BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

HEBER HEINE, R. LEE POE, RUTH TUTTLE, KENNETH HEINE, and DOUGLAS MERCER, Petitioners, vs. CITY OF PORTLAND, Respondent, and UNIVERSITY OF PORTLAND and DAVID SOLOOS, Intervenors-Respondent.	LUBA No. 94-031 FINAL OPINION AND ORDER

Appeal from City of Portland.

Heber Heine, R. Lee Poe, Ruth Tuttle, Kenneth Heine, and Douglas Mercer, Portland, filed the petition for review. Douglas Mercer and Heber Heine argued on their own behalf.

Adrianne Brockman, Deputy City Attorney, Portland, filed a response brief on behalf of respondent.

Steven L. Pfeiffer and Michael R. Campbell, Portland, filed the response brief. With them on the brief was Stoel Rives Boley Jones & Grey. Michael R. Campbell argued on behalf of intervenor-respondent University of Portland.

David Soloos, Portland, represented himself.

KELLINGTON, Chief Referee; SHERTON, Referee, participated in the decision.

HOLSTUN, Referee, concurring.

AFFIRMED 07/26/94

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

Opinion by Kellington.

NATURE OF THE DECISION

Petitioners appeal a city council decision approving a conditional use ten year master plan for the University of Portland.

MOTIONS TO INTERVENE

University of Portland and David Soloos move to intervene on the side of respondent in this appeal proceeding. There is no opposition to the motions, and they are allowed.

FACTS

The University of Portland currently occupies a 92-acre site in North Portland. The campus is zoned Multifamily Residential (R-2). Institutional uses are conditionally permitted in the R-2 zoning district. An area primarily zoned single family residential surrounds the campus on three sides, and the Willamette River is on the fourth. In May, 1993, the university submitted a conditional use application for a ten year master plan. The hearings officer approved the plan and both the university and the Portsmouth Neighborhood Association appealed to the city council. The city council affirmed the decision of the hearings officer, but modified some of the conditions of approval. This appeal followed.

FIRST AND SEVENTH ASSIGNMENTS OF ERROR

Petitioners contend the city's interpretation of a

Portland City Code (PCC) provision is erroneous. Specifically, petitioners argue the master plan fails to comply with PCC 33.820.070.G.1, because the plan lacks sufficiently detailed information concerning the traffic impacts of a 5,000 person event at the university.

PCC 33.820.070.G provides:

> "Transportation and parking. The master plan must include information on the following items for each phase.
>
> "1. Projected transportation impacts. These include the expected number of trips (peak and daily), an analysis of the impact of those trips on the adjacent street system, and proposed mitigation measures to limit any projected negative impacts. Mitigation measures may include improvements to the street system or specific programs to reduce traffic impacts such as encouraging the use of public transit, carpools, van pools, and other alternatives to single occupancy vehicles.
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> "* * * * *"

The challenged decision includes the following findings:

> "The Master Plan, including the Transportation Impact Analysis, Transportation Demand Management Plan, and the Special Events Management Plan provide the information and analysis required by the above criterion. * * * Condition I will insure [the] criterion is met." Record 52.

The proposed master plan includes the following analyses, among others:

> "Although actual parking and traffic operations impact data for a 5,000 person event was not available for this analysis report, it is

> estimated, depending on event characteristics, that a 5,000 person event would have significantly greater impact than would a 4,000 person event. Depending on the occupancy rate for the event and time the event is held, an additional 500 to 1,000 vehicles might be parked on local streets in the vicinity of the University. Since the primary exiting route from the University is Willamette Boulevard, to the extent possible, motorists will attempt to access Willamette Boulevard. As a result, significant side street delay on Willamette Boulevard would be experienced. As delay on Willamette Boulevard increases, motorists will tend to access Lombard Street either via local streets or via Portsmouth. Based on observations of this phenomenon, the fixed time traffic signals along Lombard Street would not be able to accommodate the short term surge of traffic. Consequently, traffic is estimated to back up on Lombard Street from Fiske to Portsmouth. Intermittent blockages of Portsmouth Avenue at Lombard Street would also occur. Depending on the characteristics of the event, congested traffic egress conditions may last from 15 to 45 minutes. Some degree of impact from this surge of traffic can be expected to be felt as far away as Portland Boulevard for a short period of time.
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> "For the June, 1990 through May, 1991 event year, presented previously, there was one event with an attendance greater than 6,000[;] one event with attendance between 5,000 and 6,000[;] and four events with attendance between 4,000 and 5,000. As noted, the 6,000-plus attendance event (1991 college fair) will be held at the Oregon Convention Center in the future." Record 1271.

