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

STEPHEN J. ROUSE, SHANNON L.)
ROUSE, WILLIAM R. ROUSE,)
JULIA S. ROUSE, DALE A. SMITH,)
DEBRA D. SMITH, STEVEN R. STEELE,)
NICOLINA K. STEELE, E. VINCENT)
AUGUSTIN, NINA R. AUGUSTIN,)
MARION L. VERMILYEA, VIOLET M.)
VERMILYEA, TERRY E. BRADLEY and)
KATHRYN E. BRADLEY,)
Petitioners,)
vs.)
TILLAMOOK COUNTY,)
Respondent.)

LUBA No. 97-241
FINAL OPINION
AND ORDER

Appeal from Tillamook County.

Stephen J. and Shannon Rouse, Tillamook, filed the petition for review.

William K. Sargent, County Counsel, Tillamook, filed the response brief.

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

REMANDED 06/02/98

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 Petitioners appeal the county's conditional use approval
4 of an overnight campground.

5 **MOTION TO INTERVENE**

6 The Benevolent and Protective Order of the Elks, Lodge
7 #1437 (the Elks), moved to intervene on the side of respondent
8 in this appeal. In a previous order, that motion was denied
9 because it was not filed within 21 days from petitioners'
10 filing of the notice of intent to appeal. Rouse v. Tillamook
11 County, __ Or LUBA __ (LUBA No. 97-241, Order on Motion to
12 Intervene, February 11, 1998). Accordingly, the response
13 brief filed by the Elks is not considered in this opinion.

14 **FACTS**

15 The Elks applied to the county for a conditional use
16 permit for a 20-space overnight campground. The subject
17 property, on which the Elks currently maintain a private, day-
18 use recreational park, is located in a rural-residential (RR)
19 zone, one-half mile east of Highway 101, and is accessed via a
20 private easement from the highway. In 1992, the county
21 approved use of the property for day-use activities, but
22 denied the requested overnight-use. That approval was subject
23 to several use-related conditions. Two subsequent requests for
24 overnight camping approval, in 1995 and 1996, were denied and
25 withdrawn, respectively.

26 Following public hearings on the present application, the

1 county planning commission approved the request. Upon
2 petitioners' appeal, the county board of commissioners
3 (commissioners) conducted a de novo hearing, after which they
4 affirmed the planning commission decision, adopting the
5 findings and conclusions of the staff report on appeal.

6 Petitioners appeal the approval.

7 **FIRST ASSIGNMENT OF ERROR**

8 Petitioners contend the county misconstrued Tillamook
9 County Land Use Ordinance (LUO) 6.040(3) and failed to adopt
10 adequate findings supported by substantial evidence to
11 establish compliance with that ordinance. That conditional
12 use approval criterion requires the county to establish that:

13 "[t]he parcel is suitable for the proposed use
14 considering its size, shape, location, topography,
15 existence of improvements and natural features."

16 Petitioners specifically argue the county misconstrued
17 the requirement and made inadequate findings to establish that
18 the parcel is suitable for the requested use considering the
19 "existence of improvements and natural features." To support
20 their argument, petitioners contend that a condition imposed
21 requiring the Elks to buffer the boundary between the subject
22 property and adjacent residences is inadequate to mitigate the
23 impact of the development. Petitioners argue that the
24 imposition of the condition is an "acknowledgment" of the need
25 for a buffer, but that the county has not established that the
26 required buffer will be adequate to buffer the sights and
27 sounds of the campground from adjacent residential properties.

1 Petitioners' argument does not explain how the county
2 misconstrued the requirements of LUO 6.040(3), nor why the
3 findings are inadequate. Although petitioners fail to
4 articulate the underlying premise of their argument,
5 petitioners may intend to suggest that this criterion requires
6 that the county consider off-site improvements, i.e. the
7 existence of homes on adjacent properties, in evaluating the
8 "existence of improvements and natural features."

9 The county's findings of compliance do not expressly
10 interpret this requirement. They do not evaluate the off-site
11 development surrounding the subject property. They do,
12 however, evaluate at some length the characteristics and
13 natural features of the subject property.

14 We must affirm the county's interpretation of its local
15 ordinance unless it is clearly wrong. ORS 197.829(1); Clark
16 v. Jackson County, 313 Or 508, 836 P2d 710 (1992); Alliance
17 for Responsible Land Use v. Deschutes County, 149 Or App 259,
18 942 P2d 836 (1997); deBardelaben v. Tillamook County, 142 Or
19 App 319, 922 P2d 683 (1996). Although its interpretation is
20 not express, the county's finding of compliance, in which it
21 evaluates the characteristics of the subject property, is
22 sufficiently complete and detailed for us to conclude that the
23 county has impliedly interpreted this criterion to require an
24 evaluation of the subject property, rather than surrounding
25 properties. Alliance for Responsible Land Use, 149 Or App at

1 266. This interpretation is entirely within the county's
2 authority, and is not clearly wrong.

