

1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

3
4 CAROL CHIN, LYN LARSON,
5 JERRY LARSON and WALTER SCHMIDT,
6 *Petitioners,*

7
8 vs.

9
10 CITY OF CORVALLIS,
11 *Respondent,*

12
13 and

14
15 CORVALLIS SCHOOL DISTRICT 509J,
16 *Intervenor-Respondent.*

17
18 LUBA No. 2003-111

19
20 FINAL OPINION
21 AND ORDER

22
23 Appeal from City of Corvallis.

24
25 Daniel Kearns, Portland, filed the petition for review and argued on behalf of
26 petitioners. With him on the brief was Reeve Kearns, PC.

27
28 James K. Brewer, Corvallis City Attorney, Corvallis, filed the response brief and
29 argued on behalf of respondent.

30
31 Allen L. Johnson, Portland, filed the response brief and argued on behalf of
32 intervenor-respondent. With him on the brief was Johnson & Sherton, P.C.

33
34 BASSHAM, Board Chair; BRIGGS, Board Member; HOLSTUN, Board Member,
35 participated in the decision.

36
37 REMANDED

12/03/2003

38
39 You are entitled to judicial review of this Order. Judicial review is governed by the
40 provisions of ORS 197.850.

NATURE OF THE DECISION

Petitioners appeal city approval of a development permit to construct a replacement high school on a 25-acre parcel zoned medium density residential (RS-9).

FACTS

In 1935, the subject property was developed with a high school. Over time the original structure was expanded and adjunct structures were added. At the time of the application, the existing high school consisted of the main high school building, several adjunct structures, parking for 170 vehicles, and several athletic facilities, including a stadium on the west side of the property. The 25-acre subject property is generally bordered by city streets and residential development. An elementary school is located west of the subject property, across NW 16th Street. Dixon Creek flows across the northeast corner of the subject property. Some of the existing adjunct structures are within the 100-year floodplain of Dixon Creek.

In 1997, intervenor-respondent (intervenor) began a lengthy public process to evaluate the adequacy of its facilities, including the high school. Intervenor considered three basic options with respect to the high school: (1) upgrade the current buildings to meet seismic and other requirements, (2) partially upgrade and partially replace existing buildings, or (3) build all new facilities. The final decision was to demolish the existing high school buildings (with the exception of three adjunct structures adjacent to Dixon Creek), construct a new high school, and relocate the athletic fields and stadium. At the November 2002 general election, city voters authorized intervenor to issue bonds to fund the project. On December 9, 2002, intervenor obtained a demolition permit to remove the existing high school building and those adjunct structures designated for removal or replacement.

On December 30, 2002, intervenor applied for conditional development approval to construct the new high school. The application also sought approval of three “lot

1 development options,” which essentially are variances, that would allow among other things
2 a reduction in the number of required on-site parking spaces from 300 to 230. The site plan
3 proposes construction of the new main high school building in the northwest corner of the
4 subject property. A small portion of the proposed main school building is within the 100-
5 year floodplain of Dixon Creek. The site plan also proposes construction of a new stadium,
6 slightly smaller than the existing one, in the southwest corner. The new stadium will feature
7 an artificial playing surface.

8 City planning staff recommended approval, with specified conditions. The planning
9 commission conducted hearings and, on April 2, 2003, voted to approve the application
10 based upon the findings and conditions in the March 7, 2003 staff report. Opponents
11 appealed the planning commission decision to the city council, which held several hearings
12 and, on June 2, 2003, voted to deny the appeal, approving the application with additional
13 conditions. This appeal followed.

