BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

WEST HILLS DEVELOPMENT COMPANY, Petitioner, and HOME BUILDERS ASSOCIATION OF METROPOLITAN PORTLAND, Intervenor-Petitioner, vs. WASHINGTON COUNTY, Respondent, and METRO, Intervenor-Respondent.	)	LUBA No. 98-195 FINAL OPINION AND ORDER

Appeal from Washington County.

Allen L. Johnson, Eugene, and Wendie L. Kellington, Portland, filed a combined brief on behalf of petitioner and intervenor-petitioner. Allen L. Johnson argued on behalf of petitioner. With them on the brief were Johnson & Sherton, and Schwabe, Williamson & Wyatt.

Alan Rappleyea, Washington County Counsel, Hillsboro, filed a response brief and argued on behalf of respondent.

Lawrence S. Shaw, Portland, filed a response brief on behalf of intervenor-respondent.

BASSHAM, Board Member; HOLSTUN, Board Chair; BRIGGS, Board Member, participated in the decision.

AFFIRMED 10/15/99

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

Opinion by Bassham.

NATURE OF THE DECISION

Petitioners[1] appeal the county's adoption of an ordinance amending its comprehensive plan and land use regulations to establish minimum housing densities and other requirements for new development in the county's medium and high-density residential zones.

MOTION TO INTERVENE

Home Builders Association of Metropolitan Portland (Home Builders) moves to intervene on the side of petitioner. Metro, the regional government for the Portland metropolitan area, moves to intervene on the side of respondent. There is no opposition to either motion, and they are both allowed.

FACTS

Metro's Urban Growth Management Functional Plan (UGMFP) requires that Washington County provide for additional capacity of approximately 55,000 housing units and 55,000 jobs within the existing urban growth boundary. To help achieve that goal, Title 1 of the UGMFP requires that, by February 1999, the county must establish within its comprehensive plan and implementing ordinances a "minimum density" standard applicable to residential zones. The required standard must provide that no development application may be approved in the county unless the development will result in building 80 percent or more of the maximum number of dwelling units per net acre permitted by the zoning designation for the site.

Pursuant to Title 1 of UGMFP, the county conducted proceedings culminating in the adoption of Ordinance 517, which amends the Washington County Urban Comprehensive Framework Plan (UCFP) and Community Development Code (CDC) to establish minimum

[1]Petitioner and intervenor-petitioner filed a joint petition for review. We refer to both parties as "petitioners."

densities in four medium and high-density residential zones within the county. To help developers meet the minimum density requirement, Ordinance 517 makes it easier to build detached and attached single-family housing on small lots by reducing minimum lot sizes and required setbacks. The practical effect of the minimum density standard is that, in order to comply with that standard, development on most property within the affected zones must include at least some attached housing units.

To ensure that proposed attached housing is actually built, and to prevent efforts to avoid building at the densities required by the minimum density standard, Ordinance 517 establishes a "sequencing" requirement, as follows:

> "For developments with detached dwelling units, and attached dwelling units or assisted living units, where the detached dwelling units comprise sixty (60) percent or more of the total density, building permits for the final fifteen (15) percent of the proposed number of detached dwelling units shall not be issued until at least fifty (50) percent of the proposed number of attached dwelling units or assisted living units have been constructed or are under construction."

In addition, Ordinance 517 imposes a number of dimensional, setback, and design requirements for new development within medium and high density residential zones.

Section 5 of Ordinance 517 includes a severance clause stating that if any portion of the ordinance is held invalid, the remainder shall not be affected. The board of commissioners adopted Ordinance 517 on October 27, 1998. This appeal followed.

FIRST, SECOND, THIRD, AND FIFTH ASSIGNMENTS OF ERROR[2]

In these assignments of error, petitioners argue that the sequencing requirement and design requirements in Ordinance 517 violate, respectively, Statewide Planning Goal 10 (Housing),[3] provisions of the Metropolitan Housing Rule (OAR 660,

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[2]At oral argument, petitioners withdrew the fourth assignment of error, which argues that the challenged decision violates Metro's Regional Framework Plan. Petitioners agreed with intervenor-respondent Metro that the Regional Framework Plan is inapplicable to the challenged decision by virtue of ORS 268.390(5).

