BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

EVERGREEN DEVELOPMENT, INC.
Petitioner,

vs.

CITY OF COOS BAY,
Respondent,

and

STEVEN BARBEE,
Intervenor-Respondent.

LUBA No. 2000-003

FINAL OPINION
AND ORDER

Appeal from City of Coos Bay.

Jerry O. Lesan, Coos Bay, filed a petition for review on behalf of petitioner.

C. Randall Tosh, Coos Bay, filed a response brief on behalf of respondent.

Steven Barbee, Coos Bay, represented himself.

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

AFFIRMED 08/04/2000

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

Opinion by Briggs.

NATURE OF THE DECISION

Petitioner appeals a city decision denying a request for a zone change from Single Family and Duplex Residential (R-2) to Residential Certified Factory Built Home Park (R-5).

MOTION TO INTERVENE

Steven Barbee (intervenor) moves to intervene on the side of respondent. There is no opposition to the motion and it is allowed.

FACTS

The 16-acre subject parcel is located within the city's R-2 zone. The R-2 zone permits single-family residential and duplex housing. "Manufactured homes which are subject to special siting standards" are among the permitted single-family residential housing types within the zone. Coos Bay Land Development Ordinance (LDO) 2.2 Section 2. A manufactured home is defined as

> "A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. * * *" LDO Definitions.

In 1994, petitioner applied for preliminary plat approval to site a 99-lot multi-phase subdivision on the subject property. The application was granted, and Phase I of the subdivision is substantially developed. All of the dwellings within Phase I are manufactured homes conforming to the R-2 siting standards for manufactured housing.

In 1999, petitioner submitted an application to rezone the subject property to R-5 to allow for the development of a certified factory-built home park.[1] The major differences between the residential uses in the two zones are that (1) certified factory-built homes in the

[1]Despite the fact that the code uses the appellation "certified factory-built home park," the city's decision and the parties refer to "certified factory-built home parks" as "mobile home parks" or "MHPs." For ease of reference, we will use the same terminology.

R-5 district do not require a fixed foundation; (2) the land on which the homes are sited is rented rather than sold to the homeowners; and (3) recreational vehicles used for residential purposes are allowed, provided the spaces allocated for and occupied by them do not exceed 10 percent of the spaces in the park.[2] LDO 2.5 Section 2.

The application proposes that the land to be designated R-5 be developed with the same street layout and lot configuration that was proposed in the 1994 preliminary plat. In addition, the application proposes that only manufactured homes with skirting simulating a permanent foundation will be sited on the property. Other types of residential certified factory-built homes, such as mobile homes or trailers, and recreational vehicles used for residential purposes, would not be permitted.

During the proceedings before the city, petitioner testified that there was a shortage of manufactured housing within city limits, that 50 percent of the city's population could not afford a conventional stick-built home, and that 27 percent of the city's population could not afford a manufactured home on a conventional subdivision lot. Petitioner also argued that the city's supply of residential certified factory-built home parks was inadequate, partly because a majority of the spaces available within the city were located in pre-existing nonconforming

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[2] "Certified Factory-Built Home" is defined as:

> "(a) A residential trailer, a structure constructed for movement on the public highways, that has sleeping, cooking and plumbing facilities that is intended for human occupancy, is being used for residential purposes and was constructed before January 1, 1962. * * *
>
> "(b) A mobile house, structure constructed for movement on the public highways, that has sleeping, cooking and plumbing facilities, that is intended for human occupancy, is being used for residential purposes and was constructed between January 1, 1962, and June 15, 1976 * * *.
>
> "(c) A manufactured home, a structure constructed for movement on the public highways, that has sleeping, cooking and plumbing facilities, that is intended for human occupancy, is being used for residential purposes and was constructed in accordance with federal manufactured housing construction and safety standards * * *."

parks, which petitioner contended could be converted to other uses at any time, and partly because some of the area designated R-5 is unbuildable.

The city planning commission approved petitioner's application, and intervenor, a resident of the Phase I section of the subdivision, appealed the decision to the city council. Intervenor argued the proposed zone change is not compatible with existing residential development in the area and challenged the planning commission's conclusion that the proposed rezoning is necessary to accommodate needed housing.

