

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

LAND USE
BOARD OF APPEALS

DEC 6 11 58 AM '83

3 KATHY CRAFT, BETTY CORDER, ED W.)
4 NIEMI and DONALD R. DAVIS,)
5 Petitioners,)
6 vs.)
7 CITY OF ALBANY,)
8 Respondent.)

LUBA No. 89-083
FINAL OPINION
AND ORDER

9 Appeal from City of Albany

10 Kathy Craft, Betty Corder, Ed W. Niemi and Donald R. Davis,
11 Albany, filed the petition for review. Kathy Craft argued on
her own behalf.

12 James V. B. Delapoer, Albany, filed the response brief and
argued on behalf of respondent.

13 HOLSTUN, Referee; SHERTON, Chief Referee; KELLINGTON,
14 Referee, participated in the decision.

15 REMANDED

DATE 12/08/89

16 You are entitled to judicial review of this Order.
17 Judicial review is governed by the provisions of ORS 197.850.
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1 Opinion by Holstun.

2 NATURE OF THE DECISION

3 Petitioners appeal a City of Albany decision approving
4 placement of manufactured homes within previously platted
5 subdivisions which are partially developed with conventional
6 homes.¹

7 FACTS

8 A. Amendments to the Albany Development Code²

9 Between 1982 and 1984 the city considered various proposals
10 to expand opportunities to place mobile homes within the city.
11 On January 8, 1986, the city adopted Ordinance 4704 amending
12 Albany Development Code (ADC) Article 12. Prior to its
13 amendment in 1986, Article 12 provided for mobile home parks,
14 mobile home subdivisions and, in very limited circumstances,
15 allowed mobile homes to be located on individual parcels.
16 Ordinance 4704 replaced the term "mobile home" in the ADC with a
17 newly defined term, "manufactured home." As defined in
18 Ordinance 4704, there are four categories of manufactured homes,
19 classified according to their physical characteristics. Classes
20 A through C encompass manufactured homes constructed since 1976.

21 ¹In this opinion we use the term "conventional home" to refer to homes
22 constructed on-site as opposed to "manufactured homes" or "mobile homes"
which are constructed in whole, or in substantial part, off-site.

23 ²Our discussion of the facts concerning relevant amendments to the
24 Albany Development Code is taken from city Ordinance 4704, "The Albany
25 Manufactured Home Ordinance," a notice of public hearing on that ordinance
dated January 8, 1986, and a notice of referendum election on the ordinance
26 dated June 12, 1986. These documents were not submitted with the record.
At oral argument the Board requested that the city provide these documents,
and we take official notice of them.

1 Manufactured homes in these three classes must have at least
2 1,000 square feet of occupied space (Class A), 750 square feet
3 of occupied space (Class B) or 320 square feet of occupied space
4 (Class C)-. Classes A through C also impose different
5 requirements concerning exterior appearance, particularly
6 concerning roof pitch and permitted roof and siding construction
7 materials. Class D includes manufactured homes constructed
8 prior to 1976.³

9 Under ADC Article 12, as amended by Ordinance 4704, Class A
10 manufactured homes are allowed in all residential zoning
11 districts (R-1, R-2 and R-3) as outright permitted uses in
12 manufactured home subdivisions and manufactured home parks.
13 Class A manufactured homes also are allowed as conditional uses
14 on individual parcels or lots.⁴ Class B manufactured homes are
15 permitted outright in manufactured home subdivisions and parks,
16 but are not allowed on individual parcels and lots. Class C and
17 D manufactured homes generally are limited to manufactured home

18
19 ³The amended ADC also establishes standards for approval of manufactured
20 home subdivisions allowing placement of manufactured homes on individual
21 manufactured home subdivision lots. In addition, the ADC establishes
22 standards for manufactured home parks which allow placement of multiple
23 manufactured homes on a single parcel, with a maximum density of ten units
24 per acre.

25 ⁴For purposes of this opinion, we assume, as do the parties, that Class
26 A manufactured homes are allowed outright in manufactured home
subdivisions. ADC 12.020(2) does not expressly state that Class A
manufactured homes are allowed outright in manufactured home subdivisions.
However, under ADC 12.020(2), Class B manufactured homes expressly are
allowed outright in manufactured home subdivisions, and under ADC 12.015
Class A manufactured homes are larger and more stringently regulated than
Class B manufactured homes. We believe it is clear the city intended to
allow Class A manufactured homes in manufactured home subdivisions.

1 parks.

