

1 BEFORE THE LAND USE BOARD OF APPEALS
2 OF THE STATE OF OREGON

3
4 DEBORAH FAY,
5 *Petitioner,*

6
7 and

8
9 ERIK PALMER,
10 *Intervenor-Petitioner,*

11
12 vs.

13
14 CITY OF PORTLAND,
15 *Respondent,*

16
17 and

18
19 TERRY CARNEY,
20 *Intervenor-Respondent.*

21
22 LUBA No. 2002-119

23
24 FINAL OPINION
25 AND ORDER

26
27 Appeal from City of Portland.

28
29 Deborah Fay, Portland, filed the petition for review and argued on her own behalf.

30
31 Erik Palmer, Portland, represented himself.

32
33 Peter A. Kasting, Chief Deputy City Attorney, Portland, filed the response brief and
34 argued on behalf of respondent.

35
36 Terry Carney, Portland, represented himself.

37
38 BRIGGS, Board Member; HOLSTUN, Board Chair; BASSHAM, Board Member,
39 participated in the decision.

40
41 REMANDED

12/19/2002

42
43 You are entitled to judicial review of this Order. Judicial review is governed by the
44 provisions of ORS 197.850.

NATURE OF THE DECISION

Petitioner challenges a city decision that rezones a 10,000 square foot lot from Single Dwelling Residential (R5) to High Density Residential (RH).

FACTS

The subject property is located at the southwest corner of North Edison Street and North Baltimore Avenue in the City of Portland. North Edison Street runs northwest to southeast and is a 60-foot right-of-way improved with a 32 foot wide paved road surface. North Baltimore Avenue runs east to west and is a 60-foot right-of-way improved with a 36 foot wide oiled gravel surface. All properties abutting the intersection of North Edison Street and North Baltimore Avenue, except the subject property, are improved with concrete curbing and grassy parking strips between the roadway and a paved sidewalk, with street trees planted in the parking strips. Both North Edison Street and North Baltimore Avenue are designated as local service streets in the city’s transportation plan. However, because of its proximity to the St. Johns Bridge, a major through route, North Baltimore Avenue has some characteristics of a collector street.

The property is designated High Density Residential on the city’s comprehensive plan map. It is developed with a single-family dwelling and a detached garage on the northerly half of the site, with the southerly portion of the site serving as a side yard and garden area. Intervenor-respondent applied to rezone the property from R5 to RH.¹

Petitioner and intervenor-petitioner, among others, opposed the application, arguing that the proposed rezoning would result in increased traffic, would pose an additional hardship on scarce police services and would violate various transportation policies and

¹ According to intervenor-respondent’s application, the dwelling and garage will be demolished and the property will be redeveloped with a five-story building housing 25 to 35 condominium units for low-income residents. However, it is clear that the city’s decision approves only the zone map change and does not approve any particular development proposal.

1 service standards. A city hearings officer approved the application, with conditions. The
2 hearings officer's decision was appealed to the city council, which affirmed the hearings
3 officer's decision and imposed additional conditions of approval in order to address
4 opponents' concerns regarding traffic safety. This appeal followed.

5 **FIRST ASSIGNMENT OF ERROR**

6 Portland City Code (PCC) 33.855.050.B sets out the public service standards that
7 must be met in order to approve a rezoning application. It provides, in relevant part:

8 **“Adequate public services.** Public services for * * * transportation system
9 structure and capacity, and police and fire protection are capable of supporting
10 the uses allowed by the zone or will be capable by the time development is
11 complete[.]”

12 “1. Adequacy of services applies only to the specific zone change site.

13 “2. Adequacy of services is based on the projected service demands of the
14 site and the ability of the public services to accommodate those
15 demands. Service demands may be determined based on a specific use
16 or development proposal, if submitted. If a specific proposal is not
17 submitted, determination is based on City service bureau demand
18 projections for that zone or area[. Those demand projections] are then
19 applied to the size of the site. Adequacy of services is determined by
20 the service bureaus who apply the demand numbers to the actual and
21 proposed services to the site and surrounding area.”

