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

WILEY MTN., INC., )  
 )  
 Petitioner, )  
 )  
 vs. )  
 )  
 CITY OF ALBANY, )  
 )  
 Respondent. )

LUBA No. 98-194  
  
FINAL OPINION  
AND ORDER

Appeal from City of Albany.

Larry O. Gildea, Eugene, filed the petition for review and argued on behalf of petitioner.

James V.B. Delapoer, Albany, filed the response brief and argued on behalf of respondent. With him on the brief was Long, Delapoer, Healy, McCann & Noonan.

BASSHAM, Board Member; HOLSTUN, Board Chair; BRIGGS, Board Member, participated in the decision.

AFFIRMED 7/22/99

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

1 Opinion by Bassham.

2 **NATURE OF THE DECISION**

3 Petitioner appeals the city's limited land use decision denying site plan approval for a  
4 manufactured home park.

5 **FACTS**

6 The subject property is an undeveloped parcel with public street access to Clover  
7 Ridge Road. Clover Ridge Road is a public roadway with a 20-foot paved width within a 40-  
8 foot right-of-way. The city's master street plan designates Clover Ridge Road as a collector  
9 street.

10 Petitioner filed an application for approval of a 229-unit manufactured home park in  
11 1995. The site plan for petitioner's manufactured home park includes a number of streets  
12 within the park, three of which petitioner proposed to dedicate to the city. Two of the  
13 proposed public streets intersect Clover Ridge Road and, as proposed, would be 36 feet in  
14 width.

15 Following a hearing, the city planning commission approved the site plan with  
16 conditions on June 29, 1998.<sup>1</sup> The planning commission decision was appealed to the city  
17 council. Following a public hearing on August 12, 1998, the city council denied petitioner's  
18 application for site plan review approval on October 28, 1998. This appeal followed.

19 **STANDARD OF REVIEW**

20 Because petitioner challenges the city's denial of its land use application on  
21 evidentiary grounds, petitioner bears the burden of demonstrating that only evidence  
22 supporting the application can be believed and that, as matter of law, such evidence

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<sup>1</sup>The city first approved the site plan on June 7, 1996. On appeal, this Board affirmed the city's decision. Venable v. City of Albany, 33 Or LUBA 1 (1997). The Court of Appeals reversed and remanded that decision. Venable v. City of Albany, 149 Or App 274, 942 P2d 843, rev den 326 Or 63 (1997). The city adopted supplemental findings and approved the site plan again on November 3, 1997. This Board granted a voluntary remand on the appeal of the November 3, 1997 decision.

1 establishes compliance with each of the applicable criteria. Petersen v. Yamhill County, 33  
2 Or LUBA 584, 587 (1997); Horizon Construction, Inc. v. City of Newberg, 28 Or LUBA  
3 632, 635 (1995).

4 **FIRST AND SECOND ASSIGNMENTS OF ERROR**

5 Petitioner argues that there is not substantial evidence to support the city's finding  
6 that the two proposed accesses to petitioner's manufactured home park are located on Clover  
7 Ridge Road and that the city erred in concluding that public facilities cannot accommodate  
8 the proposed development.<sup>2</sup>

9 The Albany Development Code (ADC) sets forth public street access requirements  
10 for manufactured home parks. ADC 10.230 provides:

11 "Manufactured Home Park accesses shall be located on public streets  
12 improved to a minimum width of 36 feet to a point intersecting a collector or  
13 arterial street."

14 The city council made the following findings in support of its decision to deny the  
15 application:

16 "1. The applicable criteria are Albany Development Code (ADC) sections  
17 10.230 and 8.070.

18 "\* \* \* \* \*

19 "3. The two proposed accesses to this manufactured home park are located  
20 on Clover Ridge Road NE, a public street.

21 "4. Clover Ridge Road is neither currently improved to a minimum of 36  
22 feet to a point intersecting a collector or arterial street, nor is this  
23 improvement shown as part of this application.

24 "5. Clover Ridge Road is designated as a collector street in the Master  
25 Street Plan; it intersects with Knox Butte Road, which is designated as  
26 an arterial street." Record 7.

27 Based on those findings, the city council drew two conclusions:

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<sup>2</sup>Albany Development Code 8.070 provides site plan review criteria and requires, inter alia, that "[p]ublic facilities can accommodate the proposed development."

1 "1. Clover Ridge Road does not meet the threshold standard in the  
2 Development Code that requires accesses for manufactured home  
3 parks to be located on public streets improved to a minimum of 36 feet  
4 to a point intersecting a collector or arterial street.

5 "2. Public facilities cannot accommodate the proposed development  
6 because the transportation system does not meet the threshold standard  
7 for manufactured home parks spelled out in ADC 10.230." Record 7.

8 At issue is whether the "manufactured home park accesses" are, within the meaning  
9 of ADC 10.230, the points of intersection of the proposed streets with Clover Ridge Road  
10 and therefore that Clover Ridge Road is the public street that must be improved to 36 feet, as  
11 the city decided, or whether, as petitioner argues, the public street accesses required by ADC  
12 10.230 are provided by the proposed streets within the subject property as a matter of law.

13 Petitioner's argument is premised on the assumption that three of the streets proposed  
14 in the site plan will be dedicated to the city, in whole or in part, thereby becoming public city  
15 streets. Once constructed and dedicated to the city, petitioner contends, two of these three  
16 streets, and not Clover Ridge Road, will provide access to the manufactured home park.  
17 Therefore, petitioner contends, there is not substantial evidence to support finding three,  
18 quoted above, and, as a matter of law, the evidence in the record establishes compliance with  
19 ADC 10.230.

