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REMANDED

01/28/92

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

1 Opinion by Holstun.

2 **NATURE OF THE DECISION**

3 Petitioners appeal an amendment to the Tigard
4 Comprehensive Plan (TCP) Transportation Map. The challenged
5 amendment downgrades the existing plan designation for one
6 street, upgrades the existing plan designation for two
7 others, and adds extensions of the two upgraded streets.

8 **MOTION TO INTERVENE**

9 Triad Tigard Limited Partnership and Ross Woods move to
10 intervene on the side of respondent. There is no opposition
11 to the motion, and it is allowed.

12 **FACTS**

13 The streets affected by the challenged decision lie
14 east of Highway 99W, a north-south arterial highway. Naeve
15 Street is an existing east-west minor collector, extending
16 east from its present unsignalized intersection with Highway
17 99W. In order to improve the traffic carrying capacity of
18 the streets in this area, and to avoid increasing the amount
19 of traffic at the current unsignalized Naeve Street/Highway
20 99W intersection, the challenged decision adopts several
21 changes to the TCP Transportation Map for this area.

22 The challenged decision adds extensions of Sattler
23 Street and 109th Avenue to the map, and designates those
24 streets as minor collectors. Sattler Street, an existing
25 east-west minor collector terminating at 100th Avenue, is
26 extended west from 100th Avenue to connect with 109th

1 Avenue.¹ 109th Avenue, an existing north-south local
2 street, is extended south and west, crossing Naeve Street
3 and ultimately connecting with Highway 99W at a signalized
4 intersection across from Royalty Parkway. The challenged
5 decision also downgrades the existing classification of
6 Naeve Street from a minor collector to a local street.

7 Petitioners own property currently served by Naeve
8 Street and would be affected by the street extensions and
9 redesignations approved by the challenged decision.

10 **FIRST ASSIGNMENT OF ERROR (LUBA NO. 91-133)**

11 Citing Strawberry Hill 4-Wheelers v. Benton Co. Bd. of
12 Comm., 287 Or 591, 601 P2d 769 (1979), petitioners contend
13 the challenged decision is quasi-judicial, and that the city
14 erred when it determined that the decision is legislative.²
15 Petitioners contend that if the challenged decision is
16 quasi-judicial, Tigard Community Development Code (TCDC)

¹In addition, the TCP Transportation Map Notes are amended to state that the design of the Sattler Street extension may vary from the city's standards for minor collector streets.

²In Strawberry Hill 4-Wheelers v. Benton Co. Bd. of Comm., *supra*, 287 Or at 602-03, the Oregon Supreme Court set forth three factors that must be considered in determining whether a local government decision is quasi-judicial. Those factors may be summarized as follows:

1. Is "the process bound to result in a decision?"
2. Is "the decision bound to apply preexisting criteria to concrete facts?"
3. Is the action "directed at a closely circumscribed factual situation or a relatively small number of persons?"

1 Section 18.22.040 governs the challenged decision and that
2 section was not applied by the city.³ Petitioners further
3 contend quasi-judicial plan amendments must be accompanied
4 by adequate findings demonstrating compliance with
5 applicable approval criteria, and petitioners argue such
6 findings are lacking.

7 We agree with petitioners that the first two of the
8 Strawberry Hill 4-Wheelers factors are satisfied in this
9 case. By virtue of TCDC Section 18.30.130.D, an application
10 for a plan amendment is bound to result in a decision,
11 whether the proposed amendment is legislative or quasi-
12 judicial. Accordingly, the first of the Strawberry Hill 4-
13 Wheelers factors is present. Additionally, as noted below,
14 all amendments to the TCP involve, at a minimum, the
15 application of preexisting criteria, namely the statewide
16 planning goals and relevant TCP policies. Thus the second
17 of the Strawberry Hill 4-Wheelers factors is also satisfied.

18 However, in applying the third of the Strawberry Hill
19 4-Wheelers factors, we conclude the challenged decision is
20 not "directed at a closely circumscribed factual situation
21 or a relatively small number of persons." Although
22 petitioners contend there are only nine parcels directly
23 affected by the challenged amendments, it appears many more

³Although we need not reach the issue, it appears that TCDC Section 18.22.040 establishes criteria governing adoption of quasi-judicial zoning map amendments, not quasi-judicial plan map amendments. The challenged decision does not amend the zoning map.