[3]Goal 10 is:

division 7),[4] and UGMFP Title 1, section 2(A).[5] In combined argument, petitioners contend that the record and the challenged decision fail to demonstrate compliance with these

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"To provide for the housing needs of citizens of the state.

"Buildable lands for residential use shall be inventoried and plans shall encourage the availability of adequate numbers of needed housing units at price ranges and rent levels which are commensurate with the financial capabilities of Oregon households and allow for flexibility of housing location, type and density."

[4]Petitioners cite the following provisions of the Metropolitan Housing Rule as applicable:

"The purpose of this rule is to assure opportunity for the provision of adequate numbers of needed housing units and the efficient use of land within the Metropolitan Portland (Metro) urban growth boundary, to provide greater certainty in the development process and so to reduce housing costs. OAR 660-007-0030 through 660-007-0037 are intended to establish by rule regional residential density and mix standards to measure Goal 10 Housing compliance for cities and counties within the Metro urban growth boundary, and to ensure the efficient use of residential land within the regional UGB consistent with Goal 14 Urbanization. OAR 660-007-0035 implements the Commission's determination in the Metro UGB acknowledgment proceedings that region wide, planned residential densities must be considerably in excess of the residential density assumed in Metro's 'UGB Findings'. The new construction density and mix standards and the criteria for varying from them in this rule take into consideration and also satisfy the price range and rent level criteria for needed housing as set forth in ORS 197.303." OAR 660-007-0000.

"Local approval standards, special conditions and procedures regulating the development of needed housing must be clear and objective, and must not have the effect, either of themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay." OAR 660-007-0015

"Residential plan designations shall be assigned to all buildable land, and shall be specific so as to accommodate the various housing types and densities identified in OAR 660-007-0030 through 660-007-0037." *Former* OAR 660-007-0018(1).

"Clackamas and Washington Counties * * * must provide for an overall density of eight or more dwelling units per net buildable acre." OAR 660-007-0035(2).

"For plan and land use regulation amendments which are subject to OAR 660, Division 18, the local jurisdiction shall either:

"(a) Demonstrate through findings that the mix and density standards in this Division are met by the amendment; or

"(b) Make a commitment through the findings associated with the amendment that the jurisdiction will comply with provisions of this Division for mix or density through subsequent plan amendments." OAR 660-007-0060(2).

[5]UGMFP, Title 1, section 2(A) provides in relevant part:

provisions, and that the challenged decision does not comply with the requirement, in Statewide Planning Goal 2 (Land Use Planning), that land use decisions be supported by an "adequate factual base."

A. Sequencing Requirement

Petitioners explain that the sequencing requirement is intended to help accomplish the purposes of the minimum density standard, which in turn is designed to implement Goal 10, OAR 660, division 7, and provisions of the UGMFP. Petitioners describe the purposes of the minimum density standard as (1) to assure the availability of an adequate supply of vacant buildable land for needed housing at prices and rent levels affordable to Oregonians of all income levels; and (2) to assure that the limited supply of such lands is used efficiently to comply with the requirements of Statewide Planning Goals 14 (Urbanization), 11 (Public Facilities and Services), and 12 (Transportation). However, petitioners argue, the sequencing requirement will frustrate rather than help to accomplish these purposes.

Petitioners cite to testimony from a representative of petitioner West Hills Development Company (West Hills) that the sequencing requirement would pose financial, logistical and marketing hardships on developers, for the following reasons:

> "Cities and counties shall apply a minimum density standard to all zones allowing residential use as follows:
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> "1(a). Provide that no development application, including a subdivision, may be approved unless the development will result in the building of 80 percent or more of the maximum number of dwelling units per net acre permitted by the zoning designation for the site; or
>
> "1(b) Adopt minimum density standards that apply to each development application that vary from the requirements of subsection 1.a., above.
>
> "* * * * *
>
> "3. No comprehensive plan provision, implementing ordinance or local process (such as site or design review) may be applied and no condition of approval may be imposed that would have the effect of reducing the minimum density standard."

> "(a) Receiving construction financing with [the sequencing restriction] would be difficult if not impossible.
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> "(b) The development's phasing, site terrain, or access to utilities may conflict with [the sequencing] requirement making it economically infeasible.
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> "(c) [Petitioner West Hills] sells all of its homes prior to construction of each home--an attached project must be 100% sold before construction on it can start. It is not reasonable, or feasible, to mandate that the detached portion of the project be 'held up' until the attached [portion] is 100% sold." Record 139.

