

LAND USE
BOARD OF APPEALS

BEFORE THE LAND USE BOARD OF APPEALS

MAY 23 5 32 PM '86

OF THE STATE OF OREGON

1
2
3 PORTLAND FIXTURE CO., an)
Oregon corporation, LOUIS)
4 ZIMEL, MARK ZIMEL, and)
KINGS CIRCLE SHOPPING CENTER,)
5)
Petitioners,)

6 vs.)

LUBA No. 85-099

7 CITY OF CORVALLIS, CORVALLIS)
8 LAND DEVELOPMENT HEARINGS)
BOARD, DENNIS HEDGES, and)
9 TIMBERHILL ACRES DEVELOPMENT)
CO.,)
10 Respondents.)

FINAL OPINION
AND ORDER

11 _____)
12 PORTLAND FIXTURE CO., an)
Oregon corporation, LOUIS)
13 ZIMEL, MARK ZIMEL, and)
KINGS CIRCLE SHOPPING CENTER,)
14)
Petitioners,)

LUBA No. 86-008

15 vs.)

16 CITY OF CORVALLIS CITY)
17 COUNCIL, DENNIS HEDGES, and)
TIMBERHILL ACRES DEVELOPMENT)
18 CO.,)
19 Respondent.)

20 Appeal from City of Corvallis.

21 Allen L. Johnson, Eugene, filed the petition for review and
22 argued on behalf of petitioners. With him on the brief were
Sullivan, Josselson, Roberts, Johnson & Kloos.

23 Richard D. Rodeman, Corvallis, filed a response brief and
24 argued on behalf of Respondent City of Corvallis.

25 Roderick L. Johnson, Corvallis, filed a response brief and
26 argued on behalf of Respondent-Intervenor Timberhill Acres
Development Co. With him on the brief were Johnson & Johnson.

1 KRESSEL, Chief Referee; BAGG, Referee; DuBAY, Referee;
participated in the decision.

2 AFFIRMED

05/23/86

3 You are entitled to judicial review of this Order.
4 Judicial review is governed by the provisions of ORS 197.850.

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1 Opinion by Kressel.

2 NATURE OF DECISION

3 The city approved a rezoning proposal involving 22 acres in
4 North Corvallis. There are two consolidated appeals.

5 LUBA No. 85-099 appeals an order of the Corvallis Land
6 Development Hearings Board (LDHB). The order rezones the 22
7 acres from Shopping Area (SA) to Community Shopping (CS).

8 LUBA No. 86-008 appeals an order of the Corvallis City
9 Council. The order (1) dismisses petitioners' appeals of the
10 LDHB's decision on standing grounds and (2) adopts findings of
11 fact supporting the rezoning in the event the standing
12 determination is overturned.

13 FACTS

14 Respondent Timberhill Acres Development Company¹
15 (Timberhill) owns a large tract in North Corvallis. Most of
16 the land is designated for residential, open space and
17 recreational uses. The tract includes 22 acres currently
18 designated SA/PD (Shopping Area/Planned Development). This
19 zoning designation allows various commercial uses but a more
20 extensive list of uses are allowed in the CS district.

21 Petitioner Portland Fixture Company is the owner and
22 developer of the Sunset Shopping Center in west Corvallis.
23 Sunset Center is approximately 5 miles from the Timberhill
24 tract in question in this appeal. Petitioners Mark and Louis
25 Zimel are partners in Portland Fixture Company. The Sunset
26 Shopping Center is in a CS district. The center is not fully

1 developed.

2 Petitioner Kings Circle Shopping Center is a developed
3 neighborhood shopping area about 1,000 feet from the Timberhill
4 tract.²

5 The city's comprehensive plan map designates the 22 acres
6 "Shopping Area". This term is defined as

7 "A grouping of commercial establishments planned as a
8 unit and related in location, site, and type of shops
9 to its trade area." Corvallis Comprehensive Plan at
10 135.