22 The city found that adequate police services are available to support the proposed RH
23 zone, based on the police bureau's written response and based on statements by the mayor
24 that explained her understanding of the bureau's response. The finding is also based on
25 statements by the mayor that the area in which the subject property is located has the lowest
26 crime rate in the city.²

² The city council's finding with respect to police services adopts the hearings officer's conclusion regarding the adequacy of the evidence, and adds one additional piece of evidence to support the hearings officer's conclusion. The finding states, in relevant part:

“* * * The site is within the service area of the Portland Police Bureau. The Bureau of Police submitted a letter which is part of this record. The letter stated, in part: ‘Based upon the limited information we have reviewed, the Portland Police Bureau will be able to provide

1 Petitioner challenges the evidentiary basis for the city’s finding that PCC
2 33.855.050.B.2 has been satisfied with respect to police services. First, petitioner argues that
3 the Portland Police Bureau’s response regarding the adequacy of police services is much
4 more equivocal than the excerpt relied upon by the hearings officer and the city council
5 suggests.³ According to petitioner, the response, in its entirety, does not support a conclusion
6 that police services are adequate. Petitioner further argues that the evidentiary value of the
7 police bureau’s response is further undermined because the response does not include the
8 demand projections that are necessary to establish that services are adequate when no
9 specific use is being proposed.

10 Second, petitioner argues that there is nothing in the record to support the hearings
11 officer’s summary conclusion that high-density residential uses will not require more than
12 minimal police services. Petitioner cites to evidence in the record that shows that a nearby

“adequate” police services to the site[.] The proposed zoning of RH for one 10,000 sq. ft. parcel of land will not greatly impact police services.’ * * *

“This is a minimal response from the Bureau of Police. The Hearings Officer seriously considered denying this application on the basis that the Police Bureau response was not legally sufficient to satisfy the [PCC] 33.855.050.B.2 approval criteria. However, the response from the Bureau of Police did state that the Police Bureau would be able to provide ‘adequate’ police services and the Hearings Officer finds that, although minimal, it does meet the standards of [PCC] 33.855.050.B.2.

“The use of the property is proposed to be for residential purposes. The proposed use is not one, in and of itself, which creates disproportionate demand upon police services. If, for example, the application was for a use which had a reputation or history of creating high demand for police services then the Hearings Officer would have given increased scrutiny to the Police Bureau response. * * * [The] City Council upheld the adequacy of the Hearings Officer’s finding regarding adequacy of police services at the appeal hearing with a statement that the North Police Precinct currently reports the lowest crime rate in the City.” Record 30.

³ In addition to the excerpt quoted in the city’s decision at n 2, the Police Bureau’s response states, in relevant part:

“The process under which we have been required to follow in reviewing our ability to provide ‘adequate’ police services is difficult to anticipate or forecast need. A broader picture must be reviewed to properly assess our future police services. On individual sites, we can better predict the impact of a proposed site on police services if we know such things as its intended use. Owner occupied or low-income? Are CPTED principles applied? Will the structure accommodate on-site parking or will the occupants be forced to park on the street?” Record 614.

1 high-density residential building is a constant source of complaints by neighbors with respect
2 to noise, litter and criminal activity and that the police bureau is often called to respond to
3 those complaints. Third, petitioner argues that the mayor’s statement that the North Precinct
4 has the lowest crime rate in the city is merely an opinion, and is not supported by any
5 evidence in the record.⁴

6 The city responds that there is substantial evidence to support the city’s finding.
7 According to the city, nothing in PCC 33.855.050.B.2 requires a numerical demand analysis
8 to support a conclusion that services are adequate to support the proposed use. In this case,
9 the city argues that police bureau employees used “common-sense judgment” to substantiate
10 the fact that the North Precinct can provide adequate police protection services to one
11 additional multi-family structure. Respondent’s Brief 8. The city contends that the police
12 bureau’s letter states that it will be able to adequately serve the site and none of the evidence
13 petitioner relies on undermines that conclusion. The city notes that none of the opposing
14 testimony indicates that current service levels are inadequate, only that a multi-family
15 development in the area is the source of many police calls. The city also argues that none of
16 the opposing testimony suggests that even if additional demand for police services is
17 generated by the proposed rezoning, the city does not have the resources to address that
18 additional demand. The city contends that if additional police protection is necessary, more
19 staff can be transferred to the North Precinct from other areas. Finally, the city argues that
20 even if there is conflicting evidence with respect to the adequacy of service, the choice of
21 which evidence to rely on is the city’s. *Wissusik v. Yamhill County*, 20 Or LUBA 246, 260
22 (1990).

