

1 Opinion by Holstun.

2 **NATURE OF THE DECISION**

3 Petitioners appeal a city council order denying
4 petitioner Allred's application for a conditional use permit
5 for a motel in the city's Limited Commercial (C1) zone.

6 **FACTS**

7 The relevant facts are set out in the petition for
8 review as follows:

9 "The Cannon Beach zoning ordinance allows motels
10 as a conditional use in [the C1 zone].
11 [Petitioner] Allred applied for a conditional use
12 permit to build a 22 unit motel in the [C1] zone,
13 on property owned by [petitioner] Hay. The
14 Planning Commission held a public hearing on
15 November 15, 1990 and tentatively denied the
16 application, making its decision final on December
17 15, 1990. The Planning Commission denied the
18 application on two grounds. These were (1) that
19 it was inconsistent with Midtown Policy 5 of the
20 Comprehensive Plan, and (2) that no need existed
21 for the proposed motel use at the site. The
22 Planning Commission found that the application
23 would meet the other standards of the
24 Comprehensive Plan and zoning ordinance if the
25 motel were reduced to 17 units from 22 units.

26 "[Petitioners] Hay and Allred appealed the
27 Planning Commission's decision to the City
28 Council. The City Council upheld the decision on
29 February 5, 1991 and adopted findings and
30 conclusions on March 5, 1991. * * *" Petition for
31 Review 2-3.

32 **DECISION**

33 In their appeal before LUBA, petitioners challenge both
34 of the reasons given by the city in its findings for denying
35 the request. We address the challenge to the city's

1 findings concerning demand for the use at the proposed
2 location first.

3 **A. Demand**

4 Cannon Beach Zoning Ordinance (CBZO) § 6.110 provides,
5 in part, as follows:

6 "Before a conditional use is approved, findings
7 will be made that the use will comply with the
8 following standards:

9 "1. A demand exists for the use at the proposed
10 location. Several factors which should be
11 considered in determining whether or not this
12 demand exists include: accessibility for
13 users (such as customers and employees),
14 availability of similar existing uses,
15 availability of other appropriately zoned
16 sites, particularly those not requiring
17 conditional use approval, and the
18 desirability of other suitably zoned sites
19 for the use.

20 "* * * * *"

21 The city found CBZO § 6.110 was not satisfied.
22 According to the city's findings, there are approximately
23 600 existing motel units in Cannon Beach.¹ The city's
24 findings then explain that only the Residential Motel (RM)
25 zone allows motels as a use permitted outright. Although
26 there presently are no vacant RM zoned parcels in the city,
27 the city's findings explain that two RM zoned parcels in the
28 Tolovano area, which are presently occupied by motels, are

¹The 600 unit figure includes 115 units at the Cannon Beach Conference Center (CBCC). The CBCC units are rented as a group for private meetings and conferences.

1 not developed to the maximum number of motel units possible.
2 Both motels have plans to redevelop the properties to
3 provide more units. In addition, the city identifies a
4 number of other parcels in the Midtown area of the city
5 zoned RM. These parcels apparently are developed with
6 single family dwellings. However, according to the city's
7 findings, the owners of existing RM zoned parcels have a
8 financial incentive to redevelop their parcels for motel
9 use. Altogether, the city found the existing RM zoned
10 parcels have the redevelopment potential to provide 130
11 additional motel units. The city found "[s]even hundred and
12 thirty motel units provide adequate visitor housing."
13 Record 5.

14 Petitioners present several challenges to the city's
15 findings. We first discuss the requirement of CBZO § 6.110
16 before addressing petitioners' challenges.

17 **1. CBZO § 6.110**

18 CBZO § 6.110(1) requires that the city determine "[a]
19 demand exists for the use at the proposed location." The
20 CBZO provides no definition of the term "demand," so the
21 commonly understood meaning of the term applies. Sarti v.
22 City of Lake Oswego, 106 Or App 594, 597, ___ P2d ___
23 (1991). Websters Third New International Dictionary
24 includes the following definition of "demand":

25 "[A] manifested desire for ownership or use * * * :
26 a need or request for a commodity * * * ;
27 willingness and ability to purchase a commodity or

1 service * * *; the quantities of goods or of a
2 service that would be purchased at each of various
3 possible prices at a given time * * *." Id. at
4 598.

