

BEFORE THE LAND USE BOARD OF APPEALS  
OF THE STATE OF OREGON

DENNIS TYLKA,  
*Petitioner,*

vs.

CLACKAMAS COUNTY,  
*Respondent.*

LUBA No. 2023-004

FINAL OPINION  
AND ORDER

Appeal from Clackamas County.

Andrew Mulkey filed the petition for review and reply brief and argued on behalf of petitioner.

Nathan K. Boderman filed the respondent's brief. Also on the brief was Stephen L. Madkour. Stephen L. Madkour argued on behalf of respondent.

RUDD, Board Member; RYAN, Board Chair; ZAMUDIO, Board Member, participated in the decision.

AFFIRMED

07/03/2023

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

**NATURE OF THE DECISION**

Petitioner appeals the board of commissioners' adoption of an ordinance amending the Clackamas County Zoning and Development Ordinance (ZDO) to authorize the short-term rental use of dwelling units and guest houses on nonresource land.

**FACTS**

The challenged decision is the county's decision on remand from *1000 Friends of Oregon v. Clackamas County*, \_\_\_Or LUBA \_\_\_ (LUBA No 2021-003, Jan 24, 2022), *aff'd*, 320 Or App 444, 514 P3d 553 (2022) (*1000 Friends*). On December 17, 2020, the board of commissioners adopted Ordinance ZDO-273, amending the ZDO to authorize the short-term rental use of dwelling units and guest houses. In *1000 Friends*, we remanded Ordinance ZDO-273, in part, because the county failed to adequately address the Clackamas County Comprehensive Plan (CCCP) policies related to housing affordability. As we explain in more detail below, the county subsequently amended the CCCP in ways that are relevant to this appeal.

On December 8, 2022, the board of commissioners adopted "Ordinance No. ZDO-273, on remand," explaining:

"[T]he county revised the proposed ZDO amendments to address the issues identified in the Assignments of Error and included those proposed amendments in ZDO-273, on remand; and

"\* \* \* [T]he proposed ZDO amendments and the findings included

1 in Exhibit B *Findings in Response to Remand at LUBA No. 2021-*  
2 *003* effectively address the Assignments of Error included in the  
3 remand from LUBA[.]” Record 1 (italics in original).

4 This appeal followed.

5 **FIRST ASSIGNMENT OF ERROR**

6 ORS 197.175(2)(d) provides that, where a county’s comprehensive plan  
7 has been acknowledged by the Land Conservation and Development  
8 Commission, the county shall make land use decisions in compliance with the  
9 acknowledged plan. Petitioner’s first assignment of error is that the county’s  
10 decision is not in compliance with the CCCP because it conflicts with the purpose  
11 of and policies underlying numerous housing goals and policies therein. Petition  
12 for Review 6. As required by ORS 197.835(7)(a), we will reverse or remand an  
13 amendment to a land use regulation or the adoption of a new land use regulation  
14 if the regulation is not in compliance with the county’s comprehensive plan.

15 **A. First Subassignment of Error - Consideration of Applicable**  
16 **Goals and Policies**

17 Subsequent to our decision in *1000 Friends*, on June 2, 2022, the county  
18 adopted Ordinance ZDO-282, amending, among other things, CCCP chapter 6,  
19 which governs housing. App to Petition for Review 59-60. CCCP chapter 1,  
20 which is the CCCP’s introductory section, explains that the CCCP “is an official  
21 policy statement of the County” and that the goals and policies in the CCCP  
22 “direct future decisions on land use actions, ordinance amendments, zone  
23 changes, capital expenditures, procedures, and programs.”

1 CCCP Housing Goal 2 is to “[e]ncourage development that will provide a  
2 range of choices in housing type, density, and price throughout the County.”

3 Under CCCP Housing Goal 2 are 11 “Housing Type” policies. These include:

4 “6.B.1 Enable a range of housing types throughout the county in a  
5 range of zoning districts.

6 “\* \* \* \* \*

7 “6.B.3 Allow middle housing in urban, low density residential  
8 areas.

9 “\* \* \* \* \*

10 “6.B.6 Provide for increased capacity for multifamily development  
11 in the urban area.”

12 Also under CCCP Housing Goal 2 are nine “Housing Affordability” policies.

13 These include:

14 “6.C.1 Encourage more affordable housing by allowing for a  
15 variety of housing densities and price ranges throughout the  
16 county.