3 With regard to petitioners' argument that the findings
4 are inadequate and not based upon substantial evidence,
5 petitioners apparently contend the condition of approval
6 requiring establishment and maintenance of a vegetative buffer
7 is inadequate to make the subject property "suitable." Again,
8 petitioners' argument appears to be premised upon petitioners'
9 perception of the impact of the use on the surrounding
10 properties, rather than on the suitability of the subject
11 property itself for the proposed use.¹

12 Moreover, petitioners' argument establishes no more than
13 a disagreement with the county's evaluation of the evidence as
14 it relates to the criterion.² A disagreement as to the
15 evaluation of the factual evidence does not render findings
16 lacking in substantial evidence.

17 Substantial evidence is evidence a reasonable person
18 would rely on in reaching a decision. City of Portland v.
19 Bureau of Labor and Ind., 298 Or 104, 119, 690 P2d 475 (1984).
20 However, in reviewing a local decision for substantial

¹Petitioners argue that the "view" of the subject property from their adjacent properties "is the chosen outdoor living space of these homes." Petition for Review 6. To the extent petitioners argue that the Elks' use of its property is constrained by petitioners' desire to keep it for their private enjoyment, that argument is wholly irrelevant to whether the property is suitable for the requested use.

²Petitioners do not attempt to articulate in what way they believe the finding is legally inadequate, and we do not discuss this allegation further.

1 evidence, we may not substitute our judgment for that of the
2 local decision maker. Rather, we must consider and weigh all
3 the evidence in the record to which we are directed, and
4 determine whether, based on that evidence, the local decision
5 maker's conclusion is supported by substantial evidence.
6 Younger v. City of Portland, 305 Or 346, 358-60, 752 P2d 262
7 (1988); 1000 Friends of Oregon v. Marion County, 116 Or App
8 584, 588, 842 P2d 441 (1992). If there is substantial
9 evidence in the whole record to support the city's decision,
10 LUBA will defer to it, notwithstanding that reasonable people
11 could draw different conclusions from the evidence. Adler v.
12 City of Portland, 25 Or LUBA 546, 554 (1993).

13 Petitioners' disagreement with the county's decision, or
14 with the evidence upon which the county relied, does not
15 establish that the decision is not based upon substantial
16 evidence.

17 The first assignment of error is denied.

18 **SECOND ASSIGNMENT OF ERROR**

19 Petitioners next argue that the county misconstrued LUO
20 6.040(3) and failed to make adequate findings establishing
21 that the parcel is suitable for the proposed use considering
22 its location. Specifically, petitioners argue that "[t]here
23 are no findings in Planning Department Staff Report of August
24 4, 1997 addressing 'location' in [LUO 6.040(3)]." Petition
25 for Review 7-8.

1 The August 4, 1997 staff report was the staff report
2 presented to the Planning Commission. The challenged decision
3 does not adopt that report. Rather, the decision before us
4 adopts and incorporates the staff report on appeal, dated
5 October 1, 1997. That the earlier, unadopted staff report may
6 have failed to address a mandatory criterion provides no basis
7 for remand or reversal of the challenged decision.

8 The second assignment of error is denied.

9 **THIRD ASSIGNMENT OF ERROR**

10 Petitioners contend the county failed to adopt adequate
11 findings to establish compliance with LUO 6.040(4).³ That
12 criterion requires:

13 "The proposed use will not alter the character of
14 the surrounding area in a manner which substantially
15 limits, impairs or prevents the use of surrounding
16 properties for the permitted uses listed in the
17 underlying zone."

18 Much of petitioners' argument under this assignment of
19 error alleges deficiencies in the August 4, 1997 staff report.
20 As explained above, that staff report is not a part of the
21 challenged decision, and therefore any deficiencies in it
22 provide no basis for relief.⁴

³Petitioners also allege, without discussion, that the county misconstrued this ordinance. Petitioners do not establish how the county misconstrued this ordinance, and therefore we do not further discuss this allegation.

⁴One of the alleged deficiencies in the August 4, 1997 staff report is a statement in that report that the "proposed use is not unique to the area," followed by examples of other campgrounds in the area. Record 102. The challenged decision makes the same finding. Even if petitioners had properly challenged the finding, petitioners have not established any basis for remand based upon this alleged deficiency. Petitioners argue that comparisons to other campgrounds are inappropriate, in part because those

1 Petitioners also argue that they or others presented
2 evidence relevant to this criterion which is not addressed in
3 the county's findings. Specifically, petitioners argue that
4 they presented evidence on "noise pollution," the "potential
5 loss of property values," and "limitations, impairments and
6 prevention of use of [petitioners'] properties" during use of
7 the subject property for overnight camping. Petition for
8 Review 9-10. The county's decision does not address these
9 issues. The county's finding regarding adjacent properties
10 states:

11 "Staff concludes that the adjacent property uses are
12 rural homesites and agricultural farms. The
13 proposed use will not impair or prevent such uses
14 allowed in the underlying zone. The proposed use
15 can meet the criteria provided that mitigating
16 measures are taken to minimize possible impacts on
17 surrounding properties." Record 23.

