

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

3
4 PAUL T. CONTE,
5 *Petitioner,*

6
7 vs.

8
9 CITY OF EUGENE,
10 *Respondent.*

11
12 LUBA No. 2024-023

13
14 FINAL OPINION
15 AND ORDER

16
17 Appeal from City of Eugene.

18
19 Charles W. Woodward, IV filed the petition for review and reply brief and
20 argued on behalf of petitioner.

21
22 Lauren A. Sommers filed the respondent's brief and argued on behalf of
23 respondent.

24
25 ZAMUDIO, Board Member; RYAN, Board Chair; RUDD, Board
26 Member, participated in the decision.

27
28 REMANDED 07/10/2024

29
30 You are entitled to judicial review of this Order. Judicial review is
31 governed by the provisions of ORS 197.850.

NATURE OF THE DECISION

Petitioner appeals legislative amendments to the Eugene-Springfield Metropolitan Area General Plan (Metro Plan) and Eugene Code (EC) that allow for the development of middle housing types on residentially zoned properties where development of detached single-family housing is allowed.

MOTION TO DISREGARD ORAL ARGUMENT

Petitioner moves LUBA to disregard a statement made by the city’s attorney during oral argument that the Large Cities Middle Housing Model Code (Model Code) at OAR 660-046-0010, Exhibit B, does not include specific infrastructure requirements. Petitioner alleges that the statement constitutes a new argument that was not presented in the respondent’s brief. Petitioner cites OAR 661-010-0040(1), which provides, in part: “The Board shall not consider issues raised for the first time at oral argument.” The issue of what the Model Code includes and requires and whether the city’s challenged decision conforms to those requirements is an issue that petitioner raised in their petition for review and is not a new issue.

Petitioner also argues that the city’s attorney’s statement was false. The city disputes petitioner’s characterization. Parties regularly disagree about facts and law. We will review a local government decision to resolve a party’s argument that the local government made a decision that misconstrues the

1 applicable law or is unsupported by adequate findings or substantial evidence.
2 We will not disregard a statement at oral argument that is relevant to our analysis.

3 The motion to disregard is denied.

4 **BACKGROUND**

5 This appeal concerns the city’s adoption of amendments to the EC and
6 Metro Plan (collectively, Middle Housing Amendments) implementing House
7 Bill 2001 (2019), a portion of which is codified at ORS 197A.420 and which we
8 refer to as the Middle Housing Statute.¹ Or Laws 2019, ch 639, § 2. The Land
9 Conservation and Development Commission (LCDC) adopted administrative
10 rules implementing the Middle Housing Statute at OAR chapter 660, division 46.
11 These regulations include the Model Code, which was “developed by the
12 [Department of Land Conservation and Development].” OAR 660-046-
13 0020(13); *see* OAR 660-046-0010, Ex B (Model Code).

¹ ORS 197A.420(2) provides:

“Except as provided in subsection (4) of this section, each city with a population of 25,000 or more and each county or city within a metropolitan service district shall allow the development of:

- “(a) All middle housing types in areas zoned for residential use that allow for the development of detached single-family dwellings; and
- “(b) A duplex on each lot or parcel zoned for residential use that allows for the development of detached single-family dwellings.”

1 This is the second time that the city’s adoption of middle housing
2 amendments is before us for review. In *Coopman v. City of Eugene*, we affirmed
3 a city ordinance adopting middle housing amendments and the Court of Appeals
4 remanded our decision. ___ Or LUBA ___ (LUBA No 2022-056, Jan 27, 2023),
5 *rem’d*, 327 Or App 6, 534 P3d 1105 (2023). We reiterate the pertinent
6 background and procedural history.

7 The Middle Housing Statute requires large cities, including Eugene, to
8 allow duplexes, triplexes, quadplexes, townhouses, and cottage clusters on
9 properties zoned for residential use that allow for the development of detached
10 single-family dwellings. The Middle Housing Statute does not prohibit local
11 governments from permitting single-family dwellings in areas zoned to allow for
12 single-family dwellings or from allowing middle housing in areas not required
13 under the statute. ORS 197A.420(6). The Middle Housing Statute required the
14 city to amend its comprehensive plan and adopt land use regulations not later
15 than June 30, 2022. Or Laws 2019, ch 639, § 3(1)(b), *compiled as a note after*
16 ORS 197A.420 (2023). Had the city failed to implement the Middle Housing
17 Statute within that time, then the city would have been required to apply the
18 Model Code. Or Laws 2019, ch 639, § 3(2), (3), *compiled as a note after* ORS
19 197A.420 (2023).

