

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

BERNARD BRIDGES and)
VINCE MILLIGAN,)
)
Petitioners,)
)
vs.)
) LUBA No. 90-035
CITY OF SALEM,)
) FINAL OPINION
Respondent,) AND ORDER
)
and)
)
RIC McNALL,)
)
Intervenor-Respondent.)

Appeal from City of Salem.

Wallace W. Lien, Salem, filed the petition for review and argued on behalf of petitioners.

Paul A. Lee, Salem, filed a response brief and argued on behalf of respondent.

Richard C. Stein, Salem, filed a response brief and argued on behalf of intervenor. With him on the brief was Ramsay, Stein, Feibleman & Myers, P.C.

HOLSTUN, Referee; SHERTON, Chief Referee; KELLINGTON, Referee, participated in the decision.

REMANDED

07/27/90

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

Opinion by Holstun.

NATURE OF THE DECISION

Petitioners appeal a decision amending the Salem Keizer Area Comprehensive Plan (SKACP) map from "Single Family Residential" to "Multi-Family Residential" and amending the zoning map from RS ("Single Family Residential") to RM ("Multiple Family Residential") for an approximately eight acre parcel.

MOTION TO INTERVENE

Ric McNall moves to intervene on the side of respondent in this proceeding. There is no opposition to the motion, and it is allowed.

FACTS

The subject property currently is vacant and partially wooded. The adjoining property to the north and west is zoned RS and developed with single family dwellings. The adjoining property to the south and southeast is zoned for, and developed with, commercial uses. Adjoining property to the east is zoned RM and developed with multifamily dwellings.

The single family zoned and developed area to the north and west is located at a higher elevation than the commercial and multifamily area to the south and east, which is referred to by petitioners as the "flats." The topography of the subject property slopes downward from the north and west to the "flats." Historically, the area above

the "flats" (including the subject property) has been planned and zoned for single family development, and the "flats" have been planned and zoned for commercial and multifamily development.

The proposed access to the property will be from Eola Drive, which runs along the western edge of the subject property and separates the subject property from the single family zoned and developed area to the west. The applicant proposes to develop seven apartment buildings including 56 multifamily units. The apartment buildings will be clustered on the higher and more level portions of the property.

FIRST ASSIGNMENT OF ERROR

"Respondent erred in processing this application when the applicant did not have standing to file the application."

Salem Revised Code (SRC) 110.230 requires that applications for land use actions or permits be filed by the "owner," "purchaser" or "lessee" of the subject property. However, SRC 110.230(d) provides the owner's, purchaser's or lessee's agent may submit an application for a land use action "when duly authorized in writing provided the application is accompanied by proof of the agent's authority." The parties agree the applicant (intervenor-respondent Ric McNall) is not the owner, purchaser or lessee of the subject property. Petitioners contend intervenor is not the owner's duly authorized agent and, therefore, lacked

standing to file the application in this matter.

The issue of intervenor's lack of standing was raised by petitioners during a public hearing before the city council on December 11, 1989. At that hearing, intervenor introduced into the record a letter from the owner of the subject property, Security Pacific Bank, dated February 13, 1989. Record 60-61, 372-373. That letter authorizes intervenor to seek the plan and zone changes challenged in this proceeding on behalf of Security Pacific Bank. In addition, the record includes a December 21, 1989 letter from Security Pacific Bank confirming that intervenor "is authorized to make the necessary applications, sign the necessary documents, and receive notices regarding the proposed Comprehensive Plan and Zone Change for the subject property." Record 59.

We agree with respondents that even if the original application did not include the February 13, 1989 letter authorizing intervenor to request plan and zone changes, as SRC 110.230(d) requires, the written authorization apparently was given on February 13, 1989.¹ At most, the city committed procedural error in not requiring that the letter accompany the application. However, the written

¹It is not entirely clear whether the February 13, 1989 letter was submitted with the original application. Apparently, the record filed in Bridges v. City of Salem, LUBA No 89-066, an earlier appeal in which the parties stipulated to remand of a prior city decision approving the same application that is at issue in this appeal, did not include the February 13, 1989 letter.

authorization was produced as soon as the issue was raised, and we conclude petitioners were not prejudiced by the delay in submitting the written authorization required by SRC 110.230(d). Urquhart v. City of Eugene, 14 Or LUBA 335, 338 (1986).

The first assignment of error is denied.

