

1 BEFORE THE LAND USE BOARD OF APPEALS
2 OF THE STATE OF OREGON
3

4 GLEN E. NEUHARTH, LORA NEUFELD,)
5 and MARY E. BIGLER,)
6)
7 Petitioners,)
8)

9 vs.)

10)
11 CITY OF SALEM,)
12)
13 Respondent,)
14)

15 and)

16)
17 JOSEPH R. (JACK) FOX,)
18)
19 Intervenor-Respondent.)

LUBA No. 92-211

FINAL OPINION
AND ORDER

20
21
22 Appeal from City of Salem.

23
24 Carolyn Baker, Salem, filed the petition for review and
25 argued on behalf of petitioners.

26
27 Paul Lee, Assistant City Attorney, Salem; and James L.
28 Murch, Salem, filed the response brief. With them on the
29 brief was Sherman, Bryan, Sherman & Murch. Paul Lee argued
30 on behalf of respondent. James L. Murch argued on behalf of
31 intervenor-respondent.

32
33 KELLINGTON, Referee; SHERTON, Chief Referee; HOLSTUN,
34 Referee, participated in the decision.

35
36 REMANDED 05/05/93

37
38 You are entitled to judicial review of this Order.
39 Judicial review is governed by the provisions of ORS
40 197.850.

1 Opinion by Kellington.

2 **NATURE OF THE DECISION**

3 Petitioners appeal a decision of the Salem City Council
4 approving an application for a minor comprehensive plan
5 (plan) amendment and zone change and a 124 unit apartment
6 complex.

7 **MOTION TO INTERVENE**

8 Joseph R. (Jack) Fox, the applicant below, filed a
9 motion to intervene on the side of respondent. There is no
10 objection to the motion, and it is allowed.

11 **FACTS**

12 The subject property is surplus right of way adjacent
13 to the Salem Parkway. The property consists of 7.5 acres
14 and is zoned Single Family Residential (RS), but is
15 designated on the plan map as Industrial. The proposal is
16 to rezone the subject property to Multi-Family Residential
17 (RM) and to redesignate it Multi-Family Residential. The
18 application also includes a proposal to develop a 124 unit
19 apartment complex consisting of 17 buildings, with each
20 building containing three to twelve residential units.

21 The planning commission approved the proposal and
22 petitioners appealed to the city council. The city council
23 affirmed the decision of the planning commission and
24 approved the proposal. This appeal followed.

25 **MOTION TO DISMISS**

26 Respondent and intervenor-respondent (respondents) move

1 to dismiss this appeal on the basis that petitioners fail to
2 adequately allege a basis for this Board's jurisdiction in
3 the petition for review. In the petition for review,
4 petitioners allege that the challenged decision is a plan
5 amendment and zone change. This allegation is adequate to
6 establish a basis for this Board's jurisdiction to review
7 the challenged decision. ORS 197.015(10)(a)(A).

8 Respondents' motion to dismiss is denied.

9 **EIGHTH ASSIGNMENT OF ERROR**

10 "Respondent's facts and findings are uncertain
11 because they are inappropriately presented."

12 Petitioners contend it is difficult to determine what
13 documents constitute the city's decision, and that this
14 constitutes a basis for remand.

15 The challenged decision specifically adopts as findings
16 several different documents that are incorporated by
17 reference and attached to the decision, indicating the
18 city's intention that those documents be included as part of
19 the decision. The city did not err by using this method for
20 incorporating documents into the challenged decision.
21 Gonzalez v. Lane County, ____ Or LUBA ____ (LUBA No. 92-108,
22 November 20, 1992); Roden Properties v. City of Salem, 17 Or
23 LUBA 1249, 1253-54 (1989).

24 The eighth assignment of error is denied.

25 **FIRST ASSIGNMENT OF ERROR**

26 "Respondent's decision (Ordinance No. 71-92)
27 violates the approval criteria for amendments to

1 the Salem Area Comprehensive Plan, as found at SRC
2 64.090."

