

1 Opinion by DuBay.

2 NATURE OF DECISION

3 Petitioner appeals from the city's approval of a tentative
4 planned unit development (PUD) proposal to expand a city-owned
5 golf course from a nine to an 18 hole course.

6 FACTS

7 Laurelwood Golf Course is a municipal golf course occupying
8 about one half of a 91 acre site owned by the city. The
9 property was a privately owned 18 hole course between 1931 and
10 1960. However, it was operated as a nine hole course when it
11 was purchased by a school district in 1960. After the city
12 purchased the property in 1968, it was again used as a nine
13 hole course. The city operated the course until 1979 when the
14 property was leased to a golf course operator.

15 In 1985 the city amended its Parks and Recreation Master
16 Plan (PRMP), a functional element of the city's comprehensive
17 plan, by adding the following:

18 "11. If a golf course operator is able to obtain
19 private financing, necessary permits, respond to
20 safety concerns, and produce a plan acceptable to the
City, the expansion of Laurelwood to an 18-hole course
should be allowed." Record at 139.

21 In 1986 the city adopted a special procedure to make a
22 decision about development of the facility. According to this
23 procedure, the first step would be approval of a tentative
24 planned unit development based on the city's own application.
25 The special procedure called for a final PUD application by the
26 developer who submitted the best plan to implement the

1 tentative PUD approval. Following this procedure, the city
2 applied for tentative plan approval which was approved by the
3 city hearings official. The decision was appealed to the
4 planning commission which reviewed the appeal on the record
5 made before the hearings official. The planning commission
6 denied the appeal and upheld the tentative plan approval. This
7 appeal followed.

8 FIRST ASSIGNMENT OF ERROR

9 Petitioner alleges expansion of the Laurelwood golf course
10 to 18 holes would violate the 1968 city charter amendment
11 authorizing issuance of city general obligation bonds to
12 purchase the site. According to petitioner, the charter
13 amendment approved by the voters authorized purchase of the
14 property for recreational purposes that do not include golf.
15 Petitioner's argument relies on the ballot statement
16 accompanying the measure. The statement lists several specific
17 recreational uses for the property but does not include golf on
18 the list.¹ Petitioner contends the voters did not
19 contemplate exclusive use of the site for golf as the tentative
20 PUD approval provides.

21 The critical charter amendment provision states:

22 "Section 1. The Common Council of the City of Eugene
23 is hereby authorized, empowered and directed to issue
24 and sell . . . bonds of the City of Eugene . . . to be
25 used together with other available funds to purchase
for recreational uses the Laurelwood property from
School District #4J of Lane County, Oregon." Record
at 276.

26 Other provisions of the charter amendment specify the form

1 of the bonds, their method of payment and the restriction that
2 the bond sale proceeds will constitute

3 "a special fund for the use and benefit of the park
4 and recreation system of the City of Eugene, Oregon
5 and shall be used for no other purposes than herein
6 specified." Record at 276.

7 Petitioner does not claim the bond proceeds were not used
8 to purchase the Laurelwood property as the charter amendment
9 provided. Nor does petitioner claim the property was not
10 acquired for a public purpose. Petitioner's only claim is that
11 exclusive use for golf is not authorized by the charter
12 amendment.

13 We find no provision in the charter amendment restricting
14 the use of the property to be acquired with bond proceeds other
15 than the provision that the property will be for recreational
16 uses. Petitioner does not claim, and we do not find, that golf
17 is not a recreational use. Even if the ballot statement
18 supporting the measure were to be given some controlling
19 effect, and we do not believe it does, the statement does not
20 purport to be an exclusive list of recreational uses possible
21 on the property.

22 In sum, we do not find the tentative PUD approval violates
23 the charter amendment authorizing general obligation bonds to
24 purchase the property. Accordingly, the assignment of error is
25 denied.

26 SECOND ASSIGNMENT OF ERROR

Petitioner alleges the proceedings leading to approval of

1 the tentative PUD plan were defective for failure to give the
2 notice required by city code. Petitioner says Section
3 9.512(5)(a) requires written notice of public hearings to
4 owners and occupants of abutting properties and properties
5 adjacent to abutting properties. Petitioner claims 176 persons
6 should have received notice of the planning commission's
7 hearing, but notice was given only to 124.

8 The Board may reverse or remand a land use decision for
9 procedural error only if the error prejudices the substantial
10 rights of petitioner. ORS 197.835(8)(a)(B). Petitioner does
11 not claim he did not receive notice or that his ability to
12 present his position in the proceeding below was impaired by
13 the alleged error. Petitioner has not shown his substantial
14 rights have been affected. We, therefore, deny the assignment
15 of error. Lee v. City of Portland, 57 Or App 798, 646 P2d 662
16 (1982).

