BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

JACKIE HATFIELD, TINKER HATFIELD, KEITH STEENSLID, LYNNDA STEENSLID, JOHN DUNBAR, RITA DUNBAR, KEN ANDERSEN, JACKIE ANDERSEN, PAT DYER, KATHY DYER, TOM NORMINGTON, SARAH NORMINGTON, JR GUSTUFSON, CAROL RAMSEY, BURTON W. ONSTINE, ED VRANIZAN, LORI VRANIZAN, STEVE BLASKE, TIM KING, GAIL KING, CHRISTOPHER EDMONDS, ANDREA EDMONDS, McCOY NEVIN, MARGIE NEVIN, BOB FREELANDER, KAREN FREELANDER, CHARLES DAVIDSON, RALPH THOMAS, MARGARET THOMAS, MARK ELLIOTT, KATHY ELLIOTT, SHIRLEY BROWN, HANNAH CALLAGHAN and ROBERT WEAVER,
Petitioners,

vs.

CITY OF PORTLAND,
Respondent,

and

PHIL SPARKS,
Intervenor-Respondent.

LUBA No. 99-116

FINAL OPINION
AND ORDER

Appeal from City of Portland.

Jillian R. Bruce and Marnie Allen, Portland, filed the petition for review. With them on the brief was Preston, Gates and Ellis. Marnie Allen argued on behalf of petitioners.

Adrianne Brockman, Deputy City Attorney, Portland, and Daniel Kearns, Portland, filed a joint response brief on behalf of respondent and intervenor-respondent. With them on the brief was Reeve Kearns, PC. Daniel Kearns argued on behalf of intervenor-respondent.

HOLSTUN, Board Member; BASSHAM, Board Chair; BRIGGS, Board Member,

participated in the decision.

REMANDED 02/17/2000

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

Opinion by Holstun.

NATURE OF THE DECISION

Petitioners appeal a city hearings officer decision granting conditional use review approval for a bed and breakfast facility in an existing house.

MOTION TO INTERVENE

Phil Sparks (intervenor), the applicant below, moves to intervene on the side of respondent. There is no opposition to the motion, and it is allowed.

FACTS

The subject property is comprised of two 5,000 square foot lots, located on the corner of NE 24th Avenue and NE Thompson Street, in the city's Irvington Neighborhood. One Colonial Revival style house that was constructed in 1915 occupies the property. The 3,000 square foot dwelling contains five bedrooms. A detached garage is located on the northwest corner of the subject property and is accessed by a long driveway off NE Thompson Street. The subject property is located in the city's R5 d (5,000) zone.[1] The dwelling is included on the city's Historic Resources Inventory.

The immediate neighborhood surrounding the subject property is comprised of similar, large single-family dwellings. Nine bed and breakfast facilities exist within one-half mile of the subject property, along with a number of nonresidential uses. Those other nonresidential uses include social services facilities, medical offices and the Irvington Tennis Club.

The proposed bed and breakfast facility would be maintained by a residential innkeeper and up to three employees. Under city regulations, the house may also be used for no more than four private social gatherings per year. As originally proposed, the garage and driveway would provide two off-street parking spaces.

---

[1]The map symbol "d" denotes that the subject property is located in a Design Overlay Zone where certain alterations to existing structures require design review approval. PCC Chapter 33.420.

Petitioners, who are residents of the Irvington Neighborhood, appeared before the city to oppose the application. Their chief concerns revolve around the expectation that the owner of the property would not be the resident innkeeper, that the establishment of the bed and breakfast facility would continue a precedent of establishing bed and breakfast facilities in historic dwellings in the area to the detriment of single-family residents, and that the proposed use would increase traffic on residential streets in the neighborhood.

The Portland Office of Planning Development and Review approved the application on April 15, 1999, with a number of conditions to reduce off-site parking and traffic impacts. In particular, the approval required that the bed and breakfast facility utilize valet parking to allow tandem parking in the driveway because nearby on-street parking is limited.

Petitioners appealed the staff decision to the city land use hearings officer. The hearings officer denied the appeal, and affirmed the staff's decision. This appeal followed.

