

1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

05/30/17 PM 1:53 LUBA

3
4 JAMES WHITTEMORE, LAURIE WHITTEMORE,
5 MARION HOUSE, LLC, GARY ROTH, CHRISTINE ROTH,
6 KATHERINE SCHROEDER, THOMAS GUSTAFSON,
7 CAP THREE, LLC, NANCY MARSHALL,
8 GREGORY MARSHALL, GAY JACOBSEN,
9 DAVID JACOBSEN, DAVID TOWNSEND
10 and SHARON USHER,
11 *Petitioners,*

12
13 and

14
15 STEVE HEUSER and MELISSA HEUSER,
16 *Intervenors-Petitioners,*

17
18 vs.

19
20 CITY OF GEARHART,
21 *Respondent.*

22
23 LUBA Nos. 2016-101/102

24
25 FINAL OPINION
26 AND ORDER

27
28 Appeal from City of Gearhart.

29
30 Dean N. Alterman, Portland, filed the petition for review and argued on
31 behalf of petitioners. With him on the brief was Folawn Alterman &
32 Richardson LLP.

33
34 Daniel H. Kearns, Portland, filed a joint petition for review and argued
35 on behalf of intervenors-petitioners. With him on the brief was Reeve Kearns
36 PC.

37
38 Peter O. Watts, Lake Oswego, filed the response brief and argued on

1 behalf of the respondent. With him on the brief was Jordan Ramis PC.

2
3 HOLSTUN, Board Chair; BASSHAM, Board Member, participated in
4 the decision.

5
6 RYAN, Board Member, did not participate in the decision.

7
8 AFFIRMED 05/30/2017

9
10 You are entitled to judicial review of this Order. Judicial review is
11 governed by the provisions of ORS 197.850.

NATURE OF THE DECISION

Petitioners appeal two ordinances that amend the City of Gearhart Zoning Ordinance to restrict vacation rental dwellings.

INTRODUCTION

Ordinance 901 amends the City of Gearhart Zoning Ordinance (GZO) to prohibit Vacation Rental Dwellings (VRDs) in several residential zones, but authorize approval of permits to continue existing VRDs under new standards to limit their impacts. Ordinance 901 adds the following definition to GZO 1.030, the definition section of the GZO:

“Vacation Rental Dwelling. Any structure, or any portion of any structure, which is occupied or offered or designed for transient occupancy for less than 30 days for dwelling, lodging or sleeping purposes; and includes houses, cabins, condominiums, apartment units or other dwelling units, or portions of any of these dwelling units, that are used for temporary human occupancy, provided such occupancy is for less than a 30-day period.”

Under the above definition it appears that *any* use of a residence for “transient occupancy for less than 30 days” qualifies a residence as a VRD. Thus a residence that is used for transient occupancy for one weekend is considered a VRD, as would be a residence that is rented for transient occupancy 365 days a year.

With limited exceptions in the city’s High Density Residential (R-3) Zone, Ordinance 901 provides that VRDs are not permitted in the city’s remaining residential zones: Low Density Residential (R-1), Medium Density

1 Residential (R-2), Residential Commercial Planned Development (RCPD) or in
2 the Rural Agricultural (RA) zoning district. Record 8. Ordinance 901
3 authorizes a limited, 60-day period for city property owners to seek a VRD
4 permit. *Id.* But Ordinance 901 provides that, although VRD permits may be
5 inherited, they are not transferrable when properties are sold. Record 12. And
6 Ordinance 901 imposes a number of new standards that must be satisfied for a
7 VRD permit. Record 8-12.

8 The other appealed Ordinance in this consolidated proceeding,
9 Ordinance 902, amends GZO language concerning permitted uses, conditional
10 uses and prohibited uses, along with other minor changes in GZO text.

11 **FIRST AND THIRD ASSIGNMENTS OF ERROR**

12 GZO 11.040 requires that when the city amends the GZO it must adopt
13 findings to establish that the GZO amendment is consistent with Gearhart
14 Comprehensive Plan (GCP) policies.¹ GCP Residential Development Policies
15 #1 and #4 (Policies #1 and #4) provide:

16 “1. The City will preserve and maintain the predominately
17 *residential character* of Gearhart through appropriate
18 zoning and land use development regulations.” (Emphasis
19 added.)

