

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

MAR 29 4 29 PM '84

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2  
3 BILLIE GRAAP, FRED MEIKLE, )  
MARTHA JOHNSTON and EAST )  
4 COLUMBIA NEIGHBORHOOD )  
ASSOCIATION, )  
5 )  
6 Petitioners, )  
7 vs. )  
8 CITY OF PORTLAND, )  
9 Respondent. )

LUBA No. 83-116

FINAL OPINION  
AND ORDER

10 Appeal from the City of Portland.

11 John M. Wight, Portland, filed the Petition for Review and  
12 argued the cause for petitioners.

13 Ruth Spetter, Portland, filed a brief and argued the cause  
for Respondent City of Portland.

14 No appearance by Respondent Merritt.

15 DUBAY, Referee, BAGG, Chief Referee, KRESSEL, Referee  
participated in the decision.

16 KRESSEL, Referee; Dissenting.

17 REMANDED 03/29/84

18 You are entitled to judicial review of this Order.  
19 Judicial review is governed by the provisions of Oregon Laws  
1983, ch 827.

1 Opinion by DuBay.

2 DECISION APPEALED

3 This is an appeal from a city ordinance changing the zone  
4 classification on two adjacent parcels from Farm and Forest  
5 (FF) to General Manufacturing (M2).

6 SUMMARY OF FACTS

7 One of the two parcels, known as the Merritt property, is  
8 50 acres in size. The other is known as the Fazio property and  
9 consists of 110 acres. The two tracts are in northeast  
10 Portland, north of and adjacent to the Columbia Slough and near  
11 the Portland International Airport. Although there are some  
12 industrial uses in the area, there are residential developments  
13 to the north and northeast of the two tracts. The properties  
14 are part of a larger area annexed to the city in 1972 as a  
15 health hazard annexation. The city zoned the property FF at  
16 that time, but when the comprehensive plan was adopted in 1980,  
17 the two tracts were designated General Manufacturing. The  
18 zoning designation remained FF.

19 In 1982 the owner of the Merritt property applied for a  
20 zone change from FF to M2. The hearings officer denied the  
21 application and the denial was appealed to the city council.  
22 While that appeal was pending, the Portland Development  
23 Commission (PDC) was engaged in a program for economic  
24 development to identify vacant land available for industrial  
25 development. Both the Merritt and Fazio properties were  
26 selected by PDC as having potential for industrial

1 development.

2 The pending appeal was eventually terminated with no  
3 action, but this did not end the proposal to rezone the  
4 property. The planning commission initiated the zone change  
5 proceedings at issue here on the request of PDC and the owners  
6 of two properties, held hearings, and recommended the change to  
7 the city council. The city council held hearings on the  
8 proposed zone change for the two properties and adopted the  
9 ordinance allowing the change now appealed to this Board.

10 STANDING

11 The petition for review alleges standing for the three  
12 individual petitioners and the East Columbia Neighborhood  
13 Association as follows:

14 Standing

15 "Petitioner East Columbia Neighborhood Association is  
16 a recognized neighborhood association for the City of  
17 Portland, and the property subject to this petition  
18 for review is within the boundaries of the East  
19 Columbia Neighborhood Association. Petitioners Billie  
20 Graap, Fred Meikle and Martha Johnston are officers  
21 and directors of the East Columbia Neighborhood  
22 Association; they reside within the boundaries of the  
23 East Columbia Neighborhood Association and they are  
24 within the area affected by the applicant's proposed  
25 rezoning. Petitioners appeared in person and in  
26 writing in the City Council proceeding and received  
27 notices of hearings. Because of petitioners'  
28 proximity to the proposed rezoning, petitioners'  
29 interests have been adversely affected by respondent's  
30 decision and petitioners have standing to file this  
31 petition for review." Petition at 1.

32 Petitioners submitted a motion to amend the above statement  
33 of standing. The motion was received by LUBA on the day of  
34 oral argument. Respondent City has objected to an amendment of

1 the petition.

2 The facts showing petitioners are entitled to standing are  
3 required by statute to be included in the petition for review.  
4 ORS 197.830(9)(a). The rules of procedure adopted by LUBA  
5 pursuant to ORS 197.820(4) also require the petition for review  
6 to set out the facts that establish standing. The LUBA rules  
7 also provide for amended petitions in OAR 661-10-030(4) as  
8 follows:

9 "(4) Amended Petition: A petition for review which  
10 fails to comply with subsections (2) or (3) of  
11 this section may, with permission of the Board,  
12 be amended. The Board shall determine whether to  
allow an amended petition for review to be filed  
in accordance with the provisions in rule  
661-10-005."

13 OAR 661-10-005, referred to in the amendment rule above  
14 quoted, is the purpose clause of the LUBA rules. It states the  
15 procedures established in the rules are intended to provide for  
16 the speediest practical hearing and decision in the review of  
17 land use decisions while affording all interested persons  
18 reasonable notice and opportunity to participate, reasonable  
19 time to prepare and submit their cases, and a full and fair  
20 hearing. That clause carries out the policy of the legislature  
21 "that time is of essence in reaching final decisions in matters  
22 involving land use and that those decisions be made  
23 consistently with sound principles governing judicial review."  
24 ORS 197.805.<sup>1</sup> In addition to the LUBA rules, the legislative  
25 policy of an expeditious appeals process is furthered by ORS  
26 197.830(12) requiring LUBA to issue a final order within 77

1 days after the record is transmitted to LUBA by the body  
2 rendering the decision. All these provisions clearly set forth  
3 a process which provides adequate opportunity to resolve  
4 disputed land use decisions if the parties and LUBA carefully  
5 follow the rules of procedure adopted to carry out the  
6 statutory mandates.

7 The rules also provide for extensions of time in order to  
8 make certain determinations, particularly to settle factual  
9 disputes not in the record. For example, the rules provide for  
10 extensions of time to hold evidentiary hearings, which may be  
11 allowed upon motion, in cases of disputed allegations of  
12 unconstitutionality of a decision, standing, ex parte contacts  
13 or other procedural irregularities not shown in the record.<sup>2</sup>  
14 But to allow a motion to amend a petition for the purpose of  
15 adding allegations of standing, at least when such motion is  
16 made after all briefs have been filed and on the day of oral  
17 argument, runs a high risk of interfering with statutory  
18 policy of completing the appeals process as expeditiously as  
19 possible. For a fair procedure, the opposing parties should be  
20 able to contest the allegations of any material in an  
21 amendment, and further delays could result from hearings  
22 necessary to test any factual allegations not appearing in the  
23 record. Time constraints, and the procedural rules adopted to  
24 implement them, do not give this Board or the parties the  
25 luxury of liberal amendments to the pleadings often available  
26 in litigation before the courts. Insistence upon strict

1 compliance with the rules is particularly called for when there  
2 is no allegation the information sought to be admitted by a  
3 proposed amendment was not available at the time the original  
4 document was prepared. We do not know whether respondent  
5 contests the allegations petitioner here proposes to add to the  
6 original petition, but to allow the motion and to expose the  
7 appeal proceeding to possible delays under these circumstances  
8 will not carry out our statutory obligation. We deny the  
9 motion to amend the petition to add allegations of standing.

