

1 Opinion by Hanna.

2 **NATURE OF THE DECISION**

3 Petitioners appeal the city's approval of a conditional
4 use permit allowing a clubhouse to be built on school
5 district property.

6 **MOTION TO INTERVENE**

7 The Boys' and Girls' Club of Corvallis (intervenor),
8 the applicant below, moves to intervene in this proceeding
9 on the side of respondent. There is no opposition to the
10 motion, and it is allowed.

11 **FACTS**

12 On December 18, 1995, the city council affirmed the
13 planning commission's approval of a conditional use permit
14 to build a 40,000-square-foot clubhouse on property owned by
15 the local school district and zoned low-density residential.
16 The warranty deed of ownership for the subject property
17 includes a restriction that the property may only be used
18 for school purposes. The existing improvements on the
19 property include a school, a school district-owned aquatic
20 center and a fire station.

21 Petitioners appeal the city's approval.

22 **FIRST ASSIGNMENT OF ERROR**

23 Petitioners argue that the city is required by
24 Corvallis Land Development Code (CLDC) 2.0.50.10(a)(4) to
25 consider an applicant's legal interest in the property, and
26 failed to do so.

1 CLDC 2.0.50.10 states, in relevant part:

2 "Findings shall include:

3 "(a) A preamble summarizing basic facts regarding
4 the property and action taken prior to the
5 public hearing by the hearing authority.
6 This preamble should include, but should not
7 be limited to statements regarding:

8 * * * * *

9 "4. Statement of applicant's legal interest
10 in the property.

11 * * * * *

12 The challenged decision states:

13 "PREAMBLE

14 "This action relates to an application by Dick
15 Bryant, architect and representative for the Boys
16 and Girls Club (the developer) for approval of a
17 conditional development application to allow
18 construction of a new single-story recreation and
19 activity center adjacent to Highland View Middle
20 School. The Boys and Girls Club is anticipating
21 leasing a portion of the subject site from the
22 Corvallis 509J School District (property owner) to
23 allow construction of the proposed Boys and Girls
24 Club recreation and activity center." Record 23.

25 The challenged decision includes statement of
26 applicant's interest in the property, that of a proposed
27 lessee, as required by CLDC 2.0.50.10(a)(4).

28 The first assignment of error is denied.

29 **SECOND ASSIGNMENT OF ERROR**

30 Petitioners argue that the city failed to request a
31 resolution regarding a deed restriction on the use of the
32 subject property, and thereby failed to meet the requirement

1 of CLDC 2.0.50.10(c) which states:

2 "Findings and conclusions, individually numbered.
3 Such findings must relate relevant facts to the
4 legal criteria identified previously. The
5 findings may require an explanation of possible
6 conflict between provisions of identified legal
7 criteria and an explanation of how any such
8 conflicts were resolved."

9 The city and intervenors respond that "restrictive
10 covenants between private parties do not make up the law of
11 the city and may not be used to deny a request." Respondent
12 and Intervenor's Brief 11.

13 Petitioners have not established either that CLDC
14 2.0.50.10(c) is a relevant approval standard, or that it
15 supports their contention that the city must resolve any
16 conflict pertaining to a private deed restriction before it
17 can approve intervenor's permit. See Dorgan v. City of
18 Albany, 27 Or LUBA 64, 74 (1994).

19 The second assignment of error is denied.

20 **THIRD ASSIGNMENT OF ERROR**

21 Petitioners argue that the city's findings pertaining
22 to Corvallis Comprehensive Plan (CCP) Policy 8.3.2 are not
23 supported by substantial evidence in the whole record.¹
24 Petitioners identify traffic signaling, parking, protection
25 of the neighborhood, and traffic and safety as issues for

¹Petitioners also quote CCP Finding 8.3(c) which states, "A major purpose of the City's planning process is to identify, maintain, and improve the quality of established residential areas," but make no further reference to it in their argument.

1 which the evidence is deficient.