¹ GZO 11.040(1) provides:

“Before an amendment to the text of the Zoning Ordinance is approved, findings will be made that it is consistent with the policies of the Comprehensive Plan and there is a public need for the proposed amendment.”

1 “4. The City will recognize the importance of the City’s
2 *residential neighborhoods* and the need to protect them
3 from the negative impacts of the transient rental of property,
4 and to discourage increased levels of traffic and similar
5 disruptions.” (Emphasis added.)

6 In their first and third assignments of error, petitioners challenge the adequacy
7 of, and the evidentiary support for, the city council’s findings concerning
8 Policies #1 and #4. We address petitioners’ challenges to the Policy #1 and
9 Policy #4 findings together.

10 The city council adopted the following findings, which were adopted
11 earlier by the planning commission, to demonstrate that Ordinance 901 is
12 consistent with Policies #1 and #4:

13 “* * * The [city council] finds Gearhart is zoned predominantly
14 low density residential. The land use regulations restrict
15 residential zones to residential uses, minimum lot sizes, minimum
16 lot coverage, minimum setbacks, minimum height limits, and
17 minimum off-street parking requirements. However, the Zoning
18 Code does not define vacation rentals or regulate their use. For
19 many decades homes in Gearhart have been allowed to be rented
20 with no restrictions, other than issues that may arise as a nuisance
21 in the form of a complaint to the city.

22 “Because of the noticeable increase in the number of vacation
23 rentals due to marketing strategies and internet accessibility, the
24 [city council] finds there is a need to specifically define and
25 regulate vacation rentals, in the form of new zoning regulations.”
26 Supplemental Record 25-26; findings addressing Policy #1).

27 “* * * The [city council] finds the proposed rules will better
28 protect residential neighborhoods from the negative impacts of the
29 transient rental of property than do current rules. The [city
30 council] finds the level of vacation rental activity has recently

1 created disruptions not previously experienced in the community.”
2 Supplemental Record 26; findings addressing Policy #4.

3 **A. Failure to Define What a Residential Neighborhood is, Within**
4 **the Meaning of Policy 4**

5 Petitioners contend that the city council must first explain what it thinks
6 a “residential neighborhood” is before it can adopt findings to explain why it
7 believes Ordinance 901 is consistent with Policy #4. Petitioners contend
8 Gearhart has always been a beach and vacation town. We understand
9 petitioners to argue that in many parts of the City of Gearhart that are now
10 subject to Ordinance 901 the majority of the homes are owned by persons
11 whose legal domicile is someplace other than the City of Gearhart. Petitioners
12 reason that where that is the case neighborhoods are more accurately viewed as
13 “non-residential” rather than “residential.” Since Policy #4 calls for protecting
14 “residential neighborhoods,” not “non-residential neighborhoods,” petitioners
15 contend Ordinance 901 should be remanded for the city to adopt “findings that
16 distinguish between residential and non-residential neighborhoods” and then to
17 explain, if it can, how it is consistent with Policy #4 to apply Ordinance 901 to
18 non-residential neighborhoods. Petition for Review 15-16.

19 The city responds, and we agree, that petitioners adopt a narrow view of
20 what qualifies as a “residential neighborhood,” a narrow view that the city
21 council clearly does not share. The Policy #1 and Policy #4 findings, read
22 together, adopt the view that the areas of the city that are zoned and developed
23 residentially are “residential neighborhoods,” within the meaning of Policy #4.

1 The findings explain that houses in the city’s residential neighborhoods have
2 historically been used for (1) residential use, which we understand to include
3 year-round domiciles, long-term rentals, and as second homes, and (2) transient
4 occupancy vacation rentals (what Ordinance 901 calls vacation rental dwellings
5 or VRDs), with no restrictions on VRD use so long as such use did not become
6 a public nuisance.² The findings then explain that more recently the number of
7 residences that are used partially or exclusively as vacation rentals has
8 increased dramatically as a result of the ease and efficiency of putting houses to
9 such use with internet-based marketing. It is this increase in vacation rental
10 use that the city cites as its motivation for Ordinance 901.

11 We reject petitioners’ argument that Ordinance 901 should be remanded
12 for the city to adopt a better definition of what it thinks a “residential
13 neighborhood” is.

