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

JUSTIN SOARES and SUSAN MORRE,
Petitioners,

vs.

CITY OF CORVALLIS,
Respondent.

LUBA No. 2025-022

FINAL OPINION
AND ORDER

Appeal from City of Corvallis.

Andree N. Phelps filed the petition for review and argued on behalf of petitioners.

No appearance by City of Corvallis.

WILSON, Board Member; ZAMUDIO, Board Chair; BASSHAM, Board Member, participated in the decision.

REMANDED 10/09/2025

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

Opinion by Wilson.

NATURE OF THE DECISION

Petitioners appeal a city council decision re-approving, on remand from LUBA, a tentative plat for a 10-lot subdivision.

MOTION TO TAKE EVIDENCE NOT IN THE RECORD

Petitioners move to take evidence not in the record. In particular, petitioners move to take as evidence an email and attached memorandum sent to the applicant by the city. The attached memorandum is a copy of a staff report from the city public works department to the city community development department. Petitioners also seek to take as evidence copies of Corvallis Land Development Code (LDC) provisions that petitioners argue apply to the challenged decision.

Petitioners argue that the email and memorandum were placed before the decision maker but were not made part of the record. Petitioners may well be correct, but that is a basis for a record objection – not a motion to take evidence outside of the record. OAR 661-010-0045(1)[1] provides:

> "Grounds for Motion to Take Evidence Not in the Record: The Board may, upon written motion, take evidence not in the record in the case of disputed factual allegations in the parties' briefs concerning unconstitutionality of the decision, standing, ex parte contacts, actions for the purpose of avoiding the requirements of

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[1] Our rules have been amended since the original application in this appeal was filed; however, because those amendments do not affect our analysis, we refer to the current version of the rules in this opinion.

> ORS 215.427 or 227.178, or other procedural irregularities not shown in the record and which, if proved, would warrant reversal or remand of the decision. The Board may also upon motion or at its discretion take evidence to resolve disputes regarding the content of the record, requests for stays, attorney fees, or actual damages under ORS 197.845."

Petitioners have not established that their motion to take evidence outside of the record falls under any of the categories listed in OAR 661-010-0045(1). Petitioners argue that they were still in discussion with the city regarding the disputed email and memorandum when we settled the record. The fact that petitioners were in discussions with the city, however, does not absolve petitioners from raising a record objection regarding the documents when they filed their record objections.[2]

Petitioners' motion to take the email and memorandum as evidence is denied.

Petitioners argue in their petition for review that the application expired while on remand from LUBA. Petitioners' argument is based, in part, on LDC provisions that they move to have considered in the motion to take evidence not in the record. The LDC provisions are not "disputed factual allegations * * * which, if proved, would warrant reversal or remand of the decision." OAR 661-010-0045(1). While parties may dispute the applicability or consequences of

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[2] In any event, we note that the memorandum at issue is included in the record nearly verbatim, with responses from the applicant to the issues raised in the memorandum included. *See* Record 219-24.

local code provisions, it is not necessary to file a motion to take evidence outside of the record to cite those provisions.

The motion to take the LDC code provisions as evidence is denied.

Petitioners' motion to take evidence not in the record is denied.

FACTS

Petitioners challenge a decision made on remand from our decision in *Soares v. City of Corvallis*, 56 Or LUBA 551 (2008) (*Soares I*).[3] The subject property is a 2.99-acre parcel on a sloping hillside with the Marys River and Marys River Natural Area to the east and southeast.

In 2006, the applicant submitted an application for tentative approval of a 10-lot subdivision, which was approved in 2007. We remanded the decision in 2008 on three bases involving sidewalks, stormwater, and potential impacts on the nearby Marys River Natural Area. In 2010, the applicant requested the city initiate a remand hearing and submitted responses to the remand issues. Once the applicant requested the city to take action on remand, the city had 90 days to take final action on the application, unless the applicant requested an extension "for a reasonable period of time." ORS 227.181(2)(b) (1999) (the full statute is set out below). The city informed the applicant that the materials submitted were insufficient to properly address the remand issues. The applicant then sought to

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[3] *See Soares I* for an in-depth discussion of the property and proposed development.

extend the city's 90-day period to take final action in order to provide additional materials, which the city granted. The applicant subsequently requested many additional extensions, which the city also granted.

