

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

CARL R. GOMOLL,
Petitioner,

vs.

CITY OF STAYTON,
Respondent,

and

KSD PROPERTIES, LLC,
Intervenor-Respondent.

LUBA No. 2026-041

FINAL OPINION
AND ORDER

Appeal from City of Stayton.

Carl R. Gomoll filed the petition for review and argued on behalf of themselves.

No appearance by City of Stayton.

Wendie L. Kellington filed the intervenor-respondent's brief and argued on behalf of intervenor-respondent. Also on the brief was Kellington Law Group, PC.

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

ZAMUDIO, Board Member, did not participate in this decision.

AFFIRMED

10/02/2026

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

Opinion by Wilson.

NATURE OF THE DECISION

Petitioner appeals a city council decision annexing 21 acres into the city.

MOTION TO INTERVENE

KSD Properties, LLC (intervenor) moves to intervene on the side of the city. There is no opposition to the motion and it is allowed.

FACTS

The subject property is approximately 21 acres in size and is located outside the City of Stayton city limits but within the city's urban growth boundary (UGB). The property is designated Residential by the City of Stayton Comprehensive Plan Map and is zoned Marion County Urban Transition (UT-20). The property is adjacent to city limits to the north, east, and west. Property to the south is within the UGB and is zoned UT-20. The property is in the Mill Creek drainage basin and is currently vacant. The planning commission recommended approval of the annexation and the application of Medium Density Residential (MD) zoning for the property. The city council approved the annexation and applied MD zoning to the property. This appeal followed.

FIRST ASSIGNMENT OF ERROR

Stayton Municipal Code (SMC) 17.12.210.4 provides the six approval criteria for annexation. SMC 17.12.210.4.a requires that:

"Need exists in the community for the land proposed to be annexed."

1 Petitioner argues the city’s decision that such a need exists is not supported
2 by substantial evidence.¹ Substantial evidence is evidence that a reasonable
3 person would rely on in making a decision. *Dodd v. Hood River County*, 317 Or
4 172, 179, 855 P2d 608 (1993). In reviewing the evidence, LUBA may not
5 substitute its judgement for that of the local decision maker. Rather, LUBA must
6 consider all the evidence to which it is directed, and determine whether based on
7 that evidence, a reasonable local decision maker could reach the decision that it
8 did. *Younger v. City of Portland*, 305 Or 346, 358-60, 725 P2d 262 (1988).

9 Petitioner argues that there is no need for the subject property to be
10 annexed because the city has an overabundance of existing buildable residential
11 land within current city limits. Petitioner further argues that a finding of need
12 must be based on a deficit in the city’s Buildable Lands Inventory (BLI).
13 According to petitioner, the city’s BLI shows enough vacant buildable land
14 within the city to meet the need projected by the Oregon Housing Needs Analysis
15 (OHNA) so there is no need to annex additional land into the city.

16 The city’s findings regarding SMC 17.12.210.4.a state:

17 “Under the State’s revised methodology, housing needs include both
18 existing unmet needs resulting from underproduction and projected

¹ Although the assignment of error states that the city did not comply with “SMC 17.12.210, Stayton’s Amended 2021 Comprehensive Plan, and Stayton Adopted Economic Development Plan,” as well as Statewide Planning Goal 10 (Housing), the only argument presented is a substantial evidence challenge to a finding of need under SMC 17.12.210.4.a. Petition for Review 3-4.

1 future demand, which is allocated at the regional level and
2 accommodated within Urban Growth Boundaries by local
3 jurisdictions.

4 “This annexation would increase the City’s supply of buildable
5 residential land and capacity, supporting its ability to provide a
6 range of housing types and accommodate identified housing needs
7 consistent with the City’s Comprehensive Plan Housing Goal,
8 Statewide Planning Goal 10, ORS 197.296, and the OHNA
9 framework.” Record 54.²

10 Petitioner argues that “need” means that the city cannot meet the
11 requirements of the BLI with land within the city. Intervenor responds that
12 although the city did not explicitly interpret “need,” the city implicitly interpreted
13 “need” to mean merely that a need exists in the community and that the proposed
14 annexation will address that need. An implicit interpretation is one where “the
15 practical effect of the findings is to give definition to the term” and where the
16 local government’s understanding of the term is inherent in the way that it is
17 applied. *Green v. Douglas County*, 245 Or App 430, 439, 263 P3d 355 (2011)
18 (quoting *Alliance for Responsible Land Use v. Deschutes Cty.* 149 Or App 259,
19 267, 942 P2d 836 (1997), *rev dismissed as improvidently allowed*, 327 Or 555
20 (1998)). We agree with intervenor that the city made an implicit interpretation of
21 “need” because the meaning of the standard and how it is applied is readily
22 discernable from the findings. *Michaelson/NWDA v. City of Portland*, 296 Or
23 App 248, 253-54, 437 P3d 1215, *rev den*, 365 Or 556 (2019).