10 Respondent has challenged standing of petitioners, and we  
11 now examine if allegations in the petition, as above quoted,  
12 are sufficient. First we will review standing of the  
13 individual petitioners. Entitlement to standing is, with one  
14 exception,<sup>3</sup> determined in accordance with the factors in ORS  
15 197.830(2)(3). Those provisions are:

16 "(2) Except as provided in ORS 197.620(1), a person  
17 may petition the board for review of a  
18 legislative land use decision if the person:

19 "(a) Filed a notice of intent to appeal the  
20 decision as provided in subsection (1) of  
21 this section; and

22 "(b) Is aggrieved or has interests adversely  
23 affected by the decision.

24 "(3) Except as provided in ORS 197.620(1), a person  
25 may petition the board for review of a  
26 quasi-judicial land use decision if the person:

"(a) Filed a notice of intent to appeal the  
decision as provided in subsection (1) of  
this section;

"(b) Appeared before the local government,  
special district or state agency orally or

1 in writing; and

2 "(c) Meets one of the following criteria:

3 "(A) Was entitled as of right to notice and  
4 hearing prior to the decision to be  
5 reviewed; or

6 "(B) Is aggrieved or has interests  
7 adversely affected by the decision."

8 Petitioners properly filed a notice of intent to appeal,  
9 and each of them are alleged to have appeared in person and in  
10 writing in the hearing before the city council. Therefore, if  
11 the proceeding is characterized as legislative, the remaining  
12 criterion is whether petitioner is aggrieved or has interests  
13 adversely affected by the decision, and if the proceeding is  
14 characterized as quasi-judicial, petitioners must show they  
15 were entitled as of right to notice and hearing prior to the  
16 decision to be reviewed or are aggrieved or have interests  
17 adversely affected. For purposes of this discussion of  
18 standing it is not necessary to make the characterization as  
19 legislative or quasi-judicial as the individual petitioners  
20 have not alleged facts showing aggrievement, adverse affect, or  
21 entitlement to notice.

22 Petitioners allege they received notices of the hearings.  
23 Receipt of notice by itself is not the same thing as a right to  
24 receive notice as stated in ORS 197.830(3)(c)(A). Seigel v.  
25 Josephine County, 6 Or LUBA 30 (1982). LUBA has previously  
26 stated its understanding of the rationale and purpose of that

1 statute:

2 "The statute's purpose, we believe, is to eliminate  
3 the need for a person who lives close to the property  
4 which is the subject of a decision, or who is  
5 otherwise peculiarly affected by the decision and  
6 thereby entitled to some form of special notice, to  
7 have to prove that his or her interests are affected  
8 or that s/he is aggrieved. In effect, entitlement to  
9 notice creates a conclusive presumption that the  
10 person's interests are adversely affected or the  
11 person is aggrieved." Jefferson Landfill v. Marion  
12 County, 6 OR LUBA 1, 4 (1982).

13 There are no allegations in the petition showing how notice  
14 was received and whether any petitioners were entitled as of  
15 right to receive notice prior to the hearing.

16 Petitioner has also failed to allege facts showing adverse  
17 affect or aggrievement. They do allege they are within the  
18 area affected by the applicant's proposed rezoning. LUBA held  
19 in Bauer v. Columbia County, 4 Or LUBA 309 (1981) that  
20 residence or property ownership within an area affected by a  
21 land use decision is sufficient interest to grant standing in a  
22 legislative proceeding. There, the petitioner lived within an  
23 urban growth boundary established by the ordinance appealed  
24 from. Petitioner's land was directly affected by that action.  
25 Here, on the other hand, the proceeding is a zoning amendment  
26 of two parcels, and there is no allegation that petitioners  
reside on either of the parcels. We view the Bauer v. Columbia  
County case to recognize standing of those who own property or  
reside on land directly affected by a land use decision where  
the decision results in a change of legal status or applies

1 policies or criteria to petitioner's property.<sup>4</sup> That is not  
2 the case here.

3 Petitioners also allege they were adversely affected but do  
4 not allege facts showing how they were adversely affected.

5 LUBA has consistently held adverse effects must be alleged by  
6 facts. Parsons v. Josephine County, 2 Or LUBA 343 (1981);

7 Owyhee Conservationists v. Malhuer County, 6 Or LUBA 244

8 (1982). Facts must be alleged showing how the decision impacts

9 petitioners and what injury flows from that impact. Warren v.

10 Lane County, 6 Or LUBA 47 (1982). We find the individual

11 petitioners have not made sufficient allegations to confer

12 standing according to ORS 197.830(2) or 197.830(3).

13 The East Columbia Neighborhood Association alleges it is a

14 recognized neighborhood association for the City of Portland.

15 Chapter 3.96 of the Portland Municipal Code provides for

16 neighborhood associations, their purpose, qualifications, and

17 functions. The stated purpose of the code provisions is to

18 provide standards and procedures to aid in citizen

19 communication with city officials and bureaus concerning

20 neighborhood livability.<sup>5</sup> The code specifically authorized

21 a neighborhood association meeting certain standards to

22 recommend an action by the city on zoning matters.<sup>6</sup> Code

23 Section 3.96.060 requires city agencies to give notice to

24 neighborhood associations of planning matters and to include

25 the association in all planning efforts affecting neighborhood

26 livability. Ordinance or code provisions such as these confer

1 a special status on organizations meeting the criteria in the  
2 ordinance. By giving such organizations a part to play in  
3 community planning activities on behalf of the citizens, a  
4 local government creates an interest that may be adversely  
5 affected or aggrieved by land use decisions and grants a right  
6 to receive notice of land use decisions within the area of  
7 concern of the association. The allegations of status as a  
8 recognized neighborhood association, unchallenged by  
9 respondents, are sufficient allegations of fact here to show  
10 the East Columbia Neighborhood Association has interests  
11 adversely affected or aggrieved by a decision it opposed before  
12 the city council and has a right to receive notice of the  
13 proceedings. See also Downtown Association v. Portland, 3 Or  
14 LUBA 244 (1981).