The city council reversed the planning commission's decision based on findings that (1) the rezoning would be incompatible with existing residential development; (2) there is little likelihood that existing manufactured home parks will be converted to other uses; and (3) there is sufficient land zoned for manufactured home parks so that petitioner's property is not needed to accommodate needed housing.

This appeal followed.

INTRODUCTION

A. Statutory Provisions

1. ORS 197.295 through ORS 197.314

ORS 197.295 through ORS 197.314 impose statutory obligations and limitations regarding "needed housing." ORS 197.303(1) provides, in relevant part:

> "As used in ORS 197.307, until the beginning of the first periodic review of a local government's acknowledged comprehensive plan, 'needed housing' means *housing types* determined to meet the need shown for housing within an urban growth boundary *at particular price ranges and rent levels*. On and after the beginning of the first periodic review of a local government's acknowledged comprehensive plan, 'needed housing' also means:
>
> "(a) Housing that includes, but is not limited to, attached and detached single-family housing and multiple family housing for both owner and renter occupancy;
>
> "(b) Government assisted housing;
>
> "(c) *Mobile home or manufactured dwelling parks* * * *; and

> "(d) Manufactured homes on individual lots planned and zoned for single-family residential use * * *." (Emphasis added.)

The effect of the legislation is that, under ORS 197.303(1), a city with a population of 2,500 or more must include mobile homes or manufactured dwelling parks among its mix of "needed housing" types. *Rogue Valley Assoc. of Realtors v. City of Ashland*, 35 Or LUBA 139, 145 n 5 (1998) (referring to city's obligation under ORS 197.303(1) to include detached single-family dwellings as a "needed housing" type).

Once a local government establishes the amount and types of needed housing within its jurisdiction in its comprehensive plan, it must designate sufficient land to ensure that sufficient buildable land is available to meet the need. ORS 197.307(3)(a). In areas zoned to accommodate needed housing, a local government may apply only "clear and objective" standards to regulate appearance or aesthetics. ORS 197.307(3)(b). Such standards may not be used to deny an application, or to decrease density, provided that the density applied for is otherwise allowed in the zone. *Id.* Finally, ORS 197.307(6) provides:

> "Any approval standards, special conditions and the procedures for approval adopted by the local government [to address needed housing] shall be clear and objective and shall not have the effect, either in themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay."

2. ORS 197.475 through ORS 197.490

ORS 197.475 through 197.490 address the siting of mobile home or manufactured dwelling parks. ORS 197.475 establishes a legislative policy

> "to provide for mobile home or manufactured dwelling parks within all urban growth boundaries to allow persons and families a choice of residential settings."

To achieve this goal, ORS 197.480 requires that cities establish a projection of need for mobile home or manufactured dwelling parks based on population projections, household income levels and housing market trends within the region. ORS 197.480(2). The inventory must include an analysis of those existing mobile home or manufactured dwelling parks that

are located within commercial and industrial zones, or are pre-existing nonconforming uses. ORS 197.480(2)(d) and (3). The inventory must establish whether additional land must be planned and zoned to accommodate the potential displacement of mobile home or manufactured dwelling parks. ORS 197.480(3). Once the inventory is established, cities must "provide * * * for mobile home or manufactured dwelling parks as an allowed use * * * [i]n areas planned and zoned for a residential density of six to 12 units per acre sufficient to accommodate the need established [by ORS 197.480(2)]." ORS 197.480(1).

B. City of Coos Bay Comprehensive Plan and LDO Provisions

1. Coos Bay Comprehensive Plan Provisions

According to the housing inventory contained in the City of Coos Bay Comprehensive Plan (CBCP), the city had 6,660 housing units in 1987. Of those 6,660 units, 688 or approximately 10 percent were mobile homes located within 12 MHPs.[3] In 1987, 34 percent of the city's residents were in the low-to-moderate income brackets. The city determined that, of the housing options for low-to-moderate income residents, mobile homes in parks or on individual lots would be an attractive housing option. CBCP Volume I, 7-18, 7-21.

As a result of these findings the city projected that, based on an estimated population of 17,375, the city would need 6,822 housing units in 2000. The city estimated that, based on the projected number and percentage of low-to-moderate income residents and the city's desire to increase its housing vacancy rate to encourage competition among housing options, approximately 10 percent of the 2000 housing inventory would be comprised of mobile homes. The plan concluded that, to meet the estimated need for mobile homes in 2000, 12 additional mobile home spaces would have to be made available by that date. CBCP Volume I, 7-19, Volume II, 5-272.

