

1 Opinion by Gustafson.

2 **NATURE OF THE DECISION**

3 Petitioner appeals the city council's approval of a
4 conditional use permit for an arts and crafts store and an
5 educational center.

6 **MOTION TO INTERVENE**

7 David and Lee Manuel (intervenors), the applicants
8 below, and Bank of Wallowa County, owner of the subject
9 property, move to intervene on behalf of respondent. There
10 is no opposition to the motion, and it is allowed.

11 **FACTS**

12 The subject property, presently owned by the Bank of
13 Wallowa County, is located on the city's Main Street, and is
14 developed with a log building, which currently serves as a
15 bank. The property is located within the city's commercial
16 (C) district. Properties across Main Street to the south,
17 and the property immediately north and east of the subject
18 property are also zoned C. Property immediately west of the
19 subject property is zoned Select Residential (R-1), and is
20 developed with a retirement home.

21 Intervenors own and operate the "Manuel Museum"
22 directly across Main Street from the subject property. They
23 propose to redevelop the subject property as "a complete
24 educational center," which they describe as "an arts and
25 crafts store and an educational center with light industrial
26 use where bronze sculptures are created, produced and sold

1 and where vocational training and educational services are
2 provided." Record 1.

3 No plat plan or any other formal or detailed plans for
4 the educational center were provided with the application.
5 During the hearings process, intervenor Lee Manuel (Manuel)
6 provided a conceptual description of the proposed
7 educational center, but did not provide any details
8 regarding its construction or operation. As Manuel
9 described the proposed center, the focal point will be a
10 foundry, which intervenors propose to enclose with glass for
11 viewing and educational purposes. Manuel suggested the
12 foundry would require a 100 lb. furnace, which would
13 probably be smaller than other foundries in the area.
14 According to intervenors' attorney, the foundry would
15 produce only sculptures of intervenor David Manuel, and
16 "overflow" production would be transferred to other local
17 foundries.

18 There was conflicting evidence regarding the amount of
19 noise, heat and other emissions the proposed foundry would
20 generate. Workers at two local foundries testified that
21 foundries generate substantial noise, exhaust fumes, smoke
22 and heat, which would necessarily impact surrounding
23 properties. Conversely, proponents presented testimony from
24 a contractor that a foundry can be constructed so that sound
25 is "stopped" efficiently and that fire risks are minimized.
26 A professor at a nearby college that operates a foundry

1 testified that the facilities at the college operate with
2 low noise levels and no internal emissions. He testified
3 that all emissions are discharged through upper-story vents.
4 He did not testify regarding the nature or amounts of the
5 external emissions. Another operator of a "finishing
6 foundry" located in a local commercial zone testified that
7 no neighbors had complained about noise.

8 There was no evidence presented as to how the proposed
9 foundry compares to a "finishing foundry." Nor was there
10 evidence that intervenors propose to incorporate the
11 techniques used at the local college or described by the
12 contractor that would minimize noise and emissions, or
13 otherwise how the proposed foundry will be dissimilar or be
14 able to avoid the adverse characteristics of other local
15 foundries. No evidence was presented regarding how the
16 foundry would be ventilated, how emissions of heat, smoke
17 and other fumes would be discharged or what amount of noise
18 the foundry furnace or other operations would cause.

19 The city conducted two public hearings on intervenors'
20 application. At the close of the hearings, councilors
21 questioned their ability to evaluate the proposal without a
22 plat plan or other details regarding the center's
23 construction and operation. Without resolution of that
24 question, or any request for further information, the
25 councilors then voted to direct staff to prepare findings
26 approving the application. Five days later, the city

1 council held an additional hearing at which it adopted the
2 findings of approval.

3 This appeal followed.

4 **FIRST ASSIGNMENT OF ERROR**

5 Petitioner contends the city improperly construed the
6 applicable law, and made inadequate findings not supported
7 by substantial evidence when it concluded that the proposed
8 use satisfies the city's definition of "Light Industrial
9 Business."

