

1 Opinion by Holstun.

2 NATURE OF THE DECISION

3 Petitioners appeal a City of Portland decision amending the
4 Portland Comprehensive Plan (plan) and zoning map designations
5 for a 13,000 square foot property including two lots and part of
6 a vacated street right-of-way. The city's decision changed the
7 plan designation for the property from High Density Single
8 Family Residential to Medium Density Multifamily Residential.
9 The decision also changed the zoning designation for the
10 property from R5 (high density single family residential) to R1
11 (medium density multifamily residential).

12 MOTION TO INTERVENE

13 John Lape, the applicant below, moves to intervene on the
14 side of respondent in this proceeding. There is no opposition
15 to the motion, and it is allowed.

16 FACTS

17 Intervenor-respondent (intervenor) requested the plan and
18 zone changes to allow construction of a ten unit apartment
19 building on the property.

20 The property is located in the Homestead neighborhood near
21 the Oregon Health Sciences University complex and the Veterans
22 Administration Hospital. The primary access to the property is
23 through the R1 zoned area to the east from S.W. Gibbs Street
24 along S.W. 11th Avenue to S.W. Gains Street. The property lies
25 two blocks west of the intersection of S.W. 11th Avenue and S.W.
26 Gains Street, at a point where the elevation increases steeply
and S.W. Gains Street deadends. Most of the structures along

1 S.W. 11th Avenue are apartment buildings, and the R1 area to the
2 east of the site is a mixture of apartments and single family
3 dwellings, with many of the housing units occupied by employees
4 and students at the nearby hospital facilities.

5 The property at issue in this proceeding lies at the
6 boundary between the R1 zoned area and an area zoned R5. The R5
7 area encompasses several blocks to the north, west and south of
8 the property. The site zoned R1 by the city's decision
9 constitutes an extension of R1 zoning into the area currently
10 zoned R5.¹

11 An owner occupied dwelling is located on the R1 designated
12 property adjoining the subject property on the east. Single
13 family homes occupy the R5 designated properties adjoining the
14 subject property to the north and west, and single family
15 dwellings are under construction on the R5 designated property
16 adjoining the subject property to the south.

17 FIRST ASSIGNMENT OF ERROR

18 "Respondent improperly construed the applicable law,
19 violated ORS 227.173(2) and made a decision not
20 supported by substantial evidence in the whole record
by finding compliance with City Comprehensive Plan
Goal 2 and the applicable policies thereunder."

21 The city's plan and land use regulations have been
22 acknowledged by the Land Conservation and Development
23 Commission, as provided in ORS 197.251. Amendments to an

24
25 ¹Although the city's decision changed both the plan and zone map
26 designations for the subject property, for simplicity we generally refer
only to the zoning map designations in this opinion.

1 acknowledged comprehensive plan and land use regulation must be
2 consistent with the acknowledged comprehensive plan and land use
3 regulation. ORS 197.835(3). Plan Policy 10.3 explicitly
4 provides, in part:

5 " * * * The applicant [for a plan amendment] must show
6 that the requested change is: (1) consistent [with] and
7 supportive of the appropriate Comprehensive Plan goals
and policies; * * * "

8 Under the first assignment of error, petitioners challenge the
9 city's determinations that the requested plan and zone changes
10 comply with the following plan goal and policies:

11 "GOAL

12 "2 Maintain Portland's role as the major regional
13 employment, population and cultural center
14 through public policies that encourage expanded
opportunity for housing and jobs, while
retaining the character of established
residential neighborhoods and business centers."

15 "POLICIES AND OBJECTIVES

16 "2.1 Population Growth

17 "Allow for population growth within the
18 existing City boundary by providing land
19 use opportunities that will accommodate the
projected increase in City households by
the year 2000.

20 "2.2 Urban Diversity

21 "Promote a range of living environments and
22 employment opportunities for Portland
23 residents in order to attract and retain a
stable and diversified population."

24 " * * * * *

25 "2.8 Forest Lands

26 "Limit density in areas with forested lands
consistent with the City's land use

1 policies and the Urban Growth Boundary.

2 "2.9 Residential Neighborhoods

3 "Allow for a range of housing types to
4 accommodate increased population growth
5 while improving and protecting the City's
6 residential neighborhoods.

7 "* * * * *

8 "2.18 Utilization of Vacant Land

9 "Provide for full utilization of existing
10 vacant land except in those areas
11 designated as open space.

12 "* * * * *" Plan 21.

13 Petitioners contend the central issue in "this case is
14 whether * * * the proposed development site is more logically a
15 part of the multifamily development in the area or whether it is
16 logically better suited for * * * R5, High Density Single
17 Family, as originally designated by the Comprehensive Plan
18 * * *." Petition for Review 11. Petitioners contend the record
19 does not support the city's finding that the area is one
20 logically viewed as part of the R1 area and, therefore, the
21 requirement in Goal 2 for "retaining the character of existing
22 residential neighborhoods" is violated.

23 Petitioners point out the site is surrounded by owner
24 occupied dwellings.² Petitioners contend houses in the R5 area
25 are generally owner occupied and most of the rental housing and
26

²As noted earlier in this opinion, although the property to the east is zoned R1, it is developed with an owner occupied dwelling. In addition, single family dwellings are being constructed on the properties to the south.

1 apartment units are located in the adjoining R1 zoned area.
2 Petitioners also contend the topography of the property makes it
3 more logically part of the R5 zoned area.

