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NATURE OF THE DECISION

Petitioner challenges a city decision that approves a partition.

STANDING

Respondent does not challenge petitioner’s statement of standing. Petitioner appeared below, filed a timely notice of intent to appeal and therefore has standing to appeal the challenged decision to LUBA. ORS 197.830(2).¹ Petitioner alleges in her statement of standing that she is appearing in this appeal on behalf of a neighborhood association and her son. There are two reasons petitioner cannot represent the neighborhood association or her son in this appeal. First, the neighborhood association and her son are not parties because they did not sign the notice of intent to appeal or file a motion to intervene. Even if they had, petitioner is not an attorney. Petitioner may represent herself in this appeal, but petitioner may not represent others in this appeal.²

FACTS

The subject property is zoned Residential (R7) and is located on the west side of N.E. 140th Avenue in the City of Portland. The lot measures 115 feet wide along N.E. 140th

¹ ORS 197.830(2) provides:

“Except as provided in ORS 197.620 (1) and (2), a person may petition [LUBA] for review of a land use decision or limited land use decision if the person:

“(a) Filed a notice of intent to appeal the decision as provided in subsection (1) of this section; and

“(b) Appeared before the local government, special district or state agency orally or in writing.”

² OAR 661-010-0075(6) provides in relevant part:

“Appearances before the Board: An individual shall either appear on his or her own behalf or be represented by an attorney. A corporation or other organization shall be represented by an attorney. In no event may a party be represented by someone other than an active member of the Oregon State Bar.”

1 Avenue and is approximately 155 feet deep. The partition creates a new flag lot in the rear
2 and leaves a nearly square lot in front. The front lot measures 89 feet wide along N.E. 140th
3 and is approximately 83 feet deep. An existing house is located on that lot. The flag portion
4 of the lot in the rear would be 115 feet wide and approximately 72 feet deep. The flagpole
5 that would provide access to the flag portion of the lot from N.E. 140th Avenue is
6 approximately 26 feet wide.

7 **INTRODUCTION**

8 The Portland Zoning Code is Chapter 33 of the Portland City Code (PCC). The
9 subject property is located in the Glendoveer Plan District, which is one of a number of plan
10 districts designated in the Portland Zoning Code.³ The Glendoveer Plan District is a mostly
11 residential area located north and east of the Glendoveer Golf Course. The partitioned lot
12 lies just north of the golf course.

13 Petitioner believes that the Glendoveer Plan District Purpose Statement, and possibly
14 prior Multnomah County zoning requirements that applied before the area was annexed by
15 the City of Portland, should have been applied directly and resulted in denial of the disputed
16 partition. Because petitioner's assignments of error proceed from a misunderstanding
17 regarding how the city's partition criteria operate in conjunction with the Glendoveer Plan
18 District, we discuss that relationship first.

19 Under the Portland Zoning Code, plan districts are designated to allow more
20 particularized zoning regulation. PCC Chapter 33.500.010.⁴ Plan districts can include

³ The term "Plan District" offers the opportunity for confusion. The Glendoveer Plan District and the other
27 Plan Districts listed in the Portland Zoning Code are part of the Portland Zoning Code, not the Portland
Comprehensive Plan. However, there also are 46 different "Neighborhood Plans" identified in the Portland
Comprehensive Plan. Some but not all of those 46 Neighborhood Plans have corresponding Portland Zoning
Code Plan Districts. As far as we can tell there is no Glendoveer Neighborhood Plan identified in the Portland
Comprehensive Plan.

⁴ PCC 33.500.010 explains the role that plan districts play under the Portland Zoning Code:

1 regulations that supplement the base and overlay zoning regulations that apply throughout
2 the city. PCC 33.500.030 explains:

3 “Plan district regulations are applied in conjunction with a base zone. The
4 plan district provisions may modify any portion of the regulations of the base
5 zone, overlay zone, or other regulations of this Title. The provisions may
6 apply additional requirements or allow exceptions to general regulations.”⁵