14 **B. Goal 8 (Recreational Needs)**

15 Included in their arguments under the first assignment of error is a brief
16 argument that, for the city to adopt Ordinance 901, the city must identify
17 “specific provisions in [its] comprehensive plan’ that provide the basis for
18 applying Ordinance 901 to non-residential neighborhoods,” or adopt findings

² VRD use in Gearhart apparently ranges from occasional VRD use to exclusive VRD use.

1 addressing Goal 8.³ Petition for Review 15 (*citing 1000 Friends of Oregon v.*
2 *Marion County*, 27 Or LUBA 303, 305-06 (1994)). In its brief, the city either
3 does not recognize the argument or does not respond to it.

4 Before the city had an obligation to (1) adopt findings addressing Goal 8
5 or (2) identify “specific policies or other provisions” of the city’s
6 acknowledged GCP that might make statewide planning goal findings
7 unnecessary under ORS 197.835(7),⁴ petitioners must at least make some
8 showing that Goal 8 might have some bearing on or relevance to Ordinance
9 901. Petitioners apparently assume the GCP may rely in part on VRDs to
10 comply with Goal 8, but they make no attempt to explain why they make that

³ Petitioners also cite Goal 2 (Land Use Planning), presumably for the Goal 2 requirement that comprehensive plans and land use regulations have an adequate factual base.

⁴ ORS 197.835(7) provides:

“[LUBA] shall reverse or remand an amendment to a land use regulation or the adoption of a new land use regulation if:

“(a) The regulation is not in compliance with the comprehensive plan; or

“(b) The comprehensive plan does not contain specific policies or other provisions which provide the basis for the regulation, and the regulation is not in compliance with the statewide planning goals.”

1 assumption. There is nothing in the Goal 8 section of the GCP that lends any
2 support to such an assumption.⁵

3 Petitioners' Goal 8 and Goal 2 argument provides no basis for remand.

⁵ Most of Statewide Planning Goal 8 (Recreational Needs) is devoted to destination resorts, although Goal 8 does call for "siting of necessary recreational facilities." The Goal 8 section of the GCP addresses recreational facilities, and the Goal 8 policies include no hint that the city considers VRDs as "recreation facilities" that it is relying on to comply with Goal 8:

- "1. The City will encourage indoor and outdoor recreation facilities, both private and public, attractive to visitors and residents.
- "2. The City will work to ensure that the Gearhart Golf Course, the second oldest in Oregon, remain a viable recreation resource.
- "3. In order to provide parks that are adequate for future demand, the City will explore and use various means of acquiring and developing park land including donation of land or money as part of new development and park bond issues.
- "4. The City will create a master parks and trails plan so that development and maintenance may proceed in an orderly way, as funds become available. Consideration should be given to a central city park.
- "5. The City encourages the involvement of individuals and groups in the donation of land, labor, funds or equipment for the improvement of recreation facilities.
- "6. The City will cooperate with the Oregon Department of Transportation by managing Gearhart's portion of the Oregon Coast Trail so that it retains its attractiveness for both residents and visitors." GCP 7.

1 **C. Failure to Define What Residential Character is, Within the**
2 **Meaning of Policy #1**

3 Policy #1 was set out earlier and calls for the city to “preserve and
4 maintain the predominately residential character of Gearhart through
5 appropriate zoning and land use development regulations.” Petitioners make
6 two arguments. First, petitioners argue the city acknowledges that renting
7 houses to vacationers has a long history in Gearhart residential neighborhoods,
8 and the city’s findings do not explain how Ordinance 901 protects that part of
9 Gearhart’s “residential character.” Alternatively, petitioners repeat their
10 contention that many of Gearhart’s neighborhoods are non-residential and that
11 it is therefore inconsistent with Policy #1 to apply Ordinance 901 to those
12 neighborhoods to protect their “residential character.”