5 CBZO § 6.110(1) requires that the identified demand exist
6 "at the proposed location." Furthermore, CBZO § 6.110(1)
7 specifies factors which should be considered in determining
8 whether a demand exists for the use at the proposed
9 location. These factors, quoted supra, have more to do with
10 the suitability of the proposed location as compared with
11 other alternative sites, than they do with demand for motel
12 units. Therefore it is only partially accurate to
13 characterize the CBZO § 6.110(1) as a "demand" standard or
14 criterion. CBZO § 6.110(1) requires the city to find a
15 demand exists and, if so, whether the proposed location is
16 required to meet that demand or whether, compared with other
17 alternatives for satisfying the identified demand, the
18 proposed location is not required to satisfy the identified
19 demand.

20 2. The CBCC Units

21 Petitioners submitted statistical evidence that a
22 "demand" exists for motel units in Cannon Beach.² The city

²Room tax collections have risen significantly in Cannon Beach since 1987. Record 31. Petitioners also identify evidence in the record that motel occupancy rates in Cannon Beach have risen from 55% to 70% since 1985.

1 does not dispute petitioner's statistical evidence.³
2 However, the evidence submitted by petitioners does not
3 suggest any particular number of motel units is presently
4 needed to satisfy the existing demand for motel units. The
5 city found there presently are 600 motel units in Cannon
6 Beach. The city added to that figure the estimated 130
7 units which could be constructed on existing RM zoned land
8 and concluded that 730 motel units "provide adequate visitor
9 housing." Record 5.

10 Petitioners do not dispute the city's conclusion that
11 730 motel units would be adequate to satisfy the demand for
12 motel units. However, petitioners contend the city
13 improperly counts the 115 CBCC units as existing motel
14 units. Petitioners also contend that 50 to 60 of the 130
15 units potentially developable on RM zoned property would be
16 located on property owned by the CBCC and should not have
17 been counted as motel units. Because use of the CBCC units
18 is limited to groups using the conference center,
19 petitioners contend they are not available to the general
20 public and should not have been counted by the city as motel
21 units available to meet the demand for motel units.

³The city did adopt a finding that there is no "demand for * * * additional motel units in the [C1] Zone in general and the Midtown area specifically." Record 4. Petitioners challenge that finding on evidentiary grounds. However, we do not understand the city to dispute that there is a current demand for more motel units. Rather, the central disagreement between petitioners and the city is whether a demand exists at the subject property or whether other appropriately zoned property is available to meet the existing demand.

1 While petitioners disagree with the city concerning
2 whether the existing and potential CBCC units should have
3 been counted as motel units, petitioners provide no basis
4 for us to reject the city's decision to do so. We agree
5 with the city that the CBCC units fall within the CBZO
6 definition of "motel."⁴ Admittedly, the CBCC units differ
7 from other motel units in that they serve a more limited
8 clientele. However, petitioners present no reason why that
9 difference requires that the CBCC units not be counted at
10 all in identifying the demand for motel units in Cannon
11 Beach. Presumably visitors to the CBCC would compete for
12 other motel units were the CBCC units not available. We see
13 no reason to fault the city's reasoning, and petitioners
14 offer no other reason why the city's decision to include the
15 CBCC units in computing demand for motel units was
16 reversible error.

17 **3. The 130 Potential Units**

18 Petitioners contend the city improperly counts 130
19 "potential" units in concluding there is no demand for the
20 use at the proposed location. Petitioners contend these
21 potential units have no bearing on whether there are

⁴As defined by CBZO § 1.030(76):

"**'Motel'** means a building, or group of buildings on the same lot containing motel rental units for rental to transients and consisting of individual sleeping quarters with or without cooking facilities which are designed, intended, or used primarily for the accommodation of transients, and shall include hotels or inns."

1 sufficient motel units now.

