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

3 CITY OF MEDFORD,)
)
4 Petitioner,) LUBA NOS. 80-115
) and 80-116
5 v.)
)
6 JACKSON COUNTY,) FINAL OPINION
) AND ORDER
7 Respondent.)

8 Appeal from Jackson County.

9 Eugene F. Hart, Jr., Medford, filed a brief and argued the
10 cause for Petitioner.

11 John L. Dubay, Medford, filed a brief and argued the cause
12 for Respondent.

13 Bagg, Referee; Reynolds, Chief Referee; Cox, Referee;
14 participated in the decision.

15 REMANDED in part, AFFIRMED in part. 3/26/81

16 You are entitled to judicial review of this Order.
17 Judicial review is governed by the provisions of Oregon Laws
18 1979, ch 772, sec 6(a).

19 *This Final Opinion and Order incorporates those recommendations made by
20 the Land Conservation and Development Commission in their determination
21 of March 24, 1980.

1 BAGG, Referee.

2 STATEMENT OF THE CASE

3 These two cases, consolidated by consent of the parties,
4 challenge portions of Jackson County Ordinances Nos. 80-17 and
5 80-18. Ordinance No. 80-17 adopts the Jackson County
6 Comprehensive Plan and includes as part of the plan a map
7 designating land use categories. Ordinance No. 80-18 provides
8 for zoning regulations in the unincorporated areas of Jackson
9 County. The two ordinances together provide a comprehensive
10 plan and a plan map showing land use designations and
11 regulations governing the application of those designations.

12 Petitioner City of Medford owns property covered by the
13 county's comprehensive plan and map. The comprehensive plan
14 applies a general industrial plan designation to a portion of
15 petitioner's property and an open space reserve plan
16 designation to the remainder. Also included in the
17 comprehensive plan and challenged by petitioner is the adoption
18 of the "White City" urban containment boundary. The White City
19 urban containment boundary does not include petitioner's
20 property is a boundary in the nature of an urban growth
21 boundary surrounding the unincorporated area known as White
22 City.

23 STANDING

24 Standing is not an issue in this case.

25 FACTS

26 The area known as White City includes property that was

1 once part of a United States Army facility called Camp White.
2 The area is largely developed and includes some 4,300 people.
3 It houses the largest concentration of industry in the county.
4 The area is approximately 2,600 acres in size and is five miles
5 from the City of Medford on Crater Lake Highway between the
6 cities of Medford and Eagle Point.

7 The property in question lies to the west of the urban
8 containment boundary and is undeveloped. The property is
9 bordered by lands bearing a general industrial land use
10 designation. To the west is land owned by Roseburg Lumber, and
11 to the east is property within the urban containment boundary.
12 Property immediately to the north of the subject property is
13 also owned by the city and is used in part for a sewage
14 treatment facility. The sewage treatment facility serves the
15 City of Medford, White City and the surrounding area.

16 Jackson County has designated the petitioner's property
17 general industrial-open space reserve with a 20-acre minimum
18 lot size, or "GI/OSR-20." The split designation recognizes the
19 possibility of a general industrial use for the property, but
20 before such a use may be undertaken, a zone change from open
21 space reserve must be obtained.

22 ASSIGNMENT OF ERROR NO. 1¹

23 Petitioner alleges the establishment of the White City
24 urban containment boundary in the Jackson County Comprehensive
25 Plan violates Statewide Goal No. 14. Petitioner posits the
26 establishment of the urban containment boundary should have

1 been based on the seven factors in Goal 14. That is, as the
2 urban containment boundary is a boundary separating
3 unincorporated land that is nonetheless developed to an urban
4 density from urbanizable and urban lands, Goal 14's seven
5 conversion factors are applicable.

6 Respondent says Goal 14 is by its terms limited to a
7 conversion of rural to urban and urbanizable land. The terms
8 "urban," "urbanizable," and "rural" have definitions that by
9 their terms exclude communities such as White City.

10 "Urban areas are those places which must have an
11 incorporated city. Such areas may include lands
12 adjacent to and outside the incorporated city and may
13 also; (a) Have concentrations of persons who generally
14 reside and work in the area (b) Have supporting public
15 facilities and services."

16 "Urbanizable lands are those lands within the urban
17 growth boundary and which are identified and (a)
18 Determined to be necessary and suitable for future urban
19 areas (b) Can be served by urban services and facilities
20 (c) Are needed for the expansion of an urban area."

