

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

LAND USE
BOARD OF APPEALS

Nov 2 1 42 PM '84

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ASH CREEK NEIGHBORHOOD)
ASSOCIATION, BOB DAMES,)
VIRGINIA DAMES, ROBERT B.)
HARDING, MELVILLE EDELMAN,)
KATHY JOHNSTON, SUSAN MANN,)
DAVID MANN, DARRELL STROUP,)
ALICE STROUP, TOM GUINEY and)
ELSA GUINEY,)
Petitioners,)
vs.)
CITY OF PORTLAND,)
Respondent.)

LUBA No. 84-061
FINAL OPINION
AND ORDER

Appeal from the City of Portland.

John M. Wight, Portland, filed the Petition for Review and argued the cause on behalf of petitioners. With him on the brief were Bauer, Winfree, Anderson, Fountain & Schaub.

Ruth M. Spetter, Portland, filed a response brief and argued the cause on behalf of Respondent City.

BAGG, Chief Referee; KRESSEL, Referee, participated in the decision.

DUBAY, Referee, Concurring.

REMANDED 11/02/84

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

1 Opinion of the Board.

2 NATURE OF THE DECISION

3 This is an appeal from an approval of a conditional use
4 permit for construction of a mosque in a medium density, single
5 family residential district (R-7).

6 FACTS

7 The land proposed for the mosque consists of six vacant
8 lots between S.W. Capitol Highway and S.W. 42nd Avenue, an
9 unimproved street. The 10,500 square foot, 32 foot high mosque
10 will be located at the rear of the property near the unimproved
11 street. A parking lot is proposed for the front of the
12 property between the mosque and S.W. Capitol Highway. There
13 are residences on either side.

14 The proposal was approved by the hearings officer and then
15 appealed to the city council. At the city council hearing, an
16 amended site plan was presented with revisions that included
17 increased yard setbacks on 42nd Avenue, a decrease in the
18 number of parking spaces from 42 to 39, changes in width and
19 location of two driveways, and other minor changes.

20 The city council affirmed the hearings officer's decision.

21 FIRST ASSIGNMENT OF ERROR

22 Petitioners allege the proposal does not comply with the
23 city code in two instances. The first relates to compliance
24 with on-site parking requirements. Although the 39 spaces
25 shown on the revised site plan satisfy code requirements,¹
26 petitioners say the spaces are improperly located within the

1 required side yard. If the spaces were properly located,
2 according to petitioners, there would not be enough room on the
3 site for the required number.

4 The city code has special side yard requirements for
5 churches in the R-7 zone. Portland Municipal Code (PMC)
6 §33.24.280.² A 16 foot side yard is required for buildings
7 25 to 34 feet in height. The parking lot, according to
8 petitioners, intrudes into the required side yard, in violation
9 of §33.82.010(K) of the code:

10 "Except as otherwise stated in this title, parking,
11 maneuvering and loading area shall not be located
12 within the required front, side yard or rear yards;
13 and access drives to parking, maneuvering or loading
14 areas shall not occupy more than 20 percent of a
15 required yard which abuts a right-of-way." PMC
16 §33.82.010(k).

17 In answer to petitioners' arguments, the city claims its
18 ordinance requires side yards only around the building. The
19 required side yards, according to this view, do not extend the
20 full length of the lot, but only alongside the building.
21 Accordingly, the city claims approval of the applicant's plan
22 does not violate §33.82.010(k).³

23 While we will defer to a local government's reasonable
24 interpretation of its code, we do not find the city's
25 interpretation of the side yard requirement reasonable in this
26 instance. See Alluis v. Marion County, 64 Or App 478, 668 P2d
1242 (1983). The city's code does not support the claim that
required side yards extend only the length of building
lines.⁴ The provisions requiring side and front yards,

1 depending on the height of buildings, are stated in mandatory
2 terms. In this case, the mosque is to be 32 feet high, thus
3 requiring a 16 foot side yard. The site plan filed herein
4 shows intrusion into the side yard, and we believe the
5 intrusion is not consistent with the code.

