

1 Opinion by Sherton.

2 **NATURE OF THE DECISION**

3 Petitioners appeal a Marion County Board of
4 Commissioners order approving a conditional use permit for
5 the manufacture of prefabricated structural wood products.

6 **MOTION TO INTERVENE**

7 Blazer Industries, Inc., the applicant below, moves to
8 intervene on the side of respondent in this proceeding.
9 There are no objections to the motion, and it is allowed.

10 **FACTS**

11 The subject property is located within the urban growth
12 boundary (UGB) of the City of Silverton, designated
13 Industrial on the Marion County Comprehensive Plan (plan)
14 map, and zoned Industrial Commercial (IC). The northern
15 portion of the property is bordered on the east, north and
16 west by land outside the UGB designated Primary Agriculture
17 and zoned Exclusive Farm Use (EFU). The southern portion of
18 the property is bordered on the east, south and west by land
19 within the UGB designated Rural Residential and zoned
20 Acreage Residential - 5 Acre Minimum (AR-5). The subject
21 property contains intervenor's existing structural wood
22 products manufacturing operation.

23 Intervenor purchased the southern portion of the
24 subject property in 1967. In 1976, the nature of
25 intervenor's operations changed from the manufacture, rental
26 and service of portable toilets to the manufacture of

1 prefabricated structural wood products. On January 24,
2 1978, in response to a request by intervenor and the then
3 owner of the northern portion of the subject property, the
4 property was rezoned from EFU and Residential Agricultural
5 to IC, in which the manufacture of prefabricated structural
6 wood products is a conditional use. Marion County Ordinance
7 No. 497. Later in 1978, intervenor purchased the northern
8 portion of the subject property, and rented it out to
9 industrial users. In 1982, intervenor expanded its
10 operation to the northern portion of the subject property.
11 At no time did intervenor obtain a conditional use permit
12 for its operation.

13 In 1986, intervenor purchased EFU-zoned land to the
14 north and east of the subject property, outside the UGB, for
15 future expansion of its operation. In December 1987,
16 intervenor applied to the county for a comprehensive plan
17 amendment and zone change to add 8.7 acres of this
18 additional property to the Silverton UGB. Intervenor also
19 requested a change in the plan map designation for the 8.7
20 acres to Industrial, and a change in the zoning to IC.¹
21 During the course of reviewing the application, the county
22 and intervenor became aware that a conditional use permit is

¹The original application refers to 5.45 acres. Record 583. However, subsequent documents in the record refer to the proposed amendments as affecting 8.7 acres, and the parties do not dispute this figure. We also note the City of Silverton adopted a resolution recommending approval of the proposed UGB amendment and comprehensive plan map change in April 1988. Record 432.

1 required for the manufacture of prefabricated structural
2 wood products in the IC zone. Record 599. The county
3 thereafter treated intervenor's application as also being
4 for a conditional use permit for the manufacture of
5 prefabricated structural wood products on both the property
6 already zoned IC (the subject property) and the 8.7 acres
7 proposed to be rezoned IC.

8 On August 30, 1988, after a public hearing, the county
9 hearings officer issued a recommendation that the requested
10 plan amendments, zone change and conditional use permit be
11 denied. The board of commissioners held public hearings on
12 the proposed plan amendments, zone change and conditional
13 use permit on October 12, 1988 and December 5, 1990. On
14 April 3, 1991, the board of commissioners adopted the
15 challenged order approving a conditional use permit for
16 manufacture of prefabricated structural wood products on the
17 subject property.²

18 **FIRST ASSIGNMENT OF ERROR**

19 "The board [of commissioners'] approval of the
20 conditional use [permit] was not accompanied by
21 any statement explaining any criteria or standards
22 considered relevant nor did the decision state
23 facts or justification for the decision based on
24 the nonexistent criteria or standards."

²On July 5, 1991, the board of commissioners adopted Ordinance No. 893 approving the requested UGB amendment, plan map amendment, zone change and conditional use permit for the expansion of intervenor's operation onto the additional 8.7 acres. That decision is appealed in Brandt v. Marion County, LUBA No. 91-101.

1 **SECOND ASSIGNMENT OF ERROR**

2 "The board [of commissioners] erred in its finding
3 that [intervenor's] manufacturing process does not
4 pose any issues of public health, safety and
5 welfare different from other similar uses
6 permitted in the [IC] zone."

7 Marion County Zoning Ordinance (MCZO) 119.070(b) states
8 that in approving a conditional use permit, the county
9 decision maker shall determine:

10 "That such conditional use * * * will be in
11 harmony with the purpose and intent of the zone."

