BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

KELLOGG LAKE FRIENDS, an Oregon Non-profit Corporation, Petitioner, v. CITY OF MILWAUKIE, Respondent, and FIRST WESTERN SERVICE CORPORATION, Intervenor-Respondent.	LUBA No. 88-022 FINAL OPINION AND ORDER

Appeal from the City of Milwaukie.

Robert C. Shoemaker and Robert H. Thompson, Portland, filed the petition for review. With them on the brief was Lindsay, Hart, Neil & Weigler. Robert C. Shoemaker argued on behalf of petitioner.

Greg Eades, Milwaukie, filed a response brief and argued on behalf of respondent.

Mark J. Greenfield and Edward J. Sullivan filed a response brief. With them on the brief was Mitchell, Lang & Smith. Mark J. Greenfield argued on behalf of intervenor-respondent.

SHERTON, Referee; BAGG, Chief Referee; HOLSTUN, Referee; participated in the decision.

AFFIRMED 06/24/88

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

Opinion by Sherton.

NATURE OF THE DECISION

Petitioner appeals an order of the Milwaukie City Council approving a conditional use permit, Willamette River Greenway permit and transitional area review for an apartment complex on 8.3 acres adjoining Kellogg Lake.

MOTION TO INTERVENE

First Western Service Corporation moves to intervene on the side of respondent City of Milwaukie (city) in this proceeding. There is no opposition, and we allow the motion.

FACTS

Intervenor-respondent First Western Service Corporation (respondent) proposes to construct 88 units of a planned 248-unit apartment complex on 8.3 acres of an 18-acre parcel located between Kellogg Lake and McLoughlin Boulevard. The 8.3 acres are within the Milwaukie city limits. The remaining 9.7 acres, for which 160 units are planned, are located in unincorporated Clackamas County (county). The appealed order approves only the portion of the project located within the city.

The city's comprehensive plan (plan) and land use regulations were acknowledged by LCDC on February 6, 1981. The city approved annexation of the 8.3 acres on May 18, 1982. On June 1, 1982, the city adopted Ordinance 1523 changing the plan map designation for the 8.3 acres from the county's Medium Density Residential, Open Space/Resource Protection to the

city's Medium-Density Residential and rezoning the property from the county's Medium Density Residential (MR-1) to the city's Residential Zone R-3.

On March 10, 1988, after the city council's hearing on respondent's application closed, petitioner learned that no notice of the 1982 amendment to the acknowledged plan and zoning ordinance maps had been given to the Department of Land Conservation and Development (DLCD). The city was informed of petitioner's discovery on March 14, one day before it was scheduled to adopt its decision and findings. At the March 15 city council meeting, respondent presented a proposed addendum to the findings addressing the Statewide Planning Goals (goals), and petitioner submitted a letter responding to the proposed findings and addendum. Petitioner requested orally and in its letter that the city council either deny the application or obtain expert legal advice on this issue. The city council proceeded to adopt the appealed decision, including respondent's proposed addendum to the findings.

FIRST ASSIGNMENT OF ERROR

> "The Milwaukie City Council Erred in Applying the Milwaukie Comprehensive Plan and Land Use Regulations to the Application Instead of the Clackamas County Comprehensive Plan and Land Use Regulations."

According to petitioner, at the time of the 1982 city plan/zone map change for this property, ORS 197.615(1)(1981)[1] required a local government to notify the DLCD director of adopted amendments to its acknowledged plan or land use

regulations. Petitioner claims that because the city never notified the DLCD director of its 1982 plan/zone map change for the subject property, those map changes are not acknowledged.

Petitioner argues that under ORS 197.625(2)(1981) a post-acknowledgment plan or regulation amendment is considered acknowledged only if, after the required notice of the adopted amendment is given to the DLCD director, 30 days pass without an objection or appeal to LCDC being filed.[2] Petitioner contends that ORS 197.605 to 197.635(1981) prescribe a process in which post-acknowledgment plan amendments are initially screened by DLCD and then, if objected to by DLCD or persons with standing, are reviewed by LCDC. Petitioner maintains it was not the intention of the 1981 legislature to allow total avoidance of this review process because of failure to notify the DLCD director of a post-acknowledgment plan amendment.

