

JUN 3 7 03 PM '87

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

HILLSBORO NEIGHBORHOOD )  
DEVELOPMENT COMMITTEE, )  
J. MARK HUNT, KAREN DICKSON, )  
JOHN DICKSON, LARRY TERNUS, )  
BARBARA TERNUS, and )  
LYLE MCBROOM, )

LUBA No. 86-094

Petitioners, )

FINAL OPINION  
AND ORDER

vs. )

CITY OF HILLSBORO and REAL )  
PROPERTY RESOURCES, INC., )

Respondents. )

Appeal from City of Hillsboro.

Edward J. Sullivan and Mark J. Greenfield, Portland, filed the petition for review and argued on behalf of petitioners. With them on the brief were Mitchell, Lang and Smith.

Susan M. Quick, Portland, filed a response brief and argued the cause on behalf of Respondent Real Property Resources, Inc.

No appearance by the City of Hillsboro.

DuBAY, Chief Referee; BAGG, Referee; participated in the decision.

REMANDED

6/03/87

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

1 Opinion by DuBay.

2 NATURE OF DECISION

3 This is an appeal of an ordinance amending the city's  
4 comprehensive plan map by changing the designation of 11.67  
5 acres from medium density residential to commercial.

6 FACTS

7 The affected property, in combination with an adjacent 33.6  
8 acre parcel now zoned commercial, is proposed as the site of a  
9 350,000 square foot shopping center. The shopping center site  
10 is adjacent to the Tualatin Valley Highway (T-V Highway),  
11 although none of the 11.67 acre tract fronts the highway. Land  
12 to the north is zoned low density residential.

13 The plan amendment was approved by the planning  
14 commission. The city council adopted the planning commission's  
15 findings in the ordinance approving the plan change.

16 ASSIGNMENTS OF ERROR.

17 Petitioners assert three generally worded assignments of  
18 error. The Assignments of Error allege the decision: 1)  
19 violates the city's comprehensive plan and zoning code as well  
20 as statewide planning Goal 2; 2) is based on findings not  
21 supported by substantial evidence; and 3) is based on  
22 inadequate findings.

23 We divide petitioners' claims into three sections. The  
24 first considers petitioners' challenges to the city's findings  
25 that the proposed shopping center satisfies a public need.  
26 Second, we consider challenges related to several locational

1 criteria. Last, we take up petitioners' challenges related to  
2 traffic.

3 PUBLIC NEED

4 The relevant comprehensive plan map change criterion<sup>1</sup> for  
5 the 11.67 acres is:

6 "that a public need would be met by available property  
7 in the general area." Section 11-11.1(V)(B).

8 In addition, the plan's urbanization goal states that land use  
9 designations will be based on the need to

10 "[a]ssure efficient development of land consistent and  
11 compatible with the community's needs and resources."  
12 Section 11-11.2(I)(E), Hillsboro Comprehensive Plan.

13 The city found additional commercial land is needed for two  
14 principal reasons:

- 15 1) Consumers in the trade area need additional  
16 retail space.
- 17 2) Consumer spending outside the city by Hillsboro  
18 residents will be reduced.<sup>2</sup>

19 These findings are based on a consultant's report submitted by  
20 the applicant, referred to as the Hobson Report. Petitioners  
21 fault the Hobson Report on the grounds it is based on erroneous  
22 assumptions, the supporting data is deficient and has been  
23 manipulated, the methodology is flawed, and the conclusions are  
24 unwarranted. We will discuss these claims in turn.

25 A major deficiency with the Hobson Report, according to  
26 petitioners, is the use of data associated with the  
requirements for a regional shopping center to justify a  
community shopping center. Petitioners claim the proposal has

1 all the characteristics of a regional shopping center rather  
2 than a community shopping center as referred to in the findings  
3 and in the Hobson Report. This distinction affects the  
4 validity of the Hobson Report, petitioners claim, because the  
5 the report is based on data from the larger region to justify a  
6 shopping center that will serve a smaller area, the  
7 community.<sup>3</sup>

8 The different shopping center types are not described in  
9 the city's planning documents. They are described in the  
10 Shopping Center Development Handbook published by the Urban  
11 Land Institute.<sup>4</sup> According to the Handbook, the typical  
12 community shopping center ranges in size from 100,000 to  
13 300,000 square feet; covers 10-30 acres; serves a supporting  
14 population of 40,000 to 150,000 within 10-20 minutes driving  
15 time; has a primary trade area of 3-5 miles; and includes a  
16 junior department store or a large variety discount store as  
17 its leading tenant. The typical regional shopping center  
18 ranges in size from 300,000 to 900,000 square feet; occupies  
19 10-60 acres; serves a population of 150,000 or more within 20  
20 minutes driving time; has a primary trade area of eight miles,  
21 and has one or more full line department stores as leading  
22 tenants. Record at 438.

23 Petitioners contend that in all but one category (leading  
24 tenants), the facts indicate that the proposed shopping center  
25 will be a regional center. Therefore, according to  
26 petitioners, the report should have analyzed a larger primary

1 trade area which would have included other regional shopping  
2 centers. Petitioners allege analysis of the larger area would  
3 disclose a greater supply of retail space serving Hillsboro  
4 customers than found in the Hobson Report.

