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

MR. AND MRS. FRED C. LEE, )  
NORMAN R. DRULARD, IVAN )  
ZACKHEIM, JANET HECKMAN, )  
and LAWRENCE E. SCHICK, )  
Petitioners, )  
v. )  
CITY OF PORTLAND, )  
Respondent. )

LUBA NO. 80-142  
FINAL OPINION  
AND ORDER

Appeal from City of Portland.

Edward J. Sullivan, Portland, filed a brief and argued the cause for Petitioners. With him on the brief were O'Donnell, Rhoades, Gerber, Sullivan & Ramis.

Ruth Spetter, Portland, filed a brief and argued the cause for Respondent.

Bagg, Referee; Reynolds, Chief Referee; Cox, Referee; participated in the decision.

Affirmed. 5/05/81

You are entitled to judicial review of this Order. Judicial review is governed by the provisions of Oregon Laws 1979, ch 772, sec 6(a).

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1 BAGG, Referee.

2 NATURE OF THE DECISION

3 Petitioners challenge the grant of a conditional use permit  
4 to allow the construction of a fire station on city owned  
5 property within the City of Portland.

6 FACTS

7 In February of 1980, the city purchased a 20,000 square  
8 foot lot in a residential area of the city on the north side of  
9 Taylors Ferry Road between SW 4th and 5th Avenues. In May of  
10 1980, the Department of Public Works of the City of Portland  
11 submitted an application for a conditional use permit for a  
12 fire station on that property. The matter was heard before a  
13 hearings officer who granted the permit on July 18, 1980. The  
14 grant of permit was appealed to the City Council, and the  
15 Council considered the matter on September 3, 17, 18 and 25,  
16 1980. The Council rendered a decision in favor of the Fire  
17 Bureau on September 30, 1980.

18 The fire station is proposed to replace a fire station in  
19 the John's Landing area. The old location is no longer needed  
20 as the fire hazards in the area have diminished. The city  
21 wants to move the station to better serve a greater area. The  
22 city recites in its order that the Fire Bureau desires a  
23 4-minute response time within its service area, and although  
24 the area of the subject property is within a 4-minute response  
25 time as served by the present fire station, other nearby areas  
26 are not. The new location will enlarge the residential area

1 that can be served as the city wishes.

2 FIRST ASSIGNMENT OF ERROR

3 Assignment of error no. 1 alleges a violation of ORS  
4 227.173(1). ORS 227.173(1) requires a city to state, in the  
5 applicable comprehensive plan or development ordinance, the  
6 standards for discretionary permit applications and to base any  
7 approval or denial of a discretionary permit application on  
8 those standards. The city code does not have precise standards  
9 and criteria relating specifically to fire stations or to  
10 governmental structures as conditional uses. One must look to  
11 the city code generally to see if there are any applicable  
12 standards. Section 33.26.240(10) provides for governmental  
13 structures and land uses "which are essential to the  
14 functioning and servicing of residential neighborhoods" to  
15 exist within the R-5 zone. These governmental uses are  
16 permitted as conditional uses.

17 City Code Section 33.26.250 provides:

18 "33.26.250 Regulations. Decisions on  
19 applications for conditional uses shall be determined  
20 as provided in Chapter 33.106. However, the  
21 regulations in this chapter shall be considered minimum  
22 or maximum requirements as the case may be and shall  
23 apply to the particular conditional uses mentioned  
24 unless specifically modified at the time of approval.

25 "If regulations are not provided for the  
26 conditional use in this chapter and are not provided  
27 in the written instrument approving a conditional use,  
28 then the regulations governing principal uses in this  
29 chapter and this title shall also govern such  
30 conditional use insofar as applicable. Additional  
31 regulations governing parking, loading and yard  
32 requirements are contained in Chapters 33.82, 33.86  
33 and 33.90."

