BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

CLATSOP RESIDENTS AGAINST
WALMART and SARA MEYER,
Petitioners,

vs.

CITY OF WARRENTON,
Respondent,

and

WAL-MART STORES, INC.,
Intervenor-Respondent.

LUBA No. 2012-099

FINAL OPINION
AND ORDER

Appeal from City of Warrenton.

Kenneth D. Helm, Beaverton, filed the petition for review and argued on behalf of petitioners.

No appearance by City of Warrenton.

Gregory S. Hathaway, Portland, filed the response brief and argued on behalf of intervenor-respondent. With him on the brief were E. Michael Connors and Hathaway Koback Connors LLP.

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

REMANDED 04/23/2013

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

Petitioners appeal a city decision approving a site plan and variance for a Wal-Mart store.

MOTION TO INTERVENE

Wal-Mart Stores, Inc. (intervenor), the applicant below, moves to intervene on the side of the city. There is no opposition to the motion, and it is granted.

FACTS

The subject property is a parcel approximately 17 acres in size, and zoned Commercial. Highway 101 borders the property to the west. Intervenor applied to the city for site plan approval to construct a 153,000-square foot retail store, roughly rectangular in shape. The application proposed to fill a small wetland on the property, and requested variances to the city's bicycle parking standards and to the required height of a screening wall along the frontage with Highway 101.

As proposed, the front of the store faces east, and the rear of the store faces Highway 101 to the west. The long west-facing wall of the building is broken at one point by a rectangular buildout that extends to the west. The site plan proposes a truck loading dock and five truck bays, oriented toward the south-facing wall of that buildout. A compactor pad and service area is located on the north-facing wall of the buildout.

The city planning commission conducted a hearing on October 25, 2012, and issued a decision approving the application on November 15, 2012. The planning commission decision adopted two staff reports as findings. On November 30, 2012, petitioners appealed the planning commission decision to the city commission. On December 11, 2012, the city commission provided notice to the parties that the city commission declined review, and that the planning commission decision is the city's final decision. This appeal followed.

INTRODUCTION

An issue common to all three assignments of error is the proper standard of review LUBA must apply in reviewing code interpretations in the two staff reports incorporated into the planning commission decision as findings.

ORS 197.829(1) provides in relevant part that LUBA must affirm a local government's interpretation of local land use law, unless the interpretation is inconsistent with the express language, purpose or underlying policy of that law.[1] The Oregon Supreme Court has construed ORS 197.829(1) to require LUBA to affirm a local government code interpretation if the interpretation is "plausible." *Siporen v. City of Medford*, 349 Or 247, 255, 243 P3d 776 (2010). However, that deferential standard of review applies only to interpretations adopted by the governing body, not the interpretations of lesser bodies such as planning staff, hearings officers or planning commissions. *Gage v. City of Portland*, 319 Or 308, 317, 877 P2d 1187 (1994). In the latter circumstance, the meaning of local legislation is a question of law for LUBA and reviewing courts to decide, and no deference is due to the local interpretation. *Gage v. City of Portland*, 133 Or App 346, 349-50, 891 P2d 1331 (1995).

In the present case, the parties disagree whether the staff interpretations incorporated into the planning commission decision are properly imputed to the city commission. In *Derry v. Douglas County*, 132 Or App 386, 391, 888 P2d 588 (1995), the Court of Appeals

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[1] ORS 197.829(1) provides, as relevant:

> "[LUBA] shall affirm a local government's interpretation of its comprehensive plan and land use regulations, unless the board determines that the local government's interpretation:
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> "(a) Is inconsistent with the express language of the comprehensive plan or land use regulation;
>
> "(b) Is inconsistent with the purpose for the comprehensive plan or land use regulation;
>
> "(c) Is inconsistent with the underlying policy that provides the basis for the comprehensive plan or land use regulation[.]"

held that where the governing body's decision affirms or adopts a lower body's decision on appeal as its own, any interpretation of local legislation that the lower body rendered in its decision that was necessary to the decision is regarded as having obtained governing body approval, regardless of whether the governing body's own decision expressly adopts the interpretation. *See also Green v. Douglas County*, 245 Or App 438, n 5, 263 P3d 355 (2011) (deference is due where governing body's decision declining review states that the governing body affirms the lower body's decision and incorporates it as the governing body's own decision); *Baker v. Lane County*, 43 Or LUBA 493, 499-500 (2003) (where the governing body expressly adopts the underlying decision as its own, the interpretations therein are adopted by the governing body, even if the governing body does not hold a hearing on the appeal, as was the case in *Derry*).