6 As noted in footnote 3, the city recognized that allowance
7 of a parking area immediately adjacent to the lot line could be
8 undesirable. Its solution was to impose, on an ad hoc basis, a
9 requirement that an appropriate side yard for the parking area
10 would be 10 feet. There is no authority in the code for the
11 city to impose, ad hoc, a lesser side yard dimension than
12 stated in the code. It appears the city has legislated a
13 particular side yard requirement for this particular
14 conditional use. We find no authority for such an action.⁵

15 Therefore, we agree with petitioners' claim with respect to
16 the proposal's violation of side yard requirements.

17 Petitioners' second claim is that the proposal violates a
18 code provision prohibiting driveways occupying more than 20
19 percent of a required yard abutting a street. PMC
20 §33.82.010(k). The required front yard along Capitol Highway
21 is 3,000 square feet.⁶ Under the code, no more than 600
22 square feet of the yard may be occupied by driveways.

23 Petitioners say the site plan submitted with the
24 application, as well as the revised site plan submitted to the
25 city council, show access driveways aggregating 640 square
26 feet. They then allege the code violation throws doubt on the

1 capacity of the site to meet the maximum driveway and on-site
2 parking space requirements.

3 The city makes two arguments in its response to this
4 claim. First, the city claims the driveways do not exceed 600
5 square feet. At the council hearing the applicant's architect
6 testified the driveway area will be reduced by narrowing one
7 driveway to 10 feet from 12 feet as shown on the revised site
8 plan. The record does not show the council responded to this
9 oral proposal, either at the meeting or in their final order.

10 For its second argument, the city contends the driveway
11 design must be approved at the time building permits are
12 obtained and not at the time the conditional use permit is
13 approved.⁷

14 The city explains the site plan need not show compliance
15 with each code section applicable to a proposal. According to
16 the city, approval of a conditional use does not authorize a
17 code violation even if the violation appears on the face of the
18 application. The city states compliance with certain design
19 and construction requirements are dealt with in the building
20 permit process. According to the city, it is at that time the
21 size and design of the parking lot and driveways must be
22 demonstrated to comply with code requirements.

23 We reject this argument. For the reasons discussed below,
24 we believe the site plan has a more significant role in the
25 conditional use process than claimed by the city.

26 The code does not define a conditional use.⁸ However,

1 the code makes clear all conditional uses are subject to
2 discretionary criteria. PMC §33.106.010 provides:

3 "In permitting such uses, it shall be determined that
4 the use at the particular location is desirable to the
5 public convenience and welfare and not detrimental or
6 injurious to the public health, peace or safety, or to
7 the character and value of the surrounding
8 properties. However, churches...are permitted in any
9 R zones...provided the site location is found to be
10 appropriate for such use."

11 A determination whether a site location for a conditional
12 use is appropriate for the use may be dependent on many
13 factors, including the characteristics and design of a proposed
14 development and their effect on other uses in the area. The
15 site plan is a graphic representation of the design. An
16 accurate site plan provides the basis for determining whether
17 the development as designed meets code requirements and is
18 appropriate for the proposed use under PMC §33.106.010. The
19 code, in fact, requires an accurate portrayal of the site
20 layout:

21 "The application shall be accompanied by three copies
22 of a site plan showing exact dimensions and
23 arrangement of the proposed development." (emphasis
24 supplied) PMC §33.106.020.

25 Both the original and amended site plans show the driveways
26 to be in excess of code maximums. By portraying such
violations, the site plans do not provide a basis to show the
design meets ordinance standards and is appropriate for the
use. Indeed, the site plan shows the application to include a
violation of a code provision, PMC §33.82.010(k). We therefore
also sustain this subassignment of error. ORS 197.835(8)(a)(D).

1 SECOND ASSIGNMENT OF ERROR

2 Petitioners next claim the site is not appropriate for use
3 as a mosque because there is insufficient parking space in the
4 parking lot, and no off-site parking space is available.⁹
5 Petitioners say cars will park on nearby side streets which are
6 narrow and without curbs, and this will create traffic
7 congestion in the neighborhood.

8 Most of the demand for parking spaces at the mosque is
9 expected to occur Friday noon each week. The maximum
10 attendance anticipated at these services is from 200 to 250.
11 The city estimates 8 to 42 more parking spaces than are in the
12 parking lot will then be required.¹⁰ Space for parking in
13 the neighborhood is limited. Record at 126, 128.
14 Nevertheless, the city agreed with the opinion of its Office of
15 Transportation that the proposed parking lot would be
16 acceptable provided an aggressive, continuous program of
17 traffic management is maintained. The city attached the
18 following condition to its approval of the conditional use
19 permit:

20 "Prior to the issuance of building permits, the
21 applicants must prepare a traffic management plan for
22 the review and approval of the Bureau of Traffic
Management and Bureau of Transportation, Planning and
Development.... The plan shall include at least the
following:

23 "(1) Measures to be used to assure an adequate level
24 of transit ridership.

