

LAND USE  
BOARD OF APPEALS

BEFORE THE LAND USE BOARD OF APPEALS ~~APPEALS~~ 5 11 PM '89  
OF THE STATE OF OREGON

3	RODEN PROPERTIES,	)	
		)	
4	Petitioner,	)	
		)	
5	vs.	)	
		)	
6	CITY OF SALEM,	)	
		)	LUBA No. 89-046
7	Respondent,	)	
		)	FINAL OPINION
8	and	)	AND ORDER
		)	
9	DONALD J. DAVIDSON, DORIS ANN	)	
	DAVIDSON, JAMES E. ERNST and	)	
10	SHIRLEY M. ERNST, dba EDCO	)	
	LEASING,	)	
11		)	
	Intervenors-Respondent.)	)	

13 Appeal from the City of Salem.

14 James L. Murch, Salem, filed the petition for review and  
15 argued on behalf of petitioner. With him on the brief was  
Sherman, Bryan, Sherman, Murch and Knapp.

16 William J. Juza and Paul Lee, Salem, filed a response  
17 brief. Paul Lee argued on behalf of respondent.

18 Kris Jon Gorsuch, Salem, filed a response brief and argued  
19 on behalf of intervenors-respondent. With him on the brief was  
Harland, Ritter, Saafeld, Griggs, Gorsuch and Alexander.

20 KELLINGTON, Referee; HOLSTUN, Chief Referee; SHERTON,  
Referee participated in the decision.

21 REMANDED 08/08/89

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

1 Opinion by Kellington.

2 NATURE OF THE DECISION

3 Petitioner appeals City of Salem Ordinance No. 23-89 which  
4 amends the planning and zoning designations for the 5500 block  
5 of Commercial Street S.E. by changing (1) the comprehensive  
6 plan designation from Commercial to Industrial Commercial; (2)  
7 the Liberty-Boone Neighborhood Plan designation from Commercial  
8 Retail to Industrial; and (3) the zone designation from  
9 Commercial Retail (CR) to Industrial Commercial (IC).

10 MOTION TO INTERVENE

11 Donald J. Davidson, Doris Ann Davidson, James E. Ernst and  
12 Shirley M. Ernst, dba Edco Leasing, move to intervene in this  
13 proceeding on the side of respondent. There is no objection to  
14 the motion, and it is granted.

15 FACTS

16 Intervenors-respondent (intervenors) applied for a  
17 comprehensive and neighborhood plan amendment and for a zone  
18 change in order to build a self service storage facility<sup>1</sup> on  
19 the southern 2.36 acres<sup>2</sup> of the subject property. Petitioner  
20 owns and operates a self service storage facility in the  
21 vicinity of the subject property. Self service storage  
22 facilities are not authorized under the city's commercial  
23 planning and zoning designations.

24 The city planning commission considered the requested plan  
25 amendments and voted to take no action on them. The city  
26 council (council) considered the plan amendments and ultimately

1 approved the requested plan and zone changes to allow  
2 intervenors to build self service storage facilities on a  
3 portion of the subject property, subject to certain  
4 conditions.<sup>3</sup> This appeal followed.

5 FIRST ASSIGNMENT OF ERROR

6 "The City Council of Salem lacked jurisdiction to  
7 entertain a category 4 Comprehensive Plan Change  
8 without an appeal being initiated by the applicant  
under SRC 114.200."

9 Salem Revised Code (SRC) 114.200 sets out the procedural  
10 and substantive requirements for an appeal of a minor plan  
11 change to the council.<sup>4</sup> Petitioner contends that the  
12 planning commission's decision to take no action on the  
13 requested plan amendments was, effectively, a denial.  
14 Petitioner contends that because there was no appeal filed from  
15 the planning commission's "denial" of the proposed plan  
16 amendments, the council had no authority to consider the plan  
17 amendments. Petitioner argues that SRC 64.060(d)<sup>5</sup> deprives  
18 the council of the authority to make decisions on requested  
19 plan amendments unless the planning commission's decision on  
20 the requested plan amendments is appealed to the council.

21 Respondent points out that a proposed minor plan amendment  
22 is heard by both the planning commission and the city council,  
23 pursuant to SRC 64.100(b). Respondent further points out that  
24 the council, upon the recommendation of the planning  
25 commission, decides whether to amend the comprehensive plan.  
26 SRC 64.110(a) and (d).

1           Petitioner's reliance upon SRC 64.060(d) is misplaced.  
2           That subsection establishes who has standing to initiate a  
3           category 4 plan amendment, and who has standing to appeal the  
4           planning director's determination that such a plan amendment  
5           is required to accompany a requested zone change.  
6           SRC 64.060(d) has no apparent bearing on the issue presented in  
7           this assignment of error, viz, whether the council had  
8           authority to consider the category 4 plan change initiated by  
9           intervenors where the planning commission failed to recommend  
10          the action it deemed appropriate, as SRC 64.110(a) provides.

11          We see nothing in the SRC which prevents the city council  
12          from reviewing the planning commission's action on a proposed  
13          comprehensive plan amendment. The SRC requires action by the  
14          council before a category 4 plan amendment can be approved.  
15          SRC 64.110(d). The planning commission has no independent  
16          authority to approve an application for a comprehensive plan  
17          amendment. The planning commission only has authority under  
18          the SRC to make recommendations regarding proposed plan  
19          amendments. SRC 64.110(a).<sup>6</sup> We conclude that under the SRC,  
20          applications for plan amendments are considered by the planning  
21          commission and are then automatically forwarded to the council  
22          for review.

23          We agree with respondent that the city council had the  
24          authority to approve the subject comprehensive plan amendments  
25          without an appeal of the planning commission's action having  
26          been filed.

1 The first assignment of error is denied.

2 SECOND ASSIGNMENT OF ERROR

3 "The City Council erred in not adopting a specific set  
4 of findings regarding the Applicant's request for a  
5 Comprehensive Plan Change, Neighborhood Plan Change  
6 and Zone Change."