15 FIRST ASSIGNMENT OF ERROR

16 Petitioner claims the rezoning ordinance must meet the  
17 requirements of Policy 10.8 of the city's comprehensive plan.  
18 Policy 10.8 requires findings in any rezoning decision that,

19 "Public facilities, adequate to serve the proposed  
20 land uses allowed by the designations, are presently  
21 available or can be reasonably made available,  
22 (consistent with the Comprehensive Plan Public  
23 Facilities Policies) by the time the proposed use  
24 qualifies for a certificate of occupancy or completion  
25 from the bureau of buildings." Portland Comprehensive  
26 Plan Policy 10.8.

27 The city council adopted findings saying public facilities  
28 are adequate or can be made adequate for the proposed  
29 industrial use. Petitioner says those findings are not

1 supported by substantial evidence. The two kinds of facilities  
2 petitioner claims to be critical are streets and sewers. They  
3 will be discussed in that order.

4 A. STREETS

5 Access to the two properties is by way of Gertz Road which  
6 abuts them on the north. Northeast 13th Street runs north and  
7 south between the two individual tracts and intersects Gertz  
8 Road on the north. In order to avoid interference between  
9 industrial traffic along Gertz Road and Northeast 13th Street,  
10 and to keep industrial traffic away from the intersection of  
11 those two streets, which are on the edge of a residential  
12 neighborhood located to the northeast, a proposal was made to  
13 shunt traffic away from the intersection and away from the  
14 residential areas. The proposal, incorporated into the  
15 rezoning ordinance, was for a cutoff road, running diagonally  
16 from Gertz Road southeast to intersect Northeast 13th Street.  
17 This cutoff road is to commence relatively near the west side  
18 of the Merritt property and is referred to in the Record as the  
19 "long cutoff." Federal funds are said to be available to pay  
20 for construction of the long cutoff. The acquisition of  
21 federal funds, however, requires a time consuming process, and  
22 for that reason an alternate to the long cutoff road was also  
23 incorporated into the ordinance. The alternate is a shorter  
24 cutoff road, approximately parallel to the long cutoff road but  
25 located nearer to the intersection of Gertz Road and Northeast  
26 13th Street.

1 Conditions in the ordinance require the owners of the Fazio  
2 property to dedicate a right-of-way for either cutoff and  
3 further require the owner of the Merritt property to put up a  
4 cash guarantee in favor of the county in an amount estimated to  
5 pay for the construction of the short cutoff.<sup>7</sup> No  
6 certificates of occupancy would be issued until those two  
7 conditions have been met.

8 Petitioner says this procedure is not in compliance with  
9 Policy 10.8 of the comprehensive plan quoted above. Because of  
10 the long procedure to obtain federal funds to construct the  
11 long cutoff road, petitioner says the rezoning is premature.  
12 In addition, petitioner says the alternate short cutoff leaves  
13 the issue of adequacy of Gertz Road for industrial traffic  
14 unresolved. Petitioner says there is no evidence in the record  
15 to support a finding that Gertz Road will be improved  
16 sufficient for industrial traffic. Petitioner also says the  
17 plan policy prohibits issuance of certificates of occupancy  
18 until public facilities are provided, and the ordinance  
19 provision for granting certificates of occupancy upon  
20 dedication of the right-of-way and deposit of construction  
21 funds is not in compliance with the plan.

22 The findings conclude that public services, including  
23 transportation services, can be available to serve the area.  
24 Although the existing road system was found to be "inadequate,"  
25 it is apparent from the findings the inadequacy referred to was  
26 related to increased traffic and conflicts with traffic to and

1 from nearby residential areas. The findings note the rezoning  
2 application for the Merritt property had been referred to the  
3 Department of Public Works to devise a new road access, (Record  
4 at 187), and that a new road plan had been developed to address  
5 access deficiencies and industrial traffic intrusion into the  
6 nearby neighborhood. Record at 191. The findings do not  
7 indicate either Gertz Road or Northeast 13th Street are  
8 inadequate for any other reason.<sup>8</sup>

9 Although the problems of access deficiency for industrial  
10 uses and of industrial traffic conflicts with neighboring uses  
11 may be resolved by construction of a cutoff road under either  
12 of the alternatives, the plan policy requires transportation  
13 services to be available before occupancy permits are issued.  
14 Respondent City asserts the availability of a dedicated  
15 right-of-way and financial capability to construct the required  
16 cutoff road are sufficient assurances to authorize occupancy  
17 for industrial uses. However, Comprehensive Plan Policy 10.8  
18 requires assurances at the time of the rezoning that the  
19 required facilities will be available before occupancy, not  
20 assurances at the time occupancy permits are issued that the  
21 facilities will be provided in the future. To the extent the  
22 ordinance authorizes issuance of certificates of occupancy for  
23 industrial uses before transportation facilities described in  
24 the ordinance are available, the ordinance is not consistent  
25 with the requirements of Comprehensive Plan Policy 10.8. This  
26 subassignment of error is sustained.

1 B. SEWERS

2 Petitioner here claims Comprehensive Plan Policy 10.8  
3 requires a finding that sewers adequate to serve the proposed  
4 land uses allowed in the M2 zone are available or can  
5 reasonably be made available prior to occupancy before changing  
6 the zone to M2.

7 The findings show the property is served by a sewer system  
8 designed to handle sparse settlement authorized by the FF zone  
9 designation. The findings further show industrial uses allowed  
10 in the M2 zone can vary in their demands for sewer capacity.  
11 The ordinance provides three mechanisms to keep the demand  
12 within the system capacity. First, a condition is imposed  
13 limiting uses to those that produce sewage flows at a rate no  
14 greater than 0.365 gallons per minute per acre. Second, prior  
15 to issuance of building permits, development plans that include  
16 methods to enforce the standard must be approved by the bureau  
17 of planning. Approval of all occupancy permits by the bureau  
18 of sanitary engineering is the third check on sewer use  
19 limitations. The first provision fixes a definite standard of  
20 sewage flow which limits proposed uses on the properties. The  
21 other two provisions add procedures to enforce compliance with  
22 the sewage flow limitation of uses. Altogether the three  
23 provisions operate to put a functional type of restriction on  
24 uses that could exceed the capacity of the existing sewage  
25 system and to prepare the mechanism to enforce the restriction.

