 area below the bluff. The CD-2 Zone purpose is to encourage a
3 "coastal village atmosphere." BZO 3.800. In the CD-2 Zone,
4 therefore, there is a requirement to consider architectural
5 character. However, the CD-1 Zone, which controls development
6 on the bluff, includes no such requirement.¹

7 Again, we agree with the city. We are cited no provision
8 in the ordinance requiring the city to consider the
9 compatibility of the design of the proposed motel with other
10 structures in the vicinity. We also note petitioners' second
11 assignment of error is dependent upon a favorable ruling under
12 the first assignment of error. The city declined to adopt
13 petitioners' more expansive interpretation of its obligation
14 under BZO 3.720(2) to consider compatibility with the scenic
15 view. We previously found the city's more limited
16 interpretation of this criterion reasonable. Therefore, we
17 deny the second assignment of error.

18 The city's decision is affirmed.

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FOOTNOTES

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The purpose of the CD-1 Zone is as follows:

"Section 3.700. Purpose. The purpose of the CD Zone 1 is to recognize the scenic and unique quality of Banadon's ocean front and to maintain this quality as much as possible by carefully controlling the nature and scale of future development in the area. It is intended that a mix of uses would be permitted, including residential, tourist commercial and recreational. Future development is to be controlled in order to enhance the area's unique qualities.

In contrast, the purpose statement for the CD-2 Zone provides:

"Section 3.800 Purpose. To enhance and protect the unique character, natural resources and habitat characteristics of the Bandon Jetty, to encourage the development of a coastal village atmosphere of the area and to exclude those uses which would be inconsistent with the area's character."