25 "(2) Measures to be used to assure an adequate level
26 of carpooling.

1 "(3) Measures to be used to assure an adequate level
2 of van or shuttlebus or service for Friday noon
 services.

3 "(4) Plans for use of parking attendants for Friday
4 noon services, subject to the approval of the
 Fire Bureau."

5
6 Clearly, the city considered appropriateness of the site
7 (see PMC §33.106.010) to hinge largely on impacts to the
8 neighborhood from increased traffic and off-site parking
9 associated with the mosque. Record 106. According to the
10 city's order, whether these impacts are acceptable will be
11 determined by the adequacy of the required traffic management
12 plan. The record does not indicate such a traffic management
13 plan exists or that the city or any of its departments have
14 technical specifications for one.¹¹

15 As we read the order, the Bureau of Traffic Management and
16 the Bureau of Transportation have been given discretion to
17 approve or disapprove the plan based on a standard of
18 "adequacy." In effect, this places responsibility on the two
19 bureaus to determine whether the proposal meets an approval
20 criterion (§33.106.010) of the code. Stated in other words,
21 the city council concluded the proposal would meet the approval
22 criterion in §33.106.010 only if a traffic management plan with
23 "adequate" measures is developed, and then assigned to city
24 administrators the responsibility to make that determination.

25 We do not believe the city council may carry out its
26 quasi-judicial responsibilities under the code in this manner.

1 The pivotal issue under the code is the appropriateness of the
2 location. PMC §33.106.010. When the city council has final
3 quasi-judicial responsibility for determining whether a
4 development proposal meets all applicable criteria, it must
5 exercise its responsibility before approving the project.
6 Margulis v. Portland, 4 Or LUBA 89, 98 (1981). We do not
7 believe it can, on an ad hoc basis, rearticulate the approval
8 criterion and then assign responsibility for measuring
9 compliance to an administrator. Fasano v. Washington County,
10 264 Or 574, 507 P2d 23 (1973).¹²

11 THIRD ASSIGNMENT OF ERROR

12 Petitioners next allege the city made inadequate findings
13 in three instances. First, they say the findings neither
14 acknowledge nor discuss evidence that traffic counts relied on
15 by the city were unreliable. Second, the findings allegedly
16 fail to take into account conflicting evidence regarding the
17 number of cars expected at times of maximum attendance at
18 mosque services. Petitioners base both contentions on the
19 requirement that substantial evidence supports the city's
20 decision. ORS 197.835(8)(a)(C). Last, petitioners claim the
21 findings do not mention the revised site plan submitted at the
22 city council hearing.

23 Petitioners argue findings discussing conflicting evidence
24 and an explanation of why petitioners' evidence was rejected is
25 a requirement of the substantial evidence rule. In support of
26 this proposition they cite our opinions in Stephens v.

1 Clackamas County, 8 Or LUBA 172, 177 (1983); Filter v. Columbia
2 Cty, 3 Or LUBA 345 (1981); and Sane Orderly Development v.
3 Douglas County, 2 Or LUBA 196, 206 (1981).

4 The city's order does not discuss evidence conflicting with
5 the evidence relied on by the council concerning average daily
6 vehicle trips on S.W. Capitol Highway and the average number of
7 persons per vehicle to be expected at church services.¹³ The
8 question before us, however, is whether findings of this kind
9 are necessary to a determination of whether the decision is
10 supported by substantial evidence.¹⁴

11 We begin our analysis by noting our review is not de novo.
12 We are bound by any finding of fact supported by substantial
13 evidence in the whole record. ORS 197.830(11). Also, we may
14 reverse or remand a land use decision not supported by
15 substantial evidence in the whole record. ORS
16 197.835(8) (a) (C).