14 **FIRST ASSIGNMENT OF ERROR**

15 Petitioners argue that the city’s approval of a “lot development option” reducing the
16 required number of on-site parking spaces from 300 to 230 is inconsistent with Land
17 Development Code (LDC) 4.1.20(j).¹ Petitioners explain that the school generates a need for
18 approximately 375 parking spaces, but that, due to adjustments allowed elsewhere under the
19 LDC, only 300 parking spaces are required. According to petitioners, city approval of only
20 230 on-site parking spots will necessarily force approximately 70 cars to park on neighboring

¹ LDC 4.1.20(j) governs “Location of Required Parking,” and provides in relevant part:

“**Vehicles** - Vehicle parking required for residential uses in accordance with RS-3.5, RS-5, RS-6, RS-9, RS-9U, RS-12, and RS-12U district provisions shall be provided on the development site of the primary structure. Except where permitted by 4.1.50.02 below, required parking for all other use types in other districts, as well as residential uses developed in accordance with RS-20 provisions, shall be provided on the same site as the use or upon abutting property. Street right-of-way shall be excepted when determining contiguity, except on arterials and collectors where there is not a controlled intersection within 100 ft of the subject property.”

1 streets contrary to the requirements of LDC 4.1.20(j), which mandates that all required
2 parking be provided on-site.

3 Lot development options are governed by the standards at LDC 2.12.30.06.² As
4 noted, a “lot development option” allows what is essentially a limited type of variance from
5 LDC requirements. The city council approved the proposed reduction of on-site parking
6 spaces from 300 to 230 under LDC 2.12.30.06, after reviewing and balancing several
7 comprehensive plan policies and concluding that the proposed high school will reduce off-
8 site parking impacts on city streets compared to the off-site parking impacts of the existing
9 high school.³

² LDC 2.12.30.06 provides:

“Lot Development Options shall be reviewed to determine if the following have been met:

- “a. The proposed development will not be contrary to the purposes of this chapter, policies of the Comprehensive Plan, and any other applicable policies and standards adopted by the City;
- “b. The proposed development will not substantially reduce the amount of privacy enjoyed by users of nearby structures if the development were located as specified by this Code;
- “c. The proposed development will not adversely affect existing physical systems and natural systems, such as traffic, drainage, dramatic land forms, or parks, and the potential for abutting properties to use solar energy devices any more than would occur if the development were located as specified in this Code; and
- “d. Architectural features of the proposed development will be compatible to the design character of existing structures on adjoining properties and on the proposed development site.”

³ The city council findings state, in relevant part:

In relation to the requested reduction in the on-site vehicle parking requirement, the Council notes that the requested [lot development option] will result in less impervious surfaces (and therefore, better water quality) and will result in a neighborhood-oriented school which facilitates access for pedestrians, bicyclists, and transit-users. The Council notes that requiring additional on-site spaces would reduce the amount of field space available to the school and could jeopardize the decision to locate the school in this area. Additionally, the Council notes that much of the necessary on-street parking can be accommodated in areas that will not create direct impacts to residential properties. The Council notes that the actual number of on-street spaces that are anticipated to be necessary are less than are currently utilized by the existing school, * * * thereby resulting in a net improvement to on-street

1 Petitioners cite to comprehensive plan policies that discourage nonresidential
2 vehicular parking on residential streets, and require that traffic generators provide adequate
3 parking. According to petitioners, LDC 2.12.30.06(a) does not permit the city to “balance”
4 competing plan policies, or to vary the mandatory off-street parking requirements of
5 LDC 4.1.20(j). Further, petitioners contend that nothing in LDC 2.12.30.06 permits the city
6 to vary code parking requirements based on a finding that on-street parking will improve
7 over current conditions. In any case, petitioners argue, there is no evidence supporting a
8 finding that on-street parking will improve over current conditions.

9 The city responds, and we agree, that the city’s implicit interpretation of
10 LDC 2.12.30.06(a), to require a “balancing” of competing comprehensive plan policies, is
11 not reversible under ORS 197.829(1).⁴ City staff identified several plan policies that

parking available to residents. Based on this analysis, the Council finds that in balance, Comprehensive Plan Policy direction supporting a reduction in the on-site parking requirement outweighs policy direction supporting the on-site requirement.

“* * * [T]he Council notes that the proposed changes are anticipated to result in fewer vehicles parked adjacent to residences in the area than currently occur. Therefore, the Council finds that reducing the on-site parking requirement will not have an effect on the privacy enjoyed by users of nearby structures.

