

1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

3
4 MONOGIOS AND CO. and
5 MONOGIOS INTERNATIONAL COMPANY,
6 *Petitioners,*

7
8 vs.

9
10 CITY OF PENDLETON,
11 *Respondent.*

12 LUBA No. 2002-032

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15 FINAL OPINION
16 AND ORDER

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18 On remand from the Court of Appeals.

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20 D. Rahn Hostetter, Enterprise, represented petitioners.

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22 Peter H. Wells, Pendleton, represented respondent.

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

26
27 REMANDED

12/18/2002

28
29 You are entitled to judicial review of this Order. Judicial review is governed by the
30 provisions of ORS 197.850.

1 Briggs, Board Member.

2 The challenged decision involves the city’s conditional use approval for development
3 of park facilities within a floodway. In our initial opinion, we sustained two of petitioners’
4 assignments of error because the city failed to address arguments petitioners raised pertaining
5 to the applicability of certain flood hazard provisions. We sustained another assignment of
6 error in part because we agreed with petitioners that the city’s findings failed to adequately
7 address a conditional use criterion pertaining to frontage improvements on public rights-of-
8 way. We denied the remainder of petitioners’ assignments of error, one of which included an
9 argument that the city failed to address a comprehensive plan policy pertaining to the city’s
10 park classification system (“Community Park” policy). *Monogios and Co. v. City of*
11 *Pendleton*, 42 Or LUBA 291 (2002) (*Monogios I*).

12 Petitioners appealed our decision to the Court of Appeals. The court affirmed our
13 decision for the most part. However, the court concluded that the city erred by failing to
14 address the “Community Park” policy. The court held, in relevant part:

15 “The city’s findings offer nothing to answer the question of whether, when
16 and/or how city comprehensive plan policies regarding parks might apply to
17 the proposed * * * park. We note * * * that the city’s conditional use
18 requirements call for compliance with the comprehensive plan and that the
19 city believes that at least some plan policies are relevant to this conditional
20 use approval because it addressed them in its findings. With respect to the
21 ‘Community Park’ policy cited by petitioners, there is nothing in the city’s
22 findings explaining whether the policy is simply descriptive of a particular
23 variety of park, or whether it is intended to be a substantive criterion that will
24 control approval of some park facilities. * * *

25 “Given those circumstances, we must conclude that LUBA erred in not
26 requiring the city to address either why the ‘Community Park’ policy was
27 satisfied or why that policy is not applicable. Consequently, LUBA’s remand
28 to the city should direct the city to address the plan policy and its applicability
29 to the proposed development. If the policy applies at some other point in the
30 approval process, that fact should be explained. * * *” *Monogios and Co. v.*
31 *City of Pendleton*, 184 Or App 571, 576, __ P3d __ (2002).

32 Accordingly, the city’s decision is remanded for the city to address the assignments
33 of error we sustained in *Monogios I*, and to address the “Community Park” policy.