BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

PETER ETTRO,
Petitioner,

vs.

CITY OF WARRENTON,
Respondent,

and

HOME DEPOT, U.S.A., INC.,
Intervenor-Respondent.

LUBA Nos. 2006-139 and 2006-149

FINAL OPINION
AND ORDER

Appeal from City of Warrenton.

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

No appearance by City of Warrenton**.**

Glenn J. Amster, Seattle, filed the response brief and argued on behalf of intervenor-respondent. With him on the brief were Jill R. Long, Portland, and Lane Powell, PC.

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

AFFIRMED 03/16/2007

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

Opinion by Holstun.

NATURE OF THE DECISION

In LUBA No. 2006-139, petitioner challenges a city decision that grants site design and subdivision approval (site design approval). In LUBA No. 2006-149, petitioner challenges a city decision that rezones approximately 8.9 acres from Residential R-10 to Commercial C-1.

FACTS

Home Depot (applicant or intervenor) owns 26.3 acres that occupies part of a roughly triangular shaped area in the City of Warrenton. That roughly triangular shaped area is bordered by State Highway 101 on its east side east, Highway 104 Spur on its north side and Dolphin Avenue on its west side. Intervenor's 26.3 acres occupy most of the southern half of the triangle. 17.4 acres of intervenor's property was already zoned C-1. With the rezoning of 8.9 acres from R-10 to C-1, all of intervenor's 26.3 acres are zoned C-1. The approved subdivision divides the 26.3 acres into five lots. The largest of those five lots includes 10.4 acres, and intervenor proposes to construct a Home Depot Store on that lot. The disputed site design approval grants intervenor approval for that Home Depot store.

Petitioner owns an R-10 zoned lot that has frontage on Highway 104 Spur and adjoins the lot that is to be developed with the Home Depot Store and its parking lot. Petitioner is generally concerned that the approved Home Depot Store will adversely impact his property. Petitioner is also concerned that the approved Home Depot store may make it difficult or impossible for him to (1) secure city approval to rezone his R-10 zoned lot for commercial development and (2) secure approval for commercial access onto Highway 104 Spur.

FIRST AND THIRD ASSIGNMENTS OF ERROR

In his first and third assignments of error, petitioner challenges the adequacy of the city's findings.

The site design decision findings are located in a number of different documents. The first document is a "Resolution and Order," which includes two attached exhibits, Exhibits A and B. Site Design Record 3-9.[1] Exhibit A, which is entitled "Findings of Fact and Conclusions of Law," incorporates by reference two staff reports and their attachments as additional findings. Site Design Record 5-9. The second document is a January 18, 2006 staff report. Site Design Record 174-213.[2] The third document is intervenor's application, which is an attachment to the January 18, 2006 staff report. Site Design Record 214-89. The fourth document is a June 27, 2006 staff report.[3] Site Design Record 39-41.

The rezoning decision findings are also located in four different documents. The first document is Ordinance 1095-A, which includes two attached exhibits, Exhibits A and B. Rezoning Record 13. Exhibit A, which is entitled "Amended Findings of Fact and Conclusions of Law," incorporates by reference two staff reports and their attachments as additional findings. Rezoning Record 17. The second document is the January 18, 2006 staff report. Rezoning Record 309-23.[4] The third document is intervenor's application, which is

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[1] The city submitted separate records in LUBA Nos. 2006-139 and 2006-149. We refer to the record in LUBA No. 2006-139 as the "Site Design Record," and we refer to the record in LUBA No. 2006-149 as the "Rezoning Record."

[2] Both the Site Design Record and the Rezoning Record include a staff report that is dated January 18, 2006. The complete January 18, 2006 staff report is included in the Site Design Record. Site Design Record 174-213. Part 1 of the January 18, 2006 staff report addresses the rezoning request (Site Design Record 174-87); Part 2 addresses the subdivision request (Site Design Record 187-90); Part 3 addresses the site design approval request (Site Design Record 191-213). Exhibit A refers to the January 18, 2006 staff report as the April 14, 2006 staff report, apparently because it was signed on April 14, 2006. Site Design Record 213. In this opinion, we refer to that document as the January 18, 2006 staff report.