2 B. The City's Decision

3 This appeal concerns respondent city's application of the
4 above described manufactured home provisions to allow placement
5 of manufactured homes on the remaining vacant lots in two
6 existing subdivisions, Timber Linn Addition and First Addition
7 to Timber Linn. The two subdivisions include approximately 30
8 acres and 178 lots. Twenty-eight of the lots in Timber Linn
9 Addition are improved with conventional single family dwellings,
10 duplex or six-plex residential units.

11 The proposal to locate manufactured homes in the
12 subdivisions was first discussed with the city council on April
13 12, 1989, and the city council adopted a resolution stating it
14 would review such a proposal expeditiously. On April 17, 1989,
15 an application was submitted to place manufactured homes on the
16 150 remaining Residential R-1 zoned vacant lots was submitted.
17 Notice was sent to all persons owning property within 300 feet
18 of the perimeter of the vacant lots. When neighboring property
19 owners objected to the proposal, notice was given of a public
20 hearing to consider the application.

21 The city hearings board reviewed the proposal at a public
22 hearing on May 17, 1989. The hearings board concluded the
23 proposal met the standards for approval of a manufactured home
24 subdivision and approved the application, subject to 30
25 conditions. The hearings board's approval was appealed to the
26 city council, and, following a public hearing on June 14, 1989,

1 the application was approved by the city council. This appeal
2 followed.

3 FIRST ASSIGNMENT OF ERROR

4 Petitioners argue respondent violated ORS 92.225 in
5 granting the requested approval. Petitioners contend ORS 92.225
6 allows revision or vacation of subdivision plats, but not where
7 the subdivision is partially developed. Petitioners also
8 contend the record clearly shows public facilities are installed
9 in both subdivisions and, therefore, the subdivisions are
10 developed within the meaning of ORS 92.225.

11 Respondent points out that the purpose of ORS 92.225 is to
12 allow replatting or vacation of subdivisions which have not been
13 developed. ORS 92.225(4). Respondent contends that it did not
14 apply ORS 92.225 because it did not replat or vacate the plats
15 of Timber Linn Addition or First Addition to Timber Linn.
16 Respondent contends that it simply applied the provisions of
17 ADC Article 12 to approve "conversion" of the existing
18 subdivisions to manufactured home subdivisions. Respondent's
19 Brief 18.

20 Respondent concedes that its use of the term "conversion"
21 is the source of much of the confusion in this case. However,
22 respondent contends its decision did nothing to change the
23 boundaries or platted lots in the two subdivisions. Respondent
24 argues the action it took under its code to allow placement of
25 manufactured homes within the subdivisions was, therefore, not
26 an action governed by ORS 92.225.

1 We agree with respondent. Petitioner identifies nothing in
2 the recorded plats that was revised by the city's decision. The
3 copies of the plats in the record say nothing about the type of
4 homes that may be placed on the lots. ORS 92.225 is
5 inapplicable and provides no basis for reversal or remand of the
6 city's decision.

7 The first assignment of error is denied.

8 SECOND AND FOURTH ASSIGNMENTS OF ERROR

9 Under the second and fourth assignments of error,
10 petitioners contend the provisions in Article 12 for approval of
11 manufactured home subdivisions apply only to subdivision of
12 vacant, unplatted land and do not provide authority for
13 respondent to "convert" an existing subdivision to a
14 manufactured home subdivision to allow placement of manufactured
15 homes on undeveloped lots within the subdivision. Petitioners
16 also contend respondent was required to comply with conditional
17 use requirements for placement of manufactured homes on
18 individual parcels or lots and failed to do so.

19 A. Conversion of Existing Subdivision to a Manufactured
20 Home Subdivision

21 ADC 12.010(1)(a) provides that manufactured home
22 subdivisions may be approved under the code provisions for site
23 plan review.⁵ In addition, ADC 12.010(1)(c) provides:

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25 ⁵The site plan review criteria set out at ADC 13.040 require the
26 applicant to demonstrate (1) adequacy of public facilities, (2)
consideration of special site features, (3) minimization of negative
impacts of the proposed use on surrounding land uses, (4) adequate parking

1 "Manufactured homes are permitted on individual
2 parcels or lots in accordance with the placement
3 standards set forth in Section 12.020 and all other
provisions of the Development Code for conventional
built dwellings." (Emphasis added.)

