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BEFORE THE LAND USE BOARD OF APPEALS
OF THE STATE OF OREGON

HAROLD D. GILLIS,)	
)	
Petitioner,)	LUBA No. 79-004
)	
vs.)	
)	FINAL
CITY OF SPRINGFIELD)	OPINION AND ORDER
)	
Respondent.)	
)	
ROGER M. (MIKE) VAN,)	
)	
Respondent.)	

Appeal from City of Springfield.

Harold D. Gillis, Springfield, argued the cause and filed a petition for review on his own behalf as Petitioner.

Joseph J. Leahy, City Attorney, Springfield, argued the cause for respondent City of Springfield. With him on the brief were Harms, Harold & Leahy.

David B. Williams, Eugene, argued the cause for respondent Roger M. (Mike) Van. With him on the brief were Robinette, Cleveland & Williams.

Cox, Referee; Reynolds, Chief Referee; Bagg, Referee; participated in the decision.

Reversed.

3/14/80

1 COX, Referee

2 Nature of Decision

3 This is an appeal from an October 15, 1979 Springfield
4 City Council decision to rezone a 38 acre tract of land in
5 north Springfield from the combination of AG Agricultural
6 District and M-3 Heavy Industrial District to RG Garden
7 Apartment Residential District zone. Petitioner seeks a final
8 order of the Board reversing the actions of the Springfield
9 City Council.

10 Standing

11 Respondents do not contest petitioner's standing to
12 bring this action before the Land Use Board of Appeals and
13 this Board will not bring up the matter on its own motion.

14 Issues which petitioner seeks to have reviewed

15 Petitioner sets forth four assignments of error as
16 follows:

17 "The city erred in granting a zone change
18 that failed to comply with the comprehensive
plan."

19 "The zoning decision was without
20 substantial evidence demonstrating the public
need for the rezoning."

21 "The zoning decision was without substantial
22 evidence demonstrating how public need would be
23 best served by changing the zone classification
of the applicant's property as compared with
other available property."

24 "The city's findings and conclusions (1)
25 are invalid and cannot support its actions because
26 not made contemporaneous with the earlier action
and (2) are not supported by substantial evidence
in the record."

1 Facts

2 Applicant (Respondent herein) Roger M. (Mike) Van
3 applied August 29, 1979 for a zone change on approximately
4 38 acres of real property located within the city limits
5 of Springfield, Oregon from AG Agricultural District and
6 M-3 Industrial District, to RG Garden Apartment Residential
7 District. The requested zone allows for up to ten (10)
8 dwelling units per acre. The applicant proposes to develop
9 the property at an average density of approximately seven
10 (7) dwelling units per acre.

11 The subject property is located within the North Springfield
12 planning district. This planning district is governed by the
13 Eugene-Springfield Metropolitan 1990 General Plan, adopted in
14 1972, as refined by the North Springfield Community Plan (NSP)
15 adopted in 1973.

16 The 1990 General Plan was adopted by Lane County, Eugene
17 and Springfield with emphasis on metropolitan planning. It
18 suggests adoption of detailed community area "refinement" plans.
19 The NSP is such a "refinement plan" and was adopted by Springfield
20 and Lane County (part of the NSP area was in county jurisdiction
21 in 1973). The NSP deals only with North Springfield. Its land
22 use map, by color shadings, designates that portion of the
23 subject property along Marcola Road for heavy industrial use.
24 The rest of the property is designated as either neighborhood
25 and community park or low density residential.

26 / /

1 The subject rezone application was heard October 3, 1979,
2 by the Springfield Planning Commission, which voted 3-2 to
3 recommend the rezoning. The planning commission's three
4 sentence finding included a statement that the request was
5 in conflict with the NSP.