The applicant continued seeking, and receiving, extensions to the city's 90-day period for taking final action until October 2024, when the applicant sought an extension until December 2025. The city responded that it was unwilling to grant an extension until December 2025 and scheduled a public hearing on the matter for February 3, 2025. The applicant then submitted additional materials to address the remand issues. The city held a public hearing on February 3, 2025, and tentatively approved the tentative plat. The city subsequently reopened the public hearing to accept additional testimony regarding whether the application had expired. The city concluded that the application had not expired and again approved the tentative plat. This appeal followed.

FIRST ASSIGNMENT OF ERROR

The challenged decision is a tentative approval of a subdivision plat, which is a limited land use decision. ORS 197.015(12)(a)(A) (2005). LUBA shall reverse a limited land use decision when the local government "exceeded its jurisdiction" or the decision "violates a provision of applicable law and is prohibited as a matter of law." OAR 661-010-0073(1)(a), (c). LUBA shall remand a limited land use decision when the "findings are insufficient to support the decision." 661-010-0073(2)(a).

Petitioners argue that the city misconstrued ORS 227.181 (1999), which dealt with remands from LUBA and provided, in pertinent part:

> "(1) Pursuant to a final order of the Land Use Board of Appeals under ORS 197.830 remanding a decision to a city, the governing body of the city or its designee shall take final action on an application for a permit, limited land use decision or zone change within 90 days of the effective date of the final order issued by the [B]oard. * * *
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> "(2)(a) In addition to the requirements of subsection (1) of this section, the 90-day period established under subsection (1) of this section shall not begin until the applicant requests in writing that the city proceed with the application on remand.
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> "(b) The 90-day period may be extended for a reasonable period of time at the request of the applicant."

Petitioners argued below that the application was void due to violations of ORS 227.181 (1999), specifically that many of the extensions granted since 2010 exceeded, both individually and cumulatively, the "reasonable period of time" authorized under ORS 227.181(2)(b) (1999). Consequently, petitioners argued, the application had become void and the city lacked the authority to approve the application. Although petitioners raised the issue below, the city did not address the merits of that argument, but simply found that the statute was not an applicable approval criterion:

> "The [c]ity notes that ORS 227.181(2)(b) allows that '[t]he 90-day period may be extended for a reasonable amount of time at the request of the applicant,' per the version of the LUBA remand statute that was applicable at the time of the 2006 subdivision application and remand.

> "The [c]ity notes public testimony contends that the period of time that the [c]ity granted, following multiple requests from the applicant, for the resolution of the LUBA remand issues was not reasonable, and that the application should not be considered valid.
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> "* * * * *
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> "The [c]ity notes that the procedures in ORS 227.181(2)(b) relate to how a [c]ity must respond to a LUBA remand, and is not an approval criterion that a [c]ity must apply to approval or denial of a limited land use decision or subdivision application. The [c]ity notes, the approval criteria from the [LDC] are applicable for review of the three assignments of error, and the subdivision as a whole." Record 5.[4]

On appeal, petitioners repeat their arguments that the application has become void due to multiple unreasonable extensions of time in violation of ORS 227.181(2)(b) (1999), and therefore the city lacks the ability to approve the application in this proceeding. Petitioners note that some of the extensions exceeded one year in length, significantly more than the 90 days reflected in ORS 227.181(2)(b) (1999).

Neither the city nor the applicant has appeared in this appeal to respond to petitioners' assignments of error. The issue raised in this first assignment of error is ultimately one of statutory interpretation, and the absence of contested briefing on the proper interpretation and application of ORS 227.181 (1999) renders our review considerably more difficult. We therefore limit our review of this

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[4] All record references are to the Amended Record.

assignment of error to the most necessary observations about ORS 227.181 (1999).

We note that while the city is correct that ORS 227.181 (1999) is not an approval criterion, that does not mean that the statute is not *applicable* to the application. The city must still conduct its land use proceedings and render its decisions consistent with ORS 227.181 (1999). *See Bergmann v. City of Brookings*, LUBA No 2023-015 (June 16, 2023) (current version of ORS 227.181 applicable to the decision); *Central Land and Cattle Company, LLC v. Deschutes County*, 74 Or LUBA 326, 348-50, *aff'd*, 283 Or App 286, 388 P3d 739 (2016), *rev den*, 361 Or 311 (2017) (ORS 215.435, the county equivalent of ORS 227.181, applicable to the decision); *Ploeg v. Tillamook County*, 43 Or LUBA 4 (2002) (same). Furthermore, a local government exceeds its jurisdiction when it approves a void application. *Painter v. City of Redmond*, 56 Or LUBA 311, 314-15 (2008) (application was void when not deemed complete within 180 days under ORS 227.178(4)); *see also Bora Architects, Inc. v. Tillamook County*, 76 Or LUBA 330, 344-45 (2017), *aff'd*, 291 Or App 537, 422 P3d 412 (2018) (county exceeded its jurisdiction in approving a void application).