Respondent does not deny that the DLCD director was not notified of the 1982 plan/zone map change affecting the subject property. However, respondent disagrees that the consequence of such failure is that the 1982 plan/zone map amendment is "unacknowledged."

Respondent contends that this 1982 decision was not an amendment to an acknowledged plan or land use regulation to which the post-acknowledgment process of ORS 197.605 to 197.635(1981) applied. Respondent argues that the substitution of a city's plan/zone designations for a county's plan/zone designations following annexation is not a post-acknowledgment

amendment subject to ORS 197.605 to 197.635(1981), if the uses authorized for the subject property and previously acknowledged by LCDC do not change.

Respondent also contends that the 1982 change from county to city plan/zone designations was "pre-authorized and pre-acknowledged (i.e., acknowledged before the fact)" in that LCDC previously acknowledged the applicable city and county plan and ordinance provisions (including the Coordination & Dual Interest Area Agreement). According to respondent, these provisions leave the city with no discretion as to the city plan/zone designations it must apply to such property after annexation. Respondent's Memorandum at 6-7. Respondent argues that such a pre-authorized amendment raises no goal compliance issues and therefore was acknowledged upon its adoption. Respondent maintains the legislature did not intend that LCDC engage in a meaningless act of "reacknowledging" decisions it already preauthorized.

Before reviewing the substance of this assignment of error, we consider whether petitioner may raise goal compliance issues in its appeal of the city's 1987 land use action. We conclude that it may not.

ORS 197.605 to 197.635(1981) are silent as to the effect of local government failure to give the notice to parties and the DLCD director required by ORS 197.615(1) and (2). However, in construing the similar statutory provisions in effect after the 1983 amendments,[3] the Court of Appeals held:

> "We agree with LUBA that the legislature intended to make the running of the time for filing a notice of intent to appeal under ORS 197.830(7) contingent on the giving of notice to an appealing party who is entitled to notice under ORS 197.615(2). * * * "

Ludwick v. Yamhill County, 72 Or App 224, 229-230, 696 P2d 536, rev den 299 Or 443 (1985). Thus, the court held that the "21-day period set out in ORS 197.830(7)" for appealing to LUBA does not expire until 21 days after the appealing party has been given the notice required by ORS 197.615(2).[4] However, the 21-day period for initiating an appeal of a post-acknowledgment amendment to LUBA is not stayed if the petitioner himself cannot claim statutory entitlement to notice of the decision.[5] Ore. State Homebuilders Assoc. v. City of Medford, 15 Or LUBA 410 (1987).

We believe the 1981 post-acknowledgment amendment statute was analogous to the 1983 amended version in that the legislature did not intend the opportunity of a citizen to file an objection, or of the DLCD director to file an appeal, to LCDC to be lost becaose of failure to give a statutorily required notice of the local government decision. Thus, under the 1981 statute, the running of the 30-day period for filing objections or appeals is contingent upon the objector or director being given the notice required by ORS 197.615(1981).

However, in this case, petitioner does not claim it was entitled to notice of the 1982 decision under any provision of ORS 197.615(1981).[6] Therefore, as to petitioner, the 30-day period for filing objections to LCDC has long since expired.

ORS 197.625(2)(1981) provides that if no appeal or objection is filed under ORS 197.620(1981), an amendment to an acknowledged comprehensive plan or land use regulation shall be considered acknowledged upon expiration of the 30-day appeal period. As no objection or appeal of the 1982 decision has been filed under ORS 197.620(1981),[7] and any right petitioner may have had to object to the decision has expired, petitioner cannot claim in this proceeding that the 1982 plan/zone map amendment is "unacknowledged." To interpret the 1981 statute to allow petitioner to do so would produce an illogical result in that petitioner would be allowed to make a collateral attack where petitioner has no right to make a direct challenge.