12 The MCZO includes a specific "purpose" section for some
13 zoning districts, but not for the IC zoning district.

14 In these assignments of error, petitioners challenge
15 the following county findings:

16 "The manufacture of prefabricated structural wood
17 products is a conditional use listed under MCZO
18 131.040(b) [sic 151.040(b)] in the IC zone. * * *
19 The conditional use itself is in harmony with the
20 purpose and intent of the zone, which provides for
21 a wide range of industrial processes, such as
22 manufacturing electrical products, leather
23 products, textile products, and metal products.
24 [Intervenor's] manufacturing process does not pose
25 any issues of public health, safety and welfare
26 different from other similar uses permitted in
27 this zone." Record 10.

28 Although MCZO 119.070(b) is not specifically cited by
29 petitioners, it is reasonably clear from their argument that
30 the basis of their challenge is that the above quoted
31 findings misconstrue MCZO 119.070(b), are not adequate to
32 demonstrate compliance with MCZO 119.070(b), and are not

1 supported by substantial evidence in the record.³

2 Petitioners contend the above quoted findings simply
3 make a conclusory statement that the proposed conditional
4 use is inherently in harmony with the purpose and intent of
5 the IC zone. According to petitioners, this interpretation
6 and application of the standard in MCZO 119.070(b) is
7 erroneous in that it has the effect of treating the
8 manufacture of prefabricated structural wood products as a
9 permitted use, rather than a conditional use. Petitioners
10 argue the manufacture of prefabricated structural wood
11 products is different from the uses listed as permitted in
12 the IC zone due to (1) greater size of product, (2) use of
13 outdoor storage, and (3) greater risk of fire. We
14 understand petitioners to contend the challenged findings
15 are inadequate because they fail to explain why these
16 distinctive characteristics of the proposed conditional use
17 are in harmony with the purpose and intent of the IC zone.

³To the extent the first assignment of error can be interpreted to make a general argument that the county's findings fail to include a brief statement identifying the applicable criteria, as required by ORS 215.416(9), we reject that argument. The findings conclude with the following statement:

"The Board [of Commissioners] concludes that based on the above findings, the comments submitted at the public hearings and the evidence contained in the record, the proposed conditional use is consistent with MCZO Chapter 151 and MCZO 119.070 * * *."
Record 11.

This statement is sufficient to identify MCZO 119.070 and Chapter 151 as the criteria applicable to the challenged decision, in accord with ORS 215.416(9).

1 Petitioners also argue the above quoted findings are
2 not supported by substantial evidence because there is
3 evidence in the record that there are special hazards due to
4 intervenor's operation which are not typically caused by
5 permitted uses in the IC zone. Petitioners contend the
6 record shows there is an 8" water line 560 feet from the
7 property, but the city requires a 10" line to service the
8 property. Petitioners further argue the record shows that
9 the city fire hydrant closest to the subject property
10 provides inadequate flow for fire protection. Petitioners
11 also argue that sewer service is not available, and the
12 existing operation employing 50 to 70 people relies on a
13 septic tank.

14 The county and intervenor (respondents) argue the
15 county did not conclude the manufacture of prefabricated
16 structural wood products in general satisfies MCZO
17 119.070(b). Respondents contend that, in the absence of a
18 specific purpose statement for the IC zone in the MCZO, the
19 county properly took the approach of determining that
20 intervenor's operation is similar to, and produces no
21 significant impacts different from those produced by,
22 industrial uses permitted outright in the IC zone.
23 Respondents further argue the products of intervenor's
24 operation are not greater in size than those of fabricated
25 structural metal products, aircraft or boat manufacturing
26 operations, which are outright permitted uses in the IC

1 zone. Respondents also contend industrial uses permitted
2 outright in the IC zone use outdoor storage, and that
3 outright permitted uses such as furniture, chemical, paint,
4 plastics and textile manufacturing pose as great a danger of
5 fire as intervenor's operation. Finally, respondents argue
6 there is extensive and uncontroverted evidence in the record
7 that intervenor's operation has the same types and levels of
8 impacts on public health, safety and welfare as other
9 industrial uses permitted outright in the IC zone.

10 **A. Application of MCZO 119.070(b)**

11 In the absence of a specific purpose section for the IC
12 zone in the MCZO, we agree with respondents that determining
13 a proposed conditional use is similar to, and produces no
14 significant impacts different from those produced by, uses
15 permitted outright in the IC zone is a correct means of
16 determining a proposed conditional use is in harmony with
17 the purpose and intent of the IC zone, as required by
18 MCZO 119.070(b). We further agree with respondents that the
19 county's decision makes such a determination for
20 intervenor's specific operation, not for the manufacture of
21 prefabricated structural wood products generally.

