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

JEFFREY E. BOLY, ERIC DICKMAN, GRETTA GRIMALA,
VALERIE HUNTER, MD, ROBERT C. ROBERTSON,
DEBORAH WHITE, and WENDY WILES,
Petitioners,

vs.

CITY OF PORTLAND,
Respondent.

LUBA No. 2003-152

FINAL OPINION
AND ORDER

Appeal from City of Portland.

Jeffrey E. Boly, Portland, filed the petition for review and argued on his own behalf.

Kathryn S. Beaumont, Senior Deputy City Attorney, Portland, filed the response brief and argued on behalf of respondent.

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

AFFIRMED 01/07/2004

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

NATURE OF THE DECISION

Petitioners challenge a city decision that concludes that the replacement of open reservoirs in Mount Tabor Park with underground water storage tanks is a permitted modification of a conditional use in the city’s Open Space zone.

FACTS

Three of the city’s five uncovered drinking water storage reservoirs are located within Mount Tabor Park in southeast Portland. Reservoir 1 was constructed in 1894, and Reservoirs 5 and 6 were constructed in 1911. In 2002, the city water bureau began a process to modernize the water supply system. The water bureau concluded that for water delivery efficiency and public safety, Reservoir 1 should be eliminated entirely, and Reservoirs 5 and 6 should be replaced with underground storage tanks. As proposed, the underground tanks will be sited in approximately the same location as the reservoirs they would be replacing. The open water reservoirs would be removed, however, the water bureau plans to retain the existing gatehouses, weir houses and hydroelectric facility.

The city water bureau submitted a use determination request to the Bureau of Development Services (BDS), describing the water bureau’s proposal and asking for a decision to identify (1) whether and under what circumstances underground tanks such as the ones described in the request would be allowed in Mount Tabor Park; (2) what city review, if any, would be used to evaluate the proposal; and (3) whether the proposed construction would be considered a “total demolition” or “alteration” to the reservoirs and associated improvements.

BDS concluded that the proposal (1) constitutes a modification to an existing conditional use located within the Open Space zone; (2) does not require conditional use review; (3) constitutes an “alteration” to the reservoir structures that may require historic design review; and (4) includes components that may require environmental review. BDS forwarded its decision to the city council for ratification, and sent notice to residents located near Mount Tabor Park and other interested

1 persons that the city council would be considering the use determination during the August 27, 2003
2 city council meeting.

3 At the August 27, 2003 council meeting, the council heard testimony and received written
4 evidence regarding the water bureau's proposal, and the appropriateness of the use determination.
5 At the conclusion of the testimony, the city council ratified the BDS use determination without
6 amendment. This appeal followed.

7 **MOTION TO DISMISS**

8 The city moves to dismiss petitioners Eric Dickman, Gretta Grimala, Valerie Hunter, MD,
9 Robert C. Robertson, Deborah White and Wendy Wiles from this appeal. The city argues that
10 those petitioners have not demonstrated that they appeared before the city as is required by ORS
11 197.830(2)(b); and therefore they do not have standing to appeal the city's decision.¹ According to
12 the city, the city council sent notice to petitioners Eric Dickman, Gretta Grimala, Valerie Hunter,
13 MD, Robert C. Robertson, Deborah White and Wendy Wiles that the city council would be
14 considering the use determination, and at that city council meeting, the city council accepted oral and
15 written testimony regarding the use determination at issue in this appeal. While the city concedes that
16 the notice of the August 27, 2003 city council meeting did not describe the proceedings as a
17 "hearing" per se, the city argues that the meeting was nevertheless an opportunity to appear before
18 the local government that the named petitioners had to exercise to have standing to appeal to
19 LUBA.

¹ ORS 197.830(2) provides in relevant part:

"* * * [A] person may petition the board for review of a land use decision or limited land use decision if the person:

"(a) Filed a notice of intent to appeal the decision [with LUBA] * * *; and

"(b) Appeared before the local government, special district or state agency orally or in writing."

1 At oral argument, petitioner Boly argued that petitioners’ appeal was filed pursuant to ORS
2 197.830(3), which provides, in relevant part:

3 “If a local government makes a land use decision without providing a hearing, * * *,
4 a person adversely affected by the decision may appeal the decision to [LUBA]
5 under this section:

6 “(a) Within 21 days of actual notice where notice is required[.]”

