

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

4 WILSON PARK NEIGHBORHOOD)
5 ASSOCIATION, INC., WESLEY RISHER,)
6 MULTNOMAH NEIGHBORHOOD ASSOCIATION,)
7 and CHRIS RYCEWICZ,)

8)
9 Petitioners,)
10)

11 vs.)

LUBA No. 93-173

12)
13 CITY OF PORTLAND,)
14)

FINAL OPINION
AND ORDER

15 Respondent,)
16)

17 and)

18)
19 HOUSING AUTHORITY OF PORTLAND,)
20)

21 Intervenor-Respondent.)
22
23

24 On remand from the Court of Appeals.
25

26 Robert S. Simon, Lake Oswego, represented petitioners.
27

28 Peter A. Kasting, Senior Deputy City Attorney,
29 Portland, represented respondent.
30

31 Jonathan R. Gilbert and Richard J. Brownstein,
32 Portland, represented intervenor-respondent.
33

34 SHERTON, Referee, participated in the decision.
35

36 AFFIRMED

02/08/95

37
38 You are entitled to judicial review of this Order.
39 Judicial review is governed by the provisions of ORS
40 197.850.

1 Opinion by Sherton.

2 On April 11, 1994, we issued a final opinion and order
3 remanding the challenged city council decision granting
4 conditional use approval for a short-term housing facility
5 for homeless families. Wilson Park Neigh. Assoc. v. City of
6 Portland, 27 Or LUBA 106 (1994) (Wilson Park I).
7 Petitioners appealed our decision to the Court of Appeals,
8 and intervenor-respondent (intervenor) cross-appealed. In
9 Wilson Park Neighborhood Assn. v. City of Portland, 129
10 Or App 33, 877 P2d 1205, rev den 320 Or 453 (1994) (Wilson
11 Park II), the Court of Appeals affirmed our decision with
12 regard to the petition, but reversed and remanded our
13 decision for reconsideration with regard to the
14 cross-petition. The court noted intervenor challenged both
15 of the bases for our remand in Wilson Park I, and sustained
16 both of intervenor's challenges. Wilson Park II, 129 Or App
17 at 36-37.

18 With regard to the first basis for our remand in Wilson
19 Park I, the court found the city council's interpretation of
20 the "significantly lessened" standard in Portland City Code
21 (PCC) 33.815.010(A) must be affirmed. Before LUBA,
22 petitioners challenged only the city's interpretation of the
23 "significantly lessened" standard. Petitioners did not
24 contend that even under the city's interpretation of this
25 standard, the challenged decision is inadequate. Therefore,
26 this issue requires no further consideration.

1 With regard to the second basis for our remand in
2 Wilson Park I, the court found the city's findings on the
3 soil stability and saturation issue are adequate to comply
4 with the requirement of PCC 33.815.105(C)(2) that the
5 proposed development not have significant adverse impacts on
6 the livability of nearby residentially zoned land. However,
7 the court did not resolve petitioners' challenge to the
8 evidentiary support for those findings.¹

9 In Wilson Park I, 27 Or LUBA at 128-29, we stated
10 "there is conflicting expert testimony in the record with
11 regard to whether the proposed development will have an
12 adverse effect on soil saturation and, therefore, slope
13 stability, in the storm water detention area." The choice
14 between conflicting believable evidence belongs to the city
15 council. McInnis v. City of Portland, 25 Or LUBA 376, 385,
16 aff'd 123 Or App 123 (1993); Wissusik v. Yamhill County, 20
17 Or LUBA 246, 260 (1990). Based on the evidence cited by the
18 parties, a reasonable person could determine that the
19 proposed development satisfies PCC 33.815.105(C)(2) with
20 regard to safety concerns due to soil stability and
21 saturation. Younger v. City of Portland, 305 Or 346, 752
22 P2d 262 (1988).

¹In Wilson Park I, we concluded the city's findings on this issue were inadequate. Consequently, we determined whether the evidence in the record identified by the parties "clearly supports" this part of the challenged decision, as provided by ORS 197.835(9)(b), and did not consider whether there was "substantial evidence" in the record to support the city's decision, as provided in ORS 197.835(7)(a)(C).

1 Petitioners' assignments of error are denied.

2 The city's decision is affirmed.