6 Petitioner points out that the city's findings are  
7 difficult to follow. They are made up of attachments, and  
8 documents incorporated by reference. In this assignment, we  
9 understand petitioner to object to the form of the city's  
10 findings rather than their substance.

11 Respondent contends it is the petitioner's responsibility  
12 to point to defects in the findings and, because the petitioner  
13 has not identified any specific defects in the findings, this  
14 assignment of error must fail. Respondent also argues that its  
15 findings are legally sufficient. Respondent points out that:

16 "\* \* \* The findings in this case may involve  
17 surplusage and multiple statements of the same facts  
18 and rationale, but the basis for the decision is amply  
19 evident. The findings state all the applicable  
20 criteria and considerations \* \* \*, present basic facts  
21 as to general background \* \* \*, nature of the site  
22 \* \* \*, nature of the surrounding area \* \* \*, nature of  
23 the request \* \* \*, market forces associated with the  
24 proposed use \* \* \*, need or [sic] the proposed use in  
25 terms of present and future conditions \* \* \*, lack of  
26 appropriately designated land \* \* \*, expected impacts  
27 \* \* \*, and particularized statements as to how the  
28 basic facts relate to satisfaction of criterion  
29 [sic]. \* \* \* In addition, formal issues and major  
30 concerns (e.g., opposing market studies) are addressed  
31 and resolved \* \* \*." Respondent Brief 4.

25 Findings need take no particular form. Sunnyside  
26 Neighborhood v. Clackamas Co., 280 Or at 23. Under

1 ORS 227.173(2), the city's decision need only:

2       "\* \* \* be based upon and accompanied by a brief  
3 statement that explains the criteria and standards  
4 considered relevant to the decision, states the facts  
5 relied upon in rendering the decision and explains the  
6 justification for the decision based on the criteria,  
7 standards and facts set forth."

8       The city council adopted by reference as its findings a  
9 staff report with attachments (Record 6-43) and a document of  
10 additional findings submitted by the applicant (Record 44-50).  
11 Record 2. See Astoria Thunderbird v. City of Astoria, 13 Or  
12 LUBA 154, 162-163 (1985).

13       We believe the documents adopted as findings make the  
14 criteria applied and facts relied upon by the city reasonably  
15 clear. We also find that these documents reasonably explain  
16 the city's justification for its decision.

17       Petitioners do not argue that the city's findings are  
18 inadequate other than as to their general form. It is the  
19 petitioner's responsibility to identify how the findings  
20 adopted by the city are inadequate. See League of Women Voters  
21 v. Metro Service Dist., \_\_\_ Or LUBA \_\_\_ (LUBA No. 88-102, July  
22 11, 1989), slip op 36. Petitioner's do not do so.

23       The second assignment of error is denied.

24       THIRD ASSIGNMENT OF ERROR

25       "The City Council erred in that there is an  
26 insufficient finding and there is no substantial  
evidence in the record which would support a finding  
that there is an 'overriding public need which is best  
served by the proposed change.'"

SRC 64.090(b)(2) establishes the following approval

1 criterion for minor plan changes:

2 "There is an overriding public need which is best  
3 served by the proposed change"

4 A. Adequacy of Findings

5 The city findings of compliance with SRC 64.090(b)(2) are  
6 as follows:

7 "Criteria #2: Public Need:

8 "The applicant states that there is considerable land  
9 available for commercial purposes and that as more  
10 apartments are being built in the area more storage  
11 will be needed. The City staff conducted a survey of  
12 the self storage facilities which are located south of  
13 Mission Street, east of the Willamette River and west  
14 of I-5. There are two self storage facilities in that  
15 area which have a total of 708 units with currently  
16 only 26 units (4%) available for rent. The third  
17 storage facility, CPSRV Center Inc., in this same  
18 geographic area, only stores recreational vehicles."  
19 Record 25.

15 "I. Comprehensive Plan Amendment - Public Need

16 "A. The SACP Economic Development Goal 4 D encourages  
17 an adequate supply of industrial land. Mr.  
18 Nelson presented a map showing an inventory of  
19 industrial land in the area which demonstrated  
20 the lack of alternative sites for the proposed  
21 use. The industrial and commercial development  
22 working paper to the SACP periodic review report  
23 showed only two vacant IC parcels of less than  
24 five acres in all of the Salem/Keizer urban area.

21 "B. We have reviewed the statistics and data from  
22 both applicant and opponents in this proceeding,  
23 and we find the evidence of applicant to be the  
24 more weighty and persuasive evidence. The  
25 opponents rely in part on Mr. Hogevoll's  
26 estimates of existing storage, but some of his  
statistics are based on units which are not yet  
constructed. The square footage statistics  
provided by Mr. Howard appear to be a more  
accurate measure of the actual space in  
comparable use. The square footage data supplied  
by the opponents also appears to be inflated

1 through the use of dissimilar space. In  
2 addition, the population statistics provided by  
3 Mr. Howard include all population within the  
4 statistical area. The population figures  
5 utilized by opponents, Roden Properties and  
6 Mr. Hogevoll, do not include the unincorporated  
7 areas in Marion and Polk Counties which lie  
8 outside the city. Finally, the Howard data is  
9 current while the opponent's data is based on the  
10 1980 census estimates. The applicants statistics  
11 reflect the more accurate population, actual  
12 square footage in comparable use and the truer  
13 market demand of such storage space per capita.

14 "C. The data presented is that in the Pacific  
15 Northwest, in excess of 65 percent of the renters  
16 of self service storage facilities are  
17 homeowners. Multi-family housing users occupy  
18 about 17 percent of the space and business and  
19 professional users occupy the remainder.

20 "D. Demographic information shows that the population  
21 in Oregon and the per household income is  
22 expected to grow at a faster rate than the  
23 national average. Industry data projects a  
24 national growth rate of 15-20 percent per year in  
25 self service storage facilities.

26 "E. According to the CACI demographic report, there  
27 are approximately 91,000 people residing within a  
28 five mile radius of this site. In addition,  
29 according to the appraisal report, there are  
30 additional multi-family units under construction  
31 in this area. The City of Salem population  
32 forecast indicated an expected growth of  
33 approximately 14,000 persons in census tracts  
34 20-23 alone over the next 15 years. The City of  
35 Salem Data Report No. 11 reflects the increased  
36 number of dwelling units being constructed in the  
37 service area for the proposed development.

