

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

3
4 LARRY KINE,
5 *Petitioner,*

6
7 vs.

8
9 CITY OF BEND,
10 *Respondent.*

11
12 LUBA No. 2016-032

13
14 FINAL OPINION
15 AND ORDER

16
17 Appeal from City of Bend.

18
19 Christopher P. Koback, Portland, filed the petition for review and argued
20 on behalf of petitioner. With him on the brief was Hathaway Koback Connors
21 LLP.

22
23 Ian M. Leitheiser, Assistant City Counsel, Bend, filed the response brief
24 and argued on behalf of respondent.

25
26 BASSHAM, Board Member; HOLSTUN, Board Chair; RYAN, Board
27 Member, participated in the decision.

28
29 AFFIRMED 10/12/2016

30
31 You are entitled to judicial review of this Order. Judicial review is
32 governed by the provisions of ORS 197.850.

NATURE OF THE DECISION

Petitioner appeals a city decision approving comprehensive plan and zoning amendments to allow medium density residential development.

FACTS

The present appeal concerns a city decision following our remand in *Kine v. City of Bend*, 72 Or LUBA 423 (2015) (*Kine I*). We repeat the relevant facts:

“The subject property is a vacant 5.36-acre triangle-shaped parcel zoned Residential Standard Density (RS) and designated Public Facilities (PF) on the city’s comprehensive plan. In 2006, the city acquired the property from the city parks department, as surplus land. In 2015 city staff filed an application to re-designate the property from PF to Residential Medium Density (RM), and to rezone the property from RS to the corresponding medium-density residential zone, also called RM.

“The subject property is generally surrounded by RS-zoned land. Access to the property is to the east, via a stub at Thornhill Lane, a local street, through an adjoining residential subdivision with 80 lots, to Deschutes Market Road. North of the property, outside the urban growth boundary, are an irrigation canal and a public park. South of the property is land developed with a church, which adjoins Butler Market Road, a minor arterial. A small commercial area, zoned Convenience Commercial, is located at the nearby intersection of Butler Market Road and 27th Street. The city has future, unfunded plans to extend 27th Street as a major arterial north and west along the western border of the subject property, which would potentially allow a second access point to the property. Further west are vacant RS zoned lands.” 72 Or LUBA at 426-27.

1 A city hearings officer recommended approval of the city’s application,
2 and the city council adopted without changes the hearings officer’s findings as
3 its decision on the application. Petitioner appealed the city council decision to
4 LUBA, and we remanded because we agreed with petitioner that the city’s
5 findings were inadequate and that the decision was not supported by substantial
6 evidence regarding consistency with several comprehensive plan policies.

7 On remand, the city conducted two evidentiary hearings and again
8 approved the application, adopting additional findings. This appeal followed.

9 **FIRST ASSIGNMENT OF ERROR**

10 In four sub-assignments of error, petitioner challenges the findings
11 adopted on remand to demonstrate that the proposed plan and zoning map
12 amendments to allow medium density residential development are consistent
13 with four comprehensive plan policies.

14 **A. First Sub-Assignment of Error**

15 Bend General Plan (BGP) Chapter 1, Policy 5 states that:

16 “The city and county will encourage compact development and the
17 integration of land uses within the Urban Growth Boundary to
18 reduce trips, vehicle miles traveled and facilitate non-automobile
19 travel.”

20 On remand, the city council interpreted Policy 5 to encourage mixed or diverse
21 development, in areas of the city where greater integration of land uses is

1 needed, because such diversity and integration generally reduces trips and
2 vehicle miles traveled, and facilitates non-automobile travel.¹

3 On appeal, petitioner does not challenge the city council's interpretation
4 of Policy 5, but argues that the city failed to adopt adequate findings, supported

¹ The city's findings state, in relevant part:

“The Council finds that this policy is intended to encourage and facilitate a mix of uses, where appropriate, and that the [RM zone] designation is especially appropriate for this site precisely because it promotes that diversity in an area of the city where a greater integration of land uses is needed. Having such a mix can generally help reduce trips, vehicle miles traveled, and facilitate non-automobile travel, because compact development helps limit sprawl and provides options for uses and activities within a particular area. As the discussion for subsequent findings will show, this area has a variety of land uses, from Convenience Commercial (CC) directly to the south, to Industrial Light (IL) employment lands just over a ½ mile to the west, a large regional park abutting the site to the north, a church and private school directly across the street to the west, a public elementary school ½ mile to the north, a public high school ½ mile to the south, and the major medical district for the city less than 1 mile to the south. This area is otherwise dominated by neighborhoods developed with single-family detached dwellings. There is almost no multifamily development in the area. Therefore, changing the designations to RM for this site to allow for multifamily development will bring to the area an element it is currently lacking, something that is consistent with and achieves the goals in this policy of integrating land uses, where appropriate, to reduce reliance on automobile travel and provide people options that will reduce the distances and frequency of automobile trips. It will integrate the multifamily development with the other existing land uses, creating a mix of uses in closer proximity to each other consistent with and implementing this policy.” Record 28.