INTRODUCTION

Bed and breakfast facilities are allowed in the R5 zone, but require conditional use review. PCC 33.212.060.[2] The approval criteria at PCC 33.815.105, which apply generally to "Institutional and Other Uses in R Zones," must be met to approve a bed and breakfast facility. PCC 33.212.060. One of those criteria requires that a proposed conditional use be "consistent with any area plans adopted by the City Council such as neighborhood or urban

---

[2]PCC Chapter 33.212 specifically addresses bed and breakfast facilities. PCC 33.212.040 imposes "Use-Related Regulations" and requires that a bed and breakfast facility be "accessory to a Household Living use on the site." PCC 33.212.040(A). PCC 33.212.040(B) limits the maximum size of a bed and breakfast facility to five bedrooms and the maximum number of nightly guests to six. PCC 33.212.040(E) prohibits certain commercial meetings at bed and breakfast facilities and limits the number of private social gatherings to four per year. PCC 33.212.010 describes the purpose of PCC Chapter 33.212 as follows:

> "This chapter provides standards for the establishment of bed and breakfast facilities. The regulations are intended to allow for a more efficient use of large, older houses in residential areas if the neighborhood character is preserved to maintain both the residential neighborhood experience and the bed and breakfast experience. These regulations enable owners to maintain large residential structures in a manner which keeps them primarily in residential uses. The proprietor can take advantage of the scale and often the architectural and historical significance of a residence. The regulations also provide an alternative form of lodging for visitors who prefer a residential setting."

renewal plans." PCC 33.815.105(E). The Irvington Neighborhood Plan applies to the subject property, and in their first two assignments of error petitioners argue the challenged decision violates two Irvington Neighborhood Plan policies as a matter of law.

In their third and fourth assignments of error, petitioners argue the hearings officer misconstrued two of the other criteria, PCC 33.815.105(A) and (D)(2), and failed to adopt adequate findings addressing those criteria. PCC 33.815.105(A) requires that "[t]he overall residential appearance and function of the area will not be significantly lessened." PCC 33.815.105(D)(2) requires a safe transportation system to support the proposed use and existing uses. We turn to petitioners' assignments of error.

FIRST ASSIGNMENT OF ERROR

Policy V, Transportation, of the Irvington Neighborhood Plan provides:

> "Decrease traffic on Irvington streets and create a safe pedestrian-friendly environment. Encourage the use of bicycles and mass transit for commuting to work and other trips. Support the development of a north-south light rail line that serves the neighborhood. Discourage non-local traffic and parking in the neighborhood."[3]

Petitioners note that there will be *more* traffic on Irvington streets with the bed and breakfast facility than there would be without the proposed facility. Petitioners also note that the record shows that a relatively high percentage of the traffic that will be generated by the proposed bed and breakfast facility will be non-local. From these facts, petitioners argue that Policy V and Objective 6 of that policy are violated as a matter of law.

In addressing Policy V, the hearings officer adopted the following findings:

> "Policy V (Transportation), which calls for the reduction of traffic on neighborhood streets and the creation of a safe pedestrian environment, the use of alternative transportation, and discouragement of non-local traffic and parking in the neighborhood, can only be met if necessary attention is paid to the potential trip and parking impacts. In particular, Objectives 4 and 6

[3]Petitioners also cite Objective 6 of Policy V, which provides in part:

> "Reduce the amount and speed of traffic on Irvington's local streets * * *."

> mandate that parking be managed in Irvington and [the] amount and speed of traffic on local streets be reduced. In fact, Action Item T8 (Action Item) called for investigating the establishment of a permit parking program in the southern part of Irvington. A permit parking program was never established, but the action item indicates the importance of addressing parking in the neighborhood. This policy is not violated by this proposal because parking demand is modest, additional parking demand for events may be mitigated through the provision of off-site parking, and because trip generation will not be significant enough to create pedestrian safety problems." Record 11.

Petitioners and the hearings officer interpret the requirement imposed by Policy V and Objective 6 quite differently. Petitioners interpret those provisions to apply directly to this proposed conditional use and to require that the disputed bed and breakfast both reduce traffic and discourage non-local traffic, *as compared to the existing use*. The hearings officer clearly, if implicitly, interpreted the provisions to require mitigation of anticipated traffic impacts.