“The Council notes that traffic impacts are not anticipated to exceed the capacity of adjacent streets serving the school. The Council notes that the utilization of on-street parking would likely result in less of an impact to water quality because it would require less new impervious surface area to be created. Consequently, the Council finds that a reduction to the on-site vehicle parking requirements will not result in adverse impacts to existing physical and natural systems. The Council also finds that the reduction in on-site parking would have no impact on architectural features.” Record 54-55.

⁴ ORS 197.829(1) provides, in relevant part:

“[LUBA] shall affirm a local government’s interpretation of its comprehensive plan and land use regulations, unless the board determines that the local government’s interpretation:

- “(a) Is inconsistent with the express language of the comprehensive plan or land use regulation;
- “(b) Is inconsistent with the purpose for the comprehensive plan or land use regulation;
- “(c) Is inconsistent with the underlying policy that provides the basis for the comprehensive plan or land use regulation[.]”

1 encourage the city to limit impervious surfaces, and to reduce off-street parking in areas
2 where adequate on-street parking exists. These policies are in tension with the
3 comprehensive plan policies that petitioners cite, and it is difficult to see how the city could
4 address the requirements of LDC 2.12.30.06(a) without resolving that tension. That the city
5 council resolved that tension differently than petitioners would is not error, and certainly
6 does not demonstrate that the city exceeded its discretion under ORS 197.829(1) in
7 interpreting LDC 2.12.30.06(a) to require, under the present circumstances, a balancing of
8 competing plan policies. We also agree with the city that varying the mandatory
9 requirements of LDC 4.1.20(j) is precisely what LDC 2.12.30.06 allows.

10 Finally, we disagree with petitioners that the city erred in finding that the proposed
11 development will improve on-street parking over the current situation. That finding seems
12 pertinent under LDC 2.12.30.06(c) (“The proposed development will not adversely affect
13 existing physical systems * * *”). Petitioners do not dispute that the proposed development
14 offers approximately 70 more off-street parking spaces than currently exist. Neither do
15 petitioners contend that the proposed development will generate more parking demand than
16 currently exists. Petitioners have failed to demonstrate that the challenged finding lacks
17 evidentiary support, or that the city erred in relying in part on a comparison of on-street
18 parking impacts between the existing and proposed schools, in granting a lot development
19 option under LDC 2.12.30.06.

20 The first assignment of error is denied.

21 **SECOND ASSIGNMENT OF ERROR**

22 A conditional development application is required to demonstrate compliance with
23 applicable comprehensive plan policies. LDC 2.3.30.04. Corvallis Comprehensive Plan
24 (CCP) Policy 5.4.2 provides that:

25 “The City shall encourage property owners to preserve historic structures in a
26 state as close to their original construction as possible while allowing the
27 structure to be used in an economically viable manner.”

1 Petitioners argue that the existing high school is an “historic structure” within the
2 meaning of CCP Policy 5.4.2 and therefore the city was required to “encourage” intervenor
3 to preserve the existing school as close to the original construction as possible. According to
4 petitioners, the city council did nothing to “encourage” intervenor to preserve the existing
5 high school, other than adopting a non-binding “development-related concern” that
6 encourages intervenor to document the existing structure and to salvage significant
7 architectural and historic artifacts.

8 The city council’s findings address CCP Policy 5.4.2, and conclude that it is not
9 applicable to intervenor’s conditional development permit application. The city council
10 alternatively found that CCP Policy 5.4.2 is met because the city had “encouraged”
11 intervenor to consider, and intervenor had indeed considered, options that would preserve the
12 historic high school. Petitioners dispute both the finding that CCP Policy 5.4.2 is not
13 applicable and the finding that the city met its obligations under the policy in this case.
14 According to petitioners, reliance on the intervenor’s consideration of options is insufficient
15 to satisfy the *city’s* affirmative obligation under CCP Policy 5.4.2.