17 Both statutory and decisional law are sources for the
18 requirement that findings must be adopted in quasi-judicial
19 land use cases. For example, ORS 227.173 provides in part:

20 "Approval or denial of a permit application shall be
21 based upon and accompanied by a brief statement that
22 explains the criteria and standards considered
23 relevant to the decision, states the facts relied upon
24 in rendering the decision and explains the
25 justification for the decision based on the criteria
26 standards and facts set forth." (emphasis
supplied).¹⁵

Wholly apart from such statutory mandates, the courts have
required findings in quasi-judicial land use proceedings in

1 order to facilitate the judicial review function. See Roseta
2 v. County of Washington, 254 Or 161, 458 P2d 405 (1969). The
3 basis for doing so was articulated by former Judge Schwab of
4 the Court of Appeals:

5 "If there is to be any meaningful judicial scrutiny of
6 the activities of an administrative agency - not for
7 the purpose of substituting judicial judgment for
8 administrative judgment but for the purpose of
9 requiring the administrative agency to demonstrate
10 that it has applied the criteria prescribed by statute
11 and by its own regulations and has not acted
12 arbitrarily or on an ad hoc basis - we must require
13 that its order clearly and precisely state what it
14 found to be the facts and fully explain why those
15 facts lead it to the decision it makes." (emphasis
16 supplied) Homeplate, Inc. v. OLCC, 20 Or App 188, 190,
17 530 P2d 862 (1975).

18 See also Sunnyside Neighborhood v. Clackamas Co. Comm., 280 Or
19 3, 569 P2d 1063 (1977); Green v. Hayward, 275 Or 693, 552 P2d
20 815 (1976). In Sunnyside, supra, the Court again stated, in
21 summary form, the scope of the findings requirement:

22 "What is needed for adequate judicial review is a
23 clear statement of what, specifically, the
24 decision-making body believes, after hearing and
25 considering all the evidence, to be the relevant and
26 important facts upon which its decision is based.
27 Sunnyside Neighborhood v. Clackamas Co. Comm., 284 at
28 21.

29 These authorities, we note, do not require findings
30 explaining how conflicts in the evidence are resolved. They
31 require only that a quasi-judicial decision set forth what
32 facts were relied upon by the decisionmaker. Facts not relied
33 upon are not within this general rule.

34 These precedents do not support a rule requiring findings
35 analyzing conflicts in the evidence where a substantial

1 evidence challenge is presented. However, the previously cited
2 LUBA decisions have implied the rule from other sources, namely
3 federal administrative law cases and an administrative law
4 treatise interpreting federal statutes. See, e.g., Sane
5 Orderly Development v. Douglas County, supra, citing K.C.
6 Davis, Administrative Law, 3d ed, Sec 29.03, and Universal
7 Camera Corp. v. NLRB, 340 US 474, 71 S. Ct. 476, 95 L.Ed 456
8 (1951).

9 The authorities relied upon by LUBA do not address the
10 findings requirement. Instead they address the extent to which
11 the reviewing tribunal examines evidence both supporting and
12 detracting from the lower tribunal's decision before deciding
13 whether the decision is supported by substantial evidence in
14 the whole record.¹⁶ We do not read these authorities¹⁷ to
15 expand the substantial evidence test to add a requirement the
16 deciding body must make findings to show how conflicts in the
17 evidence are resolved. Accordingly, we reject petitioners'
18 first two claims in this assignment of error. In so doing, we
19 now depart from our earlier holdings to the contrary.¹⁸

20 Petitioners' third claim is that the findings are not
21 responsive to the revised site plan submitted at the city
22 council meeting. Petitioners say that since the council
23 adopted the findings of the hearings officer made before the
24 revised site plan was submitted, the earlier findings do not
25 apply to the changed site plan.¹⁹ Petitioners cite our
26 decision in Hallberg Homes, Inc. v. Gresham, 7 Or LUBA 145

1 (1983) as authority for this claim. In that case the city
2 denied a development proposal on the grounds requests for
3 hardship relief from ordinance requirements were not
4 justified. However, three of the requests for hardship relief
5 were withdrawn at the city council hearing. LUBA held the
6 city's denial was therefore erroneous.

7 Although the city's order now before us could have been
8 more clearly stated by referring to the revised site plan, we
9 believe it is reasonable to assume the city council acted on
10 the latest site plan before it.²⁰ Unlike the situation in
11 Hallberg, supra, the ordinance provisions applicable to the
12 original site plan continue to apply. The failure of the order
13 to identify the revised site plan is not a basis for reversing
14 or remanding the city's action in these circumstances. This
15 assignment of error is denied.

16 Remanded.

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1 DuBay, Concurring.

2 I concur with the majority that this matter should be
3 remanded to the city for further proceedings. However, I do
4 not agree with that part of the majority opinion regarding side
5 yard requirements adjacent to the parking lot.

