

LAND USE
BOARD OF APPEALS

BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

Nov 21 3 38 PM '83

1
2
3 CORBETT/TERWILLIGER/LAIR HILL)
4 LEGAL FUND, JERRY L. WARD,)
5 CAROLE A. COOKE, GRACE C.)
6 BULLOCK, and MARY C. CORCORAN)

7 Petitioners,)

LUBA NO. 83-071

8 v.)

9 CITY OF PORTLAND, a municipal)
10 corporation, and GK-II)
11 INVESTMENTS,)

FINAL OPINION
AND ORDER

12 Respondents.)

13 Appeal from City of Portland.

14 Edward J. Sullivan argued the cause, and Edward J.
15 Sullivan, Kenneth M. Elliott and Steven L. Pfeiffer, Portland,
16 filed the petition for review on behalf of petitioners. With
17 them on the brief were O'Donnell, Sullivan & Ramis.

18 Kathryn Beaumont Imperati, Portland, filed a brief and
19 argued the cause for respondent.

20 Stephen T. Janik, filed a brief and argued the cause for
21 reespondent GK-II Investments.

22 Remanded

11/21/83

23 You are entitled to judicial review of this Order.
24 Judicial review is governed by the provisions of Oregon Laws
25 1983, ch 827.
26

1 BAGG, Board Member.

2 NATURE OF THE PROCEEDING

3 Petitioners seek review of Ordinance 154698 adopted by the
4 City of Portland on June 15, 1983. The ordinance changed the
5 comprehensive plan designation on the subject property in the
6 city from M2 (General Manufacturing) to M3 (Light
7 Manufacturing) and changed the zoning classification to allow a
8 commercial building.

9 FACTS

10 The subject property is located on a strip approximately 80
11 feet wide with an area of 39,750 square feet. The property is
12 600 to 800 feet from the Willamette River with a public park,
13 Willamette Park, between the river and the property. There is
14 a railroad immediately adjacent to the property on the east and
15 Macadam Avenue, a major city traffic street, adjacent to the
16 west. It is within the Willamette River Greenway. North of
17 the property there is a major housing and commercial
18 development, and across Macadam Avenue to the west are several
19 commercial developments with a larger residential area located
20 further west. Until about one and one-half years ago, the
21 subject site was occupied by a manufacturing plant.

22 The city's M2 zone designation allows commercial uses as a
23 conditional use. The M3 zone permits commercial uses
24 outright. The ordinance also places a "WSD" designation on the
25 zoning classification which signifies the property is within
26 the Willamette Greenway and is subject to Greenway Review under

1 specific ordinance provisions. A "D" designation has also been
2 added to the zone classification, signifying that any
3 development is subject to design review. See Portland
4 Municipal Code §3.62.010.

5 The plan and zone changes were sought and allowed to permit
6 the construction of a multi-story commercial office building
7 approximately 70,000 square feet in size. During the
8 application and review process, and at the urging of the city
9 council, the applicants met with representatives of a
10 neighborhood planning committee and arrived at a compromise
11 redesign of the building project. The compromise design called
12 for two buildings, rather than one, with an overall height of
13 40.5 feet, which was 4.5 feet less than the original design.
14 Although the compromise design was accepted by the neighborhood
15 planning committee, the design was not approved by a majority
16 of neighboring residents. The city council approved the
17 compromise design, adopted the plan and zone change, and
18 restricted the Design Review Committee from considering height,
19 dimensions, setbacks and bulk as described and limited in the
20 compromise design.

21 STANDING

22 Standing is an issue. In this quasi-judicial proceeding,
23 standing must be based on compliance with 1979 Or Laws, ch 772,
24 §4(3), as amended by 1981 Or Laws, ch 748. That section
25 provides:

26 "Any person who has filed a notice of intent to appeal

1 as provided in subsection (4) of this section may
2 petition the board for review of a quasi-judicial land
use decision if the person:

3 "(a) Appeared before the city, county or special
4 district governing body or state agency orally or in
writing; and

5 "(b) Was a person entitled as of right to notice and
6 hearing prior to the decision to be reviewed or was a
7 person whose interests are adversely affected or who
was aggrieved by the decision."

8 The facts necessary to establish standing must be included
9 in the petition for review. 1979 Or Laws, ch 772, §4(6), as
10 amended by 1981 Or Laws, ch 748. LUBA Rule 7(C)(1). Parsons
11 v. Josephine County, 2 Or LUBA 343 (1981), Still v. Marion
12 County, 5 Or LUBA 206 (1982). Respondents complain petitioners
13 have failed to allege facts showing petitioners, or any of
14 them, are adversely affected or aggrieved by the city's
15 decision.

16 Each of the individual petitioners alleges residency in the
17 neighborhood. Petitioner Jerry Ward adds he conducts business
18 as an architect "in the neighborhood." In addition, each of
19 the individual petitioners appeared and testified in opposition
20 to the plan and zone change at various city council meetings
21 and signed letters submitted to the city council in opposition
22 to the project. The petition contains specific references to
23 the record where the reasons petitioners are adversely affected
24 or aggrieved appear. Generally, the letters attack the city's
25 compliance with applicable comprehensive plan criteria. In the
26 petition and the reply brief, the individual petitioners assert

1 each is aggrieved as each appeared before the city council in
2 opposition to the plan amendment and zone change, and each was
3 an interested person recognized as such by the city council.
4 These facts are sufficient, petitioners urge, to establish
5 standing as aggrieved persons under Benton County v. Friends of
6 Benton County, 294 Or 79, 663 P2d 1249 (1982).¹

7 The only allegation as to standing for the
8 Corbett/Terwilliger/Lair Hill Legal Fund is a claim of
9 representational standing. The organization claims standing

10 "as an organization created to protect the interest of
11 neighborhood residents from the adverse impacts of
12 commercial redevelopment along Macadam Avenue, to
13 promote sound land use planning in the Macadam Avenue
14 corridor and to insure development of the 'urban
15 village' originally envisioned by the
16 Corbett/Terwilliger/Lair Hill policy plan." Petition
17 for Review at 5.

18 A. Standing of Individual Petitioners

19 Respondents do not dispute the individual petitioners
20 appeared at the several hearings before the city council. The
21 issue, then, is whether any of the individual petitioners is a
22 person "whose interests are adversely affected or who was
23 aggrieved by the decision."