1 City Code sections 33.30.250(9) and 33.30.260 provide the same  
2 standards for the A2.5 Zone.

3 City Code section 33.106.010 provides:

4 "33.106.010 Authority. Upon approval, in  
5 accordance with the procedures specified herein, the  
6 conditional uses specified in this title may be  
7 permitted in the respective zones in which they are  
8 listed. In permitting such uses, it shall be  
9 determined that the use at the particular location is  
10 desirable to the public convenience and welfare and  
11 not detrimental or injurious to the public health,  
12 peace or safety, or to the character and value of the  
13 surrounding properties. . . .

14 "In permitting conditional uses, the minimum or  
15 maximum requirements specified for each such use in  
16 the respective zones may be increased and other  
17 conditions and restrictions if necessary to protect  
18 the public interest and the surrounding properties may  
19 be imposed."

20 Petitioners say that these provisions do not provide  
21 standards. Petitioners would have the city include a  
22 "tabulated" list of considerations which are pertinent to the  
23 development before the city takes action. Without the benefit  
24 of these standards, petitioners can not know the relevant  
25 criteria upon which to base their case. Furthermore, section  
26 33.114.060(b), requiring the hearings officer to set forth "the  
manner in which the decision is consistent with the zoning  
code" and the "manner in which the decision is consistent with  
the public need" contain standards as to procedure only and not  
the substantive standards required by ORS 227.173(1), claim  
petitioners.

27 The city responds that the city code requiring the  
28 governmental structure to be allowed only where such land uses

1 "are essential to the functioning and servicing of residential  
2 neighborhoods" is a sufficient standard in and of itself.  
3 Section 33.26.240(10) and 33.30.259(9). Also, Section  
4 33.114.060(b) requires the conditional use be consistent with  
5 the comprehensive plan and zoning code and includes an  
6 indication of how the public need will be served by the  
7 conditional use. The city further claims that section  
8 33.114.060(b) is not procedural only, but is "couched in terms  
9 of what must be found." Respondent's Brief 9. In other words,  
10 the decision in favor of the city by the hearings officer must  
11 take into account the standards set forth in that section.

12 We do not believe ORS 227.173(1) to require standards more  
13 detailed than those included, in sum, within the various  
14 provisions of the Portland City Code. There is clear demand in  
15 the code for consideration of the use of the property and its  
16 compliance with the city code generally, the degree to which  
17 the use meets the public need [Section 33.114.060(b)], and the  
18 public convenience, health and welfare [Section 33.106.060].  
19 We do not believe the requirements on the hearings officer  
20 constitute a post hearing procedure only, but impose  
21 requirements that must be met by the applicant before the  
22 hearings officer may find in the applicant's favor. The code  
23 also provides authority to impose conditions as may be  
24 necessary to protect the public interest [33.106.010]. We  
25 believe the public is adequately protected by these standards.  
26 To be sure, greater specificity would aid the applicant, but we

1 decline to overturn the decision because the standards are less  
2 than perfect. The standards are clear enough that the  
3 applicant will know what he must show during the course of his  
4 application. See Sun Ray Dairy v. O.L.C.C., 16 Or App 171, 519  
5 P2d 289 (1973).

6 SECOND ASSIGNMENT OF ERROR

7 Petitioners allege respondent violated ORS 227.173(2). ORS  
8 227.173(2) requires a brief statement to accompany a grant or  
9 denial of a permit application. The statement must include an  
10 explanation of the criteria and standards considered relevant,  
11 the facts found and relied upon and an explanation of the  
12 justification for the decision in terms of the criteria,  
13 standards and facts found. Petitioners allege the statute was  
14 broken as the city failed to show compliance with the  
15 particular city code and Statewide Land Use Goal criteria  
16 applicable to this case. The specifics of petitioners'  
17 arguments are included infra through other assignments of  
18 error. That is, a violation of one or more of the assignments  
19 of error discussing applicable provisions of the code and  
20 applicable statewide goals will result in a violation of this  
21 statute. As discussed below, this assignment of error is  
22 denied.

23 THIRD ASSIGNMENT OF ERROR

24 The third assignment of error alleges a violation of ORS  
25 227.175(3). ORS 227.175(3) provides no application shall be  
26 approved unless it is in compliance with the city's

1 comprehensive plan. Petitioners advise that lacking a plan,  
2 the city "is burdened with setting forth those policies  
3 applicable to this matter producing compliance with the same.  
4 The findings in this case hardly rise to that level." Petition  
5 for Review 10.

