

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

APR 6 4 46 PM '84

3	ERNEST BONNER, ERNEST R.)	
	MUNCH, RICHARD SPRINGER and)	
4	JOSEPH VOBORIL,)	
)	LUBA Nos. 83-102
5	Petitioners,)	83-103
)	
6	vs.)	FINAL OPINION
)	AND ORDER
7	CITY OF PORTLAND,)	
)	
8	Respondent.)	

9 Appeal from the City of Portland.

10 Robert E. Stacey, Jr., Portland, filed the petition for
11 review and argued the cause on behalf of Petitioners.

12 Petitioners/Participants Mary Corcoran, Carole Cooke, Carl
13 Simons and Jerry Ward, Portland, filed the petition for review
and argued the cause on their own behalf.

14 Kathryn Beaumont Imperati, Portland, filed the response
15 brief and argued the cause on behalf of Respondent City.

16 Susan M. Quick, Portland, filed the response brief and
17 Robert S. Ball argued the cause on behalf of
Respondent/Participant Prendergast and Associates, Inc. With
Ms. Quick on the brief were Ball, Janik and Novack.

18 BAGG, Chief Referee; DuBAY, Referee; KRESSEL, Referee;
19 participated in this decision.

20 REMANDED 04/06/84

21 You are entitled to judicial review of this Order.
22 Judicial review is governed by the provisions of Oregon Laws
1983, ch 827.

1 Opinion by Bagg.

2 NATURE OF THE DECISION

3 Petitioners¹ appeal two decisions of the city council of
4 the City of Portland. The first decision is the approval of a
5 Willamette River Greenway conditional use permit bearing number
6 CP4-83. The second decision is the approval of a design review
7 application bearing number DZ18-83. The two decisions make
8 possible construction of an eight story office tower with a
9 four level parking structure on the west bank of the Willamette
10 River north of the Johns Landing area. The development is
11 known as the "River Forum."

12 FACTS

13 The project is to be located on a 3.5 acre site. The site
14 is bordered on the north by a one and a half story
15 manufacturing building, on the south by a parking lot for a one
16 and a half story restaurant, and on the west by a railroad
17 right-of-way and a two story building. The property lies to
18 the north of the Johns Landing area. The Johns Landing area is
19 under redevelopment and is subject to a master plan adopted by
20 the city in 1973. The site is not, however, subject to this
21 master plan.

22 The site is within the Willamette River Greenway. There is
23 a trail along the river, and construction on this site will
24 include an extension of the Greenway trail. The development
25 will also include a 12 foot pedestrian and bicycle path, a 100
26 foot long public boat dock and open space. The open space will

1 be landscaped and available for use by the public. The total
2 height of the office building will be 121 feet, 6 inches. The
3 parking structure will make available 420 parking places.

4 The comprehensive plan for the City of Portland designates
5 the property as light industrial, and it bears a light
6 manufacturing (M3) zoning designation. The property is also
7 subject to a Design Overlay Zone. The Design Overlay Zone
8 requires approval of any development by the city's design
9 commission.² Because the property is within the Willamette
10 River Greenway, approval of the development under the city's
11 Willamette River Greenway regulations is mandated. See
12 Portland City Code (PCC) §33.77.010, et seq.

13 The proposal was first presented as a two phase project.
14 After a review and a denial by the city's hearings officer in
15 May of 1983, the applicant modified the development to a single
16 phase project. The planning commission and the design
17 commission heard the application and approved the project in
18 August, 1983. These approvals were taken by petitioners to the
19 city council. The city council denied the appeals on October
20 4, 1983.

21 This appeal followed.

22 STANDING

23 Both the participant, Prendergast & Associates, Inc., and
24 the city (together called "respondent" for the purposes of this
25 discussion) challenge the standing of each petitioner.³

26

1 A. Petitioner Bonner

2 Petitioner Bonner supports his claim for standing with an
3 affidavit.⁴ Mr. Bonner alleges he was the planning director
4 for the City of Portland and a member of the Willamette
5 Greenway Advisory Commission. His activities included work on
6 the Greenway. He claims to have photographed important
7 features along the Greenway trail. He also states he is a
8 Metropolitan Service District counselor and his district
9 contains over five miles of Willamette River bank on the east
10 side of the river.

11 Mr. Bonner complains that the development will be
12 incompatible with the scenic character of the Greenway. It is
13 out of porportion with surrounding development, and it will be
14 used to judge proposals to develop land to the north.
15 Therefore, its approval can lead to construction of other large
16 buildings which would irreparably harm the "basic concept of
17 the Greenway trail on the west bank." Affidavit of Ernest
18 Bonner at 3.

19 Respondents argue that there is nothing in the affidavit to
20 prove any specific injury to Mr. Bonner.⁵ The fact that Mr.
21 Bonner spent time working on the Greenway project is not
22 sufficient, according to respondents, to show that the project
23 will in any way injure him. As to Mr. Bonner's allegation that
24 this project will lead to other large buildings along the
25 river's edge, respondents state this injury is speculative.

26 Petitioner Bonner has failed to allege facts showing how it

1 is that he is adversely affected or aggrieved by this
2 decision. He does not allege that he uses the Greenway trail
3 or that he visits the site or will visit it in the future. His
4 allegations about having spent time on the Greenway and on
5 Greenway issues does not mean that he has somehow developed a
6 stake in the outcome of activities on the Greenway. That is,
7 the fact that an individual participates in a land use planning
8 activity does not mean he is adversely affected or aggrieved if
9 there are decisions taken of which he disapproves. See Order
10 on Standing in Warren v. Lane County, 5 Or LUBA 227 (1982). We
11 conclude he does not allege facts showing that he will be
12 impacted by this decision in any way differently than any other
13 member of the community or the city as a whole. Parsons v.
14 Josephine County, 2 Or LUBA 343 (1981).

15 The Board finds that Ernest Bonner lacks standing to bring
16 this appeal.

17 B. Ernest R. Munch

18 Petitioner Munch alleges he appeared before the city
19 planning commission, the design commission and the city council
20 in opposition to this project and recommended changes in
21 it.⁶ Mr. Munch says he is a frequent user of

22 "those portions of the Greenway trail which are
23 completed - principally the downtown section which now
24 extends from the Broadway Bridge to south of the
25 Hawthorne Bridge. I bike or hike portions of the
26 trail 12 to 20 times a year; eat lunch along the
Greenway; take my daughter down to the river several
times a year; and make visits to other isolated
portions of the trail once or twice a year. Prior to
my involvement in the River Forum appeal I visited

1 portions of the Johns Landing trail five to six times
2 a year. There is presently no trail connecting the
3 Johns Landing trail segment with the downtown
4 segment." Affidavit of Ernest R. Munch at 3.

4 Mr. Munch goes on to state that he has visited the site a
5 number of times over the last ten years, and some of the visits
6 were for purposes of recreation. He visited the site as early
7 as March of 1983, and has visited the area several times since
8 March of 1983.

9 Mr. Munch states that when the Greenway trail is completed
10 it will span the distance from the Broadway Bridge to the
11 Sellwood Bridge, and it will serve recreational needs,
12 including those of himself and his family. He argues that if
13 the trail is to be an enjoyable place, "it should not be
14 dominated by bulky, tall structures in the first tier of
15 development along the river bank." Ibid at 5. He claims that
16 projects such as the River Forum will impair the scenic
17 character of the Greenway and make it less enjoyable to him and
18 others.