17 “6.C.2 Allow for rental units with a variety of size, location and  
18 accessibility.”

19 CCCP Housing Goal 3 is to “[p]rovide housing opportunities that meet the  
20 economic, social, and cultural needs of community members while using energy,  
21 land, and public facilities as efficiently as possible.” Under CCCP Housing Goal  
22 3 are 12 “Livability” policies. These include:

23 “6.D.5 Provide for a variety of middle housing opportunities that  
24 meet the design standards that apply in existing, urban  
25 residential neighborhoods.

1           “6.D.6 Allow greater flexibility for duplexes, triplexes, and  
2           quadplexes in the urban area.”

3   Petitioner argues that the county’s decision conflicts and is inconsistent with the  
4   purpose of and policies underlying CCCP Housing Goals 2 and 3 and CCCP  
5   Policies 6.B.1, 6.B.3, 6.B.6, 6.C.1, 6.C.2, 6.D.5, and 6.D.6, quoted above.  
6   Petition for Review 11-12. Petitioner contends that, by allowing the use of  
7   residential dwellings as short-term rentals (STRs), the county has made housing  
8   less available for long-term use and undermined the cited housing policies. *Id.* at  
9   13.

10          Petitioner argues, in part:

11          “Although the county issued findings related to the possible effect  
12          of its zoning ordinance on the affordability of housing, the decision  
13          and record are not sufficient to demonstrate that the county  
14          adequately or fully considered the considerations required by  
15          chapter 6. In its findings related to policies 6.C.1 and 6.C.2, the  
16          county erred by focusing solely on [STRs’] potential effect on  
17          housing affordability and failing to consider the ordinance’s effect  
18          on the *availability* of housing.” *Id.* at 17-18 (emphasis in original;  
19          citation omitted).

20          Petitioner maintains that the “availability” of housing is identified as an  
21   issue multiple times in CCCP chapter 6 and that one purpose of the cited policies  
22   is to make housing available for ownership and long-term rental. CCCP chapter  
23   6 states, “The [board of commissioners] initiated the production of a countywide  
24   Housing Needs Analysis, which was completed in 2019 and compared expected  
25   housing demand with *available* land supply over 20 years.” CCCP 6-2 (emphasis  
26   added). CCCP chapter 6 also states, “Throughout the County, there is a need to

1 have housing *available* where people live and work. Having a range of housing  
2 types and prices will help to alleviate the deficit of land that exists to  
3 accommodate the needed future housing supply.” CCCP 6-4 (emphasis added).  
4 Petitioner argues that allowing STRs undermines the county’s residential zones,  
5 which are meant to assure that affordable dwelling units are available. Petitioner  
6 argues that middle housing and multi-family housing that is developed will not  
7 be available for long-term renters if they are utilized as STRs. Petition for Review  
8 15-16. Petitioner maintains that the objective of allowing for rental units with a  
9 variety of sizes, locations, and accessibilities is undermined by allowing STRs  
10 because these units will not be available for longer-term use. In sum, petitioner  
11 argues that the purpose of encouraging more affordable housing by allowing for  
12 a variety of housing densities in a variety of locations and at a variety of price  
13 ranges is thwarted if the units can be rented on a short-term basis. Petitioner  
14 argues that the county appointed a task force to research and recommend new  
15 policies and strategies to address housing affordability and homelessness and that  
16 the top issues identified by the task force included the availability of affordable  
17 housing. *Id.* at 14-15. According to petitioner, “[t]he housing need does not  
18 include and chapter 6 was not intended to accommodate vacationers,” and “the  
19 county erred by focusing solely on [STRs’] potential effect on housing  
20 affordability and failing to consider the ordinance’s effect on the *availability* of  
21 housing.” *Id.* at 16-17, 18 (emphasis in original).

22 The county responds:

1       “Petitioner misreads [the cited] goals and policies to require  
2       something they do not. The CCCP goals and policies cited by  
3       Petitioner require the County to include measures in its land use  
4       regulations that ensure opportunities are available for prospective  
5       development and redevelopment and that will minimize barriers to  
6       developing higher-density housing development.” Respondent’s  
7       Brief 7-8.

