BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

TIDES UNIT OWNERS ASSOCIATION, DAVID and GAIL SHEPHERD, ARNOLD MOOR, ESTES SNDEDACOR, JOHN L. NEWELL, DON MANTHEY and DON SIRIANNI, Petitioners, vs. CITY OF SEASIDE, Respondents.	LUBA No. 83-124 FINAL OPINION AND ORDER

Appeal from City of Seaside.

Timothy V. Ramis and Corinne C. Sherton, Portland, filed the Petition for Review and argued the cause on behalf of petitioners. With them on the brief was O'Donnell, Sullivan & Ramis.

Dan Van Thiel, Astoria, filed a brief and argued the cause on behalf of Respondent City. With him on the brief was Anderson, Fulton & Van Thiel.

KRESSEL, Referee; BAGG, Chief Referee; DUBAY, Referee participated in the decision.

REMANDED 04/25/84

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

Opinion by Kressel.

NATURE OF THE DECISION

Petitioners appeal adoption of an amendment to the Urban Renewal Plan for the Trails End Urban Renewal Area in the City of Seaside. The amendment changes the boundaries of the urban renewal area, adopts a list of future projects intended to be constructed and establishes a fiscal year in which the collection of tax increment proceeds will be terminated.

FACTS

The facts are not in dispute. The city adopted an urban renewal plan in 1979. It was amended twice in 1981. In November, 1983, the challenged amendment was adopted by Ordinance No. 83-28.

The city's urban renewal district is comprised of about 118 acres. A portion of the city's historic "promenade" area lays within the district. Ordinance No. 83-28 added 10.85 acres to the district, representing the remainder of the promenade area. The ordinance also deleted a separate area of about 10 acres from the district. The result of these boundary changes was a net gain in district size of .82 acres.

Five categories of proposed renewal projects were listed in the amendment. They included street improvements and street closure, construction and/or rehabilitation of public restrooms, reconstruction of off-street parking facilities, various public improvements along both sides of the Necanicum River (e.g., parks and greenways, benches, night lighting,

marinas and/or small boat docks, public restrooms, and recreation structures), reconstruction of amenities on the promenade, and grading, paving, and landscaping at city hall. Finally, the amendment provided that collection of tax increment proceeds[1] are to be terminated no later than the end of fiscal year 1997-1998.

Ordinance No. 83-28 contains a series of findings of fact. The findings can be summarized as follows: (1) there is a need to refurbish the promenade area, (2) all the land to be added to the renewal area is owned by the city and (3) it is necessary to establish specific projects the city desires to implement within the renewal area, consistent with available funding. The findings conclude with the statement "that such Trails End Urban Renewal Plan amendments are found to conform with the stated objectives of the original Urban Renewal Plan, with the provisions of the State's Urban Renewal Law - ORS 457, and with the Comprehensive Plan of the City of Seaside." Finding No. 10, Ordinance No. 83-28. No specific findings with reference to applicable comprehensive plan policies or the statewide planning goals appear in the ordinance.

Petitioners are the association of condominium unit owners and seven individual unit owners of the Tides Condominium (The Tides) in Seaside. The Tides is located adjacent to one of the sites proposed for improvement (construction of a public restroom) under the urban renewal plan amendment. Petitioners are concerned that construction of the facility will result in

increased noise, dust, vibration, traffic, trespass and vandalism. They expressed these concerns at hearings before the city council.

JURISDICTION

The city urges us to dismiss this appeal on grounds adoption of Ordinance No. 83-28 does not constitute a "land use decision" as that term is defined in ORS 197.015(10).[2] The city's brief states:

> "Respondent submits that the mere annexation of land into a URA is not a 'land use decision' which would bring the procedural requirements of state and local planning law into play, except to the extent required to amend the urban renewal plan under ORS Chapter 457." Brief of Respondent at 4 (emphasis added).