38 "F. According to the data presented in the expert's  
39 report, the market usage predominately lies  
40 within a three to five mile radius of the  
41 location. The average ratio in the Pacific  
42 Northwest is from three square feet of storage  
43 per person to a maximum of five square feet.  
44 From the existing demographic data and the  
45 inventory of the rentable space in comparable  
46 existing self service storage facilities in the  
47 user area, we conclude that there is a public

1 need in the immediate area for the proposed use.  
2 There is no other alternative IC site available  
to satisfy this need.

3 "G. In 1988, the City Council granted a similar  
4 comprehensive plan amendment and zone change to  
opponent Gerald Hogevoll in Case No. 87-17.  
5 Mr. Hogevoll stated in his application: "The  
6 existing mini storage is inadequate for the  
growing demand for storage in this area and  
7 currently has a waiting list that would well  
justify the expansion. Thus, the use would be  
conducive to public demand for service." Record  
8 44-45.

9 Petitioner attacks the city's findings as inadequate to  
10 satisfy SRC 64.090(b)(2) because the city made two errors.  
11 Petitioner first argues that the city improperly determined  
12 that the public need requirement can be satisfied by a finding  
13 that a future need exists and second, that the city improperly  
14 equated market demand with "public need."

15 1. Future Need

16 Petitioner contends that the city used the wrong approval  
17 standard in finding the existence of a public need for the  
18 proposed self service storage facilities. Petitioner argues  
19 that the city improperly considered future need in its analysis  
20 of whether an overriding public need for self service storage  
21 facilities exists. Petitioner claims that SRC 64.090(b)(2)  
22 does not authorize consideration of future need. Rather,  
23 petitioner asserts that under SRC 64.090(b)(2) and (3), the  
24 need identified to justify this plan amendment must be found to  
25 currently exist.

26 Intervenors maintain that anticipated residential growth

1 may be considered in the city's analysis of public need not  
2 accommodated by the plan. Intervenors contend that the  
3 projected future needs of the public are valid considerations  
4 in determining public need. Intervenors state that this  
5 principle was discussed in Sunnyside Neighborhood v. Clackamas  
6 Co., supra, where the court stated:

7 "We repeat that no particular technical form of  
8 finding is required. Some findings may describe  
9 existing geographic or other physical facts, some may  
10 describe social or economic factors, some may be  
11 statistical information, some may be projections of  
12 expected future developments. For instance, a  
13 statement that traffic on a certain thoroughfare is  
14 increasing faster than had been anticipated, or that  
15 the number of children in a neighborhood is expected  
16 to decline, or that shopping habits are changing, if  
17 these things are properly established, would be  
18 findings on the basis of which the planning body might  
19 then conclude and explain, that certain amendments are  
20 compatible with the governing policies." id. at 23.

21 We agree with intervenors that if a future need is properly  
22 established, the city could base a finding of the existence of  
23 a public need to justify the proposed amendment on such a  
24 future projected need. Petitioner does not challenge the  
25 adequacy of the city's findings to project a future need for  
26 the proposed use, other than by challenging the city's use of  
market demand in the need equation.

Accordingly, this subassignment of error is denied.

## 23 2. Market Demand

24 Petitioner contends the city improperly relies upon the  
25 existence of a market demand for self service storage  
26 facilities in determining that a public need exists for more

1 such facilities. Petitioner cites our decision in Allen v.  
2 City of Banks, 9 Or LUBA 218 (1983) for the proposition that a  
3 market analysis is not a proper substitute for a public need  
4 analysis. Petitioner maintains that the fact that a market  
5 exists for a particular use does not equate with a need for  
6 it. Petitioner cites Still v. Marion County, 42 Or App 115,  
7 122, 600 P2d 433 (1979).

8 Even assuming petitioner is correct that it would be error  
9 for the city to interpret public need under SRC 64.090(b)(2) to  
10 be satisfied by a demonstration of market demand for the  
11 proposed change, the city's findings do not analyze only market  
12 demand in establishing that a public need exists. While it is  
13 true that the city found "[t]he applicant's statistics reflect  
14 the more accurate population, actual square footage in  
15 comparable use and the truer market demand of [sic] such  
16 storage space per capita" (emphasis supplied) (Record 44), the  
17 city 's findings also state "from the existing demographic data  
18 and the inventory of the rentable space in other comparable  
19 existing self service storage facilities in the user area, we  
20 conclude that there is a public need in the immediate area for  
21 the proposed use." Record 45. Petitioner has not adequately  
22 explained the basis for its argument that the city only applied  
23 a market analysis to decide that a public need exists for the  
24 self service storage facility proposed. We will not make  
25 petitioner's argument for it. Deschutes Development v.  
26 Deschutes County, 5 Or LUBA 218, 220 (1982).

1 This subassignment of error is denied.

2 B. Evidentiary Support

3 Petitioner also contends that the city's findings of  
4 compliance with SRC 64.090(b)(2) are not supported by  
5 substantial evidence in the whole record. Petitioner contends  
6 that the city's conclusions regarding future and existing need  
7 are not supported by substantial evidence.

8 Petitioner argues that the city failed to consider evidence  
9 which petitioner suggests would undermine the city's finding of  
10 public need for the proposed self storage facilities. In this  
11 regard, petitioner claims that the city failed to consider the  
12 impact of its recent approval of expansion of an existing self  
13 storage facility. Petitioner points out that the city's  
14 approval authorized expansion of an existing self service  
15 storage facility from 42,000 square feet to 61,000 square  
16 feet. Petitioner contends that the city must consider this  
17 additional storage that will be available to the public to  
18 determine whether the public needs more self service storage  
19 facilities.

