BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

ALLEN L. HUBENTHAL,
Petitioner,

vs.

CITY OF WOODBURN,
Respondent,

and

EUGENE R. GASCHO AND JUDITH A. GASCHO,
Trustees of the Eugene R. Gascho Trust,
JUDITH A. GASCHO AND EUGENE R. GASCHO,
Trustees of the Judith A. Gascho Trust
WILLIS A. BYERS, RACHEL L. BYERS,
RODNEY LEE BYERS AND MARCIA KATHRYN BYERS,
Trustees of the Rodney Lee Byers Trust, and
MARCIA KATHRYN BYERS AND RODNEY LEE BYERS,
Trustees of the Marcia Kathryn Byers Trust,
Intervenors-Respondent.

LUBA No. 2000-050

FINAL OPINION
AND ORDER

Appeal from City of Woodburn.

Donald M. Kelley, Silverton, filed the petition for review and argued on behalf of petitioner. With him on the brief were Patrick E. Doyle and Kelley and Kelley.

No appearance by City of Woodburn.

Anthony R. Kreitzberg, Salem, filed the response brief and argued on behalf of intervenors-respondent. With him on the brief was Garrett, Hemann, Robertson, Jennings, Comstock & Trethewy.

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

REMANDED 11/03/2000

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

The challenged decision (1) annexes property to the city, (2) amends the city's comprehensive plan, (3) grants conditional zone changes, (4) approves a site plan with conditions, and (5) serves to permit the placement and construction of a multi-family assisted living facility. The proposed facility would provide 102 "suites" and includes facilities to house and serve 12 persons suffering from Alzheimer's disease.

MOTION TO INTERVENE

Eugene R. Gascho and Judith A. Gascho, trustees of the Eugene R. Gascho Trust; Judith A. Gascho and Eugene R. Gascho, trustees of the Judith A. Gascho Trust; Willis A. Byers; Rachel L. Byers; Rodney Lee Byers and Marcia Kathryn Byers, trustees of the Rodney Lee Byers Trust; and Marcia Kathryn Byers and Rodney Lee Byers, trustees of the Marcia Kathryn Byers Trust, the applicants below, move to intervene on the side of respondent in this appeal. There is no opposition to the motion, and it is allowed.

FACTS

The essential facts regarding the proposed assisted living facility are not in dispute. The site for the proposed assisted living facility totals approximately 4.3 acres. Approximately .98 acre of the subject property is already within the city. Approximately 3.32 acres are currently outside the city limits but within the city's urban growth boundary (UGB). The 3.32 acres are annexed by the challenged decision.

The entire subject property is designated Low-Density Residential (LDR) on the Woodburn Comprehensive Plan (WCP) map. The .98-acre portion of the property located in the city is zoned Single Family Residential. The 3.32 acres located outside city limits are zoned Urban Transition Farm by Marion County. The challenged decision changes the comprehensive plan map designation for the entire 4.3-acre subject property to High Density Residential (HDR) and rezones the property to Multiple Family Residential (MFR).

The site is relatively undeveloped, with only two single-family units and two barns on the subject property. There are two schools about 600 feet to the south of the property. Boones Ferry Road runs north and south and borders the subject property on the east. Country Club Road runs east and west and borders the subject property on the north. Residential zoning and uses adjoin the subject property to the south and west.

The approved site plan proposes two buildings: "Building 1" consisting of 70 suites and "Building 2" consisting of 12 Alzheimer's patient suites.[1] The buildings will cover approximately 24 percent of the site.

INTRODUCTION

The petition for review includes 34 assignments of error. In those assignments of error, petitioner argues the challenged decision violates a total of 13 separate approval criteria in various ways. The argument following petitioner's assignments of error frequently includes criticisms of the city's decision without developing those criticisms or making any substantial attempt to relate the criticism to a relevant legal standard. Attempting to acknowledge and address every undeveloped criticism would needlessly lengthen this opinion, and we therefore do not do so. *Norvell v. Portland Area LGBC*, 43 Or App 849, 851, 604 P2d 896 (1979); *Neuberger v. City of Portland*, 37 Or App 13, 19, 586 P2d 351 (1978), *aff'd* 288 Or 155, 603 P2d 771 (1979), *rehearing den* 288 Or 585 (1980).[2]

Petitioner's many assignments of error challenge three aspects of the city's decision. The first three assignments of error challenge the annexation. The fourth through the nineteenth assignments of error challenge the comprehensive plan and zoning map

[1]The challenged decision also approves an additional 20 units for Building 1, to be constructed in a second phase in the future.

[2]Petitioner also frequently "incorporates by reference" arguments that petitioner presents elsewhere in the petition for review, without making any attempt to identify precisely what arguments are being incorporated or how those arguments might relate to the subsequent assignment of error.

amendment. Finally, petitioner's remaining 15 assignments of error challenge the site plan approval. We address petitioner's assignments of error under each of these three categories.

ANNEXATION (FIRST THROUGH THIRD ASSIGNMENTS OF ERROR)

A. WCP Annexation Policy D-1

WCP Annexation Policy D-1 provides:

> "Annexation policies are extremely important for the City. While it is important that enough land is available for the necessary development anticipated in the City of Woodburn, it is also essential to prevent too much land being included in the city limits as this leads to inefficient, sprawling development. Because of the need to plan for public improvements, the City should insure that there is a five year supply of vacant land within the City. Services should be provided to that land during that five year period."

The challenged decision adopts the following findings addressing WCP Annexation Policy D-1:

> "The Urban Growth Boundary was adopted in 1980. This boundary designates areas outside Woodburn's City Limits that could be annexed to accommodate growth to the year 2000. The annexation of [the subject property] is to accommodate the growth demands of the City in a timely manner. The subject property is contiguous to the current city limits line on the west and south and across Country Club Road on the north. Because the site is almost an island surrounded by the city, because city facilities are adjacent, and because there is urban development on all sides of it, it cannot be considered 'sprawling'. The applicant states that the need for another retirement center in the city and the surrounding development [make] this a timely annexation and development. This site is one of only a few large parcels of land available for multi-family development without substantial extension of urban services." Record 13.

