

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

4 MARGE DAVENPORT,)
5))
6 Petitioner,)
7))
8 vs.) LUBA No. 92-104
9))
10 CITY OF TIGARD,) FINAL OPINION
11) AND ORDER
12 Respondent,)
13))
14 and)
15))
16 TRIAD TIGARD LIMITED PARTNERSHIP)
17 and ROSS WOODS,)
18))
19 Intervenors-Respondent.)

20
21
22 Appeal from City of Tigard.

23
24 Richard M. Whitman, Portland, filed the petition for
25 review and argued on behalf of petitioner. With him on the
26 brief was Ball, Janik & Novack.

27
28 Michael C. Robinson, Portland, filed a response brief
29 on behalf of respondent. With him on the brief was
30 O'Donnell, Ramis, Crew & Corrigan.

31
32 Steven L. Pfeiffer and Michael R. Campbell, Portland,
33 filed a response brief. With them on the brief was Stoel,
34 Rives, Boley, Jones & Grey. Steven L. Pfeiffer argued on
35 behalf of intervenors-respondent.

36
37 HOLSTUN, Referee; SHERTON, Chief Referee; KELLINGTON,
38 Referee, participated in the decision.

39
40 REMANDED 03/15/93

41
42 You are entitled to judicial review of this Order.
43 Judicial review is governed by the provisions of ORS
44 197.850.

1 Opinion by Holstun.

2 **NATURE OF THE DECISION**

3 Petitioner appeals a city decision granting site
4 development and planned development review approval for a
5 348 unit apartment development.

6 **MOTION TO INTERVENE**

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

10 **FACTS**

11 A prior request for approval of an apartment
12 development on the subject property was denied by the city
13 in 1990, due to traffic safety concerns related to the
14 condition of the streets and intersections serving the
15 subject property. Thereafter, following study of
16 alternatives for street system improvements, amendments to
17 the Tigard Comprehensive Plan (TCP) Transportation Map were
18 proposed. These amendments changed the classifications of
19 certain streets serving the subject property and designated
20 new streets and street extensions.

21 The above noted TCP Transportation Map amendments
22 became effective September 12, 1991.¹ The application that

¹The decision adopting these TCP amendments was appealed to this Board and the city's decision was remanded on January 28, 1992. Davenport v. City of Tigard, 22 Or LUBA 577 (1992). Those TCP amendments subsequently were modified and readopted by the city. That city decision was also appealed to this Board and was affirmed. Davenport v. City of Tigard, ___ Or LUBA ___ (LUBA No. 92-078, August 11, 1992).

1 led to the decision challenged in this appeal was submitted
2 to the city one day later on September 13, 1991. The city
3 applied the TCP, as amended, and other relevant TCP and
4 Tigard Community Development Code (TCDC) provisions and
5 granted the approvals challenged in this appeal on April 28,
6 1992.

7 **WAIVER OF ISSUES**

8 ORS 197.835(2) provides that LUBA's scope of review is
9 "limited to those issues raised by any participant before
10 the local hearings body as provided by ORS 197.763." ORS
11 197.763(1) provides as follows:

12 "An issue which may be the basis for an appeal to
13 [LUBA] shall be raised not later than the close of
14 the record at or following the final evidentiary
15 hearing on the proposal before the local
16 government. Such issues shall be raised with
17 sufficient specificity so as to afford the
18 governing body, planning commission, hearings body
19 or hearings officer, and the parties an adequate
20 opportunity to respond to each issue." (Emphasis
21 added.)

22 In several places in the intervenors-respondent's and
23 respondent's briefs,² respondents argue petitioner waived
24 her right to raise issues before this Board by failing to
25 list those issues in her local notice of appeal.³ Except as

²Respondent's brief primarily addresses the fourth assignment of error, but also adopts intervenors-respondent's arguments concerning the remaining assignments of error.

³TCDC 18.32.340(A)(3) requires that a notice of appeal or petition for review contain the specific grounds for appeal or review. TCDC 18.32.320(B)(2) limits the scope of the city council's review on

1 noted in our discussion of the first assignment of error
2 below, respondents do not contend petitioner failed to raise
3 those issues at some point in the local proceedings prior to
4 the close of the final evidentiary hearing before the city
5 council.