[3]Three mobile homes were located on individual lots. Thus the total number of mobile homes in Coos Bay in 1987 was 691.

The CBCP inventory does not establish the amount of *R-5 designated* land developed with MHPs or the amount of vacant land available to accommodate additional MHPs in 1987.[4] The plan does indicate that, based on a need for 12 additional mobile homes by 2000, two additional acres would need to be made available by that date.[5] CBCP Volume II, 5-286, Table 5.8-10. Of the land available for residential purposes, the inventory estimated that approximately 99 acres could be designated for the development of MHPs. *Id.*[6]

2. LDO Provisions

In 1990, the city amended its zoning ordinance to allow siting of certified factory-built homes on individual lots in the R-5 zone, as well as within MHPs. The amendments also established the Single-Family/Duplex Residential and Certified Factory-Built Home district (R-6), which allowed, among other low density residential uses, certified factory-built homes on individual lots.[7] The amendments resulted in more land within city limits being available for the siting of certified factory-built homes, although no more land was made available for siting MHPs. In 1994, the city amended its code to allow for the siting of "manufactured homes" in most of its low density residential zones, subject to certain siting standards.

FIRST ASSIGNMENT OF ERROR

LDO 5.14 establishes the criteria for approving a zone change. It provides, in relevant

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[4]Nor does the CBCP inventory establish the number of mobile homes located in pre-existing nonconforming MHPs or in industrial and commercial zones. However, in testimony before the city, petitioner estimated that approximately 208 mobile home spaces would be lost if the pre-existing nonconforming MHPs were converted to other uses.

[5]The two-acre estimate assumes that each mobile home would require a 5,445-square foot lot and that each acre has 32,670 square feet of buildable land.

[6]It is not clear from the comprehensive plan data whether the 99-acre figure is the amount of land that was actually designated R-5 on the acknowledged plan map.

[7]The zone prohibits multi-family and group residential homes, and allows mobile homes and recreational vehicles under limited circumstances.

part:

> "A change in zone designation from the existing designation to any other [designation] may be made to correct a mistake in the original zoning or for other reasons consistent with provisions of this section. The overriding consideration of granting a change in zone is whether all uses permitted by the new district are appropriate and compatible, not only a specific proposal under review. A change in zone [designation] can be approved on the condition that it is effective only for the specific use proposed * * *.
>
> "* * * * *
>
> "[T]he [Planning] Commission may approve [or] conditionally approve * * * [a request for rezoning] after adopting findings or statements of fact which substantiate ALL of the following conclusions:
>
> "1. The change in zone [designation] will conform with the policies and objectives of the comprehensive plan.
>
> "2. The * * * change in * * * zone [designation] will result in development which is compatible with development authorized in the surrounding districts.
>
> "3. The change will not prevent the use of other land in the vicinity.
>
> "4. It is appropriate at this time to permit the specific type of development or change in zone * * *." (Emphasis in original.)

Petitioner argues that the rezoning criteria are subjective and that, while subjective criteria may be acceptable in other circumstances, they are not to be applied to needed housing. Any review criteria that are applied to needed housing must be "clear and objective." ORS 197.307(3)(b); ORS 197.307(6); ORS 197.480(5).[8] Petitioner contends that

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[8]ORS 197.480(5) provides, in relevant part:

> "(a) A city * * * may *establish clear and objective criteria and standards* for the placement and design of mobile home or manufactured dwelling parks.
>
> "(b) If a city * * * requires a hearing before approval of a mobile home or manufactured dwelling park, application of the criteria and standards adopted pursuant to [ORS 197.480(a)] shall be the sole issue to be determined at the hearing.
>
> "(c) *No criteria or standards established under [ORS 197.480(5)(a)] shall be adopted which would preclude the development of mobile home or manufactured dwelling parks within the intent of ORS 197.295 and 197.475 to 197.490*." (Emphasis added.)

the rezoning criteria used by the city are not "clear and objective" and, therefore, the city's decision must be reversed.