6 Respondent points out ORS 197.275(1) providing, in sum,  
7 that during the comprehensive planning process, ordinances and  
8 regulations adopted prior to October 5, 1973 shall remain in  
9 effect until revised. Respondents cite Baker v. City of  
10 Milwaukie, 271 Or 500, 533 P2d 772 (1975) and Braidwood v. City  
11 of Portland, 24 Or App 477, 546 P2d 777 (1976) for the  
12 proposition that existing planning efforts should continue  
13 until comprehensive plans are adopted.

14 We agree with the respondent that land use actions may  
15 continue absent an adopted comprehensive plan. Petitioners are  
16 correct where they allege that a city must set forth policies  
17 applicable to the matter before a comprehensive plan is in  
18 place. We understand the city to argue that the criteria have  
19 been set forth in the city's ordinances and findings and we  
20 accept that proposition as correct. It is not necessary for  
21 the city to set out the provisions of its ordinances each and  
22 every time it uses them in a particular case. The question of  
23 the adequacy of the city's findings is another matter,  
24 however. As with assignment of error no. 2, whether the city's  
25 findings are adequate in whole or in part will determine  
26 whether this assignment of error is decided in the petitioners'

1 favor or in the city's favor. As discussed infra, this  
2 assignment of error is denied.

3 FOURTH ASSIGNMENT OF ERROR

4 Assignment of error no. 4 alleges a violation of "the  
5 Statewide Planning Goals." Petitioners specifically allege  
6 violations of Goals 1, 2, 5, 6, 7, 8, 10, 11, and 12.

7 Goal 1 is alleged to have been violated in that the city  
8 failed to notify the local neighborhood association, the South  
9 Burlingame Neighborhood Association, of the ordinance  
10 authorizing the purchase of the subject property. The  
11 ordinance complained of was adopted on February 14, 1980, and  
12 only authorizes the purchase of the property.

13 The Board views the decision to purchase the property to be  
14 outside the scope of review allowed by the Notice of Intent to  
15 Appeal filed herein. The time has long since past for a  
16 challenge to that particular action. The ordinance was made on  
17 February 14, 1980, and the Notice of Intent to Appeal was file  
18 in this case on October 15, 1980. Even if the Board were to  
19 consider this action a land use decision, and we express no  
20 opinion on that issue, the time to appeal has long since past.

21 To the extent petitioners may be challenging the citizen  
22 involvement allowed during the course of the conditional use  
23 application, we must find for respondent. We do not understand  
24 petitioners to allege that the city failed to comply with all  
25 of its notice requirements as to the conditional use  
26 proceeding. Further, the petitioners have taken an active part



1 in the proceedings before the city. We can find no hint of  
2 injury to them by any error in the city's notice procedures.

3 Goal 2 is alleged to have been violated in that findings  
4 regarding applicable statewide goals are claimed to be  
5 inadequate, not supported by the whole record. Petitioners  
6 here characterize the findings as conclusory, and direct the  
7 reader to that portion of this assignment of error that  
8 discusses the applicability of specific goals alleged to have  
9 been violated, that is, goals 5, 6, 7, 8, 10, 11 and 12.  
10 Petitioners include here, however, a broad allegation that the  
11 decision lacks a factual basis of support, and demonstrates a  
12 lack of "knowledge of criteria for the location of fire  
13 stations in general or within this area in particular." The  
14 decision shows "an approach of ignoring, rather than dealing  
15 with the applicable criteria." Petition for Review 20.  
16 Petitioners further allege that the record does not show any  
17 consideration of the plans or facilities of other  
18 jurisdictions, in violation of the "coordination" requirement  
19 within goal 2. Specifically mentioned are Multnomah County and  
20 Lake Oswego, jurisdictions also providing fire protection.  
21 Petitioners claim this land use action "cannot be said to be  
22 coordinated with the plans and actions of other jurisdictions  
23 as required by goal 2." Petition for Review 21.  
24 Respondent denies the allegation. Respondent objects to  
25 petitioners' statement that prior to adopting a comprehensive  
26 plan, goal 2 requires that the city "deal in detail with each

1 of the statewide goals." Petition for Review 13, Respondent's  
2 Brief 20. Respondent says the goals are directed primarily to  
3 the planning process, and are not so much used for single site  
4 decisions. The respondent does not deny, however, the  
5 statewide land use goals are applicable in decisions such as  
6 the one at issue.