The challenged decision was made by a hearings officer. Therefore, no deference is due the hearings officer's express or implicit interpretations. *Gage v. City of Portland*, 319 Or 308, 877 P2d 1187 (1994); *Watson v. Clackamas County*, 129 Or App 428, 879 P2d 1309 (1994). We consider whether the hearings officer's interpretation is reasonable and correct. *McCoy v. Linn County*, 90 Or App 271, 275-76, 752 P2d 323 (1988); *Stroupe v. Clackamas County*, 28 Or LUBA 107, 111 (1994).

As an initial point, we agree with petitioners that Policy V and Objective 6 are at least potentially relevant approval criteria. We reach that conclusion because, as previously noted, PCC 33.815.105(E) requires that the challenged decision be "consistent with" any relevant neighborhood plan. The Irvington Neighborhood Plan itself makes it clear that Policies and Objectives, unlike other parts of the plan, are intended to have the force of law.[4] We do not

[4]The Irvington Neighborhood Plan explains its hierarchical organization as follows:

> "The Irvington Neighborhood Plan consists of several parts. They are the Vision Statement, the Overall Neighborhood Goal, Comprehensive Plan Policies and Objectives, Action Charts, Neighborhood Objectives and an Urban Design Plan. Some of this material will be * * *

understand the hearings officer to have concluded otherwise. However, just because Policy V and Objective 6 have the force of law does not necessarily mean they apply to the particular decision that is challenged in this appeal or that they apply in the manner that petitioners argue they do.

The cited plan policy and objective do not expressly require that proposed development must be denied if it will generate *any* local or non-local traffic that is not already occurring in the Irvington Neighborhood. It is clear that the hearings officer did not interpret the plan policy and objective to impose such an obligation. Rather, the hearings officer viewed these plan provisions as imposing a more general, neighborhood-wide planning policy and objective of reducing traffic and discouraging non-local traffic. The hearings officer further notes that a particular "Action Item" was adopted in the Irvington Neighborhood Plan to implement this policy. The hearings officer ultimately found that this

---

> included as a portion of the Albina Community Plan and Portland's Comprehensive Plan. Other material will be recommended for approval by City Council by resolution or [is] intended for the neighborhood's own guidance. *Items adopted by resolution are advisory to decision makers but do not have the force of law.*
>
> "The **Irvington Vision Statement** illustrates where the Plan is leading and is stated as a set of six goals detailing overall direction for the neighborhood. * * * The Vision Statement will be recommended for adoption by resolution.
>
> "The **Overall Neighborhood Goal** ties the Irvington Neighborhood Plan to the Albina Community Plan and Portland's adopted Comprehensive Plan. It will be adopted as a policy in the Albina Community Plan. * * *
>
> "The Irvington Neighborhood Plan's **Policies and Objectives** address the aspects of the Irvington Neighborhood over which those participating in the planning process wish to provide guidance to decision makers. *They will be [adopted] by ordinance*. The Policies state the neighborhood's goals for specific areas such as housing, public safety and transportation. The Objectives detail ways in which to reach these goals.
>
> "The **Action Charts** specify projects, programs and regulatory measures that carry out the Neighborhood Plan's Policies. They are assigned a time frame and possible champion, or leader, to carry them out. Programs and projects will be recommended for adoption by resolution which means they will not have the force of law. Regulatory measures which propose amending Zoning Designations or the Zoning Code will be recommended for approval by ordinance at the same time as other portions of the Irvington Neighborhood Plan that amend the City's Comprehensive Plan, Zoning Map and Zoning Code." (Emphases added.)

general policy and objective is "not violated" by the proposal, because the traffic impacts associated with this proposal will be minimal, due to the nature of the use and the conditions of approval that are imposed as part of the decision.

The hearings officer's implicit interpretation that the cited policy and objective do not impose an absolute "traffic reduction" requirement is consistent with the interpretive approach taken by the city council in other proceedings, where the city council applied a similarly worded plan provision. *See Citizens to Save the Willamette Waterfront v. Portland*, 12 Or LUBA 244, 253-55 (1984) (plan policy to "[r]educe vehicular traffic through residential neighborhoods" is not an absolute traffic reduction requirement and is implemented by constructing public improvements and directing traffic toward those improvements). We find the hearings officer's implicit interpretation of the policy and objective to be reasonable and correct. *McCoy*, 90 Or App at 275-76.[5]

The first assignment of error is denied.