6 There may be some logic to respondents' argument that
7 LUBA's scope of review should be limited in the same way the
8 city council's scope of review is limited under the TCDC.
9 However, local government provisions narrowing the scope of
10 review during local appeals do not similarly narrow LUBA's
11 scope of review under ORS 197.763(1) and 197.835(2). See
12 Tice v. Josephine County, 21 Or LUBA 371, 376 (1991). To
13 the contrary, those statutory provisions make it clear that
14 all a petitioner must do is raise the issue it wishes to
15 raise at LUBA "not later than the close of the record at or
16 following the final evidentiary hearing * * *." ORS
17 197.763(1). We reject respondents' suggestion that the
18 above emphasized language in the statute can be interpreted
19 to permit local governments to adopt provisions under which
20 petitioners at LUBA may waive their right to raise an issue
21 at LUBA, even though the issue was raised prior to the close
22 of the local evidentiary record. As the statute is
23 presently worded, a local governing body may be free to
24 adopt provisions to narrow its own scope of review in local

appeal to the grounds identified in the notice of appeal or petition for
review.

1 appeals, but it is not free to narrow LUBA's scope of
2 review.

3 **FIRST ASSIGNMENT OF ERROR**

4 Under her first assignment of error, petitioner argues
5 the challenged decision violates TCP and TCDC provisions
6 adopted to protect inventoried scenic and natural areas
7 protected by Statewide Planning Goal 5 (Open Spaces, Scenic
8 and Historic Areas, and Natural Resources).

9 **A. Impact on Inventoried Scenic Resources**

10 Petitioner contends the challenged decision
11 inadequately identifies the impact of the proposed
12 development on inventoried scenic resources. The Little
13 Bull Mountain Natural Forest is inventoried in the TCP as an
14 outstanding scenic site. TCP I-96. Petitioner contends
15 that while the city's findings recognize the Little Bull
16 Mountain Natural Forest will be impacted by the proposed
17 development, they do not explain how much of the resource
18 will be left after the development is complete.

19 The city's findings explain the Little Bull Mountain
20 Natural Forest is identified as an outstanding scenic site
21 in the TCP and that it is valuable as a "large stand of
22 mature coniferous trees at an elevated location within the
23 City." Record 22. The findings go on to explain that
24 development of the site is limited by TCP Policy 3.4.2.b:⁴

⁴TCP Policy 3.4.2.b provides as follows:

1 "[TCP Policy 3.4.2.b] expressly anticipates that
2 future residential development may destroy some or
3 all of the designated resource, provided that the
4 development complies with the implementing
5 provisions of the [TCDC].

6 "* * * * *

7 "The [TCP] thus expressly anticipates that
8 development, and in particular residential
9 development and associated roadways, may create
10 conflicts with the designated Goal 5 resources in
11 the Little Bull Mountain natural forest.
12 Following the required Goal 5 analysis, however,
13 the [TCP] chose not to absolutely protect these
14 resources but to conditionally protect them by
15 requiring scrutiny of development proposals to
16 ensure that the number of trees lost through
17 development was minimized.

18 "The proposed development complies with the [TCDC]
19 provisions that implement [TCP] Policy 3.4.2[b].
20 The development minimizes to the greatest extent
21 possible the number of trees to be removed,
22 particularly the mature coniferous trees that lie
23 within the Little Bull Mountain natural forest in
24 the northwestern and northern portions of the
25 site. The northwestern portion of the site is
26 left entirely undisturbed, and a large buffer of
27 coniferous trees is left along the northern
28 boundary of the site * * *. In addition, the site
29 plan incorporates several groves of existing
30 mature trees within the landscaped areas of the
31 developed portion of the site and provides
32 substantial replacement landscaping in the areas
33 that will be disturbed." Record 22-23.

34 Respondents contend the TCP does not require an
35 explanation of exactly how much of the Little Bull Mountain

"[The city shall] require that development proposals in
designated timbered or tree areas be reviewed through the
planned development process to minimize the number of trees
removed[.]"

