

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

SEP 8 4 31 PM '83

1
2
3 WHITESIDES HARDWARE, INC.,)
an Oregon corporation,)
4) Petitioner,)
5)) vs.)
6 CITY OF CORVALLIS,))
7) Respondent,)
8)) and)
9 HERITAGE ENTERPRISES, a)
10 partnership of CHARLES F.)
KINGSLEY and DAVID F. WAGNER,)
11) Intervenor.)

LUBA No. 83-040

FINAL OPINION
AND ORDER

12
13 Appeal from the City of Corvallis.

14 Robert S. Ball, Portland, filed the Petition for Review and
15 argued the cause on behalf of Petitioner. With him on the
brief was Susan Q. Rosenfeld.

16 Richard D. Rodeman, Corvallis, filed the brief and argued
17 the cause on behalf of Respondent City.

18 Allen L. Johnson, Eugene, filed the brief and argued the
cause on behalf of Intervenor.

19 BAGG, Board Member.

20 REMANDED

09/08/83

21
22 You are entitled to judicial review of this Order.
23 Judicial review is governed by the provisions of Oregon Laws
1979, ch 772, sec 6(a), as amended by Oregon Laws 1981, ch 748.



STATE OF OREGON

INTEROFFICE MEMO

5.1

TO: MEMBERS OF THE LAND CONSERVATION AND DEVELOPMENT COMMISSION DATE: 8/05/83

FROM: THE LAND USE BOARD OF APPEALS

SUBJECT: WHITESIDES HARDWARE, INC. v CITY OF CORVALLIS
LUBA No. 83-040

Enclosed for your review is the Board's proposed opinion and order on goal issues only in the above captioned appeal.

The Board's file shows the Commission to have issued a continuance order stating that the City of Corvallis Comprehensive Plan and implementing ordinances have complied with all statewide planning goals. For that reason, the Board does not review the decision for compliance with statewide planning goals.

The Board is of the opinion that oral argument will not assist the commission in its understanding or review of the statewide goal issues involved in this appeal. Therefore, the Board recommends that oral argument before the commission not be allowed.



Contains
Recycled
Materials

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LUBA No. 83-040

PROPOSED OPINION
AND ORDER
(GOAL ISSUES ONLY)

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14 Robert S. Ball, Portland, filed the petition for review and
15 argued the cause on behalf of Petitioner. With him on the
16 brief was Susan Q. Rosenfeld.

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20 cause on behalf of Intervenors.

21 BAGG, Board Member.

22 08/05/83

23 You are entitled to judicial review of this Order.
24 Judicial review is governed by the provisions of Oregon Laws
25 1979, ch 772, sec 6(a), as amended by Oregon Laws 1981, ch 748.

26 Partial opinion - the proposed opinion herein contains only
those facts and discussion as may be necessary to interpret the
Board's opinion on allegations of statewide planning goal
violation. The final opinion in this case may include
additional facts and discussion.

1 Bagg, Board Member.

2 NATURE OF THE DECISION

3 Petitioner appeals City of Corvallis Ordinance No. 83-19
4 amending certain textural provisions of the Corvallis
5 Comprehensive Plan and Land Development Code. Also, petitioner
6 appeals Ordinance No. 83-20 which amends the City of Corvallis
7 Comprehensive Plan Map. This amendment applies a light
8 industrial zoning designation with a regional shopping center
9 overlay to 46.6 acres of property within the City of Corvallis
10 but outside of the downtown area.

11 FACTS

12 The intervenor herein, Heritage Enterprises, applied for a
13 comprehensive plan amendment to allow for construction of a
14 regional shopping center within the City of Corvallis but
15 outside the downtown area. It is this application that
16 resulted in the ordinances on review, Ordinances 83-10 and
17 83-20.

18 Ordinance No. 83-19 and 83-20 were adopted on the March 8,
19 1983, and became final on March 22, 1983. The procedures
20 leading to adoption of both ordinances were conducted
21 concurrently. Ordinance 83-19 amends portions of the Corvallis
22 Comprehensive Plan to allow development of a regional shopping
23 center outside the downtown Corvallis area. Ordinance No.
24 83-20 amends the City of Corvallis Comprehensive Plan Map. It
25 reclassifies 46.6 acres of property outside of the downtown
26 area from light industrial to light industrial with a regional

1 shopping center overlay.

2 Goal Issues

3 In Assignments of Error Nos. 2, 3, 4, and 5 petitioner
4 alleges the city's decisions violate one or more of the
5 statewide planning goals, specifically Goals 1, 2, and 12.

6 With respect to alleged violation of statewide planning
7 goals, Respondent City of Corvallis and intervenors argue LUBA
8 has no authority to consider the alleged violations.

9 Respondent and intervenors point to a continuance order of the
10 Land Conservation and Development Commission issued on June 16,
11 1983. In that continuance order, the following appears under
12 the hearing "Findings of Fact:"

13 "1. The Corvallis Comprehensive Plan and City land
14 use regulations comply with all applicable
15 Statewide Planning Goals for the reasons set
16 forth in Section IV of the Department's report
17 adopted by the Commission on June 2, 1983, and
18 incorporated herein.

19 "2. Amendments to the Comprehensive Plan and land use
20 regulations to allow a regional shopping center
21 to locate near the intersection of Highway 99W
22 and Circle Boulevard comply with all applicable
23 Statewide Planning Goals, for reasons set forth
24 under Section IV, Goal 2 of the Department's
25 report adopted by the Commission on June 2, 1983,
26 and incorporated herein."

21 The continuance order has a "conclusion" repeating the finding
22 that "[t]he Corvallis Comprehensive Plan and City Land Use
23 Regulations comply with all applicable Statewide Planning
24 Goals."

25 Respondent and intervenors say there are no longer any goal
26 issues in the case for LUBA to review as a result of this

1 continuance order. Petitioner's only appropriate challenge
2 before LUBA is to the city's comprehensive plan and
3 implementing ordinances, according to respondent and
4 intervenors.

5 The Board agrees it no longer has the authority to consider
6 petitioner's allegations of statewide planning goal violation.
7 The Land Conservation and Development Commission has reviewed
8 the city's plan and implementing ordinances and found them to
9 be in compliance with the goals. That review included
10 Ordinances 83-19 and 83-20 under review in this proceeding.
11 Were the Board to conduct review, it would be tantamount to
12 second guessing the acknowledgment. Any challenge to the
13 acknowledgment must be directed to the Court of Appeals. See
14 ORS 197.650. Fujimoto v Land Use Board of Appeals, 291 Or 662,
15 634 P2d 212 (1981), Byrd v Stringer, ___ Or ___, ___ P2d ___
16 (Sup Ct #29107, Slip Op of July 19, 1983).

