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

RON LARVIK,)
)
Petitioner,)
)
vs.)
)
CITY OF LA GRANDE,)
)
Respondent,)
)
and)
)
RUSSELL LESTER,)
)
Intervenor-Respondent.)

LUBA No. 97-203
FINAL OPINION
AND ORDER

Appeal from La Grande.

D. Rahn Hostetter, Enterprise, filed the petition for review and argued on behalf of petitioner.

Raymond S. Baum, La Grande, filed the response brief and argued on behalf of intervenor-respondent. With him on the brief was Mautz Baum & O'Hanlon.

GUSTAFSON, Board Chair; HANNA, Board Member, participated in the decision.

REMANDED 05/20/98

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

1 Opinion by Gustafson.

2 **NATURE OF THE DECISION**

3 Petitioner appeals the city's approval of a comprehensive
4 plan amendment and zone change.

5 **MOTION TO INTERVENE**

6 Russell Lester (intervenor), the applicant below, moves
7 to intervene on the side of respondent. There is no
8 opposition to the motion, and it is allowed.

9 **FACTS**

10 Intervenor requested approval from the city of a
11 comprehensive plan map amendment from Industrial to
12 Commercial, and a zone change from M-2, Heavy Industrial to
13 GC, General Commercial for a 15.3-acre parcel within the city
14 limits. Intervenor plans to develop the parcel with an RV
15 campground, which is allowed as a conditional use in the GC
16 zone. However, the present application does not include a
17 conditional use permit request for the campground.

18 Following public hearings, the planning commission
19 recommended that the application be denied. The city council
20 rejected that recommendation and approved the application.

21 Petitioner appeals that approval.

22 **ASSIGNMENTS OF ERROR ONE AND TWO**

23 In the first assignment of error, petitioner challenges
24 the adequacy and evidentiary support for the city's findings
25 of compliance with La Grande Land Development Code (LGLDC)

1 85.003(B)-(D) and with LGLDC 86.003(C).¹ In the second
2 assignment of error, petitioner contends the city misconstrued
3 several comprehensive plan provisions and made inadequate
4 findings that lack evidentiary support with respect to those
5 provisions.²

6 **A. Adequacy of Findings**

7 With regard to each of the challenged LGLDC approval
8 criteria, intervenor responds, generally, that the findings

¹LGLDC 85.003 requires, in relevant part:

- "(B) The property affected by the Zone Change Designation is adequate in size and shape to facilitate these uses that are normally allowed in conjunction with such zoning.
- "(C) The property affected by the Zone Change Designation is properly related to streets to adequately serve the type of traffic generated by such uses that may be permitted therein.
- "(D) The proposed Zone Change Designation will have no adverse affect on the appropriate use and development of abutting properties."

LGLDC 86.003(C) requires:

"The proposed change is supported by specific studies or other factual information which documents the public need for the change."

²The challenged provisions of the land use planning policies of the city's comprehensive plan state:

- "3. That public need be established before plan changes or related requests are approved, and that the burden of proof be borne by the requester.
- "4. That urban uses will be discouraged from sprawl which may increase service costs, transportation congestion, and the transition of land from agriculture or grazing to urban uses.
- "* * * * *
- "9. That alternative sites and alternative uses will be considered in making land use plan decisions."

1 are adequate because the record supports their conclusions.
2 However, each of the findings consists of a one or two
3 sentence conclusion regarding how an RV campground would
4 satisfy each of the approval criteria. The findings do not
5 address the requested comprehensive plan amendment and zone
6 change, and thus contain no factual or legal analysis to
7 support the conclusion that the application itself complies
8 with each of the criteria.

9 It is well-established that findings must be in the local
10 government's decision, and that they must do more than merely
11 state a conclusion of compliance. The Supreme Court first
12 articulated the standard for evaluating the adequacy of local
13 findings in Sunnyside Neighborhood v. Clackamas Co. Comm., 280
14 Or 3, 21, 569 P2d 1063 (1977):

15 "No particular form is required, and no magic words
16 need be employed. What is needed for adequate
17 judicial review is a clear statement of what,
18 specifically, the decision-making body believes,
19 after hearing and considering all the evidence, to
20 be the relevant and important facts upon which its
21 decision is based. Conclusions are not sufficient."

22 In Le Roux v. Malheur County, 30 Or LUBA 268 (1995) we
23 explained the requirement for adequate findings as follows:

24 "The county's * * * findings must (1) identify the
25 relevant approval standards, (2) set out the facts
26 relied upon, and (3) explain how the facts lead to
27 the conclusion that the request satisfies the
28 approval standards. Sunnyside Neighborhood v.
29 Clackamas Co. Comm., 280 Or 3, 20-21, 569 P2d 1073
30 (1977). See also Penland v. Josephine County, 29 Or
31 LUBA 213 (1995); Reeves v. Yamhill County, 28 Or
32 LUBA 123 (1994); Hart v. Jefferson County, 27 Or
33 LUBA 612 (1994). In addition, when, as here, a
34 party raises issues regarding compliance with any
35 particular approval criteria, it is incumbent upon

1 the local government to address those issues.
2 Hillcrest Vineyard v. Bd. of Comm. Douglas Co., 45
3 Or App 283, 293, 608 P2d 201 (1980); Collier v.
4 Marion County, 29 Or LUBA 462 (1995). Moreover,
5 when the evidence is conflicting, the local
6 government may choose which evidence to accept, but
7 must state the facts it relies on and explain why
8 those facts lead to the conclusion that the
9 applicable standard is satisfied. Moore v.
10 Clackamas County, 29 Or LUBA 372 (1995)." Le Roux,
11 30 Or LUBA at 271.

