

1 BEFORE THE LAND USE BOARD OF APPEALS  
2 OF THE STATE OF OREGON  
3

4 LAURIE BAUGHMAN, BRENNNA BELL, )  
5 BRETT BROWNSCOMBE, JEFFREY ALEX )  
6 CASE, ALEXIS DECAPRIO, BRENT )  
7 FOSTER, RACHEL KONDOR, OLIVER )  
8 LUBY, MARY JO POWROZEK, GEORGE )  
9 SEZTON, )

10 )  
11 Petitioners, )

12 )  
13 vs. )

14 )  
15 CITY OF PORTLAND, )

16 )  
17 Respondent, )

18 )  
19 and )

20 )  
21 LEWIS AND CLARK COLLEGE, )

22 )  
23 Intervenor-Respondent. )  
24

LUBA No. 98-108

FINAL OPINION  
AND ORDER

25  
26 Appeal from City of Portland.

27  
28 Brent Foster, Portland, filed the petition for review and argued on his own behalf.

29  
30 Frank Hudson, Deputy City Attorney, Portland, filed a response brief and argued on  
31 behalf of respondent.

32  
33 Steven L. Pfeiffer and Michael R. Campbell, Portland, filed a response brief and  
34 argued on behalf of intervenor-respondent. With them on the brief was Stoel Rives.

35  
36 HOLSTUN, Board Chair; BASSHAM, Board Member; BRIGGS, Board Member,  
37 participated in the decision.

38  
39 AFFIRMED

06/30/99

40  
41 You are entitled to judicial review of this Order. Judicial review is governed by the  
42 provisions of ORS 197.850.

43

1 Opinion by Holstun.

2 **NATURE OF THE DECISION**

3 Petitioners appeal the city's approval of an amended conditional use master plan for  
4 Lewis and Clark College.

5 **MOTION TO INTERVENE**

6 Lewis and Clark College (hereafter College or intervenor) moves to intervene on the  
7 side of respondent. There is no opposition to the motion, and it is allowed.

8 **FACTS**

9 We adopt the statement of facts included in intervenor's brief:

10 "[Lewis and Clark] College consists of a main campus and a law school  
11 several hundred feet to the west. Both the main campus and the law school lie  
12 within various low-density residential zones. Institutional uses, such as  
13 colleges, are allowed in these zones only as conditional uses. The City's  
14 [Conditional Use Master Plan (hereafter Master Plan)] procedure is intended  
15 to allow simultaneous, coordinated review and approval of proposed  
16 institutional expansions, which would otherwise be reviewed piecemeal and in  
17 isolation. \* \* \*

18 "The City approved a Master Plan for the College in April 1992. The College  
19 instituted this proceeding in order to obtain City approval for various  
20 amendments to the Master Plan. These amendments are intended primarily  
21 (1) to expand academic and dormitory facilities while maintaining roughly the  
22 current student enrollment and (2) to replace surface parking and private roads  
23 within the central campus in order to create a pedestrian-oriented  
24 environment. Among the amendments that are relevant to this review  
25 proceeding are an updated traffic impact analysis; the addition and deletion of  
26 various parking facilities, including the expansion of the Huston Parking Lot  
27 near the law school from 27 to 161 spaces, and the proposed expansion of the  
28 law school's academic, library, and other facilities.

29 "A City hearings officer approved the amended Master Plan with conditions  
30 on January 22, 1998. The Collins View Neighborhood Association appealed  
31 the [hearings officer's] decision to the City Council, which conducted a de  
32 novo review and affirmed the [hearings officer's decision on] June 4, 1998."  
33 Intervenor's Brief 3-4 (record citations omitted).

34 This appeal followed.

1 **FIRST ASSIGNMENT OF ERROR**

2 Petitioners argue under the first assignment of error that the city's finding that the  
3 disputed proposal complies with City of Portland Comprehensive Plan (PCP) Policy 6.14 "is  
4 not supported by substantial evidence." Petition for Review 6. Although the assignment of  
5 error is stated as a substantial evidence challenge, the argument presented in support of the  
6 first assignment of error contends that the city improperly interpreted and applied PCP Policy  
7 6.14. We consider all of petitioners' arguments.

8 PCP Policy 6.4 requires that Policies 6.1 through 6.29 be applied as "mandatory  
9 approval criteria" to certain "land use requests," including "Conditional Uses and Master  
10 Plans." One of these mandatory approval criteria, PCP Policy 6.14, provides:

11 "Parking Management

12 "To achieve environmental and transportation policy objectives, the parking  
13 supply shall be managed to take into account both transportation capacity and  
14 parking demand. Implement measures to achieve Portland's share of the  
15 mandated 10 percent reduction (per the Transportation Rule) in parking  
16 spaces per capita within the metropolitan area over the next 20 years.  
17 Through the land use process, these measures should include restrictions on  
18 the development of new spaces and the redevelopment of existing spaces for  
19 other uses."<sup>1</sup>

20 Petitioners and the city adopt very different views of how PCP Policy 6.14 applies to the  
21 decision challenged in this appeal.

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<sup>1</sup>The reference in PCP Policy 6.14 to the "Transportation Rule" presumably is a reference to OAR 660-012-0045(5)(c)(A), which requires that local governments located within Metropolitan Planning Organizations (MPOs) adopt land use and subdivision regulations that implement parking plans that "[a]chieves a 10% reduction in the number of parking spaces per capita in the MPO area over [20 years following adoption of a Transportation System Plan]." The College states that it "understands that a TSP has not yet been adopted for the Portland Metropolitan Area, which means that the 20-year planning period for reducing per capita parking has not yet begun." Intervenor's Brief 5 n 3. The city proceeded in this matter as though it were currently obligated to contribute the city's share of the 10 percent reduction specified in OAR 660-012-0045(5)(c)(A) over the next 20 years. Because the College does not assign error to that aspect of the city's decision, we do not consider further whether the city's assumption is correct.