7 Our discussion of the adequacy of the findings will be  
8 found in our analysis of each allegation of goal violation.  
9 Goal 2 is like ORS 227.173. If the findings are not adequate,  
10 the goal has been violated. Kerns v. Pendleton, 1 Or LUBA 1  
11 (1980); Kerns v. Pendleton, \_\_\_\_ Or LUBA \_\_\_\_ (LUBA No. 80-138)  
12 (1981).

13 As to the allegation the decision violates goal 2 because  
14 the decision is not coordinated with other jurisdictions, the  
15 city points to a 1977 location study from the Fire Bureau. The  
16 city says the location study recognizes the interrelationship  
17 between the five bureaus. However, the study does not detail  
18 the impact of any single Portland Fire Bureau action on other  
19 jurisdictions. The study discusses changing engine 10 from its  
20 present location to nearby the location authorized by the  
21 conditional use permit, but it does not discuss the potential  
22 impact this proposed change might have on those jurisdictions.

23 The Board does not believe this failure to be fatal. Goal  
24 2's requirement that plans be coordinated with other affected  
25 jurisdictions does not require a city to consult with other  
26 jurisdictions when it changes the location of a fire engine

1 company well within its own boundaries. Ultimately, the  
2 decision may have an impact on surrounding areas through  
3 whatever fire fighting agreements may exist between the city  
4 and other jurisdictions. However, the movement within the city  
5 of one of its engine companies does not require coordination  
6 unless other jurisdictions are markedly or potentially markedly  
7 affected. The findings and the record discuss moving this  
8 engine company so as to better serve Portland residential  
9 areas. The record shows the service area to be well within  
10 Portland city limits. Without some hint as to how this move  
11 might touch other jurisdictions, we hold this single land use  
12 decision to be outside the reach of goal 2's "coordination"  
13 requirement.

14 Goal 5 is alleged to have been violated on the ground that  
15 the city was required to prepare an inventory of natural  
16 resources. The inventory does not exist, according to  
17 petitioners. Included within the allegation is the proposition  
18 that the action violates goal 5 by failing to make findings on  
19 each of the twelve established goal 5 resources. The city's  
20 findings do address five of the resources, but petitioners  
21 believe all twelve must be discussed. Without the inventory  
22 required by goal 5, petitioners assert the city is limited to  
23 the record, and the record does not support a determination  
24 that the land is not desirable or needed for open space.  
25 Specifically mentioned by petitioners is the possible use for  
26 the property as a park.

1           The evidence in the record does not suggest that any of the  
2 qualities sought to be protected by goal 5 are present in the  
3 site. The site is a 20,000 square foot lot in a built-up  
4 residential area. There is evidence in the record that it is  
5 unimproved and a home for rats. (Record 130-132). It is not  
6 considered by the city to be large enough for a park (Record  
7 12), and a park exists to serve the area only 7/10 of a mile  
8 away. (Record 43). Absent evidence in the record to show  
9 these facts were wrong or to show these facts to be indicative  
10 of a resource goal 5 was written to protect, we will not say  
11 the city was wrong in concluding that goal 5 was not  
12 applicable. Petitioners' challenge is not specific in itself  
13 except insofar as it alleges the property might be suitable as  
14 a park. We will not find fault with a city or county based  
15 upon a conclusory allegation that a goal has been violated.  
16 There must be something more than a neighborhood desire to see  
17 the property as a park or other open space resource before the  
18 Board will conclude the city erred in not compiling an  
19 inventory of the property's potential as a goal 5 resource.

