

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

4 WES RISHER, JEFF KING, SUSAN KING,)
5 JOE HIGGINS, DOROTHY HIGGINS, ROSE)
6 FLOREK, MILTON TAXER, MILDRED)
7 TAXER, PAUL GLEASON, JAY MOWER,)
8 and CORINNE WEBER,)

9)
10 Petitioners,)
11)

12 and)
13)

LUBA No. 97-024

14 ANTHONY BOUTARD, HAYHURST)
15 NEIGHBORHOOD ASSOCIATION,)
16 MULTNOMAH NEIGHBORHOOD)
17 ASSOCIATION, and MAPLEWOOD)
18 NEIGHBORHOOD ASSOCIATION,)

FINAL OPINION
AND ORDER

(MEMORANDUM OPINION)
(ORS 197.835(16))

19)
20 Intervenors-Petitioner,)
21)

22 vs.)
23)

24 CITY OF PORTLAND,)
25)

26 Respondent.)
27)

28 and)
29)

30 KAY DURTSCHI, MARY BECKER, HELEN)
31 FARRENS, WILL FULLER, JOHN KING,)
32 NICKIE LYNCH, KEN MEYER, CANDICE)
33 PALMER, DON PALMER, JOY STRICKER,)
34 and KATHERINA WOODWARD,)
35)

36 Intervenors-Respondent.)
37)

38
39 Appeal from the City of Portland.
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41 Jeffrey L. Kleinman, Portland, filed a petition for
42 review and argued on behalf of petitioner. With him on the
43 brief was Michael G. Hanlon, Portland, attorney for
44 Intervenors-Petitioner Hayhurst Neighborhood Association,
45 Multnomah Neighborhood Association, and Maplewood

1 Neighborhood Association.

2

3 Anthony Boutard, Intervenor-Petitioner, filed a brief
4 in support of the petition for review and argued on behalf
5 of intervenors-petitioner.

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7 Kathryn S. Beaumont, Senior Deputy City Attorney,
8 Portland, filed the response brief and argued on behalf of
9 respondent.

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11 Kay Durtschi, lead Intervenor-Respondent, filed a brief
12 in support of the response brief and argued on behalf of
13 intervenors-respondent.

14

15 GUSTAFSON, Referee; LIVINGSTON, Referee, participated
16 in the decision.

17

18

AFFIRMED

08/29/97

19

20

21 You are entitled to judicial review of this Order.
22 Judicial review is governed by the provisions of ORS
197.850.

1 Opinion by Gustafson.

2 **NATURE OF THE DECISION**

3 Petitioner appeals the city's approval of a conditional
4 use application for a community center located within a city
5 park.

6 **MOTIONS TO INTERVENE**

7

8 Anthony Boutard et al. move to intervene as petitioners
9 and Kay Durtschi et al. move to intervene as respondents.
10 There is no opposition to either motion, and both are
11 allowed.

12 **DISCUSSION**

13 The city approved a conditional use application to
14 develop a large recreational community center and a 105-
15 space parking lot at the northwest corner of Gabriel Park,
16 bounded by the intersection of two district collector
17 streets. Gabriel Park is zoned Open Space (OS) under the
18 Portland City Code (PCC). The PCC classifies community
19 centers as "community services" which, along with facilities
20 like swimming pools, golf courses, and schools are allowed
21 as conditional uses in OS zones. PCC 33.100.100.B.

22 Notwithstanding that provision, intervenors-petitioner
23 argue in their first assignment of error that a community
24 center is inherently incompatible with the purposes of the
25 OS zone, which generally are to preserve open and natural
26 areas for various functions including recreation, scenic

1 qualities, and environmental protection. PCC 33.100.010.
2 The city interpreted the PCC to allow built development like
3 community centers in OS zones, and found that the proposed
4 community center was consistent with the purposes of the OS
5 zone. Given that a community center is permitted as a
6 conditional use in OS zones, we are not able to say that the
7 city's interpretation rejecting the contrary assertion is
8 "clearly wrong." Goose Hollow Foothills League v. City of
9 Portland, 117 Or App 211, 217 (1992).

10 Petitioners challenge in their first assignment of
11 error the city's refusal to determine whether the proposed
12 conditional use complied strictly with certain criteria
13 designated "aspirational" in the Transportation Element of
14 the City of Portland Comprehensive Plan (Transportation
15 Element).¹ Petitioners argue that the PCC requirement that
16 the proposed use comply with the Transportation Element
17 renders all standards in it mandatory, even if, standing
18 alone, some of those standards are designated "aspirational"
19 and hence are not approval criteria. The city interpreted

¹The Transportation Element states that:

"The Transportation Element contains both aspirational language, which acts as a guideline, and mandatory language, which acts as approval criteria in reviewing land use cases. In cases where the word "should" is used in a policy or classification description, the policy is considered aspirational rather than mandatory; and the classification description represents the ideal rather than the actual functioning of a street. The word "shall" constitutes a mandatory criteria that must be met." Id. at 3.

1 the PCC to require the proposed use to conform with the
2 Transportation Element as it stands, and we cannot say that
3 interpretation is clearly wrong.

4 Petitioners also challenge, in assignment of error 3.1,
5 the adequacy of the city's findings on certain mandatory
6 criteria in the Transportation Element. The most glaring
7 inadequacy, according to petitioners, is the city's
8 conclusory finding that the proposed community center will
9 "encourage the development of a balanced affordable and
10 efficient transportation system [by] * * * [r]educing
11 reliance upon the automobile and per capita vehicle miles
12 traveled." Transportation Element, Goal 6, at 11. While
13 the city's findings on this criterion are cursory, the city
14 points to evidence in the record that bicycle and pedestrian
15 improvements near the site will encourage non-vehicular
16 transit, that nearby bus transit is available and ridership
17 would increase, and that district residents who currently
18 commute outside the district to enjoy facilities offered by
19 the proposed center will instead travel the shorter distance
20 to the local center. We find the city's finding adequately
21 supported by substantial evidence in the record.

22 Similarly, in assignment of error 3.2, petitioners
23 fault the city's findings on compliance with the requirement
24 that neighborhood collector streets be managed according to
25 hierarchical classifications, including the requirement that
26 "interdistrict, nonlocal traffic should be discouraged from

1 using Neighborhood Collector Streets," such as the two
2 streets that intersect near the proposed center.
3 Petitioners argue that the center will in fact encourage
4 large numbers of people from outside the district to travel
5 to the site via the collector streets, contrary to the
6 requirement. The city's findings on this issue focus on
7 road capacity rather than whether the proposed use will
8 encourage or discourage interdistrict travel on collector
9 roads; nonetheless, the city points to evidence in the
10 record that the location and character of the proposed
11 center will discourage nonresidents from traveling there.
12 The city also points to evidence elsewhere in the record
13 that nonresident use will be discouraged by higher fees, and
14 the fact that nondistrict suburban users are already served
15 by similar facilities in their districts. Moreover, the
16 location of the proposed center away from interdistrict
17 transportation corridors will discourage nondistrict users
18 from traveling to the center. Although there is certainly
19 evidence in the record to the contrary, the city's findings
20 on this point are supported by substantial evidence.

21 Petitioners and intervenor/petitioners' further
22 assignments and subassignments of error similarly provide no
23 basis for remand or reversal, and do not merit discussion.

24 Pursuant to ORS 197.835(16), the city's decision is
25 affirmed.