

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

4 JAMES J. HUNTZICKER, PATRICIA M.)
5 HUNTZICKER and BETHANY NEIGHBORS,)
6)
7 Petitioners,)
8)
9 vs.)
10) LUBA Nos. 94-160 and 94-181
11 WASHINGTON COUNTY,)
12) FINAL OPINION
13 Respondent,) AND ORDER
14)
15 and)
16)
17 CENTRAL BETHANY DEVELOPMENT)
18 COMPANY,)
19)
20 Intervenor-Respondent.)

21
22
23 Appeal from Washington County.

24
25 Jeffrey L. Kleinman, Portland, filed the petition for
26 review and argued on behalf of petitioners.

27
28 David C. Noren, Assistant County Counsel, Hillsboro,
29 filed a response brief and argued on behalf of respondent.

30
31 Jeff H. Bachrach, Portland, filed a response brief and
32 argued on behalf of intervenor-respondent. With him on the
33 brief was O'Donnell, Ramis, Crew, Corrigan & Bachrach.

34
35 LIVINGSTON, Chief Referee; HANNA, Referee, participated
36 in the decision.

37
38 AFFIRMED 02/16/96

39
40 You are entitled to judicial review of this Order.
41 Judicial review is governed by the provisions of ORS
42 197.850.

1 Opinion by Livingston.

2 **NATURE OF THE DECISION**

3 Petitioners appeal a decision of the county board of
4 commissioners approving an application for a planned
5 development.

6 **MOTION TO INTERVENE**

7 Central Bethany Development Company (intervenor) moves
8 to intervene on the side of the respondent. There is no
9 objection to the motion, and it is allowed.

10 **FACTS**

11 On or about December 31, 1992, intervenor filed an
12 application for approval of the "Bethany Planned Development
13 Master Plan" (master plan) on 92 acres. The subject
14 property is in the area governed by the Bethany Community
15 Plan (BCP), which encompasses three square miles of the
16 unincorporated portion of northeast Washington County.¹ The

¹The text of the BCP, which is printed, together with maps and other graphics, on both sides of a very large sheet of paper, describes the BCP as follows, under the rubric "The Relationship of Comprehensive Plan Elements":

"The Bethany Community Plan is one of a number of planning elements which in total comprise the Washington County Comprehensive plan. * * *

"In general, the Bethany Community Plan is an area and site specific application of County Comprehensive Planning policy and a description of community development activities envisioned for the Planning Area. Implementation of the Bethany Community Plan is guided primarily by other Plan elements such as the Community Development Code, the Transportation Plan and the Unified Capital Improvement Plan.

" * * * * *

"Community Plan

"The unincorporated portion of the County within the metropolitan area regional Urban Growth Boundary and outside of city planning areas is divided into a number of Community Planning Areas. The Bethany Community Planning Area is one such planning area.

"The policies and plan designations of the Comprehensive Framework Plan are applied in a site specific manner to the Community Planning Area. The result of this application is a Community Plan, composed of a Community Plan Map and Community Plan Text.

"The Community Plan Map portrays a land use designation for each parcel of land in the planning area.

"The Community Plan Text provides a written description of the Community Plan Map in order to specify the intent of the mapped designations. Additionally, the Community Plan Text includes Community Design Elements, which are written prescriptions for particular areas or sites which shall be adhered to as the plan is implemented. For certain areas specified by the Community Plan, the concept of Area of Special Concern is applied.

"The designation of Area of Special Concern where applied to one or a combination of several parcels of land, denotes the presence of certain design opportunities or constraints. In such cases, the Community Plan Text includes specific language which identifies the design opportunities or constraints. Usually land is designated as an Area of Special Concern when parcelization and/or varied ownership requires that the area be considered as one unit during development. In some cases, the Community Plan requires an Area of Special Concern to develop through a mandatory Master Planning-Planned Development process, which provides a more flexible approach to addressing the potential design opportunities and/or constraints.

"The Master Planning-Planned Development requirement is intended to provide the open space, density transfers and design flexibility necessary to achieve the dual objectives of preserving significant natural features or achieving the design objectives of the design elements and encouraging development of a variety of housing types at the density permitted by the district. * * *

"Community Development Code

1 property includes land within three multi-family zoning
2 districts, R-9, R-15 and R-24, and also includes a 15-acre
3 commercial business district. Some of the property is
4 within an "area of special concern," as the term is used in
5 the BCP. The surrounding properties are either developed as
6 or undeveloped and zoned for single-family residential use.