18 The county's findings need not address every issue raised
19 during the local proceeding. Nor do they need to explain the
20 county's choice between conflicting evidence in the record.
21 However, when specific issues are raised that are relevant to
22 compliance with an approval criterion, the county's findings
23 must address and respond to those issues. Thomas v. Wasco
24 County, 30 Or LUBA 302, 310 (1996); Moore v. Clackamas

campgrounds do not have the same proximity to rural residential uses as the proposed campground. The county's observation that the proposed use is not unique to the area is relevant to and provides support for the county's conclusion that the proposed use "will not alter the character of the surrounding area." Whether those other campgrounds are "comparable" in terms of their proximity to residential uses does not undermine the adequacy of that finding. Petitioners also argue that those campgrounds show there is no need for the proposed campground because they are either never or rarely filled to capacity. Petitioners have not, however, established that "need" for the proposed conditional use is an approval criterion.

1 County, 29 Or LUBA 372 (1995); Suydam v. Deschutes County, 29
2 Or LUBA 273, aff'd 136 Or App 548 (1995). The county's
3 findings of compliance with LUO 6.040(4) are inadequate
4 because they do not address and respond to the specific issues
5 raised by petitioners that are relevant to the county's
6 determination that the proposed campground will not "alter the
7 character of the surrounding area in a manner which
8 substantially limits, impairs or prevents the use of
9 surrounding properties for the permitted uses listed in the
10 underlying zone." LUO 6.040(4).

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

12 **FOURTH AND FIFTH ASSIGNMENTS OF ERROR**

13 Petitioners allege the county erred by failing to adopt
14 findings related to several of the purpose statements of LUO
15 4.005, which lists the purposes of the land use standards in
16 all residential and commercial zones. The county did not
17 identify LUO 4.005 as an approval criterion for the proposed
18 conditional use, and made no findings regarding that
19 criterion.

20 Petitioners allege:

21 "Tillamook County does not have a specific land use
22 ordinance relating to Rural Residential Standards so
23 the assumption is that the above ordinance [LUO
24 4.005] would be the applicable law in this matter."
25 Petition for Review 10, 12.

26 Petitioners' "assumption" that LUO 4.005 is a mandatory
27 approval criterion is not substantiated. While petitioners
28 may raise issues concerning compliance with criteria that are

1 not addressed in the county's decision, they must, at the very
2 least, provide some explanation as to why they believe the
3 criteria are applicable. We will not consider LUO 4.005 a
4 mandatory approval criterion simply because petitioners
5 "assume" it should be.

6 Moreover, even if some provisions of LUO 4.005 could be
7 construed as approval criteria for the requested conditional
8 use permit, the "purpose" provisions petitioners identify as
9 the basis of their challenge are not. By their language, the
10 "purpose" provisions are aspirational policies, and do not
11 constitute mandatory approval criteria.⁵

12 The fourth and fifth assignments of error are denied.

13 **SIXTH ASSIGNMENT OF ERROR**

14 Petitioners allege, "Respondent failed procedurally."
15 Petition for Review 13. As far as we can tell, the essence of
16 this procedural challenge is that the August 4, 1997 staff
17 report contained some notice information that petitioners

⁵The "purposes" of LUO 4.005 that petitioners identify as relevant here include:

"1. To ensure the availability of private open space;

"* * * * *

"4. To enhance privacy for occupants of residences;

"* * * * *

"7. To ensure safe access to and from common roads;

"8. To ensure that pleasing views are neither unreasonably
obstructed nor obtained;

"9. To separate potentially incompatible land uses."

1 contend is incorrect, and that this "misinformation strongly
2 influenced" the planning commission. Id.

3 The August 4, 1997 staff report preceded the planning
4 commission hearing on this matter. Petitioners have not
5 alleged that any possible procedural deficiencies in the
6 planning commission staff report were not or could not have
7 been remedied during the commissioners' de novo review of the
8 application.

9 Procedural errors in proceedings before a lower-level
10 local decision maker provide no basis for relief when those
11 errors may be cured by de novo review by a higher-level local
12 decision maker. O'Rourke v. Union County 29 Or LUBA 303, 307
13 (1995); Wilson Park Neigh. Assoc. v. City of Portland, 23 Or
14 LUBA 708, 713-14 (1992); Murphey v. City of Ashland, 19 Or
15 LUBA 182, 189-90, aff'd 103 Or App 238 (1990). In this case,
16 the county commissioners conducted a de novo hearing on the
17 application, and petitioners do not contend they were denied
18 the opportunity to correct any alleged procedural defects that
19 may have occurred during the planning commission's initial
20 review of the application.

21 The sixth assignment of error is denied.

22 **SEVENTH ASSIGNMENT OF ERROR**

23 Petitioners allege the county erred by failing to
24 enforce, through this application, compliance with conditions
25 of the county's 1992 conditional use approval for the Elks'
26 day-use of the property.

1 The challenged decision does not concern or affect the
2 1992 conditional use approval. This is not the proper forum
3 for petitioners to seek enforcement of conditions of an
4 earlier, separate land use decision.

5 The seventh assignment of error is denied.

6 The county's decision is remanded.