BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

WES JOHNS,	)	
	)	
Petitioner,	)	
	)	LUBA No. 97-235
vs.	)	
	)	FINAL OPINION
CITY OF LINCOLN CITY,	)	AND ORDER
	)	
Respondent.	)	

Appeal from City of Lincoln City.

Gary G. Linkous, Welches, represented petitioner.

Christopher P. Thomas, Portland, represented respondent.

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

AFFIRMED 01/19/99

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

Opinion by Holstun.

INTRODUCTION

This appeal concerns the city's application of Lincoln City Zoning Ordinance (ZO) 3.110(4)(c), 3.110(4)(e) and 3.120(4)(a) to deny petitioner's application for land use approval to construct a residence in an Environmental Quality Overlay (EQ) zone.[1] This case is

---

[1]ZO 3.110(4) provides, in relevant part:

"Standards: * * * [T]he following standards will be applied in reviewing an application for any uses in the EQ Overlay zone:

"* * * * *

"(c) Exceptional Aesthetic Resources.

"1. Development on coastal headlands or in areas of exceptional aesthetic quality shall not reduce the scenic character of the area.

"* * * * *

"(e) Natural Hazards.

"1. Development of all types, except rip-rap beach front protective structures and natural means of beach protection, in hazard areas identified on the Comprehensive Plan Map shall not occur until a review is completed by a qualified engineer or qualified engineering geologist. The review shall be prepared at the developer's expense. All costs incurred by the City to review the development shall be the responsibility of the applicant. The review shall include but is not limited to erosion control, vegetation removal, slope stabilization, and other items necessary to satisfy the requirements of the Comprehensive Plan.

"2. The review completed shall be submitted to the City as a written report and shall consider as a minimum, the following:

"(a) An explanation of the degree the hazard affects the property use in question.

"(b) An explanation of the method(s) to be employed to minimize the losses associated with the hazard.

"(c) An explanation of the environmental consequences the development and the protective measure will have on the surrounding properties."

ZO 3.120(4)(a) provides, in part:

before us on remand for the second time from the Court of Appeals. We briefly review the history of this appeal before turning to the issue that the court directed us to consider on remand.

The Lincoln City Director of Planning and Community Development (Director) determined that the proposed dwelling complies with the requirements of the EQ zone. The Director's decision was appealed to the planning commission, which found that the proposed dwelling does not comply with the requirements of the EQ zone. The city council affirmed the planning commission's decision on appeal. In Johns v. City of Lincoln City, 32 Or LUBA 195 (1996) (Johns I), we affirmed the city council's decision. In doing so, we concluded that under ORS 227.175(10)(a) and ZO 9.040(1) parties could raise issues before the planning commission on appeal of the Director's decision, regardless of whether the issues raised were specified in the notices of local appeal filed by the parties. Johns I, 32 Or LUBA at 202-03.[2] On the merits in Johns I, we considered petitioner's substantial evidence challenge based on "Exceptional Aesthetic Resources" under ZO 3.110(4)(c) and rejected petitioner's challenge. On that basis, we affirmed the city's decision to deny petitioner's application.[3] We did not consider petitioner's other arguments in Johns I that the city's findings concerning "Natural Hazards" under ZO 3.110(4)(e) are not supported by substantial evidence.[4]

> "The Director shall review all environmental assessments, included but not limited to environmental reviews, geological hazard reports, and other studies required by Ordinance, to determine if significant adverse impacts will result from the proposed project. * * *"

[2]There were two local notices of appeal filed in Johns I—one by Morfitt and one by Darnell.

[3]Johns I, 32 Or LUBA at 204-05 ("Sixth Assignment of Error (Morfitt)"). ZO 3.110(4)(c)(1) requires that development "not reduce the scenic character of the area." See n 1.