The city's decision does not address ORS 227.181 (1999) other than to conclude that it is not an applicable approval criterion. The decision does not contain any findings attempting to address the issues raised by petitioners. While the record contains some illumination from the community development director as to the city's position regarding compliance with ORS 227.181 (1999), that

memorandum is neither quoted in the decision nor incorporated into the city's findings.[5] Even if the city council had adopted that memorandum as findings, the memorandum does not grapple with the issue raised by petitioners: whether the city's prior granting of perhaps problematic requests for extensions of the remand proceedings under ORS 227.181 (1999) were consistent with the statute, and if not, what are the consequences of that inconsistency. That is a threshold issue regarding the city council's authority to proceed on the application. If, as petitioners argue, some or most of the extensions were inconsistent with the statute, then the city must address that issue and determine whether any inconsistency affects the city's authority to render a decision on the application.

Petitioners make a number of other arguments in support of the position that the city violated ORS 227.181 (1999), the application is void, and the

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[5] The community development director's memorandum to the city council states, in pertinent part:

> "In 2024, [c]ity staff brought this situation to the [c]ity's new [c]ounsel, who opined that subsection (b) of [ORS 227.181(2) (1999)] applies to this case, and that the repeated 90-day period extensions that the applicant has received do not constitute a 'reasonable period of time' per state law. Thus, when the applicant again requested an extension to December 2025, staff responded with a denial of the request for extension, citing ORS [227.181] (as it was in effect at the time of remand) and setting a deadline for the submittal of the materials needed to make findings on the assignments of error remanded by LUBA, by December 16, 2024 for a hearing tentatively set for February 3, 2025. The new deadline for the [c]ity to make a final decision is May 4, 2025." Record 414

decision must be reversed. OAR 661-010-0073(1)(c). Petitioners argue in part that the city violated the statute by approving extensions that, individually or cumulatively, were beyond a "reasonable period of time." In our view, remand is the appropriate disposition to allow the city to determine and explain in the first instance whether and how it has complied with the statute. OAR 661-010-0073(2)(a). On remand, the city should include in the record the extension requests and approvals, and other supportive evidence, and adopt findings determining whether the requested extensions were for a reasonable period of time. The city should then determine whether its actions in granting the extensions were consistent with ORS 227.181 (1999). Without that initial fact finding and evidentiary record, it would be premature for us to determine whether the extensions were unreasonable or to opine on the ultimate operation of the statute.

The first assignment of error is sustained.

SECOND ASSIGNMENT OF ERROR

Petitioners argue that the application was void under the LCD, and the decision should be reversed. OAR 661-010-0073(1)(c). Petitioners' argument is based on LDC 2.0.60(d),[6] which provides, in part: "Procedures for public notice and order of proceedings for remands on quasi-judicial matters shall be in

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[6] With the exception of LDC 2.0.050.14, as discussed further below, all references to the LDC are to the 1993 LDC in effect at the time of the original application.

accordance with section 2.0.50[.]" Petitioners argue that the city failed to comply with LDC 2.0.50.14 (Dec 31, 2006), which provides:

> "Applicant's Request for Delay. Upon receipt of an applicant's written request for a delay in the processing of an application, the Director may allow the request, provided that the time the application is placed on hold does not exceed one year from the date the request is filed with the Community Development Department, and provided that the applicant agrees in writing to waive the 120-day processing time frame. After this one-year period has expired, a new application and fee are required."

While petitioners may be correct that under LDC 2.0.50.14 the application would have expired after the city's decision on remand had been delayed for more than a year, their argument is contingent upon LDC 2.0.50.14 being applicable to the decision on remand. The decision states that the original 2006 application was filed before the adoption of the 2006 LDC, "and thus is subject to the 1993 [LDC]." Record 3. The current language of LDC 2.0.50.14 was not in effect when the application was filed in 2006.[7] Petitioners concede that the "goal post rule" of ORS 227.178(3)(a) (2003) would prevent LDC 2.0.50.14 from being applicable to the decision on remand. ORS 227.178(3)(a) (2003) provides:

> "If the application was complete when first submitted or the applicant submits the requested additional information within 180 days of the date the application was first submitted and the city has a comprehensive plan and land use regulations acknowledged under ORS 197.251, approval or denial of the application shall be based

[7] LDC 2.0.050.014 (1993) concerns the "reapplication after denial" of an application.

upon the standards and criteria that were applicable at the time the application was first submitted."

