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

DAVID RATH and CHANDRA RADIANCE, )  
 )  
Petitioners, )  
 ) LUBA No. 92-016  
vs. )  
 ) FINAL OPINION  
HOOD RIVER COUNTY, ) AND ORDER  
 )  
Respondent. )

Appeal from Hood River County.

David Rath and Chandra Radiance, Hood River, filed the petition for review and argued on their own behalf.

Wilford K. Carey, Hood River, filed the response brief and argued on behalf of respondent.

KELLINGTON, Referee; HOLSTUN, Chief Referee; SHERTON, Referee, participated in the decision.

AFFIRMED 04/29/92

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

1 Opinion by Kellington.

2 **NATURE OF THE DECISION**

3 Petitioners appeal an order of the board of  
4 commissioners denying their application for a conditional  
5 use permit for a recreational park.

6 **FACTS**

7 The subject parcel is approximately 91 acres in size  
8 and is zoned Exclusive Farm Use and Flood Plain (EFU/FP).  
9 There are two structures on the parcel, a dwelling and a  
10 utility building. Petitioners' conditional use proposal  
11 includes the addition of 40 campsites, a service building  
12 enclosing bath and toilet facilities, an infirmary, a hot  
13 tub, food storage and preparation areas, as well as an  
14 eating hall for up to 100 people.<sup>1</sup>

15 In December 1985, the county approved a conditional use  
16 permit for a recreational vehicle park on the subject  
17 property at the request of a prior owner. However, the  
18 previous property owner failed to comply with certain  
19 conditions, and the approval apparently lapsed in December  
20 1989.

21 The planning commission voted to deny petitioners'  
22 application. Six weeks later, the planning commission  
23 adopted written findings supporting that decision.

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<sup>1</sup>Petitioners also applied for permission to construct a nonfarm dwelling on the subject parcel. The board of commissioners unanimously denied that part of the proposal. Petitioners do not challenge that aspect of the decision here, and we do not consider it further.

1 Petitioners appealed the planning commission's decision to  
2 the board of commissioners.

3 The board of commissioners conducted a public hearing  
4 on the record of the planning commission proceedings.  
5 Record 55-56. On November 4, 1991, the board of  
6 commissioners voted to deny the proposal based on the  
7 reasons for denial given in the planning commission decision  
8 and the staff report, noting that specific findings would be  
9 adopted at a later time.<sup>2</sup> At its next meeting, on November  
10 18, 1991, the board of commissioners agreed to reconsider  
11 its initial denial decision, at the request of one board  
12 member and petitioners. Therefore, no findings were adopted  
13 in support of the board of commissioners' earlier decision.  
14 On January 6, 1992, the board of commissioners conducted a  
15 public meeting to reconsider its earlier decision. No  
16 public testimony was allowed at this meeting. Record 20.  
17 The board of commissioners deliberated, and by a 3-2 vote  
18 again denied the application. In addition, the board of  
19 commissioners adopted findings prepared by county staff  
20 sometime between November 1991 and January 1992. This  
21 appeal followed.

22 **FIRST ASSIGNMENT OF ERROR**

23 In this assignment of error, petitioners contend the  
24 board of commissioners prejudged and were biased against

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<sup>2</sup>This decision was evidenced by a letter from the county administrator to petitioners. Record 33.

1 approving their application. In their petition for review,  
2 petitioners recite certain oral and written statements they  
3 contend were made during the proceedings below, as support  
4 for their claims of prejudgment and bias. Specifically,  
5 petitioners cite the following assertions in a petition  
6 circulated by opponents of the proposal, and relied on in  
7 the challenged decision,<sup>3</sup> stating the signators are:

8 "opposed to the following consequences which the  
9 campground will have on all of us who live in the  
10 vicinity:

11 "\* \* \* \* \*

12 "(2) The potential for vandalism due to the  
13 radically increased number of transients.

14 "\* \* \* \* \*

15 "(5) The potential for future undesirable group  
16 'commune'-type activities in the park.

17 "\* \* \* \* \*"4 Record 234.