[3] Exhibit A refers to a June 13, 2006 staff report. That reference appears to be a mistake, because there is no June 13, 2006 staff report in the Site Design Record and the June 13, 2006 staff report in the Rezoning Record addresses the rezoning application, not the site design application. The staff report to the city council in the site design appeal is dated June 27, 2006. Although the June 27, 2006 staff report plays no role in our decision, we assume that the June 27, 2006 staff report was the one that the city council intended to refer to in Exhibit A.

[4] As with Exhibit A of the Order and Resolution, Exhibit A or Ordinance 1095-A refers to the January 18, 2006 staff report as the April 14, 2006 staff report. *See* n 2. The Rezoning Record only includes Part 1 of the January 18, 2006 staff report, which is the part that addresses the rezoning request.

an attachment to the January 18, 2006 staff report. Rezoning Record 323, 439-57. The fourth document is a June 13, 2006 staff report. Rezoning Record 91-95.

The test that LUBA applies to determine whether a land use decision has adequately incorporated a document as part of its decision or part of its supporting findings is set out in *Gonzalez v. Lane County*, 24 Or LUBA 251, 259 (1992):

> "[I]f a local government decision maker chooses to incorporate all or portions of another document by reference into its findings, it must clearly (1) indicate its intent to do so, and (2) identify the document or portions of the document so incorporated. A local government decision will satisfy these requirements if a reasonable person reading the decision would realize that another document is incorporated into the findings and, based on the decision itself, would be able both to identify and to request the opportunity to review the specific document thus incorporated." (Footnote omitted.)

As noted there was some lack of clarity about the January 18, 2006 and June 27, 2006 staff reports. *See* ns 2, 3, 4. Also, both the site design decision and the rezoning decision could have more clearly stated their intent to incorporate the intervenor's application as an attachment to the January 18, 2006 staff report.[5] Tracking down any attachments to a document that are being incorporated by reference requires some additional work and there can be questions about whether attachments were actually attached. However, we conclude that under *Gonzalez*, the city's intent to incorporate the above-described staff reports and intervenor's application was sufficiently stated in this case. The city's findings include all of the documents identified above.

Petitioner also argues that the city's findings in this case are inadequate because the city council, in adopting findings that were prepared by the applicant, did not adequately identify what the city council itself found to be the facts in this case. Petitioner's argument turns in large part on the fact that the January 18, 2006 staff report is written in a format that

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[5] Exhibit A of Ordinance 1095-A "incorporates by reference the staff reports dated [January 18, 2006 and] June 13, 2006 including any attachments * * *." Rezoning Record 17. The January 18, 2006 staff report lists the "application" as an attachment. Rezoning Record 323. The Resolution and Order takes the same approach. Site Design Record 9, 213.

first identifies an applicable approval criterion and then simply quotes the proposed findings from the application that was submitted by intervenor to address that criterion. The January 18, 2006 staff report inserts at the beginning of each quoted finding from the application the words "[a]pplicant states[.]" We understand petitioner to argue that incorporating the January 18, 2006 staff report as findings may be sufficient to identify what the *applicant* thinks the facts are and how the *applicant* believes any interpretive issues should be resolved, but that staff report and the incorporated applications are not sufficient to identify what the *city council* finds the facts to be or what how the *city council* resolves any interpretive issues.

The city's decision undoubtedly would have been clearer if the city council at some point in the Resolution and Order and Ordinance 1095-A had expressly stated that it adopted the applicant's proposed findings, which were set out in the application and repeated in the January 18, 2006 staff report, as its own findings. But that was clearly what the city council intended to do. But for the planning department's repeated inserts of the words "applicant states," the findings from the application are drafted as findings. The findings immediately follow the criteria that each set of findings addresses. It is sufficiently clear that the city council intended to adopt those findings as its own.

The first and third assignments of error are denied.

SECOND ASSIGNMENT OF ERROR

In his second assignment of error, petitioner argues the city did not adequately address applicable comprehensive plan policies that were specifically raised in a June 13, 2006 letter to the city council. In that letter petitioner quoted all or parts of nine comprehensive plan policies. The quoted plan policies set out a broad range of aspirations and planning guidance.[6] After quoting the plan policies, petitioner made three somewhat overlapping arguments. Rezoning Record 83-84.

[6] We identify and briefly describe the substance of each of those policies below. Where the city specifically addressed individual comprehensive plan policies, we so indicate.

