

1 NATURE OF DECISION

2 Petitioners appeal the city's approval of a conditional use
3 permit to construct a 21 unit motel.

4 FACTS

5 The proposed motel would be located on a bluff between the
6 ocean and Beach Loop Road in the Controlled Development Zone 1,
7 (CD-1). Parking for the motel would be across Beach Loop Road.
8 The applicant owns and operates another motel on Beach Loop Road,
9 several hundred feet to the south.

10 The permit was approved by the city planning commission. The
11 decision was appealed to the city council. After holding a de
12 novo hearing, the city council approved the permit.

13 FIRST ASSIGNMENT OF ERROR

14 Petitioners allege the decision violates the parking
15 requirements in the city's zoning ordinance. Section 6.300(5) of
16 the ordinance provides:

17 "Off-street parking spaces for dwellings shall be
18 located on the same parcel with the dwelling. Other
19 required parking spaces shall be located not further
20 than 500 feet from the building or use they are
21 required to serve, measured in a straight line from
22 the building."

23 Petitioners contend that the proposed motel is composed of
24 dwellings defined in the city ordinance. According to
25 petitioners, the above-quoted ordinance requires all off-street
26 parking for the motel to be on the same parcel as the motel. The
decision, however, approves applicant's proposal to construct
off-street parking across Beach Loop Road within 500 feet to the

1 south.

2 Section 1.200 of the zoning ordinance includes the following
3 definitions:

4 "(5) Dwelling, multi-family. A building containing
5 three or more dwelling units.

6 "(6) Dwelling, single family. A detached building
7 containing one dwelling unit.

8 "(7) Dwelling, two-family. A detached building
9 containing two dwelling units.

10 "(8) Dwelling unit. One or more rooms designed for
11 occupancy by one family and not having cooking
12 facilities for more than one family."

13 Petitioners' argument is based on the logic that since a
14 motel unit is designed for occupancy by one family and does not
15 have cooking facilities for more than one family, a motel unit is
16 a dwelling unit.

17 We reject petitioners' analysis of the ordinance.

18 The ordinance defines a motel as:

19 "A building or group of buildings on the same lot
20 containing guest units with separate entrances
21 directly to the exterior and consisting of individual
22 sleeping quarters, detached or in connected rows, for
23 rental to transients." Section 1.200(32) Bandon
24 Zoning Ordinance.

25 It is undisputed that the proposed motel meets this
26 definition. Following petitioners' logic, however, the proposed
27 motel would also meet the definition of a multi-family dwelling
28 (a building containing three or more dwelling units). Followed
29 to its conclusion, this interpretation would allow motels in the
30 city's residential zone, a result clearly inconsistent with the
31 purpose of that zone. See, Section 3.000 Bandon Zoning

1 Ordinance. We conclude the reference to dwellings in Section
2 6.300(5) is intended to apply to single, two-family and
3 multi-family dwellings and not to motels. The ordinance, as we
4 read it, does not require offstreet parking for motels to be
5 onsite.

6 This assignment of error is denied.

7 SECOND, THIRD, FOURTH AND FIFTH ASSIGNMENTS OF ERROR

8 In these assignments of error petitioners challenge the
9 city's determination that the proposed motel will be compatible
10 with scenic views. Petitioners allege that the ordinance has
11 inadequate standards to assess compatibility; that the city's
12 findings on this issue are inadequate and that the findings are
13 not supported by substantial evidence.

14 Compatibility is an approval condition for all conditional
15 uses in the CD-1 zone. The condition requires that:

16 "The structure is designed to be compatible with or
17 enhances [sic] the scenic view." Section 3.720 Bandon
Zoning Ordinance.

18 Petitioners say neither this condition nor any other
19 provision of the ordinance establish criteria to determine
20 whether a proposed use is compatible with or enhances scenic
21 views.

22 Compatibility is a subjective criterion. Individual
23 perceptions may widely diverge about whether a proposed
24 development will be compatible with the existing setting or the
25 type and scale of development envisioned in planning documents.
26 The term is flexible and, therefore, an imperfect standard for

1 judging the acceptability of proposed development. Nevertheless,
2 the term is entrenched in both statute¹ and local ordinances as
3 an approval standard. An ordinance that requires evaluation of a
4 permit for compatibility without additional explanatory standards
5 to give specificity to the term is not unconstitutionally
6 defective because the standard is vague. See Anderson v. Peden,
7 284 Or 313, 587 P2d 59 (1978). The ordinance requirement that
8 conditional uses in the CD-1 zone must be compatible with or
9 enhance scenic views adequately informs interested parties of the
10 basis on which applications will be granted or denied. See Lee
11 v. City of Portland, 57 Or App. 798, 646 P2d 662 (1982).

12 The Third Assignment of Error is denied.

13 In the Second Assignment of Error petitioners allege the
14 findings are inadequate concerning compatibility. The city
15 concluded that the "design of the proposed use...is compatible
16 with the scenic view as well as the character of the surrounding
17 uses." Record at 15. Petitioners say the city made no findings
18 of facts to support the conclusion.

