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2 **NATURE OF THE DECISION**

3 This appeal concerns a county decision approving plan
4 and zoning map amendments to allow expansion of a medical
5 clinic. In approving the requested plan and zoning map
6 amendments, the county imposed a condition of approval
7 requiring that a previously approved parking lot exit be
8 eliminated. Petitioner challenges the condition.

9 **FACTS**

10 Olson Memorial Clinic occupies approximately 19,500
11 square feet of office space and includes a dental clinic,
12 medical clinic, women's clinic, pharmacy, and pediatric
13 clinic. The subject plan and zoning map amendments were
14 requested by petitioner to allow a 1,504 square foot
15 addition to the pediatric clinic.

16 Prior to submitting the subject application for the
17 plan and zoning map amendments, petitioner was granted
18 conditional use approval for an expansion to its parking lot
19 and for a parking lot exit onto Firwood Road, which adjoins
20 the clinic property on the north. This previously approved
21 exit onto Firwood Road has not been constructed. Presently,
22 patients and other persons visiting the Olson Memorial
23 Clinic enter and leave the parking area from Boones Ferry
24 Road, which adjoins the property on the south.

25 Although the board of commissioners approved the
26 requested plan and zoning map amendments, it conditioned its

1 approval on elimination of the previously approved parking
2 lot exit onto Firwood Road. The disputed condition provides
3 as follows:

4 "[The board of commissioners] finds, based on
5 evidence and testimony presented to it, that the
6 expansion which would be allowed by the approval
7 of the plan and zone change will continue [to]
8 exacerbate existing problems caused by vehicle[s]
9 taking access to Firwood Road, and that it is
10 appropriate that such access be eliminated."
11 Record 4.

12 **DECISION**

13 Petitioner argues the county's conclusion that existing
14 problems with the previously approved exit onto Firwood Road
15 justify the challenged condition is clearly wrong because
16 the exit has not yet been constructed and, therefore, there
17 is no existing problem to exacerbate. Moreover, petitioner
18 contends that while there is a great deal of testimony in
19 the record expressing concerns about traffic exiting the
20 medical clinic parking lot onto Firwood Road, there is no
21 evidence that the proposed expansion would increase such
22 traffic.

23 Petitioner argues that, to the contrary, the record
24 includes extensive testimony explaining that the expansion
25 is needed to provide adequate facilities to serve existing
26 patients, not to allow expansion of the number of patients
27 served by the pediatric clinic. According to petitioner,
28 the relevant testimony in the record shows the number of
29 doctors, medical staff, and patients is not expected to

1 increase as a result of the proposed expansion.

2 Petitioner argues the decision to allow the parking lot
3 exit onto Firwood Road was made in the county's earlier
4 conditional use decision. Absent some demonstrated
5 connection between the current request for land use approval
6 to allow expansion of the clinic and the previously approved
7 exit onto Firwood Road, petitioner argues it is improper to
8 condition the land use approval allowing the expansion upon
9 petitioner giving up the previously approved exit onto
10 Firwood Road. Petitioner contends that because the record
11 establishes no connection between the requested approval and
12 the likely traffic impacts of the exit onto Firwood Road,
13 imposition of the disputed condition was improper.

14 Where applicable plan and land use regulations allow a
15 local government to impose conditions in granting land use
16 approval, conditions of approval may be imposed to achieve
17 legitimate planning purposes. Vestibular Disorders Consult.
18 v. City of Portland, ___ Or LUBA ___ (LUBA No. 89-112, April
19 6, 1990), slip op 10; Benjamin Franklin Dev. v. Clackamas
20 County, 14 Or LUBA 758, 761-62 (1986). We therefore agree
21 with respondent that it might be appropriate for the county
22 to condition its grant of land use approval in this case
23 upon petitioner's agreement to relinquish a right granted in
24 a prior land use decision, provided there is a sufficient
25 connection between the right to be relinquished and the
26 planning interest to be served. On the other hand,

1 conditioning the current request for land use approval on
2 relinquishment of a right granted in a prior land use
3 decision is improper where there is no such connection.
4 Wheeler v. Marion County, ___ Or LUBA ___ (LUBA No. 90-118,
5 December 18, 1990), slip op 9; cf. Goodman v. City of
6 Portland, ___ Or LUBA ___ (LUBA No. 90-024, June 22,
7 1990)(city lacks authority to impose conditions on
8 contiguous property owned by the applicant which is not the
9 subject of the application). The critical question in this
10 appeal, therefore, is whether the record demonstrates there
11 is such a connection.

12 The findings, quoted supra, simply conclude that the
13 requested pediatric clinic expansion will exacerbate the
14 impacts of the exit onto Firwood Road. Beyond a general and
15 nonspecific reference to evidence in the record, the
16 findings do not identify the evidence the county relied
17 upon. We do not believe detailed findings are always
18 required to justify conditions of approval, although more
19 detailed findings may be required to support a condition of
20 approval where the propriety of the condition is disputed
21 below.¹ See Marion County v. Federation for Sound Planning,
22 64 Or App 226, 237, 668 P2d 406 (1983); City of Wood
23 Village, v. Portland Metro. Area LGBC, 48 Or App 79, 86-87,

¹In this case the county did not indicate an intent to impose the
disputed condition of approval until the final written decision was issued
and, therefore, petitioner did not have an opportunity below to raise
issues concerning the propriety of imposing the disputed condition.