First, petitioner argued that the zone change violates the quoted policies because petitioner's property (Tax Lot 2400) will become an isolated residential spot zone with no realistic chance that it will be rezoned for commercial use in the future. Rezoning Record 83.

Second, petitioner argued that the cited policies call for the area around Home Depot's property to become a regional shopping center. Petitioner believes approving the rezoning for Home Depot now, in isolation and without also rezoning other nearby

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1. 20.310 Plan Review and Update. Subsection 3 sets out general considerations when changing map designations. This policy is not specifically addressed in the decision.

2. 2.320 Urban Development. Subsection 1 calls for the city to "adopt a growth management strategy to insure the orderly conversion of land to urban uses." This policy is not specifically addressed in the decision.

3. 3.200 land and Water Use Goal. This policy calls for the city to "adopt a growth management strategy to insure the orderly conversion of land to urban uses." This policy is not specifically addressed.

4. 3.310 Residential Lands. Subsection 1(c) calls for development of single family dwellings. This policy is addressed at Rezoning Record 91.

5. 3.320 Commercial Lands. Subsection (1) calls for "adequate level of trade and services." Subsection (2) calls for common access points for adjoining properties and for minimizing traffic congestion. Subsection (3) states that a regional shopping center may be allowed in the General Commercial zone near Highway 101. Subsection (5) provides that "the city supports the efforts to develop a regional shopping district adjacent to U.S. Highway 101. This policy is addressed at Rezoning Record 17, 92, 310-12.

6. 8.200 Transportation Goal. This policy recognizes the relationship between the transportation system and land use. This policy is not specifically addressed.

7. 8.320 Street Design. This policy calls for good street design. This policy is addressed at Rezoning Record 93, 314-15.

8. 8.330 Street Width, Access and Parking Design. Section (5) calls for joint access to preserve arterial and collector street function. This policy is addressed at Rezoning Record 93, 315-16..

9. 9.310 City Economy. Section (1) calls for an increase of industrial and commercial activity. Section (2) calls for city efforts to increase industrial, commercial and tourist activity. Section (4) states the city will "encourage the development of the area between East Harbor Drive, Marlin Avenue and US Highway 101 as a regional shopping center complex." Subsections (1) and (2) of this policy are addressed at Rezoning Record 93, 317.

residentially zoned property in the area, will make anticipated development of a regional shopping center in this area impossible, and potentially preclude commercial access for petitioner's property. Rezoning Record 83-84.

Third, petitioner argued that the cited plan policies require coordinated planning and development for Home Depot's property and other nearby properties so that the highway system impacts of development of all of those properties can be considered together and the vision of a regional shopping center can be realized.

After setting out the above-described arguments in his June 13, 2006 letter, petitioner concludes:

> "In conclusion, approval of the Home Depot zone change and Comprehensive Plan Map request will violate, or preclude the achievement of, several significant Comprehensive Plan policies and goals, with regard to the remnant residentially zoned properties, especially TL 2400. These implications were not even considered by the applicant, and, in its current form, the application cannot be approved. * * *" Rezoning Record 84.

Petitioner first faults the city for not adopting any findings that address several of the comprehensive plan policies that he identified in his June 13, 2006 letter. *See* n 6. When a rezoning opponent specifically cites and quotes comprehensive plan policies and argues the proposed rezoning is inconsistent with the cited policies it is generally risky to proceed to approve the rezoning and fail to adopt any findings that specifically address the cited comprehensive plan policies. However, we do not fault the city for failing to do so here. As intervenor correctly points out, in advancing the arguments described above petitioner made no attempt to connect those arguments with any of the plan policies he quoted before making the arguments. If the findings the city adopted to respond to the substantive arguments petitioner advanced after quoting those policies are adequate to respond to the arguments, the

city's failure to tie that response to particular comprehensive plan policies is of no import.[7]

We turn to the city's responsive findings.

