

1 REYNOLDS, Chief Referee.

2 INTRODUCTION

3 Petitioner appeals the City of Portland's grant of a
4 conditional use permit to the Multnomah Athletic Club (MAC) for
5 the construction of a parking garage and supplemental athletic
6 facility across Salmon Street from MAC's present facility.

7 Petitioner seeks reversal of the decision and remand of the
8 decision to the Portland City Council.

9 Petitioner sets forth six separate assignments of error.

10 Petitioner's first assignment of error is that the city
11 standards for granting a conditional use permit are inadequate
12 under ORS 227.173(1). Petitioner's third assignment of error
13 is that the city's decision violates the statewide planning
14 goals. The remainder of petitioner's assignments of error
15 concern the sufficiency or adequacy of the findings.

16 Petitioner argues the findings are insufficient under ORS
17 227.173(2); are insufficient as to consistency of the project
18 with the city's conditional use requirements; are insufficient
19 as to addressing all contested issues of fact; and are
20 insufficient as to supporting the conditions which were
21 attached to the city's approval of the conditional use permit.

22 STATEMENT OF FACTS

23 MAC applied to the City of Portland for approval of a
24 parking structure and athletic facility to serve its members.
25 The parking structure would hold 566 cars and be on three
26 levels. The fourth level would consist of 50,000 square feet

1 of additional athletic facilities, primarily tennis courts.
2 The structure would be located across Salmon Street from the
3 MAC facility and linked to the facility by a skybridge over
4 Salmon Street. Access to the parking structure would be via
5 19th and 20th Streets, designated as local service streets in
6 the City of Portland.

7 The neighborhood surrounding the present MAC facility and
8 proposed facility contains a mixture of uses, including the
9 Zion Lutheran Church, a designated historic structure, Lincoln
10 High School and its athletic fields, new high-rise apartments,
11 older residential homes and multiple family structures, Civic
12 Stadium, several commercial and industrial uses and MAC's five
13 existing surface parking lots.

14 The site for the proposed parking structure includes one
15 and one-half blocks bounded by SW 18th Avenue, SW Salmon
16 Street, SE 20th Avenue and SW Main Street. The site was, at
17 the time approval was given by the city, zoned AO (High Density
18 Apartments). Subsequent to the city's decision in this case,
19 the city's plan was acknowledged by LCDC as in compliance with
20 the statewide planning goals. The comprehensive plan
21 acknowledged by LCDC designates the proposed site RH (High
22 Density Residential) and lists the proposed parking structure
23 as a conditional use within that land use designation.¹

24 During the city's hearings before the hearings officer,
25 numerous residents of and associated with the Goose Hollow
26 Neighborhood League testified in opposition to the proposed

1 parking structure. Concerns expressed by these residents
2 centered upon traffic, parking, noise and housing. Many
3 residents expressed their concern that the parking structure
4 would increase traffic to the area because it would make the
5 area more accessible to automobiles by increasing the number of
6 on-street parking spaces. Opinions were expressed that
7 approval of the parking garage would not help alleviate any
8 parking problems in the area because more cars would simply
9 come to the area and fill the vacant parking spaces.
10 Additional traffic would increase noise as would the relocation
11 of the traffic due to the centralized parking structure.
12 Finally, concern was expressed as to the displacement of one
13 and one-half blocks of land suitable for residential dwellings
14 in an area of the city ideally suited to high density
15 residential development.

16 The hearings officer, in an extensive report, addressed the
17 city's conditional use criteria and the statewide planning
18 goals. The hearings officer concluded that the parking
19 structure would be of benefit to the neighborhood because it
20 would concentrate parking in one centralized location which
21 happened also to be across from a major generator of traffic.
22 The hearings officer found that the design of the structure was
23 such that it would be compatible with surrounding land uses and
24 in particular with the Zion Lutheran Church located
25 approximately 50 feet from the site of the proposed structure.
26 The hearings officer found that parking was a critical problem

1 in the area and that the parking structure would help alleviate
2 this problem by requiring that other surface parking lots used
3 by MAC members and owned by MAC be closed after the parking
4 structure was completed. The hearings officer concluded that
5 additional traffic would not be generated into the
6 neighborhood. He also concluded that closing the other surface
7 parking lots would cause these sites to be returned to their
8 residential zoning and would, thus, "free up" the sites for
9 residential development. Such residential development would be
10 consistent with MAC's stated intentions with respect to future
11 use of this property.

12 The hearings officer attached some conditions to the
13 approval of the conditional use permit to mitigate future
14 potential concerns. One such condition was a requirement that
15 the applicant, in cooperation with the neighborhood, develop a
16 transportation and access plan to address such matters as
17 carpooling, mass transit and parking management. This plan
18 would have to be submitted to the Bureau of Planning for public
19 hearing and the hearings officer's approval prior to issuance
20 of a building permit. Another condition required the applicant
21 to review and evaluate traffic operations after construction to
22 further mitigate adverse impacts which may arise as a result of
23 the creation of the parking structure. Additional conditions
24 were also attached.

25 Petitioner appealed the hearings officer's decision to the
26 city council. The city council held two hearings on the

1 proposed use and generated numerous pages of testimony as a
2 result of these hearings. At the conclusion of the hearings,
3 the city added some additional conditions to the hearings
4 officer's report, adopted the report and approved the
5 conditional use permit.

6 SUMMARY OF ARGUMENTS

7 Petitioner's assignments of error fall into three general
8 categories:

9 (1) That the standards for conditional use permits violate
10 ORS 227.173(1);

11 (2) That the decision to grant the conditional use permit
12 violates the Statewide Goals; and

13 (3) That the findings adopted by the city in support of
14 the conditional use are insufficient.

15 1. Adequacy of Standards.

16 Petitioner argues that the standards for granting or
17 denying a conditional use permit are inadequate under ORS
18 227.173(1) in that they fail to contain adequate standards and
19 criteria to evaluate the conditional use permit application.

20 ORS 227.173(1) provides:

21 "Approval or denial of a discretionary permit
22 application shall be based on standards and criteria,
23 which shall be set forth in the development ordinance
24 and which shall relate approval or denial of a
25 discretionary permit application to the development
26 ordinance and to the comprehensive plan for the area
in which the development would occur and to the
development ordinance and comprehensive plan for the
city as a whole."

26 Petitioner contends that Portland's conditional use permit

1 ordinance does not set forth the standards and criteria as
2 required by ORS 227.173(1). Section 33.106.010 of the Portland
3 City Code provides, in pertinent part, as follows:

4 "* * * in permitting such [conditional] uses, it shall
5 be determined that the use at the particular location
6 is desirable to the public convenience and welfare and
7 not detrimental or injurious to the public health,
8 peace or safety, or to the character and value of the
9 surrounding properties * * * *"

10 Petitioner argues the above ordinance does not comply with ORS
11 227.173(1) because it does not say, for example, "that
12 development 'X' will require consideration of specific
13 ordinance criteria X, Y and Z, and comprehensive plan policies,
14 I, J and K." Petition for Review, p. 5.

15 Respondents, on the other hand, note that there is another
16 provision of the Portland City Code which is applicable to a
17 conditional use permit application. That section, Section
18 33.114.060(b), requires a finding by the city that the decision
19 is consistent with the comprehensive plan, with the zoning code
20 and with the public need. The city must also show the extent
21 to which the public welfare is served. The city says there
22 are, thus, four criteria to govern a conditional use permit
23 application. The decision must be (1) necessary for the public
24 welfare at the specific location chosen, (2) beneficial to
25 surrounding properties, (3) consistent with the city's
26 comprehensive plan and (4) consistent with the city's zoning
27 code.