20 In 2022, the city adopted the Middle Housing Amendments to allow for
21 the development of middle housing types on residentially zoned properties where
22 the development of detached single-family dwellings is allowed. In *Coopman*,

1 the petitioners argued that the city failed to consider and explain how the Middle
2 Housing Amendments are consistent with Statewide Planning Goal 11 (Public
3 Facilities and Services), which is “[t]o plan and develop a timely, orderly and
4 efficient arrangement of public facilities and services to serve as a framework for
5 urban and rural development.” ___ Or LUBA at ___ (slip op at 6). Goal 11
6 requires cities to “develop and adopt a public facility plan for areas within an
7 urban growth boundary containing a population greater than 2,500 persons.”

8 Goal 11 provides:

9 “A public facility plan is a support document or documents to a
10 comprehensive plan. The facility plan describes the water, sewer
11 and transportation facilities which are to support the land uses
12 designated in the appropriate acknowledged comprehensive plan or
13 plans within an urban growth boundary containing a population
14 greater than 2,500.”

15 Goal 11, Planning Guideline 3, provides: “Public facilities and services in urban
16 areas should be provided at levels necessary and suitable for urban uses.” Goal
17 11, Implementation Guideline 3, provides: “The level of key facilities that can be
18 provided should be considered as a principal factor in planning for various
19 densities and types of urban and rural land uses.” “Plans providing for public
20 facilities and services should consider as a major determinant the carrying
21 capacity of the air, land and water resources of the planning area. The land
22 conservation and development action provided for by such plans should not
23 exceed the carrying capacity of such resources.” Goal 11, Planning Guideline 7.
24 “Public facilities and services should be appropriated to support sufficient

1 amounts of land to maintain an adequate housing market in areas undergoing
2 development or redevelopment.” Goal 11, Implementation Guideline 2.

3 The city’s current Public Facilities and Services Plan (PFSP) was adopted
4 in 2017, two years prior to the enactment of the Middle Housing Statute. In
5 *Coopman*, the city stated that the city was in the process of updating the PFSP.

6 ___ Or LUBA at ___ (slip op at 10). In this appeal, the city does not state that the
7 city had adopted any PFSP updates prior to or concurrently with the Middle
8 Housing Amendments.

9 OAR 660-046-0010(3) provides, in part:

10 “A Medium or Large City may regulate Middle Housing to comply
11 with protective measures (including plans, policies, and regulations)
12 adopted and acknowledged pursuant to statewide land use planning
13 goals. Where Medium and Large Cities have adopted, or shall adopt,
14 regulations implementing the following statewide planning goals,
15 the following provisions provide direction as to how those
16 regulations shall be implemented in relation to Middle Housing, as
17 required by this rule.

18 “* * * * *

19 “(e) Goal 11: Public Facilities and Services - Pursuant to OAR
20 660-011-0020(2), a public facility plan must identify
21 significant public facility projects which are to support the
22 land uses designated in the acknowledged comprehensive
23 plan. This includes public facility projects to support the
24 development of Middle Housing in areas zoned for residential
25 use that allow for the development of detached single-family
26 dwellings. Following adoption of Middle Housing allowances
27 by a Large City, the Large City shall work to ensure that
28 infrastructure serving undeveloped or underdeveloped areas,
29 as defined in OAR 660-046-0320(8), where Middle Housing

1 is allowed is appropriately designed and sized to serve Middle
2 Housing.”

3 In *Coopman*, the petitioners argued that the city was required, but failed,
4 to consider the increased demand on public facilities that may result from the
5 development of middle housing allowed by the Middle Housing Amendments.
6 The petitioners maintained that the city could have complied with Goal 11 in at
7 least three different ways: (1) updating the PFSP; (2) enacting the Model Code;
8 or (3) undertaking a study “to predict the increased impacts on the Goal 11
9 facilities.” *Coopman*, 327 Or App at 16. The petitioners argued that, in the
10 absence of any analysis in the record comparing the projected impacts resulting
11 from these amendments to current facility capacities as established by the PFSP,
12 the city’s findings of compliance with Goal 11 were not supported by an adequate
13 factual base. We rejected that argument, reasoning that Goal 11 did not require
14 that the city update its PFSP prior to adopting amendments that may result in
15 increased demand on public facilities. We reasoned that, even if the city had
16 determined that the Middle Housing Amendments would result in increased
17 density that exceeds existing infrastructure or planned infrastructure
18 improvements, Goal 11 did not require that the city amend the PFSP to evaluate
19 the adequacy of its infrastructure prior to or concurrently with adopting the
20 Middle Housing Amendments. *Coopman*, ___ Or LUBA at ___ (slip op at 11-
21 12).