Petitioners argue, based on this testimony, that the sequencing requirement is likely to economically blight the affected lands and slow or prevent their development, which, petitioners argue, is contrary to its purpose to ensure needed housing is built, and contrary to the purposes of the minimum density standard and Goal 10 to assure that adequate buildable lands will be available. Petitioners contend that the record and challenged decision are devoid of any evidence or other basis upon which to conclude that the sequencing requirement is necessary or will have the intended effect of ensuring that needed housing is built. Given the absence of supporting evidence, petitioners argue, the only evidence in the record (the above-quoted testimony) is to the contrary, and thus the county cannot demonstrate that an adequate factual base supports its decision. Further, petitioners argue, the record is devoid of any explanation sufficient to demonstrate that the sequencing requirement is consistent with Goal 10 and the Metropolitan Housing Rule.

Petitioners also challenge the sequencing requirement from an entirely different angle, arguing not that it goes too far but that it does not go far enough. Petitioners point out that the sequencing requirement applies only to proposed development where more than 60 percent of the housing is detached housing. Petitioners argue that developers can avoid the sequencing requirement entirely by designing projects with less than 60 percent detached housing. Under that scenario, petitioners argue, developers will be free to build only the

detached portion and leave the proposed attached housing unbuilt, contrary to the purpose of the sequencing requirement to ensure that minimum densities are achieved.

The county responds that there is testimony in the record sufficient to support a conclusion that the sequencing requirement is necessary to prevent developers from building mixed-design developments in a sequence that allow the developer to avoid the minimum density standard. The county relies in part on a staff report that explains:

> "The purpose of [the sequencing requirement] is to ensure that projects will actually be designed so they will meet the minimum density standard, rather than being designed to use a small portion of a site for a number of attached units which are not intended to be built. This standard was prompted due to inquiries as to how someone could submit a development proposal, which uses some attached dwellings to meet the minimum density requirements, but where the applicant only wishes to construct the detached units, thereby leaving the portion of the site intended for attached units vacant." Record 150.

Further, the county cites to testimony from planning staff responding to the comments of petitioner West Hills' representative, quoted above:

> "[T]he fundamental rationale for [the sequencing requirement] is that we're responding to, again, the imperatives from the [UGMFP] * * * that require us, among other things, to provide capacity for a certain number of units and to have minimum densities. * * * [Under the preexisting ordinance] there was a provision that you didn't have to build it or any minimum density and what the fundamental finding was * * * that that wasn't very efficient – that we underbuilt a lot. The new approach * * * is to become much more aggressive about not moving the [urban growth] boundary and much more aggressive about being efficient * * *[.] * * * And, the efficiencies of having minimum densities really require that you guarantee that they get built. One of the things that can happen * * * is the project, especially one that gets larger in size, can be phased and there is the conceptual ability to escape the minimum density requirements by loading up the very last phase, which may be a very small piece of land with a very large amount of density. * * * [W]hat really counts also is to see that it actually gets built and that's what this requirement is about – is to not create a loophole for creating minimum densities by leaving a large residual or even a small residual amount of density to be built on a small piece of property that would become remnant and unbuildable through time." Transcript of Board of Commissioners hearing, October 6, 1998, Response Brief App 3-10.

In its brief, the county describes the scenario that the sequencing requirement is designed to prevent. The county posits that:

> "For instance, a developer has a 10-acre parcel zoned R-24 requiring a minimum density of 18 units per acre. For the first nine acres, the developer builds 10 units per acre. That leaves the last acre with a requirement of at least 90 units per acre. It will be difficult, if not impossible, to build to this density on one acre. The result will be a density of only nine units per acre, only half of that required minimum." Response Brief 4.

The Goal 2 requirement for an "adequate factual base" is equivalent to the requirement that a quasi-judicial decision be supported by substantial evidence in the whole record. *1000 Friends of Oregon v. City of North Plains*, 27 Or LUBA 372, 378, *aff'd* 130 Or App 406, 882 P2d 1130 (1994). Substantial evidence exists to support a finding of fact when the record, viewed as a whole, would permit a reasonable person to make that finding. *Dodd v. Hood River County*, 317 Or 172, 179, 855 P2d 608 (1993).

