

1 BEFORE THE LAND USE BOARD OF APPEALS
2 OF THE STATE OF OREGON
3

4 SHERWOOD BAPTIST CHURCH,)
5)
6 Petitioner,)
7)
8 vs.)
9)
10 CITY OF SHERWOOD,)
11)
12 Respondent.)

LUBA No. 92-207

FINAL OPINION
AND ORDER

13
14
15 Appeal from City of Sherwood.

16
17 Clark I. Balfour, Hillsboro, filed the petition for
18 review and argued on behalf of petitioner.

19
20 Derryck H. Dittman, Tigard, filed the response brief
21 and argued on behalf of respondent. With him on the brief
22 was Anderson & Dittman.

23
24 SHERTON, Chief Referee; HOLSTUN, Referee; KELLINGTON,
25 Referee, participated in the decision.

26
27 AFFIRMED 02/12/93

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 Sherton.

2 **NATURE OF THE DECISION**

3 Petitioner appeals a city decision granting site plan
4 review approval for an addition to a church.

5 **FACTS**

6 The subject parcel is 3.3 acres in size and is zoned
7 Institutional Public (IP). The subject parcel is occupied
8 by an approximately 7,000 sq. ft. church building and a
9 62-space gravel parking lot. Petitioner, the owner of the
10 subject parcel, proposes to construct a 2,600 sq. ft.
11 classroom building to the south (rear) of the existing
12 church building. Petitioner also proposes to add a fenced
13 children's play area adjoining the existing church building
14 and the proposed classroom building. Record 70, 74.

15 E. Sunset Blvd., a minor arterial, adjoins the northern
16 border of the subject parcel. The existing development has,
17 and the proposed development will have, access onto
18 E. Sunset Blvd., by way of an existing gravel driveway
19 within a 50 ft. easement that straddles the western property
20 line of the subject parcel.¹ The existing driveway and
21 easement run along the northern third of the western edge of
22 the subject parcel, south from E. Sunset Blvd. to the

¹Although this 50 ft. easement is sometimes referred to in the record as a "common" easement, it also appears that the church does not have an easement to use the portion of the driveway located on the parcel to the west of the subject parcel, and that some or all of the owners of the three parcels to the west do not have an easement to use the portion of the driveway on the subject parcel. Record 7.

1 entrance to the existing gravel parking lot. The existing
2 driveway and common easement also provide access to three
3 parcels adjoining the subject parcel to the west and
4 southwest. These parcels are zoned Medium-Low Density
5 Residential and are occupied by single family dwellings.
6 The parcel adjoining the subject parcel to the south is
7 undeveloped and zoned Very Low Density Residential.

8 The existing gravel driveway used by the church and the
9 adjoining properties is frequently referred to as "S. Pine
10 St.", although it is not a public street. The driveway is
11 in alignment with the existing "S. Pine St.," a north-south
12 minor collector currently terminating at E. Sunset Blvd,
13 across from the gravel driveway. Additionally, the subject
14 parcel's street address is 1350 S. Pine St.

15 Petitioner applied to the city for site plan review
16 approval for the proposed development. The city granted
17 site plan review approval, but imposed five conditions,
18 including the following (hereafter referred to as
19 condition 2):

20 "The owner shall dedicate twenty-five (25) feet of
21 right-of-way [along] the western property line, or
22 otherwise provide twenty-five (25) feet from the
23 Pine Street center line terminating in a one-foot
24 by 25-foot nonaccess strip at the south end prior
25 to issuance of a building permit." Record 2.

26 This appeal followed.

27 **FIRST ASSIGNMENT OF ERROR**

28 "The City erred in imposing Condition 2 as it
29 failed to follow applicable law and there was no

1 substantial evidence in the record to support
2 Condition 2."

3 Petitioner challenges the evidentiary support for the
4 imposition of condition 2. Petitioner argues the record
5 shows the proposed development is intended to alleviate
6 overcrowded classrooms in the existing church building, and
7 will not generate additional attendance or traffic.
8 Record 10. Petitioner contends there is no evidence in the
9 record indicating the proposed development will result in an
10 intensification of the existing use, an increase in traffic
11 or additional activities on the subject parcel. Petitioner
12 contends the only reason for requiring a dedication for a
13 future street along the western edge of the subject parcel
14 is to serve undeveloped property that does not belong to
15 petitioner. Petitioner argues that under these
16 circumstances, there is no basis in the record on which the
17 city could reasonably conclude condition 2 is needed to
18 serve a legitimate planning purpose.

19 The city points out that the proposed development will
20 increase the area of the buildings on the subject parcel by
21 37% and add a new children's play area. The city cites
22 testimony in the record by a church representative
23 indicating that church growth is anticipated in the next two
24 years. Record 8. The city also cites the following
25 testimony by another church representative:

26 "[I]t is important for the church to reach out to
27 Sherwood. The church has increased numerically,

1 but not substantially. Sherwood Baptist [Church]
2 is a respected, community and family oriented
3 church. * * *" Record 10.

4 The city further cites evidence in the record of a dust
5 problem related to use of the existing gravel driveway, and
6 of a potential access problem, in that the church does not
7 have an easement to use the portion of the existing driveway
8 located on the neighboring parcel to the west. Record 7,
9 34, 44.

