BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

NEIGHBORS FOR SENSIBLE DEVELOPMENT, INC., and REX ROSE,
Petitioners,

vs.

CITY OF SWEET HOME,
Respondent,

and

LINN COUNTY AFFORDABLE HOUSING, INC.,
Intervenor-Respondent.

LUBA Nos. 2000-154, 2001-001 and 2001-002

FINAL OPINION
AND ORDER

Appeal from City of Sweet Home.

Sydney Eddy Brewster, Salem, filed the petition for review and argued on behalf of petitioners. With her on the brief was Wallace W. Lien, P.C.

No appearance by City of Sweet Home.

Tad Everhart, Portland, filed the response brief and argued on behalf of intervenor-respondent. With him on the brief was the Community Development Law Center.

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

DISMISSED (LUBA No. 2000-154)	05/10/2001
AFFIRMED (LUBA Nos. 2001-001/002)	05/10/2001

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

Opinion by Bassham.

NATURE OF THE DECISION

In LUBA No. 2000-154, petitioners appeal the city planning commission's preliminary approval of a planned unit development (PUD) on a 3.42-acre property. In LUBA No. 2001-001, petitioners appeal the city council's decision granting general development approval for the proposed PUD and applying PUD overlay zoning to the subject property. In LUBA No. 2001-002, petitioners appeal the city council's decision approving a 15-lot subdivision in conjunction with the proposed PUD.

FACTS

The subject property is a vacant 3.42-acre parcel zoned Low Density Residential (R-1). A city park borders the property on the east side, and single-family dwellings on the north, west and south sides. On June 5, 2000, intervenor appeared before the city planning commission for preliminary approval of a PUD, as required by the Sweet Home Municipal Code (SHMC).[1] Intervenor proposed the development of 23 housing units for low income families, seniors and disabled persons, with a mix of townhouses, duplexes, and single-family dwellings. The planning commission considered the proposal and approved it in concept, as reflected in the minutes of its June 5, 2000 meeting. Petitioners were not present at this meeting, and the city did not provide them with notice of the meeting or the planning commission's decision.[2]

On June 30, 2000, intervenor filed applications with the city for (1) general development plan approval for the PUD; (2) a zoning map amendment to apply the PUD

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[1]As we discuss later in this opinion, approval of a PUD under the SHMC is a three-step process, which requires preliminary approval, general development plan approval, and final development plan approval.

[2]One of the named petitioners is an organization that represents several neighbors owning property adjacent to or near the subject property. The other named petitioner is an individual who resides next to the subject property. No party challenges the standing of the organization in this case. References in this opinion to "petitioners" "appearing" before the city during the proceedings below should be understood to include the individuals represented by petitioner Neighbors for Sensible Development.

overlay zone to the subject property; and (3) a 15-lot subdivision in conjunction with the PUD. On August 7, 2000, the city conducted a public hearing on the applications before the planning commission. Petitioners were provided notice of and attended that hearing. On August 9, 2000, the planning commission deliberated, and voted to recommend approval of the general development plan application and zone change to the city council. The planning commission also approved the subdivision, subject to the city council's approval of the PUD.

At some point during or after the proceedings before the planning commission, petitioners learned of the planning commission's June 5, 2000 preliminary approval. On September 15, 2000, petitioners filed an appeal of the June 5, 2000 decision with LUBA (LUBA No. 2000-154).

