BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

DON KNIGHT and DAPHNE RUFF,
Petitioners,

vs.

CITY OF EUGENE,
Respondent,

and

VERIZON WIRELESS LLC,
Intervenor-Respondent.

LUBA No. 2001-139

FINAL OPINION
AND ORDER

Appeal from City of Eugene.

Bill Kloos, Eugene, filed the petition for review and argued on behalf of petitioners.

No appearance by City of Eugene.

E. Michael Connors, Portland, filed the response brief and argued on behalf of intervenor-respondent. With him on the brief was Davis Wright Tremaine.

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

AFFIRMED 01/11/2002

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

Opinion by Holstun.

NATURE OF THE DECISION

Petitioners appeal a city hearings official decision that grants site review approval for a cellular communication facility.

MOTION TO INTERVENE

Verizon Wireless LLC (Verizon), the applicant below, moves to intervene in this appeal on the side of respondent. There is no opposition to the motion, and it is allowed.

FACTS

Verizon sought site review approval for an 80-foot tall monopole on which a triangular platform with 12 eight-foot tall panel antennas will be mounted.[1] The facility also includes an ancillary 12 by 28-foot equipment shelter. Two air condensing units are to be placed on top of an adjacent motel building. Shrubbery and a screening fence will be installed around the monopole and shelter.[2]

The proposed facility would be located on a 1.6-acre lot, which lies between Franklin Boulevard and Garden Avenue a short distance north of the University of Oregon. The parcel is zoned C-2 General Commercial and is currently developed with two motel buildings, a restaurant, and surface parking. Verizon proposes to lease approximately 1,000 square feet on the northwestern portion of the lot, immediately north of one motel building and west of the other, to accommodate the facility.

The challenged decision includes the following description of the surrounding area:

> "The subject parcel abuts Franklin Boulevard along its southern boundary and Garden Avenue along its northern boundary. Franklin Boulevard is a fully

[1]The lightning rod attached to the monopole will extend 90 feet above the ground.

[2]Verizon originally sought approval for a 100-foot monopole, but withdrew that application after opponents and the city expressed concerns. Based on a study that showed that an 80-foot monopole is the minimum tower height needed to meet Verizon's needs, an amended application for an 80-foot monopole was submitted.

> improved major arterial characterized by high traffic volume, utility poles and commercial strip development. Most of the area along Franklin [Boulevard], including all of the property within the vicinity of the subject property on the north side of Franklin, is zoned C-2, General Commercial. Surrounding commercial development includes a grocery store, pharmacy, video store, large-scale bakery, auto dealership, two gas stations, several restaurants and lodging facilities, * * * and several other commercial buildings that support a variety of uses. Most of the businesses along Franklin [Boulevard] occupy buildings between one and two stories tall. South of Franklin Boulevard, beyond the commercially zoned and developed strip, is the Fairmount Neighborhood.
>
> "Garden Avenue is the only street that traverses the area between Franklin Boulevard and the Willamette River. Properties along both sides of that street are also zoned C-2. The street serves as a major bicycle route connecting Alton Baker [Park], the University of Oregon, and the Autzen Foot Bridge area and the Knickerbocker Bridge. Although the area is zoned C-2 General Commercial, development along Garden Avenue includes a mixture of residential and commercial uses. Existing buildings in this area are between one and two stories tall. Utility poles extend along Garden Avenue, including a utility pole on the subject site. North of Garden Avenue and extending north into the Willamette Greenway area, the area is also characterized by numerous tall trees, at least 60-100 feet in height." Record 5.

The planning director denied the application, determining "that the height of the proposed monopole was incompatible with the surrounding area; that the applicant had not established that it could not collocate on another nearby building; and that the facility would impermissibly detract from views of Judkins Point." Record 6. On appeal, the city hearings official reversed the planning director's decision and approved the application with conditions. This appeal followed.

FIRST ASSIGNMENT OF ERROR

Under Eugene City Code (EC) 9.690(4), site plan approval must be based on the criteria at EC 9.688. Those criteria, in turn, require that the city address certain specified factors. EC 9.688(b)(1) sets forth the following factor:

> "Compatibility with the surroundings, particularly when residential in character. This factor shall not take precedence over the need to provide housing for all income groups in the city."

In addressing this factor, the hearings official first pointed out that the term "surroundings" is not defined in the code. Nevertheless, the hearings official rejected the planning director's conclusion that the proposal must be shown to be compatible with any part of the city where it "could potentially be viewed." Record 9. The hearings official concluded the compatibility analysis required by EC 9.688(b)(1) is confined to "the properties surrounding the subject property." *Id*.