28 Both respondents have cited our holding in Lee v. City of

1 Portland, _____ Or LUBA _____ (LUBA No. 80-142, 1981) in which
2 we decided the issue of the adequacy of Portland's conditional
3 use criteria adversely to the petitioner. In that case we
4 stated:

5 "We do not believe ORS 227.173(1) to require
6 standards more detailed than those included, in sum,
7 within the various provisions of the Portland City
8 Code. There is clear demand in the code for
9 consideration of the use of the property and its
10 compliance with the city code generally. The degree
11 to which the use meets the public need (Section
12 33.114.060(b)), and the public convenience, health and
13 welfare (Section 33.106.010). We do not believe the
14 requirements on the hearings officer constitute a post
15 hearing procedure only, but impose requirements that
16 must be met by the applicant before the hearings
17 officer may find in the applicant's favor. The code
18 also provides authority to impose conditions as may be
19 necessary to protect the public interest
20 (33.106.010). We believe the public is adequately
21 protected by these standards...these standards are
22 clear enough that the applicant will know what he must
23 show during the course of his application."

24 In the present case, petitioner has presented no arguments
25 sufficient to cause us to change our opinion expressed in Lee
26 as to the adequacy of the city's conditional use criteria under
27 ORS 227.173(1).

28 2. Statewide Planning Goals.

29 Petitioner argues that the city's grant of the conditional
30 use permit violates statewide planning Goals 2 (Land Use
31 Planning), 5 (Open Spaces, Scenic and Historic Areas, and
32 Natural Resources), 6 (Air, Water and Land Resources Quality),
33 10 (Housing) and 12 (Transportation).

34 Respondent MAC argues in response to petitioner's goal
35 challenges that the goal issues are moot because Portland's

1 comprehensive plan was acknowledged by LCDC subsequent to the
2 city's decision in this case. MAC argues that even if we were
3 to remand this decision for failure to adequately consider the
4 statewide goals, the decision would only be tested against the
5 city's comprehensive plan on remand, not the goals, so it is
6 the comprehensive plan which we should use to review the city's
7 decision. The hearings officer expressly found the proposed
8 structure would be consistent with the city's now acknowledged
9 comprehensive plan.

10 We do not agree with respondent MAC that the intervening
11 acknowledgment of Portland's comprehensive plan has necessarily
12 rendered moot all goal issues in this case. ORS 197.275(2)
13 provides as follows:

14 "After the Commission acknowledges a city or
15 county comprehensive plan and implementing ordinances
16 to be in compliance with the goals...the goals shall
17 apply to land conservation and development actions and
annexations only through the acknowledged
comprehensive plan and implementing ordinances unless:

18 "(a) The acknowledged comprehensive plan and
19 implementing ordinances do not control the action
or annexation under consideration, or

20 "(b) Substantial changes in conditions have
21 occurred which render the comprehensive plan and
implementing ordinances inapplicable to the
action or annexation."

22 This statute only applies to decisions made after
23 acknowledgment of comprehensive plans. Here the decision was
24 made prior to acknowledgment of the city's plan.²

25 Petitioner's Goal 2 argument is that the city failed to
26 adopt adequate findings in that they were not detailed and

1 supported by evidence in the record. Petitioner argues the
2 hearings officer's findings were not based upon substantial
3 evidence in the record due to conflicting evidence in the
4 record "which renders [the hearings officer's] conclusions less
5 than persuasive." Petitioner also contends the hearings
6 officer's conclusion that Goals 5 and 6 were not applicable was
7 not based upon evidence in the record.

8 Respondents argue that the city's findings are adequate to
9 comply with Goal 2 as they are detailed in nature and address
10 the major relevant concerns. Our review of the findings leads
11 us to conclude that respondents are correct. There are really
12 four major issues involved in this case, as will be discussed
13 more fully, infra. Those issues are parking, transportation,
14 housing and impact on the neighborhood. Each of these issues
15 was addressed by the hearings officer and an explanation was
16 given as to why the particular result decided upon was
17 reached. The fact that the hearings officer may not have
18 addressed every single issue raised by anyone who testified in
19 this lengthy proceeding does not constitute a Goal 2
20 violation. As we said in Faye Wright Neighborhood v. City of
21 Salem, 1 Or LUBA 246 (1980), it is sufficient to address the
22 major areas of concern without addressing in findings each
23 issue which is raised.

24 Petitioner's Goal 5 argument is that the city failed to
25 address in its order whether any of the resources listed in
26 Goal 5 existed on the site or in the area. The hearings

1 officer found that the site of the proposed structure is not
2 within an historic area. Petitioner says this finding ignores
3 the testimony of neighbors that they regarded and treated the
4 area as an historic area.

5 Concerning Goal 5, MAC argues that the site is not an
6 "historic area" in that 85 percent of the site is a parking lot
7 and the four houses which do exist on the site have no true
8 historical value. As a condition of approval of the
9 conditional use permit, the four houses will be offered free to
10 anyone who will move them if MAC does not move them to its
11 adjacent property. MAC also argues the evidence shows the
12 structure blends harmoniously with surrounding uses such as the
13 historic Zion Church, and there is no evidence to the contrary.

14 The city takes the position that petitioners failed to show
15 how or in what manner the hearings officer's conclusions
16 concerning open space, scenic and natural resources are in
17 error. The city cites Lee v. City of Portland, ___ Or LUBA ___
18 (LUBA No. 80-142, 1981), for the proposition that no goal
19 violations may be found absent such a showing. The city joins
20 MAC in arguing there is no substantial evidence that the area
21 has historic qualities or is within an historic area, and that
22 the design of the building will blend in with the Zion Church
23 and other uses.

24 The hearings officer's finding with respect to Goal 5 is as
25 follows:

26 "This site is not a private or public open

1 space. This proposal does not include any public open
2 space in the area, nor any designated scenic or
3 historic area and it does not impact any natural
4 resources. There are designated historical structures
5 and areas in the neighborhood. The project is
6 designed to be responsive to both in that it is
7 architecturally designed to accommodate them and its
8 contribution to parking problem solutions will be
9 beneficial to them."

10 We believe the hearings officer's conclusion with respect
11 to Goal 5 is reasonable. Eighty-five percent of the site is
12 presently in asphalt. Eighty-five percent of the site is,
13 therefore, not "open space, scenic and historic areas, or
14 natural resources." There is no evidence to suggest, and
15 petitioner does not contend, that the four houses to be removed
16 and relocated to another site have any historical value.
17 Considerable effort was expended by MAC to insure that the
18 proposed structure would blend in harmoniously with the
19 historic Zion Church. The record indicates that this effort
20 was fruitful. Although it is possible to say that the hearings
21 officer could have made more extensive findings regarding Goal
22 5, we see no reason to require more extensive findings in this
23 case.

24 Petitioner's Goal 6 argument is similar to its Goal 5
25 argument in that it contends the city's conclusion that the
26 proposed structure will not impact air, water and land
resources quality is conclusory and without factual support in
the record. Petitioner contends the city erred in not finding
whether the discharge will exceed the carrying capacity of the
air, land or water resources, considering long range needs, or

1 whether the discharge will degrade such resources or threaten
2 their availability. Petitioner argues that the city was
3 required to have a finding explaining why Goal 6 was not
4 applicable, particularly where, as here, there was evidence
5 that Goal 6 was applicable. Petitioner says the testimony
6 indicated that an increase in traffic will result from the
7 proposed structure and increased traffic means increased noise
8 and pollution levels.