22 On judicial review, the Court of Appeals agreed with the petitioners that
23 the city had not adequately addressed Goal 11 in its findings. The court reasoned:

1 “Although updating the [PFSP] likely was not feasible on the
2 schedule that the legislature imposed, as petitioners pointed out
3 before LUBA, there were other ways to achieve compliance with
4 Goal 11, like adopting provisions similar to those in the [Model
5 Code] that limit middle housing on lots that lack sufficient
6 infrastructure to support it, at least until the [PFSP] update was
7 complete.

8 “In sum, LUBA erred when it affirmed the city’s conclusion that it
9 did not have to consider the impact of the amendments to the [EC]
10 and Metro Plan on its provision of public facilities and services at
11 the time it adopted them.” *Coopman*, 327 Or App at 20 (footnote
12 omitted).

13 We remanded for the reasons set out in the court’s decision. *Coopman v.*
14 *City of Eugene*, ___ Or LUBA ___ (LUBA No 2022-056, Oct 12, 2023). The city
15 adopted new legislative amendments nearly identical to the 2022 amendments
16 and adopted new findings regarding Goal 11 and Metro Plan Policy A.12. This
17 appeal followed.

18 **ASSIGNMENT OF ERROR**

19 In a single assignment of error, petitioner argues that the city erred in
20 concluding that the Middle Housing Amendments comply with Goal 11 and
21 Metro Plan Policy A.12. We explained the applicable standard of review of
22 legislative land use decisions in *Restore Oregon v. City of Portland*:

23 “LUBA’s standard of review of a decision that amends a
24 comprehensive plan is set out at ORS 197.835(6). LUBA is required
25 to reverse or remand the amendment if it ‘is not in compliance with
26 the goals.’ ORS 197.835(6). LUBA is also required to reverse or
27 remand a decision that amends a land use regulation if, as relevant
28 here, ‘[t]he regulation is not in compliance with the comprehensive
29 plan.’ ORS 197.835(7)(a).

1 “Because the challenged decisions are legislative rather than quasi-
2 judicial, there is no generally applicable requirement that the
3 decisions be supported by findings, although the decisions and
4 record must be sufficient to demonstrate that applicable criteria were
5 applied and ‘required considerations were indeed considered.’
6 *Citizens Against Irresponsible Growth v. Metro*, 179 Or App 12, 16
7 n 6, 38 P3d 956 (2002). With respect to evidence, Statewide
8 Planning Goal 2 (Land Use Planning) requires that a decision that
9 amends a comprehensive plan or land use regulation be supported
10 by an adequate factual base. An ‘adequate factual base’ is equivalent
11 to the requirement that a quasi-judicial decision be supported by
12 substantial evidence in the whole record. *1000 Friends of Oregon v.*
13 *City of North Plains*, 27 Or LUBA 372, 378, *aff’d*, 130 Or App 406,
14 882 P2d 1130 (1994). Substantial evidence exists to support a
15 finding of fact when the record, viewed as a whole, would permit a
16 reasonable person to make that finding. *Dodd v. Hood River County*,
17 317 Or 172, 179, 855 P2d 608 (1993); *Younger v. City of Portland*,
18 305 Or 346, 351-52, 752 P2d 262 (1988).” 80 Or LUBA 158, 162
19 (2019), *aff’d*, 301 Or App 769, 458 P3d 703 (2020).

20 The city found that “it is unclear whether and to what extent the Middle
21 Housing Code Amendments will result in actual increased density in the number
22 of dwelling units in the city.” Record 138. Nevertheless, the city concluded that
23 the Middle Housing Amendments comply with Goal 11 for two reasons. First,
24 the city concluded that the PFSP demonstrates that existing public facilities and
25 the planned infrastructure improvement projects therein are sufficient to serve
26 middle housing and any increased density resulting from the Middle Housing
27 Amendments. Record 137. Second, the city concluded that existing EC
28 provisions and permitting requirements will ensure that middle housing
29 development cannot be approved without sufficient service capacity, “in the same
30 basic way” that the Model Code does. Record 138.