20           Goal 6 is alleged to have been violated because the city  
21 failed to make findings demonstrating that the use on the  
22 property will not violate or threaten any applicable state and  
23 federal environmental quality standards. In general, the  
24 allegation alleges that the city failed to demonstrate general  
25 compliance with the goal. The only specific comment in this  
26 allegation of error concerns potential noise levels that might

1 be created by the Fire Bureau activities. Presumably the  
2 petitioners are talking about sirens and bells.

3 The city's findings only recite that any impact on goal 6  
4 is "de minimis." The city's position here is that goal 6 is a  
5 goal that guides comprehensive planning activities and is not  
6 necessarily applicable to any particular land use decision.  
7 The city then points to portions of the record where the use of  
8 sirens was discussed, and testimony from representatives of the  
9 Fire Bureau indicating that the sirens are not used unless  
10 necessary to secure traffic right of way. (Record 205-206).

11 Goal 6 is concerned with activities which "threaten to  
12 violate or violate applicable state or federal environmental  
13 quality statutes, rules and standards." We believe goal 6 is  
14 designed to guide plans to insure environmental quality. The  
15 city made a limited inquiry as to noise hazards from the fire  
16 trucks and found the threat to be "de minimis." The inquiry  
17 was appropriate considering the severity of the potential  
18 problem.

19 "The amount of Fire Station No. 10 responses, for fire  
20 and other emergencies has been estimated between 250  
21 and 300 or so per year, with increases expected each  
22 year. The unavoidable noise or traffic impact of this  
23 number of average trips is not major and does not  
24 outweigh the benefits from this service, essential for  
25 the public protection and safety." (Record 12)

26 Goal 7 is alleged to have been violated in that the city  
has not shown an inventory of the potential existence of  
natural hazards. Without the city-wide inventory, the city  
must provide an assessment of such potential for the site, say

1 petitioners.

2 We do not agree that where no city-wide inventory exists  
3 showing natural hazards, an inventory of the site needs to be  
4 provided in each individual case. However, there must be  
5 enough facts in the findings and the record from which we can  
6 conclude that the site is not within a hazard area or potential  
7 hazard area. Here, a description of the property exists in the  
8 findings, and facts exist in the record showing the site to be  
9 in a developed residential area. The fact the area is built-up  
10 suggests that hazards are either rare or under control. Under  
11 these circumstances, we believe petitioners must point to some  
12 evidence to suggest that a hazard exists on the property before  
13 we will find fault with the city in its conclusion that goal 7  
14 is not applicable. Petitioners have pointed us to nothing in  
15 the record to show that any natural hazard exists on the  
16 property.

17 Goal 8 is alleged to have been violated because petitioners  
18 claim there exists a need for open space and enhanced  
19 recreational opportunities within the vicinity. Also alleged  
20 is the city failed to provide an inventory to consider park and  
21 recreational needs on a city-wide basis. The absence of that  
22 complete inventory or an inventory on this site is error,  
23 according to petitioners.

24 Respondent claims, in part, that goal 8 has been satisfied  
25 with the city's finding that this site is smaller than what is  
26 acceptable for park use. That finding is supported by

1 testimony in the record.<sup>1</sup> Also, Commissioner Schwab mentions  
2 in the record at page 43 that there is another park within 7/10  
3 of a mile. There is, however, no finding to this effect.

4 We conclude that the city did not err in rejecting the  
5 project for a park where it found the site too small for park  
6 use. We view goal 8 to apply to comprehensive plan  
7 development, and the "inventory" of recreational needs demanded  
8 by petitioners is not required under the circumstances of this  
9 case.

10 The blanket allegation by petitioners that goal 8 has been  
11 violated is not sufficient given the city's finding and the  
12 information in the record. Where it appears a goal is not  
13 directly applicable, petitioners carry the burden of  
14 illustrating damage to the city's ability to meet its planning  
15 responsibilities under goal 8 by the complained of land use  
16 action. Petitioners have not done so here, particularly in  
17 view of the record of a park close by the subject site.

18 Goal 10 is alleged to have been violated because the city  
19 does not have an inventory of buildable lands. Without that  
20 inventory, the city must identify housing needs and be sure  
21 that all land use decisions are consistent with those needs,  
22 argue petitioners.