11 The plan also defines the term "Community Shopping Area".
12 The definition is as follows:

13 "Contains a junior department store or a variety store
14 as the major tenant in addition to the supermarket,
15 convenience stores, and personal services found in a
16 neighborhood shopping area. It does not have a
17 full-line department store. Community shopping areas
18 generally range in size from 10 to 30 acres." Id. at
19 148.

20 The Timberhill site is not shown on the plan map as a
21 "Community Shopping Area;" nor does the record indicate whether
22 any land in Corvallis is so designated on the plan map (Sunset
23 Shopping Center is zoned CS). The city advises, however, that
24 the 22 acres in question have been considered appropriate for
25 development at this scale. For example, the Timberhill Master
26 Plan designated the area in 1968 and 1978 as a community
shopping area. This plan was endorsed by the city planning
commission. In 1980, the Economic Element of the city's
comprehensive plan included the area as a proposed community
shopping area.

1 The property was designated on the plan as a Shopping Area
2 in 1980. At that time, the land development code consisted of
3 three commercial districts, Central Business(CB), Linear
4 Commercial (LC) and Shopping Area (SA). In 1982 the council
5 amended the code by adding the Community Shopping District.

6 Timberhill applied for a district change from SA/PD to
7 CS/PD in 1985. As noted, the rezoning would permit a wider
8 variety of commercial uses than are permitted under the current
9 SA zoning. The Hearings Board approved the proposal after
10 public hearings. Petitioners, who objected to the change
11 during the LDHB's proceedings, appealed the approval to this
12 Board (No. 85-099). At the same time, they appealed the LDHB's
13 decision to the Corvallis City Council³.

14 After conducting a hearing on the appeals, the council
15 adopted Order No. 865. The order is in two parts. The first
16 part dismisses the appeals for lack of standing.⁴ The second
17 part adopts findings of fact on the merits. The findings are
18 preceded by the following caveat:

19 "These findings of fact are only operative in the
20 event it is later found that the appellants had
21 standing to pursue this appeal or in the event that
LUBA should declare the decision of the L.D.H.B. to be
invalid." Record at 8.

22 The council's order is before us in No. 86-008.

23 STATUS OF APPEAL IN LUBA NO. 85-099

24 As noted, No. 85-099 is an appeal of the LDHB's decision
25 approving the district change. Petitioners evidently filed
26 this direct appeal as a precaution, believing they might not

1 have standing under the Corvallis Land Development Code to
2 appeal the LDHB's decision to the city council.

3 We will not address the appeal in LUBA No. 85-099. For the
4 reasons set forth below, we conclude the city improperly
5 rejected petitioners' attempt to gain council review of the
6 LDHB's decision. Moreover, the city council superseded the
7 LDHB's decision by reaching the merits of petitioners'
8 appeals. The council's decision is a final land use decision
9 and is reviewable here. See ORS 197.010(10), 197.825.

10 PETITIONERS' STANDING TO APPEAL THE LDHB'S DECISION TO THE CITY
11 COUNCIL.

12 Under the Corvallis Land Development Code, decisions of the
13 Planning Commission and Hearings Board are appealable to the
14 city council, provided the appealing party meets the code's
15 standing requirements. Those requirements vary with the nature
16 of the land use proposal. Where, as in this case, the proposal
17 involves a district change for commercial use, the code allows
18 an appeal to the council by (1) the applicant, (2) any resident
19 or property owner within 500 feet of the parcel, (3) any city
20 department responsible for providing city facilities and
21 services to the development and (4) any ten registered voters
22 who reside in the city. Section 118.05, Corvallis Land
23 Development Review Code.

24 Petitioners filed appeals of the LDHB's decision, but the
25 appeals were rejected. The city council's order notes that
26 petitioners neither own nor reside on land within 500 feet of

1 the land to be rezoned. The council's order states:

2 "The Land Development Code was designed to limit who
3 could prosecute an appeal to the city council from a
4 decision of another city agency. The reasons for this
5 are to make the planning commissioners responsible for
6 the decisions that they make to conserve the valuable
7 time of the council from considering appeals by people
8 who have only a tangential interest in the outcome of
9 the decision.