20 Under ADC 22.010, a "manufactured home park" is "[a] parcel of land under  
21 common ownership on which four or more manufactured homes are occupied as residences"  
22 and "access" is "[t]he place, means, or way by which pedestrians or vehicles shall have  
23 ingress and/or egress to a property[.]" Based upon the ADC definitions of "access" and  
24 "manufactured home park," petitioner interprets ADC 10.230 to be applicable only to the two  
25 streets on the proposed site plan that intersect Clover Ridge Road, and not Clover Ridge  
26 Road. Petitioner reasons that the proposed streets, once deeded to the city as public streets,  
27 will not be a part of the manufactured home park, because by ADC definition, park property

1 is required to be under common ownership.<sup>3</sup> Therefore, petitioner concludes that the  
2 "access" to the manufactured home park will be on the proposed internal streets and not on  
3 Clover Ridge Road. As proposed, the streets conform to the width requirement of ADC  
4 10.230. Petitioner concludes that, under the foregoing analysis of the code definitions of  
5 "access" and "manufactured home park," it demonstrated compliance with ADC 10.230 to  
6 the city as a matter of law.

7 The city argues that the city council made an implied interpretation of ADC 10.230  
8 that is entitled to deference pursuant to ORS 197.829.<sup>4</sup> The city argues that the city council  
9 interpreted the "manufactured home park" to which "access" is required under ADC 10.230  
10 to mean the parcel on which the manufactured home park is located, consistent with the  
11 definition of "manufactured home park" and "access" at ADC 22.010. Thus, under the city's

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<sup>3</sup>It is not clear that dedication of a street under the ADC need be done, as petitioner assumes, by deed. Further, as the city argues, even if petitioner proposes to deed the streets to the city, nothing obligates the city to accept the dedication of proposed streets. See Hendrickson v. City of Astoria, 127 Or 1, 8, 270 P 924 (1928) (dedication of streets to public use is not binding and conclusive until accepted by local government); Petersen, 33 Or LUBA at 590 (an essential element of both the common law and statutory methods of dedication is the local government's acceptance of the dedication).

<sup>4</sup>ORS 197.829 provides:

- "(1) The Land Use Board of Appeals shall affirm a local government's interpretation of its comprehensive plan and land use regulations, unless the board determines that the local government's interpretation:
  - "(a) Is inconsistent with the express language of the comprehensive plan or land use regulation;
  - "(b) Is inconsistent with the purpose for the comprehensive plan or land use regulation;
  - "(c) Is inconsistent with the underlying policy that provides the basis for the comprehensive plan or land use regulation; or
  - "(d) Is contrary to a state statute, land use goal or rule that the comprehensive plan provision or land use regulation implements.
- "(2) If a local government fails to interpret a provision of its comprehensive plan or land use regulations, or if such interpretation is inadequate for review, the board may make its own determination of whether the local government decision is correct."

1 interpretation, access to the manufactured home park is provided by turning onto the property  
2 from Clover Ridge Road, and not at some internal point within the subject property.

3 To resolve this assignment of error we must first determine whether the decision  
4 includes a reviewable interpretation, either express or implied, that is entitled to deference  
5 under ORS 197.829(1). Alliance for Responsible Land Use v. Deschutes Cty., 149 Or App  
6 259, 942 P2d 836 (1997), rev dismissed 327 Or 555 (1998). This Board is only required to  
7 defer to a local government's interpretation where the interpretation is adequate for review.  
8 Weeks v. City of Tillamook, 117 Or App 449, 452-53 n 3, 844 P2d 914 (1992) (an  
9 interpretation is adequate for review if it "suffices to identify and explain in writing the  
10 decisionmaker's understanding of the meaning of the local legislation").

11 Finding three contains an implied interpretation of ADC 10.230 that is inherent in the  
12 way the city applied that provision and that is adequate for our review. Alliance for  
13 Responsible Land Use, 149 Or App at 266-67; Winkler v. City of Cottage Grove, 33 Or  
14 LUBA 543, 551 (1997); Central Bethany Dev. Co. v. Washington County, 33 Or LUBA 463,  
15 468 (1997). Implicitly, the city determined that, in analyzing the access requirement of ADC  
16 10.230, the parcel for the proposed manufactured home park is the "property" to be accessed.  
17 That parcel is accessed from Clover Ridge Road. The city's interpretation is consistent with  
18 the definition of "manufactured home park" at ADC 22.010, which describes a manufactured  
19 home park as a parcel of land under common ownership. The city's interpretation of ADC  
20 10.230 is not clearly wrong and we defer to it. ORS 197.829(1); Goose Hollow Foothills  
21 League v. City of Portland, 117 Or App 211, 217, 843 P2d 992 (1992).

22 The record includes substantial evidence to support the city's finding that petitioner's  
23 manufactured home park "accesses" onto Clover Ridge Road, as the city interprets that term.  
24 See Record 192, Oversize Exhibit.

25 Petitioner does not dispute finding four of the challenged decision that found that  
26 Clover Ridge Road is not improved to a width of 36 feet. ADC 10.230 requires that

1 manufactured home park accesses be located on public streets improved to a minimum width  
2 of 36 feet. We hold that the city did not err in concluding that Clover Ridge Road does not  
3 satisfy the manufactured home park access requirement provided in ADC 10.230.  
4 Consequently, the city did not err in concluding that the transportation system, specifically  
5 Clover Ridge Road, cannot accommodate the proposed development as required by ADC  
6 8.070.

7 The first and second assignments of error are denied.

8 The city's decision is affirmed.