

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

3
4 FRIENDS OF URBAN RENEWAL,
5 NEILSON ABEEL, ROBERT AMES,
6 LAWRENCE DULLY, WAYNE KINGSLEY,
7 PATRICK LA CROSSE, OLIVER NORVILLE
8 and JEFFREY TASHMAN,
9 *Petitioners,*

10
11 vs.

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13 CITY OF PORTLAND,
14 *Respondent,*

15
16 and

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18 PORTLAND DEVELOPMENT COMMISSION,
19 *Intervenor-Respondent.*

20
21 LUBA No. 2008-116

22
23 FINAL OPINION
24 AND ORDER

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26 Appeal from City of Portland.

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28 Steven L. Pfeiffer and Jessica T. Hamilton, Portland, filed the petition for review.
29 With them on the brief was Perkins Coie LLP. Roger A. Alfred, Portland, argued on behalf
30 of petitioners.

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32 Kathryn S. Beaumont, Senior Deputy City Attorney, Portland, filed a joint response
33 brief and argued on behalf of respondent. With her on the brief was David J. Elott.

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35 David J. Elott, Interim General Counsel, Portland, filed a joint response brief and
36 argued on behalf of intervenor-respondent. With him on the brief was Kathryn S. Beaumont.

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38 BASSHAM, Board Chair; HOLSTUN, Board Member, participated in the decision.

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40 RYAN, Board Member, did not participate in the decision.

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42 REMANDED

01/02/2009

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

NATURE OF THE DECISION

Petitioners appeal an ordinance that amends the River District Urban Renewal Plan to include a noncontiguous tract, and to increase the maximum indebtedness, in order to fund the construction of a multi-purpose public structure on the noncontiguous tract.

FACTS

The River District Urban Renewal Plan (original plan) was adopted in 1998, with a maximum indebtedness of \$224 million. The area covered by the original plan is located entirely in the northwest downtown area of the City of Portland. In 2007, the Portland Development Commission (PDC) began considering amendments to the original plan. An advisory group recommended two amendments, both of which were ultimately adopted.¹

The amendment at issue in the present appeal proposes the creation of a “satellite district” in outer southeast Portland almost ten miles from the original plan area, to include a 8.53-acre tract (“expansion area”) owned by the David Douglas school district, and to increase the maximum indebtedness for the entire River District Urban Renewal Plan area by \$19 million. The expansion area is zoned for residential use and consists of two large parcels each developed with a dwelling and associated outbuildings. The school district desires to remove the existing structures and build a new elementary school and multi-purpose community facility on the expansion area.

On March 12, 2008, the city council adopted a resolution that provides criteria for adding noncontiguous urban renewal areas, and a second resolution directing PDC to develop and present to the city council the proposed satellite district. PDC did so, and on June 25, 2008, the city council adopted the challenged ordinance creating the satellite district and increasing the maximum indebtedness. This appeal followed.

¹ The other amendment is the subject of a separate appeal. *Friends of Urban Renewal v. City of Portland* (LUBA No. 2008-117).

1 **INTRODUCTION**

2 Adoption and amendment of urban renewal plans are governed by ORS chapter 457.
3 Urban renewal plans are intended to improve existing blighted areas and prevent future
4 conditions of blight. ORS 457.020.² “Blighted areas” are defined broadly at
5 ORS 457.010(1) to mean “areas that, by reason of deterioration, faulty planning, inadequate
6 or improper facilities, deleterious land use or the existence of unsafe structures, or any
7 combination of these factors, are detrimental to the safety, health or welfare of the
8 community[,]” as characterized by the existence of one or more specified conditions.³

² ORS 457.020 is the legislative declaration of the necessity and purpose for urban renewal areas. It declares, in relevant part:

- “(1) That there exist within the state blighted areas.
- “(2) That such areas impair economic values and tax revenues.
- “(3) That such areas cause an increase in and spread of disease and crime and constitute a menace to the health, safety, morals and welfare of the residents of the state and that these conditions necessitate excessive and disproportionate expenditures of public funds for crime prevention and punishment, public health, safety and welfare, fire and accident protection and other public services and facilities.”

