

**BEFORE THE CITY COMMISSION
FOR THE CITY OF OREGON CITY**

In the matter of Appeals filed by Charles Combs and the McLoughlin Neighborhood Association of the Historic Review Board's approval of Phase I of the proposed Public Works Operations Facility in the McLoughlin Conservation District (AP 17-01 and 17-02).

**FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND FINAL ORDER**

INTRODUCTION

The City of Oregon City (the "Applicant") seeks to develop Phase I of a multi-phased development to upgrade and modernize its public works facility, which currently exists at this site. This property is located within the McLoughlin Conservation District. The Applicant sought a certificate of appropriateness for Phase I of this project including removal of the cannery and warehouse buildings, and the construction of a new office building, elevator, and covered parking.

On June 27, 2017, the Oregon City Historic Review Board (HRB) voted to approve the application (HR 17-04). City staff mailed notice of the decision on June 30, 2017.

On July 11, 2017, Charles Combs (Combs) filed an appeal of the HRB's decision. On July 14, 2017, McLoughlin Neighborhood Association (MNA) appealed the same decision which included a request to waive the \$50 appeal fee. These findings respond to Appellants' arguments raised in the appeals and adopt the HRB's decision by reference.

On April 25, 2017, the HRB held an evidentiary hearing to considering the application. This hearing was continued to May 23, 2017. On May 23, 2017, the HRB reconvened and conducted a continued evidentiary hearing. After all of the testimony was taken, the HRB closed the public hearing, deliberated and made a tentative decision to approve the application, subject to conditions of approval. The matter was continued to June 27, 2017. On June 27, 2017, the HRB reconvened for the adoption of findings. City staff mailed notice of the decision on June 30, 2017.

On July 11th and 14th, 2017, the Appellants filed their notices of intent to appeal the HRB's decision. On March 7, 2018, the City Commission convened to hear the appeal through a consolidated public hearing. Before considering the merits of the appeal, the City Commission held a de novo hearing to consider the fee waiver request. After granting the fee waiver request, the City Commission held a public hearing to consider the substance of the appeal. As with all Type III appeals, the City Commission's review was based on the record prepared before the HRB, no new evidence was considered.

PROCEDURAL ISSUES

Notice of Appeal

MNA objected that the City failed to post notice of the appeal hearing depriving the public of an opportunity to participate. Participation in the appeal hearing was limited to those who participated before the HRB. The applicable appeal notice provision, OCMC 17.50.190E, provides that: “The planning division shall issue notice of the appeal hearing to all parties who participated either orally or in writing before the close of the public record in accordance with Section 17.50.090B.” Although OCMC 17.50.090B does include provisions for published and posted notice, the Commission interprets this obligation on appeal to be limited to the method for mailing notice to those parties “who participated either orally or in writing before the close of the public record.” The City did mail notice of the appeal hearing to those individuals who participated below via first class mail consistent with the applicable requirements of OCMC 17.50.090B. Providing posted or published notice would not serve any purpose when participation is limited to those who participated before the HRB.

Request to Consider New Evidence

During the appeal hearing, MNA argued that the City Commission had to re-open the record to consider new evidence pursuant to OCMC 2.28.070(D). Mr. Combs argued that the City should consider new evidence because it was related to evidence already in the record.

OCMC 2.28.070 provides:

D. The city commission shall hear the appeal pursuant to procedures established in Chapter 17.50. The city commission shall consider the record and such additional evidence as may be offered and may affirm, reverse or modify in whole or in part the decision appealed from, or make and substitute such other additional decisions or determinations it may find warranted. The city commission shall forthwith transmit a copy of the decision to the applicant or appellant and the planning department.

Although this provision states that the city “shall consider ...such additional evidence as may be offered,” this provision also says that the appeal shall be considered “pursuant to the procedures established in Chapter 17.50.” This creates a conflict with OCMC 17.50.030(C), which is directly contrary to the statement in OCMC 2.28.070, and states that “[t]he decision of the . . . historic review board is appealable to the city commission, on the record.”

In three places, OCMC Chapter 17.50 goes on to explain that City Commission review of appeals may not include the consideration of new evidence. The most explicit reference, OCMC 17.50.190(D)(2), provides:

For Type III and IV decisions, only those persons or recognized neighborhood associations who have participated either orally or in writing have standing to appeal the decision of the planning commission or historic review board, as applicable. Grounds for appeal are limited to those issues raised either orally or in

writing before the close of the public record. No new evidence shall be allowed.
See also 17.50.030(C) and 17.50.190(F) (*emphasis added*).

All Historic Review permit decisions are categorized as Type III hearings that are reviewable by the City Commission “on the record.” OCMC 17.50.030(C).

The City Commission finds that the procedures set forth in OCMC 2.28 regarding historic review pre-date the City’s adoption of uniform land use procedures in OCMC 17.50. Some of the procedures contained in OCMC 2.28 are consistent with OCMC 17.50 procedures, such as the \$50 appeal fee, but some of them are not. For example, under OCMC 2.28.070(B) the appeal of an HRB decision must be submitted within 10 days of the notice of decision being issued. The City accepted this appeal pursuant to OCMC 17.50.190(B), allowing both appeals to be filed within 14 days of the notice of decision, not the 10 days identified under OCMC 2.28.070(B). Mr. Combs filed the appeal 11 days after the notice of decision and MNA filed its appeal 14 days after the notice of decision, or the last day to do so in order to comply with OCMC 17.50.190(B). Should the procedures in OCMC 2.28 control this process, as MNA advocates, those procedures may have resulted in the dismissal of Mr. Combs and MNA’s appeal as untimely filed. Instead, the City elected to hear the appeal pursuant to the procedures set forth in OCMC 17.50.