12 The county's findings in Le Roux did not apply the
13 approval criteria or relate the findings to the criteria in
14 any respect. Rather, the findings consisted of conclusory
15 statements that included no analysis of the facts as they
16 related to the criteria. The findings in the challenged
17 decision are equally inadequate. With respect to each of the
18 criteria petitioner identifies, the findings state only
19 conclusions of compliance. They do not apply the approval
20 criteria to the facts or in any way explain how each approval
21 criterion is satisfied.

22 **B. Substantial Evidence**

23 Intervenor cites in his brief to numerous places in the
24 record where he contends there is substantial evidence to
25 support the city's conclusion that the approval criteria are
26 satisfied. We understand intervenor to argue that, even if
27 the findings are inadequate, under ORS 197.829(11)(b) this
28 Board should affirm the city's decision.

29 ORS 197.829(11)(b) allows us to overlook inadequate
30 findings when "the parties identify relevant evidence in the
31 record which clearly supports the decision or a part of the

1 decision."³ However, the threshold for establishing that
2 evidence "clearly supports" a decision is high. As we have
3 explained, "where the relevant evidence in the record is
4 conflicting, or provides a reasonable basis for different
5 conclusions, such evidence does not 'clearly support' the
6 challenged decision." Waugh v. Coos County, 26 Or LUBA 300,
7 307 (1993).

8 The evidence upon which intervenor relies does not compel
9 a conclusion that the evidence in the case "clearly supports"
10 findings of compliance with each of the challenged code
11 provisions. At most, the evidence to which we have been cited
12 could potentially support a conclusion that the campground
13 intervenor plans to propose in the future could satisfy some
14 approval criteria. However, that campground is not part of
15 the application upon which the challenged decision is based.
16 We have been cited to no evidence, much less compelling
17 evidence, to support a conclusion that the application itself
18 satisfies the approval criteria.

19 The first and second assignments of error are sustained.⁴

³ORS 197.835(11)(b) states, in full:

"Whenever the findings are defective because of failure to recite adequate facts or legal conclusions or failure to adequately identify the standards or their relation to the facts, but the parties identify evidence in the record which clearly supports the decision or a part of the decision, the board shall affirm the decision or the part of the decision supported by the record and remand the remainder to the local government, with direction indicating appropriate remedial action."

⁴Petitioner also summarily alleges in the caption to his second assignment of error that the city "failed to properly construe the

1 **THIRD ASSIGNMENT OF ERROR**

2 Petitioner contends the city has failed to address or has
3 made inadequate findings regarding compliance with several
4 statewide planning goals.

5 **A. Goals 7 (Natural Hazards), 11 (Public Facilities)**
6 **and 12 (Transportation)**

7 Petitioner challenges the city's failure to address
8 Statewide Planning Goals 7, 11 and 12. Intervenor does not
9 dispute the applicability of these goals, but argues that the
10 city's findings adequately address each of them.

11 Intervenor contends that the subject matter of each of
12 Goals 7, 11 and 12 is mentioned in the city's findings on
13 other approval criteria. However, a passing reference to the
14 general subject matter of the goals is insufficient to
15 establish compliance with them. None of these goals is
16 identified, nor does the decision include any findings that
17 substantively address how the proposed comprehensive plan
18 amendment assures continued compliance with these goals.

19 This subassignment of error is sustained.

20 **B. Goals 9 (Economy) and 14 (Urbanization)**

21 Petitioner challenges the adequacy and evidentiary
22 support for the city's findings of compliance with Goals 9 and
23 14.

24 With regard to Goal 14, intervenor correctly responds

applicable law." Petition for Review 7. To the extent petitioner argues that the city's interpretations are incorrect, we note that the city has not attempted to expressly interpret any of the applicable comprehensive plan provisions. However, petitioner does not develop his claim, and we do not review it further.

1 that the subject property is within the La Grande city limits.
2 As such, Goal 14, which is to provide for an orderly and
3 efficient transition from rural to urban land uses, is
4 inapplicable here. Because the goal does not apply to the
5 subject property, the fact that the city made a one-sentence,
6 conclusory finding of compliance with Goal 14 is harmless
7 error.

8 With regard to Goal 9, while petitioner summarily
9 challenges the city's findings, he does not articulate in what
10 respects those findings are inadequate or lacking in
11 evidentiary support. It is not this Board's position to
12 establish petitioner's legal justification.

13 This subassignment of error is denied.

14 The third assignment of error is sustained, in part.

15 The city's decision is remanded.