



1 Opinion by Kellington.

2 **NATURE OF THE DECISION**

3 Petitioner appeals an order of the City of Mill City  
4 Council approving a conditional use permit for a municipal  
5 sewerage treatment facility.

6 **FACTS**

7 The subject property is a 12 acre parcel zoned Multiple  
8 Family Residential (R-2). The subject property is bounded  
9 by a public park on the west, residential development to the  
10 south and southwest, vacant land to the east and the Santiam  
11 River to the north.

12 The challenged decision explains the nature of the  
13 proposal as follows:

14 "The [proposal] involves the construction of a  
15 municipal treatment facility including a  
16 recirculating gravel filter, recirculation tank, a  
17 control building and a subsurface disposal  
18 (drainfield) system. The complex would be  
19 surrounded with a six foot cyclone fence. Through  
20 the proposed system, the solids would remain on  
21 site in interceptor tanks and would be removed  
22 periodically and treated elsewhere. The liquid  
23 which is brought to the plant would be treated  
24 through a recirculating gravel filter and disposed  
25 of underground. The city has received a Water  
26 Pollution Control Facilities \* \* \* permit from the  
27 Department of Environmental Quality [DEQ]. \* \* \*

28 "The facility will be built low to the ground.  
29 Other than for the control building all structures  
30 will be no more than three feet above the ground.  
31 The facility will be constructed such that the  
32 effluent will be ejected into the sand filter  
33 through pipes \* \* \*. Thus the effluent will not  
34 come into contact with the surface. Noise and  
35 odor are not to be discernible beyond the

1 perimeter of the site. The drainfield area will  
2 be completely covered with grass." Record 4.

3 The city applied for the conditional use permit for the  
4 municipal sewerage facility on March 19, 1991. The planning  
5 commission considered the application and, on April 9, 1991,  
6 approved it. Petitioners appealed the planning commission's  
7 decision to the city council. The city council conducted a  
8 public hearing and, on May 2, 1991, affirmed the decision of  
9 the planning commission. This appeal followed.

10 **FIRST ASSIGNMENT OF ERROR**

11 "Respondent failed to adequately answer the  
12 concerns of the petitioners with regard to the  
13 effect of the 12 acre development on the  
14 residential urban development within two blocks of  
15 the site \* \* \*."

16 The relevant approval standard for the proposed use is  
17 set forth in the Mill City Zoning Ordinance (MCZO) 7.020 as  
18 follows:

19 "The decision to approve or deny the conditional  
20 use shall be based on the following criteria:

21 (a) The location, size, design, and operation are  
22 compatible with and will not adversely affect  
23 the livability or appropriate development of  
24 abutting properties in the surrounding  
25 neighborhood. \* \* \*

26 "\* \* \* \* \*"

27 In this assignment of error, petitioners argue only  
28 that the city failed to address relevant issues they raised  
29 during the local hearings concerning odor, percolation  
30 difficulties, high groundwater and standing surface water on

1 the subject property.

2 We agree with petitioners that whether the facility  
3 will produce odors is a relevant consideration to  
4 determining compliance with MCZO 7.020. Accordingly, the  
5 city was obliged to address that issue in its findings.  
6 Norvell v. Portland Area LGBC, 43 Or App 849, 853, 604 P2d  
7 896 (1979).

8 The city did adopt findings addressing whether the  
9 proposed facility would emit odors. The city's findings  
10 explain the sewage at the facility will be contained within  
11 pipes and that "effluent will not come into contact with the  
12 surface." Record 4. The challenged decision concludes  
13 "noise and odor are not to be discernable beyond the  
14 perimeter of the site." Id. Petitioners do not challenge  
15 the evidentiary support for these findings. Accordingly,  
16 this portion of the first assignment of error provides no  
17 basis for reversal or remand of the challenged decision.

18 With regard to percolation difficulties, groundwater  
19 and standing surface water, petitioner does not explain how  
20 these are relevant to the applicable approval standards.  
21 Petitioners simply state:

22 "\* \* \* the existing high ground water and standing  
23 surface water problems and the percolation  
24 difficulties addressed by petitioners are not  
25 addressed in the Findings of Fact. \* \* \*"  
26 Petition for Review 3.

27 In the absence of some argument connecting the approval  
28 standards of MCZO 7.02 to the conclusions in the petition

1 for review concerning percolation difficulties, high ground  
2 water and standing surface water on the subject property,  
3 these statements provide no basis for reversal or remand of  
4 the challenged decision.

5 The first assignment of error is denied.

6 **SECOND ASSIGNMENT OF ERROR**

7 "Respondent failed to meet the DEQ requirement  
8 that a sludge management plan be submitted to that  
9 agency within 90 days of August 29, 1990 \* \* \*."

10 Petitioner argues the city has not submitted to DEQ a  
11 sludge management plan and that this is error. However,  
12 petitioner cites no approval standard requiring the  
13 submission of a sludge management plan to DEQ, and does not  
14 explain how a sludge management plan is relevant to  
15 compliance with MCZO 7.02. Accordingly, this assignment of  
16 error provides no basis for reversal or remand of the  
17 challenged decision.

18 The second assignment of error is denied.

19 The city's decision is affirmed.