2 As explained above, the standard imposed by CBZO §
3 6.110(1) is not whether there are sufficient motel units
4 now. Rather, CBZO § 6.110(1) requires precisely the type of
5 analysis the city performed, including identifying existing
6 motel units and identifying the number of units that could
7 be constructed on other appropriately zoned property.
8 Although we see no reason why the city could not interpret
9 CBZO § 6.110(1) to permit it to discount, in whole or in
10 part, the availability of RM zoned property for motel
11 development where that property is currently developed with
12 single family dwellings, we do not believe the city must
13 interpret CBZO § 6.110(1) in that manner. We cannot say
14 interpreting CBZO § 6.110(1) as including such parcels as
15 "available," due to the higher financial return associated
16 with motel use, is wrong as a matter of law. McCoy v. Linn
17 County, 90 Or App 271, 275-276, 752 P2d 323 (1988); cf.
18 Bridges v. City of Salem, ___ Or LUBA ___ (LUBA No. 90-035,
19 July 27, 1990), slip op 16, aff'd 104 Or App 221 (1990)
20 (city must consider existing multi-family zoned property
21 developed with older single-family dwellings in determining
22 whether there is an "overriding public need" for more multi-
23 family zoned land).

24 **4. The Tolovano Area Potential Units**

25 Petitioners argue the city erroneously considered the
26 Tolovano area RM zoned parcels in addressing the demand

1 criterion of CBZO § 6.110. According to petitioners,
2 expansion of existing motels in an area approximately one
3 mile from the subject property has no bearing on demand at
4 the proposed location and those expansion plans show the
5 Tolovano area parcels are not available to petitioners.

6 Once again, petitioners misunderstand what CBZO §
7 6.110(1) requires. It requires that the city determine
8 whether a demand exists for the use at the proposed
9 location. In making the locational determination, CBZO §
10 6.110(1) requires that the city look at appropriately zoned
11 sites elsewhere in the city to determine whether they are
12 available. Even if a demand for motel units is identified,
13 if there are other available appropriately zoned parcels on
14 which motels may be built, there is no demand for motel
15 units at the proposed location. The city correctly
16 construed CBZO § 6.110(1) as requiring consideration of
17 properties beyond the immediate area of the subject parcel
18 in determining whether there is other available suitably
19 zoned sites for the proposed use. We reject petitioners'
20 contention that the city should not have considered the
21 availability of the Tolovano area parcels.

22 **5. Other Decisions Concerning Requests for**
23 **Approval of Motels in the CI Zone**

24 Petitioners point out there is evidence in the record
25 that the city previously approved a 30 unit hotel and a 20
26 unit motel in the C1 zone. Although the record also shows
27 both of those projects were withdrawn, petitioners complain

1 the record shows no justification for approving those
2 applications and denying the subject application.

3 Because the prior decisions themselves are not included
4 in the record, we have no way to determine whether those
5 earlier decisions actually are inconsistent with the
6 challenged decision. Although petitioners may be suggesting
7 that the city is engaging in arbitrary decision making,
8 petitioners offer no argument in support of that position
9 and the record in this appeal does not support such a
10 conclusion.

11 In conclusion, we reject each of petitioners'
12 challenges to the city's findings of noncompliance with CBZO
13 § 6.110(1).

14 **B. Plan Midtown Policy 5**

15 Petitioners also contend the city erroneously
16 interpreted and applied Plan Midtown Policy 5 as a basis for
17 denying the subject application.⁵

18 Because we have rejected petitioners' arguments
19 concerning CBZO § 6.110(1), the city's finding that the
20 proposal fails to satisfy that CBZO standard provides a
21 sufficient basis for sustaining the city's decision, even if
22 the city erroneously interpreted and applied Plan Midtown
23 Policy 5. Morely v. Marion County, 16 Or LUBA 385, 387-388

⁵Plan Midtown Policy 5 "encourages" concentration of retail activities in the commercial zone where the subject property is located and specifies priorities for expansion of that commercial area, if warranted.

1 (1988); Valley View Nursery v. Jackson County, 15 Or LUBA
2 591, 598 (1987). We therefore do not consider the parties'
3 arguments concerning Plan Midtown Policy 5.

4 The city's decision is affirmed.