26 The ordinance, therefore, does not find there will be sewer

1 facilities for all uses allowed in the M2 zone but restricts  
2 the kinds of uses on the property to those that will not exceed  
3 the capacity of the present system. This approach is  
4 authorized in the same city code section that states the  
5 necessary prerequisites to any rezoning decision. Code Section  
6 33.102(3)(6) provides that if necessary public services are not  
7 presently available, a rezoning may be approved with the  
8 condition to specifically limit development consistent with the  
9 adequacy of available service until such time as existing  
10 service deficiencies are corrected. This approach is also  
11 consistent with Policy 10.8. The policy requires findings that  
12 facilities will be available sufficient to serve "proposed land  
13 uses allowed by the designations." (emphasis supplied). It is  
14 reasonable to assume the use of the word "proposed" to modify  
15 "land uses" and not "designations" was intentional. Conditions  
16 restricting the uses to those not exceeding existing sewer  
17 facilities are, in effect, a limitation on the proposed uses  
18 allowed in the M2 zone. It is not necessary for the city to  
19 find that sewers be adequate to serve all uses allowed in the  
20 M2 designated zone, only those uses proposed under the  
21 conditions imposed by the ordinance. This subassignment of  
22 error is denied.

23 SECOND ASSIGNMENT OF ERROR

24 In this assignment of error petitioners challenge the  
25 procedure followed by the city in making the final decision.  
26 The planning commission considered three separate requests for

1 rezoning in the same area, and made a combined report and  
2 recommendation to the city council.<sup>9</sup> The staff findings,  
3 conclusions and recommendations in the report, were adopted as  
4 findings, conclusions and recommendations by the planning  
5 commission. The city council also adopted these findings.  
6 Petitioner says that procedure violated city code Section  
7 33.114.040, requiring all land use decisions not specifically  
8 required to made by the planning commission or the city council  
9 to be made by a hearings officer. Petitioner also points to a  
10 city code provision that requires findings demonstrating  
11 consistency with the zoning code and the comprehensive plan,  
12 consistency with public need, and the extent to which the  
13 general welfare of the public is served by the decision.  
14 Petitioner claims the planning commission and city council  
15 erred in calling the rezone process a legislative act and, by  
16 that device, failing to make the required findings of public  
17 need and the extent the general welfare of the public is  
18 served.

19 Whether the proceedings were properly called legislative or  
20 quasi-judicial is not a critical issue in this assignment of  
21 error because the petitioner's real claim is that certain  
22 findings required by the city code were not made, not a failure  
23 to provide the constitutional safeguards inherent in  
24 quasi-judicial proceedings as set forth in Fasano v. Washington  
25 Co. Comm., 264 Or 574, 507 P2d 23 (1973).<sup>10</sup>

26 The city code establishes a procedure for zone changes to

1 be started by application of property owners for a zoning map  
2 change. Portland City Code, Section 33.102.020. The code also  
3 authorizes proceedings for changes in zones to be initiated by  
4 the city council or planning commission. Portland City Code,  
5 Section 33.102.010.

6 Approval or disapproval of any rezoning action, however the  
7 process is begun, must be determined by procedures established  
8 in Chapter 33.114, the Administration and Enforcement chapter  
9 of the city code. Portland City Code, Section 33.102.015.<sup>11</sup>

10 Chapter 33.114 of the code describes the functions and  
11 procedures of hearings officers and provides they shall have  
12 authority to hold hearings on

13 "...revocable permits, conditional use permits, and on  
14 zone changes except those initiated by the council or  
15 commission, however, that either commission or council  
16 may direct a hearings officer hearing if it decides  
17 such initiation is a quasi-judicial matter." Portland  
18 City Code, Section 33.114.040(b).

19 This section does not require a hearings officer to hold a  
20 hearing on every zone change. Where the change is initiated by  
21 either the city council or planning commission, a hearings  
22 officer hearing is authorized only at the election of the  
23 council or commission, and then only if the decision is a  
24 quasi-judicial matter. Here the planning commission initiated  
25 the change of zone for the combined Merritt and Fazio  
26 properties as planning commission file No. 7305 and did not  
direct a hearings officer hearing. The city did not act in  
contravention of its code in failing to hold a hearing before a

1 hearings officer.

2       However, Section 33.102.015 requires the initiating body,  
3 either commission or council, to follow the procedures  
4 established in Chapter 33.114. We read that provision to  
5 require the findings specified in Chapter 33.114. Section  
6 33.114.060 requires findings to demonstrate:

7       "(1) The manner in which the decision is consistent  
8       with the zoning code and the comprehensive plan  
9       of the City of Portland.

10       "(2) The manner in which the decision is consistent  
11       with the public need, and the extent to which the  
12       general welfare of the public is served by the  
13       decision." Portland City Code, Section  
14       33.114.060(b).

15       Respondent City does not contend such findings were not  
16       required but does assert the findings meet those standards.

17       We hold the findings do not adequately address the  
18       requirement of showing consistency with public need. The  
19       findings note "(t)he north and northeast Portland areas provide  
20       the greatest concentration of existing and potential industrial  
21       land in the city." Record at 192. The findings also include a  
22       section on economic objectives:

23       "Columbia Boulevard Industrial District Economic  
24       Objectives:

25       "1. Provide employment opportunities.

26       "2. Attract and expand light industry.

      "3. Support small and minority businesses." Record  
      at 193.

      These cursory references to the industrial character of  
26       northeast Portland and some economic objectives, do not explain

1 why the present public need is served by rezoning this land for  
2 industrial use. The code requires such findings. Although  
3 there are letters favoring the proposal attached to the  
4 planning commission report, and the letters set forth reasons  
5 for this support, there is no indication in the findings that  
6 the letters or the information in them were adopted as findings.

7 Similarly, the findings do not address the extent to which  
8 the general welfare of the public is served by the decision.  
9 The classification of the properties for industrial uses on the  
10 comprehensive plan does not by that fact alone show how the  
11 general welfare is now affected by this proposal. In summary,  
12 the ordinance does not include the findings, required by the  
13 city code, showing consistency with public need and the extent  
14 to which the public general welfare would be served by the  
15 decision.