1 by substantial evidence, explaining how medium density development of the
2 property will promote the purpose of Policy 5, as interpreted. According to
3 petitioner, any medium density development of the property will likely be
4 vehicle-oriented, and the residents will have to travel by car to obtain work,
5 services, etc. *See* Record 806 (concept plan showing 64 residential units and
6 106 parking spaces). Petitioner cites to draft plans that the city placed in the
7 record, which contemplate that higher density residential uses will be located in
8 “opportunity areas” closer to the city core, in part to reduce vehicle miles
9 traveled. Because the subject property is not near any “opportunity area,” but
10 is instead located near the periphery of the city, petitioner argues that the city’s
11 own draft plans undermine the city’s conclusion that medium density
12 development of the property is consistent with the purpose of Policy 5, to
13 reduce trips and vehicle miles traveled.

14 However, under the city council’s unchallenged interpretation of Policy
15 5, the goal of reducing trips and vehicle miles traveled and facilitating non-
16 automobile travel is achieved in part by increasing residential density and
17 diversity of residential options in areas of the city, like the area surrounding the
18 subject property, that consist largely of single-family development, and which
19 the city found includes almost no multifamily development. The city council
20 found that this integrated approach will, over time, generally promote the goal
21 of reducing trips, vehicle miles traveled, etc.

1 Under this unchallenged interpretation, the city council was not required
2 to find that medium density residential development of the property would
3 immediately play a role in reducing trips or vehicle miles traveled, or
4 facilitating non-automobile travel, or that the subject property is the best
5 location for medium density residential development within the city. While
6 petitioner may prefer that higher density residential development be located
7 *only* in areas of the city that are most suitable to supporting higher densities,
8 such as the identified “opportunity areas,” the city council apparently views
9 Policy 5 to encourage compact development even in areas, such as that
10 surrounding the subject property, that are not the optimal areas in the city for
11 supporting higher densities. Absent a challenge to that understanding of Policy
12 5, petitioner had not demonstrated that the city council’s findings are
13 inadequate or unsupported by substantial evidence.

14 The first sub-assignment of error is denied.

15 **B. Second Sub-Assignment of Error**

16 BGP Chapter 5, Policy 21 provides:

17 “Densities recommended on the Plan shall be recognized in order
18 to maintain the proper relationship between proposed public
19 facilities and services and population distribution.”

20 The city found that increasing residential density in the area is consistent with
21 Policy 21, because the area surrounding the subject property has insufficient

1 population to take advantage of adequate public facilities in the area, including
2 the regional park to the north, and two nearby schools.²

3 Petitioner argues that the city’s finding that the area needs more
4 population to take advantage of adequate public facilities is not supported by
5 substantial evidence. According to petitioner, there is no evidence or findings
6 in the record that the park or nearby schools are underutilized. Petitioner also

² The city’s findings regarding Policy 21 state, in relevant part:

“The Council finds that the history of this site is instructive in demonstrating why the proposed change is consistent with and meets this policy. The subject site was acquired by the City from the Bend Parks and Recreation District in 2006, in part because the District had no need of the land for a park. The City has the land it needs for the planned 27th Street/Empire Avenue extension, and has no need of the land for other public facility uses. The decision to seek a change to the density recommended on the plan is due in part to a desire to increase the residential population component in this area. Put another way, while the policy may be intended to ensure that an area’s population is not underserved by public facilities, this area is currently one where the relationship between population and public facilities is skewed in the *opposite* direction because there is insufficient population in the area to take advantage of the adequate public facilities, such as Pine Nursery Park to the north and to the nearby schools. Therefore, there is no need for more of those facilities even with the anticipated increase in population that would come with higher density residential housing.

“The Council therefore finds that the application is consistent with and will facilitate a better and more appropriate relationship between public facilities and services to the population distribution.” Record 29 (*italics in original*).

