

1 BEFORE THE LAND USE BOARD OF APPEALS
2 OF THE STATE OF OREGON
3

4 AUGUST STRECKER and)
5 CLARA STRECKER,)
6)
7 Petitioners,) LUBA No. 93-018
8)
9 vs.) FINAL OPINION
10) AND ORDER
11 CITY OF SPRAY,)
12)
13 Respondent.)

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16 Appeal from City of Spray.

17
18 Douglas E. Hojem, Pendleton, filed the petition for
19 review and argued on behalf of petitioners. With him on the
20 brief was Corey, Byler, Rew, Lorenzen & Hojem.

21
22 No appearance by respondent.

23
24 SHERTON, Chief Referee; HOLSTUN, Referee; KELLINGTON,
25 Referee, participated in the decision.

26
27 REMANDED 05/04/93

28
29 You are entitled to judicial review of this Order.
30 Judicial review is governed by the provisions of ORS
31 197.850.

1 Opinion by Sherton.

2 **NATURE OF THE DECISION**

3 Petitioners appeal a city council decision approving a
4 zone change from Residential (R) to Residential-Commercial
5 (RC).

6 **FACTS**

7 The subject property is approximately five acres in
8 area and is designated Residential on the City of Spray
9 Comprehensive Plan Map (plan map). The city's comprehensive
10 plan and land use regulations were acknowledged by the Land
11 Conservation and Development Commission (LCDC) pursuant to
12 ORS 197.251 on April 7, 1982. The owners of the subject
13 property requested the proposed zone change in order to
14 conduct auto body repair work on the subject property. On
15 December 4, 1992, after a public hearing, the city council
16 voted to approve the proposed zone change.¹ This appeal
17 followed.

18 **THIRD ASSIGNMENT OF ERROR**

19 "The City has not made the findings required by
20 its own zoning ordinance and Oregon [case] law."

21 Petitioners argue the city's decision must be reversed

¹The city council's oral decision to approve the zone change, made at its December 4, 1992 meeting, is memorialized only in the minutes of that meeting. Record 23. No ordinance, resolution, order or other written document was adopted by the city council. On December 5, 1992, the city recorder mailed a "Notice of Adoption" to the Department of Land Conservation and Development (DLCD), as required by ORS 197.615(1) and OAR 660-18-040. On January 7, 1993, a copy of this notice was mailed to petitioners.

1 or remanded because the city council failed to adopt a
2 statement of the findings of fact upon which the decision is
3 based, as required by the Oregon Supreme Court in Sunnyside
4 Neighborhood v. Clackamas Co. Comm., 280 Or 3, 20, 569 P2d
5 1063 (1977), and by City of Spray Zoning Ordinance
6 (SZO) 12.42.² Petitioners contend the city adopted no
7 findings whatsoever. Petitioners argue the notice of
8 adoption mailed to DLCD pursuant to OAR 660-18-040 does not
9 itself constitute the city's findings, as it was not adopted
10 or approved by the city council as findings of fact.

11 A local government decision approving a quasi-judicial
12 zone change must be supported by written findings
13 identifying the applicable criteria, setting out the facts
14 relied on and explaining the reasons why the facts establish
15 compliance with the applicable standards. Sunnyside
16 Neighborhood v. Clackamas Co. Comm., supra; Green v.
17 Hayward, 275 Or 693, 706-08, 552 P2d 815 (1976); Fasano v.
18 Washington Co. Comm., 264 Or 574, 588, 507 P2d 23 (1973).
19 Where a local government fails to adopt findings in support
20 of a quasi-judicial land use decision, it is not possible
21 for this Board to perform its review function. Hoffman v.

²SZO 12.42 provides, in relevant part:

"* * * The city council shall, within 40 days after the hearing [on a proposed amendment to the SZO], approve, disapprove, or conditionally approve the proposed amendment stating the findings of fact upon which the decision is based." (Emphasis added.)

1 Dupont, 49 Or App 699, 705, 621 P2d 603 (1980); Versteeg v.
2 City of Cave Junction, 17 Or LUBA 25, 26 (1988). Because
3 the city council failed to adopt written findings in support
4 of the challenged decision, the decision must be remanded.³

5 The third assignment of error is sustained.⁴

6 The city's decision is remanded.

³We agree with petitioners that the notice of adoption mailed by the city to DLCD does not constitute findings adopted by the city decision maker in support of the challenged decision. However, in any case, the notice of adoption does not identify criteria applicable to the proposed zone change or explain the facts and reasons relied on by the city in making its decision.

⁴Because the city failed to adopt findings in support of its decision, we are unable to review the first and second assignments of error, under which petitioners contend the challenged decision violates Statewide Planning Goal 10 (Housing) and the city comprehensive plan. However, we note that although the challenged decision purports to amend the zoning of the subject property from R to CR, it does not purport to adopt a corresponding amendment changing the plan map designation of the subject property from Residential to Commercial-Residential. On remand, the issues considered by the city should include whether the proposed CR zoning is consistent with the property's Residential plan map designation.