17 Petitioner's allegations of statewide goal violation are
18 dismissed.

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BEFORE THE
LAND CONSERVATION AND DEVELOPMENT COMMISSION
OF THE STATE OF OREGON

LAND USE
BOARD OF APPEALS

SEP. 6 12 02 PM '83

WHITESIDES HARDWARE, INC.,)
an Oregon corporation,)
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CITY OF CORVALLIS,)
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HERITAGE ENTERPRISES, a)
partnership of CHARLES F.)
KINGSLEY and DAVID F.)
WAGNER,)
)
Intervenors.)

LUBA No. 83-040
LCDC DETERMINATION


The Land Conservation and Development Commission hereby approves the recommendation of the Land Use Board of Appeals in LUBA 83-040 with the following comment:

Although it does not alter the result in this case, the Commission would note that it granted a continuance order for the City of Corvallis' plan, not an acknowledgment order. Thus, the Fujimoto case is not directly on point. The Commission believes the distinction between an acknowledgment order and a

continuance order may be important in other cases. To clarify this point, the Commission suggests the following changes in the opinion: (1) on page 4, line 12, delete "acknowledgment" and insert "Commission's determination, in its continuance order, that the Goals in question here had been met"; and (2) in line 13, delete "acknowledgment" and insert "continuance order."

DATED THIS 31st DAY OF AUGUST, 1983.

FOR THE COMMISSION:


James F. Ross, Director
Department of Land Conservation
and Development

JFR:RE:jj
5507B/2B

1 BAGG, Board Member.

2 NATURE OF THE DECISION

3 Petitioner appeals City of Corvallis Ordinance No. 83-19,
4 amending certain textual provisions of the Corvallis
5 Comprehensive Plan and Land Development Code. Petitioner also
6 appeals Ordinance No. 83-20 amending the City of Corvallis
7 Comprehensive Plan Map. Together the ordinances create a
8 regional shopping center zone and apply it to a 46.6 acre
9 parcel of property within the City of Corvallis but outside the
10 downtown area.

11 STANDING

12 Petitioner alleges it is the owner of a retail store in
13 downtown Corvallis, and its shareholders are owners of the
14 building in which the store is located. Petitioner asserts it
15 appeared before the city council in these proceedings.
16 Petitioner claims its interests are adversely affected and
17 aggrieved by the comprehensive plan text amendment (Ordinance
18 83-19) and the map change (Ordinance 83-20) because the new
19 plan policies "permit and encourage light large scale
20 commercial development in an alternative location to downtown
21 Corvallis." Petition for Review at 1. Petitioner claims the
22 effect of the changes will be to "reduce the quality of
23 downtown Corvallis for commercial land uses and retail
24 activities." Petition for Review at 1. Petitioner supports
25 its argument with a citation from the comprehensive plan as
26 follows:

1 "Studies have indicated that if a regional center were
2 to locate anywhere outside a downtown, up to 40% of
3 the existing downtown businesses would either go out
4 of business or move to the site of the regional center
within the first three years after the mall is
completed." Record at 24, Corvallis, Or.,
Comprehensive Plan, Sec 12.5.d, (March, 1983).

5 Petitioner alleges

6 "[t]he effect of the subject proceedings on petitioner
7 will be likely to lead to business disruption and a
8 decline in the quality of the commercial area in which
petitioner conducts business." Petition for Review at
2.

9 Intervenor, Heritage Enterprises, challenges this statement
10 of standing on several grounds. First, intervenor claims
11 petitioner's shareholders are not parties to this proceeding.
12 The Board does not understand petitioner to be attempting to
13 claim representational standing for its shareholders. There is
14 one petitioner, Whitesides Hardware, Inc. The reference to
15 ownership of a building by shareholders is surplusage, in the
16 Board's view.

17 Intervenor's second challenge to standing is that the
18 petition fails to "allege facts which enable the Board to
19 determine how petitioner will be affected." Intervenor's Brief
20 at 2. Intervenor alleges the facts cited by petitioner show a
21 shopping center is likely to be built "in the Corvallis market
22 area, outside downtown Corvallis, regardless of the decisions
23 under review." Intervenor's Brief at 3. The question is not
24 whether a center will be built at all, but whether it will be
25 built in Albany or Corvallis, according to intervenor.

26 Intervenor says there are no allegations that the impact of a

1 shopping center in Albany will be any less than the impact of a
2 shopping center in Corvallis. Intervenor then says:

3 "In short, the facts set forth in the petition, taken
4 as a whole, provide LUBA with no basis for finding
5 that the claimed harm is reasonably likely to result
6 from the decisions under review or that the relief
7 sought is reasonably likely to prevent that harm."
8 Brief of Intervenor at 4.

9 The Board does not agree with intervenor's analysis. 1979
10 Or Laws, ch 772, sec 4(2) and (3), as amended by 1981 Or Laws,
11 ch 478, control standing before this Board.¹ The issue is
12 whether petitioner has alleged facts sufficient to show
13 adversity or aggrievement as the result of the decision on
14 review. Petitioner has claimed the ordinances under review
15 provide for the construction of a shopping center in Corvallis
16 which would reduce the quality of downtown Corvallis for
17 commercial land uses and retail activities. Petitioner has
18 also alleged the proposed mall will cause a decline in the
19 quality of the commercial area in which petitioner conducts
20 business.² Petitioner has alleged its business interests
21 will be damaged by this proposal. Reduction in quality of
22 commercial land uses and retail activities, of which petitioner
23 is a participant, is an adverse effect or aggrievement and
24 sufficient to confer standing under 1979 Or Laws, ch 772, as
25 amended by 1981 Or Laws, ch 748.

26 Intervenor also challenges petitioner's standing on the
ground that petitioner does not have a protected interest. As
the Board understands the argument, intervenor claims the

1 petitioner has no right to challenge a decision simply because
2 it provides competition to its business. Intervenor cites
3 cases in which courts have refused to grant standing to one
4 complaining about having been put at a competitive
5 disadvantage. See Westborough Mall v City of Cape Girardeau,
6 693 F 2d 733 (8th Cir. 1982).

7 The Board does not understand petitioner to be complaining
8 about competition. The allegations do not assert that a
9 competitive advantage will be lost or that petitioner will
10 suffer a loss of customers. Petitioner alleges a reduction in
11 the quality of downtown Corvallis for commercial land uses and
12 retail activities and a disruption of petitioner's business.
13 As the Board understands these allegations, they amount to a
14 claim that the petitioner's surroundings will be injured and
15 that injury in turn will disrupt petitioner's business. The
16 Board finds nothing anti-competitive about these allegations,
17 and the Board does not believe petitioner is attempting to
18 assert a right to some monopolistic business practice in the
19 City of Corvallis. See Id.

