

LAND USE
BOARD OF APPEALS

FEB 7 4 43 PM '89

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

3 GARY BENNETT, STEVE BENNETT, and)
4 FRIENDS OF ACADEMY FIELD,)
5 an unincorporated association,)
6)
7 Petitioners,)
8 vs.)
9 CITY OF DALLAS,)
10 Respondent,)
11 and)
12 CHEMEKETA COMMUNITY COLLEGE and)
13 POLK COUNTY,)
14)
15 Intervenor-Respondent.)

LUBA No. 88-078
FINAL OPINION
AND ORDER

13 Appeal from the City of Dallas.

14 Wallace W. Lien, Salem, filed the petition for review and
15 argued on behalf of petitioners.

16 Mark Irick, Dallas, filed a response brief and argued on
17 behalf of City of Dallas. With him on the brief was Shetterly,
Irick, Shetterly and Mannenbach.

18 William G. Paulus, Salem, filed a response brief and argued
19 on behalf of intervenor-respondent Chemeketa Community
College. With him on the brief was Garrett, Seideman, Hemann,
Robertson and De Muniz.

20 Robert W. Oliver, Dallas, represented intervenor-respondent
21 Polk County.

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

23 AFFIRMED 02/07/89

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

1 Opinion by Holstun.

2 NATURE OF DECISION

3 Petitioners appeal a conditional use permit which allows
4 renovation and conversion of an existing school building for
5 use as an adult education facility by Chemeketa Community
6 College and as governmental offices by Polk County.

7 FACTS

8 The Academy School originally was constructed in 1856. The
9 building was used continuously for school purposes until
10 recently closed. The property includes a playground, open area
11 and ball field.

12 The property is designated "public school" on the City of
13 Dallas Comprehensive Plan (plan). The property is zoned
14 Residential High-Density (RHD), and is bordered on the north by
15 LaCreole Creek, on the east by Main Street, on the south by
16 Academy Street and on the west by Church Street. The areas to
17 the north and west are zoned RHD, while the areas to the south
18 and east are zoned Central Business District (CBD).

19 As part of the proposal to remodel and convert the Academy
20 School building, the existing ball field and playground will be
21 eliminated to make room for construction of 120 off-street
22 parking spaces. New access to the property will be provided
23 from Main Street and Academy Street.

24 MOTIONS TO INTERVENE

25 Polk County and Chemeketa Community College move to
26 intervene in this proceeding on the side of respondent City of

1 Dallas. There is no opposition to the motions, and they are
2 allowed.¹

3 FIRST ASSIGNMENT OF ERROR

4 "The respondent failed to follow the appropriate
5 procedures in processing this application for a
6 conditional use when the requested uses are not
7 conditionally allowed in the zone."

8 The RHD zone allows as conditional uses the same
9 conditional uses allowed in the Residential Single family (RS)
10 zone. City of Dallas Zoning Ordinance (ZO) Sec. 36(1). One of
11 the conditional uses allowed in the RS zone is as follows:

12 "(2) Governmental structure or land use including but
13 not limited to a public park, playground, fire
14 station, library or museum." ZO Sec. 14.

15 Petitioners argue the adult education facility proposed by
16 Chemeketa Community College and the offices proposed by Polk
17 County do not fall within the meaning of "governmental
18 structure or land use" as used in ZO Sec. 14(2). Petitioners
19 offer three separate arguments for why the city's
20 interpretation of ZO Sec. 14(2) to include the proposed use is
21 an erroneous construction of the zoning ordinance. We address
22 each of petitioners' arguments separately below.

23 A. Ordinance Language

24 According to petitioners, public parks, playgrounds, fire
25 stations, libraries and museums "are the classic facilities
26 ordinarily and generally understood to be public facilities of
a governmental nature." Petition for Review 7. We understand
petitioners to argue the enumerated governmental structures and

1 land uses in ZO Sec. 14(2) establish the scope of uses the city
2 intended when it used the concept "governmental structures or
3 land uses." According to petitioners, the proposed adult
4 education facility, which will offer day and evening classes,
5 and county office building are outside the intended scope.

