BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

CARL SORENSEN,
Petitioner,

vs.

CITY OF CRESWELL,
Respondent,

and

PHILIP VELIE,
Intervenor-Respondent.

LUBA No. 2007-057

FINAL OPINION
AND ORDER

Appeal from City of Creswell.

William H. Sherlock, Eugene, filed the petition for review and argued on behalf of petitioner. With him on the brief was Hutchinson, Cox, Coons, DuPriest, Orr & Sherlock, PC.

No appearance by City of Creswell.

Bill Kloos, Eugene, filed the response brief and argued on behalf of intervenor-respondent. With him on the brief was the Law Office of Bill Kloos PC.

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

REMANDED 06/21/2007

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

Opinion by Bassham.

NATURE OF THE DECISION

Petitioner appeals a legislative decision adopting a comprehensive revision of the city's land development ordinance.

MOTION TO INTERVENE

Phil Velie (intervenor) moves to intervene on the side of respondent. There is no opposition to the motion, and it is allowed.

FACTS

The city commenced a comprehensive code review process in March 2005. On October 4, 2006, LUBA remanded a quasi-judicial decision that approved intervenor's application for a planned unit development and residential subdivision on property zoned General Commercial (GC) with a Resort Commercial (RC) overlay. The regulations governing the RC overlay were codified under *former* City of Creswell Development Code (CDC) 13. In the course of that decision, we interpreted the RC overlay zone in *former* CDC 13 to restrict "traditional residential" uses, such as the proposed single-family dwellings, that are unrelated to any recreationally-oriented uses. *Concerned Homeowners v. City of Creswell*, 52 Or LUBA 620 (2006), *aff'd* 210 Or App 467, __ P3d ___ (2007).

In an apparent response to that decision, the city included within its legislative code revision process several proposed amendments to the RC overlay zone, which were recodified at CDC 2.9. The CDC 2.9 amendments eliminate language that our decision interpreted to generally restrict residential uses in the RC overlay zone to time-share units, and added language to specify that single-family dwellings are permitted outright in the RC overlay zone. On February 12, 2007, the city council adopted the revised CDC, as Ordinance 442.

The RC overlay zone applies to two areas of the city east and west of Dale Kuni Road. The eastern RC-zoned area includes a portion of the public Emerald Valley Golf

Course, part of which is zoned Park, Recreational and Open Space. Much of the two RC-zoned areas have already been developed, but there remain 22.6 vacant buildable acres.

Petitioner, who was one of the petitioners in *Concerned Homeowners*, appealed Ordinance 442 to LUBA.

FIRST ASSIGNMENT OF ERROR

Petitioner argues that the amended RC overlay zone is inconsistent with the acknowledged City of Creswell Comprehensive Plan (CCP).[1] According to petitioner, the CCP includes several policies that apply to resort commercial uses and the RC overlay zone. Those policies, petitioner argues, are consistent with the repealed provisions of *former* CDC 13 in preserving lands subject to the overlay zone for resort commercial uses, in part by restricting residential uses in the RC overlay zone. Petitioner contends that the amended RC overlay zone regulations at CDC 2.9 are inconsistent with those CCP policies, because the amendments allow traditional residential uses such as single-family homes without any restriction, and effectively convert a commercial zone that is intended for specialized commercial resort uses into a *de facto* residential zone.

A. *Former* RC Overlay Zone Regulations

Former CDC 13.1.0 was the purpose statement for what was then referred to as the Resort Commercial Subzone, and provided:

> **"Purpose.** The Resort Commercial Subzone is intended to designate those areas identified by the Creswell Comprehensive Plan as suitable for accommodating large-scale concentrations of recreationally-oriented uses. It is the intent of this subzone that such uses represent an internally consistent development pattern that is compatible and closely related to the recreational resources upon which they rely. Examples of such resources are lakes or other bodies of water, golf courses and related amenities, amusement centers and the like. Recreational uses allowed in this subzone must also be compatible with adjacent agricultural uses. *Traditional residential and commercial uses shall not be permitted within this subzone except when shown as necessary to*

[1] ORS 197.835(7)(a) provides that LUBA shall reverse or remand a land use regulation amendment if "[t]he regulation is not in compliance with the comprehensive plan."

support the primary recreationally-oriented uses. The burden of proof is on the applicant to show that all aspects of the development are clearly related to the recreational resource." (Emphasis added.)