19 Findings must state what the deciding body found to be the
20 facts and why those facts lead it to the decision it makes. Home
21 Plate, Inc. v. OLCC, 20 Or App 188, 190, 530 P2d 862 (1975). The
22 basic formula for findings of fact was succinctly stated in
23 Sunnyside Neighborhood v. Clackamas Co. Comm., 280 Or 3, 569 P2d
24 1063 (1978):

25 "No particular form is required, and no magic words
26 need be employed. What is needed for adequate
judicial review is a clear statement of what,

1 specifically, the decisionmaking body believes, after
2 hearing all the evidence, to be the relevant and
3 important facts upon which its decision is based.
4 Conclusions are not sufficient."

5 The court in Sunnyside also emphasized the need for
6 findings to explain the relationship between the facts relied
7 upon and the relevant criteria:

8 "Findings are important only insofar as they relate to
9 the objectives and policies to which the planning
10 government is committed by its plan or by state law,
11 goals or guidelines. Consequently findings must make
12 clear what these objectives or policies are as applied
13 in the concrete situation. Thereafter, findings must
14 describe how or why the proposed action will serve
15 these objectives or policies." Sunnyside Neighborhood,
16 supra at 22.

17 Measured by these standards, the findings are not adequate.

18 The city's findings that could be relevant to the issue can
19 be summarized as follows:

- 20 1. Views of the ocean from the public road are
21 available between the residential and commercial
22 buildings in the area. Record at 13.
- 23 2. The size, design and exterior finish of the
24 proposed units and their spacing blend into the
25 bungalow architectural character of the existing
26 uses. Record at 13.
- 27 3. Signs and lighting for the parking area, loading
28 access and pedestrian ways will be low level.
29 The parking lot will be screened from the public
30 way and from commercial uses to the south with
31 landscaping. Record at 13.
- 32 4. Fifty feet of the 165 foot road frontage will be
33 unobstructed to ocean views. Record at 95.
- 34 5. The proposed motel will be 14 feet above the road
35 and 42 feet above average grade. Record at 95.

36 These findings lack any explanation of the relationship
37 between the facts found and the compatibility of the proposal

1 with scenic views. For example, the findings do not explain
2 how ocean views from the public road near other buildings in
3 the area support a conclusion that the proposed motel is
4 compatible with scenic views. Neither do they explain the
5 relevancy between the bungalow character of existing uses and
6 the compatibility criterion.

7 The fundamental fault is that the findings fail to identify
8 what scenic views were considered under the criterion. That
9 views of the ocean are scenic is self evident, but other scenic
10 views are vaguely referred to or are implied to exist. If the
11 city considers views other than ocean views from the road to be
12 protected under the compatibility criterion, the findings fail
13 to say so.

14 When scenic views are identified, the city will then be in
15 a position to make findings of fact to support a conclusion the
16 proposal will be compatible with such views. In addition, the
17 findings must explain why the facts lead it to the conclusion.
18 See Sunnyside Neighborhood v Clackamas Co. Comm., supra.

19 We sustain petitioner's Second Assignment of Error.

20 Petitioners make another claim related to their charge that
21 the findings are inadequate to show compatibility. The Fourth
22 Assignment of Error charges the findings fail to inform whether
23 the city used an objective or subjective meaning when applying
24 the compatibility criterion.

25 Petitioners cite Vincent v. Benton Cty., 5 Or LUBA 266
26 (1982), to make this point. In that case the Board remanded a

1 decision to approve a rock quarry for failure of the county to
2 explain whether, in using the term compatible, it relied on a
3 subjective or an objective meaning of that term.² The
4 county's ordinance called for a finding that the use would be
5 compatible with surrounding land uses. The Board described the
6 subjective meaning as:

7 "whether the proposed use is compatible with
8 surrounding land uses as viewed by those persons who
9 live in the surrounding area...." Vincent v. Benton
Co., supra at 273.

10 The objective meaning would assess compatibility as viewed
11 by a reasonable person. However, under either interpretation,
12 the Board held the findings were incomplete because the county
13 did not consider all factors besides noise level to determine
14 if noise would have adverse impacts on nearby land uses.

15 Here, the ordinance does not call for evaluation of the
16 impacts on surrounding land uses. Compatibility with scenic
17 views is the issue. The difference is significant. When
18 surrounding land uses are protected under particular ordinance
19 provisions, the status of those living nearby is given special
20 significance. While the scenic views of nearby residents may
21 be affected by the proposed motel, the Bandon ordinance gives
22 no more protection to them than to the public in general. As
23 noted above, the needed critical finding is identification of
24 the scenic views protected by the ordinance. When the views
25 are identified, the city may then evaluate the effect of the
26 motel on those views, if any.

1 The Fourth Assignment of Error is denied.

2 Petitioner's Fifth Assignment of Error challenges the
3 evidentiary support for the findings related to compatibility.
4 Because the city's findings inadequately address this issue, no
5 purpose would be served by discussing whether the findings are
6 supported by substantial evidence. We decline to do so.
7 McNulty v. City of Lake Oswego, 14 Or LUBA 366 (1986).