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<sup>3</sup>The challenged decision incorporates the planning commission decision. The planning commission decision includes the following findings concerning the opponents' petition:

"The Public's intent is also manifested through Public comment which is an integral part of the planning process. The following property owners and residents were opposed to the requested uses \* \* \* \* and a petition, dated June 10, 1991, containing 40+ signatures representing 23 residents or property owners, the majority which are located within a proximity [sic] of the subject parcel \* \* \*. The majority of citizens within the area are opposed to the proposed use." Record 75.

<sup>4</sup>The opponents' petition also included other concerns regarding the proposal, such as:

"The potential for future re-zoning and additional infringement of the existing EFU resource of this area." Record 234.

1 Finally, petitioners recite other statements they attribute  
2 to a county commissioner and to the planning director,  
3 statements not reflected in the record.<sup>5</sup>

4 In order to establish actual bias or prejudice on the  
5 part of a local government decision maker, the burden is on  
6 petitioners to establish that the decision maker was biased  
7 or prejudged the application and did not reach its decision  
8 by applying applicable standards based on the evidence and  
9 argument presented. Oregon Worsted Company v. City of  
10 Portland, \_\_\_ Or LUBA \_\_\_\_ (LUBA No. 91-117, December 13,  
11 1991).

12 Subject to exceptions not relevant here, our review is  
13 limited to the record established below.  
14 ORS 197.835(7)(a)(C). Petitioners identify no evidence in  
15 the record to support their claim that the local decision  
16 makers made disparaging statements concerning them and their  
17 proposal. Additionally, petitioners' assertions that the  
18 alleged statements made by the planning director demonstrate  
19 bias, provide no basis for reversal or remand of the  
20 challenged decision because the planning director is not the  
21 local decision maker. See Torgeson v. City of Canby, 19 Or  
22 LUBA 511, 515-16 (1990).

23 Concerning the opponents' petition, the county's  
24 decision appears to rely on the petition only to the extent

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<sup>5</sup>Petitioners have not moved for an evidentiary hearing.

1 that it evidences opposition to the proposal. The decision  
2 does not state it agrees with the statements in the petition  
3 which petitioners contend reflect bias. Further, the  
4 decision does not evidence that the planning commission or  
5 the board of commissioners was biased against or prejudged  
6 the proposal in a manner sufficient to justify reversal or  
7 remand of the challenged decision. See 1000 Friends of  
8 Oregon v. Wasco County Court, 304 Or 76, 82-83, 742 P2d 39  
9 (1987) (One who alleges bias in quasi-judicial decision  
10 making must establish actual bias. The appearance of  
11 impropriety is an inadequate basis to disqualify a local  
12 decision maker.).<sup>6</sup> Further, whether a majority of property  
13 owners in the area are proponents or opponents of a  
14 particular proposal is not relevant to any standard  
15 governing approval of the proposal. We view the statement  
16 in the findings concerning the wishes of area neighbors as  
17 surplusage only. Such statements do not, of themselves,  
18 furnish a basis for reversal or remand of the challenged  
19 decision.

20 We conclude petitioners have not carried their burden  
21 of establishing that either the planning commission or the

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<sup>6</sup>Petitioners also suggest that a newspaper article in the record concerning an alternative style retreat center establishes the existence of bias or prejudgment of the application. Although we might agree with petitioners that the newspaper article appears to be wholly irrelevant to county approval of the proposal, we do not understand how its presence in the record establishes bias or prejudgment on the part of the county decision makers.

1 board of commissioners was biased against or prejudged their  
2 application.

3 The first assignment of error is denied.

4 **SECOND ASSIGNMENT OF ERROR**

5 Under this assignment of error, petitioners argue the  
6 decisions of both the planning commission and the board of  
7 commissioners are erroneous because those decisions were  
8 made before supporting findings were adopted. Petitioners  
9 contend this establishes that the challenged decision of the  
10 board of commissioners, adopting findings of the planning  
11 commission, is not the result of unbiased decision making.

12 The board of commissioners reviewed the planning  
13 commission's decision and adopted several new findings, in  
14 addition to incorporating the findings of the planning  
15 commission. Consequently, if the challenged board of  
16 commissioners' decision was properly adopted, that would  
17 cure any concern arising from the alleged improper manner in  
18 which the planning commission's decision was adopted. See  
19 Murphey v. City of Ashland, 18 Or LUBA 182, 189 n 7 (1990).  
20 We consider below whether the challenged board of  
21 commissioners' decision was properly adopted.