Former CDC 13.2.0 listed the permitted uses in the RC overlay zone:

> "**Permitted Uses.** The following uses are permitted in the Resort Commercial Subzone, subject to the provisions of parts 13.3 and 13.4 of this Section and subject to any additional requirements of the underlying Commercial zone:
>
> "A. *Single-family dwellings, townhouses, dwellings subject to ORS Ch. 94 and other residential uses primarily marketed under time-sharing provisions.*
>
> "B. Sports and playground facilities.
>
> "C. Facilities shown to be necessary to the support and service primary recreational uses and that are consistent with the intent of this subzone."

In *Concerned Homeowners*, we rejected the city's interpretation of CDC 13.1.0 and CDC 13.2.0(A), which effectively allowed outright in the RC overlay zone unrestricted single-family residential development that is unrelated to any resort commercial development. To the contrary, we interpreted the above-emphasized language in the CDC 13.2.0, in context with the emphasized language in the CDC 13.1.0 purpose statement, to limit most residential development to timeshares, and to allow traditional single-family residential development only in limited circumstances. *Concerned Homeowners*, 52 Or LUBA at 631.

B. Amended RC Overlay Zone Provisions

Ordinance 442 amends the RC overlay zone purpose statement, which is re-codified at CDC 2.9.100, to eliminate the above-emphasized language. CDC 2.9.100 reads:

> "The Resort Commercial Overlay is intended to designate those areas identified in the Creswell Comprehensive Plan as suitable for accommodating large-scale concentrations of recreationally-oriented uses. It is the intent of this overlay that such uses represent an internally consistent development pattern that is compatible and closely related to the recreational resources upon which they rely. Examples of such resources are lakes or other bodies of water, golf courses and related amenities, amusement centers and the like. Recreational uses allowed in this overlay must also be compatible with adjacent agricultural uses. The burden of proof is on the applicant to show

> that all aspects of the development are clearly related to the recreational resource."

Ordinance 442 amended the list of permitted uses in the RC overlay zone to include the following, codified at CDC 2.9.200:

> "The following uses are permitted in the Resort Commercial Overlay, subject to the provisions of 2.9.300 and 2.9.400 of this Chapter and subject to any additional requirements of the underlying Commercial zone:
>
> "A. Motels, hotels, and convention centers.
>
> "B. Single-family dwellings and townhouses.
>
> "C. Residential uses primarily marketed under time-sharing provisions and dwellings subject to ORS Ch. 94.
>
> "D. Clubhouses.
>
> "E. Restaurants.
>
> "F. Sports and playground facilities.
>
> "* * * * *"

Thus, Ordinance 442 amends the list of uses to specify that "[s]ingle-family dwellings and townhouses" are not subject to the requirement that they be "primarily marketed under time-sharing provisions."

C. Comprehensive Plan Provisions.

Petitioner challenges findings the city adopted concluding that the RC overlay zone amendments are consistent with several CCP provisions. According to petitioner, the applicable CCP provisions indicate that the RC overlay zone is intended to accommodate large-scale recreationally-oriented commercial uses, and that amending the zone to allow unrestricted residential development is inconsistent with those provisions.

1. Commercial Land Use Planning Policy

The CCP Commercial Land Use Planning Policy is to "[c]reate and protect areas suitable for commercial uses and services of community residents, visitors and tourists." The

city found that Ordinance 442 is consistent with this policy because the amended code continues to "provide for the creation and protection of areas suitable for commercial uses and services." Record 381. Petitioner faults this finding for failing to explain how allowing unrestricted residential dwellings on GC-zoned lands that are subject to the RC overlay zone is consistent with this policy.