However, in *Gutoski v. Lane County*, 141 Or App 265, 268, 917 P2d 1048 (1996), the Court distinguished *Derry*, and held that where the governing body's decision is to decline to review the underlying decision, making the underlying decision the county's final decision, there is no basis to impute the lower body's interpretations to the governing body. The Court so held, notwithstanding that the governing body's decision included language that arguably implied agreement with the interpretations in the underlying decision. *Id.*

Thus, as we understand *Derry* and *Gutoski*, whether the planning commission's interpretations can be imputed to the city commission in the present case turns on whether the city commission's decision "affirmed" or "adopted" or "incorporated" the planning commission's decision as the city commission's own decision.[2]

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[2] Intervenor cites to LUBA's decision in *Bard v. Lane County*, 63 Or LUBA 1, 14-15 (2011), for the proposition that the lower body's interpretations are imputed to the governing body, even where the governing body's decision simply declines review and thus renders the lower decision the county's final decision, as in the present case. *Bard* does not stand for that proposition and, to the extent it did, *Bard* would conflict with *Gutoski*. Moreover, although our decision in *Bard* does not discuss the governing body's decision to decline review or the governing code provisions, it does state that the governing body "adopted" the hearings official's decision. *Id* at 15. We also note that the code provisions that likely applied state that if the county board declines review, it must specify whether or not the board expressly agrees with or is silent regarding any

The city commission's decision was rendered pursuant to Warrenton Municipal Code (WMC) 16.208.020(3)(C), which provides that the city commission may decide at a public meeting that the decision of the lower hearings body "shall be the final decision of the City," with the result that the Commission "shall not hear the appeal."[3] WMC 16.208.020(3)(C)(b) provides that the city shall provide written notice of the City Commission's decision to the parties, and further that "[t]he decision on the land use application(s) becomes final upon mailing of the Commission's decision to decline review." Notably, WMC 16.208.020(3)(C)(b) refers to two distinct decisions: the City Commission decision to decline review, and the underlying decision, which becomes the city's final decision on the application and can be appealed directly to LUBA.

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interpretations made by the lower body, and further the board's decision must "affirm" the lower decision. Lane County Code 14.600(2)(d). Presumably, the board's decision at issue in *Bard* stated that the board agreed with the interpretations in the underlying decision, and affirmed that decision, which is why we applied a deferential standard of review to those interpretations.

[3] WMC 16.208.020(C)(3) provides:

> "a. The City Commission may, on a case-by-case basis or by standing order for a class of cases, decide at a public meeting that the decision of the lower hearings body of an individual land use action or a class of land use action decisions shall be the final decision of the City.
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> "b. If the City Commission decides that the lower hearings body decision shall be the final decision of the City, then the Commission shall not hear the appeal and the party appealing may continue the appeal to the Land Use Board of Appeals (LUBA). In such a case, the City shall provide written notice of its decision to all parties. The decision on the land use application(s) becomes final upon mailing of the Commission's decision to decline review.
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> "c. The decision of the City Commission not to hear a land use action appeal is entirely discretionary.
>
> "d. In determining whether to hear an appeal, the City Commission may consider only:
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> "i. The record developed before the lower hearings body;
>
> "ii. The notice of appeal; and
>
> "iii. Recommendations of staff."

Consistent with (WMC) 16.208.020(3)(C)(b), the city provided written notice to the parties, stating:

> "As allowed by [WMC] 16.208.020.C.3, the Warrenton City Commission at its December 11, 2012 regular meeting decided that the Planning Commission's decision to approve [the application] was the final decision of the City and declined to hear the appeal * * *. Pursuant to WMC 16.208.020.C.3.b, [the appeal may be continued] directly to the Land Use Board of Appeals.
>
> "The public hearing scheduled for December 18, 2012 to hear the appeal is cancelled." Record 1.

The above-quoted text apparently constitutes the city commission's written decision declining review. However, nothing in that text indicates that the city commission "adopted" or "affirmed" the planning commission decision, or otherwise intended to make that decision the city commission's own decision. Under *Gutoski*, therefore, we cannot impute the planning commission's interpretations to the city commission.