1 parcels are at least indirectly affected by the decision.
2 More importantly, as intervenors point out, the proceeding
3 that led to adoption of the challenged decision was
4 initiated by a neighborhood planning organization and was
5 directed at a variety of transportation planning issues.
6 The study area encompassed a large area of the city,
7 including far more than nine parcels.⁴ We conclude the city
8 correctly determined that its decision in this matter is
9 legislative, rather than quasi-judicial.

10 However, our conclusion that the challenged decision is
11 legislative rather than quasi-judicial does not mean that
12 the statewide planning goals or plan or code provisions
13 petitioners cite under the remaining assignments of error do
14 not apply to the challenged decision. Neither does it
15 necessarily mean that the city is excused from adopting
16 findings in support of its decision. As we explained in Von
17 Lubken v. Hood River County, ___ Or LUBA ___ (LUBA Nos. 91-
18 102 and 91-103, November 8, 1991), slip op 9:

19 "Quasi-judicial comprehensive plan amendments must
20 be supported by findings which explain why the
21 plan amendment complies with applicable approval
22 standards. Sunnyside Neighborhood v. Clackamas
23 Co. Comm., 280 Or 3, 19-23, 569 P2d 1063 (1977).
24 Although no statute or appellate court case we are
25 aware of specifically requires that all
26 legislative comprehensive plan amendments be
27 supported by findings, findings may nevertheless

⁴"The study area was generally defined as the area bounded by Highway 99W on the west, Murdock Street on the north, 100th Avenue on the east, and the Summerfield development on the south." Record 93.

1 be required to allow this Board to determine
2 whether the amended plan remains internally
3 consistent and consistent with the statewide
4 planning goals. See League of Women Voters v.
5 Klamath County, 16 Or LUBA 909, 913, (1988); Tides
6 Unit Owners Assoc. v. City of Seaside, 11 Or LUBA
7 84, 89-90 (1984); 1000 Friends of Oregon v. Marion
8 County Board of Commissioners, 1 Or LUBA 33, 37
9 (1980). In Oregon Electric Sign Association v.
10 Beaverton, 7 Or LUBA 68 (1982), rev'd on other
11 grounds 66 Or App 436, rev den 296 Or 829 (1984),
12 we explained that even where the challenged plan
13 amendment is legislative, Goal 2 imposes an
14 obligation that a local government explain why the
15 amendment complies with applicable statewide
16 planning goals. This explanation may be provided
17 either in findings, or if not in findings,
18 somewhere in the record supporting the legislative
19 plan amendment. Where the local government does
20 not adopt findings explaining why the challenged
21 legislative plan amendment complies with
22 applicable goal requirements, we rely on
23 respondents to provide argument and citations to
24 the record to assist this Board in resolving
25 allegations by petitioners that the challenged
26 decision does not comply with applicable statewide
27 planning goals." (Footnote omitted.)⁵

28 The first assignment of error in LUBA No. 91-133 is
29 denied.
30

⁵In the omitted footnote we explained:

"However, neither the appellate courts of this state nor this Board have ever held that the same kind of detailed findings required by ORS 215.416(9) and 227.173(2) for permits and required under appellate court decisions for other quasi-judicial land use decisions are required for legislative plan amendments. * * *" Von Lubken v. Hood River County, supra, slip op at 9. See also Jentzsch v. City of Sherwood, ___ Or LUBA ___ (LUBA Nos. 90-125, 90-151 and 90-158, Order on Motions to Dismiss, February 14, 1991), slip op 10 n 11.

1 **SECOND AND FOURTH ASSIGNMENTS OF ERROR (LUBA NO. 91-133) AND**
2 **FIRST ASSIGNMENT OF ERROR (LUBA NO. 91-137)**

3 Under TCDC Section 18.30.120, legislative plan
4 amendments are subject to compliance with the statewide
5 planning goals, applicable TCP policies, and applicable
6 provisions of the TCDC.⁶

7 TCP Policy 3.1.1 provides as follows:

8 "The City shall not allow development in areas
9 having the following development limitations
10 except where it can be shown that established and
11 proven engineering techniques related to a
12 specific site plan will make the area suitable for
13 the proposed development:

14 "a. Areas having a high seasonal water table * *
15 *;

16 "b. Areas having a severe soil erosion potential;

17 "c. Areas subject to slumping, earth slides or
18 movement;

19 "d. Areas having slopes in excess of 25%; or

20 "e. Areas having severe weak foundation soils."