Petitioner faults the above findings because they do not explain why annexing the subject property is necessary to maintain a five-year supply of vacant land in the city.

The city council does not adopt an express interpretation of Annexation Policy D-1. Although it is possible to interpret Annexation Policy D-1 to require that the city include no more than a five-year supply of land, as petitioner does, it is reasonably clear that the city does *not* interpret Annexation Policy D-1 in that way. The city's findings focus on the language in the policy that requires that the city not include "too much land" which could

lead "to inefficient, sprawling development." In other words, the city treats Annexation Policy D-1 as a general anti-sprawl standard rather than a precise five-year land supply standard. We defer to the city council's implicit interpretation. *Alliance for Responsible Land Use v. Deschutes Cty*, 149 Or App 259, 267-68, 942 P2d 836 (1997), *rev dismissed* 327 Or 555(1998).

The challenged findings explain why the subject property's contiguity with city limits and existing development lead the city to conclude that annexing the subject property "cannot be considered 'sprawling.'" Record 13. Petitioner does not challenge the adequacy of those findings. We conclude they are both adequate and supported by substantial evidence.

Petitioner's challenge concerning Annexation Policy D-1 is rejected.

B. Failure to Address Plan Annexation Goals and Policies Other than Policy D-1

As discussed above, the challenged decision adopts findings addressing Annexation Policy D-1. Petitioner argues the city erred by failing to adopt findings addressing five other WCP Annexation Goals and six other WCP Annexation Policies.

The WCP Annexation Goals and Policies cited by petitioner were adopted and became effective October 1999, *after* the application that led to the challenged decision was filed and made complete.[3] The challenged decision is a "permit," as that term is defined by ORS 227.160(2).[4] Under ORS 227.178(3), permits and zone changes are subject to "the standards and criteria that were applicable at the time the application was first submitted." *Sunburst II Homeowners v. City of West Linn*, 18 Or LUBA 695, 700-01, *aff'd* 101 Or App 458, 790 P2d 1213 (1990). We agree with intervenors that the cited WCP Annexation Goals

[3]It is not clear when the application was submitted, but it was deemed "complete" on July 19, 1999, well before the October 1999 WCP amendments took effect. Record 112.

[4]As relevant, ORS 227.160(2) provides that "'[p]ermit' means discretionary approval of a proposed development of land * * *."

and Policies are not applicable approval criteria in this matter. Therefore the city's failure to address these subsequently adopted goals and policies is not error.

C. Marion County Opportunity for Comment

WCP Growth and Urbanization Policy M-6 provides as follows:

> "Upon receipt of an annexation request or the initiation of annexation proceedings by the City, the City shall forward information regarding the request (including any proposed zone change) to the County for comments and recommendations. The County shall have twenty days to respond unless [it] request[s] and the City allows additional time to submit comments before the City makes a decision on the annexation proposal."

Petitioner argues "[t]here is no evidence in the record that the City ever forwarded the Applicants' request for annexation to the county for its review and approval." Petition for Review 8.

As an initial point, we agree with intervenors that the above-quoted WCP policy does not require that the county review and *approve* annexation requests. It simply requires that the city forward the request to the county and allow at least 20 days for the county to respond. Intervenors cite a finding in the challenged decision that the proposal "was coordinated with Marion County * * *." Record 22. Coordination requires an "exchange of information" and a balancing of "the needs of all governmental units." *Rajneesh v. Wasco County*, 13 Or LUBA 202, 210 (1985). Petitioner cites no evidence in the record that would call the cited finding into question. Absent such evidence, we reject petitioner's substantial evidence challenge. *See Leathers v. Marion County*, 144 Or App 123, 129, 925 P2d 148 (1996) (absent some evidence to the contrary, recital in ordinance that required notice was given is sufficient to establish that notice was given).

Petitioner's challenge regarding WCP Growth and Urbanization Policy M-6 is denied.

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

COMPREHENSIVE PLAN AND ZONING MAP AMENDMENT CRITERIA (FOURTH THROUGH NINETEENTH ASSIGNMENTS OF ERROR)

Woodburn Zoning Ordinance (WZO) Chapter 16 establishes the procedures and criteria that apply where the city amends its comprehensive plan map and zoning map. WZO 16.050 establishes comprehensive plan map amendment criteria.[5] WZO 16.080 establishes a separate burden of proof that must be met to amend the comprehensive plan map and the zoning map.[6] We address petitioner's challenges under these criteria below.

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[5]WZO 16.050 is as follows:

> "**Plan Amendment Criteria.** Before a Plan Amendment can be made, the Common Council must find that the proposal meets the following criteria:
>
> "(a) The proposal complies with all applicable Statewide Goals and Guidelines.
>
> "(b) The proposal complies with the remaining Goals and Policies of the Comprehensive Plan.
>
> "(c) There is a clearly demonstrated public need for the proposed amendment.
>
> "(d) The proposal best satisfies the public need."

[6]WZO 16.080 provides as follows:

> "**Burden of Proof**. The following specific questions shall be given consideration in evaluating requests regarding plan and zoning amendments and are as follows:
>
> "(a) To support an amendment to the Comprehensive Plan, the applicant shall:
>
> "(1) Prove that the original plan was in error;
>
> "(2) Show that the community has changed since the original plan was adopted; or
>
> "(3) Show that there has been a change in the planning and growth policy of the City.
>
> "(b) To support a zone change, the applicant shall:
>
> "(1) Show there is a need for the use proposed;
>
> "(2) Show that the particular piece of property in question will best meet that need.
>
> "* * * * *"

A. Compliance with Statewide Planning Goals (WZO 16.050(a))

WZO 16.050(a) requires that the city show "[t]he proposal complies with all applicable Statewide Goals and Guidelines." In his fourth, fifth and sixth assignments of error, petitioner says the city failed to establish that the proposal complies with a number of statewide planning goals.