Nonetheless, intervenor cites to statements made by city commissioners during the December 11, 2012 meeting suggesting that the commissioners declined to review the appeal because they individually or collectively believed the planning commission decision was based on a "good record," the planning commission "did their job," and the city commission should "uphold" the planning commission decision.[4] However, we do not believe that oral

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[4] The minutes of the December 11, 2012 meeting state, in relevant part:

> "* * * [The Planning Director] reviewed the City's Development Code that allows the City Commission the discretion to decide whether to hear the appeal or make the Planning Commission action the final decision of the City and allow the appealing party to continue the appeal to [LUBA]. [The Planning Director] explained that staff believes the Planning Commission made a solid and legal decision and that the appeal includes no additional information regarding how the Planning Commission erred."
>
> "Commissioner Mark Baldwin made the motion that the Planning Commission's decision on the [application] is the final decision of the City on this matter. Motion was seconded. Commissioner Orrel stated he thinks it's going to go to LUBA anyway, and the Planning Commission has a good record. Commissioner Baldwin stated that [City] Commission had determined earlier that rather than a hearings officer that the planning commission should hear the matter so we should uphold their decision. They have a good record. Vice-chair Kujala stated the [City] Commission needs to look at whether the Planning Commission failed to look

statements made to or by the governing body members are determinative; the intent to "affirm," "adopt," "incorporate" the underlying decision (or words to that effect) must be expressly stated in the governing body's written decision. In *Gutoski*, the Court noted that the governing body's written decision declining review was accompanied by explanations or language that the intervenor-respondent argued had the effect of endorsing the hearings officer's interpretations, and thus the rationale in *Derry* was applicable. 141 Or App at 267-68. The Court concluded, nevertheless, that because the governing body's written decision expressly declined to review the appeal, and did not affirm the underlying decision, *Derry* was inapposite, and LUBA was not required to apply a deferential standard of review to the hearings officer's interpretation. *Id.* The same conclusion applies in the present case.

FIRST ASSIGNMENT OF ERROR

As noted, construction of the proposed store requires filling a wetland on the property. WMC 16.156.030(A) is part of a code section entitled "Wetland Area Development Standards," and provides in relevant part:

> "Applications to the City of Warrenton for development permits, grading permits, or building permits that would alter land within a mapped wetland boundary, shall contain the following:
>
> "1. A valid State of Oregon Wetland Removal-Fill Authorization."

Notwithstanding WMC 16.156.030(A), the site design review application did not include a valid state wetland removal-fill authorization. Instead, planning staff recommended that the planning commission impose a condition requiring that the required state wetland fill/removal permit be submitted when intervenor files a building permit application to construct the store approved in the site plan review. Petitioners objected to this proposed condition, arguing that WMC 16.156.030(A) requires that a valid state permit be submitted along with the application for a "development permit," and that the site design review

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at specific issues, and it appears they did their job. The appeal can still proceed and this will remain a public process even if it goes to LUBA. Motion passed unanimously." Record 446.

application is an application for a "development permit," because it seeks authorization to construct a large retail store, which falls within the broad definition of "development" at WMC 16.12.010.[5]

The planning director responded in a November 13, 2012 supplemental report:

> "* * * [S]taff maintains that site design review [is] not a development permit per se. Approval of the site design for this project does not authorize development, but instead entitles the applicant to apply for permits which would authorize ['development' as defined by the WMC]. Clearly, the state permit (and the federal wetland permit) is required prior to the city issuing permits for the actual development. We continue the position that the recommended condition of approval that wetland permits from the Department of State Lands and U.S. Army Corps of Engineers be submitted with applications for those [building] permits satisfies this criterion." Record 31.

Consistent with the foregoing, the planning commission adopted a condition requiring that copies of wetland fill permits be submitted to the city "with the construction/building permit applications." Record 18.

On appeal, petitioners challenge the planning director's interpretation, arguing that it effectively reads the term "development permit" out of WMC 16.156.030(A), and requires submittal of a valid wetland fill permit only for construction or building permits. Petitioners also argue that the planning director erred in concluding that site design approval for the proposed Wal-Mart store does not authorize "development" as defined at WMC 16.12.010.