4 Respondent contends petitioners read Plan Goal 2 with
5 improper emphasis on the requirement to retain the character of
6 established residential neighborhoods while ignoring the first
7 part of the goal. According to respondent, the first part of
8 the goal envisions actions that inevitably will have some impact
9 on the character of established residential neighborhoods.
10 Respondent contends the need to apply a more balanced reading of
11 the goal as a whole is made clear by the policies that follow
12 the goal.³

13 We agree with respondent that petitioner's reading of
14 Goal 2 and the policies that follow that goal, as well as the
15 arguments petitioners present concerning the goal and policies,
16 narrowly and improperly focus upon the requirement to retain
17 "the character of established residential neighborhoods * * *."
18 The standards included in Goal 2 and the policies that follow do
19 not mandate retention of existing neighborhoods, or parcels
20 within specific neighborhoods, in an existing or static state.

21 More importantly, petitioners assume the relevant

22
23 ³For example, respondent points out (1) increasing allowable density in
24 the area furthers the ability of the city to accommodate population growth,
25 as required by Policy 2.1; (2) providing apartments on the site will
26 promote a range of living environments, as required by Policy 2.2; (3) the
requirement in Policy 2.15 to "[l]ocate greater residential densities near
major employment centers" is furthered by the city's decision; and (4) the
decision will stimulate utilization of currently vacant land, furthering
Policy 2.18.

1 neighborhood character to be retained under the cited goal and
2 policies is the single family dwelling character of the existing
3 R5 zoned area. We understand the city essentially to agree with
4 petitioners that there are two "neighborhoods" relevant to this
5 decision. The first neighborhood is the area generally falling
6 within the R5 designated area and the second is the area
7 generally falling within the R1 designated area to the east.
8 The former neighborhood is characterized by single family, owner
9 occupied homes. The latter is generally characterized by a mix
10 of housing types with significant apartment development and more
11 renter occupants in the single family dwellings.

12 The critical point in resolving the first assignment of
13 error is that the city apparently does not view these two
14 neighborhoods as rigidly separated by the existing plan map and
15 zoning map district boundaries. Rather, the city's findings
16 suggest that existing plan and zoning map designations may in
17 certain instances only approximate the most appropriate
18 delineation of the two neighborhoods.

19 Intervenor identifies the following relevant finding:⁴

20 "The real issue appears to be one of reasonable
21 balance as to boundary lines between multifamily and
22 single-family development. While it is of course
arguable, it does not seem unfair to the Hearings
Officer to conclude that this site is more logically a

23
24 ⁴The quoted finding appears under the "conclusions" section of the
25 hearings officer's report and recommendations. We agree with intervenor
26 that the "conclusions" are actually findings which explain the city's
rationale for determining its decision is consistent with the requirement
in Goal 2 that the character of established neighborhoods be retained.

1 part of the neighborhood more suitably devoted to
2 multifamily use. The reasons for that conclusion are
3 grounded in the access (largely through commercial and
4 multifamily used streets), the physical street pattern
5 itself which appears physically incapable of
6 connecting the single-family zoned and used land to
7 the west and north to this site, the topography of the
8 area which separates that access, and the heavily
9 wooded nature of the area which, if conserved to the
10 degree possible will visually separate this site from
11 the single-family zoned and used land in the
12 neighborhood." (Emphasis added.) Record 64.

13 Although petitioners correctly note development of the site
14 with 10 residential apartments is not likely to leave a great
15 deal of the heavily wooded portion of the site for visual
16 separation from adjoining properties, we assume some wooded
17 portions may remain and, with wooded portions of adjoining
18 properties, may continue to provide some visual separation.
19 Petitioners also contest the significance of the existence of a
20 topographic barrier to extension of S.W. Gains Street into the
21 R5 area. However, the record supports the city's conclusion
22 that the topographic barrier results in orientation of the site
23 toward, and access to the site through, the R1 area to the east.

24 Reasonable persons could easily have different views about
25 whether the topographic influence on the road system, access,
26 and orientation of the site makes the site more logically part
of one neighborhood or the other. We conclude, however, that
petitioners' different view of the significance of these factors
provides us with no basis upon which to overturn the city's
determination. The standards embodied in Goal 2 and the
policies that follow the goal are subjective, and generally
worded. They are not written as precise or objective approval

1 standards. When applying such goals and policies, the city
2 enjoys significant discretion in determining whether particular
3 factors are sufficient to show a particular proposal is
4 consistent with or supportive of the goal. We conclude the
5 city's findings are adequate to demonstrate compliance with
6 Goal 2, and the record contains substantial evidence to support
7 those findings.

8 Petitioners separately attack the city's findings of
9 compliance with Policies 2.1, 2.2, 2.15, and 2.18. Petitioners
10 also contend the city failed to address Policies 2.8 and 2.9 at
11 all.

12 Regarding the city's failure to address Policy 2.8, which
13 requires the city to limit density in areas with forested lands,
14 petitioner offers no explanation why that policy applies to land
15 already planned and zoned for residential development, or why it
16 should apply to a decision to change the plan and zone
17 designations of such land from R5 to R1. We agree with
18 intervenor's contention that the policy is inapplicable.⁵ We
19 conclude the city did not err by not addressing the policy.

20 Regarding Policy 2.9, intervenor contends the city's
21 findings adopted to address Plan Goal 3 are adequate to
22 demonstrate compliance with the policy because Goal 3 is more

23
24 ⁵The Plan Urban Development Support Document explains that the forested
25 lands referred to in the policy are those forested lands removed from urban
26 services which are to be protected by applying the Farm Forest plan and
zone designation. Plan Urban Development Support Document 44. Petitioners
present no argument to the contrary.

1 comprehensive and addresses substantially the same concerns.⁶
2 We agree and conclude that, to the extent the city's failure to
3 adopt findings explicitly addressing Policy 2.9 is error, it is
4 harmless and presents no basis for reversal or remand.