20 Petitioner has standing to bring this appeal.

21 FACTS

22 The intervenor herein, Heritage Enterprises, applied for an
23 amendment to the comprehensive plan map to allow construction
24 of a regional shopping center within the City of Corvallis but
25 outside the central business district. This application
26 resulted in the ordinances on review, 83-19 and 83-20.

1 Ordinances 83-19 and 83-20 were adopted by the Corvallis City
2 Council on March 8, 1983, and became final on March 22, 1983.
3 The procedures leading to adoption of both ordinances were
4 conducted concurrently. Ordinance No. 83-19 amends the
5 Corvallis Comprehensive Plan and the Land Development Code
6 provisions relating to a regional shopping center. Previously
7 the city's comprehensive plan had provided that any regional
8 shopping center would be located in downtown Corvallis. The
9 amendment creates a "floating zone" designated District RSC
10 (Regional Shopping Center) with the stated purpose of providing
11 "a location for regional shopping center uses which are planned
12 and developed as an integrated unit." Corvallis, Or.,
13 Ordinance 83-19, sec 5 (March 8, 1983). The effect of the
14 amendment is to allow location of a regional shopping center
15 outside of the central business district.

16 Ordinance No. 83-20 changes the classification of a 46.6
17 acre parcel of property located outside the central business
18 district from light industrial to light industrial with a
19 regional shopping center overlay.

20 GOAL ISSUES

21 In Assignments of Error Nos. 2, 3, 4, and 5 petitioner
22 alleges the city's decisions violated one or more of the
23 statewide planning goals, specifically Goals 1, 2, and 12.

24 With respect to alleged violation of statewide planning
25 goals, respondent City of Corvallis and intervenor; argue LUBA
26 has no authority to consider the alleged violations.

1 Respondent and intervenor point to a continuance order of the
2 Land Conservation and Development Commission issued on June 16,
3 1983. In that continuance order, the following appears under
4 the heading "Findings of Fact:"

5 "1. The Corvallis Comprehensive [Plan] and City Land
6 Use Regulations comply with all applicable
7 statewide planning goals for the reasons set
8 forth in Section 4 of the Department's report
9 adopted by the Commission on June 2, 1983 and
10 incorporated herein.

11 "2. Amendments to the Comprehensive Plan and Land Use
12 Regulations to allow a regional shopping center
13 to locate near the intersection of Highway 99W
14 and Circle Boulevard comply with all applicable
15 statewide planning goals for reasons set forth
16 under Section IV, Goal 2 of the Department's
17 report adopted by the Commission on June 2, 1983,
18 and incorporated herein."

19 The continuance order has a "conclusion" repeating the finding
20 that "[t]he Corvallis Comprehensive Plan and City Land Use
21 Regulations comply with all applicable statewide planning
22 goals."

23 Respondent and intervenor say there are no longer any goal
24 issues in the case for LUBA to review as the result of this
25 continuance order. Petitioner's only appropriate challenge
26 before LUBA is to the city's comprehensive plan and
implementing ordinances, according to respondent and
intervenor. The Board agrees it no longer has the authority
to consider petitioner's allegations of statewide planning goal
violation. The Land Conservation and Development Commission
has reviewed the city's plan and implementing ordinances and
found them to be in compliance with the goals. That review

1 included Ordinances 83-19 and 83-20 under review in this
2 proceeding. Were the Board to conduct review, it would be
3 tantamount to second guessing the Commission's determination,
4 in its continuance order, that the goals in question here had
5 been met. Any challenge to the continuance order must be
6 directed to the Court of Appeals. See ORS 197.650. Byrd v
7 Stringer, 295 Or 311, ___ P2d ___ (1983). See also Fujimoto v
8 Land Use Board of Appeals, 291 Or 662, 634 P2d 212 (1981).

9 Petitioner's allegations of statewide goal violation are
10 dismissed.

11 ASSIGNMENT OF ERROR NO. 1

12 "Ordinance 83-19 and Ordinance 83-20 were approved by
13 the City Council of the City of Corvallis without
adopting findings of fact."

14 Petitioner asserts "[n]othing in the Record reflects the
15 'adoption' by respondent City Council of all or any portion of
16 the staff report as findings of fact." Petition for Review at
17 8. Petitioner argues that in order for the findings of fact to
18 be effective they must be explicitly adopted by the governing
19 body. There is no presumption that a staff report has been
20 adopted by the governing body as findings, according to
21 petitioner.

22 As explained infra, respondent insists the ordinances were
23 adopted with findings. However, respondent posits that if the
24 Board finds the adoptions did not include findings, then
25 respondent takes the position Ordinance 83-19 was properly
26 adopted without supporting findings of fact because it was a

1 legislative decision. Respondent notes petitioner's reliance
2 on ORS 227.173(2) in support of the findings requirement is
3 incorrect. Respondent correctly observes that ORS 227.173(2)
4 applies to permit applications, not to map amendments.

5 Intervenor argues the City Council did adopt facts and
6 findings sufficient to permit review by this Board. Moreover,
7 intervenor notes petitioner cites to no bases for requiring
8 findings in support of legislative decisions. Thirdly,
9 intervenor argues petitioner has waived its right to object to
10 the local government's findings because it was represented by
11 counsel when the ordinances in question were read and adopted.
12 Also, intervenor says the City Council clarified its intent to
13 adopt the applicant's proposed findings and the staff report as
14 findings by a subsequent ordinance, 83-49, adopted May 31,
15 1983. Finally, intervenor asserts the plan and zoning text
16 amendments contain findings sufficient to support Ordinance
17 83-20, the map amendment.

18 The Board need not decide whether the decisions under
19 review, or either of them, are quasi-judicial or legislative.
20 The Board finds the City of Corvallis adopted findings
21 supporting its two decisions.

22 Under Section 25 of the City of Corvallis Charter, the City
23 Recorder is the officer responsible for the keeping of the
24 records of all city council proceedings. During oral argument
25 before this Board, the city attorney stated that findings
26 consisting of the city staff report and a memorandum of

1 findings by Council member Vars were attached to both
2 ordinances, and filed in the city recorder's office.³ Since
3 petitioner's attorney did not dispute this explanation, and no
4 allegation of fraudulent acts by city employees has been
5 raised, the Board accepts the city attorney's statement as
6 correct.

7 In this case, Ordinance 83-19 states:

8 "The findings of fact adopted by the City Council of
9 the City of Corvallis in support of this ordinance are
10 as attached in Exhibit A, which by this reference is
11 incorporated herein, and hereby adopted." Corvallis,
12 Or., Ordinance 83-19, Sec 13.