Intervenor responds that the planning director's interpretation is consistent with the text of WMC 16.156.030(A)(1), which is concerned only with three types of permits that "would alter land within a mapped wetland boundary." According to intervenor, site design approval does not authorize intervenor to "alter land" at all, and that only subsequent permits that directly authorize movement of dirt or building construction qualify as "development

[5] WMC 16.12.010 defines "development" as "[a]ny man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials located within the area of special flood hazard."

permits" within the meaning of WMC 16.156.030(A)(1). Intervenor also argues that the planning director's interpretation is consistent with the apparent purpose of WMC 16.156.030(A)(1), to ensure that the applicant obtains the required state wetland fill permits before actually commencing development in a wetland area.

We agree with petitioners that, if the planning director's interpretation gives no effect to the term "development permit," then that interpretation is inconsistent with the text of WMC 16.156.030(A)(1), which clearly presumes that there is some class of permits that qualify as "development permits" for purposes of that code section, and that such permits are distinct from grading or building permits. The planning director concluded that site design review approval does not qualify as a "development permit," and that the only permits that do qualify as "development permits" are those that directly authorize the alteration of land. However, neither the planning director nor intervenor identifies any permits provided under the WMC that directly authorize the alteration of land, other than grading permits or building permits, which are separately listed in WMC 16.156.030(A)(1). The WMC provides for a number of different kinds of development approvals and permits, such as site review and conditional use permits. *See* WMC Table 16.208.020. However, as we understand the WMC no such permits directly authorize the alteration of land, and all such permits require subsequent grading or building permits to actually authorize "development" or, more specifically, to authorize an applicant to physically "alter land within a mapped wetland boundary." Thus, as far as we can tell, under the planning director's interpretation the category of "development permit" as used in WMC 16.156.030(A)(1) appears to be an empty set. That interpretation is therefore inconsistent with the text of WMC 16.156.030(A)(1). Absent some other basis in the code to exclude site design review from the category of "development permit," we agree with petitioners that the planning director misconstrued WMC 16.156.030(A)(1).

Intervenor may be correct that it is likely consistent with the apparent purpose of WMC 16.156.030(A)(1) to delay submission of valid state wetland fill permits until the time the applicant for a "development permit" applies for building permit approval. However, for whatever reason, the text of WMC 16.156.030(A)(1) requires that the wetland fill permit must also be submitted with the application for a "development permit." Because the city has not established that the category of "development permit" excludes site design review approvals, the city erred in concluding that WMC 16.156.030(A)(1) was satisfied.

The first assignment of error is sustained.

SECOND ASSIGNMENT OF ERROR

WMC 16.116.030(C)(6) is part of the site design review standards, and requires in relevant part that loading docks, outdoor storage yards and all other service areas shall be located to the sides and/or rear of a building, "except when a site abuts Highway 101, in which case the said areas shall be located to the sides of the building that do not face Highway 101."[6]

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[6] WMC 16.116.030(C)(6) provides:

> Mechanical Equipment, Outdoor Storage and Service Areas. The location of loading docks, outdoor storage yards and all other service areas shall be located to the sides and/or rear of a building, except when a site abuts Highway 101, in which case the said areas shall be located to the sides of the building that do not face Highway 101.
>
> "a. All outdoor storage yards, loading docks, service areas and mechanical equipment or vents larger than eight inches in diameter shall be concealed by screens at least as high as the equipment they hide, of a color and material matching or compatible with the dominant colors and materials found on the facades of the principal building. Chain link or cyclone fencing (with or without slats) shall not be used to satisfy this requirement.
>
> "b. Equipment that would remain visible despite the screening, due to differences in topography (i.e., a site that is at a lower grade than surrounding roadways) shall be completely enclosed except for vents needed for air flow, in which event such vents shall occupy no more than 25% of the enclosure façade.
>
> "c. The architectural design of the buildings shall incorporate design features which screen, contain and conceal all heating, ventilation, air conditioning units, trash enclosures, dumpsters, loading docks and service yards."

The approved site design plan shows a long rectangular multiple-bay loading dock area located at the rear of the building, where the site abuts Highway 101 to the west. The loading doors are located on the south wall of a portion of the building that projects out from the west wall, and the long truck bays are oriented north and south, with the easternmost truck bay adjoining the western wall of the main building. As required by WMC 16.116.030(C)(6)(a), the loading dock area is screened from view by a low wall.