24 In Warren v. Lane County, 5 Or LUBA 227 (1982), the Board
25 considered the criteria for standing, and concluded, in part,
26 that

"[w]hat is required is that the person have a personal
stake in a decision. The stake need not be
substantial so long as it exists." 5 Or LUBA at 233.

The petitioners must state facts showing this personal

1 interest. Id.²

2 With the exception of Mary Corcoran and Grace Bullock, the
3 petitioners state they appeared at various council meetings and
4 gave testimony on why the project violates planning principles
5 in general and several comprehensive plan goals and policies in
6 particular. Missing from the petition and the petition's
7 references to the record³ are allegations of how each of the
8 petitioners is personally affected or impacted by the
9 decision. There are no facts alleged showing any has a
10 personal stake in the outcome of this proposal. Their
11 complaints are directed to the merits of the city's decision,
12 and there is no explanation or facts alleged that show how the
13 city's action is adverse to any of them.

14 In Jefferson Landfill Committee v. Marion County, ___ Or
15 App ___ (Slip Opinion of November 9, 1983, No. A25167), a
16 majority of the Court of Appeals declined to grant standing to
17 a person who only appeared and asserted a position contrary to
18 the one chosen by the deciding body. The court, in affirming
19 this Board, agreed the petitioners had alleged no facts showing
20 how they suffered adverse effect or aggrievement. The Board,
21 therefore, finds Petitioners Ward and Cooke do not have
22 standing because they failed to assert facts showing how they
23 are adversely affected or aggrieved by this land use decision.

24 Petitioner Mary C. Corcoran, however, has alleged
25 sufficient facts to establish standing. In her letter to the
26 city council, dated January 27, 1983, she stated that approval

1 of the proposal would impose direct injury to a potential
2 interest, i.e. her interest in the continued vitality of the
3 area as an attractive, mixed use area adjacent to the
4 Willamette River. She claimed that construction of buildings
5 of the size contemplated here would destroy river views enjoyed
6 by neighborhood residents. See Record 157-158. The Board
7 finds this allegation is sufficient to show a personal impact
8 as discussed in Warren v. Lane County, 6 Or LUBA 47 (1982).

9 Similarly, Petitioner Grace Bullock alleged an interest in
10 the neighborhood and its scenic qualities and has claimed this
11 interest will be damaged by the development. See Record
12 245-246. The Board finds her claim sufficient to grant
13 standing.

14 B. Standing of Organizational Petitioner

15 There remains the matter of standing for the
16 Corbett/Terwilliger/Lair Hill Legal Fund. There is no
17 allegation of standing for the organization itself, only a
18 claim to "representational standing." One of the principal
19 requirements necessary to establish representational standing
20 is an allegation that members of an organization would
21 otherwise have standing to sue in their own right. 1000
22 Friends of Oregon v. Multnomah County, 39 Or App 917, 923, 593
23 P2d 1171 (1979). There is no allegation that any individual
24 petitioner is a member of the Corbett/Terwilliger/Lair Hill
25 Legal Fund. Absent any such allegation, the Legal Fund has not
26 alleged sufficient facts to provide a basis for

1 representational standing.⁴

2 FIRST ASSIGNMENT OF ERROR

3 "RESPONDENT CITY OF PORTLAND'S DECISION APPROVING THE
4 PLAN MAP AMENDMENT AND ZONE CHANGE VIOLATES APPLICABLE
5 COMPREHENSIVE PLAN POLICIES AND GOALS, PERTAINING TO
6 PRESERVATION OF THE WILLAMETTE RIVER GREENWAY AND OPEN
7 SPACE, MAINTENANCE OF ESTABLISHED RESIDENTIAL
8 NEIGHBORHOODS AND OF DOWNTOWN PORTLAND AS THE CITY'S
9 COMMERCIAL CENTER, TRANSPORTATION, AIR QUALITY, PARKS
10 AND RECREATION AND CRITERIA FOR PLAN MAP AMENDMENTS."

11 "A. Willamette Greenway Plan"

12 Petitioners claim generally the ordinance was more than a
13 plan and zone change because it included approval of a
14 compromise design for the proposed office building and limited
15 certain aspects of the design review process. Those actions,
16 petitioners contend, were tantamount to approval of the
17 building without compliance with the special requirement for
18 development in the Willamette Greenway. The greenway
19 requirements are codified in the Portland Municipal Code, which
20 implements statewide planning Goal 15. Portland Code
21 §33.77.101-.145. In particular, petitioners allege the action
22 by the city does not meet the requirements in §33.77.092(3),
23 (4), and (6).

24 Section 33.77.092, in relevant part, provides:

25 "(A) The director shall approve proposals to change
26 or intensify land use within this zone which comply
27 with the following criteria:

28 * * *

29 "(3) The scale of the project, density of development
30 and/or intensity of use are in keeping with the
31 character of the river, and preserve or enhance

1 the scenic qualities of the river, the site, and
2 adjacent riparian lands."

3 "(4) Architectural scale, style, building materials
4 and finishes are keeping with the character of
5 the Willamette River. Graphics, signs and
6 exterior lighting are to be designed to preserve
7 and enhance the scenic qualities of the
8 Willamette River.

9 * * *

10 "(6) The proposed development does not conflict with
11 existing adjoining developments, land uses, and
12 greenway zones."

13 The petitioners contend the proposed building does not meet
14 the city's Greenway criteria because it creates a large barrier
15 between the river and the residential uses to the west. It
16 obstructs the view of neighborhood residences and of
17 pedestrians along Macadam Avenue, and its location adjacent to
18 Willamette Park is out of scale and obstructs the open space
19 qualities of the park. Petitioners add the approval violates
20 Plan Policy 2.7 because the Greenway requirements are to be
21 implemented through the zoning code. Because the project
22 violates the Greenway plan, it violates the comprehensive
23 plan.

24 Petitioners allege the approval also violates plan Policy
25 2.6 because the building will block "the vista of the
26 neighborhood and hills beyond, thereby reducing the visual
relief and recreational opportunities afforded by Willamette
Park." Petition for Review at 9. Plan Policy 2.6 provides:

"Open Space
Provide opportunities for recreation and visual
relief by preserving Portland's parks, golf courses,

1 trails, parkways and cemeteries. Establish a loop
2 trail that encircles the city, and promote the
3 recreational use of the city's rivers, creeks, lakes
4 and sloughs."