The city council conducted a *de novo* hearing September 12, 2000, to consider the planning commission's recommendation regarding the PUD. The city council continued its hearing to September 26 and October 10, 2000. Following deliberations on October 10 and 24, 2000, the city council voted to approve the general development plan. On September 5, 2000, petitioners appealed the planning commission's decision approving the subdivision to the city council. The city council conducted a hearing on petitioners' appeal of the subdivision approval on October 24, 2000, and, on November 14, 2000, voted to deny petitioners' appeal. Findings were prepared for both decisions, and approved on December 12, 2000. Petitioners then appealed these city council decisions to LUBA (LUBA Nos. 2001-001 and 2001-002).[3]

MOTION TO DISMISS (LUBA NO. 2000-154)

On October 19, 2000, intervenor moved to dismiss LUBA No. 2000-154 on various grounds, including an argument that the planning commission's preliminary approval was not a "final" land use decision under the city's code and therefore is not subject to LUBA's

[3]On February 21, 2001, all three appeals were consolidated for the Board's review.

jurisdiction. We denied that motion in an order dated January 8, 2001. In that order, we described the pertinent code provisions as setting forth an unusual three-step process for approving PUDs. The first step, preliminary approval, requires an applicant to submit for planning commission approval schematic drawings and a written program that contains the elements of the proposed development, including proposed land uses, building densities, building type, ownership pattern, and numerous other elements. SHMC 17.48.030(A) and (B). During the preliminary approval process, the planning commission informally reviews the submittal and either approves it in principle, approves it with recommended modifications, or denies it. SHMC 17.48.030(C).[4] The planning commission's action must be based on the city's comprehensive plan, code standards, and the suitability of the proposed development in relation to the character of the area. *Id*.

Having obtained preliminary approval, the applicant may proceed to the second step and file a general development plan for approval and an amendment to the zoning map under

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[4]SHMC 17.48.030(C) provides:

> "1. The planning commission shall informally review the preliminary development plan and program and may act to grant either preliminary approval, approval with recommended modifications or denial. Such action shall be based upon the city comprehensive plan, the standards of this title and other regulations, and the suitability of the proposed development in relation to the character of the area;
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> "2. Informal review of the preliminary development plan and program shall be held at a regular planning commission meeting, but does not require a public hearing;
>
> "3. Approval in principle of the preliminary development plan and program shall be limited to the preliminary acceptability of the land uses proposed and their interrelationships, and shall not be construed to endorse precise location of uses nor engineering feasibility. The planning commission may require the submission of other information than that specified for submittal as part of the general development plan and program;
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> "4. The planning commission shall review and may recommend expansion, additions or modifications in the qualifications of the proposed design team for the preparation of the general development plan and program;
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> "5. The planning commission shall determine the extent of any additional market analysis to be included in the general development plan and program."

SHMC 17.48.040. SHMC 17.48.040(D) specifies the required elements of the general development plan, including a demonstration that the plan is "in conformance with the approved preliminary plan." SHMC 17.48.040(D)(1)(a). In our January 8, 2001 order, we described the third step of the city's PUD approval process to be approval of the final development plan, which requires that the final recordable document comply with the general development plan approval obtained during step two. SHMC 17.48.060.

Based on the parties' arguments and our understanding of the pertinent code provisions, we denied intervenor's motion to dismiss, concluding in relevant part that:

> "* * * A preliminary approval under SHMC 17.48.030(C) appears to yield a decision that is final and binding in certain respects on both the city and the applicant. Preliminary approval requires compliance with specific approval criteria. One of the requirements for step-two general development plan approval is compliance with the preliminary approval. SHMC 17.48.040(D)(1)(a). Once preliminary approval has been obtained, the decision that the proposed PUD satisfies these approval criteria cannot be challenged at step two. Opponents such as petitioners who appear at the step-two proceedings cannot challenge compliance with the criteria applicable to preliminary approval. Under the city's scheme, compliance with preliminary approval criteria is unreviewable, and leads to land use effects without further appealable decisions." *Neighbors for Sensible Development v. City of Sweet Home*, ___ Or LUBA ___ (LUBA No. 2000-154, Order, January 8, 2001), slip op 6.