1 616 P2d 528 (1980); Hillcrest Vineyard v. Bd. of Comm.
2 Douglas Co., 45 Or App 285, 293, 608 P2d 201 (1980); Norvell
3 v. Portland Area LGBC, 43 Or App 849, 853-854, 604 P2d 896
4 (1979); Hinzpeter v. Union County, 16 Or LUBA 111, 117
5 (1987). However, where findings supporting the condition do
6 not explain the facts that justify imposing the condition,
7 the evidentiary record must be sufficient to demonstrate the
8 connection between the condition imposed and the land use
9 approval to be conditioned and that a legitimate planning
10 purpose is served by the condition.

11 The record in this appeal includes testimony from one
12 of the clinic's pediatricians concerning the need for and
13 purposes to be served by the proposed clinic expansion.
14 According to the pediatrician's testimony, the expansion
15 would not accommodate additional physicians or support
16 staff. Rather, the proposed expansion is needed to
17 accommodate a variety of existing needs. Rest rooms need to
18 be expanded to accommodate disabled patients. Additional
19 space is needed for existing clerical staff, temporary
20 storage of biological and contaminated materials and
21 retention of medical records on site. An employee lunch
22 room, separated from biological materials and the existing
23 congested nursing station, is also planned. In addition, a
24 small office is needed for the office manager to perform her
25 duties. Currently the office manager must use one of the
26 pediatricians' offices, when available. According to the

1 pediatrician's testimony, the proposed three additional
2 examination rooms are needed to accommodate existing
3 patients and, in particular, to provide space for patients
4 whose medical condition requires extended observation. The
5 pediatrician testified that neither he nor his colleagues
6 planned to, or physically could, see more patients than they
7 were currently seeing. Record 23.

8 Respondent identifies no evidence in the record
9 directly contradicting the above testimony that the needed
10 expansion is to provide more adequate care for existing
11 patients and would not provide a basis for attracting
12 additional patients. The evidence cited in respondent's
13 brief is of three types.

14 First, there is testimony directed at traffic
15 generally, and the previously approved exit onto Firwood
16 Road specifically. As such, this testimony is directed at
17 the county's earlier decision approving the conditional use
18 permit for the parking lot, not the decision approving an
19 expansion of the pediatric portion of the clinic, which is
20 the subject of this appeal. Such testimony provides no link
21 between the appealed decision and the planning purpose to be
22 served by the challenged condition, and provides no basis
23 for reversal or remand.

24 Secondly, respondent notes the applicant's testimony
25 includes references to increased numbers of patients and
26 visits per patient. However, the cited testimony refers to

1 past increases. We agree with petitioner that the testimony
2 simply states that such past increases explain how the
3 current demands placed on the pediatric clinic facility came
4 about. The testimony does not indicate, as respondent
5 contends, that the proposed pediatric clinic expansion will
6 generate increased numbers of patients or visits per
7 patient.

8 Finally, respondent cites the piecemeal manner in which
9 various approvals have been granted over the years for the
10 clinic. Respondent contends it was reasonable for the
11 county to assume the present application is simply the
12 precursor of additional requests for expansion of the clinic
13 with attendant impacts on Firwood Road.²

14 The history of the clinic's development might well lead
15 a reasonable person to suspect that there may be additional
16 requests for development approval in the future which may
17 place additional traffic demands on Firwood Road. However,
18 such suspicions about the likelihood of future requests,
19 which may or may not have adverse traffic impacts, has
20 nothing to do with the likely impacts of the present
21 decision to allow the requested expansion of the pediatric
22 clinic. Such speculation about future requests and future

²The plan and zoning map amendments approved by the county commissioners did not encompass all of the area originally requested by petitioner. Record 4. During the public hearing before the county commissioners, a county planner explained that, as reduced, expansion of the clinic beyond that proposed as part of the application would not be possible without securing additional approvals from the county. Id. at 43.

1 impacts provides no basis for conditioning the present
2 request for expansion on eliminating the parking lot exit
3 onto Firwood Road.

4 In conclusion, as explained above, the county's
5 findings do not identify facts that would justify imposition
6 of the disputed condition. Neither does the evidence in the
7 record cited by the parties establish that there is a
8 sufficient connection between the approval sought and the
9 condition imposed to justify imposition of the condition.
10 Therefore, we agree with petitioner that the county's
11 imposition of the disputed condition is improper.

12 There remains the issue of whether we should remand the
13 county's decision so that the county may again consider
14 whether the condition can be justified or whether we should
15 reverse the condition but otherwise affirm the county's
16 ultimate decision granting the requested plan and zoning map
17 amendments.

18 ORS 197.805 provides in part that

19 "[i]t is the policy of the Legislative Assembly
20 that time is of the essence in reaching final
21 decisions in matters involving land use and that
22 those decisions be made consistently with sound
23 principles governing judicial review."

24 It does not appear that the county relied in any way on the
25 disputed condition in finding that the requested plan and
26 zoning map amendments comply with applicable criteria, and
27 respondent does not contend in its brief that such is the
28 case. Therefore, elimination of the condition has no effect

1 on the county's findings that all approval criteria are
2 satisfied by the subject application. Consistent with the
3 above quoted legislative policy, because the disputed
4 condition is not essential to any other part of the county's
5 decision or the findings supporting that decision, we
6 reverse the disputed condition but otherwise affirm the
7 county's decision.