

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

3
4 BARBARA CHILLA,
5 *Petitioner,*

6
7 vs.

8
9 CITY OF NORTH BEND,
10 *Respondent.*

11
12 LUBA No. 2000-098

13
14 FINAL OPINION
15 AND ORDER

16
17 Appeal from City of North Bend.

18
19 C. Randall Tosh, Coos Bay, filed the petition for review and argued on behalf of
20 petitioner. With him on the brief was Corrigan, McClintock and Tosh.

21
22 Michael R. Stebbins, North Bend, filed the response brief and argued on behalf of
23 respondent. With him on the brief was Stebbins and Coffey.

24
25 BRIGGS, Board Member; BASSHAM, Board Chair; HOLSTUN, Board Member,
26 participated in the decision.

27
28 REMANDED

11/17/2000

29
30 You are entitled to judicial review of this Order. Judicial review is governed by the
31 provisions of ORS 197.850.
32

NATURE OF THE DECISION

Petitioner appeals a city decision to approve construction of a recreational shooting range and an expansion of AN existing retail gun store.

FACTS

On April 9, 1999, the operator of Pistol River Firearms submitted an application for a conditional use permit for an underground shooting range and an addition to an existing above-ground retail gun store. The subject property is zoned Residential Transitional (R-T) and fronts Highway 101 (also known as Broadway). The property is bordered on the other three sides by residential property. The applicant currently owns and has operated a gun store on the subject property since 1993 when he was granted a conditional use permit for that use.

The existing building includes 2,172 square feet. The applicant proposes to expand the existing building by an additional 1,690 square feet to include additional retail space, a storage area, shop area, office, restroom, and stairwell to the underground shooting range. The shooting range will be approximately 36 feet by 125 feet, and will consist of six shooting lanes. The range will be built of solid concrete walls and will be soundproofed and ventilated so that no sight, sound or smell of shooting activities can be detected at the surface. The applicant proposes additional parking over the top of the underground shooting range.

The current business on the property employs one full-time and three part-time employees. The store presently serves approximately 20 to 25 customers per day over the course of 8 to 10 hours. The applicant initially proposed a total of 29 parking spaces, including the six parking spaces currently on the property. The total number of proposed parking spaces was later reduced to 18.

On June 21, 1999, the planning commission granted a conditional use permit to the applicant to allow the proposed activities. Petitioner appealed to the city council, which after

1 a hearing adopted the planning commission’s findings and upheld the decision. On August
2 28, 1999, petitioner appealed the decision to LUBA. Respondent made a motion for a
3 voluntary remand on November 10, 1999, which was granted. On February 7, 2000, a
4 hearing was held before the planning commission. On February 24, 2000, the planning
5 commission granted the conditional use permit with five conditions. Petitioner appealed the
6 decision to the city council which again upheld the decision. This appeal followed.

7 **FIRST ASSIGNMENT OF ERROR**

8 Petitioner argues that the city erred in addressing only the requirements of North
9 Bend Zoning Ordinance (NBZO) 36(2), and in failing to address the requirements of NBZO
10 36(1).¹ Petitioner asserts that NBZO 36(1) requires a determination that the proposed use is

¹NBZO 36 provides:

“Land within the R-T zone shall be subject to rezoning for certain limited commercial purposes on a conditional use basis under the following regulations and restrictions:

- “(1) Rezoning of parcels of land shall be for specified uses which shall be restricted to those which would generate low volumes of traffic and be compatible with adjacent uses.
- “(2) All construction and use permits for commercial uses will be subject to review and approval by the Planning Commission which shall apply the following restrictions and conditions:
 - “(a) No limited commercial use shall be permitted unless it will generate a low volume of vehicular and pedestrian traffic.
 - “(b) Restrictions shall be imposed so that improvements will be compatible with uses on adjacent properties and such restrictions shall include exercising architectural and design control, controlling commercial density including lot coverage, setbacks and height of buildings, and requiring landscaping and screening of adjacent residential areas and designating the location, height and type of signs.
 - “(c) The impact of traffic on adjacent properties and on adjacent streets shall be controlled by designating the location of driveways, access roads and parking facilities and by regulating the direction and flow of traffic to and from the property rezoned.
 - “(d) Other restrictions and conditions shall be imposed as may be necessary for the orderly development of the area and its conversion to commercial uses