Because we conclude petitioner may not question, in this appeal, whether the city plan and zone designations applied to the site are acknowledged under ORS 197.625(2)(1981), we do not reach petitioner's and respondent's arguments regarding the consequences in this appeal of the 1982 decision being "unacknowledged."[8]

The first assignment of error is denied.

SECOND ASSIGNMENT OF ERROR

A. Substantial Evidence

> "The City Council's Finding That the Site Was Sufficiently Stable to Support the Proposed Project Without Risk of Landslide is not Supported by the Evidence."

Section 6.01.2.d of the city's Zoning Ordinance (ZO) requires an applicant for a conditional use permit to

demonstrate that the proposed use satisfies the following criterion:

> "The characteristics of the site are suitable for the proposed use considering size, shape, location, topography, existence of improvements and natural features."

Petitioner argues that the following finding addressing the above-quoted criterion is not supported by substantial evidence in the whole record:

> "We heard testimony from a soils engineer and a geologist that this site is suitable for this development, and we accept that testimony."

Record 61. Petitioner argues that a review and comparison of the testimony of soils engineer Lane and geologist Schlicker, on which the city relied, against the countervailing testimony of geotechnical engineer Wright and geologists Deacon and Redfern, demonstrates that the challenged finding is not supported by substantial evidence as described in Younger v. City of Portland, 305 Or 346, ___ P2d ___ (1988).

Petitioner contends that Lane's soils reconnaissance of the site was not designed to determine landslide potential, but rather was only a preliminary investigation conducted to make recommendations on techniques to mitigate the risk of slope failure due to weak foundation soils. Petitioner argues that the testimony of Wright, Deacon and Redfern indicates there are a number of active or recent landslide areas on the site, and these hazardous conditions could become worse if the proposed development were permitted. Petitioner argues that Schlicker's

testimony also indicates a risk of slope failure, and Schlicker did not conclude that the site is suitable for development at the proposed scale.

Respondent notes that the city's findings on ZO 6.01.2.d specifically incorporate other findings on related standards. Respondent identifies additional findings which it argues are relevant to the issue of landslide potential and were not challenged by petitioner.[9] Respondent concedes that the Lane testimony does not address the landslide potential of the site. However, respondent contends that a reasonable person could rely on the testimony of Schlicker alone, as he is a recognized authority in the field. According to respondent, his oral and written rebuttal testimony adequately addressed and rebutted landslide issues raised by petitioner and he concluded that the site's topography is adequate to accommodate the proposed development.

We are authorized to reverse or remand the order approving the proposed development if the city made a decision not supported by substantial evidence in the whole record. ORS 197.835(8)(a)(C); Sellwood Harbor Condo Assoc. v. City of Portland, ___ Or LUBA ___ (LUBA Nos. 87-079 and 87-080; April 1, 1988). A petitioner challenging local government findings as unsupported by substantial evidence must demonstrate that the challenged findings are essential to the county's decision. See Bonner v. City of Portland, 11 Or LUBA 40, 52 (1984).

In this case, respondent argues that the city finding specifically challenged and cited in the petition for review is not essential to the city's determination of compliance with ZO 6.01.2.d because there are other findings in the decision which are adequate by themselves to support such a determination.

Petitioner clearly challenges the evidentiary support for the finding that the applicant's soils engineer's and geologist's testimony are credible and sufficient to establish that the site is suitable for the proposed development. This finding is stated in summary form at Record 61 and is cited in the petition. It appears in more detailed form at Record 24-26. These findings are not cited in the petition. However, we do not find petitioner's failure to cite the findings at Record 24-26 determinative as these findings, although more elaborate, are in substance the same as the finding petitioner did cite in its petition.

We therefore will proceed to determine whether the city's determination that the site is topographically suitable for the proposed development is supported by substantial evidence. Substantial evidence is evidence which a reasonable mind could accept as adequate to support a conclusion. Braidwood v. City of Portland, 24 Or App 477, 480, 546 P2d 777, rev den (1976). We must determine whether, in light of all the evidence in the record, the city's conclusion is reasonable. Younger v. City of Portland, 305 Or at 360.