7 In addition to granting general approval of the master
8 plan, the challenged decision grants final development
9 approval of 152 multi-family units, to be located on lots 57
10 and 58 of the preliminary plat (identified as either the
11 South Parc Apartments or Phase I), and of 40 duplex/triplex
12 lots located in the northeast portion of the subject
13 property. All other uses proposed in the master plan will
14 be subject to approval of future development review
15 applications through the county's Type III procedures, which
16 require notice and at least one hearing.

17 The master plan approves a 15-acre commercial center.

"The chief function of the Code is to assist in the implementation of the various community plans and the Comprehensive Framework Plan. The Code is intended to achieve certain streamlining objectives necessary to ensure ease of operation, certainty, flexibility when conditions warrant and responsiveness to public concern.

"The Code contains specific procedures and development standards necessary to assist in the implementation of the community plans. The Code addresses issues such as allowed uses, density, dimensional requirements, public facility requirements, land division requirements, changes in use and aesthetic concerns. The Code also sets forth processes and procedures for review of specific development proposals, including public notice requirements." (Bold in original; additional emphasis added.)

1 It also approves possible day care and professional office
2 uses in certain residential areas. If fully developed under
3 the residential zoning in place prior to adoption of the
4 master plan, the subject property would allow a maximum of
5 1,060 dwelling units. The master plan allows a maximum of
6 860 dwelling units.

7 On March 8, 1994, after two hearings, the county
8 hearings officer entered findings approving the application.
9 Petitioners and another party, which has not appealed to
10 LUBA, appealed to the board of county commissioners
11 (commissioners). The commissioners denied the appeals after
12 two hearings and approved the application, mailing a notice
13 of decision on August 10, 1994. Petitioner James J.
14 Huntzicker filed a request for reconsideration with the
15 county and a precautionary appeal to LUBA (LUBA No. 94-160).
16 After a hearing, the commissioners denied the request for
17 reconsideration, affirming the decision of the hearings
18 officer and adopting supplemental findings. A second notice
19 of decision was mailed on September 12, 1994. Petitioners
20 appealed the commissioners' decision on reconsideration to
21 this Board (LUBA No. 94-181). By order of this Board, LUBA
22 Nos. 94-160 and 94-181 were consolidated.

23 **STANDARD OF REVIEW**

24 Because the challenged decision was made by the
25 county's governing body, ORS 197.829(1) requires we affirm
26 the county's interpretation of its comprehensive plan and

1 land use regulations unless we find that interpretation:

2 "(a) Is inconsistent with the express language of
3 the comprehensive plan or land use
4 regulation;

5 "(b) Is inconsistent with the purpose for the
6 comprehensive plan or land use regulation;

7 "(c) Is inconsistent with the underlying policy
8 that provides the basis for the comprehensive
9 plan or land use regulation; or

10 "(d) Is contrary to a state statute, land use goal
11 or rule that the comprehensive plan provision
12 or land use regulation implements."

13 See also Clark v. Jackson County, 313 Or 508, 836 P2d 710
14 (1992); Reeves v. Yamhill County, 132 Or App 263, 269, ___
15 P2d ___ (1995); Goose Hollow Foothills League v. City of
16 Portland, 117 Or App 211, 217, 843 P2d 992 (1992) (LUBA must
17 defer to a local governing body's interpretation of its own
18 enactments, unless that interpretation is "clearly wrong").

19 Intervenor contends that because petitioners neither
20 expressly assert that the county's interpretation is clearly
21 wrong, nor "offer any explanation as to why LUBA should not
22 defer to the county's findings and conclusion," LUBA should
23 deny petitioners' first two assignments of error.
24 Intervenor-Respondent's Brief 1. Although knowing the
25 applicable standard of review is useful to any party to an
26 appeal to LUBA, a petitioner need not specify the correct
27 standard of review in its brief in order to obtain a
28 decision on the merits. We reject intervenor's contention.

1 **FIRST AND SIXTH ASSIGNMENTS OF ERROR**

2 **A. Stated Bases for Decision**

3 The challenged decision relies on a number of
4 provisions from the CDC and the BCP to support a conclusion
5 that the boundaries of the zoning districts can be redrawn
6 and residential densities reallocated through the master
7 planning process. Although they are not clearly identified,
8 there appear to be three separate bases for this conclusion.
9 They are first, CDC 404-4.5(G); second, policy statements in
10 the CDC and the BCP; and third, CDC 404-4.5(E) and (F).²

11 **1. CDC 404-4.5(G)**

12 Master planning is governed by CDC Section 404.
13 Provided that certain findings, set forth in CDC 404-4.4,
14 are made, CDC 404-4.5 allows modifications to specified land
15 use standards. Under 404-4.5(G), "[t]he land use districts,
16 as designated by the Community Plan for the subject site,
17 may float within the boundaries of the proposed planned
18 development."

