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BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

TIM DOMAN, EARL DOMAN,
and DONNA DOMAN,
Petitioners,

vs.

CITY OF WOODBURN,
Respondent.

LUBA No. 2003-025

FINAL OPINION
AND ORDER

Appeal from City of Woodburn.

Tim Doman, Earl Doman, and Donna Doman, Woodburn, filed the petition for review. Tim Doman and Earl Doman argued on their own behalf.

Deniece B. Won, Assistant City Attorney, Woodburn, filed the response brief and argued on behalf of respondent.

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

AFFIRMED

08/20/2003

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

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NATURE OF THE DECISION

Petitioners appeal a city decision denying their application for comprehensive plan map and zoning map changes.

FACTS

Petitioners own a one-acre parcel that is located within the City of Woodburn. The existing comprehensive plan designation for the subject property is Low Density Residential and the zoning designation is Single-Family Residential (RS). The property is generally surrounded by other RS zoned property. The property also adjoins one property with a comprehensive plan designation of High Density Residential, which is zoned Multi-Family Residential (RM). That property is developed with an apartment complex owned by petitioners. Petitioners wish to redevelop the subject property with a similar multi-family development. Petitioners applied for a comprehensive plan map change from Low Density Residential to High Density Residential and a change in zoning from RS to RM. The planning commission held a hearing on the application and recommended that it be denied. The city council held a public hearing and denied the application. This appeal followed.

MOTION TO TAKE EVIDENCE

After the conclusion of oral argument, petitioners filed a motion asking us to consider evidence that is not included in the local record that the city filed in this appeal. Specifically, petitioners seek to have us consider a newspaper article and a city ordinance granting a comprehensive plan map and zoning map change for another property that petitioners argue is nearly identical to their property. The city ordinance was also attached to the petition for review as an exhibit, and in its response brief the city objected to our consideration of that ordinance.

OAR 661-010-0045(1) provides the grounds for motions that request that LUBA consider extra-record evidence:

1 “[LUBA] may, upon written motion, take evidence not in the record in the
2 case of disputed factual allegations in the parties’ briefs concerning
3 unconstitutionality of the decision, standing, ex parte contacts, actions for the
4 purpose of avoiding the requirements of ORS 215.427 or 227.178, or other
5 procedural irregularities not shown in the record and which, if proved, would
6 warrant reversal or remand of the decision. [LUBA] may also upon motion or
7 at its direction take evidence to resolve disputes regarding the content of the
8 record, requests for stays, attorney fees, or actual damages under ORS
9 197.845.”

10 Petitioners do not explain, and it is not apparent, which of the permissible grounds for
11 granting a motion to take evidence not in the record they are relying upon, and we do not see
12 that any of those grounds are applicable. In any event, in light of our disposition of this
13 appeal, our consideration of the evidence that is the subject of petitioners’ motion would not
14 assist petitioners.

15 The motion to take evidence outside the record is denied.

16 **ASSIGNMENTS OF ERROR**

17 The challenged decision is a denial of petitioner’s application. Therefore, if any one
18 of the independent bases that the city relies on to deny the plan and zoning change request is
19 sustained, then the decision must be affirmed. *Lee v. City of Oregon City*, 34 Or LUBA 691,
20 693-94 (1998). Petitioners must assign error to every independent basis that the local
21 government relies upon to deny the application. If petitioners fail to assign error to every
22 basis for denial, the decision must be affirmed. *Id.*; *Garre v. Clackamas County*, 18 Or
23 LUBA 877, 881, *aff’d* 102 Or App 123, 792 P2d 117 (1990). The city argues that petitioners
24 do not assign error to all the bases the city adopted for denying the application and that the
25 city’s decision should therefore be affirmed.

26 Petitioners raise three assignments of error in the petition for review. All three of
27 those assignments of error and the argument in support of those assignments of error occupy
28 a little over a page of the petition for review. It is petitioners’ responsibility to allege the
29 facts necessary to support their claim and to adequately develop their legal argument. LUBA
30 does not supply or develop a party’s argument for them. *Deschutes Development v.*

1 *Deschutes County*, 5 Or LUBA 218, 220 (1982). Petitioners’ assignments of error are
2 inadequately developed for review. The summary of argument portion of the petition for
3 review comes closer to raising cognizable assignments or error. *See Freedom v. City of*
4 *Ashland*, 37 Or LUBA 123, 124-25 (1999) (LUBA will overlook a petitioner’s failure to
5 include specific assignments of error, where it can discern the petitioner’s assignments of
6 error from the argument presented in the petition for review). As far as we can tell,
7 petitioners assign error to the city’s findings that petitioners failed to demonstrate that the
8 application complies with: (1) Statewide Planning Goal 10 (Housing); (2) Woodburn
9 Comprehensive Plan (WCP) Residential Land Development Policy A-10; and (3) WCP
10 Housing Goals and Policies G-1-1.¹

11 As the city correctly points out, petitioners’ application was denied, in part, because
12 the city found that petitioners failed to demonstrate that the request complies with Woodburn
13 Zoning Ordinance (WZO) 16.050(c) and (d).² The city adopted findings that explain why
14 the city believes WZO 16.050(c) and (d) are not satisfied in this case. Record 14-16.
15 Petitioners do not challenge those findings or provide any other basis for reversing or
16 remanding the decision notwithstanding these findings. In the absence of such a challenge,
17 we must affirm the city’s decision. *Lee*, 34 Or LUBA at 693-94.³

¹ In their second assignment of error, petitioners assign error to the city “agreeing upon a specific population forecast * * *.” Petition for Review 5. We agree with the city that this assignment of error does not challenge any finding or action the city took as part of the challenged decision.

² WZO 16.050 provides in pertinent part:

“Plan Amendment Criteria. Before a Plan Amendment can be made, the [city] must find that the proposal meets the following criteria:

“(c) There is a clearly demonstrated public need for the proposed amendment.

“(d) The proposal best satisfies the public need.”

³ In their conclusion, petitioners appear to raise a claim of bias on the part of the city, although it is not apparent whether that claim applies to the city’s staff or governing body or both. In order to demonstrate bias, a petitioner must show that a decision maker or body was incapable of making a decision based on the evidence and argument before them. *Halvorson Mason Corp. v. City of Depoe Bay*, 39 Or LUBA 702 (2001). In the

1 The city's decision is affirmed.

present case, petitioners do not come close to making that demonstration. Petitioners also assert that their constitutional rights were violated. To the extent that refers to something other than their claim of bias, the claim is not adequately developed for our review. *Sparks v. Tillamook County*, 30 Or LUBA 325, 330 (1996) (LUBA will not consider constitutional claims that are not supported by legal argument).