The landslide potential of the site is the only issue raised by petitioner with regard to the site's topographical suitability. The city relies entirely on the oral and written testimony of geologist Schlicker. Petitioner does not challenge Schlicker's qualifications as an expert. Therefore, we determine whether Schlicker's testimony is evidence a reasonable mind could accept as adequate and, if so, whether the testimony of petitioner's experts so detracts from the weight of or undermines the credibility of Schlicker's testimony as to render it not substantial. See Universal Camera Corp. v. Labor Bd., 340 US 474, 488, 71 S Ct 456, 95 L Ed 456 (1951); Sane Orderly Development v. Douglas County Bd of Comm'rs, 2 Or LUBA 196, 206 (1981).

Part of Schlicker's testimony was a response to the studies performed by Wright/Deacon and Redfern. For example, with regard to landslide problems identified by Redfern, Schlicker stated:

> "Site appears normal with minor slope hazards for the slope angle and type of material. Landsliding is not obvious in most of the site. Potential slides can be investigated and either corrected or avoided" (emphasis added). Record 151.

Schlicker agreed with Redfern that further geological investigation of the site is needed, but concluded that the results of such investigation would not significantly affect the proposed development:

> "A further investigation may identify some geologic conditions that may result in some minor changes. However, those changes are unlikely to affect the

scale or general location of the development" (emphasis added). Record 152.

In other words, Schlicker concluded the site is suitable for the proposed scale and location of development.

In response to the Wright/Deacon observations of slopes, scarps, tilted trees, a sag pond and other features typical of landslide conditions, Schlicker wrote:

> "There may be several areas within the site containing disturbed slopes, but it does not appear to be a critical factor.
>
> "Curved trees appear to be in the minority and not necessarily the result of landslide." Record 153.

Schlicker also testified orally that the alleged sag pond actually is a "plunge pool," which is not a landslide feature, and refuted other landslide concerns raised by petitioner's witnesses. Transcript of Testimony, Respondent's Brief App-28 to App-33.

Schlicker also testified that some additional geologic exploration would be advantageous to identify the depths to basalt and gravel, so that building foundations can be designed in advance of construction and foundation excavation, but stated that the results of such investigation "would not affect the locations or the site plans." Id. at App-33.

Thus, Schlicker's testimony rebuts the landslide concerns expressed by Deacon/Wright and Redfern and is a basis on which a reasonable mind could conclude that the subject site is topographically suitable for the proposed development. The

city's determination of compliance with ZO 6.01.2.d is supported by substantial evidence.

This subassignment of error is denied.

B. Condition Requiring Geological Reconnaissance

> "It Was Improper to Approve the Application on Condition That a Geologic Reconnaissance be Performed and its Findings and Recommendations Provided to the City's Staff."

The city adopted the following condition as part of its decision:

> "The Applicant shall have a professional geologist perform a detailed geological reconnaissance of the site and provide Staff with findings and recommendations. The report shall include any modifications to the soils report that are deemed appropriate. Prior to issuance of a building permit, Staff shall ensure that development is consistent with the recommendations set forth in the geology and soils reports." Record 75.

Petitioner argues that if the city's determination of compliance with ZO 6.01.2.d is not supported by substantial evidence, as contended in subassignment A above, this deficiency is not cured by the above-quoted condition. However, since we concluded under subassignment A above that the city's determination of compliance with ZO 6.01.2.d is supported by substantial evidence, we need not address this subassignment further.

This subassignment of error is denied.

The second assignment of error is denied.

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THIRD ASSIGNMENT OF ERROR

> "The City Council Erred in Considering Only the Evidence Submitted by the Applicant in Finding that Access to the Site from McLoughlin Boulevard was Acceptable from a Safety Standpoint."

Petitioner states that ZO 6.02.8[10] requires the city to consider street access in acting on a conditional use permit application for multi-family dwellings. According to petitioner, city residents expressed great concern in the proceeding below regarding the safety of allowing access from a 248-unit apartment complex onto a crowded, high-speed thoroughfare without a traffic light. Petitioner contends there is no indication in the minutes of the city council's deliberations or in the city's findings that the council considered this testimony.

