

1 Opinion by Bagg.

2 NATURE OF THE DECISION

3 Petitioner, Leonetti Furniture Manufacturing Company,
4 appeals the denial of its request for a plan amendment and zone
5 change in the City of Beaverton. The requested amendments
6 would change the plan designation and allowable use of certain
7 property from Industrial Park (IP) to Community Service (a
8 commercial designation). The changes would facilitate
9 placement of a large retail discount store. Leonetti Furniture
10 Manufacturing Company is owner of the property and the
11 applicant, Costco Wholesale Corp., is developer of the proposed
12 store.

13 FACTS

14 The property is an 8.1 acre parcel at the southeast corner
15 of Southwest Western and Southwest Fifth Avenues in Beaverton.
16 It is northeast of a retail outlet, a Handyman Store, and south
17 of and adjacent to a retail shoe outlet. Property immediately
18 to the east is zoned for residential use, and property to the
19 west and south is zoned "Industrial Park." Five of the 8.1
20 acres are improved with a 92,000 square foot building and a
21 parking area. The three remaining acres are not improved.

22 Petitioner's request was filed on December 9, 1983. On
23 January 18, 1984, the city planning commission held a public
24 hearing and recommended denial of the requested changes. The
25 city council considered the matter on February 6, 1984 and
26 denied the request. A formal order was entered on February 27,

1 1984. This appeal followed.

2 FIRST ASSIGNMENT OF ERROR

3 "THE CITY COUNCIL INCORRECTLY INTERPRETED AND APPLIED
4 THE PUBLIC NEED STANDARD."

5 Petitioner disputes the city's interpretation of a
6 requirement in its code requiring an applicant to demonstrate
7 "that a public need exists for the proposed amendment and that
8 the need for the amendment exists for this site as compared to
9 other available sites." Resolution 2155, §6(2); Ordinance
10 1800, §7(5)(c)(3); Record 3 and 4. Petitioner claims it was
11 error for the city to interpret this need standard to require a
12 showing that Beaverton needs additional commercially zoned
13 land. Petitioner would have the council interpret the
14 ordinance to focus on whether a need exists for this particular
15 proposed facility.

16 In the alternative, petitioner argues even if the city's
17 interpretation of its code is correct, it is clear from the
18 applicant's evidence that there is a public need for more land
19 zoned for commercial use and less land zoned for industrial use
20 in Beaverton. Petitioner claims its evidence regarding this
21 matter is the only current evidence in the record. The
22 evidence relied upon by the planning staff and city, according
23 to petitioner, was obtained in 1980 and outdated.

24 The city's interpretation of its code to call for a showing
25 of public need is reasonable and not contrary to the express
26 language of the plan. Alluis v. Marion County, 7 Or LUBA 98

1 (1983); Miller v. City Council of Grants Pass, 39 Or App 589,
2 592 P2d 1088 (1978). We find nothing in the code to suggest
3 the city's need requirement may be met by considering a
4 particular proposal rather than the need for the requested land
5 use designation. South of Sunnyside Neighborhood League v.
6 Clackamas County, 280 Or 3, 569 P2d 1063 (1977). While it is
7 true there may no longer be a "public need" requirement in a
8 quasi-judicial plan or zone change action, the city is free to
9 legislatively adopt such a requirement, and it has done so
10 here. Neuberger v. City of Portland, 288 Or 155, 603 P2d 771
11 (1979).

12 We agree with the city there is substantial evidence in the
13 record to support the finding there is no need for additional
14 commercial land in the city. See Record, pp. 56-57, 125,
15 149-154. Also, there is evidence in the record to support the
16 finding there is no present surplus of industrial land. Id.
17 As correctly noted by the city, the city has projected need
18 from the present to the year 2000. The need for industrial
19 land is rising, according to the city and while there is
20 available industrial land, there is no showing the city has a
21 surplus to last to the turn of the century. See Record
22 212-213, 57-58, 125, 3 and 110. Petitioner's evidence may
23 support another result, but the fact there is believable
24 evidence in the record to support the city's position is
25 sufficient to withstand the challenge. Christian Retreat
26 Center v. Comm. for Washington Co., 28 Or App 673, 560 P2d

1 1100, rev den (1977); Home Builders v. Metro Service District,
2 54 Or App 60, 633 P2d 1320 (1981).