17 THIRD ASSIGNMENT OF ERROR

18 One of the 10 conditions to the tentative PUD approval
19 states:

20 "7. To provide added water supply for fire
21 protection, standpipes shall be provided through-out
22 the golf course along the irrigation system in
23 locations approved by the fire department." Record at
24 112.

25 Petitioner contends the decision is flawed by this
26 condition because the city code has no standards governing
standpipes for fire protection.

Petitioner's claim includes no argument or explanation why

1 the lack of standards for placement of standpipes constitutes
2 error. No code standards related to fire protection or utility
3 services are cited. No claim is made that the condition is an
4 improper delegation of authority to a city official to
5 determine compliance with applicable criteria. No claim is
6 made that the condition will affect petitioner's procedural
7 rights. In sum, petitioner states no legal basis for the claim
8 that imposing the condition is error.

9 To review petitioner's assignment of error requires
10 speculation about what legal theory petitioner relies upon to
11 establish his claim. Our discussion of one or several of the
12 possible legal theories for such a claim may not match
13 petitioner's theory. We decline to undertake this exercise.
14 Deschutes Development v. Deschutes Cty., 5 Or LUBA 218, 220
15 (1982). The assignment of error is denied.

16 FOURTH ASSIGNMENT OF ERROR

17 Petitioner alleges the city failed to address applicable
18 policies in the Metropolitan Area General Plan (Metro Plan) and
19 the PRMP. Petitioner also claims the city failed to apply
20 criteria in the PRMP because it incorrectly used PUD approval
21 process rather than treating the golf course expansion as a
22 conditional use.

23 We understand petitioner's point is not that the city erred
24 by using the wrong procedure, but rather the city committed
25 error because it did not address the correct criteria.

26 However, for the reasons set forth below, it is unnecessary to

1 examine petitioner's procedural arguments.

2 Subsections 9.512(6)(a) through (i) of the code set out
3 the criteria for approval of tentative PUD plans. The two
4 subsections at issue state:

5 "(a) The proposed development is consistent with
6 related policies and development standards in
7 applicable, adopted neighborhood refinement plans and
8 special area studies.

9 "(b) The proposed development is consistent with
10 the Metropolitan Area General Plan (1) applicable land
11 use references, (2) text related to the development,
12 and (3) specific elements related to the development."

13 Petitioner says these provisions require findings
14 addressing criteria in both the Metro Plan and the PRMP.
15 Specifically, petitioner contends evidence was presented
16 regarding the following criteria that were not addressed in the
17 order:

18 "a) the text of the Environmental Resources Element of
19 the Metro Plan, and the 'Findings', and the 'Goals',
20 'Objectives' and 'Policies' of that element, pages
21 III-C-1 through III-C-11. R. 253, 256, 257.

22 "b) the text of the Environmental Design Element, of
23 the Metro Plan and the 'Findings', and the 'Goals',
24 'Objectives', and 'Policies' of that element, pages
25 III-E-1 through III-E-3. R. 252.

26 "c) the text of the Parks and Recreation Facilities
27 Element of the Metro Plan, and the 'Findings', and the
28 'Goals', 'Objectives' and 'Policies' of that element,
29 pages III-H-1 through III-H-5. R. 252-254.

30 "d) the text of the Citizen Involvement Element of
31 the Metro Plan and the 'Findings', and the 'Goals',
32 'Objectives' and 'Policies' of that element, pages
33 III-K-1 through III-K-3. R. 250.

34 "The proposed development, a metropolitan park, should
35 be examined for consistency with the Eugene Parks and
36 Recreation Master Plan, and specifically, for

1 consistency with those objectives and policies
2 enunciated under the headings: a) Planning and
3 Implementation, R. 251; b) Services, R. 254; c)
4 Community Involvement, R. 261; d) Urban Design,
5 R. 255; e) Design and Maintenance, R. 261; and the
6 Design Criteria for Metropolitan Parks, R. 254"
7 (Emphasis in original) Petition for Review at 23-24.

8 This is petitioner's only specification of the criteria he
9 claims were unaddressed. The criteria are neither quoted in
10 nor attached to the petition.

11 Our review of petitioner's citations to the record where
12 the challenged criteria may be found, provides details about
13 some, but not all of the criteria petitioner says were not
14 addressed.

15 Petitioner's record citations refer to his written argument
16 submitted to the planning commission. There, petitioner quotes
17 the following criteria that may apply to the decision:

18 "Protect valuable natural resources and encourage
19 their wise management, proper use, and reuse,
20 reflecting their special natural assets." Goal 1,
21 Environmental Resources Element, Metro Area General
22 Plan. Record 257.