1 Natural Forest will be left after the development is
2 completed. Respondents further contends the above findings
3 are adequate to explain why the challenged decision complies
4 with TCP provisions protecting the Little Bull Mountain
5 Natural Forest as an outstanding scenic site by minimizing
6 the number of trees to be removed. We agree.

7 This subassignment of error is denied.

8 **B. TCP Provisions Limiting Development in the Little**
9 **Bull Mountain Natural Forest to Low Density Single**
10 **Family Residential**

11 Citing language in the TCP description of the Little
12 Bull Mountain Natural Forest, petitioner contends the TCP
13 limits development within the forest to low density single
14 family dwellings at a density of one to five units per
15 acre.⁵ Because the challenged decision allows multi-family
16 dwellings at a significantly higher density than five units
17 per acre, petitioner contends the challenged decision is
18 inconsistent with the TCP.

19 Respondents argue the language from the TCP that
20 petitioner relies upon is a staff recommendation only, not
21 part of the TCP's regulatory provisions, which appear
22 elsewhere in the TCP. Moreover, respondents argue, the

⁵The TCP language relied upon by petitioner provides as follows:

"The [TCP] designates this area north of Naeve Road, as Low Density Residential (1-5 units to the acre) with a Planned Development overlay zone required [for] any type of residential development." TCP I-96.

1 cited TCP language simply describes the then existing TCP
2 designations, and the decision explains that these TCP
3 designations subsequently were amended to allow the type and
4 density of residential development proposed. Record 4-5.

5 We agree with respondents that the TCP does not limit
6 residential development in the manner petitioner alleges
7 under this subassignment of error.

8 This subassignment of error is denied.

9 **C. TCP Provisions Requiring Protection of the Little**
10 **Bull Mountain Summit**

11 TCP I-42 identifies six "Special Areas," one of which
12 is the Little Bull Mountain Summit, and explains as follows:

13 "In addition to the general policies to help
14 protect natural vegetation and wildlife, specific
15 areas have been suggested by specialists for
16 preservation, through fee purchase if necessary. *
17 * *"

18 Petitioner contends the above TCP language indicates the
19 city has elected to protect the Summit absolutely,
20 prohibiting all conflicting uses. Petitioner argues the
21 development approved by the challenged decision is such a
22 conflicting use, and is prohibited by the TCP.

23 Respondents answer that the above language is simply a
24 suggestion that is not implemented by the later portions of
25 the TCP that identify and implement protection of Goal 5
26 resource sites. Respondents also argue the nonregulatory
27 nature of the cited TCP provision is apparent both from the
28 language of that provision and because the TCP now

1 designates the site for medium and medium-high density
2 residential development.

3 We agree with respondents. This subassignment of error
4 is denied.

5 **D. TCDC Provisions Concerning Protection of Trees**

6 Petitioner first contends under this subassignment of
7 error that the applicant failed to submit an analysis
8 identifying the location of existing trees, making it
9 impossible for the city to determine whether the
10 requirements of TCDC 18.80.120(A)(3)(a) (which requires
11 preservation of existing trees to the "to the greatest
12 degree possible") and TCDC 18.120.180(A)(2)(b) (which
13 requires existing "[t]rees having a six inch caliper or
14 greater * * * be preserved or replaced by new planting of
15 equal character * * *").

16 Respondents answer the applicant did submit a survey of
17 existing trees and a plan for how the trees would be
18 preserved.⁶ This portion of this subassignment of error is
19 denied.

20 Petitioner also argues that the city erred by not
21 requiring under TCDC 18.120.180(A)(2)(b) "that existing
22 trees greater than six inches wide be preserved, or replaced

⁶Record 344 is a series of six oversized blue line prints of the development proposal, one of which shows existing trees.

1 in-kind."⁷

2 Respondents argue that neither petitioner nor any other
3 person raised this issue below, "either in her notice of
4 appeal to the [City] Council * * * or in any other manner."
5 Because petitioner failed to raise this issue concerning
6 TCDC 18.120.180(A)(2)(b) before the close of the local
7 record, respondents argue petitioner may not do so for the
8 first time at LUBA. ORS 197.763(1); ORS 197.835(2). We
9 agree with respondents.

