

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

3  
4           PETER M. SMITH,                                    )  
5    )  
6                    Petitioner,                                )           LUBA No. 90-150  
7    )  
8           vs.    )           FINAL OPINION  
9    )           AND ORDER  
10           CITY OF PORTLAND,                                )  
11    )  
12                    Respondent.                                )

13  
14  
15           Appeal from City of Portland.

16  
17           David R. Barrow and Nancy A. Smith, Portland, filed the  
18 petition for review. With them on the brief was Byrne &  
19 Barrow. David R. Barrow argued on behalf of petitioner.

20  
21           Adrienne Brockman, Portland, filed the response brief  
22 and argued on behalf of respondent.

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

26  
27                   AFFIRMED                                   12/20/91

28  
29           You are entitled to judicial review of this Order.  
30 Judicial review is governed by the provisions of ORS  
31 197.850.

1 Opinion by Kellington.

2 **NATURE OF THE DECISION**

3 Petitioner appeals city Ordinance No. 163608, amending  
4 the city's zoning code and comprehensive plan.

5 **FACTS**

6 In 1986, a site review overlay zone was applied to  
7 newly annexed areas of the city located in mid-Multnomah  
8 County. From 1982 on, the city conducted legislative  
9 proceedings for revising the city's entire zoning code.  
10 Petitioner resides in one of the mid-Multnomah County areas  
11 annexed to the city which was subject to the site review  
12 overlay zone. Petitioner participated in this legislative  
13 code revision process and urged the city not to repeal the  
14 site review overlay zone. After a protracted process, the  
15 city adopted Ordinance No. 163608 in 1991, which among other  
16 things, repealed the site review overlay zone provisions  
17 formerly applicable to those annexed areas. This appeal  
18 followed.

19 **ASSIGNMENT OF ERROR**

20 "The City of Portland failed to comply with  
21 applicable procedural rules as set forth in the  
22 city's code. Specifically, the city erred in  
23 failing to provide proper notice, report, public  
24 hearing before the planning commission, commission  
25 recommendation \* \* \* and city council  
26 consideration as required by city Code  
27 33.220.020."

28 Former Portland City Code (PCC) 33.220.020 articulates  
29 various procedures the city must follow in adopting

1 legislative amendments to the PCC.<sup>1</sup> We understand  
2 petitioner to argue the city failed to follow many of the  
3 provisions of former PCC 33.220.020 in adopting Ordinance  
4 No. 163608.<sup>2</sup> Specifically, petitioner argues the city  
5 failed to "initiate" revocation of Site Review Overlay Zone,  
6 or give notice that it was considering repeal of the Site  
7 Review Overlay Zone, as required by PCC 33.220.020(A) and  
8 (B). Petitioner also argues the city failed to hold the  
9 hearing before the planning commission concerning revocation  
10 of the Site Review Overlay Zone required by  
11 PCC 33.220.020(D) and (F). Finally, petitioner contends the  
12 city failed to issue the "reports" concerning revocation of  
13 the Site Review Overlay Zone required by PCC 33.220.020(B)  
14 and (D).

15 For purposes of this opinion, we assume the city erred  
16 in the manner alleged in the petition for review. All of  
17 the alleged errors are errors of procedure. We are

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<sup>1</sup>PCC 33.220.020 was repealed by the challenged legislative amendments. However, it was applicable at the time the challenged decision was made.

<sup>2</sup>PCC 33.220.020(A) provides that "legislative actions may be initiated by the City Council or a commission." PCC 33.220.020(B) requires that certain persons receive notice of the initiation of a legislative action, and requires that the planning director prepare a report synthesizing responses from persons to whom such notice was mailed and applicable code sections and prepare a report to be forwarded to the "review body" with copies to certain persons. PCC 33.220.020(D) requires that a "commission" conduct a public hearing concerning the matter, and that such "commission" must prepare a recommendation for the city council. PCC 33.220.020(F) provides procedures for the city council to follow in considering legislative actions.

1 empowered to reverse or remand a challenged decision on the  
2 basis of alleged procedural errors only if such errors  
3 "prejudiced" petitioner's "substantial rights." ORS  
4 197.835(7)(a)(B).

5 Ordinance No. 163608 was the culmination of many years  
6 of city hearings and workshops, the purpose of which was to  
7 rewrite the PCC. In 1989, an issue was raised about whether  
8 site review should be eliminated as a part of that process.  
9 Record 630. Petitioner and his wife Dorothy Smith, and  
10 Dorothy Smith as the Chair of the Parkrose Community Group,  
11 were mailed written notice of the comprehensive PCC rewrite  
12 project in 1989. Record 716. Dorothy Smith was an early  
13 participant in that PCC rewrite process. She wrote a letter  
14 to the chair of the city planning commission supporting the  
15 existing site review provisions. Record 514. She  
16 participated in a planning commission site review workshop  
17 in which there was a discussion of whether the site review  
18 provisions should be eliminated. Record 476. Finally, she  
19 submitted written testimony to the planning commission  
20 concerning the value of retaining the existing site review  
21 provisions. Record 360.

22 The planning commission recommended that the site  
23 review provisions be deleted from the PCC. The city council  
24 considered the recommended amendments to the PCC, including  
25 the proposed deletion of the site review provisions, in its  
26 legislative proceedings. Petitioner participated in the

1 city council proceedings concerning the site review  
2 provisions. Record 108. Petitioner was given a full  
3 opportunity before the city council to present evidence and  
4 argument concerning the advisability of retaining the site  
5 review provisions.

6 Under these circumstances, we do not see that the  
7 alleged procedural errors caused any prejudice to  
8 petitioner's substantial rights. See Forest Park Estates v.  
9 Multnomah County, \_\_\_ Or LUBA \_\_\_\_\_ (LUBA No. 90-070,  
10 December 5, 1990), slip op 15-16; Fedde v. City of Portland,  
11 8 Or LUBA 220, 232-33 (1983).

12 The assignment of error is denied.

13 The city's decision is affirmed.