1           **A.     The City's Interpretation**

2           The city's findings first point out that the 10 percent reduction in parking spaces per  
3           capita mandated by PCP Policy 6.14 applies to the entire "metropolitan area." The City of  
4           Portland is required by PCP Policy 6.14 to "[i]mplement measures to achieve" the city's  
5           unspecified "share" of that metropolitan area obligation.<sup>2</sup> Finally, PCP Policy 6.14 requires  
6           that "these measures should include restrictions on the development of new spaces," but does  
7           not specify precisely what those measures must require beyond "restricting" such new  
8           spaces. Nevertheless, the city's findings go on to conclude that "it is reasonable to establish a  
9           goal of achieving at least a 10% reduction over 20 years in each land use case \* \* \*." Record  
10          87. Petitioners do not dispute this aspect of the city's interpretation, but do challenge the  
11          manner in which the city applied its interpretation in this case.

12          The College's approved 1992 Master Plan does not specify a limit on the ratio of  
13          parking spaces to students. Rather that Master Plan approves a maximum of 1,740 spaces.  
14          The college's 1992 enrollment was 3,444 students. The challenged decision uses these  
15          numbers from the approved 1992 Master Plan to arrive at a parking spaces per capita ratio of  
16          approximately 0.50. Record 88-89. The challenged decision uses this ratio as a starting  
17          point or base line and concludes that for the disputed Master Plan amendment to comply with  
18          PCP Policy 6.14, that ratio must be reduced by five percent over the next 10 years to make  
19          the required progress toward achieving the goal of reducing the ratio by ten percent over 20  
20          years. A five-percent reduction in 0.50 is 0.475. The challenged decision imposes a

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<sup>2</sup>For example if the metropolitan area started the 20-year period with one million people and 500,000 parking spaces, it would begin with a parking spaces per capita ratio of 500,000/1,000,000 or 0.5. A 10 percent reduction in that ratio over 20 years would require an ending ratio of 0.5 – 0.005 or 0.45. Under PCP Policy 6.14, the city is obliged to contribute its "share" of that reduction, whatever that share may be.

1 condition "T" which provides, in part, that "[t]he ratio of parking spaces per capita must not  
2 exceed 0.475 by the year 2008." Record 109.<sup>3</sup>

3 **B. Petitioners' Interpretation**

4 Petitioners argue that PCP Policy 6.14 requires a reduction in "existing" parking  
5 spaces, not "'the maximum number of approved parking spaces' or 'potential' parking spaces."  
6 Petition for Review 9 (emphasis in original). Petitioners contend that the city's planning and  
7 transportation planning staff correctly argued below that the College's 1996 existing parking  
8 supply of 1,468 spaces and the 1996 student enrollment of 3,074 should have been used to  
9 arrive at a starting or base line ratio of 0.48. When that ratio is reduced by 5 percent,  
10 petitioners argue the limiting ratio that should have been included in condition T becomes  
11 0.46 rather than 0.48.

12 **C. Conclusion**

13 Petitioners' interpret PCP Policy 6.14 as requiring a 10 percent reduction in the  
14 parking spaces per capita ratio in individual land use proceedings using a starting or base line  
15 ratio that considers only existing parking spaces. Under petitioners' interpretation, parking  
16 spaces that have been approved but are not yet constructed are not to be considered in  
17 establishing the starting or base line ratio.

18 Petitioners' interpretation is possible and is a straightforward reading of PCP Policy  
19 6.14. Petitioners' interpretation also might well lead to elimination of more parking spaces  
20 than the interpretation adopted by the city council. However, PCP Policy 6.14 does not, by  
21 its terms, require petitioners' interpretation. More to the point, there is nothing in the  
22 language of PCP Policy 6.14 that conflicts with the different interpretation that the city

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<sup>3</sup>The decision also identifies the maximum number of parking spaces that would be allowed under other student enrollment scenarios:

"\* \* \* At the 1996 enrollment,  $.475 \times 3,074 = 1,460$  parking spaces [would be allowed]. At the target enrollment of 3,400 students, that ratio allows 1,615 parking spaces. At maximum enrollment of 3,580 students, 1,700 spaces would be permitted." Record 89.

1 council adopted. The question presented under this assignment of error is not whether  
2 LUBA thinks petitioners' interpretation of PCP Policy 6.14 is better or more correct than the  
3 interpretation the city council adopted. Rather, the question is whether the city's council's  
4 interpretation is so wrong as to be reversible under ORS 197.829(1) and Clark v. Jackson  
5 County, 313 Or 508, 836 P2d 710 (1992).<sup>4</sup> deBardelaben v. Tillamook County, 142 Or App  
6 319, 324-26, 922 P2d 683 (1996). Under this standard of review, the city council is accorded  
7 a great deal of latitude in interpreting and applying its own legislation. DLCD v. Tillamook  
8 County, 157 Or App 11, 14-15, 967 P2d 898 (1998).

9 The city council's interpretation and application of PCP Policy 6.14 is not  
10 "inconsistent with the express language" of that plan policy. ORS 197.829(1)(a). See n 4.  
11 Neither have petitioners shown that the city council's interpretation is "inconsistent with the  
12 purpose" or "underlying policy" for that plan provision. ORS 197.829(1)(b) and (c). PCP  
13 Policy 6.14 clearly provides a policy of reducing the parking space per capita ratio by 10  
14 percent, but it does not specify how the starting point for that 10 percent reduction must be  
15 computed. Although the language of PCP Policy 6.14 does not give the city carte blanche to  
16 include wholly extraneous factors that have the effect of inflating the starting or base line  
17 ratio, we believe the approach adopted by the city, which simply recognizes and gives effect

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<sup>4</sup>ORS 197.829(1) provides:

"The Land Use Board of Appeals shall affirm a local government's interpretation of its comprehensive plan and land use regulations, unless the board determines that the local government's interpretation:

- "(a) Is inconsistent with the express language of the comprehensive plan or land use regulation;
- "(b) Is inconsistent with the purpose for the comprehensive plan or land use regulation;
- "(c) Is inconsistent with the underlying policy that provides the basis for the comprehensive plan or land use regulation; or
- "(d) Is contrary to a state statute, land use goal or rule that the comprehensive plan provision or land use regulation implements."