Intervenor responds that the Commercial Land Use Planning Policy is irrelevant, because the challenged amendments apply only to lands subject to the RC overlay zone, and therefore only the plan provisions governing the RC overlay zone are pertinent. We do not entirely agree. As far as we are informed, all lands subject to the RC overlay zone carry a Commercial plan designation and a GC base zone.[2] It certainly could be the case that plan provisions generally governing all commercial lands may include language that is inconsistent with proposed code amendments to the RC overlay zone. Nonetheless, we agree with intervenor that the above-quoted sentence in the Commercial Land Use Planning Policy states a very general policy directive. Intervenor is correct that the most directly applicable source of plan policy language is that governing RC-zoned lands or plan provisions that are specifically directed at those lands. Petitioner's arguments under the general Commercial Land Use Planning Policy add nothing to their arguments, discussed below, that are directed at the CCP resort commercial description and related plan provisions.

[2] It is unclear to us whether there is a Resort Commercial plan designation, in addition to the RC overlay zone. The CCP at 80 lists only five comprehensive plan designations: (1) Residential, (2) Commercial, (3) Industrial, (4) Park, Recreation and Open Space, and (5) Public Lands. The CCP plan map provided to us by the city does not depict a Resort Commercial plan designation, although it depicts a "Resort Commercial Overlay Zone" as cross-hatched lines on top of the red Commercial plan designation. Nonetheless, the CCP Land Use Planning Policies include a section entitled "Resort Commercial," discussed below in the text. The city's findings addressing that CCP section refer to Resort Commercial as both a "designation" and an "overlay zone." Record 382. Intervenor's brief refers to a Resort Commercial "plan designation." Response Brief 10. It is not clear that it matters, but we assume, for purposes of this opinion, that there is no Resort Commercial plan designation, and that all RC-zoned lands carry a Commercial plan designation.

2. Applicable CCP Policies

Petitioner cites and discusses several CCP policies, but in our view only three policies are sufficiently focused on the RC overlay zone or the areas subject to that zone to merit extended discussion.

Under "Resort Commercial," the CCP states that it is the city's policy

> "[t]o provide areas having a suitable environment for accommodating large-scale recreationally oriented commercial uses. Compatibility of development within this category with adjacent recreational and agricultural resources shall be ensured through the application of planned unit development procedures." CCP 81.

Petitioner contends that nothing in this policy statement supports amending the RC overlay zone to allow traditional single-family residential development that is unrelated to any resort commercial use. Indeed, petitioner argues, such amendments are inconsistent with the Resort Commercial plan language, because the amendments allow unrestricted residential development that will make it difficult or impossible to develop RC-zoned areas with the "large-scale recreationally oriented commercial uses" that the zone is intended for. Petitioner cites to findings that there were only 22 acres of vacant buildable lands left in RC-zoned areas in 2004, and that the city's adopted economic forecast assumes that 83 percent of that buildable land will be developed with residential uses, not resort commercial uses.

Further, petitioner cites to CCP Parks, Recreation and Open Space Policy (h), which states that:

> "The City shall support the intensification of use of that undeveloped portion of the golf course land area between the existing fairways and Dale Kuni Road as recreational commercial, recreational residential and golf course support services, and the land west of Dale Kuni Road across from the golf course as Recreation Resort Use." CCP 85.

According to petitioner, Policy (h) makes it clear that the areas subject to RC zoning east and west of Dale Kuni Road are intended for recreational commercial, recreational residential and recreation resort uses. Policy (h) is entirely consistent with the *former* RC overlay zone code provisions, petitioner argues, which effectively limited residential uses to those that

supported the primary recreational resort uses, *i.e.*, that were "recreational residential" uses. Petitioner contends that the amended RC overlay zone code provisions are inconsistent with Policy (h), because they allow unrestricted residential development that is unrelated to any recreational or resort commercial use.