⁴ At oral argument, petitioner explained that she believes the mayor’s statement that the North Precinct has the lowest crime rate in the city is based on the raw number of reported crimes. Petitioner argued that, on a per capita basis, the North Precinct has a higher crime rate than other areas of the city. The city correctly noted that this argument constituted evidentiary testimony that is not cognizable at LUBA in the absence of a motion to take evidence not in the record.

1 If PCC 33.855.050.B.2 only required a determination by the affected service bureau
2 that services would be “adequate,” we would agree with the city that the evidence it relied on
3 is enough to support that determination. However, PCC 33.855.050.B.2 permits the city to
4 rely on service bureau responses to inquiries regarding levels of service for rezoning
5 applications that do not include a specific development proposal, provided the service bureau
6 projects “service demand” that the site will generate, applies those “demand numbers” to its
7 existing service level and then concludes that service will be adequate. PCC 33.855.050.B.2
8 thus imposes both an analytical requirement and an ultimate standard, to be based on the
9 required quantified analysis. In this case, the city does not contend that such a service
10 demand analysis was done. Instead, the city argues that the police bureau’s bare conclusion is
11 sufficient to satisfy the standard. While we do not agree with petitioner that the police bureau
12 must create a detailed statistical demand projection in order to reach its conclusion that
13 services will be adequate, something more than a summary conclusion that the police bureau
14 will be able to provide adequate services is needed to satisfy PCC 33.855.050.B.2.

15 The first assignment of error is sustained.

16 **SECOND ASSIGNMENT OF ERROR**

17 PCC 33.730.060.C provides, in relevant part:

18 **“Required information for land use reviews[.] * * * [A] complete**
19 **application for all land use reviews * * * consists of all of the materials listed**
20 **in this Subsection. * * * The applicant is responsible for the accuracy of all**
21 **information submitted with the request [for land use review].”**

22 PCC 33.800.060 provides:

23 “The burden of proof is on the applicant to show that the approval criteria are
24 met. The burden is not on the City or other parties to show that the criteria
25 have not been met.”

26 According to petitioner, PCC 33.730.060 imposes on the applicant the responsibility
27 to both provide the evidence necessary to show that all criteria are met and to ensure that the
28 evidence provided is accurate. Petitioner contends that instead of the applicant providing

1 evidence to support a finding that PCC 33.855.050.B.2 is met with respect to transportation,
2 the applicant and the city relied on evidence provided by Portland Department of
3 Transportation (PDOT) staff. Petitioner argues that the evidence provided by city staff was
4 given a presumption of accuracy, and that the decision maker’s reliance on that evidence
5 meant that the burden of proof improperly shifted to opponents of the application to show
6 that the evidence was inaccurate.

7 The city responds, and we agree, that PCC 33.730.060 does not impose a requirement
8 that the applicant provide *all* of the evidence to support an application. Nor does it impose a
9 requirement that an applicant be the guarantor of the accuracy of all evidence provided by all
10 sources in support of the application. PCC 33.730.060.C and PCC 33.800.060 together
11 require that an application for land use review satisfy the requirements of PCC 33.730.060 in
12 order to be deemed complete, and that the burden of showing that all criteria are met rests
13 with the applicant. It does not require that the application include all of the evidence that will
14 be used to support approval. The fact that some evidence in support of the application is
15 generated by city staff does not improperly shift the evidentiary burden to opponents.