1 to approved but as yet not completed parking spaces, is within its interpretive discretion  
2 under ORS 197.829(1)(a) to (c).

3 Finally, we do not believe petitioners adequately raise a challenge under ORS  
4 197.829(1)(d), which requires that we remand the city council's interpretation if it "[i]s  
5 contrary to a state statute, land use goal or rule that the comprehensive plan provision \* \* \*  
6 implements." Petitioners do not specifically identify any such state requirement or explain  
7 why they may believe that the city council's decision violates any state requirement. Even if  
8 the petition for review could be read to raise such an argument or if the language of PCP  
9 Policy 6.14 itself implicates the Transportation Planning Rule (TPR), we do not believe the  
10 city council's interpretation is inconsistent with the TPR. The only specific provision  
11 identified by any party is OAR 660-012-0045(5)(c)(A). See n 1. That rule says nothing  
12 about how parking spaces that have already been approved but are not yet constructed must  
13 be addressed under the rule in approving applications for development of new parking  
14 spaces.

15 Accordingly, we affirm the city's interpretation of PCP Policy 6.14. We also  
16 conclude that the city's finding of compliance with PCP Policy 6.14, as that provision is  
17 interpreted, is supported by substantial evidence. The first assignment of error is denied.

18 **SECOND, THIRD, AND FIFTH ASSIGNMENTS OF ERROR**

19 **A. Introduction**

20 One of the critical features of the challenged proposal is the expansion of the Huston  
21 Parking Lot (Huston lot) from 27 to 161 spaces. This expanded parking lot is located  
22 southwest of the law school and is intended to address problems created by the currently  
23 inadequate parking lot at the law school. Petitioners' second, third and fifth assignments of  
24 error challenge this aspect of the disputed proposal, arguing that it will increase traffic safety  
25 problems and create new pedestrian and bicycle safety problems.

26 A significant number of law students currently commute by automobile east on SW

1 Terwilliger Boulevard (Terwilliger) to the law school.<sup>5</sup> These students currently drive past  
2 Terwilliger's intersection with SW Boones Ferry Road (Boones Ferry) and continue on  
3 several hundred feet past that intersection on Terwilliger to the law school. These law  
4 students first attempt to park in the parking lot adjoining the law school (law school lot). The  
5 law school lot is inadequate and frequently full, and law students who are unable to find a  
6 parking space in the law school lot return to Terwilliger and continue driving east on  
7 Terwilliger to SW Palater Road (Palater) and continue on Palater a short distance to the  
8 College's upper campus and park at what is referred to as the Griswold Parking Lot. These  
9 students then walk approximately 1,150 feet back to the law school, and must cross  
10 Terwilliger to enter the law school campus.

11 The proposed expanded Huston lot would be located southwest of the law school on  
12 Boones Ferry, a short distance south of the Terwilliger/Boones Ferry intersection. A lighted  
13 path through Tryon Creek State Park, a distance of approximately 780 feet to the law school,  
14 would be provided for students and visitors using the Huston lot. The Huston lot would  
15 provide an alternative to the two existing parking options at the law school and Griswold  
16 lots.

17 **B. Terwilliger/Boones Ferry Intersection**

18 Petitioners cite testimony in the record that the law students who now travel east on  
19 Terwilliger to the law school will continue to attempt first to find a parking space at the law  
20 school lot before looking for an alternative, more distant parking space. Petition for Review  
21 17-18. If they do not find a parking space at the law school, at least some of these students  
22 will park at the Huston lot. These students will return to Terwilliger and retrace their route  
23 west to the Terwilliger/Boones Ferry intersection. At that intersection, they will have to turn  
24 left and travel a short distance south on Boones Ferry to the Huston lot.

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<sup>5</sup>As explained later in this opinion, petitioners also contend that a large number of non-student visitors also travel to the law school by automobile.

1           Petitioners argue that this pattern of law students seeking parking will cause impacts  
2 on the Terwilliger/Boones Ferry intersection that violate traffic safety standards in Portland  
3 City Code (PCC) 33.820.070(G)(1),<sup>6</sup> 33.815.105(C)(2),<sup>7</sup> 33.815.105(D)(2)<sup>8</sup> and OAR 660-  
4 012-0045(3).<sup>9</sup> Specifically, petitioners argue that automobiles attempting to turn left from  
5 Terwilliger onto Boones Ferry during peak hours currently cause the single westbound lane  
6 of Terwilliger to back up. Petitioners contend that frustrated drivers currently drive onto the

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<sup>6</sup>PCC 33.820.070 sets out the required "Components of a Master Plan." PCC 33.820.070(G) provides, in part:

**"Transportation and parking.** The master plan must include information on the following items for each phase.

"1.       Projected transportation impacts. These include the expected number of trips (peak and daily), an analysis of the impact of those trips on the adjacent street system, and proposed mitigation measures to limit any projected negative impacts. Mitigation measures may include improvements to the street system or specific programs to reduce traffic impacts such as encouraging the use of public transit, carpools, vanpools, and other alternatives to single occupancy vehicles."

<sup>7</sup>PCC 33.815.105(C)(2) requires:

"[t]he proposal will not have significant adverse impacts on the livability of nearby residential zoned lands due to: \* \* \* [p]rivacy and safety issues."

<sup>8</sup>PCC 33.815.105(D)(2) imposes the following requirement:

"The transportation system is capable of safely supporting the proposed use in addition to the existing uses in the area. Evaluation factors include street capacity and level of service, access to arterials, transit availability, on-street parking impacts, access requirements, neighborhood impacts, and pedestrian safety[.]"

<sup>9</sup>OAR 660-012-045(3)(b) requires, in part, that:

"On-site facilities shall be provided which accommodate safe and convenient pedestrian and bicycle access from within new subdivisions, multi-family developments, planned developments, shopping centers, and commercial districts to adjacent residential areas and transit stops[.]"

OAR 660-012-045(3) provides that one of its purposes is "to provide for safe and convenient pedestrian, bicycle and vehicular circulation[.]" OAR 660-12-045(3)(d) provides, in part,

"For purposes of [OAR 660-012-0045(3)(b)] 'safe and convenient' means bicycle and pedestrian routes, facilities and improvements which:

"(A)     Are reasonably free from hazards, particularly types or levels of automobile traffic which would interfere with or discourage pedestrian or cycle travel for short trips[.]"

