

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

SEP 1 4 30 PM '87

STANDARD INSURANCE COMPANY, an)
Oregon Corporation,)

Petitioner,)

vs.)

WASHINGTON COUNTY, and LLOYD)
POWELL AND ASSOCIATES,)

Respondents.)

LUBA No. 87-020

FINAL OPINION
AND ORDER

Appeal from Washington County.

Stephen T. Janik, and Jack L. Orchard, Portland, filed the petition for review. With them on the brief were Ball, Janik & Novack. Jack L. Orchard argued on behalf of petitioner.

Jeffrey J. Bennett, Portland, filed a response brief and argued on behalf of Respondent-Intervenor Lloyd Powell and Associates. With him on the brief were Bauer, Hermann, Fountain & Rhoades.

No appearance by Washington County.

DUBAY, Chief Referee; BAGG, Referee; HOLSTUN, Referee, participated in the decision.

REMANDED 09/01/87

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

1 Opinion by DuBay.

2 NATURE OF DECISION

3 This appeal challenges approval of an amendment to the
4 comprehensive plan map for the Sunset West Community Plan. The
5 amendment changes the designation of a ten acre tract from
6 Industrial to Neighborhood Commercial (NC).

7 FACTS

8 The tract is located at the intersection of N.W. Walker
9 Road and N.W. 185th Avenue in the urban area of the Washington
10 County. The applicant for the change proposes to construct a
11 100,000 square foot shopping center anchored by a 40,000 square
12 foot supermarket. Plan designations on surrounding properties
13 are Industrial to the north, west and south, and Office
14 Commercial, Neighborhood Commercial and Institutional to the
15 east. The planning commission recommended denial of the
16 application. The county commission approved the amendment as
17 proposed. This appeal followed.

18 PROCEDURAL CHALLENGE

19 Respondent-Intervenor challenges the petition for review on
20 the ground it fails to set forth specific assignments of error
21 in accordance with the Board's rules. OAR 661-10-030(3)(f) and
22 (g) require that a petition for review

23 "(f) Set forth clearly and succinctly each assignment
24 of error under a separate and appropriate heading.
25 Where several assignments of error present essentially
the same legal question, they shall be combined so far
as is practicable.

26 "(g) Set forth a separate argument for each assignment

1 of error or combination of assignments of error;"

2 The petition alleges the county commission committed two
3 types of error. The petition states:

4 "First, the applicant (and in turn the county) failed
5 to address certain relevant approval criteria.
6 Secondly, several of the findings which are critical
7 to the action approving the plan change are not
8 supported by substantial evidence, leading to a
9 decision itself not supported by substantial
10 evidence. Petitioner's specific assignments of error
11 are grouped by subject matter for ease of analysis by
12 LUBA."

13 The quoted rules may be interpreted broadly to permit the
14 organization of arguments in this manner. The petition
15 describes the two types of claimed error and provides analysis
16 and argument of how these errors occur in the discussion of
17 various issues. In this case, the format does not result in
18 the defect noted in our prior decisions, cited by
19 intervenor-respondent, that petitions for review must explain
20 how a decision violates a particular legal standard and not
21 just assert the decisionmaker reached the wrong conclusion.
22 See, Dougherty v. Tillamook County, 12 Or LUBA 20 (1984);
23 Deschutes Development Co. v. Deschutes County, 5 Or LUBA 218
24 (1982). Intervenor-respondent's challenge to the petition is
25 denied.¹

26 THE MERITS

27 Petitioner alleges the decision is defective because the
28 decision fails to show compliance with policies and strategies
29 in the county's Comprehensive Framework Plan (CFP) for the
30 Urban Area and that findings addressing these criteria are not

1 supported by substantial evidence. Our analysis of
2 petitioner's claims will address the plan criteria identified
3 by petitioner in turn.

4 CFP POLICY 18 (Location Criteria)

5 Policy 18 requires the county to adopt community plans and
6 regulations in accordance with categories and locational
7 criteria in the CFP. Specific provisions of Policy 18 are
8 applicable to this decision because an Implementing Strategy of
9 Policy 1 states:

10 "A quasi-judicial plan amendment to the Community Plan
11 Maps,... shall be granted only if...the proponent has
12 demonstrated that the proposed designation conforms to
13 the locational criteria [in Policy 18] of the
14 Comprehensive Framework Plan...and demonstrates that
15 the potential service impacts of the designation will
16 not impact the built or planned service delivery
17 system in the community...." Implementing Strategy
18 (g), Policy 1, CFP.