8       The county explains, and we agree, that it is apparent that several of the cited  
9       goals and policies do not apply to the county’s decision, specifically the Housing  
10      Type and Livability policies. *Id.* at 6-7. As the county expounds, “Housing Goals  
11      2 and 3, and the implementing policies cited in Section 6.B and 6.D, ensure that  
12      the County is providing measures to the land use regulations to provide zones  
13      and opportunities to accommodate diversified housing opportunities.” *Id.* at 7.  
14      These policies, the county argues, are not “a moratorium on any land use  
15      regulations that might, in particular cases, make certain dwelling units less  
16      available to longer term occupants.” *Id.* at 8. We agree with the county that these  
17      policies do not require the county to ensure that developed units are available for  
18      long-term occupancy. These policies require that the county facilitate housing  
19      development.

20       Again, on June 2, 2022, the county adopted Ordinance ZDO-282,  
21      amending, among other things, CCCP chapter 6. As the county explained in its  
22      findings adopting Ordinance ZDO-273, on remand, “since the adoption of ZDO-  
23      273 in December of 2020, the county substantially revised Chapter 6 of the Plan  
24      and adopted a number of amendments to the ZDO to allow for more opportunities

1 for the development of housing, including more affordable housing.” Record 264.

2 Included in the recitals for Ordinance ZDO-282 are:

3 “WHEREAS, the Clackamas County *Housing Needs Analysis*  
4 (*HNA*), completed in 2019 at the direction of the Clackamas County  
5 Coordinating Committee (C4), the Board of County Commissioners  
6 (Board), and County Administration, found that housing in the  
7 county has become less affordable and that over the next 20 years  
8 there is expected to be a deficit of available residential land for as  
9 many as 5,000 dwelling units in the urban unincorporated area; and

10 “WHEREAS, the *Housing Affordability and Homelessness Task*  
11 *Force*, appointed by the Board in 2018, recommended actions the  
12 county can take to address housing affordability issues, including  
13 strategies related to funding, housing services and housing supply;  
14 and

15 “WHEREAS, the Board’s *Performance Clackamas* strategic plan  
16 identified a five-year goal for the Department of Transportation &  
17 Development to provide zoning/places for 700 new dwelling units  
18 affordable to households from 60% to 110% of the area’s median  
19 income (AMI); and

20 “\* \* \* \* \*

21 “WHEREAS, the Planning & Zoning Division, at the direction of  
22 the Board, initiated a three-phased project to consider amendments  
23 to the [ZDO] to provide more opportunities for housing  
24 development in unincorporated Clackamas County and to address  
25 changes required by [House Bill 2001 (2019), Senate Bill 458  
26 (2021), and House Bill 4064 (2022).]” App to Petition for Review  
27 59 (*italics in original*).

28 The Housing Type and Housing Affordability policies identified by petitioner  
29 implement the county’s goals to provide housing by increasing quantity and  
30 development opportunity. Petitioner argues that these strategies may be less



1 effective if the units can be rented out on a short-term basis. That may be true,  
2 but the county is entitled to decide to achieve its objectives by focusing on  
3 development tools, and the CCCP's text does not require the county to conclude  
4 that STRs are inconsistent with the applicable goals and policies.

5 With respect to the Livability policies, petitioner argues that the use of  
6 dwelling units, including those in duplexes and triplexes, as STRs is an inefficient  
7 use of energy, land, and public facility resources and that allowing these uses in  
8 residential zones "does not efficiently meet the desire to provide short-term  
9 accommodations." Petition for Review 17. Instead, petitioner argues that the  
10 county has allowed "what is in effect dispersed hotel rooms across the county's  
11 residential zones." *Id.* Petitioner also argues that allowing STRs undermines the  
12 efficiency of zones meant to provide affordable housing. *Id.*

13 Again, we agree with the county that the Livability policies do not apply  
14 to the decision. CCCP Housing Goal 3 is to provide housing opportunities  
15 meeting community members' economic, social, and cultural needs while using  
16 energy, land, and public facilities as efficiently as possible. The implementing  
17 Livability policies identified by petitioner are to provide a variety of middle  
18 housing opportunities that meet applicable design standards and to allow greater  
19 flexibility for duplexes, triplexes, and quadplexes in the urban area. These  
20 policies focus on providing development opportunities, and nothing in the  
21 language of these policies prohibits the challenged code amendments.