19 Respondents challenge this claim for standing for reasons
20 similar to those advanced against Petitioner Bonner. While Mr.
21 Munch's planning activities for the City of Portland do not
22 establish he is adversely affected or aggrieved, his
23 allegations that his use and enjoyment of the area would be
24 injured show a personal stake in the outcome of this case.
25 Also, Petitioner Munch's assertion of an aesthetic injury may,
26 indeed, be an aesthetic enhancement to respondents, but such a

1 difference of opinion does not mean that Petitioner Munch is
2 not adversely affected or aggrieved by the construction of the
3 River Forum. Mr. Munch has alleged that his present
4 appreciation of the area will be adversely affected, and that
5 the change will be detrimental to his interests. As long as
6 Mr. Munch alleges, as he has, that he has an interest in
7 maintaining the aesthetic quality of the area, such as through
8 use and planned use, the allegation is sufficient to support a
9 claim for standing. Warren, supra.

10 Mr. Munch has standing to bring this appeal.

11 C. Richard Springer

12 As with the previous two petitioners, Petitioner Springer
13 alleges he has been involved in efforts to establish the
14 Greenway. He alleges membership in, and the presidency of, a
15 neighborhood association and involvement in other activities
16 having to do with Greenway planning. Included in his
17 allegations is the following:

18 "I regularly use the river and the developed portions
19 of the Willamette Greenway Trail, including the
20 segment that abuts the River Forum site, for
21 recreation and enjoyment. I canoe or kayak around
22 Ross Island at least once a year; this takes me
23 directly past the River Forum site, which lies across
24 the narrow main channel of the Willamette from the
25 island. I often jog, hike or bicycle along the
26 Greenway Trail from Willamette Park to the River Forum
site." Affidavit of Richard Springer at 2.

He adds the project will "adversely affect my appreciation and
enjoyment of the trail an river experience," Ibid at 3, and
other allegations stating a similar injury to his enjoyment and

1 use of the area.

2 We conclude these allegations are sufficient to grant
3 standing for Petitioner Springer. He has alleged an injury to
4 his interests and as such he has stated facts constituting
5 adverse affect and aggrivement. ORS 197.830. He has not
6 simply stated a speculative "feeling" as respondents
7 characterize.⁷

8 Richard Springer has standing to bring this appeal.

9 D. Joseph Voboril

10 Petitioner Voboril states he appeared before the city
11 council in this proceeding and states he spent four years on
12 the city planning commission during the time the Greenway plan
13 and implementing regulations were developed. He alleges the
14 people of Portland have an invaluable resource in the
15 Greenway. He claims to have an interest in maintaining the
16 Greenway values, and he asserts that the project is out of
17 scale with surrounding development and incompatible with the
18 river. He closes with the following:

19 "If the city can approve this project as consistent
20 with the Greenway review standards, those standards
21 will provide no assurance of protecting the scenic
22 character of the river and the shore line, despite the
work I did as a planning commissioners [sic] to see
that this character would be preserved." Affidavit of
Joseph Voboril at 2.

23 Respondents correctly point out that Mr. Voboril has not
24 alleged any specific individualized injury. He has stated a
25 "generalized grievance" which is potentially shared by all
26

1 persons in the city. See Brief of Participant Prendergast at
2 15. In other words, he has made no claim that he is affected
3 by the proposal in any way different from any other person who
4 is generally interested in the river area and believes the city
5 code should be interpreted to block this proposal. Parsons v.
6 Josephine County, supra. Such a general statement is not
7 sufficient to confer standing under ORS 197.830.

8 E. Mary Corcoran, Carole Cooke, Carl Simons and Jerry Ward

9 These four petitioners all allege they are residents of the
10 neighborhood, and say further that they are users of the
11 Greenway. They allege a personal interest in the development
12 along the Greenway, and they claim that the project will
13 "diminish the enjoyment petitioners derive from hiking, biking
14 and walking along the path...."

15 Petitioners Simons and Ward advise they boat along this
16 part of the river, and they say the development will erode the
17 views to the west hills and to the north and south. The
18 presence of the building will therefore diminish their
19 enjoyment.

20 The Board believes these statements are sufficient to
21 confer standing on all four of the above named individuals.
22 Though their allegations are given in summary form, it is clear
23 that the allegations are meant to be statements of each of
24 them. They have each alleged an adverse impact to their
25 aesthetic interests and their enjoyment of the area as a result
26 of the completion of this project. We believe such allegations

1 are sufficient to confer standing.⁸

2 ASSIGNMENTS OF ERROR OF PETITIONERS MUNCH AND SPRINGER
3 FIRST, SECOND AND THIRD ASSIGNMENTS OF ERROR

4 "In approving the Greenway permit under review, the
5 city council exceeded its jurisdiction, failed to
6 follow the procedures applicable to the matter before
7 it in a manner than [sic] prejudiced the substantial
8 rights of the petitioners, and improperly construed
9 Portland City Code Section 33.77.092(A)(3) by:

10 "1. Failing to address each standard of that
11 subsection in its findings and conclusions;

12 "2. Relying on findings and conclusions irrelevant to
13 the standards of that subsection; and

14 "3. Failing to demonstrate compliance with those
15 standards addressed by its findings." Petition
16 for Review at 12.

17 The substance of the first three assignments of error is
18 that the city has failed to comply with the "Willamette
19 Greenway Scenic Development" (WSD) overlay zone which is
20 intended

21 "to protect, conserve, enhance and maintain the
22 natural, scenic, historical, agricultural, economic
23 and recreational qualities of lands along the
24 Willamette River." Portland City Code (PCC)
25 §33.77.010, 020, 030.

26 The overlay requires applicants to comply with seven criteria
as follows:

"(1) The proposed use is permitted by the underlying
zone.

"(2) Uses which are not river-dependent are set back
at least 25 feet from the high water line or the top
of the bank, whichever is higher, to provide for open
space and vegetation as well a public access to and
along the river, as outlined in the Greenway Plan and
this chapter.

1 "(3) The scale of the project, density of development
2 and/or intensity of use are in keeping with the
3 character of the river, and preserve or enhance the
4 scenic qualities of the river, the site, and adjacent
5 riparian lands.

6 "(4) Architectural scale, style, building materials
7 and finishes are in keeping with the character of the
8 Willamette River. Graphics, signs and exterior
9 lighting are to be designed to preserve and enhance
10 the scenic qualities of the Willamette River.

11 "(5) Landscaping shall emphasize low maintenance
12 plantings of domestic species typical of the Lower
13 Willamette River.

14 "(6) The proposed development does not conflict with
15 existing adjoining development, land uses, and
16 Greenway zones.

17 "(7) The replacement or intensification of uses
18 within existing public utility corridors, railroad
19 rights-of-way and terminal facilities as they exist on
20 the adoption of these regulations shall be allowed,
21 providing the requirements for landscaping are met."
22 PCC §33.77.092(A).