Petitioner therefore claims the city council erred in not considering and weighing in its deliberations the evidence on both sides of the issue, which petitioner asserts is required by Younger v. City of Portland, 15 Or LUBA 210 (1987). Petitioner also argues the city's findings on street access are not supported by substantial evidence because they rely entirely on the evidence of respondent's expert and the Oregon Department of Transportation (ODOT) and ignore the contrary evidence presented.

Respondent argues that Younger does not require a local decisionmaker to identify, in its findings, the evidence in the record on both sides of an issue.[11] According to respondent,

the city is only required to identify in its findings the facts it believes and the reasons it determined those facts satisfy the applicable criteria. ORS 227.173(2).

A local government is required to consider and weigh evidence on both sides of the issues before it, Younger v. City of Portland, 15 Or LUBA at 216-217. However, we are unaware of any legal requirement that this consideration must be reflected in the minutes of the decisionmakers' deliberations or in the findings adopted.[12] We will not assume that the city failed to consider all the evidence in the record because it did not mention all the evidence expressly in its deliberations or findings.

With regard to the city's findings on street access, petitioner claims these findings are not supported by substantial evidence only because they do not discuss conflicting evidence and explain why the city did not believe the evidence submitted by petitioner. However, ORS 227.173(2) only requires a local government decision on a discretionary permit to be based upon a statement of the facts relied upon in making the decision. There is no legal requirement that a local government address in its findings conflicting evidence upon which it chooses not to rely.[13] See Ash Creek Neighborhood Ass'n v. City of Portland, 12 Or LUBA 230, 236-238 (1984).

The third assignment of error is denied.

The city's decision is affirmed.

FOOTNOTES

1 Oregon Laws 1981, chapter 748, sections 3 to 6, established a process for the adoption by local governments and appeal to LCDC of amendments to acknowledged comprehensive plans and land use regulations. This law was codified at ORS 197.605 to 197.635. The relevant portions of this law provided:

> "197.615 (1) A local government that amends an acknowledged comprehensive plan or land use regulation or adopts a new land use regulation shall mail or otherwise submit to the director a copy of the adopted text of the comprehensive plan provision or land use regulation together with the findings adopted by the local government. The text and findings must be mailed or otherwise submitted not later than five working days after the final decision by the governing body. * * *
>
> "(2)(a) Not later than five working days after the final decision, the local government also shall mail or otherwise submit notice to persons who:
>
> "(A) Participated in the proceedings leading to the adoption of the amendment to the comprehensive plan or land use regulation or the new land use regulation; and
>
> "(B) Requested of the local government in writing that they be given such notice.
>
> "(b) The notice required by this subsection shall:
>
> " * * * * *
>
> "(D) Explain the requirements for the submission of written objections to the director under ORS 197.620.
>
> "(3) Not later than five working days after receipt of an amendment to an acknowledged comprehensive plan or land use regulation or a new land use regulation submitted under subsection (1) of this section, the director shall notify by mail or other submission any persons who have requested notification. The notice shall:

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"(a) Explain the requirements for the submission of written objections;

"(b) State the deadline by which objections must be received by the director and the local government;

" * * * * *

"197.620 (1)(a) Persons who participated either orally or in writing in the local government proceedings leading to the adoption of an amendment to an acknowledged comprehensive plan or land use regulation or a new land use regulation may mail or otherwise submit written objections to the director and the local government not later than 30 days after the date of the final decision by the local government.

" * * * * *

"(2) Not later than 30 days after the final decision by the local government to adopt an amendment to an acknowledged comprehensive plan or land use regulation, the director may file an appeal of the amendment or new land use regulation with the commission if the department participated either orally or in writing in the local government proceedings leading to the final adoption.

" * * * * *

"197.625 * * *

"(2) If no appeal or objection is filed under ORS 197.620, the amendment to the acknowledged comprehensive plan or land use regulation or the new land use regulation shall be considered acknowledged upon the expiration of the 30-day period following the decision by the local government. The director, upon request, shall issue certification of the acknowledgment after the expiration of the 30-day period.