Because the compatibility criterion appears to apply with particular force where the surroundings are "residential in character," the hearings official considered whether such was the case and concluded it was not. The hearings official acknowledged the presence of a number of residences along Garden Avenue to the north, northwest and northeast of the property. However, the hearings official also pointed out the area to the south, southwest and southeast is almost exclusively commercial. The hearings official ultimately concluded that the surrounding area is accurately characterized as primarily commercial or mixed use in character.

The hearings official's additional findings addressing the compatibility criterion include the following:

> "The proposed facility is significantly taller than any of the surrounding structures, which are generally no more that two stories tall. However, the area is also characterized by numerous utility poles, which are generally about 2/3 the height of the proposed tower. Both the planning director and opponents minimize the significance of these poles as characteristic of the surrounding area, contending that they should not be used in determining compatibility with surroundings, based on their determinations that they are 'undesirable.' * * *
>
> "* * * The issue under this criterion requires an objective assessment of the surroundings. The surrounding utility poles are a part of the surroundings as much as the motel structures and parking lot immediately adjacent to the proposed structure, the other commercial structures along Franklin, the mixed uses along Garden Avenue, and the numerous 60-100 foot trees that form a backdrop to the north. The proposed facility must be evaluated in the context of all of these existing surroundings.

> "In two previous site review applications for similar transmission towers in other C-2 zones in the City (one 130 feet tall and the other 75 feet tall), the planning director stressed the 'current number and size of power and light poles already present' in determining that based on the 'existing physical characteristics of the area' the construction of the proposed monopoles would be compatible with the surroundings. * * * In both of these cases, the proposed tower was located in a C-2 zone, but bordered on one side not only by residential development but also by residential zoning. Thus, in the past, the city has determined that the existence of power poles contributed to the compatibility of the proposed telecommunications tower with the surrounding area. Likewise, the existing 50 foot power poles along Franklin [Boulevard] and Garden Avenue are a defining characteristic of the immediate area, and, while not as tall as the proposed monopole, would mitigate its visual impact to a significant degree.
>
> "In nearly any commercial location in the city, a telecommunications tower will be taller than the surrounding uses. The mere fact of its height, however, does not unequivocally render the tower incompatible with the surrounding area. In this case, the proposed tower will be along a highly developed commercial corridor, with numerous existing 50 foot utility poles already exceeding the height of the surrounding commercial and mixed use development. The nature, intensity, and variety of the diverse commercial development along Franklin will also mitigate the visual impact of the monopole. A backdrop of 60-100 foot trees to the north of the property will further mitigate the impact of the height on the view of the skyline. With regard to the most immediate views from adjacent properties, while the monopole will exceed by 30 feet the height of the existing poles, its visual impact from the ground will not be significantly more intrusive than the exiting utility poles. Viewed from the nearby one and two story structures, [the] facility will consist of a 12x28 foot shelter cornered by an existing motel building, with an adjacent metal pole, surrounded by a 6 foot tall chain link slatted fence and dense shrubbery. While the proposed tower will be taller than surrounding uses, and thus will not 'look like' surrounding uses, it will, nonetheless, be compatible with the surrounding commercial and mixed use environment." Record 9-11.

A. Failure to Identify the Surroundings Footprint

Petitioners' first argument under the first assignment of error is directed at the hearings official's failure to describe "a clear or even approximate footprint." Petition for Review 6. We understand petitioners to argue that the EC 9.688(b)(1) requirement that the city consider "[c]ompatibility with the surroundings" dictates that the city identify the

relevant surroundings on a map or describe those surroundings in words that achieve a similarly geographically precise description of the surroundings.

Petitioners are correct that our cases have consistently held that approval standards that require an analysis of the impacts of a proposed use on nearby areas, or the uses in those areas, necessarily require that the findings identify the relevant area. *Friends of the Metolius v. Jefferson County*, 25 Or LUBA 411, *aff'd* 123 Or App 256, 860 P2d 278, *adhered to* 125 Or App 122, 866 P2d 463 (1993), *rev den* 318 Or 582 (1994) (impact on surrounding area); *DLCD v. Curry County*, 21 Or LUBA 130, 135-36 (1991) (consistency with "size of other parcels being managed for the same purpose in the area"); *Benjamin v. City of Ashland*, 20 Or LUBA 265 (1990) ("minimal impact on livability of surrounding neighborhood); *Murphey v. City of Ashland*, 19 Or LUBA 182, 203, *aff'd* 103 Or App 238, 796 P2d 402 (1990) (more than minimal impact on "qualities of livability and the appropriate development of abutting properties and the surrounding neighborhood"); *Eckis v. Linn County*, 19 Or LUBA 15 (1990) (impact area); *Multnomah County v. City of Fairview*, 18 Or LUBA 8 (1989) (consistent with the character of the area); *Sweeten v. Clackamas County*, 17 Or LUBA 1234 (1989) (materially alter the stability of the overall land use pattern in the area). Petition for Review 4-5.