² All citations to the record are to the amended record received on July 21, 2026.

1 Under ORS 197.829(1), as construed in *Siporen v. City of Medford*, 349
2 Or 247, 259, 243 P3d 776 (2010), LUBA must defer to a local governing body's
3 interpretation of its comprehensive plan and land use regulations, unless the local
4 government's interpretation is inconsistent with the express language, purpose,
5 or underlying policy of the comprehensive plan or land use regulation. *Crowley*
6 *v. City of Hood River*, 294 Or App 240, 244, 430 P3d 1113 (2018). The standard
7 of review under ORS 197.829(1) and *Siporen* is "highly deferential" to the city,
8 and the "existence of a stronger or more logical interpretation does not render a
9 weaker or less logical interpretation 'implausible.'" *Mark Latham Excavation,*
10 *Inc. v. Deschutes County*, 250 Or App 543, 555, 281 P3d 644 (2012). We agree
11 with intervenor that the city's implicit interpretation of "need" to mean that a
12 need exists in the community and that the proposed annexation will address that
13 need is plausible. While the city presumably could have interpreted "need" the
14 way petitioner views need, the city did not. We now turn to whether the city's
15 decision that such a need exists, as interpreted by the city, is supported by
16 substantial evidence.

17 The findings explain that the 2013 BLI determined that there was a need
18 to annex 320 acres of residential land, and the city has annexed 60 acres since
19 that time. Record 52. The findings further explain that in 2023, the state adopted
20 a new methodology for determining housing needs through the OHNA which,
21 pursuant to the ORS 197A.018 definition of "needed housing," encompasses
22 housing by affordability level, type, characteristics, and location necessary to

1 accommodate a city's allocated housing over a 20-year period. Record 53. The
2 findings further explain that this represents a shift from a locally derived housing
3 needs analysis to a statewide regionally informed methodology that accounts for
4 both future growth and existing unmet need resulting from underproduction of
5 housing. The Department of Administrative Services (DAS) methodology for
6 housing now includes both projected future demand and existing unmet need,
7 including suppressed housing formation due to housing costs and limited supply.
8 Record 54. Finally, the DAS 2026 analysis identified a 20-year housing need
9 within Stayton's UGB for 1,058 dwelling units distributed across various income
10 levels. *Id.*

11 The Department of Land Conservation and Development (DLCD)
12 provided a letter explaining that under the OHNA framework, it is not enough to
13 have sufficient acreage of residentially zoned land to meet a specific number of
14 housing units, the acreage must also be flexible enough to accommodate a range
15 of housing types that are affordable to a variety of income levels. Record 436-38.
16 As quoted earlier, the city's decision explains that the annexation helps provides
17 that flexibility. Record 54. The DLCD letter further explains the OHNA
18 allocation of the city's housing needs is based on the latest projections, discusses
19 the different planning horizons between the comprehensive plan and the OHNA,
20 and encourages the city to require higher densities for properties proposed for
21 annexation. Record 437-38. Based on DLCD's encouragement for higher
22 density, the city zoned the property Medium Density Residential instead of Low

1 Density Residential. Finally, staff noted that DLCD had explained that the
2 projected needs were not to be viewed as a cap on housing.

3 “DLCD also indicated that these allocations should not be viewed
4 as a cap, but rather as a baseline, recognizing that the overall need
5 for housing remains significant.” Record 406.

6 The BLI and the OHNA demonstrate that there is a need for affordable
7 housing in the city that is not met by the existing land supply. Those documents
8 and the testimony submitted by DLCD provide evidence that annexation of the
9 subject property will help meet that existing need as well as provide a range of
10 housing types. A reasonable person could rely on that evidence to determine that
11 a need exists in the city and that the annexation will help meet that need.
12 Therefore, the city’s decision is supported by substantial evidence.

13 The first assignment of error is denied.

14 **SECOND ASSIGNMENT OF ERROR**

15 SMC 17.12.210.4.b requires that:

16 “The site is or is capable of being serviced by adequate City public
17 services, including such services as may be provided subject to the
18 terms of a contract annexation agreement between the applicant and
19 the City.”³

20 Petitioner argues the city’s decision that the property is capable of being
21 serviced by adequate public services, stormwater in particular, is not supported

³ Petitioner does not challenge any of the other four approval criteria for annexation.