" * * * * * * "

In 1983, the legislature changed the above process to provide for appeal of adopted post-acknowledgment amendments to LUBA, repealing ORS 197.605, 197.630 and 197.635 and amending ORS 197.610 to 197.625. Or Laws 1983, c. 827, sec. 7 to 10. Therefore, when referring infra to provisions of ORS 197.605 to 197.635 as they existed prior to the 1983 amendments, the statutory citation will be followed by "(1981)".

[2] Petitioner also argues that there are significant differences between the original county plan/zone provisions regarding natural hazards, open space and natural areas and those applied by the city in 1982 - so that proper notification of the plan/zone change might have resulted in an objection or an appeal to LCDC.

[3] After the amendments enacted by Oregon Laws 1983, chapter 827, sections 7 to 10, the relevant portions of ORS 197.610 to 197.625 provided:

> "197.615 (1) A local government that amends an acknowledged comprehensive plan or land use regulation or adopts a new land use regulation shall mail or otherwise submit to the director a copy of the adopted text of the comprehensive plan provision or land use regulation together with the findings adopted by the local government. The text and findings must be mailed or otherwise submitted not later than five working days after the final decision by the governing body. * * *
>
> "(2)(a) Not later than five working days after the final decision, the local government also shall mail or otherwise submit notice to persons who:
>
> "(A) Participated in the proceedings leading to the adoption of the amendment to the comprehensive plan or land use regulation or the new land use regulation; and
>
> "(B) Requested of the local government in writing that they be given such notice.
>
> "(b) The notice required by this subsection shall:
>
> " * * * * *
>
> "(D) Explain the requirements for appealing the action of the local government under ORS 197.830 to 197.845.
>
> "(3) Not later than five working days after receipt of an amendment to an acknowledged comprehensive plan or land use regulation or a new land use regulation submitted under subsection (1) of

this section, the director shall notify by mail or other submission any persons who have requested notification. The notice shall:

"(a) Explain the requirements for appealing the action of the local government under ORS 197.830 to 197.845;

" * * * * *

"197.620 (1) Notwithstanding the requirements of ORS 197.830 (2) and (3), persons who participated either orally or in writing in the local government proceedings leading to the adoption of an amendment to an acknowledged comprehensive plan or land use regulation or a new land use regulation may appeal the decision to the Land Use Board of Appeals under ORS 197.830 to 197.845. * * *

" * * * * *

"197.625 (1) If no notice of intent to appeal is filed within the 21-day period set out in ORS 197.830(7), the amendment to the acknowledged comprehensive plan or land use regulation or the new land use regulation shall be considered acknowledged upon the expiration of the 21-day period.

" * * * * * * "

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[4] Ludwick v. Yamhill County, supra, involved an appeal to LUBA by a petitioner who was entitled to notice under ORS 197.615(2) as a party to the local government proceeding. Presumably, the court's holding would apply equally to a LUBA appeal where DLCD is the petitioner and the director had not been given the notice to which he or she is entitled under ORS 197.615(1).

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[5] In ruling on the effect of failure to give notice of a local government land use decision required by other statutes, the Court of Appeals and this Board have held that the period for filing a notice of intent to appeal with LUBA begins to run only after the party seeking to appeal is given the notice to which he is entitled by statute. See League of Women Voters v. Coos County, 82 Or App 673, 681, 729 P2d 588 (1986) (petitioner entitled to notice under ORS 215.416(10)); Pienovi v. City of Canby, ___ Or LUBA ___ (LUBA No. 87-112/87-113; April 14, 1988) (petitioner entitled to notice under ORS 227.175(10)).

[6] In fact, it is not clear that petitioner even existed at the time of the city's 1982 plan/zone map change.

[7] Because no such objection or appeal has been filed, we need not decide in this case whether petitioner could raise goal issues in its appeal of the city's 1987 land use decision if a third party entitled to notice of the 1982 decision under ORS 197.615(1981) had filed an appeal, and such appeal was pending at the time of our review.