Although a map or a geographically precise written description of an "area" or "neighborhood" or the "surroundings" might be helpful in cases where those terms are used in approval criteria, neither is an absolute prerequisite. As the above cases make reasonably clear, we require some effort on the part of the decision maker to define the "area" or "neighborhood" when applying such criteria because those terms are inherently subjective and frequently are modified by equally subjective adjectives. However, it is one thing to say that in applying such standards the relevant area that must be analyzed must first be identified. It is quite another thing to say a map or precise written description of the "footprint" is the only way to do so or is always required.

In this case, "compatibility" must be measured with the "surroundings." The hearings official found that the surroundings were not so broad as to include any area of the city that is visible from the proposed facility. The hearings official then proceeded to identify a number of different kinds of uses that are located on adjoining and nearby properties. Although the hearings official's findings provide some indication of the geographic surroundings that were considered, petitioners are correct that it is not possible to identify a geographically precise area of consideration from those findings. Nevertheless, it is clear that the surroundings that were considered by the hearings official went well beyond the adjoining lots and parcels. It is also clear from the above-quoted findings, and the findings that were quoted earlier in our discussion of the facts, that a variety of commercial uses are located in the surroundings that the hearings official considered. Finally, it is clear that the hearings official acknowledged and considered compatibility with the nearby residential uses on Garden Avenue with which petitioners are primarily concerned.

In view of the hearings official's detailed findings concerning the nature of development in the "surroundings," we fail to see how any geographic ambiguity in the precise outer reach of the relevant surroundings could provide a basis for reversal or remand. Importantly, the hearings official clearly considered the proximate residential uses along Garden Avenue that petitioners would emphasize. The hearings official simply refused to assign the same degree of emphasis to those residential uses that petitioners would. The hearings official also refused to ignore or downplay the large number of commercial uses and existing utility poles that are similarly proximate to the subject property. It is quite clear that the hearings official considered a large number of properties in reasonably close proximity. We also believe it is significant that petitioners identify no uses that they believe both (1) fall within the "surroundings" and (2) the hearings official improperly failed to consider. We conclude that petitioners have not shown that any geographic ambiguities in the hearings official's findings warrant remand.

Subassignment of error A is denied.

B. The Hearings Official's Characterization of the Area

Petitioners contend that the hearings official's finding that the surroundings are "primarily commercial or, conservatively, 'mixed use' in character" is not supported by substantial evidence in the record. Record 9. Petitioners' argument is only plausible if one accepts their position below that the residential uses along Garden Avenue should be emphasized and the commercial uses along Franklin Boulevard should be ignored or downplayed. Record 49, 86. The hearings official viewed the scope of the surroundings as including nearby commercial uses along Franklin Boulevard. We conclude the hearings official committed no error in considering the nearby commercial uses along Franklin Boulevard as part of the surroundings. If the commercial uses along Franklin Boulevard are considered, the hearings official's finding that the surroundings are commercial or mixed use in character is clearly supported by substantial evidence.

Subassignment of error B is denied.

C. The Hearings Official's Compatibility Findings

Petitioners' final challenge under the first assignment of error consists of a series of critiques that particular findings are insufficient, in and of themselves, to demonstrate the proposal is compatible with its surroundings. However, the hearings officials' findings, quoted earlier in this opinion, recognize the existence of nearby residences and the compatibility concerns the tower poses with regard to those uses and the commercial uses in the area. The hearings official acknowledges that the tower is taller than existing utility poles and will have some visual impacts on the surroundings. The hearings official relies primarily on the commercial or mixed use character of the surroundings, the presence of existing, albeit shorter, utility poles, the proposed screening fence and shrubbery and the

screening effect of large trees to the north to explain her conclusion that although the proposed tower will have impacts on its surroundings, it nevertheless will be compatible.[3]