1 existing bike lane and shoulder on westbound Terwilliger to drive around cars waiting to turn  
2 left onto Boones Ferry. Petitioners argue that students driving from the law school to the  
3 Huston lot to find parking will exacerbate the existing dangers posed to cars, pedestrians and  
4 bicyclists turning left from Terwilliger onto Boones Ferry. Petitioners argue the city failed to  
5 adopt findings that address this issue and that the city's decision that the disputed proposal  
6 complies with the cited PCC and Transportation Planning Rule requirements is not supported  
7 by substantial evidence.<sup>10</sup>

8 **1. Findings**

9 We reject petitioners' argument that the city failed to address the issue of the impact  
10 that the law students travelling from the law school to the Huston lot may have on the  
11 Terwilliger/Boones Ferry intersection. The challenged decision includes the following:

12 "Under [PCC 33.815.105(D)(2)], Appellants have argued that:

13 " \* \* \* \* \*

14 "'The traffic analysis did not consider the fact that students  
15 came (sic) to the law school to park they would first drive to  
16 the main law school and if that was full then to the Huston lot.'

17 "Contrary to this position, the City's Transportation Staff, representatives of  
18 Kittelson & Associates, a traffic engineering consultant, and the Hearings  
19 Officer have determined that the transportation system, as enhanced through  
20 required improvements, will safely support the proposed uses included in the  
21 Master Plan as well as existing uses in the area. More specific to the Huston  
22 Lot, the Hearings Officer found, based on Transportation staff and Kittelson  
23 & Associates testimony, that no improvements were recommended or  
24 necessary at this time to accommodate the addition of the Huston Lot and the  
25 continued operation of the Boones Ferry/Terwilliger intersection. This  
26 testimony and evidence, which the Council finds credible and factually  
27 supported, contradicts [Collins View Neighborhood Association's]  
28 unsubstantiated assertion regarding this intersection and the potential

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<sup>10</sup>We have some question whether all of the cited PCC and TPR provisions impose the kind of traffic safety approval criteria that petitioners apparently assume they do in this case. However, PCC 33.815.105(D)(2) expressly requires that "[t]he transportation system [must be] capable of safely supporting the proposed use in addition to the existing uses in the area." Because petitioners allegations are addressed in part to this criterion, they present an adequate issue for review under this assignment of error.

1 implications for surrounding transportation systems, and Council notes that no  
2 substantive technical evidence or analysis by individuals with expertise in  
3 traffic engineering or planning has been submitted which effectively rebuts  
4 the analysis set forth in the record by the above-referenced traffic  
5 engineers."<sup>11</sup> Record 75-76 (emphasis added).

6 Petitioners are correct that the city's findings must address and respond to specific  
7 issues raised below that are relevant to compliance with applicable approval standards.  
8 Norvell v. Portland Area LGBC, 43 Or App 849, 853, 604 P2d 896 (1979); White v. City of  
9 Oregon City, 20 Or LUBA 470, 477 (1991); Grover's Beaver Electric Plumbing v. Klamath  
10 Falls, 12 Or LUBA 61, 66 (1984). However, the above-quoted findings explicitly  
11 acknowledge the issue petitioners raise under this assignment of error. We understand the  
12 emphasized portion of the city's findings to reject the arguments made in the neighborhood  
13 association's appeal about traffic impacts, which include arguments raising issues concerning  
14 the impact of law students travelling from the law school to the Huston lot. The reason given  
15 in the findings for rejecting that issue is that the neighborhood association's arguments are  
16 not supported by "substantive technical evidence or analysis by individuals with expertise in  
17 traffic engineering or planning." Record 75-76. Because petitioners make no attempt to  
18 explain why those findings are inadequate to respond to the issue asserted under this  
19 assignment of error, we reject petitioners contention that the challenged decision must be  
20 remanded for failure to adopt findings that respond to the issue. We turn to petitioners'  
21 substantial evidence argument.

## 22 **2. Substantial Evidence**

23 There is no dispute that law students testified during the local proceedings that the  
24 law students' current practice of seeking parking spaces at the law school first would

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<sup>11</sup>The evidence cited by petitioners includes the local appeal statement submitted by the Collins View Neighborhood Association in support of its appeal of the hearings officer's decision to the city council. Record 455-60. That appeal statement includes an argument that the hearings officer failed to address student testimony that law students traveling from the law school to the Huston lot "would create a substantial amount of backup from cars turning left from Terwilliger onto Boones Ferry heading south because Terwilliger is just a single lane road with no left hand turn lane in this location." Record 459.

1 continue after the Huston lot is constructed, with the potential impacts that have already been  
2 discussed on the Terwilliger/Boones Ferry intersection.<sup>12</sup> Record 169 and 459.<sup>13</sup> The only  
3 evidence cited by the College that directly responds to this testimony is the following  
4 statement included in a letter from the College's lawyer to the city council:

5 "With regard to students first traveling to the main Law School parking lot to  
6 look for parking, students, like anyone else, develop habits. Over time,  
7 students will come to recognize that the main Law School lot is routinely full  
8 and they will adjust their travel habits accordingly. Thus, while a law student  
9 may mistakenly visit a full main law campus lot once, he or she will likely  
10 adjust their travel habits and go straight to the Huston lot from that point on."  
11 Record 426.

12 Petitioners complain that the College lawyer's statements are not supported by any  
13 expert evidence and "defies the reality that people will look for a parking space in the most  
14 convenient location even if it means that they frequently have to go elsewhere to park.  
15 Petition for Review 22. The College, and more importantly the challenged decision,  
16 similarly criticize the students' unsupported speculation about what law students' parking  
17 travel patterns will be in the future, if the Huston lot is constructed.<sup>14</sup> Recognizing that it is

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<sup>12</sup>Petitioners also point out that the College's original proposal in this matter specifically recognizes that the Terwilliger/Boones Ferry intersection will experience unacceptable levels of service in the future. Record 1272. The College originally proposed "realignment and consolidation" of the intersection and included a proposal to add a left-turn lane on westbound Terwilliger to facilitate left turns onto Boones Ferry, as well as other intersection improvements. Record 1277. However, the College's original proposal also pointed out that mitigation measures would eventually be needed at the intersection "irrespective of any changes in development at Lewis & Clark College." Record 1240. As already noted, the city council ultimately concluded that realignment of the intersection was not necessary, and the proposed left-turn lane at the Terwilliger/Boones Ferry intersection was not required by the city council's final decision.