1. Goal 2 (Land Use Planning)

Petitioner presents three cognizable arguments under this subassignment of error. Goal 2 requires that the decision be supported by an "adequate factual base," that the city "[evaluate] alternative courses of action," and that the city "coordinate" its decision with "affected governmental units." Petitioner argues the challenged decision does not establish compliance with these Goal 2 requirements.

We reject petitioner's "adequate factual base" argument under Goal 2. There is a significant amount of evidence in the record. Other assignments of error in the petition for review challenge the adequacy of that evidence to demonstrate compliance with criteria other than Goal 2. Where those assignments of error could provide a basis for remand, and are sufficiently developed, we address them elsewhere in this opinion. However, petitioner makes no attempt to explain why the three-volume evidentiary record in this matter is insufficient to comply with the more general Goal 2 requirement that a challenged plan amendment be supported by an adequate factual base.

We also reject petitioner's argument that the city did not "[evaluate] alternative courses of action." The directive in Goal 2 to consider alternative courses of action is a very general directive. Intervenors identify findings in the decision that explain how the proposal will have advantages over single-family development. Although those findings are not specifically directed at Goal 2, they do show some "evaluation of alternative courses of action." Absent a more focused and developed argument by petitioner, we fail to see how this aspect of Goal 2 is violated by the challenged decision.

Finally, for reasons we have already explained under our prior discussion of WCP Growth and Urbanization Policy M-6, we reject petitioner's "coordination" argument under Goal 2.

2. Goals 6 (Air, Water and Land Resources Quality) and 11 (Public Facilities and Services).

Petitioner next claims violation of Goals 6 and 11 because the city did not specifically address these goals in its findings. Goal 6 is a requirement to "maintain and improve the quality of the air, water and land resources of the state." It says, among other things, that waste discharges from future developments, in combination with existing developments, are not to violate applicable environmental quality standards. Goal 11 requires that comprehensive plans provide for the "timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development." The city's decision talks about public utilities and services, including storm drainage, in the context of applicable plan and zoning ordinance criteria. That is, while the city's findings do not include a direct discussion of Goals 6 and 11, the findings do address issues relevant to these goals and to the services required for the proposed assisted living development.

Petitioner does not allege that this plan amendment affects the city's overall ability to provide for clean air and water or public facilities and services.[7] On its face, then, it does not appear the city's plan amendment, annexation of territory and approval of the assisted living facility affect the city's compliance with Goals 6 and 11 under its acknowledged comprehensive plan. Nothing in the city's findings about needed services suggests the challenged decision will undermine the city's ability to provide such services.[8] Without

[7] Petitioner does attack the city's approval of the development site plan on the grounds the matter of storm water was not properly addressed. Our review of the city's findings and the record does not show the city's treatment of this issue puts its delivery of public services at risk.

[8] In fact the city relies in part on the ready availability of most public services to justify the challenged decision.

some threshold showing by petitioner that the city's compliance with Goals 6 and 11 is affected by this plan map amendment, we decline to find reversible error in the city's failure to address these goals specifically.

Petitioner's Goal 6 and Goal 11 arguments are rejected.

3. Goals 10 (Housing), 12 (Transportation), 13 (Energy Conservation) and 14 (Urbanization)

Petitioner argues the challenged decision violates Goal 10, which requires that the city provide "for the housing needs of citizens of the state." However, petitioner does not explain how the annexation and designation of the subject property for multi-family use upsets the city's compliance with Goal 10. Petitioner's argument about compliance with Goal 10 centers on the city's claim that there is a "public need" for more land in the city that is planned and zoned for multi-family use. We discuss the city's findings concerning "public need" later in this opinion. We note, however, that nothing in petitioner's argument suggests the city's action renders the city's supply of buildable land for needed housing inadequate. To the contrary, petitioner argues the city already has an adequate supply of land planned and zoned for multi-family use. Petitioner's unstated premise is that Goal 10 prohibits including *more* land that is planned and zoned for multi-family use than the comprehensive plan identifies as "needed." Petitioner makes no attempt to explain why he believes Goal 10 imposes such a *maximum* requirement, and we do not believe that it does.[9] We therefore reject petitioner's Goal 10 argument.

The city adopted relatively extensive findings about Goal 12, which requires the provision and encouragement of a safe, convenient and economic transportation system. Petitioner discounts the city's findings and the transportation study supporting the proposed

[9]Of course, at some point, including unneeded urban and urbanizable land within the UGB might violate Goal 14 or other statewide planning goals. However, Goal 10 does not require the level of precision in matching the supply of vacant buildable lands and the identified need for particular categories of needed housing that petitioner assumes is required under the goal.

development and asserts the proposal will violate Goal 12 because it will clog intersections in proximity to it. Petitioner cites a portion of the record in which one of the city planning commissioners notes that Highway 214 at its intersection with Boones Ferry Road is "running pretty close to capacity." Record 104. We are cited to no other evidence or expression of opinion suggesting that this proposal will clog or even significantly affect the city's transportation system.

The city's Goal 12 findings conclude the proposed use will "not have a significant impact on the street system and all intersections within the area will operate at acceptable levels of service during the peak hours of the road system." Record 22-23. The record includes a traffic study. Record 258-308. That traffic study concludes the site will generate approximately 538 vehicle trips per day, that the intersections along Boones Ferry Road will operate at an acceptable level of service and that the development can be constructed with minimal impact to the surrounding street system. Record 281. The city Public Works Department reviewed the traffic study and agreed with it. Record 147. This evidence is substantial evidence supporting the city's finding.[10] *See Reeves v. Washington County*, 24 Or LUBA 483, 490 (1993) (information provided by a traffic count at a single location is substantial evidence absent evidence that it is unreliable). Petitioner cites us to no evidence of sufficient quality to overcome this evidence. That one planning commissioner questioned the traffic study does not establish that the applicant's transportation study was wrong or is somehow unworthy of belief by reasonable persons. Petitioner's Goal 12 arguments are rejected.