The compatibility standard imposed by EC 9.688 is extremely subjective. *Corbett/Terwilliger Neigh. Assoc. v. City of Portland*, 25 Or LUBA 601, 617 (1993). Reasonable persons could easily draw different conclusions from the record in this appeal about whether the proposed 90-foot tower and related facilities will be compatible with their surroundings, depending on which relevant factors the local decision maker felt deserved emphasis. In this case petitioners would have emphasized the nearby residential uses and concluded the facility is incompatible. Even if that emphasis is permissible and would lead to the conclusion petitioners support, the hearings official's decision to instead emphasize the commercial or mixed use character of the larger surroundings to reach a contrary ultimate conclusion is clearly permissible. That any of the individual findings that petitioners challenge might not provide a complete answer to the ultimate compatibility question is not determinative. The hearings official's findings, as a whole, respond to the compatibility issues raised below.[4] That petitioners would have reached a different ultimate conclusion does not mean that the hearings official's conclusion is legally incorrect or that her findings are inadequate.

The first assignment of error is denied.

SECOND ASSIGNMENT OF ERROR

EC 9.900 establishes siting standards for telecommunications facilities. EC 9.900(8)(j) provides in relevant part:

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[3]In reaching this conclusion, the hearings official also points out that in other cases the city has relied on the presence of existing utility poles in finding that taller proposed cellular towers would be compatible with their surroundings.

[4]Again those issues focus on the proximity of the proposed tower to residential uses on Garden Avenue and the feared impacts associated with the tower's height and high visibility from those residential uses.

> "*Viewshed*. * * * Visual impacts to prominent views of Skinner's Butte, Judkins Point, and Gillespie Butte shall be minimized to the greatest extent possible. *Approval for location of a transmission tower in a prominent view of these Buttes shall be given only if location of the transmission tower on an alternative site is not possible as documented by application materials submitted by the applicant, and the transmission tower is limited to the minimum height necessary to provide the approximate coverage the tower is intended to provide*." (Emphasis added.)

Petitioners' first argument is that the hearings official fails to define what is meant by a "prominent view" under EC 9.900(8)(j). Petitioners are correct. The hearings official's findings note that the planning director found that the proposed tower would not "dominate these views." Record 25. Following that observation, the hearings official found it was "unclear" whether "the facility would visually impact prominent views of Judkins Point." *Id*. We conclude that the hearings official adopted no decisive finding concerning whether the proposed tower would have "[v]isual impacts to prominent views of Skinner's Butte, Judkins Point, and Gillespie Butte." Instead, the hearings official apparently assumed that even if the tower would have such impacts, the tower could nevertheless be approved under the language of EC 9.900(8)(j) that is emphasized above.

A tower that has the visual impacts on prominent views that would otherwise be proscribed under EC 9.900(8)(j) may nevertheless be approved if (1) alternative sites are "not possible" and (2) the tower is no taller than is "necessary to provide the approximate coverage the tower is intended to provide." Petitioners do not assign error to the hearings official's finding that the shortened 80-foot tower meets the second requirement. Petitioners do argue that the hearings official failed to demonstrate that alternative sites are "not possible."

The hearings official noted that the planning director recognized that the proximity of the "Willamette River, Fairmount Neighborhood, University of Oregon campus, and Judkins Point" limit siting options for the disputed tower. Record 24. The hearings official also noted that the planning director found that alternative sites might be possible in the sense that

the applicant might be able to use multiple shorter towers located within or outside a 2,000-foot radius of the proposed tower, thereby making use of the proposed site for an 80-foot tower unnecessary. *Id.* The hearings official rejected the planning director's position and adopted the following findings in concluding that the proposal satisfies EC 9.900(8)(j):

> "While the planning director and opponents urge that the applicant should consider other configurations, including multiple locations with lower tower heights or collocation on multiple buildings, [the EC 9.900(8)(j) possible alternative site standard] does not provide authority for the city to require such alteration of the applicant's asserted and demonstrated business needs. The applicant has established that collocation on multiple, lower buildings is not feasible, and does not meet its needs. Moreover, this requirement states only that the applicant establish that 'location of the transmission tower on *an* alternative site is not possible, as documented by the application materials.' This requirement does not contemplate that the applicant be required to consider multiple lower sites. It requires only that, when there is a choice between a site without a prominent view of Judkins Point (or another specified point) or a site that would visually impact a prominent view, that the site without the view [impact] be used. It does not require that the applicant forego or significantly modify its business needs in order to avoid any view impact." Record 25 (emphasis in original).