16 Petitioner also claims the city failed to address relevant  
17 comprehensive plan policies summarized in the petition. The  
18 goals and policies in the comprehensive plan petitioner deems  
19 relevant are Policy 2.9<sup>12</sup>, Goal 3 and related Policies 3.1  
20 and 3.2;<sup>13</sup> and Policies 4.3, 4.4, 4.6, 6.2, 6.3, 11.2, 11.3,  
21 11.4, 11.5 and 11.7.<sup>14</sup>

22 As noted, the city is required by its code to make findings  
23 demonstrating the manner in which a zone change decision is  
24 consistent with the Portland Comprehensive Plan. Code Section  
25 33.114.060(b)(1). The city council found the "rezoning is in  
26 conformance with enacted elements of the City's Comprehensive

1 Plan...as indicated in the report of the Planning Commission  
2 dated June 27, 1983, P.C. File No. 7305." Finding 9, Record at  
3 003. The planning commission findings referenced in Finding 9  
4 identify the goals and policies deemed by the city to be  
5 relevant. Other than Policy 6.2, the list of plan policies  
6 listed by the city does not include the policies deemed  
7 relevant by petitioner.

8 Policy 6.2 - Regional and City Traffic Patterns, Policy 6.3  
9 - Land Use/Street Relationship, and Policy 11.2 - Orderly Land  
10 Development clearly apply to the decision made by the city to  
11 adopt a new road plan as part of a zone change to General  
12 Manufacturing for properties with transportation and sewage  
13 system deficiencies. Consequently, the findings must show  
14 consistency with those policies as required by the city code.

15 Policies 6.2 and 6.3, quoted in footnote 14, require that  
16 development should be guided by the trafficways,  
17 classifications, objectives and policies contained in the  
18 city's Arterial Streets Classification Policy, and that traffic  
19 patterns should be created that protect the livability of  
20 established residential neighborhoods. The findings address  
21 these issues by including a proposal for roadway improvements.  
22 The findings note Gertz Road is classified as a neighborhood  
23 collector street, and 13th Street is classified as a local  
24 service street. The Arterial Streets Classification Policy  
25 states that new land uses which attract a significant volume of  
26 traffic from outside the neighborhood should be discouraged

1 along neighborhood collector streets (Gertz Road), and that  
2 major sources of automobile traffic should be discouraged from  
3 locating on local service streets (13th Street) unless the  
4 street directly connects to a district collector or major city  
5 traffic street.

6 The road plan proposal calls for construction of the cutoff  
7 road, construction of a stub road from Gertz Road to the  
8 cutoff, closure of 13th Street at the boundary between  
9 residential and industrial lands, restricting access through  
10 Northeast 13th Street to the industrial lands, and eventual  
11 construction of a bridge on Northeast 13th Street over the  
12 Columbia Slough. The findings conclude "the street  
13 improvements...will distribute industrial traffic to  
14 appropriate city streets, while allowing full access to the  
15 neighborhood for residents." Record at 193.

16 The road plan proposal was implemented by the attachment of  
17 conditions to the ordinance providing for construction of  
18 either the long or short cutoff roads, the prohibition of  
19 access from the Merritt and Fazio properties onto Northeast  
20 Levee Road or onto Gertz Road west of Northeast 13th Street,  
21 the closure of the south leg of Northeast 13th Street south of  
22 the intersection with Gertz Road and construction of all street  
23 and road improvements to city standards. Although some aspects  
24 of the road plan proposal were not made conditions of the  
25 ordinance, viz construction of a stub road from Gertz Road to  
26 the cutoff and construction of a bridge over the Columbia

1 Slough, there are no findings that indicate the inclusion of  
2 those two projects is necessary to achieve consistency with the  
3 plan policies. Petitioner has not articulated an objection on  
4 that basis.

5 The findings regarding the road plan proposal adequately  
6 address Policies 6.2 and 6.3.

7 Policy 11.2 regarding the orderly provision of public  
8 facilities and services also appears on its face to apply to  
9 this rezoning decision.

10 Policy 11.2 states urban development should occur only  
11 where adequate public facilities exist or can be reasonably  
12 made available. This rezoning decision is for the purpose of  
13 allowing industrial development. The adequacy of public  
14 services for such development is obviously an issue covered by  
15 this policy and should be addressed in the findings. However,  
16 the findings regarding compliance with Policy 10.8 requiring  
17 findings of adequate public facilities as a prerequisite to a  
18 change of zone as previously considered in the first assignment  
19 of error are also sufficient to address Policy 11.2. The  
20 discussion will not be repeated here.

21 Petitioner does not point to any part of the record or  
22 otherwise comment on how the remaining comprehensive plan  
23 provisions listed in this assignment of error are applicable to  
24 this decision. Some do not appear to apply at all while others  
25 may or may not apply.

26 If the applicability of plan policies to a land use

1 decision is not facially apparent, petitioner must help this  
2 Board across the threshold by asserting a basis or theory for  
3 applicability. Without such assertion, we are left to  
4 speculate on whether the plan policies apply to this decision.  
5 The Board will not provide a theory for a petitioner in order  
6 to make petitioner's case. Deschutes Development v. Deschutes  
7 County, 5 Or LUBA 218 (1982).

8 This assignment of error is sustained in part for lack of  
9 findings required by the city code. Findings demonstrating a  
10 present public need and showing how the general public welfare  
11 would presently be served by the decision are required.

12 The decision to adopt Ordinance No. 155277 is remanded for  
13 further proceedings not inconsistent with this opinion. The  
14 city must either eliminate provisions allowing occupancy  
15 permits prior to availability of a road system adequate for  
16 permitted industrial uses or make appropriate findings  
17 demonstrating how public facilities required for allowed uses  
18 will be available prior to issuance of occupancy permits. In  
19 addition, the city must make the findings required by city code  
20 Section 33.114.060(b).

21 REMANDED.

22

23

24

25

26

1 Kressel, Dissenting in part.

2 Although I agree with the majority of the Board on the  
3 merits of this case, I dissent from its refusal to allow an  
4 amendment of the petition with respect to the standing of  
5 petitioner Martha Johnston. The amendment should be allowed.  
6 Further, we should grant standing to Petitioner Johnston in  
7 light of the amended petition.

8 1. The Amendment

9 This case concerns the rezoning of two adjacent parcels in  
10 a section of north Portland known as the East Columbia area.  
11 Petitioner Martha Johnston lives in this area. Indeed, as her  
12 proposed amendment to the petition indicates, she lives so  
13 close to the land in question that under the city code she was  
14 legally entitled to mailed notice of the rezoning proceedings.  
15 Motion to Amend Statement of Standing at 1.