[10]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). A decision may be supported by substantial evidence under this standard, even if it is not the same decision a reviewing appellate body might make based on the same evidence. *Younger v. City of Portland*, 305 Or 346, 359, 752 P2d 262 (1988).

Goal 13 calls for land uses to be managed and controlled "so as to maximize the conservation of all forms of energy, based upon sound economic principles." Petitioner attacks the city's compliance with Goal 13, arguing the access to the site is not direct and efficient and that the level of congestion shows it is likely the proposed development will result in a waste of energy.

Goal 13 addresses energy conservation as part of the comprehensive planning process. Even if the goal may have some bearing on relatively small individual development decisions such as the one at issue in this appeal, petitioner's argument does not make any attempt to explain how a development of this size will have any effect whatever on the city's efforts to make efficient use of energy. The city addressed Goal 13, noting the placement of the facility near public services including mass transit and commercial areas. The city's findings also note that trees shade the buildings and that the current insulation and code requirements will ensure minimum loss of heat. Record 21. Nothing in the record suggests that a 102-unit assisted living facility bordering an arterial street, with nearby mass transit and a clientele that will not be heavy users of automobiles, will waste energy or otherwise affect the city's compliance with Goal 13. Petitioner's Goal 13 arguments are without merit.

Petitioner next alleges violation of Goal 14, which requires provision for "an orderly and efficient transition from rural to urban land use." Petitioner asserts the city violated Goal 14 by failing to explain how the proposed use ensures an "orderly and efficient transition from rural to urban land use." The proposal does not authorize development of rural areas or authorize conversion of rural land to urban or urbanizable land. The territory to be annexed is already within the city's urban growth boundary, which separates urban and urbanizable lands from rural lands. There is, then, no conversion from rural land to urban land associated with this development. Rather, the subject property was "converted" "from rural to urban land use" within the meaning of Goal 14, when the UGB was established and the subject

property was included inside the established UGB. Petitioner's Goal 14 arguments are without merit.

Petitioner's fourth, fifth and sixth assignments of error are denied.

B. Compliance with Plan Goals and Objectives (WZO 16.050(b))

Petitioner's seventh and eighth assignments of error complain that the city failed to address the WZO 16.050(b) requirement that an applicant for a comprehensive plan amendment must demonstrate that "[t]he proposal complies with the remaining Goals and Policies of the Comprehensive Plan." The city's findings addressing WZO 16.050(b) incorporate by reference the findings in "section VI-A." Record 23. Petitioner's entire argument under the seventh and eighth assignments of error is that "[t]here is no section 'VI-A' in the city's decision * * *." Petition for Review 15.

Intervenors respond that the challenged finding mistakenly cited the wrong section of the findings document. According to intervenors, the intended reference was to section IV-A rather than section VI-A. Section IV-A includes several pages of findings addressing comprehensive plan goals and policies. Record 10-15.

Intervenors are correct. The mistaken reference in the finding could not have misled petitioner, because there is no section VI-A and it is obvious that section IV-A addresses comprehensive plan goals and policies.

Petitioner's seventh and eighth assignments of error are denied.

C. Public Need for the Proposed Amendment (WZO 16.050(c) and (d) and WZO 16.080(b))

1. Introduction

WZO 16.050(c) and (d) and WZO 16.080(b) impose similar, but not identical, "public need" criteria for comprehensive plan and zoning map amendments.[11] WZO

[11]See ns 5 and 6. The WZO does not define the term "public need."

16.050(c) and (d) require that a comprehensive plan map amendment be justified by a "clearly demonstrated public need for the proposed amendment" and that the "proposal best satisf[y] the need." Support for a zoning map amendment under WZO 16.080(b) requires showings that (1) "there is a need for the use proposed" and (2) "the particular piece of property in question will best meet that need."

The city's "public need" standards are likely relics from *Fasano v. Washington Co. Comm.*, 264 Or 574, 581, 507 P2d 23 (1973), which imposed similar standards as generally applicable requirements for all quasi-judicial zoning map amendments. *Burlington Northern v. Jefferson County*, 13 Or LUBA 274, 279 n 3 (1985). However, the *Fasano* "public need" standards are no longer generally applicable land use criteria, and they apply only where a local government's comprehensive plan or land use regulations impose them. *Neuberger v. City of Portland*, 288 Or 155, 170, 603 P2d 771 (1979), *rehearing den* 288 Or 585 (1980); *Friends of Cedar Mill v. Washington County*, 28 Or LUBA 477, 485 (1995). Of course here the city's zoning ordinance does impose a "public need" standard. Importantly, however, the city's "public need" criteria are now purely requirements of local law; and where the city council expressly or implicitly interprets local law, those interpretations are entitled to deference on review. *Gage v. City of Portland*, 319 Or 308, 317, 877 P2d 1187 (1994); *compare Forster v. Polk County*, 115 Or App 475, 478, 839 P2d 241 (1992) (local government interpretations of state law are not entitled to the deferential standard of review required by ORS 197.829(1) and *Clark v. Jackson County*, 313 Or 508, 836 P2d 710 (1992)).

Because the challenged decision's treatment of these criteria overlaps and the parties' arguments do not always distinguish between WZO 16.050(c) and (d) and WZO 16.080(b), we also combine our discussion of the parties arguments concerning those criteria. The order and manner in which the challenged decision addresses these criteria, and the manner in which petitioner attacks and intervenors defend the decision, do not readily lend themselves to analysis. To facilitate our analysis of the parties' arguments, we first consider WZO

16.080(a). Then we address the "public need" requirements of WZO 16.080(b)(1) and WZO 16.050(c). Finally, we consider the requirements under WZO 16.050(d) and WZO 16.080(b)(2) that the proposal be the "best" solution to satisfy the identified need.

2. Change in the Community (WZO 16.080(a))

To approve a change in the comprehensive plan map for the subject property, WZO 16.080(a) requires a threshold showing that one of three circumstances exists. *See* n 6. The circumstance the city found to exist here is "that the community has changed since the original plan was adopted." WZO 16.080(a)(2). Petitioner argues the city's findings regarding WZO 16.080(a) are inadequate and are not supported by substantial evidence.