13 Section 2 of Ordinance 83-20 contains similar language.

14 Accordingly, the Board concludes the city council adopted the
15 findings attached to the two ordinances. See Goose Hollow
16 Foothills League v. City of Portland, 3 Or LUBA 256 (1981).

17 The adopted findings consist of the staff report, pages 135 to
18 148 of the supplemental record, and the findings of Council
19 member Vars at page 149 of the supplemental record.

20 This assignment of error is denied.

21 ASSIGNMENT OF ERROR NO. 2

22 "If the staff report is determined by this Board to
23 constitute findings, these findings are inadequate in
24 that they fail to address applicable LCDC Goals."

25 See the Board's discussion, supra, under "GOAL ISSUES."

26 ASSIGNMENT OF ERROR NO. 3

"If the staff report is found by this Board to
constitute findings, those findings and Ordinances
83-19 and 83-20 are inconsistent with applicable
provisions of the City's Comprehensive Plan."

1 Petitioner points to three inconsistencies between the
2 Corvallis Comprehensive Plan and the findings and ordinances
3 allowing construction of a regional shopping center in an
4 outlying area:

5 (1) The Comprehensive Plan designates the downtown as a
6 "special area of concern;" Corvallis, Or., Comprehensive Plan,
7 114 (March, 1983).

8 (2) Finding 12.5d of the Comprehensive Plan states "up to
9 40% of the existing downtown businesses would either go out of
10 business or move to the site of the regional center within
11 three years after the mall is completed;" Id. at 117.

12 (3) Policy 7.8.7 of the Comprehensive Plan states:
13 "The size and function of other commercial areas shall
14 be limited to attain the pre-eminent position of the
downtown shopping area." Id. at 75.

15 Petitioner argues these conflicts violate the Goal 2
16 mandate that "actions related to land use shall be consistent
17 with the comprehensive plans of cities * * * *" Petition for
18 Review at 13. Also, according to petitioner, because Ordinance
19 83-20, the map amendment, is inconsistent with the City's
20 Comprehensive Plan, ORS 227.175(3) is violated.⁴

21 Intervenor makes four responses to petitioner's consistency
22 argument. First, intervenor argues findings contained in the
23 plan amendment support the adoption of both Ordinances 83-19
24 and 83-20. Second, the comprehensive plan amendments do not
25 have to be consistent with the comprehensive plan as it existed
26 before amendment. Third, intervenor says petitioner does not

1 identify any inconsistencies in the staff report or findings
2 that are inconsistent with "anything." And fourth, "LUBA need
3 only consider the adequacy of the evidence and findings
4 concerning plan policies that (1) exist and, (2) are
5 specifically identified as conflicting with the decision under
6 review." Intervenor's Brief at 19.

7 Petitioner is, here, asking the Board to interpret
8 provisions of the Corvallis Comprehensive Plan. In
9 interpreting the meaning of a comprehensive plan, LUBA will
10 defer to the construction of the local government if
11 reasonable. Alluis v Marion County, 7 Or LUBA 98, 103 (1982),
12 aff'd, ___ Or App ___, ___ P2d ___ (Slip Opinion of August 31,
13 1983).

14 The first conflict raised by the petitioner relates to what
15 the plan calls a narrative; the second relates to a plan
16 provision titled "Findings," and the third relates to a plan
17 policy. The Board is aided in its evaluation by a provision in
18 the Corvallis Comprehensive Plan that controls plan
19 interpretation.

20 The introduction to the comprehensive plan states:

21 "In interpreting the plan, the policies should be
22 given the greatest weight and importance. Findings
23 should be considered next in importance and finally,
24 the narrative sections, support documents and other
background studies and public records should be
referenced for clarification if necessary."
Corvallis, Or., Comprehensive Plan at 5 (March, 1983).

25 The Comprehensive Plan provision labeling the downtown area
26 as a "special area of concern" is a textual provision. Nothing

1 in the record shows that the Council considered the provision
2 when passing Ordinances 83-19 and 83-20. Apparently the City
3 Council found it unnecessary to consider the special area of
4 concern provision and this Board will not reverse that
5 decision. Based on the Comprehensive Plan's interpretative
6 provision, the City Council was not obligated to look to the
7 textual provision regarding special area of concern unless some
8 other plan provision was ambiguous or required clarification.

9 Petitioner's second alleged plan inconsistency is over the
10 finding that a 40% reduction in downtown business could result
11 from location of a regional mall outside of downtown.
12 Accompanying this finding are other findings to the effect that
13 adverse impact on downtown can be minimized and the downtown
14 has advantages for non-regional shopping activities.
15 Corvallis, Or., Ordinance 83-19, Sec 10 (March 8, 1983), Record
16 at 24-25. Findings are also contained in the Comprehensive
17 Plan amendment which suggest a regional shopping center in
18 downtown is disfavored by the public and unlikely to occur.
19 Id. at Sec 9, reprinted in Record at 23. The staff report
20 adopted as findings contains a similar conclusion. Record 46.
21 Petitioner does not dispute the accuracy of these findings.
22 Without an explanation of how the findings violate the plan,
23 the Board will find no error.

24 Petitioner's third alleged plan inconsistency is about
25 Policy 7.8.7. Policy 7.8.7 states:

26 "The size and function of other commercial areas shall

1 be limited to retain the preeminent position of the
2 downtown shopping area." Corvallis, Or.,
Comprehensive Plan at 75 (March, 1983).

3 The policy, listed under the heading, "Commercial and Office
4 Land Development and Land Use," existed prior to adoption of
5 Ordinances 83-19 and 83-20.

6 For the purpose of considering possible conflicts with
7 Policy 7.8.7, it is important to distinguish between Ordinances
8 83-19 and 83-20. Ordinance 83-19 provides for creation of a
9 regional shopping center zone. It does not specify the
10 placement of the zone. Nothing in Ordinance 83-19 limits
11 construction of a regional shopping center to downtown
12 Corvallis or anywhere else in the city. Accordingly, the Board
13 concludes Ordinance 83-19 does not conflict with Policy 7.8.7.

14 Ordinance 83-20 is different. Ordinance 83-20 is a site
15 specific map amendment, allowing construction of a regional
16 shopping center on land outside of the downtown shopping area.
17 The Corvallis Land Development Code defines a regional shopping
18 center as an enclosed structure with at least 400,000 square
19 feet of usable retail floor space. Corvallis, Or., Land
20 Development Code, Sec 200.02.03(v). Among the City Council's
21 findings, was 12.5.d; concluding that construction of a
22 regional mall outside of downtown would eventually result in
23 the loss of 40% of the downtown businesses. The City Council
24 also found that the central business district was "at a
25 disadvantage with suburban commercial areas due to its
26 fragmented ownership pattern, the developed nature of its land,

1 the higher prices of that land, through traffic and the
2 location of public parking." These two findings alone and
3 without further explanation, suggest Ordinance 83-20, providing
4 for the shopping center outside the downtown area, violates
5 Policy 7.8.7. In addition, among the findings adopted by the
6 City Council in support of Ordinance 83-20 is one stating:

7 "Locating the regional shopping center outside the
8 downtown would negatively affect the downtown." Staff
Report at 5, reprinted in Supplemental Record at 139.