10 * * *

11 "The council is bound by the ordinances of the City of
12 Corvallis. The appellants clearly do not meet the
13 standards contained in the Land Development Code.
14 They have already appealed the decision of the Land
15 Development Hearings Board to LUBA and therefore can
16 pursue any remedies they feel state law affords
17 them." Record at 7.

18 Petitioners⁵ claim the city erred by determining their
19 standing under the city code rather than state law. They rely
20 principally on ORS 227.180(1)(a). In pertinent part, the
21 statute provides

22 "A party aggrieved by the action of a hearings officer
23 may appeal the action to the planning commission or
24 council of the city, or both, however the council
25 prescribes."

26 We agree with petitioners that the statutory aggrievement
27 standard should have been applied by the city council.⁶

28 In Overton v. Benton County, 61 Or App 667, 658 P2d 574
29 (1983), the Court of Appeals overturned standing limitations in
30 a county ordinance similar to the code at issue here. The
31 court stated:

32 "The question is: are Ordinance 22Y's standing
33 provisions inconsistent with and more narrow than the
34 standing conferred by ORS 215.422(1)? The statute
35 grants standing to anyone aggrieved. The ordinance

1 limits aggrievement, at least for those who live over
2 300 feet away from the area under consideration by the
3 Board, to those who can show either 'Physical,
4 personal injury' or 'Demonstrable economic injury to
5 real property.' 'Aggrievement' is not so narrow a
6 concept. It may encompass non-economic harm to real
7 property, harm to personal property and perhaps much
8 more. By redefining 'aggrievement' in a more limited
9 way than is contemplated by the statute, the county
10 has exceeded its statutory authority." Supra, 61 Or
11 App at 672. (Citations omitted.)

12 Cases that followed Overton instruct us that local
13 governing bodies perform a "gate-keeping" function on standing
14 issues. Jefferson Landfill Comm. v. Marion County, 297 Or 280,
15 686 P2d 310 (1984). They may reach different conclusions on
16 whether a person is aggrieved by a land use decision than are
17 reached by local hearings bodies. Lamb v. Lane County, 70 Or
18 App 364, 689 P2d 1049 (1984). However, the cases also
19 reinforce the idea stated in Overton that "aggrievement" can be
20 a far more expansive concept than is suggested by the 500 foot
21 limitation in the Corvallis code. See, e.g., League of Women
22 Voters v. Coos County, 76 Or App 705, 712 P2d 111 (1985).

23 In Jefferson Landfill Comm. v. Marion County, supra, the
24 Supreme Court defined aggrievement in three steps. A person is
25 aggrieved if:

- 26 "1) the person's interest in the decision was
27 recognized by the local land use decision-making
28 body;
- 29 "2) the person asserted a position on the merits; and
- 30 "3) the local land use decision-making body reached a
31 decision contrary to the position asserted by the
32 person." 297 Or at 284.

1 The court also stated:

2 "...Local decision-makers, by ordinance or otherwise,
3 may determine who will be admitted or excluded as an
4 interested person or limited to the status of a
5 disinterested witness in a quasi-judicial proceeding.
6 Benton County, supra, 294 Or at 89. These
7 determinations may vary according to the nature of the
8 land use decision in dispute, the issues involved and
9 the particular proceeding." 297 Or at 285.

6 A footnote added:

7 "The decision of who will be admitted or excluded as
8 an interested person or limited to the status of a
9 disinterested witness will be governed by local as
10 well as state procedural standards applicable to the
11 particular proceeding. Benton County v. Friends of
12 Benton County, supra, 294 Or at 89." Id. at 284 n.3.