A. Tax Lot 2400 Will Be Left as a Residential Spot Zone

The city adopted the following findings to respond to petitioner's first argument:

> "* * * [Petitioner] fails to substantiate this claim that the Home Depot rezone would force TL 2400 to become an island of residentially zoned land or that TL 2400 will have little hope of qualifying for a zone change to commercial. First, there is nothing to preclude owners of the tax lots referenced in [petitioner's] April 26 letter from applying for one or more zone change applications. The assumptions made about permissible access points or approval/denial of future proposals can be only be speculated until a specific proposal is identified. Second, TL 2400 is directly adjacent to approximately 20 other residentially zoned tax lots totaling approximately 11 acres in size, not including additional residential tax lots west of the Highway 104 Spur. TL 2400 is directly adjacent to a large group of residential lots (larger in acreage than the Home Depot rezone) and thus is not an 'isolated' small area of land singled out and placed in a different zone from that of neighboring property ('spot zoned'), as [petitioner] asserts. The Home Depot rezone thus does not violate Comprehensive Plan policies by isolating Tax Lot 2400 or precluding future commercial rezone of TL 2400." Rezone Record 16.

The above findings directly respond to petitioner's concern that his property will be isolated by the disputed rezone and that future commercial rezoning of his property will be precluded. We conclude that the city's findings are adequate to address that concern.

B. City Plan Policies Call for this Area to be Developed as a Regional Shopping Center and the Rezoning is Inconsistent With Those Policies

> "The referenced commercial policy #3 in Article 3.320 does not specify particular tax lots or [a] general area earmarked for rezone to commercial.

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[7] We also note that the city did specifically address policy 3.310 (Residential Lands), which is one of the five plan policies or parts of plan policies that petitioner faults the city for failing to address. Rezoning Record 91. Another policy, 20.310 (Plan Review and Update), sets out general factors to be considered when changing zoning map designations. Petitioner does not argue the city failed to consider those factors. Policy 9.310(4) encourages development of a regional shopping center in another area of the city, and we agree with intervenor that it was not error to fail to address that policy. Policy 2.320(1) calls for the city to adopt a growth management plan and 3.200 (Land and Water Use Goal) calls for "well integrated development patterns." Petitioner may have been relying on those policies in asserting one or more of the specific argument he advanced and the city addressed. However, petitioner identifies nothing about either policy that requires a specific response by the city that goes beyond the response the city gave after petitioner submitted his June 13, 2006 letter.

> Rather, the policy states that a regional shopping center '*may be allowed as a conditional use in the General Commercial district* ***near*** *U.S. Highway 101* ***or*** *east Harbor Drive…'* This policy does not specify or anticipate that the entire area around the Home Depot site will be converted to commercial zoning for a regional shopping center. Compliance with this policy thus is not contingent on including TL 2400 and other residentially zoned areas in a rezone application. The Home Depot rezone therefore does not violate this policy." Rezone Record 17 (italics and bold type in original).

The above findings are adequate to explain why the city rejected petitioner's contention that plan policy 3.320(3) and the other plan policies cited by petitioner do not mandate development of a regional shopping center at the subject property. As we noted earlier plan policy 9.310(4) does "encourage" development of a regional shopping center at a different location in the city, but there is no such policy of encouraging development of a regional shopping center in the area of the Home Depot property.

C. The Disputed Rezoning Violates Plan Policies Favoring Coordinated Planning, Will Utilize Available Traffic System Capacity and Will Preclude Future Access to Petitioner's Property

The city adopted findings set out below to respond to petitioner's third argument.

> "[Petitioner] has failed to substantiate this claim with an analysis of any surrounding intersections or proposed site access locations. The Applicant's professional traffic engineer, JRH Engineering, conducted a Transportation Impact Analysis, which shows that all transportation facilities affected by the Home Depot project will operate at accepted mobility rates throughout the planning horizon. This analysis includes not only the anticipated traffic to be generated by the Home Depot rezone, but also includes all adopted Comprehensive Plan growth through the planning horizon to the year 2022. JRH * * * further pointed out that by providing a signal at the new intersection of Highway 101 and Dolphin Lane, the Home Depot project may actually provide greater opportunity for complementary growth in the future than what currently exists because of the planned signal phasing. As a matter of policy, each applicant is required to mitigate impacts of his or her own development. As future development is proposed in the area, including potential development of [petitioner's] property for commercial purposes, there is nothing to preclude future development from implementing additional transportation improvements that will ensure additional commercial development will meet mobility standards. The Home Depot rezone thus does not violate Comprehensive Plan policies by absorbing all vehicle capacity in surrounding intersections or preclude future commercial access points." Rezoning Record 16.