10 This subassignment of error is denied.

11 The first assignment of error is denied.

12 **SECOND ASSIGNMENT OF ERROR**

13 Under this assignment of error, petitioner contends the
14 city failed to assure the proposed development complies with
15 TCP and TCDC provisions concerning physical limitations,
16 natural hazards and wetlands.

⁷Respondents dispute that TCDC 18.120.180(A)(2)(b) requires one-for-one replacement in-kind of any trees in excess of six inches caliper. Rather, respondents argue TCDC 18.120.180(A)(2)(b) requires that where such trees are removed they be "replaced by new plantings of equal character * * *." Respondents argue "[o]bviously for these 'new plantings' to be of 'equal character,' they need not be of the same diameter or planted in the same place." (Footnote omitted.) Intervenor-respondent's Brief 19. Respondents' construction of TCDC 18.120.180(A)(2)(b) is reasonable, and had the city adopted that construction we would be required to defer to it under Clark v. Jackson County, 313 Or 508, 836 P2d 710 (1992). However, as explained below, petitioner failed to raise this interpretive issue below and the city, therefore, did not explicitly adopt this interpretation in its decision. See Weeks v. City of Tillamook, 117 Or App 449, 453-54, ___ P2d ___ (1992) (local government required to interpret its own ordinances in the first instance); Larson v. Wallowa County, 116 Or App 96, 104, ___ P2d ___ (1992) (same).

1 **A. Physical Limitations and Natural Hazards**

2 Petitioner quotes TCP and TCDC provisions which require
3 either that development avoid certain geologic limitations
4 and hazards or that the applicant demonstrate the site can
5 be made suitable for development. Petitioner faults the
6 applicant's geotechnical report (Terra Report) addressing
7 site limitations, because at the time the report was
8 prepared specific development plans establishing final
9 building locations had not been prepared. In addition,
10 petitioner contends the city's findings are inadequate
11 because they do not address inconsistencies between the
12 Terra Report and the U.S. Soil Conservation Service Survey
13 of Washington County, Oregon (SCS Survey), upon which the
14 TCP is based.

15 Respondents first point out there is no requirement
16 that detailed final development plans be developed before
17 the geologic study. Respondents contend the Terra Report
18 was prepared with the knowledge of the type of multi-family
19 residential development anticipated and with preliminary
20 information about road and building locations. Respondents
21 next argue the city's findings point out that the SCS
22 Survey, unlike the Terra Report, is a gross-scale, general
23 description of soil types. Respondents note the Terra
24 Report is more site specific and includes the results of
25 soil tests from 28 test pits on the subject property, and
26 point out the city specifically found that the more detailed

1 Terra Report is not inconsistent with the SCS Survey.⁸

2 We agree with respondents that the city's findings are
3 adequate to address the concerns petitioner raises under
4 this subassignment of error and that the Terra Report
5 constitutes substantial evidence in support of those
6 findings.

7 **B. Wetlands**

8 Citing testimony that the site may include wetlands,
9 petitioner contends the challenged decision fails to
10 demonstrate the proposal can be developed consistently with
11 TCDC provisions concerning protection of wetlands.

12 Respondents contend the city found the site does not
13 include any wetlands. In response to the evidence
14 petitioner cites, respondents contend the city as a
15 precaution imposed conditions that the applicant delineate
16 any wetlands that might be found on the property and comply
17 with the TCDC Chapter 18.84 standards limiting development
18 of sensitive lands.

19 Although the finding could be stated more clearly, we
20 agree with respondents that the city found the site does not
21 include wetlands. We also agree with respondents that the
22 evidence concerning the possible existence of wetlands on
23 the site is sufficiently vague and speculative that the

⁸Respondents also contend the Terra Report responds to certain soil instability issues petitioner raised below and discusses measures to overcome those limitations, concluding that the site is suitable for multi-family residential development.

1 city's finding that wetlands do not exist on the subject
2 property is supported by substantial evidence. See Douglas
3 v. Multnomah County, 18 Or LUBA 607, 617 (1990)(and cases
4 cited therein).

