

Northwest Real Estate Forum

## **Affordable Housing Win and in a Rare Decision, LUBA Could Award Attorney's Fees**

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In *Parkview Terrace Development LLC v. City of Grants Pass*, LUBA No. 2014-024 (July 23, 2014), LUBA considered the appeal of a City Council decision that denied the Petitioner site plan approval and a variance from street and block length standards to permit construction of 50 units of federally assisted housing for low-income individuals.

The subject property is zoned High Density Residential (R-3) and includes approximately 3.02 acres. The site is neighbored by residential townhouses, a warehouse, a mini-storage facility and a City park. In 2006, the City approved a planned unit development (PUD) for 88-units, but only 28 townhouses were constructed before the project was shelved during the recession. The Petitioner, a successor-in-interest to the original developer, wanted to build a 50-unit multi-family housing project in place of the second and third phases of the PUD. In contrast to the for sale townhouses, the new units would be rental units. Although the project was supported by staff and the Planning Commission, the City Council denied the application.

The applicant appealed because the City Council applied standards that were not “clear and objective” under the needed housing statute, ORS 197.307(4), and because the City Council erred in its findings related to variance criteria. LUBA agreed and reversed the decision. The following standards were not considered clear and objective:

- A standard that the proposal comply “with applicable elements of the Comprehensive Plan, including: Traffic Plan, Water Plan, Sewer Plan, Storm Drainage Plan, Bicycle Plan, and Park Plan,” where the City Council’s decision focused on the Traffic Plan which is an eight chapter long Master Transportation Plan. Many of the goals and objectives in the Traffic Plan are not clear and objective.
- A standard that requires “potential land use conflicts have been mitigated through specific conditions of development,” where the City Council concluded without explanation that the criterion was not satisfied. LUBA found that mitigation of “potential land use conflicts” is not clear and objective.

- A standard requiring that “adequate basic urban services are available, or can be made available by the applicant as part of a proposed development or are scheduled by the City Capital Improvement Plan.” The terms “adequate,” “basic urban services” and “available” are not explained in the Code, and without some explanation those terms are not clear and objective.
- A standard that the “provision of public facilities and services to the site will not cause service delivery shortages to existing development” was not clear and objective because the Code did not provide guidance regarding the scope of “public facilities and services” or how to go to determine if the proposal will cause service delivery shortages to existing development or what qualifies as a shortage.
- A standard regarding mitigation for special design consideration related to existing adjacent development was not clear and objective because the requirement to “mitigate” and the methods of suggested mitigation (e.g., landscaping, additional setbacks, and screening) were not clear and objective.
- A standard requiring that “traffic conflicts and hazards are minimized on-site and off-site” as provided in an Article of the Code was not clear and objective because the Council's conclusion that the criterion was not satisfied did not explain minimization to on-site and off-site conflicts and hazards, and the Codes reference to a 32-page Article of the Code was too vague.
- A standard that requires “there are adequate provisions for maintenance of open space and other common areas” was not clear and objective, where the City engaged in a subjective analysis of whether the open space and common areas were “adequate.”

In addition to the failure of the City's standards to meet the clear and objective requirement, the Council's denial of a variance application was either similarly tainted, or impacts of a grant of the variance could have been mitigated through conditions.

Not only did LUBA reverse the City's decision but required that the City approve the project in accordance with the Planning Commission's decision and associated conditions. Stay tuned! This is the rare case where LUBA may consider a grant of attorney fees because the City Council's findings were made in complete disregard to the Petitioner's complaints that the standards were not clear and objective.

**Tags:** "Clear and Objective", Attorneys Fees, Grants Pass City Council, High Density Residential, Jennifer Bragar