23 The city found, in fact, that the building of the fire  
24 station would prevent the construction of six possible housing  
25 units. The city balanced this impact, however, against the  
26 positive impact of a fire station in the area. The city

1 believes this finding is adequate. The city also claims the  
2 inventory requirement of goal 10 applies to the creation of the  
3 comprehensive plan. In this site specific action, an inventory  
4 is not required, according to respondent.

5 The city made a finding that housing would be adversely  
6 affected, but it also found that a fire station on this  
7 particular parcel would balance the negative impact on the  
8 city's ability to provide housing. The city believed fire  
9 protection an important part of adequate housing. We note  
10 Portland is a large city, and the use of a 20,000 square foot  
11 lot for a fire station is not likely to have an impact on the  
12 city's ability to meet goal 10 absent some condition as yet not  
13 brought to our attention. The city's finding is sketchy, but  
14 adequate under those circumstances. The balancing of fire  
15 protection against housing is certainly logical and is clear in  
16 the record.

17 We conclude this finding to be adequate to show compliance  
18 with goal 10.

19 Goal 11 is alleged to have been violated because the city  
20 has not made a plan for the appropriate provision of public  
21 facilities and services. Petitioners allege there is only a  
22 "proposed capital improvement program" which has not been  
23 formally adopted. It sets forth recommended and not mandatory  
24 policies regarding fire protection and simply does not meet the  
25 standards of goal 11. Petitioners further allege that there  
26 are no criteria applicable to the provision of fire protection



1 services established as firm policy; there are only  
2 suggestions. Further, there have been no alternative sites  
3 considered, according to petitioners.

4 Respondent claims its findings adequately consider the  
5 placement of the station. The findings are as follows:

6 "Fire protection and emergency services are inadequate  
7 for most of the areas farther to the southwest of this  
8 site which have been annexed into the City within the  
9 past few years. These newly annexed areas do not lay  
10 within the four minutes response time desired by the  
11 Fire Bureau, although the immediate area surrounding  
12 the subject site is currently within a four minute  
13 response area.

14 "It should be noted that opponents of this Conditional  
15 Use contend that the four minutes response time  
16 desired by the Fire Bureau is not important since it  
17 is not a standard set by City Council. It simply does  
18 not follow that all considerations not specifically  
19 adopted by City council are unimportant. The  
20 opponents offer no credible evidence to suggest that  
21 more or less than four minutes is a desirable and safe  
22 fire protection response time. Based on the  
23 experience, training, and expertise of the Fire  
24 Bureau, as testified to before Council and the  
25 hearings officer, to provide the greatest protection  
26 the fire station should be as close as possible to the  
area to be served, the City Council finds the goal of  
a four minute response time as reasonable, adequate  
and necessary for the public safety in order to  
prevent and contain fires, and to administer emergency  
services." Record 9-10.

27 Page 248 of the record, a portion of the fire station  
28 relocation study done in 1977, recognizes this section of  
29 southwest Portland requires fire protection. The discussion in  
30 that study seems to support the city's conclusion that this  
31 site, or something near it, is an appropriate location for this  
32 particular kind of public service. Also included in the record  
33 is specific consideration of why this location was needed as

1 opposed to the present location. See Record 60-62. These  
2 discussions along with the portion of the relocation study lend  
3 support for the proposition that the placement of the station  
4 here was undertaken with a view to compliance with goal 11.

5 We do not find the fact the city had not adopted the  
6 capital improvement plan as necessarily important. The plan is  
7 part of the record and was before the hearings officer and the  
8 city council. These offices were entitled to consider the  
9 study as part of their deliberation on this conditional use  
10 application. Information in the capital improvement program  
11 and the relocation of engine 10 justification contained at page  
12 248 of the record provides sufficient facts for the city's  
13 conclusion that the fire station belongs at the site chosen, or  
14 at least nearby.

15 In this context, we believe goal 11 is satisfied if the  
16 city can show the proposed station fits what for now serves as  
17 its plan for fire protection. The "plan" here is the Fire  
18 Bureau study, and it appears the city followed the plan in  
19 making its decision in this case. We do not believe a greater  
20 "plan" is required for this single land use action.