3 **SECOND ASSIGNMENT OF ERROR**

4 "Respondent's decision to amend the comprehensive
5 plan [is] not supported by substantial evidence in
6 the whole record."

7 **SIXTH ASSIGNMENT OF ERROR**

8 "Respondent's decision violates several Salem Area
9 Comprehensive Plan goals and policies."

10 **SEVENTH ASSIGNMENT OF ERROR**

11 "Respondent's decision violates several statewide
12 planning goals and policies."

13 **A. SRC 64.090(1) and (2)(B)**

14 Petitioners contend the challenged decision fails to
15 establish compliance with Salem Revised Code (SRC) 64.090(1)
16 and (2)(B).¹

¹SRC 64.090 provides the following relevant standards applicable to a minor plan amendment:

"(1) [That there is a] lack of appropriately designated suitable alternative sites within the vicinity for a proposed use. Factors in determining the suitability of the alternative sites are limited to one or both of the following:

"(A) Size: Suitability of the size of the alternative sites to accommodate the proposed use; or

"(B) Location: Suitability of the location of the alternative sites to permit the proposed use; or

"(2) [That there is a] major change in circumstances affecting a significant number of properties within the vicinity. Such change is defined to include and be limited to one or both of the following:

"(A) The construction of a major capital improvement (e.g. an arterial or major collector * * *) which

1 Respondents argue that SRC 64.090(1) and (2)(B) were
2 neither required to be applied to the proposed plan
3 amendment, nor were they actually applied to the proposed
4 plan amendment. Rather, respondents contend the city
5 applied SRC 64.090(2)(A) to the proposed plan amendment, and
6 that SRC 64.090(2)(A) is an alternative standard to
7 SRC 64.090(1) and (2)(B).

8 We agree with the city that SRC 64.090(2)(A) expresses
9 an alternative standard to those expressed by SRC 64.090(1)
10 and (2)(B). Accordingly, petitioners' allegations that the
11 proposal does not comply with SRC 64.090(1) and (2)(B)
12 provide no basis for reversal or remand of the challenged
13 decision.

14 Petitioners also contend the challenged decision fails
15 to establish compliance with SRC 64.090(2)(A) because there
16 has not been any "major capital improvement" in the area
17 since the construction of the Salem Parkway, ten years ago.

18 The challenged decision determines the proposal
19 satisfies SRC 64.090(2)(A) because the construction of the
20 Salem Parkway was a major capital improvement that

was unanticipated at the time the Salem Area
Comprehensive Plan or elements of the Comprehensive
Plan were adopted or last amended.

"(B) Previously approved plan amendments for properties
in an area that have changed the character of the
area to the extent that the existing designations
for other properties in the area are no longer
appropriate[.]

** * * * * (Emphasis supplied.)

1 significantly affected the subject property. Specifically,
2 the challenged decision states:

3 "* * * The property was separated and isolated
4 from the industrial area of which it had been a
5 part, and its access was limited to a currently
6 undeveloped street * * *. The site was left in a
7 triangular configuration which presents unusual
8 design circumstances and limitations for
9 development, also taking into consideration site
10 proximity to the Parkway and possible noise
11 attenuation measures. The construction of the
12 Parkway was a major capital improvement, and its
13 effects upon this property were unanticipated when
14 the Comprehensive Plan was adopted. * * *"
15 Second Supplemental Record 20-21.

16 These findings are adequate to establish compliance
17 with SRC 64.090(2)(A). Further, there is substantial
18 evidence in the whole record to support these findings.

19 This subassignment of error is denied.

20 **B. Statewide Planning Goals (Goals)**

21 SRC 64.090(3) provides the following standard for minor
22 plan amendments:

23 "The proposed plan change considers and
24 accommodates as much as possible all applicable
25 statewide planning goals."