16 As noted, intervenor obtained a demolition permit for the existing high school prior to
17 filing the instant application. CCP Policy 5.4.2 would seem to have considerably more
18 bearing on that permit than the present application to construct a new high school. That
19 point aside, we agree with the city and intervenor that the city’s findings adequately
20 demonstrate that, even if CCP Policy 5.4.2 is applicable to the present application, the city’s
21 actions satisfied that policy. The city’s findings recite the lengthy efforts by the city,
22 specifically its historic preservation advisory board, urging intervenor to preserve the
23 existing high school. Record 52. Petitioners do not challenge those findings or explain why
24 the city’s efforts in that regard are insufficient to satisfy CCP Policy 5.4.2.

25 The second assignment of error is denied.

1 **THIRD ASSIGNMENT OF ERROR**

2 The challenged decision approves a slightly smaller new stadium in a slightly
3 different location and orientation than the existing stadium. The new stadium will also
4 feature an all-weather playing surface instead of the natural grass surface of the existing
5 stadium. Petitioners contend that the new stadium will allow outdoor sporting events and
6 practices year-round, unlike the existing stadium, and thus the new stadium will increase the
7 number of events and hence the total noise impact to adjoining residential uses, compared to
8 the existing stadium. According to petitioners, the city’s findings fail to address the alleged
9 increase in the number of events. Petitioners argue that the city was required by applicable
10 comprehensive plan policies to conduct additional acoustic studies and impose mitigatory
11 conditions to ensure that noise impacts of the new stadium, including increased number of
12 events, are neither “unusual” nor “excessive.”⁵

13 The city found that, as designed and conditioned, the new stadium will not generate
14 “unusual or excessive” noise impacts, and therefore declined to require additional acoustic
15 analysis beyond that submitted by intervenor.⁶ The city relied upon the smaller stadium size,

⁵ Petitioners cite to the following CCP policies:

“7.4.2 Future planning shall encourage the protection of both the citizens of Corvallis and the City’s economic base. Noise-sensitive development such as schools and residential uses should not be located near existing or planned uses that have major noise impacts such as airports, major highways, loud recreational facilities, intensive industrial and commercial operations, unless noise mitigation features are incorporated into the project.

“7.4.3. Where unusual or excessive noise impacts are anticipated from new development, acoustical analysis may be required of developers to determine if mitigation measures are warranted.”

⁶ The city’s findings state, in relevant part:

“* * * The terms ‘unusual’ and ‘excessive’ [in CCP Policy 7.4.3] are relative terms that require consideration of existing conditions and the reasonable expectations of neighbors in light of those conditions. The applicant has conducted an acoustical analysis for the new stadium and has shown that noise impacts will be of the same kind as, and less than or equal to what they are today. Therefore, the Council finds that no additional acoustical analysis is required.

1 reorientation of bleachers and public address speakers, and a condition allowing only 40
2 large spectator events per year. Contrary to petitioners' argument, the city's findings do
3 consider the potential for increased numbers of activities compared to the existing stadium,
4 but conclude that, as conditioned, such increases would not result in unusual or excessive
5 noise impacts. Although petitioners obviously disagree with that conclusion, petitioners'
6 disagreement offers no basis for reversal or remand.

7 The third assignment of error is denied.

8 **FOURTH ASSIGNMENT OF ERROR**

9 Petitioners contend that the challenged decision allows a portion of the new high
10 school to encroach within the 100-year floodplain of Dixon Creek without demonstrating
11 compliance with LDC chapter 4.5. as required by LDC 4.5.50.⁷ Instead, petitioners argue,
12 the city impermissibly deferred a finding of compliance with the requirements of LDC

“* * * The noises anticipated would be generally the same kind and level as the noises that currently occur in the existing similar facilities. Although more events will be possible because of the artificial turf, this permit imposes conditions limiting the number of ‘major events,’ defined as one that attracts more than 100 spectators, to 40 events per school year. The evidence in the record also shows that the proposal is to replace an existing stadium of similar capacity in the same general location where football, track, other athletic events, and band practice have occurred for decades. While replacement of the existing natural grass surface will allow such activities to occur more frequently, such additional activities are likely to be of the same general nature as currently occurs and will be subject to new safeguards, such as clearly specified time limits and public address system restrictions, that do not currently restrict usage of the existing facility. The Council finds that noise impacts will not, therefore, be either unusual or excessive.” Record 45.