13 Petitioners’ efforts to find an inconsistency in the city’s findings
14 regarding Policy #1 do not succeed. As with Policy #4, the city views
15 residential uses in the city’s residential zones as part of the city’s residential
16 neighborhoods and residential character. Ordinance 901 was adopted to
17 protect those same residential neighborhoods and that residential character
18 from one historic aspect of the city’s residential neighborhoods and residential
19 character (VRDs) that was unregulated in the past but in the city council’s view
20 is expanding too quickly, to the detriment of residential uses such as second
21 homes, long-term rentals and year-round domiciles. Petitioners’ unstated thesis
22 appears to be that if VRDs are considered a type of residential use, for purposes
23 of protecting “residential character” and “residential neighborhoods” under

1 Policies #1 and #4, they must be treated the same as all other types of
2 residential uses. The city clearly does not agree with that thesis and we see no
3 automatic error in the city deciding to treat VRD use of residential structures
4 differently from second homes, long-term rentals and domiciles. To the extent
5 petitioners challenge the city's reasoning for differentiating VRD use from
6 other uses of residential structures, petitioners fail to establish reversible error
7 in that reasoning.

8 The first and third assignments of error are denied.

9 **SECOND ASSIGNMENT OF ERROR**

10 Residential Development Policy 3 (Policy #3) provides:

11 "The City will maintain the present residential density levels in
12 established neighborhoods."

13 The city adopted no findings addressing Policy #3. Petitioners appear to
14 advance three separate arguments under the second assignment of error.

15 Petitioners first argue that if VRDs are considered a type of residence,
16 then replacing residences that are only occupied part time with residences that
17 are occupied by full-time residents will increase residential density, in violation
18 of Policy #3. Petitioners next argue that even if VRDs are not considered a
19 type of residence, then replacing them with full-time residences will increase
20 residential density in violation of Policy #3. Finally, petitioners argue that if
21 the city views VDRs as a type of residence, then they must be treated the same
22 as other types of residences under Policy #1.

1 Taking the final argument first, it is clear that the city does not view
2 VRD use as a use of residential structures that is equally protected under GCP
3 Policies. And as we have already explained, we are unpersuaded that the city
4 erred in making that distinction. Petitioners' first two arguments effectively
5 assume the number of days a residence is occupied has something to do with
6 "residential density levels," within the meaning of Policy #3. The city
7 responds that "residential density" has to do with the number of housing units
8 per acre, citing GZO 3.110 and GZO 3.210.⁶ The city contends Ordinance 901
9 adopts no change in the permissible number of units per acre, which makes
10 Policy #3 irrelevant and explains the city's lack of findings addressing Policy
11 #3. We agree with the city.

12 The third assignment of error is denied.

13 **FOURTH ASSIGNMENT OF ERROR**

14 In this assignment of error petitioners challenge the city council's
15 findings that were adopted to address GCP Policies that were adopted to

⁶ GZO 3.110 provides in part "[t]he purpose of the Low Density Residential Zone, R-1, is to provide for low density single-family development with a maximum density of four dwelling units per acre." GZO 3.210 similarly provides in part:

"The purpose of the R-2 Medium Density Residential Zone is to provide housing consisting of a mixture of single family, multiple family house. The maximum allowable density shall be six (6) dwelling units per acre."

1 comply with Statewide Planning Goal 11 (Public Facilities and Services).

2 Those findings are set out below:

3 “The Gearhart Public Facilities and Services Goal policies assure
4 compliance with applicable local, state, and federal environmental
5 noise, air, water, and solid waste standards.

6 “* * * The [city council] finds the code amendments will better
7 protect public health and guard against degradation of the
8 contiguous surface and groundwater resources by requiring septic
9 system inspections and by eliminating transient rentals in homes
10 with septic cesspools. *The Commission finds the regulations will*
11 *likely reduce sanitary sewer usage during the peak summer season*
12 *which will help to maintain the local water quality.* Supplemental
13 Record 30 (emphasis added).

14 Petitioners first argue the italicized finding is erroneous, because the city
15 has no sanitary sewer system. Petitioners also argue that assuming the city
16 council meant to refer to septic systems rather than a sewer system, the city’s
17 stated goal of encouraging domiciles and long-term rentals over VRDs will
18 mean those houses will be occupied more days and therefore increase the
19 problem with septic system loading rather than reducing septic system loading.

20 The city contends the reference to sewer systems is a scrivener’s error
21 that misled no one. The city also responds that the challenged finding is not
22 addressing concerns with septic system loading generally, but rather with the
23 spike in cesspool and septic system loading in the summer months when VDR
24 occupancy is the highest. We agree that the city’s scrivener’s error in referring
25 to a sewer system rather than septic systems was harmless and provides no
26 basis for remand. *See Walker v. City of Sandy*, 62 Or LUBA 358, 367 (2010)

1 (scrivener's error is not a basis for remand where the actual intent is obvious).
2 We also agree with the city that petitioners misstate the actual problem that the
3 city council's finding identified and found the VRD regulations would mitigate
4 (overloading of individual sewage treatment systems in the summer) and
5 therefore petitioners effectively challenge a finding the city did not adopt.