Petitioners argued below that the loading dock area is located on the side of the building that abuts Highway 101, in violation of WMC 16.116.030(C)(6). The planning commission findings on this point state:

> "The site abuts Highway 101. The loading area is located on the left (south) elevation, and trash compactor is located on the right (north) side of the proposed retail building, both of these elements will be screened by a [wall] and do not face Highway 101." Record 41.

On appeal, petitioners repeat their argument that the loading dock area is erroneously located to a side of the building that faces Highway 101.

Intervenor responds that WMC 16.116.030(C)(6) is an orientation standard that prohibits locating a loading dock so that the dock faces Highway 101. According to intervenor, the city correctly found that the loading area does "not face Highway 101," because it is located to the south wall of the building projection, and the south wall does not face Highway 101.

We note that WMC 16.116.030(C)(6) is not concerned with the orientation of the loading dock area itself, or which direction the loading dock "faces." Instead, it requires that the loading dock area be *located* to a building *side* that faces Highway 101. To the extent the city found that the loading dock location complies with WMC 16.116.030(C)(6) because the loading dock does not itself " face Highway 101," that finding is misdirected. The relevant question is whether or not the loading dock area is located to a building *side* that faces Highway 101.

It is not clear how WMC 16.116.030(C)(6) applies to a large but irregularly shaped façade such as that approved on the site plan. Petitioners' apparent position is that, viewed as a whole, the loading dock area is located mostly to the western façade of the building facing Highway 101, notwithstanding that the short northern side of the loading dock area adjoins a south-facing wall of the building. Intervenor's apparent position is that as long as the loading dock area is located to at least one side of the building that does not face Highway 101, WMC 16.116.030(C)(6) is satisfied. However, intervenor's position ignores the fact that the much longer eastern side of the loading dock area adjoins the long western wall of the main building façade for a considerable distance. There is no dispute that that long western wall faces Highway 101. It is hard to avoid the conclusion that the loading dock area is located at least partially, if not mostly, to the west side of the building facing Highway 101. Accordingly, we agree with petitioners that the city erred in concluding that the loading dock location complies with WMC 16.116.030(C)(6).

The second assignment of error is sustained.

THIRD ASSIGNMENT OF ERROR

Intervenor sought, and the city granted, a variance to the code bicycle parking requirements, to reduce the required number of parking spaces from 68 to 28. WMC 16.272 provides the applicable variance standards. WMC 16.272.010 states that the purpose of a variance is to "provide relief when a strict application of the zoning requirements would impose unnecessary hardships resulting from the size, shape, or dimensions of a site or the location of existing structures thereon; or from geographic, topographic, or other factors listed below." WMC 16.272.020 sets out six variance standards, including a requirement at WMC 16.272.020(A) that the applicant demonstrate that "[t]he hardship was not created by the person requesting the variance."[7]

[7] WMC 16.272.020 provides:

In this assignment of error, petitioners argue that WMC 16.272.020(A) imposes a threshold requirement that the applicant demonstrate and the city to find that there is a "hardship," and further that the city describe that hardship, in addition to a finding that the applicant did not create that hardship. The WMC does not define "hardship," but petitioners contend that the required hardship must be consistent with the description in the WMC 16.272.010 purpose statement, *i.e.* a hardship "resulting from the size, shape, or dimensions of a site or the location of existing structures thereon; or from geographic, topographic, or other factors[.]"[8] Petitioners contend that the city failed to adopt adequate findings

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> "Variances to a quantitative requirement of this Code may be granted only if, on the basis of the written application, investigation, and evidence submitted by the applicant, findings of fact are made by the zoning administrator (for Class 1 applications) or Planning Commission (for Class 2 applications) that satisfy the criteria of subsections A through F of this section. Prior variances allowed in the neighborhood shall not be considered by the granting authority in reaching its decision. A determination of whether the standards set forth in this section are satisfied necessarily involves the balancing of competing and conflicting interests. Each request shall be considered on its own merits.
>
> "A. The hardship was not created by the person requesting the variance;
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> "B. The request is necessary to make reasonable use of the property. There will be an unreasonable economic impact upon the person requesting the variance if the request is denied;
>
> "C. The request will not substantially be injurious to the neighborhood in which the property is located. The variance will not result in physical impacts, such as visual, noise, traffic or increased potential for drainage, erosion and landslide hazards, beyond those impacts that would typically occur with development in the subject zone;
>
> "D. The request is not in conflict with the Comprehensive Plan;
>
> "E. The request is not in conflict with the Development Code. No variance may be granted which will result in a use not permitted in the applicable zone or which will increase the allowable residential density in any zone with the exception of individual lot size reduction; and
>
> "F. Physical circumstance(s) related to the property involved preclude conformance with the standard to be varied."