6 The rezone application was next heard by the Springfield
7 City Council on October 15, 1979, on its consent calendar. The
8 resolution of intent to rezone to RG Garden Apartments was
9 unanimously adopted on that date. The resolution contained
10 no detailed findings. The adoption of findings, conclusion
11 and order did not occur until November 19, 1979. On
12 November 13, 1979, petitioner appealed the October 15, 1979
13 resolution of intent to rezone to this Board. Respondents
14 neither alleged petitioner's appeal of the October 15, 1979,
15 decision was premature nor did they contest this Board's
16 jurisdiction on the basis the October action was not a final
17 decision.

18 Decision

19 It is the decision of this Board that Respondent City
20 of Springfield's action be reversed. In reaching this
21 decision, we need only address petitioner's first assignment
22 of error.

23 The decision is in violation of the North Springfield
24 Community plan. The proponent of a zone change bears the
25 burden of proof that the proposed change complies with
26 the comprehensive plan. Fasano v. Washington County,

1 264 Or 574, 586, 507 P2d 23 (1973); Duddles v. West Linn,
2 21 Or App 310, 535 P2d 583 (1975); Rosetta v. Washington
3 County, 254 Or 161, 166-167, 458 P2d 405 (1969). The compre-
4 hensive plan controlling the property in question is the North
5 Springfield Community Plan (NSP). As the City of Springfield
6 on page 4 of the NSP states:

7 "As a physical development plan for a
8 limited geographic area, the North Springfield
9 Community Plan is intended to be a specific
10 enunciation of the goals and guidelines set forth
11 in the 1990 General Plan. Whereas, the General
12 Plan established a direction for the Eugene-
13 Springfield Metropolitan area by focusing on a
14 consistent set of goals and policies which
15 were officially endorsed by the jurisdictions
16 involved, the North Springfield Plan attempts
17 to make application of these goals and policies
18 as they relate to the particular local findings."

14 A comprehensive plan has been likened to a constitution
15 for all future development within the city. The comprehensive
16 plan must be viewed as legislative and permanent in nature.
17 To hold otherwise would relegate the comprehensive plan to the
18 role of "a vest-pocket tool of the planning commission." Baker
19 v. City of Milwaukie, 271 Or 500, 533 P2d 772 (1975). The
20 Baker court further stated:

21 "Upon passage of a comprehensive plan a city
22 assumes a responsibility to effectuate that plan
23 and conform prior conflicting zoning ordinances
24 to it. We further hold that the zoning decisions
25 of a city must be in accord with that plan and a
26 zoning ordinance which allows a more intensive
use than that prescribed in the plan must fail."
271 Or at 514.

26 The NSP designates the property in question as neighbor-

1 hood and community park, industrial, and low density residential
2 one to five dwelling units per acre.

3 The Springfield Planning Commission recognized that the
4 requested zone change was in conflict with the NSP when it
5 stated in its findings that:

6 "This request is in conformance with the
7 metroplan diagram though in conflict with the
8 North Springfield Plan which shows the area
as partially a park and partially low density
residential."

9 The RG Garden apartment zone sought by the applicant
10 provides for residential development of greater than five
11 dwelling units per acre. As such, this increase in intensity
12 of use violates the NSP and the dictates of Baker, supra.

13 In addition, there are no provisions identified in the record
14 for the allocation of this area, or portions thereof, as neighbor-
15 hood and community parks. The applicant argues that since the
16 RG zone requires 40 percent open space the neighborhood
17 and community park designation found within the North
18 Springfield Plan is somehow met. Respondent is not requir-
19 ing dedication or other means to insure public use of this
20 alleged open space as neighborhood and community park land.
21 Respondent argues that since Springfield does not have a park
22 department to maintain property dedicated to the city as park,
23 the NSP's requirements and guidelines can be ignored. Such an
24 argument is not convincing.

25 If Respondent City of Springfield wishes to allow
26 development such as the one proposed in this area, it must

1 either do so in conformance with the North Springfield Plan
2 or take appropriate steps to modify the plan. It can neither
3 modify the plan through the rezoning process nor refuse to
4 follow the plan simply because no means to implement it have
5 been developed. For the above cited reasons, the decision of the
6 Springfield City Council is reversed.

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