9 Both respondents argue there is nothing credible in the
10 record to suggest that Goal 6 has been or will be violated.
11 The applicability of Goal 6 in this case depends upon whether
12 the evidence indicates that there will be an increase in
13 traffic such that permissible pollution levels will be
14 exceeded. While the hearings officer's conclusion with respect
15 to Goal 6 is a bit cursory in nature, MAC cites the Board to
16 Golf Holding Co. v. McEachron, 39 Or App 675, 593 P2d 1202
17 (1979), for the proposition that the degree of specificity of
18 findings will vary with the nature of the development and the
19 issues raised. There was no necessity to address Goal 6 in
20 more detail, argues MAC, because there was no substantial
21 evidence that traffic will, in fact, increase in the area. In
22 fact, MAC notes that the evidence was that "cruising traffic"
23 (traffic looking for a parking space) will decrease in the area
24 and that, accordingly, a decrease in traffic in the area may
25 well result.

26 The hearings officer found concerning Goal 6:

1 "This proposal will not impact the quality of the
2 air, water or land resources."

3 The hearings officer's findings pertaining directly to Goal
4 6 are probably the weakest in his report, in that he does not
5 address specifically under Goal 6 whether (1) traffic will
6 incease and, if so, (2) whether that increase in traffic might
7 pose air quality problems. However, in another section of the
8 report the hearings officer does discuss the issue of whether
9 traffic will increase as a result of the proposed structure.
10 He found that not only will cruising traffic be reduced during
11 peak hours, but that terminating open lot use would prevent an
12 influx of traffic into the area:

13 "Is this proposal sufficiently responsive to the
14 problem to merit approval? One must start by noting
15 that the neighborhood has a parking problem in that
16 there are more cars present than places to put them.
17 In that this proposal creates a larger number of those
18 additional places to put cars, and creates them
19 contiguous to one of the largest generators of those
20 space needs, the proposal appears responsive. It will
21 take those cars off the street, off other lots, and
22 will reduce the need for extra traffic caused by the
23 search for parking spaces at peak hours. Therefore,
24 the potential for mitigation of the problem appears
25 high. Proponents' contention is two-fold: 1) The
26 MAC has a serious parking problem and this proposal
solves it. 2) To that extent the neighborhood
problem is substantially mitigated.

21 "Opponents argue that the potential for
22 mitigation identified here will not be realized:
23 Provision of more spaces will simply draw still more
24 cars to the MAC itself and to the neighborhood
25 generally. If the MAC were unwilling to work with
26 others to create, and then to implement, a Transit and
Access Plan, and unwilling to eliminate open lot use,
the Hearings Officer would be inclined to agree with
opponents. But the MAC changed its position during
the course of the hearings on this matter and is now
willing to do both. A Transit and Access Plan,

1 including parking management outlined in advance by
2 the Bureau of Planning recommendation will go as far
3 as can be gone to assure that excess vehicle use will
4 be avoided and that alternative transportation will be
5 emphasized. Terminating open lot use will remove the
6 attraction to still further vehicle penetration of the
7 neighborhood by avoiding provision of excess spaces.
8 It will draw the primary vehicle storage space from
9 those lots to the northeast away from currently
10 existing housing. In the face of the MAC's
11 willingness to take these steps, there appears little
12 more that it, by itself, can do. A Neighborhood
13 Transportation and Circulation Plan, a registration or
14 sticker approach, and other traffic and parking
15 control measures are outside the scope of the
16 applicant alone. Those are efforts for the City,
17 neighborhood, and the MAC. And the MAC has indicated
18 willingness to participate with others in them."

19 Whether traffic will be increased in the area is as far as
20 the record is concerned an open question. Some neighbors
21 testified that, in their opinion, the parking structure would
22 not alleviate traffic or parking problems because there was
23 plenty of demand for the parking spaces that MAC members would
24 normally occupy. However, the record shows traffic is
25 generated in at least two ways: (1) by cars coming into the
26 area and (2) by cars driving around while in the area. An
27 expert for the applicant testified that "cruising traffic"
28 would be reduced:

29 "So there probably will be very little increase
30 in overall traffic, there may even actually be some
31 reduction in traffic volume because you eliminate the
32 cruising traffic, or people cruising around trying to
33 find an available parking space which is difficult to
34 find today. So there may actually be a reduction in
35 traffic volume." Testimony of Mr. Fehr, Record 370.

36 Concerning increased traffic coming into the area, whether
37 by MAC members or outsiders, the applicant's expert testified

1 that there would be a very small increase if any at all. He
2 testified that the problem of outsiders using the area for
3 all-day parking while working downtown or going to school could
4 be eliminated if it became a problem through limited permit
5 parking or some other arrangement.³

6 We believe the hearings officer's findings taken as a whole
7 were adequate to address the question of whether traffic would
8 increase such that the quality of the air would be adversely
9 affected. We also conclude that his findings were supported by
10 substantial evidence in the record.

11 Petitioner argues that Goal 10 was violated because the
12 city did not adequately resolve the housing issue. The city,
13 according to petitioner, must identify its housing needs and
14 then make its decision consistent with those needs. Here, the
15 hearings officer acknowledged that his decision would result in
16 displacement of almost two blocks of potential downtown high
17 rise apartments. Petitioner objects to the hearings officer's
18 use of a balancing approach by which he weighed the benefits
19 from the proposed structure against a detrimental impact on
20 housing. Petitioner argues this approach would be valid only
21 if this property were the only property in the area suitable
22 for parking. It is not, argues petitioner, and the record
23 shows the availability of alternative sites and plans.

24 Concerning Goal 10, respondents argue that this decision
25 can be looked at in one of two ways: It can be looked at
26 either as removing some land from potential housing usage, or

1 as freeing up a considerable amount of other land for potential
2 housing usage. Respondents argue that while certainly this
3 parking structure will occupy what could theoretically be used
4 for housing, if the parking structure were not built, the land
5 would continue to be used in any event for parking and not for
6 housing. Moreover, consolidation of parking on one lot will
7 free up other MAC surface parking lots for housing in
8 accordance with the zoning for the property. As MAC is
9 required to terminate use of its other parking lots for parking
10 purposes as a condition of approval of this parking structure,
11 approximately two acres of land will then be available for
12 housing. MAC stated its intent during the hearings to use the
13 property for this purpose. Accordingly, respondents argue that
14 this decision will really free up more land for housing than
15 would denial of the conditional use permit.

16 It is clear from the hearings officer's report that the
17 housing issue is of major concern. While land designated for
18 high density living in Portland is scarce, the hearings officer
19 concluded, on balance, that the parking structure should be
20 permitted because it would free up almost two blocks for
21 housing use. Looking at the housing issue by itself, then, and
22 without considering other issues, we cannot say that the
23 decision violates Goal 10. Petitioner argues that evidence was
24 presented as to alternative sites and plans with respect to
25 solving the parking problem. This evidence, according to
26 petitioner, was to the effect that it would not be necessary to

1 use land designated for housing for a parking structure. A
2 review of the evidence referred to by petitioner in the record,
3 however, does not bear out petitioner's position. The evidence
4 referred to by petitioner consists primarily of testimony of
5 those who live in the neighborhood and are in opposition to the
6 proposed parking structure. Their basic feeling was that the
7 parking structure would not solve the parking problem by
8 itself. The hearings officer and the city have apparently
9 agreed, which is the reason for the attachment of certain
10 conditions to the approval.⁴ No evidence was presented,
11 however, that an alternative site existed on which a parking
12 structure could be erected which would be as convenient as the
13 present site to one of the largest generators of traffic and
14 parking problems in the area. We do not agree with petitioner
15 that approval of this structure constitutes a violation of Goal
16 10.