In addition, the master plan's traffic impact analysis (TIA) analyzes the daily and peak parking and transportation related impacts of the proposed master plan. See Record 1245-72. Specifically, the TIA includes an analysis of the traffic impacts associated with a 5,000 person event

at the university.[1] Record 1271, 1275. Intervenor cites a number of other analyses in the master plan, the TIA and the Transportation Demand Management Plan (TDMP) which it contends provide the information required by PCC 33.820.070.G.1.

We are required to defer to a local government's interpretation of its own land use regulations.[2] ORS 197.829; Clark v. Jackson County, 313 Or 508, 515, 836 P2d 710 (1992). Here, the city determined the information presented in the proposed master plan was sufficient to comply with PCC 33.820.070.G.1. The city's interpretation of PCC 33.820.070.G.1 as being satisfied by the information contained in the proposed master plan, including the TIA and TDMP, is not contrary to the express words, policy or purpose of PCC 33.820.070.G.1 and, therefore, we defer to

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[1]Intervenor explains:

> "* * * Because such events are infrequent, and because their transportation and parking effects vary substantially with the nature and timing of the event, precise transportation and parking projections would not have been possible or useful. Nonetheless, using a detailed analysis of a 4000-person event, the TIA projected that, depending upon the nature and timing of the event, a 5000-person event would attract an additional 500 to 1000 vehicles that would be parked on neighborhood streets and that would be added to the transportation system. This number of vehicles would, in turn, cause intense traffic congestion on nearby streets for a period of 15 to 45 minutes following the event." Intervenor's Brief 10.

[2]There is no contention here that the city's interpretation of PCC 33.820.070.G.1 is contrary to a statute, administrative rule or planning goal PCC 33.820.070.G.1 was designed to implement. ORS 197.829(4).

it.[3]

The first and seventh assignments of error are denied.

SECOND AND THIRD ASSIGNMENTS OF ERROR

Petitioners argue the city did not adequately analyze proposed mitigation measures connected to the traffic impacts associated with special events at the university, as required by PCC 33.820.070.G.1, quoted supra. Petitioners also argue the proposal will violate the city's Arterial Streets Classification Policy (ASCP) and PCC 33.815.105.D.1 and 2,[4] because it will impermissibly reduce the level of service of certain intersections for a limited time.

The challenged decision includes findings addressing these standards. See Record 72-74. Some of those findings follow:

> "The [University] is an established use at this site and its range of activities is not proposed to change under the master plan proposal. The

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[3]A key substantive point of disagreement between the parties is whether the PCC requires the transportation system to be able to accommodate the traffic impacts associated with special, worst-case events. This interpretational issue is addressed, infra.

[4]PCC 33.815.105.D.1 and 2 provides as follows:

> "1. The proposed site is in conformance with * * * the [ASCP.]
>
> "2. The transportation system is capable of safely supporting the proposed use in addition to the existing uses in the area. Evaluation factors include street capacity and level of service, access to arterials, transit availability, on-street parking impacts, access requirements, neighborhood impacts, and pedestrian safety."

> ASCP's hierarchy of streets would support University-related traffic using Willamette Boulevard or Portsmouth Avenue, both neighborhood collectors, as opposed to local service streets. Signage along I-5 directs freeway traffic going to the [university] to N. Lombard (a district collector street) and on to Portsmouth to the University's campus entrances at Willamette Boulevard and Portsmouth Avenue. The traffic and route patterns coming and going to the University are therefore in conformance with this policy." Record 72.