16 The second assignment of error is denied.

17 **THIRD ASSIGNMENT OF ERROR**

18 PCC 33.855.050.A. requires that an applicant for a zone change demonstrate that the
19 proposed zone complies with the comprehensive plan map designation. PCC 33.855.050.A.1
20 provides that:

21 “When the Comprehensive Plan Map designation has more than one
22 corresponding zone, it must be shown that the proposed zone is the most
23 appropriate, taking into consideration the purposes of each zone and the
24 zoning pattern of surrounding land.”

25 Petitioner argues that because the subject property is currently zoned R5, approval of
26 a zone change requires a finding that the proposed zone, RH, is more appropriate than the
27 current R5 zoning designation. Petitioner contends that the city erred by failing to address

1 whether the proposed zone is more appropriate, and argues that the evidence shows that the
2 contrary is true.

3 The city responds that petitioner did not raise this issue below and, therefore,
4 petitioner has waived the right to raise that issue before LUBA. ORS 197.763(1).⁵ Petitioner
5 has not responded to this argument with citations to the record demonstrating that this issue
6 was raised below. Therefore, we agree with the city that the issue may not be raised here.

7 The third assignment of error is denied.

8 **FOURTH ASSIGNMENT OF ERROR**

9 The applicant for the proposed rezoning must demonstrate that the proposal is
10 consistent with Portland Comprehensive Plan Transportation Policy 6.15, which provides:

11 **“On-Street Parking Management:**

12 “Manage the supply, operations and demand for parking and loading in the
13 public right-of-way to encourage economic vitality, traffic safety, and
14 livability of residential neighborhoods. Parking in the right-of-way, in general,
15 should serve land uses in the immediate area. Maintain existing on-street
16 parking in older neighborhoods where off-street parking is inadequate.
17 Parking for individuals, or at specific locations, is not guaranteed by this
18 policy. However, the City should act to protect parking, first for residents and
19 second for customers and visitors.”

20 The city’s finding with respect to Transportation Policy 6.15 states:

21 “Applicant is required to improve the Baltimore Avenue frontage to City
22 Standards. The street widths are adequate to accommodate on-street parking
23 on both block faces. No on-street parking will be restricted or eliminated
24 (except in front of the driveway access to the garage). This policy is met.”
25 Record 32, 134.

26 Petitioner argues that the city erred in concluding that Transportation Policy 6.15 is
27 met, and that its conclusion is not supported by substantial evidence. Petitioner argues that

⁵ ORS 197.763(1) provides, in relevant part:

“An issue which may be the basis for an appeal to the Land Use Board of Appeals shall be raised not later than the close of the record at or following the final evidentiary hearing on the proposal before the local government. * * *”

1 the fact that North Baltimore Avenue will be improved to city standards does not address the
2 fundamental requirements of Transportation Policy 6.15: (1) that parking supply and demand
3 will be managed to encourage residential neighborhood livability; (2) that parking will be
4 maintained for existing residential uses where parking is inadequate; and (3) that the city will
5 act to protect parking. Petitioner explains that the area surrounding the subject property
6 includes many older dwellings that do not have off-street parking. Petitioner also notes that
7 there is an existing parking supply shortage, because of the number of dwellings that use on-
8 street parking, and because of events held in a neighborhood park that result in visitor
9 parking spilling over into the neighborhood. Petitioner contends that there is evidence in the
10 record that the applicant intends to satisfy some of the parking needs generated by the
11 proposed development by on-street parking. According to petitioner, that additional demand
12 for on-street parking cannot be satisfied, given the current parking situation. Petitioner
13 argues that the new development that will occur as a result of the proposed rezoning will
14 intensify competition for the existing, limited on-street parking.

15 The city responds that the findings demonstrate that the proposed rezoning is
16 consistent with Transportation Policy 6.15. The findings suggest that development allowed
17 under the proposed rezoning will result in the loss of some on-street parking in order to
18 accommodate driveway access to the subject parcel. It appears from the record that the loss
19 of at least some on-street parking will be necessary to provide the off-street parking that will
20 be required to develop the subject property and satisfy the Transportation Policy 6.15
21 requirement to “maintain existing on-street parking in older neighborhoods where off-street
22 parking is inadequate.” Therefore, the driveway referenced in the city’s findings does not
23 violate Transportation Policy 6.15; rather it would appear to be *required* by that policy. To
24 the extent petitioner argues that Transportation Policy 6.15 absolutely prohibits removal of
25 any on-street parking, even where some on-street parking must be lost to allow access to new

1 off-street parking, it is clear that the city does not interpret Transportation Policy 6.15 to
2 impose such an extreme requirement.