19 NC Zone Description

20 Petitioner alleges the applicable criteria in Policy 18 include
21 the following description of the NC zone:

22 "The intent is to provide for the shopping and service
23 needs of the immediate urban neighborhood and as such
24 should be readily accessible by car and foot from the
25 surrounding neighborhoods. The scale, operation and
26 types of uses permitted in this district are in
27 keeping with the neighborhood character and the
28 capacity of public facilities and services. The
29 principal tenant is likely to be a food market."

30 Petitioner argues that the decision fails to show
31 compliance with several provisions in this description of the
32 NC zone. Petitioner alleges the decision is defective for
33 failure to show conformance with the described characteristics

1 of the NC zone.

2 We find no error. Policy 18 includes provisions for each
3 of the 14 zone classifications in the county, including NC,
4 with two types of information given for each classification.
5 Each zone class is followed by a paragraph entitled
6 "Characterization" and another entitled "Location Criteria."
7 Implementation strategy (g) of Policy 1, quoted above, requires
8 a demonstration that the proposal "conforms to the locational
9 criteria of the Comprehensive Framework Plan." (Emphasis
10 added.) The description of characteristics of the zone is not
11 an approval standard for proposed additions to the zone.
12 Petitioner cites no plan provision requiring comparison of
13 proposed changes with the description of zone characteristics.
14 We agree with respondent-intervenor that the "characteristics"
15 for each zone shown in Policy 18 are not approval standards and
16 deny this subassignment of error.

17 Location Criteria

18 Petitioner next alleges the decision does not satisfy the
19 location criteria for the NC zone. The location criteria for
20 the NC zone are as follows:

21 "The precise location of these uses should be jointly
22 determined by market factors and the community
23 planning process. Generally, they should be located
24 at Collector and/or Arterial intersections and at
intervals a mile apart. These uses may be grouped on
sites of up to 10 acres." CFP at 3.3.28

25 In the first of three challenges to the findings addressing
26 these location criteria, petitioner claims the market factors

1 considered by the county were the result of flawed methodology
2 in the applicant's economic study.

3 Petitioner alleges the county erred by basing estimates of
4 supply and demand for food markets solely on a trade area
5 within five minutes drive time from the proposed location.
6 According to petitioner, the trade area construct fails to take
7 account of competing food markets outside the trade area but
8 within five minutes drive time for residents of the trade
9 area. Petitioner argues that some residents near the fringe of
10 the trade area will shop outside the trade area because stores
11 outside the area may be closer. We understand petitioner to
12 say that because the estimates do not recognize all food
13 markets within five minutes driving time for trade area
14 residents, the existing supply of food stores is greater than
15 shown in the application. As a consequence, petitioner says
16 the need for additional food stores is not as great as
17 presented by the applicant's evidence.

18 In addition, petitioner alleges the supply and demand
19 calculations exclude non-supermarket food stores, and that the
20 findings fail to explain why these stores are not considered
21 part of the existing supply of food stores.

22 Petitioner's objection to the county's analysis of market
23 factors and the finding of an unmet need for more retail food
24 stores challenges the evidence relied upon by the county. We
25 do not reweigh the evidence, but confine our review to
26 determine if the record contains substantial evidence to

1 support the decision. Home Builders v. Metro Service Dist., 54
2 Or App 60, 633 P2d 1320 (1981).

3 The findings are based on a report submitted by the
4 applicant's planning consultant. The report notes that

5 "A five minute drive time is considered a standard
6 primary market area for a neighborhood shopping center
and supermarket.

7 * * *

8 "The demand for grocery [sic] within a trade area is a
9 function of the total available household dollars
10 within a trade area, the average grocery expenditures
per household and the average sales per square foot of
11 grocery sales space. The relationship of these
factors will give the total amount of grocery space
that the trade area will support at a particular time
12 for a particular population and number of households."
Record at 213-213.