5 Chapter 33.77 of the Portland Municipal Code prohibits any
6 development, change of use or intensification of use without
7 approval under the Greenway review process set forth in the
8 ordinance. Portland Municipal Code, §33.77.030. The process
9 is initiated by an application. Portland Municipal Code
10 §33.77.050. Decisions are made by the planning director unless
11 the proposed use is expected to have a major impact on the
12 Greenway, the river or adjacent lands, in which event the
13 application is referred to a hearings officer for a hearing.
14 Portland Municipal Code §33.77.060. Provisions are also made
15 for appeals from the planning director or hearing officer's
16 decision. Portland Municipal Code §33.77.070. These
17 procedures are for the stated purpose of protecting, conserving
18 and enhancing the Greenway pursuant to statute. Portland
19 Municipal Code §33.77.010. They are, by terms of the code, to
20 be implemented prior to issuance of a building permit for any
21 development, rather than during the zone change process.
22 Reviewing the Greenway criteria now would be premature, and the
23 city so found.⁵

24 Petitioners charge, however, the ordinance under review
25 approved the particular building, at least those aspects which
26 would normally be reviewed under the Greenway review process.
Petitioners are mistaken. The city did not limit the scope of

1 the Greenway review. The city only limited the inquiry as to
2 height, dimensions, setbacks and bulk by the "Design Review
3 Committee." The design committee is the appropriate reviewing
4 body to review major projects in the design overlay zone.
5 Portland Municipal Code §33.62.030. The design overlay review,
6 conducted by the design committee, is different than Willamette
7 Greenway review. Therefore, this application requires two
8 separate reviews with the possibility of appeal flowing from
9 either or both such reviews. The Board is cited to nothing in
10 this land use decision which states the Greenway review will be
11 limited in any manner.

12 As to a potential violation of plan Policy 2.6, the city
13 first points out that the pre-existing M2 zoning is worse than
14 the proposed zoning. This finding is not sufficient to show
15 compliance with the plan policy. A land use decision must find
16 its justification in compliance with applicable criteria.
17 Comparisons between what is allowed on the property as
18 presently zoned and what may be allowed under the proposed
19 zoning may be helpful to an understanding of the case, but the
20 city must still show that its proposed action meets all
21 applicable policies.

22 However, the Board does not believe Policy 2.6 has been
23 violated in the manner alleged by petitioners.⁶ No building
24 is to be placed on open space land, and no restriction in use
25 of Willamette Park will accompany this land use decision. See
26 Record 34. Also, the city provided a view corridor as "visual

1 relief" in conjunction with this project. See Record 63-64.
2 Were petitioners' argument to be accepted, the city might never
3 be able to zone commercial uses next to a park for fear a
4 commercial building would damage the view from the park. The
5 Board does not believe Policy 2.6 prohibits the city from
6 allowing development to occur around parks. The policy calls
7 for visual relief, and the Board does not understand the policy
8 to mean no change in views may occur.

9 This subassignment of error is denied.

10 "B. Maintenance of Established Residential Neighborhoods"

11 Petitioners here allege the proposed building will cut off
12 the neighborhood from the river and the Willamette Park and
13 therefore violate Policy 2.9. Additionally, petitioners assert
14 Policy 4.4 of the city's plan will be violated because of
15 increased commuter traffic on neighborhood streets, loss of
16 river view and loss of access to and overcrowding of Willamette
17 Park.

18 Plan Policy 2.9 provides:

19 "Residential Neighborhoods
20 Allow for a range of housing types to accommodate
21 increased population growth while improving and
22 protecting the city's residential neighborhoods."

23 Plan Policy 4.4 provides:

24 "Housing Choice and Neighborhood Stability
25 Support public and private actions which increase
26 housing choices for Portlanders, with emphasis on
housing and public improvement programs which: 1)
improve the balance in the city's population by
attracting and keeping in the city families with
children; 2) maintain neighborhood schools; 3)
increase the number of housing alternatives for both

1 renter and owner; 4) improve the physical and
2 environmental conditions of all neighborhoods."

3 Respondents admit Policy 2.9 is applicable and requires
4 consideration of the effect of this proposal on established
5 residential neighborhoods. They claim the findings adequately
6 consider Policy 2.9; construction of the project will not
7 separate the neighborhood from the park. The neighborhood is
8 and has been separated by the old manufacturing plant and by
9 Macadam Avenue, according to respondents. Further, a policy to
10 protect neighborhoods must be weighed with other policies
11 calling for more employment opportunities (Policy 2.2) more
12 development south of the Broadway Bridge (Policy 2.7) and
13 development of vacant land (Policy 2.18).⁷

14 The Board agrees with respondents and does not find the
15 city's policy to protect and preserve residential neighborhoods
16 requires protection of any particular neighborhood vista. The
17 Board is not aware of any legal right of neighborhood residents
18 to maintenance of a view of a particular piece of sky or river,
19 or maintenance of a particular level of automobile traffic.
20 There is nothing in the policy that flatly requires a
21 development to be prohibited because it impacts a
22 neighborhood. To say so is to make this plan policy paramount
23 over all others. Further, even the petitioners say this area
24 is one of mixed residential, commercial and industrial uses.
25 In such a mixed area, commercial or industrial activity that
26 might harm a natural vista can be expected.

1 The Board finds no violation of plan Policy 2.9.

2 Although petitioners claim that Policy 4.4 of the city's
3 plan mandates the city to support public and private actions
4 which improve the physical and environmental condition of all
5 neighborhoods, the policy does not so provide. The policy
6 requires the city to support public and private actions which
7 increase housing choices and requires the city to put emphasis
8 on certain housing and public improvement programs. The change
9 in zoning for the subject property to permit a commercial
10 office building is not a housing and public improvement
11 program, and it does not appear to have any direct effect on
12 housing choices.⁸ The Board agrees with the city that Policy
13 4.4 is not applicable to this proceeding.