The findings go on to state that for most events, the mitigation measure of a minor change to the timing of the signals at key intersections, will maintain an adequate level of service at affected intersections. The findings acknowledge that for infrequent, large, special events:

> "Significant delays are expected within the first 15-30 minutes after the [event] for traffic exiting at the university's access onto Willamette Boulevard.
>
> "* * * * *
>
> "The TIA * * * recognize[s] that there will be system failures for these large events and congestion during these events will occur. The transportation system is not and should not be designed to handle infrequent large events without this congestion. * * *" Record 74.

Essentially, the city interprets the ASCP, PCC 33.815.105.D.1 and 2, and PCC 33.820.070.G.1 to allow short traffic system failures for infrequent, large, special events. The city's position is that it should not require its transportation system to be over-built to accommodate infrequent, large, special events at the university. The

city's interpretation of the ASCP, PCC 33.815.105.D.1 and 2, and PCC 33.820.070.G.1 is not clearly wrong, and we defer to it. West v. Clackamas County, 116 Or App 89, 94, 840 P2d 1354 (1992). We agree with the city that nothing in either the ASCP, PCC 33.815.105.D.1 and 2 or PCC 33.820.070.G.1 requires that a particular level of service be maintained at affected intersections at all times.

The second and third assignments of error are denied.

FOURTH AND FIFTH ASSIGNMENTS OF ERROR

These assignments of error are based on the premise that the capacity of a neighborhood collector street is limited to 800-900 vehicle trips per day. As we understand it, petitioners contend the expansion of the university allowed under the proposed master plan will result in daily vehicle trips on neighborhood collector streets in excess of 800-900 vehicle trips per day. However, petitioners cite no relevant approval standard which limits neighborhood collectors to no more than 800-900 vehicle trips per day, and we are not aware of such a standard.

These assignments of error provide no basis for reversal or remand of the challenged decision.

The fourth and fifth assignments of error are denied.

SIXTH ASSIGNMENT OF ERROR

Petitioners contend that under PCC 33.820.070.G.1, the challenged decision does not adequately determine the traffic effects of the university enrollment increase

contemplated by the proposed master plan. Petitioners argue the challenged decision erroneously relies upon the TIA's 1990 traffic study, even though the city conducted a traffic study in 1992. According to petitioners, the 1992 city traffic study shows the projected enrollment increase at the university will result in 971 vehicles per hour on Willamette Boulevard. Petitioners contend this exceeds the capacity of Willamette Boulevard.

The challenged decision determines that regardless of whether the 1990 or 1992 traffic study is used, the master plan contemplates traffic impacts that are well within the capacity of Willamette Boulevard. In addition, the challenged decision contains adequate findings analyzing the expected traffic impacts of the proposed master plan to comply with PCC 33.820.070.G.1.

Concerning evidentiary support for the city's findings, they are supported by the 1990 TIA traffic study. Additionally, the 1992 traffic study does not undermine the 1990 TIA traffic study to the extent that reliance on that study is unreasonable. The 1992 study is based on data obtained on a single day at an intersection some distance away from the university. This is in contrast to the 1990 study, which is based on traffic data spanning a period of over two months and involving three intersections adjacent to the university, and one further away. Petitioners do not allege that evidence in the record, other than the 1992

traffic study, undermines the city's determination of compliance with PCC 33.820.070.G.1. The challenged decision is supported by substantial evidence in the whole record.

The sixth assignment of error is denied.

The city's decision is affirmed.

Holstun, Referee, concurring.

I do not agree that the question presented in the first and seventh assignments of error is a question of interpretation to which this Board must apply the very deferential standard of review set out in Clark v. Jackson County, supra, and ORS 197.829. The city simply concluded that the information and analysis required by PCC 33.820.070.G is contained in the documents cited in the findings quoted in the majority opinion. I agree with the city's conclusion that the informational requirements of PCC 33.820.070.G are satisfied.