3 The second part of petitioner's argument, that there are no
4 other available sites, is based on a commercial lands analysis
5 submitted by the applicant. See Record 149-154. The city's
6 findings apparently acknowledge there is no other available
7 site for this particular use, as it found "this goes to prove
8 that the applicant cannot find a site in Beaverton." Record,
9 p. 4. We do not believe the city committed error by denying
10 the proposal even though there may be no site within the city
11 limits for a particular use. We are not cited to any
12 requirement which would force a local government to have sites
13 available for whatever project one might propose. The standard
14 in the plan addresses itself to the relationship between
15 industrial and commercial land generally and not to some
16 particular need for a particular kind of store. The city found:

17 "The Council also adopts the discussion of
18 availability and need for industrial park land on
19 pages 5 and 6 of the staff report. The table on page
20 5 of the staff report demonstrates that 56.30 acres or
21 19.5% of the industrial park land is vacant. Although
22 Metro estimated the City has a surplus of land, these
23 projections are not current. Using realtors'
24 projections, it appears the vacant industrial park
25 sites will be adequate for ten years. Since the
26 comprehensive plan should address needs for the City
until the year 2000, sites which are currently zoned
and developed as industrial should be retained as
industrial." Record, p. 3.

24 We believe this rationale is consistent with the city's plan
25 and is not error.

26 We therefore deny the first assignment of error.

1 SECOND ASSIGNMENT OF ERROR

2 "THE CITY COUNCIL FAILED TO CONSIDER ALL OF THE
3 RELEVANT TEXT PROVISIONS OF THE GENERAL PLAN."

4 Petitioner argues the city's reliance on a general plan
5 policy calling for preservation of "prime lands for industrial
6 purposes" was applied erroneously and to the exclusion of other
7 important and relevant plan policies. Petitioner claims the
8 site is not prime industrial land because the site is no longer
9 well suited for traditional industrial uses. Petitioner cites
10 evidence submitted by the applicants which supports this
11 conclusion. See Record 65-66, 70-76, and 212-213.

12 Also, petitioner argues the city ignored a statement of
13 intent in the city's plan for industrial areas which provides:

14 "A functional and attractive mix of light industry and
15 office industry uses should be encouraged in areas
16 designated on the Plan for industrial park. A limited
17 but complementary number of commercial and other
18 non-industrial uses will improve these areas'
19 attractiveness as employment centers." City of
20 Beaverton General Plan, p. 58.

21 In addition, petitioner sites to the following statement of
22 intent for commercial areas:

23 "Zoning for additional or expanded commercial center
24 areas should be allocated on the basis of apparent
25 need [sic] and this need should be supported by
26 current market analysis submitted by the applicant."
Beaverton General Plan, p. 55.

Petitioner urges the city should be required to consider all of
the relevant general plan policies.

We reject the petitioner's analysis and agree with that of
the city.

1 The city points out the change requested is a change to the
2 comprehensive plan map, not to the policies of the
3 comprehensive plan. Therefore, any change in the map must be
4 consistent with the text. The city argues the industrial lands
5 policy cited by petitioner gives land in Beaverton a special
6 priority and mandates preservation of industrial land. The
7 city found this industrially zoned land important and this
8 conclusion is sufficient, by itself, to deny the requested
9 change, according to the city. Also, the city notes in its
10 findings that its policies apply to all industrial park land,
11 not just to "prime" industrial park plan.

12 "Resolution No. 2155, section 6(3), Ordinance No.
13 1800, section 7(5)(c)(1), and Ordinance No. 2050,
14 section 129.2(1), all require the request to be
15 consistent with the General Plan text. As its
16 findings on the General Plan text provisions for
17 industrial park areas, the Council adopts the
18 discussion in the January 18, 1984, staff report
19 (hereinafter staff report), attached as Exhibit A, on
20 pages 7 and 8, item C, the first section. In summary,
21 these sections state that industrial park areas should
22 be retained and protected for future industrial
23 development and that the City should make efforts to
24 continue to attract high quality industrial
25 development. There is no merit to the applicant's
26 contention that some industrial park land is prime and
some is not and that these policies only apply to
prime industrial land. These policies apply to all
industrial park land.

21 "The applicant's contentions that this site is not in
22 an industrial park subdivision and that other adjacent
23 areas are commercial and not industrial do not justify
a deviation from the general policy.

24 "Furthermore, this site has an existing industrial
25 structure, rail service and good access to region-wide
26 highways which reinforce the reliance on these
policies." ¹ Record, pp. 2-3.