14 This subassignment of error is denied.

15 "C. Transportation"

16 Petitioners state the project will bring additional traffic
17 into already congested Macadam Avenue; and the additional
18 traffic will spill over into a portion of the residential
19 neighborhood. Those two consequences will allegedly violate the
20 city's plan goal on transportation, Policy 6.2 of the plan and
21 Policy B of the Corbett/Terwilliger/Lair Hill Plan adopted by
22 the city council in 1977. The plan includes a provision which
23 is "to reduce vehicular traffic through residential
24 neighborhoods."⁹ Petitioners support the argument by
25 alleging there will be more traffic through residential areas
26 than the city staff projected because of poor access to Macadam

1 Avenue.

2 Petitioners' claim is buttressed by the testimony of Mr.
3 Ward, who lives and works in the neighborhood.¹⁰ His
4 testimony includes the following:

5 "There is no left turn bay for southbound traffic at
6 S.W. Vermont Street. The north driveway is locate a
7 Vermont intersection. [sic] Because of that
8 southbound Macadam vehicles will have to drive south
9 to Taylors Ferry Road, turn around, then go northbound
10 back to the project. This process has a potential for
11 creating traffic problems. The left turn light light
12 [sic] from Taylors Ferry Road to Macadam is only a
13 three second light allowing two to three cars per
14 light sequence. The back up area from southbound
15 Macadam to make the U turn has only a three car
16 waiting area without impeding traffic west on Taylors
17 Ferry Road. With additional traffic it is assumed one
18 half of the A.M. rush hour load coming from the
19 proposed rezone site, the interchange would have major
20 traffic problems. Because of potential back up
21 southbound traffic could possibly reroute itself to
22 come down Corbett, Virginia, Fulton Park Boulevard and
23 onto Taylors Ferry Road, and then directly onto
24 Macadam; or traffic could go through the neighborhood
25 and then down Vermont to make direct crossing into the
26 project.

16 * * * *

17 "Exiting from the project to go south will definitely
18 increase neighborhood traffic. To go south a vehicle
19 must turn north onto Macadam at Vermont. A left-turn
20 is impossible because at that point it is designated
21 left-turn lane from northbound Macadam traffic, thus a
22 left-turn to the south is impossible. Even with
23 design if it was allowed the 10 foot wide median strip
24 is not wide enough to provide a converging lane to
25 merge with southbound traffic, therefore southbound
26 traffic will have to go north on Macadam on Nebraska,
which has a left-turn lane. * * * *

23 "There is a large amount of traffic coming into the
24 Corbett/Terwilliger basin from Corbett Street from the
25 I-5 Corbett Street exit. This traffic is coming from
26 downtown Portland and the Hamilton Street/Barbur
connection. This traffic from Corbett Street which is
designated as only a neighborhood collector street and

1 minor transit street, and already we are having
2 problems on Corbett. This traffic is dumped directly
3 in the middle of the neighborhood. To get the project
4 residential streets must be used. The rezone would
5 increase this traffic into the neighborhood."
6 Record 255-256.

7 The city's transportation goal (Goal 6) is:

8 "To promote an efficient and balanced urban
9 transportation system consistent with the arterial
10 streets classification policy, to encourage energy
11 conservation, reduce air pollution, lessen the impact
12 of the vehicular traffic on residential neighborhoods
13 and improve access to major employment and commercial
14 centers." Portland Comprehensive Plan Goal 6 at
15 Record 44.

16 Plan Policy 6.2 states:

17 "Create and maintain regional and city traffic
18 patterns that protect the livability of Portland's
19 established residential neighborhoods while improving
20 access and mobility within commercial and industrial
21 areas." Portland Comprehensive Plan Policy 6.2.

22 Respondent City says it is entitled to rely on information
23 of its experts as to traffic volume and street capacities and
24 that the experts gave sufficient testimony to support the
25 finding that the project will not violate the city's
26 transportation goal. Respondent City notes Macadam Avenue is a
designated major city traffic street. Its purpose is moving
the traffic into or out of the district. The street will not
be over capacity as a result of the development, according to
the city.

27 The findings and the supplemental findings address both
28 Goal 6 and Policy 6.2. The traffic increase on Southwest
29 Macadam Avenue is estimated by the city council to be 850 trips
30 per day. This figure is within the capacity of SW Macadam

1 Avenue. Record 44. The findings thus show the development
2 will not burden Southwest Macadam Avenue beyond its design
3 capacity as a major city traffic street. The city's findings
4 on Policy 6.2 say the policy is not violated because there is
5 "no credible evidence" to show any material amount of traffic
6 will use neighborhood streets. Record 45.

7 The city's supplemental findings address the concern about
8 traffic on neighborhood streets as follows:

9 "* * * the report of the city's transportation
10 planning section * * * and the report of the city
11 traffic engineering department * * * do not indicate
12 that any appreciable amount of traffic will utilize
13 neighborhood streets in order to access the proposed
14 office building. In fact, SW Macadam Avenue, a major
15 arterial, provides adequate access to the subject
16 property. Traffic moving to the subject site from the
17 north will utilize the newly constructed interchange
18 at SW Taylors Ferry Road to gain access to the site
19 and would not be likely to utilize neighborhood
20 streets. Traffic coming to the site from the south
has direct access to the site and would not use
neighborhood streets. Traffic exiting the site
heading south would not use neighborhood streets to
obtain access to SW Macadam Avenue heading south.
Traffic exiting the site heading north would turn
immediately right onto SW Macadam Avenue and would not
utilize neighborhood streets. The council does not
find credible evidence to the effect that any
appreciable amount of traffic resulting from the
change from M-2 to M-3 would utilize neighborhood
streets." Record 40.

21 See also Appendix C to Petition for Review.11

22 Here the report by the Bureau of Traffic Engineering says,
23 in part,

24 "A southbound U-turn was included in the Macadam
25 Avenue project at Miles Street. It provides
26 southbound traffic a method to get to the driveways
along the east side without circulating through he
neighborhood." Record 446.

1 The city also attached a condition to this zone change that
2 requires the traffic engineer, and the transportation section
3 of the Planning Bureau to review "for approval" the "parking,
4 access and circulation patterns."

