



1 governed by the provisions of ORS 197.850.

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**NATURE OF THE DECISION**

Petitioner appeals a city council decision that grants site plan approval for a 24-unit hotel.

**JURISDICTION**

Although no party questions our jurisdiction in this matter, we raise the issue of our jurisdiction on our own motion. *Adams v. City of Ashland*, 33 Or LUBA 552, 554 (1997). Intervenors-respondents (intervenors) attach to their response brief a letter addressed to the city. In that letter intervenors state:

“[W]e have decided that the best course of action to respond to the LUBA appeal is to abandon/withdraw the application and start over with a new, separate, land use application. This new application will propose a different development concept for the site.” Response Brief App 1.

In their response brief, intervenors make no attempt to defend the city’s decision on the merits. Intervenors state they would have requested a voluntary remand, but recognize that since the record has been filed and petitioner has filed her petition for review, that option is no longer available if petitioner objects, which she does. *See Dexter Lost Valley Community Assn. v. Lane County*, 255 Or App 701, 706-08, 300 P3d 1243 (2013) (rejecting LUBA’s distinction between (1) withdrawing a decision for reconsideration under 197.830(13)(b) and (2) a motion for voluntary remand). Intervenors concede under the first assignment of error that the findings are inadequate, and concede under the remaining assignments of error that the decision is not supported by

1 substantial evidence. However under all four assignments of error, intervenors  
2 “ask that LUBA not address any of the other substantive issues raised in this  
3 assignment of error.” Response Brief 3-5.

4         With regard to whether this appeal is moot, we cannot determine what, if  
5 any, legal effect intervenors’ decision to “abandon/withdraw the application”  
6 may have had on the decision that is before us in this appeal, which grants site  
7 plan approval. Therefore, this appeal is not moot. *Jacobsen v. Douglas*  
8 *County*, 54 Or LUBA 790, 791 (2007); *Gilson v. City of Portland*, 22 Or  
9 LUBA 343, 352 (1991); *McKay Creek Valley Assoc. v. Washington County*, 16  
10 Or LUBA 1028, 1029 (1987).

11         We also deny intervenor’s request that LUBA not address any of the  
12 substantive issues presented in the petition for review. That would in effect be  
13 the equivalent of granting a voluntary remand and therefore would be contrary  
14 to the Court of Appeals’ holding in *Dexter Lost Valley*. In holding that a local  
15 government may not move for voluntary remand or withdraw a decision for  
16 reconsideration after the record is filed, the Court of Appeals presumably  
17 understood that the local government viewed the decision as indefensible and  
18 that in such cases LUBA appeals might go forward without any briefs that  
19 respond to the assignments of error on the merits.

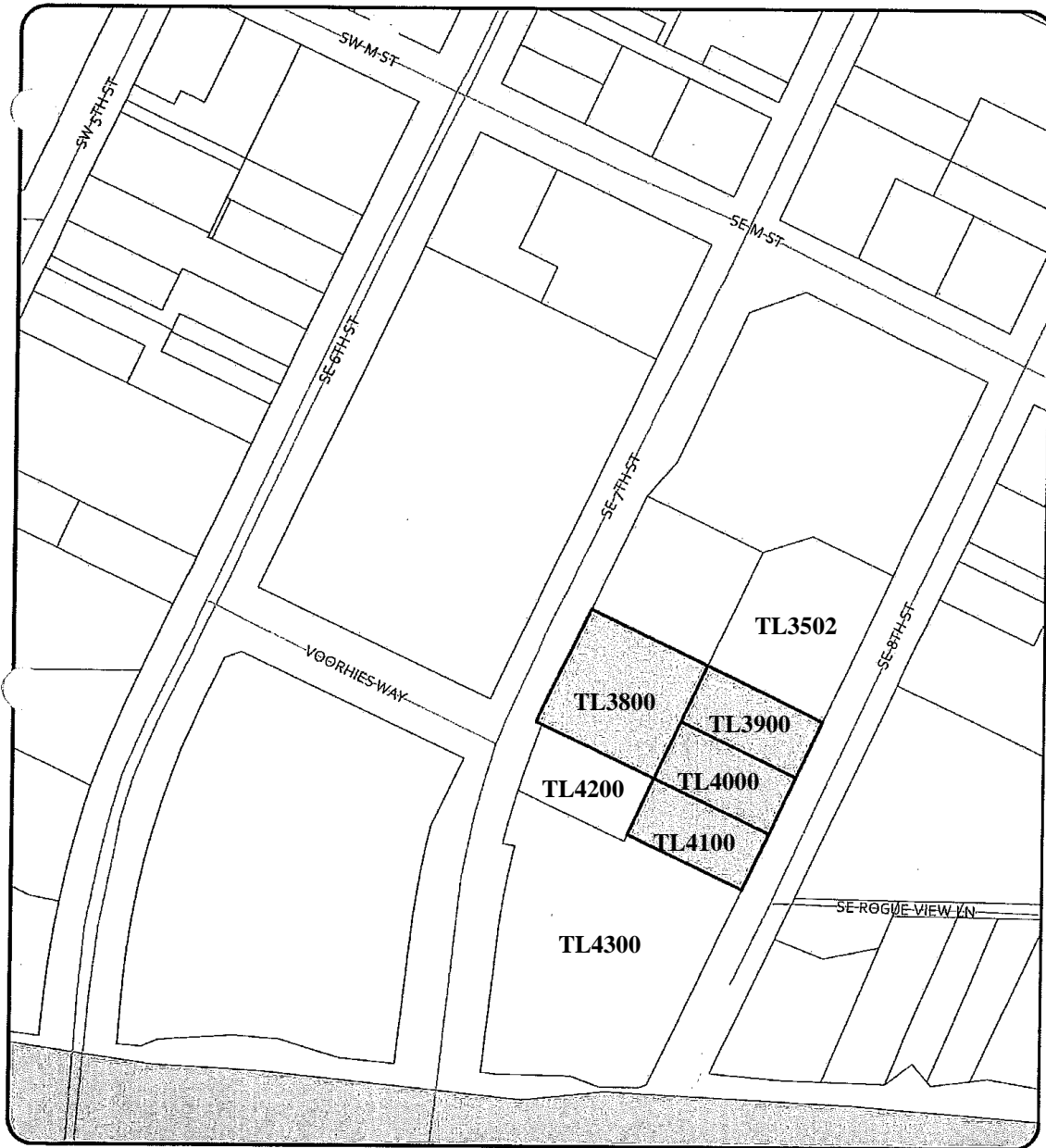
20         The lack of a brief in support of the decision does, however, complicate  
21 our review, running the risk that LUBA will fail to appreciate or recognize  
22 potentially meritorious arguments in response to legal challenges.