6 The fourth assignment of error is denied.

7 **FIFTH ASSIGNMENT OF ERROR**

8 While the first four assignments of error are directed at Ordinance 901,
9 the fifth assignment of error is directed at Ordinance 902. According to
10 petitioners, "Ordinance 902 is an odd duck" because the city council adopted
11 the ordinance under the mistaken belief that it adopted only "non-
12 discretionary" amendments and "non-substantive" amendments. Petitioners
13 contend the city understood the term "non-discretionary" to mean the city
14 believed it was compelled by law to adopt the amendments. Petitioners also
15 contend that several of the amendments were substantive.

16 **A. Non-Discretionary Amendments**

17 Turning first to the "non-discretionary" issue, petitioners cite to several
18 pages in the record where the city council referred to the amendments as "non-
19 discretionary." Record 1, 5, 14, 91, 118, 155, 175, 189, 191, 476, 1157, and
20 1248.⁷ It is not clear to us why petitioners believe the city used the term non-

⁷ Record 14, 91 and 118 are the same document page. Record 175, 191 and 476 are the same document page.

1 discretionary” as a short hand for belief that the city “had no choice” but to
2 adopt Ordinance 902. Petition for Review 24. Apparently at least the
3 amendment to clarify what the city meant by “[a] permitted use,” “[a]
4 conditional use,” and “[a] prohibited use” were adopted to respond to a
5 municipal court decision regarding a residence that was being leased as a
6 wedding venue. The municipal court judge interpreted the GZO, as worded
7 before the disputed amendments, to not support the city’s position in an
8 enforcement proceeding that leasing a residence as a wedding venue is a
9 prohibited commercial use in the R-1 zone. Ordinance 902 was adopted in part
10 to make it clear that leasing a residence in the R-1 zone for weddings is a
11 prohibited use.

12 We are not sure why the city refers to the amendments to respond to the
13 municipal court decision as “non-discretionary,” but it is quite clear that the
14 city did not believe the municipal court ordered it to adopt those amendments.
15 Rather the city believed the disputed clarifications were necessary for the city
16 to successfully take the position in municipal court that renting residences in
17 the R-1 zone for weddings and other similar events is a prohibited use.
18 Because the city was not laboring under the false belief petitioners alleges it
19 was, and because petitioners offer no legal theory for why the city council
20 could not amend the GZO to prohibit a use that the city already believed the
21 GZO prohibited, petitioners’ arguments about the “non-discretionary”
22 references provide no basis for reversal or remand.

1 **B. Non-Substantive Amendment**

2 Petitioners cite several pages in the record where the city refers to some
3 of the amendments as “non-substantive.” Record 175, 191, 476. Petitioners
4 contend that a number of the amendments are substantive.⁸ We agree with
5 petitioners that the amendments they identify as substantive are substantive
6 rather than non-substantive. But petitioners identify nothing in our scope of
7 review at ORS 197.835 that authorizes LUBA to remand a decision that
8 mischaracterizes a substantive amendment as non-substantive. It is true that
9 the findings the city adopted to support Ordinance state: “No state or
10 comprehensive plan goals, LCDC rules or state land use statutes apply to these
11 code amendments because there will be no change to the substance of the plan
12 or zoning ordinance.” Supplemental Record 8 (underscoring in original.) But
13 any remandable error the city council may have made in adopting that finding
14 is not the mischaracterization of some of the amendments as non-substantive.
15 Rather the potential remandable error the city council may have committed by
16 mischaracterizing some of the amendments as non-substantive is relying on
17 that mischaracterization in failing to address applicable state or local legal

⁸ Petitioners cite (1) the amendment that makes it clear that leasing residences in the R-1 zone for weddings and other events is a prohibited use, (2) an amendment that may have the effect of prohibiting city sales, exchanges or transfer of rights-of-way if they do not provide beach, lake or shoreland access, and (3) an amendment to city parking requirements to distinguish between existing cafes and new cafes.