5 While the record includes additional evidence on traffic,
6 the Board finds no evidence that specifically discusses the key
7 issue of the diversion of traffic into the residential
8 neighborhood. Mr. Ward's evidence is the only evidence on the
9 point. There is no evidence, for example, refuting his claim
10 that southbound traffic leaving the site will inevitably flow
11 into the residential area. The respondent can not rely on the
12 city traffic engineer's general statement of "no objection to
13 the project" to refute this specific claim and related claims
14 about possible backups at the Taylors Ferry Road site.

15 Also, the engineer did not discuss, as the Board believes
16 he was required to once the issue was raised, the problem of
17 traffic to and from the site by persons using other than the
18 Macadam Avenue route. The Board believes the city was required
19 to address these concerns with more than the comment that they
20 do not constitute "credible evidence". Norvell v. Portland
21 Metro Area Local Government Boundary Comm., ___ Or App ___, 604
22 P2d 896 (1979); Gruber v. Lincoln Co., 2 Or LUBA 180 (1981).

23 Also, the city's direction to the traffic planning bureau
24 to review the project for "approval" suggests the city was not
25 convinced the traffic issue was settled in favor of this
26

1 development. Perhaps the condition is only a final check, but
2 the condition appears to require a full review of traffic
3 patterns as called for in the Plan. Policy 6.2. Compliance
4 with plan policies may not wait for a building permit
5 application. Whether a proposal meets the plan is generally,
6 as here, a matter of feasibility and must be determined before
7 the building permit stage. Margulis v. Portland, 4 Or LUBA 89
8 (1981).

9 [The Board notes Goal 6 and Policy 6.2 are not stated in
10 absolutes. That is, the goal and the policy do not require a
11 fixed limit on traffic in residential neighborhoods. Goal 6
12 seeks to "lessen" impact of traffic on neighborhoods while at
13 the same time improving access to employment and commercial
14 centers. Similarly, Policy 6.2 seeks to protect the livability
15 of residential neighborhoods while "improving access and
16 mobility within commercial and industrial areas." The Board
17 does not find that these policies create an absolute
18 prohibition on increased traffic through residential
19 neighborhoods. The Board believes these standards require a
20 balancing of competing interests, those of improved access to
21 commercial and industrial centers and those of residential
22 tranquility. However, the city was under an obligation, once
23 the issue of residential area traffic was raised to expressly
24 explain how the facts justified the conclusion the policy was
25 met. This obligation was not satisfied and requires a remand.]
26 The Board does not have the Corbett, Terwilliger, Lair

1 Hill plan before it. Both petitioners and respondents have
2 treated this plan as applicable and have mentioned policy "B"
3 which provides for reduction of vehicular traffic through the
4 neighborhood. The Board does not know what other policies
5 exist in the plan and how its policies are to be read.

6 This subassignment of error is sustained, in part.

7 "D. Maintenance of Downtown Portland as the
8 Commercial Center"

9 Petitioners allege violation of Policy 2.10. Policy 2.10
10 is part of the urban development goal which directs the city to

11 "[m]aintain Portland's role as the major regional
12 employment, population and cultural center through
13 public policies that encourage expanded opportunity
14 for housing and jobs, while retaining the character of
15 established residential neighborhoods and business
16 centers."

17 Policy 2.10 is the "downtown Portland" policy which requires
18 the city to

19 "[r]einforce the downtown's position as the principal
20 commercial, service, cultural and high density housing
21 center in the city and the region. Maintain the
22 downtown as the city's principal retail center through
23 implementation of the Downtown Plan."

24 Petitioners characterize this policy as one requiring proof
25 "that alternative sites and development opportunities are not
26 available in the central business district" before any
development requiring a plan map amendment may be approved.
Petition for Review at 12. Petitioners also argue the policy
prohibits development such as the one proposed if the
development would have an adverse impact on downtown office

1 space. In support of the argument, petitioners cite evidence
2 in the record showing the downtown area to have a high vacancy
3 rate and also showing present office space to meet projected
4 demand into the 1990s. See Record 233. Petitioners say the
5 addition of 70,000 square feet of office space outside the
6 downtown area will "siphon off potential tenants and detract
7 from downtown's position as the principle commercial center, in
8 violation of Policy 2.10." Petition for Review at 13.

9 The city's findings state the "downtown Portland" policy is
10 not violated because:

11 "a. This goal does not require that all office
12 development in the City of Portland be located in
downtown Portland.

13 "b. The evidence in the record demonstrates that a
14 John's Landing market is a separate office market
15 from that of downtown Portland and that vacancy
16 rates in downtown Portland are very high, while
vacancy rates in the John's Landing area are very
17 low. Thus, allowing an office development does
not affect the market for office space in
downtown Portland.

18 "c. There is no credible evidence in the record that
19 allowing the comprehensive plan and zone change,
20 which would permit office development on this
site, would have any material impact upon keeping
downtown Portland as the principle commercial
center of the metropolitan region." Record 36-37.

21 The Board finds nothing in the plan requiring the analysis
22 posited by petitioners whenever a commercial development is
23 proposed outside of the downtown area. Indeed, Policy 2.11,
24 "Commercial Centers," appears to recognize and encourage
25 commercial centers other than downtown Portland. Policy 2.11
26 provides as follows:

1 "Expand the role of major established commercial
2 centers which are well served by transit. Strengthen
3 these centers with retail, office, service and labor-
4 intensive industrial activities which are compatible
with the surrounding area. Encourage the retention of
existing medium and high density apartment zoning
adjacent to these centers."

5 The Board believes this policy, along with the downtown
6 Portland policy, creates a need for the city to balance
7 development outside the downtown area with the needs of the
8 downtown area. However, there is no prohibition on expansion
9 of other commercial centers. The city has found the downtown
10 and the Macadam Avenue markets to be different. The Board does
11 not understand petitioners to challenge this finding. The
12 Board concludes petitioners are under an obligation to speak
13 with greater detail as to how it is the downtown policy is
14 violated where the city's plan appears to encourage continued
15 development of other commercial centers.

16 This subassignment of error is denied.

17 "E. Air Quality"

18 Petitioners argue Policy 8.1 of the city's comprehensive
19 plan requires the city to continue to cooperate with public
20 agencies about air quality. Petitioners say the additional
21 traffic and auto congestion which will be generated by the
22 project will harm air quality. Petitioners claim the record
23 shows no evidence that DEQ and federal air standards will be
24 met.