1 Nevertheless, where we are reasonably confident how legal issues should be  
2 resolved, we resolve them below. Where we are not reasonably confident how  
3 legal issues should be resolved, and the findings are inadequate, we remand for  
4 additional findings, even in some cases where petitioner does not explicitly  
5 assign error based on inadequate findings.


6 **FACTS**

7 The proposed three-story, 24-unit hotel would be constructed as an  
8 addition to an existing one-story convention center. The required *off-street*  
9 parking for the hotel would be supplied by existing parking that the hotel  
10 would share with existing uses on surrounding properties that intervenors own  
11 and with a number of *on-street* parking spaces. A map showing the tax lots  
12 where the hotel expansion and shared parking will be located (Record 368)  
13 appears on the next page of this decision. The existing convention center is  
14 located on tax lot (TL) 3900. The proposed hotel would be located on TL  
15 4000. The existing parking that intervenors rely on to supply the required  
16 number of parking spaces is located on TLs 3502, 3800, 4100, 4200 and 4300.  
17 The tax lots are bounded on the east by SE 7<sup>th</sup> Street, a residential street, and on  
18 the west by SE 8<sup>th</sup> Street. SE 8<sup>th</sup> Street is State Highway 99, which is an  
19 arterial and a major city thoroughfare. Petitioner resides in the residentially  
20 zoned and developed area located across SE 7<sup>th</sup> Street from the subject  
21 property, to the east.

22



**CITY OF GRANTS PASS**  
 840 SE 8th Street  
 36-05-19-AA, TL 3800,  
 3900, 4000, 4001

**Legend**  
 Subject Parcels

**EXHIBIT 1**

0 30 60 120 180 240 Feet

**CITY OF GRANTS PASS**  
 Parks & Community Development Dept.  
 101 Northwest "A" Street  
 Grants Pass, OR 97526  
 Phone: (541) 450-6060  
 Fax: (541) 476-9218  
 Web: [www.grantspassoregon.gov](http://www.grantspassoregon.gov)



DISCLAIMER: The Geographic Information Systems (GIS) data made available on this map are developed and maintained by the City of Grants Pass and Josephine County. Every reasonable effort has been made to assure the accuracy of the maps and associated data.

1 Under her first assignment of error, petitioner argues the existing parking  
2 on the tax lots that surround TL 3900 and TL 4000 is insufficient to supply the  
3 number of off-street parking places required by the Grants Pass Development  
4 Code (GPDC). In her second assignment of error, petitioner contends the city  
5 council wrongly believed it lacked authority to impose conditions of approval  
6 to mitigate potential land use conflicts between the proposed hotel and adjacent  
7 residential uses. In her third assignment of error, petitioner contends the  
8 proposal violates criteria that govern access to the subject property from the  
9 adjoining streets. And in her final assignment of error, petitioner challenges a  
10 condition of approval regarding use of the Event Center.

11 **FIRST ASSIGNMENT OF ERROR**

12 Petitioner argues the city committed a number of errors in approving  
13 intervenors’ proposal to rely on shared parking and on-street parking spaces to  
14 comply with GPDC off-street parking standards. The existing and proposed  
15 uses for each of the seven tax lots are set out below:

16	<u>“Tax Lot</u>	<u>Use(s)</u>
17	“3900[ <sup>1</sup> ]	Event Center/proposed hotel addition
18	“3502	‘Hamilton House’ business offices and meeting rooms
19	“3800	Umi Sushi
20	“4100	Dining facility
21	“4200	Edward Jones Investments business office
22	“4300	Lodge at Riverside lodge and meeting room[.]”
23	Petition for Review 12.	

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<sup>1</sup> The parcels that are designated TL 3900 and TL 4000 have apparently been consolidated with the consolidated parcel being designated TL 3900.

1 Intervenor’s engineer prepared and revised a “Parking Plan.” Record 79. That  
 2 parking plan includes a “Proposed Shared Parking Summary,” which is set out  
 3 in the challenged decision. Record 25. That shared parking summary shows  
 4 that although in some instances the parking spaces on the seven tax lots are  
 5 insufficient to supply the required number of parking spaces for the buildings  
 6 on those tax lots, in other instances there are more existing parking spaces than  
 7 required under the GPDC, with the ultimate result that there are more existing  
 8 parking spaces (157 spaces) than the existing uses and proposed hotel require  
 9 (116 spaces). Accordingly, the city council found that intervenors’ proposal to  
 10 satisfy the required parking for the proposed hotel by sharing existing parking  
 11 spaces complies with the GPDC parking criteria. The proposed shared parking  
 12 summary is set out in a slightly modified format in the petition for review that  
 13 uses bold type to identify the assumptions or numbers that petitioner disputes:  
 14

15	<u>“Use</u>	<u>Area</u>	<u>Ratio</u>	<u>Required</u>	<u>Provided</u>
16	“Hotel (Service Area)	4,310	0.75/room	<b>0</b>	0
17	“Event Center	3,050	<b>1/100</b>	<b>31</b>	0
18	“Hotel Addition	15,981	0.75/room	18	0
19	“(24 Rooms)				
20	“Lodge at Riverside	17,438	<b>0.75/room</b>	<b>25</b>	47
21	“(33 rooms)				
22	“Umi Sushi	2,156	1/200	11	29
23	“Edward Jones Office	2,810	1/500	6	10
24	“Hamilton House	9,753	<b>1/500</b>	<b>20</b>	33
25	“Dining Facility	2,024	N/A	<b>0</b>	0
26	“On Street Parking	N/A	N/A	N/A	<b>15</b>
27	“ADA [Parking]	N/A	4 [per]	<b>5</b>	9
28			76-100		
29	“Total			<b>116</b>	157.”



1 We now turn to petitioner’s specific challenges to the parking plan.

2 **A. The Proposed Parking Plan Violates the GPDC Minimum**  
3 **Parking Requirements as a Matter of Law**

4 **1. Hotel Event Center (Tax Lot 3900)**

5 The Event Center has an area of 3,050 feet and the applicant and city  
6 applied a ratio of one parking space per 100 square feet to conclude that 31  
7 spaces are required for the Event Center. The city’s decision provides the  
8 following explanation for how it went about computing the Event Center  
9 parking:

10 “The [GPDC] does not have a specific listing for a hotel with a  
11 private banquet, assembly or meeting facility. As allowed under  
12 [GPDC] 25.035(2), parking space requirements for building[s] and  
13 uses not specified in the [GPDC] shall be determined by the  
14 Director, and such determination shall be based upon the  
15 requirements for the most comparable building or use specified  
16 herein. Additionally, [GPDC] 24.042(8) states that: ‘Other uses  
17 not specifically listed above shall furnish parking as required by  
18 the Director.’ When the [GPDC] does not provide a clear  
19 requirement for parking, the American Planning Association  
20 (APA) Parking Standards guide is commonly used to determine  
21 parking requirements. The APA Parking Standards recommends  
22 one (1) space per each 100 square feet of banquet, assembly,  
23 meeting or restaurant seating area (in addition to the parking  
24 required per room). Based upon the APA Parking Standards 36  
25 spaces are required for the banquet, assembly and meeting area  
26 (event center) \* \* \*.” Record 29.

