

BEFORE THE LAND USE BOARD OF APPEALS BOARD OF APPEALS

OF THE STATE OF OREGON

Nov 6 4 04 PM '84

1
2
3 CITIZENS TO SAVE THE)
WILLAMETTE RIVERFRONT, JOHN)
4 WIEST, JERRY WARD, CARL)
SIMONS, MARILYN REHM, LAWRENCE)
5 JACOBSEN, MARY CORCORAN, CAROL)
COOKE, GRACE BULLOCK, SUSAN)
6 KIRSCHNER CALLAHAN,)
Petitioners,)
7 vs.)
8 CITY OF PORTLAND, OREGON, a)
municipal corporation, and)
9 GK-II INVESTMENTS,)
10 Respondents.)
11

LUBA No. 84-056
FINAL OPINION
AND ORDER

12 Appeal from the City of Portland.

13 James Hunt Miller, Portland, filed the Petition for Review
14 and argued the cause on behalf of petitioners.

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

16 Susan Quick, Portland, filed a response brief and argued
17 the cause on behalf of Respondent GK-II Investments.

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

19 AFFIRMED 11/06/84

20 You are entitled to judicial review of this Order.
21 Judicial review is governed by the provisions of ORS 197.850.

1 Opinion by Kressel.

2 NATURE OF THE DECISION

3 Petitioners appeal the city's approval of plan and zoning
4 map amendments changing the designation of certain property
5 owned by Respondent GK-II Investments from M2 (General
6 Manufacturing) to M3 (Light Manufacturing). The changes
7 authorize construction of a three story office building on a
8 site between S.W. Macadam Avenue and Willamette Park,
9 approximately 800 feet from the Willamette River.

10 FACTS

11 This case is before the Board for the second time. The
12 facts are set forth in our opinion Corbett-Terwilliger Lair
13 Hill Legal Fund v. City of Portland, ___ Or LUBA ___, LUBA No.
14 83-071, November 21, 1983. In that appeal, we held the city
15 had not adequately considered the impacts its decision would
16 have on traffic in the Corbett residential area, as required by
17 certain comprehensive plan policies. With reference to those
18 policies we stated:

19 "The Board notes Goal 6 and Policy 6.2 are not stated
20 in absolutes. That is, the goal and the policy do not
21 require a fixed limit on traffic in residential
22 neighborhoods. Goal 6 seeks to 'lessen' impact of
23 traffic on neighborhoods while at the same time
24 improving access to employment and commercial
25 centers. Similarly, Policy 6.2 seeks to protect the
26 liveability of residential neighborhoods while
'improving access and mobility within commercial and
industrial areas.' The Board does not find that these
policies create an absolute prohibition on increased
traffic through residential neighborhoods. The Board
believes these standards require a balancing of
competing interests, those of improved access to
commercial and industrial centers and those of

1 residential tranquility. However, the city was under
2 an obligation, once the issue of residential area
3 traffic was raised to expressly explain how the facts
4 justify the conclusion the policy was met. This
5 obligation was not satisfied and requires a remand."
6 Slip Op. at 19.

7 After the remand, the city conducted a hearing on the issue
8 of traffic impacts on the residential area. Extensive
9 testimony was received from experts and others interested in
10 the application. At the end of the hearing the council again
11 approved the requested changes, concluding the traffic
12 generated by the proposed building would not adversely affect
13 the liveability of the residential area, and the pertinent plan
14 policies were satisfied. Findings in conjunction with the
15 city's decision were adopted on June 13, 1984. This appeal
16 followed.

17 STANDING

18 Respondents challenge the standing of each petitioner. The
19 governing standard is set forth in ORS 197.830(3):

20 "(3) Except as provided in ORS 197.620(1), a person
21 may petition the board for review of
22 quasi-judicial land use decision if the person:

23 "(a) Filed a notice of intent to appeal the decision
24 as provided in subsection (1) of this section;

25 "(b) Appeared before the local government, special
26 district or state agency orally or in writing; and

27 "(c) Meets one of the following criteria:

28 "(A) Was entitled as of right to notice and
29 hearing prior to the decision to be
30 reviewed; or

31 "(B) Is aggrieved or has interests adversely

1 affected by the decision."

2 Our consideration of the standing challenge is also guided
3 by the Supreme Court's recent opinion in Jefferson Landfill
4 Committee v. Marion County, 297 Or 280, ___ P2d ___ (1984). In
5 that case the Court set forth a three-part test of
6 "aggravement," as that term is used in ORS 197.830(3)(c)(B):

7 "(1) The person's interest in the decision was
8 recognized by the local land use decisionmaking
9 body,

9 "(2) The person asserted a position on the merits and

10 "(3) The local land use decisionmaking body reached a
11 decision contrary to the position asserted by the
12 person." 297 Or at 284.