The above findings are adequate to explain that the city does not interpret its plan policies that favor coordinated planning to require that the city delay Home Depot's application until the other property owners in the area are prepared to submit their own applications for commercial rezoning.[8] The findings also explain that the rezoning will not consume all available transportation system capacity, or necessarily preclude future access to petitioner's property, as petitioner fears. The city's findings are adequate to respond to petitioner's third argument.

For the reasons explained above, we reject petitioner's contention that the city's findings are inadequate to respond to his arguments based on comprehensive plan policies.

The second assignment of error is denied.

FOURTH ASSIGNMENT OF ERROR

Petitioner's arguments under the fourth assignment of error concern a loading area that is located at the southeast corner of the proposed store, next to Highway 101. That loading area is not visible from petitioner's property because it is located on the opposite side of intervenor's property from petitioner's property and the Home Depot Store is located between that loading area and petitioner's property. Petitioner's arguments also concern the interface between petitioner's property and the proposed parking lot.

Warrenton Development Code (WDC) Chapter 3 sets out design standards. In his May 3, 2006 letter to the city and in his notice of local appeal, petitioner argued that the proposed loading area next to Highway 101 violates the design standard set out at WDC 3.04.3(F), which petitioner interpreted to require that the store's loading area be located where it would not face Highway 101. Site Design Record 44, 64. Petitioner contended that

[8] The city initially sought to have nearby properties included in the proposed commercial rezoning of Home Depot's property. That effort was abandoned when the Oregon Department of Transportation objected that the applicant's traffic study, which was the only traffic study available to support the requested rezoning, did not consider the traffic impacts of applying commercial zoning to surrounding properties that are not owned by Home Depot.

the loading area located at the southeast corner of the building violated that standard. The city rejected that argument. Site Design Record 6-7. In this appeal, petitioner does not assign error to the city's finding that the approved loading area does not violate WDC 3.04.3(F).

In his May 3, 2006 letter to the city and in his notice of local appeal, petitioner also argued that the proposal violates the WDC 3.2.3(E)(3) buffering and screening standard.[9] The focus of that argument appears to be the parking lot that borders his property. Petitioner's argument to the city is set out below:

> "§§3.2.3(E)(3) & 3.2.5 Buffering and Screening: These code sections require vegetative buffers and or walls between commercial uses and residential districts and residential driveways. TL 2400 is residentially zoned. The site plan propose[s] only partial screening (apparently a wall) and not the <u>full</u> vegetative buffering and/or walls as required by these sections along the site's

[9] The text of WDC 3.2.3(E)(3) is set out below:

> "<u>Buffering and Screening Required</u> – Buffering and screening are required under the following conditions:
>
> "a. <u>Parking/Maneuvering Area Adjacent to Streets and Drives</u>. Where a parking or maneuvering area is adjacent and parallel to a street or driveway, a decorative wall (masonry or similar quality material), arcade, trellis, evergreen hedge, or similar screen shall be established parallel to the street or driveway. The required wall or screening shall provide breaks, as necessary, to allow for access to the site and sidewalk by pedestrians via pathways. The design of the wall or screening shall also allow for visual surveillance of the site for security. Evergreen hedges used to comply with this standard shall be a minimum of 36 inches in height at maturity, and shall be of such species, number and spacing to provide the required screening within one year after planting. Any areas between the wall/hedge and the street/driveway line shall be landscaped with plants or other ground cover. All walls shall be maintained in good condition, or otherwise replaced by the owner.
>
> "* * * * *
>
> "c. <u>Screening of Mechanical Equipment, Outdoor Storage, Service and Delivery Areas, and Automobile-Oriented uses</u>. All mechanical equipment, outdoor storage and manufacturing, and service and delivery areas, shall be screened from view from all public streets and Residential districts. Screening shall be provided by one or more [of] the following: decorative wall (i.e. masonry or similar quality material), evergreen hedge, non-see through fence, or a similar feature that provides a non-see thorough barrier. * * *" (Underline emphasis in original.)

> entire border with TL 2400."[10] Site Design Record 44, 64-65 (underline emphasis in original).