23 Petitioners' first complaint is that the city failed to
24 properly apply paragraph 3. According to petitioners, the
25 findings must show the scale of the project either preserves or
26 enhances the scenic qualities of the river, the site and
27 adjacent riparian lands. Further, depending on whether the
28 proposal is measured by density of development or intensity of
29 use, the city must find the density (or intensity) is in
30 keeping with the character of the river and preserves or
31 enhances the scenic qualities of the river, the site and
32 adjacent riparian lands. Petitioners argue the city failed to
33 identify what is meant by "scale of the project and character
34 of the river." Petition for Review at 15. The city must

1 distinguish between the scale of the project and its density
2 (or intensity) when describing its relationship to the river
3 and it must further identify the qualities of the river, the
4 site and adjacent riparian lands and explain how these scenic
5 qualities are preserved or will be enhanced by the project.
6 Petitioners claim the only sentence in the final order which
7 addresses the scenic qualities requirement is as follows:

8 "The site landscaping proposed for the Greenway Trail
9 and the public plazas in a very positive way addresses
10 the requirement to preserve and enhance the scenic
11 qualities of the River, the site and adjacent riparian
12 lands." Record, p. 159.

11 Petitioners argue this finding is a mere conclusion. To the
12 extent it is a finding at all, it only addresses landscaping;
13 it does not address how the scale of this building affects the
14 scenic qualities of the river and the site, according to
15 petitioners.

16 The city's findings about PCC §33.77.092(A)(3) are as
17 follows:

- 18 "1. The site is located in the M3, Light
19 Manufacturing Zone. Offices and restaurants are
20 allowed as permitted uses in the M3 Zone.
21 Minimum off-street parking must be provided,
22 whether by means of a surface lot or a
23 multi-level structure.
- 24 "2. The proposed buildings are not river dependent
25 and the modified building plan indicates an 86
26 foot setback, which is well beyond the stipulated
27 25 foot minimum distance from the high water
28 line. The project design reviewed by the
29 Hearings Officer had a building setback of 25
30 feet.
- 31 "3. The modified proposal contains one seven story

1 office building and a 3 1/2 level parking
2 structure, all to be constructed in a single
3 phase with no subsequent development. The
4 proposal reviewed by the Hearings Officer
5 involved a Phase I six story office building, a 1
6 1/2 level parking structure and a parking lot;
7 with a second phase six story or larger office
8 building and four additional levels added to the
9 parking structure, to be reviewed at a later
10 date. Therefore, the modified development is
11 slightly larger than the previous first phase
12 proposal, is set back much further from the
13 river, and is considerably smaller than the
14 planned two-phase development. It should be
15 noted that the resulting FAR of 1.54:1 is
16 considerably smaller than development that has
17 occurred in the Downtown area and its height
18 would be approximately half of the new One
19 Pacific Square Building.

11 "The proposed development does not represent more
12 massive development than that which was occurred
13 in adjoining area. Some previously approved
14 development has been sited in a horizontal
15 fashion with little visual penetration through
16 these projects. This proposal is more vertical
17 and sited to permit River views through the
18 project. The overall scale, density and
19 intensity is similar to neighboring development,
20 and therefore, the modified plan should be
21 regarded as being in character with the River,
22 just as neighboring development has been judged
23 to have met this criteria. Actually, the
24 modified design provides a very large front yard
25 similar to suburban development. A somewhat more
26 intensive use of the site might be more befitting
to this gateway district next to the high density
Downtown area, providing that buildings are set
back sufficiently from the River bank; however,
the Planning Commission's finding was that in
this case provision of approximately one acre of
open space was a preferable tradeoff in exchange
for a building somewhat taller than other
development in the area.

23 "Other buildings would generally conceal views of
24 the proposed structures from the west and south
25 and the most complete view would be from the
26 River. There would be intermittent locations on
the Willamette Greenway Trail where the building
would come into view, and of course, from the

1 Rusty Pelican looking north, the building would
2 be clearly visible. Views from the north are
3 difficult to determine until the area between the
4 Ross Island Bridge and the site is redeveloped.
5 Views from the River and those across the River
6 not blocked by Ross Island perimeter trees, would
7 reveal a taller slender building in contrast to
8 some more bulky neighboring development. Graphic
9 illustrations submitted and field examinations
10 substantiate this finding.

11 "The site landscaping proposed for the Greenway
12 Trail and public plazas in a very positive way
13 addresses the requirement to preserve and enhance
14 the scenic qualities of the River, the site and
15 adjacent riparian lands.

16 "The new office of Transportation Planning, under
17 the Director of Public Works, has prepared a
18 transportation evaluation for the modified plan
19 and recommends approval of the revised 143,000
20 square foot office building with conditions.
21 (See Exhibit 6j)

22 "4. In the judgment of the Design Commission, the
23 previous Phase I building would be appropriate
24 for its location near the Willamette River. In
25 reaching its decision, the Commission considered
26 the scale, style, materials and finishes of the
27 proposal, however, at the time, the details of
28 graphics, signs and lighting were not available.
29 The modified building would have the same
30 positive characteristics.

31 "5. The proposed landscape plan employs plant
32 materials selected from a list of species
33 recommended by the Portland Planning Bureau.

34 "6. The proposed use of the site for offices is
35 compatible with the use of adjoining parcels of
36 land for offices, light manufacturing and
37 restaurants.

38 "7. Development of the site does not interfere with
39 utility and/or railroad corridors nearby."

40 Respondents urge us to find that the Greenway criteria
41 "involve highly subjective judgments" about what character is
42

1 and what enhances or preserves scenic qualities. Respondents
2 also would have us analyze the criteria against the provisions
3 of the underlying M3 Zone. See PCC §33.77.091.

4 We conclude petitioners are correct insofar as they allege
5 the findings do not adequately describe the scale of the
6 project, its density of development (or intensity of use) and
7 insofar as they allege the city has failed to discuss what it
8 believes are the scenic qualities of the river, the site and
9 adjacent riparian lands.⁹

10 We recognize the criterion embodied in PCC §33.77.092(A) (3)
11 is largely subjective. However, it is possible to describe the
12 scale of the project, its density and what the city believes to
13 be the character of the river, site and riparian uses. The
14 findings do advise as to the size of the project, its use and
15 how it is to be located on the 3.5 acre parcel, but there is
16 little description of what the city understands to be the
17 scenic quality of the river, this site and the adjacent
18 riparian lands. The petitioners are correct when they say that
19 this criterion requires consideration of the uses on adjacent
20 riparian lands and a comparison of the scale of this project
21 and its density (or intensity) with that on adjacent riparian
22 lands. This description and comparison is missing from the
23 final order. We hasten to add, however, that when the
24 comparison is made, the matter of whether a particular
25 structure or project preserves or enhances the scenic qualities
26 the city identifies is a question that must, in the greatest

1 part, be left to the city to decide.

2 We wish to note also that the city may not, as petitioners
3 argue, be limited in its analysis to adjacent riparian lands.
4 By its terms, PCC §33.77.092(A)(3) may be read to consider a
5 broad geographical area. In this case, however, the city makes
6 a reference to a building which we understand to be in downtown
7 Portland without any explanation of how it is that a structure
8 so far away is relevant to the city's inquiry here. The seven
9 criteria in the scenic development overlay focus attention on
10 the site and adjoining (or riparian) uses. See PCC
11 §33.77.092(A) quoted supra at 10-11, and in particular
12 paragraphs 4 and 6. Without an explanation of the relevance of
13 a comparison to a structure in downtown Portland, the city's
14 finding does not help to show compliance with PCC
15 §33.77.092(A)(3).

16 The First, Second and Third Assignments of Error are
17 sustained.

18 FOURTH ASSIGNMENT OF ERROR

19 "The City Council's order approving [sic] the
20 Greenway Permit for River Forum was not supported by
21 substantial evidence in the whole record. The
following findings upon which the order was based are
not supported by evidence:

- 22 "1. 'The modified proposal contains one seven story
23 office building ***.'
24 "2. There will be 'no subsequent development.'
25 "3. "[I]ts height would be approximately half of the
26 new One Pacific Square Building.'
"4. 'The overall scale, density and intensity is

1 similar to neighboring development *** [and] is
2 not more massive.'