SECOND ASSIGNMENT OF ERROR

Irvington Neighborhood Plan Policy VI states:

> "Improve neighborhood commercial districts. Support commercial development that serves the neighborhood and is compatible with Irvington's scale and character."[6]

---

[5]Petitioners' argument under this assignment of error is limited to alleging that the hearings officer misconstrued the cited plan provisions by not interpreting them to require that the proposal reduce existing local and non-local traffic. We reject that argument. We do not understand petitioners to allege that the hearings officer's findings are inadequate to demonstrate compliance with the cited policy and objective or are not supported by substantial evidence if, as we conclude the hearings officer implicitly found, the policy and objective impose a general planning directive rather than an absolute traffic reduction requirement. We therefore do not consider that question.

[6]The quoted language of Policy VI is followed by seven Objectives. Objective 3 provides:

> "Protect the primarily residential character of the Irvington Neighborhood by discouraging development of commercial uses in other than designated neighborhood commercial nodes and the north side of Broadway."

In a June 15, 1999 letter to the hearings officer, an opponent of the application quotes Policy VI and Objective 3 and states:

> "A bed and breakfast is a *commercial use allowed as an accessory to a primary residential use*. The Irvington Neighborhood encourages support of commercial development that serves the neighborhood. The applicant has stated that the proposed bed and breakfast will serve out-of-town business travelers. The business traveler is likely to conduct business downtown or near the Lloyd office areas, not on Broadway Street. A bed and breakfast, a form of transient commercial lodging, at this location compromises the integrity of the residential nature of Irvington. The proposed bed and breakfast, by its own admission will serve out-of-town travelers, not the neighborhood. Therefore, the proposal is [not] consistent with Policy VI of the Irvington Neighborhood Plan." Record 157 (emphasis added; emphasis in original deleted).

The hearings officer's decision does not address Policy VI, and petitioners argue that the hearings officer erred by failing to adopt findings addressing the policy.

The Oregon Court of Appeals and this Board have held on numerous occasions that when a legitimate issue is raised concerning a relevant approval criterion during a quasi-judicial land use proceeding, the local decision maker is obligated to address that issue in the findings that support the decision in such proceedings. *City of Wood Village v. Portland Metro. Area LGBC*, 48 Or App 79, 87, 616 P2d 528 (1980); *Hillcrest Vineyard v. Bd. of Comm. Douglas Co*, 45 Or App 285, 293, 608 P2d 201 (1980); *Allen v. Umatilla County*, 14 Or LUBA 749, 755 (1986). The question presented here is whether the issue opponents raised concerning Policy VI qualifies as a legitimate issue concerning a relevant approval criterion.

As we have already explained, because Policy VI is part of the Irvington Neighborhood Plan, it is at least potentially a relevant approval criterion. It is not entirely clear whether Policy VI does anything more than impose an *affirmative* obligation to support commercial development that supports the neighborhood. It is certainly possible that Policy

VI itself has no prohibitory effect at all.[7] Even if it does have the prohibitory effect that petitioners assume that it does, the policy addresses "commercial uses." We conclude below that there is a legitimate question concerning whether the proposed bed and breakfast is properly viewed as a commercial use, for purposes of Policy VI.

Respondent and intervenor (respondents) cite several PCC provisions to establish that the proposed bed and breakfast is not properly viewed as a "commercial use." However, those provisions are sufficiently ambiguous that they might also support a contrary interpretation. For example, the description of Household Living at PCC 33.920.110 identifies bed and breakfast facilities as being accessory to household living.[8] However, such a characterization does not preclude an interpretation that a bed and breakfast may *also*

---

[7]Objective 3, which was cited to the hearings officer but is not specifically referenced in the petition for review, does call for "discouraging development of commercial uses in other than designated neighborhood commercial nodes and the north side of Broadway."