6 The majority notes the city's code requires minimum side
7 yards for churches in the R-7 zone to be based on the height of
8 the church buildings. In accordance with the code provisions,
9 the 32 foot high mosque will require a side yard at least 16
10 feet wide. The majority then state the parking lot, shown on
11 the site plan as located between the mosque and S.W. Capitol
12 Highway, intrudes into the 16 foot required side yard. This
13 position assumes the side yard required by the code is adjacent
14 to the entire side lot line and is uniform along its length.

15 The code does not describe side yards with this
16 configuration.²¹ Side yards are not defined to extend along
17 the length of side lot lines, but only along the lot line
18 between front and rear yards.

19 Other provisions of the code also suggest side yards do not
20 extend the length of the side lot line. For example, the
21 minimum side yards for permitted uses in the R-7 zone are
22 stated in PMC §33.24.100 which provides in part:

23 "There shall be a minimum side yard on each side of
24 any main building according to the height as shown on
the following schedule..." (emphasis supplied).

25 These code provisions support an interpretation that a side
26 yard is a yard between a building and a side lot line.²²

1 This is the county's interpretation.

2 This Board has previously accepted a local government's
3 reasonable interpretation of its own ordinance if not contrary
4 to the express terms of the ordinance. Alluis v. Marion
5 County, 7 Or LUBA 98, 102 (1982); Brady v. Douglas County, 7 Or
6 LUBA 251, 262 (1983); Tribbett v. Benton County, 2 Or LUBA 161,
7 164 (1981); Denham v. Clackamas County, 1 Or LUBA 129, 132
8 (1980). I would do so here.

9 Although side yards, in accordance with the city's
10 interpretation, extend only between buildings and side lot
11 lines, the question remains whether the city can establish a
12 minimum side yard along the parking lot. As the majority
13 correctly states, there are no provisions in the code for
14 minimum side yards along parking lots. However, even though
15 such provisions are lacking, the code allows increases in
16 minimum yard requirements. PMC §33.106.010 provides in part:

17 "In permitting conditional uses, the minimum or
18 maximum requirements specified for each such use in
19 the respective zones may be increased and other
20 conditions and restrictions if necessary to protect
21 the public interest and the surrounding properties may
22 be imposed."

23 The imposition of a condition requiring a 10 foot side yard
24 along the parking lot is authorized by this section of the city
25 code.

26 For these reasons I would deny the subassignment of error
challenging the location of the parking lot as shown on the
revised site plan.

FOOTNOTES

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1 Section 32.24.280 of the Portland Municipal Code (PMC) requires churches in all R-7 zones to have one parking space for each 84 square feet in the main auditorium. The mosque will have 3,000 square feet in the main auditorium and this translates to 36 required parking spaces.

2 "Minimum side yard or rear yard:

"For buildings under 15 feet in height	10 feet
"For buildings 15 to 24 feet in height	13 feet
"For buildings 25 to 24 feet in height	16 feet
"For buildings 35 to 44 feet in height	20 feet
"For buildings 45 to 54 feet in height	25 feet
"For buildings 55 to 64 feet in height	35 feet
"For buildings 65 to 74 feet in height	45 feet;"

PMC §33.24.280(5).

"'Side yard' means any yard abutting a side lot line and extending between the front yard and the rear yard, if any." PMC §33.12.840.

3 The city also required a 10 foot minimum side yard for the parking area evidently as a means of separating that area from nearby uses. The 10 foot requirement was apparently derived from a code provision establishing 10 feet as the minimum side yard for buildings under 15 feet in height. PMC §33.24.280(5).

4 For example, as noted earlier, the code expressly bars placement of parking areas in required yards. PMC §33.82.010(k). If the city's narrow definition of required side yard were correct, a parking area could be placed immediately adjacent to any side lot line not parallel to a building on the lot. The result would be to obstruct access to the rear of the lot -- a result we believe the code was designed to prevent.

Furthermore, the city's interpretation does not account for

1 the circumstance in which a use not involving a building
2 occupies a lot. In a district where side yards are required,
3 the city's interpretation would make it impossible to identify
4 where those yards should be located in such a case.

5
6 The code does allow the city to impose additional side yard
7 distances. See PMC §33.106.010.

8
9 The property is 150 feet wide adjacent to S.W. Capitol
10 Highway. The code requires front yards 20 feet wide for
11 buildings less than 45 feet high. PMC §33.24.280.