SECOND ASSIGNMENT OF ERROR

"Respondent's decision violates the approval criteria for plan amendments to the Salem Keizer Area Comprehensive Plan."

The plan map amendment approved by the city in this proceeding is classified as a minor plan change. SRC 64.040(g). The criteria for approval of a minor plan change are set forth at SRC 64.090(b), which provides in part:

- "(1) The proposed plan change considers and accommodates as much as possible all applicable statewide planning goals;
- "(2) There is an overriding public need which is best served by the proposed change;
- "(3) The plan does not otherwise make adequate provision to accommodate the public need; and
- "(4) The proposed change is logical and harmonious with the land use pattern for the greater area as shown on the detailed and general plan maps."

Petitioners contend none of the above quoted criteria are satisfied in this case.

Intervenor points out that plan Residential Development Policy 16 provides that:

"Requests for rezonings to higher intensity residential uses to meet the identified housing needs will be deemed appropriate if adequate water, sewer, storm drainage, police, fire, school, transportation and park facilities and services can reasonably be made available at levels adequate to serve the more intensive use unless it is found through findings of fact that the proposed use should not be permitted because of overriding site or location conditions." SKACP 41.

Intervenor suggests the above quoted policy establishes a presumption in favor of approving plan designations allowing higher density where property is already designated for residential use.

We disagree. The cited policy may establish a presumption in favor of changing a zoning designation to allow more intense residential development.² However the policy has no applicability where the issue is whether the plan designation should be changed. SRC 64.090(b), quoted above, establishes the criteria governing plan map amendments.

A. Compliance With Statewide Planning Goals

Under ORS 197.175(1) and SRC 64.090(b)(1) the city is required to demonstrate that the plan amendment from Single Family Residential to Multi-Family Residential complies with

²For example, the multifamily plan designation permits four possible residential zoning designations. Where multifamily designated property is zoned for one of the less intensive allowable residential zones, the policy apparently provides that rezoning to a higher intensity residential zone would be deemed appropriate if the services identified in the policy are available.

applicable statewide planning goals. Petitioners contend the city improperly concluded Goal 5 (Open Spaces, Scenic and Historic Areas, and Natural Resources) and Goal 7 (Areas Subject to Natural Disasters and Hazards) do not apply.

1. Goal 5

Petitioners contend the site has been in a natural, open space condition for many years. Petitioners also point out there was testimony in local proceedings that the site provides habitat for birds and other wildlife. In view of that evidence, petitioners contend the city erred by simply concluding that Goal 5 does not apply.

Intervenor contends the city is only required to demonstrate compliance with applicable goals. Intervenor points out the city's comprehensive plan and zoning ordinance are acknowledged. ORS 197.251 The subject property is located inside the urban growth boundary and is designated for single family residential development by the acknowledged plan and zoning ordinance. Intervenor argues the decision not to protect whatever limited Goal 5 resources may exist on the property was made when the property was designated in the plan and zoning ordinance for single family residential development and those designations were acknowledged by LCDC to comply with the statewide planning goals. In any event, intervenor contends the city found, in response to petitioners' Goal 5 contentions, that the new multifamily plan designation would reduce the impact

on any Goal 5 resources that might be present on the site because the multifamily residential buildings would be clustered and more of the property would remain undisturbed than if the entire property were developed with single family residences, as permitted under the single family plan designation. Record 38.

Petitioners do not challenge the cited findings or their evidentiary support, and we conclude those findings are adequate to explain why Goal 5 does not apply in these circumstances or, if applicable, why Goal 5 is not violated by the plan map amendment from RS to RM.

This subassignment of error is denied.

2. Goal 7

Petitioners contend evidence in the record shows the property is steep and that questions were raised about the landslide and erosion potential if the property is developed as proposed. Petitioners contend these concerns make the city's conclusion that Goal 7 does not apply improper.

Intervenor's response under this subassignment of error is similar to his response under Goal 5 above. Intervenor first points out Goal 7 addresses "known" areas of natural hazards and the subject property is not identified as an area with known natural hazards on the map showing such areas in the acknowledged comprehensive plan. Record 39. Moreover, even if development hazards do exist on the site, the findings go on to explain the multifamily residential

buildings proposed are clustered on the flat areas near the top of the property, thereby leaving undeveloped the steeper areas where development hazards may exist. The findings also explain the steeper areas of the site could be developed under the acknowledged single family designation, and the clustered multifamily development is therefore more consistent with Goal 7, if the goal applies.