Finally, petitioner cites to Economic Policy (m), which states that:

> "The City shall work toward capitalizing on potential for development of integrated and well planned commercial housing and recreation support facilities, in conjunction with the [Emerald Valley] golf course, public parks and tourist-freeway commercial opportunity areas, east of the freeway."[3] CCP 86.

Although the city addressed other CCP economic policies, petitioner argues that the city's findings do not address Policy (m). According to petitioner, Policy (m) is consistent with the RC policy statement and Policy (h) in requiring the city to take positive steps to support "integrated and well planned commercial housing and recreation support facilities, in conjunction with the [Emerald Valley] golf course[.]"

The city's findings generally reject these arguments, concluding that the amended RC overlay zone is consistent with applicable plan policies because the zone continues to allow resort commercial uses as permitted uses.[4] According to the city, the *former* RC zone was

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[3] In 2005, the city apparently repealed all of its CCP Economic Policies and replaced them with a new set of economic policies. Ordinance 430, Exhibit B. As amended by Ordinance 430, CCP Section 7, Policy (o) states in similar terms to *former* Policy (m):

> "The City shall work toward capitalizing on potential for development of integrated and well planned commercial, housing, and recreation support facilities, in conjunction with the Emerald Valley Resort and public parks located east of the freeway."

The parties do not discuss Policy (o), which appears to be substantially similar to Policy (m). Absent some argument to the contrary, we assign no significance to the 2005 amendment to CCP Section 7.

[4] The city's findings state, in relevant part:

> "* * * [Petitioner's] letter cites the language from page 81 of the [comprehensive] plan that says the Resort Commercial plan designation is intended to provide a suitable environment for large-scale recreationally oriented commercial uses. The Resort Commercial zone does this; such uses are allowed in the zone. The plan does not say that *only* such uses are allowed in this zone. The zone is in fact acknowledged as a Goal 10 zone, too. It unquestionably

not limited to resort commercial uses, and permitted some (albeit limited) residential uses. As discussed further under the second assignment of error, the city concluded that the RC overlay zone is both a commercial zone that implements Statewide Planning Goal 9 (Economic Development) and a residential zone that implements Goal 10 (Housing). The city concludes that merely allowing single-family dwellings and townhouses in the RC zone free of the formerly applicable time-share and other restrictions "does not change the nature of the zone." Record 388.

Intervenor argues that the county correctly rejected petitioner's arguments based on the CCP Resort Commercial policy. Because RC-zoned lands continue to allow for resort commercial development, and the challenged amendments simply add an additional form of residential development to that already allowed in the RC zone, intervenor argues, the amended RC overlay zone is consistent with the plan language. With respect to Policy (h), intervenor argues that that policy is inapplicable, because it applies only to lands designated Parks, Recreational and Open Space, not those designated Resort Commercial. With respect to CCP Economic Policy (m), intervenor argues that it merely suggests that the city should "work toward capitalizing" on potential commercial development in conjunction with the golf course, and does not impose any mandatory obligations.

Turning to Policy (h) first, we note that the city's findings do not take the position that Policy (h) is inapplicable, as intervenor suggests. The city's findings address Policy (h) and conclude that amended RC overlay zone is consistent with that policy, essentially for the same reason the city believes the amendments are consistent with the RC plan language: the RC overlay zone continues to provide for recreational commercial, recreational residential,

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allows residential development in a time-share arrangement. Single-family dwellings are another form of Goal 10 residential development. Clarifying that another form of residential development, in addition to the time-share form, does not change the nature of the zone. It does not trigger noncompliance with the plan language supporting resort commercial development." Record 388.

and resort commercial uses.[5] We note further that the areas described in Policy (h) are, as far as we can tell, the same areas depicted on the comprehensive plan map as being subject to the RC overlay zone. Despite the fact that the Policy (h) is part of the Parks, Recreation and Open Space section of the CCP, as the city's findings recognize it seems clear that the policy is primarily, if not exclusively, directed at the only lands in the city zoned RC.