5 Turning to petitioners' challenge of the city's findings of
6 compliance with Policies 2.1, 2.2, 2.15 and 2.18, we agree with
7 respondent's position, stated under its discussion of a later
8 assignment of error, that in determining whether the city has
9 adequately addressed the plan goals and policies,

10 "the [correct] test is whether the proposed change in
11 designation is 'consistent [with] and supportive of
12 the appropriate Comprehensive Plan goals and
13 policies.' An applicant is not required to establish
14 that a proposed new use promotes each aspect of each
15 goal and policy more effectively than some other use
16 would." Respondent's Brief 16.

17 We agree with respondent that the cited policies are subjective
18 and somewhat contradictory and that, when the city's obligation
19 under the policies is viewed accordingly, the city's findings,
20 incorporating the statement submitted by the applicant, are
21 adequate to show the decision is consistent with and supportive
22 of the policies.⁷

23 ⁶We discuss petitioners' challenge to the city's findings addressing
24 Plan Goal 3 under the next assignment of error.

25 ⁷The city found "R1 meets [Policy 2.1] better than R5 by permitting ten
26 households, as compared to two families, to live on this site in the City."
Record 96. Respondent further notes there is testimony in the record that
there is a need to offset land designated for multifamily development that
has been lost since the plan was adopted in 1981 because such lands have
been developed for other purposes. The city found Policy 2.2 was met
because "[a]n apartment building will give more persons more employment
opportunities in the vicinity than would two houses." Record 96. The
city's findings concerning Policy 2.15 (Living Closer to Work) were not

1 The first assignment of error is denied.⁸

2 SECOND ASSIGNMENT OF ERROR

3 "Respondent improperly construed the applicable law,
4 violated ORS 227.173(2), and made a decision not
5 supported by substantial evidence in the whole record
6 by finding compliance with Goal 3 of the Comprehensive
7 Plan and the applicable policy thereunder."

8 Plan Goal 3 provides as follows:

9 "Preserve and reinforce the stability and diversity of
10 the City's neighborhoods while allowing for increased
11 density in order to attract and retain long-term
12 residents and businesses and insure the City's
13 residential quality and economic vitality."

14 Among the Plan Policies following Goal 3 is Policy 3.3,
15 which provides as follows:

16 "3.3 Neighborhood Diversity

17 "Promote neighborhood diversity and security by
18 encouraging a diversity in age, income, race and
19 ethnic background within the City's

20 challenged by petitioners. Regarding Policy 2.18, the city found "R1 will
21 make fuller use of this vacant land than would R5." Record 96. Respondent
22 also notes the applicant submitted evidence in support of his contention
23 that single family residential development of the site would be unlikely
24 due to the expense of developing on the steep grade. Record 93-96.

25 ⁸Citing City of Wood Village v. Portland Metro. Area LGBC, 48 Or App 79,
26 616 P2d 528 (1980), petitioners generally claim the city failed to respond
to specific evidence and legal argument offered by petitioners during local
proceedings. Specifically, petitioners fault the city for not addressing a
1967 hearings officer's decision denying a similar plan and zone change
request for the property because the hearings officer determined the site
was more related to the owner occupied single family area. As respondent
correctly notes, City of Wood Village, supra, simply requires that the city
address relevant issues upon which there was focused testimony and evidence
during local proceedings and does not require the city to respond to every
legal argument or address every piece of evidence. Respondent contends the
city responded to relevant issues raised by petitioners. With regard to
the 1967 hearings officer's decision, respondent contends that decision
established no approval criteria for the current decision and predated
adoption of the current city plan by several years. Respondent contends it
is the criteria in the city's current plan that control the decision, not a
hearings officer's decision issued over twenty years ago. We agree with
respondent.

1 neighborhoods."

2 Petitioners contend the city's findings fail to demonstrate
3 compliance with the above quoted goal and policy. Petitioners
4 view the city's action as allowing an intrusion into the
5 existing single family, owner occupied residential area.
6 Petitioners contend this will result in disruption rather than
7 stability and will make it more unlikely that long term
8 residents will be attracted to the neighborhood.

9 Respondent and intervenor identify the following findings
10 addressing Plan Goal 3 and Policy 3.3:

11 "* * * This proposal is supportive of Policy 3.3,
12 Neighborhood Diversity, and the proposal supports
13 [Goal 3] in general by allowing for increased density
14 which could likely attract long-term residents. This
15 is probable due to the size and design of the proposed
16 units." Record 58.

17 "* * * The plans proposed indicate sizeable units with
18 a very ample supply of parking. The design is well
19 conceived and, all in all, promises to be of a quality
20 which will compare favorably with most of the single
21 family and all of the multifamily development in the
22 neighborhood."⁹ Record 64.