Petitioners do not challenge the above cited findings or their evidentiary support. We conclude those findings are adequate to explain why Goal 7 is either satisfied or inapplicable.

This subassignment of error is denied.

B. Overriding Public Need Not Adequately Provided for in the Plan

SRC 64.090(b)(2) and (3) require that the approved plan change be justified by an "overriding public need," that such need be "best served by the proposed change," and that "[t]he plan does not otherwise make adequate provision to accommodate the public need * * *." Petitioners contend the city has at most shown a general market demand within the city for multifamily housing, not an overriding public need. Petitioners further contend there is an admitted surplus of multifamily designated land within the city which is sufficient to supply the projected need for multifamily dwellings until the year 2005. Therefore, petitioners contend, the plan already makes adequate provision for land designated to supply multifamily housing needs, and any

existing need for multifamily dwellings is not best served by adding to the existing surplus of multifamily designated land.

The city in large part bases its determination that the requirements of SRC 64.090(b)(2) and (3) are met on a lack of vacant, developable multifamily designated property in the area of Salem west of the Willamette River (West Salem).

We turn first to petitioners' contention that the city improperly relies on market demand to demonstrate the existence of an overriding public need. As petitioners correctly note, numerous cases have held that the existence of a market demand to convert resource land to nonresource use is not the equivalent of a public need to designate such lands for nonresource use. Still v. Marion County, 42 Or App 115, 122, 600 P2d 433 (1979); Allen v. City of Banks, 9 Or LUBA 218 (1983). Even where the issue is not conversion of resource lands, this Board has suggested that market demand alone may not equal public need. In Roden Properties v. City of Salem, ___ Or LUBA ___ (LUBA No. 89-046, August 8, 1989) slip op 10-11, we suggested that something more than market demand was required to demonstrate a public need to change the existing plan designation for property. In 1000 Friends of Oregon v. Marion County, ___ Or LUBA ___ (LUBA No. 89-104, November 17, 1989) slip op 7, we concluded a market demand for uses encouraged by the statewide goals or comprehensive plan policies might be sufficient to

demonstrate public need for such uses.

Even though encouragement of an adequate supply of multifamily housing is within the scope of Goal 10 (Housing) and city plan policies, demonstration of an existing market demand for multifamily housing does not necessarily demonstrate a public need justifying designation of additional multifamily planned and zoned land. In particular, where there is a surplus of land planned and zoned for multifamily residential development, a market shortage of multifamily housing does not justify designating additional land for such purposes. 1000 Friends of Oregon v. Marion County, supra. In such circumstances, the unmet market demand or need for such housing presumably is not caused by an inadequate supply of land planned for such purposes. As explained more fully below, we conclude the city has not adequately demonstrated that there is an overriding public need for additional multifamily planned and zoned property within the city or the West Salem subarea of the city.

The city's findings cite statistics showing the city's population is increasing and that there is a low multifamily housing vacancy rate which, in turn, inflates rents. In addition, there is evidence in the record that rental housing units are being converted to owner occupied units further constricting the supply of rental housing. However, there is also evidence in the record that a number of

multifamily housing projects currently are under construction. In addition, as petitioners point out, the city's findings also explain that notwithstanding the apparent existing shortage of multifamily dwellings, there currently is a surplus of land planned for such purposes.

"A comparison of residential land demand and supply is presented in the [city periodic review order submitted to LCDC pursuant to ORS 197.640]. * * * [T]here are 6,850 acres available for single family development. 3,510 acres are needed and 3,340 acres are [surplus]. There are 700 acres available for multifamily housing. 520 acres are needed and 180 are [surplus]. There is, therefore, a huge surplus of single family land and a minor surplus of multifamily land. * * *" Record 12.

Although intervenor suggests the shortage of multifamily housing is especially critical in West Salem, the studies he cites do not support that contention. The cited studies appear to support a conclusion that there presently is a shortage of multifamily housing citywide. However, the above quoted findings make it clear that the shortage is not caused by a lack of land planned for multifamily development.³ Therefore, even if a current market shortage for multifamily dwellings suggests a public need for such dwellings, the findings state there is more than enough land planned for multifamily purposes to meet

³There are of course a variety of factors that have nothing to do with the availability of land designated for multifamily dwellings that could explain the existing shortage of such dwellings.

the projected citywide needs through the year 2005.⁴

The city and intervenor attempt to avoid the obvious hurdle the current surplus of multifamily designated property poses in demonstrating an overriding public need warranting designation of additional property for multifamily development, by arguing that the West Salem area of the city should be viewed as a discrete subarea. West Salem is geographically separated from the rest of the city by the Willamette River, is located in a different county from the rest of the city and is the residence of approximately 12% of the city's population.