When interpreting conflicting provisions, OCMC 17.50.230 provides that “Where a provision of Title 16 or Title 17 conflicts with another city ordinance or requirement, the provision or requirement that is more restrictive or specific shall control.” In this case, the provision in OCMC 2.28.0070 conflicts with the provision of OCMC 17.50.030(C) and the City Commission rejects MNA’s suggestion that OCMC 2.28.070(D) dealing with HRB review in certain circumstances is more restrictive and specific than the procedures in OCMC 17.50.

First, OCMC 17.50.030 is just as specific as OCMC 2.28.070(D) in its reference to review of historic review board decisions where it states: “The decision of the planning commission or historic review board is appealable to the city commission, on the record.”

Second, to the extent that the City Commission is required to determine whether one procedure is “more restrictive” than another, the Commission interprets the term “restrictive” consistent with its dictionary definition. The dictionary defines the term “restrictive” as “serving or tending to restrict,” “expressing a limitation,” and “prohibiting further negotiation.” *Webster’s Third New International Dictionary* 1937 (unabridged ed 2002). Limiting the evidence to what is already in the record would be more “restrictive” than reopening the record to all parties, or even only to the appellants. Therefore, to the extent that OCMC 17.50.230 is controlling, it supports the Commission review of this matter on the record.

Since the City has a practice of hearing all appeals, including HRB appeals on the record, because it had followed all other OCMC 17.50 procedures in its review of this matter to date, and retaining a closed record is the more restrictive approach, the City Commission finds that it makes sense to continue consider only that evidence submitted into the record before the HRB.

The Commission concludes that the Appellants had a full and complete opportunity to submit evidence before the HRB. The HRB held two duly-noticed, open-record hearings where all parties were given over a month to participate and submit whatever materials they wished. MNA

participated in the proceedings before the HRB and submitted a considerable amount of evidence, approximately 1053 pages, to support its position. The City Commission finds that the proper public notice, as discussed in greater detail below, and sufficient opportunity to submit materials was provided. Appellants were not prejudiced by the Commission's refusal to re-open the record to provide them with another opportunity to submit materials.

For the foregoing reasons, the City Commission rejected and did not consider the following materials because they contained new evidence or included arguments that were not raised in the notice of appeal:

- 1) Redacted portions of page 26 of the June 27, 2017 HRB decision as redacted in the February 17, 2018 staff report on page 24, (in the agenda packet); and
- 2) Portions of the Mr. Combs March 7 written argument including:
 - a. Reference to a 2002 historic inventory at footnote 2. This document was not placed in the record before the Historic Review Board and therefore, it does not set forth any of the approval criteria applicable to this review.
 - b. The Appellants did not raise a challenge related to the comparative scale of the new construction when compared with the scale of development in the district generally – an argument raised for the first time on pages 4 – 6 of this letter. The issue raised in the Combs appeal notice is that the HRB erred in failing to consider all of the development activities or impacts that would result and that failure compromised compliance with the approval standards. Mr. Combs appeal notice did not include an allegation that the proposed construction was out of scale with the surrounding development. This is a new issue that was not raised in the appeal. In any event, the City Commission has reviewed the application with regard to scale and agrees with the HRB findings determining that the proposed development is appropriately scaled.
 - c. At pages 11-13, Mr. Combs introduced new facts outside of the record relating to how the Public Works Department is currently operating on the site along with a “Public Survey” attachment. These materials does not appear in the record and were not considered.
- 3) At the appeal hearing, counsel for MNA submitted a flash drive containing 140 different files that contain new evidence. Nothing in these materials identifies whether these are new materials or already included as part of the record. Rather than review these materials to admit duplicate copies of the materials submitted before the HRB, the City Commission rejects all of the materials contained on the drive and did not consider them. The MNA also submitted a copy of the same “Public Survey” attachment that was contained in the Combs submittal. This “Public Survey” is new evidence that was rejected from the record.

- 4) Although not disclosed as part of the oral presentation, during the appeal hearing, legal counsel for MNA submitted a letter into the record dated March 7, 2018, that contained new issues that were not raised in the notice of appeal as well as new evidence. As a result, the City Commission rejects and will not consider the following facts and argument contained in that letter:
 - a. A new argument that the City may not proceed with this application because a portion of the property is owned by the State of Oregon.
 - b. New evidence that parks lands throughout the state are being put to other purposes.

For these reasons, the City Commission rejects and does not consider these new arguments not raised in the notice of appeal or new evidence.

Request to Take Testimony from Individuals who did not Participate before the HRB

MNA also argued that as a result of re-opening the record to new evidence, the City also had an obligation to take testimony from any person wishing to testify pursuant to ORS 197.763(7). The City Commission declined MNA's invitation to take new evidence and therefore, the obligation to allow others to participate was not triggered. OCMC 17.50.120(E)(6) provides that "only those persons who participated either orally or in writing in the decision or review... allowed to participate either orally or in writing on the appeal." The City Commission did not accept testimony from individuals or entities who did not participate in the proceeding before the HRB.