[8] PCC 33.920.110 describes the Household Living category, in part, as follows:

> "A. **Characteristics**. Household Living is characterized by the residential occupancy of a dwelling unit by a household. Tenancy is arranged on a month-to-month basis, or for a longer period. Uses where tenancy may be arranged for a shorter period are not considered residential. They are considered to be a form of transient lodging (see the Retail Sales And Service and Community Service categories). Apartment complexes that have accessory services such as food service, dining rooms, and housekeeping are included as Household Living. Single Room Occupancy housing (SROs), that do not have totally self contained dwelling units are also included if at least two thirds of the units are rented on a monthly basis. SROs may have a common food preparation area, but meals are prepared individually by the residents. In addition, residential homes as defined by the State of Oregon are included in the Household Living category (see Chapter 33.910, Definitions).
>
> "B. **Accessory Uses**. Accessory uses commonly found are recreational activities, raising of pets, hobbies, and parking of the occupants' vehicles. Home occupations, accessory dwelling units, and *bed and breakfast facilities* are accessory uses that are subject to additional regulations.
>
> "* * * * *
>
> "D. Exceptions.
>
> 1. Lodging in a dwelling unit or SRO where less than two thirds of the units are rented on a monthly basis is considered a hotel or motel use and is classified in the Retail Sales And Service category." (Emphasis added).

be characterized as a commercial use. In fact, PCC 33.920.110(D)(1), which lists an exception to the Household Living category, states that in some circumstances lodging in a dwelling unit is classified in the Retail Sales and Service category. *See* n 8. The Retail Sales and Service category is a Commercial Use category. PCC 33.920.250.

Similarly, the PCC provisions that specifically address bed and breakfast facilities require that "[a] bed and breakfast facility must be accessory to a Household Living use on a site." PCC 33.212.040(A). However, PCC 33.212.030, which immediately precedes PCC 33.212.040(A), states:

> "In the RX and RH zone, where a limited [number] of commercial uses are allowed by right or by conditional use, a bed and breakfast facility may be regulated either as a Retail Sales And Service use, or as a bed and breakfast facility under the regulations of this chapter. The decision is up to the applicant."

The wording of Policy VI itself is sufficiently ambiguous and the PCC provisions characterizing bed and breakfast facilities are sufficiently unclear that we are unwilling to interpret them in the first instance to conclude that the disputed bed and breakfast facility is not properly viewed as a "commercial use" or that Policy VI does not preclude or limit approval of the disputed facility. If the city takes that position, it must adopt findings that explain and justify that position.

The second assignment of error is sustained.

THIRD ASSIGNMENT OF ERROR

PCC 33.815.105(A) requires that an "increased proportion of uses not in the Household Living category" must not "significantly lessen" the "overall residential appearance and function of the area."[9] Petitioners argue the hearings officer's findings

---

[9]The full text of PCC 33.815.105(A) is as follows:

> "**Proportion of Household Living uses**. The overall residential appearance and function of the area will not be significantly lessened due to the increased proportion of uses not in the Household Living category in the residential area. Consideration includes the proposal by

concerning PCC 33.815.105(A) misconstrue the applicable law and are inadequate to demonstrate compliance with that criterion. For the reasons explained below, we do not agree with petitioners that the hearings officer misconstrued the law in the ways petitioners allege. However, we do agree with petitioners that the city's findings concerning PCC 33.815.105(A) are inadequate.

A. Residential Appearance

Petitioners first argue that the hearings officer erred by equating the exterior appearance of the existing structure, which the approved proposal will not change, with the residential appearance of the area. Petitioners argue the city erred by not considering "taxis and shuttles," "delivery trucks" and "large social events" that have traffic and activity impacts on the residential appearance of the area. Petition for Review 17.

The difficulty with petitioners' argument is that the city did consider these impacts, as part of its consideration of the residential "function" of the area, and petitioners do not challenge those findings.[10] The findings that petitioners challenge simply point out that the proposed bed and breakfast will, as far as the appearance of the structures goes, look much like the other historic single-family dwellings in the immediate area. That is a relevant finding and it is supported by the evidence in the record.[11] Although we agree with

---

itself and in combination with other uses in the area not in the Household Living category and is specifically based on:

"1. The number, size, and location of other uses not in the Household Living category in the residential area; and

"2. The intensity and scale of the proposed use and of existing Household Living uses and other uses."

[10]The hearings officer's findings addressing PCC 33.815.105(A) specifically incorporate findings that he adopted addressing "transportation" and "nuisance impacts" under PCC 33.815.105(C) and (D). Record 6.