10 The city identified as an applicable approval criteria
11 the Joseph Land Development Code Section 1.030(44), which
12 defines "Light Industrial Business" as follows:

13 "A business engaged in manufacturing or repairing
14 a product and hiring no more than ten employees.
15 Said business must comply with all state and local
16 codes concerning sound level, utility, and
17 structural guidelines. A qualifying business
18 located in a commercial zone may not adversely
19 affect the nature of the commercial and adjoining
20 residential zones in any way."

21 Petitioner challenges the city's findings of compliance with
22 three of the requirements stated in that definition.¹

23 Intervenors respond generally that petitioner's
24 argument is misplaced, or in any event premature, since
25 petitioner cannot establish that the development, when
26 completed, will not fit within the definition of a light

¹There is no dispute that the proposed use satisfies the first component of the definition, that the use will be "[a] business engaged in manufacturing or repairing a product[.]"

1 industrial business. According to intervenors, the approved
2 use is, by definition, consistent with the definition of a
3 light industrial business because the conditions of approval
4 require that it be a light industrial business. Intervenors
5 explain:

6 "From that definition [of "light industrial
7 business"] one can determine that the use allowed
8 by the conditional use permit is for a business
9 that produces bronzes, is conducted with no more
10 than ten employees, operates in compliance with
11 local and state laws governing sound, utility and
12 structural guidelines, and does not adversely
13 affect the nature of the commercial and adjoining
14 residential zones." Response Brief 7.

15 Intervenors argue that we need not consider whether the use
16 as proposed actually satisfies each of those characteristics
17 since the use as approved requires that it fit within the
18 definition of light industrial business.

19 We disagree. The definition of "light industrial use"
20 does not determine the use. The city's findings must
21 establish whether the proposed use complies with the
22 definition, based upon a factual examination of the use
23 proposed. Thus, we must examine the city's findings
24 regarding each of the three components of the definition of
25 light industrial business upon which petitioner bases his
26 challenge.

27 **A. No More Than Ten Employees.**

28 The city found that the proposed educational center
29 could have no more than ten employees, and conditioned the
30 approval upon that requirement. Petitioner contends that

1 without any specific information regarding the center's
2 proposed operations, the city had no factual basis upon
3 which to conclude that the educational center could in fact
4 operate with no more than ten employees. Petitioner cites
5 intervenor Manuel's testimony where she questioned whether
6 ten employees would be adequate for the proposed use.
7 Record 40. Petitioner further questions the feasibility of
8 needing no more than ten employees for a "complex of nearly
9 7,000 square feet [where] they propose to develop a fully
10 operational metal foundry, a vocational training school, a
11 retail gallery, offices, seminar rooms and a museum."
12 Petition for Review 8. As petitioner asserts, "[t]here were
13 no facts submitted by the applicants which explain how this
14 facility, with all its diverse endeavors, intends to operate
15 within the limitation of ten employees." Id.

16 We agree with petitioner. The city did not find that
17 the proposed use satisfied the definition of light
18 industrial business because it would, or even could, operate
19 with no more than ten employees. In fact, the city made no
20 factual findings regarding the number of employees necessary
21 or feasible for the center's operations. The city's
22 findings are, therefore, inadequate to establish that the
23 use does or can satisfy this definitional criterion.

24 A fundamental deficiency in the city's ability to make
25 adequate findings establishing compliance with this
26 criterion is that the scope of the proposal has yet to be

1 defined. Until intervenors provide the city with sufficient
2 detail regarding the operation of the proposed educational
3 center, the city cannot perform its evaluative function to
4 determine whether it is feasible for the proposed center to
5 operate with no more than ten employees. See Rasmussen v.
6 Baker County, 17 Or LUBA 1185, 1194 (1989).

7 In order to determine whether the proposed educational
8 center satisfies the first element of the city's definition
9 of light industrial business, the city must at a minimum
10 establish that, based on the facts of the proposed use, it
11 is feasible for the use to operate with no more than ten
12 employees. It may then condition the approval to ensure
13 compliance with the criteria. Thomas v. Wasco County, 30 Or
14 LUBA ____, (LUBA No. 95-098, January 12, 1996), slip op at
15 17; Burghardt v. City of Molalla, 29 Or LUBA 223, 236
16 (1995).