3 "5. '[T]his gateway district [is] next to the high
4 density Downtown area *** .'

5 "6. The office building is 'somewhat taller than
6 other development in the area.'

7 "7. 'Views from the north are difficult to determine
8 *** .'

9 "8. 'Approximately one acre of open space' is
10 'provided.'

11 "9. From the river the project would appear 'slender
12 in contrast to some more bulky neighboring
13 development. Graphic illustrations submitted and
14 field examinations substantiate this finding.'
15 Record, pp. 158-159." (Emphasis in original).
16 Petition for Review at 27.

17 Before we begin a detailed discussion of this assignment of
18 error, we wish to note that existence of a finding of fact
19 without adequate factual support need not result in remand.
20 The law empowers us to review decisions for evidentiary
21 support, not individual findings of fact. ORS
22 197.835(8)(a)(c). If a finding is not critical to a land use
23 decision, whether or not it is supported by substantial
24 evidence is of no consequence.¹⁰

25 In this case, petitioners complain about several findings
26 which are not crucial to show compliance with applicable
27 criteria. We understand petitioners' explanation about how
28 each of the findings may mislead or form the basis of an
29 erroneous conclusion, but we do not see how it is that some of
30 the findings attacked are necessary to the city's decision.

1 For example, the finding that the proposal contains a seven
2 story office building is descriptive but not critical to the
3 decision. The findings recite that the height of the office
4 building is 121.5 feet, and there is no allegation that this
5 finding is in error. Similarly, we have not been shown why the
6 city's finding that there will be no subsequent development in
7 the openspace accompanying the project is important to the
8 decision. Petitioners are correct when they state there is no
9 substantial evidence in the record to support such a finding,
10 but we are not cited to any requirement in the city's ordinance
11 to suggest that subsequent development is prohibited. We are
12 mindful of petitioners' fear that this structure will be the
13 thin edge of a wedge which will lead to more large buildings in
14 the area. This fear goes beyond our review. Our review is to
15 the matter of compliance with existing criteria. With these
16 introductory comments in mind, we will review petitioners'
17 claims in this assignment of error.

18 Petitioners' attack the finding that the proposed River
19 Forum will be approximately one half the height of the One
20 Pacific Square Building in the downtown Portland waterfront
21 area. Petitioners not only claim the finding is not relevant,
22 they assert it is not supported by substantial evidence in the
23 record. We have already discussed the relevance of this
24 finding. Additionally, we have not been cited to any evidence
25 in the record to support the finding. Therefore, we agree with
26 petitioners.

1 Also of consequence is petitioners charge that the record
2 fails to support the city's finding that the scale, density and
3 intensity of the project is similar to neighboring
4 development. This finding is important to a showing of
5 compliance with PCC §33.77.092(A)(3).

6 Petitioners assert that this structure
7 "if built as approved, will be the biggest, tallest,
8 most imposing and largest in total floor area of all
9 development in the vicinity, however measured or
described." Petition for Review at 30.

10 Petitioners conclude that there simply is no evidence to
11 support the city's statement that the development "does not
12 represent more massive development than that which has occurred
13 in adjoining areas." Record, p. 58.

14 The applicant counters that this development should not be
15 compared to the middle and southern most "subareas" of Johns
16 Landing. This structure will be in a gateway area to downtown
17 Portland, and the inquiry should be wider, according to the
18 applicant. See Record, p. 166.

19 While the city may wish to include a broader area in its
20 consideration of PCC §33.77.092(A)(3), the findings should
21 define the scope of the inquiry and explain its relevance. As
22 we discussed earlier, a comparison with a structure in downtown
23 Portland must be preceded by some explanation of how it is that
24 the seemingly widely separated and different uses are
25 comparable and how the project is in compliance with PCC
26 §33.77.092(A)(3). We note here particularly that there is no

1 explanation in the findings of what this "gateway area" is and
2 why a criterion which appears to focus on the site and its
3 immediate surroundings is to be measured against this as yet
4 undescribed gateway area.

5 We conclude, therefore, that because the city's findings on
6 the scale, density and intensity of the use are inadequate, and
7 because the city has failed to explain what the gateway
8 district is and how it is relevant to this proposal, whether or
9 not the findings which were made are supported by substantial
10 evidence is not important. The Board believes it is not
11 productive to examine inadequate findings for evidentiary
12 support in the record.

13 Petitioners go on to complain there is no evidence to
14 support the finding that the River Forum will be "somewhat
15 taller" than other development in the area. There is no
16 explanation of what "somewhat" means, according to
17 petitioners. Also, the finding that the development would
18 appear more slender than others fails to identify what
19 development is more bulky than the River Forum. Petitioners
20 point to evidence in the record showing that the River Forum is
21 wider than it is tall. The parking structure is 300 feet long
22 and the office tower is 180 feet long. Record, pp. 591, 52.
23 There is no identification of any other structure more bulky,
24 according to petitioners.

25 We agree with participant that whether or not a building is
26 slender or bulky is a matter of taste. The difficulty with the

1 findings and the evidentiary support for them is that the
2 findings do not adequately describe the development to which
3 the city wishes to make a comparison. Without the description
4 of other such development, it is not possible for the city to
5 make the subjective analysis required by paragraph 3 of PCC
6 §33.77.092(A). Also, while there is discussion of what the
7 project will look like, there are no findings describing it.
8 The comparison called for in PCC §33.77.092(A)(3) is therefore
9 not possible.

10 Petitioners' last complaint is against the city's finding
11 that views from the north looking toward the site may not be
12 determined until other development occurs.

13 The city's criteria speak to what exists now, not what may
14 exist in the future. To the extent that the view of the
15 subject property from particular directions is important, we
16 believe the findings and the evidence should reflect what may
17 presently been seen. The city is not entitled to rely on
18 possible and as of yet unplanned future development to meet a
19 criterion which calls for a contemporary analysis of scale and
20 other qualities in relation to existing uses.

21 This assignment of error is sustained. There are
22 inadequate findings and a lack of evidentiary support to show
23 compliance with PCC §33.77.092(A)(3).

24 FIFTH ASSIGNMENT OF ERROR

25 "The city council exceeded its jurisdiction, failed to
26 follow applicable procedures and improperly construed
applicable law by failing to adopt findings of fact in

1 support of its conclusion that the River Forum
2 development satisfied paragraph (4) of
§33.77.092(A)." Petition for Review at 36.

3 Under this assignment of error, petitioners argue the
4 finding addressing PCC §33.77.092(A)(4) is inadequate because
5 it is a mere conclusion. Petitioners say there is no showing
6 of the reasoning by which the city reached the conclusion, and
7 there is none of the required analysis of architectural scale,
8 style, building materials and finishes as required in PCC
9 §33.77.092(A)(4). The design commission finding is as follows:

10 "4. The appropriateness of architectural scale,
11 style, materials and finishes to the character of the
12 Willamette River is largely a matter of judgment,
13 however, given the diversity of other development on
14 the River, inside and outside the Johns Landing area,
15 the staff is of the opinion that the main buildings
16 should be an attractive addition to the waterfront;
17 but as noted above has some concern about the mass of
18 the second phase parking structure. Details of
19 graphics, signs and lighting are not offered at this
20 time." Record 488.11

21 Applicant and Respondent City argue that compliance with
22 paragraph 4 of PCC §33.77.092(A) is shown when one reviews the
23 planning commission findings and those of the city's design
24 commission. It is the city's design commission that considers
25 architectural style and how a building is compatible with
26 others in the area. The applicant points to the following
findings by the design commission at Record pp. 489-90.