In its response brief, intervenor renews its motion to dismiss LUBA No. 2000-154, arguing that we misunderstood the pertinent provisions of the city's code and the role the preliminary PUD approval plays in the overall scheme of PUD approval. According to intervenor, preliminary approval under SHMC 17.48.030(C) is not intended to and does not result in a decision that is final and binding in any legally significant way on the city, the applicant, or any participants at subsequent proceedings on the application. Intervenor argues that:

> "* * * First, there is no aspect of Step One, the approval in principle, which cannot be challenged at the review of the general plan in Step Two. Still more important, since the planning commission can only recommend approval, there is nothing that an opponent cannot challenge and that the city council

cannot undo, since the city council must hold a hearing on the application. SHMC 17.48.050(B)." Intervenor-Respondent's Brief 8.

We agree with intervenor that our January 8, 2001 order was based on an incorrect understanding of the city's code. As intervenor points out, we failed to appreciate that the pertinent code provisions actually can be viewed as a *four*-step process, where the planning commission's decision at step two consists only of a *recommendation* to the city council under SHMC 17.48.050(A). After receiving the planning commission's recommendation, the city council then conducts a *de novo* review pursuant to SHMC 17.48.050(B).[5] Under

[5]SHMC 17.48.050 provides criteria for general development plan and zone change approval:

> "A. * * * The planning commission, after public hearing on an amendment to the zoning map in accordance with [SHMC] 17.12.020, may recommend approval of the PUD zone and the general development plan and program, with or without modifications, or may deny the application. A decision to recommend approval of a PUD zone shall be based upon the following findings:
>
> "1. That the proposed development is in conformance with the city comprehensive plan and state land use goals.
>
> "2. That exceptions from the standards of the underlying zone are warranted by the design and amenities incorporated in the development plan and program;
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> "3. That the proposal is in harmony with the surrounding area and its potential future use;
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> "4. That the system of ownership and the means of developing, preserving and maintaining open spaces is suitable to the proposed development, to the neighborhood, and to the city;
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> "5. That the approval will have a beneficial effect on the area which could not be achieved under other zones;
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> "6. That the proposed development or a unit thereof can be substantially completed within one year of the approval;
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> "7. That the streets are adequate to support the anticipated traffic, and that the development will not overload the streets outside the planned area;
>
> "8. That the proposed utility and drainage facilities are adequate for the population densities and type of development proposed, and will not create a drainage or pollution problem outside the planned area. That the timing of installation of utility and drainage facilities will be closely coordinated

that scheme, any determination by the planning commission at either step one or step two is subject to plenary review and challenge before the city council. Contrary to our above-quoted conclusion, nothing in the planning commission's preliminary approval at step one can bind the city or the applicant in reaching the city's final decision, or preclude other parties from challenging any determinations made at step one. We agree with intervenor that the decision appealed in LUBA No. 2000-154 is not a "final" decision under the city's code and, therefore, it is not subject to our jurisdiction.

We also agree with intervenor that the preliminary PUD approval decision is the equivalent of a tentative decision following an informal pre-application conference or review (hereafter pre-application conference).[6] Pre-application conferences are customarily conducted by planning staff and precede submittal of an application for permit or rezoning approval. However, we are aware of no legal requirement that a pre-application conference be conducted by planning staff.[7] Such pre-application conferences and any tentative decisions reached by the city in those conferences are not "land use decisions," as ORS 197.015(10)(a)(A) defines that term, provided they are not "final" decisions concerning the application of city land use standards or other land use standards identified at ORS

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with development construction and that it will not create a hardship to residents either within or outside the planned area.

"B. * * * After receiving the recommendation from the planning commission, the city council shall hold a hearing on the proposal for a PUD zone and the general development plan and program in accordance with [SHMC] 17.12.020. The city council shall either approve the application, with or without modifications, or deny it.

"* * * * * "

[6]SHMC 17.48.030(C)(1) provides that the planning commission will "informally review the preliminary development plan." SHMC 17.48.030 describes the planning commission's approval of a preliminary plan as "approval of the project in principle."

