

BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

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CANBY QUALITY OF LIFE COMMITTEE,)
DEBBIE BELL, KAY BOEN, MARVIN)
BOEN, JOYCE CARONE, PAUL CARONE,)
EARLINE CARTER, HERBERT CARTER,)
BELVA CLARK, ROBERT CLARK, BILL)
DICKINSON, DONNA DICKINSON, DEBORAH)
DONOVAN, MARQUITA DUMAS, RENE)
DUMAS, BETTY FOSTER, ROY FOSTER,)
BRAD GERBER, YVETTE GERBER, LETA)
GRAY, RONALD GRAY, PATRICIA HILLS,)
INTERIORS WEST, JOAN JONES, VERLA)
KREBS, ALICE LOWRIE, HOWARD LOWRIE,)
L. D. MCCARTY, MARY JO MCGAUVVRAN,)
RON MCGAUVVRAN, DONNA JEAN MCMANAMON,)
JOHN MCMANAMON, MARY ANN MAPLES,)
TIMOTHY MAPLES, MR. AND MRS. TROY)
NELSON, MR. AND MRS. LE THI NGUYEN,)
No. 95-059)
REBECCA NUGENT, TERRI OLMSTEAD,)
ENA RISELING, MARK RISELING,)
ADELAIDE SAMPSEL, LEON SAMPSEL,)
MR. AND MRS. RONALD SANDNER, CARLA)
SATHER, STEVEN SATHER, GERALD)
THARP, MARION THARP, MR. AND MRS.)
EDWARD SEMPERBONI, GERTRUDE)
THOMPSON, PHYLLIS TODD, CAROLE)
WHEELER, AND MARK WHEELER,)
)
Petitioners,)
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vs.)
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CITY OF CANBY,)
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Respondent,)
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and)
)
FRED A. KAHUT,)
)
Intervenor-Respondent.)

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LUBA

FINAL OPINION
AND ORDER

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Appeal from City of Canby.

Jeffrey L. Kleinman, Portland, filed the petition for review and argued on behalf of petitioners.

1 John H. Kelley, City Attorney, Canby, filed a response
2 brief and argued on behalf of respondent.

3
4 Mark J. Greenfield, Portland, and R. Roger Reif, Canby,
5 filed a response brief and argued on behalf of intervenor-
6 respondent. With them on the brief was Reif & Reif.

7
8 GUSTAFSON, Referee; HANNA, Referee, participated in the
9 decision.

10
11 REMANDED

10/31/95

12
13 You are entitled to judicial review of this Order.
14 Judicial review is governed by the provisions of ORS
15 197.850.

1 Opinion by Gustafson.

2 **NATURE OF THE DECISION**

3 Petitioners appeal the city's approval of a conditional
4 use permit, design review and lot line adjustment for a
5 solid waste transfer station and recycling processing
6 center.

7 **MOTION TO INTERVENE**

8 Fred Kahut, the applicant below, (intervenor) moves to
9 intervene on the side of respondent. There is no opposition
10 to the motion, and it is allowed.

11 **FACTS**

12 Intervenor proposes to locate a solid waste transfer
13 station and recycling processing center in the city's light
14 industrial (M-1) zone. The facility will include a 36,000
15 square foot concrete building, which will serve the primary
16 waste transfer and recycling operations, and store
17 collection vehicles and equipment for the Canby Disposal and
18 Canby Transfer and Recycling companies. A second, 4,000
19 square foot office building will serve as headquarters for
20 the two companies. The facility will not accept solid waste
21 from the public. However, a recycling convenience center
22 will accept deliveries from the public of source-separated
23 recyclable materials.

24 The site is within an industrial park, bordering the
25 southern city limits. It is surrounded to the east, north
26 and west by industrial zoning within the city. The area

1 immediately south of the site, outside the city limits, is
2 designated in the Canby Comprehensive Plan (CCP) for single-
3 family residential zoning (R-1) upon annexation. The
4 present zoning is EFU-20. There are residential areas
5 "nearby" to the west and southwest. An elementary school is
6 located 1,000 feet south of the site's southern boundary.

7 The elementary school fronts Township Road, which also
8 accesses the proposed facility from the south. However,
9 traffic to and from the facility will be routed to avoid
10 Township Road. All facility related vehicles, including
11 transfer and collection vehicles, will be routed, via
12 Redwood Street, to and from Highway 99E, north of the
13 facility. Only passenger vehicles delivering recyclable
14 materials, and local collection vehicles, may use Township
15 Road.