12 Below, we consider the standing of each petitioner in the
13 order presented by the challengers.

14 Simons and Cook

15 Respondents correctly claim that the allegations with
16 respect to petitioners Simons and Cook are insufficient. There
17 is no allegation, as the statute plainly requires, that each
18 petitioner appeared before the city in connection with the
19 challenged land use proposal. This omission alone is grounds
20 for dismissal of their appeal. ORS 197.830(3)(b)(2).¹

21 Corcoran and Bullock

22 These petitioners reiterate allegations we found sufficient
23 to establish their standing in the prior appeal. In that
24 appeal they alleged (1) they appeared before the city council
25 in opposition to the proposal, and (2) approval would adversely
26 affect their interests as residents in the scenic character of

1 the Corbett neighborhood (for example, construction of the
2 building would obstruct their views of the Willamette River).
3 See CTLH Legal Fund v. City of Portland, supra, Slip Op. at 6-7.

4 We consider the reiteration of these allegations sufficient
5 here. Respondents are correct that this appeal is a separate
6 proceeding from the prior appeal and that petitioners have not
7 pleaded they appeared before the city during the remand
8 hearing. However, we believe the critical fact, at least for
9 standing purposes, is that both this and the prior appeal
10 involve substantially the same land use proposal. No purpose
11 would be served by denying standing to persons who previously
12 established the requisite legal interests and who rely on the
13 same interests in pressing a second appeal of the same proposal.

14 The challenge to the standing of Petitioners Corcoran and
15 Bullock is denied.

16 Ward, Rehm, Jacobsen and Callahan

17 Each of these petitioners alleges residency and/or property
18 ownership in the area and appearance in opposition to the
19 proposal during the city's proceeding on remand. They claim
20 they are aggrieved by the city's action and that their
21 interests are adversely affected by the decision. Respondents
22 complain, however, that the allegations of aggrievement and
23 adverse affect are unduly vague.

24 Whatever validity respondents' objection may have had
25 before the decision in Jefferson Landfill Committee v. Marion
26 County, supra, it is clearly wide of the mark now. Petitioners

1 have met the requirements of appearance before the local
2 government and "aggrievement," as the quoted term has been
3 defined by the state Supreme Court. Although more precise
4 language might have been used in the petition, we read the
5 allegations to satisfy the Jefferson Landfill Committee tests.
6 Petitioners' interests were recognized by the city council,
7 they asserted positions on the merits, and the city's approval
8 of the requested changes was contrary to the positions they
9 asserted.

10 The challenge to the standing of Petitioners Ward, Rehm,
11 Jacobsen and Callahan is denied.

12 Wiest

13 Petitioner Wiest alleges he lives within sight of the
14 proposed project, he appeared in writing during the proceeding
15 and he would be aggrieved by the project's addition of traffic
16 in the Macadam Corridor. Respondents do not question the
17 allegations of Wiest's appearance before the city but contend
18 the nature of the expected harm is not specifically described.
19 However, we read the allegations to be adequate under both the
20 "aggrievement" and "adverse affect" statutory standards. See
21 Jefferson Landfill Committee v. Marion County, supra
22 (aggrievement) and Duddles v. West Linn, 21 Or App at 310, 535
23 P2d 583 (1975) (adverse affect presumed from residence within
24 sight or sound of challenged development). We conclude
25 Petitioner Wiest has standing to challenge the city's decision.

26

1 Citizens to Save the Willamette Riverfront (CSWR)

2 The organizational petitioner claims standing in its own
3 right and as representative of its members. CSWR alleges it
4 appeared at the city's hearings through identified
5 representatives. They expressed the organization's interest in
6 neighborhood liveability and warned the city of the threat to
7 that interest presented by the proposal. The allegations are
8 sufficient to establish the organization's standing as an
9 aggrieved person. See Jefferson Landfill Committee v. Marion
10 County, supra; ORS 197.015(14).²

11 We also accept the claim to representational standing
12 asserted by the organization. Members of CSWR have already
13 been found to have standing in this appeal (See discussion with
14 respect to Petitioners Ward, Jacobsen and Rehm, supra).
15 Although the law in this area remains unclear, we believe the
16 organization has standing to represent their interests. See
17 1000 Friends of Oregon v. Multnomah County, 39 Or App 917, 593
18 P2d 1171 (1979), but see Benton County v. Friends of Benton
19 County, 294 Or 79, 81, 635 P2d 1249 (1982).

20 The challenge to the standing of the organizational
21 petitioner is denied.

22 We next address the assignments of error set forth in the
23 petition.

24 FIRST ASSIGNMENT OF ERROR

25 Petitioners first assail the city's decision on grounds
26 that various aspects of the final order lack evidentiary

1 support. We find none of these challenges persuasive.

2 1. Conditions of Approval

3 As stated earlier, the city council concluded the proposal
4 would not adversely affect the liveability of the adjacent
5 residential area and was therefore consistent with the
6 governing policies in the comprehensive plan. However, in
7 response to concerns raised by opponents of the project, the
8 final order included a condition requiring the applicant to
9 work toward reduction of traffic impacts generated by the
10 proposed office use on local streets. Record at 8-9.
11 Specifically, programs to increase transit ridership and
12 ride-sharing were to be considered.³

13 During the council's hearing, petitioners claimed the
14 proposed condition would not be effective to protect the
15 neighborhood. The council, however, rejected this claim based
16 on testimony by its staff and the applicant's expert witness.
17 In this assignment of error, petitioners charge the city's
18 rejection of their position is unsupported by substantial
19 evidence.