4 As relevant, ADC 12.020(1) and (2) provide as follows:

5 "(1) As noted below where individual placement of
6 certain manufactured homes requires a
7 conditional use permit, the design compatibility
8 criteria of Section 12.015(1)(f)(1-5) shall be
utilized in place of the conditional use permit
criteria of Article 14, Section 14.030.⁶

9 and traffic circulation, (5) consideration of energy conservation measures,
10 (6) consideration of solar access, and (7) consideration of safety related
design features.

11 ADC 12.030 through 12.070 set forth the following additional
12 requirements for manufactured home subdivisions:

13 "Minimum Area Required. A manufactured home subdivision shall
14 consist of a minimum area of 5 acres. Manufactured home
subdivisions or expansions thereof less than 5 acres in size
may be considered by Conditional Use Permit application.

15 "Lot Size and Dimension Requirements. The minimum lot area and
16 dimensions within a manufactured home subdivision shall be the
same as that allowed within the zoning district.

17 "Screening. Manufactured Home Subdivisions shall meet exterior
buffering and screening requirements of Section 7.050.

18 "Permitted Uses. Manufactured Home Subdivisions may contain
19 manufactured homes, and related accessory structures.

20 "Setbacks. Setbacks for manufactured homes, modular homes and
21 accessory structures shall be the same as provided in
Article 6, except that no manufactured home shall be located
within 15 feet of another manufactured home." (Citations to
ADC sections deleted).

22
23 ⁶The design compatibility criteria of Section 12.015(1)(f)(1-5) appear
24 under the requirements for Class A manufactured homes and provide as
follows:

25 "[a Class A Manufactured Home shall] be approved for design
26 compatibility with other dwellings in the 'review area' which
is the area within 300 feet of the subject lot or parcel or the

1 "(2) As defined in Section 12.015, each manufactured
2 home shall be classified as Class A, B, C or D
3 and shall be permitted within the following
4 areas:

5 "Class A - Permitted in all R-1, R-2, and R-3
6 Districts by conditional use permit and
7 permitted outright in [manufactured home
8 subdivisions and]⁷ manufactured home parks * * *

9 "Class B - Permitted in all manufactured home
10 subdivisions and manufactured home parks;

11 "Class C - Permitted in all manufactured home
12 parks. * * *

13 nearest five dwellings. When said dwellings are in excess of
14 300 feet from the subject property, the owners thereof shall
15 also receive notice. The criteria for determining acceptable
16 compatibility shall be based upon a review of the following
17 design elements:

18 "1. Roofing materials shall be similar in appearance to the
19 most predominant type in the review area. The roof pitch
20 shall be a minimum of 3/12;

21 "2. Siding materials and trim shall be similar in appearance
22 or complementary to other homes in the review area
23 including the type, color, and horizontal or vertical
24 placement of materials;

25 "3. A garage will be required of like materials and color of
26 the attached dwelling where such is predominant in the
27 review area. A carport may be allowed if other homes in
28 the review area also have carports of [sic] if there is a
29 mixture of homes with or without garages or carports.
30 Such garage or carport may be required to be attached if
31 a higher degree of compatibility will be achieved;

32 "4. The placement of the manufactured home and accessory
33 structures upon the lot shall be consistent with other
34 homes in the review area in terms of setback dimensions,
35 angle to the street, location of garage or carport, and
36 any other special features of the neighborhood or lot;

37 "5. The location and design of porches, patios, driveways,
38 walkways, and landscaping shall be reflective of and
39 complementary to the features of homes in the review area
40 * * *

41 ⁷See n 4, supra.

1 "Class D - Permitted only in manufactured home
2 parks as replacement to existing Class D units."

3 Under these code provisions, in addition to approving
4 manufactured home parks in which all classes of manufactured
5 homes are allowed, the city may approve placement of
6 manufactured homes in residential districts in two ways. First,
7 the city may allow Class A manufactured homes in the R-1, R-2
8 and R-3 districts on individual parcels or on lots within
9 existing subdivisions, provided the manufactured home is
10 approved as a conditional use (with the criteria of
11 ADC 12.015(1)(f)(1-5) substituting for the conditional use
12 criteria of ADC 14.030 which would otherwise apply). Second,
13 the city may approve manufactured home subdivisions in which
14 both Class A and Class B manufactured homes are allowed
15 outright.