⁷ LDC 4.5.50 provides:

“Compliance of development applications with the provisions of this chapter shall be determined through the development review process identified in Chapter 1.2—Legal Framework (Section 1.2.110) or the building permit review process. Applications for building permits or other permits for structures and other development activities located in the flood plain or adjoining a natural drainage area shall be submitted and reviewed to assure sites are reasonably safe from flooding before any permits are issued or improvements, construction or development begins.”

1 chapter 4.5 to future grading plan review and building permit proceedings that do not provide
2 for a hearing or opportunity for public participation.⁸

3 The city council adopted findings in a staff report that purport to address LDC
4 chapter 4.5. However, the staff findings discuss only LDC 4.5.80, and focus primarily on
5 CCP Policy 4.8.2.C, a comprehensive plan policy requiring that development within the
6 floodplain shall maintain or improve stormwater and floodplain functions. Record 484-487.⁹

⁸ Petitioners allege that the decision also allows unspecified “sports facilities” within the 100-year floodplain of Dixon Creek, as well as structures in the creek floodway itself. However, the city disputes that the decision allows any sports facilities in the floodplain, or any structure in the floodway. We agree that petitioners have not demonstrated the contrary. Accordingly, we confine our analysis to petitioners’ claims regarding the encroachment of a portion of the new high school building into the 100-year floodplain.

⁹ The staff report states, in relevant part:

“[LDC] Chapter 4.5 specifies the requirement to establish drainageway dedications or easements to protect the hydrological and biological functions of drainageways. In accordance with [LDC] 4.5.80, the applicant has proposed a drainageway easement along Dixon Creek. * * * The easement needs to be provided as proposed * * * and needs to include terms that allow City maintenance access, restrict new structural improvements, regrading, paving, and the removal of vegetative cover, and prohibit encroachment of buildings into the easement area. * * *

“The proposed encroachment [by the new high school building in the floodplain] was evaluated against applicable floodplain and stormwater policies. In particular [CCP] 4.8.2.C * * *.

“The applicant’s narrative addresses [CCP] Policy 4.8.2.C, as it relates to floodplain functions * * *. * * * [T]he proposed renovation will remove 6,700 square feet of building and pavement from the 100-year floodplain, allowing for revegetation along Dixon Creek. The revegetated area along Dixon Creek, as well as the proposed detention pond and drainage system discharging to the pond, should improve the following floodplain functions: [listing functions]. The floodplain function related to reduction of floodwater velocity and erosive forces will be maintained. The floodplain function related to temporary storage of floodwater will be maintained through the applicant’s proposal to ‘lay back’ a portion of the stream bank to accommodate additional storage capacity. In effect, this proposal provides new storage volume in exchange for the equivalent volume taken up by the portion of the new building encroaching into the floodplain. The applicant will need to provide engineered calculations demonstrating this equivalent volumetric exchange as part of the excavation and grading plans (Condition 20).

“* * * * *

“There are currently existing public storm drainage lines that serve the site. The applicant has proposed a private storm drainage system, including trapped catch basins, bio-swales, and a detention pond. The private storm drainage system will be reviewed as part of the building permit application process and will need to demonstrate that the storm drainage facilities are

1 The staff findings conclude that CCP Policy 4.8.2.C is satisfied by intervenor’s proposal to
2 remove 6,700 square feet of existing development from the floodplain, and to “lay back” a
3 portion of the existing stream bank to compensate for the storage capacity lost by the
4 proposed placement of part of the new high school within the floodplain. *Id.* at 486. The
5 staff report recommends condition 20, requiring that intervenor provide detailed plans as part
6 of grading plan review demonstrating that excavating part of the stream bank will
7 compensate for the lost storage capacity. With respect to stormwater functions, the staff
8 report recommends condition 21, requiring that intervenor provide detailed plans as part of
9 the building permit process demonstrating that proposed storm drainage facilities match pre-
10 and post-development stormwater flows. The staff report then concludes that “[w]ith
11 provision of public facilities indicated above, the requirements of [LDC chapter 4.5] will be
12 met.” Record 487. The city council ultimately imposed both conditions, but did not adopt
13 any additional findings regarding LDC chapter 4.5.