23 As under the first assignment of error, much of
24
25

26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219
220
221
222
223
224
225
226
227
228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250
251
252
253
254
255
256
257
258
259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299
300
301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
319
320
321
322
323
324
325
326
327
328
329
330
331
332
333
334
335
336
337
338
339
340
341
342
343
344
345
346
347
348
349
350
351
352
353
354
355
356
357
358
359
360
361
362
363
364
365
366
367
368
369
370
371
372
373
374
375
376
377
378
379
380
381
382
383
384
385
386
387
388
389
390
391
392
393
394
395
396
397
398
399
400
401
402
403
404
405
406
407
408
409
410
411
412
413
414
415
416
417
418
419
420
421
422
423
424
425
426
427
428
429
430
431
432
433
434
435
436
437
438
439
440
441
442
443
444
445
446
447
448
449
450
451
452
453
454
455
456
457
458
459
460
461
462
463
464
465
466
467
468
469
470
471
472
473
474
475
476
477
478
479
480
481
482
483
484
485
486
487
488
489
490
491
492
493
494
495
496
497
498
499
500
501
502
503
504
505
506
507
508
509
510
511
512
513
514
515
516
517
518
519
520
521
522
523
524
525
526
527
528
529
530
531
532
533
534
535
536
537
538
539
540
541
542
543
544
545
546
547
548
549
550
551
552
553
554
555
556
557
558
559
560
561
562
563
564
565
566
567
568
569
570
571
572
573
574
575
576
577
578
579
580
581
582
583
584
585
586
587
588
589
590
591
592
593
594
595
596
597
598
599
600
601
602
603
604
605
606
607
608
609
610
611
612
613
614
615
616
617
618
619
620
621
622
623
624
625
626
627
628
629
630
631
632
633
634
635
636
637
638
639
640
641
642
643
644
645
646
647
648
649
650
651
652
653
654
655
656
657
658
659
660
661
662
663
664
665
666
667
668
669
670
671
672
673
674
675
676
677
678
679
680
681
682
683
684
685
686
687
688
689
690
691
692
693
694
695
696
697
698
699
700
701
702
703
704
705
706
707
708
709
710
711
712
713
714
715
716
717
718
719
720
721
722
723
724
725
726
727
728
729
730
731
732
733
734
735
736
737
738
739
740
741
742
743
744
745
746
747
748
749
750
751
752
753
754
755
756
757
758
759
760
761
762
763
764
765
766
767
768
769
770
771
772
773
774
775
776
777
778
779
780
781
782
783
784
785
786
787
788
789
790
791
792
793
794
795
796
797
798
799
800
801
802
803
804
805
806
807
808
809
810
811
812
813
814
815
816
817
818
819
820
821
822
823
824
825
826
827
828
829
830
831
832
833
834
835
836
837
838
839
840
841
842
843
844
845
846
847
848
849
850
851
852
853
854
855
856
857
858
859
860
861
862
863
864
865
866
867
868
869
870
871
872
873
874
875
876
877
878
879
880
881
882
883
884
885
886
887
888
889
890
891
892
893
894
895
896
897
898
899
900
901
902
903
904
905
906
907
908
909
910
911
912
913
914
915
916
917
918
919
920
921
922
923
924
925
926
927
928
929
930
931
932
933
934
935
936
937
938
939
940
941
942
943
944
945
946
947
948
949
950
951
952
953
954
955
956
957
958
959
960
961
962
963
964
965
966
967
968
969
970
971
972
973
974
975
976
977
978
979
980
981
982
983
984
985
986
987
988
989
990
991
992
993
994
995
996
997
998
999
1000

19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219
220
221
222
223
224
225
226
227
228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250
251
252
253
254
255
256
257
258
259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299
300
301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
319
320
321
322
323
324
325
326
327
328
329
330
331
332
333
334
335
336
337
338
339
340
341
342
343
344
345
346
347
348
349
350
351
352
353
354
355
356
357
358
359
360
361
362
363
364
365
366
367
368
369
370
371
372
373
374
375
376
377
378
379
380
381
382
383
384
385
386
387
388
389
390
391
392
393
394
395
396
397
398
399
400
401
402
403
404
405
406
407
408
409
410
411
412
413
414
415
416
417
418
419
420
421
422
423
424
425
426
427
428
429
430
431
432
433
434
435
436
437
438
439
440
441
442
443
444
445
446
447
448
449
450
451
452
453
454
455
456
457
458
459
460
461
462
463
464
465
466
467
468
469
470
471
472
473
474
475
476
477
478
479
480
481
482
483
484
485
486
487
488
489
490
491
492
493
494
495
496
497
498
499
500
501
502
503
504
505
506
507
508
509
510
511
512
513
514
515
516
517
518
519
520
521
522
523
524
525
526
527
528
529
530
531
532
533
534
535
536
537
538
539
540
541
542
543
544
545
546
547
548
549
550
551
552
553
554
555
556
557
558
559
560
561
562
563
564
565
566
567
568
569
570
571
572
573
574
575
576
577
578
579
580
581
582
583
584
585
586
587
588
589
590
591
592
593
594
595
596
597
598
599
600
601
602
603
604
605
606
607
608
609
610
611
612
613
614
615
616
617
618
619
620
621
622
623
624
625
626
627
628
629
630
631
632
633
634
635
636
637
638
639
640
641
642
643
644
645
646
647
648
649
650
651
652
653
654
655
656
657
658
659
660
661
662
663
664
665
666
667
668
669
670
671
672
673
674
675
676
677
678
679
680
681
682
683
684
685
686
687
688
689
690
691
692
693
694
695
696
697
698
699
700
701
702
703
704
705
706
707
708
709
710
711
712
713
714
715
716
717
718
719
720
721
722
723
724
725
726
727
728
729
730
731
732
733
734
735
736
737
738
739
740
741
742
743
744
745
746
747
748
749
750
751
752
753
754
755
756
757
758
759
760
761
762
763
764
765
766
767
768
769
770
771
772
773
774
775
776
777
778
779
780
781
782
783
784
785
786
787
788
789
790
791
792
793
794
795
796
797
798
799
800
801
802
803
804
805
806
807
808
809
810
811
812
813
814
815
816
817
818
819
820
821
822
823
824
825
826
827
828
829
830
831
832
833
834
835
836
837
838
839
840
841
842
843
844
845
846
847
848
849
850
851
852
853
854
855
856
857
858
859
860
861
862
863
864
865
866
867
868
869
870
871
872
873
874
875
876
877
878
879
880
881
882
883
884
885
886
887
888
889
890
891
892
893
894
895
896
897
898
899
900
901
902
903
904
905
906
907
908
909
910
911
912
913
914
915
916
917
918
919
920
921
922
923
924
925
926
927
928
929
930
931
932
933
934
935
936
937
938
939
940
941
942
943
944
945
946
947
948
949
950
951
952
953
954
955
956
957
958
959
960
961
962
963
964
965
966
967
968
969
970
971
972
973
974
975
976
977
978
979
980
981
982
983
984
985
986
987
988
989
990
991
992
993
994
995
996
997
998
999
1000