1 argues that unless the 27th Street Extension is built, there will be no easy way
2 for residents of the subject property to get to Pine Nursery park, due to the
3 irrigation canal that separates the park from the otherwise adjoining subject
4 property.

5 Petitioner does not challenge the city council’s express interpretation of
6 Policy 21, that the policy supports increasing density where public facilities in
7 the area are adequate. The city found that the subject property was given to the
8 city as surplus park land, and is not needed for any public facility or service,
9 suggesting that park and other public facilities in the area are adequate and can
10 support the additional residential uses allowed under medium, rather than the
11 existing single-family, residential zoning. Under the city’s interpretation, the
12 city is not required to find that specific public facilities in the area such as
13 schools are “underutilized,” as petitioner argues. Absent a more developed
14 argument, petitioner’s arguments under this sub-assignment of error do not
15 provide a basis for reversal or remand.

16 The second sub-assignment of error is denied.

17 **C. Third Sub-Assignment of Error**

18 BCP Chapter 5, Policy 1 provides that:

19 “Future development and local development standards shall
20 recognize and respect the character of existing areas.”

21 The city council found that medium density residential development of
22 the property under the RM zone will recognize and respect the character of the
23 surrounding area, which the city found is mostly residential, with some

1 commercial development.³ The city council concluded that allowing different
2 residential densities does not fail to recognize or respect the character of the
3 existing area.

³ The city council’s findings state, in relevant part:

“The character of the area to the east and southeast of the subject site is residential, but there are commercial areas to the direct south and west (CC zone and Trinity Lutheran Church and School), and Pine Nursery Park to the north. The proposed development will also be residential, and as such will be more consistent with the character of the nearby residential areas than commercial development. The Council also notes that the proposed plan amendment will change the designation from PF, a designation that would allow a variety of public facility improvements which would be more industrial or commercial in character. Thus, several of the other options, including leaving the designation unchanged, would be less consistent with the character of the existing area, and potentially less respectful of that character.

“Although the proposed change to RM is higher density than the RS designation of the residential area nearby, the Council finds that having different residential densities in the same area does not equate to a conclusion that the character of an existing area is not being recognized or respected. Indeed, the Council notes that other policies, such as Chapter 1, Policy 5, by their nature encourage and result in a mix of uses and designations through integration of different land uses in order to accomplish important goals, such as the reduction of vehicle miles traveled. * * * [T]he Council finds that changing the plan designation to RM is consistent with recognizing and respecting the character of the existing area, and finds that it will most likely enhance it. Finally, this policy connects itself to the creation and maintenance of the standards in the Bend Development Code, which regulates future development, including features such as building heights, lot

1 Petitioner contends that the city’s findings fail to describe in sufficient
2 detail the character of the existing area, such as how the current residents live,
3 what they do for recreation, and whether the area has a suburban or urban vibe.
4 The city responds, and we agree, that neither our remand nor Policy 1 itself
5 require such a detailed characterization of the existing area.

6 Petitioner next challenges the city council’s finding that increased
7 residential density does not mean lack of recognition or respect for the
8 character of the existing area, arguing that the city’s interpretation is not
9 responsive to LUBA’s remand. However, petitioner does not identify anything
10 in LUBA’s remand that constrains the city council’s ability to interpret Policy
11 1, or otherwise requires us to not affirm the express interpretation adopted on
12 remand under the deferential standard of review LUBA must apply to a
13 governing body’s interpretation of its comprehensive plan policies, under ORS
14 197.829(1).⁴

coverage, permitted uses, transitional buffers, and others to ensure
compatibility and respect for the character of existing areas.”
Record 29.

⁴ ORS 197.829(1) provides, in relevant part:

“[LUBA] 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;

1 Finally, petitioner argues that to the extent the city relied upon future
2 zoning changes or the future character of the area to demonstrate consistency
3 with Policy 1, the city erred, because Policy 1 requires that future development
4 recognize and respect the character of *existing* areas. Petitioner may be correct
5 that Policy 1 is concerned only with recognizing and respecting the character of
6 the existing area; however, petitioner identifies nothing in the city council’s
7 findings on remand that purport to rely upon future zoning changes or the
8 future character of the area to find consistency with Policy 1.

9 The third sub-assignment of error is denied.

10 **D. Fourth Sub-Assignment of Error**

11 BGP Chapter 5, Policy 31, and BGP Chapter 7, Policy 6.9.1, both
12 provide, in nearly identical language:

13 “Medium and high-density developments shall be located where
14 they have good access to arterial streets and be near commercial
15 services, employment and public open space to provide the
16 maximum convenience to the highest concentrations of
17 population.”