Petitioners, however, argue that the goal post rule does not apply because the applicant did not make the application complete within 180 days of the date of the application was first submitted. ORS 227.178(4) (2003) provides:

> "On the 181st day after first being submitted, the application is void if the applicant has been notified of the missing information as required under subsection (2) of this section and has not submitted:
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> "(a) All of the missing information;
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> "(b) Some of the missing information and written notice that no other information will be provided; or
>
> "(c) Written notice that none of the missing information will be provided."

In 2006, after the application was filed the city apparently informed the applicant that the application was incomplete. The applicant initially requested a 15-day extension. Record 711. The applicant then requested an additional 65-day extension stating that "[i]n addition to our first 15-day extension, this request will extend the state mandated 120-day rule a total of 80[ ]days." Record 706.[8] Petitioners argue that because the applicant obtained a 200-day extension, the

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[8] The applicant's representative appears to have mistaken the 180-day period for deeming an application complete under ORS 227.178(4) (2003) with the 120-day period for taking final action on an application under ORS 227.178(1) (2003). It is reasonably clear that the applicant's representative was referring to the time period for deeming the application complete.

applicant did not submit the required information within the 180 days required by ORS 227.178(3)(a) (2003) and therefore the goal post rule does not apply.

While petitioners are correct that the goal post rule would not apply if the application was not deemed complete within 180 days, that is not what occurred.[9] After the applicant requested the additional 65-day extension, the city granted the extension but informed the applicant that the application must be complete by April 11, 2007, the 180th day, as the application would be void under ORS 227.178(4) (2003) otherwise. Record 699. The applicant submitted a detailed narrative on April 10, 2007, which apparently resulted in the city deeming the application complete because it scheduled the application for public hearings. *See* Record 670-88. As the application was deemed complete before the 180-day requirement of ORS 227.178(4) (2003) had passed, the goal post rule applies to the application and the current version of LDC 2.0.50.14 is not applicable and does not provide a basis to find that the application has expired.

The second assignment of error is denied.

THIRD ASSIGNMENT OF ERROR

In *Soares I*, we remanded the decision under three assignments of error. We remanded the decision under the second assignment of error on an issue involving sidewalks. That issue is not before us in the present appeal. We

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[9] Not only would the goal post rule not apply, the application would be void because it was not deemed complete within the required 180 days. ORS 227.178(4) (2003).

remanded the decision under the third and fourth assignments of error on issues involving stormwater. The city adopted findings addressing those remand issues, and petitioners challenge those findings.

A. *Soares I* Third Assignment of Error

Under the third assignment of error in *Soares I*, petitioners argued that the findings regarding stormwater drainage were inadequate and not supported by substantial evidence. LDC 4.5.90.b.1 required that development projects above a certain size must "implement stormwater detention and/or retention measures as specified in the Corvallis Design Criteria Manual." *Soares I*, 56 Or LUBA at 563. LDC 4.0.80.e required that all public utility installations "shall conform to the [c]ity's adopted facilities master plans." *Id.* The city explained that these provisions referred to Appendix F of the Corvallis Stormwater Master Plan. Instead of finding that the proposed stormwater plan satisfied the standards in Appendix F, the city imposed a condition of approval requiring the applicant to submit plans to the city engineer demonstrating compliance with Appendix F. Thus, the city deferred the demonstration of compliance with Appendix F to a later review process involving only the applicant and the city engineer.

We sustained the assignment of error, stating:

> "Accordingly, we agree with petitioner that remand is necessary for the city to adopt findings explaining what role the design criteria in Appendix F and other master plans play in reviewing a tentative subdivision plat application, pursuant to LDC 4.0.80.3.e and LDC 4.5.90.b.1. Petitioner argues, and we agree, that if those 'design criteria' apply to tentative subdivision plat applications or include

> discretionary approval standards, the city must address those standards at the time of tentative subdivision plat approval. The city may not defer consideration of applicable discretionary approval standards to a later review process that does not offer notice and opportunity for public participation. *Rhyne v. Multnomah County*, 23 Or LUBA 442, 447-48 (1992).
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> "If on remand the city determines that some of the design criteria in Appendix F are not approval standards for tentative subdivision plat approval, or that Appendix F includes certain design criteria that are objective, nondiscretionary technical engineering standards, the city should identify any such design criteria and explain why they need not be addressed at the time of tentative subdivision plat approval." *Soares I*, 56 Or LUBA at 566-67 (footnotes omitted).

