

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

4 DON BALL AND ASSOCIATES,)
5)
6 Petitioner,)
7)
8 vs.)
9)
10 JOSEPHINE COUNTY,)
11)
12 Respondent.)

LUBA No. 92-219

FINAL OPINION
AND ORDER

13
14
15 Appeal from Josephine County.

16
17 Matthew G. Fawcett, Medford, filed the petition for
18 review and argued on behalf of petitioner.

19
20 No appearance by respondent.

21
22 HOLSTUN, Referee; SHERTON, Chief Referee; KELLINGTON,
23 Referee, participated in the decision.

24
25 REMANDED 06/28/93
26

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

1 Opinion by Holstun.

2 **NATURE OF THE DECISION**

3 Petitioner challenges a county decision denying its
4 request for an administrative permit for a campground in the
5 Exclusive Farm (EF) zone.

6 **FACTS**

7 The requested campground would provide spaces for up to
8 41 recreational vehicles. The proposed campground would be
9 located next to an existing nonconforming 103 space mobile
10 home park which is also located on the subject property.
11 Access to the proposed campground would be provided through
12 the existing mobile home park.

13 **DECISION**

14 Petitioner makes a multi-faceted attack on the county's
15 decision. We limit our consideration to petitioner's
16 allegations that the challenged decision is not supported by
17 adequate findings.

18 We have explained on many occasions the difficult
19 burden a permit applicant assumes in challenging a local
20 government decision denying a request for permit approval.
21 The burden is difficult, because the burden to demonstrate
22 compliance with each approval criterion rests with the
23 applicant. Fasano v. Washington Co. Comm., 264 Or 574, 507
24 P2d 23 (1973). Therefore, where a local government denies a
25 permit application, a single finding of noncompliance with
26 an applicable approval criterion, provided that finding has

1 the requisite evidentiary support in the record, is
2 sufficient to sustain a decision denying an application for
3 permit approval.¹

4 In view of the above described burden, and based on the
5 record submitted by the county in this appeal, we express no
6 view concerning petitioner's ultimate prospects for success
7 in its attempt to secure permit approval. However,
8 notwithstanding the difficult burden petitioner assumes, ORS
9 215.416(9) requires that the county provide an explanation
10 of why the county believes petitioner's request fails to
11 meet applicable standards.

12 "Approval or denial of a permit * * * decision
13 shall be based upon and accompanied by a brief
14 statement that explains the criteria and standards
15 considered relevant to the decision, states the
16 facts relied upon in rendering the decision and
17 explains the justification for the decision based
18 on the criteria, standards and facts set forth."
19 (Emphases added.)

20 The decision first describes the evidence offered by
21 the applicant and the opponents, without identifying which
22 evidence the county chose to believe. The decision then
23 identifies the relevant criteria and standards and sets out
24 seven findings.² The challenged decision then concludes as

¹In reviewing a land use decision for substantial evidence under ORS 34.040(3), the court of appeals explained a local government's decision that an applicant has failed to carry its burden of proof is supported by substantial evidence, "unless the reviewing court can say that the proponent * * * sustained his burden of proof as a matter of law." Jurgenson v. Union County Court, 42 Or App 505, 510, 600 P2d 1241 (1979).

²Those findings are as follows:

1 follows:

2 "Based on the * * * evidence, findings, and
3 applicable criteria for decision, the Board of
4 County Commissioners [concludes the application
5 does] not comply with the requirements of
6 Josephine County and State law pertaining to such
7 matters." Record 17.

8 The county's decision lacks the "explanation" required
9 by ORS 215.416(9) connecting the facts found with the
10 identified criteria and justifying the decision based on
11 those facts and criteria. The problems with the seven
12 findings adopted by the county are that the findings

"The request did not meet the intent of the Josephine County Zoning Ordinance and Comprehensive Plan for the following reasons:

- "A. The [applicant] failed to demonstrate that suitable provisions had been made to provide water and septic [facilities] to the campground.
- "B. The [applicant] failed to demonstrate that the impact of the proposed campground on neighboring properties, including those located on the south side of the river would not be detrimental to the health, safety, and general welfare of the neighborhood.
- "C. The increased traffic generated by the proposed campground would be detrimental to the health, safety, and general welfare of the neighborhood.
- "D. The water table in the area is extremely high, presenting potential septic problems, especially during the rainy season.
- "E. The proposed access to the campground through the adjacent existing adult mobile home park constituted a drastic change in the character of the neighborhood.
- "F. Approval of the request would constitute a contradiction of the existing rules and regulations of the adult mobile home park." Record 17.

1 themselves are conclusory, they do not identify which of the
2 standards and criteria the county believes the finding
3 addresses, or they suffer from both problems.³

4 In summary, the county's decision simply refers to the
5 evidence submitted, without identifying which evidence the
6 county found to be factual. Beyond failing to identify the
7 necessary relevant facts, the findings fail to relate those
8 facts to the relevant approval standards or provide an
9 explanation for why those facts led the county to conclude
10 one or more of those standards are not met by the proposed
11 campground. The county's findings do not comply with the
12 requirement of ORS 215.416(9).

13 The county's decision is remanded.

³For example, it is possible that findings "B", "C" and "E" were adopted to address Josephine County Zoning Ordinance (JCZO) 15.229(1)(c), which requires that the proposal "not have a detrimental impact on the neighborhood." If so, the challenged decision does not identify the relevant neighborhood, for the proposes of JCZO 15.229(1)(c). Moreover, while the decision recites that it is based on the evidence and testimony submitted by witnesses, the evidence in the record concerning the significance of traffic and other impacts of the proposed campground on the adjoining mobile home park is conflicting. The findings do not identify which evidence the board of commissioners believes. Just as importantly, neither do the county's findings attempt to explain why the evidence the county chose to believe supports a conclusion that the proposal will "have a significant detrimental impact on the neighborhood."