[8] WMC 16.272.010 provides:

> "The purpose of a variance is to provide relief when a strict application of the zoning requirements would impose unnecessary hardships resulting from the size, shape, or

identifying a "hardship" justifying the requested variance from 68 to 28 bicycle parking spaces.

According to petitioners, the closest the city findings come to identifying a hardship is the findings addressing WMC 16.272.020(A), which state:

> "The hardship is created through the imposition of the code requirement to provide 68 bicycle parking spaces with development of the site. The proposed use is a retail store that specializes in general household and consumer products and at times large packaged items and merchandise that are not typically transported via bicycle. The Applicant has not created the hardship and therefore the proposal is consistent with this requirement. This criterion is met." Record 68.

Petitioners contend that the foregoing finding does not address or demonstrate that the alleged hardship results from the size, shape, or dimensions of the site or any geographic or topographical factors. Petitioners argue that, based on dictionary definitions, a "hardship" means something more than the mere inconvenience of complying with the approval standard. Petitioners disputed below the applicant's apparent position that the "hardship" in the present case is the requirement to provide the full 68 bicycle parking spaces required by the code. Record 247-48. The findings do not explicitly address that issue or expressly determine what constitutes a hardship as that term is used in WMC 16.272.020.

Intervenor responds that no criterion in WMC 16.272.020 explicitly requires the city to identify the "hardship." The only criterion that mentions a hardship is WMC 16.272.020(A), intervenor argues, and that criterion merely requires a finding that the applicant did not create the hardship, which the city found and petitioners do not challenge.

Even if WMC 16.272.020 implicitly requires the city to identify a hardship, intervenor contends that petitioners challenge only the findings addressing WMC 16.272.020(A), and fail to challenge the remaining findings addressing WMC 16.272.020(B)

> dimensions of a site or the location of existing structures thereon; or from geographic, topographic, or other factors listed below. * * *

through (F). According to intervenor, those findings more specifically describe and address the hardship created by the requirement to construct 68 bicycle parking spaces.

We agree with petitioners that, at least where an issue was raised below that no "hardship" exists, as that term is used in WMC 16.272.020, the city is required to adopt findings addressing whether a hardship indeed exists and, if so, adequately describe the hardship to the extent necessary to apply the criteria at WMC 16.272.020(A) through (F). We also agree that any determination or interpretation of "hardship" cannot be inconsistent with the purpose statement at WMC 16.272.010, *i.e.*, which states that the purpose is to relieve hardships resulting from the size, shape, or dimensions of a site or the location of existing structures, or from geographic, topographic, or other factors listed in the variance approval criteria.

Intervenor is correct that some findings addressing other variance criteria appear to relate the alleged hardship to geographic and topographical constraints, in particular the finding on WMC 16272.020(F), which requires a finding that "[p]hysical circumstance(s) related to the property involved preclude conformance with the standard to be varied." The city's findings concur with the applicant's following statement:

> "This variance is requested to assist with overcoming development constraints inherent in the site and to be reflective of the true demand that will be generated by the proposed use. It is clearly stated within the intent of Chapter 16.128.010 that the purpose of the Chapter is to provide basic and flexible standards for development of vehicle and bicycle parking. Adding excessive bicycle parking that would be unused requires additional use of property, which is already constrained by varying topography across the site, fixed access locations, and existing wetlands to the south. This criterion is met." Record 70-71.

Petitioners do not challenge the above finding, but we disagree with intervenor that that finding or any of the other findings addressing the variance criteria adequately describe the alleged hardship. Although the above-quoted finding refers to inherent development constraints, including topographic constraints across the site, access restrictions and existing

wetlands, the finding does not explain why providing 68 rather than 28 bicycle parking spaces is a hardship *resulting* from such constraints.

We conclude that remand is necessary for the city to adopt adequate findings addressing the nature of the alleged hardship, and explaining why that hardship results from the size, shape, or dimensions of a site or the location of existing structures, or from geographic, topographic, or other factors listed in the variance approval criteria.

The third assignment of error is sustained.

The city's decision is remanded.