27 Among the criteria for Site Plan review is GPDC 19.052(3), which  
28 among other things, requires that the proposal comply with “off-street parking”  
29 requirements. GPDC 25.040 requires that development include off-street  
30 parking in accordance with the requirements of the schedule set out at GPDC

1 25.042. That GPDC 25.042 schedule sets out the off-street parking  
2 requirements for a large number of specified buildings and uses. GPDC  
3 25.035(2), cited in the above-quoted city council findings, specifies how off-  
4 street parking is to be computed for buildings and uses that are not specified in  
5 the GPDC 25.042 schedule:

6 “Parking Requirements for Uses not Specified. The parking space  
7 requirements for buildings and uses not specified in this article  
8 shall be determined by the Director, *and such determination shall*  
9 *be based upon the requirements for the most comparable building*  
10 *or use specified herein. \* \* \*.*” (Italics added.)

11 GPDC 25.042(8), also cited in the above-quoted findings, similarly provides:

12 “Other uses not specifically listed above shall furnish parking as  
13 required by the Director. *The Director shall use the above list as*  
14 *a guide for determining requirements for said other uses.*”  
15 (Emphasis added.)

16 Despite the express requirement in GPDC 25.035(2) that the required  
17 off-street parking for uses not specified in the GPDC 25.042 schedule is to “be  
18 based upon the requirements for the most comparable building or use  
19 specified” in the GPDC 25.042 schedule, the city used the APA Parking  
20 Standards as a guide to determine parking requirements for the Event Center.  
21 Petitioner argues the city erred by doing so, and we agree. On remand the city  
22 must determine the required number of parking spaces in the manner required  
23 by GPDC 25.035(2).

1           Petitioner argues that LUBA should go further and determine that the  
2 standard set out at GPDC 25.042(4)(g) under “Public Assembly Uses” for  
3 “Other auditorium; meeting rooms; or theater” applies here:

4           “There is no meaningful distinction in the GPDC between a  
5 private assembly use and a public assembly use. The ‘most  
6 comparable’ use specified in the GPDC is ‘other auditorium,  
7 meeting rooms, or theater,’ which requires one parking space per  
8 every 28 square feet where no permanent seats or benches are  
9 maintained in assembly areas.” Petition for Review 15.<sup>2</sup>

10           It may be that the city and intervenors are relying on a condition of  
11 approval “that the event/meeting area will be used only for the exclusive use of  
12 the hotel patrons and their guests” to distinguish a *public* meeting room (which  
13 presumably would be directly subject to the GPDC 25.042(4)(g) one space per  
14 28 square feet standard), from what the city refers to as a “*private* banquet,  
15 assembly or meeting facility.” (Record 29; emphasis added). But even if that  
16 condition is adequate to render what would otherwise qualify as a public event  
17 center into a private event center, so that GPDC 25.042(4)(g) does not apply  
18 directly, GPDC 25.035(2) nevertheless would require that the parking for a  
19 *private* Event Center “shall be based upon the requirements for the most  
20 comparable building or use specified herein.” Petitioner may well be correct  
21 that the uses specified at GPDC 25.042(4)(g) (“[o]ther auditorium; meeting

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<sup>2</sup> The number of square feet in the Event Center (3,050 square feet) divided by 28 square feet is 109 spaces, only seven parking spaces short of the required 116 parking spaces for all uses.

1 rooms; or theater”) constitute “the most comparable building or use specified”  
2 in GPDC 25.042. Nevertheless, we believe the city council should be given an  
3 opportunity to address that question in the first instance.

4 For purposes of this appeal, we simply conclude the city council erred by  
5 determining the required number of parking spaces for the Event Center by  
6 looking at APA parking standards rather than the number of off-street parking  
7 spaces that would be required for “the most comparable building or use  
8 specified” in GPDC 25.042, as required by GPDC 25.035(2). On remand the  
9 city must compute the required off-street parking for the Event Center in the  
10 manner dictated by GPDC 25.035(2).

## 11 **2. Hotel Service Area**

12 As shown on the table above, there are to be 4,310 square feet in what is  
13 identified as the Hotel (Service Area). Without explanation, the city concluded  
14 no parking spaces are required for the Hotel (Service Area). Absent an  
15 explanation for that conclusion, remand is necessary. On remand the city must  
16 explain its reasons for identifying the Hotel (Service Area) as a use and then  
17 failing to apply GPDC 25.035(2) and 25.042 to determine how many parking  
18 spaces are required for that use.

## 19 **3. Dining Facility**

20 As shown on the table, there are 2,024 square feet in the existing Dining  
21 Facility on TL 4100. Petitioner argues “GPDC 25.042(6)(g) requires one  
22 parking space for every 200 square feet of gross floor area ‘for the sale and

1 consumption on the premises of food and beverages.” Petition for Review 17.  
2 Petitioner contends the Dining Facility therefore requires a minimum of 10 off-  
3 street parking spaces, and the city council erred by not attributing any of the  
4 existing off-street parking spaces to the Dining Facility.

5 Absent some explanation from the city for its decision to attribute none  
6 of the existing off-street parking spaces to the Dining Facility, we agree with  
7 petitioner. Remand is required for the city to apply GPDC 25.042(6)(g) to the  
8 square footage of the Dining Facility.

9 **4. Hamilton House and the Lodge at Riverside Public**  
10 **Meeting Spaces**

11 Hamilton House, which is located on TL 3502 immediately north of TL  
12 3900, includes both offices and meeting rooms (Oak Rooms). Petitioner  
13 contends the Oak Rooms are 1,620 square feet and seat up to 130 persons. We  
14 understand petitioner to argue that rather than applying a ratio of two off-street  
15 parking spaces per 1,000 square feet to the entire 9,753 square feet of Hamilton  
16 House, the city should have applied the GPDC 25.042(4)(g) standard (one off-  
17 street parking space per 28 square feet of meeting room space) to the area of  
18 the Oak Rooms (1,620 square feet) and the GPDC 25.042(6)(g) two off-street  
19 parking spaces per 1,000 square feet standard to the remaining 8,133 square  
20 feet of office space at Hamilton House. If it had done so, it would have  
21 concluded that substantially more of the existing off-street parking spaces are  
22 required to serve Hamilton House. Petitioner makes an identical argument

1 concerning the 216 square foot Boardroom, a meeting room at the Lodge at  
2 Riverside.