19 The challenged decision states, with reference to
20 CDC 404-4.5(G):

²Although the challenged decision relies on CDC 404-4.5(E) and (F) as another means to justify redrawing the boundaries of the zoning districts and reallocating residential densities, petitioners do not discuss CDC 404-4.5(E) and (F), beyond saying these provisions "simply do not apply." Petition for Review 16. Since petitioners furnish no argument, we do not reach this aspect of the first assignment of error. See Neuman v. City of Albany, 28 Or LUBA 337 (1994); Deschutes Development v. Deschutes Cty., 5 Or LUBA 218 (1982).

1 "One of the allowed modifications of standards
2 listed in section 404-4.5 is the right to allocate
3 the density throughout the site, as long as the
4 total number of units does not exceed the maximum
5 allowed by the underlying zoning districts, and as
6 long as the allocation and configuration of the
7 units is consistent with other relevant standards
8 and policies in the Code and the BCP." Record
9 269.

10 The challenged decision notes that the interpretations
11 advocated by the opponents of the development

12 "are contrary to how the County has traditionally
13 interpreted and applied section 404-4.5G, because
14 the opponents' interpretations result in limiting
15 design flexibility and innovation, which the
16 master planning-planned development process is
17 intended to foster." Record 270.

18 To support that "traditional" interpretation, the decision
19 relies on the definition of "planned development" in CDC
20 106-161 and states:

21 "The definition references an integrated
22 development with increased flexibility in use and
23 design, terms that are consistent with
24 interpreting the floating provision as allowing
25 the melding or allocating of the total number of
26 dwelling units throughout the subject site rather
27 than limiting the site design to simply moving the
28 individual zoning districts." Record 271.³

29 **2. Policy**

30 The decision incorporates by reference part of a
31 memorandum prepared by intervenor's attorneys (rebuttal

³CDC 106-161 defines "Planned Development" as:

"An integrated, coordinated development of land, normally involving increased flexibility in use and design standards, with special incentives or restrictions on development."

1 memorandum).⁴ Id. The rebuttal memorandum argues that not
2 only are "floating" land districts or "density transfers"
3 allowed by CDC 404-4.5(G), but they are consistent with the
4 following statement in the BCP:

5 "The Master Planning-Planned Development
6 requirement is intended to provide the open space,
7 density transfers and design flexibility necessary
8 to achieve the dual objectives of preserving
9 significant natural features or achieving the
10 design objectives of the design elements and
11 encouraging development of a variety of housing
12 types at the density permitted by the district."⁵
13 Record 504.

14 The rebuttal memorandum also relies on BCP Subarea Design
15 Element (SDE) 6 to buttress the contention that a
16 redistribution of densities throughout the subject property
17 should be allowed through master planning.⁶ The

⁴Petitioners challenge the adequacy of the county's findings on the basis that incorporating other findings by reference results in a "confusing and complex matrix." Petition for Review 18. We have stated before that where a decision maker does not clearly identify the portions of a document it incorporates by reference, it runs a risk we will be unable to review those portions as findings. Wilson Park Neigh. Assoc. v. City of Portland, 24 Or LUBA 98, 106 (1992), aff'd 117 Or App 620, rev den 315 Or 142 (1993). However, the challenged decision is sufficiently specific, and we do not reject the findings as inadequate on this basis.

⁵This language is emphasized and shown in context in note 1, supra.

⁶SDE 6 states:

"Locational adjustments to the development designations within the Area of Special Concern Boundary may be approved during the Master Planning-Planned Development Process. * * * Any adjustment, however, must recognize that the locations depicted upon the Bethany Community Plan map are, in large part, a function of both the proposed transportation system as well as the Plan's express intent to protect existing residential areas. Therefore, any locational adjustments within the Area

1 incorporated section of the rebuttal memorandum concludes:

2 "Underlying the opponents' criticisms of where the
3 different land uses and housing densities are
4 located is their opposition to the Bethany
5 Community Plan. The design virtually all of the
6 opponents appear to be advocating is one that
7 reduces the size of the apartments and commercial
8 area and moves them as far away as possible from
9 all of the opponents. A design, in other words,
10 that undermines the BCP's vision of an urban
11 village." Record 506.

12 The challenged decision contains additional findings
13 applying SDE 2 and 6.⁷ In analyzing SDE 2, it states that

of Special Concern must reflect a continuation of the transportation/land use relationship depicted on the Plan map and described in the text. The entire Community Business District shall be located within one quadrant of the Laidlaw/158th Avenue intersection."