7 Petitioner Boly argues that the city council meeting where the use determination was considered was
8 not a “hearing” and, therefore, petitioners did not have to appear before the city council at that
9 meeting in order to file an appeal at LUBA under ORS 197.830(3). *Boom v. Columbia County*,
10 31 Or LUBA 318, 324 (1996).

11 Petitioner Boly argues, and the city does not dispute, that the notice of intent to appeal was
12 timely filed under either ORS 197.830(3) or (9). Therefore, the question before us is limited to
13 whether the city council proceeding itself was sufficient to constitute a “hearing” within the meaning
14 of ORS 197.830(3). We conclude that it was. At the August 27, 2003 council meeting, the mayor
15 announced that the council would consider testimony regarding the use determination. Record 73.
16 Petitioner Boly and others testified with respect to the tentative use determination decision provided
17 by city staff, and presented evidence with respect to the water bureau’s proposal. We conclude that
18 the proceeding, even though it was not described as a “hearing” in the city’s notice, was in fact a
19 hearing that petitioners Eric Dickman, Gretta Grimala, Valerie Hunter, MD, Robert C. Robertson,
20 Deborah White and Wendy Wiles had to participate in in order to file an appeal at LUBA. *See*
21 *Friends of Jacksonville v. City of Jacksonville*, 189 Or App 283, 292-93, 76 P3d 121 (2003)
22 (proceedings where decision maker gathers evidence about an application or hears and considers
23 argument on issues of fact or law relevant to a land use application is a “hearing” for the purposes of
24 establishing the deadline for filing an appeal at LUBA).² Because the city provided a hearing, ORS

² Our dismissal of the appeal with respect to Eric Dickman, Gretta Grimala, Valerie Hunter, MD, Robert C. Robertson, Deborah White and Wendy Wiles does not result in dismissal of the appeal because there is no

1 197.830(3) does not apply and petitioners must satisfy the appearance requirement at ORS
2 197.830(2). Because Eric Dickman, Gretta Grimala, Valerie Hunter, MD, Robert C. Robertson,
3 Deborah White and Wendy Wiles did not appear before the city council, we grant the city’s motion
4 to dismiss them from this appeal.

5 **MOTION TO STRIKE**

6 The city moves to strike a document appended to petitioner’s brief. The city argues that the
7 document was not submitted to the city council during the proceedings below, and is not subject to
8 a motion to take evidence pursuant to OAR 661-010-0045.³ Therefore, the city contends, that
9 document cannot be considered by the Board.

10 Petitioner responds that the document includes relevant evidence that demonstrates that the
11 proposed replacement of open reservoirs with underground tanks will eliminate an important water
12 purification function. Petitioner contends in his second assignment of error that that treatment
13 function was not considered by either BDS or the city council in its review of the water bureau’s use
14 determination request. According to petitioner, the water bureau should have considered the water
15 purification function of the open reservoirs when it considered alternatives to those reservoirs and,
16 as a result of the water bureau’s failure to consider that purification function or to address that
17 function in its use determination request, the use determination is not broad enough to encompass
18 what the water bureau proposes to do.

19 The city responds that the city council considered testimony and evidence at its August 27,
20 2003 city council meeting regarding the appropriateness of allowing the proposed underground

dispute that petitioner Boly (hereinafter petitioner) appeared before the city and therefore satisfied the ORS 197.830(2)(b) appearance requirement.

³ OAR 661-010-0045(1) provides, in relevant part:

“* * * Grounds for Motion to Take Evidence Not in the Record: The Board may, upon written motion, take evidence not in the record in the case of disputed factual allegations in the parties’ briefs concerning unconstitutionality of the decision, standing, ex parte contacts, actions for the purpose of avoiding the requirements of ORS 215.427 or 227.178, or other procedural irregularities not shown in the record and which, if proved, would warrant reversal or remand of the decision. * * *”

1 tanks without further land use review and petitioner had an opportunity to provide evidence
2 regarding the water purification function of the open reservoirs at that time. The city contends that
3 petitioner may not proffer that evidence for the first time at LUBA to support arguments made in the
4 petition for review.

5 We agree. Petitioner has not demonstrated that the document attached to his brief is part of
6 the city’s record or is otherwise reviewable by LUBA. Accordingly, we do not consider the
7 document appended to petitioner’s brief in resolving petitioner’s second assignment of error.

