

LAND USE
BOARD OF APPEALS

BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

JAN 7 3 57 PM '86

3	TERRY G. HANNON and ANDRE W. ISELI,)	
4)	LUBA No. 85-070
	Petitioners)	
5)	FINAL OPINION
	vs.)	AND ORDER
6)	
7	CITY OF GRESHAM and TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT)	
8)	
	Respondents)	

9 Appeal from City of Gresham.

10 Terry G. Hannon, Portland, filed the petition for review
11 and argued the cause on behalf of the petitioner. With him on
the brief were Maurer & Glazer.

12 Matthew R. Baines, Gresham, filed a response brief and
13 argued the cause on behalf of City of Gresham.

14 Dana A. Anderson, Portland, filed a response brief and
argued the cause on behalf of respondent, TRI-MET.

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

17 Affirmed 01/07/86

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

1 Opinion by Kressel

2 NATURE OF THE DECISION

3 The city approved an area accessory permit allowing
4 respondent TRI-MET to construct a light rail transit station
5 and park-and-ride lot near the Gresham City Hall. Petitioners
6 seek review of the portion of the permit authorizing the
7 park-and-ride lot.

8 FACTS

9 The park-and-ride lot is to be built on a three-acre parcel
10 in downtown Gresham, immediately south of the light rail
11 station. The lot will accommodate 285 vehicles.

12 The city's plan map designates the site "Transit
13 Development District." Area accessory developments, including
14 "transit facilities," are permissible in the Transit
15 Development District. The criteria for approval of area
16 accessory developments are set forth in the city's development
17 code.¹

18 Six members of the nine member Gresham Planning Commission
19 conducted a hearing on the permit application on June 11,
20 1985. At the conclusion of the hearing, a motion to approve
21 the permit resulted in a tie vote. The commission then voted
22 to continue the matter to enable the three absent planning
23 commissioners to review the record and participate in the
24 decision.

25 On June 25, 1985, the full planning commission took up the
26 permit request. The previously absent commissioners indicated

1 they had listened to the tapes of the June 11th hearing and
2 were familiar with the record. After discussion of the
3 application, the commission voted to approve the permit by a
4 six-to-three vote.

5 Petitioners appealed the planning commission's decision to
6 the City Council. The council heard the appeal based on the
7 record established before the planning commission. At the
8 conclusion of the hearing, the council affirmed the planning
9 commission's approval.

10 FIRST ASSIGNMENT OF ERROR

11 Petitioners allege the city misinterpreted the effect of
12 the planning commission's tie vote at the June 11th hearing.
13 Petitioners claim the deadlock on the motion to approve the
14 permit constituted denial by the commission and that the
15 subsequent proceedings were therefore a nullity.

16 We reject petitioners' procedural challenge. Assuming the
17 tie vote constituted denial of the permit,² the record
18 indicates that the commission took further action to keep the
19 matter within its jurisdiction. As noted, the tie vote was
20 followed by a motion to continue the matter to enable the
21 absent planning commissioners to participate in the final
22 decision. A fair construction of the motion, given the
23 surrounding circumstances, is that the previous decision was to
24 be reconsidered at a hearing of the full commission. We are
25 aware of no legal impediment to adoption of such a motion by
26

1 the planning commission. Its passage set the stage for the
2 hearing of June 25, 1985, at which the full commission voted
3 six-to-three to approve the permit.

4 Petitioners also claim the three absent planning
5 commissioners were disqualified from participating in the
6 decision on June 25th. The argument is that although the
7 commissioners reviewed the record, they did not have the
8 opportunity to see and assess the credibility of the witnesses.

9 Petitioners support this claim by citing a plan provision
10 governing voting by city council members and ORS 14.210(1),
11 governing the conduct of judges. However, neither authority
12 pertains to the issue here, viz; whether planning commissioners
13 not present when the record is made may participate in a land
14 use decision after reviewing the record. We find no error.

15 Petitioners also suggest that the absent commissioners were
16 incapable of rendering an impartial decision. However, their
17 argument is not supported by any specific facts showing
18 bias.³ A bias claim cannot be sustained without facts
19 clearly demonstrating the validity of the claim. Schneider v.
20 Umatilla County, ___ Or LUBA ___ (LUBA No. 83-091, 06/25/85).

21 The first assignment of error is denied.

22 SECOND ASSIGNMENT OF ERROR

23 Petitioners next contend the park-and-ride lot is not
24 permitted in the city's Transit Development District. The
25 district is intended to promote intensive land development, an
26 objective petitioners say is thwarted by allowance of a
Page three-acre parking lot in the city's core.

1 The parking facility is to be built in conjunction with the
2 City Hall light rail station. As noted, the development code
3 specifically authorizes approval of "Transit Facilities" in the
4 Transit Development District. The city's interpretation of
5 "transit facilities" to include the light rail station and the
6 ancillary park-and-ride lot is reasonable. Petitioners argue
7 in favor of a contrary interpretation, but their argument is
8 not persuasive. Given the express authorization of transit
9 facilities under the code, we reject petitioners' claim that the
10 park-and-ride lot is prohibited. Alluis v. Marion County, 64
11 Or App 478, 481, 668 P2d 1242 (1983).