1 for a “limited commercial purpose” that is “compatible with adjacent uses.” Petitioner
2 contends that the issue of compliance with NBZO 36(1) was raised below and that the city
3 nonetheless failed to determine that the proposed use constitutes a “limited commercial
4 purpose.” Further, petitioner argues that the city erred in considering whether the proposed
5 *improvements*, rather than the proposed *uses*, are compatible with adjacent properties, as
6 petitioner contends NBZO 36(1) requires.

7 The city responds that its decision addresses the nature of the proposed use and its
8 compatibility with adjacent uses in the context of NBZO 36(2). The city contends that
9 nothing in either NBZO 36(1) or (2) requires a separate finding that the proposed use is for a
10 “limited commercial purpose” or falls within a distinct category of “limited commercial use.”
11 All NBZO 36 requires, the city argues, is that the city find that the proposed commercial use
12 is limited as prescribed in NBZO 36(2). The city argues that the city council adopted an
13 interpretation to that effect in finding 3A, which states:

14 “The purpose of the residential transitional zone is to allow for the orderly
15 development of the area and its conversions to commercial uses with the least
16 amount of adverse [effect] upon traffic and adjoining properties (see section
17 36(2)(d)).” Record 9.

18 We disagree with the city that finding 3A contains an adequate express or implicit
19 interpretation to the effect that NBZO 36(1) contains no applicable criteria or that no findings
20 under that provision are necessary. Both NBZO 36(1) and (2) contain similar or overlapping
21 language, although NBZO 36(1) appears to be directed at rezoning the property to allow for
22 certain uses, while NBZO 36(2) appears to be directed at “construction and use permits” for
23 those uses. It is not clear to us whether, as petitioner argues, the prefatory sentence to NBZO
24 36 and NBZO 36(1) require findings in addition to those adopted under NBZO 36(2), or
25 whether, as the city contends, no findings regarding the nature of the proposed use are

with the least amount of adverse [effect] upon traffic and adjoining
properties.”

1 required other than as mandated by NBZO 36(2). Under these circumstances, it is
2 appropriate to remand the decision to the city to interpret NBZO 36 in the first instance.
3 ORS 197.829(2); *Opp v. City of Portland*, 153 Or App 10, 14, 955 P2d 768 (1998).

4 The first assignment of error is sustained.

5 **SECOND ASSIGNMENT OF ERROR**

6 Petitioner challenges the city’s findings that address the traffic impacts of the
7 proposed use.²

²In relevant part, those findings are as follows:

“2C. Broadway [Highway 101] is designed to handle a high volume of traffic. According to the Bay Area Transportation Study the average daily traffic count on Broadway is between 11,000 and 15,000 vehicles. This average daily traffic count is considered high volume and consistent with a commercial use area.

“* * * * *

“2F. The Planning Commission finds that there is a difference between general retail sales (which is often defined as: the sale or rental of commonly used goods and merchandise for personal or household use) and a specialty store. A specialty store is a store that sells specific items that are not every day products; the gun store is a specialty store.

“2G. Based on information obtained from the Institute of Transportation Engineers, 1991 Trip Generation Guide, the North Bend Planning Commission finds:

“Uses such as eating and drinking establishments, grocery stores, barber shops, beauty parlors, service stations and convenience stores generate high volume traffic.

“General retail stores, banks with drive-ups, medical offices, clinics and personal services generate a moderate volume of traffic.

“General and professional offices, furniture and appliance stores, and specialty stores would generate low volume traffic.