25 Policy 8.1 is part of the city's environment goal which is:
26

1 "Maintain and improve the quality of Portland's air,
2 water and open space resources and protect
3 neighborhoods and business centers from detrimental
4 noise pollution."

5 Policy 8.1, "Interagency Cooperation-Air Quality," provides as
6 follows:

7 "Continue to cooperate with public agencies concerned
8 with the improvement of air quality, and implement
9 State and regional plans and programs to attain
10 overall State and Federal air quality standards.
11 Cooperate and work with Metro and the State Department
12 of Environmental Quality in efforts to reach
13 attainment of Federal ambient air quality standards
14 for ozone by 1987 and carbon monoxide by 1982."

15 Policy 8.1 requires the city to cooperate with other public
16 agencies, and there is nothing to which the Board has been
17 cited to suggest the city will be unable to continue to
18 cooperate with state and federal agencies in this matter. The
19 policy also requires "implementation" of the state and regional
20 plans and programs to meet federal and state standards. There
21 is a finding that the impact of this development on state and
22 federal air pollution standards "will be negligible." Record
23 46. The finding is supported in the staff report. The report
24 states "[t]he request will not significantly impact air or
25 water resources * * * *" Record 473.

26 The Board does not know whether a negligible impact will
push the city over the line into a violation of some air
quality standard. However, the Board does not believe this
policy requires the city to show compliance with air quality
standards for each development approval. The policy requires

1 the city to cooperate with other agencies and implement plans
2 in order to obtain overall federal air quality standards. The
3 policy sets out a goal, not a mandate applicable immediately.

4 This subassignment of error is denied.

5 "F. Parks and Recreation"

6 Petitioners complain goal 11F of the comprehensive plan is
7 violated because the city has failed to preserve a park and
8 open space. Willamette Park, immediately to the east of the
9 subject property, is the only park in the neighborhood. By
10 damaging the scenic and open space qualities of the park and
11 Greenway and by increasing demand on park facilities by
12 importing additional office workers, the city's policy is
13 violated, according to petitioners.

14 Goal 11F provides the city is to

15 "[m]aximize the quality, safety and usability of
16 parklands and facilities to the efficient maintenance
17 and operation of park improvements, preservation of
18 parks and open space, and equitable allocation of
19 active and passive recreation opportunities for the
20 citizens of Portland."

21 Policies 11.46 and 11.47 provide:

22 "Improvements

23 "Base the priorities for improvement and development
24 of parklands on documented needs and the following
25 criteria: low long-term maintenance costs, location
26 in deficient areas, broad community support, location
adjacent to schools and other public facilities,
support of neighborhood stabilization and community
development projects and policies, and consistency
with park master development plans.

"New Parkland

1 "Increase the supply of parkland, giving priority to:
2 areas where serious geographical and service level
3 deficiencies exist, land acquisition necessary to
4 complete the 'Forty Mile Loop' system, acquisition of
5 lands appropriate for park development which have been
6 declared surplus by other public agencies, and
7 acquisition of environmental unique areas and natural
8 drainageways."

9 The city's findings correctly say the concerns raised by
10 petitioners would be equally pertinent to any project
11 permissible under the M2 or M3 zones. That is, the change in
12 zoning does not alter the possible impacts on the park.
13 Further, the city makes a specific finding that the use will
14 not cause an overcrowding of the park or limit public access to
15 the park. Lastly, the council notes that there are no approved
16 "view corridors" which overlay the site, and therefore there
17 will be no impact on any approved view corridors by this zone
18 change and its attendant office building development.

19 The Board does not find violation of Goal 11F. The goal
20 and Policies 11.46 and 11.47 do not prohibit developments that
21 may be sited adjacent to a park. The office building will not
22 diminish park property or deny legal access to the park. The
23 view from the park will be obstructed, but the Board does not
24 find that fact alone to violate a goal of park improvement and
25 preservation. Policies 11.46 and 11.47 do not even address
26 events around parks. The policies address park acquisition and
27 improvements.

28 This subassignment of error is denied.

29 "G. Criteria for Plan Map Amendments"

1 In this subassignment of error, petitioners argue the
2 applicant failed to show conformity with the four criteria
3 given in plan Policy 10.4. Plan Policy 10.4 provides:

4 "The applicant must show that the requested change is
5 (1) consistent and supportive of the appropriate
6 Comprehensive Plan Goals and Policies, (2) compatible
7 with the land use pattern established by the
8 Comprehensive Map, (3) in the public interest to grant
9 the petition; the greater the departure from the
10 Comprehensive Plan Map designation, the greater the
11 burden of the applicant, (4) that the [public]
12 interest is best served by granting the petition at
13 this time and at the requested locations."

14 Petitioners complain the applicant has failed to show
15 conformity with the comprehensive plan. Presumably,
16 petitioners are reincorporating the earlier allegations of plan
17 policy violation in this subassignment of error. Additionally,
18 petitioners say the impacts resulting from this plan change are
19 not compatible with commercial and residential uses and the
20 space and recreational qualities of Willamette Park and the
21 Willamette River. Petitioners urge the public interest is not
22 served by the change because downtown commercial uses will
23 suffer from

24 "unnecessary competition, residential neighborhoods
25 will bear the burden of additional traffic circulation
26 on local neighborhood streets [sic] and Willamette
Park users will be faced with more competition for
crowded facilities." Petition for Review at 15.

27 Lastly, petitioners argue the fourth criteria, concerning
28 public interest, requires showing a need for the change.
29 Petitioners state there are existing office vacancies and
30 available sites for the uses planned, and the policy is not met

1 simply by a desire to change the plan map designation on the
2 property rather than utilize other available properties.

3 Petitioners characterize the applicant's interest as a "private
4 financial interest," which is not enough to offset public
5 interest in maintaining adherence to the city's comprehensive
6 plan.

7 The Board has already discussed compliance with the
8 particular comprehensive plan policies alleged by petitioners
9 to have been violated.

10 As to compatibility with the land use pattern established
11 by the plan map, the Board notes the comprehensive plan map for
12 this area shows a mixture of commercial, light manufacturing,
13 general manufacturing and open space uses. The city's findings
14 show the property to have mixture of M2 and M3 zoning, with
15 "the most significant" land use action in the area being the
16 down zoning of the John's Landing project from M2 to M3 in the
17 1970s. The city states that the "zoning pattern" of a few
18 places of M2 zoning along Macadam Avenue are "vestiges of the
19 old zoning." Record 72.