26 Further, it is well established that a plan amendment
27 must comply with the goals. ORS 197.175(2)(a); 1000 Friends
28 of Oregon v. Jackson County, 79 Or App 93, 98, 718 P2d 753
29 (1986), rev den 301 Or 445 (1987); Ludwick v. Yamhill
30 County, 72 Or App 224, 231, 696 P2d 536, rev den 299 Or 443
31 (1985).

1 **1. Goal 2 (Land Use Planning)**

2 Petitioners argue the city failed to provide an
3 adequate analysis of alternative sites and alternative
4 courses of action under Goal 2.²

5 Respondents correctly state that Goal 2 does not itself
6 require an independent review of specific alternative sites.
7 Neuberger v. City of Portland, 288 Or 155, 169-70, 603 P2d
8 771 (1979). Further, in the context of a plan or zone
9 change, the alternative courses of action provision in Goal
10 2 simply requires the city to:

11 "* * * explain why the classification selected *
12 * * was chosen instead of other available
13 classifications * * *." Urquhart v. LCOG and City
14 of Eugene, 14 Or LUBA 335, 341, rev'd on other
15 grounds 80 Or App 176 (1986).

16 The challenged decision contains findings adequate to
17 explain why the Multi-Family Residential plan designation
18 and RM zoning district were selected, rather than other
19 potential plan and zone classifications.

20 This subassignment of error is denied.

21 **2. Goal 10 (Housing)**

22 Petitioners argue the proposal to redesignate the
23 subject property to Multi-Family Residential violates Goal

²Goal 2 provides:

"All land use plans shall include identification of issues and problems, inventories and other factual information for each applicable [goal], evaluation of alternative courses of action and ultimate policy choices * * *." (Emphasis supplied).

1 10, because there is a surplus of Multi-Family Residential
2 planned and zoned land in the City of Salem.

3 The subject property is currently designated for
4 industrial use. We fail to see how a plan amendment from
5 Industrial to Multi-Family Residential violates Goal 10,
6 which requires that the city provide for its citizens'
7 housing needs.

8 This subassignment of error is denied.

9 **3. Goal 11 (Public Facilities and Services)**

10 Goal 11 requires that the city "* * * plan and develop
11 a timely, orderly and efficient arrangement of public
12 facilities and services to serve as a framework for urban
13 and rural development." Goal 11 goes on to state:

14 "Urban * * * development shall be guided and
15 supported by types and levels of urban * * *
16 public facilities and services, appropriate for,
17 but limited to, the needs and requirements of the
18 urban [and] urbanizable * * * areas to be served.
19 A provision for key facilities shall be included
20 in each plan. * * *"

21 Petitioners contend the challenged decision fails to
22 establish compliance with Goal 11 because an affected area
23 elementary school lacks capacity to serve the proposal and:

24 "[Petitioners] have noticed a difficulty in fire
25 and emergency vehicles getting to the area because
26 of traffic and an excessive amount [sic] of cars
27 parked on Shangri La Avenue, which is [the
28 proposed access to the subject property]."³

³Petitioners also contend that local police "already have numerous calls to the area." Petition for Review 13. However, petitioners' contention

1 Petition for Review 13.

2 With regard to the ability of affected area schools to
3 accommodate the proposal, the challenged decision states the
4 following:

5 "* * * Concerning the school issue, the School
6 District is notified of land use requests and has
7 the opportunity to comment on land use proposals.
8 The traditional response by the District has been
9 that [it] will accommodate school growth as it
10 occurs. The approval of the District's
11 construction bond measure will address some of the
12 overcrowding issues within the District. * * *"
13 Record 210.

14 There is no contention in the decision or in the
15 respondents' briefs that Goal 11 does not require an
16 analysis of whether impacted schools can accommodate the
17 demands on the school district anticipated to be generated
18 by the proposal. Goal 11 states:

19 "urban * * * development shall be * * * supported
20 by types and levels of urban * * * public
21 facilities and services appropriate for * * * the
22 needs and requirements of the urban * * * areas to
23 be served."

