



**NATURE OF THE DECISION**

Petitioner appeals city approval of a comprehensive plan and zone change.

**FACTS**

The subject property totals approximately eight acres in two separate parcels, one of which currently contains the Santiam Memorial Hospital. The current comprehensive plan and zoning classification for the property is a mix of Low, Medium, and High Density Residential. The comprehensive plan and zoning map change amends the classification to Public/Semi-Public. The hospital is a pre-existing nonconforming use, and the map change would bring the hospital into compliance with the plan and zoning map.

Petitioner provides water to various users and maintains an irrigation canal, the Salem Ditch, which runs through the city. According to petitioner, the Salem Ditch receives the overwhelming majority of stormwater discharge generated in the city. Petitioner asserts that the Salem Ditch does not have adequate capacity to handle all of the stormwater discharge produced by the city, and that during storm events the ditch overflows and floods adjoining lands. Petitioner objects to the proposed applications because it fears the approvals will lead to additional impervious surfaces which will increase the stormwater discharge into the already overburdened Salem Ditch.

The planning commission recommended approval of the applications over petitioner's objections, and the city council approved the applications. This appeal followed.

**MOTION TO STRIKE**

The city moves to strike portions of the petition for review that refer to a separate LUBA appeal. Petitioner concedes the motion to strike. Therefore, we will not consider page 10, lines 16-21 of the petition for review.

1 **FIRST ASSIGNMENT OF ERROR**

2 Petitioner’s first assignment of error is less than clear. While the assignment of error  
3 is labeled as a failure to “follow the applicable procedure” of the code, the assignment of  
4 error is more properly characterized as a challenge to the adequacy of the findings.

5 Stayton Municipal Code (SMC) 17.12.420.5 provides the approval criteria for plan  
6 amendments. As relevant here, it provides:

7 “In order to approve a plan amendment, the following affirmative findings  
8 concerning the action must be able to be made by the decision authority:

9 “a. The proposed amendment is compatible with the existing provisions of  
10 the plan, as measured by:

11 “\* \* \* \* \*

12 “2) Impact of the proposed amendment on land use and  
13 development patterns within the City, as measured by:

14 “\* \* \* \* \*

15 “c) Demand for public facilities and services;

16 “d) Maintenance of public health and safety;

17 “\* \* \* \* \*

18 “g) Protection and use of natural resources;

19 “h) Natural hazards and constraints; \* \* \*

20 “\* \* \* \* \*

21 “c. The proposed amendment complies with all the applicable Statewide  
22 Planning Goals and administrative rule requirements \* \* \*.”

23 SMC 17.430.5 provides the approval criteria for zone changes:

24 “In order to approve a zone change, the following affirmative findings  
25 concerning the action must be able to be made by the decision authority and  
26 placed into written form as part of the action on the proposal.

27 “a. The proposed zone change and intended use is compatible with the  
28 surrounding area, as measured by:

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“4) Potential adverse impacts such as \* \* \* demand on public services and facilities.

“\* \* \* \* \*

“c. There are adequate urban services to serve the possible use under the zone proposed.

“\* \* \* \* \*

“e. The proposed zone change satisfies the applicable provisions of Oregon Statewide Planning Goals and Administrative Rules.”

In addition to the plan and zone change approval criteria regarding the adequacy of public facilities and services, petitioner also argued below that the proposal would violate various Statewide Planning Goals, including Goal 2 (Land Use Planning), Goal 6 (Air, Water and Land Resources Quality), and Goal 11 (Public Facilities and Services). Rather than quote all of the city’s findings regarding these approval criteria and the goals, we instead recognize that the city found that there is no impact on public facilities or services or the statewide planning goals because the proposal only requests a plan and zone change and does not seek approval for any additional development at this time. According to the city, because there are adequate facilities and services for the existing nonconforming uses and no additional applications for uses were submitted with the plan and zone change, the map amendment has no impact on public facilities.

At oral argument, petitioner argued that when adopting a plan and zoning map amendment, the city must assume the most intensive use allowed by the zone change will be developed, and find that there are adequate services to meet that intensive use. The city argues that it need not consider the adequacy of services to meet any potential use of the property because the adequacy of such services will have to be demonstrated to obtain site plan approval of any future development. The city argues it cannot determine whether there will be adequate services until it knows what the proposed development is.

1           In some circumstances, such as when OAR 660-012-0060 (the transportation  
2 planning rule) applies, a local government must assume the most intensive development  
3 allowed by the plan or zone in approving a plan or zone amendment for purposes of  
4 assessing the adequacy of the transportation system to serve the uses that will be allowed by  
5 the plan or zone amendment. *See Griffiths v. City of Corvallis*, 50 Or LUBA 588, 595-96  
6 (2005) (OAR 660-012-0060 generally requires evaluation of traffic impacts based on the  
7 most traffic-intensive uses allowed in the new zone, not the particular use that is proposed);  
8 *Mason v. City of Corvallis*, 49 Or LUBA 199, 219 (2005) (same). The present case,  
9 however, does not involve the Transportation Planning Rule. In other circumstances, we  
10 have previously held that local governments have some latitude in assuming what uses will  
11 occur on properties subject to a zone change for purposes of assessing the capacity of public  
12 facilities to serve those uses. *See Bothman v. City of Eugene*, 51 Or LUBA 426, 433-34  
13 (2006) (city was not required to consider “worst-case” development scenario, and  
14 consideration of “likely” development scenario was permissible).<sup>1</sup>