1       Petitioner also cites the “Houselessness” policies under CCCP Housing  
2   Goal 1, which address housing availability for individuals moving from  
3   houselessness to stable housing through short- and long-term options. Petitioner  
4   states that the decision does not address CCCP Housing Goal 1 or the  
5   implementing Houselessness policies, but it is not clear whether petitioner is  
6   simply pointing this out or arguing that the county erred. Petition for Review 12-  
7   13. CCCP Housing Goal 1 is to “[m]eet the needs of the County houseless  
8   population through a variety of short and long-term options.” CCCP chapter 6  
9   explains:

10       “Over the last several years, the cost of living has outpaced wage  
11       growth across the nation and in the County. As rent and  
12       homeownership become less affordable, the risk of becoming  
13       houseless increases. Meeting the needs of the county’s houseless  
14       population will require coordination between several county  
15       departments to ensure that safe, affordable shelter place, as well as  
16       the services necessary to help the houseless transition to more  
17       permanent housing can be provided.” CCCP 6-3.

18       Petitioner argues:

19       “The county’s goal and policies do not include [STRs] for  
20       vacationers who have a primary residence elsewhere and rent rooms  
21       or dwelling units subject to the transient room tax. The county’s  
22       decision to allow [STRs] in dwellings was not intended to address  
23       and does not address the issues covered by chapter 6, goal 1 or the  
24       policies in 6.A.” Petition for Review 13.

25       We agree with the county that the Houselessness policies do not apply to  
26   the decision. Respondent’s Brief 8-9. Any challenge by petitioner to compliance

1 with these policies inserts what is not there, contrary to ORS 174.010.<sup>1</sup>  
2 Petitioner's argument that the county was required to consider these policies  
3 when adopting Ordinance ZDO-273, on remand, requires us to insert a policy  
4 providing that the county will address houselessness by prohibiting STRs. The

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<sup>1</sup> ORS 174.010 provides:

"In the construction of a statute, the office of the judge is simply to ascertain and declare what is, in terms or in substance, contained therein, not to insert what has been omitted, or to omit what has been inserted; and where there are several provisions or particulars such construction is, if possible, to be adopted as will give effect to all."

The Houselessness policies are:

"6.A.1 Support regional programs and the County's Public Housing Program as a means to provide more low- and moderate-income housing.

"6.A.2 Give priority for relocation into public housing to low-income residents displaced by development.

"6.A.3 Develop and support a full spectrum of shelter and housing options (e.g., emergency shelters, transitional shelters, and public housing) that assist individuals in moving from houselessness to stable, long-term housing solutions.

"6.A.4 Collaborate with community partners to provide a continuum of supportive services and programs that address the needs of unhoused persons and families to assist in their transition to more permanent housing solutions.

"6.A.5 Ensure the [ZDO] allows for places to develop temporary shelters, alternative shelter models, and other transitional housing types."

1 Houselessness policies address shelter space and transition services, and we do  
2 not address them further.

3 Petitioner argues, and we agree, that, “[a]lthough ‘[c]omprehensive plan  
4 goals and policies often contain competing policy objectives’ and a local  
5 government ‘is generally entitled to balance competing policies,’ a local  
6 government errs if it ‘failed to meaningfully consider a reasonably specific and  
7 pertinent goal or policy.’” Petition for Review 8 (quoting *Chapman Point*  
8 *Homeowners Assoc. v. City of Cannon Beach*, \_\_\_ Or LUBA \_\_\_, \_\_\_ (LUBA  
9 Nos 2020-043/044, Mar 2, 2021) (slip op at 12-13). The county is required to  
10 consider applicable comprehensive plan policies when adopting a new land use  
11 regulation. However, in adopting Ordinance ZDO-273, on remand, the  
12 Houselessness policies, as written, do not require the county to evaluate whether  
13 the development of STRs might reduce the inventory of available long-term  
14 housing to a greater extent than the county did.