We appreciate the city's argument that adoption or amendment of an urban renewal plan does not have immediate or direct land use consequences. It is true that inclusion of land within an urban renewal area and the listing of proposed renewal projects creates eligibility for subsequent development; the final determination of whether proposed uses are allowable at certain locations, and the process leading to the issuance of permits for actual construction, are governed by other documents, such as the comprehensive plan, the zoning ordinance and the building code. Nevertheless we must reject the assertion we lack jurisdiction over this appeal. As discussed below, certain provisions in ORS Chapter 457 (the urban renewal statute), when read in conjunction with the definition of "land use decision" in ORS 197.015(10), make it

clear we have jurisdiction to review the challenged ordinance. Further, for the reasons that follow, we find the decision to adopt the challenged plan amendment will have significant impacts on present or future land use in Seaside. Accordingly, under ORS 197.175(1) and City of Pendleton v. Kerns, 294 Or 126, 134, 653 P2d 992 (1982), we have jurisdiction to review the decision as an exercise of the city's "planning and zoning responsibilities."

1. The Urban Renewal Statute (ORS Chapter 457)

The underlined language from the city's argument, quoted above, forms one basis for our disposition of the jurisdictional issue. As the city itself acknowledges, the requirements of land planning law are brought into play when an urban renewal plan is adopted or substantially amended pursuant to ORS Chapter 457. The statute expressly requires that an ordinance approving an urban renewal plan include a finding the plan "...conforms to the comprehensive plan and economic development plan, if any, of the municipality as a whole..." ORS 457.095(3). See also, ORS 457.220(2) (substantial plan amendment must be approved in same manner as plan). It follows from these statutory requirements that adoption or substantial amendment of an urban renewal plan is a "land use decision," i.e., one concerning the application of the municipality's comprehensive plan, under ORS 197.015(10)(a)(A)(ii). Where the legislature has expressly required local government to find proposed action conforms to the locality's comprehensive plan,

that action constitutes a land use decision reviewable by this Board. ORS 197.825(1).

Our resolution of this issue necessarily includes a holding that Ordinance No. 83-28 constitutes a substantial amendment to Seaside's Urban Renewal Plan and therefore must be adopted in the same manner as the original plan. ORS 457.220(2). We note ORS 457.220 does not define "substantial amendment." However, we believe the challenged amendment falls within the statute because it concerns significant areas, measured in terms of size[3] and importance to the city's status as a coastal tourist attraction. Accordingly, because the challenged amendement could not be adopted without a finding of conformity with Seaside's comprehensive plan, ORS 457.220(2); 457.095(3), this Board has jurisdiction over the appeal.

EXERCISE OF PLANNING AND ZONING RESPONSIBILITIES (ORS 197.175(1)

Petitioners advance a second argument in favor of this Board's jurisdiction. They contend the challenged amendment constitutes an exercise of the city's planning and zoning responsibilities which, pursuant to ORS 197.175(1), must be carried out in accordance with the statewide planning goals. Under state law, our jurisdiction extends over local government decisions that concern the application of the goals. ORS 197.015(10)(a)(A)(i).

The courts and this Board have reviewed a number of appeals that required an initial determination whether the challenged

decision fell within the scope of ORS 197.175(1). At least two doctrines have emerged from these cases. Both are relevant to this appeal.

First, the Supreme Court has indicated that a decision involves the exercise of planning and zoning responsibilities under ORS 197.175(1), and is therefore reviewable by this Board for compliance with the goals, when it can be said the decision will have a "significant impact on present or future land uses in the area." City of Pendleton v. Kerns, supra, 294 Or at 134 (ordinance authorizing improvement of dedicated street); Peterson v. Klamath Falls, 279 Or 249, 566 P2d 1193 (1977) (annexation). See also, 1000 Friends of Oregon v. Wasco County Circuit Court, 62 Or App 75, 659 P2d 1001 rev den 295 Or 259 (1983) (incorporation). On the other hand, the Court of Appeals has stated that local decisions on taxation or budgetary matters are not within the scope of ORS 197.175(1), even if the decisions have land use impacts. State Housing Council v. City of Lake Oswego, 48 Or App 525, 617 P2d 655 (1980), pet dis 291 Or 878, 635 P2d 647 (1981) (ordinance imposing systems development charge on new construction was fiscal in nature and not a land use decision); Westside Neighborhood Quality Project, Inc. v. School District 4J, 58 Or App 154, 647 P2d 962, rev den ___ Or ____ (1982) (school district's decision to close school was fiscal in nature and not a land use decision).

Both doctrines are worded in highly general terms and leave

room for debate in specific cases, as some of our recent decisions indicate.[4] We resolve the present controversy in favor of petitioners' position for the reasons set forth below.

