

LAND USE
BOARD OF APPEALS

BEFORE THE LAND USE BOARD OF APPEALS Nov 7 10 41 AM '86
OF THE STATE OF OREGON

3	CHARLES R. KNIGHT,)	
)	
4	Petitioner,)	LUBA No. 86-066
)	
5	vs.)	FINAL OPINION
)	AND ORDER
6	CITY OF COOS BAY,)	
)	
7	Respondent.)	

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9 Appeal from City of Coos Bay.

10 Robert E. Brasch, North Bend, filed the petition for review
and argued on behalf of petitioner.

11 Paula Bechtold, Coos Bay, filed a response brief and argued
12 on behalf of Respondent City.

13 DuBAY, Chief Referee; BAGG, Referee; KRESSEL, Referee;
participated in the decision.

14 AFFIRMED 11/07/86

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

1 Opinion by DuBay.

2 NATURE OF THE DECISION

3 This is an appeal of a decision to rezone property in the
4 City of Coos Bay from R-2 (Single Family and Duplex
5 Residential) to I-C (Industrial Commercial) and to change the
6 comprehensive plan from Low Density Residential to Commercial.

7 FACTS

8 The plan and zone changes apply to an L-shaped property.
9 One leg of the "L" is a 25 foot by 100 foot strip that is part
10 of a larger tract occupied by a bowling alley and its parking
11 lot. A house is on the other leg of the "L." The zone change
12 from R-1 to I-C was approved by the planning commission at its
13 meeting on July 23, 1986. The approval was made conditional
14 upon amendment of the comprehensive plan to change the plan map
15 designation from Low Density Residential to Commercial. On
16 July 28, the city council approved the plan map change. The
17 planning commission's zone change order and the city council's
18 plan change order were each signed on July 29th.

19 JURISDICTION

20 We first address respondent's allegation that LUBA has no
21 jurisdiction to review the zone change by the planning
22 commission. The city claims that the petitioner appealed the
23 commission's decision to us without exhausting the remedies at
24 the local level. Accordingly, respondent says this appeal
25 should be dismissed.

26 The city's Land Development Ordinance (LDO) authorizes the

1 planning commission to approve requests for zone changes,
2 Chapter 5.13, Section 4, LDO. The planning commission's
3 decision may be appealed to the city council by filing a notice
4 of appeal with the city recorder within 15 days of the
5 decision. Chapter 5.4, Section 1, LDO. Petitioner did not
6 appeal the planning commission's decision on the zone change to
7 the city council but instead filed a notice of intent to appeal
8 with this Board. By not appealing the rezoning to the city
9 council, petitioner has not "exhausted all remedies available
10 by right before petitioning the board for review." ORS
11 197.825(2)(a). This failure to exhaust all available remedies
12 at the local level requires that we dismiss petitioner's
13 challenge of the zone change. Lyke v. Lane County, 70 Or App
14 82, 688 P2d 411 (1984); Zarkoff v. Marion County, 14 Or LUBA 61
15 (1985).

16 Dismissal of petitioner's challenge to the rezoning
17 decision may not end our review, however, if petitioner's
18 appeal includes a challenge to the city's decision to amend the
19 comprehensive plan. We conclude it does.

20 The notice of intent to appeal states petitioner intends to
21 appeal:

22 "...that land use decision of respondent entitled Land
23 Development Permit, Final Order for Change and [sic]
24 Zone designation, which became final on July 29, 1986
25 and which involved approval by the Coos Bay City
26 Council, at its regularly scheduled city council
meeting on July 28, 1986, of a change in zone
designation from R-2 to I-C (Low Density Residential
to Commercial)..., more specifically described in
Exhibit 'A', pages 1 through 6 attached hereto."

1
2 References to both the zone change and the plan change
3 appear in this notice. The "change in zone designation from
4 R-2 to I-C" (the planning commission's decision) is also
5 described as a change from Low Density Residential to
6 Commercial (i.e., comprehensive plan designations) made by the
7 city council at a meeting on July 28. This confusion of
8 terminology and forum is repeated in the petition for review:

9 "Petitioner is...appealing the decision of the City of
10 Coos Bay, Oregon, through its planning commission, to
11 change a strip of property from low density
12 residential to commercial, namely: from R-2 to I-C."
13 Petition at 1.