1 by substantial evidence.⁴ Petitioner further argues that the Mill Creek drainage
2 basin suffers from severe existing drainage capacity deficits and that the city
3 lacks funding to solve the existing problem. According to petitioner, because the
4 drainage basin is already overburdened and the city does not have the resources
5 to solve the existing problem, the property is not capable of being serviced by
6 adequate stormwater facilities.

7 The city's findings state:

8 "While the property is not currently connected to City utilities, the
9 City's adopted master plans (Transportation, Water, Stormwater,
10 and Wastewater) provide clear pathways for extending services. At
11 the time of development, the applicant will be required to construct
12 or extend infrastructure to meet all applicable standards, ensuring
13 the property can be fully and adequately served.

14 "* * * * *

15 "Stormwater Drainage

16 "The City's engineering consultant has stated that the site can be
17 served by the City's storm drainage system once infrastructure is
18 extended and required stormwater facilities are constructed. The
19 property is not currently served by City storm drainage, with the
20 nearest storm system approximately 1,500 feet southeast at Whitney
21 Street and Cascade Highway SE. Existing shallow ditches along
22 Golf Lane do not connect to an approved discharge point. At
23 development, a complete stormwater management
24 system – including flow control, water-quality treatment, and
25 conveyance – will be required in accordance with the Stormwater

⁴ Petitioner does not argue any other public facilities cannot be adequately provided.

1 Master Plan and Public Works Design Standards. Stormwater from
2 this property ultimately drains to Mill Creek and nearby existing
3 detention and wetland features will remain protected under the
4 Master Plan.” Record 54-55.

5 As under the first assignment of error, intervenor argues that the city made
6 an implicit interpretation of SMC 17.12.210.4.b. According to intervenor, the city
7 implicitly interpreted “capable of being serviced by adequate City public
8 services” to mean that there is a pathway for the extension of services consistent
9 with the city’s design standards. We agree with intervenor that the city made an
10 implicit interpretation of “capable of being serviced by adequate City public
11 services” because the meaning of the standard and how it is applied is readily
12 discernable from the findings. *Michaelson*, 296 Or App at 253-54. We also agree
13 with intervenor that that implicit interpretation is plausible. *Siporen*, 349 Or at
14 259. We now turn to whether the city’s decision that such a pathway for the
15 extension of stormwater services consistent with city design standards is
16 supported by substantial evidence.

17 The findings state that the property is capable of being served by adequate
18 city stormwater services because it is feasible to extend the existing city
19 stormwater system to the property and by developing an on-site stormwater
20 management system as required under city regulations. The findings rely on a
21 memorandum from the city’s public works department that explains that no
22 public infrastructure requirements are required for annexation of the property, but
23 at the time of development improvements will be required. Record 756.
24 Regarding stormwater improvements specifically, the memorandum states:

1 “Construction of a storm drainage system, including flow control,
2 stormwater quality treatment, and extension of existing City storm
3 infrastructure to serve the property, will be required at the time of
4 development of the Subject Property. The proposed development
5 may also be responsible for contributing proportional share toward
6 *Stormwater Master Plan* capital improvements that benefit the
7 Subject Property.” Record 758 (emphasis in original).

8 As intervenor explains, the SMC contains subdivision and partition
9 approval criteria that require development to provide a stormwater management
10 plan that meets city design standards. Intervenor-Respondent’s Brief 42 (citing
11 SMC 17.24.040.3). Those city design standards require development to provide
12 on-site detention basins to meet “zero-impact” rules so that post-development
13 runoff does not exceed pre-development runoff rates. The city design standards
14 require consideration of downstream impacts and ensure that the impacts
15 petitioner fears will not happen. As the findings explain, those standards will
16 apply to future development proposals for the property. Record 55.

17 The findings adequately explain why the city concludes the property is
18 capable of being served by adequate city stormwater services because there is a
19 pathway for extension of stormwater services consistent with city design
20 standards. A reasonable person could rely on the evidence relied upon by the city,
21 particularly the memorandum from the public works department, to conclude that
22 SMC 17.12.210.4.b. is satisfied. *Younger*, 305 Or at 358-60. Therefore, the city’s
23 decision is supported by substantial evidence.

24 The second assignment of error is denied.

25 The city’s decision is affirmed.