9 The City Council also made a finding that:

10 "The downtown has locational characteristics including
11 proximity to the Willamette River with public
12 ownership of the waterfront, proximity to the
13 University, and on-going riverfront and Madison Avenue
14 improvement projects that can mitigate the effects of
a regional shopping center located outside the
downtown." Id.

15 This last finding does not explain how Policy 7.8.7 would be
16 satisfied if a regional shopping center were constructed
17 outside of the downtown area.

18 The city made no findings about the Ordinance 83-20's
19 compliance with Policy 7.8.7 aside from findings suggesting
20 location of a regional shopping center outside of downtown was
21 detrimental to the downtown area. Here the city has failed to
22 explain how 83-20 will not violate Policy 7.8.7. The Board
23 finds this explanation necessary.

24 Respondent and intervenors put forward a further defense,
25 however. They urge this Board to consider Ordinance No. 83-49,
26 adopted by the Corvallis City Council on May 31, 1983. Section

1 of that ordinance repeals Policy 7.8.7 of the Corvallis
2 Comprehensive Plan. Without Policy 7.8.7, there is no conflict
3 or violation created by Ordinance 83-20. Petitioner says the
4 Board should not consider Ordinance 83-49 for various reasons
5 that intervenor regards as a collateral attack. The intervenor
6 argues that the petitioner must attack Ordinance 83-49 through
7 a direct attack unless it is facially invalid or petitioner was
8 deprived of notice of its passage. Intervenor cites to
9 Gearhard v Klamath County, 7 Or LUBA 27, 31 (1982), where this
10 Board held:

11 "...[A]pplication of the new code in accordance with
12 the general rule that '[i]f a zoning ordinance has
13 been amended between the moment of administrative
14 action or decision and the moment of review, the
15 amendment will apply.' 4 Anderson, American Law of
16 Zoning, Sec 25.31 (2d, ed. 1977)."

17 In short, intervenor argues LUBA should take notice of the
18 ordinance, and any objection to it on the part of the
19 petitioner is a collateral attack and therefore impermissible.

20 Although intervenor's analysis would generally be correct,
21 in this instance LUBA declines to take notice of Ordinance
22 83-49. In Simmons v Holm, 229 Or 373, 367 P2d 368 (1961), an
23 action seeking damages for personal injury where a bicycle
24 rider was struck by a driver at an uncontrolled intersection,
25 the court considered a similar problem of a collateral attack.
26 Plaintiff in that case contended the driver was entering the
intersection from private property, based on an ordinance
vacating the street on which the truck approached the

1 intersection. Defendent argued that the ordinance had not been
2 properly adopted and thus, the driver had the right-of-way
3 since he entered the intersection to the right of the rider.

4 The court quoted the following passage from McQuillin,
5 Municipal Corporations to support its holding that it could
6 consider the correctness of the adoption procedure:

7 "...of course in an action to enforce an ordinance,
8 the defense may be set up that the municipal
9 corporation had no power to pass the ordinance or that
10 it was never legally enacted. Neither of such
11 defenses is viewed as a collateral attack.... 6
12 McQuillin, Municipal Corporations, 3d., ed., sec
13 20.14, p. 33." Id., 299 Or at 390.

14 The court said that where the issue was not whether the
15 ordinance was invalid, but whether it even existed, there is no
16 presumption of validity. Id.

17 An examination of the record shows no evidence the
18 ordinance was correctly enacted. During oral argument before
19 this Board, respondent's attorney was unable to say that the
20 procedures followed with respect to Ordinances 83-19 and 83-20
21 were followed with respect to Ordinance 83-49. The Corvallis
22 Land Development Code at Section 102.04 describes the procedure
23 for comprehensive plan amendments. That procedure includes a
24 public hearing by the planning commission, notice of which is
25 to be given at least 30 days prior, followed by a public
26 hearing by the City Council with some form of public notice
(depending upon the type of hearing) to be given 10 days
prior. See Corvallis, Or., Land Development Code, Sec 102.04

1 (1983). None of these procedures appear in the record
2 submitted to this body and none were offered in support of
3 Ordinance 83-49. The Board has been cited to no provisions in
4 the charter or ordinances of the city that would permit an
5 amendatory ordinance to be adopted without the same notice
6 formalities as required for the original adoption. See 6 E
7 McQuillin at Sec 21.04 (1980). Ordinance 83-49, then, is not
8 effective to amend Ordinance 83-19 and 83-20 and render the
9 issues in this appeal moot.

10 In the alternative, respondent and intervenor argues that
11 Ordinance 83-49 was simply a continuation of 83-19 and 83-20.
12 The Board declines to adopt this theory. The signatures of the
13 governing body were attached to written Ordinances 83-19 and
14 83-20 as provided in Corvallis City Charter, Section 42, and
15 the ordinances were filed in the appropriate depository, the
16 city recorder's office pursuant to Corvallis City Charter,
17 Section 25. Additionally, there is no indication in the record
18 that any further proceedings to consider 83-19 and 83-20 were
19 anticipated at the time the ordinances were passed. See
20 Supplemental Record at 36-37. It is apparent the city
21 considered the ordinances complete and effective on the date of
22 adoption, March 8, 1983.

23 This assignment of error is sustained insofar as it alleges
24 a violation of Plan Policy 7.8.7.

25 ASSIGNMENT OF ERROR NO. 4

26 "The approval of Ordinance 83-19 without an

1 opportunity for citizen involvement violated Goal 1
2 and City of Corvallis Comprehensive Plan Policies
3 2.1.1, 2.1.2 and 2.1.3."

4 Petitioner's argument under this assignment of error is
5 only about Policy 2.1.2. Petitioner argues that Comprehensive
6 Plan Policy 2.1.2 requires that the Committee for Citizen
7 Involvement ensure citizen involvement in the comprehensive
8 plan amendment process. Petitioner is apparently correct in
9 saying that the committee was not involved in consideration of
10 Ordinance 83-19. Petitioner's version of Comprehensive Plan
11 Policy 2.1.2 was amended prior to consideration of 83-19,
12 according to the city's attorney. Respondent's Brief at 13.
13 The policy now states:

14 "The Planning Commission shall be the body responsible
15 for ensuring on-going citizen involvement related to
16 the development, review, and updating and
17 implementation of the comprehensive plan."