⁷SDE 2 states:

"In order to achieve the intended commercial atmosphere envisioned in the Community Business District, the site shall be developed in accordance with a unified theme, presenting consistent design features between buildings. The commercial atmosphere intended by the Bethany Community Plan is one of a community center or urban village which, ideally, could take advantage of the historical significance of the Bethany community. A mixture of retail uses or community based office uses would be considered appropriate. A mixture of retail uses or community based office uses would be considered appropriate. Examples include: a full service grocery store, specialty shops, restaurant, medical offices, and a branch bank. Additionally, institutional uses such as a library or small post office could be considered as well. The Tanasbourne Town Center is located two miles to the south and is considered adequate for the provision of regional and comparison shopping needs.

"Because of the commercial area's proximity to residential uses, landscaping and buffering will be an important design element necessary to ensure an aesthetic transition between commercial and residential uses. In addition, the CBD is located in close proximity to the Bethany Baptist Church. The design of both the commercial and residential uses surrounding

1 the master plan "has adopted an urban village concept as its
2 'unified theme.'" It then incorporates by reference a
3 "Master Plan Design Analysis" provided by the applicant
4 below and a section of the rebuttal memorandum. Record 299.
5 The Master Plan Design Analysis describes the proposal,
6 relating it both to the urban village concept and to general
7 policy statements in the BCP. Record 1161. The
8 incorporated portion of the rebuttal memorandum quotes a
9 statement in the BCP that "[t]he [CDC] contains specific
10 procedures and development standards necessary to assist in
11 the implementation of the community plans."⁸ It states that
12 "[to] the extent there is any conflict between or ambiguity
13 resulting from provisions in the BCP and the [CDC], the BCP
14 would be the controlling document." Record 498-99.

15 **B. Petitioners' Challenge**

16 The challenged decision reviews the application for the
17 entire site through the master planning process.⁹ Record

it should take into account existing views available to the Church as well as their relationship to the distinct architectural style of the Church."

⁸This language is emphasized and shown in context in note 1, supra.

⁹Master planning is required by the BCP, which provides:

"Central Bethany

** * * * *

"A number of elements warrant particular consideration in Central Bethany. These include:

** * * * *

1 259. In the first and sixth assignments of error,
2 petitioners contend the county has abused the master
3 planning process, destroying acknowledged land use
4 districts, as shown on acknowledged plan maps. They
5 maintain the master plan establishes and arranges land use
6 districts in a manner that is inconsistent with the BCP and
7 BCP map, as well as the Washington County Community
8 Development Code (CDC). Petitioners point out that the
9 master plan map not only shifts the location of the Central

"b. The development of the Community Business District in a manner compatible with the overall design of Central Bethany.

"c. The buffering of higher density and lower density residential development through the provision of open space and landscaping; and

"d. The transportation system in Central Bethany.

"Because of these elements and the potential impact on Central Bethany if each area is developed without the benefits of the master planning process, the majority of Central Bethany has been designated as an Area of Special Concern. The Bethany Community Plan requires that all development proposals within the area boundary be accomplished through the Master Planning-Planned Development process set forth in the Community Development Code. The Site Analysis provision of the Master Planning process shall, at a minimum, include the entire area covered within the Area of Special Concern boundary or the area prescribed in the Community Development Code, whichever is greater. This requirement will ensure that the property owners prepare master plans for the area which account for the design relationships between the various land use types, coordinate transportation facilities and access, consider drainage characteristics, and provide for continuity of open space patterns between properties. Additionally, the Master Planning-Planned Development approach will provide the developer(s) with the flexibility needed to utilize, or in some cases, compensate for the unique qualities of a specific piece of land." (Emphasis added.)

1 Business District (CBD) from the central location shown on
2 the BCP map, but also alters the location and size of
3 residential districts formerly zoned R-9, R-15 and R-24,
4 expanding the areas allowing higher densities at the expense
5 of those requiring lower densities.¹⁰

6 Respondent and intervenor (together, respondents) do
7 not dispute that the master plan has the effect on the BCP
8 map described by petitioners. The dispute between
9 petitioners and respondents is over whether the challenged
10 decision correctly interprets the BCP, BCP map and CDC as
11 allowing the described modifications.

12 Petitioners argue first that density transfers are
13 governed by CDC 300-3. Under CDC 300-3.1, CDC 300-3 may
14 allow density transfers when a portion of the subject lot is
15 within one of several listed areas, such as flood plain,
16 drainage hazard, power line easement, etc. In such
17 instances, CDC 300-3.2 allows density transfers within a
18 single lot or parcel or to an adjoining lot or parcel that
19 is a subject of the development application.