5 The city addressed the issue and found:

6 "The Commission finds that according to the Urban Land  
7 Institute 'Community Shopping Center Guide' whether a  
8 shopping center is community or regional is not  
9 dependent solely on the size of the center, rather it  
10 depends on the type of major tenants. The type of  
11 tenants in a community center include hardware stores,  
12 garden and building supplies, variety stores and  
13 furniture stores. In a regional center, one normally  
14 finds full-line department stores which will not be  
15 located at this center. Therefore, the Commission  
16 finds that it is reasonable to identify the type of  
17 center proposed as a 'community shopping center' as  
18 opposed to a 'regional' center, such as the 1.3  
19 million square foot Washington Square." Record at 31.

20 To make this finding, the city was able to rely on the  
21 following testimony of the economist who prepared the Hobson  
22 Report:

23 "In the industry we define a shopping center by what  
24 it does not how big it is. To support this idea let  
25 me just quote from an authoritative source that both  
26 sides have relied on during these hearings which is  
the Urban Land Institute. And in their shopping  
center Handbook they say 'the major tenant  
classification, that is what the anchors are,  
determines the type of shopping center. Size alone is  
inadequate in defining shopping centers since it  
implies a direct correlation between center size,  
tenants and functions served.' So what defines a  
community center. The Urban Land Institute goes on to  
say 'a community shopping center can largely be  
defined by what it does and does not have. It offers  
greater depth and range of merchandise and shopping of  
specialty goods (than) in the neighborhood center. It  
also tends to provide certain categories of goods that  
are not likely to be found in regional centers such as  
furniture stores, hardware stores, garden and building  
supplies.(') And when you look at the retail mix that

1 (is) contemplated by Real Property Resources, the  
2 anchors include a variety store, building materials  
3 store, perhaps an off-price realtor, perhaps a family  
4 clothing store and certainly no full line department  
store." Testimony of Doug Anderson, August 26, 1986,  
Planning Commission Hearing, at App-14 of respondents'  
brief.

5 Although the application does not clearly identify the  
6 stores that will anchor the shopping center, a reasonable  
7 person could rely on the above testimony by the applicant's  
8 consultant to conclude that a community shopping center is  
9 proposed. Braidwood v. City of Portland, 24 Or App 477, 546  
10 P2d 777 (1976). We do not accept petitioners' argument that  
11 the Hobson Report is based on an erroneous classification of  
12 the shopping center.

13 The Hobson Report identified the primary trade area for the  
14 shopping center by using demographic data provided by  
15 Metropolitan Service District and standard methods for  
16 computing driving times. Record at 363. The primary trade  
17 area west of the site is within 12 minutes drive time, and the  
18 area east is within 6-7 minutes drive time. See, App- 17,  
19 respondents' brief. The report notes that the greatest share  
20 of recurring sales will come from this primary trade area.

21 Two secondary trade areas are also identified in the  
22 report. The largest extends west and northwest from the  
23 primary area, and the smaller extends east towards Beaverton.  
24 The secondary east area is smaller to reflect the greater  
25 competition in that direction. The secondary east area is  
26 within 7-12 minutes drive time from the site, and the secondary

1 west area is within 12-20 minutes driving time. The economic  
2 consultant testified that a small but regular patronage of the  
3 shopping center can be expected from these secondary areas.  
4 App-17, respondents' brief.

5 We reject petitioners' claim that designation of the trade  
6 areas in the Hobson Report is not supported by substantial  
7 evidence. As noted above, the evidence shows the trade area  
8 boundaries are based on driving times to the proposed site.

9 We cannot say that the contours of the primary and  
10 secondary trade areas established in the report by analyses of  
11 driving times and other demographic data is not credible  
12 evidence for the reasons advanced by petitioners. As we held  
13 above, the classification of the proposed shopping center as a  
14 community center is warranted by the evidence. The driving  
15 time contours are based on the distance from the site and not  
16 on distance from the central business district. The  
17 designation of the trade areas based on factors described in  
18 the Hobson Report is plausible and sufficient to support a  
19 conclusion acceptable to a reasonable mind. Braidwood v. City  
20 of Portland, supra.

21 The report in part measures public need by comparing the  
22 supply and demand for retail stores within the trade areas.  
23 The consultants used a different method to inventory the supply  
24 and demand in the secondary areas than the method used for the  
25 primary area to reflect less use by more distant customers.  
26 For example, all household retail expenditures by residents in

1 the primary trade area were considered in the demand  
2 computations while household retail expenditures by residents  
3 of the secondary areas were discounted. On the supply side,  
4 100% of the retail space in the primary trade area was  
5 inventoried, but the amount of retail space in the secondary  
6 areas was discounted.

7 Petitioners charge that the Hobson Report grossly  
8 manipulates the supply and demand data by these discount  
9 methods. To illustrate, petitioners point out:

10 "Hobson discounts Fred Meyer(Cornelius) by 50%,  
11 although that store is within Hillsboro's primary  
12 trade area (as identified in the 1981 study) and well  
13 within five miles of the site. R 435. Hobson also  
14 discounts K-Mart (6.7 miles from the site) by 50%, but  
15 discounts Tanasbourne (7.6 miles away) by only 10%."  
16 Petition at 34.