1 petitioners' dispute with the city is based on their
2 disagreement that the site is properly considered part of the R1
3 area. We conclude the above findings are adequate to address
4 the objectives expressed in the cited goal and policy favoring
5 stability, diversity, and retention of long term residents. We
6 also conclude the findings are supported by substantial evidence
7 in the record.¹⁰

8 The second assignment of error is denied.

9 THIRD ASSIGNMENT OF ERROR

10 "Respondent improperly construed the applicable law,
11 violated ORS 227.173(2), and made a decision not
12 supported by substantial evidence in the whole record
by finding compliance with Goal 4 and its implementing
policies."

13 Plan Goal 4 provides as follows:

14 "Provide for a diversity in the type, density and
15 location of housing within the City consistent with
16 the adopted City Housing Policy in order to provide an
adequate supply of safe, sanitary housing at price and
rent levels appropriate to the varied financial
capabilities of City residents."

17 Among the policies following Goal 4 are Policies 4.3 and 4.4,
18 which provide as follows:

19 "4.3 New Housing Production
20
21

22 ¹⁰Intervenor submitted testimony that it would not be economically
23 feasible to construct single family residences on the property. Record
24 92-95. Petitioners submitted conflicting evidence suggesting it would be
25 feasible to develop the property with single family dwellings. We conclude
26 the evidence is such that a reasonable person could have agreed with either
intervenor or petitioners. In such circumstances, a decision either way is
supported by substantial evidence, and it is not appropriate for this Board
to disturb the city's decision. Younger v. City of Portland, 360 Or 346,
360, 752 P2d 262 (1988) ("* * * for a decision to be reasonable, it need
not be the decision that LUBA would have made on the same evidence.")

1 "Assist the private sector in maintaining an
2 adequate supply of single and multi-family
3 housing units. This shall be accomplished by
4 relying primarily on the home building industry
and private sector solutions, supported by the
elimination of unnecessary government
regulations.

5 "4.4 Housing Choice and Neighborhood Stability

6 "Support public and private actions which
7 increase housing choices for Portlanders, with
8 emphasis on housing and public improvement
9 programs which: 1) improve the balance in the
10 City's population by attracting and keeping in
11 the City families with children; 2) maintain
neighborhood schools; 3) increase the number of
housing alternatives for both renter and owner;
4) improve the physical and environmental
conditions of all neighborhoods." Plan 26-27.

12 Petitioners argue the city relied in large part on the
13 decision's effect on the amount of available land for
14 multifamily residential development in concluding that the
15 decision is consistent with the above cited goal and policies.
16 Petitioners argue, however, the city did not show there is a
17 shortage of multifamily designated land or a shortage of R1
18 designated property in the area. Petitioners also argue the
19 city improperly failed to consider the impact of its decision on
20 single family residential development in the area.

21 The city's finding concerning Goal 4 is as follows:

22 "This proposal is supportive of the Housing Goal and
23 particularly, Policies 4.3 * * * [and] 4.4 * * *.
24 This development will increase the opportunity to
provide rental housing units for residents in close
proximity to their work, OHSU, which is difficult to
reach from other residential areas." Record 58.

25 Respondent and intervenor point out the record does show a
26 need for multifamily designated land in the city, due to

1 conversion of land originally designated for multifamily
2 development to other uses. Record 119; see n 7, supra.
3 Respondent further notes that Plan Policy 2.1 encourages
4 location of housing close to employment centers, as the city's
5 decision does in this instance. Respondent also contends
6 Policies 4.3 and 4.4 encourage both single family and
7 multifamily dwellings for renters as well as owners. Respondent
8 contends the city's findings and the evidence in the record
9 clearly show multifamily development will be supported by the
10 city's decision, and that is all that Plan Goal 4 and Policies
11 4.3 and 4.4 require.

12 We essentially agree with respondent. Although it might be
13 that in some instances a decision could so affect the balance
14 between multifamily and single family dwellings in an area that
15 the city would be required under the cited plan policies to
16 address in its findings the impact of its decision on single
17 family residential development, such is not the case here. In
18 addition, as noted earlier in this opinion, the city found in
19 addressing other goals and policies, that it is unlikely the
20 site would be developed with single family residences due to the
21 high cost of developing on the steep slopes and the nature of
22 the immediate neighborhood.

23 The third assignment of error is denied.

24 FOURTH ASSIGNMENT OF ERROR

25 "Respondent improperly construed the applicable law
26 and made a decision not supported by substantial
evidence in the whole record by finding compliance

1 with Goal 8, Environment."

2 Plan Goal 8 provides as follows:

3 "Maintain and improve the quality of Portland's air,
4 water and land resources and protect neighborhoods and
5 business centers from detrimental noise pollution."
6 Plan 57.

7 Plan Policy 8.16 (Uplands Protection) provides as follows:

8 "Conserve significant upland areas and values related
9 to wildlife, aesthetics and visual appearance, views
10 and sites, slope protection, and groundwater recharge.
11 Encourage increased vegetation, additional wildlife
12 habitat areas, and expansion and enhancement of
13 undeveloped spaces in a manner beneficial to the City
14 and compatible with the character of surrounding urban
15 development."¹¹ Plan 60.