[7]Most cities and counties likely do not involve permit decision makers at this stage, in part to avoid potential problems with *ex parte* contact or bias when they are asked to review applications that they have already reviewed and preliminarily approved in a meeting with the applicant.

197.015(10)(a)(A)(i) through (iv).[8] Pre-application conferences are generally required to eliminate obvious problems with permit and zone change applications and facilitate subsequent review by the ultimate decision maker, and are not designed to make any "final" decision concerning compliance with relevant approval criteria. It also follows that any tentative decision or decisions reached in a pre-application conference do not constitute "permits" or "zone changes," again, provided they are *tentative* and carry no preclusive legal effect in the review that is required and conducted when the application for "permit" or "zone change" approval is later submitted. In this case, the request for planning commission general development plan approval is the step at which the applicant submitted an application for a "permit" and "zone change." It is the request for general development plan approval at step two that triggers the statutory requirement under ORS 227.175(3) for a public hearing or the right of local appeal to challenge a permit decision that is rendered without a prior public hearing.

Finally, we note that SHMC 17.48.040(D)(1) does establish the elements for a general development plan and SHMC 17.48.040(D)(1)(a) provides that one of those elements is a "[g]eneral development plan in conformance with the approved preliminary plan." In our earlier order denying intervenor's motion to dismiss we were influenced by this provision, in concluding that the preliminary approval decision has final land use effects that are not reviewable at subsequent stages. Upon reconsideration, however, the selection of one

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[8]ORS 197.015(10)(a)(A) defines "land use decision" to include:

> "A final decision or determination made by a local government or special district that concerns the adoption, amendment or application of:
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> "(i) The goals;
>
> "(ii) A comprehensive plan provision;
>
> "(iii) A land use regulation; or
>
> "(iv) A new land use regulation[.]"

preliminary development plan, among the potentially numerous preliminary development plans that might be submitted for review and approval, is not materially different than the decisions that are routinely made in pre-application conferences. The fact remains that the general development plan, which follows submittal of the preliminary plan, must meet the approval criteria at SHMC 17.48.050 that apply to general development plans. Applying the pre-application conference analogy, the fact that SHMC 17.48.040(D)(1)(a) might require an applicant to seek a new preliminary plan approval before the applicant could submit a request for general development plan approval that varied materially from the preliminary plan does not make that preliminary plan approval a final, separately appealable, "permit" or "zone change" decision.[9]

Because we conclude that the preliminary plan approval decision is not a land use decision, LUBA No. 2000-154 is dismissed.

FIRST, SECOND AND THIRD ASSIGNMENTS OF ERROR[10]

In the first assignment of error, petitioners contend that the city violated statutory requirements at ORS 227.173 by failing to provide notice and opportunity to be heard with regard to the planning commission's preliminary approval under SHMC 17.48.030. In the second assignment of error, petitioners argue that the city's preliminary approval was not supported by the written findings required by ORS 227.173(3). In the third assignment of

[9]We have some question whether the city could, in the informal preliminary plan approval stage, deny a preliminary development plan under SHMC 17.48.030(C)(1) and thereafter refuse to accept or consider a general development plan under SHMC 17.48.040(D)(1)(a), solely on the basis that the preliminary development plan had been denied under SHMC 17.48.030(C)(1). *See* n 4. However, that question is not before us and we need not decide it here.

[10]Due to the late timing of consolidation, petitioners submitted two petitions for review, one for LUBA No. 2000-154 and another for LUBA Nos. 2000-154, 2001-001, and 2001-002. Dismissal of LUBA No. 2000-154 disposes of the three assignments of error in the first petition. The second petition presents seven assignments of error, the first three of which substantially duplicate the three assignments in the first petition, but which arguably contain some challenges to the city's final decision. Our discussion below addresses the seven assignments of error in the second petition, although that discussion is summary to the extent the assignments of error are directed at the decision appealed in LUBA No. 2000-154.

error, petitioners contend that intervenor failed to submit necessary information required by SHMC 17.48.030(B) in order to obtain preliminary approval and, therefore, the city's preliminary approval lacks evidentiary support.