17 Petitioner's Goal 12 argument is that the goal was not
18 adequately addressed because the criteria in the goal were
19 ignored. For example, the city did not consider the carrying
20 capacity of 19th and 20th streets which will access the parking
21 structure. These streets are classified "local service" and
22 intended in the comprehensive plan to serve adjacent uses,
23 primarily residential, and not a commercial athletic facility
24 with membership over 17,000 people and expanding by 25
25 percent.⁵ Petitioner argues the city's findings on
26 transportation are limited to statements which recite the

1 streets and buslines which serve the property.

2 The issue under Goal 12, according to respondents, was the
3 extent to which the parking structure would alleviate parking
4 problems in the area and the extent to which it might increase
5 traffic in the area. The decision to access the structure via
6 19th and 20th streets designated as local service streets, was
7 based upon the applicant's traffic consultant and architect
8 study. Respondents dispute petitioner's suggestion that local
9 service streets are only or primarily intended to serve
10 adjacent residential uses. Respondents note they are intended
11 to serve adjacent land uses, and are not restricted to just
12 residential uses.

13 Moreover, argues respondents, MAC must develop as a
14 condition of approval a transportation and access plan to
15 further mitigate traffic and parking problems. This plan is to
16 include (1) a transit incentive program, (2) a ride-sharing
17 program, (3) preferential parking for carpools and bikes, and
18 (4) a policy to limit member parking to an established
19 boundary. This program is to be done in cooperation with the
20 neighborhood and is to be reviewed by the hearings officer. In
21 addition, conditions were added to the approval in order to
22 mitigate existing parking and traffic congestion. Condition G
23 provides as follows:

24 "The applicant shall review and evaluate traffic
25 operations impacted by the garage, including but not
26 limited to the 19th Avenue access onto Main and
Salmon, the intersection of 20th and Salmon and
through traffic in the neighborhood, six months after

1 the garage is open. Such evaluation shall propose
2 mitigation measures where necessary and shall be
3 submitted to the Bureau of Planning, Transportation
4 Section, and to Traffic Engineering. The applicant
shall participate in financial responsibility for
traffic controls to the degree necessitated by its
activities."

5 It appears to us that the hearings officer and the city
6 adequately addressed the transportation issue in the findings.
7 The hearings officer found that no significant increase in
8 traffic will result as a result of the proposed parking
9 structure and that the structure should alleviate many of the
10 traffic and parking problems in the area. See discussion under
11 Goal 6, supra. Furthermore, the city has taken precautions in
12 the event its conclusion is wrong. It has required the
13 applicant to develop a transportation plan and has imposed
14 Condition G, quoted above, on the applicant. These conditions
15 in addition to others previously discussed will help to further
16 mitigate potential traffic problems which may result from the
17 MAC parking structure. The city has acted reasonably, in our
18 opinion, and has not violated Goal 12.

19 3. Adequacy of Findings.

20 There are four main issues under the question of the
21 adequacy of the city's findings. The first issue is whether
22 the findings were required to be attached to the council's
23 order or whether it was sufficient for the council to simply
24 reference the findings in the order. Petitioner, as we
25 understand its argument, argues that the findings failed to
26 comply with ORS 227.173(2) in that they failed to appear in any

1 officially recorded place within the city. The decision is
2 not, therefore, "accompanied by" findings of the hearings
3 officer.

4 What happened here is that the city's order as recorded by
5 the City Auditor only had attached to it the four pages of
6 conditions imposed by the hearings officer and concurred in by
7 the City Council. The rest of the hearings officer's report
8 which was adopted by the hearings officer on the same day as
9 the conditions was not attached to the Council's order. The
10 City Council's order says:

11 "* * * At said sessions persons desiring to speak were
12 heard and written statements and objections were
13 considered; and the Council denied the appeals and
14 reaffirmed the November 25, 1980, REPORT OF HEARINGS
15 OFFICER DECISION, attached hereto and made a part of
16 this Order of Council, as amended by the following
17 additions to Condition A:

18 "* * *

19 "and adopted findings of the Hearings Officer as
20 amended during the February 4, 1981 Council Session."

21 It appears to us that the City Council intended to base its
22 decision and intended to adopt as its own the hearings
23 officer's findings. It also appears that the City Council
24 intended to have attached to its order the findings of the
25 hearings officer. The fact that only the conditions of the
26 hearings officer were actually attached to the city's order
should not, in our opinion, result in reversal of this
decision. Even if failure to have the findings attached to the
order were an error, it would seem to be akin to a procedural

1 error for which a reversal would be warranted only if we found
2 prejudice to the petitioner. No such prejudice has been
3 alleged.

4 A second issue under adequacy of findings is whether the
5 city adequately addressed all of the requirements in its
6 conditional use ordinance. The hearings officer concluded the
7 conditions had been met but doesn't state why, at least to the
8 petitioner's satisfaction. Petitioner contends no balancing
9 between the benefits to the MAC and the adverse impacts on the
10 neighborhood was warranted. To the extent the hearings officer
11 did this, according to petitioner, the hearings officer erred.

12 Respondents disagree and believe the conditional use
13 requirements were met by the city's findings. The city found
14 that the consolidation of parking would alleviate a serious
15 parking problem and also help to reduce a traffic problem in
16 the neighborhood. Consolidation of parking would, thus, be of
17 value to the neighborhood because it would reduce "cruising
18 traffic" and it would eliminate use of other parking lots in
19 the neighborhood. The structure would also free up some land
20 for housing.

21 We believe the conditional use criteria have been met. The
22 city found that the use at this particular location is
23 desirable to the public convenience and welfare and not
24 detrimental or injurious to the public health, peace or safety,
25 or to the character and value of the surrounding properties,
26 thus satisfying Section 33.106.010 of the Portland City Code.

1 This is not to say there wasn't conflicting evidence on these
2 issues; certainly, there was. But the findings made by the
3 city addressed the four major areas of concern: traffic,
4 parking, housing and adverse impacts on the neighborhood. The
5 city found that traffic would not be increased and may be
6 decreased; that the parking problem in the area would be
7 alleviated somewhat by this parking structure; that this
8 decision would free up other lots presently used for surface
9 parking lots for high density residential living; and largely
10 because of the foregoing and the design and location of this
11 particular parcel within the neighborhood and the surrounding
12 land uses, there would be little or no adverse impact on the
13 neighborhood.

14 Petitioner's third argument is that the findings fail to
15 adequately address contested issues of fact. These issues,
16 according to petitioner, relate to noise impacts, alternative
17 sites and plans, traffic and adverse impacts on neighboring
18 property values. The city erred when it failed to address
19 these issues, according to petitioner, when "sufficient
20 evidence was presented to raise" them and the issues were
21 relevant to the decision.