17 In addition, petitioners allege the method of discounting is  
18 not adequately explained.

19 If petitioners contend an expert witness must explain the  
20 basis for all assumptions that underlie the expert's evidence,  
21 we are cited no authority to sustain this claim. The  
22 substantial evidence standard in ORS 197.830(11) requires only  
23 that the supporting evidence must be seen as adequate by a  
24 reasonable person. Braidwood v. City of Portland, supra. We  
25 test the evidence, including the merits of the discounting  
26 methods, by this standard.

27 The author of the Hobson Report testified that discounting  
28 the amount of retail expenditures from distant (secondary)  
29 areas was based on guidelines developed by the International



1 Council of Shopping Centers. See, App-18 respondents' brief.  
2 The report discounts the retail expenditures from the east and  
3 west secondary areas by one-half (Table 4, Record at 368) and,  
4 in the alternative, by two-thirds (Table 3, Record at 367).  
5 The report notes that discounting by one-half is "in line with  
6 usual analyses." Record at 369. After discounting retail  
7 expenditures from the secondary areas, the retail expenditures  
8 were converted to estimates of the amount of retail space  
9 necessary to serve demands of trade area residents. Depending  
10 upon which discount factor is used, either two-thirds or  
11 one-half, the report estimated a need for 1.782 to 2.02 million  
12 square feet of retail space.

13 On the supply side of the equation, the amount of existing  
14 retail space in the secondary areas was discounted on a  
15 different basis than the method described above. The same  
16 discount factors (one half and two thirds) were used to  
17 discount individual stores in the secondary areas, but another  
18 method was used to inventory retail space in shopping centers  
19 in the secondary areas. The report states:

20 "However, retail trade centers which are some distance  
21 removed from the trade area under study cannot fully  
22 serve the trade area; they serve only a portion of the  
23 demand. The portion of the trade area which they  
24 actually serve must be estimated, converted into  
square footage, and added to the inventory of space  
which is wholly within the trade area. This process  
is technically known as 'partitioning' the floor area  
of retail centers." Record at 372.

25 The Hobson Report's author, Mr. Anderson, testified that in  
26 the secondary trade area, the amount of retail space in

1 shopping centers considered as part of the supply inventory is  
2 less than the total space in such shopping centers. The total  
3 space is reduced by a ratio based on a comparison of trade  
4 areas.<sup>5</sup> The ratio segregates, or partitions, the portion of  
5 the total retail space in the existing shopping center  
6 available to residents in the secondary trade area.

7 These explanations are reasonable. The report and the  
8 testimony state the basis for and the method used to calculate  
9 consumer demand and retail supply in the defined trade areas.

10 The described method of partitioning to determine discount  
11 percentages is a reasonable explanation of the discounting  
12 method for shopping centers in the secondary areas. We deny  
13 petitioners' claim that the Hobson Report is not substantial  
14 evidence because the discounting was inconsistent and arbitrary.

15 Petitioners also allege the Hobson Report inaccurately  
16 tallies the existing supply of retail services in the area. As  
17 noted above, the Hobson Report establishes need for additional  
18 retail space by comparing demand and supply of retail services  
19 in the primary and secondary market areas. Petitioners claim  
20 the Hobson Report understates the amount of existing retail  
21 space. In addition, petitioners say the Hobson Report is not  
22 reliable because no inventory of specific stores is included,  
23 and only totals are reported.

24 The Hobson Report states retail space was physically  
25 inventoried in each retail site and facility in an area roughly  
26 equivalent to the trade area. The boundaries of the area were

1 described. Record at 372. Tables in the report show totals of  
2 retail space inventoried and adjustments to the totals by  
3 discounting as above described. Since two discount factors  
4 were applied, the adjusted totals of retail space range between  
5 1.17 million and 1.19 million square feet.

6 Petitioners advance several reasons why the inventory is  
7 inaccurate. However, their arguments are based on a comparison  
8 with an inventory prepared by opponents and submitted to the  
9 city. At bottom, petitioners ask us to find their evidence  
10 more credible than the evidence relied upon by the city. That  
11 is not our function. The city found the Hobson Report more  
12 credible than petitioners' inventory. That is within the  
13 city's power. We find the consultant's statements that a  
14 physical inventory was taken and retail space calculated to be  
15 credible evidence. The city was entitled to rely on it.

16 Columbia River Television v. Multnomah County, 14 Or LUBA 179  
17 (1986); aff'd, 78 Or App 669, 716 P2d 264 (1986).

18 The Hobson Report calculated an existing unmet demand for  
19 retail floor space of roughly 600,000 to 825,000 square feet.  
20 Record at 384. An estimated additional 1.5 to 1.8 million  
21 square feet of retail space will be needed by the year 2005.  
22 These figures are recited in the report to show a shortfall of  
23 retail space will persist for twenty years. Record at 30. The  
24 projection of future demand is based in part on estimates of  
25 future population and employment projections.

26 The city relied on population and growth projections of

1 Metropolitan Service District (Metro), which in turn relies  
2 upon the Center for Population Research and Census of Portland  
3 State University. In 1985, these sources predicted a compound  
4 rate of growth of 2.96% between 1985 and 2000 in the Hillsboro  
5 planning area. Record at 248.