6 There are at least two problems with petitioners' first
7 argument. First, ZO Sec. 14(2) expressly provides the listed
8 examples are not an inclusive list of governmental structures
9 or land uses. Thus, unless there is some other basis for
10 concluding a public educational facility and county office
11 building are not governmental structures or land uses, the
12 enumerated uses provide no basis for such a conclusion.
13 Second, the only significant common trait we discern in the
14 enumerated examples in ZO Sec. 14(2) is public ownership and
15 operation, a trait also possessed by the proposed use.
16 Although there are differences between the proposed adult
17 education facility and, e.g., a fire station, in our view
18 public schools and county office buildings are just as
19 "classic" governmental structures or land uses as a fire
20 station or museum.

21 B. Plan Policies

22 Petitioners next look to the acknowledged plan to support
23 their construction of ZO Sec. 14(2). Petitioners argue the
24 plan map designates the property "existing school" rather than
25 "public and semi-public land." The latter designation is
26 applied to the county courthouse and city hall. The

1 petitioners also cite the following plan policy:

2 "City and county offices should be encouraged to
3 remain in the central district." Plan VI-24.²

4 We do not believe the plan provides support for
5 petitioners' construction of ZO Sec. 14(2). Petitioners do not
6 argue all governmental structures or land uses must be
7 designated "public or semi-public lands" or "central business
8 district." In our view, the fact the city public and
9 semi-public plan designation is applied to some, but not all,
10 governmental structures and land uses and the existence of a
11 policy to encourage city and county offices to remain in the
12 central business district has no material bearing on the proper
13 construction of ZO Sec. 14(2).

14 C. Judicial Admission

15 Petitioners note intervenor Chemeketa Community College
16 sought and was granted a zone change for the property from RHD
17 to CBD, after the city's decision to grant the conditional use
18 permit challenged in this appeal. Petitioners argue this
19 action constituted a judicial admission by intervenor and
20 respondent that a zone change to CBD, rather than a conditional
21 use approval under ZO Sec. 14(2), is required to allow the
22 proposed uses.³

23 Intervenor answers:

24 "It is irrelevant for the purposes of this appeal to
25 determine whether a zone change would have been more
26 appropriate since the requested use of county offices,
educational facilities, parking adjunct thereto and
landscaped public open space falls squarely within the

1 permitted conditional use of Section 14(2)."
2 Intervenor's Brief 7.

3 We agree with intervenor that the rezoning of the property
4 to CBD has no bearing on whether the proposal properly is
5 viewed as a conditional use in the RHD zone under ZO Sec.
6 14(2). Applicants for land use approval frequently pursue
7 multiple or alternative routes for obtaining such approval. We
8 see nothing in the subsequent rezoning of the property that
9 constitutes a judicial admission that ZO Sec. 14(2) was not
10 properly applied to the property.

11 Because we reject each of petitioners' separate arguments
12 under this assignment of error, the first assignment of error
13 is denied.

14 SECOND ASSIGNMENT OF ERROR

15 "The decision of respondent violates the city's own
16 comprehensive plan."

17 ZO Sec. 177 establishes general requirements for approval
18 of conditional use permits and requires, in part, that the
19 approving body find

20 "* * * * *

21 "* * * The proposal will be consistent with the
22 Comprehensive Plan and the objectives of the
Zoning Ordinance and other applicable policies of
the city.

23 "* * * * *."

24
25 Petitioners argue the following plan policies and goal⁴
26 are violated by the city's decision:

1 "City and county offices should be encouraged to
2 remain in the Central Business District." Plan VI-24.

3 "Encourage regional offices of the state and federal
4 governments to locate in the City of Dallas." Plan
5 III-11.

6 "Encourage regional offices of the state and federal
7 governments to locate on the periphery of the Central
8 Business District." Plan IV-14.

9 "Encourage the development of adequate off-street
10 parking facilities in the Central Business District."
11 Plan IV-14.

12 "GOAL: To maintain and enhance the quality of
13 existing residential areas and encourage the
14 development of a variety of housing types to meet the
15 needs and desires of the community." Plan IV-10.

16 "High density residential development should be
17 encouraged to locate around the Central Business
18 District and shopping centers to get maximum use out
19 of this currently served valuable land;

20 "High density residential development should have good
21 access to arterial or collective streets and be
22 located close to employment or shopping centers; * * *

23 * * * * *

24 "The residential development of close in vacant land,
25 readily serviceable by a full range of government
26 services shall be encouraged to be used before new
27 areas are annexed, * * *" Plan IV-11.

28 We do not agree with petitioners' essential but unstated
29 premise under this assignment of error that the above-quoted
30 policies are approval standards applicable to conditional use
31 permits.

