



1 Opinion by Livingston.

2 **NATURE OF THE DECISION**

3 Petitioner appeals a decision of the city council  
4 allowing a lot line adjustment in the city's Low Density  
5 Single-Family Residential (R-1) zone.

6 **DISCUSSION**

7 Tax lot 9000 is a flag lot located behind tax lot 8900.  
8 On January 5, 1996, the city planning director approved a  
9 lot line adjustment to reconfigure tax lot 8900 and tax lot  
10 9000. The planning director applied the criteria for  
11 property line adjustments stated in the city's Ordinance  
12 1674, and concluded the criteria were met. The result of  
13 the reconfiguration was that tax lot 9000 was reduced in  
14 size by approximately square 700 feet, to 7,982 square feet.

15 Petitioner appealed the planning director's decision to  
16 the planning commission and, from there, to the city  
17 council. The main thrust of her argument at each level was  
18 that a road easement crossing tax lot 9000 and comprising  
19 682 square feet could not be considered part of the lot for  
20 the purpose of calculating lot size, and, therefore, the  
21 reconfigured tax lot 9000 was below the minimum lot size of  
22 7,500 square feet established for the R-1 zone. The city  
23 council rejected that argument and other arguments  
24 identified in its decision, and allowed the lot line  
25 adjustment.

26 Petitioner appealed to LUBA, and we affirmed in a

1 memorandum decision. Petitioner then appealed to the Court  
2 of Appeals, which reversed and remanded to LUBA on the  
3 ground that the city had failed to address at every level an  
4 argument raised by petitioner below. The court explained:

5 "Petitioner contends that the slope of the  
6 affected property 'drops off drastically,' and  
7 that development on it would pose a landslide  
8 risk. She therefore argues that, as part of this  
9 decision, the city was required to, but did not,  
10 apply Goal 1 of the Natural Features component of  
11 the city's comprehensive plan. The goal requires  
12 minimization of 'damage to the natural resources  
13 of the coastal zone that might result from  
14 inappropriate development in environmentally  
15 hazardous areas.' Policy 3 of the goal, which  
16 petitioner specifically contends is applicable and  
17 was not followed by the city, provides:

18 "Where hazardous areas have not been  
19 specifically identified but there is a  
20 reason to believe that a potential does  
21 exist, a site specific investigation by  
22 a registered geologist or engineer shall  
23 be required prior to development.'

24 "Petitioner maintains that she raised the issue of  
25 'environmental hazards and site specific  
26 investigation' at each level of the city's  
27 decision-making process and that the city did not  
28 address the issue. We emphasize that this opinion  
29 pertains directly only to the city's asserted  
30 failure to address the issue. We do not suggest  
31 anything about the merits of petitioner's  
32 substantive position, except that it is not  
33 outside the range that the city could have found  
34 meritorious had it considered it or should it do  
35 so later as a consequence of our remand."  
36 Jebousek v. City of Newport, 147 Or App 100, 102,  
37 \_\_\_ P2d \_\_\_ (1997) (emphasis in original).

38 Petitioner's "environmental hazards" argument is based  
39 on Newport Comprehensive Plan Goal 1 and, in particular,

1 Goal 1, Policy 3. It also relies on the intent statement in  
2 NZO 2-2-1.020 pertaining to the R-1 zone:

3 "The intent of the R-1 district is to provide for  
4 large lot residential development. This district  
5 should also be applied where environmental  
6 constraints such as topography, soils, geology, or  
7 flooding restrict the development potential of the  
8 land."

9 Because the city has not addressed petitioner's  
10 argument by interpreting these standards and applying them  
11 or not applying them in a manner consistent with the city's  
12 interpretation, we remand to give the city an opportunity to  
13 do so.

14 **PETITION FOR ATTORNEY FEES**

15 The city has filed a petition for attorney fees under  
16 ORS 197.830(14)(b). The petition is denied.