

1 Opinion by Bagg

2 NATURE OF THE DECISION

3 Petitioner appeals a City of Eugene decision to rezone
4 property from suburban residential (RA) to limited multiple
5 family residential (R-2/SR). The property is on the north side
6 of Willakenzie Road between Adkins Street and Best Lane.

7 FACTS

8 The rezoned property is a 1.66 acre tract owned by
9 Respondent Clair Adkins. Ms. Adkins applied for this zone
10 change to permit construction of 27 dwelling units. The
11 property is adjacent to commercial uses to the west. The land
12 to the north and east is zoned RA and developed for single
13 family houses and duplexes, and the area to the south is zoned
14 for single family residential use.

15 The rezone application was made on May 12, 1987. On
16 May 27, a public hearing was held before the city's hearings
17 officer. The hearings officer issued a decision granting the
18 zone change on June 5.

19 On June 22, 1987, petitioner filed an appeal to the city's
20 planning commission. The planning commission considered the
21 matter at a hearing on July 7, and sustained the hearings
22 officer's decision on July 13, 1987. This appeal followed.

23 FIRST ASSIGNMENT OF ERROR

24 "Consideration was not given to the inadequacy of
25 public safety factors at the site where rezoning has
been requested."

26 Petitioner complains the rezoning and subsequent

1 development will have traffic impacts, and the city did not
2 adequately consider these impacts. Petitioner states the
3 traffic engineer's testimony did not include accurate
4 information on traffic volumes. Information suggesting the
5 existing streets could handle the increased traffic from the
6 development lacked "specifics" according to petitioner.

7 Petitioner concludes as follows:

8 "Tainted generalities, not facts, were the evidence
9 given the Planning Commission considering the public
10 safety at the property location. If facts are
11 considered, safety factors are not adequate to serve
12 existing or increased housing density at this
13 location."

14 Respondent argues street conditions are not a basis for
15 denying a rezoning request. Respondent advises the criteria
16 for a zone change are as follows:

17 "(2) The commission or hearings official shall review
18 the application and receive pertinent evidence and
19 testimony as to why or how the proposed change is
20 consistent with the following criteria required for
21 approval:

22 "(a) The uses and density that will be allowed in
23 the location of the proposed change (1) can be served
24 through the orderly and efficient extension of key
25 urban facilities and services prescribed in the
26 Metropolitan Area General Plan, and (2) are consistent
27 with the principles of compact and sequential growth.

28 "(b) The proposed change is consistent with the
29 Metropolitan Area General Plan (1) applicable text,
30 (2) specific elements related to the uses listed in
31 the proposed zoning districts, and (3) applicable land
32 use designations. The written text of the Plan takes
33 precedence over the Plan diagram where apparent
34 conflicts or inconsistencies exist.

35 "(c) The proposed zone change is consistent with
36 applicable adopted neighborhood refinement plans,
37 special area studies, and functional plans. In the

1 event of inconsistencies between these plans or
2 studies and the Metropolitan Area General Plan, the
3 latter is the prevailing document." Eugene Code,
4 Section 9.678(2).

5 Respondent then notes street conditions are not a basis for
6 denying a zoning request and cites to the city's Metro Plan.
7 The plan defines "key urban facilities and services" as follows:

8 "They consist of sanitary sewers; solid waste
9 management; water service; fire protection; police
10 protection; parks and recreation programs; electric
11 service; land use controls; communication facilities;
12 and public schools on a district-wide basis (in other
13 words, not necessarily within walking distance of all
14 students served). Paved streets with adequate
15 provision for stormwater runoff and pedestrian travel,
16 meeting applicable local policies, are
17 important--particularly in new developments and along
18 existing streets heavily used by pedestrians." Metro
19 Plan at Page II-B-4.