11 We infer from this language that when local officials
12 exercise discretion in the opening and closing of the standing
13 "gate" they must take into account the nature of the disputed
14 land use decision, the issues involved and the particular
15 proceeding. A land use decision affecting a broad range of
16 interest necessarily is subject to challenge by persons
17 asserting those interests. League of Women Voters v. Coos
18 County, supra.

19 Applying these principles to the case at hand we conclude
20 that the city could not rely on the 500 foot limitation in the
21 development code to deny petitioners' standing to appeal the
22 LDHB's decision. The 500 foot rule is far too restrictive
23 under the circumstances. It does not accommodate interests
24 clearly affected by the district change.

25 The disputed land use decision involves a proposal to
26 establish (or at least pave the way for) a large-scale shopping

1 center on 22 acres in North Corvallis. As Petitioner Zimel
2 stated to the council, the approval is almost certain to have
3 significant economic, environmental and social consequences
4 inside and beyond Corvallis city limits. Record at 32. See
5 also, Record at 22-27 (minutes of city council discussion).
6 Among the issues involved in the proceeding were: (1) whether
7 the city's comprehensive plan permits only one facility of this
8 size (the Sunset Shopping Center), (2) whether the district
9 change would help or harm the city's already weak economic
10 picture, and how it would affect the downtown area and (3)
11 whether the transportation system could accommodate a large
12 commercial facility in this area. Petitioners, as owners of
13 commercial land in Corvallis, have substantial interests in
14 these questions. Under the circumstances, limiting standing to
15 those who own or reside on land within 500 feet of the
16 Timberhill site cannot be sustained.

17 Petitioners advised the LDHB and the city council that they
18 owned existing or planned shopping centers in Corvallis. They
19 also claimed that the rezoning would have harmful economic
20 impacts on their interests and on the city as a whole. They
21 cited comprehensive plan policies that arguably at least,
22 supported their claims. The LDHB properly recognized
23 petitioners' stated interests. The rezoning approval was
24 contrary to those interests. We conclude from these undisputed
25 facts that petitioners had standing to appeal the LDHB's
26 decision to the city council. The city's contrary holding is

1 erroneous as a matter of law. See Lamb v. Lane County, supra,
2 League of Women Voters v. Coos County, supra.⁷

3 Based on the foregoing, the city's dismissal of the appeal
4 on standing grounds must be reversed.⁸ This ruling would
5 ordinarily terminate our involvement, leaving it to the city to
6 take up petitioners' appeal on the merits. However, we go
7 further in this case. As noted, the city council adopted
8 findings of fact on the merits of the appeals, notwithstanding
9 the council's determination on standing. The order provides
10 that if the council's standing determination is overturned, the
11 findings of fact on the merits of the appeals become
12 "operative." Record at 3.

13 Since the council has already conducted the proceedings
14 that our reversal of the standing determination would require,
15 and since the petition in LUBA No. 86-008 attacks the city's
16 findings as though they were operative, we believe the
17 appropriate course is to take up the remaining assignments of
18 error.⁹

19 FIRST AND SECOND ASSIGNMENTS OF ERROR

20 Section 114.04.06 of the City Code states:

21 "Criteria for District Change:

22 "Petitioners for district changes which are
23 quasi-judicial in nature must prove that the change
24 conforms to the Comprehensive Plan; and the burden is
25 placed on the proponent of the district change to
26 justify the reclassification with substantial
evidence. Generally, the more drastic the change the
greater will be the burden of showing that the
proposed change is in conformance with the
Comprehensive Plan as implemented by the Land
Development Code." (Emphasis added.)

1 In these assignments of error, petitioners direct our attention
2 to the emphasized language in section 114.04.06. They contend
3 that by employing the substantial evidence requirement in
4 section 114.04.06, the city council

5 "...failed to find that the applicant had shown that
6 the proposed district changes will actually satisfy
7 applicable criteria. It found only that the applicant
8 made a record from which a reasonable person could
9 come to such a conclusion. Neither the parties nor
10 LUBA knows what the city council and LDRB would have
11 found if asked whether the evidence satisfied the
12 normal preponderance standard." Petition at 6.