18 The record shows that the planning commission was involved in
19 the planning process. There were two hearings before the
20 planning commission. See Record at 123-48 and Supplemental
21 Record at 68-91.

22 The Board concludes there is no violation of Corvallis
23 Comprehensive Plan Policy 2.1.2.⁵ This assignment of error
24 is denied.

25 ASSIGNMENT OF ERROR NO. 5

26 "Assuming, arguendo, that the City Council adopted the
staff report as findings of fact and conclusions, such
findings and conclusions are not supported by
substantial evidence contained in the record, and such

1 findings and conclusions violate Goal 2."

2 Petitioner makes four subassignments of error, each
3 attacking particular matters in the findings.

4 The first subassignment of error states:

5 "Amendments Relating to the Location of a Regional
6 Shopping Center are not Supported by Substantial
7 Evidence.

8 Under this subassignment of error, petitioner advises that
9 prior to the amendment by Ordinance 83-19, the comprehensive
10 plan stated placement of a regional shopping center outside
11 downtown Corvallis would cause severe short and long term
12 negative impacts on the downtown economy. Record 106-109.

13 Petitioner argues the city's policy was to preclude such a
14 development, and "Goal 2 requires the existence of an adequate
15 factual basis in the record to overturn such a policy."⁶

16 Petition for Review at 16. Petitioner believes there must be
17 an in-depth study of the effect on downtown Corvallis of
18 adoption of such a policy reversal, and this study is lacking.
19 Petitioner adds that the city has not addressed the criteria
20 which must be addressed before any such amendments may take
21 place. Petitioner references Corvallis Land Development Code

22 Section 102.04.04 which provides:

23 "The Comprehensive Plan may be amended when new
24 information becomes available or changes in community
25 conditions and attitudes have occurred which affect
26 the information and assumptions on which the
27 Comprehensive Plan is based. Generally, the more
28 drastic the change the greater will be the burden of
29 showing that the proposed change is in conformance
30 with the comprehensive plan."⁷

1 The Board understands petitioner to make a generalized argument
2 that the change enacted by the city is "drastic" and the city
3 has not met the burden of proof called for in the above code
4 provision to support the change.⁸

5 The city's findings may be summarized as follows: (1) the
6 downtown would be adversely affected by a regional mall located
7 in an outlying area or in another city within the same market
8 area; (2) the city would be benefited economically by
9 construction of a regional mall; (3) although construction of a
10 regional shopping center downtown may have once been possible,
11 location of a regional center in the downtown is now
12 economically and politically infeasible; and finally, (4) it
13 might be possible to alleviate some of a suburban regional
14 mall's impact on the downtown area. See the findings adopted
15 as part of the text of Ordinance 83-19, Record 22-26.
16 Additional findings supporting the city's view are found in the
17 staff report, adopted as findings and reprinted at 40-53 of the
18 record.

19 In sum, the city found circumstances to have changed making
20 placement of the center in the downtown area not feasible.
21 Petitioner does not explain how this finding is deficient.
22 Petitioner does not say, for example, that circumstances have
23 not changed. Further, petitioner does not quarrel with the
24 evidence showing the downtown mall to be infeasible. See
25 Record 23, 43, 69.

26 The Board concludes, therefore, that the city's conclusion

1 that circumstances have changed is sufficient to meet the
2 requirement stated in Development Code Section 102.04.04 and is
3 reasonable. See Miller v. City Council of Grants Pass, 39 Or
4 App 589, 592 P2d 1088 (1979). Were the Board to sustain
5 petitioner's challenge on this subassignment, the Board would
6 have to substitute its judgment for that of the city. The
7 Board would have to say there have been no changes making the
8 placement of the center downtown infeasible. Such a holding
9 would fly in the face of evidence in the record. The Board may
10 not make such a judgment. See 1979 Or Laws, ch 772 Sec 4(7),
11 as amended by 1981 Or Laws, ch 748.

12 This subassignment of error is denied.

13 Petitioner's next attack is that

14 "The Required Size of the Proposed Shopping Center is
15 not Supported by Substantial Evidence."

16 By definition, the amended city plan designates a regional
17 shopping center as having 400,000 square feet. Under this
18 subassignment of error, petitioner complains there is
19 inadequate support for the city's requirement that the shopping
20 center be of 400,000 square feet. See Record 8, 27.

21 Petitioner points to evidence in the record by a Mr. Brands
22 that the population of the Corvallis area could not absorb a
23 shopping center greater than 250,000 square feet. See Record
24 154.

25 The city recited evidence showing a market demand existed
26 in 1980 for a shopping center of 300,000 square feet.⁹

1 Record 68. See also Record 34. There is no explanation,
2 however, of why the city recited a 1980 market demand for
3 300,000 square feet of shopping space and then set out the
4 minimum square footage of any regional shopping center at
5 400,000 square feet. Given the development code requirement
6 that changes in the plan reflect changed circumstances, etc.,
7 and that the greater the change the greater the "burden" to
8 show the change meets the plan, the city was under a duty to
9 explain why it chose 400,000 square feet as the minimum
10 shopping center size. This finding is particularly necessary
11 when faced with Mr. Brands' testimony explaining a 250,000
12 square foot center was all that could fit the area. See Gruber
13 v. Lincoln County, 2 Or LUBA 180 (1981) and Sane Orderly
14 Development v. Douglas County, 2 Or LUBA 196 (1980); K. Davis,
15 Administrative Law, Sec 29.03 at 531 (3d ed 1972).

16 This subassignment of error is sustained.

17 The next subassignment of error complains

18 "The Finding that the Transportation Network is
19 Adequate to Serve the Site is not Supported by
20 Substantial Evidence."

21 Petitioner argues the comprehensive plan requires the city
22 to consider "key facilities"¹⁰ when planning for urban land
23 uses. See Record 49, Plan Policies 9.1.9 and 10.2.2.¹¹
24 Petitioner argues development of the center will increase
25 traffic from 3,000 to 7,000 average daily vehicle trips to
26 22,000 to 25,000 trips. Record 49. Petitioner alleges this
increase will have a significant impact on the transportation

1 system. One street, Circle Boulevard, does not have the
2 capacity to serve the center, according to petitioner.
3 Petition for Review at 21, Record 49. The Board understands
4 petitioner to call for an in-depth study showing traffic
5 impact. Without such a study, the findings are not adequate to
6 support the conclusion that there will be no significant impact
7 on public facilities and services, according to petitioner.