<sup>13</sup>Petitioners also cite "Testimony on March 12 from Nathan Baker before Respondent." Petition for Review 18 n 1. Although we cannot be certain, we assume petitioners are referring to the transcript attached to their brief. Petition for Review, Exhibit I, 2-3.

<sup>14</sup>The College also points out in its brief that students currently must drive past the more convenient law school lot first as they drive east on Terwilliger, so they have less reason to drive first to the less convenient Griswold lot. The College suggests that in view of the history of parking problems at the law school lot, it is not unreasonable to question whether students may be less likely to drive past a less-crowded Huston lot to check the law school lot first, when doing so incurs the risk of having to make a possibly congested return trip west on Terwilliger to the Huston lot. The College also points out that the record shows that traffic queuing at the Terwilliger/Boones Ferry intersection is worst between 7:30 and 8:10 a.m., whereas the Huston lot will

1 the city's job to judge the credibility the evidence, not LUBA's, we tend to agree with both  
2 petitioners' and the College's criticisms of the other's evidence. In both cases, the cited  
3 testimony is little more than unsupported speculation about what might or might not happen  
4 in the future. We conclude that a reasonable decision maker could have rejected either the  
5 testimony cited by petitioner or the testimony cited by the College. We therefore cannot say  
6 it was unreasonable for the city council to choose not to believe the evidence cited by  
7 petitioner. City of Portland v. Bureau of Labor and Ind., 298 Or 104, 119, 690 P2d 475  
8 (1984); Bay v. State Board of Education, 233 Or 601, 605, 378 P2d 558 (1963); Cook v.  
9 Employment Division, 47 Or App. 437, 441, 614 P2d 1193 (1980), Braidwood v. City of  
10 Portland, 24 Or App 477, 480, 546 P2d 777 (1976); Douglas v. Multnomah County, 18 Or  
11 LUBA 607, 617 (1990). Accordingly, we reject petitioners' substantial evidence argument.

12 The second assignment of error is denied.

13 **C. Public Safety**

14 PCC 33.815.105(C)(2) requires that the proposal not have "significant adverse  
15 impacts on the livability of the nearby residentially zoned land due to \* \* \* safety issues."  
16 See n 7. PCC 33.815.105(D)(2) requires that the transportation system be capable of safely  
17 supporting the proposed use with pedestrian safety being a relevant factor. See n 8. The  
18 Huston lot will be connected to the law school approximately 780 feet away by an existing,  
19 paved pedestrian/bicycle path through dense woods. At the point where the existing, paved  
20 pedestrian/bicycle path passes the law school, an intersecting gravel pathway will connect  
21 with the law school parking lot. The city's findings responding to privacy and safety issues  
22 are as follows:

23 " \* \* \* With the current application, safety along the pedestrian path from the  
24 parking lot to the Law School has been raised by opponents and has been  
25 addressed in testimony presented by College representatives including its

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receive its heaviest use during off-peak hours because classes do not begin until 9:00 a.m. four days a week and until 8:30 a.m. on the other weekday.

1 written submittal dated March 26, 1998. According to Applicant's testimony,  
2 the issue of pedestrian safety is one of the primary [bases] for developing the  
3 Huston Lot. For several reasons, development of the Huston Lot will enhance  
4 pedestrian safety. First, available parking at the Huston Lot will allow  
5 students and faculty to avoid parking at the upper campus, thereby eliminating  
6 the need to walk nearly one quarter mile along Palater and the difficult  
7 pedestrian crossing at Palater and Terwilliger, which a traffic engineer  
8 confirms to be operating below acceptable levels of service and accordingly,  
9 will have negative implications for pedestrian safety. Second, prior to the  
10 development of additional spaces at the Huston lot, the College must construct  
11 half-street improvements which include a sidewalk \* \* \* as well as the  
12 widening of Boones Ferry Road. Pursuant to Condition Z, of the Decision,  
13 the College is required construct this sidewalk to provide access to the Huston  
14 Lot. The improvement will benefit students who do not choose to walk via  
15 the lighted path from the Law School (a distance of 780 linear feet) or use the  
16 escort service provided by the College, but instead, prefer to walk along  
17 Terwilliger, as they do today, to the Boones Ferry intersection. Students who  
18 find the Huston Lot and path access to be unsafe may continue to choose to  
19 park up at the Griswold parking lot (a distance of approximately 1,150 linear  
20 feet) and cross \* \* \* Palater Road where it meets [Terwilliger] to reach the  
21 law School since, according to College testimony, use of the Huston Lot is  
22 strictly voluntary. The College will provide increased safety patrols such as  
23 bicycle patrols along the paved portion of the path as set forth in condition  
24 CC, herein. Finally it is important to note that the proposed development of  
25 the Huston Lot has been endorsed by [Transportation Staff, Traffic Staff,  
26 Planning Staff and the Hearings Officer]."

27 \* \* \* \* \*

28 "With regard to the pathway from the Huston Lot to the Law School, for those  
29 students who choose to use the pathway as one of the four proposed routes,  
30 the pathway will be enhanced or maintained as follows:

31 "- Lighting will be added pursuant to the development standards for  
32 environmental zones, and the portions of the pathway outside of the  
33 environmental zone will be further improved.

34 "- State of the art emergency call boxes will be installed in strategic  
35 locations.

36 "- The implementation of enhanced bike patrols pursuant to condition  
37 CC.

38 "- Non-native vegetation and bushes will be removed.