³ ORS 457.010(1) provides:

“‘Blighted areas’ means areas that, by reason of deterioration, faulty planning, inadequate or improper facilities, deleterious land use or the existence of unsafe structures, or any combination of these factors, are detrimental to the safety, health or welfare of the community. A blighted area is characterized by the existence of one or more of the following conditions:

- “(a) The existence of buildings and structures, used or intended to be used for living, commercial, industrial or other purposes, or any combination of those uses, that are unfit or unsafe to occupy for those purposes because of any one or a combination of the following conditions:
 - “(A) Defective design and quality of physical construction;
 - “(B) Faulty interior arrangement and exterior spacing;
 - “(C) Overcrowding and a high density of population;
 - “(D) Inadequate provision for ventilation, light, sanitation, open spaces and recreation facilities; or

1 ORS 457.010(14) defines “urban renewal area” in relevant part as “a blighted area included
2 in an urban renewal plan * * *.” In turn, the statute defines an “urban renewal plan” as “a
3 plan, as it exists or is changed or modified from time to time, for one or more urban renewal
4 areas[.]” ORS 457.010(16).

5 ORS 457.085 sets out the requirements for the urban renewal plan. The plan must
6 include, among other things, a description of each urban renewal project to be undertaken.

7 ORS 457.085(2)(a).⁴ Further, the plan must include a description of “what types of possible

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- “(E) Obsolescence, deterioration, dilapidation, mixed character or shifting of uses;
 - “(b) An economic dislocation, deterioration or disuse of property resulting from faulty planning;
 - “(c) The division or subdivision and sale of property or lots of irregular form and shape and inadequate size or dimensions for property usefulness and development;
 - “(d) The laying out of property or lots in disregard of contours, drainage and other physical characteristics of the terrain and surrounding conditions;
 - “(e) The existence of inadequate streets and other rights of way, open spaces and utilities;
 - “(f) The existence of property or lots or other areas that are subject to inundation by water;
 - “(g) A prevalence of depreciated values, impaired investments and social and economic maladjustments to such an extent that the capacity to pay taxes is reduced and tax receipts are inadequate for the cost of public services rendered;
 - “(h) A growing or total lack of proper utilization of areas, resulting in a stagnant and unproductive condition of land potentially useful and valuable for contributing to the public health, safety and welfare; or
 - “(i) A loss of population and reduction of proper utilization of the area, resulting in its further deterioration and added costs to the taxpayer for the creation of new public facilities and services elsewhere.”

⁴ ORS 457.085(2) provides, in relevant part:

“An urban renewal plan proposed by an urban renewal agency shall include all of the following:

- “(a) A description of each urban renewal project to be undertaken.

1 future amendments to the plan are substantial amendments and require the same notice,
2 hearing and approval procedure required of the original plan[.]” ORS 457.085(2)(i).
3 Substantial amendments include adding land to the urban renewal area that totals more than
4 one percent of the existing area, and increasing maximum indebtedness. *Id.* Finally,
5 ORS 457.085(2)(j) provides that for projects that include a public building, the plan must
6 include “an explanation of how the building serves or benefits the urban renewal area[.]”

7 The urban renewal plan must be supported by an urban renewal report that includes
8 the reasons and information specified in ORS 457.085(3).⁵ On receipt of the urban renewal

“(b) An outline for the development, redevelopment, improvements, land acquisition, demolition and removal of structures, clearance, rehabilitation or conservation of the urban renewal areas of the plan.

“(c) A map and legal description of the urban renewal areas of the plan.

“(d) An explanation of its relationship to definite local objectives regarding appropriate land uses and improved traffic, public transportation, public utilities, telecommunications utilities, recreational and community facilities and other public improvements.

“(e) An indication of proposed land uses, maximum densities and building requirements for each urban renewal area.

“* * * * *

“(i) A description of what types of possible future amendments to the plan are substantial amendments and require the same notice, hearing and approval procedure required of the original plan under ORS 457.095 as provided in ORS 457.220, including but not limited to amendments:

“(A) Adding land to the urban renewal area, except for an addition of land that totals not more than one percent of the existing area of the urban renewal area.

“(B) Increasing the maximum amount of indebtedness that can be issued or incurred under the plan.

“(j) For a project which includes a public building, an explanation of how the building serves or benefits the urban renewal area.”

⁵ ORS 457.085(3) provides, in relevant part:

“An urban renewal plan shall be accompanied by a report which shall contain:

1 report, the governing body may approve the proposed urban renewal plan, if it adopts
2 findings that “each urban renewal area is blighted,” among other required findings. ORS
3 457.095.⁶ The local government must approve a substantial amendment to an urban renewal
4 plan in the same manner that it approved the original plan. ORS 457.220.

