

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

4 NYLA JEBOUSEK,)
5)
6 Petitioner,)
7) LUBA No. 96-107
8 vs.)
9) FINAL OPINION
10 CITY OF NEWPORT,) AND ORDER
11)
12 Respondent.)
13

14
15 On remand from the Court of Appeals.
16

17 Nyla L. Jebousek, Springfield, represented herself.
18

19 Elizabeth A. Fetsch, Newport, represented respondent.
20

21 LIVINGSTON, Referee; HANNA, Chief Referee, participated
22 in the decision.
23

24 REMANDED 06/17/97
25

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

1 Opinion by Livingston.

2 **NATURE OF THE DECISION**

3 Petitioner appeals a decision of the city council
4 allowing a lot line adjustment in the city's Low Density
5 Single-Family Residential (R-1) zone.

6 **DISCUSSION**

7 Tax lot 9000 is a flag lot located behind tax lot 8900.
8 On January 5, 1996, the city planning director approved a
9 lot line adjustment to reconfigure tax lot 8900 and tax lot
10 9000. The planning director applied the criteria for
11 property line adjustments stated in the city's Ordinance
12 1674, and concluded the criteria were met. The result of
13 the reconfiguration was that tax lot 9000 was reduced in
14 size by approximately square 700 feet, to 7,982 square feet.

15 Petitioner appealed the planning director's decision to
16 the planning commission and, from there, to the city
17 council. The main thrust of her argument at each level was
18 that a road easement crossing tax lot 9000 and comprising
19 682 square feet could not be considered part of the lot for
20 the purpose of calculating lot size, and, therefore, the
21 reconfigured tax lot 9000 was below the minimum lot size of
22 7,500 square feet established for the R-1 zone. The city
23 council rejected that argument and other arguments
24 identified in its decision, and allowed the lot line
25 adjustment.

26 Petitioner appealed to LUBA, and we affirmed in a

1 memorandum decision. Petitioner then appealed to the Court
2 of Appeals, which reversed and remanded to LUBA on the
3 ground that the city had failed to address at every level an
4 argument raised by petitioner below. The court explained:

5 "Petitioner contends that the slope of the
6 affected property 'drops off drastically,' and
7 that development on it would pose a landslide
8 risk. She therefore argues that, as part of this
9 decision, the city was required to, but did not,
10 apply Goal 1 of the Natural Features component of
11 the city's comprehensive plan. The goal requires
12 minimization of 'damage to the natural resources
13 of the coastal zone that might result from
14 inappropriate development in environmentally
15 hazardous areas.' Policy 3 of the goal, which
16 petitioner specifically contends is applicable and
17 was not followed by the city, provides:

18 "Where hazardous areas have not been
19 specifically identified but there is a
20 reason to believe that a potential does
21 exist, a site specific investigation by
22 a registered geologist or engineer shall
23 be required prior to development.'

24 "Petitioner maintains that she raised the issue of
25 'environmental hazards and site specific
26 investigation' at each level of the city's
27 decision-making process and that the city did not
28 address the issue. We emphasize that this opinion
29 pertains directly only to the city's asserted
30 failure to address the issue. We do not suggest
31 anything about the merits of petitioner's
32 substantive position, except that it is not
33 outside the range that the city could have found
34 meritorious had it considered it or should it do
35 so later as a consequence of our remand."
36 Jebousek v. City of Newport, 147 Or App 100, 102,
37 ___ P2d ___ (1997) (emphasis in original).

38 Petitioner's "environmental hazards" argument is based
39 on Newport Comprehensive Plan Goal 1 and, in particular,

1 Goal 1, Policy 3. It also relies on the intent statement in
2 NZO 2-2-1.020 pertaining to the R-1 zone:

3 "The intent of the R-1 district is to provide for
4 large lot residential development. This district
5 should also be applied where environmental
6 constraints such as topography, soils, geology, or
7 flooding restrict the development potential of the
8 land."

9 Because the city has not addressed petitioner's
10 argument by interpreting these standards and applying them
11 or not applying them in a manner consistent with the city's
12 interpretation, we remand to give the city an opportunity to
13 do so.

14 **PETITION FOR ATTORNEY FEES**

15 The city has filed a petition for attorney fees under
16 ORS 197.830(14)(b). The petition is denied.