1 standards. However, petitioners identify no state or local legal standards that
2 they believe the city council failed to apply in adopting Ordinance 902 based
3 on the city council’s mistaken belief that all of the amendments are non-
4 substantive. Petitioners therefore identify no basis for remand.

5 The fifth assignment of error is denied.

6 **SIXTH ASSIGNMENT OF ERROR**

7 **A. Conflicting Parking Requirements**

8 The sixth assignment of error concerns Ordinance 901 and challenges
9 amendments to the city’s parking requirements. GCP Transportation Policy 6
10 (Policy #6) provides:

11 “Adequate parking for residential and commercial uses will be
12 maintained through enforcement of zoning ordinance parking
13 requirements.”

14 GCP Transportation Policy 4 (Policy #4) provides in part:

15 “The City, to ensure an orderly traffic flow, and to promote safety
16 on the Oregon Coast Highway, will require that:

17 “* * * * *

18 “D. Shared driveways and parking lots be encouraged.”

19 Petitioners argue that consistent with Policies #4 and #6, residential uses have
20 been required by GZO 6.130 to provide two parking spaces per dwelling.

21 Property owners who wish to seek approval of a VRD under Ordinance
22 901 must now comply with new, and much more demanding, parking
23 requirements. Ordinance 901 adopts GZO 7.030(1)(a)(2), which requires that
24 VRDs provide one parking space per bedroom. Petitioners first contend the

1 new VDR parking requirements conflict with the two spaces per dwelling
2 required by GZO 6.130.

3 The city responds that it is clear reading GZO 6.130 together with GZO
4 7.030(1)(a)(2) that the GZO 6.130 two parking spaces per dwelling
5 requirement applies to residences generally. But it is clear that for VRDs the
6 more stringent requirements in GZO 7.030(1)(a)(2) apply instead. We agree
7 with the city that any arguable conflict between GZO 6.130 and GZO
8 7.030(1)(a)(2) is easily resolved in the way the city describes.

9 With regard to Policy #4, which encourages “[s]hared driveways and
10 parking lots,” the city responds that nothing in Ordinance 901 discourages
11 shared driveways or parking lots. The city is correct.

12 **B. New Parking Requirements Conflict with Residential**
13 **Appearance, Residential Character, Residential Community,**
14 **and Residential Neighborhoods**

15 Petitioners next argue the one parking space per bedroom requirement
16 conflicts the requirement stated elsewhere in Ordinance 901 that VRDs
17 maintain a “residential appearance” and other residential characteristics.

18 Ordinance 901 adopted GZO 7.030(3), which imposes the following
19 requirement on VRDs:

20 “The property occupied by a vacation rental must maintain a
21 *residential appearance* whereby at least 50% of each surrounding
22 yard on the parcel shall be landscaped with trees, shrubs, flowers
23 or grass so that parking will not dominate any yard.” (Emphasis
24 added.)

1 Petitioners cite GCP Residential Policies, two of which were cited and
2 discussed under the first and third assignments of error. Those Policies are set
3 out below:

4 “1. The City will preserve and maintain the predominately
5 *residential character* of Gearhart through appropriate
6 zoning and land use development regulations.

7 “2. The City will implement the City’s land use development
8 regulations through the continued development of Gearhart
9 as a *residential community*.

10 “* * * * *

11 “4. The City will recognize the importance of the City’s
12 *residential neighborhoods* and the need to protect them
13 from the negative impacts of the transient rental of property,
14 and to discourage increased levels of traffic and similar
15 disruptions.” (Emphasis added.)

16 Petitioners argue the additional parking required by Ordinance 901 for VRDs
17 will “give Gearhart a decidedly massive parking lot appearance” that is
18 inconsistent with the above requirements to protect “residential appearance,”
19 “character,” “community” and “neighborhoods.”

20 As we have already explained the city council’s findings concerning
21 Policy #1 explain that Ordinance 901 was adopted because the city council
22 believes the “residential character” of the City of Gearhart is threatened by the
23 negative effects of the recent proliferation of VRDs. The increased off-street
24 parking requirements for VRDs were adopted to address one of those negative
25 effects, as the findings addressing Policy #2 and Policy #4 explain:

1 “* * * The proposed land use regulations include specific
2 operational and safety restrictions to establish communication
3 between property owners, to control traffic, noise and parking, and
4 to assure rentals are inspected for fire, safety and health
5 protection. * * * The [city council] finds the regulations are
6 needed to ensure Gearhart retains its residential community
7 character.”