13 Petitioners list a variety of reasons why the city council
14 could not legally base its decision on proof falling below the
15 preponderance threshold. However, their claim that the council
16 actually relied on such proof finds no support in the record.
17 We have no reason to believe that the members of the council
18 found only that the applicant made a record from which a
19 "reasonable person" could conclude the criteria were
20 satisfied.

21 We think a far more reasonable assessment of the record is
22 that the council required the zone change applicant
23 (Timberhill) to justify the change with convincing (i.e.,
24 substantial) evidence. The comments by council members
25 preceding the final vote support this conclusion. Record at
26 22-27. Petitioners' contrary allegation, which rests entirely
27 on a strained reading of Section 114.04.06, is unsupported.

28 The first and second assignments of error are denied.

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1 THIRD ASSIGNMENT OF ERROR

2 This assignment of error challenges the city council's
3 determination that petitioners lack standing to appeal the
4 LDHB's rezoning approval. We have already upheld this
5 challenge. The assignment of error is sustained.

6 FOURTH ASSIGNMENT OF ERROR

7 Petitioners next contend the city council acted improperly
8 by considering the merits of the LDHB's rezoning decision after
9 concluding that no one with standing had appealed the
10 decision. Petitioners direct our attention to the portion of
11 the council's order stating:

12 "These findings of fact are only operative in the
13 event that it is later found that the appellants had
14 standing to pursue this appeal or in the event that
LUBA should declare the decision of the LDHB to be
invalid." Record at 8.

15 Petitioners say the city council could not adopt such a
16 provisionally operative order. In their view, the council
17 relinquished jurisdiction over the rezoning proposal once the
18 appeals of the LDHB's decision were dismissed.

19 The city's order does dismiss the appeals. However, the
20 order goes on to state that if petitioners are found to have
21 standing, the council's findings on review of the LDHB's action
22 become operative. As we read it, this portion of the order
23 assumes that petitioners have standing and that the LDHB's
24 decision is therefore properly before the council. We find no
25 jurisdictional defect.

26 Petitioners support their challenge to the provisional

1 order by citing City of Rajneeshpuram v. LCDC, 76 Or App
2 55, ___ P2d ___ (1985). However, that case is not controlling
3 in this instance.

4 In the Rajneeshpuram case, LCDC adopted a continuance order
5 in response to the city's request for acknowledgement under ORS
6 197.251. The order included a "self-destruct" clause reading:

7 "If LUBA or a court of competent jurisdiction decides
8 that the city is not lawfully created, this order is
9 without effect because the Commission's review
authority under ORS 197.251 is limited to local
government requests." 76 Or App at 57.

10 The Court of Appeals struck down the quoted proviso in LCDC's
11 order. The clause was without effect, said the court, because

12 "...LCDC does not have the authority to decide in an
13 acknowledgement proceeding how a city may
subsequently lose its corporate status or what the
14 consequences of that loss would be." Id.

15 The defect in the order at issue in the Rajneeshpuram case
16 was that LCDC lacked authority to decide the consequences of
17 the invalidation of the incorporation of Rajneeshpuram. There
18 is no similar problem here. The Corvallis order does not
19 purport to decide questions beyond the city's council's
20 authority. Rather, the order merely states the council's
21 intent to adopt certain findings (well within the council's
22 authority) if petitioners have standing to appeal the LDHB's
23 decision.

24 The fourth assignment of error is denied.

25 FIFTH AND SIXTH ASSIGNMENTS OF ERROR

26 These assignments of error allege that the LDHB's decision

1 violates the city's comprehensive plan in several respects.
2 However, we have already stated that the LDHB's decision was
3 superseded by the city council's order. Accordingly, we pass
4 over these assignments. In so doing, however, we note that the
5 next two assignments of error make similar allegations in
6 connection with the city council's order.