The city found that (1) as the age of the population increases, more facilities serving this population will be needed, (2) the original comprehensive plan did not anticipate that such a change would occur, and (3) it would require land designated for multi-family development in order to provide the needed services. These findings are sufficient to provide the rationale required by WZO 16.080(a).

In support of these findings, intervenors cite 1994 census data, which estimated the Woodburn population of persons over 75 years of age to be 1,569 people.[12] Intervenors also cite the applicant's survey, which shows some 2,131 people over 75 years of age in the Woodburn area as of 1998. Record 229. These figures show an increase in the elderly population of some 562 persons in the Woodburn area. The city relied on this increase in the segment of the population over 75 years of age to conclude that the "community has changed" criterion in WZO 16.080(a)(2) is met.

The criterion imposed by WZO 16.080(a)(2) is extremely subjective. A wide range of circumstances might be sufficient to satisfy such a standard. We conclude the city's

[12] WCP 36.

findings are sufficient to show the "community has changed since the original plan was adopted," within the meaning of WZO 16.080(a)(2).

The fourteenth and fifteenth assignments of error are denied.

3. Public Need for the Use Proposed (WZO 16.080(b)(1))

WZO 16.080(b)(1) requires that the applicant for a change in zoning establish a public need for the "use proposed." The focus under WZO 16.080(b)(1) appears to be on the proposed *use* rather than on a need for more MFR-zoned land.

In addressing WZO 16.080(b)(1), the city relies largely on findings that it adopts to address other criteria. Record 25. Those findings explain the need for the proposed use by identifying a need for assisted living projects for senior citizens. The city found there are 2,131 senior citizens aged 75 years and above and 265 residents of existing retirement and assisted living facilities in the city. Record 23-24. According to the city

> "[m]any of the current assisted living projects in Woodburn have avoided taking Medicaid residents who require high levels of care. The proposed project will accommodate level 4 and 5 Medicaid residents who need high levels of care, including incontinence care." *Id*.

The city concludes that 1,866 elderly seniors remain who may need assisted living or retirement units. The proposed project will provide housing units for about 10 percent of these persons. The city finds there is a four percent vacancy rate at existing assisted living facilities. According to the city such a vacancy rate indicates a "tight market and a need for more units." Record 24.

The city adds that presently there is a 15-unit Alzheimer's care facility in the city. *Id*. The city cites estimates that more than three percent of persons over the age of 65 have some form of Alzheimer's disease. From these figures, the city concludes that approximately 64 persons in the Woodburn area have some form of the disease. *Id*. We understand the city to say that the total number of Alzheimer's patients is not served by the existing 15-unit care facility.

We conclude the above findings are adequate to establish a public need for the "use proposed," within the meaning of WZO 16.080(b)(1). It is apparent from the above findings that the city interprets WZO 16.080(b)(1) as being met where there is a statistical probability that the segment of the population that the assisted care facility is intended to serve will need the facility. We defer to that interpretation. In addition, while petitioner disputes the sufficiency of the evidence that the city relied upon in adopting the above findings, we conclude that it is substantial evidence.

The sixteenth and seventeenth assignments of error are denied.

4. Public Need for the Proposed Amendment (WZO 16.080(b)(1))

Petitioner argues the city erred as a matter of law in finding that the proposal complies with WZO 16.050(c) because the city improperly focuses on a need for the proposed *use* rather than a need for the proposed *plan amendment.* Petitioner also argues the city's findings under WZO 16.050(c) are inadequate and unsupported by substantial evidence.

Unlike WZO 16.080(b)(1), which focuses on the "use proposed," WZO 16.050(c) requires a "clearly demonstrated public need for the proposed amendment." In other words, following the approach taken by the city in this matter, having established a public need for the "use proposed" under WZO 16.080(b)(1), the city must then show there is a public need for more HDR-designated land to accommodate the proposed use, to comply with WZO 16.050(c).

Petitioner argues that because there is vacant HDR-designated land within the current city limits, and additional vacant HDR-designated land outside the city limits and inside the UGB, there can be no need for additional HDR-designated land as a matter of law. Petitioner might be correct if the city were basing its decision on a general need for more HDR-designated land. However, the city based its decision on (1) a specific need for the proposed use and (2) the unsuitability of existing HDR-designated land within the city limits and

outside the city limits but inside the UGB. The city's interpretation and application of WZO 16.050(c) to allow designation of additional HDR land to accommodate such a special need in such circumstances is well within its interpretive discretion under ORS 197.829(1) and *Clark*. We turn to petitioner's findings and evidentiary challenges.

In addressing the related "best" site criterion in WZO 16.080(b)(2), the city council adopted the following findings:

> "* * * The land use inventory * * * in the Comprehensive Plan dated January 1996 indicates that there are less than 86 acres of multi-family zoned land available for development within the city limits of Woodburn. There are approximately 121 acres of multi-family zoned land within the urban growth boundary for development. The land outside of the city, but within the urban growth boundary, does not have the city services necessary to support the proposed use. A review of the available parcels within the City of Woodburn zoned for multi-family shows that these parcels are either not listed for sale, have road access problems, or are either too small or too large for the proposed use. * * *" Record 16.

The relevant question under WZO 16.050(c) appears to be whether sites that are *already designated* HDR are suitable for the needed use. The above findings explain why none of the land that is inside the UGB and *already* planned and zoned for multi-family use is appropriate for the proposed use. Assuming these findings are supported by substantial evidence, we believe they are adequate to establish a need for additional HDR-designated land to accommodate the identified need for a multi-family assisted living facility.

The findings are supported by an analysis that was submitted by the applicant. Record 432-34. That analysis examined nine sites inside the urban growth boundary and concluded for various reasons that none of those nine sites is suitable for the needed facility. Although we might question some of the reasons that were given to reject some of those sites as unsuitable, petitioner does not specifically challenge the analysis. Absent such a challenge, we conclude the analysis constitutes substantial evidence that additional HDR-designated land is needed to accommodate the proposed use.