Appeal Hearing Recording

Finally, the City's video and audio recording system failed during a small portion of the public hearing for this appeal. The portion of the hearing that was lost was a discussion between the Deputy City Attorney and the Mayor relating to the consideration of extra-record evidence. Written minutes of that portion of the hearing are included in the record. These minutes were adopted by the City Commission on March 21, 2018.

As explained in greater detail below, the City Commission rejected the appeal and approved the application.

DECISION

The Appeals are denied. The Decision of the Historic Review Board approving the Application with Conditions is affirmed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The City Commission adopts and incorporates as its own as part of these findings, by reference, the June 27, 2017 decision by the HRB, with redactions, and the February 27, 2018. Staff Report responding to each appeal issue in their entirety and all exhibits to those documents, including the matrix responding to the issues raised by Trent Premore, except to the extent that such

incorporated documents conflict with these findings of fact and conclusions of law contained in these findings; to the extent there are conflicts, these findings shall control.

The Applicant proposes to modernize its long-existing public works facility by removing all of the buildings on the Upper Yard, except the armory, rehabilitating the armory and constructing a new office building with an access elevator from the Lower Yard, a tool storage and truck storage buildings and parking for additional service vehicles and the public.

The Public Works Operations Facility, both the Upper and Lower Yards, are located within the McLoughlin Conservation District. The McLoughlin Conservation District was created following a survey of 971 buildings, 305 of which were identified as architecturally or historically significant properties. No “significant” property was identified within the Public Works Operation site. In 2004, the City commissioned an evaluation of the buildings within the Public Works area for historic significance. At that time, the consultant concluded that none of the buildings would qualify for designation and nothing within the Public Works Operations facility was designated.

Scope of HRB Review is Limited and Adequately Protects Designated Historic Resources

The HRB’s scope of review was limited to considering the appropriateness of demolition and the design and location of new and rehabilitated structures within the McLoughlin Conservation District. The Appellants argued below that the HRB erred by failing to consider the impacts of the proposed development that bear no relationship to the historic preservation objectives for protecting designated architectural resources. These impacts include the removal of trees and geologic features, installation of utilities and, most particularly, the installation of fencing that will close the site to public access. Although no trespassing signs currently exist on the site, the proposal includes fencing and gates – a physical barrier precluding public access to the Upper Yard. MNA argues that closing this area to public access effectively removes it from the McLoughlin Conservation District and therefore, should have been considered by the HRB.

OCMC 17.40.060(A) identifies two types of development activities that require a certificate of appropriateness. One relates to new construction within a conservation district, which is applicable and which is why this application was filed. The other is that “no person shall alter any historic site in such a manner as to affect its exterior appearance” without a certificate of appropriateness. A “historic site” is defined to include “a structure and the property surrounding a landmark, a structure in an historic district, or a designated structure in a conservation district.” As noted above, this site is within a “conservation district,” not a “historic district” and, therefore, a historic site is, by definition, only those structures designated as contributing to the significance of the District. In this case, no structure, tree, rock outcropping, path, viewing area or any other feature of the Public Works Operations Center has been designated within the McLoughlin Conservation District.

In this case, non-preservation or non-historic related issues like loss of pedestrian access, open space, rock outcroppings or trees are not part of the HRB criteria. The HRB supported this argument and the City Commission agrees. Nothing cited by MNA suggests that these features

or the public access through the City's Public Works Operations facility were identified as contributing to the significance of the McLoughlin Conservation District as designated. Providing unfettered public access into buildings or onto property is not an obligation imposed on any land owner within a historic district, even for designated buildings.

Although the City Commission rejects the suggestion that public access is necessary to support the HRB's decision to approve this application, the City Commission does acknowledge that evidence was submitted to indicate that a complete pedestrian connection from Center Street to Waterboard Park will be provided as part of Phase 2 of this project. As depicted in the Clackamas County Tax Map submitted into the record, John Adams Road as it crosses the Armory property and Public Works Operations facility is not public right-of-way. As part of this proposal, a new pedestrian path will be added from Center Street that will allow people to access Waterboard Park, in front of the upper yard gates. This path can be found in the applicant's submittal on page A106- lighting plan that shows dual Waterboard park access points from the terminus of John Adams and a new path connecting Center Street to the park.

Appellant MNA goes further to argue that the proposed new construction, coupled with the fencing, converts land that has previously been dedicated as part of Waterboard Park, to a non-park use contravening the purpose statements contained within the Historic Overlay District, as well as many comprehensive plan policies.

As explained in the HRB decision, the historic overlay district applies only to resources designated as significant within conservation districts. No building within the Public Works Operations facility boundary has been designated for protection within the overlay district. The HRB did not error in failing to consider these impacts.

The primary MNA arguments on appeal are that the Upper Yard portion of the Public Works Operations Facility property has been designated as parkland. As explained above, most of these arguments rely on new evidence that the City Commission did not consider in making its decision. However, even assuming that MNA is correct, which the City does not concede, whether the new construction would be allowed on park land is not germane to the subject historic review request. MNA does not cite to a single criterion in OCMC 17.40 that requires that the HRB consider whether a use is permitted by the comprehensive plan or in the zoning designation before issuing a certificate of appropriateness. Rather, that inquiry will be determined as part of the master plan or site plan review approval phase of this project that is beyond the jurisdiction of the HRB.

