



1 Opinion by Kressel.

2 NATURE OF THE DECISION

3 The city denied a request to modify an approved and partly  
4 developed subdivision. The modification would reclassify the  
5 subdivision as a "mobile home subdivision." This would allow  
6 mobile homes to be sited on the previously approved lots.

7 FACTS

8 Meadowood Subdivision was approved in 1980. The first  
9 phase of the subdivision consists of 21 lots. Utilities  
10 necessary to serve the lots have been installed. However, only  
11 a single lot has been sold. The purchaser has built a home of  
12 conventional construction on the lot.

13 The subdivision is near the southern boundary of the city  
14 limits and is zoned R-1-8 (low density residential use).

15 When Meadowood was approved, the city's land use  
16 regulations did not permit mobile or manufactured homes in the  
17 low density residential districts. An application to rezone  
18 Meadowood to permit mobile homes was considered by the planning  
19 commission in 1983, but the application was tabled at the  
20 applicant's request. Opponents of the application argued,  
21 among other things, that it was inconsistent with the  
22 comprehensive plan, which discouraged additional mobile home  
23 development in the city.

24 In 1985 the city revised its comprehensive plan and zoning  
25 ordinance. A plan policy that "No new lands for mobile homes  
26 are needed to the year 2000" was replaced by one more favorable

1 to this housing type. The new policy acknowledged a "high  
2 level of interest in mobile home development" and committed the  
3 city to "continue to provide suitable lands for mobile home  
4 development." Section 1, Talent Ordinance No. 456 (July 17,  
5 1985) codified in Comprehensive Plan at p. 33. At the same  
6 time, however, policies (1) advocating construction of  
7 conventional housing to achieve a "balance of housing types,"  
8 and (2) protecting low density conventional housing areas from  
9 "infiltration" by mobile homes were also adopted. The revised  
10 policy on "Fair Share Housing-Conventional Low Density Housing"  
11 reads:

12 "To encourage the continued development of conventional  
13 low-density dwellings to promote a more equitable  
14 balance of housing types.

14 "The City shall help ensure the stability, integrity,  
15 and property values of both conventional and mobile  
16 home neighborhoods by assuring that (1) existing R-1  
17 zones are not allowed to be infiltrated by mobile homes  
18 on individual lots unless contained within approved  
19 mobile home subdivisions, and by ensuring that (2)  
20 existing conventional home neighborhoods will be  
21 adequately buffered, as determined by the Planning  
22 Commission following a public hearing, to provide a  
23 physical and visual separation from new mobile home  
24 subdivisions." Section 1, Ordinance 456 (July 17,  
25 1985). Codified at Comprehensive Plan, p. 33-34.

21 The 1985 changes liberalized the zoning controls over  
22 mobile homes by specifically allowing mobile home subdivisions  
23 in low density residential districts. The list of uses  
24 permitted outright in the R-1-6 and the R-1-8 districts was  
25 amended to read:

26 (1) Single-family dwelling on an individual lot,  
except that a mobile home shall be placed only on a

1 lot within an existing mobile home subdivision or on a  
2 lot within a new mobile home subdivision of two acres  
3 or larger. Section 1, Ordinance 457 (July 17, 1985).  
Codified at Section 1, Article 3, Talent Zoning  
Ordinance.

4 Following adoption of these plan and zoning ordinance  
5 changes,<sup>1</sup> the owners of Meadowood (petitioners in this  
6 appeal) applied to change the subdivision from a conventional  
7 housing development to a mobile home development. The Planning  
8 Commission denied the application in April, 1986. The  
9 applicants appealed to the Talent City Council, which upheld  
10 the denial one month later.

11 FIRST AND SECOND ASSIGNMENTS OF ERROR

12 Petitioners claim that the city failed to base its decision  
13 on standards and criteria in the city's development ordinance,  
14 thereby violating ORS 227.173.<sup>2</sup> They contend that the only  
15 issue over which the city had discretion concerned whether the  
16 proposed mobile home subdivision could be adequately buffered  
17 from existing conventional home neighborhoods. Petitioners ask  
18 us to disregard as irrelevant other issues considered by the  
19 city and to reject as "erroneous" the city's findings on the  
20 buffering issue.