6 Petitioners challenge the validity of these projections,  
7 claiming they are based on outdated information. To make this  
8 claim, petitioners rely on evidence presented by them that:

- 9 1) Since 1982 the growth rate for Hillsboro and  
10 Washington County has been only 1.17% and 1.07%  
per year respectively.
- 11 2) One major employer in the local high technology  
12 industry has laid off 3,000 workers, and another  
announced it would lay off 2,000; and
- 13 3) A Labor Economist for the State of Oregon  
14 Employment Division opined that the growth  
15 experienced in the area in 1980 is ended and will  
not return. He also said statistical projections  
based on 1981 data are not reliable. Record at  
166-167.

16 The city found the 1985 growth rate projections made by  
17 Metro applicable. Petitioners contradicting evidence was  
18 rejected. Record at 15.

19 We are bound by the city's finding if it is supported by  
20 substantial evidence in the whole record. ORS 197.830(11).  
21 Petitioners claim that the Metro projections are not  
22 substantial evidence only because their conflicting evidence  
23 undermines the Metro data. However, we believe Metro's  
24 projections, made only two years ago, are credible. The  
25 projections are not less than substantial evidence on the sole  
26

1 basis that other believable conflicting evidence is in the  
2 record. Homebuilders v. Metro Service District, 54 Or App 60,  
3 633 P2d 1320 (1981).

4 Petitioners evidentiary challenge to the population and  
5 growth findings is denied.

6 Last, petitioners attack the findings that public need will  
7 be met by the ability of the proposed shopping center to reduce  
8 spending by local residents outside the Hillsboro trade area.

9 The city found that the level of sales dollars leakage was  
10 37% of total expenditures, a level higher than desirable to the  
11 city. Based on the Hobson Report, the city says the size and  
12 configuration of the proposed shopping center is dictated by  
13 several factors discussed below, including changing  
14 merchandising methods that require larger shopping centers and  
15 larger anchor stores in any retail complex. The city also  
16 found: 1) the drawing power of a shopping center is generally  
17 directly related to the strength and composition of the city's  
18 anchor retailers and the size of the center; 2) the trend in  
19 shopping center development is larger anchor stores with a  
20 number of smaller tenants, and 3) the site is not configured to  
21 accommodate this type of development.

22 This explanation reasonably addresses the public need  
23 criterion. We have no basis to reverse or remand the decision  
24 for this exercise of the city's logic. While petitioners  
25 complain that the change of plan designation on the 11.67 acres  
26 may have only a small direct effect on leakage, the city views

1 the plan change as necessary to enable construction of the  
2 shopping center of sufficient size and design. We reject  
3 petitioner's claim that the city must apportion the center's  
4 ability to reduce leakage among each square foot of retail  
5 space in the proposed center.

6 We deny petitioners challenges to the city's findings that  
7 a public need exists for the proposed change.

8 LOCATION CRITERIA

9 Petitioners allege the city's plan change must be  
10 consistent with regional plans because the proposed shopping  
11 center is regional. According to petitioners, the city failed  
12 to explain how the new shopping center is consistent with  
13 regional planning that considers other shopping center  
14 development outside the city.

15 This challenge re-asserts petitioners' claim that the city  
16 failed to evaluate a regional shopping center. We reject this  
17 challenge. The city circulated the application to affected  
18 governmental units to invite comment. Nothing more is  
19 required. Rajneesh v. Wasco County, 13 Or LUBA 202 (1985).  
20 Petitioner has cited no legal precedent for enlarging the  
21 city's coordination responsibilities because the proposal,  
22 entirely within the city, is expected to draw customers from  
23 outside the city.

24 Petitioners next allege a shopping center of the size  
25 proposed can be built without changing the plan designation of  
26 the 11.67 acre parcel. According to petitioners, under

1 existing zoning regulations the 33.6 acre parcel can be more  
2 intensively developed than proposed.<sup>6</sup> They allege additional  
3 land is not needed to accommodate a 350,000 square foot  
4 shopping center. Petitioners add that no evidence supports the  
5 finding that the site without the 11.67 acres is too long and  
6 narrow to be workable for a community shopping center.

7 While a different design of a community shopping center is  
8 possible, the city had before it general design sketches of a  
9 one story center with buildings set back from the street and  
10 with parking uniformly spread along the highway in front. See  
11 Ex. 41. The city also found the 11.67 acre parcel is not  
12 reasonably suited for multi-family residential use in  
13 accordance with existing zoning. See discussion below. In  
14 addition, there was testimony that the 33 acre parcel is too  
15 narrow in the middle section to construct a shopping center  
16 with three or four anchor tenants as proposed. Transcript of  
17 Aug. 26, 1986, Planning Commission hearing, App-5 respondents'  
18 brief. These design considerations are the city's  
19 justification for finding the 33 acre parcel is not by itself  
20 suitable for development of the kind of shopping center  
21 desired.