1 Petitioner argues that the city’s finding that the Middle Housing
2 Amendments comply with Goal 11 are not supported by an adequate factual base
3 because the city did not attempt to determine what increased density will result
4 from adoption of the Middle Housing Amendments and there is no evidence that
5 the PFSP contemplates the levels of density allowed by the Middle Housing
6 Amendments. Petitioner argues that the EC provisions that the city relies upon to
7 ensure that middle housing development cannot be approved without sufficient
8 service capacity require that new development connect to public facilities, but do
9 not require any assessment of the adequacy of the public facilities. For the reasons
10 explained below, we agree with both arguments and remand the city’s decision.

11 **A. The PFSP does not demonstrate that existing public facilities**
12 **and planned infrastructure improvement projects are sufficient**
13 **to serve any increased density resulting from the Middle**
14 **Housing Amendments.**

15 The city found that the PFSP demonstrates that almost all areas within the
16 city are served or can be served in the short term (zero to five years) with public
17 services and that, with the improvements specified in the PFSP project lists, all
18 urbanizable areas within the urban growth boundary can be served at the time
19 that those areas are developed. Record 136-37. The city found that the PFSP,
20 “contemplates not only the infrastructure that was needed to serve the
21 development existing at the time the PFSP was adopted, but also the impact of
22 new development and of increased development densities through infill and
23 redevelopment.” Record 137. The city reasoned that, because the PFSP

1 contemplated residential use in residentially zoned areas, and middle housing is
2 a residential use, “the public facility projects identified in the PFSP to support
3 and serve residential uses will also support and serve middle housing uses.” *Id.*
4 The city explained that “[t]he projects are described in a way that will enable
5 their eventual sizing and design to serve the densities allowed by the
6 comprehensive plan at the time of the project, including the densities allowed by
7 the Middle Housing Code Amendments.” *Id.* The city pointed out that, in
8 developing the Middle Housing Amendments,

9 “city staff did not identify the need to add any new projects to the
10 PFSP or to change their descriptions or timing; neither staff nor
11 participants in the local process have identified specific public
12 facilities for which water, wastewater or stormwater services to
13 residential land are deficient or will become deficient as a result of
14 the higher densities allowed by the Middle Housing Code
15 Amendments.” *Id.*

16 We agree with petitioner that there is not an adequate factual base for the
17 city’s conclusion that the PFSP ensures adequate infrastructure for the increased
18 density that the Middle Housing Amendments allow. There is no evidence that
19 the PFSP assumed the maximum levels of density allowed by the Middle Housing
20 Amendments. The record contains no evidence or estimate of what increased
21 density will likely result from the Middle Housing Amendments. Thus, there is
22 no city estimate of residential density from which to measure whether the PFSP
23 and planned infrastructure projects therein are sufficient. At a minimum, Goals 2
24 and 11 require the city to establish a factual basis for determining whether the

1 existing PFSP provides for sufficient infrastructure to support increased density
2 allowed by the Middle Housing Amendments. That might be the maximum
3 allowable density or a lesser density. If the latter, then the city should estimate
4 the increase in density over a defined planning horizon to determine whether that
5 increase can be served by existing and planned infrastructure in the PFSP.

6 The city argues that city staff determined that the existing infrastructure
7 has the capacity to serve additional development, including middle housing, and
8 that projects identified in the PFSP are sufficient to serve the middle housing
9 allowed by the Middle Housing Amendments. The problem with that argument
10 is that the city does not point to any evidence or analysis providing any estimate
11 of increased density that could result from the Middle Housing Amendments or
12 that the city assessed the adequacy of its public facilities pursuant to any
13 evidence-based assumptions about development density. Indeed, the city asserts
14 that it does not know whether, when, or how middle housing will develop. Record
15 138.

16 The city points out that the legislature specifically limited the amount of
17 density that cities may project when developing a buildable lands inventory,
18 housing capacity analysis, and housing needs analysis. ORS 197A.270(6)(b)
19 (providing that a city generally may not assume an increase in residential capacity
20 of more than three percent above achieved density). The city argues that
21 limitation evidences a legislative recognition that increased density due to middle
22 housing is difficult to calculate and new development will not likely reach

1 maximum allowed density. That legislative recognition might provide useful
2 context for the city to develop an adequate factual base for estimating increased
3 density.

4 To the extent that the city found that the currently planned infrastructure
5 improvement projects in the PFSP will ensure that public infrastructure will be
6 built to serve increased density, the challenged decision does not point to those
7 provisions in the PFSP and neither does the city describe them in the respondent’s
8 brief.² Accordingly, the city has provided us no basis to confirm the city’s
9 assertion that the PFSP itself contains provisions that will ensure sufficient
10 capacity to serve increased density due to the development of middle housing.