7 SEVENTH AND EIGHTH ASSIGNMENTS OF ERROR

8 Petitioners allege that the city council's decision
9 violates several policies in the Corvallis comprehensive plan.
10 The challenges are considered below.

11 Policy 13.5.7

12 This policy reads:

13 "One community-scale commercial facility is permitted
14 for the west Corvallis area. It shall be located at
15 the southeast corner of 53rd Street and Philomath
16 Boulevard. The remainder of the IDs in the area of
17 53rd Street and Philomath Boulevard shall be used
18 principally for residential development."

19 Petitioners, who own the site (Sunset) referred to in Policy
20 13.5.7, claim the policy bars designation of the Timberhill
21 property for community commercial use. The city answers that
22 the policy is irrelevant because it concerns west Corvallis,
23 while the Timberhill site is in North Corvallis. The city's
24 brief explains:

25 "Timberhill is located in North Corvallis and was
26 within the city limits at the time that the
27 Comprehensive Plan was adopted. All the policies of
28 the Comprehensive Plan under Section 13 were addressed
29 to the problems of urbanizing lands outside the city
30 limits but within the Urban Growth Boundary (UGB).
31 Therefore, the policies contained in Section 13 were
32 meant to apply to those areas such as West Corvallis

1 which at that time were outside the city limits, and
2 not to the Timberhill site which was already approved
3 for development. Section 13 talks about the problems
4 of annexation and monitoring development in the urban
5 fringe. At the time the Comprehensive Plan was
6 adopted, the area now occupied by Sunset Center was
7 outside the city limits. This policy was to guide the
8 development of the site until annexation." Brief of
9 Corvallis at 31-32.

10 The city's position is borne out by maps in the
11 comprehensive plan, which show that the Timberhill area is not
12 in the area designated "West Corvallis." See, e.g., Record at
13 175. Another map (attached to the city's brief) illustrates
14 that Timberhill was inside city limits when the plan was
15 adopted. The argument, which we accept, is that Policy 13.5.7
16 was intended to apply to land outside or on "the fringe" of
17 city limits. We conclude that Policy 13.5.7 does not govern
18 the allowable development in Timberhill. Petitioners' attack
19 therefore derives no support from Policy 13.5.7.

20 Policies 7.8.1 and 7.8.4

21 These policies read as follows:

22 "7.8.1

23 The location, type, and amount of commercial activity
24 within the planning area shall be based on community
25 needs.

26 "7.8.4

Commercial Development in Residential Areas should
serve the needs of the respective area and shall meet
special site development standards which minimize the
negative impact on abutting properties."

The policies require assessment of community needs when
allocations of land for commercial use are made. Petitioners
insist that Policy 13.5.7 reflects a determination that a

1 single community commercial facility (the Sunset Shopping
2 Center) is needed in this area. Accordingly, they argue, the
3 city could not approve the Timberhill rezoning without amending
4 the plan.

5 We reject petitioners' interpretation of Policy 13.5.7. We
6 therefore also reject their claims under Policies 7.8.1 and
7 7.8.4.

8 We note also that the present plan designation of the
9 Timberhill site is "Shopping Area". Thus, the city has already
10 made a legislative assessment that at least some degree of
11 commercial use is needed in this area. The city's findings
12 (discussed below) explain why the recognized need justifies
13 rezoning the site from SA/PD to CS/PD.

14 Petitioners mount a second attack under policies 7.8.1 and
15 7.8.4. Their argument is that the evidence and findings "fail
16 to meet" certain testimony. The testimony is that (1) no
17 additional commercial centers are needed in Corvallis because
18 of the stagnant economy, (2) the city's growth projections are
19 unrealistically high and (3) the proposed facility will erode
20 the market base of other Corvallis businesses and will not stem
21 the "leakage" of sales to regional centers in Eugene and
22 Portland.

