



1 Opinion by Sherton.

2 **NATURE OF THE DECISION**

3 Petitioner appeals an ordinance adopting legislative  
4 amendments to the text of the Coos County Zoning and Land  
5 Development Ordinance (ZLDO). The amendments were adopted  
6 to bring the ZLDO into compliance with Oregon Laws 1993,  
7 chapter 792 (HB 3661) and 1994 amendments to Statewide  
8 Planning Goals 3 (Agricultural Land) and 4 (Forest Lands)  
9 and OAR Chapter 660, Divisions 06 and 33, which implement  
10 HB 3661.

11 **ASSIGNMENT OF ERROR**

12 The challenged ordinance was adopted by the board of  
13 county commissioners and contains the following findings:

14 "The Board of Commissioners of Coos County finds  
15 that the adoption of this Ordinance is a land use  
16 decision which must be made in compliance with the  
17 requirements of the Statewide Land Use Planning  
18 Goals. This Ordinance does comply with the  
19 Statewide Planning Goals and state law." Record  
20 16.

21 No other findings were adopted in support of the challenged  
22 ordinance.

23 Petitioner contends ZLDO 5.7.500 (Findings) requires  
24 that the board of commissioners adopt findings in support of  
25 the challenged decision. ZLDO 5.7.500 provides:

26 "Whenever any official action is taken by the  
27 hearings body or Board of Commissioners, findings  
28 of fact based on the record shall be made to  
29 adequately establish the basis for such official  
30 action." (Emphases added.)

1 According to petitioner, the findings required by  
2 ZLDO 5.7.500 should, at a minimum, "explain what criteria in  
3 the enabling legislation must be satisfied [and demonstrate]  
4 the basis for the Board [of Commissioners'] conclusion that  
5 the ordinance does in fact comply with the relevant enabling  
6 legislation." Petition for Review 3-4.

7 Petitioner argues the above quoted findings are  
8 impermissibly conclusory, stating no facts and giving no  
9 explanation for why the board of commissioners believes the  
10 ordinance complies with the goals and state law. See  
11 Andrews v. City of Brookings, 27 Or LUBA 39, 43-44 (1994).  
12 Petitioner contends the findings are insufficient to comply  
13 with ZLDO 5.7.500, or to allow LUBA to perform its review  
14 function. Von Lubken v. Hood River County, 22 Or LUBA 307  
15 (1991); League of Women Voters v. Klamath County, 16 Or LUBA  
16 909, 913 (1988).

17 The county contends ZLDO 5.7.500 does not apply to  
18 legislative decisions. The county argues that legislative  
19 amendments to the ZLDO are governed solely by ZLDO  
20 Article 1.2 (Amendments), which contains no requirement for  
21 findings. According to the county, ZLDO 5.7.500 is located  
22 in ZLDO Chapter V (Administration), which governs only  
23 quasi-judicial land use decisions. The county points out  
24 that certain articles in ZLDO Chapter V, e.g., Articles 5.1  
25 (Rezoning), 5.2 (Conditional Uses), 5.3 (Variances) and 5.6  
26 (Design and Site Plan Review) clearly cover only

1 quasi-judicial proceedings.

2       The county also argues that regardless of whether  
3 ZLDO 5.7.500 applies, petitioners' assignment of error must  
4 be denied because petitioner fails to identify the relevant  
5 legal standards he contends must be addressed in findings  
6 supporting the challenged ordinance. The county argues LUBA  
7 has frequently held that absent "allegations that a  
8 legislative decision violates particular legal standards, a  
9 local government's failure to adopt findings in support of  
10 that legislative decision \* \* \* is not, of itself, a basis  
11 for reversal or remand of the decision." Oregon City  
12 Leasing, Inc. v. Columbia County, 25 Or LUBA 129, 134, rev'd  
13 on other grounds 121 Or App 173 (1993). The county argues  
14 that when a legislative decision is challenged, LUBA may  
15 perform its review function if either (1) the challenged  
16 decision is supported by findings demonstrating compliance  
17 with applicable legal standards, or (2) respondents' briefs  
18 provide argument and citations to facts in the record  
19 adequate to demonstrate the challenged decision complies  
20 with applicable legal standards. Redland/Viola/Fischer's  
21 Mill CPO v. Clackamas County, 27 Or LUBA 560, 564 (1994).  
22 According to the county, because petitioner fails to  
23 identify any legal standards allegedly violated by the  
24 challenged decision, the county is deprived of its right to  
25 provide argument and citations to the record to demonstrate  
26 compliance with such standards.

1           We have consistently held there is no statutory or  
2 administrative law requirement that all legislative  
3 decisions be supported by findings.<sup>1</sup>  
4 Redland/Viola/Fischer's Mill v. Clackamas County, supra, 27  
5 Or LUBA at 563; Riverbend Landfill Company v. Yamhill  
6 County, 24 Or LUBA 466, 472 (1993); Von Lubken v. Hood River  
7 County, supra, 22 Or LUBA at 313. However, where there is a  
8 local code provision requiring that findings be adopted in  
9 support of legislative decisions, the absence of such  
10 findings, or the adoption of purely conclusory findings, can  
11 provide a basis for reversal or remand. Andrews v. City of  
12 Brookings, supra, 27 Or LUBA at 43.