5 This subassignment of error is denied.

6 The second assignment of error is denied.

7 **THIRD ASSIGNMENT OF ERROR**

8 Petitioner contends under this assignment of error that
9 the challenged decision fails to demonstrate compliance with
10 TCP provisions designed to assure the availability of
11 adequate school facility capacity.

12 Petitioner first cites TCP Policy 7.8.1, Implementation
13 Strategy I, which provides as follows:

14 "The city shall monitor school capacity by
15 requiring requests for development proposals and
16 permits to be reviewed by [the] applicable school
17 district for effects on school capacity as a pre-
18 condition to development."⁹

19 Respondents contend TCP Policy 7.8.1, Implementation
20 Strategy 1 does not require a finding of adequate school
21 facilities. Rather, it simply requires that development
22 proposals be reviewed by the school district for impacts on
23 school capacity. The required review occurred in this case,

⁹TCP Policy 7.8.1 provides as follows:

"The city shall work closely with the school Districts to assure the maximum community use of the school facilities for Tigard residents through locational criteria and the provisions of urban services."

1 the school district provided comments and respondents
2 contend that is all TCP Policy 7.8.1, Implementation
3 Strategy 1 requires. We agree with respondents.

4 Petitioner also cites TCP Policy 12.1.1 and two
5 locational criteria under that policy as applying to the
6 challenged decision. As respondents correctly note, that
7 policy and the cited locational criteria govern the
8 establishment of residential densities through zoning and do
9 not apply to development permit decisions such as the
10 decision challenged in this proceeding. See e.g. Stotter v.
11 City of Eugene, 18 Or LUBA 135, 148-49 (1989); Bennet v.
12 City of Dallas, 17 Or LUBA 450, 456-57, aff'd 96 Or App 645
13 (1989).

14 The third assignment of error is denied.

15 **FOURTH ASSIGNMENT OF ERROR**

16 Under this assignment of error, petitioner argues the
17 city's decision is improperly based on the September 12,
18 1991 amendments to the acknowledged TCP Transportation Map.
19 Petitioner contends those September 12, 1991 amendments were
20 not in effect at the time the application was first
21 submitted to the city.¹⁰ Petitioner also argues that even
22 if the application was submitted after the effective date of
23 the ordinance adopting the September 12, 1991 TCP

¹⁰ORS 227.178(3) provides that approval or denial of a permit
"application shall be based upon the standards and criteria that were
applicable at the time the application was first submitted."

1 Transportation Map amendments, these amendments were not yet
2 acknowledged pursuant to ORS 197.625, and the city therefore
3 was obligated either to apply Statewide Planning Goal 12
4 (Transportation) or the acknowledged TCP Transportation Map,
5 as it existed prior to the September 12, 1991 amendments, to
6 the subject application.

7 **A. Application Submittal Date**

8 Respondents argue that the documents submitted by the
9 applicant on August 27, 1991 were preliminary and the
10 "application" was not "submitted," as those terms are used
11 in ORS 227.178(3), until September 13, 1991 when the
12 applicant submitted the application forms required under the
13 TCDC.

14 We agree with respondents that the application in this
15 matter was submitted on September 13, 1991. However, for
16 the reasons explained below, even though the ordinance
17 adopting the September 12, 1991 TCP Transportation Map
18 amendments relied on by the city became effective one day
19 before the application was filed, the city was required to
20 apply its acknowledged TCP Transportation Plan Map, as it
21 existed prior to the September 12, 1991 amendments, until
22 the plan amendments were deemed acknowledged under ORS
23 197.625.¹¹

¹¹Under ORS 197.625(1), a postacknowledgment plan amendment is deemed acknowledged 21 days after it is final, if there is no appeal of the amendment to this Board. If such an appeal is filed, the plan amendment is considered acknowledged when and if the amendment is upheld on appeal.

