



1 BAGG, Board Member.

2 NATURE OF THE DECISION

3 Petitioners appeal the zoning of their property as Woodland  
4 Resource. The property had been zoned suburban residential  
5 with a minimum lot size of 2.5 acres (SR 2.5).

6 STANDING

7 Petitioners own the property subject to the rezoning.  
8 Respondent makes the following statement about standing.

9 "Respondent has no objection to petitioners' statement  
10 of standing. However, respondent does not waive any  
11 objection to petitioners' standing based upon the fact  
12 that the decision appealed from arose out of a  
13 legislative proceeding, and the limitations which that  
14 fact imposes."

15 We will consider this statement as an attack on petitioners'  
16 standing.

17 Whether the proceeding is legislative or quasi-judicial, we  
18 think in all cases the owner of property has standing to  
19 challenge a zone applied to his property. Petitioners have  
20 standing to bring this appeal.

21 FACTS

22 The rezoning of petitioners' property from a residential to  
23 a resource designation was part of a rezoning of some 6,000  
24 properties. The rezoning was initiated because of an order of  
25 remand from the Land Conservation and Development Commission  
26 dated May 14, 1982. Along with the rezonings, the Jackson  
County Land Development Ordinance and a revision of the  
comprehensive plan was adopted. The rezoning also included a

1 statewide land use planning goal exception for some 44,000  
2 acres of resource land. Petitioners' property was not among  
3 the properties excepted. These actions occurred on November  
4 10, 1982 by an emergency ordinance and were made permanent on  
5 December 15, 1982.

6 Prior to the rezoning, the county commissioners provided  
7 owners of property to be rezoned with opportunities to present  
8 testimony. Notice sent to owners of potentially affected  
9 property advised that the board of commissioners and planning  
10 commission (meeting together) would hold two hearings on the  
11 issue and that the owner need attend only the hearing most  
12 convenient. The notice clearly stated that oral and written  
13 testimony could be given. Additionally, there were three  
14 "public informational sessions" prior to the meetings. The  
15 sessions were to provide the opportunity for planning  
16 commission members and staff to talk about the proposed changes  
17 with those who wished to be heard. Petitioners took advantage  
18 of the opportunity and presented evidence at two joint board of  
19 commissioners' and planning commission sessions.

20 Important to the allegations of error in this case is the  
21 county's provision of an additional review. Section 277.100 of  
22 the Jackson County Land Development Ordinance provided  
23 individuals meeting certain criteria with the opportunity to  
24 have a public hearing on the zoning of their property. Section  
25 277.100 provides as follows:

26 "1) Owners of land who believe the mapping criteria

1 were inappropriately applied to their property  
2 may apply for a map designation review if:

3 "A) The property was not previously reviewed  
4 through the Board of County Commissioners'  
5 deliberations prior to the November, 1982,  
6 adoption of the official maps; or,

7 "B) The property was not previously reviewed as  
8 a Mapping Error Review through the Board of  
9 County Commissioners' deliberations prior to  
10 the adoption of the maps in November, 1982.

11 "2) The Department shall review all such applications  
12 and submit them with recommendations to the  
13 Board. The Board may hold a public hearing and  
14 give notice as is otherwise required by law. The  
15 substantive map designation [sic] criteria of the  
16 Jackson County Comprehensive Plan shall apply.  
17 The Board may thereafter by ordinance correct  
18 inappropriate designations on the Official  
19 Comprehensive Plan and Zoning Maps [sic]. The  
20 fee for such application shall be set by Board  
21 order, but may be waived by the Board in cases of  
22 inadvertence, neglect, or mistake by the  
23 Department or any County decision-making body.

24 "3) This process shall expire and no further  
25 applications shall be accepted six months after  
26 the adoption of the 1982 plan and zoning maps.

17 Petitioners could not take advantage of this provision because  
18 their property was reviewed prior to November, 1982.

19 ASSIGNMENT OF ERROR NO. 1

20 "Respondent erred in allowing its staff to submit  
21 documentary evidence in regard to tax lot 2100 upon  
22 which evidence respondent relied in arriving at its  
23 land use decision, without notifying petitioners of  
24 the same or supplying petitioners with copies of the  
25 documentary evidence, thereby denying petitioners the  
26 right to rebut said evidence."