22 This subassignment of error is denied.

23 **B. Adequacy of Findings**

24 In addressing compliance with a generally worded
25 standard such as MCZO 119.070(b), a local government does
26 not have to address in its findings every conceivably

1 relevant fact or circumstance. Findings addressing a
2 generally worded standard are adequate in scope if they
3 address facts and circumstances a reasonable person would
4 consider in determining whether the standard is satisfied.
5 Dougherty v. Tillamook County, 12 Or LUBA 20, 31 (1984); see
6 Vincent v. Benton County, 5 Or LUBA 266, 274 (1982).
7 However, a local government must address in its findings any
8 relevant issue raised by evidence or argument presented to
9 it in the local proceeding. City of Wood Village v.
10 Portland Metro Area LGBC, 48 Or App 79, 87, 616 P2d 528
11 (1980); McConnell v. City of West Linn, 17 Or App 502, 519
12 (1989).

13 In determining that intervenor's operation is within a
14 wide range of industrial processes permitted outright in the
15 IC zone, the findings do not specifically address the
16 factors of size of product, use of outdoor storage or fire
17 hazard. These factors are theoretically relevant to
18 determining whether intervenor's operation is similar to the
19 industrial uses permitted outright in the IC zone. However,
20 we do not believe these factors are ones which a reasonable
21 person would have to consider in determining whether MCZO
22 119.070(b) is satisfied, in the absence of evidence or
23 argument concerning these factors having been presented in
24 the local proceedings. We are cited to nothing in the
25 record indicating that the issues of differences between
26 intervenor's operation and uses permitted outright in the IC

1 zone with regard to size of product, outdoor storage and
2 fire hazard, were raised in the local proceedings.

3 This subassignment of error is denied.

4 **C. Evidentiary Support**

5 Petitioners contend the finding that intervenor's
6 operation does not "pose any issues of public health, safety
7 and welfare different from other similar uses permitted in
8 [the IC] zone" is not supported by substantial evidence in
9 the record. Record 10. Substantial evidence is evidence a
10 reasonable person would rely upon in reaching a decision.
11 City of Portland v. Bureau of Labor and Ind., 298 Or 104,
12 119, 690 P2d 475 (1984); Douglas v. Multnomah County, 18
13 Or LUBA 607, 617 (1990). In determining whether a decision
14 is supported by substantial evidence, we consider all the
15 evidence in the record to which we are cited, including
16 evidence which refutes or detracts from that relied on by
17 the local government decision maker. Younger v. City of
18 Portland, 305 Or 346, 360, 752 P2d 262 (1988); Eckis v. Linn
19 County, ___ Or LUBA ___ (LUBA No. 90-132, September 11,
20 1990), slip op 10.

21 In this case, the evidence cited by petitioners does
22 not support their contention that intervenor's operation
23 produces adverse impacts greater than or different from what
24 would be created by uses permitted outright in the IC zone.
25 The evidence cited by petitioners regarding water line size
26 and fire hydrant flow requirements simply refers to single

1 requirements for "industrial uses" generally, and does not
2 differentiate in any way between the impacts and
3 requirements of intervenor's operation and those of
4 industrial uses permitted outright in the IC zone. Record
5 517, 541, 551, 562. The only other evidence cited by
6 petitioners is that intervenor's operation employs 50 to 70
7 people and uses a septic tank. Record 537, 603.
8 Petitioners cite no evidence that uses permitted outright in
9 the IC zone would not employ as many people or would not use
10 a septic tank for sewage disposal.

11 On the other hand, respondents cite considerable
12 evidence in the record that intervenor's operation, as
13 approved with conditions by the appealed decision, will not
14 produce significantly greater impacts with regard to noise,
15 traffic, dust and other factors, than would uses permitted
16 outright in the IC zone. Record 235-36, 239, 266-68,
17 271-72, 290, 299-300, 600-02. We have reviewed all evidence
18 cited by the parties, and conclude the challenged finding is
19 supported by substantial evidence.

20 This subassignment of error is denied.

21 The first and second assignments of error are denied.

22 **THIRD ASSIGNMENT OF ERROR**

23 "The board [of commissioners] erred in approving
24 this conditional use permit solely for the
25 monetary benefit of [intervenor]."

26 Petitioners argue that intervenor's operation on the
27 subject property has been conducted without a required

1 conditional use permit, and therefore illegally, since the
2 property was zoned IC. Petitioners argue intervenor
3 conceded below that the only reason it cannot move its
4 rapidly growing business is economic. According to
5 petitioners, "[c]ost alone is not a sufficient factor to
6 justify expansion of an Urban Growth Boundary." Petition
7 for Review 6.

8 Petitioners' argument under this assignment of error is
9 addressed primarily to lack of justification for a UGB
10 amendment and plan/zone map change to accommodate
11 intervenor's proposed expansion of its operation to an
12 additional 8.7 acres. The challenged decision approves only
13 a conditional use permit for intervenor's existing operation
14 on IC-zoned property already within the UGB. Further, the
15 decision approves the conditional use permit on the basis of
16 compliance with MCZO 119.070 and Chapter 151, not because of
17 monetary benefit to intervenor.

18 The third assignment of error is denied.

19 The county's decision is affirmed.