The above argument does not specify whether the argument is based on WDC 3.2.3(E)(3)(a) or WDC 3.2.3(E)(3)(c). *See* n 9. The city apparently understood petitioner's written argument to be based on WDC 3.2.3(E)(3)(a), not WDC 3.2.3(E)(3)(c), and adopted the following findings in response to the above argument:

> "[Petitioner] claims the site plan does not provide the requisite vegetative buffer between his property and the Home Depot parking area * * *. First, [petitioner] cites a code provision (3.2.3(E)(3)(a)) that applies to buffering between parking areas and public roads and drives. There is no evidence of a driveway on [petitioner's] property that would implicate this code provision. Even if there were a driveway, it is not open to the public and, therefore, this provision would not apply.
>
> "Second, even if this provision of the code did apply, there is an ample landscape buffer between the Home Depot parking area and [petitioner's] property, which includes Hogan Cedar and Dogwood trees, shrubs and grasses. This landscaping will after a few years of growth screen the view of the Home Depot property from [petitioner's] property.
>
> "Third, at oral argument, [petitioner] recited language from WDC 3.2.3(E)(3)(a) [sic, probably should be WDC 3.2.3(E)(3)*(c)*], which requires 'non-see' through barriers in certain conditions. Those conditions are not present here. WDC 3.2.3(E)(3)(a) [sic, probably should be WDC 3.2.3(E)(3)*(c)*] pertains only to screening mechanical equipment, outdoor storage and manufacturing and service and delivery areas, none of which are located adjacent to or within sight of [petitioner's] parcel." Site Design Record 7.

Petitioner's design standard arguments have evolved. As previously noted, petitioner first argued that the loading area next to Highway 101 violated the WDC 3.04.3(F) design standard. Petitioner does not pursue that argument in this appeal. Petitioner also argued that the proposal violates WDC 3.2.3(E)(3) without specifying whether petitioner was relying on subsection (a) or subsection (c) of that section of the WDC. Apparently, based on the

[10] Although petitioner referenced both WDC 3.2.3(E)(3) and WDC 3.2.5, WDC 3.2.5 plays no part in petitioner's arguments before LUBA, and we do not address it further.

substance of petitioner's argument, the city assumed petitioner was relying on subsection (a) and adopted the above-quoted findings rejecting that argument. If petitioner indeed was relying on WDC 3.2.3(E)(3)(a) in his written submittals to the city, and it appears to us that he was, he has abandoned that argument in this appeal. Petitioner makes two arguments under the fourth assignment of error, and both of those arguments are based on WDC 3.2.3(E)(3)(c).

Petitioner first argues that the buffering and screening that separates his property from the proposed parking area does not comply with WDC 3.2.3(E)(3)(c). Second, he argues that the buffering and screening that separates the approved loading area from Highway 101 does not comply with WDC 3.2.3(E)(3)(c). As far as we can tell, the first time petitioner raised any issue specifically concerning WDC 3.2.3(E)(3)(c) was in oral argument before the city council.[11] We do not know whether petitioner's WDC 3.2.3(E)(3)(c) argument was directed at the loading area next to Highway 101 or at the interface of the proposal and petitioner's adjoining property, or directed at both the loading area and interface with petitioner's property. Intevernor does not argue that petitioner waived any issues with regard to WDC 3.2.3(E)(3)(c) by failing to direct his WDC 3.2.3(E)(3)(c) at either the loading area or the proposal's interface with petitioner's property. ORS 197.763(1); 197.835(3). We therefore consider both of petitioner's WDC 3.2.3(E)(3)(c) arguments.

A. The Screening and Buffering Next to Petitioner's Property

We set out the entire text of petitioner's argument below:

> "[T]he screening standard required by WDC §3.2.3(E)(3)(c) is very strict, being a 'non-see through fence, or a similar feature that provides a non-see through barrier.' This standard applies to the required buffer separating the

[11] In fact, we are not even sure petitioner raised any issue concerning WDC 3.2.3(E)(3)(c) at oral argument before the city council. We have assumed that the third paragraph of the city's findings quoted earlier meant to cite WDC 3.2.3(E)(3)(c) rather than WDC 3.2.3(E)(3)(a), because the text of those finding only makes sense if the findings were adopted to respond to a WDC 3.2.3(E)(3)(c) argument.

> parking lot and TL 2400 because the parking lot is, at a minimum, an automobile-oriented use, to which the standard applies. The record shows that only a few trees, shrubs, and a low (4-foot tall) wall are proposed to buffer TL 2400 from Home Depot's parking lot. This is not a non-see through barrier." Petition for Review 23.