21 TCP Policy 3.4.1 provides, in part, as follows:

22 "The City shall designate the following as areas
23 of significant Environmental Concern.

24 "* * * * *

25 "c. Areas valued for their fragile character as
26 habitats for plants animal or aquatic life,
27 or having endangered plant or animal species,
28 or specific natural features, valued for the
29 need to protect natural areas."

⁶ORS 197.175(2)(a) and Goal 2 (Land Use Planning) impose essentially the same requirement.

1 There are several implementation strategies for TCP Policy
2 3.4.1 and related TCP Natural Areas policies, including the
3 following:

4 "The City shall review all development proposals
5 adjacent to wildlife habitat areas to ensure that
6 adverse impacts on any wildlife habitat areas are
7 minimized, and if need be, request that other
8 federal, state, and local agencies review the
9 development proposals." TCP Natural Areas Policy
10 3.4, Implementation Strategy 3.

11 Petitioners allege the city erred by failing to
12 identify the above TCP policies and implementing strategy as
13 approval criteria and by failing to demonstrate compliance
14 with those plan provisions in making its decision to amend
15 the TCP Transportation map.

16 Petitioners also argue the city failed to apply and
17 demonstrate compliance with TCDC Chapter 18.164 (Street and
18 Utility Improvement Standards).⁷ Petitioners contend the
19 city failed to demonstrate compliance with the following
20 applicable street improvement standards.

21 "The location, width, and grade of all streets
22 shall conform to an approved street plan and shall
23 be considered in their relation to existing and
24 planned streets, and to topographic conditions,
25 the public convenience and safety, and in their
26 appropriate relation to the proposed use of the
27 land to be served by such streets * * *." TCDC

⁷TCDC Section 18.164.010.A provides as follows:

"The purpose of [the Street and Utility Improvement Standards]
is to provide construction standards for the implementation of
public and private facilities and utilities such as streets,
sewers, and drainage."

1 Section 18.164.030.D.1.

2 "As far as practical, streets shall be dedicated
3 and constructed in alignment with existing streets
4 by continuing the center lines thereof. In no
5 case shall be staggering of streets making 'T'
6 intersections at collectors and arterials be
7 designed such that jogs of less than 300 feet on
8 such streets are created, as measured from the
9 center line of such street." TCDC Section
10 18.164.030.G.1.

11 "Grades shall not exceed 10 percent on arterials,
12 12 percent on collector streets, or 12 percent on
13 any other street * * *." TCDC Section
14 18.164.030.M.1.

15 Intervenor contend none of the above TCP or TCDC
16 provisions apply to the challenged plan amendment.
17 Intervenor explain that under TCDC Section 18.26.030, all
18 requests for development approval must comply with the TCP.
19 Further, under TCDC Section 18.120.020, all development is
20 subject to site development review. Site development review
21 explicitly requires that the above cited TCDC street and
22 utility standards be addressed.⁸ "Development" is defined

⁸TCDC Section 18.120.180.A provides, in part, as follows:

"The Director shall make a finding with respect to each of the following criteria when approving with conditions, or denying an application [for site development review approval]:

"1. Provisions of the following chapters:

"* * * * *

"m. Chapter 18.164, Street and Utility Improvement Standards.

"* * * * *"

1 broadly, and would include the street improvements
2 envisioned by the challenged decision, whether or not the
3 disputed streets are improved in conjunction with
4 development of adjacent properties. TCDC Section 18.26.030.

5 Intervenor point out TCP Policy 3.1.1 explicitly
6 envisions specific engineering techniques being applied at
7 the development stage to make areas with the cited
8 limitations developable and, therefore, applies at the time
9 a specific development plan is proposed. Intervenor
10 contend TCP 3.4.1(c) simply directs that the city designate
11 certain kinds of areas as areas of significant environmental
12 concern and does not impose an approval standard on the
13 challenged plan amendment. Further, the implementation
14 strategy following that policy, quoted supra, is explicitly
15 directed at development proposals.