12 THIRD ASSIGNMENT OF ERROR

13 Petitioners allege next that the city's final order does
14 not demonstrate how the park-and-ride facility complies with
15 Statewide Goal 12 (Transportation). In particular, petitioners
16 rely on a Goal 12 guideline requiring land adjacent to major
17 mass transit stations to be "managed and controlled so as to be
18 consistent and supportive of the land use and development
19 patterns identified in the Comprehensive Plan of the city."
20 See Statewide Planning Goal 12, Guideline 3. Petitioners'
21 argument is that by approving the parking facility, the city
22 disregarded the following strategy in it's comprehensive plan:

23 "The city shall accommodate light rail park-and-ride
24 users. The city shall seek to discourage the informal
25 overflow park-and-ride user in that they will detract
26 from the parking available to the central area patron,
resident, and employee. Any expansion of park-and-
ride facilities for the public transit user shall be

1 accommodated in satellite facilities outside the
2 central area." Transportation Policy I,
Implementation Strategy IV (emphasis added).

3
4 Respondents urge us to reject the goal violation charge on
5 grounds the city's plan has been acknowledged as in compliance
6 with the statewide planning goals. We agree the
7 acknowledgement takes the goals out of consideration in our
8 review of this land use decision. ORS 197.175(2)(d); Byrd v.
9 Stringer, 295 Or 311, 666 P2d 1332 (1983). However, we read
10 the petition also to allege a direct violation of the city's
11 acknowledged plan. Such an allegation is clearly cognizable in
12 this appeal. ORS 197.175(2)(d).

13 The plan strategy relied on by petitioners can be read to
14 support their claim. That is, the underlined portion of the
15 strategy may mean that any park-and-ride facility proposed
16 after adoption of the strategy must be located outside the
17 central area.

18 Respondents urge us to reject petitioner's reading of the
19 plan strategy. Their principal point is that the City Hall
20 Station and the adjacent park-and-ride facility were part of a
21 light rail alignment approved by the city in 1978, long before
22 the strategy relied on by petitioners was adopted. According
23 to the city, this history explains why the strategy does not
24 prohibit park-and-ride facilities in the central area, but
25 instead only directs that the expansion (i.e., increase in
26 number) of such facilities must be accommodated outside that
area.

1 The city's interpretation of the plan strategy is
2 reasonable. The record supports the interpretation by
3 indicating that a light rail alignment calling for a City Hall
4 Station and park-and-ride lot was approved in 1978.⁴ Under
5 the circumstances, we cannot agree with petitioners that the
6 plan strategy forbids approval of this transit-related
7 facility. Alluis v. Marion County, supra.

8 This assignment of error contains two additional claims.
9 The first charges that the city's order fails to contain
10 findings explaining the relationship between the proposal and
11 applicable criteria in the comprehensive plan. The charge is
12 worded in highly general terms and requires only a general
13 response. Our review of the city's final order indicates that
14 the city identified pertinent plan policies and evaluated the
15 proposal in terms of its conformance with those policies.

16 Petitioners do not claim any specific policy is violated or
17 that any pertinent facts were disregarded in the order. We
18 find no support for their vague charge that the city has
19 "thrown out" the development policies in the plan."

20 The final contention is that approval of the area access
21 permit violates Statewide Planning Goal 9 (Economy of the
22 State). As noted earlier, however, acknowledgement of the plan
23 by LCDC takes the statewide goals out of consideration in this
24 appeal. If petitioners' argument is that the city's decision
25 violates the acknowledged plan itself, the policies petitioners
26 cite do not support their claim. Aside from the strategy

1 calling for dispersal of park-and-ride facilities (see above
2 discussion), the plan provision brought to our attention by
3 petitioners is worded in highly general terms.⁵ We cannot
4 conclude that approval of the permit violates the plan.

5 The third assignment of error is denied. The city's
6 decision is affirmed.

FOOTNOTES

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The code authorizes the planning commission to approve area accessory developments. The commission's decision is subject to appeal to the City Council.

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The City maintains the tie vote had no legal effect. This is allegedly because the city code requires the planning commission to support permit decisions with findings of fact and conclusions of law, and the deadlock on the motion to approve the permit prevented adoption of such an order. The city argues that under the circumstances, the commission could disregard the deadlock and set the matter over for further proceedings. We need not address this contention because, as stated in our opinion, petitioners cannot prevail even if their contrary interpretation of the effect of the deadlock is correct.

3
The petition states:

"At least one of the missing plan commission members brought extraneous information to her part of the decision by talking to people about what kind of parking lot, if any, they wanted from TRI-MET. God only knows what the three missing members were told and by whom." Petition at 8.

The ex parte survey by the commissioner is not a ground for relief. Tierney v. Duris, 21 Or App 613, 627-29, 536 P2d 835 (1975). Petitioner's vague concern about "the three missing members" requires no response. See 1000 Friends of Oregon v. LCDC, 76 Or App 577, 581 ___ P2d ___ (1985).

4
The record includes a resolution adopted by the City Council in 1978. The resolution adopts, but does not describe, the so-called "Cleveland Alignment" for the light rail program in Gresham. However, another report in the record describes the alignment as including stations at City Hall, Gresham Central, and Cleveland Terminal. The report adds:

"The City Hall and Cleveland Terminal Station sites have Park-and-Ride lot size, provision for 'Kiss and

1 Ride' locations, bus transfer areas, and extensive
2 pedestrian facilites." Record at 21.

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4 5

5 The petition cites the following plan policy in support of
6 the statewide goal challenge:

7 "To the extent a local area can effect its own
8 development against the backdrop of larger, national
9 economic forces, it does so by carefully considering
10 its strong points and by encouraging the development
11 of businesses that can make use of those strong
12 points."
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