16 The proposed facility will replace intervenor's current
17 facility in the city. That facility is located adjacent to
18 the Canby high school, and receives no more than twelve
19 deliveries of recycling materials from the public daily.

20 After three public hearings, the planning commission
21 approved the application. After a hearing on appeal, the
22 city council denied the appeal and adopted the planning
23 commission's findings of fact and conclusions of law.

24 This appeal followed.

1 **SECOND ASSIGNMENT OF ERROR¹**

2 Petitioners contend the city misconstrued the
3 applicable law and failed to make adequate findings
4 supported by substantial evidence in classifying the
5 proposed recycling processing center as a conditional use
6 under Canby Land Development and Planning Ordinance (LDPO)
7 16.32.020.

8 LDPO 16.32.020(c) allows "[w]aste and/or recycling
9 transfer operations" as conditional uses in the M-1 zone.
10 Petitioners argue the recycling processing operation
11 intervenor proposes does not satisfy the definition of
12 "recycling transfer operation. Petitioners distinguish
13 between the solid waste "transfer" operations, whereby solid
14 waste will be delivered to the site, unloaded on onto a
15 "tipping floor," then immediately transferred to trucks for
16 shipment; and recycling "processing" operations, whereby the
17 recyclable materials will be "prepare[d] for transshipment"
18 before they are transferred to trucks. This preparation
19 includes source separation, consolidation and bailing.
20 Petitioners argue this preparation precludes a recycling
21 processing center from being a conditional use in the M-1
22 zone. Under petitioners' interpretation, "recycling
23 transfer operation" is limited to bringing recyclable
24 materials to and transferring them from the site, but

¹At oral argument petitioners withdrew their first assignment of error.

1 excludes preparing them for such transfer.

2 While the city's interpretation is apparent from its
3 conclusion, the city made no findings expressly interpreting
4 LDPO 16.32.020(C) to include the proposed recycling
5 processing center. Petitioners argue that the city's
6 failure to make such an interpretation requires that the
7 decision be remanded. However, under ORS 197.829(2), in the
8 absence of a local interpretation, this Board "may make its
9 own determination of whether the local government decision
10 is correct."² We interpret this statute to authorize this
11 Board to interpret local provisions when their meaning is
12 clear.

13 We find the city's classification of the proposed
14 "recycling processing center" as a conditional use under
15 LDPO 16.32.020(C) clearly correct. It is rational and
16 logical, if not necessary, to include within the scope of
17 "waste and/or recycling transfer operations" the separation,
18 consolidation and bailing necessary to prepare recyclable
19 materials for transfer.

20 The second assignment of error is denied.³

²ORS 197.829(2) was adopted by the 1995 Oregon Legislature, and became effective September 11, 1995. Because ORS 197.829(2) affects procedural, and not substantive, rights, we apply it immediately. See Antonaci v. Davis, 108 Or App 693, 695, 816 P2d 1202 (1991).

³Intervenor also argues petitioner is bound by an unappealed 1988 planning commission interpretation that a use similar to intervenor's proposal was a conditional use, and that petitioner cannot "collaterally attack" that 1988 interpretation through this proceeding. Intervenor's argument is legally incorrect and merits no discussion.

1 **THIRD ASSIGNMENT OF ERROR**

2 Petitioners dispute the adequacy of the city's findings
3 and the evidence upon which the city relies to find
4 compliance with LDPO 16.050.010(A) and Policy 1 of the CCP
5 Land Use Element Goal.

6 LDPO 16.050.010 provides the city authority to grant
7 conditional use permits. It states, in relevant part,

8 "In judging whether or not a conditional use
9 permit shall be approved or denied, the Planning
10 Commission shall weigh the proposals' positive and
11 negative features that would result from
12 authorizing the particular development at the
13 location proposed and to approve such use, shall
14 find that the following criteria are either met,
15 can be met by observance of conditions, or are not
16 applicable:

17 "A. The proposal will be consistent with the
18 policies of the comprehensive plan and the
19 requirements of this title and other
20 applicable policies of the city;

21 "* * * * *."

22 The city listed several CCP policies as applicable
23 approval criteria for the challenged decisions, including
24 Policy 1 of the Land Use Element Goal.