5 With that overview of the urban renewal statutes, we turn to petitioners’ assignments
6 of error.

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- “(a) A description of physical, social and economic conditions in the urban renewal areas of the plan and the expected impact, including the fiscal impact, of the plan in light of added services or increased population;
 - “(b) Reasons for selection of each urban renewal area in the plan;
 - “(c) The relationship between each project to be undertaken under the plan and the existing conditions in the urban renewal area;
 - “(d) The estimated total cost of each project and the sources of moneys to pay such costs;
 - “(e) The anticipated completion date for each project;
 - “(f) The estimated amount of money required in each urban renewal area under ORS 457.420 to 457.460 and the anticipated year in which indebtedness will be retired or otherwise provided for under ORS 457.420 to 457.460;
 - “(g) A financial analysis of the plan with sufficient information to determine feasibility;
 - “(h) A fiscal impact statement that estimates the impact of the tax increment financing, both until and after the indebtedness is repaid, upon all entities levying taxes upon property in the urban renewal area[.]”

⁶ ORS 457.095 provides, in relevant part:

“The governing body of the municipality, upon receipt of a proposed urban renewal plan and report from the municipality’s urban renewal agency and after public notice and hearing and consideration of public testimony and planning commission recommendations, if any, may approve the urban renewal plan. * * * The ordinance shall include determinations and findings by the governing body that:

- “(1) Each urban renewal area is blighted;
- “(2) The rehabilitation and redevelopment is necessary to protect the public health, safety or welfare of the municipality;
- “(3) The urban renewal plan conforms to the comprehensive plan and economic development plan, if any, of the municipality as a whole and provides an outline for accomplishing the urban renewal projects the urban renewal plan proposes[.]”

1 **FIRST ASSIGNMENT OF ERROR**

2 Petitioners challenge the city’s finding that the 8.53-acre expansion area is a
3 “blighted area” as defined at ORS 457.010(1).

4 In the urban renewal report, the city found that the expansion area is a “blighted area”
5 under ORS 457.010(1)(e) (“existence of inadequate streets” open spaces and utilities) and (h)
6 (stagnant and unproductive condition of land).⁷ See n 3. Petitioners argue first that the city’s
7 findings rely in part on conditions *outside* the expansion area, specifically, the overcrowded
8 conditions of schools in the David Douglas school district. With respect to the expansion
9 area itself, petitioners argue, the city found blight based solely on the largely unimproved
10 nature of the subject 8.53 acres, which allegedly lacks adequate streets, utilities and open
11 space facilities. However, petitioners argue, that reasoning would apply to *any* undeveloped

⁷ The report states, in relevant part:

“The David Douglas Expansion Area has been purchased by the David Douglas School District for the construction of a public school which would include a multi-functional community facility. The Area is in need of a school and community facility. As described above, the David Douglas Expansion Area has inadequate transportation, open space and utility infrastructure. The site is served only by a two-lane road which lacks sidewalks and street lighting. Although there are open spaces within the David Douglas Expansion Area, there are no open space facilities or means of formal access to the open space. The water mains serving the site are inadequate to support domestic use and fire protection. In addition, at least in part as a result of the inadequate infrastructure, the David Douglas Expansion Area is not properly utilized resulting in a stagnant and unproductive condition of land that, if used as school (with associated community space) would be useful and valuable for contributing to the public health, safety and welfare. The school including the community space would be able to house much needed space for a Head Start facility as well as a computer center and places to hold adult education classes. Currently, the David Douglas Expansion Area contains only two aging residential structures and associated outbuildings. Some of the outbuildings once housed livestock but are no longer in use. Other than this minimal residential use, the land within the David Douglas Expansion Area is unproductive and stagnant. If the David Douglas Expansion Area were used, instead, as a school, the school would serve students currently attending overcrowded existing schools in the David Douglas School District. The availability of adequate school facilities for these students will increase student educational attainment and performance, contributing positively to the public health, safety and welfare. In addition, construction of a school would make community space available to the public and provide formal access to the related open space, further contributing to the public health, safety and welfare. Accordingly, the David Douglas Expansion Area is currently blighted as described in ORS 457.010(e) and (h) and amending the River District Urban Renewal Area to include the David Douglas Expansion Area and constructing the project proposed for the site will eliminate blight and help prevent the future occurrence of blight in the David Douglas Expansion Area.” Record 23.

1 or unimproved land anywhere in the city. Petitioners contend that as a matter of law vacant
2 land cannot possibly be “blighted” within the meaning of ORS 457.010(1) simply because it
3 is unimproved and undeveloped.