16 Respondent points out the ADC provisions specifying the
17 permitted uses in manufactured home subdivisions simply provide
18 that "Manufactured Home Subdivisions may contain manufactured
19 homes * * *." See n 5, supra. Respondent contends manufactured
20 home subdivisions may also include conventional homes.
21 Respondent also argues that because the subdivisions at issue in
22 this proceeding include more than five acres, as required under
23 ADC 12.030 for manufactured home subdivisions (see n 5, supra),
24 the city properly applied the provisions for approval of
25 manufactured home subdivisions to the existing subdivisions to
26 allow placement of manufactured homes on the undeveloped lots of

1 the existing subdivisions.

2 We disagree with respondent's interpretation of the
3 relevant ADC provisions. Interpreting ADC Article 12 as a
4 whole, we conclude respondent's interpretation of
5 ADC 12.010(1)(a) and 12.030 through 12.070 to permit
6 "conversion" or "approval" of an existing subdivision for
7 construction of Class A and B manufactured homes is erroneous.
8 McCoy v. Linn County, 90 Or App 271, 275-276, 752 P2d 323
9 (1988).

10 The ADC includes specific provisions which allow placement
11 of only one of the four classes of manufactured homes (Class A)
12 on "individual parcels or lots * * *." ADC 12.010(1)(c). As
13 noted above, the conditional use procedure is required to
14 approve Class A manufactured homes, with special approval
15 criteria substituted for the general conditional use approval
16 criteria. ADC 12.020(1); 12.015(1)(f). We believe the policy
17 expressed in these provisions (i.e. limiting manufactured homes
18 on individual lots to Class A manufactured homes approved under
19 special criteria) is inconsistent with allowing Class A and
20 Class B manufactured homes by converting existing subdivisions
21 to manufactured home subdivisions under different approval
22 standards.

23 Although we agree with respondent that the ADC does not
24 expressly prohibit construction of conventional homes within an
25 approved manufactured home subdivision, that interpretation of
26 the ADC is not inconsistent with an intent to limit placement of

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1 manufactured homes within existing subdivisions that were not
2 approved originally as manufactured home subdivisions.⁸

3 Our interpretation of ADC 12.010(1)(a) and 12.030 through
4 12.070 as-not allowing conversion of an existing conventional
5 subdivision to a manufactured home subdivision by following the
6 manufactured home subdivision approval process is also supported
7 by the fact that no subdivision of the subject property was
8 approved by the city's decision. As the respondent conceded
9 under the first assignment of error, the recorded plats for
10 Timber Linn Addition and the First Addition to Timber Linn were
11 not revised by the city's decision and the dimensions, location
12 and numbering of the lots remain unaltered.

13 If the city intends that any existing subdivision within
14 its jurisdiction in excess of five acres may be converted to a
15 manufactured home subdivision allowing placement of Class A and
16 B manufactured homes as a permitted use, it can easily amend
17 ADC 12.010(1) and 12.020(1) and (2) to make that intent clear.
18 As written, ADC Article 12 does not provide that authority.

19 This subassignment of error is sustained.⁹

21 ⁸Petitioners argue the limitations imposed on manufactured home parks do
22 limit manufactured home parks to a single "residence other than a
23 manufactured home * * *." ADC 12.080(4). Petitioners contend the city's
24 decision therefore violates ADC 12.080(4), because more than one
manufactured home was approved by the city. Even if we agreed with
petitioners' interpretation of ADC 12.080(4), that section applies to
manufactured home parks, not manufactured home subdivisions.

25 ⁹However, sustaining this subassignment of error will not result in
26 reversal or remand of the city's decision unless petitioner's challenge to
the city's approval of manufactured homes on individual lots through the
conditional use process is also sustained. See subassignment of error B,

1 B. Approval of Manufactured Homes on Individual Lots
2 Through the Conditional Use Process

3 Respondent argues in the alternative that its decision
4 complies with ADC conditional use requirements for approval of
5 manufactured homes on individual parcels or lots. Respondent
6 contends that it gave the same notice that would have been
7 required had the request been considered as a conditional use
8 request. Respondent also contends the hearings it held fully
9 satisfied the ADC requirements for hearings on conditional use
10 permit requests. Respondent finally contends that the findings
11 adopted to support the decision explicitly address the standards
12 of ADC 12.015(1)(f)¹⁰ that would have applied had the city
13 proceeded under the conditional use process and points out that
14 petitioners do not contest the adequacy of those findings.

15 Petitioners do not dispute that the city's notice and
16 hearing in this matter were adequate to comply with the ADC
17 provisions for approving manufactured homes as a conditional use
18 on individual lots or parcels. Neither do petitioners challenge
19 the adequacy of the city's findings addressing the approval
20 standards of ADC 12.015(1)(f) which apply to approval of
21 manufactured homes on individual parcels or lots as a
22 conditional use.