20 The record reveals testimony that the area has undergone a
21 transition over the past ten years from a primarily industrial
22 area to one of a mixture of office commercial, retail and
23 residential uses. Record 400, 474, 477. Additionally, there
24 was evidence that the site is no longer suitable for industrial
25 or retail use. Record 421-424.

26 The Board believes the second of the four criteria has been

1 met. The city's findings show the area to have undergone a
2 change from industrial use to less intensive commercial
3 activity, and the city's action under review in this case is
4 consistent with that general pattern.

5 As to the third criterion, public interest, the city
6 findings say the property was not suitable for M2 manufacturing
7 uses and stated it would not be desirable to allow the property
8 to remain vacant. The city concludes the proposed use is a
9 "reasonable use" for the property. The findings note the
10 property is narrow, with consequent difficult access for truck
11 traffic. Record 48. It has been abandoned for industrial
12 use. Id. The city adds it believes there will be little night
13 time activity, as compared with an industrial use, and this
14 factor would be a benefit to the public. The city adds the
15 proposal will create a significant number of construction jobs,
16 and it will not adversely affect demand for office space within
17 downtown Portland. Record 49.¹²

18 The city's findings demonstrate plan policies have been
19 considered and met, and there exist valid reasons to make the
20 change. The city found it is better to have the property put
21 to a useful purpose than to have it vacant.¹³ The Board
22 believes this is a sufficient analysis to meet a "public
23 interest" test. The city is simply saying that it is better to
24 use property than not to use it, and it has explained that the
25 proposal will make use of the property and will violate no
26 policies. The Board believes this definition through

1 application in the findings is sufficient.

2 The last of the four amendment criteria, that the public
3 interest is to be served at this particular time and location,
4 is answered by the city with a simple statement that a
5 reasonable use has been proposed. Record 73. Because the site
6 is unusable for manufacturing purposes, refusing to make this
7 particular zone change now will allow continued "under
8 utilization of vacant land in reasonable proximity to the city
9 center and Macadam Avenue commercial area." Id. There is a 95
10 percent occupancy in the John's Landing area, which the city
11 equates with a need for additional office space. Record 49.
12 These findings, according to the city and respondent, are
13 sufficient to show conformity with its plan policy.

14 The Board finds no violation of this last of the four
15 criteria in Policy 10.4 of the city's comprehensive plan. If a
16 proposal is in the public interest, no more is required to meet
17 this policy than to have a developer ready to proceed. There
18 is no counter plan policy or circumstance to which the Board
19 has been cited which would require the city to wait until some
20 later date. Providing the proposal meets the siting standards
21 in the plan and zoning ordinance, this criterion is met.

22 The first assignment of error is denied.

23 SECOND ASSIGNMENT OF ERROR

24 "ASSUMING ARGUENDO THAT THE FINDINGS SUPPORTING THE
25 CITY OF PORTLAND'S DECISION ARE ADEQUATE IN FORM, THE
RECORD LACKS SUBSTANTIAL EVIDENCE TO SUPPORT THOSE
26 FINDINGS."

1 Petitioners begin the second assignment of error by arguing
2 the city's conclusion that this change will be supportive of
3 the Greenway plan is not supported by evidence in the whole
4 record. Record 34-35, 64. Petition for Review at 16. Because
5 the Board believes compliance with the Greenway plan is a
6 matter for the future determination of the council, the Board
7 does not believe it was necessary for the council to show
8 compliance with the Greenway plan at this time.¹⁴

9 Petitioners' additional argument about traffic posits there
10 is considerable evidence in the record about traffic
11 circulation and impact on neighborhood streets showing an
12 increase on neighborhood streets in the past six to eight
13 years. Record 499-500. The Board has already discussed
14 compliance with neighborhood policies and petitioners'
15 assertions about traffic. In that discussion, the Board
16 commented on the sufficiency of the evidence and will not do so
17 again here.

18 The second assignment of error is denied.

19 THIRD ASSIGNMENT OF ERROR

20 "RESPONDENT CITY OF PORTLAND'S FINDINGS ARE CONCLUSORY
21 AND INADEQUATE TO EXPLAIN THE BASIS OF THE DECISION
MADE."

22 Petitioners quote findings on plan Policy 10.4 and on the
23 Greenway policy and argues the findings are mere conclusions
24 and lack ordinance support.¹⁵

25 The city notes at the outset that petitioners are relying
26 on an incorrect set of findings. The correct findings,

1 according to the city, are found between pages 63 and 72 of the
2 record. See also pages 32 through 51.

3 The Board has already discussed compliance with Policy 10.4
4 of the comprehensive plan both in terms of the adequacy of the
5 findings and whether the findings were supported by substantial
6 evidence in the record. It is not necessary to repeat that
7 discussion here.

8 The Board wishes to note that the city's findings are
9 adequate to show compliance with plan criteria. The error
10 which exists is rather one of factual support, which may well
11 be available on remand. See discussion under assignment of
12 error no. 1, supra.

13 This assignment of error is denied.

14 FOURTH ASSIGNMENT OF ERROR

15 "THE CITY ERRED IN FAILING TO ADDRESS CONFLICTING
16 EVIDENCE WHICH UNDERMIMES [sic] ITS ULTIMATE FINDINGS
AND CONCLUSIONS."

17 In this assignment of error, petitioners argue it is not
18 enough for the city to recite evidence to buttress a decision
19 and to ignore evidence which runs to the contrary. Filter v
20 Columbia County, 3 Or LUBA 345 (1981). The city has a duty to
21 respond to conflicting evidence in its findings and explain why
22 it found as it did, according to petitioners. Gruber v Lincoln
23 County, 2 Or LUBA 80 (1981); Advance Health Systems v
24 Washington County, 4 Or LUBA 20 (1981); Moore v Clackamas
25 County, 7 Or LUBA 106 (1982). Petitioners urge the Board to
26 hold the findings adopted by the city ignore evidence about

1 traffic issues. See Record 28-29, 253-58. See also 449-504.
2 In particular, evidence was introduced about traffic and
3 parking conditions and accident potential. Id. The city
4 ignored this conflicting evidence or branded it as not credible
5 without stating what evidence was not credible and why it was
6 not credible, according to petitioners.