10 Site plan approval may be granted only if the proposed
11 development satisfies the provisions of City of Sherwood
12 Community Development Code (CDC) Chapter 5 (Community Design
13 and Appearance). CDC 5.102.04(A). The city points out that
14 CDC 5.401.05(C) imposes the following requirement:

15 "All site plans for new development * * * shall
16 show ingress and egress from existing or planned
17 local or collector streets, consistent with the
18 Transportation Network Plan Map * * *."²

19 The city argues that under the above standard, the proposed
20 development cannot have access from E. Sunset Blvd., which
21 is a minor arterial, and therefore can only be approved on
22 the basis of having access onto a planned local or collector
23 street. The city further argues that an extension of S.
24 Pine St. along the western boundary of the subject parcel is
25 such a planned local street, as evidenced by the subject

²The city's Transportation Plan Map was updated in July 1991.
Record 53A. There is no dispute that the updated map is applicable to the
subject site plan review application.

1 parcel's street address on S. Pine St.³

2 We are authorized to reverse or remand the challenged
3 decision if it is not supported by substantial evidence in
4 the record. ORS 197.828(2)(a). When the evidentiary
5 support for imposition of a condition of approval is
6 challenged, we must determine whether the evidence in the
7 record could lead a reasonable person to conclude that
8 considering the impacts of the proposed development, there
9 is a need for the condition to further a legitimate planning
10 purpose. See Wastewood Recyclers v. Clackamas County, 22
11 Or LUBA 258, 263 (1991); Olson Memorial Clinic v. Clackamas
12 County, 21 Or LUBA 418, 421-22 (1991); Sellwood Harbor Condo
13 Assoc. v. City of Portland, 16 Or LUBA 505, 522 (1988);
14 Benjamin Franklin Dev. v. Clackamas County, 14 Or LUBA 758,
15 761 (1986).

16 We have reviewed the evidence in the record cited by
17 the parties. Based on this evidence, a reasonable person
18 could conclude, as did the city, that the proposed
19 development will facilitate growth in church membership and
20 activities, resulting in increased traffic on the existing
21 gravel driveway. A reasonable person could also conclude
22 that there is a need to require dedication of land along the
23 western boundary of the subject parcel for the legitimate

³The city also points out that its updated Transportation Plan Map indicates only arterials and collectors and, therefore, the fact that the proposed extension of S. Pine St. is not indicated on this map does not mean that it is not a planned local street.

1 planning purpose of establishing a local street to provide
2 access to the subject and adjoining parcels.

3 The first assignment of error is denied.

4 **THIRD ASSIGNMENT OF ERROR**

5 "The * * * imposition of Condition 2 is an
6 unconstitutional taking under the Fifth and
7 Fourteenth Amendments of the United States
8 Constitution, and Article I, section 18, of the
9 Oregon Constitution."

10 Petitioner contends the imposition of condition 2
11 violates both the state and federal constitutions because
12 there is no reasonable relationship between the dedication
13 requirement and the impacts of the proposed development.
14 Petitioner also argues the imposition of condition 2
15 violates the federal constitution because there is an
16 insufficient nexus between the governmental interests
17 furthered by the applicable city regulations and the
18 particular condition imposed.

19 We are authorized to reverse or remand the challenged
20 decision if it is unconstitutional. ORS 197.828(2)(c)(B).
21 We have previously stated both the state and federal
22 constitutions require that there be a "reasonable
23 relationship" between the challenged condition and the
24 impacts of, or needs generated by, the proposed development.
25 Dolan v. City of Tigard, 22 Or LUBA 617, 623, 626, aff'd 113
26 Or App 162, rev allowed 314 Or 573 (1992). For the reasons
27 stated under the first assignment of error, we conclude the
28 record shows a reasonable relationship between the impacts

1 of the proposed development and the condition imposed
2 requiring dedication of land for a future public street.⁴

3 We have also recognized that the federal constitution
4 imposes a requirement that there be an "essential nexus"
5 between the legitimate public purpose for which a
6 development application could be denied and the condition
7 imposed. Dolan, supra, 22 Or LUBA at 625-26; citing Nollan
8 v. California Coastal Com'n, 483 US 825, 107 S Ct 3141, 97
9 L Ed2d 677 (1987). Here, there is no dispute that ensuring
10 developments have adequate street access is a legitimate
11 public purpose. Further, under CDC 5.401.05(C), the
12 proposed development is required to have access on an
13 existing or planned local or collector street. As the
14 proposed development is not allowed to have access onto
15 E. Sunset Blvd., a minor arterial, and has no access on any
16 other existing street, it can only be approved on the basis
17 that it has access on a "planned local * * * street." We
18 conclude there is a sufficient nexus between this code
19 requirement and the condition imposed mandating dedication
20 of land necessary to provide for establishment of S. Pine
21 St. as a local street.

22 The third assignment of error is denied.

⁴We also note that during oral argument, the parties agreed that in this case, if the challenged condition meets the statutory substantial evidence standard addressed in the first assignment of error, it also satisfies the constitutional "reasonable relationship" requirement.

1 **SECOND ASSIGNMENT OF ERROR**

2 This assignment of error challenges the imposition of
3 condition 4, which requires that petitioner enter into an
4 agreement not to remonstrate against formation of an LID for
5 future street and utility improvements. At oral argument,
6 the parties agreed that if the city's imposition of
7 condition 2 is proper, then the city's imposition of
8 condition 4 is proper as well. Therefore, because we reject
9 petitioners' challenges to the imposition of condition 2 in
10 the first and third assignments of error, we need not
11 consider petitioner's second assignment of error further.

12 The second assignment of error is denied.

13 The city's decision is affirmed.