Similarly, the HRB did not error by failing to consider compliance with plan policies or plan maps that bear no relation to the historic preservation-related impacts resulting from the construction of new structures within a historic district or the demolition of non-designated structures within the conservation district. In other words, the HRB and the City Commission expressly reject any suggestion that the obligation to consider the "provisions of the comprehensive plan" pursuant to OCMC 17.40.060(F) or 17.40.070(C)(3) required the consideration of plan policies or maps adopted to serve other purposes. For example, adopted plan policies identifying certain trails, or protecting recreation and open space areas did not

require a finding that the proposed development would include those trails or protect all existing open space, when these spaces were not designated for protection, nor are recreation or open spaces in this location identified as retained in any historic significance within the McLoughlin Conservation District. The Overlook at Waterboard Park or trails identified in the City's Transportation System Plan have not been designated as "historic sites" and therefore are beyond the scope of the HRB purview.

The City Commission finds that the HRB appropriately limited the scope of its consideration of all of the purpose statements in OCMC 17.40.010, applicable by virtue of OCMC 17.40.060(F)(1), to impacts that would compromise the public benefits realized by the historic significance of the McLoughlin Conservation District. In other words, this policy focuses on whether the siting, location and design of the new structures adequately protect existing resources within the district. The proposed application will facilitate the development of a series of new buildings on the development in the vernacular style, remaining contextually appropriate with the existing homes that currently exist in the subject historic district.

The HRB review, and the City Commission's review on appeal, are limited to applying the applicable approval criteria so as to safeguard and protect the architectural significance of the McLoughlin Conservation District. The HRB does not have authority to plan for and protect the historic district from any and all perceived incompatible uses. All of the criteria for issuing a certificate for new construction in a conservation district, OCMC 17.40.060.F are limited to the effect that a "new structure" will have on the district, rather than its use. There is no criterion requiring any consideration of whether the use is appropriate at the particular location or anywhere within the district. Appellants do not identify how closing an access or other non-structure related development activities will compromise or otherwise alter the historic qualities or the historic significance of the district that resulted from its designation in the first instance.

Site Ownership Concerns

MNA argues that the City lacks authority to process this HRB application for Phase I because the City does not own all of the property subject to this application. First, this is a new issue that was not raised in the notice of appeal and, therefore, it cannot be raised for the first time in this appeal. Second, the application subject to review is for a Certificate of Appropriateness to allow for new construction, restoration and demolition of structures within a historic district. Whether ownership is required for a Phase I Detailed Development permit is beyond the scope of this permit request.

Designation of the Camp Adair Buildings is not an Applicable Approval Standards

MNA also argues that the City is precluded from processing this application until its request for designation of the Camp Adair buildings is processed. ORS 227.178(3)(a) provides that an application must be reviewed against "the standards and criteria that were applicable at the time the application was first submitted." In order for any additional historic designation to affect this appeal it would have needed to have been final before the subject application was filed. Nothing in the record reflects that a designation has occurred. Rather, the City withdrew consent for any historic designation of these structures in April, 2017. The City has no authority to require

possible eventualities or to delay decision-making to allow a sufficient time for possible changes in the regulatory background to play out.

The Tribal Notice

The record includes a copy of the emailed notice that was sent to the affected tribal representatives. The City Commission finds that this is an application criteria that is not required in order to satisfy any applicable approval criterion. Further, MNA has not identified any prejudice resulting from any alleged defect in this notice.

The Public Notices

MNA argues that the public notices provided in advance of the HRB proceedings and on appeal were deficient in that they were not properly posted, failed to identify the nature of the decision as well as the applicable plan policies.

The HRB findings fully responded to the concerns relating to the notice before the HRB in explaining:

The McLoughlin Neighborhood Association raised a number of challenges to the content of the notice along with its posting. The notice summarized the project as: “Construction of a new operations facility for the Oregon City Public Works Department in the McLoughlin Conservation District in the Institutional and R6 zoning districts.” The request is limited to determining whether proposed new construction activities, including demolition of a number of existing structures, satisfies the Historic District Overlay standards. The area subject to the proposal is designated on the City’s Comprehensive Plan and Zoning Map as “Institutional.” Whether or not the proposed site is adjacent to a park has no relevance to HRB’s review of this request. The obligation to consider comprehensive plan policies is not an independent obligation. Rather, it is to be considered in determining whether to issue a certificate of appropriateness pursuant to OCMC 17.40.060(F)(2). OCMC 17.40 was identified in the notice as an applicable approval criteria. This reference to the code standard, which includes the comprehensive plan, was sufficient to put the public on notice that comprehensive plan provisions are applicable.

As the staff report and the presentation at the public hearing made clear, the Public Works Operations Facility is located on a single site that includes both a “lower” and “upper” campus. The property legal description references tax lots 500 and 600, the upper campus properties. The property is not designated park land and as a result, did not need to identify or describe the adjacent park property. Notice of the HRB hearing was required to be “posted on each frontage of the subject property.” OCMC 17.50.100(B). A “frontage” is defined as “that portion of a parcel of property which abuts a dedicated public street or highway or an approved private way.” OCMC 17.04.495. “Notices do not have to be posted adjacent to alleys or unconstructed right-of-way.” OCMC 17.50.100(B). “Alley”

means “a public or private way not more than twenty feet wide that provides access to a property or properties from a side other than the designed front of the property. These standards establish that the obligation to post property is limited to the side of property that abuts a dedicated public street or approved private way that is the commonly designated front of the property. The “front” of the subject property that abuts a public right-of-way is along S. Center Street. John Adams Street, as it passes through the subject site, is vacated right of way that is posted on both sides to indicate that it is not public right-of-way and can be closed at any time. At best, it is an “alley” providing access to the property other than from the front. Waterboard Park Road is currently unimproved, is less than 20 feet wide and similarly does not provide access to the front of the property. In any event, the HRB finds that the posting of John Adams Street where it enters the facility, near the intersection with Spring Street would be seen by passersby travelling on either John Adams Street or Waterboard Park Road were sufficient to give notice to any person traveling along John Adams or a pedestrian path within Waterboard Park. Pg 67-68