14 Respondents argue that the city’s findings conclude that it is feasible for the proposed
15 development to comply with LDC chapter 4.5 and related comprehensive plan policies and
16 impose conditions to ensure compliance. According to respondents, when the local
17 government adopts a finding of compliance or feasibility of compliance with applicable
18 criteria, the issue is whether that finding is adequate and supported by substantial evidence,
19 not whether the local government improperly deferred a finding of compliance to a second
20 stage of review. *Salo v. City of Oregon City*, 36 Or LUBA 415, 425 (1999). Respondents
21 contend that the petitioners have not demonstrated that the challenged findings are
22 inadequate or that they lack support in the record. Alternatively, to the extent the city

designed to match pre-and post-development flows up to the 2, 5 and 10-year storm events.
* * * (Condition 21).

“Conclusion

“With provision of public facilities indicated above, the requirements of the Land
Development Code will be met. * * *” Record 484-87.

1 deferred findings of compliance with the specific provisions of LDC chapter 4.5 to the
2 building permit process, respondents argue that such deferral is expressly permitted by LDC
3 4.5.50.

4 It appears to us that the most accurate characterization of the city’s findings is that the
5 city attempted to adopt findings of compliance or feasibility of compliance with LDC chapter
6 4.5 standards, at the same time imposing conditions to ensure compliance, and that the city
7 did not intend to defer the question of compliance to a subsequent review proceeding.
8 Accordingly, we view petitioners’ arguments under this assignment of error as challenging
9 the adequacy of the city’s findings of compliance or feasibility of compliance. *Id.* As noted,
10 the staff report addresses only one specific code standard, LDC 4.5.80. Petitioners do not
11 explain why the adopted findings are insufficient to address that standard. Petitioners recite
12 other code sections under LDC chapter 4.5, but do not cite to any specific standards in that
13 chapter or explain why the city’s findings are inadequate to address any such standards.
14 Absent a more focused challenge to the city’s findings, petitioners have not demonstrated a
15 basis for reversal or remand.

16 The fourth assignment of error is denied.

17 **FIFTH ASSIGNMENT OF ERROR**

18 Petitioners argue that the city’s findings regarding stormwater functions are
19 inadequate and not supported by substantial evidence. Petitioners cite a number of CCP
20 policies governing drainageways and stormwater management and argue that the city failed
21 to adopt findings addressing most of the cited policies.¹⁰

¹⁰ Petitioners cite the following CCP policies:

- 4.8.2 “If land designated as flood plain is developed, it shall be developed to be consistent with the Federal Emergency Management Agency (FEMA) regulations to minimize impacts on the flood flows and flood levels to allow for construction of safe structures. Standards will be developed for areas that are affected by flood flows.

1 To the extent the city addressed the cited CCP policies, petitioners contend, those
2 findings fail to take into account the fact that the proposed development will create 2.9 acres
3 of new impervious surfaces outside the floodplain of Dixon Creek. Further, petitioners
4 argue, the city’s findings rely on a proposed bio-swale/detention pond, but fail to recognize
5 that the bio-swale/pond is partially within the 100-year flood elevation of Dixon Creek and

4.8.2.C “Infill and redevelopment in the 100-year floodplain of Corvallis streams, with the exception of the Willamette River, the Marys River, and the Millrace, shall maintain or improve stormwater functions and floodplain functions existing prior to the proposed infill or redevelopment, using techniques such as flow-through designs, more pervious surface area, and reduced building footprints. Development standards shall be created to allow additions to existing structures consistent with those structures’ design, provided the additions fall below the threshold of ‘substantial improvement’ contained in the Land Development Code and are constructed consistent with FEMA standards.”

4.9.1 “Significant watercourses, lakes, and wetlands shall be preserved, or have their losses mitigated, in order to: maintain clean water, support natural vegetation, protect the aquatic habitat, retain existing significant public vistas, and provide wildlife habitat and recreation sites. Site-specific buffering and setback requirements may be required, as necessary, to achieve protection.”