20 The challenged decision does not rely on CDC 300-3,
21 calling it a "related alternative approach [to density
22 transfers] to that which is allowed by section 404-4.5G."
23 Record 272. We agree that CDC 300-3 itself clearly does not

¹⁰Petitioners also argue that by applying Commercial/Residential and Office designations to certain residential districts, the master plan increases the commercial area allowed by the BCP from 15 to 28.58 acres. This contention is addressed under the second assignment of error.

1 allow the density transfers contemplated by this development
2 application. However, petitioners do not contend that it
3 expressly prohibits density transfers as part of the master
4 planning process, and we do not see that it does.

5 Petitioners' second argument addresses the county's
6 interpretation of CDC 404-4.5. They strongly dispute that
7 CDC 404-4.5 can be used to justify reallocating residential
8 densities in the manner and to the degree that has occurred.
9 Petitioners interpret CDC 404-4.5(G) to allow entire zoning
10 districts to move from one part of the planning area to
11 another, which would cause other zoning districts to move in
12 reaction, but they contend the areas of the districts cannot
13 change in the process. According to petitioners, the
14 county's interpretation of CDC 404-4.5(G) allows
15 "essentially the meltdown of all the [BCP's] land use
16 districts into one indistinguishable mass." Petition for
17 Review 16.

18 **C. Analysis**

19 **1. BCP Policies**

20 As discussed above, the challenged decision includes
21 findings that the development proposal furthers the policy
22 objectives of the BCP, relying on statements in the BCP
23 itself calling for an "urban village" and medium and higher
24 densities around the CBD. Record 1156-61. Also relying on
25 the BCP, petitioners remark that development in the Central
26 Bethany area must first, "focus the most intensive land use

1 types to activity areas"; and second, "protect the character
2 of existing residential neighborhoods from conflicting land
3 uses."¹¹ Petition for Review 9. However, they do not
4 explain why they believe these objectives are not met by the
5 development proposal. We agree with the county that the
6 proposed density transfers and clustering around the CBD
7 further the general development policies stated in the BCP
8 to a greater degree than the land use districts or zones
9 presently shown on the BCP map. The county's application of
10 the BCP satisfies ORS 197.829(1).

11 **2. Policy Implementation**

12 Because the BCP specifically provides that its
13 implementation is "guided primarily" by the CDC and other
14 plan elements (which are not relevant here), we turn next to
15 CDC 404-4.5(G), upon which the county places principal
16 reliance.

17 After Clark, supra, the general rules of statutory
18 construction are not dispositive in LUBA review of local
19 government interpretations of their own comprehensive plans
20 and land use regulations. Nevertheless, the rules can be
21 helpful in supporting a determination that the county's
22 interpretation is not clearly wrong. If the county's

¹¹Petitioners provide no argument under this assignment of error that the development proposal fails to protect the character of existing residential neighborhoods from conflicting land uses. The challenged decision interprets "existing" to mean to "existing at the time the BCP was adopted." Record 502. That interpretation must be affirmed under ORS 197.829(1) and Clark, supra.

1 interpretation survives review under the rules, it
2 necessarily passes the Clark test.

3 We follow the approach established in PGE v. Bureau of
4 Labor and Industries, 317 Or 606, 611, 859 P2d 1143 (1993).
5 First, we try to give the language its "plain, natural and
6 ordinary meaning." See PGE v. Bureau of Labor and
7 Industries, 317 Or 606, 611, 859 P2d 1143 (1993). As far as
8 we can tell, the language has no plain, natural and ordinary
9 meaning. Petitioners' interpretation, that the districts
10 may change shape so long as the area of each district does
11 not change, is not the only possible interpretation.¹² The
12 county's interpretation, that districts may be dissolved and
13 totally reconfigured, while densities are reallocated, is
14 also possible.

15 None of the parties has provided legislative history
16 helpful to interpreting the ordinance. We therefore use
17 "general maxims of statutory construction to aid in
18 resolving the remaining uncertainty." PGE, supra, 317 Or at
19 612. These include case law and how the legislative body
20 would have intended the ordinance to be applied had it
21 considered the issue.

22 There is no case law helpful to interpreting the
23 language of CDC 404-4.5(G). As quoted above, the challenged

¹²We do not agree that SDE 6, CDC 300-1, and the Community Plan language cited in petitioner's brief "make manifest the sanctity of separate and distinct land use districts." See Petition for Review 16-18.