24 Goal 11 defines "urban facilities and services" as "key
25 facilities and * * * appropriate types and levels of
26 [certain services]." The general definitional section of
27 the goals defines the term "key facilities" to include
28 "public schools." Therefore, it is clear that Goal 11
29 requires a determination that public schools are at a level

that the area is a busy police area is not the equivalent of an allegation
that existing police services are inadequate to serve the proposal.

1 of service that is:

2 "appropriate for * * * the needs and requirements
3 of the urban * * * areas to be served." Home
4 Builders v. Portland, 4 Or LUBA 245, 248-49
5 (1981).

6 The city was required to determine that schools are at
7 an appropriate level to accommodate the proposed urban
8 development. The city's findings are inadequate to
9 establish this.⁴

10 With regard to emergency vehicle access to the subject
11 property, the challenged decision acknowledges petitioners'
12 arguments below expressing concern about access to the
13 complex by fire trucks and by other emergency vehicles.
14 Record 209.

15 However, we are cited to no findings in the challenged
16 decision addressing this relevant issue and we are aware of
17 none. This is error. See Norvell v. Portland Area LGBC, 43
18 Or App 849, 853, 604 P2d 896 (1979).

⁴In Holstrom v. Marion County, 3 Or LUBA 309, 315 (1981), a case concerning the approval of an urban subdivision prior to acknowledgment of the county's comprehensive plan and land use regulations, the Board stated the following regarding the requirements of Goal 11 as it relates to school capacity issues:

"The Board is not saying that [G]oal 11 prohibits approval of subdivisions simply because school facilities are crowded. Neither are we saying that before a subdivision can be approved, additional school facilities must be in the process of being built. What is required is a showing that advanced planning has been accomplished explaining how school needs can be met. * * *"

1 This subassignment of error is sustained.⁵

2 **4. Goal 9 (Economy of the State), Goal 13**
3 **(Energy Conservation), Goal 14**
4 **(Urbanization)**

5 Petitioners assert the proposal violates Goals 9, 13
6 and 14, but fail to provide an explanation of why they
7 believe this is so. This subassignment provides no basis
8 for reversal or remand of the challenged decision.
9 Deschutes Development v. Deschutes County, 5 Or LUBA 218,
10 220 (1982).

11 This subassignment of error is denied.

12 **5. Goal 12 (Transportation)**

13 Petitioners contend the challenged decision fails to
14 establish compliance with Goal 12 because the proposal will
15 result in greater traffic impacts than would result from the
16 development of the subject parcel under the existing RS
17 zoning.⁶ Petitioners contend the proposal will convert a
18 "single family residential street * * * into a traffic
19 corridor." Petition for Review 14.

20 The challenged decision includes the following findings

⁵Petitioners also contend the challenged decision fails to establish compliance with Goal 11 because access to the subject property generally is inadequate. However, petitioners also raise this issue in conjunction with their arguments concerning Goal 12. For convenience, we address the issue of adequacy of general access to the subject property under our resolution of petitioners' Goal 12 subassignment of error, infra.

⁶Petitioners do not challenge the proposal's compliance with the Goal 12 rules, OAR Chapter 660, Division 12, and we express no position concerning the proposal's compliance with the Goal 12 rules.

1 of compliance with Goal 12:

2 "The property has access to Broadway/North River
3 Road and Cherry Ave. via Shangri La St. Both
4 Broadway and Cherry Ave. are arterials and both
5 provide a direct route to Salem Parkway, which
6 provides a direct link to I-5 and downtown. As a
7 result, the proposed development will be
8 adequately served by the existing street network.
9 In addition, public transportation is available
10 along Broadway. On this basis the proposal will
11 be adequately served by transportation
12 facilities." Record 222.