15 CCCP chapter 6 states:

16 “Meeting the future housing needs and desires of residents will  
17 require the County to allow for new housing types and densities. A  
18 wider range of housing prices can be encouraged by providing a  
19 greater variety of lot sizes and more opportunities for the  
20 development of a range of housing sizes and types. Providing more  
21 opportunities for the development of multifamily dwellings and  
22 other alternative housing forms are needed to house the young, the  
23 elderly, and lower-income households who may prefer, or only be  
24 able to afford, housing types other than detached single-family  
25 homes. And as the current housing stock ages and redevelopment  
26 takes place, regulations pertaining to density, design and

1 accessibility will shape neighborhoods and the county.” CCCP 6-1.  
2 CCCP chapter 6 also states, “Throughout the County, there is a need to have  
3 housing available where people live and work. Having a range of housing types  
4 and prices *will help* to alleviate the deficit of land that exists to accommodate the  
5 needed future housing supply.” CCCP 6-4 (emphasis added). The chapter goes  
6 on to state, “Economic, social, and cultural perspectives influence the aspects of  
7 the built environment that create welcoming and livable communities.” CCCP 6-  
8 5. The Housing Type, Housing Affordability, and Livability policies focus on  
9 quantity, affordability, and diversity of housing. We do not agree with petitioner  
10 that the county failed to *meaningfully consider a reasonably specific and*  
11 *pertinent goal or policy*. A general strategy to make it easier to build dwelling  
12 units does not translate to a requirement that the county protect or preserve  
13 dwelling units for long-term occupancy or ensure that a certain number of  
14 dwelling units be available for long-term occupancy. Further, interpreting  
15 policies using words like “encourage” and “provide opportunity” to require  
16 protection or preservation of units gives the policies more weight than their  
17 language supports.

18 LUBA must affirm a governing body’s interpretation of its own  
19 comprehensive plan provision if the interpretation is not inconsistent with the  
20 provision’s express language, purpose, or underlying policy. ORS 197.829(1).<sup>2</sup>

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<sup>2</sup> ORS 197.829(1) provides:

1 The test under ORS 197.829(1) is not whether the interpretation is correct, or the  
2 best or superior interpretation, but whether the governing body's interpretation is  
3 "plausible," given its text and context. *Siporen v. City of Medford*, 349 Or 247,  
4 243 P3d 776 (2010). The county interpreted the policies to require that it address  
5 housing affordability by facilitating development opportunities as opposed to  
6 petitioner's suggestion that it do so by protecting dwelling units for long-term  
7 use. The county's implied interpretation of the goals and policies is that they are  
8 not concerned with either specific numbers of units or the use of those units. That  
9 interpretation is plausible, and we defer to it.

10 Furthermore, as discussed in the second subassignment of error, the county  
11 considered the potential impact of STRs on housing availability:

12 "Potential impacts to affordable housing were considered

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"[LUBA] shall affirm a local government's interpretation of its comprehensive plan and land use regulations, unless [LUBA] determines that the local government's interpretation:

- "(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; or
- "(d) Is contrary to a state statute, land use goal or rule that the comprehensive plan provision or land use regulation implements."

1 throughout the life of the larger STR project (which began in 2019).  
2 Although there has been anecdotal evidence questioning if increased  
3 rental income generated from running an STR, in lieu of a traditional  
4 long-term rental, has [motivated] some owners to not pursue long-  
5 term rental as an option, it is important to note the following:

6 “a. There are currently estimated to be as many as 1,000 STRs  
7 operating in the unincorporated area of the county, the  
8 majority of which are in the resort areas of Mt. Hood, where  
9 a large portion of the housing stock is vacation homes rather  
10 than primary residences for owner or renter occupancy; and

11 “b. Based on the county’s housing needs analysis (completed in  
12 2019), there are approximately 62,000 dwelling units in the  
13 unincorporated area of the county, meaning that only  
14 approximately 1.5% of the current housing stock in the  
15 unincorporated area are STRs.” Record 264-65.

16 The county found that, even if one were to assume that STRs could have an  
17 impact on housing affordability,

18 “this conclusion would not necessarily mean that allowing STRs is  
19 contrary to the county’s affordable housing policies. The county’s  
20 policies, noted above, reference allowing for and encouraging the  
21 development of a variety of housing types in a variety of locations  
22 and at a variety of price points. The county has elected to address  
23 these policies through more direct means that would have a greater  
24 impact on affordability, such as:

25 “o creating more opportunities for the development of a greater  
26 variety of housing;

27 “o providing more incentives for the development of affordable  
28 housing; and

29 “o amending zoning regulations to help make the development  
30 of affordable housing more financially feasible in appropriate  
31 locations near services and transit.