The city responds that the provisions of ORS 197.307 and ORS 197.480 constitute *planning* directives. In other words, the statutes direct cities to inventory housing needs and zone sufficient land to accommodate those particular housing needs. According to the city, ORS 197.307 and ORS 197.480 do not require that review of applications to rezone property to allow for MHPs must be governed by clear and objective siting standards. Rather, the city argues that if sufficient land is currently zoned for MHPs, then the statutes do not apply to applications that would provide more land than needed to accommodate that type of housing. *See Robert Randall Company v. City of Wilsonville*, 15 Or LUBA 26, 32 (1986) (ORS 197.295 through ORS 197.312 "require that a need must be shown before the local government is obliged to provide for certain types of housing"). The city contends that, in this case, the applicant failed to demonstrate that additional R-5 zoned land is needed to accommodate the established need for MHPs and, therefore, the city appropriately denied petitioner's application because it failed to comply with the LDO 5.14 criteria. In the alternative, the city argues that the requirements of ORS 197.307(3)(b) only apply to those regulations that address the physical characteristics of needed housing, such as setbacks and property development standards and, as such, do not apply to rezoning applications.

We agree with the city that nothing identified to us in ORS 197.307 or ORS 197.480 requires that the city apply clear and objective criteria in considering an application to rezone additional land to accommodate MHPs, at least when the city has otherwise planned and designated sufficient land to satisfy the need for MHPs within its jurisdiction.

The first assignment of error is denied.

SECOND ASSIGNMENT OF ERROR

Petitioner argues that the challenged decision interprets the city ordinance in such a way as to violate ORS 197.307(3)(a), (3)(b) and (6), ORS 197.480(1)(a), (1)(b) and (5)(a),

ORS 227.173(3), ORS 197.829(1), ORS 197.835(9)(a)(D) and CBCP Section 9.1, paragraph 3, page 9-5.[9] *See* discussion of the statutes in the introduction and n 8.

A. Incompatible Uses

The city's decision interprets LDO 5.14 Section 1 to require that the city consider all uses permitted in the new zone and the impacts generated by those uses in determining whether the LDO 5.14 Section 4(2) requirement that "the overall change in the zone district will result in development which is compatible with development authorized in the

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[9]ORS 227.173(3) requires that decisions regarding the approval or denial of land use permits shall

> "be based upon and accompanied by a brief statement that explains the criteria and standards considered relevant to the decision, states the facts relied upon in rendering the decision and explains the justification for the decision based on the criteria, standards and facts set forth."

ORS 197.829(1) requires that LUBA affirm a local government's interpretation of comprehensive plans and land use ordinances, unless the interpretation:

> "(a) Is inconsistent with the express language of the comprehensive plan or land use regulation;
>
> "(b) Is inconsistent with the purpose for the comprehensive plan or land use regulation;
>
> "(c) Is inconsistent with the underlying policy that provides the basis for the comprehensive plan or land use regulation; or
>
> "(d) Is contrary to a state statute, land use goal or rule that the comprehensive plan or land use regulation implements."

ORS 197.835(9)(a)(D) requires that LUBA reverse or remand a land use decision if it improperly construes the applicable law.

CBCP Section 9.1, paragraph 3, page 9-5 provides, in relevant part:

> "Low Density Residential: (maximum 9 dwelling units per net acre)[.] Low density residential areas * * * will be located in fringe areas generally away from commercial centers and will extend from existing low density development. This kind of development may involve the use of the closed street system concept where appropriate as a means of eliminating through traffic on residential streets, will strive to protect scenic amenities, and will recognize the existing single-family neighborhoods.
>
> "This objective will be accomplished in the [LDO] by establishing * * * the Single-family Residential (R-1), Single Family/Duplex Residential (R-2), [Residential Certified Factory-Built Home Park] (R-5), Single Family/Duplex Residential and Certified Factory-Built Home (R-6), and Restricted Waterfront Residential (R-W) districts."

surrounding districts" is satisfied. The decision concludes that, in this instance, the R-5 zoning is inherently incompatible with R-2 zoning because the R-5 designation only allows one conventional (stick-built) single-family dwelling to be constructed within an MHP, and that dwelling is to be set aside for the owner or manager of the MHP. The remainder of the dwellings must be certified factory-built homes or mobile homes. In addition, up to 10 percent of the MHP may include recreational vehicles used for residential purposes. In the R-2 zone, stick-built single-family dwellings and duplexes are permitted outright. Manufactured dwellings are allowed subject to siting standards and MHPs are not permitted. The county concluded that the two districts located side-by-side within the same subdivision would adversely affect the property values in that portion of the subdivision zoned R-2.