[11]Apparently certain improvements to the existing structure, including a port cochere, deck and third floor balcony, were made without required permits and design review approval. Petitioners do not claim that these improvements are inconsistent with single-family residential use of the subject property, and the challenged decision does not approve these improvements.

petitioners that the hearings officer's finding concerning the lack of planned changes in the appearance of the existing historic structure does not, in and of itself, demonstrate that the "overall residential appearance and function of the area will not be significantly lessened," we do not agree that considering traffic and activity impacts as part of the "function" rather than as part of the "appearance" prong of PCC 33.815.105(A) misconstrues the law.

This subassignment of error is denied.

B. Two-Block Study Area

The hearings officer's findings addressing PCC 33.815.105(A) include the following:

> "* * * At a minimum, a *two-block radius* must be considered as the area of impact for at least two reasons. First, customers and visitors can reasonably be expected to walk to their vehicles within * * * two blocks and further, it is reasonable to extend the three-lot notification requirement (i.e., the Type II review requires a 150-foot notification) in an R5 area to include the *next abutting block* in the interest of being able to anticipate all potential impacts." Record 6 (emphases added).

Petitioners complain that the hearings officer's decision to limit the analysis required by PCC 33.815.105(A) to a two-block area renders the analysis that is required by that criterion "meaningless." Petition for Review 19. According to petitioners, "[i]n an area zoned residential, with 10,000 square foot lots, rarely if ever is there going to be more than one Non-Household use [in a two-block area]." *Id.* Instead, petitioners argue, the relevant "area" for purposes of PCC 33.815.105(A) should be that portion of the Irvington Neighborhood "that is zoned and intended for residential use." Petition for Review 20.[12]

We do not agree with petitioners that the hearings officer misconstrued the applicable law. The hearings officer's rationale for selecting a two-block area is based on assumed walking distance to cars parked off-site. The rationale petitioners offer for selecting a larger area, while plausible, is no more plausible than the one offered by the hearings officer.

[12]A copy of the Irvington Neighborhood Plan is attached as an appendix to the petition for review. One of the maps that is included in that plan shows the Irvington Neighborhood as including approximately one square mile.

Petitioners' point regarding the infrequency with which any two-block area would include existing non-Household Living uses is difficult to understand. In that circumstance, an applicant would be required to show that going from an area without *any* non-Household Living uses to a two-block area that includes at least one non-Household Living use meets the criterion set out at PCC 33.815.105(A).

It may be that the city could define a "residential area" for purposes of PCC 33.815.105(A) that is so small that no meaningful proportionality analysis is possible. However, petitioners have not established in the present case that the defined area is insufficient or renders the required proportionality analysis "meaningless." As explained below, we are uncertain what the hearings officer meant when he described the relevant area under PCC 33.815.105(A) as including two blocks, and the hearings officer's findings under PCC 33.815.105(A) do not use a consistent "area" in addressing PCC 33.815.105(A). However, we reject petitioners' argument that, as a matter of law, a two-block area is too small.

This subassignment of error is denied.

C. Inadequate Findings

In *Heiller v. Josephine County*, 23 Or LUBA 551, 556 (1992), we explained the requirements for adequate findings:

> "Findings must (1) identify the relevant approval standards, (2) set out the facts which are believed and relied upon, and (3) explain how those facts lead to the decision on compliance with the approval standards. *Sunnyside Neighborhood v. Clackamas Co. Comm.*, 280 Or 3, 20-21, 569 P2d 1063 (1977); *Vizina v. Douglas County*, 17 Or LUBA 829, 835 (1989); *Bobitt v. Wallowa County*, 10 Or LUBA 112, 115 (1984)."

PCC 33.815.105(A) is set out in full above at n 9. The analysis required by PCC 33.815.105(A) is awkwardly stated, but essentially requires five steps. First, the relevant

"area" must be identified.[13] Second, the "residential appearance and function" of that area must be identified or described. Third, the findings must identify the "number, size and location" of all uses in the area that are "not in the Household Living category." Fourth, the findings must describe the "intensity and scale" of the proposed use and the other existing uses in the area. Finally, considering the proposal itself and the other uses not in the Household Living category, the ultimate legal standard must be addressed: will the "increased proportion of uses not in the Household Living category" in the identified area "significantly lessen" the identified "overall residential appearance and function" of that area? The fifth and final step in the analysis is to be based on the considerations addressed in the third and fourth steps.[14]

