

IN THE COURT OF APPEALS OF THE
STATE OF OREGON

SKY LAKES MEDICAL CENTER, INC.,
Petitioner,

v.

CITY OF KLAMATH FALLS;
State of Oregon Department of Administrative Services;
Department of Human Services;
and Klamath Falls Holdings, LLC,
Respondents.

Land Use Board of Appeals
2019019; A171287

Argued and submitted August 9, 2019.

Josh Newton argued the cause for petitioner. Also on the brief was Karnopp Petersen LLP.

Garrett K. West argued the cause for respondents City of Klamath Falls and Klamath Falls Holdings, LLC. Also on the joint brief were Jarvis, Dreyer, Glatte & Larsen, LLP, and Michael Swanson.

Ellen F. Rosenblum, Attorney General, Benjamin Gutman, Solicitor General, and Denise G. Fjordbeck, Assistant Attorney General, filed the brief for respondents State of Oregon Department of Administrative Services and Department of Human Services.

Before Lagesen, Presiding Judge, and Powers, Judge, and Kistler, Senior Judge.

LAGESEN, P. J.

Affirmed.

LAGESEN, P. J.

Sky Lakes Medical Center, Inc. (petitioner), has petitioned for judicial review of a final order of the Land Use Board of Appeals (LUBA). ORS 197.850. In that order, LUBA affirmed in part and remanded in part decisions by the Klamath Falls City Council that approved respondent Klamath Falls Holdings' applications for a conditional use permit and site design review for a three-story office building to be constructed in a Mixed Use (MU) zone in the city's downtown central business district. On review to determine whether LUBA's order is "unlawful in substance," ORS 197.850(9)(a), we affirm.

The plan for the building is that respondent Department of Human Services (DHS) will lease the building in its entirety for the purpose of operating a "DHS Multi-Service Center," which will permit DHS to consolidate its Klamath Falls operations at a single location. DHS plans to use the first floor of the building to provide a variety of direct services to the public, and DHS also will sublease some portion of the first floor to another service provider, Klamath Basin Behavioral Health. DHS intends to use the other two floors as office space for DHS employees. Approximately 265 DHS employees will work in the building. The issue posed by petitioner is whether LUBA erred in concluding that the city plausibly construed certain provisions of its own Community Development Ordinance (CDO) when it determined that the "principal use"¹ of the building is "government office,"² and not "social service" (a term the CDO does not define). That issue matters to the parties because, under the CDO, only one "principal use" is permitted per lot. If the building's "principal use" is "social service," as petitioner contends, that use would not be an allowed "principal use" in the city's MU zone. In petitioner's view, the CDO, correctly interpreted, required the city to conclude that "social service" is the "principal use" of the building, and LUBA erred in accepting the city's contrary interpretation.

¹ CDO 10.010 defines "principal use" as "[a] use permitted in a zone as an outright or conditional use and is the predominant use of any lot or parcel."

² CDO 10.010 defines "government office" as "[a]n office where government employees work. Typical uses include, but are not limited to[,] city, county, state, federal, school district, and transit district offices."

Under ORS 197.829(1), LUBA is required to accept a local government's interpretation of its own land use ordinance if that interpretation "plausibly accounts for the text and context" of the ordinance. *Siporen v. City of Medford*, 349 Or 247, 262, 243 P3d 776 (2010). Here, LUBA did what it was supposed to do under ORS 197.829(1), as interpreted by *Siporen*. The city supplied a considered analysis of how its interpretation accounts for the text and context of the pertinent provisions of CDO 10.010 and CDO 12.000.³ In particular, the city observed that the plain terms of the definition of "government office" in CDO 10.010—"[a]n office where government employees work"—capture the proposed predominant use of the building: an office building where DHS employees will work. Then, analyzing the context of the term "government office," the city explained how that context demonstrated that the fact that DHS operations included a social services "component" did not transform its predominant use into "social services" for purposes of the code. The city observed that other public uses identified in CDO 12.000, such as churches, schools, parks and recreation facilities, hospitals, and fraternal lodges, often involve social service components. Further, the city pointed out that there is no indication in the CDO that the existence of a social service component would transform a use that otherwise plainly qualified as another type of public use into a social service use.

The city also noted that the "social service" use category was a relatively recent addition to the CDO. Examining its history, the city concluded that it lent further support to the conclusion that the building's use was "government office," notwithstanding its social service component:

"The City Council finds no evidence the adoption of the social services category was intended to supplant all social services use being performed in government offices throughout the City. Rather, the social services subcategory

³ CDO 12.000 sets forth uses permitted by zone. It lists the following as public uses: cemetery, church, crematory, government office, hospital, fraternal lodge, mortuary, parks and recreation facilities, public utilities, school, and social service. It indicates further that all of those uses are allowed either outright or conditionally in the MU zone, with the exception of cemetery, crematory, mortuary, and social service.

was added to the Code in response to the Gospel Mission homeless shelter to capture social services that were not already categorized in the CDO, such as homeless shelters, warming centers, sobriety centers, and soup kitchens.”

Finally, allowing for the possibility that a government agency’s use of a site could in some instances qualify as “social service” instead of government office if the use was wholly devoted to the provision of social services, the city observed that the unrebutted evidence demonstrated “that approximately two-thirds of the building would be devoted to offices, with one-third or less open to [the] public and providing a social service component.” In such a case, the city concluded, a social services component does not remove a use that otherwise falls within the definition of “government office” from that category of use.

On its face, the city’s interpretation of the definitions of “principal use” and “government office” in CDO 10.010 plausibly accounts for their text and context. Although petitioner vigorously argues for a different reading that would place more weight on other provisions of the CDO than did the city, those arguments do not persuade us that the city’s interpretation is an implausible one. In other words, nothing that petitioner points to in the CDO demonstrates that the city was compelled to interpret its ordinance in the manner advocated by petitioner, or that the approach adopted by the city was unreasonable in view of the text and context of the CDO. Consequently, LUBA correctly determined that it was required to accept the city’s interpretation. *Siporen*, 349 Or at 266. Accordingly, we must affirm.

Affirmed.