22 We find the analysis is reasonable. As noted elsewhere in  
23 this opinion, the city based its finding that more land for  
24 retail development is needed on other factors. Petitioners  
25 cite no authority for their proposition that all available land  
26 must be developed at the most intensive permissible level

1 before adding new land to the commercial inventory. Their  
2 claim of error on this ground is rejected.

3 Petitioners also challenge the city's finding that no other  
4 adequate parcel already zoned commercial is available for the  
5 proposed use. Petitioners say the city erred by examining only  
6 alternative sites in the Hillsboro area. According to  
7 petitioners, the city should have looked at a larger geographic  
8 area because the shopping center will have regional impacts.

9 We reject this claim for the reasons set forth above  
10 regarding petitioners' claim that the proposal is for a  
11 regional shopping center. In addition, we reject the claim for  
12 another reason. The city based its conclusion that the  
13 proposed shopping center at the particular location is needed  
14 to reduce consumer spending by residents outside the local  
15 area. Obviously, a shopping center outside the local area  
16 would not serve the same purpose. The city was not required to  
17 consider the alternative of locating the proposed shopping  
18 center at the Tanasbourne Town Center as petitioners insist.

19 We turn next to petitioners' challenge to the finding that  
20 the 11.67 acre tract is not reasonably suited for the uses for  
21 which it is presently designated. The plan change criterion  
22 addressed by the challenged finding states:

23 "Where a specific parcel of property is involved, it  
24 is necessary for the applicant to show . . . that the  
25 property is not reasonably suited for uses under the  
present plan designation . . . ." Section  
11-11.1(V)(B), Hillsboro Comprehensive Plan.

26 The city found: 1) multi-family uses "immediately adjacent



1 to commercial use creates a conflict of potentially  
2 incompatible uses in this case without adequate buffering"; 2)  
3 the swale at the northeast edge of the tract would act as a  
4 natural buffer between the shopping center and residential  
5 property to the east; and 3) access to the tract if used for  
6 residential purposes would be difficult.<sup>7</sup>

7 Petitioners allege the findings of potential conflicts are  
8 conjectural. According to petitioners, the criterion requires  
9 a finding that conflicts will exist because adequate buffering  
10 cannot occur. Petition at 12. Petitioners also contend the  
11 findings about access to the 11.67 acre parcel are inadequate  
12 and not supported by the evidence.

13 Respondents answer these allegations by pointing out that  
14 the parcel is three times as long as it is wide, and  
15 residential development would abut commercial development along  
16 the long western side of the property. Although man made  
17 buffering is possible along this boundary, respondents contend  
18 it is more reasonable to take advantage of the natural swale  
19 for a buffer between residential and commercial uses.

20 Respondents note the criterion does not require the city find  
21 it impossible to use the site for residential use, only that  
22 the site is not reasonably suited for such use. Respondents  
23 also contend the city properly considered access to the 11.67  
24 acres, either through the shopping center to T-V highway or  
25 through the swale, as a constraint rendering the site  
26 unsuitable for residential uses.

1 Respondents' argument is the more persuasive. The  
2 criterion calls for some exercise of discretion by the city.  
3 We see nothing in the plan change standard precluding the city  
4 from taking account of the topographical features, adjacent  
5 commercial development, and local street patterns to evaluate  
6 whether the site is reasonably suitable for residential use.  
7 Where each of these factors indicate a problem to be overcome  
8 if the property is to be used for residential purposes, and no  
9 similar problems will be associated with commercial  
10 development, we cannot say the city's conclusion is  
11 unreasonable. Petitioners' interpretation that the criterion  
12 requires findings that residential use is technically  
13 infeasible or financially impracticable is rejected. Petitioners  
14 challenge to the findings on this issue is denied.

15 TRAFFIC ISSUES

16 The Hillsboro comprehensive plan includes the following  
17 policies:

18 "The city shall design, adopt and implement a  
19 comprehensive transportation system which:

20 (1) Is designed to serve traffic volumes and  
21 traffic patterns generated by various urban activities.

(2) Is not hazardous, overly congested or unable  
to function adequately because of abutting land uses  
which attract traffic.

\* \* \*

22 (4) Provides residential living areas or  
23 business centers with high levels of pedestrian  
traffic from being disrupted.

24 (5) Provides adequate capacity for traffic  
25 generated by major commercial centers, places of  
employment and transportation facilities."

Comprehensive Plan Section 11-11.13(III)(A)

26 The comprehensive plan also includes the following

1 implementation measure:

2 "Land use actions which would create substantially  
3 higher traffic volumes than were assumed in the  
4 development of the Transportation Maps shall be  
5 evaluated. Land use actions which would exceed the  
6 street capacities of the Transportation Maps shall not  
7 be allowed unless the maps and other applicable  
8 ordinances are first amended." Comprehensive Plan  
9 Section 11-11.13(VII)(A).

10 Petitioners first allege the decision violates Section  
11 11-11.13(VII)(A), last quoted above. The city's transportation  
12 maps, according to petitioners, show the street capacity of T-V  
13 Highway is either 35,000 or 42,000 average daily trips(ADT).  
14 The applicant's traffic study shows 42,620 ADT on T-V Highway  
15 by 2005. Petitioners claim this evidence is proof that the  
16 highway's capacity will be exceeded in violation of the plan  
17 policy.