Petitioners' arguments under these assignments of error are premised largely on the view that the city's step-one preliminary approval was itself a "permit" decision subject to the requirements of ORS 227.175.[11] In our order dated January 8, 2001, we addressed and rejected an argument that the notice of intent to appeal filed in LUBA No. 2000-154 was untimely filed. In the course of our discussion we agreed with petitioners that the city's preliminary approval process was subject to the procedural requirements imposed by ORS 227.175. However, as we now understand the pertinent code provisions, the city's preliminary approval is not subject to ORS 227.175.

There is no question that the city's ultimate decision approving the PUD and rezoning application is a decision on a permit subject to the requirements of ORS 227.175. However, the city satisfied the relevant requirements by conducting "at least one public hearing on the application," as required by ORS 227.175(3). ORS 227.175 sets forth certain minimum procedural requirements for processing permit applications, but does not prohibit or regulate informal proceedings such as those provided under SHMC 17.48.030 that may *precede* the public hearing(s) required by the statute.[12]

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

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[11]ORS 227.160(2) defines "permit" in relevant part to mean the "discretionary approval of a proposed development of land, under ORS 227.215 or city legislation or regulation." ORS 227.175 requires generally that the applicant for a permit may apply to a hearings officer or other designate and that the hearings officer shall conduct at least one public hearing on the application, except as provided in ORS 227.175(10). The latter statutory provision plays no role in this case.

[12]It is important to note that intervenor filed its application for general development plan review and subdivision approval on June 30, 2000, *after* the planning commission gave its preliminary approval on June 5, 2000. The date the permit application is submitted is of considerable importance for several statutory purposes, including application of the procedural requirements of ORS 227.175. Assuming without deciding that the pertinent date of the permit application in this case is June 30, 2000, rather than the dates of intervenor's submissions prior to that date, then the procedural requirements of ORS 227.175 would not apply to the planning commission's June 5, 2000 preliminary approval.

FOURTH ASSIGNMENT OF ERROR

Petitioners contend that the city council's decision, specifically the zoning map change, is a post-acknowledgment land use regulation amendment subject to the requirements of ORS 197.610. In relevant part, ORS 197.610(1) requires that the city forward the proposed amendment to the Department of Land Conservation and Development (DLCD) "at least 45 days before the first evidentiary hearing on adoption."[13] Petitioners argue that the city violated ORS 197.610(1), because it provided DLCD only seven days' notice of its initial evidentiary hearing, on August 7, 2000, and did not identify any emergency circumstances justifying less than the required 45 day notice.

Intervenor responds that the challenged zone change is not a land use regulation amendment subject to the requirements of ORS 197.610(1). Intervenor explains that OAR 660-018-0020 implements ORS 197.610(1) in requiring that proposals to amend an acknowledged plan or land use regulation must be submitted to DLCD at least 45 days before

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[13]ORS 197.610(1) and (2) provide:

> "(1) A proposal to amend a local government acknowledged comprehensive plan or land use regulation or to adopt a new land use regulation shall be forwarded to the Director of the Department of Land Conservation and Development at least 45 days before the first evidentiary hearing on adoption. The proposal forwarded shall contain the text and any supplemental information that the local government believes is necessary to inform the director as to the effect of the proposal. The notice shall include the date set for the first evidentiary hearing. The director shall notify persons who have requested notice that the proposal is pending.
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> "(2) When a local government determines that the goals do not apply to a particular proposed amendment or new regulation, notice under subsection (1) of this section is not required. In addition, a local government may submit an amendment or new regulation with less than 45 days' notice if the local government determines that there are emergency circumstances requiring expedited review. In both cases:
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> "(a) The amendment or new regulation shall be submitted after adoption as provided in ORS 197.615 (1) and (2); and
>
> "(b) Notwithstanding the requirements of ORS 197.830 (2), the director or any other person may appeal the decision to the board under ORS 197.830 to 197.845."

the first evidentiary hearing.[14] However, intervenor argues, OAR 660-018-0010(11) exempts from the scope of "land use regulation" as used in OAR chapter 660, division 18 "small tract zoning map amendments."[15] Because the challenged zone change is a "small tract zoning map amendment," intervenor argues, it is not a land use regulation amendment that is subject to the notice requirements of ORS 197.610(1) and OAR 660-018-0020.