The hearings officer's decision fails to navigate the first step successfully. The portion of the hearings officer's decision quoted above under section B of our discussion of this assignment of error first states that the relevant area is a "two-block radius." Record 6. Although there certainly is room to debate what is meant by a "two-block radius," we assume that area includes the block where the property is located along with the two adjoining blocks in all directions.[15] However, the hearings officer later states that the area is limited to the "next abutting block." This description of the "area" is as unclear as a two-block radius "area." If the area only includes the abutting blocks to the north, south, east and west, the

---

[13]As discussed below, this is a particularly critical step, since it establishes the geographic scope of the remaining parts of the analysis required by PCC 33.815.105(A).

[14]We do not mean to suggest that every use in the identified area necessarily must be addressed separately in the findings required by steps three and four. However, the findings required by the fifth step of the PCC 33.815.105(A) analysis must be "specifically based on" the considerations in the third and fourth steps. Therefore, the findings required under the third and fourth step must be sufficiently detailed to support the analysis that is required by the fifth step.

[15]As a matter of geometry, it is somewhat difficult to envision a *radius* that is measured in *blocks*. In a true grid system of *square* blocks, that area presumably would include a five-block by five-block square or 25 blocks, although the sweep of a radius of any length would produce a circle rather than a square. In this case, the blocks are rectangular, making the concept of a two-block radius even more problematic. We assume the hearings officer intended a two-block radius to include a 25-block rectangle with the block containing the disputed structure in the middle.

area includes a total of five blocks. If the blocks to the northeast, southeast, northwest and southwest are included, the area would encompass nine blocks.

After setting out the above-noted findings describing the "area," the hearings officer proceeded to adopt the following findings:

> "The non-household use nearest to the proposed Blair House Bed and Breakfast is the Metropolitan Family Service (MFS) non-profit office located approximately ½ block (320 feet) south on NE Thompson Street. Based upon testimony received in the hearing, MFS operates a number of community service programs from the NE 24th Street location. The Irvington Club (tennis, swimming and social club) is located on NE 21st and NE Thompson, approximately 2 and ½ blocks to the west." Record 7.

The hearings officer then goes on to acknowledge the local appellants' arguments concerning the 10 existing bed and breakfast facilities that are located within a one-half mile radius of the subject property. The hearings officer notes that six of those facilities are within three blocks of the Broadway/Weidler commercial couplet, two are south of that commercial couplet and "[t]he remaining 4 bed and breakfast facilities identified by the opponents * * * are in neighborhoods very similar in character to the neighborhood where the proposed Blair House is located and each of these facilities is 2 blocks or more from one-another." Record 7.

The hearings officer's findings are inadequate. He does not clearly identify an "area" for analysis and then use that identified area. To the contrary, the findings include overlapping discussion of a number of different "areas" throughout the analysis. That failure creates a related problem. For example, the findings appear to describe the "residential appearance and function" of the "immediate area" as being composed of large detached single-family dwellings with "diverse architectural elements and styles." Record 6. However, we cannot tell from the decision whether that description of the "immediate area" relates to the two-block radius, the next-abutting block, or the one-half mile radius "areas" that are mentioned elsewhere in the findings. The findings' attempt to identify and discuss uses not in the Household Living category in the "area" is equally problematic. The

Metropolitan Family Service facility apparently is located within all of the identified "areas," since it is only one-half block away. The Irvington Club does not fall within the next-abutting block "area," and we are unsure whether it falls within the two-block radius, since it is described as being two and one-half blocks west.[16] The findings discussing the 10 other identified bed and breakfast facilities dismiss those facilities as a basis for finding noncompliance with PCC 33.815.105(A), but do not appear to do so because they are outside the relevant "area" under PCC 33.815.105(A). Rather, the hearings officer rejects the local appellants' arguments based on reasons that do not have any obvious connection to the analysis that is required by PCC 33.815.105(A).[17]

The hearings officer must first identify and justify a relevant area for purposes of the analysis required by PCC 33.815.105(A), as described above. Just as importantly, he must use that identified area in performing the PCC 33.815.105(A) analysis.

The third assignment of error is sustained, in part.

FOURTH ASSIGNMENT OF ERROR

PCC 33.815.105(D)(2) imposes the following criterion:

> "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[.]"