4 The city and PDC (respondents) answer, and we agree, that while the report discusses
5 conditions outside the expansion area and the ultimate intended use of the expansion area for
6 a school, the report properly focuses on whether the expansion area itself is a “blighted area”
7 as defined in ORS 457.010(1). As petitioners acknowledge, the definition of “blighted area”
8 is broad, and can include areas that are characterized by only one of the deficiencies set out
9 in ORS 457.010(1)(a) through (i). The report identifies two such deficiencies under
10 ORS 457.010(1)(e) and (h), specifically the existence of inadequate streets and other rights
11 of way, open spaces and utilities, and a stagnant and unproductive condition of land
12 potentially useful and valuable for contributing to the public health, safety and welfare.
13 While petitioners are correct that such deficiencies could potentially include any vacant or
14 undeveloped area of land, petitioners identify nothing in the text or context of the statute that
15 would prohibit concluding that such areas are “blighted areas” as defined by the statute. The
16 legislature adopted a broad definition of “blighted area,” and we have no authority to
17 construe the definition narrowly to exclude land that otherwise meets one or more of the
18 characteristics listed in the definition.

19 The first assignment of error is denied.

20 **SECOND ASSIGNMENT OF ERROR**

21 Under ORS 457.085(2)(j), for an urban renewal project that includes a public
22 building, the urban renewal plan must explain “how the building serves or benefits the urban
23 renewal area.” See n 4. Significantly, public building projects are the only type of urban
24 renewal project that requires a demonstration that the project serves or benefits the urban
25 renewal area.

1 The city found that the proposed public school/community facility serves and benefits
2 the central city portion of the amended urban renewal area because it provides school
3 facilities for families that were displaced from the central city to eastern Portland due to
4 rapidly rising housing prices:

5 “* * * The school constructed as part of the project will serve or benefit the
6 River District Urban Renewal Area by providing school facilities for families
7 that have been displaced from the portion of the Area located in the Central
8 City as a result of rapidly increasing housing prices which has made most
9 family housing unaffordable in the Central City portion of the River District
10 Urban Renewal Area. As a result, families have moved to the eastern portion
11 of the city which has caused classroom overcrowding. The proposed school
12 will help alleviate overcrowding and reduce the need for schools within the
13 Central City portion of the River District Urban Renewal Area.” Record 76.

14 Petitioners challenge this finding, arguing that there is no evidence of any
15 relationship between the expansion area and the original central city urban renewal area,
16 which are located ten miles apart, much less that the public building to be located in the
17 expansion area will serve or benefit the central city urban renewal area. According to
18 petitioner, the original central city urban renewal area was, prior to initiation of the urban
19 renewal plan, a commercial area with few if any families living in the area. Further,
20 petitioner argues that, as a result of the urban renewal plan, the central city portion of the
21 urban renewal area has had a 144 percent increase in low and moderate income housing
22 available in the area and a 1,020 percent increase in middle and upper income housing, thus
23 significantly increasing the amount of affordable housing in the central city portion of the
24 River District urban renewal area.

25 Petitioners contend that the record includes no evidence of any family residing in the
26 central city portion of the urban renewal area moving to the David Douglas school district.
27 The only evidence on this point consists of testimony that one family moved from northwest
28 Portland’s Alphabet District (an area not included in the River District urban renewal area) to
29 the David Douglas School District, and anecdotal evidence that families have moved
30 eastward for affordability. Record 242, 665. According to petitioners, this testimony is not

1 evidence that a reasonable person would rely on to conclude that the proposed public school
2 will serve or benefit the urban renewal area.

3 The city responds initially that there is no legal requirement under the statute for a
4 public building in one portion of the urban renewal area to benefit or serve other portions of
5 the urban renewal area. We understand the city to argue that as long as the proposed public
6 building benefits the publicly owned parcel on which it sits, it is not necessary that the public
7 building benefits or serves other properties within the urban renewal area. We disagree.
8 Public buildings and property pay no taxes that can be used to repay the bonds issued to fund
9 urban renewal projects. The apparent purpose of ORS 457.085(2)(j) is to ensure that cities
10 do not fund public buildings with urban renewal revenues unless those buildings benefit or
11 serve the privately owned portions of the urban renewal area, whose property taxes provide
12 the revenue to repay the bonds used to fund urban renewal projects. That purpose is not
13 served if the only portion of the urban renewal area served or benefited by public building is
14 the publicly-owned property on which the building sits, or other privately owned lands not
15 within the urban renewal area.