The city's decision finds that the R-5 zone will allow uses that are prohibited in the R-2 zone, and that the more intense uses allowed in the R-5 zone are incompatible with the existing R-2 zone. In addition, the city's decision determines that the city has different road design and setback standards for the R-5 zone and that the differing standards would be incompatible with the standards in the adjacent R-2 zone.

Petitioner contends that the statutes and the city comprehensive plan require that MHPs be allowed in all areas that permit residential densities of 6-12 units per acre. The comprehensive plan's low density residential designation allows for nine dwellings per net acre and thus, petitioner argues, MHPs should be allowed in *all* low density residential zones, not just the R-5 zone. Petitioner argues that, because MHPs must be allowed in all residential zones that allow densities of 6-12 units, the uses allowed in one low density residential zone cannot, as a matter of law, be incompatible with other uses allowed in other low density residential zones.

In the alternative, petitioner contends that the city's interpretation of its ordinance is clearly wrong because, taken to its logical conclusion, the result of the city's interpretation is

that no land can be rezoned to R-5, because inevitably it will abut a zone that allows uses that are different than those permitted in the R-5 zone.

We disagree with petitioner that the statutes obligate the city to allow MHPs in all residential zones that permit residential densities of 6-12 units per acre. The statutes require that when a need is demonstrated, the city must accommodate that need by zoning a sufficient amount of land to satisfy the need. *See Creswell Court v. City of Creswell*, 35 Or LUBA 234, 242-43 (1998) (where a city's housing needs analysis establishes a need for MHPs, lands must be designated and zoned to allow for MHP development). The city may accomplish this goal by allowing MHPs in established zones, or by creating new zones that allow MHPs outright. Finally, even if the city's interpretation of the compatibility standard has the logical consequence that no new R-5 zones could be established within the city, petitioner has not demonstrated that the city's interpretation is inconsistent with the express language of the ordinance or is "clearly wrong." Therefore, we defer to it. ORS 197.829(1)(a); *Goose Hollow Foothills League v. City of Portland*, 117 Or App 211, 217, 843 P2d 992 (1992).

The first and second subassignments of error are denied.

B. MHP Inventory

Petitioner argues that the city's reliance on its housing inventory to show that there is sufficient land available to accommodate the city's need for MHPs is misplaced, because the housing inventory fails to satisfy all of the requirements for establishing need for MHPs. According to petitioner, ORS 197.480 requires the inventory to identify pre-existing nonconforming MHPs located within commercial and industrial zones, and then designate sufficient lands to ensure that, in the event those nonconforming uses are phased out, enough properly designated land remains. Because the city's inventory does not establish the number of mobile home parks and spaces that could be lost through conversion to other uses, or project how much land would be needed to ensure that land is available to site MHPs to

replace land that may be lost through conversion to other uses, petitioner contends that there is no inventory of MHPs as required by ORS 197.480 and, therefore, its application must be approved.

Petitioner argues that the city's decision improperly relies upon testimony by intervenor to the effect that approximately 65 acres of land within the city are designated R-5, and 111 acres of land are designated R-6, and that all of this land is available to site additional MHPs. Petitioner argues that the R-5 land to which intervenor refers is already developed, is being developed, or is undevelopable and therefore is not available to accommodate additional MHPs. According to petitioner, the 65 acres of R-5 designated land relied upon by the city as satisfying the need for MHPs include only 457 mobile home spaces, less than the number needed to accommodate the city's projected need for 682 mobile homes by 2000. Petitioner also argues that the amount of land available in the R-6 zone is irrelevant because, while the R-6 zone permits certain types of certified factory-built homes on individual lots, mobile homes and MHPs are not allowed.[10] Finally, petitioner argues that in *Creswell Court*, LUBA determined that a requirement that an applicant demonstrate a need for MHPs before an application to rezone property for MHP uses violates ORS 197.307(6) because it has the effect of discouraging MHPs through unreasonable cost and delay. *Creswell Court,* 35 Or LUBA at 243-244.

The city contends that the housing inventory is adequate to demonstrate the number of mobile homes that are required to satisfy the need for that type of housing, and to show that an adequate amount of land is available to satisfy that need. The city argues that the city properly planned for the siting of mobile homes and mobile home parks, as required by ORS 197.480. The city contends that the lands zoned R-5 and R-6 are more than sufficient to offset any potential loss through the conversion of nonconforming MHPs to other uses.