As previously noted, petitioners make no attempt to challenge the hearings official's finding that the applicant adequately demonstrated that an 80-foot tower is needed. Petitioners also do not challenge the above findings, which respond to arguments that redesigning the facility to include multiple shorter towers or utilize existing structures might provide an alternative to the proposed 80-foot tower. Rather petitioners simply argue:

> "The hearings official found, in a conclusory fashion, the application complies with [EC 9.900(8)(j)]. However, she has failed to find compliance with the alternative site requirement. That is, the applicant has not demonstrated, and the hearings official has not found, that an alternative site is not possible. This is a missing required finding, which must be supported by evidence in the record." Petition for Review 14.

The above argument is unclear, because the hearings official clearly did adopt findings addressing arguments concerning the possibility of using alternative sites for the proposal. Those findings include the findings quoted above, which reject arguments that alternative sites exist if the proposal is reconfigured to use multiple shorter towers or existing

buildings. Petitioners' point appears to be that, assuming an 80-foot tower is needed to meet the applicant's needs, the hearings official did not explain in the findings that immediately follow EC 9.900(8)(j) why there are no possible alternative sites for an 80-foot tower that would avoid any impacts on the viewshed that are proscribed under EC 9.900(8)(j)

As petitioners recognize, the hearings official did adopt findings in addressing other criteria in which she concluded there are no suitable alternative sites for the proposed 80-foot tower within 2,000 feet of the subject property. Specifically, the hearings official addressed and rejected petitioners' arguments under EC 9.900(7)(c)(2) that a number of sites located within 2,000 feet could accommodate the proposed facility.[5] Petitioners make no attempt to explain why those findings are not also adequate to support the hearings official's subsequent conclusion that EC 9.900(8)(j) is satisfied, other than to suggest the city cannot rely on those findings because they were adopted to address a different criterion, which is "related to keeping facility sites at least 2000 feet apart."[6] Petition for Review 14. Petitioners include an ambiguous, undeveloped, one-sentence argument that can be read to suggest that there might be suitable locations for an 80-foot tower more than 2,000 feet from the subject property that would not impact the viewshed in a way that would violate EC 9.900(8)(j) and might not violate the 2,000-foot separation standard.[7]

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[5]EC 9.900(7)(c)(2) requires that the applicant for approval of a telecommunications facility include:

> "Documentation that alternative sites within a radius of at least 2000 feet have been considered and have been determined to be technologically unfeasible or unavailable. * * *"

[6]It appears that the criterion that requires separation of transmission towers is not EC 9.900(7)(c)(2), but rather is EC 9.900(8)(a), which provides, in part:

> "No transmission tower may be constructed within 2000 feet of any pre-existing transmission tower. * * *"

[7]The entire argument is as follows:

> "The alternative site analysis under the 'viewshed' requirement of EC 9.900(8)(j) does not come with a 2000-foot radius limitation." Petition for review 14-15.

Petitioners do not challenge the hearings official's findings under EC 9.900(8)(j) that the applicant should not be required to reconfigure the proposal to include multiple shorter facilities, even if that would make use of the proposed site unnecessary. Similarly petitioners do not challenge the hearings official's findings under EC 9.900(7)(c)(2) that there are no suitable alternative sites for an 80-foot tower within 2,000 feet of the subject property. It is reasonably clear that the hearings official relied on those findings concerning the unavailability of suitable sites for an 80-foot tower, in concluding that EC 9.900(8)(j) is satisfied. Petitioners do not contend that they argued below that there are suitable sites for an 80-foot tower *beyond* the 2,000-foot radius that the hearings official considered that would *also* satisfy the 2,000-foot separation requirement of EC 9.900(8)(a). Neither do petitioners identify any such potential sites in the petition for review. In view of these failures, and the detailed findings that the hearings official did adopt, to the extent the petition for review can be read to advance the argument described above, we reject petitioners' challenge to the adequacy of the hearings official's findings.

The second assignment of error is denied.

THIRD ASSIGNMENT OF ERROR

As relevant, EC 9.900(8)(f) requires that where

> "adjacent property is * * * occupied by a dwelling * * *, noise generating equipment shall be sound buffered by means of baffling, barriers, or other suitable means to reduce sound level measured at the property line to 45dBa * * *."