[4]We explained that we did not consider petitioner's other assignments of error, because only one adequate basis for denial of a land use permit request is required. Johns I, 32 Or LUBA at 205. Two of the assignments of error that we did not consider address what we referred to as a "gratuitous finding." Id. The remaining assignment of error that we did not consider concerns the city's findings related to "Natural Hazards" under ZO 3.110(4)(e). In our decision, we mistakenly referred to that assignment of error as the "sixth assignment of

In Johns v. City of Lincoln City, 146 Or App 594, 933 P2d 978 (1997) (Johns II), the court of appeals reversed our decision in Johns I. The Court of Appeals held that we misinterpreted ORS 227.175(10)(a) and ZO 9.040 and that under a correct interpretation of the statute and zoning ordinance, the parties were limited to the issues identified in the local notice of appeal. The Court of Appeals remanded our decision with instructions that we remand the city council's decision so that the city could determine whether one or both of the local notices of intent to appeal that were filed in this matter met the specificity requirements that the court interpreted ZO 9.040 to impose and to address only those issues that "have been adequately raised." Johns II, 146 Or App at 603.

On remand, the city determined that the local notices of appeal filed by Morfitt and Darnell were adequate to raise the issues that the city considered in its initial decision, including issues regarding ZO 3.110(4)(c) and 3.110(4)(e). The city also relied on a footnote in the court of appeal's decision in Johns II to adopt an alternative basis for reaching the issues concerning compliance with ZO 3.110(4)(c) and 3.110(4)(e). See Johns II, 146 Or App at 602 n 1. In the footnote, the court left open the possibility that the planning commission and city council might be able raise issues on their own beyond those raised by the parties in the local notice of appeal. The city readopted its earlier decision with some revisions.

The city's decision on remand was appealed to LUBA. Johns v. City of Lincoln City, ___ Or LUBA ___ (LUBA No. 97-235, July 2, 1998) (Johns III). We concluded that the Darnell notice of local appeal was adequate to raise an issue concerning "Natural Hazards" under ZO 3.110(4)(e)(2). Johns III, slip op 11. In affirming the city's decision that petitioner failed to demonstrate compliance with ZO 3.110(4)(e)(2)(c), we did not consider petitioner's

---

error (Darnell)," when the reference should have been to the "fifth assignment of error (Darnell)." Johns, 32 Or LUBA at 205 n 8.

fifth assignment of error (Darnell) in Johns I.[5] Johns III, slip op 12. In Johns III, we also specifically did not consider petitioner's challenge to the city's decision on remand that the Morfitt notice of local appeal was adequate to raise an issue concerning "Exceptional Aesthetic Resources" under ZO 3.110(4)(c). Johns III, slip op 11. Neither did we consider petitioner's challenge to the city council's alternative determination on remand that the planning commission and city council could consider issues on its own motion, even if those issues were not raised by any party in its local notice of appeal. Johns III, slip op 12.

On judicial review, the Court of Appeal reversed and remanded our decision in Johns III. Johns v. City of Lincoln City, 157 Or App 7, ___ P2d ___ (1998) (Johns IV). The Court of Appeals agreed with us that the Darnell notice of local appeal was adequate to raise the issue of compliance with ZO 3.110(4)(e)(2). However, the court concluded that we erred in failing to address petitioner's substantial evidence challenge in Johns I to the city's findings addressing ZO 3.110(4)(e)(2), and directed that we "review the substantial evidence challenge to the 'Natural Hazards' finding." Johns IV, 157 Or App at 10.

In summary, following the Court of Appeal's decision in Johns IV, we are directed to determine whether the city's findings concerning "Natural Hazards" under ZO 3.110(4)(e) and 3.120(4)(a) are supported by substantial evidence. If they are, the city's decision must be affirmed, and we need not consider the questions that we did not reach in Johns III.

DECISION

A. Fifth Assignment of Error (Darnell)

The city council adopted five findings addressing natural hazards under ZO 3.110(4)(e). Those findings are set forth below:

> "1. The site is located on a bluff overlooking the Pacific Ocean. The bluff already is subject to erosion due to natural causes. Erosion at one site

[5]As previously noted, in that assignment of error in Johns I, petitioner alleged that the city's findings concerning "Natural Hazards" under ZO 3.110(4)(e) were not supported by substantial evidence See n 4.

has the potential to and ordinarily does contribute to erosion at surrounding properties on the bluff. Added instability has the potential to and ordinarily does contribute to the rate of erosion. It thus is important that human activity not add to the instability of the bluff, thus increasing the rate of erosion.