8 **INTRODUCTION**

9 The city has adopted a category zoning system, where particular uses are placed in “use
10 categories” based on “common functional, product or physical characteristics.” Portland City Code
11 (PCC) 33.920.010.⁴ Each use category includes a section setting out: (1) the primary characteristics
12 of the uses included in the category; (2) a nonexclusive list of accessory uses; (3) a nonexclusive list
13 of examples; and (4) exceptions. A use is compared to a summary of defining characteristics in a
14 use category to determine which of the use categories best corresponds with that use. Once a use is
15 placed in a particular use category, how and where the use is allowed depends on whether a
16 particular zone allows, conditionally allows or prohibits that use category. *Id.*

17 PCC 33.920.400(C) includes “water towers and reservoirs” as an example of Basic
18 Utilities. Generally speaking, Basic Utilities are allowed as conditional uses in the Open Space zone.
19 The city concluded that underground water storage tanks are properly categorized as a Basic
20 Utilities. Moreover, the city concluded that the replacement of the existing above ground reservoirs
21 with underground storage tanks constitutes a change in the development of the existing Basic
22 Utilities use, which, provided the change falls within certain development parameters, is allowed
23 without further land use review.

⁴ The PCC includes five main use categories: Residential, Commercial, Industrial, Institutional and Other. The Basic Utilities use category is a subcategory of the Institutional use category.

1 **FIRST ASSIGNMENT OF ERROR**

2 A use determination is:

3 “A decision which determines the appropriate zoning classification for a particular
4 use by applying criteria or performance standards defining the uses permitted within
5 the zone, and the determination applies only to land within an urban growth
6 boundary[.]”ORS 227.160(2)(b).

7 A use determination is a statutory exception to the definition of “permit” that allows a city to decide
8 whether a particular use is allowed in a zone without having to follow statutory “permit” procedures.
9 This exception was created to provide a process that does not require statutory notice and hearing
10 requirements associated with “permits.” See *Buckman Community Assoc. v. City of Portland*, 36
11 Or LUBA 630, 634 (1999), *aff’d* 168 Or App 243, 5 P3d 1203 (2000) (discussing legislative
12 history of ORS 227.160(2)(b)).

13 Petitioner contends that a use determination is a limited exception to permit procedures and
14 any discretionary decisions regarding approval processes that might flow from that determination
15 require review as “permits.” Petitioner concedes that the city has the authority under ORS
16 227.160(2)(b) to conclude that the existing reservoir facilities are classified as Basic Utilities that are
17 conditional uses in the Open Space zone and have the status of an automatic conditional use.
18 However, petitioner argues that ORS 227.160(2)(b) does not allow the city to draw inferences
19 from the present use and its classification to reach a conclusion that the proposed underground
20 storage tanks are a modification to that automatic conditional use or to set out the procedures that
21 are necessary to implement that modification.

22 Petitioner argues that this view of the statute is bolstered by PCC 33.815.040, in that PCC
23 33.815.040 distinguishes proposals to alter a *use* from proposals (such as this one) that alter
24 *development*.⁵ Petitioner argues that legal and evidentiary disputes in the latter circumstance must
25 be resolved through conditional use review.⁶

⁵ PCC 33.815.040 provides in relevant part:

1 The city responds that there is nothing in the statute or its legislative history to support
2 petitioner’s assertion that the city’s authority under ORS 227.160(2)(b) is limited to deciding only
3 the zoning classification for uses. According to the city, a use determination is an answer to a
4 classification question presented by an applicant, based on assumed facts asserted in the
5 classification request. As a matter of practice, the city states that once it determines the proper use
6 category for a use, it informs the applicant what processes will be used to consider the use based on
7 the zoning classification for the area where the use is to be located. The city contends the use
8 determination itself does not permit a use that is inconsistent with the facts presented in the use
9 determination request. The city contends that identifying the process for approval that flows from a
10 use determination is “part and parcel” of the use determination process. Response Brief 8.

11 We agree with the city that a use determination, as that term is used in ORS 227.160(2)(b)
12 may include a decision regarding the process a local government will use to consider a request for
13 necessary approvals for the proposed use, as well as the city’s determination regarding which of the
14 use categories the proposed use fits into. As the city explains, development must be consistent with
15 the proposal described in the use determination in order for a developer to rely on the use
16 determination to set out the appropriate process for approval. Further, whether a proposal may
17 result in a “use” or a “development” as those terms are used in PCC 33.815.040(B) affects the
18 process by which the proposal is evaluated; it does not affect the city’s threshold use determination