20 We understand respondents to say the question of road
21 capacity and street safety is not a criterion for rezoning.
22 Respondent also states, however, that even if these issues were
23 applicable to the decision on appeal, the hearings officer
24 found the streets were adequate, particularly because
25 Willakenzie Road is scheduled for improvement during the
26 1987-88 construction season. This improvement will include
paving. Record 81-82.

While petitioner does not cite us to a provision in the
city's land use regulatory scheme making traffic impacts a
specific criterion for rezoning, we believe the comprehensive
plan provision requiring a full range of "key urban facilities
and services" to be provided in urban areas is applicable.
The provision is sufficiently broad to require that there be

1 adequate city streets. Under the city's rezoning criteria,
2 conformity with the Metropolitan Area General Plan is
3 required. Eugene Code Section 9.678(2). We will therefore
4 consider whether the city's decision addresses the adequacy of
5 the streets.

6 The hearings officer found that traffic safety was not an
7 issue for the rezoning. However, he also found Willakenzie
8 Road is scheduled for improvement, and the staff concluded that
9 the required key urban facilities were available at the site
10 and have the capacity to serve the site in the light of the
11 proposed rezoning. See Record 37. These findings are part of
12 the decision on review, and petitioner's argument, in sum,
13 appears to be that the findings are erroneous because the
14 hearings officer and the planning commission misinterpreted the
15 available facts. That is, we understand petitioner to claim
16 the evidence in the record really shows a traffic hazard
17 exists, and the claims of the city that no such hazard exists
18 are simply factually wrong.

19 We are not empowered to reweigh facts presented to the
20 local decision maker. While we understand petitioner disagrees
21 with the conclusions reached by the hearings officer on the
22 planning commission, we are not able to reverse or remand the
23 decision unless petitioner is able to show the conclusions are
24 not supported by substantial evidence. Petitioner has not made
25 such a showing, rather petitioner has simply argued his
26 evidence shows a safety hazard to exist. Even if we agree with

1 petitioner in the abstract, our function is not to reweigh the
2 facts for the city decision makers. Younger v. City of
3 Portland, 86 Or App 211, ___ P2d ___ (1987). Our inquiry is
4 limited to determining whether the evidentiary record
5 supporting the city's finding is such that a reasonable person
6 would rely on. We conclude that it is.

7 The first assignment of error is denied.

8 SECOND ASSIGNMENT OF ERROR

9 In this assignment of error, petitioner argues there was no
10 evidence presented to support a demand for additional multiple
11 family dwellings. On the contrary, petitioner claims there was
12 testimony offered to show there was additional demand for
13 single family dwellings.

14 Respondent correctly notes the public need is not a
15 criterion for a zone change under Eugene Code Section
16 9.678(2). We are, therefore, required to deny this assignment
17 of error. Where petitioners complaint is not based on a
18 standard for rezoning, the complaint, even if valid, provides
19 no basis for reversal or remand. Ridge v. Clackamas Co., 14 Or
20 LUBA 766 (1966).

21 The second assignment of error is denied.

22 THIRD ASSIGNMENT OF ERROR

23 Petitioner states the decision in this case is based on
24 staff assertions that some 16 units could be developed from the
25 property under existing zoning. Petitioner claims this
26 assertion is not correct.

1 Whether the city staff incorrectly described how many units
2 might be built under RA Zoning has little bearing on the city's
3 order. The city's order grants the rezoning, and the criteria
4 against which to measure the rezoning exists in the county
5 zoning ordinance. If the rezoning complies with applicable
6 zoning ordinance criteria, the existence of mistakes of fact in
7 the record is not sufficient, by itself, to invalidate the
8 decision. Spalding v. Joseph County, 14 Or LUBA 143 (1985).

9 Here, petitioner does not explain how this alleged error
10 undermines the city's final decision. We therefore deny this
11 assignment of error.