32 ZO Sec. 177(1) quoted supra, and ORS 197.835(3) both
33 require land use decisions, such as conditional use permit
34 approvals, to be consistent with the acknowledged comprehensive
35 plan. However, this requirement does not impose a burden of

1 consistency with every statement or phrase in a comprehensive
2 plan. As we have explained in prior cases, plan policies in
3 acknowledged comprehensive plans may or may not be approval
4 criteria applicable to a specific land use decision depending
5 on their context and how they are worded. Pardee v. City of
6 Astoria, ___ Or LUBA ___ (LUBA Nos. 88-049/88-050/88-051,
7 December 14, 1988); Hummel v. City of Brookings, 13 Or LUBA 25,
8 35 (1985); McCoy v. Tillamook County, 14 Or LUBA 108, 110-111
9 (1985).

10 Local governments may or may not make it clear in their
11 plan and land use regulations how their plan goals and policies
12 apply to such decisions as variances, conditional uses, plan
13 and zone changes, etc. See Miller v. City of Ashland, ___ Or
14 LUBA ___ (LUBA No. 88-038, November 22, 1988) slip op 23.
15 Frequently, as in the present case, they do not. In such
16 instances, this Board must determine whether the plan policies
17 at issue constitute approval criteria applicable to the land
18 use decision at issue.

19 We conclude the cited plan policies are not approval
20 criteria applicable to conditional use permit applications
21 under the plan and zoning ordinance.⁵ These plan policies
22 are interspersed with plan text and are written in very
23 general, nonmandatory language. Although the plan could have
24 made it clearer, we believe these policies express a general
25 framework and general principles which guide the city's
26 implementing land use regulations such as its zoning

1 ordinance. See Urquhart v. LCOG and City of Eugene, 14 Or LUBA
2 335, 347, rev'd on other grounds 80 Or App 176, 721 P2d 870
3 (1986). Presumably these policies guided the city in adoption
4 of its zoning ordinance and continue to guide the city when it
5 amends its zoning ordinance.⁶

6 In McCoy v. Tillamook County, supra, we were faced with a
7 similar question concerning a policy in Tillamook County's
8 comprehensive plan worded in similar nonmandatory language.

9 "New developments should be designed to minimize peak
10 storm water discharge. Alteration of natural
11 drainageways should be minimized. Roads in urban
12 areas should have adequate ditches and culverts to
13 transport storm water effectively. * * *." Id. at 118.

14 We rejected petitioner's contention in McCoy that the
15 county was required to address the above-quoted policy in
16 granting subdivision approval as follows:

17 "However, we note the policy is not expressed as a
18 regulatory requirement. Instead, the policy merely
19 encourages the pursuit of certain objectives
20 (minimizing storm water discharge) and discourages
21 certain actions (alteration of natural drainageways).
22 Given the text, we conclude no responsive findings are
23 required." Id. at 118.

24 Our conclusion in McCoy applies with equal force here. See
25 also Urquhart v. LCOG and City of Eugene, supra.

26 The second assignment of error is denied.

27 THIRD ASSIGNMENT OF ERROR

28 "The decision of respondent to grant this conditional
29 use permit is not supported by substantial evidence in
30 the whole record."

31 The city's order contains three subsections -- "Findings of
32 Fact," "Conclusions of Law" and "Opinion." Petitioners first

1 attack several findings in the findings of fact section of the
2 city's decision, arguing they are not supported by substantial
3 evidence or are conclusions.⁷

4 Petitioners do not explain why the challenged findings are
5 critical to the city's decision, and it is not obvious from the
6 city's decision that the challenged findings are critical.⁸

7 Because petitioners do not explain why the challenged findings
8 are critical to the city's decision, our review of petitioners'
9 evidentiary challenge to those findings would serve no purpose
10 and we reject petitioners' challenge to those findings.

11 Territorial Neighbors v. Lane County, ___ Or LUBA ___ (LUBA No.
12 87-083, April 27, 1988) slip op 22-23; Sellwood Harbor Condo.
13 Assoc. v. City of Portland, ___ Or LUBA ___ (LUBA Nos.
14 87-079/87-080; April 1, 1988); Bonner v. City of Portland, 11
15 Or LUBA 40, 52 (1984).