16 Petitioners contend the city failed to demonstrate the
17 noise that would be generated by traffic from the 10 unit
18 apartment building on a steep slope would not violate Plan
19 Goal 8. Petitioners contend they testified there will be

20 ¹¹Policy 8.16 lists the following objectives:

21 "A. Wetland/water body Buffer

22 "Provide protection to significant wetland and water body
23 natural resources through designation of significant
24 upland areas as a buffer between the resource and other
25 urban development and activities.

26 "B. Slope Protection and Drainage

"Protect slopes from erosion and landslides through the
retention and use of vegetation, building code
regulations, erosion control measures during
construction, and other means.

"C. Wildlife Corridors

"Conserve and enhance drainageways and linear parkways
which have value as wildlife corridors connecting parks,
open spaces, and other large wildlife habitat areas, and
to increase the variety and quantity of desirable
wildlife throughout urban areas." Plan 60.

1 adverse noise impacts, violating Goal 8. Petitioners also
2 contend the visual impact of a ten unit apartment building in an
3 area with single family dwellings will violate Policy 8.16.

4 The city's findings concerning Goal 8 are as follows:

5 "The request will not significantly impact the air or
6 water resources, no designated open space is affected,
7 and the proposed use will not unduly increase noise
8 levels in the area; therefore, the request is not in
9 conflict with [Goal 8] and associated policies. City
10 maps identify this area to have 'severe landslide
11 hazard' characteristics. The Bureau of Buildings will
12 require additional precautionary construction methods
13 * * * prior to approval of a Building Permit."
14 Record 59.

15 "Traffic, including whatever relatively modest
16 additional traffic noise is generated, can only come
17 via one route to this site. That route is through
18 those streets in the neighborhood which are already
19 largely lined with multifamily and commercial
20 development. Traffic will not, therefore, pass by the
21 houses of those neighbors who, for the most part,
22 comprise the opposition to this proposal.

23 "The noise which opposing neighbors fear will derive
24 from 10 dwelling units on this site. There is nothing
25 inherent in this proposal which really justifies undue
26 apprehensions as to increased noise level. This,
27 after all, is still a residential proposal. The plans
28 proposed indicate sizable units with a very ample
29 supply of parking. The design is well conceived and,
30 all in all, promises to be of a quality which will
31 compare favorably with most of the single-family and
32 all of the multifamily development in the
33 neighborhood." Record 63-64.

34 Respondent concedes there will result some incremental
35 increase in noise level, as compared with the existing
36 undeveloped site, if the property is improved as proposed.
37 Respondent points out that even if single family dwellings were
38 constructed on the site, there would be some incremental noise
39 increase. Respondent contends, however, the probable

1 incremental increase in a type of noise already present in the
2 neighborhood does not establish a conflict with Goal 8.

3 Respondent argues

4 "The types of noise problems contemplated by Goal 8
5 can be determined by examining the specific Goal 8
6 policies and objectives relating to noise. Those
7 policies and objectives are: 1) Policy 8.19, Noise
8 Abatement Construction Requirements; 2) Policy 8.20,
9 Noise Abatement Strategies, and 3) Policy 8.21,
10 Portland International Airport Noise impact Area. The
11 only 'objectives' set out in this section of the
12 Comprehensive Plan relate to development around the
13 airport. A slight increase in the level of background
14 noise resulting from additional cars in the
15 neighborhood is simply not 'detrimental noise
16 pollution' for purposes of Goal 8."
17 Respondent's Brief 14.

18 We agree with respondent, and reject petitioners'
19 contention that the city failed to show compliance with Goal 8.

20 Concerning Policy 8.16, respondent concedes any new
21 structure will have some visual impact. Respondent contends,
22 however, petitioners read the regulatory effect of Policy 8.16
23 far too expansively. Respondent argues the policy is not
24 designed to prohibit multifamily structures on urban lands
25 designated for urban uses. Respondent points out the policy
26 includes three objectives relating to wetlands and water bodies,
27 slope protection and drainage, and wildlife corridors. See
28 n 11, supra. Respondent contends a reasonable reading of the
29 policy and its objectives shows they are intended to regulate
30 significant upland areas. The site is not such an area, and
31 respondent contends Policy 8.16 is not properly interpreted as
32 "a design review standard on the development of any vacant

1 parcel." Respondent's Brief 15.

2 We agree with respondent's explanation, and conclude
3 Policy 8.16 is not violated by the city's decision.

4 The fourth assignment of error is denied.

5 FIFTH ASSIGNMENT OF ERROR

6 "Respondent improperly construed the applicable law,
7 violated ORS 227.173(2), and made a decision not
8 supported by substantial evidence in the whole record
9 by finding compliance with Goal 6 of the Comprehensive
10 Plan and the applicable Policies thereunder."

11 Plan Goal 6 provides as follows:

12 "Promote an efficient and balanced urban
13 transportation system, consistent with the Arterial
14 Streets Classification Policy, to encourage energy
15 conservation, reduce air pollution, lessen the impact
16 of vehicular traffic on residential neighborhoods, and
17 improve access to major employment and commercial
18 centers."

19 Plan Policy 6.5 (Transit Related Density) provides:

20 "Reinforce the link between public transportation and
21 land use by increasing residential urban densities
22 along designated major transit streets and near
23 commercial centers, where practical."

24 Petitioners argue the record shows that the traffic impact
25 on the immediate neighborhood around the site will be greater if
26 the approved apartments are constructed, rather than two single
family dwellings. Petitioners contend, therefore, Goal 6's
policy to "lessen the impact of vehicular traffic on residential
neighborhoods" is violated. Petitioners further contend Plan
Policy 6.5 is violated because the city failed to show
construction of apartments on the site is "a practical
consideration" in view of "livability and neighborhood

1 character" concerns. Petition for Review 34.