17 This subassignment of error is sustained.

18 **B. Compliance With All State and Local Codes**
19 **Concerning Sound Level, Utility, and Structural**
20 **Guidelines.**

21 The city's findings of compliance with this criterion
22 state:

23 "The applicant and several others who testified in
24 support of the proposed use submit that compliance
25 with State and Federal agency standards for sound
26 levels, utilities and structural changes required
27 for the industrial component of the use is
28 sufficient to satisfy the requirements set forth
29 in the second sentence of Section 1.030(44). The
30 Council finds that there are specific standards

1 set by agencies such as the Occupational Safety
2 and Health Administration (OSHA), Department of
3 Environmental Quality (DEQ), Building Codes
4 Division (BCD) and the Oregon State Fire Marshall
5 (OSFM) and that the City has no additional
6 requirements. However, the Council also finds
7 that not all of these agencies are involved in the
8 planning phase of development. Therefore, in
9 order to ensure that their standards are met prior
10 to the beginning of construction, a condition of
11 approval shall be placed on the permit requiring
12 approval of engineered plans from these agencies
13 prior to the City's approval of a zoning or
14 building permit application." Record 6-7.

15 A condition of approval adds:

16 "The applicant shall solicit and receive written
17 approval of engineered plans for the proposed use
18 from OSHA, DEQ, BCD and OSFM prior to the City's
19 approval of a zoning or building permit
20 application." Record 18.

21 Petitioner argues:

22 "Without taking any testimony as to what standards
23 might be applicable to this project, to what
24 extent they may apply, or whether those standards
25 are in compliance with the city's own zoning
26 ordinance and comprehensive plan, the city simply
27 decided to name all the state agencies it could
28 think of that might have some relevance to this
29 project, then transfer the responsibility for
30 compliance and enforcement to them." Petition for
31 Review 12.

32 When a local approval criterion mandates compliance
33 with state agency requirements, the local governing body is
34 not required to establish that the state agency requirements
35 can, in fact, be satisfied. The local governing body need
36 only determine that the necessary agency permit is
37 available. As we stated in Bouman v. Jackson County, 23 Or

1 LUBA 628, 647 (1992):

2 "[W]here a local government finds that approval
3 criteria will be met if certain conditions are
4 imposed, and those conditions are requirements to
5 obtain state agency permits, we think a decision
6 approving the subject application simply requires
7 that there be substantial evidence in the record
8 that the applicant is not precluded from obtaining
9 such agency permits as a matter of law. There
10 does not have to be substantial evidence in the
11 record that it is feasible to comply with all
12 discretionary state agency permit approval
13 standards because the state agency, which has
14 expertise and established standards and
15 procedures, will ultimately determine whether
16 those standards are met."

17 Thus, in order to establish compliance with the
18 challenged definitional criterion with regard to applicable
19 state codes, the city must only establish which, if any,
20 agency codes contain approval criteria, and that as a matter
21 of law, intervenors are not precluded from obtaining such
22 agency permits. The city's findings, however, do not
23 satisfy this threshold requirement.

24 The findings do not explain why the state agencies
25 specified were determined to have jurisdiction over aspects
26 of the proposed development. Neither the application nor
27 any supporting materials in the record provide any
28 indication of which agencies might have jurisdiction, other
29 than a statement by intervenors' attorney that DEQ may have
30 some controlling regulations. During hearing testimony,
31 intervenor Manuel acknowledged she did not know to which
32 state regulatory requirements the proposed development would

1 be subject, but assured the council that she would comply
2 with whatever standards were required. Record 40. This
3 assurance is insufficient to establish which agencies have
4 applicable code requirements, and whether the proposal
5 qualifies to apply for those approvals.

6 As discussed with regard to the first subassignment of
7 error, the city cannot find compliance with this criterion
8 when the scope of the proposed development has yet to be
9 defined. Without plans for the proposed use, the city
10 cannot determine which state agencies may have jurisdiction
11 over various aspects of the development.