25 That Goal states:

26 "To guide the development and uses of land so that
27 they are orderly, efficient, aesthetically
28 pleasing and suitably related to one another."

29 Policy 1 states:

30 "Canby shall guide the course of growth and
31 development so as to separate conflicting or
32 incompatible uses while grouping compatible uses."

1 Petitioners contend the city failed to make any finding
2 on compliance with this policy, notwithstanding substantial
3 testimony from petitioners regarding the incompatibility of
4 the proposed facility "directly across the street from the
5 recently opened Trost School, and near new residential
6 subdivisions." Petition for Review 14. Petitioners contend
7 the proposed facility is incompatible with these nearby uses
8 because it "will produce conflicting or incompatible levels
9 of traffic, noise, odor, vectors, vermin, and other safety
10 problems and nuisances." Id.

11 Intervenor responds that petitioners cannot challenge
12 compliance with Policy 1 through this proceeding for two
13 reasons. First, intervenor argues the policy requires the
14 city to "guide" development to separate conflicting or
15 incompatible uses, and that the city accomplished this
16 policy when it established, through its code, that the
17 proposed facility is a conditional use in the M-1 zone.
18 Intervenor argues any "attack" on the legislative
19 implementation of that policy is an impermissible attack on
20 that earlier decision. Secondly, intervenor argues the term
21 "guide" is advisory and, consequently, this policy is not a
22 mandatory approval criterion.

23 Intervenor may be correct that the separation of
24 incompatible uses and the grouping of compatible ones is
25 most effectively accomplished through a legislative zoning
26 process. However, whether Policy 1 should be an approval

1 criterion is not at issue: the city identified Policy 1 as
2 an approval criterion in this quasi-judicial review, and
3 thereby obligated itself to make findings establishing the
4 proposed facility complies with that policy. If intervenor
5 objected to the applicability of that policy, his recourse
6 was to raise the issue before the city and through a cross-
7 petition for review. Intervenor cannot, in a response
8 brief, raise new issues regarding the applicability of an
9 identified approval criterion. See Louks v. Jackson County,
10 28 Or LUBA 501 (1995).⁴

11 Intervenor also asserts that the city did make findings
12 of compliance with Policy 1. The finding upon which
13 intervenor relies does not specifically refer to Policy 1,
14 but rather generally responds to all the Land Use Element
15 Goal policies, and states:

16 "The Commission finds the proposal is to use a
17 portion of The Logging Road Industrial Project
18 Site, M-1 zoned property, for a permitted
19 industrial use. There are conditions established
20 by the Commission to reduce any operating
21 characteristics of the proposed use to a level
22 consistent with existing and proposed uses. These
23 conditions will apply to prevent overburdening the
24 highways, the sewer treatment plant and other
25 facilities. The subject parcel has not been
26 identified as an area of risk with natural
27 hazards. The subject area is Area "G" in the
28 Comprehensive Plan and is desirable as appropriate
29 for heavy commercial or industrial use which is

⁴Intervenor makes similar arguments regarding the policies with which petitioners challenge compliance in assignments of error four and five. We reject those arguments as well.

1 the use proposed for the subject site by the
2 applicant.

3 "No local landfill sites are recommended, but a
4 local transfer station is appropriate as part of a
5 regional collection and disposal system. The
6 Commission incorporates all public facilities
7 reports and finds that all facilities and services
8 are available and adequate." Record 37.

9 Local government findings must (1) identify the
10 relevant approval standards, (2) set out the facts relied
11 upon, and (3) explain how the facts lead to the conclusion
12 that the request complies with the approval standards.
13 Sunnyside Neighborhood v. Clackamas Co. Comm., 280 Or 3, 20-
14 221, 569 P2d 1073 (1977); Vizina v. Douglas County, 17 Or
15 LUBA 829, 835 (1989).