3 No party argues this issue was not raised below, and petitioner cites to  
4 local deliberations that show that the issue was raised. Yet the issue is neither  
5 acknowledged nor addressed in the decision. We agree with petitioner that the  
6 city erred by only applying the GPDC 25.042(6)(g) requirement for two spaces  
7 per 1,000 square feet to both the office space and the meeting room space at  
8 Hamilton House and the Lodge at Riverside without providing any explanation.  
9 On remand the city must do so.

#### 10 **5. On-Street Parking**

11 GPDC 25.032(2) provides, in part, that “[o]n-street parking may be  
12 counted toward the minimum parking requirements when it is on the block face  
13 abutting the subject use. On-street parking counted toward the minimum  
14 requirement shall remain open and available to the public.” The city credited  
15 the applicant with 15 on-street parking spaces. That is consistent with  
16 Oversized Exhibit (OE) 6, if all the on-street parking spaces on the west side of  
17 SE 8<sup>th</sup> Street along the entire block that includes the subject property are  
18 counted. But as petitioner points out, there are only six on-street parking  
19 spaces on the west side of SE 8<sup>th</sup> Street along the portion of that block face that  
20 abuts TL 3900 and TL 400. The issue under GPDC 25.032(2) is whether the  
21 reference to “block face abutting the subject use” is a reference to the entire  
22 “block face abutting the subject use” or is a reference to the portion of the

1 “block face abutting the subject use” that adjoins the property where the subject  
2 use is to be located. There are no findings in the decision addressing this  
3 interpretive issue.

4 The city erred by allowing the applicant to count on-street parking  
5 spaces along the entire block face along the west side of SE 8<sup>th</sup> Street, without  
6 explaining why that is consistent with the GPDC 25.032(2) requirement that  
7 on-street parking that is to be counted as off-street parking must be limited to  
8 the “block face abutting the subject use.” GPDC 25.032(2) is at the very least  
9 ambiguous, and on remand the city must explain its decision on this point.

10 **6. ADA Accessible Parking**

11 A portion of the table at GPDC 25.031(13), imposes the following  
12 requirement:

13 “Disabled person parking spaces shall be provided for all  
14 structures required to provide such parking under Oregon Revised  
15 Statutes or other applicable regulations, at the following rate:

16

Minimum Required Number of Total Parking Spaces	Required Number of Accessible Spaces
1 - 25	1
26 - 50	2
51 - 75	3
76 - 100	4
101 - 150	5.”

1           Petitioner contends intervenors’ engineer failed to appreciate that the  
2 required number of “[d]isabled person” (accessible) parking spaces are  
3 required for *each* of the existing and proposed “structures” on the property, and  
4 the required number of accessible parking spaces for each structure depends on  
5 the number of off-street parking spaces each of those structures requires.  
6 Petitioner contends intervenors’ engineer erroneously determined that only five  
7 accessible parking spaces are required, based on its estimate that only a total of  
8 116 spaces are required for all structures. Petitioner contends that if GPDC  
9 25.031(13) had been separately applied to each structure that is required to  
10 provide accessible parking, the required total number of accessible spaces  
11 would be higher than five spaces.<sup>3</sup>

12           We agree with petitioner. On remand the city must first determine which  
13 structures are required to provide accessible parking spaces. The city must  
14 next determine how many off-street parking spaces each of those structures is  
15 required to provide. The city will then be in a position to apply the GPDC  
16 25.031(13) table to each of those buildings to determine how many accessible  
17 parking spaces are required.

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<sup>3</sup> Petitioner contends a total of 15 accessible parking spaces are required, based on her estimate of the total number of off-street parking spaces required for each building. Petition for Review 19, 22.



1                   **6. Conclusion**

2           Petitioner contends that the existing buildings/uses lack the required  
3 number of off-street parking spaces, which makes it impossible for intervenors  
4 to rely on shared use of that same inadequate number of parking spaces to  
5 satisfy the required number of parking spaces for the proposed hotel expansion.  
6 If it has not become obvious by now, the Grants Pass parking regulations are  
7 complicated, and navigating through the schedule set out at GPDC 25.042 on  
8 remand will require the city to exercise some discretion. We decline  
9 petitioner’s invitation to attempt to decide now whether the existing parking  
10 spaces are inadequate as a matter of law. That said, petitioner has presented a  
11 compelling case that pursuant to her understanding of the GPDC 25.042  
12 schedule, intervenors’ engineer seriously underestimated the required number  
13 of parking spaces that are required for existing uses, and therefore seriously  
14 overestimated the number of existing off-street parking spaces available for  
15 shared use to satisfy the GPDC parking requirements for the proposed hotel  
16 expansion. We stop short of saying there is no way the city council could  
17 possibly interpret the applicable parking requirements to conclude that there is  
18 sufficient existing off-street parking to meet the GPDC requirements for the  
19 existing structures and the proposed hotel expansion. At the same time we  
20 agree with petitioner that the prospects for adopting and successfully defending  
21 such interpretations, even under the deferential standard of review required by

1 ORS 197.829(1) and *Siporen v. City of Medford*, 349 Or 247, 259, 243 P3d 776  
2 (2010), appear to be questionable.

3 **B. The Proposal Does not Establish that it Complies With the**  
4 **Shared or Joint-Use Parking Requirements**

5 GPDC 25.031(8) requires [t]he total requirements for off-street parking  
6 space shall be the sum of the requirements for the various uses, unless joint use  
7 of parking facilities can be established consistent with [GPDC] 25.032(3).” As  
8 we have already explained, intervenors are relying entirely on joint use of the  
9 existing parking on nearby tax lots to satisfy the parking requirements for the  
10 proposed hotel expansion. GPDC 25.032(3) imposes the following limitation  
11 on using a single parking space to meet the parking requirements of more than  
12 one use:

13 “The off-street parking requirements of two or more uses,  
14 structures or parcels of land may be satisfied by the same parking  
15 or loading space used jointly *to the extent that it can be shown by*  
16 *the owners or operators of the uses, structures or parcels that*  
17 *their operations and parking needs do not overlap in point of time.*  
18 If the uses, structures or parcels are under separate ownership, the  
19 right to joint use of the parking space must be evidenced by a  
20 deed, lease, contract or other appropriate written document to  
21 establish the joint use.” (Emphasis added.)

22 Petitioner argues that in addition to overstating the number of existing  
23 off-street parking spaces available for the proposed hotel to utilize to meet  
24 GPDC off-street parking requirements, the application and decision entirely fail  
25 to address the emphasized requirement above that the “operations and parking  
26 needs” of the proposed hotel addition and the other businesses that will

1 continue to use those same existing parking spaces “do not overlap in point of  
2 time.” Petitioner contends that given the nature of those existing businesses and  
3 the hotel, it is highly unlikely intervenors can make that showing.