16 The city next argues that the record supports the city's finding that the proposed
17 school/community facility will serve or benefit the central city portion of the River District
18 Urban Renewal Area. Again, we disagree. We assume without deciding, for purposes of this
19 assignment of error, that it is permissible under ORS chapter 457 to create an urban renewal
20 area and then later add geographically noncontiguous areas to that urban renewal area.⁸
21 However, even under that assumption, where the subsequently added portion of that urban
22 renewal area consists entirely of a publicly owned tract on which a public building is
23 proposed, we interpret ORS 457.085(2)(j) to require that the public building serve or benefit
24 at least some portion of the original noncontiguous urban renewal area.

⁸ That issue is raised in the fourth assignment of error, below.

1 Here, the publicly owned subject tract is located almost 10 miles from the central city
2 area of the River District urban renewal area, across the Willamette River. While it is
3 presumably not impossible for a public building to serve other lands across that distance, it is
4 difficult to see how the proposed public elementary school/community facility could possibly
5 do so. The city cites to testimony from the chair of the David Douglas school board that
6 “Portland’s real estate boom of the past decade pushed more families farther east in search of
7 lower cost housing options in areas of the city where land is less expensive,” and that “a
8 significant number of families have come to David Douglas due to rising housing costs found
9 in Portland’s central city neighborhoods,” resulting in overcrowded David Douglas schools.
10 Record 39, 76. Notably, there is no testimony that families from the River District Urban
11 Renewal Area moved eastward in search of lower housing costs. Even if there were such
12 testimony in the record, it is not clear that that circumstance would itself provide a basis to
13 conclude that constructing a new public school in the David Douglas school district “benefits
14 or serves” the River District urban renewal area.

15 Finally, the city notes that the city found that the open space portions of the subject
16 property will create a “park-like setting” that is not present in the central city portion of the
17 River District, “and will provide additional opportunities for Area residents to experience a
18 quality multifaceted recreational experience.” Record 76. We understand the city to argue
19 that public open space will serve or benefit current residents of the central city portion of the
20 River District, who will be able to recreate on the new school grounds. However, the
21 possibility that current residents of the central city portion of the River District might travel
22 10 miles to recreate on the open space areas of the new school grounds is simply too tenuous
23 to support a finding that the proposed public school/community facility “serves or benefits”
24 the central city portion of the River District Urban Renewal Area, within the meaning of
25 ORS 457.085(2)(j).

1 While the social justice concerns that presumably underlie the city’s position are
2 entirely laudable, the record does not include substantial evidence—evidence a reasonable
3 person would rely upon—demonstrating that the proposed public school/community facility
4 “serves or benefits” any part of the central city portion of the urban renewal area. Unless that
5 statutory prerequisite is satisfied, the public building may not be included in the urban
6 renewal area expansion, no matter how worthy the social justice concerns. Accordingly, the
7 amended urban renewal plan is inconsistent with ORS 457.085(2)(j).

8 The second assignment of error is sustained.

9 **THIRD ASSIGNMENT OF ERROR**

10 Petitioners contend that the city lacks the legal authority to fund the construction of a
11 public school. According to petitioners, urban renewal expenditures under ORS chapter 457
12 are intended to increase economic productivity and tax revenues of blighted areas, and that
13 nothing in the statute authorizes the city to use urban renewal revenues to fund projects such
14 as a public school that do not increase economic productivity and increase tax revenues.

15 In addition, petitioners argue that Section 102 of the City Charter excepts from the
16 city’s authority those powers expressly conferred by law on any other public corporation
17 within its corporate limits, such as the David Douglas school district. Petitioners contend
18 that because the school district has express powers to fund and construct public schools, it is
19 therefore inconsistent with Section 102 for the city to fund the construction of public schools.

20 The city responds, and we agree, that ORS chapter 457 expressly permits the city to
21 use urban renewal revenue to fund construction of a public building, as long as it satisfies the
22 requirements of ORS 457.085(2)(j). We reject petitioners’ arguments that the statute
23 implicitly limits the city to public buildings that increase economic productivity or increase
24 tax revenues.

25 We also agree with the city that petitioners have not demonstrated that it is
26 inconsistent with Section 102 of the City Charter for the city to fund the construction of a

1 public school. The city cites to a memorandum from the city attorney opining that while
2 there may be some question as to whether it would be inconsistent with Section 102 for the
3 city to fund core school functions such as teachers, books and classrooms, there is no
4 question that the city can fund construction of parks, recreation facilities and community
5 centers. Record 272. The city argues that the proposed building is a combined public
6 school/community facility and until a specific development plan is proposed and the city
7 determines what its financial contribution will go toward, it is too speculative at this point to
8 determine whether Section 102 is violated. We agree with the city.