13 The report includes tables of current and projected
14 population of the trade area, total income and the estimated
15 expenditures for food by trade area residents, and the number
16 of square feet of retail space needed to meet that expenditure
17 demand. The result of the calculations in the report is that
18 in 1985 a demand existed for 69,520 square feet of food store
19 retail space which will increase to a demand for 93,920 square
20 feet by 1990. The report states existing supermarkets in the
21 trade area comprise 60,900 net square feet.² This will
22 result in a demand for 33,020 additional square feet of retail
23 selling space by 1990. Based on year 2005 population
24 projections furnished by Metropolitan Service District, the
25 report predicts an unmet demand for 182,000 square feet of
26 store area by 2005. Record at 214.

1 A reasonable person could rely on this evidence. The
2 calculations in the report are said to be based on trade area
3 calculations recognized in the industry. Petitioner faults the
4 report's conclusions on grounds that quick stop grocery stores
5 and Costco, a warehouse type retail store, were not considered
6 available to meet the calculated demand for retail grocery
7 stores. However, petitioner cites to no evidence in the record
8 that quick stop stores are in the trade area. When petitioners
9 objected to the exclusion of Costco from the analysis, the
10 applicant presented testimony explaining why Costco was not
11 considered. Record of Board of County Commissioners' meeting
12 of February 3, 1987 at 35. Petitioner's opinion that the
13 methods used by the applicant are flawed was rejected by the
14 county. We will not substitute our judgement for the county's
15 on this issue. Cite Hillsboro Neighborhood Association v. City
16 of Hillsboro, ___ Or LUBA ___ (LUBA No. 86-094, June 3,
17 1987). This subassignment of error is denied.

18 Petitioner's second challenge to the city's compliance with
19 the location criteria for the NC zone alleges the community
20 planning process was inadequate because the Citizens Planning
21 Organization (CPO) did not take a position on the matter and
22 participation by the CPO was extremely limited.. Petitioner
23 adds that the community planning process dictates the decision
24 should be the subject of a legislative proceeding rather than a
25 quasi-judicial plan amendment.

26 We reject both claims. Petitioner cites no provision in

1 the county's planning documents requiring approval or
2 disapproval by the CPO before final action on land use
3 matters. Neither does petitioner cite any authority for the
4 claim that the quasi-judicial procedures are improper for the
5 single tract plan amendment here considered. Petitioners rely
6 on the opinion expressed by the planning commission and staff
7 favoring "a comprehensive analysis of market demands and
8 alternative land use pattern." Record at 190. The
9 recommendation of the planning commission, however, does not
10 limit the county's discretion to amend the plan through
11 quasi-judicial procedures. The county commission was entitled
12 to amend the plan according to the criteria for quasi-judicial
13 amendments in Implementing Strategy (g) of Policy 1, quoted
14 supra.

15 Petitioner's last challenge to the decision for failure to
16 satisfy the location criteria for the NC zone alleges the site
17 is less than one mile from the nearest NC site. According to
18 petitioner, this does not comply with the following criterion
19 in Policy 18:

20 "Generally, they should be located at Collector and/or
21 Arterial intersections and at intervals a mile apart."

22 Petitioner says the county either ignored or improperly
23 interpreted this standard to approve this site located a few
24 hundred feet east of another site zoned NC.

25 The findings state:

26 "The Board views the one mile provision of the
Neighborhood Commercial location criteria merely as a

1 guideline. It is not inappropriate, for example, to
2 locate a small-scale convenience commercial use such
3 as a Plaid Pantry upon a small Neighborhood Commercial
4 site relatively close to a larger scale full-service
5 Neighborhood Commercial shopping center on a 10-acre
6 site nearby. That is the case with respect to the
7 subject property and the Neighborhood Commercial site
8 located just east of the intersection of Walker Road
9 and 185th Avenue. Because the one mile reference in
the Neighborhood Commercial District merely is a
guideline, and because the Board interprets the
location criteria to permit Neighborhood Commercial
uses to be located near one another so long as the
uses do not serve the same functions, the Board
concludes that no violation of the Neighborhood
Commercial location criteria is present in this
case." Record at 62-63.