WDC 3.2.3(E)(3)(c) applies to "Screening of Mechanical Equipment, Outdoor Storage, Service and Delivery Areas, and Automobile-Oriented uses." *See* n 9. The city's findings quoted earlier found that there was no proposed mechanical equipment, outdoor storage, or service or delivery area to screen from petitioner's property. The city's findings do not address whether the proposed parking lot is properly viewed as an "Automobile-Oriented use[]." Intervenor argues that "[r]espondent's interpretation that Home Depot is not an auto-oriented use is reasonable within the definition given in the WDC." Intervenor-Respondent's Brief 18.

The difficulty with intervenor's argument is there is no city interpretation to defer to. However, as intervenor points out, petitioner provides no argument in support of his position that the Home Depot Store is an auto-oriented use; petitioner simply states that it is.

WDC 1.3 provides the following definition:

> "**Automobile Oriented Uses** – 'Automobile-oriented uses' means automobiles and/or other motor vehicles are an integral part of the use; including drive-up, drive-through, vehicle sales, service, or repair, and similar uses. * * *"

Intervenor argues that the approved Home Depot will not sell, service or repair vehicles, and does not include a drive-through or drive up component. Intervenor argues that it follows that Home Depot is not an automobile oriented use, within the meaning of WDC 1.3.

We agree with intervenor. The size of the proposed parking lot suggests that many customers will be traveling to the Home Depot in automobiles and parking in that parking lot. The Home Depot therefore could be accurately described as automobile oriented in the general sense that most of its customers likely will travel to the store in automobiles. But the WDC defines "Automobile-Oriented Uses" more narrowly. As defined by the WDC, we

agree with intervenor that the Home Depot is not an automobile-oriented use. The city therefore correctly found that the WDC 3.2.3(E)(3)(c) design standard does not apply to the interface between petitioner's property and the approved Home Depot proposal.

This subassignment of error is denied.

B. The Screening and Buffering Next to the Loading Area

Petitioner's WDC 3.2.3(E)(3)(c) argument concerning the loading area is brief:

> "[E]ven if the city commission can interpret the site plan and its code so as to determine that the loading/delivery area is at the side and not facing Highway 101, it is still visible from Highway 101, which still violates the no-see through screening/buffer requirement of WDC §3.2.3(E)(3)(c). LUBA should remand the site plan approval for reconsideration and adoption of new findings and conditions related to screening and buffering." Petition for Review 23.

Intervenor responds that providing a "non-see through fence, or a similar feature that provides a non-see through barrier" is only one of the three ways a proposal can comply with WDC 3.2.3(E)(3)(c). *See* n 9. The other two options are a "decorative wall" or an "evergreen hedge." Intervenor contends "[t]he Applicant is providing both evergreen hedges as well as Hogan cedars, which are wide, pyramidal shaped and dense evergreen trees that provide substantial vegetated screening." Intervenor-Respondent's Brief 19. In support of that argument intervenor cites Site Design Record 7, 247, and 289.

Site Design Record 7 discusses the buffering between the parking lot and petitioner's property, and does mention Hogan cedar. But the discussion on Site Design Record 7 does not specifically address the type of screening between the loading dock and Highway 101 and does not find that the loading dock is screened by an "evergreen hedge." We also cannot tell from the site plan at Site Design Record 289 whether an evergreen hedge or some other screening that would comply with WDC 3.2.3(E)(3)(c) is proposed. However, Site Design Record 247, also cited by petitioner, sets out the applicant's proposed findings concerning WDC 3.2.3(E)(3)(c), which were adopted by the city council. Those findings specifically address the loading area screening. While those findings do not specifically mention an

evergreen hedge, they do explain that "[s]ubstantial landscaping along the perimeter of the site effectively screens the loading area * * * from Highway 101 and Dolphin Lane." The findings conclude "[t]herefore, this criterion has been met." Petitioner does not assign error to these findings or argue that they are inadequate to demonstrate that the loading area screening complies with WDC 3.2.3(E)(3)(c). Because petitioner does not challenge those findings, this subassignment of error must be denied.

This subassignment of error is denied.

The fourth assignment of error is denied.

The city's decision is affirmed.