2 As we noted in our discussion under the first assignment of
3 error, we agree with respondent that petitioners' emphasis of
4 only one aspect of plan goals is improper. Such singular
5 emphasis fails to recognize that the multidimensional and
6 somewhat internally contradictory nature of generally worded
7 planning goals, such as Goal 6, requires that such goals be read
8 as a whole, so that the overall public policy expressed in the
9 goal is not frustrated. See Kenton Neighborhood Assoc. v. City
10 of Portland, ___ Or LUBA ___ (LUBA No. 88-119, June 7, 1989),
11 slip op 16; Forest Highlands Neighborhood Assoc. v. Portland,
12 11 Or LUBA 189, 193 (1984).

13 Goal 6 expresses a public policy favoring a balanced
14 transportation system so that, in addition to lessening
15 vehicular traffic impacts on residential neighborhoods, energy
16 will be conserved, air pollution will be reduced, access to
17 employment and commercial centers will be improved. We agree
18 with respondent that it is not proper to select one of the
19 public policies furthered by Goal 6, apply that policy to the
20 immediate area of the site, and claim Goal 6 is violated if that
21 public policy is not furthered in that immediate area. Such an
22 approach is particularly improper where, as here, it is clear
23 that the other public policies mentioned in Goal 6 are
24 furthered, and that even the public policy identified by
25 petitioners may be furthered, if a broader geographic area is
26 considered.

1 The city found that apartment dwellers are more likely to
2 use public transit and that the short distance of the site from
3 the Oregon Health Sciences University and Veterans
4 Administration Facilities makes nonvehicular travel to work
5 possible. Use of available transit and nonvehicular options for
6 travel to work would further the energy conservation, air
7 pollution reduction, and access to employment policies in Plan
8 Goal 6. Petitioners do not challenge the evidentiary support
9 for these findings and assumptions, but rather focus
10 exclusively, and in our view improperly, on the likelihood of
11 increased vehicular impacts in the area adjoining the site. In
12 view of the favorable impacts on other concerns expressed in
13 Goal 6, we conclude that even if, as is likely, there will be
14 some increase in vehicular impact on the area immediately
15 adjacent to the site, Goal 6 is not violated by the city's
16 action.

17 Turning to petitioners' arguments concerning Policy 6.5,
18 respondent contends petitioners misread the policy. According
19 to respondent, the reference in the policy to "where practical"
20 does not require an affirmative showing or determination that
21 construction of multifamily housing on the site is "practical."
22 Rather, the qualifier that residential densities adjoining
23 transit stops and near commercial centers be increased "where
24 practical" simply means the policy is not absolute and increased
25 densities will not be required where it is not feasible to do so
26 due to particular circumstances. Respondent contends that it

1 clearly is feasible to construct multifamily housing in a
2 residentially planned and zoned area which already has a mix of
3 single family and multifamily dwellings.¹²

4 We agree with respondent's interpretation of Policy 6.5 and
5 agree that the policy is not violated by the city's decision.

6 The fifth assignment of error is denied.

7 SIXTH ASSIGNMENT OF ERROR

8 "Respondent improperly construed the applicable law,
9 violated ORS 227.173(2), and made a decision not
10 supported by substantial evidence in the whole record
by finding compliance with City Comprehensive Plan
Goal 7."

11 Plan Goal 7 (Energy) provides as follows:

12 "To increase the energy efficiency of existing
13 structures and the transportation system of the city
14 through policies and programs which encourage
15 conservation of nonrenewable resources and the
application of renewable resources, while maintaining
the attractiveness of the City as a place to live and
do business."

16 Petitioners contend the city failed to demonstrate the
17 proposal will maintain "the attractiveness of the City as a
18 place to live and do business." Petitioners repeat their
19 arguments discussed under earlier assignments of error that the
20 proposed apartments will intrude into the existing single family
21 area in a disruptive and unattractive way.

22 Respondent answers that petitioners again emphasize one
23 small part of the goal and thereby fail to recognize the overall

24
25
26 ¹²Intervenor presented testimony that constructing multifamily dwellings
on the property is feasible. Record 92-95.

1 policy expressed in the goal.

2 The city's findings concerning Goal 7 include the
3 following:

4 "This proposal supports the Energy Goal by providing a
5 land use density near a major employment and
6 educational facility, and close to transit and
7 shopping areas and, thus the need to use nonrenewable
8 auto fuel is reduced. Further the applicants propose
9 to use energy-saving design methods in the
10 construction of the proposed apartments."¹³
11 Record 59.

12 As we noted earlier in this opinion, the petitioners and
13 the city simply disagree concerning the compatibility of the
14 proposed apartments with adjoining uses and whether the property
15 is properly viewed as part of the R5 area or part of the R1
16 area. As we have already explained, based on the record in this
17 proceeding and the goals and policies cited, we have no basis
18 upon which to conclude the city's view is erroneous. We,
19 therefore, reject petitioners' arguments under this assignment
20 of error. The above quoted findings are adequate to show
21 compliance with the energy conservation concerns expressed in

22 ¹³Intervenor presented the following statement concerning compliance
23 with Plan Goal 7:

24 "* * * Locating ten families (R1) on this site, as opposed to
25 two (R5) means more persons will walk to work, take the bus,
26 and make more efficient use of heat in the well-insulated,
energy efficient apartments. Party wall design and stacking
units will reduce heat loss through fewer exterior surfaces.
Less private automobile driving will reduce the use of
nonrenewable fuels.

"* * * More walking/cycling/bus riding and less private
automobile driving will reduce the use of non-renewable fuels."
Record 97.