12 This lack of information also precludes the city from
13 determining that it does not have any codes applicable to
14 the proposed development. The city has not explained how it
15 reached its conclusion that there are no local regulatory
16 code requirements, such as local fire or building standards,
17 to which this development will be subject.

18 This subassignment of error is sustained.

19 **C. No Adverse Affect on the Nature of the Commercial**
20 **and Adjoining Residential Zones in Any Way.**

21 The city's finding regarding this criterion states:

22 "The last sentence of Section 1.030(44) reads, "A
23 qualifying business located in a commercial zone
24 may not adversely affect the nature of the
25 commercial and adjoining residential zones in any
26 way." The Council finds that with the operation
27 of a foundry the potential for hazardous and
28 adverse impact to neighbors, both commercial and
29 residential, does exist; that the conditions of
30 approval previously stated [regarding the first

1 two sentences of 1.030(44)] are intended to insure
2 there will be no adverse affect on the adjoining
3 zones; and that the last sentence of Section
4 1.030(44) requires the Council to deny the
5 application unless the approval is further
6 conditioned to provide for immediate abatement of
7 any condition that causes an adverse affect on the
8 adjoining zones. Therefore, a condition of
9 approval shall be placed on the permit requiring
10 that upon written notification from the Council
11 affecting the adjoining zones the applicant will
12 immediately remedy the affect or cease operation.
13 In order to ensure for the applicant a fair
14 application of this condition and to ensure
15 enforcement of the condition at no cost to the
16 citizens of Joseph, the condition for approval
17 shall include a provision for costs and attorney
18 fees to the prevailing party in case of
19 litigation." (Emphasis added.) Record 7.

20 A condition of approval adds:

21 "Upon written notification from the Council that
22 operation of the foundry is adversely affecting
23 the adjoining zones the applicant will immediately
24 remedy the affect or cease operation of the
25 foundry until the affect can be remedied. In the
26 event of litigation regarding the enforcement or
27 interpretation of this or any other condition of
28 this permit the prevailing party shall be entitled
29 to costs, disbursements (including expert witness
30 fees), and reasonable attorney fees." Record 18.

31 Where the city's approval acknowledges the potential
32 for adverse impacts from the proposed foundry, it cannot
33 determine there will nonetheless be compliance with this
34 criterion through the imposition of a condition that
35 requires abatement of that adverse impact. Thomas v. Wasco
36 County, slip op at 17. The city's own findings indicate the
37 proposed development does not satisfy this criterion.
38 Moreover, until intervenors provide evidence regarding scope

1 and operation of the proposal, the city cannot properly
2 evaluate whether a foundry in the proposed location can be
3 developed so as to meet the definitional requirement of a
4 "light industrial business" by virtue of its having no
5 adverse affect on the adjoining residential zone. See
6 Rasmussen, 17 Or LUBA at 1194.

7 This subassignment of error is sustained.

8 The first assignment of error is sustained.

9 **SECOND ASSIGNMENT OF ERROR**

10 Petitioner assigns error to the city's compliance with
11 several comprehensive plan provisions.

12 Intervenors argue in their jurisdictional statement,
13 and again in their response to the second assignment of
14 error, that petitioner may not raise issues regarding
15 compliance with comprehensive plan provisions because, in
16 his jurisdictional statement, petitioner asserted as the
17 basis for this Board's jurisdiction only that the decision
18 involved "the application of a land use regulation * * *
19 pursuant to ORS 197.015(10)(a)(A)(iii). He did not also
20 assert that this Board has jurisdiction under ORS
21 197.015(10)(a)(A)(ii), which provides for jurisdiction over
22 decisions involving application of comprehensive plan
23 provisions. According to intervenors, petitioner is "bound
24 by his jurisdictional allegation" and therefore his
25 arguments must be limited to those which fall within his
26 jurisdictional statement. Response Brief 5.