13 These findings are adequate to establish the proposal is
14 consistent with Goal 12.

15 Petitioners' arguments concerning the evidentiary
16 support for these findings contend there is conflicting
17 evidence in the record concerning the adequacy of these
18 streets to serve the proposal. There is conflicting,
19 relevant evidence in the record in this regard. The choice
20 between conflicting believable evidence belongs to the city,
21 and we will not disturb that choice here. Angel v. City of
22 Portland, 22 Or LUBA 649, 659, aff'd 113 Or App 169 (1992).

23 This subassignment of error is denied.

24 **C. SRC 64.090(4)**

25 Petitioners argue the proposal fails to establish
26 compliance with SRC 64.090(4), which provides the following
27 standard for minor plan amendments:

28 "The proposal change is logical and harmonious
29 with the land use pattern for the greater area as
30 shown on the detailed and general plan maps * *
31 *."

32 The challenged decision includes the following findings

1 of compliance with SRC 64.090(4):

2 "The applicant indicates the property is located
3 along a major arterial that is designed and
4 intended to provide high-speed access between the
5 city center and I-5. The property is surplus land
6 from the Parkway project and is now an isolated
7 parcel designated as Industrial in the plan. The
8 alignment of the Parkway resulted in the
9 property's triangular shape and limited access
10 opportunities. The location between the Parkway
11 and an existing residential area, lot shape and
12 access limitations, restrict practical uses for
13 the property to residential development.

14 "The land use pattern of the adjacent area
15 consists of single family and multifamily
16 residential uses. A residential use pattern and
17 neighborhood has been established in this area
18 north of the Parkway. The major influence on the
19 type of development and the practical use of the
20 subject property, is the Parkway. The Parkway
21 imposes a major impact on the site, particularly
22 with the amount of frontage the property has on
23 the Parkway. Multifamily residential development
24 will be consistent with the current mix of
25 multifamily and single family housing types that
26 currently exist on adjacent lands, while providing
27 a buffer use between a noise source and single
28 family uses." Record 202.

29 These findings are adequate to establish compliance
30 with SRC 64.090(4). Further, we have examined the evidence
31 cited by the parties and determine that there is substantial
32 evidence in the whole record to support these findings

33 This subassignment of error is denied.

34 **D. SRC 64.090(5)**

35 Petitioners contend the challenged decision fails to
36 establish compliance with SRC 64.090(5), which provides the
37 following standard for minor plan amendments:

1 "The proposed change conforms to all criteria
2 imposed by applicable goals and policies of the
3 comprehensive plan in light of its intent
4 statements."

5 As a preliminary matter, we note our agreement with
6 respondents' contention that many of the plan provisions to
7 which petitioners refer under this subassignment of error
8 are prefaced by words such as "encourage," and state that
9 they provide guidance as to what the city "should" do. It
10 is well established that the city's failure to establish
11 compliance with such aspirational plan provisions provides
12 no basis for reversal or remand of the challenged decision.
13 Bennett v. City of Dallas, 17 Or LUBA 450, aff'd 96 Or App
14 645 (1989). Accordingly, we only address plan standards
15 relied upon by petitioners that employ mandatory language.
16 We reject petitioners' arguments concerning the proposal's
17 compliance with other plan provisions which do not contain
18 mandatory language without further comment.

19 **1. Plan Policy 7**

20 Plan policy 7 provides as follows:

21 "Provision shall be made for multifamily housing
22 in areas close to the city core, in clusters
23 around commercial, office, and public buildings
24 that have a convenient access to major
25 transportation corridors."

26 Petitioners argue the challenged decision is
27 inconsistent with plan policy 7 because it will allow
28 multifamily housing outside of the city core and because the
29 subject property lacks convenient access to a major traffic

1 corridor.

2 While plan policy 7 clearly states that the city must
3 have multifamily housing "close" to the city core, it does
4 not require that multifamily housing be inside the city
5 core. Further, that petitioners disagree with the city
6 concerning whether the proposed access to the site is
7 convenient is not a basis for reversal or remand of the
8 challenged decision.