13           Here, the findings adopted as part of the challenged  
14 ordinance are mere conclusions and are inadequate to satisfy  
15 ZLDO 5.7.500. Consequently, if ZLDO 5.7.500 applies to  
16 legislative ZLDO amendments adopted by the board of  
17 commissioners, the challenged decision must be remanded for  
18 adoption of adequate findings. However, the challenged

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<sup>1</sup>We have also concluded that where a specific challenge is made to a legislative decision, findings may be necessary to enable LUBA to perform its review function or to satisfy the requirement of Goal 2 (Land Use Planning) for an adequate factual base. See 1000 Friends of Oregon v. City of North Plains, 27 Or LUBA 372, 377, aff'd 130 Or App 406 (1994); League of Women Voters v. Klamath County, supra. The county is correct, however, that even where a specific challenge to a legislative decision is made, it is also possible that respondents may be able to defend against such a challenge through argument in their briefs and citations to plan, provisions, code provisions and evidence in the record. Redland/Viola/Fischer's Mill v. Clackamas County, supra, 27 Or LUBA at 564; see Gruber v. Lincoln County, 2 Or LUBA 180, 187 (1981). However, petitioner makes no specific challenge to the subject ordinance in this appeal.

1 decision does not itself interpret ZLDO 5.7.500. Therefore,  
2 we must first determine whether we have authority to make  
3 the initial interpretation regarding the applicability of  
4 ZLDO 5.7.500.<sup>2</sup>

5 Under Gage v. City of Portland, 319 Or 308, 316-17, 877  
6 P2d 1187 (1994), and Clark v. Jackson County, 313 Or 508,  
7 514-15, 836 P2d 710 (1992), LUBA is required to give  
8 considerable deference to a local governing body's  
9 interpretation of local enactments.<sup>3</sup> Under Weeks v. City of  
10 Tillamook, 117 Or App 449, 453-54, 844 P2d 914 (1992), this  
11 means that in reviewing a decision adopted by the local  
12 governing body, LUBA must review the governing body's  
13 interpretation of local code provisions and may not  
14 interpret the local code in the first instance.  
15 Additionally, to be reviewable by LUBA, a local government's  
16 interpretation of its code must be provided in the  
17 challenged decision or in supporting findings, not in the  
18 local government's brief. Eskandarian v. City of Portland,  
19 26 Or LUBA 98, 109 (1993); Miller v. Washington County, 25  
20 Or LUBA 169, 179 (1993). Thus, unless there is "no possible  
21 rational dispute" regarding the correct interpretation of

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<sup>2</sup>In Andrews, there was no dispute that the code requirement for findings applied to legislative, as well as quasi-judicial, land use decisions.

<sup>3</sup>Our review of local government interpretations of comprehensive plans and land use regulations is now governed by ORS 197.829. However, the Court of Appeals has stated that it interprets ORS 197.829 to mean what the Supreme Court, in Gage, interpreted Clark to mean. Watson v. Clackamas County, 129 Or App 428, 431-32, 879 P2d 1309, rev den 320 Or 407 (1994).

1 ZLDO 5.7.500, we must remand the challenged decision to the  
2 county to interpret ZLDO 5.7.500 in the first instance.  
3 Gage v. City of Portland, 123 Or App 269, 274-75, 860 P2d  
4 282 (1983), rev'd other grounds 319 Or 308 (1994); see Towry  
5 v. City of Lincoln City, 26 Or LUBA 554, 560 (1994).

6 ZLDO 5.7.500 specifically refers to "any official  
7 action" of the board of commissioners. This section is part  
8 of ZLDO Article 5.7 (Public Hearings). Nothing in  
9 Article 5.7 explicitly provides that Article 5.7 applies  
10 only to quasi-judicial proceedings. Neither does  
11 Article 1.2 explicitly provide that it governs legislative  
12 amendments to the ZLDO. Further, although ZLDO 1.2.600  
13 indicates that both the planning commission and board of  
14 commissioners are required to hold public hearings on a  
15 proposed ZLDO text amendment, nothing in ZLDO Article 1.2  
16 establishes procedures for such hearings.

17 Based on the above, we conclude that petitioner's  
18 suggested interpretation of ZLDO 5.7.500 is not untenable,  
19 and that nothing in the language of ZLDO 5.7.500, or in  
20 other ZLDO provisions, establishes unequivocally that  
21 ZLDO 5.7.500 is inapplicable to legislative actions by the  
22 board of commissioners. Therefore, we must remand the  
23 challenged decision to the county to determine whether  
24 ZLDO 5.7.500 is applicable to the challenged legislative  
25 decision and, if so, to adopt the required findings.

26 The assignment of error is sustained.

1           The county's decision is remanded.