Both the planning director and the hearings official found the proposal complied with EC 9.900(8)(f). The hearings official adopted the following findings addressing EC 9.900(8)(f):

> "[T]he proposed facility will include vegetative screening and an equipment shelter to minimize sound levels. The exterior condensing units are proposed on top of the adjacent hotel building to minimize noise levels at ground level. The applicant has provided a noise analysis by Verizon's engineering consultants concluding that the noise generated from the proposed facility will fall well below the maximum limit of 45 dBa. Land Use Management reviewed the analysis and [found] that the analysis satisfies this criterion. In

> response to planning division comments questioning the validity of the applicant's materials, and in response to the comments from [opponents] that the analysis does not provide sufficient detail to confirm that the proposed facility would satisfy the code requirements, the applicant provided supplemental information from Verizon's environmental consultants [dated December 27, 2000,] addressing these concerns. That documentation establishes that the noise generated will be below the 45 dBa limit." Record 21, 23.

The December 27, 2000 supplemental information (hereafter revised noise analysis) provides information concerning "Existing Noise Levels," "Equipment Noise" and "Calculated Sound Levels." Record 267-69. The revised noise analysis explains why, based on a number of factors, the proposed facility will not generate noise in excess of 45 dBa at the property line. Petitioners' attorney submitted a June 20, 2001 letter that criticized the revised noise analysis. Record 92.[8] Petitioners argue that the hearings official erred by failing to adopt findings addressing the specific criticisms that were expressed in the June 20, 2001 letter.[9]

We have held on many occasions that where legitimate issues are raised in a quasi-judicial land use proceeding concerning a relevant approval criterion, a local government's findings must address such issues. *Blosser v. Yamhill County*, 18 Or LUBA 253, 264 (1989), citing *Norvell v. Portland Metropolitan LGBC*, 43 Or App 849, 852-53, 604 P2d 896 (1979) and *McCoy v. Linn County*, 16 Or LUBA 295, 302 (1987), *aff'd* 90 Or App 271, 752 P2d 323 (1988). However, this general principle does not mean that a local government is necessarily obligated to specifically address in its findings every conflict in the evidence or every

[8]In the letter, the attorney advanced six criticisms of the December 27, 2000 supplemental information: (1) lack of clarity about existing noise levels at the subject property, (2) lack of facts to support the assumption that there will be no noise from equipment in the equipment cabinet, (3) lack of explanation for assumptions for noise level when both Carrier Units are operating together, (4) lack of "factual discussion regarding distance attenuation or the [e]ffects of parapets on noise reduction," (5) until existing noise levels are known, applicant's claim that the facility's notice level will be far below existing noise levels is not supported by the record, and (6) reference to 45 dBa noise limit as a nighttime limit is in error since it applies at all hours. Record 92.

[9]The hearings official did acknowledge the criticisms, but rejected them without discussing them individually, concluding that petitioners sought a level of evidentiary detail that is not required by EC 9.900(8)(f). Record 23.

criticism that is made of particular evidence. *Thomas v. Wasco County*, 30 Or LUBA 302, 310 (1996); *Angel v. City of Portland*, 22 Or LUBA 649, 656-57, *aff'd* 113 Or App 169, 831 P2d 77 (1992); *Ash Creek Neighborhood Ass'n v. City of Portland*, 12 Or LUBA 230, 236-38 (1984).

This is not to say that where there are sufficient conflicts in the evidence in the record, LUBA might not conclude on appeal that a reasonable decision maker would no longer rely on that evidence to support a particular finding without some attempt in the findings to resolve those conflicts. *Douglas v. Multnomah County*, 18 Or LUBA 607, 619 (1990). Similarly we see no reason why even non-expert critical comment directed at expert evidence might not so undercut that evidence that some response to that critical comment, either in the findings or through submittal of additional responsive evidence, would be required before LUBA could conclude on review that a reasonable person would nevertheless rely on the criticized evidence. However, the only criticisms in the June 20, 2001 letter that come close to raising such concerns are petitioners' first and fifth criticisms regarding uncertainty about existing noise levels. *See* n 8. However, petitioners make no attempt to explain why existing noise levels are legally relevant under EC 9.900(8)(f), which appears to be concerned with the noise that will be generated by the proposed facility rather than existing ambient noise levels. Simply stated, even if existing noise levels at the subject property exceed 45 dBa, which appears to be the case, petitioners did not argue below, and do not explain in their petition for review, how they believe such existing noise levels would have any bearing on application of EC 9.900(8)(f) in this case to the proposed facility.

We agree with intervenor, that the hearings official's findings that the proposed facility will comply with EC 9.900(8)(f) are supported by substantial evidence in the record.

The third assignment of error is denied.

The city's decision is affirmed.