24 Petitioners' assignment of error is based on the premise  
25 that the proceeding in which petitioners participated was a  
26

1 quasi-judicial proceeding and that petitioners were therefore  
2 entitled to due process of law as outlined in Fasano v  
3 Washington Co. Comm., 264 Or 574, 588, 507 P2d 23 (1973). One  
4 such due process right is the right to rebut evidence, and  
5 petitioners say they were not given the right to rebut a staff  
6 report, soil characteristics chart, soil interpretation chart  
7 and a soils map. Petitioners assert they were unaware of the  
8 documents at the time of those proceedings.

9 As we understand petitioners' argument, the respondent, by  
10 encouraging property owners to participate in the rezoning  
11 process, turned what might be a legislative rezoning of a  
12 considerable number of properties and large land area into a  
13 quasi-judicial proceeding.

14 Respondent County says this proceeding was not  
15 quasi-judicial. Respondent views the proceedings as  
16 legislative. The fact that notice was given to many property  
17 owners allowing them to take part in the proceedings did not,  
18 according to respondent, somehow extend quasi-judicial  
19 protections to landowners. Respondent argues Section 277.100  
20 of the Jackson County Land Development Ordinance simply  
21 provided a review proceeding for landowners who did not have  
22 their zoning reviewed during deliberations earlier. Just  
23 because the ordinance provided a different review proceeding  
24 for landowners whose property was not reviewed during the  
25 earlier proceeding does not mean petitioners' due process  
26 rights were violated, according to respondent. "The different

1 classes of landowners are provided different review procedures  
2 does not per se offend constitution or statutory procedural  
3 rights." Brief of Respondent at 5.

4 We do not understand petitioners to claim they have  
5 suffered a violation of due process of law because they have  
6 been treated differently from other landowners.<sup>1</sup> Rather, we  
7 understand petitioners to argue that because they were allowed  
8 to present evidence to the governing body during the course of  
9 its proceedings, they were entitled to quasi-judicial  
10 protection.

11 As we understand the facts of this case, the county was  
12 required by LCDC to reexamine its plan policies and zoning  
13 designations on its resource lands.<sup>2</sup> Pursuant to that aim,  
14 the county solicited the comments of landowners in order to  
15 help make its decisions about individual pieces of property.  
16 Along with this commentary, the county prepared revisions of  
17 its comprehensive plan, zoning map and implementing ordinances.  
18 As we understand the record, the rezoning, the land development  
19 ordinance enactment and the comprehensive plan revisions all  
20 occurred together.<sup>3</sup>

21 Under this process, the county was developing new criteria  
22 for its resource lands at the same time it used the criteria to  
23 apply specific designations to specific properties. Great  
24 numbers of properties and large areas of land were affected.  
25 This was not a case of application by an individual landowner  
26 or a group of landowners to change specific properties. To be

1 sure, the county was obliged to pursue revisions to its plan  
2 ordinances, but these revisions were undertaken to comply with  
3 the general legislative mandate to the whole State of Oregon to  
4 enact plans and ordinances that complied with statewide goals.  
5 See ORS 197.175, et seq. The county was not bound, however, to  
6 conduct a review and reach a result by virtue of a single  
7 application. We believe these qualities of broad policy review  
8 suggest the county action was more legislative than  
9 quasi-judicial. The fact that the county paid particular  
10 attention to comments from individuals does give this  
11 proceeding a quality that suggests quasi-judicial  
12 decisionmaking. However, this individual attention does not  
13 appear to us from the record to be anymore intensive or any  
14 different from that same individual attention that must be  
15 given by a local government whenever it plans or zones land  
16 within its jurisdiction. That is, even when drawing a brand  
17 new comprehensive plan, zoning ordinance and map, the county  
18 governing body must pay attention to individual properties. We  
19 do not believe this kind of attention on a broad scale means  
20 that what otherwise would be a legislative act is somehow  
21 transformed into a quasi-judicial act. See Newberger v  
22 Multnomah County, 288 Or 155, 603 P2d 771 (1980).<sup>4</sup>