On remand, the applicant provided a stormwater design report to address the remand issues. The report contains calculations to capture stormwater runoff in a swale with detention facilities that will meet the requirements of the city's stormwater master plan. While the city found that that the proposed facility would meet the required detention calculations, the city found that the proposed facility would not meet the requirements as outlined in the stormwater master plan and the 2005 King County Standards that Appendix F incorporates as a requirement. The city findings state:

> "The [c]ity finds that the proposed combined swale detention facility does not meet the requirements for stormwater facilities as outlined in the Stormwater Master Plan or in the King County 2005 Surface Water Design Standards. * * * The [c]ity finds that the applicant must construct facilities as prescribed in the King County 2005 Surface Water Design Standards consisting of two separate facilities: one swale for water quality and one pond for detention facilities." Record 8.

The city then finds that the 2005 King County standards are not subjective but are "outlined engineering criteria which must be met." Record 9. The city proceeds to provide design criteria from the 2005 King County standards for a swale and detention pond that the applicant will need to demonstrate compliance with at a later stage of development. *Id.* Finally, the city imposed a condition of approval for the stormwater and detention facilities:

> "The applicant must install stormwater quality and detention facilities consistent with Appendix F of the City Stormwater Master Plan as required in LDC 4.0.80.e. Appendix F refers to design criteria established in the King County, Washington Surface Water Design Manual, September 1998 or the most recent final version. The most recent version at the time of the application was the King County 2005 Surface Water Design Standards. The applicant provided calculations for a water quality swale 125 feet long and 2 feet wide, and a detention pond with approximately 4200 cubic feet of storage. The sizing was based on design storms in the City Stormwater Master Plan and engineering design standards in place at the time of application. The [c]ity references the King County design standards regarding objective physical requirements such as slopes, access, landscaping and typical details, identified in the 2005 Surface Water Design Manual[.] The applicant's final design must meet these attached design criteria including one swale and one facility for a detention pond. The increase footprint of the stormwater facilities may impact the layout of lots 1-3. The resultant lots must meet minimum requirements outlined in applicable LDC requirements such as section 3.1.20." *Id.*

Although it is difficult to be certain, as neither the city nor the applicant appeared to defend the decision, it appears "the city found the design criteria in Appendix F and other master plans" are "objective, nondiscretionary technical engineering standards." *Id.* The city found that those criteria could be complied

with and imposed a condition of approval requiring compliance with those criteria. As the design criteria are not "applicable discretionary approval standards," the city did not err in deferring consideration of those standards to a later review process that does not offer an opportunity for public participation. The city therefore does not run afoul of *Rhyne*.

The portion of the third assignment of error regarding the third assignment of error in *Soares I* is denied.

B. *Soares I* Fourth Assignment of Error

Under the fourth assignment of error in *Soares I*, the petitioners argued that the findings failed to adequately address concerns regarding potential adverse effects of stormwater runoff on the Marys River Natural Area wetlands to the south and southeast of the property. LDC 2.4.30.04 provided that a tentative subdivision plat "shall be reviewed to assure consistency with the purposes of the [c]ode[.]" *Soares I*, 56 Or LUBA at 567 (first brackets added, second brackets in original). The LDC 2.4.20 purpose section stated that land division review procedures are established, among other reasons, to "[m]inimize negative effects of development upon the natural environments." *Id.* (citing LDC 2.4.20.b).

In *Soares I*, the city contended "concerns regarding wetland protection will be specifically addressed at the time of development through the 2006 LDC." 56 Or LUBA at 568. The city explained that this referred to standards enacted in 2006 that apply to "lot development." *Id.* We agreed with the petitioners that the city's finding was inadequate:

> "If the * * * finding is intended to suggest that future application of unidentified standards that govern development of *individual* lots within the subdivision is sufficient to address the impacts of the entire subdivision on a nearby wetland for purposes of LDC 2.4.30.04 and LDC 2.4.20.b, the finding is inadequate. At a minimum, the city needs to make clearer in its findings what standards governing lot development are sufficient to ensure that stormwater impacts of the subdivision as a whole on the wetland are consistent with the code purpose to '[m]inimize negative effects upon the natural environment[.]' Nothing cited to us in the city's incorporated findings, including the staff report, address impacts on the nearby wetland. Remand is therefore necessary to adopt findings addressing the concerns the petitioners raised under LDC 2.4.30.04 and LDC 2.4.20.b, regarding the impact of the subdivision on the nearby Marys River Nature Area" *Id* at 568-69 (emphasis and brackets in original).

