

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

3
4 DAVID LAINE,)
5)
6 Petitioner,)
7)
8 vs.)
9) LUBA No. 93-137
10 CITY OF ROCKAWAY BEACH,)
11) FINAL OPINION
12 Respondent,) AND ORDER
13)
14 and)
15)
16 JOAN WAAGMEESTER,)
17)
18 Intervenor-Respondent.)

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21 Appeal from City of Rockaway Beach.

22
23 David Laine, Rockaway Beach, filed the petition for
24 review and argued on his own behalf.

25
26 No appearance by respondent.

27
28 Steven T. Campbell, Tillamook, filed the response brief
29 and argued on behalf of intervenor-respondent.

30
31 KELLINGTON, Chief Referee; HOLSTUN, Referee; SHERTON,
32 Referee, participated in the decision.

33
34 REMANDED 01/11/94

35
36 You are entitled to judicial review of this Order.
37 Judicial review is governed by the provisions of ORS
38 197.850.

1 Opinion by Kellington.

2 **NATURE OF THE DECISION**

3 Petitioner appeals a city decision approving a
4 conditional use permit for the construction of seven
5 dwellings.

6 **FACTS**

7 A portion of the subject property is zoned Waterfront
8 Development (WD), and another portion of the property is
9 zoned Special Area Wetlands (SA).¹ The applicant below
10 requested approval for the construction of eight dwellings
11 on the subject property. The planning commission approved
12 seven of the requested eight dwellings. Petitioner appealed
13 the planning commission's decision to the city council.
14 City council approved the planning commission decision, and
15 this appeal followed.

16 **ASSIGNMENTS OF ERROR**

17 Petitioner argues the challenged decision must be
18 reversed or remanded because the city council failed to
19 identify the criteria and standards considered to be
20 relevant to the proposed development, as required by ORS
21 227.173(2), or to explain why these criteria and standards
22 are satisfied. See also Sunnyside Neighborhood v. Clackamas

¹The challenged decision does not identify the portions of the subject property zoned WD or SA, and does not identify how much property is involved. The decision suggests the proposed development will occur on seven 3,500 square foot lots. However, another part of the decision states the proposed development will be "clustered."

1 Co. Comm., 280 Or 3, 20, 569 P2d 1063 (1977).

2 A local government quasi-judicial land use decision
3 must be supported by written findings identifying the
4 applicable criteria, setting out the facts relied on and
5 explaining the reasons why the facts establish compliance
6 with the applicable standards. Sunnyside Neighborhood v.
7 Clackamas Co. Comm., supra; Green v. Hayward, 275 Or 693,
8 706-08, 552 P2d 815 (1976); Ruff v. Harney County, 23 Or
9 LUBA 521, 524 (1992). Where a local government fails to
10 adopt findings identifying and applying the applicable
11 criteria, it is not possible for this Board to perform its
12 review function. See Hoffman v. Dupont, 49 Or App 699, 705,
13 621 P2d 603 (1980); Versteeg v. City of Cave Junction, 17
14 Or LUBA 25, 26 (1988). Further, this Board may not
15 determine in the first instance which standards apply. Gage
16 v. City of Portland, 123 Or App 269, _____ P2d _____ (1993);
17 Weeks v. City of Tillamook, 117 Or App 449, 454, 844 P2d 914
18 (1992). The county's failure to identify and explain which
19 standards apply and how the proposal satisfies those
20 standards requires that we remand the challenged decision to
21 the city.

22 The first and second assignments of error are
23 sustained.²

²Because the city failed to adopt findings identifying the criteria relevant to the challenged decision and explaining how those criteria are met, we are unable to review the third through fifth assignments of error,

1 The city's decision is remanded.

2

in which petitioner contends the challenged decision violates various comprehensive plan and zoning ordinance provisions.