11 **B. Existing city regulations are not functionally equivalent to the**
12 **Model Code and do not ensure “sufficient infrastructure” for**
13 **increased density allowed by the Middle Housing Amendments.**

14 The Court of Appeals determined that the city could demonstrate
15 compliance with Goal 11 by adopting the Model Code requirements or their

² The challenged decision states that

“[t]he projects are described in a way that will enable their eventual sizing and design to serve the densities allowed by the comprehensive plan at the time of the project, including the densities allowed by the Middle Housing Code Amendments. The relevant portions of the 2017 Ordinance (Ord. No. 20584) are included in the record of these proceedings.” Record 137.

Those findings are inadequate to identify “the relevant portions” of the PFSP or explain how the city believes that they satisfy the Goal 11 requirements.

1 equivalent to limit middle housing on lots that lack sufficient infrastructure to
2 support it. *Coopman*, 327 Or App at 20. The Model Code requires that
3 “Applicants must demonstrate that Sufficient Infrastructure is provided, or will
4 be provided, upon submittal of a triplex or quadplex development application.”
5 Model Code 10; *see also id.* at 21 (providing the same requirement for
6 townhouses), *id.* at 27 (providing the same requirement for cottage clusters).

7 “‘Sufficient Infrastructure’ means the following level of public
8 services to serve new Triplexes, Quadplexes, Townhouses, or
9 Cottage Cluster development:

10 “(a) Connection to a public sewer system capable of meeting
11 established service levels;

12 “(b) Connection to a public water system capable of meeting
13 established service levels;

14 “(c) Access via public or private streets meeting adopted
15 emergency vehicle access standards to a city’s public street
16 system; and

17 “(d) Storm drainage facilities capable of meeting established
18 service levels for storm drainage.” OAR 660-046-0020(16).

19 The city found that the EC infrastructure requirements for development
20 “provide equal or greater assurance [than the Model Code] that new middle
21 housing built in Eugene will be appropriately served by public facilities.” Record
22 139. The city found that “when considering a development application, the City
23 will determine whether the existing service is sufficient and, if not, will require
24 an expansion of the system’s capacity as a condition of approval.” Record 138.

1 The city relies on EC 9.6000 and 9.6505. EC 9.6000 provides that the
2 following standards “apply to the entire development site at the time of any
3 development,” with exceptions that are not relevant to our analysis.

4 EC 9.6505 provides:

5 “All public improvements shall be designed and constructed in
6 accordance with adopted plans and policies, the procedures
7 specified in Chapter 7 of this code, and standards and specifications
8 adopted pursuant to Chapter 7 of this code. Additionally, all
9 developments shall make and be served by the following
10 infrastructure improvements.

11 “(1) Water Supply. All developments shall be served by the water
12 system of the Eugene Water & Electric Board.

13 “(2) Sewage. All developments shall be served by the wastewater
14 sewage system of the city, complying with provisions in
15 Chapter 6 of this code.

16 “(3) Streets and Alleys.

17 “(a) The developer shall grade and pave all streets and
18 alleys in the development site. All paving shall be to
19 the width specified in EC 9.6870 Street Width and
20 provide for drainage of all such streets and alleys, and
21 construct curbs and gutters, sidewalks, street trees and
22 street lights within the development site according to
23 the Design Standards and Guidelines for Eugene
24 Streets, Sidewalks, Bikeways and Accessways and
25 standards and specifications adopted pursuant to
26 Chapter 7 of this code and other adopted plans and
27 policies.

28 “(b) The developer shall pave streets and alleys adjacent to
29 the development site to the width specified in EC
30 9.6870 Street Width, unless such streets and alleys are
31 already paved to that width, provided the City makes

1 findings to demonstrate consistency with constitutional
2 requirements. All paving shall provide for drainage of
3 all such streets and alleys, and construct curbs and
4 gutters, sidewalks, street trees and street lights adjacent
5 to the development site according to the Design
6 Standards and Guidelines for Eugene Streets,
7 Sidewalks, Bikeways and Accessways and standards
8 and specifications adopted pursuant to Chapter 7 of this
9 code and other adopted plans and policies.

10 “(c) The standard at (3)(b) may be adjusted if consistent
11 with the criteria of EC 9.8030(19).