1 “Along those lines, and as noted above, the county substantially  
2 revised Chapter 6 of the Plan and adopted a number of amendments  
3 to the ZDO to allow for more opportunities for the development of  
4 housing, including more affordable housing.” Record 265.

5 The county explains that the fact that it focused more on affordability than  
6 availability is consistent with how often those terms are used in the CCCP.  
7 Respondent’s Brief 14. The county maintains, “Petitioner fails to raise any  
8 particularly unique issues that would implicate housing affordability or  
9 availability as it relates to the provision of middle-housing or homeless shelters  
10 that the [board of commissioners] did not already consider in the context of its  
11 broader housing findings.” *Id.* at 15. The county explains:

12 “The [board of commissioners] interprets its housing policies, like  
13 CCCP Section 6.C.1 and 6.C.2, to be general requirements which  
14 are not violated so long as the amendment does not undermine or  
15 interfere with initiatives that the County is taking to implement the  
16 policies through other means, notwithstanding the possibility that  
17 STRs could have incremental impacts on housing. This  
18 interpretation is well within the deference the [board of  
19 commissioners] must be given under ORS 197829 and *Siporen*  
20 \* \* \*.” *Id.* at 18-19.

21 The county considered the impact of STRs on housing availability.

22 The first subassignment of error is denied.

23 **B. Second Subassignment of Error - Adequate Factual Base**

24 The county concluded that “the relevant affordable housing policies” in  
25 CCCP chapter 6 were CCCP Policies 6.C.1 and 6.C.2. Record 264. In addressing  
26 these policies, the county found:

27 “Several national studies have considered impacts of STRs on the



1 price of housing. Most conclude that STRs, on average, may have a  
2 minimal impact to home prices. As noted in the Wall Street Journal  
3 article, *[STRs] Have Modest Impact on Home Prices, Study*  
4 *Suggests*, a report by Oxford Economics found that *[STRs] haven't*  
5 *significantly contributed to the rise in American housing costs*. This  
6 report found *that over a four-year period only 0.2 percentage points*  
7 *of the 4.3% rise in inflation-adjusted rent could be attributed to the*  
8 *effects of [STRs]*. For home sales, the increase amounts to less than  
9 \$9 on the average monthly payment.

10 “On a more local level, evidence from Clatsop County suggests  
11 STRs do not have a discernable impact on housing prices. A May  
12 2022 report compiled from [STR] data in Clatsop County found that  
13 the data *demonstrates that there is not a correlation between the*  
14 *issuance of [STR] permits and housing prices*.

15 “The Board finds this evidence to be credible, and indicative that  
16 STRs have a *de minimis* impact on home prices and housing  
17 affordability in Clackamas County.” Record 265 (emphases in  
18 original; underscoring added).

19 Petitioner argues that the evidence relied upon by the county as support for  
20 its conclusion that Ordinance ZDO-273 will not have a large impact on housing  
21 affordability is inadequate. Petition for Review 18-19. Statewide Planning Goal  
22 2 (Land Use Planning) requires that legislative land use decisions be supported  
23 by an “adequate factual base.” An “adequate factual base” is an evidentiary  
24 standard that is equivalent to the requirement that a quasi-judicial decision be  
25 supported by substantial evidence in the whole record. *1000 Friends of Oregon*  
26 *v. City of North Plains*, 27 Or LUBA 372, 378, *aff'd*, 130 Or App 406, 882 P2d  
27 1130 (1994). Substantial evidence exists to support a finding of fact when the  
28 record, viewed as a whole, would permit a reasonable person to make that  
29 finding. *Dodd v. Hood River County*, 317 Or 172, 179, 855 P2d 608 (1993);

1 *Younger v. City of Portland*, 305 Or 346, 360, 752 P2d 262 (1988). “If a locality  
2 recognizes that evidence contradicting its decision exists and disregards it based  
3 upon ‘speculative reasoning,’ that decision lacks substantial evidence.”  
4 *Columbia Pacific v. City of Portland*, 289 Or App 739, 757, 412 P3d 258, *rev*  
5 *den*, 363 Or 390 (2018). However, in *OCAPA v. City of Mosier*, we explained:

6 “[T]he Goal 2 requirement for an adequate factual base is not met  
7 unless a legislative land use decision is supported by substantial  
8 evidence, *i.e.*, evidence a reasonable person would believe.