“2H. The applicant conducted a traffic count study * * * of vehicles that carried individuals that used [the applicant’s] store during a given time period. The study showed that applicant’s store generated an average of 5.11 vehicles per hour on Wall Street. * * *

“* * * * *

“2K. The owner’s current use of the subject property generates a low traffic volume.

“* * * * *

1 **A. Finding 2G**

2 Petitioner argues that the city erred in relying upon the Institute of Transportation
3 Engineers, 1991 Trip Generation Guide (guide), because the guide was never submitted into
4 the record. Petitioner contends that the information within the guide is adjudicative fact, and
5 the city cannot take official notice of the guide, or otherwise rely upon it, given its absence
6 from the record. Consequently, petitioner argues, the city’s findings based upon the guide
7 are not supported by substantial evidence. Petitioner also asserts under this subassignment of
8 error that the city planner inappropriately acted as an advocate for the applicant by
9 discussing and relying upon the guide in the staff report.

10 The city responds that there was substantial evidence presented during the hearings to
11 support the city’s findings. According to the city, the staff report summarized relevant
12 portions of the guide, and the city relied upon the staff report, rather than the guide, in
13 assessing the traffic impacts of the proposed use. The city argues that the staff report is part

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- “2M. The [NBZO] does not establish a parking demand for a specialty store. However, it does grant the Planning Commission the authority to determine the parking requirements based on a comparable use. The closest listed comparable use is a furniture store which requires 1 space per 500 square feet of floor area.
 - “2N. If the Planning Commission were to set the parking demand for a specialty store at 1 space per 500 square feet of floor area, the applicant would be required to provide a total of 18 parking spaces for the entire development * * *
 - “2O. A survey of other coastal cities revealed North Bend’s parking requirements are strict. Most cities allow for the exclusion of restrooms, hallways, storage areas and lobbies form parking calculations. * * *.
 - “2P Located within the same general area as [the applicant’s] property along Broadway are several high volume and medium volume commercial uses.
 - “2Q. The expansion of the retail building by 1,690 square feet and adding a 6 lane shooting range will increase the traffic volume to the property.
 - “2R. After the planned expanded development of [the applicant’s] property, the property will continue to generate a low volume of vehicular and pedestrian traffic.
 - “2S. A specialty store such as Pistol River Firearms would be expected to generate a low volume of traffic.” Record 7-9.

1 of the record and was available before both hearings, and that petitioner had ample
2 opportunity to object below to the staff report’s reliance on the guide, but failed to do so.

3 A staff report may contain evidence that the local government can rely upon in its
4 findings. *Scott v. City of Portland*, 17 Or LUBA 197, 202 (1988). Petitioner does not explain
5 why it was error for the city to consider and rely on the portions of the guide summarized in
6 the staff report, other than to contend that doing so improperly shifted the burden of proof on
7 the matter of traffic volume from the applicant to petitioner. According to petitioner, the
8 applicant has the burden of demonstrating that the proposed use will generate only low
9 volumes of traffic, and the city staff’s use of the guide essentially cast the city in the role of
10 advocate for the applicant. The result, petitioner argues, was to obligate petitioner to
11 demonstrate that the proposed use would generate high volumes of traffic. However, we see
12 no significance in the source of the information relied upon in the city’s decision, unless the
13 source bears on whether the information is substantial evidence. Nor are we aware of any
14 general prohibition against local government staff referring to and relying upon extra-record
15 published sources such as the guide in formulating recommendations and proposed
16 interpretations of local provisions.³ Petitioner has not established that the city’s actions in
17 this case improperly shifted the burden of proof or otherwise constituted error.