18 Petitioner challenges the city’s findings that the site has “good access to arterial
19 streets,” and that the site is located “near commercial services, employment and
20 public open space[.]”

“(b) Is inconsistent with the purpose for the comprehensive plan
or land use regulation; [or]

“(c) Is inconsistent with the underlying policy that provides the
basis for the comprehensive plan or land use regulation[.]”

1 **1. Good Access to Arterial Streets**

2 On remand, the city council interpreted the phrase “good access to
3 arterial streets” to mean a site that is in reasonably close proximity to an arterial
4 and has at least indirect access to that arterial.⁵

⁵ The city council’s findings address the “good access” requirement as follows:

“The Council interprets ‘good access’ to an arterial street as being met when the site is in reasonably close proximity and has access, whether direct or indirect, to the arterial. The policy language uses the term ‘good’ to describe the requisite access, which is distinct from a requirement that the access be ‘direct.’ Further, the policy language does not specify that it refers solely or even primarily to ‘vehicle’ access.

“In fact, both the plan and [BDC] limit direct vehicle access to arterial and collector streets. Arterial and collector street standards require infrastructure for multi-modal transportation with sidewalks and bicycle lanes on both sides of the street, and often include existing or future planned transit routes and stops. The subject site will have direct pedestrian and bicycle system connections to this planned arterial, and potentially a direct vehicle access as well. Such bike and pedestrian connections will be required to be provided concurrently with development of the site, even if the larger City arterial street project is not yet constructed at the time of site development.

“Even without considering the 27th Street/Empire Avenue extension, the south end of the site is less than 200 feet north of Butler Market Road (arterial street), and vehicle access from the site to Deschutes Market Road (collector street) is approximately 1/3 of a mile * * *.

“* * * * *

1 Petitioner argues that the city council’s interpretation and findings are
2 inadequate. First, petitioner argues that the city council failed to define or
3 explain the meaning of “reasonably” close access. However, the city’s findings
4 recite several undisputed facts, that the site is one-third mile drive from an
5 arterial, that the site is only 200 feet as the crow flies from an arterial, and that
6 pedestrian and bicycle access to that arterial will be required with development,
7 even if the 27th Street/Empire Avenue extension is not constructed. The
8 findings provide a sufficient explanation for what the city council understands
9 “good access” to an arterial to mean. Petitioner apparently disagrees that the
10 access described is “good,” but that difference of opinion on such a subjective
11 standard does not demonstrate either that the city council’s interpretation is not
12 required to be affirmed under ORS 197.829(1), or that the city council’s
13 findings are inadequate.

14 Next, petitioner argues that the city council erred in relying upon the
15 future construction of the 27th Street/Empire Avenue extension in order to
16 provide “good access” to the site. However, while the findings discuss the 27th
17 Street/Empire Avenue extension as “informative,” the decision ultimately

“Accordingly, the Council determines that the current, existing access to arterial streets is sufficient to constitute good access, given the language of the plan policy. The high priority of the 27th Street/Empire Avenue extension is informative, but its future funding and construction is not a necessary basis for determining that the current access is sufficient.” Record 33-34.

1 concludes that the “current, existing access to arterial streets is sufficient to
2 constitute good access,” and the future extension “is not a necessary basis for
3 determining that the current access is sufficient.” Record 34. The findings
4 clearly do not rely on the extension to support the findings regarding good
5 access.

6 Petitioner’s remaining arguments regarding “good access” to the
7 property, to the extent they differ from the two arguments above, do not
8 provide a basis for reversal or remand.

9 **2. Near Commercial Services, Employment Areas and**
10 **Public Open Space**

11 The findings describe a number of commercial and employment areas
12 within one mile of the subject property, and conclude that the site is sufficiently
13 “near commercial services, employment and public open space” for purposes of
14 BGP Chapter 5, Policy 31, and BGP Chapter 7, Policy 6.9.1.⁶

⁶ The city council findings regarding the “near commercial services, employment, and public open space” language is as follows:

“The CC zone immediately to the south of the subject site is just over 2 acres and contains an array of commercial services, including a 3,196 square foot dentist office, two commercial/retail buildings (4,000 square foot and 2,400 square foot, respectively) with multiple tenants including a small market, two restaurants, a gun shop, a hair salon, a nearly 2,000 square foot gas/service station, and a drive-through coffee purveyor. * * *

“* * * * *

1 Petitioner challenges those findings, arguing that adequate findings
2 addressing proximity to commercial services and employment must do more
3 than simply list the commercial and employment sites in the vicinity, but must
4 also describe the types of services and jobs provided, and in addition must
5 address proximity to other commercial services that residents will likely need,
6 such as grocery stores, drug stores, etc. Further, petitioner argues that the

“Approximately ½ mile to the north, separated from the site by the Pine Nursery Park, is Ponderosa Elementary School which employs approximately 51 staff including teachers, administration, and custodial, and has an enrollment of around 577 students.