23 "Public and private facilities shall be designed and
24 located in a manner that preserves and enhances
25 desirable features of local and neighborhood areas
26 and promotes their sense of identity." Environmental
Design Element, Metro Area General Plan. Record at
253.

"Provide a variety of parks and recreation facilities
to serve the diverse needs of the community's
citizens." Goal, Parks and Recreation Facilities
Element, Metro Area General Plan. Record at 254.

The hearings officer found that use of the property for a
golf course is consistent with the designation of the property
as parks and open space on the Metro plan map. He also noted

1 provisions in the Parks and Recreation Element of the Metro
2 plan indicate a need for additional golf courses. Record at
3 119. Addressing criterion in the PRMP, the hearings officer
4 found the proposed expansion is consistent with PRMP objective
5 to develop existing parks to meet local recreational needs.
6 Record at 115. The hearings officer particularly noted the
7 provision of the PRMP stating an 18 hole golf course should be
8 allowed on the site if financing, safety and suitable operator
9 concerns can be satisfied. Responding to opponents' claims
10 that a PRMP policy calling for preservation of unique and
11 natural open spaces must be applied, the hearings officer found
12 that policy must be balanced against other policies in the PRMP
13 calling for a range of recreation facilities in the city.
14 Record at 116.

15 We agree with the city's argument that relevant policies in
16 the Metro Plan and the PRMP were addressed. We also agree that
17 the city was entitled to weigh conflicting provisions in the
18 planning documents, particularly where the plan language is
19 stated in general terms rather than as an approval standard
20 applicable to all development. Downtown Community Association
21 v. City of Portland, 14 Or LUBA 382, 386, (1986); rev'd on
22 other grounds 80 Or App 336, 722 P2d 1258 (1986). This
23 analysis seems especially apt given the specific PRMP provision
24 recommending expansion of the golf course when certain
25 conditions have been met.

26 As noted above, petitioner argued that because the city did

1 not consider the expansion proposal a conditional use, the city
2 did not consider the policies and objectives of the PRMP.
3 However, the hearings official did find the proposal conformed
4 to the PRMP. Record at 115-117. Although petitioner contends
5 the city failed to consider text provisions, objectives and
6 policies of the Metro plan and the PRMP other than those
7 discussed by the hearings official, petitioner's failure to
8 specify the particular criteria that were unaddressed and
9 provide a theory why addressing them is essential to the
10 decision, prevents further review of these claims. Therefore,
11 the assignment of error is denied.

12 FIFTH ASSIGNMENT OF ERROR

13 Petitioner alleges the planning commission erred in
14 concluding the proposal complies with the Metro Plan. In
15 particular, petitioner says the site is a scenic area and a
16 natural resource area on the city's inventory of resources
17 protected by Statewide Planning Goal 5. Petitioner contends
18 the site was considered for inclusion on the inventory when the
19 plan was updated in 1982; the site has features described as
20 protectible in the planning documents, and the site was
21 included on the comprehensive plan map as Parks and Open
22 Space. Consequently, petitioner argues the site includes Goal
23 5 protected resources which would not be preserved if the golf
24 course is expanded.

25 The findings state the site is not on the city's list of
26 resources protected by Goal 5, a point repeated in the city's

1 brief and argument to the Board. The city agrees that the
2 Laurelwood site was canvassed as a possible resource site when
3 the plan was prepared but disagrees with the assertion that the
4 property was placed on the city's inventory of Goal 5
5 resources.

6 We agree with the city. Petitioner cites to no provision
7 in the Metro Plan denominating the Laurelwood site as a
8 resource within the protection of Goal 5. We do not accept
9 petitioner's logic that designation of the site as Parks and
10 Open Space is equivalent to designation of the site as either
11 an open space or natural resource defined by Goal 5.
12 Petitioner's case for now, including the site as a resource
13 within the Goal's protection, may have merit. However, this
14 proceeding is not available to correct the city's acknowledged
15 inventory of Goal 5 resources. Urquhart v. Lane County, 80 Or
16 App 176, 721 P2d 870 (1986).

17 The assignment of error is denied.

18 Affirmed.

FOOTNOTES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

1

The ballot statement in relevant part states:

"The property has the potential of providing a large variety of recreational uses for citizens of Eugene. . . .

"SOME OF ITS RECREATIONAL POTENTIAL IS:

- | | | |
|----------------|---------------|---------------------|
| Picnic Areas | Tennis Courts | Swimming Pool |
| Playgrounds | Wading Pools | Bicycle Path |
| Jogging Trails | Casting Lake | Recreation Building |
| Hiking Trails | Ballfields | Archery Range." |