

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

3  
4 ARLEY E. KANGAS, GLENN WESTLING,    )  
5 and MAGDALENA WESTLING,    )  
6    )  
7                               Petitioners,    )               LUBA No. 93-117  
8    )  
9               vs.    )               FINAL OPINION  
10    )               AND ORDER  
11 CITY OF OREGON CITY,    )  
12    )  
13                               Respondent.    )

14  
15  
16               Appeal from City of Oregon City.

17  
18               Arley E. Kangas, Oregon City, filed the petition for  
19 review and argued on his own behalf. Glenn Westling and  
20 Magdalena Westling, Oregon City, represented themselves.

21  
22               Daniel Kearns, Portland, filed the response brief and  
23 argued on behalf of respondent. With him on the brief was  
24 Preston Thorgrimson Shidler Gates & Ellis.

25  
26               SHERTON, Referee; KELLINGTON, Chief Referee; HOLSTUN,  
27 Referee, participated in the decision.

28  
29                               AFFIRMED   11/02/93

30  
31               You are entitled to judicial review of this Order.  
32 Judicial review is governed by the provisions of ORS  
33 197.850.

1 Opinion by Sherton.

2 **NATURE OF THE DECISION**

3 Petitioners appeal a city decision denying their  
4 application to change the zoning of an 11 acre parcel from  
5 the R-10 Single Family Residential zone to the R-8 Single  
6 Family Residential zone.

7 **FACTS**

8 The subject property is designated Low Density  
9 Residential on the city's comprehensive plan map, and is  
10 owned by petitioners Westling. The subject property is part  
11 of an area annexed by the city in 1991. At that time, the  
12 current R-10 zone was applied. Partlow Road, an east-west  
13 road, is located approximately 200 ft. north of the northern  
14 boundary of the subject parcel. Partlow Road intersects  
15 with S. Central Point Road, a north-south road that adjoins  
16 the subject parcel to the east and provides access to the  
17 property. In this area, properties to the north of Partlow  
18 Road are zoned R-8 and properties to the south are zoned  
19 R-10. Petitioners wish to subdivide the property in the  
20 future. The proposed zone change would allow the property  
21 to be developed at a greater density.

22 **SECOND ASSIGNMENT OF ERROR**

23 The approval criteria for a zone change established by  
24 Oregon City Municipal Code (OCMC) 17.68.020 include the  
25 following:

26 \* \* \* \* \*

1 "B. That public facilities and services (water,  
2 sewer, storm drainage, transportation,  
3 schools, police and fire protection) are  
4 presently capable of supporting the uses  
5 allowed by the [proposed] zone, or can be  
6 made available prior to issuing a certificate  
7 of occupancy.

8 "C. The land uses authorized by the proposal are  
9 consistent with the level of service of [the]  
10 transportation system serving the proposed  
11 zoning district.

12 "\* \* \* \* \*

13 With regard to adequacy of the transportation system,  
14 the challenged decision states:

15 "\* \* \* It was noted, by the applicant, that  
16 S. Central Point Road in the area of the property  
17 is substandard. The road will need to be improved  
18 to City standards through a half-street  
19 improvement.

20 "[T]he transportation system, S. Central Point  
21 Road[,] is not adequate to serve the site.  
22 Although a portion of the street system adjacent  
23 to the property will be somewhat improved, the  
24 main access road to the site is substandard.

25 "\* \* \* The applicant states there will be  
26 adequate upgrades to the transportation [system]  
27 to serve this site.

28 "It was noted by Clackamas County that the  
29 proposed site [sic] distance is not adequate. The  
30 issue will need to be remedied to the County's  
31 satisfaction. It is noted that S. Central Point  
32 Road is substandard.

33 "\* \* \* \* \*

34 "It has been found that the request does not meet  
35 the criteria for a zone change with regard to the  
36 following:

1 "1. [T]he public facilities and services,  
2 particularly \* \* \* transportation, are not  
3 adequate to serve the site.