“Less than ½ mile to the south on 27th Street is Mountain View High School which employs almost 100 staff including teachers, administration, and custodial.

“Just south of the high school, less than 1 mile from the subject site, is the 220-acre Medical District Overlay zone, which includes St. Charles Hospital and a variety of medical offices and support services.

“Also, just over ½ mile to the west, accessed both from Butler Market Road (existing arterial just south of the site) and from the planned 27th Street/Empire Avenue arterial extension bounding the site on the west, is approximately 180 acres of industrial employment land with a variety of industrial and recreation uses and support services. While these economic lands are surrounded by residential lands, there is almost no multifamily development in this area. The only housing stock available within a ¾ mile radius of the subject property are single-family detached dwellings.

“The Council finds that these various commercial services, employment and public open spaces are near the site and sufficient to satisfy this criterion.” Record 30-33.

1 findings must explain how residents of medium density development at the site
2 will access jobs and services, given the site’s limited vehicular connectivity to
3 the city’s transportation network.

4 The city responds, and we agree, that petitioner has not established that
5 more detailed findings are necessary to explain the council’s conclusion that
6 the site is near commercial services and employment.⁷ Petitioner’s unspoken
7 premise is that BGP Chapter 5, Policy 31, and BGP Chapter 7, Policy 6.9.1
8 require the city to find that the site is near a comprehensive range of
9 commercial services and employment opportunities, sufficient to serve the
10 wide-ranging needs of residents of medium density development on the
11 property. The city council apparently does not view BGP Chapter 5, Policy 31,
12 and BGP Chapter 7, Policy 6.9.1 to require that the site be near a
13 comprehensive range of services and jobs, only that it is near some services and
14 some jobs. Petitioner does not attempt to establish that the city council’s more
15 limited understanding of these policies is reversible under the deferential
16 standard of review we must apply.

17 Nor does the city council appear to believe, as petitioner apparently does,
18 that the site’s current limited vehicular connectivity to the city’s transportation
19 network is a basis to conclude that the site is not sufficiently “near” the
20 identified commercial services and employment in the area. Petitioner has not

⁷ Petitioner does not dispute that the site, adjacent to Pine Nursery Park, is near to public open space.

1 established that additional findings are necessary to describe, for example,
2 driving times and distances to nearby services and jobs.

3 The fourth sub-assignment of error is denied.

4 The first assignment of error is denied.

5 **SECOND ASSIGNMENT OF ERROR**

6 Bend Development Code (BDC) 4.6.300.B.3 is a zone change standard
7 requiring a finding that:

8 “The property and affected area is presently provided with
9 adequate public facilities, services and transportation networks to
10 support the use, or such facilities, services and transportation
11 networks are planned to be provided concurrently with the
12 development of the property[.]”

13 The city council found that the site is presently provided with adequate
14 public transportation facilities, or such facilities are planned to be provided
15 concurrently with development of the property, even if the property is
16 developed prior to construction of the 27th Street/Empire Avenue extension.⁸

⁸ The city council’s findings state, as relevant:

“The Council finds that there are adequate public facilities, services and transportation networks to support the use that would be enabled under the RM designation. However, looking forward, any subsequent development of the site will be required to go through a Type II land use approval, either a Subdivision and/or Site Plan review. The standards required for either subdivision or Site Plan Review ensure that adequate public facilities, services and transportation networks to support the use are provided concurrently with the development of the property.

“It is likely that fire codes will require a second point of access with development of the site. However, where the access will be located and how it is provided will depend on the specific development proposal. It is premature and impracticable to require a specific condition of approval without a development plan. Further, as discussed below, a condition of approval is not needed as the review procedures and the applicable criteria and standards of the [BDC] will ensure that adequate transportation networks are present.