39 "Although the parking lot is some distance from the Law School and  
40 traversing the distance at night could create a safety issue, the College has

1 proposed to provide an evening escort service for those students who elect not  
2 to walk to their cars on either the lighted pedestrian paths or on Terwilliger  
3 Boulevard. According to College testimony, this service is available from  
4 dusk to 12:15 a.m. to coincide with the hours of operation for the Huston Lot.  
5 Based upon the availability of this service, pathway lighting and call box  
6 facilities and the continued ability to park at other College facilities, the  
7 Council finds that pedestrian safety in the conjunction with the proposed lot  
8 can reasonably be assured and that such issues will not have a significant  
9 [effect] on surrounding residentially zoned land and, accordingly, that this  
10 criterion is met." Record 72-73.

11 Petitioners do not challenge the adequacy of the above-quoted findings. However,  
12 petitioners argue the findings are not supported by substantial evidence. Petitioners cite  
13 evidence in the record that, even with the proposed mitigation measures, the proposed path  
14 connecting Huston lot with the law school will "create a significant risk of attack and theft  
15 for several specific reasons." Petition for Review 24. The extensive testimony cited by  
16 petitioners includes the following criticism of the proposal's plans to address pedestrian  
17 safety:

- 18 • During winter hours, the trail will be dark by 4:30 p.m. Significant  
19 portions of the trail are isolated by the separation of the trail from  
20 Terwilliger and the Law School and the trail borders Tryon Creek State  
21 Park, which closes after dark.
- 22 • Both paved and unpaved sections of the trail are very narrow and bordered  
23 closely by dense vegetation. The planned lighting will be directed, low  
24 wattage lighting which will illuminate the path but not the adjoining  
25 vegetation, making it possible for persons to hide in the dark adjoining  
26 vegetation.
- 27 • The College has experienced thefts of, among other things, laptop  
28 computers. Students walking the path with laptop computers will be  
29 vulnerable to such thefts.
- 30 • Women students on the unlit trail will be particularly vulnerable to assault.
- 31 • The proposed call boxes will not help someone who is being attacked on  
32 the trail.
- 33 • The proposed escort service will not be effective due to delays related to  
34 the logistics of requesting and providing the service from the upper

1 campus and due to the possible reluctance of male students to request the  
2 service.

3 • Proposed bike patrols may not be possible on the gravel portion of the trail  
4 and foot patrols may not be effective.

5 • The alternative route traveling along Boones Ferry and up Terwilliger is  
6 not an acceptable alternative because Terwilliger lacks lights and  
7 sidewalks.

8 The College responds that although the record includes references to some criminal  
9 incidents, including several incidents of indecent exposure at the main campus and in Tryon  
10 Creek State Park and thefts at the law school, there is no record of incidents of violent crimes  
11 such as robbery or sexual assault in parking lots or along College paths. The College cites  
12 testimony by the College Director of Campus Safety that there is virtually no "person to  
13 person crime on any of our campus." Petition for Review, Exhibit I, 6. The College  
14 concedes that the isolation of the path led the College to propose and the city council to  
15 adopt the previously described mitigation measures to address safety. The College argues:

16 "Based on the record, reasonable people might well disagree on whether the  
17 path would be unsafe and, if unsafe, on whether the preventive measures that  
18 the College will implement would be adequate to render it safe. The City  
19 Council found, however, that the path would be safe with the preventive  
20 measures to be implemented by the College. Given the absence of any history  
21 of violent crime in the area, and given the preventive measures to be  
22 implemented, that finding is reasonable." Intervenor's Brief 19-20.

23 Although we agree with the College's argument, the substantial evidence question  
24 presented under this assignment of error is a close one. Petitioners presented a great deal of  
25 testimony that directly questions the efficacy of the proposed mitigation measures. The  
26 College cites no evidence that directly contradicts that testimony. Were this Board required  
27 to perform the role of the local decision maker, we might well be persuaded by the testimony  
28 cited by petitioners that the proposed mitigation measures will not be adequate to protect  
29 students who will travel a poorly lit path late at night. However, LUBA does not replicate  
30 the role of the city council in this matter in considering petitioners' substantial evidence

1 question. Younger v. City of Portland, 305 Or 346, 360, 752 P2d 262 (1988); Douglas, 18  
2 Or LUBA at 617. The only question for this Board under this assignment of error is whether  
3 the evidence cited by petitioners is such that a reasonable decision maker could not make the  
4 decision reached by the city council. Id.

5 The record supports the College's contention that the College historically has not  
6 experienced the kinds of violent crime that petitioners speculate may occur despite the  
7 mitigation measures. Given that evidence, we cannot say that the numerous questions raised  
8 by petitioners about the proposed mitigation measures are sufficient to demonstrate that it  
9 was unreasonable for the city council ultimately to conclude that those measures nevertheless  
10 are sufficient to ensure compliance with the cited PCC public safety standards.

11 The third assignment of error is denied.

12 **D. Bicycle Safety**

13 Petitioners argue under their fifth assignment of error that the city's findings of  
14 compliance with "OAR 660-012-0045(3)(b); [PCP] Policy 6.12 \* \* \*, SW District Policies,  
15 [PCC] 33.815.105(D) and [PCC] 33.820.070(G)" are not supported by substantial  
16 evidence.<sup>15</sup> Petition for Review 40. According to petitioners the evidence in the record  
17 shows the Huston lot will result in new pedestrian trips on the pedestrian/bicycle path that  
18 connects the Huston lot and the law school. Petitioners argue that because there is not  
19 substantial evidence in the record supporting the city's findings concerning these criteria, the  
20 decision should be remanded.

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<sup>15</sup>Our review of this assignment of error is complicated by petitioners' failure to clearly articulate the legal standard that they believe the cited PCC, TPR and plan provisions impose, and the College's position that it "does not agree that the safety issues raised by Petitioners are germane to all of these approval criteria." Intervenor's Brief 24 n 18 (emphasis added). Nevertheless, we conclude that OAR 660-012-0045(3)(b) and PCP Policy 6.12 require that the city address bicycle use and safety. OAR 660-012-0045(3)(b) is set out above at n 9; PCP Policy 6.12 provides:

"Make the bicycle an integral part of daily life in Portland, particularly for trips of less than five miles, by implementing a bikeway network, providing end-of-trip facilities, improving bicycle/transit integration, encouraging bicycle use, and making bicycling safer."