“The procedure for reviewing conditional uses depends on how the proposal affects the use of, or the development on, the site. Subsection A * * * outlines the procedures for proposals that affect the use of the site while Subsection B outlines the procedures for proposals that affect the development. Proposals may be subject to Subsection A or B or both. The review procedures of this section apply unless specifically stated otherwise in this Title. * * *”

⁶ Petitioner also incorporates by reference the briefs and record in *Arlington Heights Neigh. Assn. v. City of Portland*, __ Or LUBA __ (LUBA No. 2003-151, November 4, 2003), *appeal pending*, in addressing petitioner’s assignments of error. In *Arlington Heights Neigh. Assn.*, we dismissed an appeal of a development permit that was issued to install temporary covers over water reservoirs located in Washington Park because we concluded the decision that was challenged in that appeal was not a land use decision. We fail to see how our decision in *Arlington Heights Neigh. Assn.* has any bearing on the resolution of petitioner’s assignments of error here and, therefore, we decline to consider documents produced during the course of that appeal.

1 decision. The city did not err in the process it used to conclude that the proposal as described is an
2 allowed modification to an existing conditional use in the Open Space zone.

3 The first assignment of error is denied.

4 **SECOND ASSIGNMENT OF ERROR**

5 Petitioner argues that, under the city’s use category classification system, the defining
6 characteristics of a proposed use establish the proper use category for that use. According to
7 petitioner, this approach focuses on the *function* of a particular use first and, secondarily, on the
8 attributes that support that function. Petitioner argues that in this case, the primary *function* of the
9 existing open reservoirs is natural water purification, but with the proposed conversion to
10 underground water tanks, the primary function shifts to water protection. As a result, petitioner
11 argues, the proposal constitutes a change in use that is subject to either a Type II conditional use
12 process pursuant to PCC 33.815.040(A)(2)(a) or a Type III conditional use process pursuant to
13 PCC 33.815.040(A)(2)(b).⁷

⁷ PCC 33.815.040(A) provides, in relevant part:

“Proposals that affect the use of the site.

“* * * * *

“2. Changing to another use:

“a. In the same use category.

“(1) Except as specified in subparagraph A.2.a(2), below, changing from one conditional use to another conditional use in the same use category is processed through a Type II procedure;

“(2) If changing from one conditional use to another conditional use in the same use category will also change a specifically approved amount of the previous use, such as members, students, trips, or events, by more than 10 percent, the change of use is processed through a Type III procedure[.]

“b. In another use category.

“(1) Changing to a conditional use in another use category is processed through a Type III procedure.

1 Petitioner argues that the proposed shift from the water purification function to the water
2 protection function is a change from one Basic Utilities use to another Basic Utilities use that
3 requires a Type II review pursuant to PCC 33.815.040(A)(2)(a)(1). In the alternative, petitioner
4 argues that to the extent underground tanks will be used to protect the water supply from illegal
5 tampering, that function is more properly described as a public safety use and is no longer a
6 reservoir/water purification use.⁸ As a result, petitioner argues, the proposal is a change in use
7 subject to a Type III review pursuant to PCC 33.815.040(A)(2)(b).

8 The city responds that petitioner misunderstands how PCC 33.815.040(A) is applied.
9 According to the city, PCC 33.815.040(A)(2)(a) is triggered where a proposed use is included in
10 the same general use category, but is different from the existing use.⁹ The city states that PCC
11 33.815.040(A)(2)(b) is triggered if a proposed use is to replace another use allowed as a
12 conditional use in a particular zone, but the proposed use is included in another use category.¹⁰

13 The city explains that the Basic Utilities use category lists reservoirs as an example of a
14 basic utility, but does not further differentiate among the functions that the reservoirs perform. The
15 city asserts that such specificity is not required because the important characteristics that identify
16 reservoirs as “Basic Utilities” are that they are “infrastructure services which need to be located in or
17 near the area where the service is provided.” PCC 33.920.400. The city contends that whether
18 drinking water storage occurs above ground in open reservoirs or below ground in storage tanks
19 does not change the defining characteristics of the use, and therefore PCC 33.815.040(A)(2)(a)
20 does not apply. The city further argues that even if the water purification versus public safety

“* * * * *” (Bold in original.)

⁸ Public safety facilities are examples of Basic Utilities. PCC 33.920.400(C).

⁹ For example, according to the city, PCC 33.815.040(2)(a) would apply if the city proposed to convert the existing drinking water reservoirs into a storm drainage facility.