The HRB decision responded to all of the comprehensive plan policies that the Appellant claims should have been included in the notice and these policies are discussed in greater detail below. In addition to providing posted notice, the City provided published notice as well as mailed notice to property owners within 300 feet of the subject property as required by OCMC 17.50.090. The City Commission agrees that the notice objections were not well taken and affirms the HRB.

The Timing for Issuing a Demolition Permit

Once this decision is adopted, the owner of the site may submit for a demolition permit, issued by the Building Division. This demolition permit will not be issued until after August 16, 2017, the date when MNA claims that a demolition permit may issue. This objection is resolved.

The HRB properly considered all of the applicable code and Comprehensive Plan criteria and other requirements for this application.

MNA argues that the decision fails to comply with Statewide Planning Goal 5 or Comprehensive Plan Section 5 (open spaces, scenic sites, historic resources, natural resources), Section 8 (parks), and Policy 2.4 (livability) and the 1999 Parks and Recreation Master Plan that it claims are applicable by virtue of *Baker v. City of Milwaukie*, 217 Or 500 (1975), which MNA claims requires that the comprehensive plan controls over all land use decisions.

One of the stated purposes for the historic overlay district is to “carry out the provisions of LCDC Goal 5.” OCMC 17.40.010(I). However, the City Commission interprets this purpose to apply to regulatory or plan amendments that would trigger Goal 5. This provision has no application to this quasi-judicial review. Goal 5 would not impose any additional obligations on this approval, in any event. Oregon Administrative Rule 660-023-0200 sets forth local government obligations to achieve Goal 5 with regard to historic resources. OAR 660-023-0200(2)(a) provides:

Local governments are not required to amend acknowledged plans or land use regulations in order to provide new or amended inventories, resource lists or programs regarding historic resources, except as specified in section (8). Local governments are encouraged to inventory and designate historic resources and must adopt historic preservation regulations to protect significant historic resources.

Therefore, the City was not under any obligation pursuant to Goal 5 to presume any historic designation of the Camp Adair buildings or recognize any other non-designated structure or view point in order to comply with Goal 5 as necessary to satisfy the purpose statement. OCMC 17.40 fully complies with and implements Goal 5 with regard to Historic Preservation and no further action is necessary.

With regard to the role of the comprehensive plan generally, any obligation that local government decisions be consistent with the comprehensive plan do not mean that all parts of the comprehensive plan necessarily are approval standards. *McGowan v. City of Eugene*, 24 Or LUBA 540, 546 (1993); *Neuenschwander v. City of Ashland*, 20 Or LUBA 144, 154 (1990); *Bennett v. City of Dallas*, 17 Or LUBA 450, 456, aff'd 96 Or App 645, 773 P2d 1340 (1989). Even if the comprehensive plan includes provisions that can operate as approval standards, those standards are not necessarily relevant to all quasi-judicial land use permit applications. *Bennett v. City of Dallas*, 17 Or LUBA at 456. Moreover, even if a plan provision is a relevant standard that must be considered, the plan provision might not constitute a separate mandatory approval criterion, in the sense that it must be separately satisfied, along with any other mandatory approval criteria, before the application can be approved. Instead, that plan provision, even if it constitutes a relevant standard, may represent a required consideration that must be balanced with other relevant considerations. See *Waker Associates, Inc. v. Clackamas County*, 111 Or App 189, 194, 826 P2d 20 (1992) ('a balancing process that takes account of relative impacts of particular uses on particular [comprehensive plan] goals and of the logical relevancy of particular goals to particular uses is a decisional necessity'). Id. at 209-210.

The HRB responded to the Comprehensive Plan policies that the Appellants argue were not considered and the Appellants failed to challenge any of these responses. The HRB's findings provide as follows:

Goal 2.4 Neighborhood Livability - Policy 2.4.1 - Develop local neighborhood plans to strengthen and protect residential neighborhoods and historic areas from infill development; such as development along linear commercial corridors.

Finding: Not Applicable. This provision encourages the adoption of neighborhood plans that protect neighborhood livability. This proposal does not adopt or amend a neighborhood plan. Compliance with OCMC 17.40 requirements will adequately protect historic areas from the proposed infill development.

Policy 2.4.2 - Strive to establish facilities and land uses in every neighborhood that help give vibrancy, a sense of place, and a feeling of uniqueness; such as activity centers and points of interest.

Finding: To the extent it is applicable, it is satisfied. This provision applies to decisions to establish uses in neighborhoods and since this review is limited solely to building design and siting, this plan policy does not apply. Further, as discussed elsewhere, the proposed new construction is sensitive to the uniqueness of the McLoughlin Historic Conservation District historic character by proposing a design that will complement and be largely invisible from the public right-of-way.