16 We agree with intervenors that TCP Policy 3.4.1(c) is
17 not an approval criterion for the challenged decision, and
18 that the remaining TCP provisions and the TCDC street and
19 utility standards quoted above apply at the time development
20 of the disputed streets is proposed. Those standards are
21 not intended as approval criteria for plan amendments, such
22 as those adopted by the disputed decision.⁹

⁹Although we agree with intervenors that the TCP and TCDC provisions discussed under these assignments of error are not approval criteria applicable to the disputed plan amendments, we agree with petitioners that the disputed plan amendments approve an alignment for Sattler Street which has staggered "T" intersections with 100th Avenue closer than 300 feet apart. Therefore, construction of this Sattler Street alignment

1 The second and fourth assignments of error in LUBA No.
2 91-133 and the first assignment of error in LUBA No. 91-137
3 are denied.

4 **THIRD ASSIGNMENT OF ERROR (LUBA NO. 91-133)**

5 Pursuant to Goal 5 (Open Spaces, Scenic and Historic
6 Areas, and Natural Resources) the city has inventoried a
7 number of sites to be protected under Goal 5. Petitioners
8 identify three sites that either will be or may be affected
9 by the challenged decision, and argue the city erred by
10 failing to explain how the challenged decision complies with
11 Goal 5.¹⁰

12 When adopting amendments to its acknowledged
13 comprehensive plan, the city is required to assure that the
14 amended plan remains in compliance with the statewide
15 planning goals. 1000 Friends of Oregon v. Jackson County,
16 79 Or App 93, 97, 718 P2d 753, rev den 301 Or 445 (1986).
17 As intervenors correctly note, the city's acknowledged plan
18 includes a variety of measures adopted to protect identified
19 Goal 5 resource sites. However, here, the city is amending

necessarily would violate TCDC Section 18.164.030.G.1, quoted above in the text. The city apparently attempted to address this problem by exempting the design of the Sattler Street extension from the city's standards for minor collectors. We address this aspect of the city's decision infra.

¹⁰The city's decision adopts no findings addressing Goal 5, and the inventory maps provided by the parties do not precisely locate the city's inventoried Goal 5 resource sites. The Little Bull Mountain Natural Forest and the Kallstrom Fir Grove are both inventoried sites and appear to be impacted by the challenged decision. Petitioners also point out the summit of the Little Bull Mountain area is designated as a Special Area and contend that it contains resources protected by Goal 5.

1 its plan to designate new alignments for minor collector
2 extensions and to redesignate existing streets. These
3 changes in the acknowledged comprehensive plan require that
4 the city identify possible conflicts the proposed action may
5 cause with inventoried Goal 5 resource sites, and explain
6 how those conflicts are resolved, as required by OAR 660
7 Division 15.¹¹

8 Intervenor's argue:

9 "* * * Absent a [sic] indication that the plan
10 amendment would adversely affect the inventoried
11 resources in a manner not anticipated by the
12 City's acknowledged [comprehensive plan and land
13 use regulation] provisions, it is appropriate for
14 the City to rely upon existing implementing
15 measures to maintain Goal 5 compliance. See
16 Urquhart v. Lane Council of Governments, 80 Or App
17 176, 721 P2d 870 (1986)." Intervenor's-
18 Respondent's Brief 15.

19 If, by the above quoted statement, intervenors mean
20 that where a proposed amendment to an acknowledged
21 comprehensive plan will not affect inventoried Goal 5
22 resources or will affect them only in a manner already
23 anticipated by the plan and addressed in some manner
24 pursuant to OAR 660 Division 15, we agree. However, we do
25 not agree that we can assume, based on the disputed decision
26 or the record in this matter, that such is the case here.
27 Where apparently applicable statewide planning goals are

¹¹OAR 660 Division 15 establishes a process whereby Goal 5 resource sites must be inventoried, conflicting uses identified, and a program adopted to resolve those conflicts adopted.