“Nevertheless, the Council observes that the 100 feet of public right-of-way for the future extension of 27th Street/Empire Avenue exists adjacent to the site and could easily accommodate a secondary emergency vehicle access and/or pedestrian and bicycle connections in the interim period before the full arterial street build-out. Because there is no proposal for development at this time, it is premature to speculate on what specific levels of infrastructure might be required with development, thus making it impossible to accurately craft specific conditions of approval on a plan amendment and zone change. These requirements *are planned to be provided concurrently with the development of the property* as required under BDC Chapter 3.4 which must be addressed and met with development of the site through the Type II Site Plan Review and/or Subdivision application processes which are *required* prior to development.

“The Council finds that BDC 3.4.100 establishes that, even if the facilities, services, and transportation networks are not presently provided, they will be planned, provided and required concurrently with the development of the property. BDC 3.4.100.B provides that development shall not occur unless the public improvements serving the development comply with the public facility requirements of Chapter 3.4. In addition, BDC 3.4.100.D mandates that no development shall occur unless required public facilities are in place or guaranteed.

1 To the extent fire codes require emergency access to the site, the city found that
2 the 27th Street/Empire right-of-way, which the city already owns, can provide
3 such access, even if the extension itself is not in place when the site is
4 developed.

5 Petitioner argues that the city implicitly concluded that the 27th
6 Street/Empire Avenue extension must be in place in order to provide the site
7 with adequate transportation infrastructure, but that there is no basis in the
8 record to conclude that the extension will be constructed concurrently with site
9 development. Petitioner cites to findings noting that the traffic study
10 recommended connecting the site to the 27th Street/Empire Avenue right of way
11 in order to meet city block length and perimeter requirements, and a conceptual
12 plan showing that connection, as evidence that the city relies upon the
13 extension to provide adequate transportation infrastructure. However, the city
14 council expressly chose not to rely on the extension to support its conclusion
15 that the site is currently provided with adequate transportation infrastructure.
16 Petitioner’s argument that the city implicitly relied on the extension provides
17 no basis for reversal or remand.

“Based on reading these [BDC] provisions along with BDC 4.6.300.B.3, the Council finds that the provisions in BDC 3.4.100 effectively condition any development of the subject site on the presence of adequate public facilities, services and transportation networks.” Record 35 (emphases in original).

1 Relatedly, petitioner argues that the city’s findings are inconsistent, both
2 noting that the traffic study recommended a connection to the 27th
3 Street/Empire Avenue right of way to comply with block length and perimeter
4 requirements (Record 35), and also noting elsewhere that city code limits direct
5 access to an arterial (Record 33). However, even if the findings are
6 inconsistent on this point, something petitioner has not established, petitioner
7 does not explain why any such inconsistency means that the city’s findings
8 regarding compliance with BDC 4.6.300.B.3 are inadequate or erroneous.⁹

9 In something of an alternative argument, we understand petitioner to
10 argue that the city erred in *failing* to condition approval of the zone change on
11 construction of the 27th Street/Empire Avenue extension in order to provide
12 potential secondary access to the site. Petitioner argues that without the
13 possibility of secondary access via the extension the site will have only a
14 single, circuitous access point to the city’s transportation network: along two
15 local streets to connect to the Deschutes Market Road, a collector street to the
16 east. The city council adopted several supplemental findings addressing the
17 alleged need for secondary access, including:

⁹ We do not perceive the alleged inconsistency. For purposes of block length and perimeter requirements, site development might include a built street connection to the 27th Street/Empire Avenue extension, but to comply with other code limitations that built connection may provide only limited direct vehicular access to or from the arterial, or only emergency access.

1 “BDC 4.6.300B.3 does not require secondary access, and the
2 property will have an emergency access in addition to its main
3 access, which is all that is required [by the fire code].” Record 42.

4 Petitioner does not challenge the finding that BDC 4.6.300B.3 does not require
5 secondary access, or otherwise establish that the city erred in concluding that
6 the site is provided adequate transportation infrastructure, even in the absence
7 of the 27th Street/Empire Avenue extension.

8 Finally, petitioner argues that the city ignored potential safety issues
9 along the single access route to the site, specifically at the intersection of the
10 Monticello Drive and the collector Deschutes Market Road. However,
11 petitioner cites nothing in the record suggesting the existence of any safety
12 issues at that intersection, or explains why the city erred in failing to adopt
13 findings under BDC 4.6.300.B.3 addressing safety issues at that intersection.

14 The second assignment of error is denied.

15 The city’s decision is affirmed.