9 The third assignment of error is denied.

10 **FOURTH ASSIGNMENT OF ERROR**

11 Petitioners argue that no statutory authority or legal precedent exists for a city to
12 create a single urban renewal area that consists of separate, noncontiguous portions,
13 particularly noncontiguous portions that are 10 miles apart and have no apparent relation to
14 each other.

15 The city responds that nothing in ORS chapter 457 prohibits creating a single urban
16 renewal area consisting of noncontiguous portions. The city notes that the statute permits the
17 city to adopt a single urban renewal plan that encompasses multiple urban renewal areas, as
18 long as each area is found to be blighted. *See* ORS 457.085(2)(e) (the plan must indicate the
19 proposed land uses, maximum densities and building requirements “for each urban renewal
20 area of the plan”) (quoted in full at n 4). The city argues that the statute does not require
21 each urban renewal area encompassed by the plan to be contiguous, and there is similarly no
22 requirement that all geographic portions of a single urban renewal area be contiguous. The
23 city contends that LUBA should not read into the statute an implicit prohibition on a single
24 urban renewal area with non-contiguous portions.

25 Petitioners’ argument consists of a single paragraph, in which petitioners merely
26 assert that no statutory authority exists for a single urban renewal area with multiple,

1 noncontiguous portions. Petitioners are correct that there is no express authority in ORS
2 chapter 457 to create an urban renewal area with noncontiguous portions; on the other hand,
3 there is no express prohibition on doing so, either. The statute is entirely silent on that
4 question. In our view, resolving that question will require drawing inferences based largely
5 on an analysis of context and legislative history and intent. Petitioners make no effort to
6 provide any analysis of context, legislative history or intent, and we decline to attempt to
7 resolve that question without assistance from the parties.

8 Petitioners bear the burden of demonstrating legal error warranting reversal or
9 remand. Because petitioners have not met that burden with respect to this assignment of
10 error, we deny the fourth assignment of error.

11 **FIFTH ASSIGNMENT OF ERROR**

12 Petitioners challenge a recitation at Record 3, part of the ordinance adopting the
13 amended urban renewal plan, that “acquisition of real property is provided for and it is
14 necessary.” Petitioners argue that the finding is inaccurate, because there is no provision for
15 acquisition of real property, because the school district already owns the subject 8.53 acres.

16 The city responds, and we agree, that the challenged finding is surplusage and does
17 not provide a basis to reverse or remand the ordinance. The finding is part of a paragraph
18 that briefly recites a number of statutory requirements. There is no dispute that the amended
19 urban renewal plan does not call for the acquisition of real property, and petitioners have not
20 demonstrated that the city’s finding at Record 3 is more than harmless error.

21 The fifth assignment of error is denied.

22 **SIXTH ASSIGNMENT OF ERROR**

23 ORS 457.085(1) requires that the urban renewal agency (PDC, in this case) “shall
24 provide for public involvement in all stages in the development of an urban renewal plan.”
25 Petitioners argue that the city council violated ORS 457.085(1) when on March 12, 2008 it
26 adopted a resolution directing the PDC to develop and present to the city council a proposal

1 to amend the urban renewal district to include the David Douglas property. According to
2 petitioners, the city council essentially preordained the result it was seeking, and thus
3 effectively deprived the public of a meaningful opportunity to provide input at the critical
4 decision point.

5 The city responds, and we agree, that petitioners have not demonstrated any violation
6 of ORS 457.085(1), or prejudice to their substantial rights. All stages of the proceedings
7 below, including the proceedings leading up to adoption of the March 12, 2008 resolution,
8 were public hearings at which petitioners and the public had an opportunity to participate.
9 To the extent petitioners allege that the city council had prejudged the merits or were biased
10 in favor of the proposal, the act of initiating the process by directing the PDC to present a
11 proposal to amend the urban renewal plan falls far short of demonstrating bias or
12 prejudice. *See Carlsen v. City of Portland*, 36 Or LUBA 614, 628-29 (1999), *rev'd on*
13 *other grounds*, 169 Or App 1, 8 P3d 234 (2000) (earlier adoption of a resolution reserving a
14 potential site for a proposed memorial is insufficient evidence of bias or prejudice in
15 challenge of subsequent decision approving the memorial).

16 The sixth assignment of error is denied.

17 The city's decision is remanded.