1 The city adopted the following findings:

2 "With respect to the multi-use pathway, the path is currently used by  
3 bicyclists and pedestrians today as was originally intended; these are not  
4 mutually exclusive uses here or elsewhere in the City and this facility will not  
5 substantially change the degree of use by either mode. \* \* \* As a multi-use  
6 path, the easement was granted with the intention that it would be used by  
7 bicyclists and pedestrians equally. Multi-use paths, such as the Tryon Creek  
8 path, are prevalent throughout the Portland metro area, and the co-existence of  
9 bicyclists and pedestrians is expected." Record 107.

10 Petitioners do not challenge the adequacy of these findings. Specifically, petitioners  
11 do not argue that the city's findings are inadequate for not specifically addressing the issue of  
12 additional pedestrian traffic on the pedestrian/bicycle path. Norvell, 43 Or App at 853;  
13 White, 20 Or LUBA at 477 (1991); Grover's Beaver Electric Plumbing, 12 Or LUBA at 66.  
14 Neither do petitioners argue that the findings are inadequate to explain why the legal  
15 standard imposed by the bicycle use and safety standards petitioners cite are met. Rather,  
16 petitioners argument under this assignment of error is simply that the city's findings are not  
17 supported by substantial evidence, and we limit our review to that question.

18 As petitioners point out, the record does not include evidence specifically addressing  
19 the number of additional pedestrian trips that may be expected to be added to the path as a  
20 result of the expanded Huston lot. Petitioners speculate, based on an estimate of daily trips  
21 generated by the Huston lot, that there may be as many as 1,000 such pedestrian trips in a  
22 day. The College, on the other hand, speculates that as many as 220 pedestrian might use the  
23 path during a peak hour, but contends that spreading 220 pedestrian trips over the path in an  
24 hour would not cause an unsafe condition. The evidence concerning the likely impact  
25 attributable to students parking at the Huston lot and walking to and from the law school on  
26 bicyclists is sketchy at best.

27 Nevertheless, as presented in this assignment of error, the question presented is  
28 whether the city's ultimate conclusion that the bicycle use and safety standards are met is  
29 supported by substantial evidence, notwithstanding the relative lack of evidence concerning

1 the number of pedestrian trips attributable to the Huston lot. We agree with petitioners that  
2 the College has not identified substantial evidence supporting the city's finding that the  
3 relative degree of use by bicycles versus pedestrians will not be substantially affected by the  
4 Huston lot. However, the city also relied on the undisputed fact that the path is currently a  
5 combined bicycle/pedestrian path. The city found that the co-existence of pedestrians and  
6 bicycles on such paths is "expected." Petitioners do not challenge that finding or argue that it  
7 is not supported by substantial evidence.

8 In the circumstances presented in this appeal, we do not agree with petitioners that  
9 the lack of evidence establishing the exact mix of pedestrians and bicycles and how that mix  
10 may change due to the construction of the Huston lot means the city's decision concerning  
11 the cited bicycle use and safety criteria is not supported by substantial evidence. A  
12 reasonable person could conclude, notwithstanding the lack of such evidence, that increased  
13 pedestrian use of the path is consistent with bicycle safety.

14 The fifth assignment of error is denied.

15 **FOURTH ASSIGNMENT OF ERROR**

16 PCC 33.820.070(G)(1) is set out in full at note 6. It requires that a Master Plan  
17 "include information on" "[p]rojected transportation impacts." Petitioners contend this  
18 criterion "requires that in order to be approved master plans must adequately assess the  
19 projected transportation impacts that a project will have." Petition for Review 33.  
20 Petitioners argue that the city's finding that the College's 1997 Traffic Impact Analysis (TIA)  
21 satisfies the requirement of PCC 33.820.070(G)(1) is not supported by substantial evidence.  
22 In particular, petitioners complain that the existing law school facility occupies  
23 approximately 91,000 square feet of facility space and that, under the approved Master Plan,  
24 the law school facility may be expanded by an additional 90,000 square feet, essentially  
25 doubling in size. This expansion of the law school facility is to be undertaken to correct  
26 currently inadequate law school facilities, not to increase the number of students. However,

1 petitioners argue that such an increase in the law school facility will create additional traffic  
2 impacts that are independent of the number of students attending the law school.<sup>16</sup> Because  
3 non-students are expected to use the expanded law school facilities, petitioners argue the  
4 traffic impacts attributable to these non-students should be separately factored into the traffic  
5 impact analysis.

6 The city adopted the College's position that it is sufficient to project traffic impacts  
7 solely as a function of anticipated student enrollment. Essentially the city accepted the  
8 College's position that there is no need to separately assess the potential traffic impacts that  
9 might be associated with non-students using the expanded law school facility.

10 **A. The Requirement Imposed by PCC 33.820.070(G)(1)**

11 The College argues this assignment of error should be summarily rejected, because  
12 PCC 33.820.070(G)(1) is simply an informational requirement, and petitioners have failed to  
13 identify any substantive legal criterion that is implicated by the substantial evidence  
14 arguments presented under this assignment of error. See Wissusik v. Yamhill County, 27 Or  
15 LUBA 94, 98-99 (1994) (a petitioner alleging missing information as a basis for remand  
16 must demonstrate that the missing information is necessary to demonstrate compliance with  
17 an approval criterion); Murphy Citizens Advisory Comm. v. Josephine County, 25 Or LUBA  
18 312, 325 (1993) (same).

19 We reject the College's suggestion that PCC 33.820.070(G)(1) is purely an  
20 informational requirement, which includes no substantive obligation for the city to ensure  
21 that the required information is reliable. The challenged decision nowhere interprets PCC  
22 33.820.070(G)(1) in the manner the College suggests. To the contrary, the city's findings  
23 addressing PCC 33.820.070 in several instances acknowledge issues raised during the local  
24 proceedings about the information submitted by the College and explain why the city finds

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<sup>16</sup>Petitioners specifically note the law school expansion could include a new 4,000 square foot auditorium and significant expansion of the law library facility.