4 We agree with petitioner that it was error for the city not to address and  
5 demonstrate that the proposal to share the existing parking with existing  
6 businesses on surrounding tax lots complies with the limitation imposed by  
7 GPDC 25.032(3). While we again stop short of concluding the city will not be  
8 able to do so, as a matter of law, the requirement in GPDC 25.032(3) steepens  
9 the already steep hill the city will have to climb to permit the applicant to rely  
10 entirely on sharing existing parking with the businesses on surrounding tax lots  
11 to meet the proposed hotel’s off-street parking obligation under the GPDC.

12 **C. GPDC Parking Area Design Standards and Screening and**  
13 **Buffering Standards**

14 **1. GPDC Article 25**

15 GPDC 25.034 requires that a parking lot plan accompany development  
16 permit applications, and requires that the parking lot plan be “drawn to scale”  
17 and “show all those elements necessary to indicate that the requirements of” the  
18 GPDC are met. Petitioner contends the parking plan submitted by intervenors’  
19 engineer “does not establish the parking space or aisle dimensions for the  
20 proposed parking areas,” as set out at GPDC 25.033(1).<sup>4</sup> Petitioner contends

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<sup>4</sup> GPDC 25.033(1) provides that a “Typical” “Parking Space Dimension” is “8 ½ feet by 20 feet[.]”

1 the parking plan also fails to show the GPDC 25.033(2) minimum aisle  
2 dimensions are satisfied or that adequate on-site turnarounds are provided, as  
3 required by GPDC 25.033(7).<sup>5</sup> Finally, petitioner contends the proposal  
4 violates GPDC 25.033(12) which prohibits access from a commercial use to a  
5 residential street unless a variance is approved.<sup>6</sup>

6 The parking plan submitted by intervenors' engineer is drawn to scale. It  
7 is not obvious to us that any necessary elements are missing, and petitioner  
8 does not identify which elements she thinks are missing. The parking spaces  
9 seem to have the dimensions required by GPDC 25.033(1) and the aisle widths  
10 required by GPDC 25.033(2). And it is not obvious to us how the proposal  
11 violates the GPDC 25.033(7) requirement for aisles or turnarounds so that  
12 "backing movements or other maneuvering within a street right-of-way" will

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<sup>5</sup> GPDC 25.033(2) refers to Sketch 25-1 and that sketch shows various aisle widths, depending on the design of the parking spaces.

GPDC 25.033(7) provides:

"Except for single-family and duplex dwellings, groups of more than two parking spaces shall be so located and served by an aisle or turnaround that their use will require no backing movements or other maneuvering within a street right-of-way, other than an alley."

<sup>6</sup> GPDC 25.033(12) provides, in part:

"Through access from a commercial use to a residential street is prohibited unless provided by variance or other authorized provision of this Code."

1 not be required. Finally, with regard to GPDC 25.033(12), while there is an  
2 existing access onto SE 8<sup>th</sup> Street, the challenged decision does not approve a  
3 new access onto SE 8<sup>th</sup> Street. Petitioner has not sufficiently developed her  
4 arguments regarding these GPDC requirements for LUBA review, and we do  
5 not consider them further. *Deschutes Development v. Deschutes Cty.*, 5 Or  
6 LUBA 218, 220 (1982)

7 **2. GPDC Article 23**

8 GPDC Article 23 sets out landscaping and buffering standards. One of  
9 the Parking and Loading Design Standards, GPDC 25.033(9), in certain  
10 circumstances requires landscaping, “in accordance with [GPDC] 23.035,” on  
11 the side of such parking that “adjoins residential zoned property.”<sup>7</sup> GPDC  
12 30.20 defines “adjoin” as the “[s]ame as adjacent.” GPDC 30.20 defines  
13 adjacent as “[c]ontiguous to a property boundary at a property line or property  
14 corner, or contiguous to a property line or corner as extended across an  
15 abutting right-of-way for an alley or street, as shown in Concept Sketch 30-  
16 Adjacent and Abutting.” According to the concept sketch, property directly  
17 across a right of way, while not qualifying as “[a]butting” to that property, does  
18 qualify as “[a]djoint” to that property. Therefore, as far as we can tell, the

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<sup>7</sup> GPDC 25.033(9) provides:

“Off-street parking and loading spaces in groups of more than four (4) shall be screened and buffered in accordance with [GPDC] 23.035, Type E Landscaping, on each side which adjoins residential zoned property.”

1 subject property adjoins the residentially zoned property located across SE 8<sup>th</sup>  
2 Street. Record 79; OS Exhibit 6.

3 As far as we can tell, GPDC 23.033(9) applies and the city erred by  
4 failing to address and demonstrate that intervenors' parking plan complies with  
5 GPDC 23.033(9). On remand the city must address this aspect of intervenors'  
6 plan.

7 For all of the reasons discussed above, and as limited in our discussion  
8 above, the first assignment of error is sustained.

## 9 **SECOND ASSIGNMENT OF ERROR**

10 In her second assignment of error, petitioner argues the city refused to  
11 impose conditions of approval that petitioner believes are necessary to (1)  
12 mitigate parking and traffic impacts, and (2) ensure the hotel will be  
13 compatible with adjacent development, because the city was under the  
14 mistaken impression that it lacked authority to impose such conditions of  
15 approval. Petitioner also argues the proposal violates GPDC building  
16 orientation requirements and setback requirements.

### 17 **A. Introduction**

18 The preface to petitioner's second assignment of error can be read to take  
19 the position that commercial development and residential development are  
20 inherently incompatible and that commercial development necessarily will have  
21 impacts on nearby residential development that invariably will require  
22 conditions of approval to mitigate.

1 To the extent that is petitioner’s position we reject it. The city’s  
2 authority and obligation to impose conditions of approval is guided by its  
3 authorization to impose such conditions of approval and whether the city  
4 determines conditions of approval are necessary to ensure compliance with  
5 approval standards. Commercial and residential development is not inherently  
6 incompatible.

7 **B. The City’s Authority to Impose Conditions of Approval**

8 As discussed below, the planning director advised the city council that it  
9 lacks authority to impose certain conditions of approval. Petitioner argues, and  
10 there can be no serious dispute, that the city has ample authority to impose  
11 conditions of approval, if it concludes that such conditions of approval are  
12 warranted or necessary to ensure a site plan complies with applicable approval  
13 criteria. GPDC 19.021(2) expressly states that one of the major functions of  
14 site plan review is to apply conditions to ensure development will not result in  
15 land use conflicts.<sup>8</sup> The site plan review criteria expressly authorize and  
16 require conditions of approval to mitigate potential conflicts. GPDC 19.052.<sup>9</sup>

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<sup>8</sup> GPDC 19.021(2) provides:

“In addition to determining compliance with development standards of [the GPDC], another major function of site plan review is to identify potential land use conflicts resulting from the proposed development, and mitigating those conflicts through specific conditions of development.”