8 SIXTH AND SEVENTH ASSIGNMENTS OF ERROR

9 Petitioners allege no substantial evidence in the record
10 supports the city's finding that a thorough and detailed
11 geologic study was made of the site. Petitioners say the
12 applicant's consulting geologists conducted no subsurface tests
13 on the bluff slope where the motel will be constructed.
14 Petitioners also allege the city erred by delegating to its
15 planning staff the right to approve design changes in the
16 structure during construction.

17 Section 3.710(4) of the zoning ordinance states in part:

18 "If any geologic hazard is suspected, that the
19 development is consistent with a report which is
20 prepared by a professional geologist or engineer at
21 the expense of the developer and which evaluates the
22 degree of hazard present and recommends appropriate
23 precautions that would avoid endangering life or
24 property, and minimizes sand erosion resulting from
25 vegetation removal."

26 The city found:

"A thorough and detailed study of the geologic
conditions of the subject property has been completed
by professional geotechnical consultants whose staff
includes licensed geologists and civil engineers and
the report of L. R. Squier Associates, Inc., and the
facts determined therein are hereby adopted." Record

1 at 14.

2 The geologist's report describes the field examinations
3 made of the site and the subsurface tests. Three test holes
4 were bored from the top of the slope to provide data for
5 foundation design. Record at 49. Bedrock was encountered at
6 depths varying from 31 to 41 feet. Record at 51. In addition,
7 five hand auger holes were bored on the slope to about six foot
8 depth. Record at 50. The report includes a map of the bore
9 hole locations, and bore hole logs showing the material found
10 at varying depths. Record at 60-63. The report evaluates the
11 hazards of construction and recommends methods to support the
12 structure.

13 Petitioners do not allege the report is inaccurate in any
14 respect. They point to no other evidence in the record that
15 conflicts with the report or that undermines its conclusions.
16 We find the geologist's report to be evidence a reasonable mind
17 could accept to support a conclusion. Accordingly, the Sixth
18 Assignment of Error is denied.

19 Petitioners last claim the city improperly delegates to the
20 planning staff the authority to approve modifications to the
21 structure should subsurface exploration disclose unanticipated
22 conditions. This claim attacks the following condition:

23 "The recommendation of L.R. Squier Associates, Inc.
24 geotechnical consultants for the applicant making
25 specific provision for the manner of the development
26 of the foundation of the structure specifically and
the development of the project generally shall be
followed as supplemented by the testimony of the
engineer, including maintaining contact with the

1 geotechnical consultants during all phases of the
2 construction of the footings to enable the expertise
3 of these consultants to be utilized to insure that
4 construction will be in conformance with their
5 conclusions and recommendations and to enable them to
6 address the need for any modifications to the
7 recommendations for structural design based on
8 conditions found to exist during the boring on the
9 site for placement of the concrete piers on which the
10 structure will be located.

11 "3. When the subsurface exploration is complete the
12 geotechnical consultants will be again consulted to
13 determine whether any modifications in the proposed
14 structural design are required and all such
15 recommendations will be submitted to the appropriate
16 authorities approving any initial structural plans for
17 the project." Record at 16-17.

18 We first note that the geologists report makes no reference
19 to additional subsurface exploration. We read these findings
20 as carrying out the consultants recommendations to monitor
21 plans and specifications and foundation construction operations.

22 "We should review the project plans and specifications
23 to determine if they are in substantial conformance
24 with the conclusions and recommendations contained in
25 our report, and to determine if they are compatible
26 with site geotechnical conditions. Moreover, we
27 recommend that all construction operations relating to
28 foundation construction be observed by us to determine
29 if the work is proceeding in accordance with the
30 intent of the design concepts, specifications and/or
31 recommendations, and to allow for design changes in
32 the event that subsurface conditions differ
33 from those anticipated." Record at 55.

34 The city found that the motel can be safely constructed on
35 the site. The consultants' report is substantial evidence to
36 support this conclusion. Unanticipated conditions discovered
37 during the course of construction may require solutions to
38 construction requirements different than recommended by the
39 consultants. These detailed technical matters are not required

1 to be resolved by the governing body under the city's
2 ordinance. The city did not delegate decision making authority
3 that must be exercised in a quasi-judicial proceeding. See,
4 Meyer v. City of Portland, 67 Or App 274, 678 P2d 741 (1984).

5 The Seventh Assignment of Error is denied.

6 This decision is remanded for the reasons stated in our
7 discussion of the Second Assignment of Error.

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FOOTNOTES

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Exceptions to statewide planning goals on the grounds stated in ORS 197.732(1)(c) are based in part on whether

"(T)he proposed uses are compatible with other adjacent uses...."

"Non-farm dwellings may be located on land zoned for exclusive farm use upon a finding, among others, that the proposed dwelling

"(I)s compatible with farm uses described in ORS 215.203(2)...."

2.

LUBA's decision in Vincent v. Benton County, 5 Or LUBA 266 (1982) was appealed. The Court of Appeals affirmed on the grounds that the county amended its ordinance pending the appeal, and the parties agreed the issues addressed by LUBA would not arise on remand under the new ordinance. Benton County v. Vincent, 60 Or App 324, 653 P2d 279 (1982).