9 “[However,] the Goal 2 requirement for an adequate factual base  
10 does not exist in a vacuum. In alleging a Goal 2 factual base  
11 inadequacy at LUBA, a petitioner must establish that some  
12 applicable statewide planning goal or *other criterion imposes*  
13 *obligations* that are of such a nature that a factual base is required to  
14 determine if the zoning ordinance amendment is consistent with the  
15 goal or other criterion.” 44 Or LUBA 452, 462 (2003) (emphasis  
16 added).

17 First, petitioner maintains that, “as a matter of law[,] a journal article that  
18 cites a study is not evidence that a reasonable person would rely upon.” Petition  
19 for Review 18-19. We understand the referenced “journal article” to be a Wall  
20 Street Journal newspaper article in the record. Petitioner argues that the record  
21 contains the article but not the underlying study. Petitioner does not argue that  
22 the news source cited is not credible, and we do not agree that a reasonable person  
23 would not rely on a newspaper article’s characterization of a study for evidentiary  
24 support.

25 Petitioner also argues that the county did not address other studies  
26 identified in the newspaper article as supporting a contrary view of the impact of

1 STRs on housing affordability. The county points out that petitioner did not argue  
2 below that the county should not rely on the article.

3 Petitioner does not address the county's finding that "several" national  
4 studies exist and that "most" national studies conclude that the impact may be  
5 minimal. Additionally, the county did not rely solely on the newspaper article or  
6 the Oxford Economics study and, in fact, cited a study in another Oregon county.  
7 As the county points out, petitioner does not address the county's finding  
8 concerning the Clatsop County study.

9 Petitioner argues that the county's decision is not supported by an adequate  
10 factual base because the county relies on increased housing production to meet  
11 its housing objectives without determining how many STRs are anticipated once  
12 the use becomes legal, diminishing the effectiveness of these policies. The county  
13 found:

14 "There are currently estimated to be approximately 1,000 STRs  
15 operating in the unincorporated area of the county, the majority of  
16 which are in the resort areas of Mt. Hood, where a large portion of  
17 the housing stock is vacation homes rather than primary residences  
18 for owner or renter occupancy[.]" Record 264.

19 The reference to the approximate number of existing STRs and the location of  
20 the majority of those rentals reflects information in the October 26, 2022 staff  
21 report to the board of commissioners. Record 296. As the county observes,  
22 similar information was presented to the county during the proceedings that led

1 to the adoption of the original Ordinance ZDO-273. Respondent's Brief 21. For  
2 example, the March 11, 2020 staff report in those proceedings states:

3 "[A]pproximately 1,000 STRs are currently operating and have  
4 therefore already had an impact (whatever that may be) on the  
5 county's housing stock. To the extent that creating a process to allow  
6 and register these uses would suddenly create a great influx of new  
7 STRs, it could indeed generate impacts to the housing stock. *There*  
8 *is, however, no evidence in the research staff has done that would*  
9 *indicate that creating regulations would increase the number of*  
10 *STRs."* 1000 Friends Record 357 (emphasis added).<sup>3</sup>

11 The September 25, 2019 staff report in the same proceedings states, "Based on  
12 information from industry experts, there may be as many as 1,600 STRs operating  
13 in the county (including cities). Assuming 60% to 70% of these are outside of  
14 cities, would mean that there are approximately 950 – 1,100 STRs currently  
15 operating in unincorporated Clackamas County." 1000 Friends Record 585.  
16 Evidence presented by county staff may be substantial evidence. *See Forest Park*  
17 *Neighborhood Assoc. v. Washington County*, 73 Or LUBA 193, 207-08 (2016)  
18 (concluding, in an appeal of an ordinance adopting code amendment to a natural  
19 area buffer requirement, that planning staff testimony that two five-foot-high  
20 fences on either side of a vegetated buffer would discourage human trespass  
21 provided an adequate factual base to conclude that the buffer ensured  
22 compatibility between urban and rural uses with respect to trespass impacts).

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<sup>3</sup> The record in *1000 Friends* is included in the record in this appeal.