23 The criticisms of the city's findings are not well taken.
24 The findings address all the issues petitioners say should have
25 been addressed. For example, the order states:

26 "The Council recognizes that the state of the local

1 economy has not grown appreciably in recent years.
2 Nevertheless, the demographic and logistic data
3 submitted by Mr. Van Dyke indicate that there are
4 approximately 20,000 people within one and one-half
5 miles of this site; that much of the future growth of
6 the Corvallis area is likely to occur in the north and
7 therefore this particular site is likely to service
8 those citizens. Over the next 5 years, this site will
9 be capable of supporting the commercial needs of North
10 Corvallis, which has recently experienced a
11 considerable decline in commercially designated
12 acreage.

13 * * *

14 "The approval of this site for community scale
15 shopping center will allow the citizens of Corvallis a
16 local choice for their shopping opportunities which
17 will stem some of the drain of dollars from the
18 community. The more diverse retail trade that is
19 available in the Corvallis community, the better will
20 be the downtown as well as other commercial areas."
21 Record at 14-16.

22 Petitioners offered evidence contrary to the evidence
23 accepted by the city, but this does not invalidate the city's
24 decision. The critical questions in connection with policies
25 7.8.1 and 7.8.4 are (1) whether the city's findings address the
26 issues raised during the hearings and (2) whether the findings
are supported by substantial evidence. As noted above, the
first question merits an affirmative response. We do not read
the petition to present the second question. Petitioners
allege only that the evidence "fails to meet" the testimony
they offered. (Petition at 30-31.) This allegation does not
challenge the evidentiary support for any specific findings
adopted by the city, but instead invites us to conclude that
petitioners' evidence was more persuasive than the applicant's
evidence. Our review authority does not enable us to perform

1 this type of analysis.

2 Policy 9.1.9

3 This policy states:

4 "The city shall consider the level of key facilities
5 that can be provided when planning for various
densities and types of urban land uses."

6 We construe the policy to require that key facilities must be
7 adequate to support planned urban land uses.

8 Petitioners allege the city's findings under Policy 9.1.9
9 do not address or rebut testimony they offered about the
10 impacts the rezoning would have on traffic flow. Their
11 testimony was that development of the proposed community
12 commercial center would substantially reduce traffic flow.

13 Petitioners complain that:

14 "Mr. Hanks [their traffic expert] recommended that no
15 land use change be made on the subject site until the
impacts have been thoroughly analyzed and mitigation
16 measures are planned, programmed, and ready to be
built. Neither the evidence nor the findings meet
this testimony." Petition at 32.

17 We find no defect in the city's findings concerning the
18 adequacy of the transportation system to accommodate the
19 rezoning. The findings state:

20 "17. The subject property is bordered by Walnut
21 Boulevard to the north and Kings Boulevard to the
west, both of which are arterials and have the
22 capacity to adequately carry the vehicular movement
associated with the CS designation of said property."
23 Record at 12.

24 The order concludes:

25 "6. There are no adverse traffic impacts related to
26 this district change. The road system adjacent to
this site is one of the best in the entire city for

1 servicing a major commercial center. The streets were
2 planned to accommodate the kind of traffic volumes
presented by Mr. Hanks." Record at 15.

3 These findings address the issue of traffic impacts raised by
4 petitioners. Their claim that neither the evidence nor the
5 findings "meet the evidence" presented by their expert invites
6 us to give different weight to the evidence than was given by
7 the city council. We are not authorized to do so.¹⁰ We also
8 have not been cited to legal authority requiring the city to
9 adopt findings explaining why petitioners' evidence was not
10 accepted. We have previously held that such explanatory
11 findings are not required by the substantial evidence rule.

12 See Morse v. Clatsop Co., 12 Or LUBA 70, 74 (1984).

13 Policies 8.4.3. and 8.4.4

14 These policies state:

15 "More intensive land uses proposed for established
16 residential areas shall be subject to special site
development standards which minimize the negative
impact on abutting properties.

17 "The city should review all development proposals for
18 compatibility with surrounding established residential
19 areas. Policies related to land use, transportation,
public facilities, and utilities shall seek to
maintain the quality of these areas."