20 Petitioners' challenge can be rejected on either of two
21 bases. First, the final order makes clear that the council
22 believed the proposal satisfied the applicable plan policies as
23 submitted, i.e., without the condition relating to transit
24 incentives. The order states:

25 "It should be emphasized that the evidence submitted
26 to the council indicates that the development of the
applicant's site and the resulting addition of 1,080

1 vehicle trips per day will not generate an
2 unacceptable level of traffic. The conditions imposed
3 by the council are designed to insure this remains the
4 case." Record at 67.

5 In other words, the condition is designed as additional
6 protection of the neighborhood but is not necessary for the
7 proposal to satisfy the approval criteria governing the
8 request. Given these circumstances, whether the condition and
9 the related findings are supported by substantial evidence is
10 of no consequence to the validity of the city's decision.

11 Second, assuming for the sake of argument that the city
12 could not impose the condition in question without substantial
13 evidence, there is ample evidence in the record, including
14 expert testimony, to warrant rejection of petitioners'
15 challenge. No purpose would be served by detailing that
16 evidence here. See, Braidwood v. City of Portland, 24 Or App
17 477, 480, 546 P2d 777 (1976); Earl v. McCarthy, 28 Or App 541,
18 544, 560 P2d 665 (1977); Pierron v. City of Eugene, 8 Or LUBA
19 115, 120-21 (1983).

20 2. Conflicting Testimony: The Substantial Evidence 21 Requirement

22 As noted earlier, conflicting expert testimony was received
23 by the council with regard to impacts the proposal would have
24 on traffic in the Corbett neighborhood. The conflict was
25 ultimately resolved in favor of the applicant's claim the
26 impacts would be insignificant. Petitioners argue, however,
that the city's determination is not based on substantial
evidence and that the final order does not adequately justify

1 rejection of the position they advocated.

2 The city's determination on the question of traffic impacts
3 must be sustained if it is based on substantial evidence, i.e.,
4 evidence a reasonable mind could accept to support the city's
5 conclusion. Braidwood v. City of Portland, supra. In applying
6 this standard, we may not reweigh the facts or substitute our
7 judgment for that of the local decisionmakers. Id.

8 The record in this appeal clearly contains evidence meeting
9 the above standard. The applicant's traffic engineering
10 expert, Mr. Buttke, provided extensive written and oral
11 testimony on the subject. His testimony was corroborated by
12 the city's Bureau of Traffic Engineering. The city council was
13 entitled to rely on the testimony of these experts and we are
14 bound by the findings predicated on that testimony. Valley &
15 Siletz Railroad v. Laudahl, 56 Or App 487, 491, 642 P2d 337
16 (1982) pet dismiss 296 Or 779 (1984); ORS 197.830(11).

17 The applicant's expert testified the proposal would add
18 about 1,080 vehicle trips per day to the area. Although some
19 of the added traffic would use local streets, the expert
20 calculated the streets could readily accommodate the increase.
21 This calculation was based on current and predicted traffic
22 volumes, which the expert showed would be consistent with a
23 subjective standard of "neighborhood liveability."⁴

24 Petitioners point out, and respondents apparently concede,
25 that the estimate in the final order of traffic increases on
26 two local streets (S.W. Texas and S.W. Florida) is based on

1 incomplete data. Evidently, the data set forth in a portion of
2 the order does not reflect current traffic counts on those
3 streets. However, we do not believe the omission undermines
4 the reasonableness of the city's ultimate determination. The
5 record contains other data concerning the capacity of the
6 streets to absorb the expected traffic increases.⁵ The data
7 reasonably supports the city's conclusion that the
8 "liveability" standard would not be exceeded. Accordingly,
9 substantial evidence supports the city's determination. ORS
10 197.835(8)(a)(C). Braidwood v. City of Portland, supra.

11 Petitioners also claim the city did not give sufficient
12 weight to traffic count data which conflicted with the data
13 presented by the applicant. In this argument petitioners cite
14 a study conducted by the Oregon Department of Transportation
15 (ODOT) showing higher traffic volumes on certain neighborhood
16 streets than are reflected in the report compiled by the city
17 and relied on by the applicant's expert. Petitioners assert we
18 should remand the decision because the city did not have a
19 rational basis for disregarding the ODOT data.

20 As noted earlier, we do not reweigh evidence in performing
21 our statutory review function. Land use cases frequently
22 involve factual disputes and debates over the proper
23 interpretation of the evidence. The task of resolving these
24 conflicts in evidence is to be performed by local
25 decisionmakers. Our function is to ascertain whether
26 substantial evidence supports the decision ultimately reached.

1 Christian Retreat Center v. Washington County, 28 Or App 673,
2 679, 560 P2d 1100 (1976) rev den 278 Or 553 (1977). As stated
3 in Homebuilders of Metropolitan Portland v. Metropolitan
4 Service District, 54 Or App 60, 62, 633 P2d 132 (1981):

5 "Where there is conflicting evidence based upon
6 differing data, but any of the data is such that a
7 reasonable person might accept it, a conclusion based
upon a choice of any of that data is, by definition,
supported by substantial evidence."

