

1 Opinion by Sherton.

2 **NATURE OF THE DECISION**

3 Petitioner appeals a City of Portland (city) hearings
4 officer decision granting interim resource protection review
5 approval for the reconstruction of an intersection.

6 **FACTS**

7 The approved project is described as follows:

8 "As part of an overall improvement to S.E.
9 McLoughlin Boulevard, the Oregon Department of
10 Transportation (ODOT) proposes to reconstruct the
11 Tacoma Street intersection. This project will
12 result in some excavation in, and realignment of,
13 Johnson Creek and the construction of three
14 bridges over the creek. Johnson Creek is a City
15 designated water feature with an interim resource
16 protection overlay [zone].

17 "ODOT proposes to reconstruct the creek beds and
18 replace and improve fish and wildlife habitat.
19 The reconstruction will include pools and riffles,
20 instream structures to improve fish habitat,
21 replacement of vegetation, and a meandering
22 low-flow channel. Two stormwater detention ponds
23 are also proposed." Record 3.

24 The subject application for interim resource protection
25 review approval was filed jointly by ODOT and the city
26 Office of Transportation. The city planning department
27 issued an administrative decision approving the application.
28 This decision was appealed by petitioner. On July 12, 1991,
29 after a public hearing, the city hearings officer issued the
30 challenged decision denying the appeal and approving the
31 application.

1 **FIRST ASSIGNMENT OF ERROR**

2 "It was error for the Hearings Officer to fail to
3 address the issue of the internal conflict of
4 interest and improper processing of the
5 application by the City of Portland and ODOT."

6 Petitioner contends it was denied an impartial tribunal
7 because the city was not only the decision maker below, but
8 also the applicant and a property owner. Petitioner argues
9 the city planning director improperly intervened in the
10 permit review process by requesting leniency and expediency
11 for the applicants, in a memo which was sent to the
12 administrative decision maker. Petitioner also argues that
13 this issue should have been addressed by the hearings
14 officer in the appealed decision.

15 Respondents contend this Board has rejected arguments
16 that a local government decision maker can be presumed to be
17 partial if the local government is also the applicant for
18 land use approval. Waite v. Marion County, 16 Or LUBA 353,
19 357 (1987); Gordon v. Clackamas County, 10 Or LUBA 240, 245
20 (1984); Christie v. Tillamook County, 5 Or LUBA 256 (1982).
21 Respondents argue there was nothing improper in the
22 memorandum sent by the city planning director to the staff
23 planner working on the application, a copy of which was
24 provided to the administrative decision maker. Respondents
25 contend the memorandum does not request leniency, but rather
26 simply refers questions raised by applicant ODOT to the
27 staff planner. Respondents also argue any error in the

1 sending of the memorandum to the administrative decision
2 maker was cured when the city hearings officer conducted a
3 de novo review of the administrative decision maker's
4 decision. Finally, respondents argue the hearings officer
5 addressed this issue when he made an oral ruling on
6 petitioner's Motion for Change of Venue at the June 11, 1991
7 public hearing.

8 We agree with respondents that a local government
9 decision maker cannot be presumed to be partial simply
10 because the local government is also the applicant for land
11 use approval. Waite v. Marion County, supra; Gordon v.
12 Clackamas County, supra; Christie v. Tillamook County,
13 supra. Further, in establishing actual bias or prejudgment
14 on the part of a local government decision maker, the burden
15 is on petitioner to show the decision maker was biased or
16 prejudged the application and did not reach its decision by
17 applying applicable standards based on the evidence and
18 argument presented. Waite v. Marion County, supra; Oatfield
19 Ridge Residents Rights v. Clackamas Co., 14 Or LUBA 766, 768
20 (1986); Schneider v. Umatilla County, 13 Or LUBA 281, 283-84
21 (1985).

22 In this case, petitioner argues only that partiality is
23 shown in the memorandum by the city planning director, a
24 copy of which was provided to the administrative decision
25 maker. However, we agree with respondents that this
26 memorandum simply asks the staff planner to respond to

1 certain questions raised by ODOT. It does not request
2 leniency or exception from applicable approval standards.
3 Further, even if the administrative decision maker were not
4 impartial, that would be insufficient grounds to reverse or
5 remand the challenged decision, because petitioner was
6 afforded a de novo review of the administrative decision,
7 including a public hearing, by the hearings officer. See
8 Knapp v. City of Jacksonville, ___ Or LUBA ___ (LUBA No.
9 90-064, October 31, 1990), slip op 22-23; Slatter v. Wallowa
10 County, 16 Or LUBA 611, 617 (1988). Petitioner offers no
11 reason to find the hearings officer was not impartial.

12 The first assignment of error is denied.

13 **SECOND ASSIGNMENT OF ERROR**

14 "Without a wetlands policy incorporated into the
15 City of Portland Land Use Comprehensive Plan, no
16 decision can be made on this [application] unless
17 and until a [LCDC] Goals Analysis is made. * * *"

18 Petitioner contends that because the city's
19 comprehensive plan contains no policy on wetlands, the city
20 improperly failed to review the proposal for compliance with
21 the Statewide Planning Goals.

22 There is no dispute that the city's comprehensive plan
23 and land use regulations are acknowledged pursuant to ORS
24 197.251. After acknowledgment, the local comprehensive plan
25 and land use regulations, not the Statewide Planning Goals,
26 govern a local government's decisions on land development
27 permit applications. ORS 197.175(2)(d); Byrd v. Stringer,

1 295 Or 311, 666 P2d 1332 (1983); Kola Tepee, Inc. v. Marion
2 County, 17 Or LUBA 910, 920, aff'd 99 Or App 481 (1989),
3 rev den 309 Or 441 (1990).

4 The second assignment of error is denied.

5 **THIRD ASSIGNMENT OF ERROR**

6 "It was error for the Hearings Officer to fail to
7 make careful and specific Findings of Fact and
8 Conclusions of Law as to specific criteria in the
9 Land Use comprehensive [plan] and implementing
10 code [of] the City of Portland."

11 Petitioner contends the findings supporting the
12 challenged decision are only "non-specific conclusions
13 regarding [the] substantive issues in this case." Petition
14 for Review 4.

15 The challenged decision is supported by six single-
16 spaced pages of findings. Petitioner does not identify the
17 findings it considers to be conclusory or explain why the
18 findings are not specific enough with regard to any
19 substantive issue. It is petitioner's responsibility to
20 adequately develop its legal argument and specify a basis on
21 which this Board might grant relief. Deschutes Development
22 v. Deschutes County, 5 Or LUBA 218, 220 (1982). Petitioner
23 has failed to do so.

24 The third assignment of error is denied.

25 The city's decision is affirmed.