3 However, given the evidence that the proposed rezoning may result in additional
4 demand for on-street parking, the above-quoted finding is inadequate to demonstrate
5 compliance with the requirements of Transportation Policy 6.15 that the city “[m]anage the
6 * * * demand for parking in the public right-of-way to encourage economic vitality, traffic
7 safety, and livability of residential neighborhoods.”⁶ It may be that the city will address this
8 policy in its consideration of a specific development proposal. If that is the case, then the
9 city’s findings should state that compliance with the policy will be addressed in later
10 proceedings. But because we cannot be sure that Transportation Policy 6.15 will be
11 addressed outside of the current proceedings, we agree with petitioner that the findings do
12 not demonstrate that the proposed rezoning is consistent with the policy.

13 The fourth assignment of error is sustained.

14 **FIFTH ASSIGNMENT OF ERROR**

15 Transportation Policy 6.4 requires that land use planning be coordinated with
16 transportation planning. It provides, in relevant part:

17 “* * * The Transportation Element of the Comprehensive Plan will guide the
18 land use planning * * * process. In reviewing land use requests done as * * *
19 Zone Changes in compliance with the Comprehensive Plan * * * [t]he
20 Transportation Goal and Policies 6.1 through 6.29, The District Policies, the
21 Classification Descriptions, and the Maps are used as mandatory approval
22 criteria.”

⁶ In *Wakelin v. City of Portland*, 40 Or LUBA 401, 409-10 (2001), we affirmed findings addressing Transportation Policy 6.15 in which the city found that a proposed rezoning was consistent with the policy, given local code requirements for on-site parking, location of the site on a major transit street, and a finding that any additional demand for on-street parking generated by the proposal was negligible. The city council in that case took the apparent position that Transportation Policy 6.15 is satisfied by such considerations. The city does not explain why the findings in the present case, which do not consider supply or demand at all, are also sufficient to satisfy Transportation Policy 6.15.

1 North Baltimore Avenue and North Edison Street are identified as “local service
2 streets” in the city’s transportation plan. The city transportation plan describes the
3 characteristics of local service streets and advocates for specialized street designs and access
4 limitations where traffic safety hazards are identified.⁷ Petitioner explains that North
5 Baltimore Avenue is relatively level at the North Baltimore Avenue and North Edison Street
6 intersection, but that at the next intersection to the west, North Baltimore Avenue is
7 considerably lower in elevation. According to petitioner, the 20-percent incline between the
8 intersection to the west and the North Baltimore Avenue and North Edison Street intersection
9 results in limited sight distance. As a result, petitioner argues that the North Baltimore
10 Avenue and North Edison Street intersection poses a traffic safety hazard that must be
11 addressed before any rezoning is approved. According to petitioner, if the policies and
12 standards advocated in the transportation plan are considered, the resulting high-density use
13 of the property must be either considerably restricted, or the application denied altogether.

14 The city responds that the portion of the city’s transportation plan that petitioner
15 relies upon does not establish any approval standards that must be met. According to the city,
16 even if the street classifications do in some way impose approval criteria, there is evidence in
17 the record that the city relies on to show that no traffic hazard exists. In addition, the city
18 argues, the city council imposed a condition of approval requiring the applicant to provide an
19 engineering study that demonstrates that 300 feet of sight distance is or can be achieved if an

⁷ The street classification provisions that petitioner apparently relies upon in her arguments under this assignment of error provide, in relevant part:

“Interchanges/Intersections. Intersections between Local Service Streets which experience safety, speed, or nonlocal traffic problems may be treated in such a way as to control access or deny traffic movements.

“* * * * *

“Design Treatment and Traffic Operations. * * * Access for motor vehicles may be selectively restricted on Local Service Streets to allow for nontraffic uses or improved safety * * *.” Respondent’s Brief App 34.