7 As Portland Zoning Code Plan Districts go, the Glendoveer Plan District is relatively
8 short and straightforward. It applies only to certain R7 zoned areas of the Glendoveer Plan
9 District. Where it applies, it requires a minimum lot area of 7,500 square feet in place of the
10 4,200 square foot minimum lot area that would otherwise be required under the R7 zone. In
11 addition, a minimum 70-foot lot width is required, in place of the minimum 40-foot lot width
12 that would otherwise be required in the R7 zone. The parcels created by the partition both
13 meet these increased size and width requirements. We set out the Glendoveer Plan District
14 provisions in their entirety in the margin.⁶

“Plan districts address concerns unique to an area when other zoning mechanisms cannot achieve the desired results. An area may be unique based on natural, economic or historic attributes; be subject to problems from rapid or severe transitions of land use; or contain public facilities which require specific land use regulations for their efficient operation. Plan districts provide a means to modify zoning regulations for specific areas defined in special plans or studies. Each plan district has its own nontransferable set of regulations. This contrasts with base zone and overlay zone provisions which are intended to be applicable in large areas or in more than one area. However, plan districts are not intended for small areas or individual properties.”

⁵ PCC 33.700.070(E) explains the hierarchy of different levels of regulation under the city’s zoning code. PCC 33.700.070(E)(1)(a) explains “[t]he regulations in a plan district supersede regulations in * * * base zones and regulations in the 600 series of chapters.” The 600 series of chapters govern partitions, among other things.

⁶ The Glendoveer Plan District is PCC Chapter 33.530, which provides as follows:

“33.530.010 Purpose

“The regulations of the Glendoveer plan district are intended to ensure that the special development patterns fostered by Ascot zoning and succeeding zoning provisions established by Multnomah County are protected and continued under City zoning regulations following annexation.

“33.530.020 Where the Regulations Apply

1 **FIRST AND SECOND ASSIGNMENTS OF ERROR**

2 In her first and second assignments of error, petitioner contends the city erroneously
3 refused to apply the Glendoveer purpose statement at PCC 33.530.010 as an approval
4 standard. That purpose statement is set out at n 6 and is reproduced again below:

5 “The *regulations* of the Glendoveer plan district are intended to ensure that
6 the special development patterns fostered by Ascot zoning and succeeding
7 zoning provisions established by Multnomah County are protected and
8 continued under City zoning regulations following annexation.” PCC
9 33.530.010 (emphasis added).

10 Although petitioner’s arguments under these assignments of error are not entirely clear, we
11 understand petitioner to argue that the city should have “identified the special development

“The standards of this chapter apply only to areas zoned R7 and which were zoned LR7.5 by Multnomah County prior to the establishment of City zoning. Glendoveer plan district boundaries and areas that were formerly zoned LR7.5 and are now zoned R7 are shown on Map 530-1, located at the end of this chapter, and on the Official Zoning Maps.

“33.530.030 Minimum Lot Size and Maximum Density

“The minimum lot area is 7,500 square feet. The minimum lot width is 70 feet. Maximum density is 1 unit per 7,500 square feet of site area.

“33.530.040 Building Setbacks

“A. Building setback standards. The minimum building setbacks are:

<u>“Setback</u>	<u>Distance</u>
“Front setback	30 feet
“Side setback	10 feet
“Rear setback	15 feet”

“B. Setback standards for detached garages. Detached garages are allowed in side and rear building setbacks that do not abut a street if all of the following are met:

- “1. The garage entrance is at least 50 feet from a front lot line, and if on a corner lot, 25 feet from a side street lot line;
- “2. The garage has dimensions that do not exceed 24 feet by 24 feet; and
- “3. The garage walls are no more than 10 feet high, excluding the portion of the wall within a gable.”

1 patterns fostered by Ascot zoning” and then considered whether the partition is consistent
2 with those special development patterns. Petitioner also appears to argue that the city’s Type
3 I Review process, which does not require a public hearing before a city land use hearings
4 officer, does not present an adequate opportunity to ensure that the partition is consistent
5 with the underlying basis for the Glendoveer Plan District.