27 ". . . [T]he proposed site plan allows for public
28 access to and use of the riverfront, and the landscape
29 design includes a variety of outdoor spaces that would
30 be complementary to the waterfront."

1 * * * * *

2 ". . . The relationship of buildings to one another
3 south of the site borders on excessive variety, in
4 that frame, stucco, brick and glazed window walls have
5 been employed on buildings of various styles and
6 configurations; at the same time their profiles are
7 consistently horizontal, with the exception of the
8 renovated office buildings near S.W. Macadam Avenue.
9 If, by this criteria, there is to be a balance between
10 uniformity and variety, . . . the proposal would
11 successfully complement other buildings in the
12 vicinity as a vertical counterpoint. The individual
13 elements of the building do not repeat those of
14 surrounding buildings, but they are subdued enough to
15 harmoniously complement them.' R. 489-490."

16 * * * * *

17 "There is a consistency of composition within the
18 project that may not reflect other development in the
19 area, but neither does it compare.' R. 490."

20 Respondent City cites the following finding:

21 "The area to the north is likely to be redeveloped in
22 the future, so that in the absence of a design plan,
23 there is no way of knowing how the current proposal
24 will relate. The area to the west is developed with
25 three-story masonry buildings that are undistinguished
26 on their eastern facades, which will be adjacent to
27 the parking structure. The relationship of buildings
28 to one another south of the site borders on excessive
29 variety, in that frame, stucco, brick and glazed
30 window walls have been employed on buildings of
31 various styles and configurations; at the same time
32 their profiles are consistently horizontal, with the
33 exception of the renovated office building [sic] near
34 S.W. Macadam Avenue. If, by this criteria, there is
35 to be a balance between uniformity and variety, the
36 staff is of the opinion that the proposal would
37 successfully complement other buildings [sic] in the
38 vicinity as a vertical counterpoint. The individual
39 elements of the building do not repeat those of
40 surrounding buildings, but they are subdued enough to
41 harmoniously complement them." Record, pp. 489-490.

42 The Board understands the applicant and the city to argue

1 that these findings, along with evidence in the record about
2 the existence of a mix of architectural styles and building
3 materials is sufficient to show compliance with paragraph 4 of
4 PCC §33.77.092(A). See Record, pp. 180-181, 558-559, 561,
5 598-600, 601, 616.

6 Paragraph 4 of PCC §33.77.092(A) is even less subject to
7 objective application than paragraph 3. In this criterion the
8 architectural scale and style is not to be compared with other
9 buildings in the area but only to the Willamette River.
10 Similarly, graphics, signs and exterior lighting are to
11 preserve the scenic qualities of the river, not the
12 neighborhood, the city or some other area or quality. Still,
13 the criterion calls for some statement about the architectural
14 scale, style and building materials along with its graphics,
15 signs and exterior lighting. There is discussion of the fact
16 the building is tall rather than long. Record, p. 158. There
17 is also a conclusion that it will fit into the area. Record,
18 p. Id. However, we are not cited to findings which describe
19 the scale, style and materials beyond what is quoted above. It
20 is correct that the city council was presented with a model of
21 the structure, but there is nothing in the findings to state
22 what significance the model held for the council and how it
23 aided the council in concluding that PCC §33.77.092(A) (3) and
24 (4) were satisfied.

25 This assignment of error is sustained.

26

1 SIXTH THROUGH EIGHTH ASSIGNMENTS OF ERROR

2 "In approving the design review application for River
3 Forum, the city council exceeded its jurisdiction,
4 failed to follow the applicable procedures, improperly
5 construed the applicable law and made a decision not
6 supported by substantial evidence in the whole record
7 by:

- 8 "1. Failing to apply design guidelines adopted for
9 the River Forum site, as required by
10 §33.62.030(3);
- 11 "2. Failing to apply a five-story height limitation
12 imposed by both sets of design guidelines
13 applicable to the site; and
- 14 "3. Adopting findings regarding compliance with
15 certain design guidelines that were not supported
16 by substantial evidence." Petition for Review at
17 38.

18 Petitioners state the River Forum project is located in a
19 "D Zone," which is a design overlay zone. It is controlled by
20 PCC §33.62.000, and has as its purpose the conservation and
21 enhancement of the appearance of the city in areas of special
22 interest. See PCC §33.62.010(1). The chapter requires the
23 design commission to adopt guidelines for each area, and two
24 sets of guideline criteria have been adopted for the River
25 Forum area. They are entitled "Design Committee Guidelines for
26 Johns Landing," appearing at Record, p. 624 and certain
27 guidelines included in the Johns Landing D Zone appearing at
28 Record, pp. 450, 453-455, 457. Petitioners argue these
29 criteria were applicable, but the city only applied the Johns
30 Landing criteria.

31 Respondent City advises that the only set of guidelines

1 applicable to this project are those appearing at Record 624
2 and entitled Design Commission Guidelines for Johns Landing.¹²

3 While the Board agrees there is a memorandum from the
4 Corbett/Terwilliger/Lair Hill Planning Committee in the record
5 which lays out certain guidelines, it is not clear to the Board
6 that these guidelines are made applicable to this project. See
7 Record, p. 453. The city treated only the Johns Landing
8 guidelines for this project to be applicable. A comment
9 appears in the record from a planning staff member that the
10 1975 guidelines from the Corbett/Terwilliger/Lair Hill Planning
11 Committee were never adopted. Record, pp. 504-6. Without some
12 clear indication that these guidelines were in fact adopted by
13 the city, the Board declines to overturn the city's conclusion
14 that only the Johns Landing guidelines are applicable.

15 A second issue raised here is an alleged failure to apply a
16 five story height limitation petitioners claim is imposed by
17 both sets of guidelines. As noted earlier, the
18 Corbett/Terwilliger/Lair Hill Planning Committee guidelines are
19 not applicable.

20 The city responds that there is no fixed height limitation
21 imposed by the Johns Landing guidelines, the guidelines only
22 state that any major proposal for a structure more than five
23 stories high is to be reviewed by both the design commission
24 and "again" by the planning commission. The city says the
25 guideline is not a regulation, and as a guideline, it indicates
26 what has to be considered by the planning commission but does

1 not impose a prohibition.

2 Petitioners are correct that the city did not address this
3 project against the precise wording of the five story
4 guideline. However, the clear purpose of the guideline is to
5 require inquiry into building height. The city considered
6 building height even though it spoke in terms of 121.5 feet and
7 not five plus stories. Therefore, we conclude this guideline
8 was addressed in the city's findings under PCC §33.77.092(A)(3).

9 Petitioners' last complaint is that the findings which
10 followed the design committee's approval of the original River
11 Forum project on April 21, 1983, have nothing to do with the
12 second application. That is, the findings refer to the wrong
13 structure. Petitioners also point to design guidelines
14 requiring harmony of materials, colors and textures, and say
15 that the guidelines were not followed. See Record, p. 490.

16 The guidelines for the Johns Landing area are not
17 requirements but are guidelines which are to be "considered" by
18 the design committee. Record, p. 624. They are not hard
19 rules. We find the city did "consider" these issues. The
20 adequacy of this consideration has already been discussed.

