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**NATURE OF THE DECISION**

Petitioner appeals a decision by the City of Portland Office of Planning and Development Review (OPDR) that purports to correct an error in a city zoning map.

**FACTS**

A detailed understanding of the facts in this case is not necessary to resolve one of the errors that petitioner alleges. That error is dispositive and requires that the challenged decision be remanded. This case involves a number of tax lots, which lie generally to the west of N. Edison Street, a street that generally runs north and south. The affected tax lots are zoned EG2 (General Employment 2) or R5 (Single Family Residential 5000 Square Foot Minimum Lot Size) or split-zoned with the easterly portion of the lot zoned R5 and the westerly portion zoned EG2. The challenged decision attempts to correct the line that divides the R5-zoned area to the east from the EG2-zoned area to the west, with regard to these tax lots.<sup>1</sup>

**FIRST ASSIGNMENT OF ERROR**

Portland City Code (PCC) 33.855 governs zoning map amendments. PCC 33.855.070 establishes an administrative procedure (Type I procedure) to “correct” zoning map errors without following the more extensive city and statutory procedures that would otherwise be required to “amend” the city’s zoning map. As relevant, PCC 33.855.070 provides:

“The Director of OPDR may initiate and approve a review following the Type I procedure for the types of corrections to the Official Zoning Maps listed below. If the Director of OPDR determines that the map error is discretionary in nature, then the Director of OPDR can initiate a Type II process.

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<sup>1</sup>The record includes copies of the corrected zoning map and the zoning map as it appeared before it was corrected. Record 12, 13, 51. The record also includes a map that shows the dimensions of the affected tax lots. Record 52. It is difficult to reconcile either the prior or the corrected zoning maps with the map at Record 52.

1           **“A. Mapping errors.** The correction may be made for mapping errors  
2           such as:

3                   “\* \* \* \* \*

4                   “3. The line on the [zoning] map does not match the legal  
5                   description or map shown or referenced in the ordinance which  
6                   applied the designation[.]”

7           The OPDR provided the following explanation for why it believes PCC  
8           33.855.070(A)(3) applies in this case and is satisfied:

9                   “A memorandum from the Bureau of Planning indicates that older mylar  
10                  versions of the zoning map generally indicate that the zoning line was placed  
11                  100 feet west of N. Edison but that the newer digitized map indicate[s] a jog  
12                  in the line approximately 250 feet south of [the] N. Reno [intersection with N.  
13                  Edison]. The digitized maps were based on the older mylar versions of the  
14                  maps. The map error correction is being made so that the digitized map will  
15                  match the mylar maps on which the digitized maps are based. *Earlier mylar*  
16                  *versions of the map more accurately portray the intended location of the zone*  
17                  *line at the time the zone line was established.”* Record 9 (emphasis added).

18          For the reasons discussed below, we agree with petitioner that the city’s findings are  
19          inadequate to establish compliance with PCC 33.855.070(A)(3).

20                First, the challenged decision seems to say that it is correcting the zoning map to  
21          conform to the earlier mylar versions of the zoning map. However, neither those older mylar  
22          maps nor prints from those mylar maps are included in the record. Therefore, even if the  
23          referenced “older mylar versions of the maps” were the proper maps to consult in applying  
24          PCC 33.855.070(A)(3), the challenged decision would not be supported by substantial  
25          evidence.<sup>2</sup>

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<sup>2</sup>As relevant, the planning staff report that is referenced in the quoted findings simply states:

“\* \* \* Older mylar versions of the zoning map *generally indicate* that the zoning line was placed 100 feet west of N. Edison. However, the newer digitized maps indicate a jog in the line approximately 250 feet south of [the N. Reno intersection with N. Edison]. Because the depth of the properties along this side of N. Edison vary from 98 feet to 115 feet, it appears that the jog in the line is intended to follow the varying property line depths.” Record 50 (emphasis added).

1           Second, PCC 33.855.070(A)(3) requires that the city compare the existing zoning  
2 map with (1) the legal description in the ordinance that originally applied the zoning  
3 designation or (2) the map that is “shown or referenced” in that original ordinance. The  
4 ordinance that adopted the EG2 zone is not included in the record. Neither does the record  
5 include the legal description or the map that was adopted by that ordinance to establish the  
6 location of the zoning district boundaries in this area.<sup>3</sup> We note that the emphasized  
7 language in the above-quoted findings strongly suggests that the “older mylar versions of the  
8 zoning map” are not themselves the “map shown or referenced in the ordinance which  
9 applied the [zoning] designation.” In summary, as far as we can tell from the parties’  
10 arguments and the decision itself, the map that must be consulted under PCC  
11 33.855.070(A)(3) was not consulted and is not included in the record.

12           The first step in applying PCC 33.855.070(A)(3) is to locate the ordinance(s) that  
13 adopted the relevant R5 and EG2 zoning map designations so that the legal descriptions or  
14 maps that those ordinance(s) adopted can be compared with the existing zoning maps. The  
15 second step is to determine whether that comparison permits a nondiscretionary “correction”  
16 of the existing zoning map. If so, the city may proceed to the third step and correct the  
17 zoning map. We agree with petitioner that the city has not established that it successfully  
18 negotiated the first step. The city must first locate the ordinance that adopted the relevant R5

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Given the equivocal nature of this statement and its recognition that the varying lot depths present a variety of possibilities for establishing the dividing line between the two districts, we do not believe the planning staff report itself constitutes substantial evidence that the adopted correction is consistent with the older mylar versions of the zoning map.

<sup>3</sup>The EG2 zone appears to have replaced a previously adopted zone. The record does not include an ordinance, legal description or map regarding the previously adopted zone in this area either.

1 and EG2 zoning together with the legal descriptions or maps that established the location of  
2 the R5 and EG2 zoning district boundaries on the affected tax lots.<sup>4</sup>

3 The city's decision is remanded.

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<sup>4</sup>If those ordinances simply renamed or amended the provisions of previously existing zoning designations, without affecting the zoning map, it may be necessary to locate the ordinance that adopted and applied the previously existing zoning designations to apply PCC 33.855.070(A)(3).