¹⁰ For example, according to the city, PCC 33.815.040(2)(b) would apply if the city proposed to convert the existing reservoirs, which are conditionally allowed as a Basic Utilities use in the Open Space zone, to a gift shop, which is conditionally allowed as a Retail Sales and Service Use in the Open Space zone.

1 functions were proper considerations in the use determination analysis, both of those functions are
2 “infrastructure services which need to be located in or near the area where service is provided,” and
3 thus constitute a Basic Utility. Therefore, the city argues, the city council did not err in concluding
4 that no change in the use category will occur as a result of changing water storage from above
5 ground to below ground and, as a result, PCC 33.815.040(A)(2)(b) does not apply either.

6 With respect to petitioner’s argument that the proposed underground tanks are more
7 properly categorized as “Public Safety” facilities, because they will primarily perform a water
8 purification function, the city responds that of the two uses, the “reservoir” moniker is a better fit,
9 because Public Safety facilities are defined in PCC 33.910.030 as:

10 “a facility necessary to respond to an immediate hazard to the public health and
11 safety, and that is owned, leased or operated by the City of Portland. Public safety
12 facilities include fire and police stations, flood control facilities, water towers and
13 pump stations needed for emergency service, and emergency communication
14 broadcast facilities.”

15 The city concedes that the proposed underground tanks will be owned and operated by the
16 city, but argues that the water storage function performed by the tanks are not “necessary to
17 respond to an immediate hazard to the public health.” Therefore, the city argues, the city council did
18 not err in concluding that the underground tanks are a type of reservoir and as such, constitute the
19 same use that is currently conditionally permitted.¹¹

20 We must affirm a local government’s interpretation of its land use regulations provided that
21 interpretation is not inconsistent with other land use regulations, its comprehensive plan or state land
22 use planning laws, goals and rules. ORS 197.829(1). We agree with the city that the city council’s
23 conclusions that (1) the primary function of the reservoirs is water storage; (2) the word “reservoir”
24 can include both open and covered storage; and (3) of the two examples of a Basic Utility use, the

¹¹ The city code does not define “reservoir.” *Webster’s New International Dictionary (unabridged)*, (3d ed. 1981) 1931 defines “reservoir” as:

“**1:** a place where something is kept in store as **a:** a place where water is collected and kept in a quantity for use when wanted.”

1 proposed underground storage tanks are a type of reservoir and are not a Public Safety facility, are
2 not inconsistent with the PCC, the city’s comprehensive plan or other land use regulation to which
3 we are cited.

4 The second assignment of error is denied.

5 **THIRD ASSIGNMENT OF ERROR**

6 Petitioner argues that even if the proposed underground storage tanks are a modification to
7 the development of an existing conditional use as the city council decided, the use is subject to
8 conditional use review pursuant to PCC 33.815.040(B) because it expands the floor area of the
9 development by more than 1,500 square feet.¹² Petitioner argues that the existing reservoirs are not
10 a “structure” as the term is defined in the PCC, but the proposed underground storage tanks are.¹³
11 Petitioner argues that because the existing reservoirs are not structures, they have no “floor area,”
12 but that the underground storage tanks have floor area because they are structures. Petitioner argues
13 the floor area attributable to the underground storage tanks is greater than 1,500 square feet and,
14 therefore, the proposal requires conditional use review because the proposed underground tanks
15 will increase floor area by more than 1,500 square feet.

¹² PCC 33.815.040(B) provides in relevant part:

“Proposals that alter the development of an existing conditional use. Alterations to the development on a site with an existing conditional use may be allowed, require an adjustment, modification, or require a conditional use review, as follows:

“1. Conditional use review not required. A conditional use review is not required for alterations to the site that comply with Subparagraphs a through e. All other alterations are subject to Paragraphs 2. and 3., below. Alterations to development are allowed by right provided the proposal:

“* * * * *

“c. Does not increase the floor area by more than 1,500 square feet[.]” (Bold in original.)

¹³ “Structures” are defined in PCC 33.910.030 as:

“Any object constructed in or on the ground. Structure includes buildings, decks, fences, towers, flag poles, signs, and other similar objects. Structure does not include paved areas or vegetative landscaping materials.”