The response brief anticipates that petitioners may seek to avoid that conclusion by relying on OAR 660-018-0010(13), which defines the term "map change" as used in OAR 660-018-0020 to mean "a change in the designation of an area as shown on the comprehensive plan map, zoning map or both." Intervenor concedes that OAR 660-018-0010(13) can be read to require that zoning map amendments of any size require notice to DLCD under OAR 660-018-0020, notwithstanding OAR 660-018-0010(11). However, intervenor argues that the two definitions must be read together and effect given to both sections of the rule to avoid nullification of the specific exclusion at OAR 660-018-0010(11) for small tract zoning map amendments.

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[14]OAR 660-018-0020 provides, in pertinent part:

> "(1) A proposal to amend a local government acknowledged comprehensive plan or land use regulation or to adopt a new land use regulation shall be submitted to the Director at least 45 days before the first evidentiary hearing on adoption. The proposal submitted shall be accompanied by appropriate forms provided by the Department and shall contain three copies of the text * * *. In the case of a map change, the proposal must include a map showing the area to be changed as well as the existing and proposed designations. * * *
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> "(2) For purposes of this rule, 'text' means the specific language being proposed as an addition to or deletion from the acknowledged plan or land use regulations. * * * In the case of map changes 'text' does not mean a legal description, tax account number, address or other similar general description."

[15]OAR 660-018-0010(11) provides:

> "'Land Use Regulation' means any local government zoning ordinance, land division ordinance adopted under ORS 92.044 or 92.046 or similar general ordinance establishing standards for implementing a comprehensive plan. 'Land use regulation' does not include small tract zoning map amendments, conditional use permits, individual subdivisions, partitioning or planned unit development approvals or denials, annexations, variances, building permits, and similar administrative-type decisions."

We agree with intervenor's reading of OAR 660-018-0010(11), 660-018-0010(13) and 660-018-0020. Because the notice requirements of ORS 197.610(1) and OAR 660-018-0020(1) do not apply to the small tract zoning map amendment proposed here, petitioners' arguments under this assignment of error do not provide a basis for reversal or remand.

The fourth assignment of error is denied.

FIFTH ASSIGNMENT OF ERROR

SHMC 17.48.040(D) sets forth the required elements of the general development plan, including that the plan be "in conformance with the approved preliminary plan." SHMC 17.48.040(D)(1)(a). Petitioners argue that, because the city's preliminary approval process was flawed, the record does not contain evidence showing that the plan is in conformance with the approved preliminary plan. According to petitioners, because the step-one preliminary approval is not supported by the record, the record is insufficient to support the step-two approval.

Intervenor responds that SHMC 17.48.040(D)(1)(a) is a submittal requirement, not an approval criterion. Intervenor also argues that petitioners have not demonstrated any violation of SHMC 17.48.040(D)(1), citing to testimony that there are no substantial changes between the general development plan and the approved preliminary plan.

As discussed above, petitioners have not established any error in the city's preliminary approval process, much less one that affects the evidentiary support for the challenged city council decision. To the extent the evidentiary support regarding SHMC 17.48.040(D)(1)(a) is at issue, we agree with intervenor that the record shows that the general development plan conforms with the approved preliminary plan.

The fifth assignment of error is denied.