21 Goal 12 is alleged to have been violated because the record  
22 suggests that the safe, convenient and economic transportation  
23 system envisioned by goal 12 is violated specifically by the  
24 siting of a fire station at this location. Petitioners point  
25 to several points in the record where the dangerous quality of  
26 the traffic pattern in the area is mentioned. The city's own

1 transportation planners acknowledged such accident potential to  
2 exist in the findings. Record 13. The record includes much  
3 testimony on traffic hazards as perceived by area residents.

4 The city included a condition in this permit requiring the  
5 construction of signaling devices on Taylor's Ferry Road.

6 However, the city's findings on goal 12 do not reflect why the  
7 signaling devices were ordered or what bearing they have on  
8 goal 12. Earlier in the findings, the city explained its  
9 decision to require the lights.

10 The opponents claim that traffic on S.W. Taylors Ferry  
11 will prevent this site from being a good location for  
12 a fire station. Based on the statements of the City's  
13 Traffic Engineer and the Fire Bureau, made to the  
14 Hearings Officer, the City Council finds that the  
15 street system surrounding this location is adequate to  
16 support this use and that this use will not unduly  
17 impact the existing street system. The statements of  
18 the Traffic Engineer, Transportation Planning Section,  
19 and Fire Bureau are adopted as evidence that any  
20 traffic problems associated with this proposal can be  
21 resolved or mitigated by the conditions attached to  
22 this approval.

23 "The opponents claim that the Fire Bureau should be  
24 prohibited from using S.W. 4th for emergency runs to  
25 the north. The Fire Bureau has stated a preference  
26 for going north via Taylors Ferry Road and then  
27 Terwilliger. The neighbors request a condition  
28 prohibiting the use of S.W. 4th. The City Council  
29 finds that although the Taylor's Ferry-Terwilliger  
30 route is highly preferable from the standpoint of  
31 reducing neighborhood impact, it would be unwise to  
32 restrict the ability of the Fire Bureau to respond as  
33 needed in a particular emergency situation.

34 "A number of alternative sites were suggested at the  
35 public hearing and the selection method for arriving  
36 at this particular site was questioned. The City  
37 Council finds that this particular location is  
38 appropriate, based on the Fire Bureau's testimony that  
39 of prime importance is a location as near as possible  
40 to the intersection of S.W. Terwilliger and Taylors

1 Ferry. The City Council finds, based on the Fire  
2 Bureau's testimony that moving the Engine Company No.  
3 10 location to another site away from this  
4 intersection will reduce their ability to cover the  
5 areas to be protected in the least amount of time, to  
6 the detriment of the residents of this areas."  
7 (Record 11).

8 These findings show a detailed consideration of goal 12,  
9 and the fact the city mistakenly concluded goal 12 was not  
10 applicable does not lessen the city's substantial compliance  
11 with the goal.

12 We conclude the city to have met goal 12 considering the  
13 nature of the use proposed. The fourth assignment of error is  
14 denied.

#### 15 FIFTH ASSIGNMENT OF ERROR

16 The fifth assignment of error alleges that notice of the  
17 city actions was not provided to the South Burlingame  
18 Neighborhood Association. This assignment of error is based  
19 upon City Code Section 3.96.060 requiring 30 days advance  
20 notice of all actions affecting the livability of a  
21 neighborhood to be given to local neighborhood associations.

22 It would appear from the record that petitioners are  
23 correct. There is no evidence included in the original record  
24 submitted to the Board showing compliance with this provision  
25 of the City Code. However, there has been no allegation that  
26 the neighborhood association has been injured or that it or any  
of its members was denied the opportunity to present views to  
the city. Indeed, petitioners have participated in this  
proceeding from the very outset. Oregon Laws 1979, ch 772, sec

1 5(4)(B) does not allow the Board to reverse or remand where  
2 there has been no showing of "prejudice [to] the substantial  
3 rights of the petitioners."