1 **B. Applicable Standards and Criteria**

2 In Von Lubken v. Hood River County, 118 Or App 246, ___
3 P2d ___ (1993), the Court of Appeals held that comprehensive
4 plan standards and criteria adopted or amended by
5 postacknowledgment plan amendments do not apply to permit
6 applications filed after such postacknowledgment plan
7 amendments are adopted, until those postacknowledgment plan
8 amendments are deemed acknowledged.¹² Under the court's
9 decision in Von Lubken, it does not matter when an ordinance
10 adopting amended plan provisions is final or legally
11 effective. Rather, the critical date, for purposes of
12 identifying potentially applicable standards and criteria in
13 the comprehensive plan, is the date the amended plan
14 standards and criteria are considered acknowledged, pursuant
15 to ORS 197.625.¹³ For purposes of identifying the
16 "standards and criteria" that are "applicable at the time
17 the application was first submitted" under ORS 227.178(3),
18 the acknowledged comprehensive plan standards and criteria

ORS 197.625(3). The September 12, 1991 TCP Transportation Map amendments applied by the city in this matter were on appeal to this Board and therefore were not acknowledged when the application was submitted on September 13, 1991. See n 1, supra.

¹²In a footnote, the court did state that it did "not mean to imply there are no circumstance in which it would be permissible to apply local provisions before they are acknowledged." Von Lubken, supra, 118 Or App at 249 n 1. We are uncertain to what circumstances the court may be referring.

¹³ORS 197.175(2)(d) requires that local governments make land use decisions in compliance with their acknowledged comprehensive plans and land use regulations.

1 continue to apply, even after adoption of an ordinance
2 repealing or amending those acknowledged standards and
3 criteria, until the newly adopted plan standards and
4 criteria are themselves deemed acknowledged.

5 If the TCP Transportation Map provisions amended by the
6 September 12, 1991 amendments constitute "standards and
7 criteria," as those terms are used in ORS 227.178(3), the
8 city erred by applying the amended, but as yet
9 unacknowledged, TCP Transportation Map provisions in their
10 stead. We consider that question below.

11 **C. Nature of the September 12, 1991 TCP**
12 **Transportation Plan Map Amendments**

13 While the TCP Transportation Map does not impose a land
14 use planning "standard" like the standard at issue in Von
15 Lubken, supra, the TCP Transportation Map is part of the
16 city's comprehensive plan and is an applicable "standard or
17 criterion," within the meaning of ORS 227.178(3).¹⁴ It is
18 clear that a number of the TCP and TCDC provisions that were
19 applied by the city in this matter and found to be satisfied
20 either could not or would not have been applied in the way
21 they were if the unamended (pre-September 12, 1991) TCP

¹⁴The plan standard at issue in Von Lubken was textual, and required that "[d]evelopment will not occur on lands capable of sustaining accepted farming practices."

1 Transportation Map continued to apply.¹⁵ Thus, while the
2 pre-September 12, 1991 TCP Transportation Map provisions
3 apply less directly than the standard at issue in Von
4 Lubken, they nevertheless are "standards or criteria" within
5 the meaning of ORS 227.178(3). Because the city applied
6 unacknowledged September 12, 1991 TCP Transportation Map
7 provisions in approving the challenged decision, rather than
8 the acknowledged pre-September 12, 1991 Transportation Map
9 provisions, it erroneously construed the applicable law and
10 the decision must be remanded. ORS 197.835(7)(a)(D).

11 The fourth assignment of error is sustained.

12 **FIFTH ASSIGNMENT OF ERROR**

13 The city's planned development approval process occurs
14 in three separate steps:

15 "1. The approval of the planned development
16 overlay zone;

17 "2. The approval of the planned development
18 concept plan; and

19 "3. The approval of the detailed development
20 plan." TCDC 18.80.015(B).

21 There is no dispute that the first step, approval of the
22 planned development overlay zone for the subject property,
23 has been completed.

24 Under this assignment of error, petitioner argues there

¹⁵There are numerous references to the new street and intersection alignments in the findings addressing transportation related TCDC and TCP criteria.

1 is sufficient confusion concerning whether the challenged
2 decision was intended to grant "concept plan" or "detailed
3 development plan" approval to warrant remand.¹⁶ Petitioner
4 argues that if the challenged decision approves a concept
5 plan, the city's findings addressing the criteria set forth
6 at TCDC 18.80.120 for such approvals are inadequate. On the
7 other hand, petitioner argues that if detailed development
8 plan approval is granted the city erred by granting such
9 approval because concept plan approval has never been
10 granted.