Unlike quasi-judicial land use decisions, legislative decisions need not be supported by findings. However, for LUBA to perform its review function, where legislative decisions are not supported by findings demonstrating compliance with applicable legal standards, respondent must include in its brief argument and citations to facts in the record to demonstrate that the decision complies with applicable legal standards. *Redland/Viola/ Fischer's Mill CPO v. Clackamas County*, 27 Or LUBA 560, 563-64 (1994).

We disagree with petitioners that the record lacks evidence that the sequencing requirement is necessary. The above-quoted testimony from county staff identifies a potential problem in applying the minimum density standard, and adequately explains why the sequencing requirement is an appropriate solution to that problem. A reasonable person could conclude, based on the record as a whole, that the sequencing requirement is a means to forestall the identified problem.

We also disagree with petitioners that the sequencing requirement is defective because it does not go far enough. The minimum density requirement itself, which petitioners

do not challenge, is the main element of Ordinance 517 intended to comply with the UGMFP and, ultimately, Goal 10. As the county explains it, the sequencing requirement is merely a means to forestall one potential method of avoiding the minimum density requirement in certain scenarios where the incentive to underbuild is the strongest: where the large majority of proposed housing consists of detached single-family units. That the sequencing requirement will not apply in all cases, or in scenarios where there are fewer incentives to underbuild, does not demonstrate that the minimum density standards will fail or be undermined.[6]

The more difficult question is petitioners' further argument that nothing in the decision or record addresses petitioners' concerns regarding the unintended economic consequences of the sequencing requirement. Petitioners cite to *Opus Development Corp. v. City of Eugene*, 28 Or LUBA 670, 691 (1995), for the proposition that, once an objector has demonstrated that a comprehensive plan or land use regulation amendment may impact a buildable lands inventory in a manner inconsistent with applicable statewide planning goals, the local government must demonstrate that the plan and land use regulation comply with the goals. At issue in *Opus Development Corp.* were legislative amendments that converted land in the city's Goal 9 inventory of industrial and commercial land to mixed-use designations allowing residential uses, and imposed certain site design requirements on industrial and commercial uses. We stated in that case:

> "Petitioners have demonstrated [that] the challenged decisions include zone changes from an industrial zone to a mixed use zone allowing a variety of residential uses. Petitioners have also demonstrated the site review requirements imposed by the challenged decisions on numerous industrial, commercial and mixed use zoned properties may impose limitations on future

[6]If we understand the county's explanation correctly, the incentive to underbuild is strongest in residential developments consisting largely of single-family detached housing with only a small number of attached residential units. According to the county, the incentive to underbuild is correspondingly weaker in developments consisting of a large percentage of attached housing, apparently on the theory that a reasonable developer is unlikely to voluntarily leave large areas of the property vacant just to avoid building attached housing.

> industrial and commercial use of those properties. This is sufficient to require the city to demonstrate that it remains in compliance with the Goal 9 requirement for an adequate inventory of commercial and industrial sites.
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> "* * * The city essentially argues [that the challenged decisions] can be presumed to comply with Goal 9, paragraph 3 because the city's inventories of commercial and industrial land contain large surplus acreages above what is needed. However, Goal 9, paragraph 3 requires that the city's inventory of suitable commercial and industrial sites be adequate not just with regard to total acreage, but also with regard to size, type, location and service levels * * *. The city must demonstrate that in view of the limitations and changes imposed by the challenged decisions, it still has an inventory of commercial and industrial sites that is adequate with regard to size, type, location and service levels * * *." 28 Or LUBA at 691.

In the present case, petitioners argue that, as in *Opus Development Corp.*, they have demonstrated that the challenged ordinance may frustrate the purpose of the minimum density standard in a manner that ultimately may prevent the affected lands from being developed at all, much less developed at the densities required for compliance with the UGMFP and Goal 10. Moreover, petitioners contend that the sequencing requirement may also threaten the county's inventory of buildable lands because, if petitioners are correct, the sequencing requirement will render some lands effectively unbuildable. Consequently, petitioners argue, it is incumbent on the county to demonstrate that the challenged ordinance will not in fact render lands unbuildable and will achieve the housing densities required by the goal and functional plan.