8 This characterization of the review standard is satisfied
9 here. Our examination of the record, including the ODOT study
10 cited by petitioners, convinces us the city reached a
11 reasonable conclusion with respect to the traffic issue.
12 Stated in other terms, the data relied on by petitioners,
13 though credible, does not so detract from the data relied on by
14 the city as to deprive the decision of reasonableness.⁶

15 3. Conflicting Testimony: The Findings Requirement

16 With respect to the adequacy of the findings, we note the
17 final order does set forth reasons why the council found the
18 testimony presented by opponents of the proposal unpersuasive.
19 Assuming, arguendo, that the substantial evidence requirement
20 obligates the city to formally respond to conflicting evidence,
21 Sane Orderly Development v. Douglas County, 2 Or LUBA 196, 206
22 (1981), we find the city's order adequate. The order discusses
23 the pertinent arguments presented by petitioners and reasonably
24 explains why the arguments were rejected.

25 More fundamentally, however, we do not believe the
26 substantial evidence requirement calls for adoption of the kind

1 of findings petitioners demand. As we have recently pointed
2 out, the substantial evidence rule directs the reviewing
3 tribunal (here, LUBA) to examine the record to determine
4 whether substantial evidence supports the challenged decision.
5 ORS 197.835(8)(a)(C). The statutory rule defines the scope of
6 our review; it does not require local decisionmakers to adopt
7 findings explaining the basis on which they resolved conflicts
8 in evidence. Ash Creek Neighborhood Association v. City of
9 Portland, LUBA No. 84-061, November 2, 1984, Slip Op. at 9-13;
10 Morse v. Clatsop County, LUBA No. 84-026, August 30, 1984, Slip
11 Op. at 7.⁷

12 We conclude the city's decision with respect to the traffic
13 impacts generated by the GK II proposal is supported by
14 substantial evidence. Accordingly, this assignment of error is
15 denied.

16 SECOND ASSIGNMENT OF ERROR

17 In this assignment of error petitioners claim the city
18 misconstrued provisions of the applicable neighborhood plan and
19 the comprehensive plan. They also claim inadequate findings
20 were made with respect to certain plan provisions. We find
21 none of these claims persuasive.

22 1. Policy B, Corbett-Terwilliger/Lair Hill
Neighborhood Plan

23 Policy B of the Corbett-Terwilliger/Lair Hill Neighborhood
24 Plan⁸ states:

25 "Reduce vehicular traffic through residential
26 neighborhoods.

1 "1. Intent. Improve the environment of the
2 residential neighborhood by lessening noise,
3 congestion, and air pollution caused by traffic.

4 "2. Reasons.

5 "A. Reinforce the public investment in
6 neighborhood rehabilitation.

7 "B. Encourage higher quality development in the
8 neighborhoods."

9 The city's order notes this policy is capable of two
10 understandings. The first construes the policy as a
11 prohibition of any development which increases vehicular
12 traffic in the residential area. The second interprets the
13 policy as a foundation for public improvements and related
14 actions (e.g., street closures) designed to reduce traffic
15 through the residential neighborhood. Record at 69.

16 The city rejected the first interpretation of Policy B as
17 impractical and inconsistent with the legislative history of
18 the neighborhood plan. That history indicated the council
19 intended the policy to discourage "through traffic" in
20 residential areas by channeling that traffic onto improved
21 thoroughfares.⁹

22 Although the second interpretation appeared to render
23 Policy B inapplicable to the privately-sponsored development
24 proposal under consideration, the council construed it to have
25 the following relevance:

26 "Based on the above the council finds that Policy B
has only limited applicability to the applicant's
proposal. Policy B was to be implemented by the
construction of public improvements to divert traffic

1 away from the residential neighborhood. Thus, the
2 focus of the council's inquiry under Policy B is
3 whether traffic generated by the applicant's proposal
4 will unnecessarily divert traffic into the Corbett
5 neighborhood and away from the public improvements
designed to carry out this policy. In effect, this
analysis involves an application of the balancing
approach used under Goal 6 and Policy 6.2 of the
comprehensive plan." Record at 72-73.

6 The GK II proposal was found consistent with this policy
7 interpretation because the proposal would (1) channel most
8 traffic onto the principal public improvement (Macadam Avenue)
9 in the area; and (2) have an insignificant traffic impact on
10 the nearby residential area. Record at 73.

11 Petitioners contend the city erroneously construed Policy B
12 of the neighborhood plan. They state:

13 "But Policy B contains very plain language, and the
14 most sensible interpretation is not presented or
15 considered. The most sensible interpretation of the
16 plain language would be similar to the directive with
17 which the Board remanded this proposal, i.e., the
18 combination of planning actions taken will improve
neighborhood liveability through reduction of traffic
and the balancing of tranquility and access. The
unambiguous language does not support the city's
interpretation." Brief of Petitioners at 21 (citation
omitted).