18 This subassignment of error is denied.

19 **B. Findings 2C, 2O and 2P**

20 Petitioner next contends that findings 2C, 2O, and 2P are not supported by substantial
21 evidence. *See* n 2. Petitioner argues that the “Bay Area Transportation Study” and the
22 regulations of “other coastal cities” are not in the record and cannot be relied on to support

³It may be that if the validity or reliability of such extra-record published sources is called into question, a staff report that relied upon such a source without including it in the record would thereby be undermined and no longer constitute substantial evidence. That does not appear to be the case here. Petitioner has not questioned, either below or before LUBA, the validity or reliability of the guide or the portions of the guide summarized in the staff report.

1 the city's findings. Petitioner also argues that there is no evidence of high or medium
2 volume commercial uses in the general area.

3 The city responds that the Bay Area Transportation Study has been adopted as part of
4 the city's comprehensive plan and its factual contents can be used to support the city's
5 findings. With respect to finding 2O, the city argues that it is supported by a description of a
6 survey of coastal cities contained in the staff report. With respect to finding 2P, the city
7 argues that it is supported by testimony supplied by the applicant at the February 7, 2000
8 planning commission meeting and that there is no evidence to the contrary.

9 We agree with the city that it did not err in relying upon factual information in the
10 Bay Area Transportation Study. Petitioner does not explain why the city cannot rely upon
11 the summary of coastal cities' regulations in the staff report to support finding 2O. In any
12 case, petitioner has not explained what bearing that finding has on any approval criterion or
13 the city's decision. *See Reynolds v. Clackamas County*, 21 Or LUBA 412, 414-15 (1991) (an
14 incorrect finding is harmless error where the decision maker did not rely on the incorrect
15 finding in determining compliance with applicable approval criteria). With respect to finding
16 2P, the city cites to testimony at Record 76 that we agree is sufficient to support the city's
17 findings regarding the traffic volumes generated by other commercial uses in the area.⁴

18 This subassignment of error is denied.

⁴The cited testimony states:

“* * * As there is no definition of high, medium and low volume traffic within the NBZO, it is reasonable to say that Public Square Shopping Center and Pony Village are high traffic generators; that Security Bank, Les Schwab and McDonalds are medium traffic generators (due to high turnover and numbers of customers) and all the other small businesses on Broadway are low traffic volume generators. Logically, Pistol River Firearms will generate somewhat more traffic than it does now, which is very low, but certainly nothing like a McDonalds or Security Bank. * * *” Record 76.

1 **C. Findings 2F, 2G, 2M, 2N and 2S**

2 Petitioner asserts that findings 2F, 2G, 2M, 2N and 2S improperly rely upon the city’s
3 characterization of the proposed use as a “specialty store” for purposes of establishing off-
4 street parking requirements. See n 2. Petitioner argues that “specialty store” is an
5 inappropriate classification as it is not found within the NBZO. Petitioner explains that,
6 under NBZO 80(5), if the proposed use is not listed in the code, then the planning
7 commission must determine the parking requirements based upon a comparable use that is
8 listed.⁵ Because “specialty store” is not a listed use, petitioner argues, the city erred in
9 essentially creating such a category.

10 The city responds that it did not create a new category of “specialty store,” but merely
11 used that term to distinguish the applicant’s store from general retail stores. According to the
12 city, the comparison it made was to “furniture store,” which is a listed use under the code,
13 and which is also classed as a “specialty store” under the Trip Generation Guide.

14 We agree with the city that its findings do not create a category of “specialty stores,”
15 but rather use that term to distinguish the proposed use from general retail uses. The city’s
16 findings compare the proposed use to a furniture store, a listed use under the city’s code.
17 That furniture stores are classified along with “specialty stores” under the guide and that the
18 city’s findings also refer to the proposed use as a specialty store for purposes of calculating
19 off-street parking requirements does not demonstrate a violation of NBZO 80(5).

20 This subassignment of error is denied.

⁵ NBZO 80(5) provides:

“Requirements for a building or development not specifically listed herein shall be determined by the Planning Commission based upon the requirements of comparable uses listed.”