2 CCP Policy 8.3.2 states: "[c]ity land use actions shall
3 protect, maintain, and improve established residential
4 areas." The challenged decision states:

5 "The Council finds that [CCP Policy 8.3.2] is a
6 general policy statement in the Comprehensive Plan
7 which is fully implemented through the criteria in
8 the Land Development Code, and in this particular
9 case, through LDC section 2.3.30.04 (Review
10 Criteria for Conditional Developments) and Article
11 IV of the Land Development Code (Development
12 Standards). * * * Therefore, the Council finds
13 that compliance with the implementing criteria of
14 Section 2.3.30.04 and Article IV in the Land
15 Development Code assures that the proposal is
16 consistent with Policy 8.3.2."² Record 34.

²CLDC 2.3.30.04 states:

"Requests for Conditional Developments shall be reviewed to assure consistency with the purposes of this chapter, policies of the Comprehensive Plan, and any other applicable policies and standards adopted by the City Council. In addition, the following compatibility factors shall be considered:

- "a. Basic site design (* * *);
- "b. Visual elements (* * *);
- "c. Noise attenuation;
- "d. Noxious odors;
- "e. Lighting;
- "f. Signage;
- "g. Landscaping for buffering and screening;
- "h. Traffic;
- "i. Effects on off-street parking;
- "j. Effects on air and water quality."

1 **A. Ordinance Issues Identified by Petitioners**

2 Petitioners state that CLDC 4.0.70 states that
3 "[t]raffic signals should generally not be spaced closer
4 than 1500 ft for reasonable traffic progression." (Emphasis
5 added.) Based on a traffic engineer's study, the challenged
6 decision concludes: "traffic signals in proximity to each
7 other can be designed to operate safely by phasing the
8 signals together." Record 32.

9 Petitioners argue also that the proposed use allows for
10 more than one access point to a street in violation of CLDC
11 4.1.40(a)(3). Petitioners do not elaborate on this
12 contention. CLDC 4.1.40(a)(3). states: "No development site
13 shall be allowed more than 1 access point to any arterial or
14 collector street * * * except as approved the City
15 Engineer." (Emphasis added.)

16 Petitioners dispute the relative merits of the evidence
17 presented on each issue. Additionally, they identify
18 ordinance criteria but do not apply the plain meanings of
19 those criteria. By its terms, CLDC 4.0.70 provides only a
20 general rule. Under CLDC 4.1.40(a)(3), the traffic engineer
21 has discretion to allow additional access points to a
22 street. Petitioners' arguments on these issues do not
23 establish a basis on which we can reverse or remand the
24 city's decision.

25 **B. Non-Ordinance Issues Identified by Petitioners**

26 Petitioners dispute the city council finding that "the

1 record contains all information needed to evaluate the
2 application for compliance with relevant criteria." Record
3 25. Petitioners contend that the city should have sought
4 additional information including a traffic study and more
5 documentation pertaining to a portion of the subject
6 property that petitioners describe as a wetland.
7 Additionally, petitioners argue generally that this proposal
8 and the city's conclusions approving it are no different
9 from a prior proposal that the city did not approve.

10 Petitioners describe this assignment of error as a
11 substantial evidence challenge. As a review body, we are
12 authorized to reverse or remand the challenged decision if
13 it is "not supported by substantial evidence in the whole
14 record." ORS 197.835(7)(a)(C). If there is substantial
15 evidence in the whole record to support the city's decision,
16 LUBA will defer to it, notwithstanding that reasonable
17 people could draw different conclusions from the evidence.
18 Alder v. City of Portland, 25 Or LUBA 546, 554 (1993).

19 Petitioners dispute the merits of the evidence
20 presented in support of the challenged decision. However,
21 they do not establish that the city violated CCP 8.3.2.
22 Petitioners' arguments do not establish a basis on which we
23 can reverse or remand the city's decision.

24 The third assignment of error is denied.

25 The city's decision is affirmed.