

1 Opinion by Holstun.

2 **NATURE OF THE DECISION**

3 Petitioner appeals a decision amending the city's
4 comprehensive plan and zoning maps.

5 **MOTION TO INTERVENE**

6 Russell Dahl and Sandra Dahl move to intervene on the
7 side of respondent in this appeal. There is no objection to
8 the motion, and it is allowed.

9 **MOTION TO ALLOW REPLY BRIEF**

10 Petitioner moves to allow it to file a reply brief.
11 OAR 660-10-039. Respondent does not object to the motion,
12 and it is allowed.

13 **FACTS**

14 The subject tax lot totals .65 acre in size. The
15 property is located on the east side of Highway 101, near
16 the south end of the city. Prior to adoption of the
17 challenged decision, the property was planned and zoned for
18 single family residential use. The challenged decision
19 changes the comprehensive plan and zoning map designations
20 to allow the property to be used for commercial purposes.

21 **FIRST ASSIGNMENT OF ERROR**

22 Comprehensive plan and zoning map amendments must
23 comply with applicable Statewide Planning Goals and Land
24 Conservation and Development Commission (LCDC)
25 administrative rules. ORS 197.175; 197.250; 197.835(4) and
26 (5); Newcomer v. Clackamas County, 94 Or App 33, 36-37, 764

1 P2d 927 (1988); 1000 Friends of Oregon v. Jackson County, 79
2 Or App 95, 97, 718 P2d 753 (1986); Recht v. City of Depoe
3 Bay, ___ Or LUBA ___ (LUBA No. 92-120, October 8, 1992),
4 slip op 6. In addition, comprehensive plan provisions may
5 establish standards for such amendments.¹ Recht v. City of
6 Depoe Bay, supra; DLCD v. Polk County, 21 Or LUBA 463, 465
7 (1991).

8 During the local proceedings that led to the challenged
9 decision, petitioner identified Statewide Planning Goal 12
10 (Transportation), OAR 660 Division 12 (hereafter Goal 12
11 rule) and city comprehensive plan transportation policies as
12 criteria that must be applied. Record 11. Petitioner also
13 cites evidence in the record which it argues supports its
14 contention that the challenged decision will have traffic
15 related impacts which violate the cited provisions. Under
16 its first assignment of error, petitioner argues the city's
17 decision must be remanded because the city adopted no
18 findings addressing Goal 12, the Goal 12 rule and
19 comprehensive plan transportation policies.

20 Respondent and intervenors-respondent (respondents)
21 argue petitioner failed to elaborate adequately, during the
22 hearings below, the specific nature of its contentions that
23 the challenged action violates Goal 12, the Goal 12 rule and

¹Waldport Development Code (WDC) 11.020(2)(a) requires that zoning map amendments "be consistent with all other provisions of [the WDC], and applicable statutes and regulations and in conformance with the Statewide Planning Goals * * * [.]"

1 comprehensive plan transportation policies. Respondents
2 contend petitioner may not simply cite goal, rule and
3 comprehensive plan standards and thereby obligate the city
4 to address those standards in its findings.

5 In adopting quasi-judicial comprehensive plan and
6 zoning map amendments, it is the city's burden to adopt
7 findings explaining why the amendments comply with
8 applicable standards. Sunnyside Neighborhood v. Clackamas
9 Co. Comm., 280 Or 3, 11-14, 569 P2d 1063 (1977); Fasano v.
10 Washington Co. Comm., 264 Or 574, 586, 507 P2d 23 (1973).
11 Here, the city did not do so, and for that reason we sustain
12 the first assignment of error and remand the city's decision
13 so that it may adopt such findings.

14 Where, as is the case here, cited goal, rule and
15 comprehensive plan criteria appear to be relevant, those
16 standards must be addressed in the city's supporting
17 findings.² See 1000 Friends of Oregon v. Washington County,
18 17 Or LUBA 671, 685 (1989). Contrary to the arguments
19 presented by respondents in their brief, this Board does
20 not, in the absence of such findings, independently review
21 the record to determine whether, in view of the evidence in
22 the record, a reasonable person could have concluded that
23 applicable standards are met. It is the city's

²This is particularly the case where, as here, a participant in the local proceeding leading to the comprehensive plan and zoning map amendment specifically identifies the goal, rule and comprehensive plan standards and argues that they are relevant.