20 Intervenor's contend that there is substantial evidence in  
21 the record that a public need exists "today." Intervenor's  
22 Brief 4. Intervenor's cite the following evidence to  
23 demonstrate current public need for the proposed self storage  
24 units:

25 "The demographic information previously explained  
26 indicates a strong demand far in excess of the ability  
to build at this one location. The competitive market

1 information indicates very strong occupancies in all  
2 of Salem and particularly strong occupancies and  
3 demand in the south Salem area. The demographic and  
4 competitive market information indicate a need and  
5 demand in excess of 50,000 square feet. However, the  
6 prime location offers the ability to build the maximum  
7 of 50,000 square feet. The actual site and plan and  
8 building layout afford the most visibility and  
9 accessibility equates to just under 43,000 gross  
10 square feet. The total net area planned is just over  
11 37,000 square feet. All data considered together  
12 indicate that a mid size storage facility at this  
13 location can be quite successful." Record 74.

14 We agree with petitioner that the city must consider its  
15 recent approval for expansion of an existing self service  
16 storage facility in determining whether a need exists.<sup>7</sup> As  
17 intervenors have pointed out, the future needs of the public,  
18 if properly established, can be used to establish that a public  
19 need exists for a particular use. However, when relying upon  
20 the future needs of the public, the city must also consider the  
21 impact of reasonably certain improvements which would serve the  
22 projected need. The city considered the future needs of the  
23 public, in part, in deciding that a public need exists. Record  
24 44, 45. However, the city discounted the evidence presented by  
25 petitioner to show that adequate self storage space will exist  
26 to accommodate the future needs of the public. The city  
discounted petitioner's evidence because the city found that  
petitioner's expert based his figures in part on facilities not  
yet built. The city stated

27 " \* \* \* We have reviewed the statistics and data from  
28 both applicant and opponents in this proceeding, and  
29 we find the evidence of applicant to be more weighty  
30 and persuasive evidence. The opponents rely, in part  
31 on Mr. Hogevall's estimates of existing storage, but

1 some of his statistics are based on units which are  
2 not yet constructed. The square footage statistics  
3 provided by Mr. Howard appear to be a more accurate  
4 measure of actual space in comparable use." Record 44.

5 The city cannot determine a need exists, based in part on  
6 future public needs, and then refuse to consider evidence of  
7 reasonably certain improvements which, arguably, can alleviate  
8 the identified public need.

9 The city must consider the impact of its recent approval  
10 for expansion of an existing self service storage facility on  
11 whether a current and future public need exists for the  
12 proposed use. The city has failed to do so.

13 This subassignment of error is sustained.

14 The third assignment of error is sustained, in part.

15 FOURTH ASSIGNMENT OF ERROR

16 "The City Council erred in that there is an  
17 insufficient finding and there is no substantial  
18 evidence in the record which would support a finding  
19 that 'the plan does not otherwise accommodate a public  
20 need.'"

21 SRC 64.090(b)(3) establishes the following approval  
22 criterion for minor plan changes:

23 "The plan does not otherwise make adequate provision  
24 to accommodate the public need;"

25 A. Adequacy of Findings

26 The city's findings purporting to show compliance with  
27 SRC 64.090(b)(3) are as follows:

28 / / /  
29 / / /  
30 / / /

1           "Criteria #3: Plan Does Not Otherwise Accommodate the  
2           Public Need:

3           "The applicant has stated there is a very small amount  
4           of IC zoning in Salem and aside from the neighboring  
5           properties, there are no other similarly zoned areas  
6           for approximately four miles. \* \* \*" Record 20.

7           "B. Conclusion: There is an overriding public need  
8           which is best served by the proposed storage.

9           "Finding No. 1: "The applicant produced a plat map  
10          with an inventory of industrial commercial zoned land  
11          in south Salem. The inventory demonstrated that there  
12          is a very small amount of IC zoned land and that the  
13          only vacant parcel at this time in all of south Salem  
14          is property south of Madrona. From the applicant's  
15          testimony, it appears that there is a high occupancy  
16          rate of self-storage units in south Salem and that an  
17          increased scale of activity in apartment, condominium  
18          and residential construction in this area within three  
19          or four miles of the subject site enhances the need  
20          for a service facility of this type. Kuebler  
21          Boulevard has now been extended to Commercial street  
22          and is under construction for extension from  
23          Commercial Street to I-5 where there will be an  
24          interchange. Construction is also underway from I-5  
25          to the Santiam Highway and with the completion of  
26          these lengths Keubler becomes a major belt road. The  
            community has a tremendous investment in the  
            transportation improvements that have been constructed  
            to serve the site and the overriding public need to  
            utilize the site in a positive way to that these  
            transportation facilities can be efficiently used.  
            The applicant has conducted a survey of potential  
            sites and finds that the subject site is the best site  
            for a self-storage facility with relationship to  
            traffic improvements along Commercial and Kuebler  
            Boulevard. The proposed use will serve to satisfy the  
            public need for storage facilities with respect to  
            existing and planned residential facilities in this  
            area of south Salem." Record 48-49.

27           With regard to compliance with SRC 64.090(b)(3), petitioner  
28           contends the city erred in selecting an improper area in  
29           determining whether properly zoned land exists to accommodate  
30           the identified public need. Petitioner argues that the city

1 utilized a particular radius surrounding the subject property  
2 to evaluate the SRC 64.090(b)(2) requirement of "public need."  
3 Petition for Review 15, 16. Petitioner states that it was  
4 within this particular radius that the city found residential  
5 construction was occurring, and that it was within this radius  
6 where the city found the need for the proposed self service  
7 storage facility to occur. Petitioner complains, however, that  
8 the city addressed a different area in its analysis under  
9 SRC 64.090(b)(3) to determine the existence of IC zoned land to  
10 accommodate the identified public need. Petitioner argues that  
11 the city cannot have it both ways. Petitioner maintains that  
12 the area the city finds to be generating the need for more IC  
13 zoned land must also be the area utilized in examining whether  
14 there is land properly planned and zoned to satisfy the need.

15 Intervenor's suggest that the city's interpretation of its  
16 ordinance as authorizing use of different areas for evaluating  
17 the existence of a public need and the existence of IC zoned  
18 land to accommodate the public need is reasonable and proper.