22 Respondents argue that it is not necessary to address in
23 findings every single issue that is raised in a quasi-judicial
24 land use proceeding, but that it is sufficient to address the
25 major areas of concern. Respondents argue that the major areas
26 of parking, traffic, housing and neighborhood impact were

1 adequately addressed by the hearings officer. Respondents also
2 argue that the evidence with respect to noise impacts was
3 insubstantial.

4 For the reasons expressed in our discussion of Goal 2,
5 supra, and for the reasons which follow, we agree with
6 respondents. Petitioner argues that there was evidence raised
7 about noise impacts and that this evidence was not addressed by
8 the hearings referee. Petitioner cites the record at page 319
9 as the place where the issue of noise impacts was raised. The
10 evidence cited on that page in the record is the testimony of a
11 resident of the area. This resident testified that, in her
12 opinion, the noise of the cars coming in and going out of the
13 parking structure was going to have an impact on residents of
14 nearby apartment buildings. This testimony was given on
15 November 20, 1980, and exists on one page of sixty pages of
16 testimony given that day. On November 19, 1980, the hearings
17 officer listened to testimony which equals 50 pages of single
18 spaced transcript. To say that the hearings officer erred in a
19 manner sufficient to warrant reversal because his findings
20 failed specifically to mention noise impacts on the
21 neighborhood would be unwarranted in this case. Furthermore,
22 there was evidence in the record that, overall, the noise
23 impacts on the area would be reduced by the parking structure,
24 primarily due to the reduction in "cruising traffic."

25 Petitioner's final argument concerning the findings is that
26 they are not adequate to support the conditions which the city

1 imposed. Specifically, petitioner refers to Condition G which
2 requires the applicant at the conclusion of six months to
3 review and evaluate the traffic operations impacted by the
4 parking structure. Petitioner says the effect of this
5 condition is to not require the applicant to address traffic
6 consequences until after development is completed. There is no
7 reason, according to petitioner, given the science of
8 estimating traffic consequences, why the traffic consequences
9 couldn't be evaluated in advance of approval. Without a
10 traffic analysis, argues petitioner, it is impossible to say
11 whether the impact on the neighborhood will be negative.

12 Respondent MAC says the purpose of conditions imposed by
13 the city was to mitigate potential future traffic impacts and
14 to encourage other transportation modes. MAC's position seems
15 to be that the conditions were not required as a prerequisite
16 to approval of this garage but were imposed only for
17 precautionary purposes. The city takes the position that since
18 there are some long term impacts which are presently unknown,
19 conditions were attached to "further protect the public
20 interest and the surrounding properties." For example, the
21 Salmon and 20th Street intersection was a major concern to the
22 city. It may require a signal in the future. Condition G
23 recognizes the Bureau of Traffic Engineering is best equipped
24 to handle this eventuality. Members of the neighborhood may
25 still bring traffic problems to the engineer's attention. If
26 MAC fails to do the study required by Condition G or to take

1 appropriate action, this matter could be brought to the city's
2 attention and the city could, if necessary, revoke the
3 conditional use permit.

4 Once again, we believe that petitioner is asking more than
5 is required of the city in this case. There has been no real
6 showing that the parking garage is likely to increase traffic
7 in the neighborhood. The city concluded, based on evidence in
8 the record, that no significant increase in traffic was
9 likely. Under these circumstances, the city's approach in
10 imposing Condition G on the applicant is a cautious one and may
11 even be more than the city was required to do.

12 The grant of a conditional use permit by the City of
13 Portland for the Multnomah Athletic Club is affirmed.

FOOTNOTES

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3 _____
4 1
5 MAC's present surface parking lots which occupy this and
6 other sites are allowed under conditional use permits within
7 the high density residential zone.

8
9 _____
10 2
11 We do not decide whether it would have been proper for the
12 city or MAC to have argued that the decision complied with the
13 city's comprehensive plan and, thus, complied with the
14 statewide goals, in view of the plan's status as an
15 acknowledged plan. Respondents have not proceeded in this
16 manner, but have argued that the city's approval of the
17 conditional use permit complies with the goals.

18
19 _____
20 3
21 The city council added as a condition to approval of the
22 parking structure that the traffic engineer work with the
23 applicant and the neighborhood to explore the feasibility and
24 desirability of a parking permit program for the area.

25
26 _____
27 4
28 These conditions include the requirement that MAC develop a
29 Transportation and Access Plan and an evaluation of traffic
30 impacts six months after the garage opens. MAC is also
31 required to reinstitute its shuttle bus program as well as
32 participate in exploring the feasibility of a parking permit
33 program.

34
35 _____
36 5
37 We assume that the statement "expanding by 25%" is with
38 reference to the increase in athletic facility space which the
39 proposed tennis courts would cause and not necessarily to an
40 increase in membership.

BEFORE THE
LAND CONSERVATION AND DEVELOPMENT COMMISSION
OF THE STATE OF OREGON

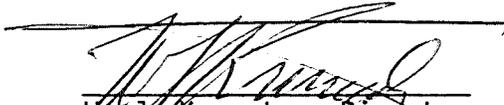
GOOSE HOLLOW NEIGHBORHOOD)
ASSOCIATION,)
)
Petitioner(s),)
)
v.)
)
CITY OF PORTLAND,)
)
Respondent.)

LUBA 81-029
LCDC Determination

The Land Conservation and Development Commission hereby approves
the recommendation of the Land Use Board of Appeals in LUBA 81-029,
concerning allegations of Statewide Goal violations.

DATED THIS 29th DAY OF JUNE, 1981.

FOR THE COMMISSION:



W. J. Kvarsten, Director
Department of Land
Conservation and Development

WJK:ER:cp
5931A/p. 4/4B



STATE OF OREGON

INTEROFFICE MEMO

TO: MEMBERS OF THE LAND CONSERVATION AND DEVELOPMENT COMMISSION DATE: 6/10/81

FROM: THE LAND USE BOARD OF APPEALS

SUBJECT: GOOSE HOLLOW v PORTLAND
LUBA No. 81-029

Enclosed for your review is the Board's proposed opinion and final order in the above captioned appeal.

This case concerns the validity of a conditional use permit approved by the City of Portland for the construction of a parking garage and supplemental athletic facility for the Multnomah Athletic Club (MAC). Petitioner contends the decision violates Goals 2, 5, 6, 10 and 12. Petitioner's concerns under these goals relate to a lack of substantial evidence and adequate findings with respect to such issues as traffic, parking, housing and the impact of the proposed parking structure on the neighborhood.

The Board's proposed opinion concludes that the city did not violate any of the goals raised by petitioner. The Board felt the city's findings adequately address the major areas of concern and there was evidence in the record to support the findings made. Accordingly, the Board's proposed opinion recommends that no goal violations be found to exist in this case.

The Board is transmitting with this cover memorandum to the Department a copy of the city's findings in the event any members of the Commission may wish to review the findings of the city. Most pertinent portions of the findings, however, are quoted in the proposed opinion.

The Board is of the opinion that oral argument will not assist the commission in its understanding or review of the statewide goal issues involved in this appeal. Therefore, the Board recommends that oral argument before the commission not be allowed.



Contains
Recycled
Materials

1 INTRODUCTION

2 Petitioner appeals the City of Portland's grant of a
3 conditional use permit to the Multnomah Athletic Club (MAC) for
4 the construction of a parking garage and supplemental athletic
5 facility across Salmon Street from MAC's present facility.