First, our review of the challenged plan amendment convinces us the city's decision has significant impacts on present and future land use in Seaside. It is therefore within the "significant impact" test set forth in Kerns, supra. As stated earlier, the decision involves redevelopment of areas of significance to this coastal resort city. Moreover, although some of the proposed renewal projects are minor in terms of predictable land use impact, others are not. For example, the proposals for street closure, new public restrooms, and marinas and/or boat docks may well have significant impacts on surrounding lands - impacts of equal or greater magnitude than those found significant in the Kerns case.[5]

We are aware that adoption of the challenged amendment represents only the initial step in the implementation of the city's revitalization plan for the area in question. A number of the proposed projects, including the project of principal concern to petitioners, will be subject to more detailed review in the context of zoning permit hearings. However, the fact the action at issue in this appeal is not the final step in the development process, does not take it outside the scope of ORS 197.175(1). As the Court of Appeals has stated with regard to the "significant impact" test, "...if the completed process

would have a significant impact, the decision implementing the process is reviewable." 1000 Friends of Oregon v. Wasco County Court, supra, 62 Or App at 81.

We conclude that, taken as a whole, the challenged amendment falls within the "significant impact" test developed by the Supreme Court in connection with ORS 197.175(1). Further, we believe the amendment should not be considered as principally a fiscal or budgetary matter outside our jurisdiction. Rather we view the amendment as the first in a series of public actions necessary for the development or redevelopment of land. The entire focus of the urban renewal program is on land development/redevelopment as a means of social and economic revitalization. ORS 457.020. See also, Foeller v. Housing Authority of Portland, 198 Or 205, 253, 256 P2d 752 (1953). The fact the program includes fiscal components which facilitate achievement of its goals does not alter its fundamental thrust.

Based on the foregoing, we agree with petitioners that the challenged decision is a land use decision reviewable by this Board.

STANDING

Apart from challenging our jurisdiction over this appeal, the city also contends petitioners lack standing because they "...have failed to show that they are aggrieved or have interests adversely affected by the decision, as required by ORS 197.830(3)." Brief of Respondent at 1. The city

acknowledges petitioners' allegations that construction of public restrooms near the Tides Condominium, one of the projects contemplated by the amendment adopted under Ordinance No. 83-28, will result in increased litter, vandalism, and trespass, but describes these alleged impacts as totally conjectural and speculative.

The city's standing argument parallels its argument on the jurisdictional question, i.e., since the challenged amendment of the urban renewal plan has only indirect land use impacts, it is not a land use decision and cannot have the sort of immediate impact on petitioner's interests which would entitle them to standing.

We do not concur with the city's argument. Each of the petitioners has alleged property ownership within sight and sound of at least one project contemplated by the challenged renewal measure (restroom construction at the "Avenue U site"). Each has alleged that direct adverse impacts, such as trespass, increased litter, and noise, will result if the project is undertaken. These allegations are sufficient under ORS 197.830.[6]

We conclude we have jurisdiction over this appeal and that petitioners have standing. Below we take up the assignments of error on the merits.

FIRST, SECOND, AND THIRD ASSIGNMENTS OF ERROR

Petitioners combine their first three assignments of error. The first contends the city failed to adopt explanatory

findings of fact to support its conclusion the amendment conforms to the city's comprehensive plan. The second alleges the general finding of plan conformity is not supported by substantial evidence in the record. The third contends the amendment violated certain applicable comprehensive plan policies pertaining to housing, economics, streets, recreation and flood hazards. As discussed below, we sustain the first assignment of error. Accordingly we must remand the decision to the city for additional findings. OAR 661-10-070(1)(C)(1).

As noted earlier, state law requires the challenged amendment to Seaside's Urban Renewal Plan to include a finding of conformance with the city's comprehensive plan. The city attempted to satisfy the statutory requirement by adopting what amounts to a general conclusion of law, i.e., "that such Trails End Urban Renewal amendments are found to conform with the...comprehensive plan of the City of Seaside." Although it has the virtue of brevity, we do no believe this statement by the city is adequate.

The parties have framed the question of the adequacy of the city's findings in terms of the distinction between quasi-judicial and legislative action. Petitioners urge us to characterize the challenged decision as quasi-judicial in nature, thereby making applicable the requirement that specific findings concerning pertinent comprehensive plan policies be adopted. South of Sunnyside Neighborhood League v. Board of County Commissioners of Clackamas County, 280 Or 3, 20-21, 569

P2d 1063 (1977). Respondent, on the other hand, insists the decision is legislative. Respondent implies that in the legislative context, a conclusory statement concerning plan conformance is sufficient.