19 The record is not clear and is somewhat conflicting as to  
20 the particular areas identified to establish public need and to  
21 determine whether the plan adequately accommodates that need.  
22 The city's findings appear to identify an area four miles in  
23 radius surrounding the subject site to determine whether the  
24 plan adequately accommodates the identified need. Record 25,  
25 35. However, the city's findings identify an area with a  
26 radius of up to five miles from the subject site in identifying

1 the existence of a public need. Additionally, the findings  
2 strongly suggest that the area generating the public need may  
3 be much larger, extending as far as the City of Albany, and  
4 including 91,000 people.<sup>8</sup>

5 Under SRC 64.090(b)(3), the city is required to explain why  
6 the plan does not accommodate the public need. If the city is  
7 going to look at less than the area it used to demonstrate  
8 need, then the city must justify the area it chooses to use in  
9 determining if there is land already planned to accommodate the  
10 identified need.<sup>9</sup>

11 For instance, the city has not explained whether there  
12 exist other IC zoned lands in the need generating area of the  
13 city which could accommodate the identified need.<sup>10</sup> It is  
14 not clear that a need for public self service storage units is  
15 only adequately accommodated when constructed in close  
16 proximity to the users. Further, the record suggests that the  
17 need for the self service storage units proposed is coming from  
18 areas, at least in part, outside of the city limits.<sup>11</sup> If  
19 the city includes land outside of its limits for establishing  
20 the statistical area it examines to determine the existence of  
21 public need, then it may also be required to evaluate whether  
22 there are lands appropriately planned and zoned by the  
23 applicable county plans for self storage facilities to  
24 accommodate the need.<sup>12</sup>

25 If the public policy objectives of SRC 64.090 are to have  
26 any meaning, the city must explain why it limits its analysis

1 to a particular area in determining whether the plan adequately  
2 accommodates the public need under SRC 64.090(b)(3). The  
3 city's decision does not provide this explanation. We conclude  
4 that without adequate explanation, the city is incorrect in  
5 choosing, in its examination of whether land is already planned  
6 to accommodate a need, a smaller and different area than that  
7 it chose to identify the need for the proposed use.

8 This subassignment of error is sustained.

9 B. Evidentiary Support

10 Petitioner argues that the city's findings concerning  
11 SRC 64.090(b)(3) are not supported by substantial evidence in  
12 the whole record. However, because we conclude under the  
13 preceeding subassignment that the findings supporting  
14 SRC 64.090(b)(3) are inadequate, there is no point in  
15 evaluating the substantiality of the evidence supporting these  
16 inadequate findings. DLCD v. Columbia County, \_\_\_ Or LUBA \_\_\_  
17 (LUBA No. 87-109, March 15, 1988), slip op 7.

18 The fourth assignment of error is sustained, in part.

19 FIFTH ASSIGNMENT OF ERROR

20 "The City Council erred in that there was an  
21 insufficient finding and there was no substantial  
22 evidence in the record which would support a finding  
that 'the change must be logical and harmonious.'"

23 SRC 64.090(b)(4) provides the following requirement for  
24 minor plan changes:

25 "The proposed change is logical and harmonious  
26 with the land use pattern for the greater area as  
shown on the detailed and general plan maps."

1           A.    Adequacy of Findings

2           The city's findings of compliance with this criterion are  
3 as follows:

4           "Under the new policy of zoning for specific uses,  
5 which became effective on January 1, 1989, the City  
6 can eliminate the undesirable uses in a zone change  
7 thereby only permitting, in effect, uses that are  
8 allowed in a CR (Commercial Retail) zone plus the  
9 mini-warehouse use. This would address the Planning  
10 Commission's concern regarding the possibility of  
11 other more undesirable uses such as  
12 intercity/interstate trucking and storing." Record 13.

13           "Criteria #4: The Change Must Be Logical and  
14 Harmonious The surrounding property to the south and  
15 southwest are currently designated 'Industrial  
16 Commercial' and are used for storage. Furthermore,  
17 the property is on Commercial Street which is a major,  
18 commercially developed thoroughfare of the City.  
19 Therefore, the change in designation from 'Commercial'  
20 to 'Industrial Commercial' is logical and harmonious  
21 with the land use pattern of the area." Record 25.

22           "Criteria #4: The applicant indicates that the  
23 proposed change in land use will have a positive  
24 effect on the neighborhood. The proposed facility  
25 will be fenced and landscaped. Furthermore, since  
26 mini-warehouses would generate low volumes of traffic,  
the developer would have no need to access Woodside  
Drive or Fabry Road. The proposed use will have  
little or minimal impact on public facilities and  
services. There would be little, if any, impact on  
water and sewer services as compared to alternative  
commercial retail uses. Likewise, there would be  
considerably less impact in terms of vehicular  
movements and traffic on the surrounding street system  
than other alternatives." Record 27.

27           "Findings: While the City of Salem does not have a  
28 'gateway' policy, the applicant has agreed to  
29 landscape the subject property and to accept a  
30 condition that the property be used only for self  
31 service storage. This will significantly lessen the  
32 impact of a change permitting industrial use. With  
33 this limitation on use the Liberty-Boone Neighborhood  
34 Association indicated its support for the proposal and  
35 that it would be compatible with the neighborhood.  
36 The chairman of the neighborhood group testified that

1 the proposed facility would not have the appearance of  
2 an industrial use. The existing land use pattern of  
3 the area along Commercial Street includes commercial  
4 retail uses including a boat sales facility and also  
5 mini warehouses. Across the street from the subject  
6 property to the east is the regional headquarters for  
7 the Bureau of Land Management. There are various  
8 commercial uses, such as lumber yards, along  
9 Commercial Street. The proposed facility will have to  
10 be constructed according to code with the appropriate  
11 setbacks, etc., and the applicant is prepared to  
12 construct an attractive facility. The proposed change  
13 is logical and harmonious since it utilizes the major  
14 transportation improvements along Commercial Street  
15 and Kuebler Boulevard. Locating this use on  
16 Commercial Street tends to promote the integrity of  
17 neighborhood streets since customers in the south  
18 Salem area can utilize the arterials to get to the  
19 site. With Kuebler Boulevard constituting part of the  
20 beltline serving the Salem urban area, locating a self  
21 service storage facility at the subject site is  
22 logical and harmonious with the transportation plan  
23 and is consistent with the goal of using arterials to  
24 avoid intrusion in the neighborhoods." Record 49-50.