6 Petitioner seeks reversal of the decision and remand of the
7 decision to the Portland City Council on the grounds, among
8 others, that the city's decision violates Goals 2, 5, 6, 10 and
9 12.

10 STATEMENT OF FACTS

11 MAC applied to the City of Portland for approval of a
12 parking structure and athletic facility to serve its members.
13 The parking structure was to hold 566 cars and be on three
14 levels. The fourth level was to consist of 50,000 square feet
15 of additional athletic facilities, consisting primarily of
16 tennis courts. The structure was to be located across Salmon
17 Street from the MAC facility and would be linked to the
18 facility by a skybridge over Salmon Street. Access to the
19 parking structure would be via 19th and 20th Streets,
20 designated as local service streets in the City of Portland.

21 The neighborhood surrounding the present MAC facility and
22 proposed facility contains a mixture of uses, including the
23 historically recognized Zion Lutheran Church, Lincoln High
24 School and its athletic fields, new high-rise apartments, older
25 residential homes and multiple family structures, Civic
26 Stadium, several commercial and industrial uses and MAC's

1 existing surface parking lots.

2 The site for the proposed parking structure includes one
3 and one-half blocks bounded by SW 18th Avenue, SW Salmon
4 Street, SE 20th Avenue and SW Main Street. The site was, at
5 the time approval was given by the city, zoned AO (High Density
6 Apartments). Subsequent to the city's decision in this case,
7 the city's plan was acknowledged by LCDC as in compliance with
8 the statewide planning goals. The comprehensive plan
9 acknowledged by LCDC designates the proposed site RH (High
10 Density Residential) and lists the proposed parking structure
11 as a conditional use within that land use designation.¹

12 During the city's hearings before the hearings officer,
13 numerous residents of and associated with the Goose Hollow
14 Neighborhood League testified in opposition to the proposed
15 parking structure. Concerns expressed by these residents
16 centered upon traffic, parking, noise and housing. Many
17 residents expressed their concern that the parking structure
18 would increase traffic to the area because it would make the
19 area more accessible to automobiles by increasing the number of
20 on-street parking spaces. Opinions were expressed that
21 approval of the parking garage would not help alleviate any
22 parking problems in the area because more cars would simply
23 come to the area and fill the vacant parking spaces.
24 Additional traffic would increase noise as would the relocation
25 of the traffic due to the centralized parking structure.
26 Finally, concern was expressed as to the displacement of one

1 and one-half blocks of land suitable for residential dwellings
2 in an area of the city ideally suited to high density
3 residential development.

4 The hearings officer, in an extensive report, addressed the
5 city's conditional use criteria and the statewide planning
6 goals. The hearings officer concluded that the parking
7 structure would be of benefit to the neighborhood because it
8 would concentrate parking in one centralized location which
9 happened also to be across from a major generator of traffic.
10 The hearings officer found that the design of the structure was
11 such that it would be compatible with surrounding land uses and
12 in particular with the Zion Lutheran Church located
13 approximately 50 feet from the site of the proposed structure.
14 The hearings officer found that parking was a critical problem
15 in the area and that the parking structure would help alleviate
16 this problem by requiring that other surface parking lots used
17 by MAC members and owned by MAC be closed after the parking
18 structure was completed. The hearings officer concluded that
19 additional traffic would not be generated into the
20 neighborhood. He also concluded that closing the other surface
21 parking lots would cause these sites to be returned to their
22 residential zoning and would, thus, "free up" the sites for
23 residential development. Such residential development would be
24 consistent with MAC's stated intentions with respect to future
25 use of this property.

26 The hearings officer also attached some conditions to the

1 approval of the conditional use permit to mitigate future
2 potential concerns. One such condition was a requirement that
3 the applicant, in cooperation with the neighborhood, develop a
4 transportation and access plan to address such matters as
5 carpooling, mass transit and parking management. This plan
6 must be submitted to the Bureau of Planning for public hearing
7 and the hearings officer's approval prior to issuance of a
8 building permit. Another condition required the applicant to
9 review and evaluate traffic operations after construction to
10 further mitigate adverse impacts which may arise as a result of
11 the creation of the parking structure. Additional conditions
12 were also attached.

13 Petitioner appealed the hearings officer's decision to the
14 city council. The city council held two hearings on the
15 proposed use and generated numerous pages of testimony as a
16 result of these hearings. At the conclusion of the hearings,
17 the city added some additional conditions to the hearings
18 officer's report, adopted the report and approved the
19 conditional use permit.

20 OPINION

21 Petitioner argues that the city's grant of the conditional
22 use permit violates statewide planning Goals 2 (Land Use
23 Planning), 5 (Open Spaces, Scenic and Historic Areas, and
24 Natural Resources), 6 (Air, Water and Land Resources Quality),
25 10 (Housing) and 12 (Transportation). Under Goal 2, petitioner
26 argues that the city failed to adopt adequate findings in that

1 they were not detailed and supported by evidence in the
2 record. Petitioner argues the hearings officer's findings were
3 not based upon substantial evidence in the record due to
4 conflicting evidence in the record "which renders [the hearings
5 officer's] conclusions less than persuasive." Petitioner also
6 contends the hearings officer's conclusion that Goals 5 and 6
7 were not applicable was not based upon evidence in the record.

8 Petitioner's Goal 5 argument is that the city failed to
9 address in its order whether any of the resources listed in
10 Goal 5 existed on the site or in the area. The hearings
11 officer's found that the site of the proposed structure is not
12 within an historic area. Petitioners say this finding ignores
13 the testimony of neighbors that they regarded and treated the
14 area as an historic area.

15 Petitioner's Goal 6 argument is similar to its Goal 5
16 argument in that it contends the city's conclusion that the
17 proposed structure will not impact air, water and land
18 resources quality is conclusory and without actual support in
19 the record. Petitioner contends the city erred in not finding
20 whether the discharge will exceed the carrying capacity of the
21 air, land or water resources, considering long range needs, or
22 whether the discharge will degrade such resources or threaten
23 their availability. Petitioner argues that the city was
24 required to have a finding explaining why Goal 6 was not
25 applicable, particularly where, as here, there was evidence
26 that Goal 6 was applicable. Petitioner says the testimony

1 indicated that an increase in traffic will result from the
2 proposed structure and increased traffic means increased noise
3 and pollution levels.

4 Petitioner argues that Goal 10 was violated because the
5 city did not adequately resolve the housing issue. The city,
6 according to petitioner, must identify its housing needs and
7 then make its decision consistent with those needs. Here, the
8 hearings officer acknowledged that his decision would result in
9 displacement of almost two blocks of potential downtown high
10 rise apartments. Petitioner objects to the hearings officer's
11 use of a balancing approach by which he weighed the benefits
12 from the proposed structure against a detrimental impact on
13 housing. Petitioner argues this approach would be valid only
14 if this property were the only property in the area suitable
15 for parking. It is not, argues petitioner, and the record
16 shows the availability of alternative sites and plans.