"2. At this particular site, in order to protect the stability of the west bluff, as it relates both to the site and to surrounding properties, any development on the site must not disturb the west bluff. The proposed development, however, will disturb the west bluff both through the installation of structures that will penetrate the west bluff and though direct surface disturbance and vibration during construction. This disturbance of the bluff at the site, in turn, over time will contribute to destabilization and erosion both of the site and surrounding properties on the bluff.

"3. Trenching, back filling, compacting, and drilling of holes on the site during construction further will contribute to long term destabilization of the site, including the west bluff. Over time, this too will contribute to destabilization and erosion of surrounding properties on the bluff.

"4. During construction, construction techniques and heavy equipment will create significant vibrations both at the site and at surrounding properties on the bluff. These vibrations at surrounding properties will contribute to destabilization and increased erosion at those properties.

"5. Each of the factors listed in paragraphs 2 through 4, above, independently will be a significant adverse impact on surrounding properties on the bluff. The applicants have not identified measures that will protect these properties from adverse impacts. The proposed development therefore does not meet the provisions of sections 3.110(4)(e)(2) and 3.120(4)(a) of the Zoning Ordinance."[6] Record (Johns III) 65.

In his petition for review before LUBA in Johns I, petitioner challenged findings 2 through 4. Petition for Review (LUBA No. 96-082) 14-17. [7] The petition for review explains:

---

[6]These code provisions are quoted at n 1.

[7]We note that while petitioner apparently set out finding number 5 in his brief before the Court of Appeals in Johns IV, his fifth assignment of error (Darnell) only challenges findings 2-4. We also note that petitioner filed two separate appeals in Johns I which were consolidated for LUBA review. Nevertheless, petitioner filed two petitions for review. The reference to "LUBA No. 96-082" is to distinguish between the two petitions for review filed in Johns I. Johns I, 32 Or LUBA at 196.

> "[P]etitioner hired H.G. Schlicker and Associates, Inc. to provide the initial review and Lincoln City hired SRI/Shapiro to provide the peer review. * * * In addition to these two organizations of professional engineers and geologist[s], the record indicates that several other engineers were brought in to review this project and help establish criteria. SRI/Shapiro hired a geotechnical firm, Squire Associates * * *. Petitioner hired an additional geotechnical firm, Wright/Deacon & Assoc., Inc. * * *
>
> "It was the unanimous conclusion of all these experts that based on the scientific evidence, and provided the construction was done according to specified requirements, there would be no adverse impacts on adjacent properties. * * *" LUBA Petition for Review (LUBA No. 96-082) (Johns I) 15.

Petitioner goes on to argue that the permit opponents in this case were obligated to present evidence that was "equal to the analysis of the site provided by the experts." LUBA Petition for Review (LUBA No. 96-082) (Johns I) 16. Petitioner contends the city should not be allowed to require that he hire experts to present detailed analyses and then "[substitute] its own unsubstantiated opinions for the findings of the engineers." Id.

We do not agree with petitioner that the city was obligated to support its decision with evidence that matches, in a qualitative or quantitative sense, the expert testimony described above.[8] However, in reviewing a land use decision to determine whether it is supported by substantial evidence, this Board relies on the parties to direct it to the relevant evidence in the record, so that we may consider whether the evidence is such that the local government would rely on that evidence to support the findings upon which the decision is based. See Eckis v. Linn County, 110 Or App 309, 313, 821 P2d 1127 (1991) (LUBA is not required to search the record "for evidence with which the parties are presumably already