1 We reject intervenors' argument. The statement
2 required by OAR 660-10-030(2)(c) provides a means for this
3 Board to determine whether the challenged decision fits
4 within the statutory scope of our jurisdiction.² That
5 statement need not exhaust all the bases upon which the
6 challenged decision is a land use decision over which we
7 have jurisdiction. Nor does it limit the issues that may be
8 raised in the body of the petition.

9 Intervenors further argue that petitioner has waived
10 his right to raise issues regarding compliance with the
11 challenged comprehensive plan provisions because he did not
12 raise them during the local proceedings. As we understand
13 intervenors' argument, they contend not that petitioner
14 failed to raise the issues he now wishes to raise, but that
15 he did not specifically relate those issues to the
16 comprehensive plan provisions to which he now cites.
17 Intervenors' contention suggests that petitioner must
18 identify the specific criterion to which each issue relates
19 in order to raise the issue on appeal.

20 We disagree. A party must raise issues, not criteria.
21 So long as petitioner raises the issues with sufficient
22 specificity to allow the decision maker to recognize the
23 issue and to respond to it, petitioner may raise those

²OAR 660-10-030(2)(c) requires that the petition for review "[s]tate why the challenged decision is a land use decision or a limited land use decision subject to the Board's jurisdiction[.]"

1 issues on appeal. Boldt v. Clackamas County, 107 Or App
2 619, 623, 813 P2d 1078 (1991). We will consider each of
3 petitioner's challenges to compliance with comprehensive
4 plan provisions.

5 **A. Goal 1 - Citizen Involvement**

6 Petitioner challenges the city's compliance with its
7 comprehensive plan Goal 1 on the basis that, by deferring
8 compliance with mandatory approval criteria through the
9 imposition of conditions, the city has effectively precluded
10 citizens from involvement in the city's decision making
11 process.³

12 As discussed with regard to the first assignment of
13 error, the city does not establish compliance with mandatory
14 approval criteria solely through the imposition of
15 conditions that require those approval criteria be
16 satisfied. However, while the city's findings improperly
17 defer compliance with mandatory approval criteria, this
18 error does not relate to any mandatory approval criterion
19 stated in the city's plan Goal 1. Petitioner has not
20 demonstrated that the city's plan Goal 1 imposes any
21 approval criteria applicable to the challenged application.

22 This subassignment of error is denied.

³Petitioner relies on the summary of Goal 1 of the city's comprehensive plan, which states, in part:

"The intent of this goal is to insure 'the opportunity for citizens to be involved in all phases of the planning process.'"

1 **B. Goal 2 - Land Use Planning**

2 Although petitioner identifies this challenge as being
3 to compliance with the city's plan Goal 2, in substance,
4 petitioner challenges compliance with "the Purpose of the
5 Commercial and Residential Plan Classification," which the
6 city listed as an applicable approval criterion. That
7 section states:

8 "The intent of this classification is to attempt
9 to maintain and encourage a visually pleasing Main
10 Street to incoming visitors and tourists by
11 retaining an emphasis on wood-frame types of
12 construction and masonry or stone construction.
13 Commercial uses would be separated from
14 residential uses through zoning. The residential
15 zoning would be similar to the Select Residential
16 Classification." City of Joseph Land Plan at 4.

17 Petitioner argues that because the proposed development
18 is neither residential nor commercial, the city cannot
19 establish compliance with this purpose statement. However,
20 the city's code also identifies light industrial uses as
21 conditional uses in the "C" zone. The city's prior
22 legislative decision to permit light industrial uses in the
23 "C" zone is not the subject of this review, and we find no
24 Goal 2 violation in the city's application of its
25 conditional use process in this case.

26 This subassignment of error is denied.

27 **C. Goal 5 - Natural Resources**

28 The city listed Policy 4 of the city's plan Goal 5 as
29 an applicable approval criterion. That policy states:

30 "Uses with undesirable noise, smoke, visual and

1 other objectionable characteristics may be
2 prohibited from locating in areas where such
3 conditions are incompatible with surrounding area
4 development."

5 The city's finding of compliance with this criterion
6 states, in full:

7 "The Council finds that the proposed use as
8 conditioned is not incompatible with surrounding
9 area development." Record 15.