21 The city council's findings can be summarized as follows:

- 22 1. Construction of a conventional home in Meadowood  
23 precludes a determination that the proposed  
mobile home development could be adequately  
buffered from conventional dwellings.
- 24 2. Forty-one per cent of Talent's housing stock  
25 consists of mobile homes. This is a  
disproportionately high share of the region's  
26 stock of such housing. There is also sufficient

1 land in the city's mobile home and low density  
2 residential districts to accommodate new mobile  
3 home developments. Since this proposal will be  
4 incompatible with surrounding development and  
5 established homes, the demand for mobile home  
6 housing should be met elsewhere.

7 3. The owner of the conventional home in Meadowood  
8 relied on the developer and the city to maintain  
9 the subdivision's status as a conventional home  
10 development.

11 4. There is reason to believe that the improving  
12 economy will make Meadowood feasible as a  
13 conventional home development. Maintaining the  
14 subdivision's status as a conventional home  
15 subdivision "...would be consistent with Talent's  
16 policy of encouraging additional conventional  
17 home development to better balance the housing  
18 stock." Record at 4.

19 As explained later, we reject Petitioners' claim that the  
20 city violated ORS 227.173 by relying on the foregoing points.  
21 However, we turn first to a more fundamental issue raised in  
22 the city's brief, i.e., whether the application to redesignate  
23 Meadowood facially violated the city's plan and zoning  
24 ordinance by proposing to site mobile homes in a development  
25 already occupied by a conventionally built dwelling.

26 As noted, the 1985 zoning amendments permit placement of  
mobile homes on lots in the R-1-8 district "...within an  
existing mobile home subdivision or on a lot within a new mobile  
home subdivision of two acres or larger." Section 1, Ordinance  
No. 457 (July 17, 1985). As we understand the city's argument,  
Petitioners' proposal to site mobile homes in Meadowood meets  
neither of these tests. According to the city, Meadowood is  
not an "existing mobile home subdivision," and it cannot be

1 designated as a "new mobile home subdivision" because the  
2 property has already been developed with a conventional  
3 residence in accord with the 1980 plat.

4 We find merit in the city's argument. Petitioners sought a  
5 change in the designation of Meadowood from a subdivision for  
6 conventionally built homes to a "new mobile home subdivision."  
7 We find no definition in the plan or zoning ordinance of the  
8 terms "conventional subdivision" or "mobile home subdivision."  
9 However, the terms obviously connote different types of housing  
10 development. The city's intent to separate mobile home  
11 subdivisions from areas developed with conventional housing is  
12 evident in the plan policies referred to earlier. The policies  
13 assure that

14 "(1)...existing R-1 zones are not allowed to be  
15 infiltrated by mobile homes on individual lots unless  
16 contained within approved mobile home subdivisions...  
17 and (2)...existing conventional home neighborhoods will  
18 be adequately buffered...to provide a physical and  
19 visual separation from new mobile home subdivisions"  
20 Section 1, Talent Ordinance No. 456 (July 17, 1985).

21 We agree that redesignation of Meadowood as a new mobile  
22 home subdivision was barred by construction of a conventional  
23 dwelling on one of the approved lots. Under the city's plan  
24 and zoning ordinance, land partially developed with  
25 conventionally built housing cannot be reclassified as a mobile  
26 home subdivision. Accordingly, the city's denial of the  
27 application was proper.

28 The foregoing is sufficient to warrant rejection of this  
29 assignment of error. However, we turn to the merits of

1 petitioners' attack on the final order under ORS 227.173(1),  
2 assuming for argument's sake that our interpretation of the  
3 plan and zoning ordinance is in error.