1 decision informs us that the county board of commissioners
2 has customarily interpreted CDC 404-4.5(G) to allow the
3 reconfiguration of zoning districts and density transfers
4 that has occurred here, subject to certain constraints.
5 Record 269-70. While customary interpretations should not
6 be perpetuated if wrong, see McInnis v. City of Portland, 25
7 Or LUBA 376, 379 (1993), the county's interpretation is
8 consistent with the concept of master planning generally and
9 particularly with "floating zones," as described in
10 Anderson, American Law of Zoning:

11 "The common zoning ordinance divides the community
12 into districts, and prescribes the uses which are
13 permitted in each district. The boundaries are
14 fixed; the uses are listed. The arrangement has
15 the virtue of certainty. A landowner's rights are
16 limited, but he enjoys the advantage of sure
17 knowledge that he can establish certain uses
18 without appealing to the discretion of an
19 administrator or administrative board. In
20 addition, he can rely upon the limitations which
21 apply to adjacent lands.

22 "But the fixed boundaries and listed uses which
23 provide the system with its certainty yield a by-
24 product of rigidity. The common zoning ordinance
25 does not bend easily to the weight of change. The
26 amendment process is more cumbersome than is true
27 of amendment procedures in general, and the
28 legislative limitations of a substantive character
29 interpose a real barrier to changes which apply to
30 small areas or to single owners.

31 "The history of zoning is a chronicle of efforts
32 to bring flexibility to the system without
33 destroying its certainty. Thus, municipal
34 legislatures have experimented with exceptions,
35 special permits, and variances, in an attempt to
36 make an essentially inflexible system of controls
37 work successfully in a context of continuous

1 change. * * * [T]hey are closely related to a
2 hybrid device which is intended to make the
3 regulation of land uses more flexible, such device
4 having been described as a 'floating' zone. * * *
5 [T]he floating zone device is used to create
6 cluster developments. It is the most common
7 technique for establishing planned development
8 districts, and the preferred method of creating a
9 planned unit development." 2 Anderson, American
10 Law of Zoning § 11.06 (3d rev ed 1986).

11 Notwithstanding the severe difficulties we admittedly
12 have in understanding CDC 404-4.5(G), we conclude it may
13 have the meaning stated by the challenged decision,
14 particularly in view of the language emphasizing flexibility
15 in both CDC 160-161 and the BCP. The county's
16 interpretation is not clearly wrong.

17 **D. Conclusion**

18 In both the first and sixth assignments of error,
19 petitioners express concern that the county's interpretation
20 of CDC 404-4.5(G) destroys both the concept of land use
21 districts and the role of formally adopted comprehensive
22 plan maps. We disagree. The challenged decision finds, and
23 petitioners do not contest, that where the BCP is
24 inconsistent with the CDC, the BCP controls. Record 498-
25 499. On the facts of this case, the county's interpretation
26 of the CDC furthers the stated objectives of the BCP, an
27 acknowledged part of the county's comprehensive plan, within
28 the narrowly defined area covered by a master plan.

29 The first and sixth assignments of error are denied.

1 **SECOND ASSIGNMENT OF ERROR**

2 The challenged decision states that day care facilities
3 are permitted uses in the R-9, R-15 and R-24 residential
4 districts, subject to the standards stated in CDC 430-53.2,
5 when approved through a Type III review process.¹³ The
6 residential lots shown on the proposed plan which may
7 accommodate a day care facility are lots 48, 49, 53, 45, 46,
8 and 56. Record 288. Similarly, the challenged decision
9 states that professional offices are permitted uses in
10 residential districts, subject to the standards stated in
11 CDC 430-101, when approved through a Type III review
12 process.¹⁴ The residential lots shown on the proposed plan
13 which may accommodate a professional office are lots 48, 53,
14 45, 46 and 56. Record 289.

15 Petitioners do not dispute either that the CDC allows
16 day care facilities and professional offices as permitted
17 uses subject to Type III review in areas zoned R-9 (day care
18 facilities only), R-15 or R-24, or that the listed lots
19 would be zoned R-9, R-15 or R-24 under the master plan.
20 However, they contend SDE 2 and 6 prohibit such uses outside
21 the CBD in the area covered by the BCP.¹⁵ They maintain

¹³See CDC 304-3.13(C); 305-3.15(C); 306-3.13(C). Although the decision actually uses the term "group care," we understand it to mean "day care."

¹⁴Professional offices are listed as permitted uses through a Type III procedure in the R-15 and R-25 zones. See CDC 305-4.7; 306-4.6.