14 Petitioner claims that the city's findings do not  
15 adequately explain why this intrusion of industrial zoning into  
16 the commercially planned and zoned strip along Commercial  
17 Street is logical and harmonious. Petitioner also claims that  
18 rezoning and replanning the site to IC is really a major plan  
19 change. Petition for Review 18.

20 Respondent addresses only petitioner's claim that rezoning  
21 and replanning the site is a major plan change. Respondent  
22 maintains that this action is not a major plan change.

23 Respondent argues:

24 " \* \* \* a site specific comprehensive plan and zone  
25 change cannot work a major policy or plan change.  
26 \* \* \* Absent some provision of law exclusively  
mandating amendment of the commercial zone use list  
over a comp plan/zone change to allow a particular use

1 on a particular parcel, the only issue is the validity  
2 of the action taken. \* \* \*" Respondent's Brief 5.

3 Petitioner does not demonstrate that the city has actually  
4 adopted a major plan change in the appealed decision.

5 Petitioner points to no code provision which would make the  
6 city's action in this case improper. Accordingly, we have no  
7 basis for concluding the city committed error in the manner in  
8 which it processed this plan amendment. Deschutes Development  
9 v. Deschutes County, supra.

10 Neither respondent nor intervenors address petitioner's  
11 charges concerning the adequacy of the city's findings. The  
12 city's findings, however, state that the amendment is, in  
13 essence, logical and harmonious because of existing and planned  
14 traffic improvements along Commercial Street, including the  
15 fact that nearby Kuebler Road is becoming a part of the Salem  
16 "beltline," opening up south Salem to the surrounding areas.  
17 Record 50. The findings also state that the amendment is  
18 logical and harmonious because there is other IC zoning in the  
19 area. Record 25. Petitioner has not pointed to any specific  
20 defect in these findings. These findings identify the criteria  
21 the city employed, explain the facts relied upon by the city in  
22 reaching its conclusion and explain the justification for the  
23 conclusion reached. See ORS 227.173(2). Petitioner fails to  
24 provide specific argument as to why these findings are  
25 inadequate.

26 Accordingly, this subassignment of error is denied.

1           B.    Evidentiary Support

2           Petitioner argues that the city's findings that the  
3 proposed plan amendment is logical and harmonious, are not  
4 supported by substantial evidence in the whole record because  
5 they rely upon an existing self service storage facility as a  
6 use with which the proposed self service storage use will be  
7 harmonious.<sup>13</sup> Petitioner points out that the existing self  
8 service storage facility referred to does not have any frontage  
9 on Commercial Street. Accordingly, petitioner reasons that the  
10 existing facility cannot be considered as evidentiary support  
11 for a determination that the proposed self service storage  
12 facility, which has frontage on Commercial Street, is logical  
13 and harmonious with the land use pattern of the area.

14           Intervenors maintain that there is more than adequate  
15 evidentiary support for the city's conclusion that the  
16 amendment will be logical and harmonious. Intervenors point  
17 out that the site borders IC zoned land on the south and west.  
18 Intervenors also argue that uses in the area have an  
19 "industrial appearance," which uses include "Capitol Rental  
20 Center; Kilgore-Blackman Building Materials; Salem Farm and  
21 Garden Supply; numerous auto body and repair shops and the BLM  
22 Regional office which has a large outdoor storage area for  
23 vehicles." Intervenors' Brief 9. Intervenors argue that  
24 petitioner's storage facility and an outdoor RV storage  
25 facility are visible from Commercial Street and, therefore, the  
26 fact that they do not front Commercial Street is not important.

1 Finally, intervenors maintain that the conditions of approval  
2 imposed on the subject property as part of the appealed  
3 decision are more restrictive than the development standards  
4 imposed in the zones applied in the area authorizing "heavy"  
5 commercial uses. Intervenors contend that these conditions of  
6 approval ensure that the proposed self service storage facility  
7 will continue to be logical and harmonious with the land use  
8 pattern of the area.<sup>14</sup>

9 Petitioner's only specific argument regarding the evidence  
10 the city relied upon is that petitioner's self service storage  
11 facility does not front on Commercial Street. This evidence  
12 does not, by itself, undermine the evidence in the record cited  
13 by intervenors that the proposed facility fronting on  
14 Commercial Street will be logical and harmonious with the land  
15 use pattern of the area. The area the city addressed under  
16 this approval criterion is larger than merely the subject site  
17 and petitioner's existing facility. A reasonable person could  
18 conclude, based on the evidence in the whole record, that the  
19 proposed use will be logical and harmonious with the land use  
20 pattern of the area.

21 This assignment of error is denied.

22 SIXTH ASSIGNMENT OF ERROR

23 "The City Council and the Planning Commission erred in  
24 that there is no adequate findings or substantial  
25 evidence in the record which would support a finding  
26 that the zone change requirements under SRC 114.160  
are met."

26 SRC 114.160 provides:

1           "(a) The applicant for any quasi-judicial land use  
2           action under this zoning code \* \* \* shall have  
3           the burden of proving justification for the  
4           proposal. The greater the impact of the proposal  
5           in an area, the greater is the burden on the  
6           proponent.

7           "(b) The proposal must be supported by proof that it  
8           conforms to all applicable criteria imposed in  
9           this zoning code; that it conforms to all  
10          standards imposed by applicable goals and  
11          policies of the comprehensive plan in light of  
12          its intent statements, including adopted  
13          neighborhood plans; and that it conforms with all  
14          applicable land use standards imposed by state  
15          law or administrative regulation. The burden  
16          rests ultimately on the proponent to bring  
17          forward testimony or other evidence sufficient to  
18          prove compliance with these standards. At a  
19          minimum, the proponent's case should identify and  
20          evaluate the proposal in the context of all  
21          applicable standards.