19 In effect, petitioners contend the policy authorizes the city
20 to take only those actions which (1) reduce traffic and (2)
21 balance the goal of neighborhood tranquility with the needs of
22 developers for site access. The city's final order endorses
23 the latter approach but rejects the former.

24 The policy in question is ambiguous. We do not read it to
25 constitute an absolute traffic reduction requirement as
26 petitioners assert. The intent of the policy is to improve the

1 residential environment by "lessening noise, congestion, and
2 air pollution caused by traffic." Application of the policy as
3 a means of balancing the negative impacts caused by private,
4 non-residential developments in the mixed use neighborhood with
5 the needs of those developments for site access is consistent
6 with other pertinent policies in the city's comprehensive
7 plan.¹⁰ The city's plan interpretation is reasonable¹¹ and
8 should be upheld. Fifth Avenue Corp. v. Board of County
9 Commissioners of Washington County, 282 Or 591, 599-901, 581
10 P2d 50 (1978).

11 Petitioners make one additional argument in connection with
12 Policy B of the neighborhood plan. They claim the city
13 considered only the issue of traffic congestion under the
14 policy, disregarding vehicular noise and pollution problems the
15 development might create in the neighborhood. Although the
16 final order does not specifically discuss Policy B in terms of
17 noise and air pollution, we agree with the city that specific
18 findings with respect to these concomitants of vehicular
19 traffic were not required.

20 As noted previously, the city's findings indicate the
21 project would generate an insignificant increase in traffic on
22 nearby streets, i.e., the standard of neighborhood liveability
23 would not be exceeded. There is substantial evidence in the
24 record to support this conclusion. See pages 10-11, supra.
25 The findings also indicate the project in question would not
26 alter the "level A" rating (relatively free flow of traffic) of

1 the affected streets. Record at 51-58, 73. We believe these
2 findings are adequate to demonstrate conformance with the
3 broadly worded policy in question.

4 Our decision is also supported by the fact the record does
5 not disclose testimony by opponents of the application focusing
6 on vehicular noise and pollution issues, as distinct from the
7 more general concern of increased street traffic. Findings
8 specifically addressing vehicular noise and pollution problems
9 were not required under these circumstances. Norvell v.
10 Portland Metropolitan LGBC, 43 Or App 849, 604 P2d 896 (1979);
11 Faye Wright Neighborhood Planning Council v. Salem, 1 Or LUBA
12 246, 252 (1980).

13 2. Arterial Streets Classification Policy

14 Petitioners next contend the city's decision violates the
15 city's Arterial Streets Classification Policy (ASCP).¹² They
16 claim the approved development will direct commuter traffic
17 onto streets (Neighborhood Collector and Local Service streets)
18 designed for less intensive use. Under the ASCP, Neighborhood
19 Collectors are designed to distribute traffic from a major
20 traffic street (here, Macadam Avenue) to the neighborhood and
21 to serve trips which both start and end within a neighborhood.
22 Record at 876. Local Service Streets are intended to serve
23 "local circulation, access and service requirements for
24 traffic, bicycle and pedestrian movements." Record at 877-88.

25 We agree with Respondents that petitioners read the ASCP
26 too narrowly, disregarding that the neighborhood includes both

1 residential and non-residential uses. As the city's brief
2 states:

3 "The principal flaw in the petitioners' argument is
4 that petitioners define the 'applicable neighborhood'
5 far too narrowly. Petitioners fail to recognize that
6 the Corbett, Terwilliger, Lair Hill Neighborhood is a
7 mixed use neighborhood, comprising both residential,
8 industrial, and commercial uses, and includes
9 properties in the Macadam Corridor.

10 * * *

11 "Nevada, California, Texas, Idaho, and Florida Streets
12 [Local Service Streets] will be used to some extent
13 for access to and from the GK II site, a use located
14 within the neighborhood. The office to be developed
15 on the GK II site will be located along a major city
16 traffic street (Macadam Avenue) and not on a local
17 service street. The additional traffic from the GK II
18 site will not travel more than one block west of
19 Macadam, will not exceed the carrying capacity of any
20 of the residential local service streets, will not
21 cause any of those streets to exceed the 1200 vehicle
22 trips per day, environmental liveability threshold and
23 will not alter the current level of service of any of
24 these streets." Brief of Respondent City of Portland
25 at 24, 28 (citations omitted).

26 We note also that the classifications established by the
ASCP do not establish any fixed limitation on types or volumes
of traffic, as petitioners seem to contend. An introductory
portion of the ASCP states:

"The classification system dictates what kinds of
traffic and transit use should be emphasized on each
street, and how future street improvements, projects
and private developments relate to those uses."
(emphasis added). Record at 872.

Accordingly, even if the streets in question are to be used for
purposes not entirely consistent with their ASCP
classifications, we do not believe the city's approval of the
GK II project must be overturned.