10 The spacing criterion is not phrased in mandatory terms,
11 being prefaced by the qualifier "generally." Given this
12 non-mandatory provision in the location criteria, we do not
13 find the county's interpretation is unreasonable. We defer to
14 the interpretation by the jurisdiction of its own enactment in
15 these circumstances. Fifth Avenue Corp. v. Washington Co., 282
16 Or 591, 581 P2d 50 (1978).

17 Petitioner's claims that the decision does not meet the
18 location criteria in Policy 18 are denied.

19 CFP POLICY 20 (Supply of Industrial Land)

20 Petitioners charge that the findings include no discussion
21 at all of Policy 20 which requires an adequate supply of
22 industrial land to ensure choice in the market place.
23 Petitioner points to statements in a staff report that the site
24 meets three of the Industrial zone location criteria but only
25 one of the NC zone criteria. Petitioner claims the country
26 erred by not evaluating the loss of industrial land from the

1 county's inventory.

2 CFP Policy 20 encourages activities that strengthen the
3 local economy. Implementing strategy (b) of the Policy states:

4 "Help create a healthy climate for economic
5 development by designating an adequate amount of
6 commercial and industrial land to ensure choice in the
7 market place."

8 The county addressed CFP Policy 20 in the order. The focus
9 of the findings, however, is on the shortage of sites for
10 grocery stores in the county's inventory. The effect of the
11 redesignation on the supply of industrially zoned land was not
12 mentioned.

13 The CFP refers to Implementing Strategies as "standards
14 designed to regulate...growth and development." CFP at 1. The
15 Implementing Strategies section of Policy 20, similar to other
16 policies in the plan, is prefaced by the command, "The county
17 will: ---." We believe these imperatives require the county to
18 explain, when the inventories of commercial and industrial
19 designated lands are adjusted, whether the requirements of
20 Implementing Strategy (b) of Policy 20 are satisfied. That is,
21 does the adjustment help create a healthy climate for economic
22 development by ensuring an adequate supply of land in both
23 categories?

24 Intervenor-respondent says the county's conclusion
25 additional grocery store space is needed is a tacit statement
26 that the demand for additional food store space overrides the
need for 10 acres of Industrial land. We reject this

1 contention. The county's silence is an insufficient statement
2 of how the county views this issue. The county must make
3 findings that explain how the facts lead it to a conclusion
4 that applicable criteria are met. Sunnyside Neighborhood v.
5 Clackamas Co. Comm., 280 Or 3, 569 P2d 1063 (1977). Because
6 the county made no findings addressing the supply of Industrial
7 land after the redesignation, this subassignment of error is
8 sustained.

9 CFP POLICY 1 (Alternative Sites)

10 Petitioner alleges the decision improperly applied CFP
11 Policy 1 which requires a demonstration that suitable
12 alternative sites are lacking as a pre-requisite to a change in
13 plan designation. Implementing Strategy (g) of Policy 1
14 requires a demonstration of:

15 "A lack of appropriately designated suitable
16 alternative sites within the vicinity for a proposed
17 use. Factors in determining the suitability of the
18 alternative sites are limited to one of the following:

- 19 (a) Size: suitability of the size of the alternative
20 sites to accommodate the proposed use; or
21 (b) Location: suitability of the location of the
22 alternative sites to permit the proposed use."
23 CFP at 3.1.5

24 The county considered five alternative sites. Before its
25 discussion of these sites, however, the county commission
26 clarified how it would apply the above quoted criteria in three
27 particulars. Petitioner challenges the county's reasoning for
28 all three.

29 First, the county concluded the proposed use for the

1 evaluation of alternative sites would be a ten acre, grocery
2 based neighborhood shopping center. The county based this
3 conclusion on the applicant's evidence that modern marketing
4 conditions dictate that supermarkets be of a large size
5 (averaging about 40,000 square feet); that economics prevent
6 investment in this size operation without rental income from
7 complementary commercial retail stores, and that the combined
8 grocery store and other commercial uses require about ten acres
9 to develop. Record at 45-47, 204-209.

10 Petitioner says the county justified the decision on a need
11 for additional grocery store space but provided no explanation
12 why the additional 60,000 square feet of retail space is needed
13 in the vicinity.

