

1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

3
4 ERIC LANGFORD, TY HULING, and)

5 MILO DUDDEN,)

6)

7 Petitioners,)

8)

9 vs.)

10) LUBA No. 93-090

11 CITY OF EUGENE,)

12) FINAL OPINION

13 Respondent,)

14) AND ORDER

15)

16 and)

17)

18 LANE COUNTY HOUSING AUTHORITY)

19 AND COMMUNITY SERVICES AGENCY,)

20)

21 Intervenor-Respondent.)

22
23 On remand from Oregon Court of Appeals.

24
25 Douglas M. DuPriest, Eugene, represented petitioners.

26
27 Glenn Klein, Eugene, represented respondent and
28 intervenor-respondent.

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

32
33 REMANDED 05/09/94

34
35 You are entitled to judicial review of this Order.
36 Judicial review is governed by the provisions of ORS
37 197.850.

1 Opinion by Holstun.

2 This appeal is before us on remand from the court of
3 appeals. Langford v. City of Eugene, ___ Or LUBA ___ (LUBA
4 No. 93-090, October 6, 1993), rev'd 126 Or App 52, ___ P2d
5 ___ (1994). In our prior decision in this matter, we
6 sustained petitioners' fifth assignment of error. In that
7 assignment of error, petitioners challenged the city's
8 interpretation of Eugene Code (EC) 9.724, which pertains to
9 controlled income and rent (CIR) housing.

10 Petitioners argued that EC 9.724 governs only approval
11 of CIR housing at a density exceeding the density otherwise
12 permissible under the EC. Petitioners argued that because
13 the challenged CIR housing development also exceeds the
14 ratio of multi-family units to single family units that
15 would otherwise be permissible under the EC, and because
16 those units were to be developed on a single lot, planned
17 unit development (PUD) approval is also required.

18 The city took a different approach in its
19 interpretation of EC 9.724. The city interpreted EC 9.724
20 as establishing the exclusive criteria for approval of CIR
21 housing as a type of "use" rather than additional criteria
22 for approval of CIR housing where increased density is
23 proposed. The court of appeals held LUBA erred in
24 concluding that the city's interpretation of EC 9.724
25 exceeded its interpretive discretion under Clark v. Jackson
26 County, 313 Or 508, 836 P2d 710 (1992).

1 In accordance with the court of appeals' decision, we
2 defer to the city's interpretation of EC 9.724, and
3 petitioners' fifth assignment of error is denied. In our
4 prior decision, although we rejected petitioners' third and
5 fourth assignments of error, we sustained petitioners' first
6 and second assignments of error. That portion of our
7 decision was affirmed by the court of appeals.

8 The city's decision is remanded in accordance with our
9 prior decision, as modified by this decision.