1 The city council found that the proposed underground storage tanks will not increase the
2 floor area of the existing reservoirs because underground development has no floor area, as the term
3 “floor area” is defined in PCC 33.910.030.¹⁴ The city council findings state in relevant part:

4 “The described alterations do not increase floor area as the proposed development
5 does not meet the definition of floor area. The term ‘floor area’ is defined in PCC
6 33.910.030 (Definitions) as, ‘The total floor area of the portion of a building that is
7 above ground.’ Although the Zoning Code does not define the term ‘floor,’ the
8 dictionary defines the term as the ‘inside bottom surface of a room, hall, etc. on
9 which one stands or walks.’ As the structures described by the Bureau of Water
10 Works are tanks intended for the storage of water, and will be entirely underground
11 (with the exception of vents, and access hatches for maintenance), they do not
12 constitute floor area. Because the access hatches and vents will not contain a ‘floor’
13 that meets the above-described definition, they do not constitute floor area.

14 “Given the definition of floor area in PCC 33.910.030, the proposed modifications
15 to the reservoirs as described by the Bureau of Water Works are not considered
16 floor area, and as such, there is no increase in floor area.” Record 7.

17 Petitioner’s point is based on the mistaken belief that the definition of floor area requires a
18 threshold determination of whether a particular improvement is a structure. If it is a structure,
19 petitioner posits, then it must have a roof and, logically, a floor. However, the city’s code definition
20 of “floor area” assumes that there is a structure involved; it simply counts only that portion of the
21 structure that is located above ground in the calculation of floor area. Petitioner does not explain
22 why, given the city’s definition of floor area, the city council erred in concluding that conditional use
23 review is not required because floor area will not be increased by the installation of underground
24 storage tanks that will replace above ground reservoirs.

25 The third assignment of error is denied.

¹⁴ In relevant part PCC 33.910.030 defines “floor area” as

“[t]he total floor area of the portion of the building that is above ground. Floor area is measured from the exterior faces of a building or structure. Floor area includes the area devoted to structured parking that is above ground level. * * *”

1 **FOURTH ASSIGNMENT OF ERROR**

2 The reservoirs and their supporting structures have been nominated for placement on the
3 National Register of Historic Places. If those improvements are placed on the National Register,
4 alterations to those improvements may be subject to historic design review.¹⁵ PCC 33.445.140. A
5 proposal to demolish an historic landmark is reviewed through a different process. PCC
6 33.445.150. As part of its use determination request, the water bureau asked for a clarification of
7 the terms “alteration” and “total demolition” as those terms would be applied to the bureau’s
8 proposal. The city council found:

9 “Both the definitions included in the Zoning Code, and the historical implementation
10 of these provisions, consider the term ‘alteration’ to include all modifications to a
11 site and structures except for ‘total demolition.’ The term ‘total demolition,’ though
12 not specifically defined in the Zoning Code, has consistently been interpreted and
13 implemented as the removal of all structures and associated development on a site.
14 Therefore, *the proposed work intended to be undertaken at Mt. Tabor Park,*
15 *where some elements would likely be disturbed or removed but many other*
16 *would remain, would constitute ‘alteration,’ and not ‘total demolition.’” * * **
17 Record 9 (emphasis in original).

18 Petitioner argues that the city erred in concluding that the conversion of the reservoirs to
19 underground storage tanks is an alteration to the reservoirs and not a “total demolition.” Petitioner
20 contends that there is no dispute that none of the open reservoirs will continue to exist once the city

¹⁵ “Alteration” is defined in PCC 33.910 as:

“A physical change to a structure or site. Alteration does not include normal maintenance and repair or total demolition. Alteration does include the following:

“- Changes to the façade of a building;

“* * * * *

“- Increases or decreases in floor area of a building;

“- Changes to other structures on the site, or the development of new structures;

“- Changes to exterior improvements[.]”

1 implements its plan to install underground tanks in Mount Tabor Park. Petitioner argues that no
2 reasonable decision maker would conclude such an action is not a “total demolition.”

3 The city responds that petitioner has not explained why the city council’s interpretation is
4 inconsistent with the city’s definition of “alteration” or other code provisions that address changes to
5 historic landmarks. According to the city, the term “total demolition” is not defined in the city code,
6 but has been interpreted to require complete removal off all structures on a particular site. The city
7 contends that under the proposal as described, the gatehouses, weir houses, and some piping will
8 remain on the site. Therefore, the city argues, the city council decision that the proposed
9 replacement of the reservoirs without removal of associated facilities is not a “total demolition.”

10 We agree with the city that petitioner has not demonstrated that, as described, the actions
11 described in the water bureau’s proposal are not an alteration rather than a total demolition. While
12 some the major historic elements of the water structures will be demolished, some of the historic
13 structures will remain.

14 The fourth assignment of error is denied.

15 The city’s decision is affirmed.