16 Petitioners next turn to the opinion section of the
17 decision. As is frequently the case in local government land
18 use decisions, the portion of the decision denoted opinion or
19 conclusion actually is a mixture of findings of fact,
20 conclusion of law and reasoning relating the facts and legal
21 conclusions. Unlike the earlier findings challenged, the
22 challenged findings discussed infra appear immediately below
23 the conditional use criteria they address.⁹ It is therefore
24 obvious from the city's decision which criteria these
25 challenged findings were adopted to address.

26 / / /

1 A. ZO Sec. 177(2)

2 Under ZO Sec. 177(2) the city is required to find:

3 "The location, size, design, and operating
4 characteristics under the proposal will have minimal
5 adverse impact on the liveability, value, or
6 appropriate development of abutting properties in the
7 surrounding areas."

8 We note ZO Sec. 177 expressly recognizes that a conditional use
9 may result in "adverse conditions." See n 9 supra. We
10 understand ZO Sec. 177(2) to require that such adverse impacts
11 be "minimal."

12 Respondent's determination that ZO Sec. 177(2) is met by
13 the proposal is as follows:

14 "The liveability of the surrounding neighborhood will
15 not be negatively effected [sic] by the use of the
16 existing school building, but in fact will be
17 enhanced. The school building, which has not been
18 especially well maintained in recent years, will be
19 restored, renovated and landscaped. The addition of
20 the landscaping, as well as the new entrance on the
21 East side of the building will enhance the property
22 aesthetically.

23 "Additionally, under the proposal, on site storm
24 drainage will be installed for the parking area as
25 well as the area to the immediate East of the
26 building, which currently do not have on site storm
27 drainage facilites, which will eliminate any drainage
28 problems and constitute a significant improvement to
29 the property.

30 "The primary access to the building, which currently
31 is from Church Street on the West, will be changed to
32 Main Street on the East, which will take traffic away
33 from the residential area of Church Street and route
34 it from Main Street which is a major arterial street.
35 The parking lot was designed to assure that the
36 streets in the residential area will not be congested
37 by off street parking, since an adequate number of
38 spaces for the students, staff and clients using the

1 services within the building have been provided. The
2 location of a new elevator and the major entrance on
3 the East side of the building, adjacent to the new
4 parking lot, will further ensure that the residential
neighbors to the West and the offices to the South
will not be effected [sic] negatively by traffic or
parking.

5 "Although Chemeketa Community College will be offering
6 classes in the evening hours, the classes will end at
7 an early enough time so as not to cause any
8 disturbance to the adjoining residential
9 neighborhood. Additionally, the routing of the
10 traffic from Main Street will reduce the possibility
11 of evening traffic disturbing the residential
12 neighborhood. Chemeketa Community College will not be
13 changing its methods or hours of operations from that
14 currently being offered at its present location at the
15 Morrison School, which is located in a residential
16 neighborhood and which has caused no adverse impact on
17 the residential neighborhood.

18 "The liveability of the neighborhood will be greatly
19 enhanced by the preservation of a landmark building
20 meeting its original purpose of providing educational
21 opportunities to the community.

22 "The only adverse impact the proposal entails is the
23 loss of the ball field on the East side of the
24 building, which will be converted into a parking lot.
25 However, there is no alternative plan which would
26 fulfill the parking requirements without converting
the ball field into a parking lot. The alternative
plan presented at the public hearing is not feasible
because it involves on street parking, which is
contrary to the policy of the comprehensive plan;
would not present convenient and easy to use off
street parking, which would encourage people to use on
street parking in a residential neighborhood; would
not provide the closest possible access to the
entrance to the building, which again would encourage
on street parking; would involve the use of the
portion of the property which lies in the flood plain
for parking, when it is the policy of the City not to
encourage development in the flood plain; and would
require a difficult to negotiate hard right turn off
Main street to the off street parking, which could
cause traffic congestion and related safety problems.

27 "No negative effect on the value or appropriate

1 development of the properties in the surrounding area
2 would incur. In fact, it is likely that the
3 renovation and improvement of this property will have
4 a positive effect on the value of the surrounding
5 properties and will encourage similar renovation and
6 aesthetically appropriate development of the
7 surrounding properties. (Emphasis added). Record
8 10-13.

9 Petitioners first argue that the first sentence of the
10 city's decision quoted supra is a "conclusion, and not a
11 finding of fact." Petition for Review 17. Petitioners
12 further argue there are no findings of fact on the
13 liveability criteria, and the evidence in the record is
14 conflicting." Petition for Review 17-18.