1 access from the subject property to North Baltimore Avenue is proposed. The city argues that
2 the condition of approval is adequate to address petitioner's concerns regarding traffic safety.

3 It is relatively clear that Transportation Policy 6.4 requires that the city address
4 whether the proposed zone change is consistent with the classification of the streets that will
5 be used for access. However, we agree with the city that the street classification provisions
6 do not impose an absolute requirement that the city deny or otherwise condition its approval
7 in order to comply with the street classification provisions. In addition, the conditions
8 imposed by the city council to address the perceived safety hazards are sufficient to ensure
9 that the proposed zone change complies with Transportation Policy 6.4 and the provisions of
10 the local service street classification that address traffic safety hazards.

11 The fifth assignment of error is denied.

12 **SIXTH ASSIGNMENT OF ERROR**

13 According to testimony by city transportation staff, a 1997 traffic study established
14 that North Baltimore Avenue carries approximately 2,000 trips per day, and North Edison
15 Street carries approximately 600 trips per day. Record 136. City staff estimated that the
16 proposed rezoning would add approximately 280 trips per day to North Baltimore Avenue
17 and 85 trips per day to North Edison Street. *Id.*

18 Local service streets are defined as streets that generally handle no more than 1,500
19 trips per day. Record 548. If the local service street classification is used as the standard to
20 establish street capacity, then North Baltimore Avenue already exceeds that standard.
21 However, in its brief and at oral argument, the city explained that the street classification
22 does not establish street *capacity*. Instead, the city explained that capacity is derived from the
23 number of trips that can travel on each lane of traffic during any given hour. In this case, the
24 capacity of each travel lane on streets developed to city standards is estimated to be 1,900
25 vehicles *per hour*. Because the capacity of the two streets that will serve the subject property
26 will be able to handle the additional trips that are likely to be generated by multi-family

1 development, the city transportation staff concluded that the proposed rezoning is consistent
2 with PCC 33.855.050.B.2 and other city transportation policies. That conclusion was adopted
3 by the hearings officer and the city council.

4 Petitioner challenges the city’s finding that the two streets have adequate capacity to
5 permit the proposed rezoning. According to petitioner, street classification is the relevant
6 transportation standard and it is necessary to limit development that will increase vehicular
7 trips to ensure that the local service street classification is maintained. Petitioner argues that
8 the evidence clearly establishes that North Baltimore Avenue already carries more traffic
9 than its classification as a local service street suggests it can support.

10 We agree with petitioner that the challenged decision is not entirely clear that street
11 classification is not relevant in determining street capacity for the purpose of satisfying PCC
12 33.855.050.B.2.⁸ However, the decision does conclude, based on the evidence in the record
13 and the service bureau response, that the city street system is capable of handling the traffic
14 that will be generated by the proposal. Petitioner does not point to any specific standard that
15 requires that adequacy be based on street classification rather than the capacity of the street
16 as built, and we agree with the city that there is evidence in the record to support the city’s

⁸ The transportation staff evidence relied upon by the city council states, in part:

“This zone change would allow a net increase of [approximately] 365 trips per day with approximately 36 of those trips occurring during the peak hours. Traffic counts on file show N[orth] Edison Street at approximately 600 trips per day. N[orth] Baltimore [Avenue], a through street, which is signalized at N[orth] Ivanhoe and is the more direct route out of the area, had a count of approximately 2,000 trips per day. Assuming a proportionate distribution of traffic, maximum development of the site would increase traffic on [North] Baltimore [Avenue] by an estimated 280 trips per day and on [North] Edison [Street] by approximately 85 trips per day * * *. These traffic volumes fall within the acceptable range for local service streets.

“* * * * *

“The site is well served by an existing street system, which is capable of handling the increased traffic that would be generated by this proposed zone change. * * * The existing system can safely accommodate this increase, therefore, there is no requirement for a Traffic Analysis or Traffic Study.” Record 136.

1 conclusion that the street system in the area is capable of absorbing the trips that will be
2 generated by the proposal.