1 that the information submitted by the College is adequate. Record 51-58.<sup>17</sup> We understand  
2 the city to require that the information submitted under PCC 33.820.070 be the kind of  
3 information a reasonable person would rely on, i.e. substantial evidence. See Dodd v. Hood  
4 River County, 317 Or 172, 179, 855 P2d 608 (1993) (“Substantial evidence exists to support  
5 a finding of fact when the record, viewed as a whole, would permit a reasonable person to  
6 make that finding.”)

7 **B. Substantial Evidence**

8 We treat petitioners' substantial evidence challenge as an argument that the city failed  
9 to require that the information submitted by the College to comply with PCC  
10 33.820.070(G)(1) constitute the kind of information a reasonable person would rely on. In  
11 finding that the TIA was sufficient to comply with PCC 33.820.070(G)(1), the city relied, in  
12 part, on findings that it adopted to address other subsections of PCC 33.820.070. Record 57.  
13 Those findings include the following:

14 "[I]t is important to note that increases in traffic or trips result only from  
15 increases in enrollment, not the expansion of buildings. With this in mind,  
16 although the College does not expect enrollment to increase appreciably  
17 during the next decade, the [TIA] assumed a worse case \* \* \* student  
18 enrollment of 3,580 which includes a 1% increase per year over 1992 levels,  
19 (including the Law School) over the ten-year life of the Master Plan. The  
20 College states this is a generous assumption since current enrollment is less  
21 than 1992 levels, and actual enrollment on campus is approximately 15-20%  
22 lower than the total enrollment stated due to overseas and off-campus  
23 programs.

24 "In summary, Council finds that the parking and traffic impacts of the  
25 proposed 90,000 square foot addition to the Law School were conservatively  
26 addressed through baseline enrollment figures in the Traffic Analysis which  
27 include worst case enrollment figures for the Law School. Based upon  
28 available evidence and testimony, the Law School is currently experiencing a

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<sup>17</sup>We note that one of the apparent purposes of PCC 33.820.070 is to provide some of the information needed to allow the applicant and city to address the conditional use substantive criteria at PCC 33.815 and make the required findings of compliance with those criteria. PCC 33.820.050(B) ("proposed uses and possible future uses in the [Master Plan required by PCC 33.820.070 must] comply with the applicable conditional use approval criteria").

1 shortage of physical space and, as stated in the Master Plan, the purpose of  
2 additional classroom and library space is not to increase student enrollment at  
3 the Law School, but to make the school more attractive by increasing the type  
4 and amount of quality space available per student. For these reasons, the  
5 Council finds the Applicant's General Statement narrative includes all the  
6 required elements and, more specifically, that the testimony and evidence  
7 submitted by the College and its representatives as to the limitation of alleged  
8 impacts on residentially zoned area from the proposed Law School expansion  
9 is persuasive and demonstrates compliance with [PCC 33.820.070(B)]."  
10 Record 52-53.

11 Petitioners do not challenge the above-quoted findings. With one exception, neither  
12 do petitioners challenge the College's use of anticipated student enrollment to project  
13 expected transportation impacts. Petitioners' challenge is limited to the city's failure to  
14 require that the College compute and include in its analysis an additional traffic impact factor  
15 for the additional 90,000 square feet of additional facility space this decision authorized for  
16 the law school campus. We understand petitioners to argue that the College's failure to do so  
17 makes the TIA insufficient to constitute substantial evidence, *i.e.* insufficient to constitute the  
18 kind of evidence a reasonable person would rely upon to make a decision. Dodd, 317 Or at  
19 179.

20 The city's above-quoted findings start with the position that traffic impacts may be  
21 estimated based solely on student population. We might agree with petitioners' criticism of  
22 that position, if it is accepted at face value and outside the context of the remaining findings.  
23 As petitioners correctly point out, there is evidence in the record which suggests that certain  
24 authorized law school improvements which are not being made to increase the number of  
25 students are nevertheless likely to increase the number of non-student visitors to the law  
26 school.

27 However, as the College points out, there is also evidence in the record that such non-  
28 student visitors likely would not arrive at peak traffic hours, which would reduce the impacts  
29 associated with any such traffic. More importantly, the findings explain that use of student  
30 enrollment to project transportation impacts in this case was a conservative methodology, in

1 the sense it likely overstates the likely actual transportation impacts. This is because (1) the  
2 projected number of students represents the worst-case scenario (highest possible number of  
3 students) and (2) a significant percentage of students are actually studying in off-campus  
4 locations. The findings acknowledge the possible construction of 90,000 square feet of  
5 additional space at the law school, but nevertheless conclude that the conservative approach  
6 taken in using student enrollment to project likely traffic impacts is sufficient to account for  
7 all traffic impacts, not just those attributable to students.

8 The substantial evidence question presented in this assignment of error, like that  
9 presented in the third assignment of error, is a close one. However, we are mindful that our  
10 role is to determine whether there is substantial evidence to support the city's decision, not to  
11 reweigh the evidence ourselves. 1000 Friends of Oregon v. Marion County, 116 Or App  
12 584, 587-88, 842 P2d 441 (1992). We cannot agree with petitioners that the city's decision is  
13 not supported by substantial evidence. The city explained that it viewed the use of student  
14 enrollment as a conservative predictor of traffic. The city also explained that the purpose of  
15 the proposed expansion is to expand the space available per student without increasing  
16 enrollment.<sup>18</sup> Given these explanations and the evidence cited by the parties, we cannot say  
17 that it was unreasonable for the city to rely on a traffic report based on student enrollment  
18 without separately addressing and accounting for non-student traffic impacts that might be  
19 associated with the additional 90,000 square feet of space authorized for the law school. We  
20 conclude the city's finding that the Master Plan complies with PCC 33.820.070(G)(1) is  
21 supported by substantial evidence.

22 The fourth assignment of error is denied.

23 The city's decision is affirmed.

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<sup>18</sup>As noted previously, the College's expert testified that any new traffic that might be associated the proposed new law school auditorium would likely not occur during the a.m. or p.m. peak traffic hours and the transportation system could "safely support the proposed development." Record 190-91.