21 The Board is not particularly troubled by the fact that
22 several of the findings go to an earlier and somewhat different
23 proposal because the committee made a specific finding to the
24 continuing relevancy of these original findings.¹³

25 The record shows a city council order dated October 4,
26 1983, which adopts "Design Commission Findings DZ18-83, River

1 Forum." Record, p. 438. The document referred to in the
2 city's order appears at page 474 of the record. It consists of
3 only two findings, the first of which states as follows:

4 "The findings adopted by the Design Commission on
5 April 25, 1983, pertaining to orientation and location
6 of structures, relationship with existing and proposed
7 adjoining developments, building design, materials,
8 colors and consistency of composition remain
9 applicable to the revised proposal." Id.

10 We believe this finding constitutes a finding about the revised
11 proposal. The second of the two findings states:

12 "The addition of 16 feet of height to the building is
13 a worthwhile tradeoff to the retention of
14 approximately one acre of open space. The resultant
15 placement of the building would be no less than 85
16 feet from the mean high water line." Id.

17 The two findings pertain to the revised proposal. Whether
18 they are adequate findings of compliance with applicable
19 criteria is a separate question.

20 The Sixth, Seventh and Eighth Assignments of Error are
21 denied.

22 NINTH, TENTH AND ELEVENTH ASSIGNMENTS OF ERROR

23 "The city failed to follow the procedures applicable
24 to the matter before it in a manner that prejudiced
25 the substantial rights of the petitioners by:

- 26 "1. Failing to hold a public hearing before the
hearings officer on the revised River Forum
proposal as required by the City Code;
- "2. Failing to notify petitioners and other parties
of the decision of the planning commission as
required by law; and
- "3. Failing to include written findings as part of
the planning commission decision." Petition for

1 Review, p. 43.

2
3 In this assignment of error, petitioners say the applicant
4 changed the development after it was first denied by the
5 hearings officer. Petitioners remind us that

6 "[t]he applicant dropped a second-phase building,
7 moved the first-phase building, eliminated a surface
8 parking lot, reduced the length of the parking
9 structure, increased the height of both the office and
10 parking buildings, added a yard area, and eliminated a
11 restaurant." Petition for Review at 43.

12
13 Petitioners complain there was an increase in total office
14 space, height and other "measures of scale and density." Id.

15 In addition, petitioners claim there has been a violation
16 of PCC §33.77.060, 070; §33.106.020, §33.114.040 and
17 §33.114.050 because the city's code requires the hearings
18 officer to review all Greenway permit applications either
19 initially or on appeal to the planning director. Because of
20 the substantial changes in the application, it represented a
21 new Greenway application, and the applicant duly submitted a
22 new Greenway application, assert petitioners. See Item 78.

23 But this new application was submitted to the planning
24 commission as part of the applicant's appeal of the original
25 hearings officer's denial. Therefore, because the planning
26 commission has authority only to hear appeals of decisions of
the hearings officer and not review new applications, the new
application was not acted on as required, argue petitioners.
See PCC §33.106.030, §33.114.060, §33.114.090. Petitioners claim

1 they have a "substantial right" to a hearings officer's
2 decision.¹⁴

3 Lastly, petitioners claim the planning commission did not
4 adopt any findings to support the decision.

5 We do not agree with petitioners on the question of the
6 need for a review of a "new" application. We are not aware of
7 any provision in the city's code which would require the city
8 to consider changes in applications to constitute new
9 applications in all cases. We do not believe the city was
10 bound to consider a new application to exist in this case.
11 After the applicant submitted a revised application, the city
12 treated it as such, not as a new application. We think the
13 city has substantial latitude in determining whether an
14 alteration in a permit proposal requires a complete re-hearing
15 or rather can be taken up in the course of the ongoing
16 proceeding. Of course, interested parties must be given ample
17 opportunity to comment on an alteration, and such opportunity
18 was provided here. Given the facts in this case, we believe
19 the city was entitled to do as it did.

20 Further, we reject the claim that petitioners were
21 prejudiced because they did not have the benefit of a hearings
22 officer decision on the second application. The Board does not
23 believe that the planning commission was obliged to send the
24 proceeding back to the hearings officer after making a
25 procedural decision that only a revised application was at
26 issue.

1 As to the claim that the planning commission did not adopt
2 findings, the city responds that even if the planning
3 commission had failed to adopt findings the error was cured by
4 the city council. The city council decision is the final
5 decision in this matter, and the council adopted findings to
6 support the decision. We agree. Any error that may have been
7 committed by the planning commission was cured by what we
8 understand to be a de novo review and adoption of findings by
9 the city council. Dotson v. Bend, 8 Or LUBA 33 (1983).

10 In summary, we find no error as alleged by petitioners.

11 ASSIGNMENTS OF ERROR OF PETITIONERS/INTERVENORS CORCORAN,
12 COOKE, SIMONS, AND WARD
13 FIRST ASSIGNMENT OF ERROR

14 Intervenor's first assignment of error alleges the decision
15 is flawed by procedural errors that prejudice intervenor's
16 substantial rights. They mention a letter from a Mr. Gould, an
17 attorney for the Southern Pacific Railroad, which was not
18 attached to the hearing officer's report and which was not
19 considered during the course of these proceedings.¹⁵

20 The Board believes it is the responsibility of a party to a
21 land use proceeding to insure that the record that is before
22 the deciding body includes all materials the party believes
23 appropriate and necessary. In this case, we understand
24 petitioners to assert that the city has committed some kind of
25 error because a letter petitioners believe to be important does
26 not appear in the record. There may be any number of reasons
why the letter does not appear including simply loss and

1 deliberate destruction of the letter. If the letter is lost,
2 it is simply an unfortunate circumstance, but one which could
3 have been corrected had petitioners reviewed the record before
4 the city council. If the letter were withheld, petitioners
5 might have a claim of prejudice warranting reversal or remand.
6 See ORS 197.835(8)(a)(B). There is nothing in the file before
7 us to suggest that the city has committed such a prejudicial
8 error.

9 We see no error as alleged.

10 SECOND ASSIGNMENT OF ERROR

11 In the second assignment of error, intervenors allege the
12 city did not address conflicting evidence which undermines the
13 city's findings and conclusions about density of development
14 and intensity of use. We understand intervenors' assignment of
15 error here to be substantially similar to that discussed supra
16 under Petitioners' Munch, et al, Fourth Assignment of Error.
17 We do not believe it necessary for us to reiterate our
18 discussion here.

19 THIRD ASSIGNMENT OF ERROR

20 Here intervenors allege the parking garage violates the
21 City of Portland Comprehensive Plan goals, policies and
22 regulations related to the Greenway. It is not clear precisely
23 what goals, policies and regulations intervenors believe are
24 violated. However, from the whole of intervenors' petition, we
25 believe intervenors are claiming violation of PCC
26 §33.77.092(A)(2). Intervenors claim the city is required to

1 show how the parking structure, not just the office building,
2 meets all applicable Greenway regulations. Intervenors advise
3 the southern portion of a driveway to the parking structure
4 will be about ten feet from the Greenway pedestrian trail.
5 Intervenors remind us that some 2,200 vehicle trips a day will
6 be generated by this project. See Record, p. 223. Intervenors
7 point to a comment by the hearings officer that there are no
8 other parking structures of the size of the one proposed
9 anywhere in the Greenway, and argue these facts show
10 non-compliance with Greenway regulations. See Record, p. 277.