16 When the findings are inadequate, ORS 197.835(9)(b)
17 requires this Board to affirm a local government's
18 conclusion, if "the parties identify relevant evidence in
19 the record which clearly supports the decision or a part of
20 the decision." In addition, ORS 197.829(2) allows this
21 Board to interpret local ordinances provisions in the first
22 instance when the local government fails to make a necessary
23 interpretation in its findings. These statutes, however, do
24 not require this Board to search the record, or to make
25 interpretations or draw conclusions that are not clearly
26 evident. See Marcott Holdings v. City of Tigard, ___ Or
27 LUBA ___, LUBA No. 95-011 (October 20, 1995), slip op 27-28;
28 Eckis v. Linn County, 110 Or App 309, 821 P2d 1127 (1991).
29 Nor does our obligation under ORS 197.835(9)(b) supersede

1 the local government's obligation to respond in its findings
2 to specific issues raised in the local proceedings that are
3 relevant to compliance with applicable approval standards.
4 Hillcrest Vineyard v. Bd. of Comm. Douglas Co., 45 Or App
5 283, 293, 608 P2d 201 (1980); Norvell v. Portland Area LGBC,
6 43 Or App 849, 853, 604 P2d 896 (1979); Skrepetos v. Jackson
7 County, ___ Or LUBA ___, (LUBA No. 94-174, April 25, 1994),
8 slip op 22; McKenzie v. Multnomah County, 27 Or LUBA 523,
9 544-45 (1994).

10 The city's finding on compliance with Policy 1 does not
11 explain how the city interprets this policy as it applies to
12 a conditional use proceeding or respond to issues raised by
13 petitioners regarding compatibility. While the facility's
14 proposed location within an industrial zone may be evidence
15 of compatibility, depending on how that term is defined, it
16 is not conclusive. References in intervenor's brief to
17 evidence scattered throughout the findings and record which
18 could lend support to a conclusion of compliance with Policy
19 1 do not make such a conclusion obvious, particularly in
20 light of the lack of interpretation of the policy's
21 requirements.

22 As a reviewing body, we cannot both fashion an
23 interpretation of an ambiguous provision, then piece
24 together evidence from a voluminous record to support that
25 interpretation. The city must respond to the allegations of
26 incompatibility specifically raised by petitioners during

1 the local hearing, and explain its basis for concluding that
2 Policy 1 is satisfied through this proposed development.

3 The third assignment of error is sustained.

4 **FOURTH ASSIGNMENT OF ERROR**

5 Petitioners dispute the adequacy of the city's findings
6 and the evidence upon which the city relies to find
7 compliance with LDPO 16.050.010.A, Policy 3 of the CCP Land
8 Use Element Goal, and the CCP Transportation Element Goal.

9 Policy 3 states:

10 Canby shall discourage any development which will
11 result in overburdening any of the community's
12 public facilities or services."

13 The CCP Transportation Element Goal states:

14 "To develop and maintain a transportation system
15 which is safe, convenient and economical."⁵

16 Petitioners challenge compliance with Policy 3 only
17 insofar as it relates to their allegation that the
18 development will overburden the transportation system.

19 The city made findings establishing that the proposed
20 facility, as conditioned, will satisfy the Transportation
21 Element Goal and its implementing policies. In addition to
22 conditions regarding street improvements, the
23 transportation-related conditions include, in part,

⁵The Transportation Element Goal is followed by twelve implementation policies. Petitioners do not specifically challenge compliance with those policies. Nor do petitioners challenge compliance with the city's Public Facilities and Services Goal, which is "[t]o assure the provision of a full range of public facilities and services to meet the needs of the residents and property owners of Canby."

1 prohibitions of truck traffic on portions of South Township
2 and South Redwood Roads, (other than designated local
3 collection activities), and a requirement that all truck
4 traffic be restricted to designated streets which will route
5 traffic north of the site. The city also made findings that
6 the proposal satisfies the city's public facilities and
7 services goal as it relates to transportation.

8 Petitioners disagree with the city's findings, and
9 argue their traffic analysis is both more current and more
10 accurate than the analysis upon which the city relied.
11 Petitioners' traffic analysis indicates a greater
12 transportation impact than does the city's. Petitioners
13 discount the conditions imposed by the city to minimize any
14 traffic impact on the residential areas, and the elementary
15 school south of the site, since those conditions will not
16 eliminate all traffic impacts.

17 Notwithstanding evidence in the record that, at its
18 current location, the recycling center generates an average
19 of only twelve visitors a day, petitioners' greatest fear is
20 that the recycling traffic will cause a dangerous traffic
21 situation at the nearby elementary school. The city
22 rejected that argument, finding:

23 "The Commission accepts the testimony of the
24 school district Superintendent that the school
25 district does not have any concerns with the
26 proposal, as drafted. The Commission finds that
27 the Trost [Elementary] School principal
28 investigated traffic reports, and the effects on
29 students. It was the testimony of the school

1 district Superintendent that he and/or members of
2 his staff have reviewed the plans, and have no
3 problems. Furthermore, there was testimony that
4 the high school's site is closer to the existing
5 facility of the applicant, and the high school has
6 experienced no problems with the applicant."
7 Record 43.