21 "Rural lands are those which are outside the urban
22 growth boundary and are: (a) Non-urban agricultural,
23 forest and open space lands or (b) Other lands suitable
24 for sparse settlement, small farms or acreage homesites
25 with no or hardly any public services, and which are not
26 suitable, necessary or intended for urban use."
Statewide Planning Goals and Guidelines, Definitions
Section."

21 The county concludes "[e]ven though the development on
22 lands such as White City may be significant they cannot be
23 'urban land' or 'urbanizable land.'" Respondents Brief at 4.

24 The county goes on to say that though Goal 14 is not
25 applicable, the Jackson County Comprehensive Plan does provide
26 a policy of limiting expansion of industrial uses on rural land

1 outside of urban growth boundaries. Policy 7 of the rural and
2 suburban lands element and Policy 3 of the urban lands element
3 of the comprehensive plan recognize the existence of industrial
4 and other urban residential uses in the county and in White
5 City in particular. The policies restrict the expansion of
6 these built up areas "except for fill-in development."

7 As petitioner has challenged the existence of the
8 containment boundary as having been improperly drawn, we must
9 consider whether Goal 14 applies to such boundaries,
10 notwithstanding the goal's apparent requirement that an urban
11 growth boundary have within it an incorporated city.

12 White City, with its population of 4,300 people, is almost
13 as much a "city" for planning purposes as an incorporated
14 city. The requirement that "city" or urban uses cannot be
15 located outside urban growth boundaries is intended to be
16 primarily directed at future development. Cf. City of Sandy
17 and Metro v. Clackamas Co. & Carmel Estaes, Inc., LCDC 79-029
18 (1979). The goals are not so inflexible that they won't
19 recognize the existence of development which has already taken
20 place. See e.g. 1000 Friends v. MSD, LCDC No. _____. To
21 apply a requirement so strictly that no existing quasi-urban
22 areas can be recognized outside urban growth boundaries would
23 make non-conforming uses out of every such use in areas like
24 White City.² This rigid interpretation of goal 14 could
25 adversely affect the quality of life in such areas.

26 We recognize Goal 14's requirement is to place urban growth

1 and development within urban growth boundaries. Cf. City of
2 Sandy, supra. However, we also recognize that circumstances
3 may exist (i.e. White City) whereby it may be necessary to
4 recognize quasi-urban areas outside an urban growth boundary.
5 We believe the most reasonable approach which achieves the
6 purpose of Goal 14 is to follow Goal 2's exception process when
7 determining whether quasi-urban uses may be located outside
8 urban growth boundaries on resource lands as defined by the
9 Goals. That is, the county may recognize the existence of
10 White City and its built-up lands. Any expansion beyond what
11 is already built on resource land, would be undertaken with the
12 following process:

13 "(a) Why these other uses should be provided for;

14 "(b) What alternative locations within the area
15 could be used for proposed uses;

16 "(c) What are the long term environmental,
17 economic, social and energy consequences to
18 the locality, the region or the state from
19 not applying the goal or permitting the
20 alternative use;

21 "(d) A finding that the proposed uses will be
22 compatible with other adjacent uses."
23 Statewide Planning Goals and Guidelines,
24 Goal 2, Land Use Planning.

25 We believe this process will preserve what we perceive as
26 an intent throughout the goals to limit expansion of urban uses
27 outside the urban areas.

28 On non-resource lands, the intensification of development
29 is not required to follow the exceptions process as outlined in
30 Goal 2. However, the decision to allow quasi-urban uses on

1 non-resource lands must be consistent with all other applicable
2 goals. Key issues will be the availability of public
3 facilities and services (Goal 11) and transportation facilities
4 (Goal 12). In addition, a decision to allow intensification of
5 development on non-resource lands must assess the impacts of
6 development on nearby urban growth boundaries (Goal 14).

7 The combined requirements of Goal 14 relative to
8 city-county cooperation in adopting an urban growth boundary
9 and Goal 2 requirements for coordination require that the
10 decision to allow intensification of use outside an urban
11 growth boundary on non-resource lands must not undermine the
12 effectiveness of adjacent urban growth boundaries.