¹⁵SDE 2 is quoted at note 7, supra. SDE 6 is quoted at note 6, supra.

1 that because the challenged decision allows day care and
2 professional office uses in certain residential areas
3 outside the CBD, it effectively allows the expansion of the
4 CBD beyond the 15 acres allowed by the BCP. Finally, they
5 contend that because CDC 313-3.14 permits day care
6 facilities and CDC 313-3.18 permits professional offices in
7 the CBD, these uses cannot be permitted in other zones.

8 The fact that the CDC permits day care and professional
9 offices in certain residential districts does not, as a
10 rule, turn these residential districts into commercial
11 districts. Nothing in the BCP states a different rule.
12 SDE 2 states design policies and appropriate commercial uses
13 within the CBD. SDE 6 addresses locational adjustments to
14 development designations. Neither applies to permitted uses
15 in residential zones. Finally, that CDC 313-3.14 permits
16 day care facilities and CDC 313-3.18 permits professional
17 offices in the CBD does not mean these uses cannot be
18 permitted in other districts as well.

19 The second assignment of error is denied.

20 **THIRD ASSIGNMENT OF ERROR**

21 Petitioners contend that the designations of lots 45,
22 46, 48 and 56 as "commercial/residential" and lot 53 as
23 "office" in the preliminary plat approved by the county
24 apply nonexistent zoning and result in an additional 13.58
25 acres of property designated for commercial use.
26 Petitioners contend further that placing commercial and

1 residential uses together violates SDE 2, which calls for
2 landscaping and buffering.

3 As the designations are explained by the challenged
4 decision, they neither refer to a nonexistent zone nor
5 result in additional commercial land:

6 "[S]everal lots have been designated
7 'commercial/residential.' This combined
8 designation is intended to preserve flexibility as
9 to the exact location of the commercial uses, as
10 well as residential uses and the office and day
11 care facilities that may be associated with
12 residential uses. However, to insure consistency
13 with the 15-acre provision with SDE 6, a
14 supplemental condition of approval is imposed
15 limiting all commercial uses to the southeast
16 quadrant of the intersection and limiting the
17 ultimate size of the land supporting those
18 commercial uses to no greater than 15 acres. The
19 office and day care uses specifically associated
20 with residential property shall not be considered
21 commercial uses within the 15-acre limit." Record
22 80.

23 Lot 48, which is outside the southeast quadrant is
24 distinguished from the other lots designated
25 commercial/residential:

26 "[I]t should be noted that the reference on the
27 preliminary plat * * * to lot 48 as a
28 commercial/residential lot is intended to allow
29 for the siting of a day care or professional
30 office as part of the residential land use
31 designation; it is not intended to allow any other
32 type of commercial use on that lot." Record 296.

33 This reference to lot 48 sets it apart from lots 45, 46 and
34 56, which are located in the southeast quadrant of the
35 intersection and therefore included in the CBD.

36 The third assignment of error appears to be based on a

1 factual misunderstanding, and it is denied.

2 **FOURTH ASSIGNMENT OF ERROR**

3 **A. Substantial Evidence**

4 In their first subassignment of error, petitioners
5 contend that while the county has made the necessary
6 findings with respect to the design of the CBD, those
7 findings are not supported by substantial evidence.
8 Petition for Review 30. Petitioners challenge in particular
9 the evidence supporting findings that the proposed master
10 plan complies with SDE 2, which calls for a "community
11 center or urban village which, ideally, could take advantage
12 of the historical significance of the Bethany community."

13 Petitioners do not contest the county's determination,
14 which is well within its interpretive discretion, that the
15 design-oriented policies in the BCP, including SDE 2, "give
16 general guidance and a description of what is intended by
17 the term urban village, but do not establish a specific
18 standard." Record 502. No responsive findings are required
19 when local government policies are expressed not as
20 regulatory requirements, but as aspirational objectives.
21 Ellison v. Clackamas County, 28 Or LUBA 521, 525 (1995);
22 Wissusik v. Yamhill County, 20 Or LUBA 246, 254-55 (1990);
23 McCoy v. Tillamook County, 14 Or LUBA 108, 118 (1985). That
24 a decision does not adequately address aspirational policies
25 or that the record does not contain evidentiary support for
26 findings of compliance with these policies, provides no

1 basis for reversal or remand of the challenged decision.
2 See Bennett v. City of Dallas, 17 Or LUBA 450, aff'd 96 Or
3 App 645 (1989).