8 This Board is not entitled to substitute its judgment
9 of the evidence in the record for that of the governing
10 body. Rather, if there is substantial evidence in the whole
11 record to support the city's decision, LUBA will defer to
12 it, notwithstanding that reasonable people could draw
13 different conclusions from the evidence. Adler v. City of
14 Portland, 25 Or LUBA 546, 554 (1993). Where the evidence is
15 conflicting, if a reasonable person could reach the decision
16 the city made, in view of all the evidence in the record,
17 LUBA will defer to the city's choice between conflicting
18 evidence. Bottum v. Union County, 26 Or LUBA 407, 412
19 (1994); McInnis v. City of Portland, 25 Or LUBA 376, 385
20 (1993); Mazeski v. Wasco County, 28 Or LUBA 178, 184 (1994),
21 aff'd, 133 Or App 258, 890 P2d 455 (1995).

22 The evidence in the record with regard to
23 transportation impacts is conflicting. However,
24 petitioners' evidence does not so undermine the evidence
25 upon which the city relied as to discount its credibility.
26 A reasonable person could find, as the city did, that with
27 the conditions imposed, the proposed facility will not
28 overburden public facilities, including the transportation
29 system.

1 The fourth assignment of error is denied.

2 **FIFTH ASSIGNMENT OF ERROR**

3 Petitioners dispute the adequacy of the city's findings
4 and the evidence upon which the city relies to find
5 compliance with LDPO 16.050.010.A, and the policies of the
6 CCP Environmental Concerns Element Goal.⁶

7 While petitioners generally challenge all policies of
8 this
9 goal, their argument addresses only Policy 7-R, which
10 states:

11 "Canby shall seek to improve the overall scenic
12 and aesthetic qualities of the city."

13 Petitioners conclude, without discussion or references
14 to evidence in the record, that by locating the proposed
15 facility "adjacent to" educational and residential areas,
16 the effect "will be to greatly diminish the scenic and
17 aesthetic qualities of the City, rather than to improve
18 them." Petition for Review 18. Petitioners contend that
19 the city did not make findings regarding compliance with
20 this criterion, and that the record lacks substantial
21 evidence to support a finding of compliance.

22 Contrary to petitioners' contention, the city did make

⁶The CCP Environmental Concerns Element Goal states:

- "1) To protect identified natural and historical resources.
- "2) To prevent air, water, land, and noise pollution. To protect lives and property from natural hazards."

1 a finding on this policy. That finding, which is part of a
2 general finding regarding compliance with all applicable
3 environmental policies, states "Landscaping proposed by the
4 applicant and included as a condition by the Commission will
5 improve the overall scenic and aesthetic qualities of the
6 site." Record 39.

7 Petitioners' general challenge to the evidence upon
8 which compliance with Policy 7-R is based reflects their
9 disagreement with the city's conclusion. However, while the
10 finding itself lacks reference to substantial evidence upon
11 which it is based, another finding specifically describes
12 the landscaping upon which the city based its finding of
13 compliance. In addition, intervenor has identified
14 substantial evidence in the record to further substantiate
15 the finding. Petitioners cite to no evidence that would
16 compel an opposite conclusion.

17 While ORS 197.835(9)(b) does not require us to piece
18 together evidence which could support the city's unexplained
19 conclusion, it does require us to consider substantiating
20 evidence to support a finding where the city explains the
21 basis upon which it reached its conclusion. The city has
22 done so here by finding that scenic and aesthetic qualities
23 will be improved through the site's proposed landscaping.
24 Intervenor has cited to substantial evidence in the record
25 that clearly supports the city's finding.

26 The fifth assignment of error is denied.

1 **SIXTH ASSIGNMENT OF ERROR**

2 Petitioners contend the city's findings are inadequate
3 and lack substantial evidence to support the city's
4 conclusion that the proposed development satisfies LDPO
5 16.49.040.1.B.