<sup>9</sup> GPDC 19.052 provides, in part:

1 And finally, to the extent GPDC 19.021(2) and 19.052 left anything to the  
2 imagination, GPDC 19.053 provides: “To the extent necessary to satisfy the

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“Criteria for Approval. The Review Body shall approve, conditionally approve, or deny the request based upon the following criteria:

“\* \* \* \* \*

“(4) Potential land use conflicts have been mitigated through specific conditions of development.

“\* \* \* \* \*

“(8) The characteristics of existing adjacent development have been determined and considered in the development of the site plan. At a minimum, special design consideration shall be given to:

“(a) Areas of land use conflicts, such as more restrictive use adjacent or across street from proposal. Mitigate by orienting business operations away from use, additional setbacks, screening/buffering, landscaping, direct traffic away from use.

“(b) Setbacks. Where existing buildings are setback deeper than required by [the GPDC], new setbacks to be compatible.

“(c) Transitions between existing development and new development. New development should be consistent with the purpose statement of the base zone but also recognize compatibility with existing, adjacent development.

“\* \* \* \* \*

“(9) Traffic conflicts and hazards are minimized on-site and off-site, as provided in Article 27.”



1 criteria for site plan review, and to mitigate potential impacts to existing  
2 surrounding development, the site plan committee may impose any of the  
3 following as conditions of development \* \* \*.”

4       Following the quoted GPDC 19.053 text there are 18 different categories  
5 of conditions that may be imposed, including conditions to mitigate land use  
6 conflicts, GPDC 19.053(2), and to avoid traffic congestion, GPDC 19.053(10).  
7 The city has broad authority to impose conditions of approval in site plan  
8 review to avoid land use and traffic conflicts. That is not the same thing as  
9 saying the city is obligated to impose conditions of approval to mitigate any  
10 development impacts that a party believes constitute an incompatibility or land  
11 use conflict. But if the city council concludes that there is a land use or traffic  
12 conflict that merits imposition of a condition of approval, there is simply no  
13 question that the city has the authority to impose such mitigating conditions,  
14 subject of course to any limits imposed by the United States or Oregon  
15 Constitutions or other applicable law.<sup>10</sup>

16       **C.     Parking and Traffic Impacts**

17       Petitioner contends the city council should have imposed conditions of  
18 approval to mitigate traffic impacts on SE 8<sup>th</sup> Street “by for example, directing  
19 parking and traffic away from SE 8<sup>th</sup> Street and the residential neighborhood.”

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<sup>10</sup> For example, the needed housing statutes at ORS 197.303 to 197.309 limit a local government’s authority to impose conditions of approval on needed housing.

1 Petition for Review 31. During the March 15, 2017 city council hearing in this  
2 matter one of the city councilors asked if the city council had authority to  
3 impose conditions of approval to limit “impact on the neighborhood.” Petition  
4 for Review 32. Later the same city councilor asked if the city council could  
5 “impose parking limitations on 8<sup>th</sup> Street \* \* \* [o]r is that off-limits according  
6 to the criteria?” *Id.* The planning director advised the city council that it could  
7 not impose such conditions because the GPDC specifically allows use of on-  
8 street parking spaces to satisfy off-street parking requirements. *Id.* Although  
9 not clearly stated that advice apparently assumes the authority to impose  
10 conditions of approval does not go so far as conditioning approval to require  
11 the applicant to forgo doing something that is otherwise permitted by other  
12 GPDC requirements. If that was the basis for the planning director’s advice, it  
13 is erroneous. If, for example, the city council concluded intervenors should not  
14 be allowed to rely on on-street parking to avoid traffic conflicts, the city  
15 council could impose a condition that precluded or limited intervenors’ reliance  
16 on on-street parking, even if intervenors would otherwise be entitled under the  
17 GPDC to rely on such on-street parking.

18 We note that there is nothing in the decision itself that suggests the city  
19 council believed it lacked authority to impose conditions of approval to address  
20 perceived traffic or parking conflicts. Nevertheless, the city’s decision must be  
21 remanded for other reasons. On remand, the city council should determine if it  
22 agrees with petitioner that the proposal will result in potential conflicts that

1 warrant imposing a condition of approval to address. If the city council so  
2 concludes, it has authority to impose such conditions, subject as we have noted  
3 to any competing constitutional, statutory or local law requirements. The fact  
4 that the condition might limit parking on SE 8<sup>th</sup> Street that would be  
5 permissible under the GPDC, absent the city’s obligation under GPDC  
6 19.052(9) to minimize traffic conflicts, does not mean the city lacks authority  
7 to impose such a condition of approval, provided the city agrees the condition  
8 is necessary to minimize traffic conflicts.

9 **B. Design/Architecture**

10 The hearings officer imposed a condition to limit the height of the  
11 proposed hotel to 35 feet. Petitioner contends the 41-foot tall hotel that the city  
12 council approved will not be compatible with the surrounding neighborhood,  
13 which is generally developed with shorter buildings. Petitioner contends the  
14 decision “violate[s] GPDC 19.052(8), which requires that new development be  
15 designed to be compatible with the other commercial buildings abutting the  
16 subject property or the adjacent residential buildings.” Petition for Review 34.

17 While perhaps a technical point, GPDC 19.052(8) does not require that  
18 the proposed development be “compatible” with the surrounding  
19 neighborhood. What GPDC 19.052 requires is that the “characteristics of  
20 existing adjacent development have been determined and considered in the  
21 development of the site plan.” *See* n 9. It also requires that potential land use  
22 conflicts be mitigated in certain ways, without mentioning shortening building

1 heights. *Id.* But GPDC 19.052(4) broadly requires that the city mitigate  
2 “[p]otential land use conflicts” through “conditions of development.” *Id.* The  
3 city council addressed the building height issue under GPDC 19.052(4). If the  
4 city council concluded that the taller 41-foot building would create a “potential  
5 land use conflict,” we have no doubt it would have authority under GPDC  
6 19.052(4) to impose a condition that required the building to be shortened to  
7 avoid the potential land use conflict.