9 Finally, petitioners argue the subject property is not
10 "close" to the city core, as required by plan policy 7.

11 The challenged decision contains only a conclusory
12 statement that the subject property is "close" to the city
13 core. The decision provides no explanation of why it
14 reaches that conclusion. Weeks v. City of Tillamook, 117 Or
15 App 449, ___ P2d ____ (1993); Larson v. Wallowa County, 116
16 Or App 96, ____ P2d ____ (1992). On remand, the city
17 should explain why it believes the subject property is
18 "close" to the city core, within the meaning of plan policy
19 7.

20 This subassignment of error is sustained, in part.

21 **2. Plan Policy 10**

22 Plan policy 10 provides:

23 "Residential Areas shall be protected from more
24 intensive land use activity in abutting zones."

25 We agree with respondents that this policy is
26 inapplicable to individual development actions. Rather, it
27 is a policy designed to direct the development of the city's

1 zoning ordinance. Accordingly, plan policy 10 provides no
2 basis for reversal or remand of the challenged decision.

3 This subassignment of error is denied.

4 **3. Plan Policy 12**

5 Plan policy 12 requires:

6 "Requests for rezonings to higher intensity
7 residential uses to meet the identified housing
8 needs will be deemed appropriate if adequate
9 public utilities, facilities and services can be
10 made reasonably available to the site and the
11 site's physical conditions and location warrant
12 the more intense use."

13 Petitioners argue that this policy is not satisfied
14 because the schools in the area are over capacity and cannot
15 accommodate the proposed development. Petitioners also
16 repeat their argument stated above that emergency vehicle
17 access to the subject property is inadequate. Petitioners
18 also state they are concerned about "possible difficulty
19 with additional water and sewer access in the area."
20 Petition for Review 21.

21 With regard to school capacity, the city's plan does
22 not include a definition of the term public utilities,
23 public facilities or public services. Similarly, the
24 challenged decision does not explain whether schools are
25 included in these terms, within the meaning of plan policy
26 12. On remand, the city should interpret its plan and
27 determine whether public schools are a public utility,
28 public facility, or public service within the meaning of
29 plan policy 12 and, if so, determine whether the proposal

1 complies with plan policy 12 with regard to the issue of
2 adequate school facilities.⁷

3 Regarding petitioners' contention concerning inadequate
4 emergency vehicle access, as explained above, there is no
5 definition in the city's plan concerning the meaning of
6 "public utilities, facilities and services." We determine,
7 supra, that we are neither cited to findings, nor are we
8 aware of any findings, addressing the adequacy of emergency
9 vehicle access to the subject property. On remand, the city
10 should interpret its plan and determine whether the terms
11 public utilities, public facilities or public services, as
12 used in plan policy 12, include emergency services. If it
13 determines that any of these terms include emergency
14 services, then it should adopt findings, supported by
15 substantial evidence, explaining how plan policy 12 is
16 satisfied in this regard.

17 With regard to petitioners' contentions concerning the
18 availability of sewer and water service, the city's findings
19 are adequate to establish that sewer and water service can
20 be provided to serve the development of the subject property
21 under the proposed plan and zoning designations. Further,
22 these findings are supported by substantial evidence in the
23 whole record.

24 This subassignment of error is sustained, in part.

⁷We address the Statewide Planning Goal 11 issues concerning schools,
supra.

1 **E. SRC 64.090(6)**

2 SRC 64.090(6) provides the following standard
3 applicable to minor plan amendments:

4 "The proposed change benefits the public."

5 The challenged decision contains findings of compliance
6 with this standard. Petitioners' challenge under this
7 subassignment of error expresses no more than disagreement
8 with the city's decision. We conclude that petitioners'
9 arguments concerning SRC 64.090(6) provide no basis for
10 reversal or remand of the challenged decision. McCarty v.
11 City of Portland, 20 Or LUBA 86, 89 (1990).