4 SIXTH ASSIGNMENT OF ERROR

5 The sixth assignment of error alleges the decision is  
6 inconsistent with Portland City Code Section 33.114.060(b) and  
7 the conditional use standards set forth in the Code including  
8 Section 33.106.010. The assignment also alleges that the  
9 decision is without adequate findings and conclusions to  
10 support it. In this assignment of error, petitioners mention  
11 testimony of persons opposed to the grant and say this evidence  
12 stands either uncontested or outweighs any findings to the  
13 contrary. The city either failed to articulate compliance with  
14 the quoted portions of its own ordinance, or made findings that  
15 had no support anywhere in the record, posit petitioners.

16 Respondent claims the record shows petitioners' citations to  
17 the record are inaccurate in some instances and quote testimony  
18 unsupported by any facts in other instances. Respondent adds  
19 that the findings meet the standards set by the ordinance.

20 Our review of the record suggests that respondent is the  
21 more correct, although the findings lack detail. As noted  
22 above, the city standards are vague. Compliance with those  
23 standards is shown generally in the findings. It is, after  
24 all, not difficult to show that a fire station will aid the  
25 public good.

26

1 SEVENTH ASSIGNMENT OF ERROR

2 The seventh assignment of error alleges "Respondent failed  
3 to address all contested issues of fact by way of adequate  
4 findings and conclusions." The argument here is that the city  
5 was faced with challenges to a number of important issues  
6 including noise impacts, alternative sites, coordination with  
7 other jurisdictions, adverse impact on property values, etc.,  
8 and failure to respond to these concerns was error.

9 The city recites that it did respond adequately to those  
10 concerns. It did not ignore the factual questions as alleged  
11 by the petitioners.

12 Again, the findings are sketchy. Taken as a whole and when  
13 combined with the record, they do indicate that the city did  
14 consider the challenges mentioned above, as well as others. It  
15 would be quite tedious to answer in detail all the challenges  
16 spoken at the various hearings. The city had to generalize the  
17 challenges in order to make them manageable. Once generalized,  
18 these broad areas of concern were addressed in a manner that  
19 explained well enough the basis for the decision, the reasons  
20 for the decision and why alternative proposals were not  
21 followed.

22 This assignment of error is denied.

23 EIGHTH ASSIGNMENT OF ERROR

24 The eighth assignment of error alleges the discretionary  
25 conditions of approval were delegated improperly and imposed  
26 without findings. Petitioners allege there are no findings

1 with respect to any of the conditions imposed. Further,  
2 petitioners say conditions b, c and d appearing at page 15 of  
3 the record are discretionary and delegated to various  
4 administrative officials after all opportunities for public  
5 comment are closed.

6 The conditions complained of are as follows:

7 "b. Pedestrian sidewalks shall be provided along the  
8 S.W. 4th and S.W. Taylors Ferry frontage to City  
9 Engineer's standards.

10 "c. Street improvements shall be made to City  
11 Engineer's standards.

12 "d. Warning lights and signs shall be placed on S.W.  
13 Taylor Ferry Road, in conjunction with the  
14 Traffic Engineer, to insure safe entry from S.W.  
15 4th to Taylors Ferry by emergency vehicles."

16 Petitioners do not cite us to authority prohibiting  
17 delegations of authority regarding sidewalk construction  
18 standards, street improvements standards and traffic warning  
19 lights. Persons to whom the delegations have been made in the  
20 first two cases are the city engineer, and in the last case,  
21 the traffic engineer.

22 Respondent does not cite us to any portion of the city code  
23 establishing standards for the actions to be taken under the  
24 permit. Respondent says in its brief that "technical  
25 specifications" exist to guide the acts, but we do not find the  
26 specifications in the record.

27 This assignment of error is denied. We will not hold that  
28 a city may not delegate construction of signal lights and  
29 similar projects to staff if standards for construction exist

1 in the city's code or other regulations. As respondent  
2 represents that the standards do exist, and as petitioners have  
3 not claimed the standards do not exist, this assignment of  
4 error is denied.

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FOOTNOTE

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1 A proposal was made that part of the Fire Bureau property be used as a park. This proposal appears to have been rejected in the findings. The record includes testimony reflected in the findings as to the dangers associated with attracting children to a fire station. The small park would so attract children, in the view of Fire Bureau officers.