22 Petitioners are correct that the board of  
23 commissioners' earlier decision to deny the proposal was  
24 made before findings supporting that decision were adopted.  
25 However, we believe the earlier decision is properly viewed  
26 as a tentative decision which was not intended to become a

1 final decision until findings supporting the decision were  
2 adopted. Moreover, on the date set for the board of  
3 commissioners to adopt findings supporting that earlier  
4 denial decision, the record states:

5 "[A member of the board of commissioners] stated  
6 that he made the motion to reconsider. A letter  
7 was received from [petitioners] asking that a  
8 decision on findings be tabled to allow them time  
9 to submit a new application for a recreational  
10 park with 12 sites and no structures. A  
11 reasonable approach would be to reconsider on the  
12 basis that litigation is a possibility." Record  
13 12.

14 The record establishes that at this meeting, the board of  
15 commissioners agreed to reconsider the earlier denial  
16 decision. Thereafter, the board of commissioners held a  
17 public meeting to reconsider that decision. After these  
18 reconsideration deliberations, the board of commissioners  
19 again denied the proposal. At the same time, the board of  
20 commissioners adopted the challenged denial decision which  
21 includes supporting findings.

22 We conclude no error was committed by the board of  
23 commissioners in its adoption of the challenged decision.  
24 Further, we see nothing in the manner in which the  
25 challenged decision was adopted to suggest the decision was  
26 the result of actual bias or prejudice.

27 The second assignment of error is denied.

28 **FOURTH ASSIGNMENT OF ERROR**

29 Under this assignment of error, petitioners argue the  
30 county should have found the proposal complies with

1 ORS 215.296(1)(a) and (b), which provides that the proposal  
2 will not:

3 "(a) Force a significant change in accepted farm  
4 or forest practices on surrounding lands  
5 devoted to farm or forest use; or

6 "(b) Significantly increase the cost of accepted  
7 farm or forest practices on surrounding lands  
8 devoted to farm or forest use."

9 Petitioners argue:

10 "Neither the planning commission nor the county  
11 commissioners discussed these standards, evaluated  
12 the proposal against them, nor made any findings  
13 regarding them which would weigh against [the]  
14 applicants' proposal." Petition for Review 9.

15 The challenged decision includes the following findings  
16 concerning the proposal's compliance with these standards:

17 "The requirements of ORS 215.296(1)(a) and (b)  
18 were not addressed by the applicant and the  
19 applicant therefore did not meet the applicant's  
20 burden of proving the use would [satisfy ORS  
21 215.296(1)(a) and (b)]." Record 9.

22 At the outset we note the challenged decision is one to  
23 deny the proposal. It is well established that in order for  
24 this Board to overturn a local government's denial decision,  
25 petitioners must establish that they meet all applicable  
26 standards as a matter of law. Garre v. Clackamas County, 18  
27 Or LUBA 877, 881, aff'd 102 Or App 123 (1990); Joseph v.  
28 Lane County, 18 Or LUBA 41, 48 (1989). Here, petitioners  
29 have not established compliance with ORS 215.296(1)(a) and  
30 (b) as a matter of law. The county's findings that  
31 petitioners did not carry their burden to establish

1 compliance with ORS 215.296(1)(a) and (b), provide an  
2 adequate ground to deny the proposal. Further, we have  
3 reviewed the evidence in the record cited by the parties and  
4 conclude it does not show compliance with ORS 215.296(1)(a)  
5 and (b) as a matter of law.

6 The fourth assignment of error is denied.<sup>7</sup>

7 The county's decision is affirmed.

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<sup>7</sup>No purpose is served by reviewing either the adequacy of or evidentiary support for other findings purporting to establish other bases justifying a denial decision, where there is at least one adequate basis to support a local government's denial of proposed development. Here, because we sustain one of the county's bases for denial, we need not address petitioners' arguments in the third and fifth assignments of error challenging alternative bases for the county's denial decision. Garre v. Clackamas County, supra, 18 Or LUBA at 881-82.