The county responds in its brief that petitioners have failed to demonstrate that the sequencing requirement will prevent affected lands from being used at the densities required by Goal 10 and the UGMFP, or that it will affect the inventory of building lands. The county argues that petitioners greatly overstate the potential impact of the sequencing requirement. According to the county, the sequencing requirement affects only four of 12 county residential districts, and applies only to proposals for mixed detached and attached housing. Of those proposals, the requirement applies only to mixed development where detached units make up more than 60 percent of the total density. Further, its only impact is to delay

building permits for 15 percent of the detached dwelling units until 50 percent of the attached units are built. With such a limited and attenuated impact, the county argues, the sequencing requirement cannot adversely impact the county's buildable lands inventory.

Moreover, the county contends, the only contrary evidence consists of the speculative opinion of one home builder that it would be difficult to obtain financing for projects subject to the sequencing requirement, that it might conflict with phasing and other limitations, and that it would conflict with that builder's practice of pre-selling its dwellings before it builds them. However, that testimony does not explain *why* financing would be difficult to obtain for mixed-use projects subject to the requirement, why the requirement might conflict with phasing and other developmental limitations, or why the requirement is inconsistent with West Hills' practice of pre-selling its dwellings. Absent such additional explanation, the county submits, West Hills' three concerns are no more than insubstantial speculation. The county argues that petitioners' further speculations on appeal, that the sequencing requirement will cause an economic blight on affected lands, rendering those lands unbuildable and incapable of supporting the requisite density, has no factual basis in the record.

We agree with the county that petitioners have failed to demonstrate that the county's decision lacks an adequate factual base, or is inconsistent with Goal 10 and relative housing provisions. The scope of the sequencing requirement is so limited and the possible effects petitioners fear so attenuated, that a reasonable person could conclude, based on the text of the requirement and the evidence quoted above, that the sequencing requirement will not adversely affect the county's buildable lands inventory or prevent it from achieving the required density.

Moreover, even assuming that petitioners' speculations are correct and that the sequencing requirement imposes such burdens that at least some developers will decline to build projects subject to that requirement, it does not follow that the affected lands will be

economically blighted, rendered unbuildable, or limited in a manner that affects the county's buildable lands inventory. Unlike the legislative amendments at issue in *Opus Development Corp.*, the sequencing requirement does not reduce the supply of land within the county's buildable lands inventory, or impose limitations on uses protected by a statewide planning goal that threaten to convert those lands to uses not protected by the goal.[7] As both parties point out, the sequencing requirement is easily avoided by proposing development with less than 60 percent detached housing. Thus, even if petitioners' concerns are well-founded, the only probable effect is that some developers who would otherwise propose residential development with a higher percentage of detached housing will instead propose development with a lower percentage of detached housing, and thus a higher percentage of attached housing. As the county points out, all other things being equal, attached housing generates higher density than detached housing. Accordingly, even if the sequencing requirement has the unintended consequences that petitioners claim, the only probable result is that more higher-density attached housing will be built than would otherwise be the case, not that affected lands will be economically blighted and remain undeveloped. Such a result would not be inconsistent with the requirements of the UGMFP and Goal 10.

We conclude that petitioners have not demonstrated that the county's decision lacks an adequate basis in fact with respect to compliance with Goal 10, the Metropolitan Housing Rule, or the UGMFP.

The first, second, third, and fifth assignments of error are denied.

SIXTH ASSIGNMENT OF ERROR

In the sixth assignment of error, petitioners argue that the challenged decision fails to comply with Goal 10, ORS 197.303, the Metropolitan Housing Rule, the Metro Regional

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[7]In *Opus Development Corp.*, the site review requirements at issue allegedly limited industrial and commercial uses of land (protected by Goal 9) in a manner that threatened to convert those lands from industrial and commercial uses to residential uses that were also allowed by mixed use zoning.

Framework Plan, and the UGMFP because it does not establish that the lands needed to provide the required range of housing types remain available after cumulative application of the minimum density requirement and new design requirements in combination with the county's preexisting standards.

