



1 Opinion by Kellington.

2 **NATURE OF THE DECISION**

3 Petitioner appeals from a county decision modifying a  
4 previously approved planned unit development (PUD).<sup>1</sup>

5 **FACTS**

6 In 1979, the city approved a request to construct a  
7 total of 421 single family residential dwelling units,  
8 condominiums, and apartment buildings in the subject PUD.  
9 The subject property is a portion of that PUD, bordering two  
10 streets forming outside boundaries of the PUD. On the  
11 subject property, 85 apartment units and 21 single family  
12 residential dwellings were originally approved. As relevant  
13 here, the proposal will reduce the number of dwelling units  
14 proposed for the subject property.

15 The planning commission recommended approval of the  
16 proposal. The city council affirmed the planning commission  
17 decision, and this appeal followed.

18 **FIRST AND THIRD ASSIGNMENTS OF ERROR**

19 Petitioners argue the proposal will impair their view  
20 and will allow the development of the subject property for  
21 "Godless purposes."<sup>2</sup> However, petitioners cite no code

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<sup>1</sup>The challenged decision adds two lots to the PUD and changes the standards applicable to it.

<sup>2</sup>Petitioners include other allegations which appear to be aimed at the 1979 PUD approval rather than the subject proposed modification of that 1979 PUD approval. We may not consider challenges to the city's 1979 decision in this appeal proceeding.

1 provisions or other legal standard violated by the proposal,  
2 and we are aware of none. It is petitioners' responsibility  
3 to establish a basis upon which LUBA may grant relief and to  
4 identify the statute, plan, ordinance or regulation  
5 allegedly violated by the challenged decision. Petitioners  
6 fail to do so here.

7 The first and third assignments of error are denied.

8 **SECOND ASSIGNMENT OF ERROR**

9 As we understand it, petitioners allege the city  
10 council was biased in favor of approval of the proposed  
11 modification. Petitioners allege that during the local  
12 proceedings on the proposal, a city council member disclosed  
13 previous business dealings with the applicant and stated  
14 that those dealings had nothing to do with the proposal and  
15 would not affect his decision.<sup>3</sup> Petitioners also allege a  
16 former city manager, from some ten years ago, expressed  
17 support for the PUD. Finally petitioners cite a statement  
18 by a city council member to the effect that the PUD  
19 applicant would maintain streets better than the city could.

20 In order to establish bias, petitioners must establish  
21 the city council was incapable of making a decision based on  
22 the evidence and arguments of the parties. 1000 Friends of  
23 Oregon v. Wasco Co. Court, 304 Or 76, 742 P2d 39 (1987),  
24 cert den 486 US 1007 (1988). Petitioners do not do so here.

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<sup>3</sup>Petitioners did not request further information after this disclosure was made.

- 1 The second assignment of error is denied.
- 2 The city's decision is affirmed.