As petitioner points out, Policy (h) contemplates that undeveloped lands in that area will be developed with recreational commercial, recreational residential and resort recreation uses, and requires the city to *support* the intensification of those uses. Policy (m), although less geographically focused, is consistent with that apparent intent. The challenged amendments make two types of residential development outright permitted uses in the areas described by Policy (h), removing code language that (nominally, at least) severely limited such residential uses in the RC zone.

In this respect, Policy (h) and to a lesser extent Policy (m), impose a more affirmative obligation on the city than does the Resort Commercial policy language quoted above, "[t]o provide areas having a suitable environment for accommodating large-scale recreationally oriented commercial uses." Read in isolation, the city's obligation under the CCP Resort Commercial policy statement might be satisfied by simply adopting zoning that makes "large-scale recreationally oriented commercial uses" permitted uses in suitable areas, even if those areas are subject to zoning that allows other, unrelated residential uses as outright permitted uses. However tenable that view of the Resort Commercial policy language might be, it is difficult to read Policy (h) in any other way than to impose on the city an affirmative

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[5] The city's finding under Policy (h) states:

> "Land Development Ordinance No. 442 is consistent with the Comprehensive Plan intent, vision, policies, and objectives for parks, recreation and open space because land use process and zones are established to provide for the intensification of use of that undeveloped portion of the golf course land area between the existing fairways and Dale Kuni Road as recreational commercial, recreational residential and golf course support services, and the land west of Dale Kuni Road across from the golf course as Recreation Resort Use." Record 384.

obligation to support the development of RC-zoned lands east of Dale Kuni Road for recreational commercial, recreational residential and golf course support services, and the land west of Dale Kuni Road across from the golf course as Recreation Resort Use. Neither the city's findings, nor intervenor's brief, offers an explanation for why the challenged amendments are consistent with that affirmative obligation. On the contrary, as discussed below, the city clearly expects that pursuant to the challenged amendments the majority of the remaining vacant RC-zoned lands will not be developed with any recreational or resort-related uses, but instead will be developed with unrelated residential units. We agree with petitioner that the findings and record do not demonstrate that the challenged amendments are consistent with Policy (h), Policy (m) and the Resort Commercial policy language, read in context with those policies.

The CCP policies discussed above were apparently adopted in 1982, when the CCP was first acknowledged. It may be that those policies no longer reflect the city's vision for that area of the city, or that that vision has been achieved and the CCP policies are no longer necessary. Whatever the case, we agree with petitioner that the findings and record fail to demonstrate that the challenged amendments are consistent with those policies, and that in order to adopt those amendments the city will likely have to eliminate or amend those policies.

The first assignment of error is sustained.

SECOND ASSIGNMENT OF ERROR

Petitioner contends that the city's decision fails to demonstrate that the challenged amendments are consistent with Statewide Planning Goal 9 (Economic Development).

Goal 9 requires, in relevant part, that local governments must "[p]rovide for at least an adequate supply of sites of suitable sizes, types, locations, and service levels for a variety of industrial and commercial uses consistent with plan policies[.]" Further, local governments must "[l]imit uses on or near sites zoned for specific industrial and commercial

uses to those which are compatible with proposed uses." The administrative rules implementing Goal 9 generally require local governments to designate an inventory of commercial and industrial land that "at least equals the total projected land needs for each industrial or other employment use category identified in the plan during the 20-year planning period." OAR 660-009-0025(2).