14 As petitioner correctly points out, the findings do not
15 show a shortage of commercial retail space in the community.
16 However, the county's action is not based on a shortage of
17 commercial retail space. According to the county, the
18 additional commercial space is needed to make construction of
19 needed market space feasible. Without the economic support of
20 rent from other commercial space, the supermarket could not
21 stand alone. Record at 45-46. The county insists the proposed
22 use, i.e. the size and design of the facility, with its
23 auxillary commercial space, is the use that must be considered
24 in any comparison of alternative sites.

25 We do not find the county's application of the CFP policies
26 unreasonable or contrary to any requirement in the plan. We

1 defer to the county's application of the plan and deny
2 petitioner's claim of error.

3 To make its assessment of alternative sites, the county
4 also concluded that the vicinity to be examined is the
5 five-minute drive time Sunset West Trade Area delineated by the
6 applicant. Record at 54. Petitioner's second argument is that
7 the term "vicinity," as used in CFP Policy 1, requires the
8 county to evaluate alternative sites outside the immediate
9 vicinity considered by the county.

10 The county's plan gives no guidance about the area to be
11 considered as the vicinity in the evaluation of alternative
12 sites. In the absence of such guidance, the county's selection
13 of the same area to be served by the proposed use is reasonable
14 and does not violate the plan policies.

15 The third assumption made by the county in its alternative
16 sites analysis was that any site should be located to take
17 advantage of evening peak hour traffic flows. Record at 54.
18 Petitioner faults this conclusion on the ground it shows the
19 supermarket must depend on customers driving by who may well
20 not reside in the trade area.

21 This claim is also rejected. The county found that shopper
22 convenience is a major factor in site selection for a
23 grocery-based neighborhood shopping center, and that the
24 traffic volumes at the site and at other intersections in the
25 area demonstrate that a majority of Sunset West Community
26 traffic will converge on this area on the way home from work.

1 We do not believe this explanation of the relationship between
2 neighborhood commuter traffic and the convenience of local
3 residents is inconsistent with the NC zone as petitioner
4 alleges.

5 We turn to petitioner's challenges to the county's findings
6 and conclusions that each of the alternative sites considered
7 is unsuitable for the proposed use.

8 185th and Cornell Road

9 This 9.5 acre site is located relatively near the center of
10 the Sunset West Community trade area. Record at 160. It is
11 designated Community Business District (CBD). The county
12 concluded the site is not appropriately designated for the
13 proposed use on the ground the CBD district is intended for a
14 different function than the NC district. The county found:

15 In other words, the function of the Neighborhood
16 Commercial District is to provide for the immediate
17 day-to-day shopping and service needs of persons who
18 live within the immediate neighborhood. In contrast,
19 the central business district is intended to service a
20 much larger trade area or 'community,' and to provide
21 a much broader range of consumer services." Record at
22 57.

23 The findings add that the NC district is intended to provide
24 the primary location for satisfying the grocery based
25 convenience shopping demands.

26 Petitioner challenges this rationale, arguing that the
county fails to explain why the large supermarket proposed,
with its expanded product and services, is not the kind of
facility intended for the CBD district.

1 We sustain petitioner's challenge but for a slightly
2 different reason. The county's interpretation is premised on
3 its view that grocery based convenience shopping demands are
4 inappropriate in the CBD district because such uses are more
5 appropriate in the NC district. This view is not borne out by
6 the terms of the county's development code. According to the
7 code, uses permitted in the CBD district, using a Type II
8 approval procedure, include both convenience groceries (Sec.
9 313-3.3) and food markets of all types (Sec. 313-3.9).
10 Further, the code states:

11 Type II land use actions are presumed to be
12 appropriate in the District. They generally involve
13 uses or development for which review criteria are
14 reasonably objective, requiring only limited
15 discretion." (Emphasis supplied) Sec. 202-2.1,
16 Community Development Code.

17 While the CBD district does provide a broader mix of uses to
18 serve a larger area than allowed in the NC district, to say
19 grocery based convenience shopping facilities are inappropriate
20 for the district is contrary to the express terms of the
21 ordinance. We reject that interpretation of the county's
22 regulations. See West Hills & Island Neighborhoods v.
23 Multnomah Co., 68 Or App 782, 683 P2d 1032 (1984).