15 Petitioners are correct that the above-quoted sentence
16 states a conclusion. However, the balance of the
17 above-quoted findings addressing ZO Sec. 177(2) explain
18 the city's basis for concluding that the proposed use of
19 the Academy School complies with ZO Sec. 177(2).

20 Further, petitioners challenge the evidentiary support
21 for only selected portions of the balance of the
22 findings. Petitioners do not challenge the adequacy of
23 the quoted findings emphasized above. Neither do
24 petitioners explain why those unchallenged findings by
25 themselves are not sufficient to show the proposal
26 complies with the requirement in ZO Sec. 177(2) that
27 "adverse impacts" be "minimal" in view of the
28 "appropriateness, desirability or * * * public necessity"
29 of the proposal. Therefore, even if petitioners are

1 correct in their contentions that the challenged findings
2 are not supported by substantial evidence, that would not
3 be a sufficient basis for reversing or remanding the
4 city's decision.

5 However, this subassignment of error must be denied in
6 any case if we agree with the city that the challenged
7 findings are supported by the record and are sufficient to
8 support the city's decision that ZO Sec. 177(2) is met.
9 We, therefore, consider below petitioners' attacks on
10 specific city findings explaining its conclusion that ZO
11 Sec. 177(2) is satisfied.

12 Petitioners dispute the city's conclusion that
13 reorienting the main entrance to the east toward Main
14 Street would minimize impacts on adjoining residences and
15 offices to the west and south. Petitioners complain that
16 the city did not consider whether a new driveway onto Main
17 Street for a parking lot capable of parking 120 cars would
18 have a negative affect on traffic flows on Main Street.
19 Petitioners further speculate that the other entrance on
20 Academy Street potentially will increase traffic impacts.

21 Respondent points out no evidence was submitted in the
22 local hearings that the proposal would result in traffic
23 or parking problems in the area. Respondent further argues

24 "It is appropriate for a governing body to state
25 findings of fact in a more conclusional form when
26 there is no substantial evidence in the record from
opponents addressing the relevant criteria.
Publisher's Paper Company v. Benton County, 6 Or LUBA

1 182, 189 (1982). Further, as stated in Spexarth Land
2 Company v. City of Warrenton, 15 Or LUBA 334, 339 (1987),
3 the city is not required to address all possible adverse
4 affects of a land use decision. Without evidence of
5 potential adverse affects, the city need only address
6 facts and circumstances reasonably likely to occur, which
7 the city has done." Respondent's Brief 6.

8 We agree with respondent. The city explained, and the
9 record shows, the access to the property will be from Main
10 Street, a major arterial, and Academy Street. Record 47, 62,
11 63. In addition, the major entrance and building elevator will
12 be relocated to the east side, away from offices to the south
13 and residences to the west. Record 47, 64. The parking lot is
14 of sufficient size to accommodate the parking needs of the
15 building, minimizing parking impacts on adjoining residential
16 streets.

17 Petitioner points to no argument or evidence submitted to
18 the city in the local proceedings which suggest the proposal
19 will have traffic and parking impacts on adjoining properties.
20 In the absence of such arguments or evidence, we believe the
21 city's decision that ZO Sec. 177(2) is satisfied is adequate
22 and supported by the evidence in the record.¹⁰

23 Petitioners next argue the city recognized a significant
24 adverse impact of the proposed use would be the loss of the
25 existing ball field. Petitioners argue there is no substantial
26 evidence in the record to support the city's conclusion that
27 there was no alternative plan that would both preserve the
28 off-street parking required under the code and save the ball
29 field.

1 Respondent notes there is no dispute that under the zoning
2 ordinance the proposed use will require 120 off-street parking
3 spaces. ZO Secs. 140(3) and 144. Respondent argues the site
4 plan at Record 62 and planning staff testimony at Record 19 and
5 32 shows there is not sufficient area on the property to
6 accommodate both the required parking and the ball field.
7 Respondent further argues the impossibility of accommodating
8 both the required parking and the ball field is shown by the
9 petitioners' proposal, which placed some of the required
10 parking on Academy and Church Streets. According to
11 respondent, this would violate the ZO Sec. 140(3) requirement
12 that off-street parking be provided. In addition, respondent
13 argues the record shows that alternatives such as the one
14 presented by petitioners would create on-site and off-site
15 traffic circulation problems. Record 31.