6 LDPO 16.49.040 provides the standards and criteria for
7 design review. LDPO 16.49.040.1.B. states:

8 "The proposed design of the development is
9 compatible with the design of other developments
10 in the same general vicinity."

11 Petitioners assert the design of the proposed development is
12 incompatible with the nearby residential development and
13 elementary school. Petitioners also contend the city has
14 not made the required finding of design compatibility.

15 The city's findings do not specifically address LDPO
16 16.49.1.B. However, the city makes the following finding,
17 labeled "Regarding Site and Design Review":

18 "The Commission concludes that with the attached
19 conditions, the proposed development, as described
20 in the application, site plan and staff report, is
21 in conformance with the standards of this and
22 other applicable ordinances; the design is
23 compatible with the design of the developments in
24 the vicinity, and the location, design, size and
25 materials of the exterior of the structure will be
26 compatible with the proposed development and
27 appropriate to the design character of other
28 structures in the same vicinity."

29 This conclusion is preceded by an evaluation of the
30 design review requirements, though that evaluation does not
31 address compatibility. Intervenor also points to additional

1 evidence, scattered throughout the findings and record,
2 which could support a finding of compatibility, depending on
3 how that term is defined. However, nowhere in that
4 evaluation, or in the conclusion, is there any
5 interpretation of "compatibility" or evaluation of which
6 factors lead to the city's conclusion that the proposed
7 design is compatible with the design of development in the
8 general vicinity.

9 We do not agree, as petitioners appear to suggest, that
10 compatibility requires that an industrial use in an
11 industrial zone be designed to resemble the nearby
12 elementary school or residential dwellings. However, before
13 the city can substantiate a conclusion that the design is
14 compatible under LDPO 16.49.040.1.B, the city must first
15 define the standard, then apply the facts in the record to
16 that standard.

17 The sixth assignment of error is sustained.

18 **SEVENTH AND EIGHTH ASSIGNMENTS OF ERROR**

19 Petitioners claim the city exceeded its jurisdiction
20 and that its decision improperly delays the annexation into
21 the city of property of one of the petitioners. The finding
22 to which petitioners object states:

23 "The farm property located southeast of the
24 subject property has not been annexed to the City
25 of Canby at this time. It is in the third phase
26 of annexation (phase C) as shown on the City of
27 Canby Growth Priorities Map and should not be
28 annexed until after the first two phases (A and
29 B), which still has substantial area available.

1 The farm property is proposed to be used
2 ultimately as residential land use within the City
3 of Canby Comprehensive Plan, upon annexation, but
4 **rezoning** will be necessary to permit residential
5 development." (Emphasis in original.) Record 51-
6 52.

7 Petitioners argue this finding also contradicts a CCP Urban
8 Growth Element Policy which provides property owners with a
9 process to request early annexation. According to
10 petitioners, this finding somehow precludes their member
11 from availing herself of that process.

12 The challenged finding does nothing more than describe
13 current uses on surrounding property. It does not compel or
14 preclude any use of any surrounding property. The city's
15 decision, and this finding in particular, does not in any
16 way apply to or direct use of property outside that which is
17 the subject of this application.

18 The seventh and eighth assignments of error are denied.

19 **NINTH ASSIGNMENT OF ERROR**

20 Petitioners dispute the city's conclusion that
21 intervenor "has complied with relevant portions of its
22 comprehensive plan and development ordinance, including
23 requirements for a conditional use and site and design
24 review." Petitioners then summarily "incorporate" arguments
25 from their second through sixth assignments of error.

26 Petitioners have not developed an argument sufficient
27 for discussion. See Testa v. Clackamas County, 26 Or LUBA
28 357, 373, aff'd 127 Or App 137, rev den 319 Or 80 (1994);

1 Deschutes Development v. Deschutes Cty., 5 Or LUBA 218
2 (1982).

3 The ninth assignment of error is denied.

4 **TENTH ASSIGNMENT OF ERROR**

5 Petitioners summarily conclude that six of the city's
6 conditions of approval improperly defer discretionary
7 approval to later stages. Each of the summarily challenged
8 conditions appears to require intervenor to either comply
9 with technical standards or obtain permits from state and
10 federal agencies over which the city has no authority.
11 Petitioners have made no effort to establish how any of
12 these conditions require any future discretionary action
13 from the city.

14 The tenth assignment of error is denied.

15 The city's decision is remanded.