4 "2. [T]he transportation system, S. Central Point  
5 Road, is not adequate to serve the site.  
6 Although a portion of S. Central Point Road  
7 will be improved [along] the property  
8 frontage, it is substandard adjacent to and  
9 leading to the site. A traffic analysis was  
10 not available to determine impacts." Record  
11 7-8.

12 Petitioners challenge the evidentiary support for the  
13 city's determination that the transportation system serving  
14 the subject property is not adequate to support the proposed  
15 zone change. Petitioners assert the city has approved three  
16 new subdivisions in the R-8 zoned area north of Partlow  
17 Road, based on requiring the same sort of half-street  
18 improvements that would be required of petitioners with  
19 regard to the portion of S. Central Point Road abutting the  
20 subject property. Petitioners do not, however, cite any  
21 evidence in the record in support of their position.

22 The city argues that the applicant for quasi-judicial  
23 land use approval has the burden of proving that all  
24 applicable approval standards are met. Fasano v. Washington  
25 Co. Comm., 264 Or 574, 586, 507 P2d 23 (1973). The city  
26 further argues that OCMC 17.68.020.B and C require a  
27 demonstration of the adequacy of the entire transportation  
28 system serving the subject property, not just the portion of  
29 street abutting the subject property. The city cites  
30 evidence in the record regarding inadequacy of the

1 transportation infrastructure in the subject area in  
2 general, and inadequacy of S. Central Point Road in  
3 particular. According to the city, the only evidence in the  
4 record supporting petitioners' position consists of their  
5 own unsubstantiated statements.

6 In order to overturn on evidentiary grounds the city's  
7 determination that OCMC 17.68.020.B and C are not met, the  
8 evidence in the record "must be such that a reasonable trier  
9 of fact could only say petitioners' evidence should be  
10 believed." Thomas v. City of Rockaway Beach, 24 Or LUBA  
11 532, 534 (1993); Schmaltz v. City of Hood River, 22 Or LUBA  
12 115, 119 (1991); McCoy v. Marion County, 16 Or LUBA 284, 286  
13 (1987); Weyerhaeuser v. Lane County, 7 Or LUBA 42, 46  
14 (1982). Thus, petitioners must demonstrate, as a matter of  
15 law, that they sustained their burden of proof of compliance  
16 with OCMC 17.68.020.B and C, with regard to adequacy of the  
17 transportation system. See Jurgenson v. Union County Court,  
18 42 Or App 505, 600 P2d 1241 (1979); Consolidated Rock  
19 Products v. Clackamas County, 17 Or LUBA 609, 619 (1989).

20 We have reviewed the evidence in the record cited by  
21 the parties. That evidence consists of testimony by  
22 neighboring property owners that S. Central Point Road is  
23 generally narrow and inadequate to handle increased traffic,  
24 a comment by Clackamas County that "no information was  
25 provided to determine safety due to a sight obstruction at  
26 two access points on [S.] Central Point Road," and

1 conclusory statements by petitioners that half-street  
2 improvement of the portion of S. Central Point Road abutting  
3 the subject property will adequately serve the proposed use.  
4 Record 14, 30, 33, 35, 51, 60, 80-81. Based on this  
5 evidence, we agree with the city that petitioners fail to  
6 demonstrate compliance with OCMC 17.68.020.B and C as a  
7 matter of law.

8 The second assignment of error is denied.

9 **FIRST, THIRD AND FOURTH ASSIGNMENTS OF ERROR**

10 In the first, third and fourth assignments of error,  
11 petitioners challenge three additional bases relied on by  
12 the city in denying their application. However, to support  
13 a denial, the city need only establish the existence of one  
14 adequate basis for denial. Roozenboom v. Clackamas County,  
15 24 Or LUBA 433, 437 (1993); Garre v. Clackamas County, 18  
16 Or LUBA 977, 981, aff'd 102 Or App 123 (1990). Here, as  
17 explained above, the city's decision establishes an adequate  
18 basis for denial under OCMC 17.68.020.B and C.

19 The city's decision is affirmed.