1 implicated by a challenged decision, the city must either
2 explain how the challenged decision complies with the goals
3 or explain why those apparently applicable goals do not
4 apply. See 1000 Friends of Oregon v. Washington County, 17
5 Or LUBA 671, 683 (1989).

6 The third assignment of error in LUBA No. 91-133 is
7 sustained.

8 **FIFTH ASSIGNMENT OF ERROR (LUBA NO. 91-133)**

9 Petitioners argue the city failed to perform its
10 obligation to coordinate its plan amendment with affected
11 governmental entities. TCP Policy 8.1.2 provides as
12 follows:

13 "The city shall provide for efficient management
14 of the transportation planning process within the
15 city and the metropolitan area through cooperation
16 with other federal, state, regional and local
17 jurisdictions."

18 We assume the above policy was adopted by the city to
19 implement its obligation under Goal 2 (Land Use Planning) to
20 assure that its plan amendments are "coordinated with the
21 plans of affected governmental units." Tektronix v. City of
22 Beaverton, 18 Or LUBA 473, 484-85 (1989); Rajneesh v. Wasco
23 County, 13 Or LUBA 202, 210 (1985).

24 Petitioners contend that neither the decision nor the
25 record in this matter establishes the city fulfilled its
26 obligation under the above cited policy to coordinate its
27 decision with the Oregon Department of Transportation, the
28 Metropolitan Service District, and Washington County. We

1 agree.¹²

2 The fifth assignment of error in LUBA No. 91-133 is
3 sustained.

4
5 **SIXTH ASSIGNMENT OF ERROR (LUBA NO. 91-133) AND FOURTH**
6 **ASSIGNMENT OF ERROR (LUBA NO. 91-137)**

7 TCP Policy 8.1.1 provides as follows:

8 "The city shall plan for a safe and efficient
9 street and roadway system that meets current needs
10 and anticipated future growth and development."

11 Petitioners complain that the challenged decision does
12 not demonstrate compliance with this policy. Petitioners in
13 LUBA No. 91-133 point out that if the extension of 109th
14 Avenue is not completed at the same time the other
15 improvements envisioned by the city's decision, Naeve Street
16 will provide the only outlet onto Highway 99W and contend
17 that unsignalized intersection is inadequate to perform that
18 function safely.¹³

19 Although TCP Policy 8.1.1 is very general, and
20 intervenors cite a number of places in the record where
21 safety, timing, and funding of improvements is discussed, we

¹²Although the record shows the Oregon Department of Transportation participated during the local proceedings, there is no indication in the record that the city coordinated its decision with the Metropolitan Service District or Washington County.

¹³Petitioner Luton claims "the uncontroverted evidence was that the proposed new street system would harm, not help, the development of plaintiff Luton's property." Petition for Review 11. As intervenors correctly note, the policy is directed at the street and roadway system and does not necessarily require that the city avoid all actions that may have negative impacts on development of specific individual properties.

1 agree with petitioners that the city must explain why it
2 believes the policy is satisfied by the challenged decision.

3 The sixth assignment of error in LUBA No. 91-133 and
4 the fourth assignment of error in LUBA No. 91-137 are
5 sustained.

6 **SECOND AND THIRD ASSIGNMENTS OF ERROR (LUBA NO. 91-137)**

7 Under these assignments of error, petitioner raises
8 essentially two issues. First, petitioner contends the city
9 erred by exempting the Sattler Street extension from the
10 city's street standards applicable to minor collectors.
11 Second, petitioner contends the city erred by failing to
12 address Statewide Planning Goal 9 (Economy of the State) and
13 TCP provisions requiring protection of commercial
14 properties.

15 **A. The Sattler Street Extension**

16 Sattler Street presently terminates at 100th Avenue.
17 As approved by the challenged decision, at a point
18 approximately 200 feet north of the existing Sattler
19 Street/100th Avenue intersection, Sattler Street would be
20 extended from 100th Avenue to the west and designated a
21 minor collector, thus creating two "T" intersections with
22 100th Avenue with a "jog" of less than 300 feet. As noted
23 above, such a jog violates TCDC Section 18.164.030.G.1. See
24 n 9, supra. The city's apparent solution to this problem
25 was to add the following language to the TCP Transportation
26 Plan Map Notes:

1 "The design of the Sattler Street Extension may
2 vary from the adopted City standards for minor
3 collectors." Record 21.