16 We agree with respondent that the record contains
17 substantial evidence to support the city's determination that
18 it is not possible both to provide the required off-street
19 parking and to save the existing ball field.¹¹

20 This subassignment of error is denied for two reasons.
21 First, petitioners do not explain why the city findings
22 petitioners do not challenge are insufficient to show ZO Sec.
23 177(2) is satisfied. Second, the findings petitioners do
24 challenge are supported by substantial evidence in the record.

25 B. ZO Sec. 177(3)

26 ZO Sec. 177(3) requires the city to find "the location and

1 design of the site and structures for the proposal will be as
2 attractive as the nature of the use and its setting warrants."

3 The city concluded

4 "As discussed above, the building will be renovated
5 and its appearance will be greatly improved. Also,
6 the landscaping around the building and the parking
7 area will make the site more attractive and
8 aesthetically pleasing." Record 13.

9 Petitioners argue:

10 "Petitioners wholeheartedly disagree with this
11 conclusion, believing that the natural openness of the
12 softball field is vastly more attractive and
13 aesthetically pleasing than black, hard asphalt."
14 Petition for Review 20.

15 Petitioners' disagreement with the city's decision provides
16 this Board with no basis for remand. See Tichy v. Portland
17 City Council, 6 Or LUBA 13, 23 (1982). Petitioners do not
18 explain why the evidence supporting the city's discussion of
19 proposed improvements to the building and site does not
20 constitute substantial evidence to support the city's
21 decision.¹²

22 This subassignment of error is denied.

23 C. ZO Sec. 177(4)

24 ZO Sec. 177(4) requires the city to find

25 "The proposal will preserve environmental assets of
26 particular interest to the community."

The city's findings concerning this criterion are as
follows:

"The proposal will allow the preservation, renovation
and continued maintenance and upkeep of a landmark
building that is a part of the history of Dallas. The
proposal will entail the loss of a recreation site

1 which is an asset to the community, however, since no
2 feasible alternatives are available which would
3 preserve the ball field and still allow the proposed
4 use of the building by Polk County and Chemeketa
5 Community College, the importance of preserving and
6 maintaining the building must take precedence over
7 preserving the ball field. The overall effect of the
8 proposal will be to not only preserve an environmental
9 asset of particular importance to the community, which
10 is the Academy building, but to also enhance that
11 environmental asset." Record 8.

12 The record shows the existing school building is now
13 vacant. Record 29. There is testimony in the record showing
14 the Academy building is no longer a viable facility for the
15 Dallas School district. Record 1. There is also testimony in
16 the record supporting the city's determination that the
17 building is in a deteriorated condition and likely will
18 continue to deteriorate if not renovated so that it may be put
19 back in use. Record 15, 44, 48.

20 We do not understand petitioners to argue the existing
21 vacant building is not deteriorated or not in need of
22 renovation. Neither does petitioner dispute the city's finding
23 that the Academy School is an "environmental asset of
24 particular interest to the city." Rather, petitioners argue
25 the city's admission that the ball field is an environmental
26 asset that will be lost as a result of this decision is an
27 admission that ZO Sec. 177(4) is violated by the proposal. In
28 other words, petitioners argue the city does not have the
29 discretion under ZO Sec. 177(4) to balance the value of
30 environmental assets in cases where measures necessary to
31 preserve one will result in destruction of the other.

1 Respondent answers that ZO Sec. 177(4) requires the city to
2 find the proposal will "preserve environmental assets."
3 Respondent argues the city properly found that to be the case
4 here, because the Academy School, an environmental asset, will
5 be renovated and restored to use. Respondent notes that ZO
6 Sec. 177(4) does not require preservation of all environmental
7 assets. Respondent argues it is not possible to save both the
8 school and the ball field.¹³ Respondent argues we may
9 properly defer to the city's interpretation of ZO Sec. 177(4)
10 to permit balancing of the value of two environmental assets in
11 a situation where it is not possible to save both.

12 We conclude ZO Sec. 177(4) as applied in this context is
13 ambiguous, and we find the city's interpretation and
14 application reasonable and correct. McCoy v. Linn County, 90
15 Or App 271, 275-276, 752 P2d 323 (1988). As respondent
16 correctly notes ZO Sec. 177(4) does not expressly provide no
17 environmental asset shall be removed or destroyed. In the
18 circumstances presented by this case, we believe balancing the
19 value of environmental assets is permissible under ZO Sec.
20 177(4).