8         The exchange between the city attorney and the city council set out at  
9 Petition for Review 36-37 certainly suggests the city attorney advised, and the  
10 city council may have understood, that the city council lacked authority to  
11 require that the proposed hotel be shortened. But the findings the city adopted  
12 ultimately concluded that the reduction in height was not necessary to avoid a  
13 land use conflict:

14         “The development will not cause a new land use conflict. Any  
15 conflicts identified will be mitigated through the conditions of  
16 approval. The neighbors have objected to the height of the hotel  
17 which was reflected [sic] to be approximately 38 ft. The neighbors  
18 also contended that the structure will not be compatible with the  
19 area due to design. Several of the buildings noted are similar in  
20 height, construction (lodge style with pitched roof lines), and  
21 materials. Specifically, the Peoples Bank is actually taller than the  
22 proposed hotel and contains a third story area at 41 ft. in height.  
23 The Taprock Restaurant is 31.5 ft. high, plus has a 19 ft. lower  
24 ground level facing the river for a total of 40.5 ft. The Lovejoy  
25 Hospice office across the street is 30 ft. high, and the Hamilton  
26 House next door from the proposed hotel is 31 ft. high. Both  
27 structures are built similarly with pitched rooflines. The maximum  
28 height in the GC zone is 35 ft. with the allowance up to 51 ft. for  
29 gabled or hipped roof features with a pitch over 5:12 (Schedule

1 12-8). Due to the concerns expressed by the neighbors, the  
2 Hearings Officer stipulated a condition of approval that will  
3 require the overall height of the building not to exceed 35 ft.  
4 *However, the City Council found that there was adequate*  
5 *information to determine that the originally proposed height of*  
6 *approximately 41 ft. for the new structure would be compatible*  
7 *in scale and architecture with buildings reflected in the aerials*  
8 *and photographs included in the various exhibits.”* Record 32  
9 (emphasis in original).

10 Because the city council ultimately decided the shorter hotel structure  
11 was not necessary to avoid a land use conflict, and explained its reasoning in  
12 reaching that conclusion, we see no error in failing to impose a condition of  
13 approval to require a shorter hotel building. Petitioner is free to disagree with  
14 the city council about whether the 41-foot hotel will result in a land use  
15 conflict, but that is a subjective determination and based on the record in this  
16 appeal the city council was well within its discretion to conclude the 41-foot  
17 high hotel will not result in a land use conflict with surrounding buildings and  
18 uses.

### 19 **C. Building Entrance Orientation**

20 GPDC 20.405 sets out architectural standards for “Building Entrances[.]”

21 GPDC first sets out “Principles.” One of those principles is set out below:

22 *“Buildings should orient entrances toward the public right-of-*  
23 *way. However, when entrances are oriented internal to the site,*  
24 *the design of the building facing the public right-of-way should*  
25 *present a ‘face’ through the use of a corner entrance,*  
26 *architectural treatment, presence of windows, or other features.*  
27 *The side of the building facing the street should not have the*  
28 *appearance of a service area or service entrance.”* (Italics in  
29 original.)

1 The GPDC 20.405 “Principles” are followed by two “Standards,” which are set  
2 out below:

3 “(1) When a building abuts a public sidewalk or exterior front or  
4 side landscaped front yard, it is **recommended, but not**  
5 **required**, that at least one public or main entrance should  
6 be oriented to the public sidewalk, as well as the primary  
7 public parking area, so the entrance abuts the public  
8 sidewalk or landscaped front yard with a direct pedestrian  
9 path to the public sidewalk. *See Figure 20-14.*

10 “(2) Buildings shall have sheltering elements to provide  
11 protection from the weather at primary or public entrances.  
12 Sheltering elements shall provide a covered area at least five  
13 feet deep.” (Figure omitted; emphases in original).

14 Petitioner contends the hotel will not be oriented toward a public right of  
15 way and does not present a “face” toward a public right of way as described in  
16 the second sentence of the above-quoted principle.

17 We are not sure what to make of GPDC 20.405. The “principle” that  
18 petitioner is relying on is worded as alternative “shoulds.” It is not entirely  
19 clear to us whether either alternative is mandatory under the GPDC 20.405  
20 principle. *See Standard Insurance Co. v. Washington County*, 16 Or LUBA 30,  
21 38 (1987) (spacing criterion that is not worded in mandatory terms is correctly  
22 interpreted not be a mandatory standard). The two “Standards” are clear  
23 examples of a nonmandatory consideration (Standard 1) and a mandatory  
24 requirement (Standard 2). On remand, the city council must first address  
25 whether the cited principle states *mandatory* alternatives and, if so, the city  
26 council must ensure that one of those mandatory alternatives is satisfied.

1           **D.     Setbacks**

2           GPDC 19.052(8)(b) requires that “[w]here existing buildings are set back  
3 deeper than required by [the GPDC], new setbacks [must] be compatible.”  
4 Petitioner contends the hotel addition is not set back as deeply as the existing  
5 convention center or the buildings to the north and south. There is no question  
6 that the proposed hotel would be located closer to SE 8<sup>th</sup> Street than the  
7 existing convention center and the buildings to the north and south. The  
8 question under GPDC 19.052(8)(b) is whether the different hotel setback is  
9 “compatible” with the other setbacks. On remand the city council must address  
10 that question.

11           **THIRD ASSIGNMENT OF ERROR**

12           As previously noted, SE 8<sup>th</sup> Street is a residential street. It dead ends at  
13 the Rogue River a short distance south of the proposed hotel, and intersects  
14 with M Street at an uncontrolled intersection a short distance north of the  
15 proposed hotel. Petitioner contends the existing traffic situation on SE 8<sup>th</sup>  
16 Street is hazardous, and the hotel traffic impacts will only make the traffic  
17 situation worse. Petitioner contends difficulties with north/south connectivity  
18 for the existing parking lots will force traffic onto SE 8<sup>th</sup> Avenue to travel  
19 between the parking on the north and south sides of the block.

20           **A.     Access**

21                   **1.     Direct Access to Arterials**

22           GPDC 27.121(11)(h) provides, in part:

1           “Access to Arterials and Collectors.

2           “(1) Direct access to arterial streets and collector streets shall be  
3           avoided wherever practical. An encroachment permit to  
4           allow private direct access onto an arterial street shall be  
5           granted by the City Engineer only after all other reasonable  
6           options are explored. The number of access points on  
7           arterial and collector streets shall be minimized whenever  
8           possible through the use of driveways common to more than  
9           one development and through interior circulation design to  
10          further this requirement. Any public or private road  
11          approach onto a state facility must be consistent with the  
12          spacing and permit standards of the Access Management  
13          Oregon Administrative Rule [(OAR)] 734-051.

14          “\* \* \* \* \*

15          “(4) Each parcel shall be allowed no more than one direct access  
16          driveway, regardless of the size of the property or the linear  
17          feet of frontage, unless a variance is granted by the review  
18          body based on a traffic analysis report and the criteria in  
19          Article 6.”

20          There are four existing access points from the property onto SE 7<sup>th</sup> Street  
21          (State Highway 99), which as previously noted is an arterial. We understand  
22          petitioner to argue those four accesses violate the GPDC 27.121(11)(h)(1)  
23          requirement that accesses to arterials be “avoided wherever practical” and the  
24          two accesses onto SE 7<sup>th</sup> Street from TL 3800 violate GPDC 27.121(11)(h)(4).  
25          Petitioner also suggests the four access points may not be consistent with “the  
26          spacing and permit standards of OAR 734-051.” Petition for Review 44.