11 **A. Confusion Regarding the Type of Approval Granted**

12 The notice of the city council public hearing in this
13 matter states that "detailed development plan" approval is
14 requested, and the notice of decision states that "detailed
15 development plan" approval is granted. Record 2, 435. The
16 challenged decision itself states that it grants "detailed
17 development plan" approval. Record 4. The city has not
18 previously granted concept plan approval. Therefore,
19 although the city may not have intended to grant "detailed
20 development plan" approval, the challenged decision
21 nevertheless erroneously grants it.

22 The challenged decision must be remanded in any event,

¹⁶TCDC 18.80.110 imposes detailed informational requirements for applications for concept plan approval. TCDC 18.80.120 imposes a lengthy list of approval standards for concept plan approval. TCDC 18.80.020(G) provides that approval of a detailed development plan is a ministerial action, requiring the planning director to find the detailed development plan conforms with the approved concept development plan.

1 and the city presumably can correct any unintended reference
2 to "detailed development plan" approval in its notices and
3 decision on remand. This subassignment of error is
4 sustained.

5 **B. TCDC 18.80.120**

6 TCDC 18.80.120(A) sets out five and one-half pages of
7 approval standards for planned development concept plan
8 approval. TCDC 18.80.120(A)(1) requires compliance with
9 TCDC land division provisions. TCDC 18.80.120(A)(2)
10 requires that the provisions of nine other listed TCDC
11 Chapters be met. TCDC 18.80.120(A)(3) lists several pages
12 of criteria addressing a variety of considerations.

13 The city did not adopt findings addressing
14 TCDC 18.80.120(A) specifically, and the only finding
15 addressing TCDC Chapter 18.80 at all is as follows:

16 "Chapter 18.80 (Planned Development) is satisfied
17 because the proposal has been reviewed as required
18 by the provisions of the Planned Development
19 overlay zone." Record 30.

20 The above finding is a conclusion and is inadequate to
21 explain the city's justification for why it believes the
22 detailed criteria of TCDC 18.80.120(A) are satisfied.¹⁷
23 Respondents correctly point out that there are findings

¹⁷Under ORS 227.173(3), in rendering a decision on a permit, the city is required to explain "the criteria and standards considered relevant to the decision, [state] the facts relied upon in rendering the decision and [explain] the justification for the decisions based on the criteria, standards and facts set forth."

1 elsewhere in the decision addressing many of the TCDC
2 provisions referenced in TCDC 18.80.120(A)(2). Respondents
3 also correctly note the planned development concept plan
4 criteria set out in TCDC 18.80.120(A)(3) overlap
5 significantly with the detailed site development review
6 criteria of TCDC 18.120.180, and the city adopted a finding
7 that the proposal complies with TCDC Chapter 18.120.
8 However, neither the challenged decision nor respondents'
9 briefs explain how those findings addressing other TCDC
10 standards are adequate to demonstrate the proposal complies
11 with very detailed requirements of TCDC 18.80.120.¹⁸ We are
12 unable to conclude that the requirements of TCDC 18.80.120
13 are either satisfied or inapplicable to the challenged
14 proposal. See Peyton v. Washington County, 95 Or App 37,
15 767 P2d 470 (1989).

16 This subassignment of error is sustained.

17 The fifth assignment of error is sustained.

18 **SIXTH ASSIGNMENT OF ERROR**

19 Under her final assignment of error, petitioner alleges
20 the city committed a variety of procedural errors in
21 conducting the local proceedings below. Because this
22 decision must be remanded for additional proceedings in any

¹⁸The finding of compliance with TCDC Chapter 18.120 cited by respondents does not specifically address TCDC 18.120.180 and is nearly as conclusory as the finding of compliance with TCDC Chapter 18.80 quoted in the text. The finding is not adequate to explain how the proposal complies with the requirements of TCDC 18.80.120.

1 event, and we have no reason to believe the alleged errors
2 will be repeated on remand, we do not consider those
3 arguments.¹⁹

4 The city's decision is remanded.

¹⁹We do not determine whether all of the procedural irregularities petitioner identifies constitute procedural error or, if they are, whether they prejudiced petitioner's substantial rights.