Although we agree with respondent that the challenged amendment is legislative in nature,[7] we do not accept its position with regard to the adequacy of the challenged finding. In our view, the requirement in the urban renewal law for a finding of conformance with the comprehensive plan, combined with the availability of review of that finding by this Board, imply that the city must do more than simply conclude its plan is satisfied. In order for us to determine whether the city has properly construed the applicable law (here, the comprehensive plan), we must be advised what specific provisions of the plan are applicable to this decision. ORS 197.835(8)(a)(D). Further, in order for us to give appropriate weight to the city's judgments concerning the relationship between the challenged amendment and the pertinent provisions of the comprehensive plan, it is necessary for the city to advise us, in the form of findings, what those judgments are.

In this context, we find the words of the Court of Appeals in The Home Plate, Inc. v. OLCC, 20 Or App 188, 190, 530 P2d 862 (1975) pertinent. In that case the court stated:

> "If there is to be any meaningful judicial scrutiny of the activities of an administrative agency - not for the purpose of substituting judicial judgment for

> administrative judgment but for the purpose of requiring the administrative agency to demonstrate that it has applied the criteria prescribed by statute * * * - we must require that its order clearly and precisely state what it found to be facts and fully explain why those facts lead it to the decision it makes."

We recognize the above observation was made in connection with judicial review of a contested case proceeding - a proceeding which bears a greater similarity to local quasi-judicial actions than to legislative actions. Nevertheless, we find the principle applicable in this appeal. We are unable to properly review the city's decision under ORS 457.095(3) in the absence of more complete findings. The findings must indicate which provisions of the city's comprehensive plan apply to the challenged amendment and explain why the amendment conforms to those provisions.

We are aware some decisions of this Board have indicated explicit findings of plan compliance are not always necessary in the context of legislative land use decisions. See e.g., Gruber v. Lincoln County, 2 Or LUBA 180, 186-187 (1981) (broad legislative rezoning need not contain written justifications, based on the plan, for designation of each rezoned parcel). We believe, however, that Gruber and similar decisions should be understood in light of their factual contexts - contexts markedly dissimilar from the instant appeal.

In Gruber, supra, we considered a claim the county had failed to explain how a zoning designation of a specific parcel, one of many affected by a large scale rezoning, carried

out pertinent plan policies. In that circumstance we found it sufficient, for purposes of our review, that the record contained the governing plan criteria (criteria for designating land as suitable for disbursed residential development) as well as the pertinent facts about the land in question. Accordingly, we saw no need for parcel-by-parcel findings of plan conformance. At the same time, however, we explicitly recognized that other situations might require detailed findings concerning the comprehensive plan. 2 Or LUBA at 187.

This case presents one such situation. First, as we have noted, the urban renewal statute requires a finding of plan conformance. This alone distinguishes the case from Gruber, where no express statutory requirement for findings had been identified. Second, we deal here with a situation in which, as far as we are aware, there are no clearly governing plan criteria. Rather, a variety of plan criteria, such as those concerning economic development, recreation and public facilities, appear to apply to the various renewal projects the city has in mind. In such a circumstance, we are not in a position to review the record, as we did in Gruber, to determine which plan criteria apply and which are satisfied by the proposed action.

We conclude the city is required to adopt explanatory findings showing the relationship between the challenged amendment and the comprehensive plan. We therefore sustain the first assignment of error. We see no purpose in addressing the

second assignment of error, which alleges the city's conclusory finding of plan conformance is not supported by substantial evidence. We will be in a position to review an evidentiary challenge only after adequate findings have been adopted. Finally, at this stage we are also not in a position to evaluate petitioners' related argument that certain comprehensive plan policies are in fact violated by the challenged decision. We await the city's judgments, expressed in the form of findings, on these questions before undertaking review.

FOURTH AND FIFTH ASSIGNMENTS OF ERROR

Petitioners' arguments the city failed to properly evaluate the challenged urban renewal plan amendment in terms of the Seaside Comprehensive Plan, discussed above, are paralleled in the fourth and fifth assignments of error. In these assignments petitioners claim the city failed to consider the relationship between the challenged amendment and the statewide planning goals. It is first contended the city failed to adopt any findings relating the amendment to the goals and that such findings were required (fourth assignment of error). In the fifth assignment of error petitioners claim the challenged amendment in fact violates four of the goals.