16 The city does not dispute this point.<sup>15</sup> Instead, the  
17 city takes the position we should disregard the allegation of  
18 entitlement to notice because it did not appear in the petition  
19 when it was originally filed.<sup>16</sup> Reply to Motion to Amend at  
20 1-2. Regrettably, the majority adheres to the city's position  
21 - a position I regard as unduly technical and unjustified by  
22 the laws governing operation of this Board.

23 A rule of this Board authorizes amendments to a petition  
24 for review. The rules states:

25 "Amended Petition: A petition for review which fails  
26 to comply with sections (2) or (3) of this rule may,  
with permission of the Board, be amended. The Board

1 shall determine whether to allow an amended petition  
2 for review to be filed in accordance with the  
provisions in rule 661-10-005." OAR 661-10-030(4).

3  
4 The rule directs us to examine any proposed amendment in light  
5 of the policy considerations set forth in OAR 661-10-005. In  
6 its entirety, that rule states:

7 "Purpose

8 "661-10-005 The procedures established in these  
9 rules are intended to provide for the speediest  
10 practicable hearing and decision in the review of land  
11 use decisions while affording all interested persons  
12 reasonable notice and opportunity to participate,  
13 reasonable time to prepare and submit their cases, and  
14 a full and fair hearing. The procedures established  
15 in these rules seek to accomplish these objectives to  
the maximum extent consistent with the time  
16 limitations placed upon the Board in 1983 Oregon Laws,  
17 Chapter 827. These rules shall be interpreted to  
18 effectuate these policies and to promote justice.  
19 Technical violations of these rules which do not  
20 affect substantial rights or interests of parties or  
21 of the public shall not interfere with the review of a  
22 petition." OAR 661-10-005

23 This provision reflects a number of policies, only the  
24 first of which receives attention from the majority. The  
25 policies are (1) to promote speedy decisionmaking, (2) to  
26 afford all interested persons reasonable notice and opportunity  
to participate in full and fair hearings and (3) to promote  
27 justice. The rule also cautions us to disregard technical  
28 errors which do not affect substantial rights or interests of  
29 other parties or the public.

30 With respect to Petitioner Martha Johnston, the proposed  
31 amendment to the petition would add an allegation that Ms.  
32 Johnston was entitled as of right to notice of the city's

1 proceedings. The majority denies this amendment on grounds  
2 that to do otherwise runs a risk of interfering with the  
3 statutory policy of completing the appeals process  
4 expeditiously.

5 The difficulty with the majority's position is that it is  
6 demonstrably incorrect about the consequences of allowing the  
7 motion. Moreover, the majority opinion fails to give any  
8 substance to the policy in OAR 661-10-005 that calls for  
9 providing the public with reasonable access to this Board.  
10 Also disregarded is the policy that we should not make  
11 decisions based on technical violations which do no harm to  
12 other parties or to the public.

13 Allowance of the amendment with respect to Ms. Johnston  
14 would not significantly delay this proceeding. The factual  
15 issue presented, i.e., whether Ms. Johnston lives so close to  
16 the subject property that she is legally entitled to mailed  
17 notice of the rezoning hearings under the city code, lends  
18 itself to speedy resolution. Indeed, the city was able to  
19 quickly and easily verify Ms. Johnston's address and her  
20 entitlement to notice under the code when inquiries along these  
21 lines were made by the Board after oral argument. The legal  
22 issue presented, i.e., whether her entitlement to notice of the  
23 city's hearings gave her standing to appeal to this Board, is  
24 equally susceptible of prompt resolution. In fact, the city  
25 has not contested the idea that Ms. Johnston would have  
26 standing to appeal the rezoning decision if she was entitled to

1 notice of the city's hearings.

2 Thus, the majority's argument that allowance of the  
3 amendment would slow down the decisionmaking process is  
4 unsupportable in this case.

5 In my view, we should allow the amendment because it would  
6 not slow down the decisionmaking process and it would promote  
7 reasonable citizen access to this Board. As I see it, the  
8 majority's treatment of this issue relies on a technical  
9 pleading error. The Court of Appeals has advised us against  
10 invoking technical pleading requirements. Hilliard v. Lane  
11 County, 51 Or App 587, 595, 626 P2d 905 (1981). In this  
12 context, I find it significant that the city makes no claim it  
13 would be harmed by amendment of the petition to correct the  
14 allegation as to Ms. Johnston's standing.

15 The legislature has made it clear this Board should  
16 expedite its review of challenged land use decisions,  
17 consistent with sound principles of judicial review. ORS  
18 197.805. A general policy against allowing substantive  
19 amendments to petitions is therefore appropriate, especially  
20 when such amendments are made late in the review process. A  
21 generally restrictive policy is wise because such amendments  
22 may easily have the effect of delaying our ability to issue a  
23 final order. However, where, as here, there is no threat to  
24 our ability to expeditiously decide a case, and no prejudice to  
25 the parties or the public, we should allow an amendment to the  
26 petition. To do so would be consistent with sound principles

1 of judicial review and with the policies stated in our own  
2 rules.<sup>17</sup>

3 2. Standing of Petitioner Johnston

4 My opinion the amendment concerning Petitioner Johnston  
5 should be allowed leads to the further question, not considered  
6 by the majority, of whether Ms. Johnston has standing in light  
7 of the amended petition. This question clearly deserves an  
8 affirmative answer.

9 The statute governing standing to appeal to this Board, ORS  
10 197.830, sets forth different standards depending on whether  
11 the challenged decision is legislative or quasi-judicial.  
12 Where a legislative decision is appealed, one has standing if  
13 one is aggrieved by the decision or has interests adversely  
14 affected by it. ORS 197.830(2). However, where a  
15 quasi-judicial decision is appealed, the test is more  
16 restrictive. A petitioner must have appeared in the local  
17 government proceedings, and must meet one of the following  
18 tests: (1) petitioner was entitled as of right to notice of  
19 the local government's hearings prior to its decision or (2)  
20 petitioner is aggrieved by the decision or has interests  
21 adversely affected by it. ORS 197.830(3).

22 In the present case, it is difficult to know which  
23 standards to apply, because the challenged rezoning has both  
24 legislative and quasi-judicial aspects. Overall, I believe the  
25 quasi-judicial aspects predominate.<sup>18</sup> However, under either  
26 test Petitioner Johnston should be granted standing in light of

1 the amended petition.

2 Petitioner Johnston appeared at city hearings concerning  
3 the proposed rezoning and was entitled to personal notice of  
4 those hearings under the city code. If the city's proceedings  
5 merit a quasi-judicial characterization, there is no question  
6 Petitioner Johnston is entitled to standing under ORS  
7 197.830(3).