1 responsibility to consider the evidentiary record, identify
2 the applicable standards, make the decision in the first
3 instance and explain the basis for its decision in its
4 findings. That decision, including its supporting
5 findings, is then appealable to this Board. Our scope of
6 review is set out in, and limited by, ORS 197.835. See
7 Clark v. Jackson County, 313 Or 508, ___ P2d ___ (1992).
8 Our review is not de novo, and in performing our review
9 function we do not apply the applicable approval criteria in
10 the first instance.³

11 Had the city adopted findings addressing the goal, rule
12 and comprehensive plan criteria, it might be in a position
13 to argue that petitioner's citation of the transportation
14 related criteria during the local proceedings was inadequate
15 to preserve petitioner's ability to raise particular issues
16 or argue that the challenged decision violates particular
17 provisions of the cited criteria. See Boldt v. Clackamas
18 County, 107 Or App 619, 813 P2d 1078 (1991); Southwood
19 Homeowners Assoc. v. City of Philomath, 21 Or LUBA 260, 266
20 (1991); Wethers v. City of Portland, 21 Or LUBA 78, 92
21 (1991). Here, however, the city adopted no findings; and it

³This Board may, in limited circumstances, overlook a local government's failure to support its decision with findings explaining why applicable criteria are met. ORS 197.835(9)(b) (LUBA may overlook failure to adopt adequate findings where "parties identify relevant evidence in the record which clearly supports the decision * * *"). This is not a circumstance where the evidence in the record "clearly supports" a decision that the cited goal, rule and comprehensive plan criteria are satisfied or do not apply.

1 is this failure to adopt any findings that requires that we
2 affirm the first assignment of error.⁴

3 The first assignment of error is sustained.

4 **SECOND ASSIGNMENT OF ERROR**

5 Under this assignment of error, petitioner alleges the
6 city's findings fail to adequately identify the relevant
7 facts and provide a rationale for why the city believes the
8 challenged decision satisfies the requirements of
9 WDC 11.020(2)(b) through (d).⁵

10 The findings addressing WDC 11.020(2)(b) identify
11 evidence in the record of commercial development in the
12 area, but do not provide any explanation for why the city

⁴We do not determine which provisions of Goal 12, the Goal 12 rule or the comprehensive plan apply to the challenged decision or whether those provisions are violated by the proposed action. That determination is for the city to make in the first instance, subject to review by this Board.

⁵WDC 11.020(2) provides, in relevant part, as follows:

"A quasi-judicial [WDC] amendment may be authorized provided that the proposal satisfies all applicable requirements of the code and also provided that the applicant, in a quasi-judicial hearing, demonstrates the following:

"* * * * *

"b. That there has been a substantial change in the character of the area since zoning was adopted and which warrants changing the zone; or

"c. That the site under consideration is better suited to the purposes of the proposed zone than it is to the purposes of the existing zone; or

"d. That there is a public need for the change being sought and the subject property is suitable to meet that need and will not impair the actual or legally designated uses of surrounding properties."

1 believes such development satisfies the legal requirement of
2 WDC 11.020(2)(b) "[t]hat there has been a substantial change
3 in the character of the area * * * which warrants changing
4 the zone." Neuenschwander v. City of Ashland, 20 Or LUBA
5 144 (1990); Eckis v. Linn County, 19 Or LUBA 15 (1990);
6 Corbett/Terwilliger Neigh. Assoc. v. City of Portland, 19 Or
7 LUBA 1 (1990). The findings addressing WDC 11.020(2)(c)
8 similarly fail to provide an explanation for why respondent
9 believes that criterion is satisfied, and the findings
10 addressing WDC 11.020(2)(d) simply make an unsupported
11 assertion that there is a need for more commercially zoned
12 property.

13 The second assignment of error is sustained.

14 The city's decision is remanded.

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