13 ASSIGNMENT OF ERROR NO. 2

14 Petitioner alleges that the "decision" on petitioner's
15 lands violates Goals 5 and 9. Petitioner's argument is that
16 "exclusion of petitioner's lands from the containment boundary
17 and its classification as open space should not have been done
18 without the inventories required by Goals 5 and 9."

19 Goal 5 requires an inventory as follows:

20 "The location, quality and quantity of the following
21 resources shall be inventoried:

22 "a. Land needed or desirable for open space;

23 "b. Mineral and aggregate resources;

24 "c. Energy sources;

25 "d. Fish and wildlife areas and habitats;

26 "e. Ecologically and scientifically significant
natural areas, including desert areas;

- 1 "f. Outstanding scenic views and sites;
2 "g. Water areas, wetlands, watersheds and groundwater
3 resources;
4 "h. Wilderness areas;
5 "i. Historic areas, sites, structures and objects;
6 "j. Cultural areas;
7 "k. Potential and approved Oregon recreation trails;
8 "i. Potential and approved federal wild and scenic
waterways and state scenic waterways."

9 Goal 9 similarly requires an inventory.

10 "Plans shall be based on inventories of areas suitable
11 for increased economic growth and activity after
12 taking into consideration the health of the current
13 economic base; materials and energy availability;
14 labor market factors; transportation; current market
forces; availability of renewable and non-renewable
resources; availability of land; and pollution control
requirements."

15 Petitioner finds no such inventories in the Jackson County Plan
16 and claims failure to have such inventories renders the
17 classification of petitioner's land invalid.

18 Petitioner also takes issue with the policy in the urban
19 containment boundary to limit industrial growth and calls it
20 "overly restrictive and based upon a mistaken interpretation of
21 the goals." Petitioner then quotes a policy statement adopted
22 June 6, 1980, by LCDC setting forth a procedure for citing
23 industrial uses outside urban growth boundaries in certain
24 circumstances.

25 "Industrial uses may be sited outside of an urban
26 growth boundary (UGB), subject to the following
procedure:

- 1 "1. Identify the Statewide Planning Goals that apply
2 to the proposed industrial use of the rural site;
- 3 "2. Determine whether the proposed industrial use
4 complies with the applicable goals;
- 5 "3. If the use is not allowed by the applicable
6 goals, a Goal 2 exception must be taken to allow
7 the use; and
- 8 "4. Make findings on compliance with all other
9 applicable goals."

10 The county responds by saying that the LCDC policy
11 statement relied on by petitioner

12 "addresses the problem of how a proposed industrial
13 use may be considered outside an urban growth
14 boundary. That procedure is not a policy statement
15 that there may be industrial zones outside urban
16 growth boundaries as the statement considers a
17 specific use in a specific location only."
18 Respondent's Brief at 5.

19 Respondent goes on to say, in essence, that these inventories
20 were made. The White City lands were scrutinized and
21 industrial needs of the county were noted. Included in the
22 record are detailed descriptions of White City showing services
23 available, population, industrial lands available and proposed,
24 and an outline of the options for locating the urban
25 containment boundary. The options were three different
26 drawings of the limits of the urban containment boundary.
27 Alternatives and reasons for choosing the urban containment
28 boundary eventually selected were included in the record and
29 were discussed at the Planning Commission meeting of March 31,
30 1980. Minutes of that meeting were included as part of the
31 record in this case. It would appear that the county's

1 decision is based on the Planning Commission's belief that the
2 area which includes petitioner's property was not committed for
3 industrial use. See minutes of the Planning Commission Meeting
4 March 31, 1980.

5 Respondent says that the record shows petitioner's property
6 to be vacant and not developed, not needed for specific
7 industrial use and far from any incorporated city or urban
8 growth boundary. In short, for the purpose of designating the
9 land for other than immediate industrial use, the inventory was
10 adequate.

11 Given the facts as they appear in the record, we conclude
12 the county's inventory was as complete as necessary to restrict
13 development. The county was under no obligation to designate
14 petitioner's property for industrial use. The policy statement
15 by LCDC adopted June 6, 1980, and relied on by petitioners
16 appears to us to presuppose, at a minimum, the existence of
17 some identifiable need for industrial use. Furthermore, that
18 identified need must be particularly suitable to a particular
19 site before those policies come into play. Eugene v. Lane
20 Co., ____ Or LUBA ____, LUBA No. 80-050 (1981). The record in
21 this case simply does not disclose the existence of such a need.