4 This subassignment of error is denied.

5 **B. Failure to Make Findings**

6 In their second subassignment of error, petitioners
7 contend that although they raised as an issue that the
8 proposed design for the CBD is analogous to Tanasbourne Town
9 Center, in violation of SDE 2, the challenged decision
10 contains no finding concerning this violation. Petitioners
11 rely on the general principal, stated in Norvell v. Portland
12 Metro Area LGBC, 43 Or App 849, 853, 604 P2d 896 (1979) and
13 Eckis v. Linn County, 22 Or LUBA 27, 57 (1991), that where
14 issues relevant to compliance with applicable approval
15 criteria are raised in local government proceedings, the
16 local government is required to address those issues in its
17 findings.

18 Petitioners' comparison of the CBD to Tanasbourne Town
19 Center does not raise a different issue from their
20 contention that the design for the CBD fails to meet the
21 "urban village" goal, but is instead a regional shopping
22 center. The comparison only illustrates that contention.
23 As stated above, the county was not required to make
24 findings of compliance with the aspirational goals stated in
25 SDE 2. Nevertheless, it did make adequate findings. See
26 Record 502-503; 1156-57.

1 This subassignment of error is denied.

2 The fourth assignment of error is denied.

3 **FIFTH ASSIGNMENT OF ERROR**

4 Petitioners make several contentions under this
5 assignment of error, which addresses the increase of allowed
6 densities on tax lots 57 and 58: first, the challenged
7 decision makes a de facto plan amendment without going
8 through the proper procedures; second, the applicant below
9 made certain promises at the time petitioners purchased
10 their homes that lots 57 and 58 would be developed with lots
11 for single-family homes; third, petitioners' property values
12 will fall as a result of the county's decision; fourth, the
13 existing single-family development to the west of NW Bethany
14 Boulevard is not adequately buffered from the higher density
15 development on lots 57 and 58; and fifth, the county
16 improperly relied on CDC 602 to justify amending the plat
17 for lots 57 and 58.

18 Petitioners' first contention is addressed in our
19 discussion of the first assignment of error. Because
20 petitioners do not explain how creating the effects
21 described in the second and third contentions violates a
22 land use regulation, comprehensive plan provision or
23 statute, they state no basis for reversal or remand, and we
24 do not consider these contentions. The fourth contention
25 relies on a statement in the BCP that one of the purposes
26 for establishing "two main land use focal points for future

1 development" is "to protect the character of existing
2 residential neighborhoods from conflicting land uses." We
3 agree with intervenor that this statement of purpose is not
4 a mandatory approval standard that must be addressed in the
5 findings.

6 Moreover, even if it were a mandatory approval
7 standard, petitioners have not shown it protects the houses
8 on the west side of NW Bethany Boulevard. As discussed
9 under the first assignment of error, petitioners do not
10 challenge the county's interpretation of "existing
11 residential neighborhoods" to mean those neighborhoods
12 existing at the time the BCP was adopted. They do not cite
13 to evidence in the record which would support a finding that
14 their neighborhood is an "existing residential
15 neighborhood," as the county interprets that phrase. We
16 will not search the record for that evidence. See Calhoun
17 v. Jefferson County, 23 Or LUBA 436, 439 (1992).

18 We reject petitioners' fifth contention. CDC 602
19 contains general provisions applicable to all land divisions
20 and lot line adjustments. The challenged decision makes
21 findings under CDC 602 in approving the plat for lots 57 and
22 58, while explaining the relationship between the new
23 approval and the earlier approval. Record 295. Petitioners
24 state these findings are inadequate, but provide no
25 reviewable argument. Neumann, supra; Deschutes Cty., supra.

26 The fifth assignment of error is denied.

1 **SEVENTH ASSIGNMENT OF ERROR**

2 Petitioners list thirteen conditions imposed by the
3 challenged decision which they contend fail to achieve
4 compliance with mandatory approval criteria. However, they
5 do not identify which mandatory approval criteria are not
6 satisfied, and therefore provide no basis on which we may
7 remand or reverse the decision.

8 The seventh assignment of error is denied.

9 **EIGHTH ASSIGNMENT OF ERROR**

10 Petitioners contend that one exhibit presented by the
11 applicant below was altered between the time of the hearings
12 officer's decision and the time of the hearings before the
13 commissioners. Petitioners made the same contention in a
14 motion for evidentiary hearing filed earlier in this appeal.
15 We concluded then that the county's rejection of
16 petitioners' contention was based on substantial evidence
17 and therefore binding on LUBA. Huntzicker v. Washington
18 County, 29 Or LUBA 587 (1995). We adhere to that
19 conclusion.

20 The eighth assignment of error is denied.

21 The county's decision is affirmed.