1 3. Findings Regarding Indirect Traffic Impact

2 Petitioners next contend the city failed to address an
3 issue pertinent to the question of traffic impact.
4 Specifically, they claim the council did not respond to
5 testimony that traffic generated by the GK II project would
6 congest certain key intersections in the Corbett area, causing
7 other commuter traffic to enter the neighborhood in search of
8 alternative routes. According to petitioners, this additional
9 traffic

10 "...will add to the traffic on neighborhood streets
11 above and beyond the site-generated traffic. The city
12 made no findings on this issue and did not consider
the impact of this through traffic on the Neighborhood
Collector Streets." Petition at 26.

13 We do not believe a specific finding on the point raised by
14 petitioners is required. As already noted, the city's order
15 sets forth a detailed evaluation of the overall capacity of
16 neighborhood streets to accommodate the traffic increases
17 caused by the project. The determination that the project will
18 not generate excessive neighborhood traffic is supported by
19 substantial evidence. The record does not disclose that
20 opponents of the project directed the city's attention to the
21 "indirect traffic impact" issue so as to require a formal
22 response. As we have stated on another occasion:

23 "The Board does not accept the proposition that every
24 issue or concern raised at a hearing on a land use
25 matter must be addressed by a local jurisdiction in
26 its findings. Formal issues and major relevant
concerns raised must be addressed in some fashion, but
not every assertion by a participant in a land use
decision warrants a specific finding.

1 "In the Norvell case cited by petitioners, the court
2 noted ' a good deal of focused evidence and
3 discussion' had occurred on a Goal 4 matter below.
4 The court, on the basis of that 'focused' discussion,
5 concluded a finding was necessary. Here petitioners
6 point us to no such 'focused' or major discussion
7 occurring below." Faye Wright Neighborhood Planning
8 Council v. Salem, 1 Or LUBA 246, 252 (1980) (emphasis
9 in original; citations omitted).

10 In addition to the above point, we note that petitioners
11 have not explained why a finding on the indirect traffic issue
12 would be critical to satisfaction of any approval criterion
13 governing the city's action. We will not speculate on the
14 relationship between issues raised at a hearing and the
15 governing approval criteria.

16 Petitioners' final claim in this assignment of error is
17 that the council's order does not balance competing interests
18 as the comprehensive plan requires, but instead "...gave the
19 short shrift to liveability and residential neighborhood
20 liveability issues and failed to improve access to Macadam
21 Avenue-Sites." Petition at 27. Although the claim is worded
22 in terms of the council's improper construction of Goal 6 and
23 Policy 6.2 of the comprehensive plan, the gist of petitioners'
24 complaint is that the council gave insufficient weight to
25 evidence the project would seriously interfere with
26 neighborhood liveability.

27 The record does not bear out this claim. The city
28 council's concern with balancing the goal of maintaining
29 neighborhood liveability and the developer's interest in

1 obtaining reasonable access to the site is reflected in the
2 extensive treatment of this issue in the final order. Record
3 at 46-73. We will not substitute our judgment for that of the
4 city council with respect to the ultimate conclusion of the
5 balancing analysis. The critical point for purposes of this
6 issue is that the required analysis was conscientiously
7 undertaken and the determination ultimately reached is
8 supported by substantial evidence.

9 Based on the foregoing, we deny the second assignment of
10 error.

11 THIRD ASSIGNMENT OF ERROR

12 Petitioners present two unrelated contentions in this
13 assignment of error. We find neither persuasive.

14 First, petitioners assert the city's decision violates
15 Statewide Goal 2 (Land Use Planning) because it does not
16 respond to their contention that transportation planning should
17 be completed before more non-residential traffic is introduced
18 in the area. They describe the city's action as an
19 "...abdication of the city's planning responsibilities, an
20 improper construction of applicable law and a failure to comply
21 with applicable law." Petition at 30.

22 This highly generalized attack cannot be sustained. We are
23 aware that the city's comprehensive plan has been acknowledged
24 by LCDC as in compliance with the statewide goals. Petitioners
25 have not explained why Goal 2 (or any goal)¹³ requires
26 completion of neighborhood transportation planning for the area

1 in question before site specific plan map amendments may be
2 approved.

3 Petitioners' second contention is that the city failed to
4 respond to evidence that traffic generated by the GK II
5 development would burden an already overburdened intersection
6 in south Portland - the intersection of Barbur Boulevard and
7 S.W. Hamilton Street. They insist a remand is in order as a
8 result of this deficiency in the findings.

9 We disagree. Petitioners have not explained why a finding
10 on this matter is a prerequisite to the city's approval of the
11 proposal. We will not speculate on the question. As we stated
12 in Dougherty v. Tillamook Co., ___ Or LUBA ___, LUBA No.
13 84-040, July 26, 1984:

14 "We believe it is unreasonable and unfair to insist
15 local decisionmakers attempt to 'cover the waterfront'
in making findings under such standards.

16 * * *

17 "We believe a reasonableness test should guide our
18 review of challenges to the scope of findings under
19 generally worded standards. The test is similar to
20 the test for substantial evidence in land use and
21 related contested cases. That is, we believe findings
are adequate in scope if they address facts and
circumstances a reasonable person would take into
account in concluding a generally-worded standard is
satisfied." Slip Op. at 17-18 (citations omitted).

22 The challenged order satisfies this standard. Petitioners have
23 presented no basis for a remand order directing the city to
24 address the project's relationship to the south Portland
25 intersection.