Petitioner argues that when amending a commercial zone to allow new or expanded noncommercial uses, local governments must demonstrate that it still retains an inventory of commercial lands that is adequate "with regard to size, type, location and services levels, considering" applicable comprehensive plan policies. *Opus Development Corp. v. City of Eugene*, 28 Or LUBA 670, 691 (1995). In *Opus Development Corp.*, the city adopted a neighborhood refinement plan that, among other things, rezoned certain commercial areas to mixed use zones that allowed a range of residential uses. On appeal to LUBA, the city argued that there was a large surplus of general commercial lands in the city, and the city could rely on that surplus to demonstrate that, whatever impact the new mixed use zones and other amendments might have on commercial lands in the affected neighborhood, the city's commercial lands inventory remained in compliance with Goal 9. LUBA held in *Opus Development Corp.* that Goal 9 requires that the city's commercial lands inventory be adequate not only with respect to size, but also type, location and service levels, and remanded the decision to the city to address the impact of the amendments on the commercial lands inventory and whether that inventory continued to comply with Goal 9.[6]

[6] We stated:

> "The city does not identify, either in the decision or its argument, what land in the Whiteaker neighborhood is on the city's Goal 9 inventory of commercial and industrial sites or explain how it believes industrial and commercial use of such land will be affected by the Whiteaker Plan and zone change orders. The city essentially argues the Whiteaker Plan and zone change orders can be presumed to comply with Goal 9, paragraph 3 because the city's inventories of commercial and industrial land contain large surplus acreages above what is needed. However, Goal 9, paragraph 3 requires that the city's inventory of suitable commercial and industrial sites be adequate not just with regard to total acreage, but also with regard to size,

In the present case, petitioner argues that the city's findings addressing Goal 9 fail to demonstrate that removing restrictions on residential uses in the RC overlay zone is consistent with the city's Goal 9 obligation to "[p]rovide for at least an adequate supply of sites of suitable sizes, types, locations, and service levels for a variety of industrial and commercial uses consistent with plan policies[.]" We understand petitioner to argue that the comprehensive plan policies discussed under the first assignment of error describe the types and locations for particular resort and recreational commercial uses that the RC zone is intended to provide for, and that the county must demonstrate that the proposed amendments are consistent with the city's obligations to provide an adequate supply of sites for the commercial uses described in those plan policies.

As discussed above, the applicable comprehensive plan policies contemplate that RC-zoned areas of the city will be developed with resort or recreational commercial uses and related supporting uses. According to petitioner, those plan policies were adopted in conjunction with the *former* RC code provisions, which limited residential uses in the RC overlay zone to timeshares, and prohibited traditional residential uses that were not necessary to support the primary recreationally-oriented uses. We understand petitioner to argue that the code restrictions and prohibitions on residential development was one of the means by which the city ensured that resort commercial uses would actually develop in the RC overlay zone, and thus ensure compliance with plan policies and Goal 9. Petitioner contends that eliminating those restrictions and prohibitions without a demonstration that they are not necessary to ensure compliance with Goal 9 warrants reversal or remand.

The city rejected petitioner's Goal 9 arguments below, concluding that the amendments are consistent with Goal 9 for three reasons. First, the city reasoned that the

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> type, location and service levels, to provide for a 'variety of industrial and commercial uses consistent with plan policies.' The city must demonstrate that in view of the limitations and changes imposed by the challenged decisions, it still has an inventory of commercial and industrial sites that is adequate with regard to size, type, location and service levels, considering its plan policies for use of the Whiteaker neighborhood." 28 Or LUBA at 691.

amendments are "neutral in terms of impact on land available for resort commercial versus residential uses," because the RC zone already allows some residential uses (primarily marketed as timeshares) and the amendments simply add a different type of residential development, or more precisely, a different type of ownership, as an outright permitted use. Second, the city concluded that the RC overlay zone is both a Goal 9 and a Goal 10 zone, and that it is consistent with Goal 9 to provide for additional residential uses in what is essentially a mixed use zone. Third, the city found it had a surplus of 57.9 acres of commercial land through the year 2025, including RC-zoned lands.[7] Petitioner challenges each of these conclusions.