8 “* * * * *

9 “* * * The [city council] finds the proposed rules will better
10 protect residential neighborhoods from the negative impacts of the
11 transient rental of property than do current rules. * * *.”
12 Supplemental Record 26.

13 The city argues the above findings are adequate to explain why the city
14 council believed Ordinance 901 advanced the cited GZO 7.030(3) and GCP
15 Policies to protect “protect residential appearance,” “character,” “community”
16 and “neighborhoods.” The city further contends that there is evidence in the
17 record that the currently largely unregulated parking at VRDs was making
18 some residential neighborhoods look like a parking lot. Record 151, 1667,
19 1069.

20 We conclude the city council’s findings are adequate to establish that the
21 new parking regulations for VRDs in Ordinance 901 are not inconsistent with
22 GZO 7.030(3) and Policies #1, #2 and #4.

23 The sixth assignment of error is denied.

24 **SEVENTH ASSIGNMENT OF ERROR**

25 Under GZO 11.040(1), before amending the GZO the city must find
26 “there is a public need for the proposed amendment.” See n 1. Petitioners

1 contend the city council’s failure to “articulate a recognizable ‘public need’
2 based on facts and evidence of vacation rentals” requires remand. Petition for
3 Review 36. Petitioners repeat the argument that they made under other
4 assignments of error that VRDs are a type of residential use, just like long-term
5 rentals and year-round domiciles. We understand petitioners to contend that
6 because VRDs were treated the same as other kinds of residences in the past,
7 presumably consistently with Policies #1, #2, and #4, the city must identify a
8 public need to now treat them differently.

9 It is not correct to say the city council did not adopt findings addressing
10 public need. The city council adopted the following finding to address GZO
11 11.040(1) requirement that the city find there is a public need for Ordinance
12 901:

13 “For the reasons set forth in Section C above, the [city council]
14 has determined there is a public need to impose specific
15 regulations and limitations on the increasing number of transient
16 lodging uses that are negatively changing the residential character
17 of the City.” Supplemental Record 31.

18 The findings we have already discussed are located in Section C. As the
19 city points out there is testimony in the record strongly supporting and strongly
20 opposing Ordinance 901. Based on that testimony and other evidence in the
21 record reasonable persons could disagree about whether the problems posed by
22 VRDs in the City of Gearhart warrant the specific types of restrictions imposed
23 by Ordinance 901. But there is no mystery about why the city council thought
24 there is a public need for the proposed amendments. The city council found the

1 proliferation of VRDs, with their associated impacts on neighboring non-VRD
2 residences, created the public need for Ordinance 901. The city's findings
3 adequately articulate that public need and those public need findings are
4 supported by substantial evidence in the record.

5 Finally, petitioners contend that any public need to limit VRDs is
6 undercut by the city council's decision to allow VRDs to continue if a permit is
7 sought. That the city council allowed the current owners of VRDs to apply for
8 permits to continue their VRDs under more stringent standards to address their
9 negative impacts, and imposed limitations on the transfer of such permits, in no
10 way undercuts the city council's identified public need for Ordinance 901.

11 The seventh assignment of error is denied.

12 The city's decision is affirmed.

Certificate of Mailing

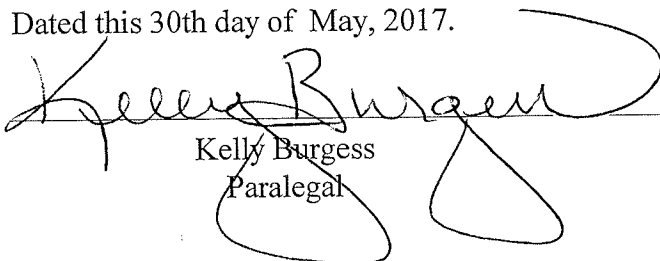
I hereby certify that I served the foregoing Final Opinion and Order for LUBA No. 2016-101/102 on May 30, 2017, by mailing to said parties or their attorney a true copy thereof contained in a sealed envelope with postage prepaid addressed to said parties or their attorney as follows:

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Dated this 30th day of May, 2017.


Kelly Burgess
Paralegal

Kristi Seyfried
Executive Support Specialist