22          "(c) \* \* \* the following factors should be evaluated  
23          by the proponent and shall, where relevant, be  
24          addressed by the administrative body in its final  
25          decision:

26                "(1) The existence of a mistake in the  
                  compilation of any map, or in the  
                  application of a particular land use  
                  designation to any property in this zoning  
                  code or the comprehensive plan;

                  "(2) A change in the social, economic or  
                  demographic patterns of the neighborhood or  
                  of the community;

                  "(3) A change of conditions in the character of  
                  the neighborhood in which the use or  
                  development is proposed;

                  "(4) The effect of the proposal on the  
                  neighborhood, the physical characteristics  
                  of the subject property, and the public  
                  facilities and services.

                  "(5) All other factors relating to the public  
                  health, safety, and general welfare which  
                  the administrative body deems relevant.

26          / / /

1           "(d) The extent of the consideration given to the  
2           various factors set forth in subsection (c) of  
3           this section will depend on the nature and  
4           circumstances of each individual case. Unless  
5           any of the factors is deemed irrelevant,  
6           something more than an unsupported conclusion  
7           will be required, but the degree of detail in the  
8           treatment of relevant factors will depend on the  
9           degree of the proposed change or deviation, and  
10           the scale and intensity of the proposed use or  
11           development. The requisite degree of  
12           consideration is directly related to the  
13           provisions of subsection (a) of this section that  
14           the greater the impact of the proposed use in an  
15           area, the greater is the burden on the proponent."

16           Petitioner claims that the city's findings are inadequate  
17           to satisfy SRC 114.160 and lack evidentiary support in the  
18           record. We address each contention separately.

19           A. Adequacy of Findings

20           Petitioner contends that SRC 114.160 establishes approval  
21           standards. Petitioner argues that the city incorrectly applied  
22           SRC 114.160(c)(2) and (3). Petitioner also argues that under  
23           SRC 114.160(c)(1), intervenors must, but did not, show the  
24           existence of a "mistake" in the original planning and zoning  
25           for the subject property.

26           The findings to which we are cited by the parties address  
27           SRC 114.160(c)(1)-(3) as follows:

28           "The applicant does not allege a mistake in the  
29           compilation of any map or in the application of a  
30           particular land use designation, and therefore it is  
31           not an issue." Record 27.

32           "B. Mistake in Zoning. While applicant does not  
33           allege there is a mistake in zoning the subject  
34           property, the applicant does point out, in the  
35           article entitled 'Standards for Self Service  
36           Storage Facilities,' that modern facilities are  
37           quite compatible with residential and commercial

1 developments and in many jurisdictions these  
2 facilities are not permitted uses in commercial  
zones.

3 "C. Change in Economic and Demographic Patterns. The  
4 City of Salem Data Report No. 11 shows that in  
5 the past two years the subject area is undergoing  
6 increased residential development. This is a  
7 demographic change from the previous five years.  
Industry statistics show that approximately 82  
percent of the users of self service storage  
facilities are single family and multi family  
residents." Record 45.

8 "D. Change in Character of the Neighborhood: With  
9 recent major commercial development to the north  
10 (i.e., G.I. Joes and Payless/Albertson's) the  
11 demand and need for commercial retail development  
12 on the subject property is greatly diminished.  
13 The development created a change in the character  
14 of the neighborhood. The development pattern for  
15 commercial retail is to cluster such uses. The  
SACP commercial development policies discourage  
strip commercial development. The subject  
property is too small to be developed into a  
clustered neighborhood shopping center. It lies  
adjacent to IC property. Use of the subject  
property for self service storage avoids strip  
commercial retail development." Record 45.

16 Petitioner claims that the city found only that the  
17 proposed use will not "change the social, economic or  
18 demographic patterns of the neighborhood" or the "character of  
19 the neighborhood." Petition for Review 22. Petitioner  
20 contends that the city must find that circumstances have  
21 changed which justify the plan amendment, not that the proposal  
22 does not change the circumstances of the neighborhood.

23 Intervenors point to findings which show the circumstances  
24 in the neighborhood have changed, thus demonstrating compliance  
25 with SRC 114.160(c)(2) and (3). Intervenor also argues that  
26 SRC 114.160(c) provides factors which the city must consider

1 and address, not approval standards.

2 We agree with intervenors that the factors listed in  
3 SRC 114.160(c) are not approval standards. SRC 114.160(c)  
4 requires the city to decide which of its factors are relevant,  
5 and to address them in its decision. If a listed factor is  
6 found "irrelevant" by the city, then no findings are required  
7 to demonstrate such consideration.

8 Here, the city properly determined that the "mistake"  
9 factor was irrelevant to its decision because no mistake was  
10 claimed to exist. The city determined considerations  
11 SRC 114.160(2) and (3) were relevant, and the city addressed  
12 them in its decision. The findings cited by intervenor show  
13 the city did consider whether there was a change in the  
14 neighborhood. Petitioner does not show why the city findings  
15 cited by intervenor are inadequate. Intervenors direct us to  
16 specific findings which intervenors contend support the city's  
17 decision. Petitioner must explain why the findings cited by  
18 intervenors are inadequate. Vizina v. Douglas County, \_\_\_ Or  
19 LUBA \_\_\_ (LUBA No. 88-014, August 26, 1988), slip op 11.  
20 Petitioner has not done so.

21 Accordingly, this subassignment of error is denied.

22 B. Evidentiary Support

23 Petitioner asserts that the city's findings addressing  
24 SRC 114.160(c)(2) and (3) are not supported by substantial  
25 evidence in the whole record. Petitioner provides no specific  
26 citation to any evidence that would discredit the evidence

1 relied upon by the city. Similarly, petitioner does not  
2 explain why the evidence relied upon by the city is  
3 unreliable. Petitioner argues only that the SRC requires  
4 intervenors to provide evidence that the social, economic or  
5 demographic patterns of the area and the character of the  
6 neighborhood have changed since the time the property was zoned  
7 and planned.