1 **D. Anticipated Future Volume of Traffic**

2 Petitioner argues that there is not substantial evidence to support the city’s ultimate
3 conclusion that the proposed use will generate only low volumes of traffic, as required by
4 NBZO 36(2)(a). Specifically, petitioner argues that the study of traffic generated by the
5 existing store is not sufficient to measure the possible future traffic generated by the
6 proposed expansion. Petitioner contends that the only substantial evidence in the record on
7 this point is the applicant’s original site plan, which calls for 29 parking spaces, an increase
8 of 500 percent over the existing parking. Petitioner submits that the site plan demonstrates
9 that the proposed use will generate more than low volumes of traffic.

10 The city responds that its finding that the proposed use will generate only low
11 volumes of traffic is supported by substantial evidence. The city explains that its decision
12 requires only 18 spaces, and the reason the original site plan proposed 29 spaces was because
13 the applicant thought that the city would classify the proposed use as a general retail store,
14 and thus would require more parking spaces than in fact was the case.

15 The parties and the city’s decision treat the number of off-street parking spaces
16 required for the proposed use as an adequate measure of compliance with NBZO 36(2)(a).
17 The city required 18 parking spaces, based on a formula described in finding 2N. *See* n 3.
18 Petitioner does not challenge the evidence supporting that finding, or explain why the need
19 for 18 parking spaces represents a volume of traffic inconsistent with NBZO 36(2)(a).

20 This subassignment of error is denied.

21 The second assignment of error is denied.

22 **THIRD ASSIGNMENT OF ERROR**

23 Petitioner asserts that the city failed to address NBZO 36(2)(d), by failing to (1)
24 identify adverse impacts to adjoining properties and (2) impose additional restrictions and
25 conditions to ensure that the least amount of adverse impact to adjoining properties will
26 occur. According to petitioner, the city failed to address issues raised below regarding

1 adverse impacts caused by late hours of operation, devaluation of adjoining residential
2 property, increased traffic, street parking and light pollution.

3 The city responds that it addressed the issues petitioner identifies here under
4 NBZO 36(2)(b), which requires that the proposed use be compatible with adjoining uses.
5 Further, the city argues that the conditions imposed are sufficient to ensure compliance with
6 NBZO 36(2).⁶ According to the city, NBZO 36(2)(d) does not require that the city address
7 all conceivable adverse impacts and impose restrictions to ensure the least impact on
8 adjoining properties, as petitioner suggests. We understand the city to argue in its brief that
9 NBZO 36(2)(d) merely authorizes the city to impose additional restrictions or conditions,
10 beyond those restrictions and conditions that may be imposed to meet the requirements of
11 other subsections of NBZO 36(2), “as may be necessary for the orderly development of the
12 area and its conversion to commercial uses.” According to the city, petitioner has made no
13 attempt to demonstrate either before the city or LUBA that any additional restrictions or
14 conditions are “necessary” to mitigate the identified concerns. The city also points out that
15 petitioner objects only to the proposed shooting range and not to the existing use or
16 expansion of the retail space.⁷ The city submits that because the shooting range is

⁶The conditions imposed in the final decision are as follows:

- “1. The applicant must provide a minimum of 18 parking spaces and comply with the off street parking requirements listed in Sections 79-84 of the North Bend Zoning Ordinance.
- “2. The applicant shall provide screening to diffuse light and to buffer the sound.
- “3. All lighting shall be shaded to minimize off site illumination.
- “4. The hours of operation for the total facility will be 9:00 a.m. to 8:00 p.m. Monday through Saturday and 12:00 noon to 5:00 p.m. Sunday.
- “5. The applicant shall comply with North Bend Ordinance #1547.” Record 11.

⁷Finding 3J states:

“The appellant has no objection to the use of the owner’s property as a retail firearms store and has no objection to the expansion of the square footage of the retail store.” Record 10.

1 underground and is undetectable from the surface, any adverse impacts from the range are
2 minimal and adequately addressed under NBZO 36(2)(b).