18 Resolution of this claim requires that we determine what  
19 the city's transportation maps show respecting the capacity of  
20 T-V Highway.

21 The city's comprehensive plan includes three transportation  
22 maps. Section 11-11.14(I), Hillsboro Comprehensive Framework  
23 Plan. One map, entitled "YEAR 2000 TRAFFIC," shows "36,000" on  
24 T-V Highway adjacent to the proposed shopping center. A second  
25 map, entitled "STREET PLAN," is coded to show streets as  
26 arterials or collectors, and the street standard designation  
for the streets shown.<sup>8</sup> The street standard for T-V Highway  
is shown as "E." The E designation is for streets designated  
as arterials. Section 11-11.13(VII)(M)5, Hillsboro

1 Comprehensive Plan. The plan has five categories of streets.  
2 Standards are described for each category. The carrying  
3 capacity, stated as the maximum number of vehicles per day, are  
4 stated in the standards for Local Residential Streets,  
5 Residential Collector Streets, and Collector Streets. The  
6 standards for Arterial Streets do not include any maximum  
7 vehicles per day limitation.<sup>9</sup>

8 These standards, which are designated on the plan's  
9 transportation maps by notation of the street type, do not show  
10 the capacity of T-V Highway as petitioners contend. Indeed,  
11 the plan maps and standards do not show any capacity  
12 limitations for arterial streets. Accordingly, we deny  
13 petitioners' claim the decision violates the capacity  
14 limitation shown on the plan's transportation maps.

15 Petitioners next allege the applicant's traffic evidence  
16 was based on erroneous assumptions about the amount of traffic  
17 that would be added to local streets by the proposed shopping  
18 center. In particular, petitioners say the assumption that the  
19 center would generate vehicle trips at the rate of 49.7 trips  
20 per 1000 square feet of gross leasable area is too low.  
21 According to petitioners' theory, the expert should have used a  
22 rate of 50.1 per 1000 square feet, the same ratio that was used  
23 in a traffic report prepared for the city in 1979.<sup>10</sup>

24 Applicant's traffic consultant justified selection of the  
25 49.7 rate on the ground that the rate was derived from a  
26 publication of the Institute of Traffic Engineers (ITE). The

1 consultant's report notes that the publication relied upon is  
2 the accepted resource by the City of Hillsboro, Oregon  
3 Department of Transportation, Washington County, Metro and all  
4 other jurisdictions in Oregon that utilize transportation  
5 planning. Record at 295. The report also states that the 49.7  
6 rate is comparable to the 50.1 rate used in the previous  
7 traffic report to the city.

8 Petitioners sole reason for challenging the rate used in  
9 the consultant's report is its inconsistency with the 1979  
10 traffic report to the city. This is not enough to convince us  
11 that the report relied upon by the city is not substantial  
12 evidence. The report's explanation that the selected rate is  
13 based on data published by a recognized authority, which is  
14 included in the consultant's report, is a reasonable basis to  
15 support the conclusion about the appropriate rate. Petitioners  
16 claim that the trip generation rate assumptions from the  
17 shopping center are in error is denied.

18 Petitioners also challenge the consultant's trip generation  
19 projections for a portion of the property that is not proposed  
20 for use as a shopping center. Applicant's traffic report notes  
21 that the application proposed construction of an elderly care  
22 center on a portion of the site, but whether the property would  
23 be put to that use is uncertain. These doubts prompted the  
24 consultant to increase the estimated traffic generated from  
25 this portion of the site by assuming 55,000 square feet of  
26 office space would be constructed. Record at 313.

1           Petitioners claim the assumption made in the report that  
2 office space will be developed is not certain, and other more  
3 intensive uses may be constructed. Petitioners point to  
4 evidence in the record that office space will generate one  
5 fourth to one fifth of the average daily traffic generated by  
6 medical offices, a permitted use in the commercial zone. See,  
7 Record at 142.

8           Respondents argue that this assumption is warranted because  
9 the present zoning limits the site to office use only.  
10 However, respondents cite only to the traffic report itself as  
11 evidence of this limitation in the zoning ordinance. As we  
12 read the zoning ordinance, no such limitation exists. Existing  
13 C-1 zoning allows more uses than office spaces. 1000 Friends  
14 of Oregon v. LCDC (Lane County), 83 Or App 782, \_\_\_ P2d \_\_\_  
15 (1987). See, Section 11-6.64, Hillsboro Zoning Ordinance.

16           We agree with petitioners claim that no basis exists to  
17 assume development on the five acres in question will generate  
18 traffic at the rate assumed in the report. Respondents cite to  
19 no evidence of applicant's plans for this site. Present  
20 commercial zoning on this portion of the site will permit uses  
21 generating traffic in far greater amounts than assumed in the  
22 applicant's traffic report. In these circumstances, we cannot  
23 second guess what the expert's opinion would be if the  
24 assumption were different. We conclude this aspect of the  
25 report is not substantial evidence supporting the city's  
26 conclusions about traffic impacts. See, Confederated Tribes v.