24 As noted, the county's only reason for rejecting the 185th
25 and Cornell Road site as a suitable alternative site is based
26 on this erroneous view that the proposed use is inappropriate
in the CBD district. Because this interpretation is rejected,
a remand is warranted.

1 158th and Walker Site

2 This 17 acre site is in the City of Beaverton and is
3 designated General Commercial, a zone comparable to the
4 county's CBD designation. Record at 214. The county found the
5 site is an unsuitable alternative on two grounds. First, the
6 county found the site is planned to contain approximately
7 170,000 square feet of retail space, a size too large to be
8 anchored by a supermarket alone. Second, evening peak hour
9 traffic at the 158th Street and Walker Road intersection is
10 less than traffic at the intersection near the chosen site.
11 The county concludes this lower traffic count indicates a less
12 convenient site for residents of the Sunset West Community.

13 Petitioner attacks both reasons advanced by the county.
14 Petitioner says no evidence supports the county's conclusion
15 that more than one anchor store is necessary for development at
16 the site or that the 17 acres must be developed with only one
17 shopping center. As to traffic, petitioner challenges the
18 county's rationale, i.e., that more traffic at nearby
19 intersections equals more convenience to residents of the
20 Sunset West Community. According to petitioner, a less
21 traveled route (such as at 158th and Walker) may be more
22 attractive to many local residents. Petitioner contends the
23 applicant's desire for higher traffic counts indicates a desire
24 to capture passing commuter traffic and not to serve trade area
25 residents.

26 The record includes a report, submitted with the

1 application, that describes the site's potential. Because of
2 the large space available and lower traffic count at the
3 intersection, the report concludes a shopping center at this
4 location "will most likely develop as a destination shopping
5 center rather than a convenience center." Record at 215. The
6 appropriateness of a convenience shopping center is discounted
7 by the report. Petitioner does not challenge the credibility
8 of the report.

9 We find the report is substantial evidence to support a
10 conclusion by a reasonable person that the 17 acre site at
11 158th and Walker is not suitable for a convenience shopping
12 center.

13 Petitioner's second argument attacking the connection
14 between traffic and convenience is also rejected. Petitioner
15 would draw a different conclusion from the traffic count
16 evidence than drawn by the county. Whether different
17 conclusions are possible is not relevant. The issue is whether
18 substantial evidence supports the county's finding that low
19 traffic counts at the intersection indicates less convenience
20 to local residents. A reasonable person could conclude the low
21 traffic counts indicate an inconvenient route, even though
22 other conclusions are possible. We will not substitute another
23 conclusion for the county's in these circumstances. ORS
24 197.830(11); Younger v. City of Portland, 86 Or App 211, ____
25 P2d ____ (1987).

26 OTHER SITES

Page Petitioner faults the county's conclusions that three other

1 sites are not suitable alternatives to the chosen site. The
2 three sites are at 219th Avenue and Baseline Road, at Cornelius
3 Pass Road and Cornell Road, and in the Bethany Community area.
4 All three sites were rejected by the county in part because
5 they are located either outside of the Sunset West Community
6 area or too far from the center of the trade area.

7 Petitioner disputes this rationale, saying no planning
8 criteria requires a central location. Petitioner points to
9 this logic as driven by the wishes of the applicant rather than
10 the needs of the community.

11 Petitioner's claim misses the target. The basis for
12 petitioner's claim is that the county made an impermissible
13 assumption about the necessity of convenience for all trade
14 area residents. However, petitioner fails to state a
15 prohibition, in the county planning documents or otherwise,
16 that prevents the county from making that assumption. Again,
17 petitioner asks this Board to substitute our judgement for the
18 county's about whether convenience stores should be centrally
19 located in the area served by such stores. We cannot do
20 so.³

21 Petitioner's claim that the county erred by finding the
22 185th and Cornell Road site is not a suitable alternative site
23 is sustained for the reasons stated above. Petitioners
24 remaining claims of error regarding the alternative sites
25 analysis required by CFP Policy 1 are denied.