10 As determined above, until the city knows the nature
11 and scope of the proposed use, it cannot determine whether
12 the use is incompatible with surrounding uses. Conditions
13 of approval aimed at minimizing or abating incompatibility
14 are insufficient to support a finding that the use will not
15 be incompatible with surrounding area development. The city
16 has not established compliance with this policy.

17 This subassignment of error is sustained.

18 **D. Goal 6 - Air, Water and Land Resources Quality**

19 The city listed Policy 2 of its plan Goal 6 as an
20 approval criterion. That policy states:

21 "It will be desirable to limit industry to the
22 non-polluting type."

23 The city's findings of compliance state:

24 "Testimony was received that "smoke-eaters" can be
25 installed and other engineering techniques can be
26 utilized to eliminate pollution from the
27 industrial use of the structure. Additional
28 testimony was received regarding concern for
29 employees, visitors and surrounding property
30 owners who may be adversely affected by pollutants
31 from said use. The Council finds that the
32 conditions that have been placed upon this
33 proposed use adequately address the issue of

1 pollution." Record 15-16.

2 While a proponent of the proposed use testified that he
3 recommended the use of "smoke-eaters" to minimize internal
4 foundry smoke, there is no evidence in the record indicating
5 that the proposed foundry intends to incorporate that
6 feature, or even if proposed, how that feature would affect
7 external foundry emissions. In addition, there is no
8 evidence in the record to support the finding that the
9 proposed development will use "other engineering techniques"
10 to "eliminate pollution."

11 Again, until the city knows the nature and scope of the
12 proposed development, it cannot affirmatively determine that
13 the use proposed does or can satisfy this policy.

14 This subassignment of error is sustained.

15 **E. Goal 8 - Recreational Needs**

16 The city listed two policies of its plan Goal 8 as
17 applicable approval criteria. Petitioner argues that "there
18 is no evidence in the record indicating that this Goal was
19 examined." Petition for Review 30. However, the city made
20 findings of compliance with these two policies, which
21 petitioner does not challenge.⁴

22 This subassignment of error is denied.

⁴To the extent this finding relies on an incorrect factual determination that the proposed development satisfies the definition of a light industrial business, the finding must nonetheless be re-examined once the city has sufficient information regarding nature and scope of the proposed development to determine whether the development satisfies that definition.

1 **F. Goal 9 - Economy**

2 The city listed two policies of its plan Goal 9 as
3 applicable approval criteria. Petitioner challenges the
4 findings of compliance with both. Policy 1 states:

5 "Social and economic factors will be considered in
6 addition to environmental effect when making
7 planning decisions."

8 The city's finding of compliance with that criterion states:

9 "The economic benefit of the proposed use was one
10 of the main factors leading to approval of this
11 application." Record 17.

12 Petitioner argues, and we agree, that the city points
13 to no evidence supporting that finding. While a presumed
14 economic benefit underlies proponents' testimony in the
15 record, the city has not explained what factors it considers
16 relevant to establishing compliance with this policy. Nor
17 are we cited to any evidence relied upon by the city to
18 determine that the proposed use would provide an economic
19 benefit.

20 The second economic policy listed by the city as an
21 approval criterion states:

22 "All new businesses and those existing will be
23 encouraged to meet the following design
24 specifications for the exterior of their buildings
25 in an attempt to lure new business and create a
26 better economy[.]"

27 The policy then specifies recommended construction styles

1 and materials.⁵

2 The city's finding of compliance states, in full:

3 "The issues presented were adequately addressed by
4 conditions placed on the proposed use." Record
5 17.

6 In response to petitioner's challenge to compliance
7 with this policy, intervenors argue:

8 "Petitioner argues that Intervenors should have
9 provided 'architectural drawings, blueprints,
10 elevations, or engineering' to support the City's
11 conclusions that the proposed use will be an
12 economic benefit to the City. [Petition for Review
13 at 30.] No such information is required by the
14 City's Comprehensive Plan Goal 9 policies."
15 Response Brief at 11.