The ninth, tenth and eleventh assignments of error are denied.

5. The Best Proposal and Best Site Criteria (WZO 16.050(d) and 16.080(b)(2))

Petitioner alleges the city failed to demonstrate that the subject property is the best site for the proposed use, as required by WZO 16.050(d) and 16.080(b)(2). As an initial point, we have some question whether the requirement under WZO 16.050(d) that the "proposal best [satisfy] the public need" necessarily requires that the applicant demonstrate that the subject property is the best site for the proposed use. However, there can be no doubt that WZO 16.080(b)(2), which requires "that the particular piece of property in question will best meet that need" does impose such a requirement.

Petitioner argues that the city's findings of compliance with WZO 16.050(d) and 16.080(b)(2) are inadequate because the city failed to examine every parcel in or near the city that could allow, or be rezoned to allow, the proposed use. Further, petitioner argues that the city's findings are impermissibly conclusory, because they do not explain in sufficient detail why the parcels the city examined are not suitable for the proposed use.

The city findings state on this point:

> "* * * The applicant states 'the proposed site is adjacent to Boones Ferry Road, which is an arterial street serviced by public transportation. This will enable the residents to easily utilize public transportation. Second, the proposed site is in close proximity to an ambulance service, which will greatly benefit the residents when they are in need of emergency medical attention. The location is also convenient to churches [and] business[es] providing commercial services and public city services.' The land use inventory (Table 4) in the Comprehensive Plan dated January 1996 indicates that there are less than 86 acres of multi-family zoned land available for development within the city limits of Woodburn. There are approximately 121 acres of multi-family zoned land available within the urban growth boundary for development. *The land outside the city, but within the urban growth boundary, does not have the city services necessary to support the proposed use. A review of the available parcels within the City of Woodburn zoned for multi-family shows that these parcels are either not listed for sale, have road access problems, or are either too small or too large for the proposed use. For these reasons, the proposed*

site best suits the public need for the proposed use." Record 16 (emphasis added).[13]

The city approached the question of compliance with WZO 16.050(d) and 16.080(b)(2) by first explaining why the subject property is well-suited for the proposed use, and then examining certain other properties in or near the city to determine if any were as well-suited. The city rejected all multi-family zoned lands outside the city, because such lands lack city services. The city then rejected all multi-family zoned lands inside the city, based on the applicant's study of those lands, because each parcel had one or more features that made it unavailable or otherwise inferior to the subject property.

Petitioner does not explain why WZO 16.050(d) and 16.080(b)(2) must be interpreted to require individual comparisons with all parcels in or near the city that could be rezoned to allow the proposed use. The city's findings implicitly reject that view, and instead apply these criteria to require comparisons only against land currently zoned for multi-family uses. Petitioner makes no attempt to explain why that view of WZO 16.050(d) and 16.080(b)(2) is inconsistent with the text, purpose or policy underlying those criteria, or otherwise "clearly wrong." ORS 197.829(1); *Alliance for Responsible Land Use*, 149 Or App at 265.

In *Alliance for Responsible Land Use*, the Court of Appeals affirmed an implicit county interpretation of a local approval criterion very similar to WZO 16.050(d) and 16.080(b)(2). The provision at issue in *Alliance for Responsible Land Use* allowed property to be rezoned if the need will be "best served" by the subject property "as compared with other available property." 149 Or App at 262. The court held that it was not clearly wrong for the county to interpret that provision to limit the scope of comparison to other property in particular zoning classifications, and rejected the petitioners' argument that the provision must be read to require individual comparisons with all sites that could be rezoned to allow

[13]The city's findings addressing WZO 16.080(b)(2) incorporate the quoted findings by reference. The quoted findings address a WCP criterion that is worded similarly to WZO 16.080(b)(2).

the proposed use. For the same reasons, we reject petitioner's challenge in the present case to the city's implicit interpretation of WZO 16.050(d) and 16.080(b)(2).

In *Alliance for Responsible Land Use*, the court further rejected the petitioners' challenge to the adequacy of the comparisons the county made, which approached the issue in the same manner the city does here: by explaining the virtues of the subject property, and then rejecting other available property that lacked one or more of those virtues. Similarly, petitioner does not explain in the present case why, under the city's approach, detailed site-specific findings are required to demonstrate that the subject property "will best meet the need." Under the city's approach, once the city has determined that other parcels, individually or as a group, are inferior to the subject property for one or more reasons, there is no point in further analysis of those parcels. We note that petitioner does not specifically challenge any of the reasons the city adopted for finding other property less suitable for the proposed use.

The twelfth, thirteenth, eighteenth and nineteenth assignments of error are denied.

SITE PLAN REVIEW (TWENTIETH THROUGH THIRTY-FOURTH ASSIGNMENTS OF ERROR)

Petitioners final series of assignments of error challenge the city's compliance with its site plan review standards. The standards for site plan review are set out at WZO 11.070.[14] Petitioner disputes many of the city's findings addressing the site plan standards,

[14]WZO 11.070 provides the following site plan review criteria:

"(a) The placement of structures on the property shall minimize adverse impact on adjacent uses.

"(b) Landscaping shall be used to minimize impact on adjacent uses.

"(c) Landscaping shall be so located as to maximize its aesthetic value.

"(d) Access to the public streets shall minimize the impact of traffic patterns. Wherever possible, direct driveway access shall not be allowed to arterial streets. Wherever possible, access shall be shared with adjacent uses of a similar nature.

arguing they are conclusory or incorrect. We note at the outset that petitioner's criticisms often ignore that many of the standards are not stated as absolute requirements. Rather they call for efforts to *minimize* impacts on adjacent uses and traffic and do not require that such impacts be *eliminated*.