4.10.5 “To minimize the negative impacts of development, stormwater runoff after development should be managed to produce no significantly greater peak flow rates than prior to development, unless more appropriate provisions are identified in adopted comprehensive storm water management plans.”

4.10.6 “To minimize the negative impacts of development, stormwater runoff after development should be managed to produce no significant reduction of water quality than prior to development unless more appropriate provisions are identified in adopted comprehensive storm water management plans.”

4.10.8 “Grading and filling in drainageways shall be regulated to prevent negative impact on the channel, floodway and flood plain, riparian habitat, wetlands, and other properties. Where drainageways are disturbed through development, the developer shall return the drainageway to its natural state, to the extent practicable.”

7.5.5 “The City shall attempt to limit unnecessary increases in the percentage of Corvallis’ impervious surfaces.” Petition for Review 25-26.

Respondents do not dispute that the CCP includes the above-quoted policies and that the petition for review accurately quotes them. However, the copy of the CCP available to us (which includes updates through April 18, 2002) does not include the language attributed to Policy “4.8.2.” The language that petitioner quotes as CCP Policy 4.10.5 does not appear in that policy, and quoted language attributed to CCP Policy 4.10.6 is found at 4.10.7. It is possible that the petition for review quotes older versions of the CCP, or that the copy of the CCP at LUBA’s offices is outdated. However, without some assistance from respondents on these points, we will assume that the quoted CCP policies are included in the version of the CCP applicable to intervenor’s application. We will also cite the relevant CCP policies by the numbers given in the petition for review.

1 thus cannot function to detain any stormwater during 100-year flood events and possibly
2 lesser storm events.¹¹

3 As an initial matter, intervenor disputes that CCP Policies 4.10.5 and 4.10.6 are
4 applicable approval criteria that the city must address in approving the proposed
5 development. Intervenor notes that the city council decision expressly rejects the view that
6 plan policies stated in nonmandatory terms such as “should” provide mandatory approval
7 standards for quasi-judicial land use applications.¹² Under that interpretation, intervenor
8 argues, it is clear that CCP Policies 4.10.5 and 4.10.6 are not applicable.

9 The city council findings quoted at n 12 do not specifically address the applicability
10 of CCP Policies 4.10.5 or 4.10.6, although they provide a general interpretation of how the
11 city resolves questions regarding the applicability of comprehensive plan policies to quasi-
12 judicial development applications, and a blanket rejection of unspecified plan policies
13 proposed by opponents as applicable criteria. Petitioners do not acknowledge that general

¹¹ Petitioners also repeat their argument that the city impermissibly deferred findings of compliance with LDC chapter 4.5 with respect to stormwater functions. We reject that argument for the same reasons discussed in the fourth assignment of error.

¹² The city council decision states, in relevant part:

“* * * To be an applicable standard for a quasi-judicial planning or zoning application, a comprehensive plan provision must have the following characteristics:

- “1. It must be clearly described as a ‘policy.’
- “2. It either must be: (a) worded in mandatory terms such as ‘shall’ or ‘must,’ not in advisory terms like ‘encourage,’ ‘may,’ or ‘should,’ or (b) without mandatory language, from the context and legislative history of the provision, the Council must be able to reasonably interpret the provision language as being mandatory.
- “3. It must be clearly relevant to specific planning or zoning amendments rather than to other aspects of the land use process. * * *
- “4. It must be relevant to the decision at hand.

“Based on these requirements, these findings and those adopted by reference, the Council finds that many of the plan provisions cited by participants are not applicable mandatory standards for this decision.” Record 41-42.