21 This subassignment of error is denied.

22 The third assignment of error is denied.

23 The decision of the city is affirmed.

24

25

26

FOOTNOTES

1

2

3 1

4 Respondent City of Dallas also filed a motion to dismiss
5 this proceeding but withdrew the motion at oral argument.

5 2

6 The plan does not number or provide other means for
7 identifying specific policies. Our citations to plan policies
8 in this opinion are to the page on which the cited policy
9 appears in the plan.

9 3

10 The rezoning decision identified by petitioners is
11 challenged by petitioners in a separate appeal. Bennett v.
12 City of Dallas, LUBA No. 88-118.

12 4

13 The plan defines "goal" and "policy" as follows:

14 "GOAL: A desired condition or state of being to be
15 achieved. Achievement is usually attained only by
16 prolonged effort and may not be measurable in a
17 definitive way."

18 "POLICY: A policy is a principle, plan, or course of
19 action that is directed toward the achievement of
20 identified goals. Policy statements are intended to
21 be instructive and directional in nature. Upon
22 adoption of the plan, a policy commits the city to the
23 principle plan, or course of action, set forth in the
24 policy statement. However, the decision on how to
25 implement the policy is left to the appropriate city
26 decision maker." Plan I-3.

21 5

22 Our view is not changed by the fact the city did adopt
23 findings explaining why it believes the proposal furthers the
24 cited plan policies.

24 6

25 It is unnecessary for us to determine in this case whether
26 some or all of the policies cited are mandatory approval
27 criteria applicable to zoning map amendments.

1

2

3 The challenged findings of fact include findings that the
4 existing Academy School is "a historical asset" (finding 2);
5 that the school was closed several years ago (finding 3); that
6 parts of the school building have been leased in the past
7 (finding 4); that there are no alternatives for providing
8 required parking other than converting the baseball field to a
9 parking lot (finding 10); that no other person has expressed an
10 interest in acquiring and renovating the building (finding 11);
11 and that traffic and parking problems in the neighborhood will
12 be minimized by providing access to the property from Main
13 Street (finding 12). Record 6-8.

8

9

10 Findings 2, 3, 4, and 11 do not appear to be relevant to
11 the approval criteria for conditional uses discussed infra.
12 See n 7. Findings 10 and 12 which petitioner argues are mere
13 conclusions, could be relevant, but are repeated in substance
14 later in the city's decision and are separately challenged by
15 petitioner infra.

13

14 The applicable criteria quoted in the opinion infra are in
15 ZO Sec. 177, which also provides:

15

16 "In judging whether or not a Conditional Use proposal shall
17 be approved or denied, the Planning Commission shall weigh
18 its appropriateness and desirability or the public
19 necessity to be served against any adverse conditions that
20 would result from authorizing the particular development at
21 the location proposed and, to approve such use, shall find
22 that the following criteria are met, can be met by
23 observance of conditions, or are not applicable."
24 (Emphasis added).

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22 10 In particular, we agree with respondent that detailed
23 technical studies about possible traffic impacts were
24 unnecessary, absent some argument by petitioners or evidence
25 that the proposed design orienting traffic and users to the
26 east, away from adjoining uses to the south and west, was
insufficient to address such potential impacts.

25

26 11 Petitioners suggest the city erred by not considering a

1 variance from parking requirements so that the ball field could
2 be saved. Petitioners do not argue or explain how a variance
3 could be granted in the circumstances presented by this case
4 under the ZO criteria for variances. Neither do petitioners
5 argue they raised this issue with the city. Accordingly, we do
6 not believe the city erred by not considering a variance from
7 off-street parking requirements.

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6 It may be that petitioners argue the city must compare the
7 attractiveness of the proposed parking lot with the ball field
8 whereas the city interprets ZO Sec. 177(3) simply to require
9 the proposed use to be made as attractive as possible. We find
10 the city's interpretation of ZO 177(3) is correct.

13

10 Other than their argument that an alternative parking
11 arrangement could be developed to save both the school and the
12 ball field, we do not understand petitioners to argue both the
13 Academy School and the ball field can be saved. We rejected
14 petitioners' argument that the city failed to show no such
15 alternative parking arrangements are possible under the first
16 subassignment of error, supra.