3 The sixth assignment of error is denied.

4 **SEVENTH ASSIGNMENT OF ERROR**

5 Transportation Policy 6.26 requires that transportation facilities be adequate to serve
6 proposed land uses. It provides, in relevant part, that the city:

7 “Ensure that amendments to the Comprehensive Plan or land use regulations
8 which change allowed land uses, including * * * zone changes * * *, and
9 which significantly affect a transportation facility, are consistent with the
10 identified function, capacity and level of service of the facility.”

11 The challenged decision states, in relevant part:

12 “[PDOT] provided a detailed response to the requirements of Goal 6 and the
13 relevant policies as well as addressed the Transportation Planning Rule
14 Interim Requirements. (Exhibit H.108, May 16, 2002 memo from Eudaly to
15 Walhood). [PDOT] comments in this Exhibit are incorporated by the
16 reference into this finding. * * *” Record 32.

17 The incorporated findings state in relevant part:

18 “Both of the streets adjacent to the site are local service streets, however, the
19 site is located 2 blocks from [North] Philadelphia and 3 blocks from N[orth]
20 Ivanhoe Street and [North] St. Louis Avenue which are Major City Traffic
21 Streets, Transit Streets, City Bikeways and Walkways. It is also one block
22 from the St. Johns Pedestrian District. Maximum development of the site
23 would generate an increase of approximately 365 trips per day (an
24 [approximately] 14-percent increase) according to the Institute of
25 Transportation Engineers Trip Generation Manual, 6th Edition. The
26 construction of the sidewalk on [the North Baltimore Avenue frontage of the
27 subject property] will connect to existing sidewalk[s] leading to the St. Johns
28 downtown. This policy is met.” Record 135.

29 Petitioner argues that the city’s conclusion that the proposed rezoning is consistent
30 with Transportation Policy 6.26 is not supported by substantial evidence. Petitioner argues
31 that the traffic data the city relied upon to determine existing trips for North Edison Street
32 and North Baltimore Avenue are outdated. Petitioner contends that the 1997 trip numbers for
33 North Edison Street do not take into account recent development in the area that has added to

1 the traffic in the vicinity. Petitioner also argues the number of vehicles that use North
2 Baltimore Avenue does not provide evidence that the street has the capacity for additional
3 trips, considering the steepness of North Baltimore Avenue and the truck and passenger
4 vehicles with boat trailers that use North Baltimore Avenue on a regular basis.

5 In addition, petitioner argues that the city relied on contradictory evidence with
6 respect to existing trips on North Edison Street and the impact the proposed rezoning would
7 have on those existing trips. Finally, petitioner argues that the evidence relied upon by the
8 city to establish that the proposal is consistent with Transportation Policy 6.26 is undermined
9 by the fact that the methodology that PDOT staff used to establish anticipated demand was
10 not placed in the record.

11 The city responds that there is substantial evidence in the record to support a finding
12 that Transportation Policy 6.26 is met. According to the city, opponents provided no
13 evidence to contradict the number of trips on North Edison Street that PDOT calculated in its
14 May 16, 2002 memo, nor is there evidence in the record that shows that even if there is a
15 difference in the number of existing trips, the difference is significant enough to undermine
16 the ultimate conclusion that the proposed rezoning is “consistent with the identified function,
17 capacity and level of service of the facility” within the meaning of the policy.

18 We understand the city to identify the relevant “transportation facility” referred to in
19 Transportation Policy 6.26 to include North Baltimore Avenue, North Edison Street, North
20 Philadelphia Avenue, North Ivanhoe Street and North St. Louis Street. There is substantial
21 evidence in the record to support the city’s finding that the transportation facility, as defined,
22 is adequate to support the proposed rezoning. Petitioner does not cite to any evidence
23 contradicting that finding and petitioner’s questioning of the difference between certain trip
24 generation numbers, and the methodology used to reach those numbers, does not undermine
25 the evidence the city relied upon. Therefore, this assignment of error provides no basis for
26 reversal or remand.

- 1 The seventh assignment of error is denied.
- 2 The city's decision is remanded.