[8]As we have explained on numerous occasions, where the evidence in the record on review is conflicting, such that a reasonable decision maker could reach different conclusions based on that evidence, the choice of which evidence to believe and which conclusion to reach is for the local decision maker. Younger v. City of Portland, 305 Or 346, 360, 752 P2d 262 (1988); City of Portland v. Bureau of Labor and Ind., 298 Or 104, 119, 690 P2d 475 (1984); Stefan v. Yamhill County, 18 Or LUBA 820, 838 (1990); Douglas v. Multnomah County, 18 Or LUBA 607, 617-18 (1990). LUBA does not reweigh the evidence or substitute its conclusions for the conclusions reached by the local decision maker in such circumstances. 1000 Friends of Oregon v. Marion County, 116 Or App 584, 842 P2d 441 (1992); Heceta Water District v. Lane County, 24 Or LUBA 402, 427 (1993).

familiar.").

In this case, the city response to petitioner's assignment of error appears at pages 35 to 37 of the respondent's brief in Johns I. The city response simply summarizes the findings and asserts that the record supports those findings. In its response to this assignment of error, the city does not supply a single citation to the record to identify evidence that supports the challenged findings.[9]

We are unable to determine from respondent's general discussion of the facts whether findings 2 through 4 are supported by substantial evidence. The facts recited in the first two sentences of finding 2 do not appear to be in dispute. However, the final sentence of finding 2 and findings 3 and 4 all are in dispute and state that various proposed construction

---

[9]Respondent's brief in Johns I does include an extensive summary of facts. According to that summary of facts, the area of the subject property has a history of slope instability and erosion. Record (Johns I) 331-32. The site has experienced erosion in the past, but a recently constructed seawall has reduced site erosion. Record (Johns I) 318-19. The site averages approximately 40 feet from the front property line to the edge of the bluff. With the required 10-foot front yard setback, the proposed house occupies the remaining 30 feet and provides no "setback from the bluff edge to allow future bluff retreat." Record (Johns I) 319. The proposal utilizes drilled piers and a deep foundation to allow bluff retreat "without threatening the structural integrity of the residence." Id. The proposal includes a cross braced system which allows the "front decks and front of the house to be cantilevered out toward the bluff face." Id.

We also note that the expert evidence cited by the parties is laced with somewhat equivocal language. For example, the Squire Associates peer review report includes the following:

> "In our opinion, the foundation system appears well thought out, and should provide a higher degree of structural integrity for the residence. If erosion patterns remain the same, the loss of bluff due to ongoing erosion should not structurally threaten the house over a conventional design life of approximately 50 years.
>
> "The potential for construction impacts on adjacent properties is a concern. In this regard, trench excavation and backfilling is the critical element of construction. Prevention of surficial runoff from entering the trenches, and support of the trenches during construction are important safety considerations.
>
> "In our opinion, considering our observations and review, the geologic report which contains an environmental assessment of the proposed residential site appears adequate and technically accurate. The foundation design recommendations should provide a suitable foundation and should result in a satisfactory design life for the structure, but will result in no apparent setback from the bluff edge over time. The structure will initially be very close to the bluff edge, and over time will project out over the bluff edge. This design approach represents a non-conventional approach for this area that should be evaluated in conjunction with the owner's and City's visual impact requirements." Record (Johns I) 319-20. (Emphases added.)

activities will cause destabilization and erosion of the site and the surrounding properties. Findings 2, 3 and 4 themselves do not identify the evidence that the city was relying upon in making those findings. The failure of the findings to identify the evidence that supports the findings is not necessarily fatal, so long as the respondent's brief, or the briefs filed by other parties, directs our attention to evidence in the record that supports those findings. Eckis, 110 Or App at 313; see Angel v. City of Portland, 22 Or LUBA 649, 656-57, aff'd 113 Or App 169, 831 P2d 77 (1992) (findings not required to explain how conflicting evidence is balanced or to identify evidence that is not relied on); Douglas v. Multnomah County, 18 Or LUBA 607, 619 (1990); Ash Creek Neighborhood Ass'n v. City of Portland, 12 Or LUBA 230, 236-38 (1984). The respondent's brief is the only brief filed in support of the city's decision. As noted earlier, respondent's brief does not identify evidence, that supports the disputed findings.