4 Petitioner contends the challenged decision offers no
5 explanation of why the above exemption for the Sattler
6 Street extension is warranted.¹⁴ Neither, contends
7 petitioner, do any of the notices of hearing provided in
8 this matter suggest that the city proposed to amend its plan
9 to completely exempt the Sattler Street extension from the
10 standards the city imposes on minor collectors. Petitioner
11 contends the city's failure to provide adequate notice of
12 its proposed action violates Statewide Planning Goal 1
13 (Citizen Involvement). Petitioner also contends the city's
14 failure to explain why the adopted exemption is warranted
15 constitutes error.

16 We agree with petitioner that the challenged decision
17 does not explain why the Sattler Street extension is excused
18 from compliance with the street construction standards
19 applicable to minor collectors. To the extent the exemption
20 is intended only to obviate the requirement of TCDC Section
21 18.164.030.G.1, there is no explanation for why TCDC Section
22 18.164.030.G.1 cannot be met, and the exemption granted is
23 much broader than necessary to eliminate the requirement for

¹⁴We agree with petitioner that while the city's intent may have been only to relieve the Sattler Street extension from the 300 foot "T" intersection jog requirement, the quoted exemption is much broader and apparently provides that the Sattler Street extension need not comply with any of the standards applicable to minor collectors.

1 compliance with that particular standard. Because we are
2 unable to discern the city's rationale for exempting the
3 Sattler Street extension from the street construction
4 standards applicable to minor collectors, we sustain this
5 subassignment of error.¹⁵

6 **B. Goal 9 and TCP Commercial Property Provisions**

7 Petitioner contends the challenged decision will have
8 significant adverse economic impacts on his property. The
9 extension of 109th Avenue may cut petitioner's property into
10 two parcels. Petitioner contends downgrading Naeve Street
11 to a local street will adversely affect access to
12 petitioner's commercially planned and zoned property. In
13 view of these impacts, petitioner contends the city erred by
14 failing to explain why its decision is consistent with Goal 9
15 and TCP provisions requiring protection of commercial
16 properties.

17 Petitioner's concern is that the properties now served
18 by Naeve Street, and his property in particular, will be
19 adversely affected by the challenged decision. It is not at
20 all clear to us how the potential adverse transportation and
21 access impacts noted on the pages of the record cited by

¹⁵In arguing the notices of hearing provided by the city violate Goal 1, petitioner does not identify specifically which provisions of that Goal he believes were violated and does not cite provisions of the TCP or the TCDC that may have been adopted to govern notice of legislative plan amendments or implement Goal 1. On remand, the city presumably will assure that its notices of hearing are adequate to advise persons wishing to participate in those proceedings of the nature of the action it intends to take.

1 petitioner could amount to a violation of Goal 9. As
2 intervenors correctly note, Goal 9 requires the city "[t]o
3 diversify and improve the economy of the state." The goal
4 does not require that all city planning decisions avoid
5 adverse economic impacts on individual properties.
6 Petitioner's Goal 9 allegations are not sufficiently
7 developed and are rejected.

8 The TCP policy cited by petitioner requires, with
9 specified exceptions, that the city "prohibit residential
10 development in commercial and industrial zoning districts."
11 TCP Policy VI.5. Petitioner's argument is apparently based
12 on his view that the challenged decision is primarily
13 intended to allow development of intervenors' residentially
14 zoned property. Because the challenged decision does not
15 approve residential development in commercial and industrial
16 zones, we fail to see how the challenged decision violates
17 TCP Policy VI.5. However, Economic Implementation Strategy
18 19, which follows this policy, presents a different
19 question. That strategy requires as follows:

20 "The city shall coordinate its planning efforts
21 with the Metropolitan Service District and Oregon
22 Department of Transportation to ensure adequate
23 access from major arterial routes to designated
24 commercial and industrial area." TCP Economic
25 Implementation Strategy 19.

26 TCP Economic Implementation Strategy 19 may be
27 implicated by the challenged decision, and the city must
28 address that strategy on remand.

1 The second and third assignments of error in LUBA No.
2 91-137 are sustained in part.
3 The city's decision is remanded.