7 The Board has already discussed problems relating to the
8 lack of substantial evidence under assignment of error no. 1.
9 It would serve no purpose to discuss matters of substantial
10 evidence on plan policies that the Board has found do not apply
11 or apply in a manner different than alleged by petitioners.
12 Further, the Board has already discussed the matter of
13 substantial evidence on those plan policies that petitioners
14 have alleged have been violated and on which the city has made
15 findings.

16 The decision of Portland is remanded for proceedings not
17 inconsistent with this opinion. The city must consider the
18 traffic impacts of this action under Goal 6 and Policy 6.2 of
19 the city's comprehensive plan, and the Corbett, Terwilliger,
20 Lair Hill Plan.

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FOOTNOTES

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3 ¹ In the Benton County case, the court said

4 "[a] person whose interest in the decision has been
5 recognized by the body making a quasi-judicial
6 decision and who has appeared and asserted a position
7 on the merits as an interested person, rather than
8 only as a source of information or expertise, can be
9 'aggrieved' by an adverse decision within the meaning
10 of section 4(3). As in Marbet [v. Portland Gen.
11 Elect., 277 Or 447, 561 P2d 154 (1977)], to be
12 'aggrieved' a person must be more than abstractly
13 dissatisfied with the outcome after the fact. The
14 decision must be contrary to the request or other
15 position that the person espoused during the
16 proceeding." 294 Or at 89.

17 ² In limited situations, the Board held petitioners who
18 appeared in the local government proceedings and have a
19 particular relationship to the decision involved have
20 standing without the burden of alleging particular adverse
21 effect. In such cases, adverse effect or aggrievement is
22 presumed absent assertions to the contrary by
23 respondents. For example in Casey v. Dayton, 5 Or LUBA 96
24 (1982), the mere allegation of residents within sight and
25 sound of a proposed development was sufficient to confer
26 standing. See also Van Volkinburg v. Marion County, 2 Or
LUBA 112 (1980); Merrill v. Van Volkinburg, 54 Or App 873
(1981); Gallagher v. Benton County, 5 Or LUBA 287 (1982).

27 ³ With reference to the practice of pleading facts
28 pertinent to standing by citation to the record, rather
29 than including the facts in the petition itself, the Board
30 wishes to add a word of caution. By engaging in this
31 practice, petitioners are asking the Board to consider
32 evidence submitted to the city council and discern how
33 that evidence demonstrates that petitioners are adversely
34 affected or aggrieved. This approach can present
35 substantial difficulty. For example, it is clear that the
36 statements on which petitioners rely were not made to show
37 adverse effect or aggrievement. Rather, they were
38 obviously made to show what was wrong with the city's
39 decision on the merits. Reliance on such statements run

1 the risk of obscuring the actual theory of standing being
2 advanced by petitioners. The Board wishes to discourage
3 this practice.

4

4 The Board rejects petitioners' attempt in the reply brief
5 to add an additional allegation of standing. Facts showing the
6 petitioners have standing must be stated in the petition for
7 review. There is no reason advanced by petitioners to explain
8 why all theories and facts showing standing could not have been
9 presented at the time of the filing of the petition for
10 review. Further, even if the Board were to allow the new
11 claim, the Board notes this additional claim that petitioners
12 were entitled to notice of the decision entitled them to
13 standing under 1979 Or Laws, ch 772, sec 4(3)(b) is misplaced.
14 That subsection refers "to notice and hearing prior to the
15 decision to be reviewed * * * *" (Emphasis added). There is
16 no allegation that petitioners were entitled to notice and
17 hearing prior to the decision on review in this case. See 1000
18 Friends v. Benton County, 2 Or LUBA 324 (1981).

12

13 The findings say:

14 "The WSD, Willamette River Scenic Development zone
15 allows development while encouraging public use and
16 enjoyment of the waterfront and enhancement of the river's
17 scenic qualities. The applicant has indicated that the
18 Greenway permit will be applied for after the basic zoning
19 decisions have been made. This site is 660 feet to 800
20 feet from the river with the railroad tracks and Willamette
21 Park separating the site from the river. Exhibit 8a lists
22 the code requirements for an improvement within a Scenic
23 Development Zone. These requirements must be met when the
24 applicant applies for a Greenway permit at a later date."
25 Record 61.

21

22 The Board finds the policy is applicable now. There is
23 nothing in the Greenway review ordinance which suggests that
24 consideration of a general comprehensive plan policy may wait
25 for this limited review.

24

25 The Board does not understand why this policy is
26 applicable. The policy calls for allowance of a range of
27 housing types to accommodate increased population "while

1 improving and protecting the city's residential
2 neighborhoods." (Emphasis added). The policy seems to address
3 city action when it plans for housing, not when it plans for
4 commercial or industrial uses. It is certainly conceivable
5 that in allowing for a range of housing types, existing
6 neighborhoods could be disrupted or even torn down. This
7 policy seems more directed at that kind of situation than the
8 one involved here.

8

The findings do, however, note that residential uses are permitted in the M3 zone while not allowed in the existing general manufacturing zone classification. Findings II B(1) at Record 69.

9

The Corbett/Terwilliger Lair Hill Plan is not in the record.

10

The reference to Mr. Ward's testimony is made under assignment of error no. 4 in which petitioners claim the city did not address conflicting evidence.

11

There is no explanation of why traffic leaving the site to go south on Macadam will not utilize neighborhood streets. See map #212. See also testimony of Mr. Simmons, Record 499-500.

12

The city says it bases this claim on opinion of real estate brokers. However, the Board is not cited to where this testimony appears.

13

See also 2.18 providing for "full utilization" of vacant land except areas designated as open space.

14

The Board notes much of petitioners' discussion about conformity with the Greenway overlay zone requirements found in Portland Municipal Code §33.77.092 echo petitioners' complaint about the scale of this project and whether or not it is in keeping with the character of the neighborhood. In that regard, petitioners are simply rearguing matters discussed

1 under the first assignment of error, supra.

2

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3 Again, the Board will not discuss the city's conclusions as
4 to the Greenway plan for the reasons discussed in assignment of
error no. 1.

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