1 interpretation or explain why CCP Policies 4.10.5 and 4.10.6 should be viewed as mandatory
2 applicable approval criteria under that interpretation. On the other hand, as discussed below
3 the city required that intervenor provide a bioswale/detention pond and other improvements
4 to the stormwater system that are apparently intended to mitigate stormwater flows from the
5 proposed new development. CCP Policies 4.10.5 and 4.10.6 appear to have at least some
6 bearing on that question. It may be that the proposed improvements to the stormwater
7 system were required by other plan policies or code provisions not cited to us, but we cannot
8 rule out the possibility that the city in fact applied CCP Policies 4.10.5 and 4.10.6 in
9 requiring those improvements. In short, we are in no position to agree with intervenor that
10 CCP Policies 4.10.5 and 4.10.6 are not mandatory applicable approval criteria.

11 The city did adopt findings addressing the remaining cited CCP policies, particularly
12 CCP 4.8.2.C. The city adopted findings that cite and appear to address CCP Policies 4.9.1
13 (Record 482), 4.10.3 (Record 466-70, 483), 4.10.8 (484) and 7.5.5 (Record 471). In addition
14 to the findings quoted at n 9, above, the city council adopted the following findings
15 addressing CCP Policy 4.8.2.C and the general issue of “water quality”:

16 “Policy 4.8.2.C of the [CCP] requires that infill and redevelopment in the 100-
17 year floodplain shall maintain or improve stormwater functions and floodplain
18 functions. The Council notes that the proposed development maintains and
19 improves the stormwater functions and floodplain functions as follows:

20 “A. Floodwater storage is maintained at current levels by removing
21 existing rip-rap and laying back portions of the stream bank to
22 accommodate additional storage capacity.

23 “B. Beneficial deposition of sediments outside the channel will be
24 improved as there will be an additional 6,700 square feet of
25 undeveloped landscaped areas in the proposed plan.

26 “C. Groundwater recharge opportunities within the 100-year floodplain
27 will be improved as there will be an additional 6,700 square feet of
28 undeveloped landscaped area in the proposed plan.

29 “D. Filtering of pollutants will be significantly improved with the
30 proposed plan for the following reasons: 1) All new catch basins
31 within parking lots and driveways will be trapped to remove oils and

1 sediments; 2) Two bioswales will further help to remove pollutants; 3)
2 A detention pond will allow additional deposition of sediments and
3 will also provide for some biological filtration of pollutants.

4 “E. The reduction of floodwater velocity and erosion will be maintained
5 with the proposed plan.

6 “F. Opportunities for nutrient exchange will be improved as there will be
7 an additional 6,700 square feet of undeveloped landscaped area within
8 the 100-year floodplain in the proposed plan.

9 “G. Refuges for fish will be improved during the summer as the applicant
10 is revegetating the stream bank to allow for stream shading. The tree
11 canopy will also help reduce soil evaporation rates, and will allow for
12 a slight increase in water flow during the summer months.” Record
13 49-50.

14 The city’s findings do not specifically address the question of increased stormwater
15 run-off from the additional 2.9 acres of impervious surface located outside the floodplain or
16 the location of the proposed bioswale/detention pond partially within the 100-year
17 floodplain. Respondents argue, however, that there is evidence that additional stormwater
18 runoff generated by the increase in impervious surfaces will be offset by proposed
19 improvements, such as the proposed bioswale/detention pond, as well as catch basins,
20 filtration, and new riparian landscaping.¹³ Further, respondents argue that the
21 bioswale/detention pond is intended to detain stormwater during 2 through 10-year storm
22 events, and not during 100-year flood events, so its partial location within the 100-year
23 floodplain has no bearing on its ability to perform its intended function.

24 The above responses may well adequately explain why the proposed development is
25 consistent with the cited CCP policies. However, the city’s findings do not adopt those
26 responses, and do not otherwise address the issues of the additional impervious surfaces and
27 the location of the proposed bioswale/detention pond. Therefore, remand is necessary for the

¹³ Respondents also point out that most of the 2.9 acres of additional impervious surface consists of the all-weather playing surface in the new stadium.

1 city to adopt findings determining whether CCP Policies 4.10.5 and 4.10.6 are applicable
2 approval criteria and to adopt findings addressing whether the increase in impervious
3 surfaces and the location and function of the proposed bioswale/detention pond are consistent
4 with applicable CCP policies.

5 The fifth assignment of error is sustained.

6 The city's decision is remanded.