1 We agree with the city's point that in denying a request to
2 amend the general plan map, the city is not obliged to discuss
3 all possible grounds for granting the request. One provision
4 clearly supports denial in this case. There has been no
5 showing that any policy in the plan compels approval of the
6 proposal. In this case, a complete analysis of all plan
7 policies is not required to support a denial. The city was
8 entitled to base denial on the industrial lands policy alone.
9 See Deters v. Clackamas Co., 1 Or LUBA 217 at 227 (1980).

10 THIRD ASSIGNMENT OF ERROR

11 "THE CITY COUNCIL ERRONEOUSLY CONCLUDED THAT THE
12 REQUESTED CHANGES WOULD ADVERSELY AFFECT SURROUNDING
13 PROPERTY OWNERS AND ADOPTED FINDINGS NOT SUPPORTED BY
14 EVIDENCE IN THE RECORD."

15 In the last assignment of error, petitioner complains the
16 city's findings about adverse effect on the quality of the
17 surrounding area are mostly conclusions and not findings.
18 Petitioner states that only a statement in Finding 5 noting the
19 rear yard setback is different between the industrial and the
20 commercial zone (75 feet vs 20 feet) is a finding of fact.
21 Petitioner also quarrels with the conclusion that commercial
22 uses "can cause more negative impacts."

23 The city's Resolution No. 2155, §6, requires the city to
24 consider the impact of a particular change on surrounding areas
25 including the quality of life of persons directly impacted by
26 the proposed change.² The city's findings show the council
considered this impact. However, the petitioner is correct

1 when it alleges the findings are stated in conclusional form.
2 It may be that the city is trying to say the applicant had not
3 shown there would be a positive impact on the quality of life
4 in the surrounding areas. It is not clear from the findings or
5 the city's regulations that such a positive impact is a
6 requirement for approval, since Resolution 2155 only requires
7 the city to give "consideration" to such matters. Therefore,
8 while we are not sure of the purpose of the requirement and the
9 related finding, and while it is not clear that the city has
10 indeed found that there would be adverse impacts on the
11 neighborhood, the fact the city had other valid grounds for
12 denying the application means the city must prevail.³

13 Deters, supra; Weyerhaeuser v. Lane County, 7 Or LUBA 42 (1982).

14 The decision of the City of Beaverton is affirmed.

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FOOTNOTES

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4 The staff findings, referred to by the city council, are
5 found at Record, pp. 13-14.

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7 "Resolution 2155, Section (8), requires the Council to
8 consider the 'effect of the quality of life of those
9 persons directly impacted by the proposed change,' and
10 Section 6(2) requires Council consideration of the
11 'impact on the surrounding areas, the environment
12 and the general economy.' A change in the required
13 rear yard set back (sic) from 75 feet for industrial
14 park to 20 feet for commercial where the site abuts
15 residential property would bring non residential uses
16 closer to residential uses. This would negatively
17 affect the surrounding residential area and quality of
18 life of the residents who abut the property. Although
19 Costco, the proposed user of the site, has promised
20 buffering landscaping, increased set backs (sic) and
21 special parking arrangements to minimize this impact,
22 once the change to commercial has been approved, any
23 business may use the site, and Costco's plans would
24 not apply. Also, site plans are reviewed by the Board
25 of Site and Design Review Board and are not properly
26 before the Council at this time.

"Testimony demonstrates that a commercial use, such as
Costco, can cause more negative impacts to the
surrounding area than an industrial use, such as the
current use, because of the increased traffic,
increased exhaust, longer hours of operation and
weekend use. Changing the designation from industrial
to commercial might have a good effect on the general
economy by potentially providing more jobs or might
have a negative effect or no effect if the jobs are at
the low end of the pay scale as compared with higher
paying industrial jobs." Record, pp. 4-5.

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24 Resolution No. 2155(6) requires the council to
25 "consider...the impact on surrounding areas, public facilities
26 and services...[and] the effect on the quality of life of those
persons directly impacted by the proposed change." We are not
certain of the function the city intends this requirement to
perform. If the city intends this language to create an

1 approval standard, the language is objectionable in that it
2 does not reflect a value preference.

3 "...[A] demand for information does not tell an
4 applicant...what conclusion the information is
5 required to prove. It provides no verbal yardstick
6 against which the evidence is to be measured. A
7 demand for information standing alone is not a
8 standard." Marbet v. Portland General Electric, 277
9 Or 447, 465, 561 P2d 154 (1977).

10 The requirement that certain impacts be "considered"
11 appears to be neither a standard, nor a demand for information
12 within the Marbet rationale. We decline to speculate on its
13 correct legal characterization.
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