1 Goal 7.

2 The sixth assignment of error is denied.

3 SEVENTH ASSIGNMENT OF ERROR

4 "Respondent improperly construed the applicable law,
5 violated ORS 227.173(2), and made a decision not
6 supported by substantial evidence in the whole record
7 by finding compliance with City Comprehensive Plan
8 Goal 10 and the applicable policies thereunder."

9 Under this assignment of error, petitioners contend the
10 city's decision violates Plan Policies 10.3 and 10.7. Plan
11 Policy 10.3 provides as follows:¹⁴

12 "10.3 Comprehensive Plan Map Amendments

13 "Requests for modification of the Comprehensive Plan
14 map designations will proceed under the regulations,
15 notification requirements and hearing procedures used
16 for zone change requests. The burden of proof for
17 such a change is placed upon the petitioner seeking
18 such an action. The applicant must show that the
19 requested change is: (1) consistent [with] and
20 supportive of the appropriate Comprehensive Plan goals
21 and policies; (2) compatible with land use pattern
22 established by the Comprehensive Plan Map; (3) in the
23 public interest to grant the petition; the greater the
24 departure from the Comprehensive Plan Map designation,
25 the greater the burden of the applicant; and (4) that
26 the interest is best served by granting the petition
at this time and at the requested locations. Rezoning
may be considered concurrently with the request for
modification of the Comprehensive Plan Map

21 ¹⁴Goal 10 (Plan Review and Administration) provides as follows:

22 "Portland's Comprehensive Plan will undergo periodic review to
23 assure that it remains an up-to-date and workable framework for
24 land use development. The Plan will be implemented in
25 accordance with State law and the Goals, Policies and
26 Comprehensive Plan Map contained in the adopted Comprehensive
Plan."

27 Although petitioners allege the city's decision fails to demonstrate
28 compliance with Goal 10, respondent correctly notes petitioners' arguments
29 are limited to policies under Goal 10 and do not address Goal 10 itself.

1 designation." Plan 65.

2 Petitioners contend the city failed to demonstrate
3 compliance with the four comprehensive plan map amendment
4 standards of Policy 10.3.

5 The city adopted findings determining compliance with the
6 first two standards of Policy 10.3. We have already discussed
7 and rejected petitioners' challenges to the city findings
8 demonstrating compliance with Plan goals and policies, including
9 the city findings that the site, located at the boundary between
10 the R1 and R5 area, is logically viewed as part of the mixed
11 multifamily and single family R1 area. Petitioners offer no new
12 arguments under this portion of the seventh assignment of error.

13 The city findings addressing the third and fourth standards
14 of Policy 10.3 are as follows:

15 "* * * The approval of this request is in the public
16 interest in that vacant land which is close to
17 services, employment, educational, and transit
18 facilities would become developed in a manner which is
19 compatible with the surrounding development.

20 "* * * services are in place presently to support
21 development of the site. * * *" Record 60.

22 Petitioners contend that because the site is surrounded by
23 single family residences, the proposal is not compatible with
24 surrounding development and, therefore, it does not follow that
25 the public interest is served by changing the plan designation
26 of the subject property at this time.

27 What is or is not in the public interest is a highly
28 subjective determination. Petitioners clearly disagree with the
29 city that the public interest is furthered by the city's action.

1 However, petitioners' disagreement with the city provides us
2 with no basis to question the city's decision on the matter.
3 See Corbett/Terwilliger/Lair Hill Legal Fund v. City of
4 Portland, 9 Or LUBA 245, 266 (1983) (explanation that action
5 will put vacant land to use in compliance with plan policies
6 sufficient to show action is in the public interest).

7 The city determined that the public interest would be
8 served by an action to permit multifamily development of vacant
9 land close to public facilities and employment. The city also
10 determined that all necessary services are available to the
11 site, making action now to designate the property for
12 multifamily development appropriate. Petitioners' disagreement
13 concerning the desirability of multifamily development of the
14 site provides no basis for concluding the city failed to
15 demonstrate compliance with the third and fourth factors of
16 Policy 10.3.

17 Petitioners' final challenge under the seventh assignment
18 of error concerns Policy 10.7, which provides in part:

19 "10.7 Zoning Upon Plan Adoption

20 "* * * * *

21 "* * * * *

22 "C. Three major sets of conditions must be met
23 before upzoning may be approved. If all
24 conditions are met, the rezoning request
25 will be approved. The conditions are:

26 "(1) The proposed rezoning must be to the
maximum Comprehensive Plan Map
designation unless:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

* * * * *

"(b) Proof is provided that development at full intensity is not possible within five (5) years due to physical conditions (such as topography, street patterns, public service, existing lot arrangement, etc.)"

Petitioners contend the city failed to properly address Policy 10.7 because there are no adequate findings showing development of the site with single family residences as currently allowed by the R5 zoning is not possible.

Respondent answers that petitioners misunderstand the meaning and effect of the portion of 10.7 they rely upon.

Respondent explains:

"The language [of Policy 10.7(C)] addresses what zoning should be applied after a new Plan designation is adopted, and specified that the new zoning should be to the maximum use of the property consistent with the new Comprehensive Plan Map designation. In this case, the R1 zoning that was applied for is the maximum zoning designation that implements the Medium Density Multifamily Residential Comprehensive Plan Map designation. * * * The exception to the 'maximum zoning' requirement described in [Policy 10.7(C)(1)(b)] is not applicable because no exception is being sought." Respondent's Brief 24.

We agree with respondent that Policy 10.7 does not apply in the way petitioners argue and, therefore, even if single family dwellings could be built on the property, that would provide no basis for reversal or remand of the city's decision.

The seventh assignment of error is denied.

The city's decision is affirmed.