8 If the proceedings were legislative in nature<sup>19</sup> the  
9 result should be the same. Since the statute on standing in  
10 the more restrictive quasi-judicial context equates entitlement  
11 to notice with aggrievement/adverse affect, ORS 197.830(3)(c),  
12 I would apply the same principle to the legislative context.  
13 See Jefferson Landfill v. Marion County, 6 Or LUBA 1, 4-5  
14 (1982) ("In effect, entitlement to notice creates a conclusive  
15 presumption that the person's interests are adversely affected  
16 or one person is aggrieved."). Thus, one who is legally  
17 entitled to individual notice of a proposal for legislative  
18 land use action (in the rare case where there is such an  
19 entitlement) should be considered aggrieved or adversely  
20 affected under ORS 197.830(2)(b).

21 For the reasons stated above, I must dissent in part from  
22 the majority's opinion. The proposed amendment to the petition  
23 concerning the standing of Petitioner Martha Johnston should be  
24 allowed. In light of that amendment, we should find Petitioner  
25 Johnston has standing to appeal the city's rezoning decision.

26

FOOTNOTES

1  
2  
3 1

The complete text of the rule is as follows:

4 "197.805 Policy on review of land use decision. It is the  
5 policy of the Legislative Assembly that time is of essence  
6 in reaching a final decision in matters involving land use  
7 and that those decisions be made consistently with sound  
8 principles governing judicial review. It is the intent of  
9 the Legislative Assembly in enacting ORS 197.805 to 197.850  
10 to accomplish these objectives."

9 2

OAR 661-10-045(1)(5) states:

10 "(1) The Board may upon written motion conduct a special  
11 evidentiary hearing in the case of disputed  
12 allegations of unconstitutionality of the decision,  
13 standing, ex parte contacts or other procedural  
14 irregularities not shown in the record and which, if  
15 proved, would warrant reversal or remand of the  
16 decision. A special evidentiary hearing may also be  
17 held to consider claims of irreparable injury in  
18 requests for stays under 1983 Or Laws, ch 827, sec 34."

\* \* \*

16 "(5) The filing of any motion for evidentiary hearing will  
17 suspend the time limits for any other event in the  
18 review proceeding including the issuance of the  
19 Board's final order. If the Board grants the request  
20 for hearing, the time limits for other events shall  
21 continue to be suspended until the close of the  
22 evidentiary hearing. The Board shall schedule any  
23 evidentiary hearing not less than ten days after the  
24 time the Board issues an order granting the motion for  
25 evidentiary hearing or at such other times as the  
26 parties may agree. If the Board denies a request for  
an evidentiary hearing, the time for all future events  
will begin to run upon the date the Board issues its  
order denying the hearing."

3

The exception is a proceeding leading to the adoption of an  
amendment to an acknowledged comprehensive plan or land use  
regulation or a new land use regulation. ORS 197.620. Neither

1 party contends the rezoning of the two parcels involved in this  
2 case fall within that category.

3 \_\_\_\_\_  
4 4 This view is consistent with the opinion in Warren v. Lane  
5 County, 6 Or LUBA 47 in which LUBA rejected a claim for  
6 standing based upon residence within the same planning  
7 subarea. To grant standing on that basis was held to be an  
unwarranted presumption of adverse affect or aggrievement where  
the planning subarea represented only about 3 percent of the  
county population.

8 \_\_\_\_\_  
9 5 Portland City Code, Section 3.96.010 states:

10 "3.96.10 Purpose. The purpose of this chapter is to  
11 provide standards and procedures whereby  
12 organized groups of citizens seeking to  
13 communicate with city officials and city  
14 bureaus on matters concerning neighborhood  
15 livability may obtain assistance from staff  
in so communicating and to provide certain  
minimum standards for said organizations in  
order to insure that the broadest possible  
means for citizens' organizations to  
communicate with city government may exist.

16 "Nothing in this chapter shall limit the  
17 right of any person or group to participate  
18 directly in the decision making process of  
the city council or any city agency."

18 \_\_\_\_\_  
19 6 3.96.040(1) states:

20 "(1) Recommend an action, a policy, or a comprehensive  
21 plan to the city and to any city agency on any  
22 matter affecting livability of the neighborhood,  
23 including, but not limited to, land use, zoning,  
24 housing, community facilities, human resources,  
social and recreational programs, traffic and  
transportation, environmental quality, open space  
and parks;..."

25 \_\_\_\_\_  
26 7

The order provides the cash guarantee would be used by the  
county for construction of the short cutoff road if the long

1 cutoff is not under construction within 3 years. Finding 11.

2

8

3 Petitioner alleges the city should require improvement of  
4 Gertz Road to "industrial standards" but does not allege what  
5 such standards may be or where they may be found. The findings  
6 make no mention of such standards.

5

6 9

7 The first request resulted in the decision here reviewed.  
8 The second was from the East Columbia Neighborhood Association  
9 for a plan map change on lands next to the Merritt-Fazio  
10 properties, and the third was from other owners of nearby  
11 property, known as the Lamb property, for a plan map and zone  
12 change. Record at 71. The council accepted the report and  
13 held hearings on all requests, culminating in adoption of the  
14 ordinance here reviewed. The other two requests were not  
15 included in the ordinance here reviewed and consideration of  
16 their disposition is not necessary here.

12

10

13 Although petitioner states in the summary of facts portions  
14 of the petition that petitioners were limited to 5 minutes  
15 before the planning commission, any limitation on the right of  
16 hearing was not alleged as error. Further, counsel for  
17 petitioner stated at argument there were no limitations on the  
18 right of hearing before the city council, whose decision is  
19 here appealed.

17

11

18 Portland City Code, Section 33.102.015 states:

19 "Approval or disapproval of rezoning of property shall be  
20 determined using the procedures established in this Chapter  
21 and in Chapter 33.114."

21

12

22 Policy 2.9 states:

23 "2.9 Residential Neighborhoods  
24 Allow for a range of housing types to accommodate  
25 increased population growth while improving and  
26 protecting the city's residential neighborhoods."

26

2 Goal 3 and policies 3.1 and 3.2 provide as follows:

3 "GOAL:

4 "3 Preserve and reinforce the stability and diversity of  
5 the city's neighborhoods while allowing for increased  
6 density in order to attract and retain long-term  
7 residents and businesses and insure the city's  
8 residential quality and economic vitality.

7 "POLICIES:

8 "3.1 Physical Conditions.