Policy 2.4.4 - Where environmental constraints reduce the amount of buildable land, and/or where adjacent land differs in uses or density, implement Comprehensive Plan and zoning designations that encourage compatible transitional uses.

Finding: Complies as Proposed. The office building and associated structures located at the upper portion of the site are set deep within the site to better integrate with the adjacent residential properties. The main office building will be located near the edge of the bluff and visible from the Center Street right-of-way. The other buildings such as the truck shed and the tool shed will be located behind landscaping and behind the proposed office building. The buildings are placed such that their view from the adjacent properties is mitigated by topography and an existing natural vegetative buffer. The existing buffer will be increased with additional plantings and the preservation of existing trees to the extent possible. All existing trees have been evaluated for preservation. Those to remain will be protected during construction to ensure their preservation. The OCPW is proposing additional plantings well beyond what is required by the Oregon City Municipal Code.

Goal 5.1 Open Space - Establish an open space system that conserves fish and wildlife habitat and provides recreational opportunities, scenic vistas, access to nature and other community benefits.

Finding: Not Applicable. This provision outlines a policy for the provision of recreational opportunities guiding the City in its adoption of comprehensive plan and zoning policy. It has no applicability to the City's review of this proposal, as the purpose of the Historic Review Board review is to review the design in compliance with the applicable standards in OCMC 17.40.

Policy 5.1.2 - Manage open space areas for their value in linking citizens and visitors with the natural environment, providing solace, exercise, scenic views and outdoor education. Built features in open space sites should harmonize with natural surroundings.

Finding: Not Applicable. As used in the plan, "open space" refers to natural or recreation areas and the subject property is not designated as open space. Further, how open space is used is not germane to the HRB's more-limited review of whether the design and siting of structures is compatible with existing historic resources. To the extent it is applicable, access through the site will be improved

with the completion of an improved trail connecting Waterboard Park with downtown in Phase II. This development will have no impact within Waterboard Park or the Overlook at Waterboard Park, which are not designated historic sites.

Goal 5.2 Scenic Views and Scenic Sites: Protect the scenic qualities of Oregon City and scenic views of the surrounding landscape.

Finding: Not Applicable. This plan policy is directed at guiding the City in legislative decision-making and has no application to the City's review of this proposal. The City has not adopted any viewsheds or scenic sites. Further, there is no evidence that the City has impeded any designated view sheds with this proposal.

Policy 5.2.1 Identify and protect significant views of local and distant features such as Mt. Hood, the Cascade Mountains, the Clackamas River Valley, the Willamette River, Willamette Falls, the Tualatin Mountains, Newell Creek Canyon, and the skyline of the city of Portland, as viewed from within the city.

Finding: Not Applicable. This plan policy is directed at guiding the City in legislative decision-making and has no application to the City's review of this proposal. Further, there is no evidence that the City has regulations protecting views of any designated features that are visible or would otherwise be compromised from this proposal.

Policy 5.2.2 Maximize the visual compatibility and minimize the visual distraction of new structures or development within important viewsheds by establishing standards for landscaping, placement, height, mass, color, and window reflectivity.

Finding: Not Applicable. This plan policy is directed at guiding the City in drafting planning policy and has no application to the City's review of this proposal. Further, there is no evidence that the City has impeded any designated viewsheds with this proposal.

Goal 5.3 Historic Resources - Encourage the preservation and rehabilitation of homes and other buildings of historic or architectural significance in Oregon City.

Finding: Complies as Proposed. As part of this master plan development process, the applicant has conducted a study determining the historic eligibility of the buildings on the site, the State Historic Preservation Office (SHPO) has indicated that none of the buildings on the site are eligible to be listed on the National Register of Historic Places.

Policy 5.3.1 - Encourage architectural design of new structures in local Historic Districts, and the central Downtown area to be compatible with the historic character of the surrounding area.

Finding: Complies with Condition. As demonstrated within this report, the structures and context will comply with the applicable criteria with conditions of approval. A further analysis of the design criteria can be found later in the staff report. HRB has determined that it is possible, likely and reasonable that the applicant can meet this standard through the Conditions of Approval.

Policy 5.3.2 - Evaluate the establishment of Historic and Conservation Districts to preserve neighborhoods with significant examples of historic architecture in residential and business structures.

Finding: Complies with Condition. As demonstrated within this report, the proposal can comply with the applicable sections of the Oregon City Municipal Code as well as the Design Guidelines for New Construction, thus preserving the historic district. No adverse impacts have been identified which cannot be mitigated with a condition of approval. No structures onsite are currently designed on the National Register or locally identified as individually designated structures. The applicant has proposed to retain some of the structures onsite. Please refer to the demolition analysis within this report for further discussion. HRB has determined that it is possible, likely and reasonable that the applicant can meet this standard through the Conditions of Approval.

Policy 5.3.5 - Support efforts to obtain historic designation at the city, state and national levels for public and private historic sites and districts. Natural and cultural landscapes should also be considered.

Finding: Not Applicable. The application is for the construction of a new buildings and does not include a request for historic designation of any buildings. Further, the evidence in the record shows that none of the buildings are suitable for historic designation.

Policy 5.3.7 - Encourage property owners to preserve historic structures in a state as close to their original construction as possible while allowing the structure to be used in an economically viable manner.