20 Petitioners allege that the city's findings in connection
21 with these policies are unsupported by substantial evidence.

22 The city answers by pointing out that the property bears a
23 "planned development" designation and that the compatibility
24 issues raised by the cited policies are to be taken up in
25 subsequent development phases. The city's brief states:

1 "The comprehensive Plan and Land Development Code
2 development districts set the general and specific
3 uses that are applicable to property in Corvallis.
4 Virtually all new development is processed under the
5 'planned development' approach. *** That process
6 requires both a conceptual development plan and a
7 detailed development plan to be considered by the
8 planning authorities in Corvallis and requires a
9 public hearing prior to final approval. This process
10 successfully assures that site development concerns
11 will be addressed and ameliorated to the most
12 considerable degree." Brief of Corvallis at 30.

13 A finding adopted by the city council echoes this rationale.

14 Petitioners' challenge seems to assume that the city could
15 not rezone the property without proof that the required planned
16 development review process will protect the surrounding area
17 from negative impacts. The assumption is unwarranted. As the
18 city points out, no development will entail an additional
19 review process involving separate hearings and the application
20 of approval criteria requiring a compatibility analysis. See
21 Section 112 Corvallis Land Development Code. Any findings the
22 city may make that those approval criteria are satisfied will
23 require evidentiary support in the record. We will not
24 speculate in this appeal about whether the necessary proof can
25 or will be offered.

26 The seventh and eighth assignments of error are denied.

The city's decision is affirmed.

FOOTNOTES

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1
Timberhill and Dennis Hedges filed Statements of Intent to Participate in these appeals. See OAR 661-10-020. No objection was filed to their participation on the side of respondent.

2
Kings Circle did not file Notices of Intent to Appeal in No. 85-099 or 86-008. However, it did file a Statement of Intent to Participate in 85-099.

3
Two appeals of the LDHB's action were filed in the city council. One was filed by Petitioners Louis and Mark Zimel. They are partners in the Portland Fixture Company. A second appeal was filed in the city council by Kings Circle Shopping Center.

4
The council also dismissed the appeal by Kings Circle Shopping Center on grounds it was filed after the appeal deadline and without the required fee. That ruling is not challenged in this appeal.

5
Our discussion of the standing issue pertains only to Portland Fixture Company and Louis and Mark Zimel. Kings Circle's appeal was untimely filed with the council. The dismissal of that appeal is not assigned as error here.

6
The city maintains that ORS 227.180 is inapplicable in this instance for two reasons. First it points out that the statute grants standing only to "parties" in the lower-level proceeding. The city argues that petitioners were not parties to the LDBH's proceeding because they were not entitled to notice of the proceeding. Second, the city argues that ORS 227.180 applies only to actions of a hearings officer; the statute allegedly does not cover actions of other agencies, such as the city's Hearings Board.

We are unpersuaded by these arguments. Petitioners may not

1 have been entitled to notice of the LDBH's proceeding, but they
2 were permitted to fully participate therein. The city code
3 does not define "parties" in land use hearings. We believe
4 that petitioners became parties to the LDBH's proceeding once
5 they were allowed to express their opposition to the rezoning
6 application. See Jefferson Landfill Comm. v. Marion County,
7 297 Or 280, 686 P2d 310 (1984).

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It also seems reasonable to say that petitioners, who own competing shopping center developments, are adversely affected by the rezoning. They alleged that the rezoning would have significant adverse affects on their economic interests. Although adverse affect is not a standing pre-requisite under ORS 227.180, the case law implies that interests cognizable under an adverse affect analysis would necessarily merit local recognition under an aggrievement analysis also. Thus, the city could not "close the gate" on these petitioners.

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Our ruling rejecting the city council's standing decision necessarily rejects Timberhill's challenge to Kings Circle's right to participate in this appeal. We hold that Kings Circle is aggrieved by the city's decision.

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