1 Wallowa County, 14 Or LUBA 92 (1985).

2 Petitioners allege the traffic report fails to include  
3 traffic generated from a residential area described in an  
4 earlier traffic report submitted by the applicant. The earlier  
5 report, dated May, 1986, showed 1500 vehicle trips per day  
6 originating from the residential area. This load on the street  
7 system was not mentioned in the later traffic report dated  
8 August, 1986. Petitioners say this omission results in an  
9 under-estimation of traffic impacts.

10 We disagree. The May, 1986, report explains traffic  
11 impacts were originally prepared for a 95.52 acre development  
12 that included single family residential units on 50.25 acres.  
13 The report states that the housing development was later  
14 eliminated from the development proposal. Record at 719. The  
15 application for the plan change is based solely on commercial  
16 development of the 45.27 acre site. Record at 789. The August  
17 traffic report was submitted to identify traffic impacts  
18 associated with the 45.27 acre development proposal only.  
19 Record at 289. We do not find that omission of traffic data  
20 related to future development not before the city for  
21 consideration affects the believability of the evidence in the  
22 May, 1986, report. We deny this claim.

23 Petitioners next allege no substantial evidence supports  
24 the report's assumption and the findings that trip generation  
25 estimates may be reduced 6% to account for non-vehicular trips  
26 to the shopping center. Petitioners contend trip generation

1 estimates based on ITE data already account for non-vehicular  
2 trips, and to deduct for them is "double counting." Petition  
3 at 51.

4 The report states:

5 "The excellent bus transit service provided along TV  
6 Highway, the close proximity of residential areas to  
7 the proposed center, and the proposed pedestrian and  
8 bicycle facilities serving the site will allow future  
9 users of the center to leave their autos at home.

10 "A three(3) percent reduction in the trips generated  
11 by the site was made to reflect patron usage of the  
12 Tri-Met bus service. A three percent reduction is  
13 consistent with the METRO transit usage estimates for  
14 general shopping trips in the Hillsboro area. With  
15 the Tri-Met route number 57, the major east-west  
16 transit trunk line, providing service on TV Highway  
17 the 3% transit usage is probably conservative for this  
18 site.

19 "An additional 3% reduction in the trips generated by  
20 the site was made to account for the close proximity  
21 of the site to the residential neighborhoods.  
22 Pedestrian and bicycle facilities along Cypress Street  
23 and 32nd Avenue will provide easy access for  
24 pedestrians and bicyclists." Record at 296-297.

25 The report also states the reduction is consistent with the  
26 factors used in the METRO regional transportation modeling and  
the East Hillsboro Transportation Study.

The ITE publication on which the report bases its trip  
generation estimates notes that the high cost of motor fuels,  
public transportation ridership and ride sharing programs may  
change the trip generation rates. The publication states the  
trip generation rates may be modified to reflect expected  
changes in public transportation, ride sharing, and the amount  
of walk-ins or the use of bicycle trips. Record at 338.<sup>11</sup>



1           The ITE trip generation manual does not include any  
2 specific adjustment for mode of transportation. As we  
3 understand the issue, adjustments are discretionary with the  
4 traffic engineer. The applicant's traffic engineer set forth  
5 the basis for reducing the ITE rates, i.e. ready access to a  
6 major Tri-Met bus line, the nearness of residential areas, and  
7 bicycle and pedestrian facilities. Use of similar deduction  
8 methods in other traffic studies is also reported. This  
9 explanation reasonably supports a conclusion that the deduction  
10 for non-vehicular traffic is warranted. Petitioners' claim to  
11 the contrary is denied.

12           We also do not accept petitioners' argument challenging the  
13 assumption that 35% of the site generated trips will drop in  
14 from existing traffic on adjacent streets. Petitioners contend  
15 this assumption in the traffic report is invalid because it  
16 conflicts with other studies of traffic in the Portland area  
17 showing drop-in traffic rates of 17% and 25%.

18           The applicant's traffic report estimates 65% of traffic  
19 generated by the proposed shopping center will be added to  
20 adjacent streets. The report bases this assumption on the  
21 function of T-V Highway as the primary link between the cities  
22 of Cornelius, Forest Grove, Hillsboro and Beaverton and its  
23 heavy use for shopping trips. Record at 314. The report also  
24 notes that ITE data shows about 50% of the trips generated at  
25 new shopping centers will be new trips on the adjacent  
26 streets. This basis for the report's assumption about

1 additional traffic is not unreasonable. See, Columbia River  
2 Television v. Multnomah County, 14 Or LUBA 179 (1986); aff'd,  
3 78 Or App 669, 716 P2d 264 (1986).

4 Petitioners last challenge attacks the findings that the  
5 predicted level of service (LOS) at the intersection of T-V  
6 Highway and Cypress Street is acceptable under the city's  
7 street standards.<sup>12</sup>

8 The city adopted the following finding:

9 "Goal 13 policies state that the transportation system  
10 should be designed to facilitate safe and efficient  
11 traffic flow based upon convenience, comfort, income,  
12 time and cost considerations. The Planning Commission  
13 finds that this policy is met because all  
14 intersections affected by the proposal will operate at  
15 a level of service D or better up through the year  
16 2005. The Commission finds that the only exception to  
17 this is that the intersection of Cypress and T.V.  
18 Highway which will operate at a borderline level of  
19 service D/E. The Commission finds that this level of  
20 service would be reached with or without the project.  
21 The Commission finds that it is acceptable level of  
22 service before year 2005 because the long range  
23 planning projections allow for borderline situations  
24 due to the many assumptions that must be used in long  
25 range traffic projections." Record at 60.