In Roden Properties v. City of Salem, supra, we recognized that the city might be able to identify subareas of the city for purposes of considering public need for a plan amendment under SRC 64.090(b)(2) where there is a reasonable justification for doing so. See also 1000 Friends of Oregon v. Metro Service Dist., ___ Or LUBA ___ (LUBA No. 89-036, November 3, 1989) slip op 16 (concluding that need under Goal 14 factors 1 and 2 may in an appropriate case be based on subregional need). We conclude

⁴Respondent and intervenor suggest that since the actual construction of multifamily units is in large part driven by the private sector, perhaps the land now designated for multifamily development in the plan is inappropriately designated for such purposes. Although we do not foreclose the possibility that the city could adopt findings explaining why the existing surplus of multifamily designated land is not capable of meeting the projected need due to limitations on developing that land for such purposes, the findings adopted by the city do not attempt to do so, and we decline to speculate that the existing multifamily designated lands are inappropriately designated for such development.

the size and geographical separation of West Salem from the rest of the city, along with Residential Development Policy 17 (SKACP 41) under which multifamily development opportunities may be considered on a subarea basis, provide adequate justification for considering the public need for multifamily dwellings in the West Salem subarea of the city rather than in the city as a whole.

The city assumed the need for multifamily units in West Salem by the year 2005 is proportional to West Salem's current share of the city's total population. Utilizing this assumption, the city determined a total of 1,122 additional multifamily units is needed in West Salem by the year 2005. Applying a density estimate of 18 units per acre, the city found approximately 62 acres are needed to satisfy the public need for additional multifamily designated land in West Salem between now and 2005. Although the plan includes a number of residential development policies, the city does not base its assumption that there is a need to locate 12% of the city's needed multifamily housing in West Salem on these policies. As far as we can tell the city's assumption is based solely on West Salem's current 12% share of the city's population.

Petitioners contend that the city failed to show there is any overriding public need for multifamily housing justifying a need to designate additional land for multifamily use. Petitioners further contend that even if

such a need did exist, it would not be best served by redesignating the subject parcel, which has steep slopes limiting its development potential. In addition, petitioners argue there is a very large area immediately adjacent to the subject property in the "flats" which is planned and zoned for multifamily development. Although that property is largely developed with older single family dwellings, petitioners argue the city did not adequately explain why that land is not available to satisfy any of the public need for multifamily designated land.

Intervenor and petitioners identified approximately 27 acres of vacant developable land in West Salem designated for multifamily development. The city adopted findings explaining that the some of the parcels comprising the 27 acres of vacant multifamily designated land in West Salem have more significant development constraints than the subject property. Record 35-37. Petitioners do not challenge those findings. In addition, the findings explain the city did not consider the large area of multifamily designated land located east of the subject property to be available to meet any of the identified need for multifamily dwellings, because this area is currently developed with older single family dwellings.⁵

⁵We are unable to determine exactly how many acres are planned and zoned for multifamily use in the "flats" east of the subject property. However, from the map included in the record it appears to include well over 50 acres. The city suggests this older housing may be needed for lower income

Turning first to the city's assumption that 12% of the additional multifamily housing needed in the city will be needed in West Salem, we find no plan policies supporting the city's population-based assumption. To the contrary, the plan policies emphasize provision of a variety of housing types, proximity of multifamily housing to necessary public facilities and the city core, and compatibility with adjoining residential uses. Residential Policy 17 provides:

"The jurisdictions will determine specific criteria for the location of multifamily development and specify the location and intensity of residential development for subareas as a result of completing plans for facility development such as sector plans, and completing plans for neighborhood redevelopment, such as renewal and in-fill studies, and neighborhood plans."

Under the city's plan, land for residential development in general and land for multifamily development in particular, is to be designated based on such considerations as public facilities, neighborhood plans, renewal and in-fill studies, sector plans -- not according to the proportionate population of designated subareas. Therefore, the city's assumption that 12% of the additional multifamily housing needed in the city by the year 2005 is needed in West Salem, simply because 12% of the city population currently lives in

housing but does not explain the magnitude of this need or why such a need renders none of this large multifamily designated area available for new multifamily housing which might also serve such lower income housing needs.