3 The parties' disagreement turns on the meaning and function of NBZO 36(2)(d). In
4 petitioner's view, NBZO 36(2)(d) requires the city to (1) adopt findings addressing all
5 identified adverse impacts of the proposed use and (2) impose restrictions and conditions
6 sufficient to ensure the *least* amount of adverse impact. The city argues that no findings or
7 restrictions are required under NBZO 36(2)(d) at all, as long as the restrictions and
8 conditions that are imposed under NBZO 36(2)(b) to ensure compatibility with adjoining
9 uses are also adequate to ensure "orderly development" with the "least amount of adverse
10 effect."

11 The challenged decision does not address NBZO 36(2)(d), or contain a reviewable
12 interpretation of that provision, to the effect that NBZO 36(2)(d) need not be addressed or is
13 adequately addressed by the city's findings under NBZO 36(2)(b), as the city argues in its
14 brief. The purpose and function of NBZO 36(2)(d) and its relationship with NBZO 36(2)(b)
15 are unclear. Accordingly, it is appropriate to remand the decision for the city council to
16 interpret that provision in the first instance. ORS 197.829(2); *Opp*, 153 Or App at 14.

17 The third assignment of error is sustained.

18 **FOURTH ASSIGNMENT OF ERROR**

19 Petitioner argues that the city's findings under NBZO 36(2)(b), regarding
20 compatibility of the proposed use with adjoining uses, are inadequate and not supported by
21 substantial evidence.⁸

⁸The city's findings regarding compatibility state, in relevant part:

"3D. The applicant proposes constructing an underground shooting range with 6 shooting lanes. The shooting range would be underneath the parking lot on the north portion of the property. There will be minimal visual impact from the addition. The range would be used for testing, training and recreational purposes.

1 **A. Findings 3D, 3E, 3F, 3G, 3I, 3K, 3M and 3Q**

2 Petitioner argues:

“3E. The recreational use is not incompatible with the adjacent properties’ uses because it is underground.

“3F. The shooting range will be constructed with thick cement walls and ceiling and a modern air and sound filtering system. No sound or odor will be detectable from the surface.

“3G. The development of the shooting range proposed by the applicant is a related use to the primary use of the property.

“* * * * *

“3I. There is no evidence in the record that the City has received any complaints concerning the existing use since it began operations in 1993.

“* * * * *

“3K. Section 36(2)(b) of the North Bend Zoning ordinance sets out the restrictions which may be imposed to make a use compatible with the adjacent properties. Such restrictions shall include exercising architectural and design control, controlling commercial density including lot coverage, setbacks and height of buildings and requiring landscaping and screening of adjacent residential areas and designation of the location, type and height of sign.

“The applicant has met or exceeded all the restrictions set out in Section 36(2)(b) by placing the shooting range underground, designing the above ground structure to appear residential in nature, providing a site obscuring fence wall or evergreen hedge between the properties and providing screened lighting which will eliminate any off site illumination.

“* * * * *

“3M. North Bend Ordinance #1547 provides that no person may discharge or shoot any firearm, air gun, slingshot, bow and arrow, or other similar weapon or [device]. However, the Ordinance then states that it does not apply to the discharge of a gun or device on a shooting range operated, supervised, or approved by the North Bend Police Department. The applicant would be required to obtain approval by the North Bend Police Department before placing the shooting range in operation. If the approval is obtained, shooting of guns in the planned shooting range would be legal and irrelevant to the compatibility of the proposed improvements with the adjacent properties’ uses.

“* * * * *

“3Q. By requiring fence and landscape screening of adjacent residential properties and limiting the hours of operation of the retail store, the proposed expansion of owner’s use of his property as a retail sales store for firearms with an underground 6 lane shooting range is compatible with uses on adjacent properties.” Record 9-11.