Although the city does not advance the argument, we have considered whether finding 5 by itself might provide a sufficient basis for the city's decision that the applicant failed to demonstrate the proposal will protect surrounding properties from adverse impacts.[10] However, the ultimate finding in finding 5 appears to rely on findings 2 through 4. Without argument and some assistance from the city, we will not assume the city had some other unspecified basis, independent of findings 2 through 4, for adopting finding 5.

For the reasons explained above, we conclude that findings 2 through 5 are not supported by substantial evidence. In reaching that conclusion, we do not mean to say there might not be substantial evidence in the record to support the city's decision to deny the requested land use approval. It may be that the city simply was not persuaded by expert evidence and, for that reason, concluded the applicant failed to carry its burden of proof

[10]As we noted earlier, petitioner did not challenge the evidentiary support for finding 5.

under ZO 3.110(4)(e)(2) and 3.120(4)(a).[11] However, the city's findings do not express that position. It may also be that there is conflicting evidence in the record that the city believes undermines the evidence submitted by the experts. However, without some assistance from the city, we are unable to determine what that evidence may be.[12]

The fifth assignment of error (Darnell) is sustained.

B. Revived Issues

In view of our disposition of petitioner's substantial evidence challenge above, we must consider two questions that we did not reach in Johns III under petitioner's first assignment of error in Johns III. Those issues concern whether the city may properly consider the issue of compliance with the aesthetic resources standard in ZO 3.110(4)(c)(1).

1. Adequacy of the Mofitt Notice of Local Appeal

ZO 9.040, which governs local notices of appeal, is set out in our decision in Johns I. Johns I, 32 Or LUBA at 201-02. The Court of Appeals concluded the city did not adopt a reviewable interpretation of ZO 9.040. Johns II, 146 Or App at 600-01. The court construed ZO 9.040 ab initio to require that the issues presented by a party on appeal to the planning commission "must be reasonably discernible from the notice itself." Johns II, 146 Or App at 603 (emphasis in original). The court explained

> "We do not suggest that notices of [local] appeal filed pursuant to section 9.040 must contain voluminous detail or that interstices in their meaning

---

[11]Where a local government decision takes the position that the party with the burden of proof has failed to carry that burden of proof, a petitioner on appeal to LUBA challenging such a decision on evidentiary grounds is required to demonstrate he carried his burden of proof as a matter of law. Jurgenson v. Union County Court, 42 Or App 505, 510, 600 P2d 1241 (1979); Chemeketa Industries Corp. v. City of Salem, 14 Or LUBA 159, 163 (1985); Weyerhauser v. Lane County, 7 Or LUBA 42, 46 (1982).

[12]The record includes letters from nearby property owners that lend some support to the challenged findings. Record (Johns I) 293-95. In those letters, the property owners express concerns that the proposal may have adverse impacts on their properties. However, we have no way knowing if the city was relying on these letters or on other evidence. More importantly, without some assistance from the city in its findings or in the respondent's brief, we cannot conclude that these letters constitute evidence a reasonable decision maker would have relied upon to adopt the challenged findings, in view of the expert testimony and studies in the record which generally support the proposal.

> cannot be filled by common-sense readings and reasonable extrapolations from what they say. See Boldt v. Clackamas County, 107 Or App 619, 813 P2d 1078 (1991) (fair notice suffices). * * *" Johns II, 146 Or App at 602 (emphasis in original).

On remand the city interpreted ZO 9.040 to require that the city consider the words of the notice of local appeal and also "[r]eview the official record before the City regarding the contested application as of the time of filing the notice of appeal, to identify those criteria and factual matters as to which issues were raised prior to filing the notice of appeal." Record (Johns III) 69. Following this approach, the city council concluded the Morfitt notice of local appeal adequately identified ZO 3.110(4)(c) as the basis for the appeal.