[16]We note that the findings do not attempt to describe the "size" or the "intensity and scale" of either of these uses or how approving the proposed facility affects the "proportion of uses not in the Household Living category" in the relevant area, whatever that area may be.

[17]The hearings officer rejected the local appellants' arguments concerning those bed and breakfast facilities because they are south of, or less than three block north of, the Broadway/Weidler commercial couplet or because they are spaced two blocks or more from each other. Those facts may be relevant to the analysis required by PCC 33.815.105(A), but it is not obvious to us why that is the case.

A. Erroneous Construction of the Law

Petitioners first attack the hearings officer's analysis because it compares the estimated traffic-generating characteristics of the proposed bed and breakfast with the subject property assuming it was developed with two single-family dwellings.[18] According to petitioners, a correct interpretation of PCC 33.815.105(D)(2) requires that the hearings officer compare the traffic-generating potential of the proposal with the *one* existing single-family dwelling on the subject property.[19]

As explained below, the disputed finding is of only indirect relevance and clearly insufficient, in and of itself, to demonstrate compliance with PCC 33.815.105(D)(2). Nevertheless we fail to see how the hearings officer erroneously interpreted PCC 33.815.105(D)(2) in comparing the traffic that might be generated by the proposed bed and breakfast with the traffic that might be generated by the two single-family dwellings that are possible on the subject property rather than the one single-family dwelling that is already there.

Petitioners' only focused argument notes the reference in PCC 33.815.105(D)(2) to "existing uses in the area." From that reference, petitioners reason the comparison must be based on the existing dwelling rather than the maximum potential number of dwellings. The cited reference is to the other existing uses in the area that, along with the disputed proposal, must be served by the transportation system. It does not, as petitioners suggest, refer to the

[18]The subject property is composed of two 5,000 square foot lots, and apparently the historic house that currently occupies the subject property is sited in the approximate middle of that 10,000 square foot area. However, if the subject property were vacant, one single-family dwelling could be constructed on each of the 5,000 square foot lots.

[19]The hearings officer found that the traffic-generating characteristics of the proposed bed and breakfast facility and two single-family dwellings would be similar, based on conflicting evidence in the record. The hearings officer found the proposed bed and breakfast will generate approximately 20 trips per day and that two single-family dwellings would generate approximately 10 daily trips each. Record 9.

existing use of the single-family dwelling on the subject property that is to be replaced by the proposed bed and breakfast facility.

This subassignment of error is denied.

B. Inadequate Findings and Lack of Substantial Evidence

Petitioners' findings arguments in support of their challenge to the hearings officer's findings under this criterion are cursory and barely adequate for review. However, petitioners argue the hearings officer's findings do not "identify what is required to comply with the [criterion]." Petition for Review 24. Petitioners are correct. Perhaps more fundamentally, the hearings officer's findings focus exclusively on the relatively small traffic generating potential of the proposed bed and breakfast, compared to two single-family dwellings, and ignore the ultimate legal standard that is imposed by PCC 33.815.105(D)(2), *i.e.*, that the "transportation system is capable of safely supporting the proposed use in addition to the existing uses in the area." Nowhere does the decision address that question. If the existing transportation system is not "capable of safely supporting * * * the existing uses in the area," it does not matter that the proposed bed and breakfast facility would only generate 20 trips per day.

Petitioners also argue:

> "The evidence in the record indicates there is no existing street capacity. At a minimum, 20 trips will be generated from the bed and breakfast. The Irvington Streets can not accommodate this increase." Petition for Review 25 (record citations omitted).

While we express no view concerning whether the evidence cited by petitioners actually constitutes substantial evidence that "there is no existing street capacity," or that Irvington Neighborhood streets cannot accommodate the increased traffic that would be generated by the proposed bed and breakfast, respondents identify no evidence that addresses the adequacy of the transportation system to serve the existing area.

In summary, the hearings officer's findings addressing PCC 33.815.105(D)(2) are inadequate, because they fail to address the ultimate legal standard. Moreover, without some assistance from respondents locating supporting evidence in the record, we conclude the hearings officer's ultimate finding of compliance with PCC 33.815.105(D)(2) is not supported by substantial evidence in the record.

The fourth assignment of error is sustained, in part.

The city's decision is remanded.