The stormwater report provided by the applicant on remand provides calculations that the releases from the detention facilities would minimize the effects on the natural environment:

> "LUBA states there is no evidence in the record for pre and post development stormwater flows from the site to determine the impacts on water levels in the Mary's River Natural Area. The applicant included Stormwater Design Calculations dated December 2024 showing the existing stormwater flow rates and proposed stormwater flow rates after release from detention facilities are equal or less than before development for the required 2-, 5- and 10-year storm events thereby minimizing negative effects of development upon the natural environment.
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> "* * * * *
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> "[T]he City finds that the calculations included in the applicant's December 2024 LUBA Remand Response materials, in addition to the City's findings and conditions related to stormwater quality and detention, provide sufficient information about * * * compliance with LDC Chapters 4.0 and 4.5 to conclude that LDC [s]ections

2.4.20.b and 2.4.30.04 are satisfied." Record 10.

While the proposed detention facilities may be designed to release stormwater at rates that will minimize impacts on nearby wetlands, petitioners argue that the proposed detention facilities will not capture all the stormwater flow onsite and therefore not minimize impacts on the nearby wetlands.

The applicant's remand response states that due to the topography:

> "[F]or lots 4-8, the roof drainage will be discharged on the surface and directed to the detention swale via overland flow to avoid impacting critical root zones of the existing trees. For lots 9 and 10, the roof drainage will be directed to Brooklane [a different street] and conveyed in the stormwater facilities installed in Brooklane Drive." Record 216.

The city's findings attempt to address this issue:

> "The [c]ity notes that although the applicant indicates runoff from the lots may be overland flow, it is likely that routing of stormwater from roof drains pipes and driveway inlets may need private easements and private drainage pipes across the lots to get to the public water quality and detention facilities. Public drainage leaving the facilities will be routed to the piped storm drain in Chintimini to Roth, or to the proposed storm drain in Brookland as conditioned in Conditions of Approval 18 [and] 19." Record 9 (boldface omitted).

According to the city's findings, petitioners' concerns are addressed by conditions of approval 18 and 19. As petitioners point out, however, conditions of approval 18 and 19 do not actually address this concern. Condition of approval 18 merely cites applicable LDC provisions. Condition of approval 19 merely states that "[a]ll storm drainage from the development that will be conveyed to

the existing storm collection system south of the site shall be adequately treated before being released into the system." Record 17.

Petitioners argue that the city has not demonstrated that the proposed stormwater facilities will capture all stormwater runoff. According to petitioners, without knowing how all the stormwater runoff will be captured there is not substantial evidence to demonstrate that the stormwater detention facilities will "minimize negative effects of development on the natural environment." LDC 2.4.20.b. Substantial evidence is evidence that a reasonable person would rely on in making a decision. *Dodd v. Hood River County*, 317 Or 172, 179, 855 P2d 608 (1993). In reviewing the evidence, LUBA may not substitute its judgement for that of the local decision maker. Rather, LUBA must consider all the evidence to which it is directed, and determine whether based on that evidence, a reasonable local decision maker could reach the decision that it did. *Younger v. City of Portland*, 305 Or 346, 358-60, 725 P2d 262 (1988).

Petitioners raised the issue of overland flows not being adequately captured by the proposed swale and detention pond and therefore the facilities will not "minimize negative effects of development upon the natural environment." LDC 2.4.20.b. We do not see that the city's findings demonstrate that the proposed stormwater facilities are sufficient to "minimize negative impacts of development on the natural environment[,]" including the Marys River Natural Area. *Id.* Absent any assistance from the city or the applicant to

explain how the findings adequately respond to this evidentiary issue, we agree with petitioners that the decision is not supported by substantial evidence.

This portion of the third assignment of error regarding the fourth assignment of error in *Soares I* is sustained.

The third assignment of error is sustained in part.

The city's decision is remanded.