26 In conclusion, this assignment of error is denied.

1 FOURTH ASSIGNMENT OF ERROR

2 Petitioners next redirect our attention to the Traffic
3 Management Program outlined in a condition of the city's
4 decision. Here they assert the terms of the condition are
5 unduly vague. They cite the following provisions:

6 "If the Bureau of Traffic Management determines that
7 the applicant is not taking significant steps to
8 implement Condition 2 and/or that the applicant's site
9 is generating more than 1,080 vehicle trips per day,
10 the Bureau shall require the applicant to implement
11 additional traffic mitigation measures.

12 "If a Transportation Management Program is developed
13 for the entire Macadam Avenue Corridor, the applicant
14 will participate in this program and may be released
15 from the requirements specified in the conditions of
16 zone change approval." Record at 9.

17 Petitioners are correct that these conditions-subsequent
18 authorize the Bureau of Traffic Management to exercise
19 considerable discretion. However, they do not explain why this
20 circumstance warrants reversal or remand of the city's
21 decision. It is true that "conditions are not an adequate
22 substitute for findings." Rockaway v. Stefani, 23 Or App 639,
23 543 P2d 1089 (1975). As we noted earlier, however, the
24 conditions in question are not elements of the city's
25 application of the pertinent legal standards. The record shows
26 those standards were considered and found satisfied. See First
Assignment of Error, supra. In view of this fact, we find no
error in the council's delegation of discretion to the Bureau.

The fourth assignment of error is denied.

1 FIFTH ASSIGNMENT OF ERROR

2 The final assignment of error alleges that procedures
3 followed by the city in the preparation and adoption of the
4 final order violated Statewide Goal 1 (Citizen Involvement) and
5 comparable provisions of the city's comprehensive plan.¹⁴

6 The gist of the claim is that petitioners were not given
7 sufficient time (i.e., more than one week) to prepare a
8 response to lengthy findings drafted by the applicant's
9 attorneys. Petitioners claim the procedure

10 "...prejudiced the substantial rights of petitioners
11 because of petitioners' reliance on the city's
12 previous practice. Because the time allowed was so
short, petitioners could not prepare an adequate
response." Petition at 34.

13 We do not sustain this assignment of error. First, we
14 construe statewide Goal 1 and the generally-worded plan
15 policies cited by petitioners as measures calling for citizen
16 involvement in the planning (plan adoption/amendment) process.
17 See Rivergate Residents Assn. v. LCDC, 38 Or App 149, 154-55,
18 590 P2d 1233 (1979). The record shows there was ample
19 opportunity for citizen involvement in the process leading to
20 the city's decision. We do not regard the cited authorities as
21 due process standards governing post-hearing procedure in plan
22 amendment cases.

23 Second, even if the cited goal and plan policies entitled
24 petitioners to some involvement in the formulation and adoption
25 of the final order, we still have no basis on which to reverse
26

1 or remand this decision. Petitioners have failed to
2 demonstrate that a substantial right was prejudiced by the
3 procedure followed by the city. ORS 197.835(8)(a)(B). They
4 assert the prejudice standard is met in this case but they have
5 not explained the assertion. In the absence of demonstration
6 of prejudice to a substantial right, we have no basis on which
7 to grant relief. ORS 197.835(8)(a)(B); See also, Neuberger v.
8 City of Portland, 288 Or 585, 591, 607 P2d 722 (1980).

9 Base on the foregoing, the fifth assignment of error is
10 denied.

11 The city's decision is affirmed.¹⁵

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

FOOTNOTES

1
2
3 1
4 The Petition contains no specific allegations concerning
5 the standing of these petitioners. However, we note each is
6 included in the general allegation that all petitioners are
7 aggrieved and adversely affected by the city's decision, hold
8 positions on the facts rejected by the city and are threatened
9 with "loss of property value and personal, social and
10 neighborhood amenities due to the city's decision." Petition
11 at 7-8. Because the required allegation of appearance before
12 the local government has not been pleaded, however, we need not
13 discuss the sufficiency of these general allegations.

9 2
10 ORS 197.015(4) reads:

11 "Person" means any individual, partnership,
12 corporation, association, governmental subdivision or
13 agency or public or private organizations of any kind."

13 3
14 The programs included (1) provision of carpool spaces and
15 transit information on the site, employer-paid transit
16 subsidies, flex time work schedules and vanpool services.

16 4
17 The applicant's expert, whose experience in the field of
18 traffic engineering is extensive, testified as follows:

19 "Now, as Mr. Janik explained, that without this site,
20 when he summarized my analyses, the streets are
21 operating at a level service 'A' and with this
22 development they are still of a level service 'A'.
23 The local residential streets have a much higher
24 traffic carrying capacity than what is really
25 acceptable for a local residential street from an
26 environmental standpoint or livability standpoint.

23 "So, the profession has spent some time in the past 5
24 to 10 years trying to define -- to define what that
25 threshold level is where people start becoming annoyed
26 with the traffic and they actually notice that there
is traffic out in front of their street before where
they didn't, and when one has to start being careful
in crossing the street. You walk out of your house

1 and want to go visit a neighbor next door; you can
2 generally just walk across the street and not have to
worry about traffic.