[8] Petitioner argues that the consequence of the 1982 plan/zone map changes not being acknowledged is that the original county plan and zone designations still apply to the 8.3 acres. Petitioner also argues, in the alternative, that if the consequence of the 1982 plan/zone map changes not being acknowledged is that the city was required to comply with the Statewide Planning Goals in making the appealed decision, the city's failure to give petitioner "a meaningful opportunity to rebut the applicant's assertions and to present evidence concerning the application of the goals is a denial of due process." Petition for Review at 18.

Respondent disagrees with petitioner's contention that the consequence of the 1982 decision being "unacknowledged" would be that the county plan/zone designations still apply to the property. Respondent argues that the 1982 amendment effectively applied city plan and zone designations to the annexed property. Respondent contends that petitioner's alternative argument based on the manner in which the city applied the goals in making the challenged decision should not be addressed by LUBA because (1) it is outside the scope of petitioner's assignment of error; (2) petitioner has not set forth the legal basis for its claim with sufficient specificity; (3) petitioner did not object to the alleged procedural error below; and (4) petitioner has not alleged or demonstrated how its substantial rights were prejudiced.

[9] The additional findings identified by respondent provide as follows:

> "Lane's soils report was criticized by opponents to the project on the ground it was not prepared by a professional geologist. We note that the [weak

foundation soils] policy does not require that the report be done by a geologist; the policy allows for the report to be prepared by a soils engineer. We find that Mr. Lane has done over 3000 foundation studies in his career and that he has worked as a civil engineer since 1967. We accept Mr. Lane's testimony and report as credible and we find him to be a soils expert.

"Although it may not have been necessary for the applicant to do so, the applicant hired a professional geologist, Herbert Schlicker, who reviewed all the reports, visited the site twice, identified the geology of the area and concluded that the site can be developed at the proposed scale. We note that Schlicker previously authored a publication addressing the geology of the area, and we find his testimony credible. Schlicker testified, and we find, that the soils on this site are common to the region and are developable; that any landslide potential the site may have is not of such magnitude as to render the site unbuildable; that the site is underlain with basalt; that the cabin on the County portion of the property, built in 1902, shows no signs of distress from slope movement; that enhancement of the site by drainage will help stabilize surface soils; that silty sands on the site are ample to provide adequate foundation strength, and that where more foundation is needed, gravels are available at 5-10 feet and are underlain with basalt; and that the geology of the area is such that the development should be able to occur essentially in the manner shown on the site plan." Record 25-26.

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[10] The relevant portion of ZO 6.02.8 provides:

"Multifamily condominium and Apartment Dwellings. In considering a conditional use application for multifamily condominium and apartment dwellings, the Planning Commission shall consider the following:

" * * * * *

"b. Street Access.

" * * * * * * "

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[11] Respondent also notes that ZO 6.02.8 only requires that the city consider street access and, as it is clear from the findings that the city did consider street access, petitioner's assignment lacks a legal foundation for claiming error. Respondent's point would be well-taken if petitioner were arguing that the city's findings fail to comply with ZO 6.02.8. However, the essence of petitioner's argument is that the city erred in performing its decisionmaking function because it failed to consider and weigh all the evidence placed before it.

[12] We do not suggest that a local government is free to ignore evidence bearing upon issues relevant to applicable criteria. It is required to address in its findings relevant issues which are raised by evidence presented to it. See City of Wood Village v. Portland Metro Area LGBC, 48 Or App 79, 87, 616 P2d 528 (1980); Hillcrest Vineyard v. Bd. of Comm. Douglas Co., 45 Or App 285, 293, 608 P2d 201 (1980). However, petitioner does not claim that the city's findings on street access do not adequately address relevant issues raised in the proceeding below, only that they do not demonstrate how conflicts in the evidence were resolved.

[13] Of course, a local government's decision may also be challenged on the ground conflicting evidence in the record so undermines otherwise substantial evidence relied upon by the local government that the decision is not supported by substantial evidence. In such cases, some explanation in the findings of why a local government does not believe contrary evidence may be helpful to us in our review, even if not legally required.