Finding: Not Applicable. No structures onsite are currently designated on the National Register or locally identified as individually designated structures. The State Historic Preservation Office (SHPO) has indicated that none of the buildings on the site are eligible to be listed on the National Register of Historic Places. As a result, Phase 1 includes demolition of all the buildings located within the Upper Yard with the exception of the Armory. The phase one proposal will retain the majority of the buildings in the lower yard and the Armory within the upper yard will be slightly altered. Four new garage doors will be added to the west elevation, and one of the garage doors will be removed and the existing CMU façade will be painted a different color. Additional discussion about the demolition is identified in page 32-34 of the revised staff report.

Policy 5.3.8 - Preserve and accentuate historic resources as part of an urban environment that is being reshaped by new development projects.

Finding: Not Applicable and if applicable, it Complies. No structures onsite are currently designated on the National Register or locally identified as individually designated structures. The State Historic Preservation Office (SHPO) has indicated that none of the buildings on the site are eligible to be listed on the National Register of Historic Places. There will be no adverse effects to Waterboard Park as part of this development and it is not a historic resource, in any event. As discussed elsewhere, the new structures will be compatible with each other as well as the district as whole.

Goal 5.4 Natural Resources - Identify and seek strategies to conserve and restore Oregon City's natural resources, including air, surface and subsurface water, geologic features, soils, vegetation, and fish and wildlife, in order to sustain quality of life for current and future citizens and visitors, and the long-term viability of the ecological systems.

Finding: Not Applicable. This plan policy is directed at guiding the City in legislative decision-making and has no application to the City's review of this proposal. Further, the applicant will be required to comply with applicable overlay districts during future Site Plan and Design Review.

Policy 5.4.1 - Conserve and restore ecological structure, processes and functions within the city to closely approximate natural ecosystem structure, processes, and functions.

Finding: Not Applicable. This plan policy is directed at guiding the City in legislative decision-making and has no application to the City's review of this proposal. Further, the applicant will be required to comply with applicable overlay districts during future Site Plan and Design Review.

Policy 5.4.3 - Identify, initiate and cooperate in partnerships with other jurisdictions, businesses, neighborhoods, schools and organizations to conserve and restore natural resources within and adjacent to Oregon City.

Finding: Not Applicable. This plan policy is directed at guiding the City in legislative decision-making and has no application to the City's review of this proposal. Further, the applicant will be required to comply with applicable overlay districts during future Site Plan and Design Review.

Policy 5.4.4 - Consider natural resources and their contribution to quality of life as a key community value when planning, evaluating and assessing costs of City actions.

Finding: Not Applicable. This plan policy is directed at guiding the City in legislative decision-making and has no application to the City's review of this

proposal. Further, the applicant will be required to comply with applicable overlay districts during future Site Plan and Design Review.

Policy 5.4.6 - Support and promote public education, interpretation, and awareness of the city's ecological resources.

Finding: Not Applicable. This plan policy is directed at guiding the City in legislative decision-making and has no application to the City's review of this proposal. Further, the applicant will be required to comply with applicable overlay districts during future Site Plan and Design Review.

Policy 5.4.8 - Conserve natural resources that have significant functions and values related to flood protection, sediment and erosion control, water quality, groundwater recharge and discharge, education, vegetation and fish, and wildlife habitat.

Finding: Not Applicable. This plan policy is directed at guiding the City in legislative decision-making and has no application to the City's review of this proposal. Further, the applicant will be required to comply with applicable overlay districts during future Site Plan and Design Review.

Policy 5.4.12 - Use a watershed-scale assessment when reviewing and planning for the potential effects from development, whether private or public, on water quality and quantity entering streams.

Finding: Not Applicable. This plan policy is directed at guiding the City in legislative decision-making and has no application to the City's review of this proposal. Further, the applicant will be required to comply with applicable standards during future Site Plan and Design Review.

Policy 5.4.17 - Protect and maintain groundwater recharge through conservation and enhancement of wetlands and open space.

Finding: Not Applicable. This plan policy is directed at guiding the City in legislative decision-making and has no application to the City's review of this proposal. Further, the applicant will be required to comply with applicable standards during future Site Plan and Design Review.

Policy 5.4.18 - Encourage use of native and hardy plants such as trees, shrubs and groundcovers to maintain ecological function and reduce maintenance costs and chemical use.

Finding: Not Applicable. This plan policy is directed at guiding the City in legislative decision-making and has no application to the City's review of this proposal. Further, the applicant will be required to comply with applicable standards during future Site Plan and Design Review.

Goal 8.1 Developing Oregon City's Park and Recreation System: Maintain and enhance the existing park and recreation system while planning for future expansion to meet residential growth.

Policy 8.1.1 - Provide an active neighborhood park-type facility and community park-type facility within a reasonable distance from residences, as defined by the Oregon City Park and Recreation Master Plan, to residents of Oregon City.

Policy 8.1.9 -Emphasize retaining natural conditions and the natural environment in proposed passive recreation areas.

Policy 8.1.12 Identify and protect land for parks and recreation within the Urban Growth Boundary.

Finding: Not Applicable. These policies are directed at legislative policy making activities and have no application to the city's limited review of a new construction and demolition request. Further, the area that will accommodate the public works operations center is neither a park, nor does it further recreation purposes. These policies do not apply.

Project Need

MNA questions whether this proposal will fulfill a stated need. As explained above, the proposed use of the property to be achieved through this proposal is beyond the purview of the HRB and the City Commission on review. The HRB findings responded to this issue as follows:

Per OCMC 17.40, the Historic Review Board is tasked with reviewing proposals for New Construction, demolition and exterior alterations to designated structures. Whether the project fulfills a stated need has been previously determined by the City Commission through the previous Master Plan process and current Commission Goals to proceed with development of the site.