18 The levels of service summary in the applicant's traffic  
19 report show the intersection of Cypress and T-V Highway now  
20 experiences D level of service which will not change after the  
21 proposed development. The summary also shows the intersection  
22 will experience level of service D/E, with a volume to capacity  
23 ratio of 0.92, in the year 2005, whether the proposed  
24 development is constructed or not.

25 The findings are adequate to meet the challenge. As we  
26 read the city's comprehensive plan, it includes no specific

1 level of service standard as a prerequisite for approval of  
2 development. Neither does it prohibit development that  
3 contributes vehicle traffic to an intersection predicted to be  
4 at unacceptable levels of service eighteen years in the  
5 future. The findings recognize the level of service will not  
6 be affected by the proposed development. The comprehensive  
7 plan standards are adequately addressed.

8 The evidence supporting the findings on this issue is  
9 credible. Petitioners claim is denied. Homebuilders v. Metro  
10 Service District, 54 Or App 60, 633 P2d 1320 (1981).

11 The decision is remanded.  
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FOOTNOTES

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4 The city's comprehensive plan has provisions for both  
5 major and minor changes. The city determined the  
6 redesignation of the 11.67 acres is a minor change.  
7 Petitioners do not challenge this determination in this  
8 appeal.

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11 The city also found the following needs will be  
12 satisfied by meeting local area retail demand and by  
13 recapturing leakage of retail dollars away from the city:

- 14 "(a) The need to provide shopping closer to home for  
15 Hillsboro residents;  
16 "(b) The need to centralize shopping opportunities in  
17 the City of Hillsboro;  
18 "(c) The need to provide economic stimulus . . . to  
19 existing downtown businesses;  
20 "(d) The need to provide jobs for Hillsboro residents; and  
21 "(e) The need to increase investment of capital  
22 expenditures in the City of Hillsboro." Record at 22.

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25 Petitioners also allege other errors arising from the  
26 city's characterization of the regional shopping center as  
27 a community center. Petitioners claim the city's  
28 comprehensive plan has no policies permitting a regional  
29 center, that no regional coordinatdion preceded the  
30 decision, and that the city failed to take into account  
31 the current and future expansion of another competing  
32 shopping center, Tanasbourne Town Center. For the reasons  
33 set forth above, we deny these claims.

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36 Information from the Shopping Center Development  
37 Handbook is extracted at Record 438.

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40 The ratio is obtained by comparing the size of the  
41 entire trade area of the existing shopping center with the  
42 portion of that area within the secondary trade area being  
43 evaluated.

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2 The code permits up to 60% lot coverage and  
3 multi-story development not exceeding 35 feet high.  
4 Hillsboro Zoning Ordinance, Section 58-59.

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5 Although the 11.67 acre parcel is adjacent to Cypress  
6 Avenue, access from this location would require use of  
7 cul-de-sacs longer than permitted by the city's code. The  
8 city found the most likely access would be to and from the  
9 Tualatin Valley Highway, a solution deemed undesirable for  
10 multi-family residential use, according to the findings.

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10 The third transportation map in the comprehensive plan  
11 shows the existing and proposed bikeway system for the  
12 city. This map is not an issue.

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13 The standards for Arterial Streets do provide that  
14 when street volume is forecast to between 18,000 and  
15 32,000 vehicles per day, certain minimum construction  
16 standards apply. Section 11-11.13(VII)(M)5.

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17 Petitioners allege the 1979 report by Carl Buttke,  
18 Inc. is part of the Hillsboro comprehensive plan.  
19 However, the city's framework comprehensive plan does not  
20 incorporate the Buttke Report. We see no basis for  
21 considering the report, and any traffic generation rates  
22 used in its preparation, as part of the city's plan.

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21 The ITE publication also notes that the amount of  
22 non-vehicular travel may be associated with the purpose of  
23 the trip and suggests adjustments to the rates in the  
24 report be made by trip purpose to reflect changes in the  
25 travel mode. No specific basis for making adjustments to  
26 the published rates are recommended, however.

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26 Levels of Service (LOS) are terms for expressing the  
qualitative measure of various factors which influence  
traffic operations. The applicant's traffic report

1 explains use of the terminology as follows.

2 Six levels of service have been established and are  
3 designated by the letters A through F, providing the  
4 best to worst service in terms of driver  
5 satisfaction. For signalized intersections, the level  
6 of service is generally evaluated in terms of an  
7 equivalent range of a quantitative measure, the  
8 volume/capacity ratio. The level of service D, with a  
9 corresponding v/c ratio range of 0.8 - 0.9, or better  
10 is the desired level of service for design by ODOT and  
11 the City of Hillsboro. For unsignalized intersections,  
12 the level of service is evaluated in terms of reserved  
13 capacity at each approach to the intersection. The  
14 level of service E, with a corresponding reserve  
15 capacity 0 to 10 vehicles is acceptable for the minor  
16 street approaches, if signal warrant conditions are  
17 not met." Record at 303.

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