12
13 Section 33.82.010(1) provides:

14 "The plan drawn to scale indicating how the off-street
15 parking requirement is to be fulfilled, shall
16 accompany the request for a building or occupancy
17 permit. The plan shall show all those elements
18 necessary to indicate that the requirements are being
19 fulfilled and shall include: (1) delineation of
20 individual parking spaces; (2) circulation area
21 necessary to serve spaces; (3) access to streets,
22 alleys and property to be served; (4) curb cuts; (5)
23 dimensions, continuity, and substance of screening;
24 (6) grading, drainage, surfacing, and subgrading
25 details; (7) delineation of obstacles to parking and
26 circulation in finished parking area; (8)
27 specifications as to signs and bumper guards; (9) all
28 other pertinent details."

29
30 See Anderson v. Peden, 284 Or 313, 587 P2d 59 (1978) for a
31 discussion of three different meanings for the term
32 "conditional use."

33
34 As noted in the first assignment of error, the code allows
35 churches as conditional uses in R zones "provided the site
36 location is found to be appropriate for such use." PMC
37 §33.106.010.

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39 The Office of Transportation made this estimate based on the

1 assumption everyone attending the service will come by car.
2 Assuming four persons per vehicle, the Department estimated a
3 shortfall of 8-20 spaces. Based upon the assumption three
4 persons will be in each vehicle, the shortfall was estimated to
5 be 25-42 spaces. Record 126. These estimates are based on
6 availability of the 42 parking spaces on site as shown on the
7 original site plan, not 39 spaces as shown in the revised site
8 plan.

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In Lee v. City of Portland, 57 Or App 798, 646 P2d 662
(1982), the Court approved a condition placed in a conditional
use permit requiring construction of sidewalks and warning
lights to city engineer standards. The city asserted there
were city technical specifications for such construction. The
Court declined to hold the condition improper "absent a showing
that such technical specifications do not exist." Lee v. City
of Portland, supra at 807.

12

The present case may be contrasted with the circumstance in
Lee v. City of Portland, 57 Or App 798, 646 P2d 662 (1982).
Here, no comparable specifications exist.

13

Respondent does not say such findings were made. It
answers petitioners' claim by arguing that the findings were
supported by substantial evidence.

14

This issue was considered in Morse v. Clatsop County, ____
Or LUBA ____ (1984) (LUBA No. 84-026, August 30, 1984).
Petitioners in the Morse case admitted that there was
substantial evidence supporting the finding of erosion of a
bank but argued the reference to "the whole record" in ORS
197.835(8)(a) requires the deciding body to explain why it did
not accept conflicting evidence. Although we expressed serious
doubts that explanatory findings were required, the decision
was also based on our view the findings included an adequate
analysis of the conflicting evidence.

15

ORS 215.416(7) has similar provisions regulating county
permit proceedings.

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2 In Universal Camera Corp. v. NLRB, 340 US 474, 71 S. Ct.
3 476, 95 L.Ed 456 (1951), for example, the Court analyzed a
4 reviewing courts scope of review for "substantial evidence on
5 the record considered as a whole." The Court said this
6 standard requires review of evidence in the record detracting
7 from, as well as evidence supporting, the agency's decision.
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Whether the findings requirment can be traced to some
source other than the substantial evidence rule is not
presented in this appeal and we accordingly express no opinion
on the subject.

18

We do not wish to suggest, however, that a local government
is free to ignore evidence bearing upon required criteria.
See, for example, City of Wood Village v. Portland Metropolitan
Area Local Government Boundary Commission, 48 Or App 79, 616
P2d 528 (1980); Hillcrest Vineyard v. Board of County
Commissioners of Douglas County, 45 Or App 285, 608 P2d 201
(1980).

Nor do we wish to discourage the practice, now common in
some jurisdictions, of adopting explanatory findings setting
forth why some evidence was found more persuasive than evidence
presented by opponents of the decision. Although we do not
believe the practice is required by the substantial evidence
rule, it is often of assistance to us as a reviewing tribunal.

19

The revised site plan reduced the number of parking spaces
from 42 to 39 and changed the design of the parking lot and
access drives as well as location of the building.

20

The record shows the revised plan was presented at the
council meeting, and the changes from the original plan were
pointed out to the council. Record 36.

21

The code defines a yard and front, rear and side yards as
follows:

"33.12.810 Yard. 'Yard' means the open space, other
than a court, on a lot, unoccupied and unobstructed