14 It is difficult to discern if petitioner intends to appeal
15 one decision and not the other. Our resolution of this
16 dilemma, and the choice we think reflects the petitioner's
17 intention, is to interpret the appeal to challenge both
18 decisions. Accordingly, we turn to petitioner's assignment of
19 error as a challenge of the city council's decision to amend
20 the plan.

21 ASSIGNMENT OF ERROR

22 Petitioner challenges the city council's plan change for
23 low density residential to commercial on two bases. First,
24 petitioner alleges that no findings or evidence support the
25 city's conclusion that the change corrects a prior mistake in
26 the plan. However, the city council's decision to change the
plan designation, unlike the planning commission's zone change
decision, was not adopted to correct a prior error. The

1 decision makes no mention of a mistake in previous plan
2 designations. The council made no conclusion as alleged.
3 Petitioner's challenge on this ground therefore fails.

4 Petitioner also alleges the decision violates several
5 provisions in the city's comprehensive plan. This challenge
6 also fails. The provisions cited by petitioner are summarized
7 as follows:

- 8 1) The statement that the primary motive for
9 developing a plan is to protect existing
10 investments in residential, commercial and
11 industrial development.
- 12 2) The integrity of established residential areas
13 should be protected by changing zone designations
14 to correspond with existing development.
15 Petition at Appendix A-12.
- 16 3) The natural character of the community should be
17 maintained when planning for residential growth.
18 Future residential development should conserve
19 open space. Petition at Appendix A-13.
- 20 4) Apartments shall be intermixed with offices and
21 limited commercial activities in appropriately
22 designated areas. Petition at Appendix A-14,
23 Section H.3.
- 24 5) An adequate supply of land shall be maintained
25 for low and moderate density residential
26 development. Petition at Appendix A-14, Section
H.6.
- 6) Industrial zoning shall be based on realistic and
practical utilization. Petition at Appendix
A-15, Section ED.5.
- 7) Major residential developments shall be subject
to site plan review. Petition at Appendix A-16,
Section H.9.
- 8) The comprehensive plan shall be the basis for all
land use regulations. Petition at Appendix A-17,
Section LU.2.

1 9) To resolve conflicts between implementation
2 strategies and policies in the plan, the long
3 term environmental economic, social and energy
4 consequences must be considered. Petition at
5 Appendix A-18, Section LU.7.¹

6 The petition for review does not explain how the decision
7 violates these plan provisions. Instead, the petition merely
8 alleges they are violated, leaving this Board the task of
9 determining the basis for the claim.

10 The relevancy of some of these provisions is questionable.
11 Even if the provisions do address concerns that may be
12 relevant, e.g., the supply of land for residential development,
13 we must guess why petitioner believes the decision must comply
14 with this provision and petitioner's reason it does not. In
15 some circumstances, the legal basis for a general claim that
16 standards are not met may be evident by reading the decision
17 and the cited standard. That is not the case here.

18 As a general rule, allegations that a decision violates the
19 local comprehensive plan must include analysis of whether the
20 cited plan provisions are standards for the decision under
21 review and whether the decision meets those standards. In the
22 absence of allegations showing noncompliance with specified
23 decision-making standards in the plan, we are left to speculate
24 about the legal theory underlying petitioner's claim. This we
25 will not do. Deschutes Development Company v. Deschutes
26 County, 5 Or LUBA 218 (1982). Petitioner's failure to allege
no more than a general claim that particular plan provisions
are violated is grounds for denying the assignment of error.

1 Petitioner's challenge to the decision of the city council
2 is denied.

3 Affirmed.
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FOOTNOTES

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1 The cited plan provisions appear in the plan either as introductory material, "objectives," "rationale," "implementation," or "strategies." Neither petitioner nor respondent address the legal effect to be given plan provisions in these various categories. See Grindstaff v. Curry Co., ___ Or LUBA ___ (1986) (LUBA No. 86-060, October 31, 1986).