11 The applicant responds that the parking structure is part
12 of the overall proposal and need not be singled out. We agree
13 that as the garage is part of the whole application, the
14 findings need only concern the whole application. We note,
15 however, that the parking structure may not be ignored. As
16 discussed under Petitioner Munch's Assignments of Error 1
17 through 3, the findings on PCC §33.77.092(A) (3) do not
18 adequately discuss the size, scale, density and intensity of
19 this use in relation with other riparian uses, and we note
20 further that the findings do not appear to consider the parking
21 structure at all. A more complete set of findings on PCC
22 §33.77.092(A) (3) should at a minimum discuss how the parking
23 structure is a part of the whole project.

24 The third assignment of error is sustained insofar as
25 intervenors allege violation of PCC §33.77.092(A) (3).¹⁶

26

1 FOURTH ASSIGNMENT OF ERROR

2 Intervenor's attack the city's decision on the ground that
3 the city failed to adequately consider traffic issues. We
4 understand intervenors to allege violation of PCC
5 §33.77.092(A) (3) requiring an analysis of the intensity of use
6 and City Code §33.77.092(A) (6) concerning conflicts with
7 existing and adjoining developments and uses. Intervenor's urge
8 that traffic is part of the intensification of use that this
9 project will produce. Traffic will affect and conflict with
10 existing development, according to intervenors. Intervenor's go
11 on to say that traffic is part of design review. We understand
12 the claim to be that the city did not adequately consider
13 traffic in design review.¹⁷

14 Intervenor's also attack the decision on the basis of the
15 transportation policy in its comprehensive plan. The
16 transportation policy exists

17 "[t]o promote an efficient and balanced urban
18 transportation system consistent with the arterial
19 streets classification policy, to encourage energy
20 conservation, reduce air pollution, lessen the impact
of the vehicular traffic on residential neighborhoods
and improve access to major employment and commercial
centers."

21 In addition, intervenors claim the city has violated its
22 arterial streets policies. As evidence of violation,
23 petitioners point to statements in the record by individuals
24 alleging that a percentage of the traffic generated by this
25 project will end up on neighborhood streets. See Record, pp.
26

1 44, 87, 89 and 90.¹⁸

2 The findings about traffic appear at pages 163 and 164 of
3 the record. The findings discuss the location of the project
4 and include recitations of existing traffic policies. There is
5 some minimal discussion about the traffic that will be
6 generated by this project, but there is no finding or even a
7 conclusion that the traffic generated will be consistent with
8 any city standard.¹⁹ There is no analysis of traffic as
9 either a separate issue or, perhaps more importantly, as part
10 of the impact of this development generally on the neighborhood
11 and adjacent riparian uses.

12 There are conditions that appear to go to the matter of
13 traffic. These conditions appear at page 155 of the record,
14 and the conditions may indeed answer some of petitioners'
15 concerns. However, the conditions do not serve as substitutes
16 for findings which show how the pertinent standards pertaining
17 to traffic are met. While it may be that the city heard
18 testimony from its own experts about traffic, that testimony
19 was not translated into a set of findings addressing an issue
20 which appears to be part of the consideration required under
21 PCC §33.77.092(A)(3) and under the transportation goal of the
22 city's comprehensive plan.

23 We sustain this assignment of error insofar as it alleges a
24 failure to adequately address the matter of the traffic impacts
25 of this development as required by the city's comprehensive
26 plan (the transportation goal) and PCC §33.77.092(A)(3), (6).

1 We do not sustain this assignment of error insofar as it
2 alleges violation of the other potentially applicable standards
3 recited by intervenors. Intervenors do not explain how these
4 other standards apply or even if they are part of the city's
5 ordinance structure. Without a clear explanation showing
6 applicability of a standard (which is not obviously applicable)
7 we will not proceed further.²⁰

8 FIFTH ASSIGNMENT OF ERROR

9 In the fifth assignment of error, intervenors point to
10 conflicting evidence about traffic and argue the city failed to
11 address this evidence. We understand this assignment of error
12 to repeat intervenors' complaint that the city has inadequately
13 dealt with traffic issues. We note that without adequate
14 findings about traffic, we are not in a position to evaluate
15 whether substantial evidence exists in the record to support
16 possible findings on traffic.

17 This matter is remanded to the City of Portland for further
18 evaluation of PCC §33.77.092(A) (3) and (6) and goal 6 of the
19 comprehensive plan.

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FOOTNOTES

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3 _____
4 1
5 There are two sets of petitioners. The first includes
6 Petitioners Ernest Bonner, Ernest R. Munch, Richard Springer
7 and Joseph Voboril. Also petitioners are the following
8 individuals, each filing a petition for review: Mary Corcoran,
9 Carole Cooke, Carl Simons and Jerry Ward.

7 _____
8 2
9 The design commission is controlled by PCC §33.62.020, et
10 seq.

9 _____
10 3
11 Petitioners filed a motion for evidentiary hearing in order
12 "to resolve disputed allegations of fact concerning the
13 standing of petitioners." We find participants' arguments
14 about standing to go to the sufficiency of the allegations and
15 not to whether the allegations are true. Therefore, we find no
16 need to hold an evidentiary hearing and deny the motion. See
17 OAR 661-10-035(1) and OAR 661-10-045.

14 _____
15 4
16 The affidavit submitted by Petitioner Bonner is unsigned.
17 Respondent says the affidavit should be disregarded for that
18 reason. The Board disagrees. There is no requirement that the
19 allegations of fact made in support of standing must be sworn.

18 _____
19 5
20 The Board does not understand Petitioner Bonner to claim
21 that he is entitled to standing because he was entitled to
22 notice as of right of the pendency of the proceeding before the
23 city. See ORS 197.830(3)(c)(A).

21 _____
22 6
23 He also claims to have testified that he was a long
24 standing interest in the Greenway. He advises he participated
25 in studies requiring examination of the history of the river
26 and adjacent neighborhoods ranging from downtown to Johns
Landing. He states he was a transportation planner for the
City of Portland and supervised preparation of the Greenway
plan.

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We reject the argument that because the project will contain extensive landscaping and open space, that there is little liklihood of any injury to Mr. Springer's enjoyment. This kind of subjective injury is not made non-existent because of another's difference of opinion.

8

We do not adopt respondents' view that the record does not show facts to support their concerns. Facts in support of standing are to be included in the petition for review. ORS 197.830. If respondents believe the facts asserted are not true, respondents have the obligation to assert the true facts. See OAR 661-10-035.

9

Included in our review were the findings of the design commission as adopted by the city council.

10

The principle is especially noteworthy in cases such as this one, where a petitioner attacks a series of findings on grounds of insufficient evidence. In such cases, the attack must include an explanation of why each challenged finding is of importance to the decision. In the absence of such an explanation we will not undertake to review the record for evidence, since the product of our inquiry might be of little or no ultimate consequence to the outcome.

11

See p. 14, #4 for the planning commission (and city council) finding on this criterion.

12

The guidelines are as follows:

- "1. Site layout, orientation, location of structures and relationship to one another and to open spaces and topography. Definition of pedestrian and vehicular areas; i.e., sidewalks as distinct from parking facilities and traffic access.