SIXTH ASSIGNMENT OF ERROR

Petitioners contend that the challenged decision fails to address issues raised during the proceedings below regarding compliance with applicable approval criteria.

According to petitioners, issues were raised below regarding traffic safety, sewer capacity, and need for the type of housing proposed. With respect to traffic safety, petitioners argue that the city council ignored comments from a member of the city's Traffic Safety Committee to the effect that the proposed PUD does not meet the criteria at SHMC 17.48.050(2), (3), (4), (5) and (7). *See* n 5. With respect to sewer capacity, petitioners fault the city's findings for relying on evidence from the Public Works Department, and failing to address contrary testimony of sewer-related problems. With respect to the housing needs, petitioners argue that the city failed to address testimony that the proposed housing types are not needed.

Petitioners do not identify what criteria these issues go to, other than indirect reference to SHMC 17.48.050(2), (3), (4), (5) and (7). With respect to traffic safety, intervenor responds that the city adopted a number of findings addressing traffic safety, supported by a traffic study, that adequately address the concerns raised by the Traffic Safety Committee member. With respect to sewer capacity, intervenor cites to findings that address the concerns raised by petitioners below. Record 48. With respect to housing needs, intervenor argues that, to the extent the applicable criteria require a demonstration of need for the proposed housing, the city findings address and determine that such a need exists. Record 38. We agree with intervenor that the city's findings are not inadequate for any reason advanced by petitioners.

The sixth assignment of error is denied.

SEVENTH ASSIGNMENT OF ERROR

Petitioners contend that the city committed procedural errors during the proceedings before the city council that deprived petitioners of their rights under the state and federal constitutions. According to petitioners, the city violated the constitutional right of due process and the right to petition government for redress of grievances when it allowed the applicant and its supporters to testify first in the hearings before the city council, with the

result that opponents could not testify until late at night. Petitioners contend that this procedure effectively prevented some opponents from testifying.

Intervenor responds that the city's code requires that the applicant present its evidence first, and that the city offered petitioners ample opportunity to present opposing evidence and written and oral testimony. We agree with intervenor that petitioners have not established any procedural error. Limitations on the opportunity for oral testimony do not constitute reversible procedural or constitutional error, where the local government provides sufficient opportunity to present written testimony. *Kane v. City of Beaverton*, 38 Or LUBA 183, 188 (2000); *Wild Rose Ranch Enterprises v. Benton County*, 37 Or LUBA 368, 374-75 (1999). Petitioners do not contend they lacked opportunity to present written testimony. Moreover, petitioners make no attempt to allege that *petitioners* were denied adequate opportunity for oral testimony. Petitioners cannot allege procedural error on behalf of others. ORS 197.835(9)(a)(B); *Fraley v. Deschutes County*, 32 Or LUBA 27, 38 (1996); *Bartels v. City of Portland*, 23 Or LUBA 182, 185 (1992).

The seventh assignment of error is denied.[16]

LUBA No. 2000-154 is dismissed. The city's decisions in LUBA Nos. 2001-001 and 2001-002 are affirmed.

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[16]The seventh assignment of error also contains a separate allegation of error that consists solely of the following sentence: "The Notice in Step Two and the Subdivision was insufficient. (Rec. 172-192, Petitioners' memorandum)." Petition for Review 15. The allegation of error is, on its face, insufficiently developed for our review. *Deschutes Development v. Deschutes Cty.*, 5 Or LUBA 218, 220 (1982) (it is not LUBA's function to supply petitioner with legal theories or to make petitioner's case). The reference to "petitioners' memorandum" may be an effort to incorporate by reference an argument as to why legally required notice was legally insufficient. However, the practice of incorporating by reference arguments in other documents is particularly problematic here. We are directed to 21 pages of the record containing a miscellany of minutes, newspaper clippings, letters and legal argument, and asked, without any assistance from petitioners, to locate something in those 21 pages that might explain why petitioners believe some unidentified notice was legally insufficient. We decline to do so.