1       Petitioner does not address or challenge the statements by staff that,  
2       historically, the majority of STRs in the county have been in an area that generally  
3       does not provide long-term residence opportunities because the housing stock is  
4       largely vacation homes. Similarly, petitioner does not address or challenge the  
5       statements by staff that their research did not reveal evidence that the adoption of  
6       STR regulations results in an increase in the number of STRs. “In order to prevail  
7       on a substantial evidence challenge, a petitioner must identify the challenged  
8       findings and explain why a reasonable person could not reach the same  
9       conclusion based on all the evidence in the record.” *Stoloff v. City of Portland*,  
10      51 Or LUBA 560, 568 (2006). Petitioner must make a similar showing to prevail  
11      on an adequate factual base challenge. *Shaff v. City of Medford*, 79 Or LUBA  
12      317, 325-27 (2019) (holding that, in adopting a revised transportation system  
13      plan, a local government may rely on a Level of Traffic Stress (LTS) analysis to  
14      evaluate the capacity and condition of a transportation facility where the  
15      petitioner fails to explain why the LTS analysis does not reflect capacity and  
16      condition). Petitioner does not address the foregoing findings or evidence and,  
17      therefore, does not provide a basis for reversal or remand.

18       We agree with the county that there is evidence in the record that the  
19      county considered housing availability. The county concluded that increasing the  
20      supply of housing should be its focus and that doing so will offset any minimal  
21      impact on the availability of housing due to STRs. Respondent’s Brief 10.

22       The second subassignment of error is denied.

1           The first assignment of error is denied.

## 2   **SECOND ASSIGNMENT OF ERROR**

3           Petitioner's second assignment of error is that the county's decision does  
4   not demonstrate compliance with CCCP chapter 11, which governs the planning  
5   process in general. Petition for Review 21. The CCCP "Amendments and  
6   Implementation" goals are to:

7           "•     Ensure that policies in this Plan are implemented.

8           "•     Establish Plan review and revision procedures that include  
9                 provisions for participation by citizens and affected  
10                governmental units.

11          "•     Ensure an adequate factual base for decisions and actions."

12          Under the CCCP Amendments and Implementation goals are 12  
13   Amendments and Implementation policies, some of which have subpolicies.  
14   CCCP Policy 11.B.1 is to "ensure that the Comprehensive Plan and County  
15   ordinances meet the goals of LCDC, the [Metro] Urban Growth Management  
16   Functional Plan and the Metro [Regional] Framework Plan." Petitioner maintains  
17   that the county did not adequately apply or consider, and, therefore, demonstrate  
18   compliance with, unidentified statewide planning goals, the Metro Urban Growth  
19   Management Functional Plan, or the Metro Regional Framework Plan because it  
20   did not adopt responsive findings. Petition for Review 21-22.

21          The Goal-2-required "adequate factual base" for a challenged legislative  
22   decision may be satisfied if the decision is supported by either (1) findings  
23   demonstrating compliance with applicable legal standards or (2) argument and

1 citations to facts in the record, in respondents' briefs, which are adequate to  
2 demonstrate compliance with applicable legal standards.  
3 *Redland/Viola/Fischer's Mill CPO v. Clackamas County*, 27 Or LUBA 560, 563-  
4 64 (1994).

5 The county explains that, "[i]n terms of implementation, the only  
6 difference between ZDO-273 and ZDO-273 (on remand) is that the later  
7 ordinance makes establishing STRs more restrictive by prohibiting STRs in  
8 certain resource zones and urban/rural reserve areas." Respondent's Brief 27. The  
9 county responds that the November 16, 2020 staff report in the proceedings that  
10 led to the adoption of the original Ordinance ZDO-273 addresses compliance  
11 with the statewide planning goals and the Metro Urban Growth Management  
12 Functional Plan. The respondent's brief explains how the challenged decision  
13 complies with the standards identified by petitioner. *Id.* at 26-30 (citing *1000*  
14 *Friends* Record 126-30).

15 The respondent's brief, in conjunction with the cited record pages, is  
16 sufficient to demonstrate that the county considered CCCP Policy 11.B.1,  
17 including compliance with statewide planning goals, the Metro Urban Growth  
18 Management Functional Plan, and the Metro Regional Framework Plan.

19 The second assignment of error is denied.

20 The county's decision is affirmed.