3 "Some of the measurements that try to define what the
4 environmental capacity of a residential street is and
5 the threshold is quite varied. People have found it
6 is somewhere between 800 vehicles a day to 4,000
7 vehicles a day. There's no agreement on it. It's all
8 subjective, but what I wish to point out is that the
9 bottom level in one analysis was 800 a day. For about
10 15 years I've been using a level of 1200 per day and
11 have used it for writing in policy of transportation
planning for small cities. What this amounts to is
12 that the traffic after the project is developed on the
13 local residential streets is still well under the
14 lowest threshold volume considered acceptable for a
15 local residential street. Therefore, the additional
16 traffic on those streets by this building are not
17 going to have an adverse impact on local streets
18 because it's still below that threshold volume."
Record at 277-78.

12 We believe the city was entitled to endorse the expert's
13 attempt to quantify the liveability standard.

14 _____
5

15 The data was supplied by the applicant's expert, Mr.
16 Buttke, at the city council's hearing after our remand. Mr.
17 Buttke stated that the current peak hour traffic count on S.W.
18 Florida Street was 25. The figure was 5 on S.W. Texas Street.
Record at 276. He estimated the increases caused by the GK II
19 development on these streets to be 10 and 20, respectively.
20 Id. Mr. Buttke then added, "These are all very, very low
21 volumes." Id.

22 _____
6

23 For example, as the city's final order points out, the data
24 relied on by the applicant was collected over an extended
25 period, whereas the data cited by opponents of the proposal
26 (the ODOT study) was not. Record at 65. Further, the city was
justified in questioning the validity of the data relied on by
27 the opponents because no explanation of the manner in which
ODOT collected the data was presented.

28 _____
7

29 Petitioners correctly remind us that a number of our prior
30 decisions have indicated the substantial evidence rule requires

1 findings explaining the resolution of conflicting evidence.
2 See, e.g., Sane Orderly Development v. Douglas County, 2 Or
3 LUBA 196, 206 (1981). The authorities relied on in those
4 cases, however, do not support the requirement. Rather, they
5 reflect the idea that review for substantial evidence requires
6 the reviewing tribunal to consider the "whole record," i.e.,
7 evidence supporting and detracting from the conclusion reached
8 by the decisionmakers. See e.g., Universal Camera Corp. v.
9 NLRB, 340 US 474, 488 (1951). This is the approach we believe
10 appropriate under ORS 197.835(8)(a)(C).

11 We express no opinion on whether the findings requirement
12 asserted by petitioners can be traced to legal authority other
13 than ORS 197.835(8)(a)(C).

14 _____
15 8
16 Policy B is made applicable to this proposal by Policy 3.6
17 of the city's comprehensive plan which states:

18 "Maintain and enforce neighborhood plans that are
19 consistent with the comprehensive plan and that have
20 been adopted by the city council."

21 _____
22 9
23 For example, the minutes of one council hearing concerning
24 the policy contain the following comment by the mayor:

25 "I think the intent of this, and it probably should
26 appear in the record, is traffic that has no business
in the neighborhood but only wants to pass through
because it has to do that to get to a major arterial,
and I think this policy ends up being more explicitly
flushed out in recommended actions, and I think those
make it clear that it's through traffic that they're
aimed at, not the ones you're talking about." Record
at 902-903.

27 _____
28 10
29 For example, Goal 6 (Transportation) of the plan seeks:

30 "To promote an efficient and balanced Urban
31 Transportation System consistent with the Arterial
32 Streets Classification Policy, to encourage energy
33 conservation, reduce air pollution, lessen the impact
34 of vehicular traffic on residential neighborhoods and
35 improve access to major employment on commercial
36 centers." Quoted at Record, 871.

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

11

The interpretation is also in line with the legislative history of the plan policy, a circumstance which supports the result we reach.

12

The transportation goal of the city's comprehensive plan incorporates the ASCP as a plan element. Record at 871.

13

Goal 9 of the city's plan states:

"Improve the method for citizen involvement in the on-going land use decision-making process and provide opportunities for citizen participation in the implementation, review and amendment of the adopted comprehensive plan.

"Policy 9.3 of the city's plan states:

"Allow for the review and amendment of the adopted comprehensive plan which ensures citizen involvement opportunities for the city's residence, businesses and organizations."

14

Petitioners also rely on statewide Goals 11 and 12 in making this argument. However, their reference to these goals is too generalized to warrant specific discussion.

15

In an earlier phase of this appeal, we rejected petitioners' claim that a memorandum dated April 26, 1984 (the "Wentworth" memo) was part of the record. Petitioners subsequently moved for reconsideration of that ruling. We did not formally respond to the motion until today.

The motion for reconsideration is denied. The record does not indicate the memorandum was before the city during the proceedings in question. Indeed, we note the memorandum is dated after the date of the evidentiary hearing which formed the basis of the city's decision.

We note that our decision in this appeal would not be changed even if we considered the Wentworth memo part of the record.