A. Placement of Structures and Landscaping to Minimize Adverse Impacts on Adjacent Uses (WZO 11.070(a) and (b))

With respect to the first two site review criteria, which require that "placement of structures on the property shall minimize adverse impact on adjacent uses," and that "[l]andscaping shall be used to minimize impact on adjacent uses," the city found:

> "The applicant states that 'Building 2 is positioned in the middle of the subject property so it will have very little impact on adjacent uses. Building 2 is also oriented on the property so that the majority of the parking area and cars are shielded by the building from adjacent properties.' The site plan and building elevations also show that the buildings are offset and use angled walls, overhangs, and dormers for a less obtrusive view from adjacent properties. The proposed development has been revised to adequately minimize possible deleterious effects on adjacent low-density residential developments. It accomplishes this with a generous amount of landscaped yard with shrubs, lawn, and trees, with fences, and low profile residential-appearing buildings. The setback to single-family lots on the south will be increased from a minimum of 20 feet to a minimum of 50 feet and to the west, from 17 feet to 49 feet. These setbacks increase in most areas along the west and south property lines. The fence will be a 7 foot high sight obscuring ornamental fence on the property lines to further reduce any impact. The

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"(e) The design of the drainage facilities shall minimize the impact on the City's or other public agencies' drainage facilities.

"(f) The design encourages energy conservation, both in its siting on the lot, and its accommodation of pedestrian and bicycle traffic. (Note: specific solar access provisions are described in Section 8.200.)

"(g) The proposed site development, including the architecture, landscaping and graphic design, is in conformity with the site development requirements of this Ordinance and with the standards of this and other ordinances insofar as the location and appearance of the proposed development are involved.

"(h) The location, design, color and materials of the exterior of all structures and signs are compatible with the proposed development and appropriate to the character of the immediate neighborhood."

> [building's] architectural features provide many roof and wall variations to mitigate its mass. In addition, the landscaping plan provides for the planting of a significant number of large evergreen trees along the south property line.
>
> "* * * The applicant's landscaping plan shows that the site will be planted with many new medium and large trees. These trees are maples, hemlocks, cedars, ash, and other species - which should help provide visual screening of the upper walls and roofs of the development. Shrubs planted on three (3) foot centers will screen (along with the fence) lower walls of the development. * * * The applicant is proposing 50% of the site in landscaping while 20% is required. * * *" Record 19-20.

The findings clearly set out mitigation measures. The proposal may not provide the more extensive mitigation petitioner's argument suggests he desires, but we agree with intervenors that the findings address the criteria adequately and that the findings are supported by substantial evidence.

The twentieth, twenty-first, twenty-second and twenty-third assignments of error are denied.

B. Driveway Access (WZO 11.070(d))

WZO 11.070(d) requires that traffic impact be minimized and that "[w]herever possible, direct driveway access shall not be allowed to arterial streets." See n 14. The city found the two driveways, one on Boones Ferry Road and the other on County Club Road, are far enough apart so as to create no traffic impact. Record 20. However, the city's findings under WZO 11.070(d) do not explain why direct driveway access is allowed on Boones Ferry Road, an arterial street. Intervenors argue the driveway access onto Boones Ferry Road is for the purpose of providing alternative access as required by the city's fire chief. Intervenors' Brief 42.[15] While it may be that the fire chief expressed concerns that would provide a basis for the city finding that it is not possible here to deny direct driveway access to Boones Ferry Road, the city's findings addressing WZO 11.070(d) do not express that

[15]Intervenors cite pages 103 and 242 of the record in support of their contention that the driveway access to Boones Ferry Road was required by the city fire chief. The cited pages of the record do not support that contention.

position. We agree with petitioner that the city's findings are inadequate to address the requirement of WZO 11.070(d) that "[w]herever possible, direct driveway access shall not be allowed to arterial streets." On remand, the city must supply a more complete explanation of its reasons for why it is not "possible" to deny direct driveway access to Boones Ferry Road.

The twenty-fourth, twenty-fifth and twenty-sixth assignments of error are sustained.

C. Drainage Facilities (WZO 11.070(e))

WZO 11.070(e) requires that "[t]he design of the drainage facilities shall minimize the impact on the City's or other public agencies' drainage facilities." The city adopted the following findings addressing WZO 11.070(e):

> "The City has no improved storm sewer in the vicinity except an existing 10 [inch] diameter storm sewer at the intersection of Boones Ferry Road and Country Club Road that discharges to Miller Farm Road. Public Works staff has indicated that this system may be utilized temporarily if capacity is available based on a hydraulic analysis of the existing storm sewer. The permanent system will need to discharge to Goose Creek by a piped system within Boones Ferry Road as part of the ultimate street improvement. The applicant may be required to share some of the cost of constructing this system."[16] Record 20-24.

Reading the findings and conditions of approval together, we conclude they are adequate to demonstrate compliance with WZO 11.070(e). Together they explain that Boones Ferry Road will be improved to provide a permanent storm water solution for the proposed

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[16]The city also imposed the following relevant conditions of approval:

> "30. On-site storm water runoff detention shall be required meeting city standards.
>
> "31. This development shall not cause storm water runoff to be impounded on adjacent properties.
>
> "32. * * * The applicant shall provide a hydraulic analysis of the development and existing storm sewer. The permanent [storm water] system [for the proposed development] shall discharge to Goose Creek by a piped storm sewer system within Boones Ferry Road[.] [T]his would be part of the Boones Ferry Road Street Improvements. If the existing system does not have sufficient capacity the storm sewer system to Goose Creek shall be installed by the applicant at this time. The applicant will be responsible for the cost and size associated with the development, material cost in over sizing would be the city's responsibility." Record 35.

development that discharges into Goose Creek. Impacts on the city storm water system will be minimized by initially using the existing storm sewer that discharges to Miller Farm Road, if it is shown to have sufficient capacity. If not, the permanent solution for storm water discharge from the property via the Boones Ferry Road improvements will be used, with the city and applicant sharing the expense. Condition 30 explains that on-site detention will be used to manage runoff, and condition 31 requires that the development "not cause storm water runoff to be impounded on adjacent properties." The findings and conditions of approval are sufficient to demonstrate how the proposal's drainage facility design "shall minimize the impact on the City's or other public agencies' drainage facilities."

The twenty-seventh and twenty-eighth assignments of error are denied.