22 ASSIGNMENT OF ERROR NO. 3

23 Assignment of error no. 3 alleges

24 "[r]espondent failed to follow the applicable
25 procedure in that it assigned to petitioner's property
26 a zoning designation different from the Comprehensive
Plan designation without a special hearing, findings,
statement of conditions and special ordinance required

1 by Jackson County's Comprehensive Plan and Zoning
2 Ordinance.

3 This assignment of error is based upon the split
4 designation given petitioner's property. Petitioner's property
5 bears a "GI/OSR-20" designation. Petitioner argues that under
6 the county zoning ordinance, split zones may only be applied to
7 areas of "special concern." In all other cases, plan and
8 zoning designations must match exactly. Petitioner claims that
9 areas of special concern may be established only after notice
10 to the property owner and a hearing on the matter.

11 The map designation element of the Jackson County
12 Comprehensive Plan describes three types of areas suitable for
13 a split plan and zone designation.

14 "SPECIAL MAP DESIGNATIONS"

15 "In most instances, the plan map designation and the
16 zoning map designation are the same. The plan map and
17 zoning map designations may differ in those instances
18 where an area of special concern has been identified.
Areas of special concern generally consist of three
types, or combinations thereof; they are:

19 "A) Areas where a distinction between the
20 comprehensive plan designation and zoning
21 designation is necessary to accommodate a future
22 staging strategy for future land use actions, or
to prevent conversion of certain lands from a
resource map with both designations (for example,
plan/zone such as UR/SR, AR/ODS, or WR/EFU-3); or,

23 "B) Areas where an individual policy concern
24 must be successfully addressed by all applicants
25 for land use action, prior to the approval by the
26 county. Such policies may be linked in addition
to the imposition of site plan review
requirements specified in the Jackson County
zoning Ordinance; or,

1 "C) Areas in which planned unit developments or
2 cluster permits are required in order to meet a
3 specific concern identified by the Planning
4 Commission, shall be identified as such on the
5 Jackson County Comprehensive Plan and Zoning Map
6 by the letters (ASC), and an identification
7 number referring to the ordinance adopted by the
8 Board of Commissioners which created the ASC."
9 (Map Designation Element, JC Comp. Plan, p. 2,
10 Appendix 3.)"

11 Respondent argues the establishment of the split zone on
12 petitioner's property was done as part of the comprehensive
13 plan and zoning ordinance adoption process. The county
14 interprets the ordinance prospectively and says it is only when
15 other areas of special concern are identified in the future
16 that the notice and hearing process comes into play. See Sec
17 280.110, Jackson County Zoning Ordinance.

18 We believe the county's reading of its ordinance to be
19 reasonable. The plan and the zoning ordinance were adopted at
20 the same time. We find nothing in the record in either case
21 (80-115 or 80-116) to suggest that sec 280.110 of the zoning
22 ordinance, controlling areas of special concern, was to be
23 applied during the comprehensive plan adoption process.

24 Indeed, the description of areas of special concern in the Map
25 Designation Element of the Comprehensive Plan cited above and
26 the ordinance read together suggest rather that designation of
27 areas of special concern could occur either at the time of plan
28 adoption or afterward. If areas of special concern are to be
29 adopted after the comprehensive plan passage, however, the
30 ordinance requires notice and a hearing. Jackson County Zoning

1 Ordinance sec 280.110. We will not overturn a local
2 jurisdiction's interpretation of its ordinance where that
3 interpretation is reasonable. Fifth Avenue Corporation v.
4 Washington County, 282 Or 591, 581 P2d 50 (1978); Bienz v. City
5 of Dayton, 29 Or App 761, 566 P2d 904, rev den, 280 Or 171
6 (1977).

7 ASSIGNMENT OF ERROR NO. 4

8 Assignment of error no. 4 alleges that the county failed to
9 make adequate findings and statements of reasons explaining its
10 "GI/OSR" designation(s) on petitioner's property. Petitioner
11 can accept the general industrial (GI) designation, but
12 petitioner does not accept the more restrictive OSR
13 designation. Petitioner here draws no distinction between
14 legislative and quasi-judicial actions, and says that in either
15 case, findings are necessary to show goal compliance.