6 The city found that “[t]he applicable criteria for approval of this application do not
7 require Staff to make findings on the purpose statement, or intent, of the Glendoveer Plan
8 District * * *.” Record 5. Petitioner assigns error to that finding.⁷

9 We agree with the city that if PCC Chapter 33.530 is read as a whole, it imposes
10 special minimum lot size and maximum density requirements and special building setback
11 requirements in the Glendoveer Plan District. *See* n 6. We also agree with the city that the
12 special minimum lot size and maximum density requirements and special building setback
13 requirements set out at PCC 33.530.030 and 33.530.040 are “[t]he *regulations* of the
14 Glendoveer plan district [that] are intended to ensure that the special development patterns
15 fostered by Ascot zoning and succeeding zoning provisions * * * are protected and continued
16 * * * following annexation.” (Emphasis added.) The PCC 33.530.010 purpose statement is
17 not itself a regulation of the Glendoveer Plan District. If, as petitioner apparently believes,
18 the supplemental regulations at PCC 33.530.030 and 33.530.040 are inadequate to protect
19 and continue the Glendoveer Plan District’s “special development patterns,” the adopted
20 regulations at PCC 33.530.030 and 33.530.040 may be amended or supplemented to better

⁷ PCC 33.660.120 sets out 12 separate approval criteria for review of proposed land divisions, and those criteria address numerous factors. While PCC 33.660.120 does not specifically address how Portland Zoning Code Plan District Requirements might affect application of the 12 approval criteria, PCC 33.700.070(E)(1)(a) does. *See* n 5. The challenged decision includes findings addressing the PCC 33.660.120 criteria. In addressing the PCC 33.660.120(A) criterion regarding lot requirements, the city found the proposal meets the increased lot size and width requirements in the Glendoveer Plan District. Petitioner does not argue that the city failed to require that the application comply with any of the minimum lot size or maximum density requirements of PCC 33.530.030 or any of the special building setback standards of PCC 33.530.040. In fact, petitioner does not challenge the city’s findings regarding any of the PCC 33.660.120 criteria.

1 protect those special development patterns. However, the PCC 33.530.010 purpose
2 statement may not be applied as a regulation, when it plainly is not a regulation, and the city
3 correctly rejected petitioner’s argument that it should be applied as a regulation.

4 Similarly, if the city’s Type I procedure is an inadequate procedure for reviewing
5 partition applications in the Glendoveer Plan District, the remedy is to amend the PCC to
6 require a different procedure. Petitioner cannot challenge the city’s adopted procedures in
7 her appeal of this partition decision, which simply follows the procedure that has been
8 adopted and is currently in place. *See Femling v. Coos County*, 34 Or LUBA 328, 332-33
9 (1998) (LUBA has “no authority to review the validity of an ordinance adopted in a separate
10 proceeding, in the course of reviewing a decision that applies the ordinance.”).

11 The first and second assignments of error are denied.

12 **THIRD AND FOURTH ASSIGNMENTS OF ERROR**

13 Under her third assignment of error, petitioner cites language from the prior
14 Multnomah County zoning ordinance that applied to the subject property. That language
15 provided that difficulties in building a particular housing design would not justify a variance.
16 Petitioner apparently believes certain unspecified Portland Zoning Code provisions that favor
17 infill development to be inconsistent with the special development patterns that may have
18 been better protected under the prior county zoning ordinance provisions.

19 Petitioner’s fourth assignment of error appears to repeat her argument that the city’s
20 Type I Review Procedure is inadequate.

21 Again, if there is something in the prior county zoning of the property that should be
22 carried forward as a *regulation* in the Glendoveer Plan District to protect its special
23 development pattern, the remedy is to amend PCC 33.530.030 and 33.530.040 to include
24 them. Specifically, if division of existing lots generally or divisions that create flag lots in
25 particular are inconsistent with the Glendoveer Plan District’s special development patterns,

1 the regulations in the Glendoveer Plan District could be amended to limit or prohibit such
2 divisions. As the Glendoveer Plan District regulations are now written, they do not do so.

3 Finally, as we have already noted, if the Type I Review Procedure is somehow
4 inadequate within the Glendoveer Plan District, the remedy is to amend the Portland Zoning
5 Code to require a different review procedure. The third and fourth assignments of error
6 provide no basis for reversal or remand.

7 The third and fourth assignments of error are denied.

8 The city's decision is affirmed.