27          It is not at all clear to us how GPDC 27.121(11)(h)(1) and (4) apply to a  
28          site with previously existing access to arterial streets where the site is to be



1 developed in a way that likely will increase use of those access points. On  
2 remand, the city council must address that question.

3 **2. Through Access From and Arterial to a Residential**  
4 **Street**

5 Another subsection of GPDC 27.121(11)(h) provides, in part:

6 “(8) Where a development abuts or contains an existing or  
7 proposed arterial street, the development design shall  
8 provide adequate protection for residential properties and  
9 shall separate residential access from through traffic, or if  
10 separation is not feasible, the design shall minimize the  
11 traffic conflicts. The design requirements may include any  
12 of the following:

13 “\* \* \* \* \*

14 “(iv) Adequate on-site turnaround for lots having direct  
15 access.”

16 Petitioner contends that intervenors’ parking plan will not separate  
17 residential properties from through traffic and petitioner questions whether the  
18 turnaround on TL 3800 will actually permit on-site turnarounds. Petitioner  
19 contends the parking plan will result in unmitigated traffic and parking  
20 conflicts on SE 8<sup>th</sup> Street. Again, petitioner complains that the planning  
21 director advised the city council it was without power to impose conditions to  
22 mitigate traffic and parking conflicts on SE 8<sup>th</sup> Street.

23 As was the case with GPDC 27.121(11)(h)(1) and (4), it is not clear to us  
24 how GPDC 27.121(11)(h)(8) applies to developed parcels that are being  
25 redeveloped without adding new access points. The city council must address  
26 that question on remand. In doing so, and in considering any related traffic

1 conflicts the city council may identify, we again note the city council does not  
2 lack authority to impose any conditions of approval it may believe are  
3 warranted to mitigate any such identified traffic conflicts, with the previously  
4 mentioned caveats regarding constitutional and other legal requirements that  
5 may limit the city council’s authority to impose conditions.

6 **B. Internal Circulation**

7 Petitioner first makes an additional, nuanced argument under GPDC  
8 27.121(11)(h)(1) that the “interior circulation design” in the proposed plan will  
9 not work as intended and therefore will not further the policy in GPDC  
10 27.121(11)(h)(1) to minimize access onto arterials and protect residential areas  
11 from through traffic. We have already concluded that the city council must  
12 determine whether the parking plan complies with the arterial access limits  
13 imposed by GPDC 27.121(11)(h)(1). That determination must also include  
14 consideration of the efficacy of the interior circulation design to further the  
15 central purpose of GPDC 27.121(11)(h)(1), which is to minimize direct access  
16 to arterial and collector streets.

17 Petitioner makes an additional argument that the parking plan does not  
18 comply with GPDC 27.321(3), which requires that pedestrian ways are to be  
19 provided “[t]o connect to potential walkway locations on adjoining properties  
20 to create an integrated internal walkway system along desired lines of  
21 pedestrian travel.” As conditioned, the challenged decision requires “[a]  
22 walkway between the shared parking on the Hamilton House lot to the hotel, to

1 include lighting of the pedestrian access way.” Record 34. Petitioner makes  
2 no attempt to explain why that condition is inadequate to ensure the parking  
3 plan complies with GPDC 27.321(3). Petitioner’s argument concerning GPDC  
4 27.321(3) is not sufficiently developed and for that reason we do not consider it  
5 further.

6 The third assignment of error is sustained in part.

7 **FOURTH ASSIGNMENT OF ERROR**

8 The challenged decision imposes a condition of approval that must be  
9 satisfied within 18 months after the decision to limit use of the Event Center:

10 “2. Provide a written statement from the property owner  
11 acknowledging the stipulated condition that the  
12 event/meeting area will be used only for the exclusive use of  
13 the hotel patrons and their guests.” Record 34 (boldface,  
14 italics, and strikeout text omitted).

15 The decision includes an additional, similar condition that must be satisfied  
16 prior to issuance of a certificate of completion:

17 “24. As stipulated, use of the event/meeting area is hereby  
18 limited to the exclusive use of the hotel patrons and their  
19 guests. No outside events are permitted under this review.”  
20 Record 38 (boldface, italics, and strikeout text omitted).

21 We agree with petitioner that the conditions are stated a bit oddly, no  
22 doubt due to the way the conditions came about—as a stipulation by the  
23 applicant. But we reject petitioner’s contention that the condition “violates  
24 [GPDC] 19.052,” which authorizes imposition of conditions of approval.  
25 Petition for Review 49.

1           Petitioner also suggests condition 2 was adopted to comply with the  
2 minimum parking standards set out in GPDC 25. But as we explained in our  
3 discussion of the first assignment of error, that is not the case. Rather the city  
4 council improperly looked to the APA Parking Standards to compute the  
5 number of parking spaces required for the Event Center, instead of basing the  
6 required number of Event Center parking spaces on “the most comparable  
7 building or use specified” in GPDC 25.042, as required by GPDC 25.035(2). It  
8 appears the conditions were imposed to address the more general obligation the  
9 city has to minimize traffic conflicts under GPDC 19.052(9). Record 33.

10           Petitioner cites to an exchange between a city councilor, the planning  
11 director and intervenors’ engineer to argue that the condition is unenforceable,  
12 citing *Sisters Forest Planning Committee v. Deschutes County*, 198 Or App  
13 311, 108 P3d (2005). While there can always be problems with enforcement of  
14 permit conditions of approval, we see no reason why enforcement action could  
15 not be taken if outside events are allowed to use the Event Center or if events  
16 that are marketed to the general public are allowed to use the Event Center.  
17 The condition at issue in *Sisters Forest Planning Committee* simply referred to  
18 a list of recommendations, some of which were worded merely as strong  
19 considerations. *Id.* at 317. The condition in this case is far more objective and  
20 enforceable.

21           Finally, petitioner argues the evidentiary record does not support the city  
22 council’s conclusion that the condition will reduce parking demand. As

1 already noted, the record shows the condition was imposed to address concerns  
2 that the hotel and event center would create traffic conflicts and hazards, which  
3 GPDC 19.052(9) requires to be mitigated. *See* n 9. A reasonable decision  
4 maker could conclude that a 3,050-square foot Event Center that is marketed to  
5 both hotel patrons and to the general public would generate larger events, with  
6 far more event attendees, and more traffic and parking demand from off-site  
7 than an Event Center that is limited to hotel patrons and their guests. We reject  
8 petitioner's substantial evidence challenge to the city council's conclusion that  
9 the condition will reduce parking demand.

10 The fourth assignment of error is denied.

11 The city's decision is remanded.