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

CARL DOUMANI,)
)
Petitioner,)
)
vs.)
)
CITY OF EUGENE,)
)
Respondent,)
)
and)
)
NIELSON PROPERTIES, LLC.,)
)
Intervenor-Respondent.)

LUBA NO. 98-111 and 98-120

FINAL OPINION
AND ORDER

Appeal from City of Eugene.

Allen L. Johnson, Eugene, filed the petition for review. With him on the brief was Johnson, Kloos and Sherton.

Emily N. Jerome, Eugene, filed a response brief. With her on the brief was Harrang, Long, Gary, Rudnick.

Michael J. Farthing, Eugene, represented intervenor-respondent.

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

REMANDED 01/05/99

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

1 Opinion by Hanna.

2 **NATURE OF THE DECISION**

3 Petitioner appeals the city's rejection of his site review application.¹

4 **MOTION TO INTERVENE**

5 Nielson Properties, LLC, (intervenor) the fee owner of the subject property, moves to
6 intervene on the side of the respondent. There is no opposition to the motion, and it is
7 allowed.²

8 **FACTS**

9 Petitioner entered into a contract to purchase a 10.5-acre parcel from intervenor.
10 Prior to closing the transaction, petitioner filed an application with the city planning
11 department for site review for a shopping center. The city rejected petitioner's application
12 because the application was not signed by the record title holder.

13 This appeal followed.

14 **ASSIGNMENT OF ERROR**

15 Petitioner argues that the city exceeded its authority, improperly construed and
16 applied the city code and failed to follow applicable procedures in a manner that prejudiced
17 his substantial rights. Petitioner contends that the city's construction of Eugene Code (EC)
18 9.690 is inconsistent with the methodology for construing statutes as set forth in PGE v.
19 Bureau of Labor and Industries, 317 Or 606, 859 P2d 1143 (1993). The city bases its refusal
20 to consider petitioner's application on the language in EC 9.690(2), that an application be
21 submitted "in the manner prescribed by the city." EC 9.690(2) provides, in relevant part:

¹The city made two decisions. In the first decision, the planning staff rejected petitioner's application. After the planning staff consulted with the city attorney, the staff made a second decision, in which it confirmed the earlier rejection of petitioner's application. The parties treat these two decisions as one decision for purposes of appeal.

²Intervenor did not file a response brief or otherwise participate in this appeal.

1 "Application submittal and notice. An application and related information
2 shall be submitted by the applicant, in the manner prescribed by the city,
3 together with a fee established by the city manager as provided by section
4 2.020 of this code."

5 Although the city concedes that nothing in EC 9.690(2) expressly requires the owner
6 to sign a site review application, it argues that nothing in the code prohibits the city from
7 requiring a signature. The city's site review application form contains a signature line under
8 the heading "OWNER". The city argues that by having an owner signature line on the
9 application form, the city has established a requirement within its "in the manner prescribed"
10 authority under EC 9.690(2).

11 The rules of statutory construction apply to the construction of local ordinances as
12 well as statutes. City of Hillsboro v. Housing Devel. Corp., 61 Or App 484, 489, 657 P2d
13 726 (1983). The analytical process for interpreting statutes is set forth in PGE, 317 Or at
14 610-12. The first level of analysis is to examine the text and the context of the statute. The
15 text of EC 9.690 does not include a requirement that the owner of the subject property sign
16 the application for site plan review. Generally, EC 9.690 refers to the "applicant" rather than
17 the "owner."³ Where "owner" is used in EC 9.690(8) and (9), it is used as an alternative to
18 "applicant." Specifically, those provisions allow either the "owner" or the "applicant" to
19 appeal a site plan decision or seek modification of a site plan. Thus, EC 9.690(8) and (9)
20 suggest that the city council contemplated that an applicant need not always be the owner.

21 In Mission Bottom Assoc. v. Marion County, 29 Or LUBA 281, 289 (1995) we held
22 that "this Board has no authority to read into a statute language that is not there or to restrict
23 the scope of a statute." EC 9.690(2) does not require that the applicant sign an application
24 for site review, much less that persons other than the applicant sign the application. The
25 general language in EC 9.690(2) simply states that the city has authority to prescribe the

³For example, the preapplication procedures in EC 9.690(1), the application submittal procedures in EC 9.690(2) and the provisions of EC 9.690(4) regarding planning director decisions refer to the "applicant" and make no mention of "owner."

1 "manner" of submitting the "application and related information" but does not implement that
2 authority. The city takes the position that it may implement the EC 9.690(2) language by
3 prescribing the "manner" an "application and related information" are to be submitted in its
4 application form. However, the absolute requirement that the applicant either be the record
5 property owner, or sign the application, goes significantly beyond requiring "related
6 information" or prescribing the "manner" in which an application must be submitted.

7 Based on our review of the text and context of EC 9.690(2), that code provision does
8 not provide a sufficient basis, by itself, for the city to refuse to review an application for site
9 review, simply because it is not signed by the record property owner.⁴ Neither do we agree
10 that EC 9.690(2) authorizes planning staff to impose such a requirement in an application
11 form.

12 The assignment of error is sustained.

13 The city's decision is remanded.

⁴As petitioner points out, other code provisions governing other types of applications do require signatures by record property owners. The city's failure to impose that requirement explicitly in EC 9.690(2) is at least some indication that the city did not intend to impose that requirement in EC 9.690(2).