The challenged decision amends CDC provisions governing site design requirements such as setbacks, driveways, parking, building facades, etc., for development within the R-9, R-15, R-24 and R-25+ zones. Petitioners identify several aspects of the challenged amendments, discussed below, and argue that, combined with existing standards and the new minimum density requirement, the county's requirements may effectively prevent some lands from being developed. Petitioners argue the cumulative impact of these requirements will result in at least some circumstances where the land cannot be developed at any allowed density.

A. CDC 300-2.3

CDC 300-2 sets forth the method to calculate both maximum and minimum residential densities. CDC 300-2.3 as amended now provides that

> "The number of units which may be constructed on the subject site shall be subject to the limitations of the applicable provisions of this Code, including the requirements of Section 300-3 [governing density transfers] and such other things as landscaping, parking, flood plain, buffering, slopes and other site limitations."

According to petitioners, "landscaping, parking, flood plain, buffering, slopes and other site limitations" may limit the buildable land on a site to the point where the site cannot meet the minimum density requirements. Petitioners argue that, under CDC 300-3.4, all land is considered buildable for purposes of calculating density unless it is subject to a density transfer. While land in flood plains is subject to density transfers, land required for landscaping, parking, buffering, slopes and other site limitations is not eligible for density transfers, which means such land is considered "buildable land." Petitioners speculate that there may be circumstances when a site cannot meet site and design standards and the

minimum density requirement. Because the challenged decision contains no exceptions for such circumstances, petitioners argue that the county must deny all projects involving such sites.

B. Driveway Width and Depth

The challenged decision adopted CDC 413-5.11, which imposes a 12-foot minimum driveway width and a 20-foot minimum driveway depth for all detached and attached units within the R-9, R-15, R-24 and R-25+ zones.[8] Petitioners argue that these driveway widths and depths are larger than necessary, and that the extra width and depth will render it more difficult to develop projects consistent both with these requirements and with the minimum density requirements. Petitioners also note that the minimum street frontage dimensions in the R-9 zone for an attached dwelling is 24 feet. Petitioners argue that, combined with the excessive 12 foot minimum driveway width, the required three-foot driveway aprons, and offstreet parking requirements, which require 18 feet, it will be impossible to meet the driveway and offstreet parking requirements with a 24-foot wide lot. Consequently, petitioners argue, developers will have to use wider lots, which will make it more difficult to satisfy the minimum density standard.

In addition to its general response, discussed below, the county responds that the off-street parking requirement applies only in certain circumstances, and even where it applies it can be addressed in alternative ways, such as angled parking or parking courts. Further, the county notes that the 24-foot width in the R-9 zone is only a minimum; lots can be wider.

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[8]CDC 413-5.11 provides:

> "The minimum driveway width for one detached dwelling unit shall be twelve (12) feet. The minimum driveway width for each single family attached dwelling unit with individual vehicular access to a street shall be twelve (12) feet. The minimum driveway depth for detached and attached units shall be twenty (20) feet (measured from the back of sidewalk or the property line as specified by the primary district).

C. Setbacks

Petitioners argue that the rear and front yard setbacks adopted by the challenged decision "are far too restrictive to enable the production of dense affordable housing." Petition for Review 28. We understand petitioners to contend that these rear and front yard setbacks are larger than necessary, and thus will make it more difficult to satisfy both these requirements and the minimum density requirements.

Petitioners also argue that the county has failed to consider whether it can achieve the required densities given the setbacks for screening and buffering setbacks required by CDC 411. CDC 411 generally requires that, in addition to any other applicable setbacks, property adjacent to property within a different zoning district may have to provide vegetation or a setback from the property line in order to screen or buffer less intensive uses from more intensive uses.

D. Parking Courts

The challenged decision adopts CDC 413-6.3, which allows portions of the on-street parking required by CDC 413-6.1 to be provided by "parking courts" limited to eight parking spaces and located within 100 feet of the affected lots.[9] Petitioners argue that CDC 413-6.3 is inconsistent with the county's ability to meet density requirements and provide needed housing, because it effectively mandates a relatively short minimum block size of 200 feet, which means more land will be used for streets rather than for housing. Petitioners reason

[9]CDC 413-6.3 provides in relevant part:

> "Portions of the on-street parking required by [CDC] 413-6.1 may be provided in parking courts that are interspersed through out a development when the following standards are met:
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> "A. No more than eight (8) parking spaces shall be provided in a parking court;
>
> "B. A parking court shall be located within one hundred (100) feet of the affected lot as in accordance with the requirements of [CDC] 413-2.2[.]"

that if each house served by a parking court must be within 100 feet of the court, it is impossible for blocks to be any longer than 200 feet.