15           We need not decide what amount of latitude the city has in the present appeal,  
16 because the city made no attempt to base its decision on a “worst-case,” “best-case,” or  
17 “likely” development scenario. The city merely took the position that no development was  
18 proposed in the plan and zone change application so no consideration of future development  
19 was required. That position is incorrect. SMC 17.12.430(5)(a)(4) requires the city find the  
20 zone change is compatible with “potential adverse impacts” such as demand for “public  
21 services and facilities.” SMC 17.12.430(5)(c) requires the city to find that there are  
22 “adequate urban services to serve the possible use” allowed in the new zone. *See also* SMC

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<sup>1</sup> At oral argument, the city cited our decision in *Rickreall Community Water Assoc. v. Polk County*, 53 Or LUBA 76 (2006), *aff'd* \_\_\_ Or App \_\_\_, \_\_\_ P3d \_\_\_ (May 2, 2007), for the proposition that the local government should only look at the existing use on the property being rezoned rather than potential uses that could be allowed under the new plan and zone. The city is mistaken. *Rickreall* underscores our point that even if a “worst-case” scenario is not required, the local government must at least consider proposed or likely uses that the plan and zone change allows. Here the city did not consider any proposed or likely uses.

1 17.12.420(5)(c) and (d). Moreover, although the city’s response brief argues that any  
2 potential adequacy of service problems will be addressed at the site plan review stage, that  
3 argument is not made or supported by any language in the decision. Whatever the city’s  
4 latitude in addressing the adequacy of public services to serve uses allowed by the plan and  
5 zone change, the city may not merely ignore the issue by stating that the plan and zone  
6 change does not propose any development at the time. The city must provide some  
7 explanation for why adequate public facilities and services will be available to serve the  
8 property after the plan and zone change. The city’s findings are inadequate regarding SMC  
9 17.12.420(5)(a)(2) and (c), and SMC 17.12.430(5)(a)(4)(c) and (d).

10 The first assignment of error is sustained.

11 **SECOND ASSIGNMENT OF ERROR**

12 Petitioner argues that the city violated the coordination requirement of Goal 2. The  
13 Goal 2 coordination requirement requires that comprehensive plans be “coordinated” with  
14 the plans of affected governmental units.<sup>2</sup> Comprehensive plans are “coordinated” when the  
15 needs of all levels of government have been considered and accommodated as much as  
16 possible. The Goal 2 coordination requirement generally encompasses a two-step process  
17 wherein (1) information is exchanged between the planning jurisdiction and the affected  
18 local governments, and (2) the planning jurisdiction uses the information gathered to balance  
19 the needs of the affected governmental units as much as possible. The planning jurisdiction  
20 must adopt findings to address legitimate concerns raised by the affected governmental units.  
21 *DLCD v. Douglas County*, 33 Or LUBA 216, 221 (1997) (citing *Brown v. Coos County*, 31  
22 Or LUBA 142, 145 (1996)).

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<sup>2</sup> Goal 2 provides in pertinent part:

“Each plan and related implementation measure shall be coordinated with *the plans* of affected governmental units.” (Emphasis added.)

1 If the city was required to coordinate with petitioner pursuant to Goal 2, the city did  
2 not do so, and remand would be required. *DLCD v. Douglas County*, 33 Or LUBA 216, 221  
3 (1997) (citing *Brown v. Coos County*, 31 Or LUBA 142, 145 (1996)). Initially, the city  
4 argues that petitioner is not an “affected governmental unit.” We disagree. Goal 2  
5 specifically defines “affected governmental units” to include “special districts.” ORS  
6 197.015(20) defines “special districts” to include “water control districts.” Even though  
7 petitioner is an affected governmental unit, however, the coordination requirement only calls  
8 for the city to coordinate with “the plans of” petitioner. Petitioner has not cited to us any  
9 plan with which it claims the city did not coordinate. Petitioner merely appears to have  
10 challenged the effects of additional stormwater discharge under the city’s code. Because  
11 petitioner identifies no plan that the city failed to coordinate with, petitioner has not  
12 established that the city violated the coordination requirement of Goal 2.

13 The second assignment of error is denied.

14 **THIRD ASSIGNMENT OF ERROR**

15 Petitioner argues that the city’s decision is not supported by substantial evidence.  
16 Because we remand the decision due to inadequate findings, it would serve no purpose to  
17 consider substantial evidence challenges.<sup>3</sup>

18 We do not reach the third assignment of error.

19 **FOURTH ASSIGNMENT OF ERROR**

20 Petitioner argues that the city failed to comply with Goal 6. We have already  
21 determined that the city’s findings are inadequate to demonstrate compliance with SMC

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<sup>3</sup> Petitioner argues that the decision must be reversed because “[t]his is not a situation where the decision could be remanded for the City to correct or supplement its Findings” to satisfy the code. Petition for Review 13. We disagree. Decisions not supported by substantial evidence are routinely remanded to local governments to correct or supplement its findings. One possible solution for a lack of evidence is to conduct an evidentiary hearing on remand.

1 provisions requiring compliance with the goals, including Goal 6. The city will be required  
2 to address Goal 6 on remand. We do not further consider this assignment of error.

3 We do not reach the fourth assignment of error.

4 The city's decision is remanded.