12 “(4) Sidewalks. Sidewalks shall be located, designed and
13 constructed according to the provisions of this land use code,
14 the Design Standards and Guidelines for Eugene Streets,
15 Sidewalks, Bikeways and Accessways, construction and
16 design standards adopted pursuant to Chapter 7 of this code,
17 and other adopted plans and policies.

18 “(5) Bicycle Paths and Accessways. Bicycle Paths and
19 Accessways shall be designed and constructed according to
20 provisions of this land use code, the Design Standards and
21 Guidelines for Eugene Streets, Sidewalks, Bikeways and
22 Accessways, construction and design standards adopted
23 pursuant to Chapter 7 of this code, and other adopted plans
24 and policies.” (Emphases and underscoring omitted.)

25 EC 9.6790 through 9.6797 require compliance with a city Stormwater
26 Management Manual. EC 9.6797 provides:

27 “(1) All stormwater facilities shall be operated and maintained in
28 accordance with EC Chapters 6 and 7, and the Stormwater
29 Management Manual.

30 “(2) Unless the applicant proposes private maintenance of the
31 facility, a stormwater facility that will provide treatment for
32 runoff from the public right-of-way shall be:

- 1 “(a) Designed and constructed through the Privately
2 Engineered Public Improvement (PEPI) process; and
- 3 “(b) Located in public rights of way or public easements
4 dedicated in accordance with EC 9.6796; and
- 5 “(c) Selected from the list of stormwater facilities identified
6 in the Stormwater Management Manual as a type of
7 facility that the City will operate and maintain.”
8 (Underscoring omitted.)

9 Petitioner argues that the city code is not sufficient to satisfy Goal 11
10 because the cited provisions require only two things: (1) that residential
11 development “connect” to a public facility, and (2) that the development provide
12 the on-site connections (*e.g.*, sewer pipes) with capacity to serve the
13 development. Petitioner argues those standards do not require the developer to
14 demonstrate that the public facilities to which the required connections are made
15 have capacity to serve the development at “established service levels,” as the
16 Model Code requires.

17 The city argues that the city would reject a new connection if the new
18 connection would overload existing city systems. Thus, no development will be
19 approved without the city first confirming connection will be made to adequate
20 public facilities. In other words, if existing public infrastructure cannot serve it,
21 then an application for middle housing will be denied unless the developer and/or
22 city makes infrastructure improvements to allow the development and
23 occupancy. In support of this argument, the city quotes and relies on the

1 following testimony from the Principal Civil Engineer for City of Eugene Public
2 Works, which the city council adopted in its findings:

3 “The City of Eugene has existing code provisions and permitting
4 requirements that will ensure new middle housing development will
5 be served by or require the construction of needed infrastructure,
6 including water, electrical, sewer, stormwater, streets, and
7 sidewalks.

8 “* * * * *

9 “Wastewater systems, often referred to as sewers, are designed with
10 added capacity to accommodate growth. The City has a wastewater
11 monitoring and modeling program to evaluate current flows in the
12 system. This program is used to evaluate the capacity of the system
13 as development is proposed and areas of the city densify.

14 “The City has stormwater development standards that require
15 stormwater treatment onsite and require detention systems for new
16 development in areas where the system has limited capacity for new
17 development. The majority of the City’s stormwater system has
18 additional capacity for new development and densification.

19 “The City evaluates the transportation needs for new development
20 proposals in order to have a safe system with the required capacity.

21 “The City has masterplans and a Capital Improvement Program for
22 the wastewater, stormwater and transportation systems. The
23 masterplans identify potential growth and plan for the infrastructure
24 needs associated with new development and densification. The
25 Capital Improvement Program funds programs and projects that
26 provided needed infrastructure as the city grows.

27 “Water service and electrical service is provided to Eugene citizens
28 by the Eugene Water and Electric Board [(EWEB)]. The city works
29 with EWEB on long range planning of infrastructure and EWEB has
30 a masterplan that accommodates growth.” Record 138 (brackets
31 from original omitted).

1 That testimony establishes that the city manages and monitors its public
2 facilities and responds to increased needs through project development.
3 Petitioner argues, and we agree, that the cited evidence and findings do not
4 adequately explain how the cited city code provisions and permitting process
5 address the sufficiency of public facilities to satisfy the city's Goal 11 planning
6 obligation, at least to the Model Code standard.

7 The city's findings that Metro Plan Policy A.12 is satisfied relied on the
8 city's Goal 11 findings. Petitioner's argument under Policy A.12 is derivative of
9 their Goal 11 argument and provides no separate basis for remand.

10 The assignment of error is sustained.

11 The city's decision is remanded.