In addition to its general response, discussed below, the county responds that the parking court requirement does not mandate 200 foot blocks. According to the county, a series of parking courts can be placed on lots in the middle of blocks, allowing for blocks longer than 200 feet.

E. The Parties' Contentions

Based on the preceding examples, petitioners argue that the county has not established that it is possible to comply with the site design requirements, combined with the county's other standards and its newly adopted minimum density requirement. According to petitioners, the consequence of imposing these standards is that in at least some cases developers will be forced to propose, and the county will thus be forced to deny, nonconforming projects. That is, petitioners speculate that in some cases developers will not be able to comply with both the density requirement and new and old site design standards, forcing the developer to propose projects that are nonconforming with respect to one or both sets of requirements. Because those requirements apply only to four residential zones disproportionately affecting assisted living units, attached housing, and small-lot detached housing, petitioners argue that the burden the challenged decision places on development within these zones will effectively discourage these needed housing types. The consequence, petitioners argue, is that the challenged amendments will impair the county's ability to reach density goals and ensure that certain needed housing types are represented in its inventory.[10]

[10]Petitioners also argue that the challenged decision is inconsistent with Title III of the UGMFP, which requires up to 200-foot setbacks from certain water features, prohibits development in certain mapped areas, and allows density transfers in identified water quality resource areas and flood management zones. Petitioners contend that the density transfers allowed under the CDC are more restrictive than those allowed under Title III. Further, petitioners argue, a developer attempting to comply with Title III's setbacks and prohibitions on development may have to reduce proposed density below the required minimum density, forcing the county to deny those projects.

The county agrees with petitioners to the extent that the minimum density requirement, combined with new and old site design provisions, will make it harder to develop lower density projects consisting entirely or mostly of single-family detached housing. However, the county argues that petitioners have failed to demonstrate any potential inconsistency with Goal 10 or related needed housing standards, nor any reason to believe that the county will not be able to achieve its minimum density goals. According to the county, the consequence of imposing the minimum density standard in combination with the new and old site design requirements is that in most cases some portion of the proposed development will require attached, multi-family or assisted living units in order to comply with all relevant standards. In certain cases, the county argues, application of the minimum density standard and the site design standards to lands with a relatively low proportion of buildable sites may require a smaller percentage of single family detached housing than some developers might prefer, but petitioners have not demonstrated that any circumstances exist in which lands cannot be developed in compliance with all applicable standards, given the appropriate mix of housing types.

We agree with the county that petitioners' speculations regarding the combined impacts of the minimum density requirement and the county's site design requirements are insufficient to establish that the challenged decision fails to comply with Goal 10 and related needed housing provisions or that it lacks an adequate factual base. Even if it is true that certain lower density proposals will be unable to establish compliance with both the minimum density requirement and the site design requirements, nothing in Goal 10 or elsewhere directed to our attention requires that the entire range of potential densities be

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The county and Metro respond that the operative provisions of UGMFP Title III were not effective at the time of the challenged decision, and will not become effective until the year 2000. Both respondents argue, and we agree, that inconsistency with UGMFP Title III is no basis to reverse or remand the challenged decision.

allowed in all zoning districts.[11] If the practical effect of imposing both the density requirement and site design requirements is to encourage higher density projects than would otherwise be proposed, then that result seems entirely consistent with Goal 10 and related needed housing provisions, including Title I of the UGMFP. Petitioners' speculations are insufficient to establish that due to topographic or other constraints certain lands cannot be developed consistently with the minimum density and site design requirements at any allowed density.

The sixth assignment of error is denied.

The county's decision is affirmed.

[11]As the county points out, OAR 660-007-0030 and existing provisions of the county's comprehensive plan require that the county adopt the goal of building 50 percent of new housing units in the county as attached units. Presumably, to achieve that goal more than 50 percent of new housing units must be attached housing in some zoning districts, such as the medium and high-density zoning districts at issue here, to balance other residential zoning districts where attached housing is limited or not allowed.