9 Provide and coordinate programs to prevent the  
10 deterioration of existing structures and public  
11 facilities.

10 "3.2 Social Conditions.

11 Provide and coordinate programs to promote  
12 neighborhood interest, concern and security and  
13 to minimize the social impact of land use  
14 decisions."

15 Sections 4.3, 4.4, 4.6 provides as follows:

16 "4.3 New Housing Production.

17 Assist the private sector in maintaining an  
18 adequate supply of single and multi-family  
19 housing units. This shall be accomplished by  
20 relying primarily on the homebuilding industry  
21 and private sector solutions, supported by the  
22 elimination of unnecessary government regulations.

19 "4.4 Housing Choice and Neighborhood Stability.

20 Support public and private actions which increase  
21 housing choices for Portlanders, with emphasis on  
22 housing and public improvement programs which: 1)  
23 improve the balance in the city's population by  
24 attracting and keeping in the city families with  
25 children; 2) maintain neighborhood schools; 3)  
26 increase the number of housing alternatives for  
27 both renter and owner; 4) improve the physical  
28 and environmental conditions of all neighborhoods.

25 "4.6 Existing Housing: Maintenance.

26 Encourage and assist the continuing maintenance  
27 of existing residential properties, both single

1 and multi-family. This maintenance will be  
2 accomplished through a voluntary housing  
3 maintenance code program to include marketing,  
4 inspection and financial assistance, aimed  
5 primarily at safety, sanitation, structural  
6 integrity and energy conservation."

7 Sections 6.2 and 6.3 provide:

8 "6.2 Regional and City Traffic Patterns.  
9 Create and maintain regional and city traffic  
10 patterns that protect the livability of  
11 Portland's established residential neighborhoods  
12 while improving access and mobility within  
13 commercial and industrial areas.

14 "6.3 Land Use/Streets Relationship.  
15 Land Use planning and project development should  
16 be guided by the trafficways classifications,  
17 objectives and policies contained in the adopted  
18 Arterial Streets Classification Policy and in  
19 coordination with criteria established in the  
20 Facilities System Plan."

21 Sections 11.2 to 11.7 provide:

22 "11.2 Orderly Land Development.  
23 Urban development should occur only where urban [sic]  
24 public facilities and services exist or can be  
25 reasonably made available."

26 \* \* \*

27 "11.3 Orderly Service Extension.  
28 The improvement and expansion of one urban public  
29 facility or service should not stimulate development  
30 that significantly precedes the City's ability to  
31 provide all other necessary urban public facilities  
32 and services at uniform levels."

33 \* \* \*

34 "11.4 Capital Efficiency.  
35 Maximum use of existing public facilities and  
36 services should be supported through encouraging new  
37 development to occur at the maximum densities allowed  
38 by the Comprehensive Plan and through the development  
39 of vacant land within presently developed areas."

40 \* \* \*

1 "11.5 Cost Equitability.

2 To the maximum extent possible, the costs of  
3 improvement, extension and construction of public  
4 facilities should be borne by those whose land  
5 development and redevelopment actions made such  
6 improvement, extension and construction necessary. A  
7 procedure is to be established that defines the  
8 responsibility for improvements of individual  
9 projects."

6 \* \* \*

7 "11.6 Facilities System Plan.

8 Develop and maintain a coordinated Facilities System  
9 Plan that provides a framework for the provision of  
10 urban public facilities and services within  
11 Portland's Urban Services Boundary. This plan will  
12 be consistent with the designated land uses and  
13 density of the applicable plan. A 20-year time  
14 schedule should, if practical, be established as part  
15 of the Facilities System Plan to address vacant,  
16 buildable land, and the cost to increase facilities  
17 to meet projected population growth. This schedule  
18 would, if developed, become the basis for the Capital  
19 Improvement Program and for future upzoning."

14 \* \* \*

15 "11.7 Capital Improvement Program.

16 The Capital Improvement Program will be the annual  
17 planning process for major improvements to existing  
18 public facilities and the construction of new  
19 facilities. Planning will be in accordance with the  
20 framework provided by the Facilities System Plan."

19 

---

15

20 Indeed, in a telephone conference with the parties after  
21 oral argument, the city conceded Mrs. Johnston was entitled  
22 under the city code to mailed notice because she resides within  
23 400 feet of the rezoned property.

22 

---

16

23 The original allegations concerning standing are set forth  
24 at page 3 of the majority opinion. With respect to Petitioner  
25 Johnston, the following pertinent allegations were made: (1)  
26 she resides within the boundaries of the East Columbia  
Neighborhood Association, an association recognized by the  
city, (2) the rezoned land is also within the Association's  
boundaries, (3) she received notices of the rezoning hearings

1 and personally appeared at the hearings and (4) because of her  
2 proximity to the rezoned land, her interest are adversely  
3 affected by the city's decision.

3  
4 17

4 My point is underscored by my agreement with the majority  
5 that certain other aspects of the motion to amend the complaint  
6 should be denied. These portions of the motion would add  
7 allegations that the city's decision will harm petitioner by  
8 causing increased traffic, noise and visual blight. Such  
9 allegations could easily delay this proceeding by triggering  
10 objections by the city, the need for an evidentiary hearing,  
11 further briefs, etc. By contrast, the amendment to allege Ms.  
12 Johnston's entitlement to notice would not create these  
13 problems.

9  
10 18

10 I take into account the following factors in reaching this  
11 conclusion: (1) the rights of a limited number of persons are  
12 implicated by the two parcel rezoning, (2) in rezoning the  
13 property the city applied existing policy, it did not adopt new  
14 policy and (3) the procedure followed by the city suggests an  
15 adjudicatory model (individual notice, opportunity for comment,  
16 adoption of findings of fact). See Strawberry Hill 4 Wheelers  
17 v. Benton County, 287 Or 591, 602-604, 601 P2d 769 (1979).

15  
16 19

16 The best argument for the legislative characterization is  
17 that it appears the city retained the discretion to table the  
18 rezoning proposal at any time. See Strawberry Hill 4 Wheelers  
19 v. Benton County, supra, 287 Or at 602 (decisions are usually  
20 legislative where the process is not bound to result in a  
21 decision). However, as noted earlier, many other aspects of  
22 the proceeding fit the quasi-judicial picture. It merits  
23 notice that in Strawberry Hill itself the court applied the  
24 quasi-judicial characterization to an action (road vacation)  
25 that could have been withdrawn at any time by the county. 287  
26 Or at 606.