12 FOURTH ASSIGNMENT OF ERROR

13 In this assignment of error, petitioner argues changing the
14 zoning to allow 27 apartment units is not consistent with the
15 Metropolitan Area General Plan. Petitioner complains urban
16 sprawl is created by this zone change. Also, petitioner
17 repeats his argument that testimony was presented to the city
18 illustrating a demand for single family dwellings, not
19 multi-family dwellings.

20 Respondent replies the decision meets the Metro Plan and
21 the rezoning criteria included in the city's zoning ordinance.
22 Specifically, respondent argues the zoning represents an
23 efficient use of urban land, because the site is near
24 commercial services, a public community center and public
25 transportation. Further, the zoning is consistent with the
26 Metro Plan diagram showing medium density residential

1 development in the area. See, The Metropolitan Area General
2 Plan, Plan diagram, Page II-E-26.

3 Petitioner does not cite provisions in the comprehensive
4 plan prohibiting R2/SR Zoning in this area. Indeed, the plan
5 encourages

6 "higher-density residential development near
7 industrial and commercial centers throughout the
8 metropolitan area." Metro Area General Plan Policy
30, Page III-A-7. See also, Objective Six, Page
II-A-4.

9 Further, the rezoning does appear to fit the plan map
10 description of this area as medium density residential. This
11 assignment of error is denied.

12 FIFTH ASSIGNMENT OF ERROR

13 In this assignment of error, the petitioner complains about
14 a hearings officer finding that the rezoning was acceptable
15 because it created a "medium density housing node."

16 Record 84. Petitioner states he is unable to find reference to
17 medium density housing nodes in the Metropolitan General Plan.

18 According to petitioner, nodes are related to commercial
19 development "with bands of other types of zoning evolving
20 logically around the perimeter of the Commercial Nodes."

21 Petition for Review at 6. Petitioner states:

22 "This extensive residential node creation by the
23 hearings official points to the recognition of the
24 incompatibility of this argument with the existing
25 logical and systematic development of this area into
single family dwellings under RA Suburban residential
zoning. The desenting [sic] commissioners Gerry
Gaydos and Alan Yordy agree."

26 The petitioner does not allege an error for which we may

1 grant relief. Whether or not the hearings officer, and later
2 the planning commission, was correct in characterizing the
3 rezoning as creating a medium density housing node is of little
4 consequence if the city's decision otherwise meets applicable
5 provisions in the comprehensive plan and zoning ordinance. Any
6 error in characterizing the decision is cause for reversal or
7 remand only if the error is also a failure to satisfy some
8 applicable criterion. As in the case of the third assignment
9 of error, we are cited to applicable standards in the
10 comprehensive plan or other regulations which are affected by
11 the hearings officer's characterization.

12 The fifth assignment of error is denied.

13 SIXTH ASSIGNMENT OF ERROR

14 In the last assignment of error, petitioner notes a
15 planning commissioner asked that if the rezoning were approved,
16 could planning staff establish a policy of no further R2
17 rezonings in the area, until "an official refinement plan were
18 developed for this area ***." Petition for Review at 6.
19 Petitioner then claims comments in the record of this meeting
20 have the status of policy development for the planning
21 commission and the staff. Petitioner argues:

22 "I propose the evidence and testimony in the appeal as
23 well as these comments point to the error in allowing
24 the rezoning. It is not logical to compact and
25 sequential growth in this area [sic] and that is
26 specifically why the concern was expressed by
Commissioner Anderson."

We understand petitioner to complain about a planning

1 commission request for preparation of a policy statement
2 precluding multiple family residential zoning east of Best
3 Lane. See Record 29. The policy was not adopted as part of
4 the decision on review, and we are unclear as to how this issue
5 is related to the city's decision. The fact the Planning
6 Commissioners may be concerned about further R2 rezonings in
7 this area does not have any apparent bearing on rezoning
8 criteria in the comprehensive plan or the zoning ordinance.
9 Therefore, comments regarding such a policy are surplussage.

10 The sixth assignment of error is denied.

11 The city's decision to rezone the subject property is
12 sustained.

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