8 Intervenor's provide numerous citations to evidence in the  
9 record to support the city's finding that the demographics of  
10 the area are changing. Intervenor's Brief 11-12. Intervenor's  
11 also cite evidence in the record that the neighborhood has  
12 changed since its plan and zoning designations were applied.  
13 Record 32. Intervenor's contend that since that time, the land  
14 has developed with large commercial retail operations and that

15 " \* \* \* experts have testified that it will be many  
16 years before additional commercial land in that  
17 quantity is needed. These users and the users of the  
recently developed residential properties need self  
storage. \* \* \*" Intervenor's Brief 12.

18 We have no reason to question the reliability of the  
19 evidence to which we have been cited by the intervenors. We  
20 conclude that this evidence is evidence upon which a reasonable  
21 person could conclude that the demographics and character of  
22 the neighborhood have changed within the meaning of SRC  
23 114.160(c)(2) and (3). Younger v. City of Portland, 305 Or  
24 346, 360, 752 P2d 262 (1988).

25 This subassignment of error is denied.

26 The sixth assignment of error is denied.

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The city's decision is remanded.

FOOTNOTES

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The self service storage facility is also referred to as a "mini warehouse." It is, essentially, a facility used for storage needs by the public.

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The precise acreage upon which the proposed self service storage facility is to be located is unclear. Petitioner points to a discrepancy between the 2.36 acres for which the plan and zone changes were requested and the 2.67 acre size of the parcel. However, for purposes of this appeal, it is not important whether the redesignated area is 2.36 or 2.67 acres.

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The history leading up to the council's adoption of Ordinance 23-89 is confusing. The planning commission on November 29, 1988 voted to take no action on the plan amendments. However, it also voted at the same time that if the council approved the plan amendments, the commission would like the council to return the zone change to the commission for review. Record 135-136. The council considered the plan amendments at its February 13, 1989 meeting. The council had a second reading of Ordinance 6-89, which approved the plan amendments. Record 113. According to the planning commission's recommendation, the council voted to return the zone change request to the planning commission. Record 112. On February 21, 1989, the planning commission voted to recommend approval of the requested zone change. Record 121. On February 27, 1989, at the request of intervenors, the council reversed its decision to approve the comprehensive plan amendments and rescinded Ordinance 6-89. Record 109. On March 13, 1989, the council held a hearing on the comprehensive and neighborhood plan amendments and on the zone change. On March 20, 1989, the council approved the plan and zone changes. Record 52. On April 11, 1989, the council adopted the challenged ordinance, which conditionally authorizes the plan amendments and the zone change. Record 105.

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All parties agree that the subject plan amendments are "a category 4 minor plan change," and that SRC 114.200 governs appeal of planning commission decisions on such plan changes. Petition for Review 9.

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SRC 64.060 provides in part:

"The following classes of persons \* \* \* have standing to initiate [plan] amendments \* \* \*.

\* \* \* \* \*

"(d) Category 4: any person having standing to file a petition for a zone change pursuant to SRC 110.230 who has actually filed such a petition, where the planning administrator finds that the zone change, with or without conditions, would conflict with the comprehensive plan map and/or with the neighborhood plan. Any person with standing to petition for a Category 4 plan amendment may appeal the planning administrator's determination under this subsection to the Salem Planning Commission. Said appeal shall be limited to the determination of whether or not a conflict exists between the proposed zone change and the comprehensive plan. Appeal to the planning commission shall be conducted as a quasi-judicial matter, and may be appealed to the common council in the same manner as provided in SRC 114.200.

\* \* \* \* \*

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6

At most, the planning commission failed to make a recommendation. However, we do not believe that this failure deprives the council of its authority to review the planning commission's action. Sunnyside Neighborhood v. Clackamas Co., 280 Or 3, 7-8, 569 P2d 1063 (1977). Petitioners do not allege the planning commission's failure to make a recommendation to the council as error.

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There is also evidence in the record that there is an additional facility containing 50,000 square feet of self service storage under construction and possibly completed. Record 126.

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The entire City of Salem had an estimated population of 95,375 in 1987. Record 90.

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The city limited its consideration to IC planned and zoned areas, and the parties do not argue that there are other city planning and zoning designations which allow self storage facilities. If the city has other planning designations which authorize this use then, of course, the SRC requires the city to identify those designations and explain why land with such designation does not adequately accommodate the need for self storage facilities. However, we do not suggest that the city needs to consider whether areas currently planned and zoned such that self service storage facilities not allowed may be replanned and rezoned. The public policy objectives embodied in SRC 64.090(b)(3) demonstrate a purpose to preserve the planning scheme developed by the city absent demonstration by an applicant of a public need which the existing plan does not adequately accommodate.

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10

Additionally, we note that the city's findings state:

"\* \* \* The industrial and commercial development working paper to the SACP periodic review report showed only two vacant IC parcels of less than five acres in all of the Salem/Keizer urban area." Record 44.

No explanation is given why only IC planned and zoned lands having less than five acres can accommodate a self service storage facility.

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11

The city's findings recite that petitioner's evidence relating to population is not "accurate" because petitioner's evidence fails to include "all population within the statistical area," which includes "the unincorporated area in Marion and Polk Counties which lie outside of the city." Record 44.

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12

We do not suggest that because a need for self service storage comes from rural or residential areas, areas planned and zoned for rural (including resource) or residential uses should or could be replanned and rezoned under an industrial designation. See Still v. Marion County, 42 Or App 115, 122, 123, 600 P2d 433 (1979) (market demand for rural residential

1 homesites is not equivalent to a public need to convert  
2 agricultural land to residential use.)

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4 The self service storage facility referred to is  
petitioner's. Record 146.

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6 Intervenor's point out that the following conditions are  
7 imposed " \* \* \* landscaping requirements in excess of commercial  
8 development \* \* \* [e]xternal lighting is severely limited \* \* \*  
9 outdoor storage is prohibited \* \* \* [t]he building is to be one  
story \* \* \* access is limited to Commercial Street, so there  
will be no traffic infiltration into the neighborhood \* \* \*"  
Intervenor's Brief 9.

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