We are advised the city's comprehensive plan and implementing ordinances have yet to be acknowledged by LCDC. Accordingly, pursuant to ORS 197.175(2)(c), the city's land use decision in this case, see pages 4-9, supra, must comply with

the pertinent statewide planning goals. However, on the record before us, we are unable to determine whether the city has fulfilled its obligation under ORS 197.175(2)(c).

Neither the ordinance under review, nor any portion of the adopted amendment to the urban renewal plan, contains findings indicating which statewide goals are believed by the city to apply in this case and the manner in which the applicable goals are affected by the challenged amendment. Before we can review the decision for goal compliance, such findings must be made. Twin Rocks Water District v. City of Rockaway, 2 Or LUBA 36, 43-44 (1980). In this context, our earlier comments with respect to the principles underlying the need for findings regarding the comprehensive plan, see page 13, supra, apply with equal force.

Based on the foregoing, we sustain the third assignment of error. Petitioners' further claims that the challenged amendment in fact violates certain goals must await the entry of findings by the city indicating which goals are deemed to apply and the manner of their application.

SIXTH ASSIGNMENT OF ERROR

Petitioners next contend the city failed to comply with certain provisions of ORS Chapter 457, when it adopted the challenged amendment. Our attention is directed to ORS 457.095, which authorizes adoption of an urban renewal plan only after the governing body receives both the proposed plan and a report concerning the plan from the municipality's urban

renewal agency. The contents of the required report are set forth in ORS 457.085(3). In pertinent part, the statute reads:

> "(3) An urban renewal plan shall be accompanied by a report which shall contain:
>
> "(a) A description of physical, social and economic conditions in the urban renewal areas of the plan and the expected impact, including the fiscal impact, of the plan in light of added services or increased population;
>
> "(b) Reasons for selection of each urban renewal area in the plan;
>
> "(c) The relationship between each project to be undertaken under the plan and the existing conditions in the urban renewal area;
>
> "(d) The estimated total cost of each project and the sources of moneys to pay such costs;
>
> "(e) The anticipated completion date for each project;
>
> "(f) The estimated amount of money required in each urban renewal area under ORS 457.420 to 457.440 and the anticipated year in which indebtedness will be retired or otherwise provided for under ORS 457.440;
>
> "(g) A financial analysis of the plan with sufficient information to determine feasibility;
>
> "(h) A fiscal impact statement that estimates the impact of the tax increment financing, both until and after the bonds are repaid, upon all entities levying taxes upon property in the urban renewal area; and
>
> "(i) A relocation report which shall include:"

Petitioners contend no such report was prepared or considered before respondent enacted Ordinance No. 83-28. They argue that since the ordinance constitutes a substantial

amendment of the city's urban renewal plan, ORS 457.220(2) requires that it be adopted in the same manner as the plan, i.e., a report satisfying ORS 457.085(3) must accompany the amendment.

Respondent does not argue that a report meeting the requirements of ORS 457.085(3) was prepared in connection with the challenged plan amendment. Instead, respondent first reiterates its claim we lack jurisdiction over the appeal because no "land use decision" is involved, a claim we have rejected earlier in this opinion.[8]

Two additional assertions are made by respondent. First it is contended no report was necessary in this instance because the members of the Common Council of the City of Seaside also serve as the city's urban renewal agency and, as a result, "...lines of communication are direct. The members are intimately familiar with all the details of drafting the urban renewal plan, its amendments, impacts on the city and other tax paying bodies and of the plan's implementation." Brief of Respondent at 6. Accordingly, it appears to be respondent's contention that an urban renewal report along the lines contemplated by ORS 457.085(3) should not be required in this instance.

Apart from the preceding argument, the city also contends that since its original urban renewal plan was adopted in 1979, prior to the date ORS 457.085(3) was enacted, no report was necessary. Respondent claims the absence of a statutory urban

renewal report is of no consequence because, pursuant to ORS 457.220(2), the city was required to adopt the challenged amendment in the same manner as the adoption of the original plan, i.e., without inclusion of an urban renewal report.