Need for this project is not an applicable approval criterion and was not relevant to this review.

Parkland Designation

MNA argues that the City was prohibited from approving this application because the subject property has been designated as a park. As pointed out above, the Commission interprets its obligation to consider the comprehensive plan limited to those provisions that are "applicable." The elements of the Comprehensive Plan that are "applicable" to this proposal are the ones that directly relate to the historic preservation objectives set forth in the applicable sections of OCMC 17.40. Historic park master plan or comprehensive plan maps are not "applicable" to the matter on review. Further, the HRB correctly rejected any claim that the proposal will remove accessible and level parkland. The proposal entails construction in portions of the site which are already developed and utilized by Public Works Operations.

Compliance with the Design Guidelines

MNA adopted the arguments presented by Mr. Trent Premore arguing that the proposal failed to comply with the adopted design guidelines with regard to complementary styles and setbacks, work in the right-of-way, vehicle access and garage locations, and design elements and materials.

The applicant has provided a response matrix as part of their comments to the appeal that breaks down Mr. Premore's concerns and the Commission agrees with the findings set forth in that matrix. A majority of these concerns relate to the West Truck Shed located below the rock bluff on Center Street; however, the West Truck Shed is not part of this application and will be submitted to the Historic Review Board for review in a future phase. Therefore, Mr Premore's comments relating to setbacks, design, materials and driveway location are not pertinent to this application.

The design guidelines indicate that commercial uses outside the 7th Street Corridor shall employ residential style architecture, such as Queen Anne, Vernacular and Foursquare. The guidelines suggest that these styles can be utilized for the following uses: retail, office or multifamily residential. It is the applicant's opinion, and the City Commission agrees, that the approved development is an institutional use therefore the commercial building styles are more applicable, will be more efficient in terms of construction costs and future maintenance, and will better serve the needs of the Oregon City Public. The design guidelines also indicate that other commercial mixed use zoned areas exist outside the 7th Street Corridor such as Seventh Street east of John Q. Adams and north and south along Washington, Center and High. These areas have a mix of newer commercial buildings and historic residential styled structures. The site is currently not designed to a residential scale or with residential characteristics and the character of the McLoughlin Conservation District as a whole includes nonresidential uses mixed with residential. Due to the size of the site and program, the applicant has proposed to construct multiple smaller buildings to better fit within the scale of the residential neighborhood. The buildings are distributed around the upper level of the site reducing their impact on the adjacent residential properties. The proposed Operations Office Building, the largest of the proposed new buildings, has been designed utilizing varying materials, building recesses, and projections that reduce its overall scale by breaking up its overall volume." The Historic Review Board agreed with this approach and found the design of the upper yard office building to be appropriately scaled and compatible with the McLoughlin Conservation District. The City Commission agrees.

The applicant proposed a ground face CMU with traditional jointing, color and pattern. The applicant indicated that the proposed ashlar pattern will provide rich texture, traditional color patterns and detailing. The intent of the guidelines is to forbid plain faced CMU in a manner that is typically used with industrial buildings. Historic Review Boards found in this specific instance that the proposed use of CMU is compatible with the McLoughlin Neighborhood Conservation District and is in compliance with the Historic Design Guidelines and the City Commission agreed with this approach.

CONCLUSION AND CONDITIONS OF APPROVAL:

Based on the analysis and findings as described above, the City Commission denies AP 17-01 and AP 17-02 and affirms the Historic Review Board's decision approving Planning File HR 17-04 subject to the following conditions of approval:

1. The property shall obtain all necessary permits including but not limited to a Master Plan Amendment, Detailed Development Plan, and Geologic Hazards Review by the Planning Division, a right-of-way permit from the Development Services Division, and all necessary permits from the Building Division. (P, DS, B)
2. The applicant shall submit a landscaping plan with the following changes:
 - a. Documentation indicating that a minimum of 20% of the site is landscaped.(P)
 - b. At least four (4) native trees, at least 15 feet in height when mature, and eight (8) shrubs (at least 3 ½ feet in height when mature, shall be planted along the northwest façade of the two story office building facing the South Center Street Right-of-Way.(P)
3. All mechanical equipment shall be screened and out of view from the public right-of-way. All mechanical equipment shall be at least 80% screened by a fence or vegetation. Any fences used for screening mechanical equipment shall not exceed six (6) feet in height.
4. Fences may be placed along the side and rear perimeter of the site and shall not exceed six feet in height. Additionally, in an effort to maintain a contextual appropriateness, any proposed fences along the rear and side perimeter of the site shall not be composed of chain-link, vinyl, split rail, ornate wrought iron, stockade, plywood, or hard panel.
5. The applicant shall coordinate with the City to send out a public notice in the local newspaper for any parties interested in removing and rehabilitating the Camp Adair buildings.
6. The materials on the elevator shall be comprised of the same materials proposed to be used on the building. Those materials include stone and metal exterior façade pieces designed in neutral and soft earth tones colors.

(P) = Verify that condition of approval has been met with the Planning Division.

(DS) = Verify that condition of approval has been met with the Development Services Division.

(B) = Verify that condition of approval has been met with the Building Division.

(F) = Verify that condition of approval has been met with Clackamas Fire Department.