

1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

3  
4 VINCENT DIMONE, DEBRA DIMONE,  
5 and EDWARD DAVIS,  
6 *Petitioners,*

7  
8 vs.

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10 CITY OF HILLSBORO,  
11 *Respondent,*

12  
13 and

14  
15 ZOE ANNE ARRINGTON,  
16 *Intervenor-Respondent.*

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18 LUBA Nos. 2001-117 and 2001-118

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20 FINAL OPINION  
21 AND ORDER

22  
23 On remand from the Court of Appeals.

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25 Michael J. Lilly, Portland, represented petitioners Vincent Dimone and Debra  
26 Dimone.

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28 Edward Davis, Hillsboro, represented himself.

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30 Timothy J. Sercombe, Portland, represented respondent.

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32 Jack L. Orchard, Portland, and Kristin L. Udvari, Portland, represented intervenor-  
33 respondent.

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

37  
38 REMANDED

09/12/2002

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

**DECISION**

This appeal is before us on remand from the Court of Appeals. *Dimone v. City of Hillsboro*, 41 Or LUBA 167 (2001), *rev'd and rem'd* 182 Or App 1, \_\_\_ P3d \_\_\_ (2002). In our decision, we rejected petitioner Davis's fourth assignment of error and part A of petitioners Dimones' first assignment of error. Those assignments of error concerned a city finding that suggested that rezoning the subject property to Station Community Commercial-Multi-Modal (SCC-MM) is justified to correct a shortage of commercially zoned land. Petitioners alleged that the evidentiary record in this matter does not establish that there is an existing shortage of commercially zoned land. We concluded that it did not matter whether the evidentiary record established that there is a current shortage of commercially zoned land, because the disputed finding that such a shortage exists was only one of several reasons the city gave for its rezoning decision. 41 Or LUBA at 179-80. The Court of Appeals also appears to have understood our decision to conclude that there was substantial evidence in the record of a current need for commercially zoned land.

On appeal, the Court of Appeals reversed and remanded:

“[I]t appears from the record before us that the city's decision to impose this zone was based, in part, on its determinations that there was such a need and that allowing commercial uses on this property helps satisfy that need. The city's findings addressing the need for commercially zoned land gave no indication that the discussion was not necessary to its decision or was intended as surplusage or simply as an observation. The city's findings supporting the rezoning are stated in terms demonstrating the city council's belief that each of the reasons for its decision contributed to its ultimate decision. Were the city's findings to have stated clearly its understanding of the significance of the need issue and, in so doing, advised LUBA and us of the relative importance of the issue to its decision, our conclusion might be different. Based on the existing record, we must conclude that the need for commercial property in this area played a role in the city's decision.

“In reviewing a local government decision, we are limited to the findings and conclusions that the local government actually made. \* \* \* If the city believes that the need for commercial land is irrelevant to its decision to apply the SCC-MM zone on remand, it can say so.” 182 Or App at 13-14.

1 The Court of Appeals went on to conclude that the prior determinations the city's findings  
2 cited concerning need for commercially zoned land did not themselves constitute substantial  
3 evidence of a current need for commercially zoned land, because the evidence that supported  
4 those prior determinations is not in the record. 182 Or App at 14-15.

5 In accordance with the Court of Appeals' decision, the city's decision is remanded for  
6 additional proceedings.