16 Intervenors are correct that the policy does not
17 specify how the determination of compliance will be
18 established. However, the city has identified this policy
19 as an approval criterion. Therefore, the city's findings

⁵The design specifications listed in that policy include:

- "a. Wood or masonry type construction. If wood, preferably stained in neutral color. Metal siding and roofing shall be discouraged.
- "b. Re-siding of existing brick or stone buildings shall be discouraged.
- "c. Business signs should be made of wood where at all possible and preferably attached directly to the building.
- "d. Sidewalk awnings, when installed, should be of beam type construction such as exhibited by Drummer Pharmacy and Gateway Market.
- "e. In general, a Western Motif shall be considered desirable."

1 must point to some evidence in the record that describes how
2 the proposed development will comply with the policy.
3 Reliance on unspecified conditions of approval is inadequate
4 to establish compliance with this policy.

5 This subassignment of error is sustained.

6 **G. Goal 12 - Transportation**

7 The city listed Transportation Policy 6 as an approval
8 criterion. Petitioner argues generally that the city erred
9 by not specifying which other policies are applicable, and
10 specifically challenges compliance with one other policy,
11 Policy 1.⁶ Petitioner has not, however, established that
12 the city was required to consider Policy 1 as a mandatory
13 approval criterion. Nor has petitioner established that the
14 city was required to consider any of the other policies as
15 mandatory approval criteria. By their language, these
16 policies are aspirational, and thus do not constitute
17 mandatory approval criteria.

18 Plan Policy 6 states:

19 "The city shall encourage existing and future
20 development along Main Street to conform to the
21 provisions of this plan and to be well maintained

⁶Transportation Goal 12, Policy 1 states:

"All new developments within City jurisdiction shall provide as visually attractive transportation facilities as possible and of such specifications as listed within the appropriate Ordinance."

Petitioner cites to no ordinance that would provide any specifications for transportation facilities applicable to the proposed development.

1 to retain a high quality of visual
2 attractiveness."

3 In finding compliance with this policy, the city again
4 relied upon conditions of approval, without any actual
5 finding as to what factors the city considers necessary to
6 establish compliance with this policy, or what facts the
7 city relied on in establishing such compliance. Again,
8 until the nature and scope of the proposed development is
9 determined, the city cannot make a factual determination of
10 whether the development satisfies this policy.

11 This subassignment of error is sustained, in part.

12 The second assignment of error is sustained, in part.

13 **THIRD ASSIGNMENT OF ERROR**

14 Petitioner contends the city violated ORS 227.173(2) by
15 making its decision to approve intervenors' application
16 before it had prepared factual findings supporting its
17 determination.⁷ The factual basis of petitioner's
18 contention is that after expressing reservations regarding
19 whether intervenors had established compliance with all
20 applicable approval criteria, the city council nonetheless
21 directed staff to draft findings of approval. Those

⁷ORS 227.173(2) states:

"Approval or denial of a permit application * * * shall be based upon and accompanied by a brief statement that explains the criteria and standards considered relevant to the decision, states the facts relied upon in rendering the decision and explains the justification for the decision based on the criteria, standards and facts set forth."

1 findings were adopted, without any further public hearing or
2 council deliberation, at a hearing held five days later.

3 Comments of city council members made during the course
4 of their deliberations that are not reflected in the
5 county's final written findings, are not relevant in
6 determining whether the county complied with ORS 227.173(2)
7 in adopting its findings. See Waker Associates, Inc. v.
8 Clackamas County, 21 Or LUBA 588, 591 (1991). Moreover,
9 after the findings are prepared, there is no legal
10 requirement that those findings be discussed prior to their
11 adoption. McCoy v. Linn County, 16 Or LUBA 295, aff'd 90 Or
12 App 271 (1987). While we have determined that, in fact, the
13 city had before it inadequate factual information to make
14 findings approving the application, we find no violation of
15 ORS 227.173(2) in the manner in which the city adopted those
16 findings.

17 The third assignment of error is denied.

18 The city's decision is remanded.