1 CFP Policy 32 (Traffic)

2 Petitioner alleges the findings addressing traffic issues
3 are inadequate. Petitioner's principal argument alleges the
4 decision is flawed because no traffic study analyzed the impact
5 of the proposal on the street system. Petitioner cites to
6 reports by the planning staff stating that changing the zone
7 designation could increase traffic generation from 700 to 7,690
8 trips per day which could degrade the level of service at the
9 185th and Walker intersection. Record at 107, 187.

10 The decision allows deferral of a traffic study until a
11 development permit is applied for when the specific design and
12 its effect on traffic can be analyzed. Petitioner acknowledges
13 this approach is often used in the county but nevertheless
14 contends that plan criteria require at least a basic review of
15 traffic impacts before a plan change is made.

16 CFP Policy 32 states:

17 "It is the policy of Washington County to provide a
18 balanced transportation system which combines land
19 uses with the appropriate levels and types of
transportation services necessary to accommodate the
full implementation of the comprehensive plan."

20 The implementing strategies following this policy adopts a
21 functional classification for streets and roads. Each class of
22 streets is described by its functional purpose. Design and
23 land use considerations for each class are also described. The
24 classifications are made relevant to the plan change decision
25 by the following implementing strategy:

26 "A quasi-judicial plan amendment to the Community
20

1 Plan Maps...shall be granted only if...the
2 proponent...demonstrates that the potential
3 service impacts of the designation will not impact
4 the built or planned service delivery system in
5 the community." (Emphasis added) Implementing
6 Strategy (g), CFP Policy 1.

7 The findings state that evidence is conflicting concerning
8 the impact the development would have on the intersection. The
9 commissioners rejected the staff report as unsubstantiated that
10 the proposal would generate more traffic than an industrial
11 project. The facts relied upon by the commissioners relevant
12 to impacts on the built or planned road system are set forth in
13 the following finding:

14 "Moreover, the Applicant has demonstrated, and the
15 Board has found, that this project merely will satisfy
16 a need that already exists. Because at least 43
17 percent of the residents within the trade area
18 presently shop outside the trade area for groceries,
19 it reasonably can be inferred that provision of an
20 additional grocery based neighborhood shopping center
21 within the trade area will actually reduce the overall
22 impact of traffic within the trade area." Record at
23 64.

24 Based on this finding about impacts on the street system,
25 the county concluded that approval of the application complies
26 with CFP Policy 32.

27 The above quoted findings fail to meet the standards for
28 our review. To show that applicable criteria have been met,
29 findings must set forth in positive terms what facts are relied
30 upon by the county and explain how those facts demonstrate that
31 applicable criteria have been met. Home Plate, Inc. v. OLCC,
32 20 Or App 183, 530 P2d 862 (1975). The criterion applicable
33 here requires a demonstration of what potential service impacts

1 may result and how they will affect the street system in the
2 community. The fact that 43 percent of trade area residents
3 now shop outside the trade area gives no information about the
4 present capacity of the street system or what potential service
5 impacts will result from the proposed change. The findings
6 provide no explanation to connect the amount of existing
7 out-of-the-trade area shopping with impacts from any site
8 generated traffic the proposed neighborhood shopping center
9 might develop. In short, the findings fail to set forth facts
10 and reasons warranting a conclusion Implementing Policy (g) of
11 Policy 1 is met by the proposed change. For this reason
12 petitioner's challenge is sustained. Sunnyside Neighborhood v.
13 Clackamas Co. Comm., 280 Or 3, 569 P2d 1063 (1977).

14 The decision is remanded.

FOOTNOTES

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1 We note, however, that this organization of arguments may not be conducive to efficient review. If errors are not clearly identified, respondents may not provide adequate responses, and the Board may not address all issues in its review. We discourage petitions that do not clearly set out a particular claim of error and a separate argument in support of the claim.

2 The term "net square feet" is not defined in the report. A note in the report quotes from a publication of the Food Marketing Institute that 70% is the average net to gross ratio for supermarkets.

3 The county also found two of the other sites unsuitable in part because they are zoned CBD. If that were the only reason the sites were rejected, petitioners challenge would be sustained for the reasons set forth in the discussion about the 185th and Cornell Road site. However the county found the sites unsuitable for other reasons which have not been successfully challenged here.