17 Petitioner's Goal 12 argument is that the goal was not
18 adequately addressed because the criteria in the goal were
19 ignored. For example, the city did not consider the carrying
20 capacity of 19th and 20th streets which will access the parking
21 structure. These streets are classified "local service" and
22 intended in the comprehensive plan to serve adjacent uses,
23 primarily residential, and not a commercial athletic facility
24 with membership over 17,000 people and expanding by 25
25 percent.² Petitioner argues the city's findings on
26 transportation are limited to statements which recite the

1 streets and buslines which serve the property.
2 Respondent MAC argues in response to petitioner's goal
3 challenges that the goal issues are moot because Portland's
4 comprehensive plan was acknowledged by LCDC subsequent to the
5 city's decision in this case. MAC argues that even if we were
6 to remand this decision for failure to adequately consider the
7 statewide goals, the decision would only be tested against the
8 city's comprehensive plan on remand, not the goals, so it is
9 the comprehensive plan which we should use to review the city's
10 decision. The hearings officer expressly found the proposed
11 structure would be consistent with the city's now acknowledged
12 comprehensive plan.

13 We do not agree with respondent MAC that the intervening
14 acknowledgment of Portland's comprehensive plan has necessarily
15 rendered moot all goal issues in this case. ORS 197.275(2)
16 provides as follows:

17 "After the Commission acknowledges a city or
18 county comprehensive plan and implementing ordinances
19 to be in compliance with the goals...the goals shall
20 apply to land conservation and development actions and
annexations only through the acknowledged
comprehensive plan and implementing ordinances unless:

21 "(a) The acknowledged comprehensive plan and
22 implementing ordinances do not control the action
or annexation under consideration, or

23 "(b) Substantial changes in conditions have
24 occurred which render the comprehensive plan and
implementing ordinances inapplicable to the
action or annexation."

25 This statute only applies to decisions made after
26 acknowledgment of comprehensive plans. Here the decision was

1 made prior to acknowledgment of the city's plan.³

2 Respondents argue that the city's findings are adequate to
3 comply with Goal 2 as they are detailed in nature and address
4 the major relevant concerns. Our review of the findings leads
5 us to conclude that respondents are correct. There are really
6 four major issues involved in this case, as will be discussed
7 more fully infra. Those issues are parking, transportation,
8 housing and impact on the neighborhood. Each of these issues
9 was addressed by the hearings officer and an explanation was
10 given as to why the particular result decided upon was
11 reached. The fact that the hearings officer may not have
12 addressed every single issue raised by anyone who testified in
13 this lengthy proceeding does not constitute a Goal 2
14 violation. As we said in Faye Wright Neighborhood v. City of
15 Salem, 1 Or LUBA 246 (1980), it is sufficient to address the
16 major areas of concern without addressing in findings each
17 issue which is raised.

18 Concerning Goal 5, MAC argues that the site is not an
19 "historic area" in that 85 percent of the site is a parking lot
20 and the four houses which do exist on the site have no true
21 historical value. As a condition of approval of the
22 conditional use permit, the four houses will be offered free to
23 anyone who will move them if MAC does not move them to its
24 adjacent property. MAC also argues the evidence shows the
25 structure blends harmoniously with surrounding uses such as the
26 historic Zion Church, and there is no evidence to the contrary.

1 The city takes the position that petitioners failed to show
2 how or in what manner the hearings officer's conclusions
3 concerning open space, scenic and natural resources are in
4 error. The city cites Lee v. City of Portland, ___ Or LUBA ___
5 (LUBA No. 80-142, 1981), for the proposition that no goal
6 violations may be found absent such a showing. The city joins
7 MAC in arguing there is no substantial evidence that the area
8 has historic qualities or is within an historic area, and that
9 the design of the building will blend in with the Zion Church
10 and other uses.

11 The hearings officer's finding with respect to Goal 5 is as
12 follows:

13 "This site is not a private or public open
14 space. This proposal does not include any public open
15 space in the area, nor any designated scenic or
16 historic area and it does not impact any natural
17 resources. There are designated historical structures
18 and areas in the neighborhood. The project is
19 designed to be responsive to both in that it is
20 architecturally designed to accommodate them and its
21 contribution to parking problem solutions will be
22 beneficial to them."

23 We believe the hearings officer's conclusion with respect
24 to Goal 5 is reasonable. Eighty-five percent of the site is
25 presently in asphalt. Eighty-five percent of the site is,
26 therefore, not "open space, scenic and historic areas, or
natural resources." There is no evidence to suggest, and
petitioner does not contend, that the four houses to be removed
and relocated to another site have any historical value.
Considerable effort was expended by MAC to insure that the

1 proposed structure would blend in harmoniously with the
2 historic Zion Church. The record indicates that this effort
3 was fruitful. Although it is possible to say that the hearings
4 officer could have made more extensive findings regarding Goal
5 5, we see no reason to require more extensive findings in this
6 case.

7 Concerning Goal 6, both respondents argue there is nothing
8 credible in the record to suggest that Goal 6 has been or will
9 be violated. The applicability of Goal 6 in this case depends
10 upon whether the evidence indicates that there will be an
11 increase in traffic such that permissible pollution levels will
12 be exceeded. While the hearings officer's conclusion with
13 respect to Goal 6 is a bit cursory in nature, MAC cites the
14 Board to Golf Holding Co. v. McEachron, 39 Or App 675, 593 P2d
15 1202 (1979), for the proposition that the degree of specificity
16 of findings will vary with the nature of the development and
17 the issues raised. There was no necessity to address Goal 6 in
18 more detail, argues MAC, because there was no substantial
19 evidence that traffic will, in fact, increase in the area. In
20 fact, MAC notes that the evidence was that "cruising traffic"
21 (traffic looking for a parking space) will decrease in the area
22 and that, accordingly, a decrease in traffic in the area may
23 well result.

24 The hearings officer found concerning Goal 6:

25 "This proposal will not impact the quality of the
26 air, water or land resources."

1 The hearings officer's findings pertaining directly to Goal
2 6 are probably the weakest in his report, in that he does not
3 address specifically under Goal 6 whether (1) traffic will
4 in cease and, if so, (2) whether that increase in traffic might
5 pose air quality problems. However, in another section of the
6 report the hearings officer does discuss the issue of whether
7 traffic will increase as a result of the proposed structure.
8 He found that not only will cruising traffic be reduced during
9 peak hours, but that terminating open lot use would prevent an
10 influx of traffic into the area:

11 "Is this proposal sufficiently responsive to the
12 problem to merit approval? One must start by noting
13 that the neighborhood has a parking problem in that
14 there are more cars present than places to put them.
15 In that this proposal creates a larger number of those
16 additional places to put cars, and creates them
17 contiguous to one of the largest generators of those
18 space needs, the proposal appears responsive. It will
19 take those cars off the street, off other lots, and
20 will reduce the need for extra traffic caused by the
21 search for parking spaces at peak hours. Therefore,
22 the potential for mitigation of the problem appears
23 high. Proponents' contention is two-fold: 1) The
24 MAC has a serious parking problem and this proposal
25 solves it. 2) To that extent the neighborhood
26 problem is substantiall mitigated.

27 "Opponents argue that the potential for
28 mitigation identified here will not be realized:
29 Provision of more spaces will simply draw still more
30 cars to the MAC itself and to the neighborhood
31 generally. If the MAC were unwilling to work with
32 others to create, and then to implement, a Transit and
33 Access Plan, and unwilling to eliminate open lot use,
34 the Hearings Officer would be inclined to agree with
35 opponents. But the MAC changed its position during
36 the course of the hearings on this matter and is now
37 willing to do both. A Transit and Access Plan,
38 including parking management outlined in advance by
39 the Bureau of Planning recommendation will go as far
40 as can be gone to assure that excess vehicle use will

1 be avoided and that alternative transportation will be
2 emphasized. Terminating open lot use will remove the
3 attraction to still further vehicle penetration of the
4 neighborhood by avoiding provision of excess spaces.
5 It will draw the primary vehicle storage space from
6 those lots to the northeast away from currently
7 existing housing. In the face of the MAC's
8 willingness to take these steps, there appears little
9 more that it, by itself, can do. A Neighborhood
10 Transportation and Circulation Plan, a registration or
11 sticker approach, and other traffic and parking
12 control measures are outside the scope of the
13 applicant alone. Those are efforts for the City,
14 neighborhood, and the MAC. And the MAC has indicated
15 willingness to participate with others in them."