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[7] The city's findings state, in relevant part:

> "[Petitioner] argues that the proposed amendment violates Statewide Planning Goal 9 because it will turn the entire zone into a residential suburbia, thus not leaving enough acreage for actual resort commercial uses. There are several responses to this argument. The most simple response is that the change is neutral in terms of impact on land available for resort commercial versus residential uses. As noted above, [petitioner] and LUBA agree that the Resort Commercial zone already allows residential development, if it is in the time-share form. This amendment does not change what land can be developed with residences. It only clarifies the types of ownership of units that is allowed. It is, therefore, neutral in terms of Goal 9 and Goal 10 impacts.
>
> "Furthermore, several additional points about the character of the Resort Commercial zone should be emphasized here. The first is that the Resort Commercial zone was initially acknowledged in 1982 as being a zone that contains land that is in the Goal 10 inventory as allowing single-family owner occupied land. The 1982 LCDC acknowledgement order stated, in part:
>
> > "'Creswell has designated 266 vacant buildable acres to meet residential land use needs. Of 289 vacant acres designated 'Residential,' 256 acres are located outside the floodway and so are suitable for development. *Ten additional acres of the land designated for Resort Commercial use east of I-5 are intended to accommodate 70 owner-occupied housing units.*'
>
> "Second, subsequent amendments to the comprehensive plan have reinforced the character of the Resort Commercial zone as being, in part, a zone with land in the Goal 10 buildable lands inventory. For example, the *Creswell Economic Opportunities Analysis, by ECONorthwest (March 2005)* ('CEAO'), explains that of all the buildable land in the Resort Commercial zone, it is assumed that 83% will be developed with residential uses. * * *
>
> "Third, even if [petitioner's] assumption is correct—that the proposed amendment would debit the Goal 9 land inventories in favor of Goal 10 housing, the total impacts would not put the City out of compliance with Goal 9. This is because of the magnitude of the existing

We tend to agree with petitioner that the first and second rationales are insufficient to establish that the challenged amendments are consistent with the city's Goal 9 obligations. We are cited to no evidence supporting the city's "neutrality" rationale for Goal 9 compliance. As far as we can tell, the amendments make it much more likely that the RC zone will be developed with non-Goal 9 uses instead of Goal 9 uses and Goal 9 supportive uses. We do not understand how that consequence can be "neutral" with respect to Goal 9. Similarly, the city's conclusion that the RC overlay zone is, in part, a Goal 10 zone is based on the fact that ten acres of the RC overlay zone is part of the city's Goal 10 inventory of buildable lands. However, that does not necessarily mean that the entire zone is a "Goal 10" zone, or that code amendments that allow for unrestricted residential development everywhere in the zone at the potential expense of commercial development are necessarily consistent with the city's Goal 9 obligations.

However, we need not resolve petitioner's challenges to the first and second rationales, because we agree with intervenor that the third rationale—that the supply of commercial land far exceeds the demand—is a sufficient basis to conclude that the amendments are consistent with Goal 9. Turning to that rationale, the city concludes in relevant part that the challenged amendments are consistent with Goal 9 because there is a 57.9 acre surplus of buildable commercial land within the urban growth boundary through the year 2025.

Table 2-4 of the Economic Opportunities Analysis (EOA) indicates that in 2004 there were 48.7 vacant acres of land designated "Commercial," and 22.6 acres of vacant land designated "Commercial/Resort." Table 6.1 of the EOA compares the supply and demand for commercial and industrial land for the period 2004 through 2025. Unlike Table 2-4, Table 6-

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> surplus of commercial lands. The CEAO study discussed above documents this. There is currently (2004) a surplus of 57.9 acres of 'buildable' commercial land in the UGB. * * * The total acreage of vacant and partially vacant land in the UGB with a Commercial Resort plan designation (in 2004) is 22.6 acres. * * *" Record 289 (emphasis in original, citations omitted).