12 In addition, we conclude that there is substantial
13 evidence in the whole record to support the city's
14 determination of compliance with this standard.

15 This subassignment of error is denied.

16 The first, second, sixth and seventh assignments of
17 error are sustained, in part.

18 **THIRD ASSIGNMENT OF ERROR**

19 "Respondent's decision to change the zone on the
20 subject property violates the approval criteria
21 for a zone change, as found at SRC 114.160."

22 **FOURTH ASSIGNMENT OF ERROR**

23 "Respondent's decision to change the zone is not
24 supported by substantial evidence in the whole
25 record."

26 SRC 114.160 provides, in relevant part, the following:

27 "* * * * *

28 "(c) [T]he following factors should be evaluated

1 by the proponent and shall, where relevant,
2 be addressed by the administrative body in
3 its final decision:

4 "(1) The existence of a mistake in the
5 compilation of any map, or in the
6 application of a particular land use
7 designation to any property in this
8 zoning code or the comprehensive plan;

9 "(2) A change in the social, economic, or
10 demographic patterns of the neighborhood
11 or of the community;

12 "(3) A change of conditions in the character
13 of the neighborhood in which the use or
14 development is proposed;

15 "(4) The effect of the proposal on the
16 neighborhood, the physical
17 characteristics of the subject property,
18 and public facilities and services;

19 "(5) All other factors relating to the public
20 health, safety, and general welfare
21 which the administrative body deems
22 relevant.

23 "(d) The extent of the consideration given to the
24 various factors set forth in subsection (c)
25 of this section will depend on the nature and
26 circumstances of each individual case.
27 Unless any of the factors is deemed
28 irrelevant, something more than an
29 unsupported conclusion will be required * *
30 *. The requisite degree of consideration is
31 directly related to the provision of
32 subsection (a) of this section that the
33 greater the impact of a proposal is to the
34 area, the greater is the burden on the
35 proponent."

36 In Bridges v. City of Salem, 19 Or LUBA 373, 387, aff'd
37 104 Or App 220 (1990) (Bridges), we stated

38 "[T]he factors listed in SRC 114.160(c) are only

1 considerations, not approval standards for zone
2 changes. SRC 114.160(c) requires that the listed
3 factors be evaluated by the applicant and, where
4 relevant, be addressed by the city in its
5 findings. * * *

6 The challenged decision includes findings, supported by
7 substantial evidence in the whole record, demonstrating the
8 city considered the factors established by SRC 114.160(c).

9 The third and fourth assignments of error are denied.

10 **FIFTH ASSIGNMENT OF ERROR**

11 "Respondent misconstrued applicable law, when
12 respondent made the decision to amend its zone and
13 comprehensive plan."

14 Many of the arguments expressed under this assignment
15 of error are arguments which we address in previous sections
16 of this opinion, and we need not address them again here.
17 However, one additional point merits comment. Petitioners
18 contend that under our decision in Bridges, supra, the city
19 failed to establish the existence of an "overriding public
20 need" for more multifamily zoned land. However,
21 petitioners' reliance upon Bridges is misplaced. After the
22 Bridges decision, the city amended the SRC to remove the
23 "overriding public need" standard. That standard was
24 removed before the subject application for the plan and zone
25 amendments at issue in this appeal was submitted. The
26 standards applicable to the proposal at issue here are those
27 that are acknowledged and in effect at the time the

1 application was submitted.⁸ ORS 227.178(3). Those
2 standards do not include an "overriding public need"
3 standard. Consequently, the city did not err by failing to
4 apply such a standard to the challenged decision.

5 The fifth assignment of error is denied.

6 The city's decision is remanded.

⁸No party argues that the amended SRC applied to the application at issue in this appeal, was unacknowledged at the time that application was submitted to the city. See Von Lubken v. Hood River County, 118 Or App 246, 249, ___ P2d ___ (1993). We assume that the SRC applied to the challenged decision by the city is acknowledged.