1 “* * * Finding 3E does not adequately explain why the fact that the
2 recreational shooting range is underground makes the improvement
3 compatible with adjacent uses, and is an overgeneralization. There is nothing
4 in the record which supports Finding 3G, and this finding likewise fails to
5 adequately explain why a new, different use is related to the primary use on
6 the Applicant’s property. Finding 3K is inadequate, since it fails to identify
7 all relevant aspects of the adjoining properties which must be considered in
8 making any determination of the compatibility between the Applicant’s
9 proposed improvements and those properties. Finding 3I is inadequate, since
10 the findings must be based on the existence of evidence, not its absence or
11 lack of evidence to the contrary. * * * Findings 3M and 3Q are also
12 inadequate in that both fail to adequately explain why approval renders the
13 Applicant’s proposed improvement—i.e. a recreational shooting range--
14 compatible with adjoining properties.” Petition for Review 20 (case citation
15 omitted).

16 The city responds, and we agree, that petitioner has not demonstrated that the
17 findings set forth in n 8 are inadequate. Petitioner’s argument fails to appreciate that the
18 foregoing findings *collectively* explain the city’s conclusion that the proposed use complies
19 with a single criterion, NBZO 36(2)(b). Taken together, the findings adequately explain why
20 the city believes the proposed shooting range is compatible with adjoining uses.

21 The only evidentiary challenge we discern in petitioner’s argument is with respect to
22 finding 3G. The city cites to testimony within the record to the effect that the proposed use
23 merely an expansion of the primary use and that the expansion “* * * does not materially
24 change the function of the establishment * * *.” Record 513. Petitioner identifies no
25 evidence to the contrary. It is not clear to us how the question of whether the proposed
26 expansion is related to the primary use bears on compliance with NBZO 36(2)(b), or any
27 other applicable criteria. However, we conclude that it is supported by substantial evidence.

28 **B. Finding 3P**

29 Finding 3P states that “[a]nother shooting range has existed for many years in the
30 same area of the City, located at the North Bend Junior High School which is in a residential
31 zone.” Record 11. Petitioner argues that this finding is based on a comment by a city
32 council member during deliberations, and is not based on any evidence in the record.

1 Respondent concedes that finding 3P is not based upon evidence in the record, but
2 argues that the city’s remaining findings of compliance with NBZO 36(2)(b) are supported
3 by substantial evidence and adequate to demonstrate compliance with that provision. For the
4 reasons expressed above, we agree.

5 The fourth assignment of error is denied.

6 **FIFTH ASSIGNMENT OF ERROR**

7 Petitioner argues that the city failed to impose conditions sufficient to ensure
8 compliance with the screening requirements in NBZO 84(6)(f).⁹

9 The city responds that petitioner fails to recognize that condition 1 of the challenged
10 decision requires compliance with, *inter alia*, NBZO 84. Condition 1 of the final order
11 states:

12 “The applicant must provide a minimum of 18 parking spaces and comply
13 with the off street parking requirements listed in Sections 79-84 of the North
14 Bend Zoning Ordinance.” Record 11.

15 We agree with the city that Condition 1 appears to require compliance with the particular
16 ordinance provision that petitioner asserts was ignored by the city.

17 The fifth assignment of error is denied.

18 The city’s decision is remanded.

⁹Petitioner’s argument in her brief cites NBZO 80(f). However, no such provision exists, and it is evident from other portions of the brief and the city’s response brief that the focus of petitioner’s argument is actually NBZO 84(6)(f). NBZO 84(6)(f) provides:

“Where parking abuts a public right-of-way, a wall or screen planting shall be provided sufficient to screen the parking facilities but without causing encroachment into vision clearance areas. Except in residential areas, where a parking facility or driveway is serving other than a one or two family dwelling and is located adjacent to residential, agricultural or institutional uses, a site obscuring fence, wall or evergreen hedge shall be provided on the property line. Such screening shall be maintained in good condition and protected from being damaged by vehicles using the parking area.”