16 With particular regard to the zoning of the property,
17 petitioner says again that the inventory required in Goal 5 and
18 Goal 9 was not made. Petitioner goes on to quote respondent's
19 plan text which requires identification of resources and land
20 use classifications based on the inventory. Petitioner's Brief
21 in LUBA 80-116 at 7; Jackson County Comprehensive Plan, page
22 2. Petitioner claims its own witnesses pointed out significant
23 characteristics of the subject property and how it was
24 appropriate for industrial use. Petitioner concludes it is
25 entitled to a statement of the facts and reasons upon which
26 this decision was based.

1 Respondent argues that though there may have been no
2 "findings" in a formal sense accompanying the action on
3 petitioner's property, the county nonetheless followed the law
4 in making the designations. The county argues it is not
5 necessary that a local jurisdiction make detailed findings for
6 each and every piece of property within its jurisdiction in a
7 broad legislative action such as the adoption of a whole
8 comprehensive plan. In this regard, respondent is correct. As
9 we said in Gruber v. Lincoln County, _____ Or LUBA _____, LUBA
10 No. 80-088 (1981), there is no need for such "findings" as long
11 as inventories of the property are adequate and those
12 inventories when read with plan policies show that the land in
13 question was zoned in accordance with the policies, and
14 ultimately in accordance with the goals. However, we also said
15 in Gruber v. Lincoln County, supra, that where a particular
16 challenge was made during the course of the plan process, there
17 must be some means of identifying why alternative courses of
18 action were chosen. That is, faced with an "articulate
19 challenge to a proposed designation and no plan policy
20 controlling the decision and eliminating competing choices for
21 land use designations, the 'rationale' for the particular
22 decision must be evident someplace in the plan or in supporting
23 documents (i.e. the record)." Gruber v. Lincoln Co., supra,
24 LUBA No. 80-088 at page 13.

25 Here, there was no real alterantive to the county's OSR
26 , zoning of petitioner's property given the "GI" comprehensive

1 plan designation. As previously discussed (see discussion of
2 second assignment of error), the record does not disclose any
3 reason why petitioner's property should be presently zoned GI.
4 Perhaps, most importantly, policy 7 of the rural and suburban
5 lands element of the Jackson County Comprehensive Plan limits
6 existing committed rural industrial areas outside of urban
7 growth boundaries except for fill-in development. Policy 7
8 controls the county's decision. No findings showing
9 alternative uses and reasons for choosing one over the other
10 are needed. The plan policy dictates the choice.

11 We believe the county has adequately provided the basis for
12 its decision with respect to petitioner's property. The county
13 has a policy controlling growth in unincorporated areas and
14 outside of urban growth boundaries. That policy along with
15 discussions of the White City area and the need for industrial
16 property in the county included within the comprehensive plan
17 provides a sufficient basis for the county's decision to
18 exclude petitioner's property from the White City urban
19 containment boundary area.³ Designation of petitioner's
20 property as some sort of reserve or open space is, therefore,
21 in compliance with the county plan and supported by sufficient
22 statements of fact and evidence in the record.⁴

23 The third assignment of error is denied. Ordinance no.
24 80-17 is remanded to Jackson County for proceedings consistent
25 with this opinion. Ordinance no. 80-18 is affirmed.

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FOOTNOTES

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As LUBA Nos. 80-115 and 80-116 have been consolidated, we will number the assignments of error 1 through 4. The first two assignments of error are from case 80-115 and challenge the Jackson County Comprehensive Plan, the third assignment of error is from case 80-116 and challenges the Jackson County Zoning Ordinance, and the fourth assignment of error combines allegations, appearing in both cases, that the county failed to adopt sufficient findings and reasons supported by substantial evidence.

2

We use the term "quasi-urban" to define those uses which are urban in character but not located within an urban growth boundary because of the absence of an incorporated city.

3

We wish to stress that we have not examined the adequacy of the underlying industrial designation of petitioner's property. An examination of the record for compliance with other statewide standards, e.g. goal 3 and 5, might result in a finding that the industrial designation was not justified.

4

We note, however, that petitioners have not challenged zoning designations on neighboring properties, but only on their own property. A review of the White City portion of the plan for compliance with the goals on all properties could conceivably result in a finding of a violation of one or more statewide planning goals. See our discussion under assignment of error no. 1, supra. Were respondent to follow proper procedure in drawing the White City urban containment boundary, "findings" would have to be made showing compliance with relevant portions of Goal 2's exception process.