It is unnecessary for us to determine whether the city was free on remand to adopt an interpretation of ZO 9.040 that is different than the interpretation adopted by the Court of Appeals or whether the city has done so in this case. Even if ZO 9.040 is properly interpreted in the manner endorsed by the city council in its decision on remand, we do not agree with the city that the Morfitt notice is sufficient to raise an issue concerning ZO 3.110(4)(c). The city's conclusion that the Morfitt notice of local appeal is adequate to raise ZO 3.110(4)(c) is based almost entirely on the fact that some of the words used in the notice of local appeal were also used in a portion of a document included in the record which addresses ZO 3.110(4)(c). Record (Johns III) 74-76. That simple coincidence in the use of particular words is not adequate to provide "fair notice" that the Morfitt appeal was based on ZO 3.110(4)(c). The city erred in determining that the Morfitt notice of local appeal was adequate to raise an issue concerning compliance with ZO 3.110(4)(c).

This subassignment of error is sustained.

2. Authority of the Planning Commission to Raise Issues Beyond Those Issues Identified in the Notice of Local Appeal

In Johns II, the Court of Appeals explicitly left open the question of whether the planning commission or city council could raise issues that were not identified in the parties' notices of local appeal.

> "* * * We * * * imply no view as to whether the reviewing body may raise questions of its own, beyond those specified in the notice. The only question we consider in this part of our discussion is what a party may raise at the hearing under the circumstances and the ordinance provisions in question." Johns II, 146 Or App at 602 n 1 (emphasis in original).

On remand the planning commission concluded that while ZO 3.110(4)(c) limits parties to the issues raised in the local notices of appeal, there is no code provision similarly limiting the issues that the planning commission may consider on its own motion. The planning commission concluded that it was therefore appropriate for the planning commission to raise the issue of compliance with ZO 3.110(4)(c)(1) on its own motion. The planning commission also

> "concluded that the applicant had not been prejudiced by the [Planning] Commission's decision to exercise its independent authority to consider the issues, since the record demonstrates that the applicant was aware, as of the time of the hearing on the merits of the environmental assessment appeal, that the Commission intended to consider those issues." Record Johns III 76.

The city council agreed with the planning commission that even if the local notices of local appeal failed to raise any question concerning aesthetic issues under ZO 3.110(4)(c)(1), nothing in ZO 9.040 prevented the planning commission and city council from considering aesthetic issues and that petitioner was not prejudiced by the city's consideration of issues regarding ZO 3.110(4)(c)(1).[13]

Petitioner does not and cannot claim he was surprised that the planning commission addressed the aesthetic issues under ZO 3.110(4)(c)(1). We therefore reject petitioner's argument that the planning commission could not raise an issue concerning compliance with ZO 3.110(4)(c)(1) on its own motion. Unlike the code provision at issue in Smith v. Douglas County, 93 Or App 503, 506-07, 763 P2d 169 (1988), aff'd 308 Or 191, 777 P2d 1377

[13]The city council agreed with the planning commission that ZO 3.110(4)(c)(2) could not be raised on the planning commission's own motion because petitioner was not aware at the time of the planning commission hearing that it intended to consider that issue and would be prejudiced if the planning commission were to raise that issue on its own motion at the planning commission hearing. See n 15

(1989), here the city's zoning ordinance does not specifically limit the planning commission's review to the issues identified in the local notice of appeal. Therefore, because the planning commission's decision to raise that issue on its own did not result in prejudice to petitioner's substantial rights, we conclude that the planning commission did not err in raising the issue of compliance with ZO 3.110(4)(c)(1) on its own motion.

This subassignment of error is denied.

3. Conclusion

For the reasons explained above, we conclude that the planning commission and city council did not err in considering whether the proposal complies with ZO 3.110(4)(c)(1). In the decision challenged in Johns I, the city adopted findings that the proposal would violate ZO 3.110(4)(c)(1). Record Johns I, 231-32 (findings 1 through 3 and 6).[14] In Johns I,

[14]Those findings are as follows:

> "1. The site is on a bluff overlooking the Pacific Ocean. It is in an area of exceptional aesthetic quality, with reference to the view from the beach looking up and down the beach, to the view from the beach looking up at the bluff and inland, and to the view from nearby residences on the bluff looking up and down the beach. This exceptional aesthetic quality is evident both from the attractiveness of the combined ocean, beach, and bluff to tourists who come to Lincoln City to view and enjoy them and from the high value associated with residences on the bluff.
>
> "2. The proposed development will introduce a new design concept to the area of the site. This will result in the structure having an effect of being cantilevered over the edge of the bluff, with the structure, including the deck, jutting out substantially over the edge. As part of the development, there will be a wall extending 10 feet or likely more up from the side of the bluff which, when combined with the substructure and structure itself, will create an impression of building mass, height, and prominence far in excess of the impression of other residences in the area. If the wall for some reason cannot be built due to instability of the side of the bluff, then the substructure will be further exposed to view. Further, as bluff erosion occurs over time, which appears inevitable, the exposure of the substructure will increase, contributing to an increased visual impact from the structure.
>
> "3. The scenic character of the area already has been compromised by development, but nevertheless remains exceptional. The proposed development, with its impression of mass and height and its cantilevered effect and substructure, will substantially further reduce the scenic character of the area. Although screening may help, it will not prevent the development from having a substantial adverse impact on the scenic character of the area. This substantial adverse impact will affect the view from the beach looking up and down the beach, from the beach looking up the bluff and

petitioner argued that the city's findings concerning ZO 3.110(4)(c) are not supported by substantial evidence, but we rejected petitioner's substantial evidence challenge. Johns I, 32 Or LUBA at 204-05. We explained as follows:

> "Petitioner contends findings 2, 3 and 4 of the planning commission's decision * * * which were adopted by the challenged decision, are not supported by substantial evidence in the whole record. These findings, which address ZO 3.110(4)(c), elaborate on a theme that a large, cantilevered residence jutting out over the edge of a cliff subject to erosion, in a scenic, though developed, coastal area, will have a substantial adverse impact on the view from the beach and from nearby residences. The findings are supported by comments in the Shapiro review and letters in the record, including one from the Department of Land Conservation and Development at Record 251. No more support is required, as the findings proceed from the application of highly subjective standards to the undisputed facts of the proposal itself." Id.

It does not appear that the Court of Appeals considered our resolution of petitioner's substantial evidence challenge to the city's findings concerning ZO 3.110(4)(c)(1) in either Johns I or Johns III. We see no reason to reconsider that portion of our decision in Johns I, and we readopt that portion of our decision in Johns I in support of our decision here on remand. Findings 1 through 3 and 6 express an adequate basis for denial of petitioner's request for permit approval under ZO 3.110(4)(c)(1).[15] As we explained in Johns I, those findings are supported by substantial evidence, i.e., evidence a reasonable person would believe. Only one adequate basis for denial is required. Garre v. Clackamas County, 18 Or

---

> inland, and from other nearby residences on the bluff looking up and down the beach.
>
> "* * * * *
>
> "6. For the reasons stated in finding 1 through 3, * * * the proposed development will have significant adverse impacts on the exceptional aesthetic quality of the area."

[15]In considering petitioner's challenge to findings 1-3 in Johns I, we also rejected petitioner's substantial evidence challenge to finding 4. Finding 4 expressed an alternative basis for denial of the requested permit under ZO 3.110(4)(c)(2), which prohibits substantial alteration of natural vegetative cover. In view of our conclusions above, see n 13, the city may not rely on ZO 3.110(4)(c)(2) to deny petitioner's request. Nevertheless, because findings 1-3 and 6 express an independent basis for denial under ZO 3.110(4)(c)(1), finding 4 is not necessary to support the city's decision and it does not matter whether finding 4 is supported by substantial evidence.

LUBA 877, 881, aff'd 102 Or App 123 (1990); Baughman v. Marion County, 17 Or LUBA 632, 636 (1989); Van Mere v. City of Tualatin, 16 Or LUBA 671, 687 (1988); Kegg v. Clackamas County, 15 Or LUBA 239, 244 (1987); Weyerhaeuser v. Lane County, 7 Or LUBA 42, 46 (1982).

The city's decision is affirmed.