8 Respondent City of Corvallis argues the transportation
9 policies have been met but agrees that improvements must be
10 made to Walnut Boulevard and Bellevue Street before the
11 shopping center can be built. See finding at Record 49-50 and
12 engineer's comments at Record 61. Funding is not immediately
13 available for these improvements, however, and the city finds
14 an assessment district and a bond election may be used to
15 finance the improvements. Record 50. The city cites
16 conditions approved by the planning commission that require the
17 city engineer to sign off on certain improvements. Brief of
18 Respondent City at Appendix F. It does not appear, however,
19 that the city adopted these conditions as part of Ordinance
20 83-20 of designating the property for a regional shopping
21 center.

22 The Board finds no violation of the transportation policies
23 as alleged. The Board understands the procedure leading to
24 construction of a regional shopping center calls for two
25 additional procedural steps. First, a developer requests a
26 rezone of the RSC Overlay Zone to RSC and submits a "conceptual

1 development plan." As the Board reads the ordinance
2 controlling a conceptual development plan, Corvallis, Or., Land
3 Development Code, Sec. 112.04 (1983), the plan must include
4 information concerning "[t]he existing and proposed general
5 circulation systems * * * *" Id. at Sec 112.04.01.01(d).
6 Further review of the conceptual development plan includes
7 public hearings, Id. at Sec. 112.04.03, a staff review, Id. at
8 Sec. 112.04.05, a planning commission review, Id. at Sec
9 112.04.07 and findings, Id. at Sec. 112.04.08. The Board also
10 notes a detailed development plan must be submitted following
11 the conceptual development plan. Id. at Sec. 112.04.14. Part
12 of the detailed development plan is additional information
13 concerning: "street, driveway, parking area, service area,
14 loading area, pedestrian way and bikeway improvements and their
15 dimensions." Id. at Sec. 112.05.01.01(e). A second major
16 procedure before city approval of the regional shopping center
17 is the "Plan Compatibility Review," Id. at Sec. 108 (1983).
18 This section provides that certain developments shall be
19 reviewed for plan compatibility for the following purposes:

20 * * *

21 "b. To protect neighboring property owners and
22 residents by assuring that reasonable provisions
23 have been made for such matters as surface water
24 drainage, suitable sound and sight buffers, the
preservation of use, light and air and such other
aspects of design which may have substantial
effects on neighboring land uses;

25 * * *

26 "d. To protect and insure the adequacy and usefulness

1 of public and and private facilities and services
2 as they relate to each other and to the
neighborhood or area. * * *" Id. at Sec. 108.02.

3 This review is conducted at the staff level with no provision
4 for public hearing.

5 The Board believes the plan policies governing
6 transportation and cited by petitioner must be read with these
7 subsequent required steps in mind. It appears these later
8 steps implement the transportation policies. Therefore, the
9 city has done what it was required to do at this stage; it has
10 found the site can be provided with adequate transportation.
11 In other words, it has found transportation services to be
12 feasible; and, therefore, the site may be designated for this
13 proposed use. See Margulis v. City of Portland, 4 Or LUBA 89
14 (1981). The specific improvements and the exact manner in
15 which they will be constructed are subject to evaluation and
16 review at later implementation stages as outlined above.

17 This subassignment of error is denied.

18 The next subassignment of error alleges:

19 "The Finding that the Decision will not Result in a
20 Shortage of Industrial Land is not Supported by
Substantial Evidence."

21 In this last subassignment of error, petitioner says there
22 are only two large (greater than 20 acres) industrial sites
23 within the city limits. Petitioner argues the findings simply
24 conclude the redesignation of the 46 acres of light industrial
25 land within the urban growth boundary for the use of the
26 shopping center will not conflict with Plan Policy 7.7.2, which

1 requires the city to "reserve sufficient land in large parcels
2 within the urban growth boundary for light industrial uses."

3 Record 53. Petitioner believes the taking of such a large
4 volume of land requires a more complete discussion.

5 Particularly, petitioner claims approval of Ordinances 83-19
6 and 83-20 are inconsistent with a finding in the economic
7 element of the comprehensive plan showing the light industrial
8 land inventory of only 129 acres. This project would remove
9 approximately a third of that total available acreage.

10 Respondent points to the findings noting there are 120
11 acres of "general industrial land" which correspond to light
12 industrial land, within the city limits. Record 52.

13 Seventy-six acres have city services and 36 acres are scheduled
14 to receive services in 1983. Id. The city findings also refer
15 to a supply of light industrial land of 522 acres as shown in
16 the "1982 Economy Element" (presumably of its comprehensive
17 plan). Id. The city notes the same study found demand for
18 only 138 acres of light industrial land. Id. The city does
19 not precisely say so, but the Board understands the city to be
20 speaking of industrial land within its urban growth boundary.

21 The staff concludes that "it can not be shown" that changing
22 this property will result in a shortage of industrial land.

23 Record 53, 79. The staff concedes, however, that removing this
24 site will remove one of two large industrial sites from the
25 city industrial lands inventory. Id. The city points to a
26 research and technology center in "Sunset Park" as a possible

1 alternative for light industry. Id. The city goes on to
2 explain that it balanced "competing land uses" and concluded
3 that the sites suitable for regional shopping centers are more
4 scarce than those for light industrial uses. Id.

5 Policy 7.7.2 states:

6 "RESERVE SUFFICIENT LAND IN LARGE PARCELS WITHIN THE
7 URBAN GROWTH BOUNDARY FOR LIGHT INDUSTRIAL USES."

8 The policy is addressed to land within the urban growth
9 boundary. The policy does not appear to address land within
10 the city limits. The city found, as noted above, that "it can
11 not be shown" that changing the designation on the subject
12 property will result in a shortage of industrial land. This
13 finding appears to be adequately supported by the city's
14 finding that the 1982 economy element of its comprehensive plan
15 showed an inventory of 522 acres of industrial land and a
16 demand for only 138 acres of light industrial land. Petitioner
17 has not supplied any evidence to contradict these facts, and
18 the Board believes the county's conclusion that no shortage of
19 industrial land in the urban growth boundary will result from
20 this change is adequately supported.

21 Policy 7.7.5, however, requires that lands that are
22 designated for industrial use be preserved for those uses or
23 uses which are "compatible."

24 "LAND DESIGNATED FOR INDUSTRIAL USE SHALL BE PRESERVED
25 FOR INDUSTRIAL AND OTHER COMPATIBLE USES AND PROTECTED
26 FROM INCOMPATIBLE USES."