West Salem, is unjustified.⁶

We also agree with petitioners that the city may not simply disregard the potential that some of the needed multifamily housing in West Salem may be satisfied through conversion of existing single family development in the "flats" to multifamily use. Although, the existing development may limit the amount of multifamily development that can be expected to occur in the flats, some multifamily development must have been anticipated, or the large multifamily designated area would have received a different plan designation. We conclude the city's findings, therefore, fail to demonstrate there is not adequate multifamily designated land in West Salem to satisfy the identified public need for such housing in West Salem, as SRC 64.090(b)(3) requires.

In addition, we agree with petitioners that the city failed to explain why the public need for multifamily housing in West Salem "is best served by the proposed change" as required by SRC 64.090(b)(2). See Von Lubken v. Hood River County, ___ Or LUBA ___ (LUBA No. 89-023, September 8, 1989) slip op 16 (construing similar code language to require consideration of the planned facility in

⁶This does not mean the 12% figure necessarily is incorrect. However, consideration of the plan policies adopted to guide planning for residential development could easily result in a need for additional multifamily housing in West Salem that is higher or lower than 12% of the additional amount needed citywide.

context with other possible ways to satisfy the public interest). Although the city attempts to demonstrate compliance with SRC 64.090(b)(2) by pointing out numerous site amenities present on the subject property, the city has not identified an "overriding public need" for multifamily housing with the particular amenities available at the subject property. See DLCD v. Clatsop County, 14 Or LUBA 358, 362 (1986). As petitioners point out, the findings do not demonstrate that there are not other properties in West Salem which could be developed at higher densities and which are therefore better able to satisfy the public need for multifamily housing in West Salem.

Because the city's assumption concerning the amount of multifamily housing needed in West Salem is not justified, and the city failed to explain why existing multifamily designated property in the "flats" cannot satisfy the identified public need for additional multifamily designated land in West Salem or why the identified public need for such land is best served by the proposed change, this subassignment of error is sustained.⁷

⁷Because we sustain this portion of the second assignment of error, the portion of the city's decision approving the plan map amendment must be remanded. Because the approved rezoning to RM requires that the subject property have a multifamily plan designation, the portion of the decision granting the rezoning must be remanded as well. Nevertheless, we consider the remaining portion of the second assignment of error and the remaining assignments of error. ORS 197.835(9)(a).

C. Logical and Harmonious with the Land Use Pattern

The requirement of SRC 64.090(b)(4) that a change in the plan map designation be "logical and harmonious with the land use pattern for the greater area" is a subjective requirement. Intervenor cites findings adopted by the city explaining why, in view of the relatively low proposed density, the design of the buildings, buffering, and other measures proposed and conditions imposed on the project, the city concluded the proposed development satisfies this criterion, notwithstanding its proximity to existing single family developed areas. Intervenor also cites evidence supporting those findings, including the testimony of an appraiser that the proposed development would enhance the existing neighborhood. Although petitioners cite contrary views expressed during the local proceedings, we conclude the findings are adequate to demonstrate compliance with SRC 64.090(b)(4) and are supported by substantial evidence in the record.

This subassignment of error is denied.

The second assignment of error is sustained in part.

THIRD ASSIGNMENT OF ERROR

"The decision of the City of Salem to change the zone on the subject property is inconsistent with and in violation of the City's own approval criteria for a zone change."

SRC 114.160 establishes the criteria and burden of proof for quasi judicial land use actions. SRC 114.160(a)

states the applicant has the burden of proof and that the burden increases with the impact of the proposal. SRC 114.160(b) requires that the standards located elsewhere in the zoning code, plan and state law must be satisfied. SRC 114.160(c) provides

"In addition to the proof under [SRC 114.160(a) and (b)], the following factors should be evaluated by the proponent and shall, where relevant, be addressed by the administrative body in its final decision:

- "(1) The existence of a mistake in the compilation of any map, or in the application of a particular land use designation to any property in this zoning code or the comprehensive plan;
- "(2) A change in the social, economic, or demographic patterns of the neighborhood or of the community;
- "(3) A change of conditions in the character of the neighborhood in which the use or development is proposed;
- "(4) The effect of the proposal on the neighborhood, the physical characteristics of the subject property, and public facilities;
- "(5) All other factors relating to the public health, safety, and general welfare which the administrative body deems relevant."

SRC 114.160(d) goes on to explain that unless one of the factors in SRC 114.160(c) is irrelevant, something more than an unsupported conclusion is required to address the factors and the level of detail necessary will depend on the degree of impact in a particular case.