9 Whether traffic will be increased in the area is as far as
10 the record is concerned an open question. Some neighbors
11 testified that, in their opinion, the parking structure would
12 not alleviate traffic or parking problems because there was
13 plenty of demand for the parking spaces that MAC members would
14 normally occupy. However, the record shows traffic is
15 generated in at least two ways: (1) by cars coming into the
16 area and (2) by cars driving around while in the area. An
17 expert for the applicant testified that "cruising traffic"
18 would be reduced:

19 "So there probably will be very little increase
20 in overall traffic, there may even actually be some
21 reduction in traffic volume because you eliminate the
22 cruising traffic, or people cruising around trying to
23 find an available parking space which is difficult to
24 find today. So there may actually be a reduction in
25 traffic volume." Testimony of Mr. Fehr, Record 370.

23 Concerning increased traffic coming into the area, whether
24 by MAC members or outsiders, the applicant's expert testified
25 that there would be a very small increase if any at all. He
26 testified that the problem of outsiders using the area for

1 all-day parking while working downtown or going to school could
2 be eliminated if it became a problem through limited permit
3 parking or some other arrangement.⁴

4 We believe the hearings officer's findings taken as a whole
5 were adequate to address the question of whether traffic would
6 increase such that the quality of the air would be adversely
7 affected. We also conclude that his findings were supported by
8 substantial evidence in the record.

9 Concerning Goal 10, respondents argue that this decision
10 can be looked at in one of two ways: It can be looked at
11 either as removing some land from potential housing usage, or
12 as freeing up a considerable amount of other land for potential
13 housing usage. Respondents argue that while certainly this
14 parking structure will occupy what could theoretically be used
15 for housing, if the parking structure were not built, the land
16 would continue to be used in any event for parking and not for
17 housing. Moreover, consolidation of parking on one lot will
18 free up other MAC surface parking lots for housing in
19 accordance with the zoning for the property. As MAC is
20 required to terminate use of its other parking lots for parking
21 purposes as a condition of approval of this parking structure,
22 approximately two acres of land will then be available for
23 housing. MAC stated its intent during the hearings to use the
24 property for this purpose. Accordingly, respondents argue that
25 this decision will really free up more land for housing than
26 would denial of the conditional use permit.

1 It is clear from the hearings officer's report that the
2 housing issue is of major concern. While land designated for
3 high density living in Portland is scarce, the hearings officer
4 concluded, on balance, that the parking structure should be
5 permitted because it would free up almost two blocks for
6 housing use. Looking at the housing issue by itself, then, and
7 without considering other issues, we cannot say that the
8 decision violates Goal 10. Petitioner argues that evidence was
9 presented as to alternative sites and plans with respect to
10 solving the parking problem. This evidence, according to
11 petitioner, was to the effect that it would not be necessary to
12 use land designated for housing for a parking structure. A
13 review of the evidence referred to by petitioner in the record,
14 however, does not bear out petitioner's position. The evidence
15 referred to by petitioner consists primarily of testimony of
16 those who live in the neighborhood and are in opposition to the
17 proposed parking structure. Their basic feeling was that the
18 parking structure would not solve the parking problem by
19 itself. The hearings officer and the city have apparently
20 agreed, which is the reason for the attachment of certain
21 conditions to the approval.⁵ No evidence was presented,
22 however, that an alternative site existed on which a parking
23 structure could be erected which would be as convenient as the
24 present site to one of the largest generators of traffic and
25 parking problems in the area. We do not agree with petitioner
26 that approval of this structure constitutes a violation of Goal

1 10.

2 The issue under Goal 12, according to respondents, was the
3 extent to which the parking structure would alleviate parking
4 problems in the area and the extent to which it might increase
5 traffic in the area. The decision to access the structure via
6 19th and 20th streets designated as local service streets, was
7 based upon the applicant's traffic consultant and architect
8 study. Respondents dispute petitioner's suggestion that local
9 service streets are only or primarily intended to serve
10 adjacent residential uses. Respondents note they are intended
11 to serve adjacent land uses, and are not restricted to just
12 residential uses.

13 Moreover, argues respondents, MAC must develop as a
14 condition of approval a transportation and access plan to
15 further mitigate traffic and parking problems. This plan is to
16 include (1) a transit incentive program, (2) a ride-sharing
17 program, (3) preferential parking for carpools and bikes, and
18 (4) a policy to limit member parking to an established
19 boundary. This program is to be done in cooperation with the
20 neighborhood and is to be reviewed by the hearings officer. In
21 addition, conditions were added to the approval in order to
22 mitigate existing parking and traffic congestion. Condition G
23 provides as follows:

24 "The applicant shall review and evaluate traffic
25 operations impacted by the garage, including but not
26 limited to the 19th Avenue access onto Main and
Salmon, the intersection of 20th and Salmon and
through traffic in the neighborhood, six months after

1 the garage is open. Such evaluation shall propose
2 mitigation measures where necessary and shall be
3 submitted to the Bureau of Planning, Transportation
4 Section, and to Traffic Engineering. The applicant
shall participate in financial responsibility for
traffic controls to the degree necessitated by its
activities."

5 It appears to us that the hearings officer and the city
6 adequately addressed the transportation issue in the findings.
7 The hearings officer found that no significant increase in
8 traffic will result as a result of the proposed parking
9 structure and that the structure should alleviate many of the
10 traffic and parking problems in the area. See discussion under
11 Goal 6, supra. Furthermore, the city has taken precautions in
12 the event its conclusion is wrong. It has required the
13 applicant to develop a transportation plan and has imposed
14 Condition G, quoted above, on the applicant. These conditions
15 in addition to others previously discussed will help to further
16 mitigate potential traffic problems which may result from the
17 MAC parking structure. The city has acted reasonably, in our
18 opinion, and has not violated Goal 12.

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FOOTNOTES

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1
MAC's present surface parking lots which occupy this and other sites are allowed under conditional use permits within the high density residential zone.

2
We assume that the statement "expanding by 25%" is with reference to the increase in athletic facility space which the proposed tennis courts would cause and not necessarily to an increase in membership.

3
We do not decide whether it would have been proper for the city or MAC to have argued that the decision complied with the city's comprehensive plan and, thus, complied with the statewide goals, in view of the plan's status as an acknowledged plan. Respondents have not proceeded in this manner, but have argued that the city's approval of the conditional use permit complies with the goals.

4
The city council added as a condition to approval of the parking structure that the traffic engineer work with the applicant and the neighborhood to explore the feasibility and desirability of a parking permit program for the area.

5
These conditions include the requirement that MAC develop a Transportation and Access Plan and an evaluation of traffic impacts six months after the garage opens. MAC is also required to reinstitute its shuttle bus program as well as participate in exploring the feasibility of a parking permit program.