23 We agree with respondent that to the extent the city's

24 _____
25 infra.

26 ¹⁰See n 6, supra. The city also imposed a separate condition that each
manufactured home comply with the criteria of ADC 12.015(1)(f).

1 failure to require that the application be in the form of a
2 request for 150 conditional use permits was error, it is
3 procedural error, and petitioners offer no explanation of how
4 their substantial rights were prejudiced by such error.
5 ORS 197.835(8)(a)(B). However, we disagree with respondent that
6 the decision challenged in this proceeding can be affirmed based
7 on compliance with the ADC provisions allowing placement of
8 manufactured homes on individual parcels or lots as conditional
9 uses under ADC 12.010 and 12.020.

10 ADC 12.020(2) explicitly provides that only Class A
11 manufactured homes may be approved on individual parcels or lots
12 through the conditional use process. Under ADC 12.015(1)(a), a
13 Class A manufactured home must have "more than one thousand
14 (1000) square feet of occupied space * * *." Under
15 ADC 12.015(2)(a), a Class B manufactured home must have "more
16 than seven hundred fifty (750) square feet of occupied space
17 * * *."

18 The city's findings expressly refer to the approved
19 manufactured homes as having "960 square feet, excluding the
20 carport/garage." Record 103. One of the conditions of approval
21 requires that 21 of the 150 lots "shall have units which are a
22 minimum of 1,050 square feet of occupied space * * *." Record
23 138. However, regarding the remaining lots, the condition
24 provides "[e]ach unit shall have more than 950 square feet of
25 occupied space * * *." Id.

26 Because the city's decision does not limit its approval to

1 Class A manufactured homes, we may not affirm the decision based
2 on compliance with the ADC provisions for approval of Class A
3 manufactured homes on individual parcels or lots.

4 This subassignment of error is sustained.

5 The second and fourth assignments of error are sustained.

6 THIRD ASSIGNMENT OF ERROR

7 Petitioners contend the city erred by applying ADC 1.090
8 (concerning nonconforming situations generally) and ADC 1.100(c)
9 (concerning nonconforming lots) rather than the statutory
10 standards for nonconforming uses in ORS 215.130.

11 Respondent contends that the city did not apply the ADC
12 nonconforming situation provisions in this case because
13 manufactured homes are an allowed use the R-1 zone and the lots
14 in the subdivisions are conforming lots. Respondent contends
15 the statutory nonconforming use provisions of ORS 215.130 are
16 inapplicable for that reason and also because ORS 215.130
17 applies to counties, not cities.

18 We agree with respondent.

19 The third assignment of error is denied.

20 FIFTH ASSIGNMENT OF ERROR

21 In the final assignment of error, petitioners allege the
22 city's "decision is not supported by substantial evidence in the
23 record as to * * * findings concerning legality, adverse impact
24 and necessity."

25 As respondent points out, petitioners fail to identify the
26 findings they believe are unsupported by substantial evidence.

1 Respondent contends the decision identifies the site plan review
2 criteria in ADC 13.030 as applicable and adopts findings
3 addressing each of those criteria. The decision also includes
4 findings explaining why the manufactured dwellings on certain
5 lots close to existing conventional dwellings would minimize
6 negative impacts, as required by ADC 13.040(3). Those findings
7 also address the conditional use approval criteria applicable to
8 manufactured homes under ADC 12.015(1)(f) and 12.020(1).
9 Petitioners neither attack those findings nor direct their
10 evidentiary challenge to any particular findings.

11 We agree with respondent that the gist of petitioners'
12 argument under this assignment of error is that placing
13 manufactured homes close to conventional homes will reduce the
14 market value of the conventional homes. Even if petitioners are
15 correct in this contention, they cite no approval standard
16 requiring that placement of manufactured homes have no negative
17 effect on the value of nearby conventional homes. Indeed, as
18 respondent correctly points out, the city code expressly allows
19 the location of manufactured homes in areas with conventional
20 homes. The code does include a number of standards in
21 ADC 13.040 and 12.015(1)(f) that impose requirements designed to
22 make the manufactured homes compatible with nearby land uses.
23 However, because petitioner simply cites testimony in the record
24 without identifying the findings or determinations of compliance
25 with ADC criteria which they believe are unsupported by
26 substantial evidence in the record, we have no basis upon which

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to identify what part of the city's decision is challenged.

The fifth assignment of error is denied.

The city's decision is remanded.

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