[10]Petitioner notes that only those certified factory-built homes that fall under the "manufactured home" subclassification are allowed in other zones, including the R-6 zone. *See* n 2.

According to the city, LUBA's reasoning in *Creswell Court* is inapposite because there the city had failed to designate land for needed housing and, therefore, the city's transferral of its obligation to inventory its needed housing to the applicant violated ORS 197.307. Here, the city argues, there is an adequate supply of R-5 designated land, so the burden on the applicant to show that its particular application for an MHP satisfies a demonstrated need is similar to that of any other applicant for a zone change.

As for petitioner's argument that only land designated R-5 should be considered "available" for the siting of MHPs, and for satisfying the city's projected need for additional mobile homes, the city responds that the city's comprehensive plan implicitly concludes that the city's need for mobile homes, certified factory-built homes and manufactured homes can be satisfied either through the establishment of MHPs or through the siting of manufactured homes in other residential zones. According to the city, it should not be presumed (1) that the pre-existing nonconforming MHPs will be converted to other uses, or (2) that all persons who desire a certified factory-built home wish that home to be located within an MHP. Moreover, the city argues that even if only the R-5 designated land is considered, current LDO requirements permit up to eight dwellings to be located per acre and at that density there is sufficient land available to accommodate its need for mobile homes. Finally, the city argues that the testimony the city relied upon to conclude that sufficient R-5 designated land is currently available to site MHPs constitutes substantial evidence.

Our difficulty with the city's response is that the comprehensive plan inventory does not distinguish between the general need for mobile homes and the need for mobile home parks. Similarly, the comprehensive plan does not establish how much land currently designated R-5 is developed with MHPs, and how much of that land is available to satisfy projected need within the planning period. We understand ORS 197.480(3) to require that the city's comprehensive plan establish the adequacy of planned and zoned areas to accommodate the potential displacement of existing nonconforming MHPs. The city's plan

does not do so. Therefore, we agree with petitioner that, to the extent the comprehensive plan is relied upon to demonstrate the need for MHPs and how much land is available to replace the potential loss of nonconforming MHP spaces, that reliance is misplaced.

Nevertheless, we agree with the city that its findings and the evidence it relied upon are sufficient to demonstrate that the city's need for MHPs is satisfied by land currently designated R-5 and R-6. The comprehensive plan indicates a need for only 12 additional mobile homes by 2000. The plan failed to account for the potential loss of nonconforming MHPs. The city's findings state, and the evidence is uncontroverted, that the city has provided for the siting of mobile homes and mobile home parks as a permitted use in at least one of its residential zones that permits densities of 6-12 units per acre. The city permits the siting of manufactured homes, a subcategory of certified factory-built homes, as an allowed use in areas designated for single-family dwellings, as is required by ORS 197.480 and ORS 197.314(1). In addition, the city found that there was no evidence that any of the existing nonconforming MHPs would be phased out over the remainder of the planning period. If they were, the city concluded that the evidence presented by intervenor was sufficient to demonstrate that large areas of R-5 and R-6 designated property remain available to offset the units that would be lost if the nonconforming MHPs were phased out. The city cites to testimony where one of the parties refers to an expansion of an existing MHP, and to "11 acres properly zoned on LaClair Street that is for sale, where a manufactured or a certified home park could be built." Record 97-98.

We do not agree with petitioner that any requirement that an applicant to rezone land for an MHP demonstrate some need for that rezone is prohibited by ORS 197.307(6). *See Creswell Court*, 35 Or LUBA at 244 n 7 (requiring some evidentiary support for the proposition that a particular housing type is needed does not, as a matter of law, discourage the establishment of that needed housing). Here, the city has established that it has sufficient land to accommodate the projected need for new mobile homes and any potentially displaced

MHPs. Therefore, the city may require that an applicant seeking to provide additional areas for MHPs establish why the additional land is needed.

The third and fourth subassignments of the second assignment of error are denied. The second assignment of error is denied.