1 lumps together the commercial and commercial/resort categories, and estimates the total
2 supply of "net buildable acres" of commercial land to be 67.8 acres. On the demand side,
3 Table 6-1 estimates demand for only 10 net buildable acres of commercial lands through the
4 year 2025. According to Table 6-1, there is thus a 57.9-acre surplus of commercial lands,
5 considering both lands designated for general commercial uses and those designated for
6 resort commercial uses.[8]

7 Citing *Opus Development Corp.*, petitioner argues that it is not sufficient to have a
8 general surplus of commercial land. According to petitioner, Goal 9 requires that the city's
9 inventory include not only an adequate supply of acreage, but also sites that are adequate
10 with regard to size, type, location and service levels. We understand petitioner to argue that
11 the RC overlay zone is the only place in the city where there are areas suitable in type,
12 location and service levels to accommodate the specific type of resort and recreational uses
13 that the zone is intended for. If the RC overlay zone is developed primarily with residential
14 uses unrelated to resort commercial development, petitioner argues, then there may not be
15 sufficient suitable land to accommodate any "large-scale concentrations of recreationally-
16 oriented uses," such as expansions of the existing golf course.

17 Intervenor responds that, while Table 6-1 does not breakdown the demand for resort
18 commercial uses separately from general commercial uses, the fact that the total demand for
19 both categories of commercial uses is only ten acres through the period 2025 is a sufficient
20 basis to conclude that the challenged amendments are consistent with the city's Goal 9
21 obligations, even if petitioner is correct that pursuant to the amendments most of the
22 remaining 22.6 acres of vacant RC-zoned land will not be used for resort commercial
23 development.

[8] The decimal points in those figures from Table 6-1 do not add up precisely. It is not clear why.

We agree with intervenor. As the findings quoted at n 7 point out, a footnote to Table 6-1 estimates that 17 percent of the buildable RC-zoned land will be used for commercial uses, while 83 percent will be used for residential development. It is not clear what that estimate is based on, but it presumably reflects some evaluation of the demand for commercial versus residential lands in the RC zone. Seventeen percent of 22.6 acres is approximately 3.8 acres. Read together with the figures in Table 6-1, we understand the EOA to estimate a total demand of ten acres for commercial uses, with approximately 3.8 acres for resort commercial uses, and approximately 6.2 acres for general commercial uses, through the year 2025. In other words, the EOA estimates a surplus of approximately 18.8 acres in the RC overlay zone (22.6 minus 3.8), that are potentially available for non-resort commercial uses.

The EOA was adopted as a refinement plan to the comprehensive plan, and as a matter of law its economic supply and demand projections are acknowledged to be consistent with Goal 9. The EOA predates the challenged amendments, of course, and did not take those amendments into account in estimating demand for resort commercial versus residential development. Petitioner is correct that, by eliminating the restrictions and prohibitions under the former code, the challenged amendments make it far easier to site, and will likely increase the demand for, residential development unrelated to any resort commercial use in the RC zone. We understand petitioner to argue that, under the challenged amendments, it is possible that all of the remaining 22.6 vacant acres may be developed with residential uses unrelated to any commercial use, and therefore there may not be sufficient sites to meet even the identified demand (3.8 acres) for resort commercial uses.

However, the challenged amendments essentially alter the RC overlay provisions to conform to the city's long-standing (mis)interpretation of the former code provisions, which the city understood to allow unrestricted residential development. The EOA was prepared in 2004, and presumably estimated demand for residential development versus resort

commercial development based on the historic development pattern and the city's long-standing interpretation that the RC overlay zone allows unrestricted residential development. Because the challenged amendments essentially codify the interpretation that the EOA is premised on, a reasonable decision maker could rely on the EOA to determine that there is a surplus of land available for resort commercial development, far above the estimated demand for such development, and that therefore the challenged amendments are consistent with the city's Goal 9 obligations.

The second assignment of error is denied.

The city's decision is remanded.