D. Energy Conservation (WZO 11.070(f))

WZO 11.070(f) requires that "[t]he design encourages energy conservation, both in its siting on the lot, and its accommodation of pedestrian and bicycle traffic." Petitioner argues the city's findings of compliance with WZO 11.070(f) are inadequate and unsupported by substantial evidence. The city's findings discuss sidewalks throughout the facility connecting to both adjacent public streets. Record 21. They mention bicycle parking facilities for staff, and address energy conservation in the facility itself by (1) pointing out the building will be shaded by proposed tree planting and (2) noting compliance with current insulation code requirements. Petitioner complains about the findings because they do not address how the "siting" of the proposed buildings will encourage energy conservation.

The city's findings do address several matters that are relevant to energy conservation under WZO 11.070(f). The reference in WZO 11.070(f) to siting of the building on the lot is not explained. That is, WZO 11.070(f) is not clear about how siting of structures on the lot may or may not promote energy conservation. While the city's findings addressing WZO 11.070(f) do not specifically address energy conservation considerations in building siting, in a separate finding addressing solar access the city does discuss building placement through a

requirement that the building not cast a shadow on the south wall or any solar access buildable area during certain hours. Record 28. Given the ambiguity in the ordinance energy conservation standard, the city's discussion of sidewalks, solar access, shade trees and landscaping elsewhere in the findings is sufficient to address the code standard.[17] Record 20, 21, 28.

The twenty-ninth and thirtieth assignments of error are denied.

E. Location and Appearance of the Development (WZO 11.070(g))

WZO 11.070(g) requires "[t]he proposed site development, including the architecture, landscaping and graphic design, [must be] in conformity with the site development requirements of this Ordinance and with the standards of this and other ordinances insofar as the *location and appearance of the proposed development* are involved." (Emphasis added.) The city's finding addressing this criterion is as follows:

> "The applicant's proposal has complied with the standards of the Zoning Ordinance and other ordinances as discussed in this staff report [*sic*]."[18] Record 21.

Petitioner argues that this finding is inadequate because it fails to identify the standards of the zoning ordinance and "other ordinances" with which the location and appearance of the proposed development conform.

The short finding quoted above expresses the view that the findings the city adopted elsewhere in its decision consider the location and appearance of the proposed development. Whether they actually did or not is not important here, because petitioner makes no attempt to attack the adequacy of those findings in his challenge under this assignment of error.

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[17] Findings do not require magic words, and they do not have to be in perfect logical or topical order. *See Sunnyside Neighborhood v. Clackamas Co. Comm.*, 280 Or 3, 21, 569 P2d 1063 (1977).

[18] The challenged decision includes a number or references to "this staff report." The city council's and planning commission's decisions in this matter incorporated much of the planning staff report without deleting many of the internal references to "this staff report."

Instead, he appears to argue that the city must repeat those findings here as a separate exercise. We reject the argument.

The thirty-first and thirty-second assignments of error are denied.

F. Structure Exteriors and Signs (WZO 11.070(h))

WZO 11.070(h) requires that "[t]he location, design, color and materials of the exterior of all structures and signs [must be] compatible with the proposed development and appropriate to the character of the immediate neighborhood." This criterion calls for a subjective judgment about development aesthetics and whether the facility exteriors and signs are in keeping with the character of the immediate neighborhood.

Petitioner argues the city's findings addressing WZO 11.070(h) are defective because they do not discuss the immediate neighborhood, structure layout and business signs. Findings adopted elsewhere in the decision describe the immediate neighborhood as including single-family dwellings, a US West communications facility, a church and apartments. Record 10. Other findings address structure heights and setbacks and landscaping. Record 19-20.

WZO 11.070(h) is highly subjective and does not call for more than a generalized aesthetic discussion. We do not agree with petitioner's apparent view that the city's findings under this standard addressing the exterior of the structure are defective simply because a description of the surrounding neighborhood is included under some other heading in the findings. The city's findings viewed as a whole are sufficient to address the WZO 11.070(h) compatibility requirement regarding "[t]he location, design, color and materials of the exterior of all structures * * *." We also reject petitioner's suggestion that the city was obligated to specifically address in its finding every criticism of the layout of the structures that was expressed during the local proceedings. Findings adopted to support a quasi-judicial land use decision generally must specifically address relevant *issues* that are raised during the proceedings. *City of Wood Village v. Portland Metro. Area LGBC*, 48 Or App 79,

87, 616 P2d 528 (1980); *McConnell v. City of West Linn*, 17 Or LUBA 502, 519 (1989). However, findings need not specifically address every complaint that is voiced during the proceedings. Petitioner simply cites to three pages of the record without making any attempt to identify which complaints petitioner believes amount to "issues" that require specific responses in the findings.

Finally, WZO 11.070(h) also requires that the city consider the compatibility of the proposed "signs." As far as we can tell the city did not do so. Intervenors cite to pages in the record that show the proposed locations and design of two proposed entry monument signs. Record 312, 316. Intervenors argue that based on this evidence we may overlook the missing findings. ORS 197.835(11)(b) (LUBA may overlook defective findings where "evidence in the record * * * clearly supports the decision"). We do not agree. The evidence cited by intervenors does not provide more than an idea of what the proposed signs will look like. It is not evidence that clearly supports a decision that the signs are, in the words of WZO 11.070(h), "compatible with the proposed development and appropriate to the character of the immediate neighborhood." Moreover, whether any given particular sign complies with the "compatibility" standard in WZO 11.070(h) calls for the kind of highly subjective judgment that generally makes reliance on ORS 197.835(11)(b) inappropriate. *Waugh v. Coos County*, 26 Or LUBA 300, 307-08 (1993). On remand the city must consider whether the proposed signs comply with WZO 11.070(h).

The thirty-third and thirty-fourth assignments of error are sustained in part.

CONCLUSION

Because we sustain the twenty-fourth, twenty-fifth and twenty-sixth assignments of error and sustain the thirty-third and thirty-fourth assignments of error in part, the challenged decision is remanded.

The city's decision is remanded.