27 This policy, in contrast to Policy 7.7.2, appears to refer to

1 lands designated by the city (and, therefore, within the city
2 limits) for industrial use. The city does not explain how it
3 is that removal of one of two large blocks of light industrial
4 land will not adversely affect the city's own industrial lands
5 inventory and not violate Plan Policy 7.7.5 calling for
6 preservation of such lands for industrial or other "compatible"
7 uses. The Board believes the city is required by this plan
8 policy and by Section 102.04.04 of the development code (supra
9 at p. 20-21) to make such an explanation when designating this
10 property for a regional shopping center.

11 This subassignment of error is sustained, in part.

12 This assignment of error is sustained in part as explained
13 above.

14 ASSIGNMENT OF ERROR NO. 6

15 "The City has not complied with the criteria for an
16 amendment of the comprehensive plan required by the
17 provisions of its own Comprehensive Plan and Land
18 Development Code."

19 In this assignment of error, petitioner cites the Land
20 Development Code Section 102.04.04, quoted supra at 20-21, and
21 complains the city's decision to allow the development of a
22 shopping center outside the downtown area is a "drastic change"
23 in the plan. A great burden is placed on the city to show the
24 change is in conformity with the comprehensive plan, according
25 to petitioner. Petitioner states the city has not met its
26 burden of showing there is substantial evidence in the record
to support its findings and has not met the great "burden

1 imposed by its own ordinance due to the drastic nature of the
2 amendments." Petition for Review at 24.

3 The Board will not address this assignment of error because
4 it believes petitioner's point has been adequately addressed
5 elsewhere in this opinion. The Board understands this
6 assignment of error simply to clarify what may have been
7 unclear in assignment of error no. 5 that petitioner is
8 challenging the city's compliance with its own comprehensive
9 plan and not just challenging individual findings as being
10 unsupported by substantial evidence.

11 The City of Corvallis Ordinances 83-19 and 83-20 are
12 remanded for further proceedings not inconsistent with this
13 opinion. The city has not fully explained its choice of size
14 of a regional shopping center in Ordinance 83-19. In Ordinance
15 83-20, the Board believes the city has not adequately explained
16 how it is that the designation of the subject property for a
17 regional shopping center is in keeping with Comprehensive Plan
18 Policies 7.8.7 and Policies 7.7.5, as explained, supra.

FOOTNOTES

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"(2) Except as provided in subsection (3) of this section, any person whose interests are adversely affected or who is aggrieved by a land use decision and who has filed a notice of intent to appeal as provided in subsection (4) of this section may petition the board for review of that decision or may, within a reasonable time after a petition for review of that decision has been filed with the board, intervene in and be made a party to any review proceeding pending before the board.

"(3) Any person who has filed a notice of intent to appeal as provided in subsection (4) of this section may petition the board for review of a quasi-judicial land use decision if the person:

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

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

2
It might be that petitioner could make a similar claim about a mall in the Albany area.

3
During oral argument before LUBA, the attorney for the city stated that the applicant's proposed findings, although attached to Ordinance 83-19 as found in the city recorder's office, were not adopted as findings by the board. The same findings were also attached to Ordinance 83-20. The city attorney also stated the applicant's proposed findings should not be considered findings of the city council. The Board is uncertain as to why the city attorney makes this statement, particularly since the filings in the city recorder's office show the applicant's proposed findings attached to both ordinances.

1 The city attorney may believe the city council could adopt
2 the staff report as findings based on past custom while the
3 applicant's findings require specific consideration by the city
4 council. Findings are not to be adopted by custom. The Board
5 believes the record shows the city council explicitly adopted
6 all the attached findings. If the city's attorney prefers not
7 to have this Board consider the applicant's findings as
8 findings, the Board will not, at least when petitioner does not
9 object. It must be clear, however, the Board is ignoring
10 applicant's proposed findings solely because the city attorney
11 stated his client did not regard them as findings, not because
12 of some custom.

4

8 ORS 227.175(3) is about "permits." A plan and zone change
9 is not a permit under ORS 227.160 to 227.180. See Constant v.
10 City of Lake Oswego, 5 Or LUBA 311 (1982).

5

11 Policy 2.1.1 states:

12 "THE CITY SHALL ACTIVELY SEEK OPINIONS AND RESPONSES
13 FROM ALL INTERESTED CITIZENS REPRESENTING DIVERSE
14 POINTS OF VIEW ON THE IMPLEMENTATION AND REVISION OF
15 THE COMPREHENSIVE PLAN.

15 Policy 2.1.3 states:

16 "THE CITY SHALL ENSURE THAT TECHNICAL INFORMATION ON
17 LAND USE PLANNING ISSUES IS AVAILABLE IN AN
18 UNDERSTANDABLE FORM FOR ALL INTERESTED CITIZENS."

18 Petitioner does not explain how the city violated either of
19 these policies in adopting Ordinances 83-19 and 83-20. The
20 Board declines to speculate on how these provisions might have
21 been violated.

6

21 The Board will not address this portion of the petitioner's
22 argument. See the discussion supra under "Goal Issues."

7

24 Petitioner also mentions Land Development Code Section
25 17.04.01 which provides:

25 "Upon the initiation of a text amendment in accordance
26 with the above process, the director shall prepare a

1 background report outlining the need for the
2 amendment, justification for the proposed text
3 amendment, and the proposed verbage of the text
4 change."

5
6 The Board understands this provision to be a direction to the
7 planning director. It does not contain the substantive
8 criteria for plan changes.

9
10 8
11 In addition, petitioner argues the city failed to explore
12 alternatives to placement of the use outside the downtown
13 area. Petitioner's argument in this regard is based entirely
14 on Goal 2. The Board will not address petitioner's argument
15 for the reasons stated under "GOAL ISSUES", supra.

16
17 9
18 This citation is not a finding but a mere recitation of
19 evidence. See Hill v. Union County Court, 42 Or App 505, 600
20 P2d 1241 (1979).

21
22 10
23 Key facilities includes transportation facilities. See
24 Comprehensive Plan at 142.

25
26 11
27 Section 9.1.9 of the comprehensive plan provides:

28 "THE CITY SHALL CONSIDER THE LEVEL OF KEY FACILITIES
29 THAT COULD BE PROVIDED WHEN PLANNING FOR VARIOUS
30 DENSITIES AND TYPES OF URBAN LAND USES."

31 Section 10.2.2 provides:

32 "THE CITY SHALL MAINTAIN THE CARRYING CAPACITY AND
33 VIABILITY OF MAJOR ARTERIALS AND OTHER MAJOR STREETS BY
34 RESTRICTING OR REDUCING CURB CUTS AND OTHER DIRECT ACCESS
35 POINTS, REQUIRING ADEQUATE RIGHTS-OF-WAY AND SETBACK LINES
36 AS PART OF THE DEVELOPMENT PROCESS AND DISCOURAGING
37 ON-STREET PARKING."