We cannot accept either of respondent's arguments in connection with this assignment of error. The statutory requirement that a report accompany an urban renewal plan, or a substantial plan amendment, was clearly enacted as a means of increasing public awareness of local activities under the urban renewal program. Indeed, ORS 457.085, which lists the requirements for an urban renewal plan report, begins by stating: "An urban renewal agency should provide for public involvement in all stages in the development of an urban renewal plan." ORS 457.085(1). Accordingly, the fact members of the Seaside Common Council were intimately familiar with the proposed plan amendment by virtue of their membership on the Seaside Urban Renewal Agency, presents no reason to depart from the requirement that a report be prepared in accord with ORS 457.085(3).

Finally, we do not accept respondent's argument the pre-1979 status of its urban renewal plan exempts this amendment from the report requirement in ORS 457.085(3). Had the legislature intended such a result it could easily have so provided when ORS 457.085(3) was enacted. We believe the intent of the statute, taken as a whole, is that a report conforming to ORS 457.085(3) must accompany an urban renewal

plan or, as in this case, a substantial amendment to such a plan, when it is placed on the agenda of the governing body.

This assignment of error is sustained.

SEVENTH ASSIGNMENT OF ERROR

In the final assignment of error, petitioners allege the city failed to make certain findings required by ORS 457.095 in connection with adoption of Ordinance No. 83-28. The statute requires that an ordinance adopting an urban renewal plan include the following "determinations and findings":

> "(1) Each urban renewal area is blighted;
>
> "(2) The rehabilitation and redevelopment is necessary to protect the public health, safety or welfare of the municipality;
>
> "(3) The urban renewal plan conforms to the comprehensive plan and economic development plan, if any, of the municipality as a whole and provides an outline for accomplishing the urban renewal projects the urban renewal plan proposes;
>
> "(4) Provision has been made to house displaced persons within their financial means in accordance with ORS 281.045 to 281.105 and, except in the relocation of elderly or handicapped individuals, without displacing on priority lists persons already waiting for existing federally subsidized housing;
>
> "(5) If acquisition of real property is provided for, that it is necessary;
>
> "(6) Adoption and carrying out of the urban renewal plan is economically sound and feasible; and
>
> "(7) The municipality shall assume and complete any activities prescribed it by the urban renewal plan."

The petition contends the findings required by subparagraphs (2), (3), (6) and (7) of the statute were not made by

respondent. We agree in part.

As we read Ordinance No. 83-28, the city found the proposed redevelopment is necessary to protect the public welfare, in accordance with ORS 457.095(2). Although the precise words of the statute have not been used, the findings reflect the public welfare concept by stating (1) the promenade is an historic public facility which has deteriorated, (2) the promenade is a vital link in the city's economy and has important recreational value, and (3) rehabilitation of the promenade and adjacent areas is necesssary. See Findings 1-8, Ordinance No. 83-28. Taken as a whole, the findings are sufficient to meet the criterion in ORS 457.095(2).

We have previously discussed the deficiencies in the city's general finding of conformance with the comprehensive plan under ORS 457.095(3). In addition, we agree with petitioners that the city has not provided an "outline for accomplishing the urban renewal projects the urban renewal plan proposes" under the same statutory provision. The adopted plan does list intended projects, all of which involve land owned by the city. However, the plan does not identify priorities among the projects, anticipated costs or completion dates or the process by which the generally described projects (e.g., construction of marinas and/or boat docks along the Necanicum River) will be implemented. For example, the nature of any further permit requirements is not mentioned. We believe the outline contemplated by ORS 457.095(3) should at least cover

such matters. Accordingly, we agree with petitioners that the statute has not been met.

Finally, we agree the findings required by subparagraphs (6) and (7) of ORS 457.095 have yet to be entered by the city. The former requires a finding that plan adoption and implementation is "economically sound and feasible." However, the city's findings are more tentative. They state the renewal projects are desired to be implemented "...consistent with available funding." Finding No. 8, Ordinance No. 83-28 (emphasis added). We do not view this as equivalent to the affirmative declaration required by the statute.

As for the requirement of ORS 457.095(7), that the city make a determination or a finding it will complete the activities prescribed by the urban renewal plan, no such finding appears in Ordinance No. 83-28 or other portions of the record. None has been brought to our attention by respondent.

Based on the foregoing, this assignment of error is sustained in all but one part.