4 As we read the order, the decision is based on the plan  
5 policies to maintain a balance of housing types, encourage  
6 conventional home development, and buffer conventional housing  
7 from mobile home development. These objectives are expressly  
8 set forth in the policies adopted in 1985 and quoted earlier in  
9 this opinion. Petitioners overlook the first two policies, or  
10 unduly minimize their scope, when they insist that the only  
11 standard applicable to their proposal to redesignate Meadowood  
12 was that it be physically and visually separated ("buffered")  
13 from conventional home neighborhoods.

14 ORS 227.173(1) required the city to consider the applicable  
15 plan policies, as well as other standards in the development  
16 ordinance. Therefore, the city did not err in measuring the  
17 application against the policies advocating a balance of  
18 housing types and encouraging development of conventionally  
19 built homes. Even if the buffering issue had not been  
20 considered in the Final Order the city could deny the  
21 application under these policies.

22 Based on the foregoing, the first and second assignments of  
23 error are denied.

24 THIRD ASSIGNMENT OF ERROR

25 Petitioners claim that the city's findings are not  
26 supported by substantial evidence in the record. They insist

1 that the evidence they submitted required approval of their  
2 application.

3 We have previously accepted the city's argument that the  
4 application to redesignate Meadowood as a mobile home  
5 subdivision contravened the comprehensive plan and zoning  
6 ordinance as a matter of law. Our holding on that point does  
7 not depend on any of the findings in the city's order, but  
8 relies entirely on our interpretation of the plan and  
9 ordinance. Accordingly, petitioners' evidentiary challenge to  
10 the city's findings is of no consequence.

11 Apart from the foregoing, we note that one who challenges  
12 the evidentiary basis for a permit denial in a land use case  
13 confronts a considerable burden. The challenger must  
14 demonstrate that he "sustained his burden of proof as a matter  
15 of law." Jurgenson v. Union County Court, 42 Or App 505, 510,  
16 600 P2d 1241 (1979). Petitioners have not carried this  
17 considerable burden.

18 Based on the foregoing, the third assignment of error is  
19 denied.

20 FOURTH ASSIGNMENT OF ERROR

21 The petition alleges:

22 "The decision of the City Council in denying the  
23 application is simply not consistent with the  
24 Comprehensive Plan and land use regulations discussed  
25 above. The petitioners presented a plan for a  
26 subdivision to provide exactly the type of housing  
needed by the community and addressed in the Plan and  
regulations. The only criteria was adequate buffering  
and petitioners sustained their burden of proof in  
this regard. \* \* \* Both the decision and the

1 findings are inconsistent with the acknowledged  
2 Comprehensive Plan and Land Use Regulations."  
3 Petition at 17.

4 We construe the foregoing to reiterate points already discussed  
5 in this opinion. We have held that, not only could the city  
6 deny the application under the plan and zoning ordinance, it  
7 was required to do so by those laws. Therefore, the fourth  
8 assignment of error must be denied.

9 The city's decision is affirmed.  
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FOOTNOTES

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4 The city's somewhat more permissive approach to mobile home  
5 development was also reflected by adoption of "residential  
6 development requirements" that covered all "residential  
7 development," regardless of type. Under this zoning ordinance  
8 amendment, certain requirements apply uniformly to "conventional,  
9 site-built dwellings, modular homes, pre-fabricated homes,  
10 factory-built homes, manufactured homes, or mobile homes."  
11 Section 2A, Residential Development Requirements. Other  
12 requirements, however, distinguish between conventional and other  
13 forms of housing.

9 2

10 ORS 227.173(1) reads:

11 "Approval or denial of a discretionary permit application  
12 shall be based on standards and criteria, which shall be set  
13 forth in the development ordinance and which shall relate  
14 approval or denial of a discretionary permit application to  
15 the development ordinance and to the comprehensive plan for  
16 the area in which the development would occur and to the  
17 development ordinance and comprehensive plan for the city as a  
18 whole."  
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