"The proposed site plan is based on the premise that the influence of the automobile should be limited to the western portion of the site by orienting the

1 office towers to the riverfront. The drawback of this
2 approach is that at the second phase a sizable parking
3 structure, distinct from the two office towers, is
4 proposed which would be in view from the south on the
5 Greenway Path. Lombardy Poplar trees are proposed on
6 the southern and eastern sides of the structure, which
7 would tend to camouflage the overall bulk of the
8 building from a distance; but as one approaches the
9 site from the south, the appearance of the structure at
10 ground level would be imposing. Moving the parking
11 area to some other location is not possible because
12 land to the north, west and south of the site is
13 already occupied, and the Willamette River abuts the
14 site to the east.

8 "Otherwise, the proposed site plan allows for public
9 access to and use of the riverfront, and the landscape
10 design includes a variety of outdoor spaces that would
11 be complementary to the waterfront.

11 "2. Harmonious relationship with existing and
12 proposed adjoining developments, avoiding both
13 excessive variety and monotonous repetition.

13 "The issue the Design Commission must deliberate is
14 how the proposed buildings fit within the context of
15 existing development to the north, south and west of
16 the site. The area to the north is likely to be
17 redeveloped in the future, so that in the absence of a
18 design plan, there is no way of knowing how the
19 current proposal will relate. The area to the west is
20 developed with three-story masonry buildings that are
21 undistinguished on their eastern facades, which will
22 be adjacent to the parking structure. The
23 relationship of buildings to one another south of the
24 site borders on excessive variety, in that frame,
25 stucco, brick and glazed window walls have been
26 employed on buildings of various styles and
27 configurations; at the same time their profiles are
28 consistently horizontal, with the exception of the
29 renovated office buildings near S.W. Macadam Avenue.
30 If, by this criteria, there is to be a balance between
31 uniformity and variety, the staff is of the opinion
32 that the proposal would successfully complement other
33 buildings in the vicinity as a vertical counterpoint.
34 The individual elements of the building do not repeat
35 those of surrounding buildings, but they are subdued
36 enough to harmonously [sic] complement them.

25 "3. Building design, materials and colors to be
26 sympathetic with the Willamette waterfront

1 surroundings.

2 "The design of the proposed office towers, would in
3 the staff's judgement, be sympathetic to the
4 Willamette River waterfront. The parking garage would
5 be partially concealed by landscaping and from several
6 views by the office towers, but where visible, care
7 must be taken to assure an attractive addition to the
8 waterfront. Colors and materials have not been
9 identified as of this time.

10 "4. Maximum height, area, setbacks and over-all mass,
11 as well as parts of any structure (buildings,
12 walls, screens, towers or signs) and effective
13 concealment of all mechanical equipment.

14 "The size of the office structures and the second
15 phase parking structure are perhaps the main topic to
16 be evaluated. On one hand M3 zoning allows a building
17 over twice as high and six times as large in floor
18 area, covering the entire site. On the other hand
19 other buildings in the vicinity are five stories or
20 less in height, and there is no other instance of a
21 400 foot long, five-story high parking structure
22 nearby. From a design standpoint, the height of the
23 office towers would be more apparent to boaters on the
24 Willamette and from vantage points on the east side of
25 the River because other buildings would generally
26 conceal views of them from the Willamette Greenway
27 Trail where the building would come into view, and of
28 course from the Rusty Pelican looking north the
29 building would be clearly visible. Views from the
30 north are difficult to determine until the area
31 between the Ross Island Bridge and the site is
32 redeveloped.

33 "5. Harmony of materials, colors and textures.

34 "At this point the materials, colors and textures have
35 not been submitted for approval.

36 "6. Consistency of composition and treatment.

37 "There is a consistency of composition within the
38 project that may not reflect other development in the
39 area, but neither does it compete.

40 "7. Landscape design with emphasis on native
41 plantings and regard for local climatic
42 conditions.

1 "Plant materials have been selected from a list of
2 recommended species prepared by the Portland Planning
3 Bureau, as a means of carrying out the Willamette
4 Greenway program.

5 "8. Design and appropriateness of graphics, signs,
6 street lights and exterior lighting.

7 "At this point graphics, signs, street lights and
8 exterior lighting have not been submitted for
9 approval." Record, pp. 504-506

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12 Of course, the city is not relieved of the responsibility
13 to make adequate findings on all criteria. For example, if the
14 only findings on scale of the project are those for a different
15 project, then the city's compliance with a criterion calling
16 for an analysis of scale is defective. In this case, because
17 we have found the city's findings with respect to PCC
18 §33.77.092(A)(3) to be inadequate, the city may wish to
19 reevaluate its acceptance of findings on a different structure.

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22 Petitioners make an additional claim that they were not
23 provided with notice of the planning commission's decision
24 notwithstanding the fact that they are entitled to such notice
25 under PCC §33.77.020. There is no assertion that petitioners
26 were denied the opportunity to appear and be heard, however,
27 and we decline to find the city to have committed an error
28 warranting reversal or remand under such circumstances. See
29 ORS 197.835(8)(a)(B).

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32 This issue was the subject of an order on the record issued
33 January 11, 1984. In that order, the Board declined to accept
34 petitioners' view that Mr. Gould's letter should be part of the
35 record. We see no reason to depart from that order now.

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38 We will not consider petitioners' vague references to
39 violations of the comprehensive plan and other provisions of
40 the city's code. We believe it is the petitioners'
41 responsibility to cite to specific code provisions petitioners
42 believe are violated. Petitioners have not done so here.

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45 Intervenors also attack the decision on the basis of the

1 Macadam Avenue Improvement Goals and the Corbett/Terwilliger/
2 Lair Hill Policy Plan. See Record, p. 483. The intervenors
3 say there is a policy requiring the city to reduce vehicular
4 traffic through residential neighborhoods, and they claim this
5 policy is violated by this development. In addition
6 intervenors claim the city has violated its arterial street
7 policies.

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Petitioners point to additional evidence in the record from
the Bureau of Traffic Engineering citing problems to be
associated with the first phase of what was originally a two
phase development. Petitioners quote the following:

"The proposed 200 left turns into River Forum during
a.m. peak will create a problem. Vehicles waiting for
left turns into River Forum would block the
intersection where the Bancroft traffic merges with
southbound Hood-Macadam traffic. This could not be
tolerated...signalizing this access point would be
very undesirable...would severely restrict the level
of service on Macadam. The green time on both
Boundary Street (a neighborhood street) and Hamilton
Court would have to be lengthened. This will reduce
level of service on Macadam. It is our opinion that
the proposed access to the River Forum office
development is inadequate for the projected traffic."
Record, pp. 541, 542.

19

"With development of the River Forum project, SW
Macadam Avenue southbound will operate at C/D level of
service during the p.m. peak hour and northbound S.W.
Macadam Avenue is predicted to operate at a B level of
service during the p.m. peak hour.

"Local access to the site from SW Macadam Avenue will
be provided from SW Hamilton Court and an easement at
the north edge of the site. The traffic consultant
indicates that SW Hamilton Court will operate at a C
level of service in 1986.

"There are approximately 7.5 to 8.0 acres of land
available for development between SW Bancroft Street
and SW Hamilton Court. If built to a similar density
to River Forum, the following projected additional
trips would result:

"4,693 trips/24 hour two-way volume

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"614 trips/a.m. peak

"The expected traffic generated from the River Forum project is as follows:

"2,200 trips/24 hour two-way volume
"320 trips/a.m. peak" Record, p. 164.

20

The policies cited by petitioners are not in the record before us. We happened to have a copy of the transportation policy in the city's comprehensive plan for another case and we have noticed it for the purposes of this discussion.