Petitioners challenge the adequacy of, and evidentiary

support for, the city's findings to show compliance with the factors of SRC 114.160(c), quoted above.

As we explained in Roden Properties v. City of Salem, supra, the factors listed in SRC 114.160(c) are only considerations, not approval standards for zone changes. SRC 114.160(c) requires that the listed factors be evaluated by the applicant and, where relevant, be addressed by the city in its findings. Intervenor cites findings in the city's decision which address each of the factors of SRC 114.160(c) as well as evidentiary support in the record for those findings. Nothing more is required.

The third assignment of error is denied.

FOURTH ASSIGNMENT OF ERROR

"The decision of respondent to grant this comprehensive plan and zone change application is not supported by substantial evidence in the whole record."

Petitioners challenge the evidentiary support for the city's decision in this matter. We sustained petitioners' challenge to the adequacy of the city's findings addressing the overriding public need requirement of SRC 64.090(b)(2) and lack of sufficient multifamily designated land to satisfy the identified public need, as required by SRC 64.090(b)(3), under the second assignment of error. No purpose would be served in reviewing the evidentiary support for those inadequate findings.

Petitioners also generally allege the record includes

evidence that the property contains resources protected by Goal 5 and natural hazards that are within the ambit of Goal 7. Petitioners argue the city's decision that the cited goals do not apply is not supported by substantial evidence. However, as we explained under the second assignment of error, the city did not base its decision that the cited goals are inapplicable on a finding that there are no resources or hazards subject to protection under the cited goals. Rather the city found Goal 5 and 7 issues concerning the property were not raised because the comprehensive plan does not identify such resources on the property and designates the property for residential development, and the plan has been acknowledged. In addition, the city found the multifamily plan designation would allow development to be clustered leaving the more sensitive portions of the property undeveloped, thus reducing the impact on any goal protected resources or hazards on the property as compared to developing the entire property with single family dwellings. Petitioner challenges neither the city's findings explaining why the goals do not apply nor the evidentiary support for those findings.

Petitioners next contend that several unspecified criteria require findings concerning character of the neighborhood and how that character may be impacted or changed by the proposed development. Petitioners contend the city's findings on these issues are not supported by

substantial evidence.

Petitioners' evidentiary challenge cannot be sustained unless the findings petitioners identify address mandatory approval criteria, i.e. criteria for which the county is required to adopt findings demonstrating compliance. The SRC 64.090(b)(4) requirement that the proposed plan change be "logical and harmonious with the land use pattern for the greater area" is such a mandatory approval criterion, and is the only such criterion identified by petitioners. To the extent petitioners' challenge is directed at the city's findings of compliance with the SRC 64.090(b)(4), we have already concluded under the second assignment of error that the city's findings are adequate and supported by substantial evidence.

Finally, petitioners challenge the evidentiary support for the city's findings addressing the "mistake" factor of SRC 114.160(c)(1).

Intervenor cites evidence in the record in support of the city's findings explaining a "mistake" was made, in the sense there are advantages in developing the property with multifamily dwellings as compared to single family dwellings.

As we have already explained, the "mistake" factor is not an approval standard. Accordingly, the alleged inadequacy of the evidence supporting the city's findings addressing this factor, even if true, would provide no basis

for reversal or remand.⁸

The fourth assignment of error is denied.

FIFTH ASSIGNMENT OF ERROR

"This decision is inconsistent and incompatible [with] the Salem Area Comprehensive Plan."

Petitioners contend the city's decision violates the following plan provision:

"Natural separation of use types (i.e., between Single Family Residential, Multifamily Residential, and Commercial) by change in topography, natural vegetation, or other feature is desirable." SKACP 23.

Intervenor contends that a plan statement that separation of use types along topographic, natural vegetation, and other features is "desirable" does not establish an approval criterion applicable to the city's decision in this matter. We agree. Bennett v. City of Dallas, 96 Or App 645, 773 P2d 1340 (1989); McCoy v. Tillamook County, 14 Or LUBA 108, 118 (1985).

The fifth assignment of error is denied.

The city's decision is remanded.

⁸Similarly, to the extent the petitioners' previously noted general challenge to the adequacy of the evidentiary record to support the city's findings addressing neighborhood character is directed to the factor specified in SRC 114.160(c)(4), that factor is not an approval criterion and petitioners' challenge is rejected.