CONCLUSION

In conclusion, petitioners have raised a number of valid objections to the adequacy of the findings adopted in connection with the proposed amendment to the urban renewal plan for the Trails End area. The challenged ordinance must be remanded for findings indicating which comprehensive plan policies and statewide planning goals are applicable and the manner in which they apply to the challenged amendment. It is

also necessary, on remand, that a report complying with ORS 457.095(3) be prepared and presented to the governing body in connection with the ordinance. Finally, the ordinance itself must contain the findings or determinations called for by ORS 457.095.

Although our holding is favorable to petitioners on many points, we stress here that nothing we have held prevents the city from eventually adopting and carrying out the amendments under consideration. Instead, we hold only that certain findings or determinations, all of which are required by state law, have yet to be adopted by the city.

Remanded.

FOOTNOTES

[1] Tax increment financing is the principal financial tool of the urban renewal program. Under it, the increase in taxes resulting from urban renewal improvements is used to pay off the debt incurred for the improvements. See ORS 457.420 - ORS 457-460.

[2] ORS 197.015(10) reads:

"(10) 'Land use decision':

"(a) Includes:

"(A) A final decision or determination made by a local government or special district that concerns the adoption, amendment or application of:

"(i) The goals;

"(ii) A comprehensive plan provision;

"(iii) A land use regulation; or

"(iv) A new land use regulation, or

"(B) A final decision or determination of a state agency other than the commission with respect to which the agency is required to apply goals.

"(b) Does not include a ministerial decision of a local government made under clear and objectives standards contained in an acknowledged comprehensive plan or land use regulation and for which no right to a hearing is provided by the local government under ORS 215.402 to 215.438 or 227.160 to 227.185."

[3] ORS 457.220(3) prohibits increasing the originally approved urban renewal area (here an area of 118 acres) by more than 20 percent. As noted previously, the net increase in the renewal area resulting from adoption of Ordinance 83-28 is less than one acre, representing under one percent of the total urban renewal area. The city suggests we take this into account in

determining whether Ordinance No. 83-28 constitutes a substantial amendment to the plan. However, we agree with petitioners that although the net increase is slight, the effect of adding a 10.85 acre area and deleting another area of similar size, brings the case within the "substantial amendment" statute.

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[4] See, e.g. Billington v. Polk County, __ Or LUBA ___, (LUBA No. 83-072, 1984) (road vacation); Dames v. City of Medford, __ OR LUBA ___, (LUBA No. 83-099, 1984) (street widening).

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[5] In Kerns, supra, the court observed that the challenged street improvement would "...turn a neighborhood park in a quiet residential area on the outskirts of town into a major thoroughfare." 294 Or at 135. The same can be said for some of the promenade and other area improvements embraced by the city in this case.

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[6] Petitioners' reliance on their opposition to only one of numerous projects contemplated by the challenged plan amendment suggests the possibility their standing in this case might be limited to those issues concerning that aspect of the city's action. See 1000 Friends of Oregon v. Multnomah County, 39 Or App, 917, 927-929, 593 P2d 1171 (1979). However, the city does not assert such an argument in this appeal and we will not raise it on our own initiative.

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[7] The amendment, like the urban renewal plan itself, was not the sort of proposal on which the city was required to act once the process was commenced. ORS 457 allows broad latitude to municipalities to pursue or to shelve proposed urban renewal plans, see, e.g., ORS 457.095; 457.105, although once adopted, a plan must be carried out. ORS 457.095(7). The wide range of action available to the city brings this case within the legislative classification. Strawberry Hill 4 Wheelers v. Board of County Commissioners for the County of Benton, 287 Or 591, 602-603, 601 P2d 769 (1979).

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[8] Respondent's argument also asserts that, in the event this Board does have jurisdiction over the appeal, its jurisdiction does not extend to the city's alleged non-compliance "...with

the procedural requirements of ORS Chapter 457." Brief of Respondent at 6. The argument suggests the idea our jurisdiction is limited to certain aspects of the city's action and that others are beyond our power because they relate to the requirements of ORS Chapter 457. However, the argument was not fully explained in respondent's brief. It appears to be in conflict with statutes governing this Board, for example, ORS 197.835(8)(a)(D), which authorizes the Board to reverse or remand a land use decision which has "improperly construed the applicable law." The applicable law in this case includes the pertinent provisions of ORS Chapter 457. Respondent has not presented a persuasive argument to the contrary.