THIRD AND FOURTH ASSIGNMENTS OF ERROR

In the fourth assignment of error, petitioner challenges the city's findings that the uses allowed in the R-2 zone and uses allowed in the R-5 zone are not compatible. Petitioner contends that even if some of the uses and standards in those two zones are different, the proposed use is compatible with existing uses in the adjacent R-2 zone. Petitioner further argues that any other allowed uses can be made compatible through the imposition of conditions of approval or through site plan and architectural review. In the third assignment of error, petitioner challenges the evidentiary bases for the city's findings. If we conclude that the city's findings are inadequate, we need not consider petitioner's evidentiary challenges. *DLCD v. Columbia County*, 16 Or LUBA 467 (1988). Therefore, we address petitioner's findings challenges first.

A. Inadequate Findings

Petitioner contends that the city's decision does not set forth the basis for its conclusion that certain uses within the R-5 zone are necessarily incompatible with the R-2 zone because those same uses are prohibited in the R-2 zone. Petitioner also argues that it is not apparent why the different setback and road design standards will be incompatible, especially in this circumstance, where the application proposes that the road design and lot layout remain the same as it was under R-2 zoning. Petitioner argues that mere proximity does not demonstrate incompatibility.

The city argues that petitioner's evidence demonstrating that the compatibility standard was satisfied falls into two categories. First, petitioner presented evidence to show that what it planned to do would be compatible with the existing R-2 uses in the remainder of

the subdivision. Second, petitioner relied on the fact that both the R-2 and the R-5 zoning designations are low density residential zones to conclude that uses in each zone would be compatible with the other. The city argues that neither position demonstrates, as a matter of law, that petitioner's proposal will satisfy the city's requirement that "all uses permitted by the new district are appropriate and compatible." The city argues that its interpretation of its ordinance provisions and the findings make it clear that petitioner failed to show how those uses that are permitted in the R-5 zone could be compatible with the existing uses in the adjacent area designated R-2.

We agree. The fact that the R-2 and R-5 districts are both in an area designated low density residential in the city's comprehensive plan does not mean that all of the uses in each district are appropriate or compatible with uses in the other district. Some areas are more appropriate for the types of uses located in one residential district than another. *See Roseta v. County of Washington*, 254 Or 161, 169, 458 P2d 405 (1969) (if a comprehensive plan makes a distinction between two types of residential development, it must be assumed that there is some purpose behind the distinction.) In addition, the criteria are clear—the applicant must demonstrate how all of the uses permitted in the proposed district are appropriate and compatible. The fact that the city could require that uses in the area petitioner proposes to be designated R-5 be limited to ensure compatibility does not mean that the city *must* do so. *Simonson v. Marion County*, 21 Or LUBA 313, 325 (1991).

The fourth assignment of error is denied.

B. Substantial Evidence

In reviewing the evidence that was relied upon by the local government to support its decision, we may not substitute our judgment for that of the local decision maker. Rather, we must consider all the evidence in the record to which we are directed, and determine whether, based on that evidence, the local decision maker's conclusion is supported by substantial evidence. *Younger v. City of Portland*, 305 Or 346, 358-60, 752 P2d 262 (1988); *1000*

Friends of Oregon v. Marion County, 116 Or App 584, 588, 842 P2d 441 (1992). In challenging a local government's denial, petitioner must demonstrate that its evidence must be believed as a matter of law. *Jurgenson v. Union County Court*, 42 Or App 505, 600 P2d 1241 (1979).

The arguments presented by petitioner which challenge the evidentiary basis for the city's findings question why the city failed to respond to the evidence it presented; the arguments do not demonstrate, as a matter of law, why petitioner's evidence must be believed. Petitioner contends that the evidence it presented shows that there are procedures in place, such as site plan and architectural review, to ensure that its proposal is compatible with adjacent R-2 uses. At one point, the city's decision concludes that redesignation of the subject property to R-5 would have an adverse effect on the property values of the property in the remainder of the subdivision. The city based this conclusion on testimony by opponents of the application and on "common sense." Record 12. Petitioner contends that this finding does not respond to any particular criterion, but also insists that the opinion of one opponent does not constitute substantial evidence that property values will in fact be adversely affected by the rezoning of the property.

The city's decision makes it clear that it considered the impact of a proposed use on property values to be relevant in determining whether that proposed use satisfies LDO 5.14 Section 2's requirement that the change in zoning designation "will result in development which is compatible with development authorized in * * * surrounding districts." Petitioner has not demonstrated as a matter of law that R-5 uses are "compatible," as the city interprets that standard, with R-2 uses.

The third assignment of error is denied.

The city's decision is affirmed.