23 As to petitioners' complaint about their opportunity to  
24 rebut evidence, we found ORS 215.060 and ORS 203.045 provide  
25 legislative proceedings must be announced and public. The fact  
26 landowners are provided with notice and an opportunity to

1 present evidence to the legislative body does not alone turn  
2 what otherwise is a legislative proceeding into a  
3 quasi-judicial one. We agree petitioners have a right to  
4 review public records. See ORS 192.420. However, there is no  
5 allegation that petitioners were denied the right to inspect  
6 evidence before the Board of Commissioners and the Planning  
7 Commission. Without an allegation that petitioners asked to  
8 review the information and were denied access to the materials,  
9 we will not find that the petitioners have been subjected to a  
10 violation of due process of law.

11 Assignment of error no. 1 is denied.

12 ASSIGNMENT OF ERROR NO. 2

13 "Respondent erred in failing to adopt any findings of  
14 fact to support its land use decision in regard to tax  
lot 2100."

15 "  
16 Petitioners' argument here is there are no findings to support  
17 the determination. Petitioners' argument is premised, again,  
18 on their view that the proceeding was quasi-judicial.  
19 Petitioners describe the process as a "property by property  
20 determination." Petition for Review at 6.

21 Respondent argues that there is no need for specific  
22 findings of fact where there is sufficient evidence in the  
23 record to conclude the county decision was correct. Respondent  
24 defends the lack of findings by arguing no such findings are  
25 needed in a legislative proceeding. Respondent supports this  
26 argument with the following citations:



1        "...(W)e do not mean to say that a broad legislative  
2        enactment must contain a list of justifications for  
3        each and every property designation. We view the need  
4        for 'findings' in a plan adoption to be met when the  
5        record shows facts and policies, which, when read  
6        together, show a factual base for particular land use  
7        designations.'" Gruber v Lincoln County, 2 Or LUBA  
8        180 (1982).

9        "'No findings showing alternative uses and reasons for  
10        choosing one (use) over the other are needed. The  
11        plan policy dictates the choice.'" City of Medford v  
12        Jackson County, 57 Or App 155, 643 P2d 1353 (1982).

13        Respondent then cites evidence in the record showing soil type  
14        and a cubic site class rating (forest site class rating). The  
15        facts illustrate the property falls within the criteria of the  
16        Jackson County Comprehensive Plan for a woodland resource  
17        zoning, according to respondent. See record, volume I at 350  
18        and footnote 7, *infra*. No further findings are needed, argues  
19        respondent.

20        We agree with the respondent that particular findings are  
21        not necessary. We reaffirm our statement in Gruber as quoted  
22        by respondent. However, the Gruber case also stands for the  
23        proposition that there must be "a record which demonstrates  
24        that citizens' concerns were heard and considered and shows why  
25        these concerns were or were not ultimately reflected in the  
26        comprehensive plan." 2 Or LUBA 180 at 188. We discuss whether  
27        such evidence exists in the discussion of assignment of errors  
28        3, 4, and 5, below.

29        ASSIGNMENT OF ERROR NOS. 3, 4, 5

30        "Respondent erred in rezoning tax lot 2100 woodland  
31        resource in that it does not meet the respondent's

1 criteria for woodland resource lands."

2 "Respondent erred in rezoning tax lot 2100 woodland  
3 resource in that it does not meet the criteria of  
statewide planning goal 4 for forest lands."

4 "Respondent erred in rezoning tax lot 2100 woodland  
5 resource in that the property is committed to  
6 nonresource uses and pursuant to respondent's  
exception criteria No. 5 should not be zoned woodland  
resource."

7 In the last three assignments of error, petitioners argue  
8 there is no evidence in the record to show the property meets  
9 the criteria in statewide planning Goal 4 for forest lands.<sup>5</sup>  
10 Petitioners cite to testimony of two expert witnesses in the  
11 record concluding that the property is not suitable for  
12 commercial forest uses. Petitioners add the property has not  
13 been assessed for forest purposes.

14 Petitioners also urge the property should have been  
15 excepted from woodland resource zoning because it is committed  
16 to non-resource use. This commitment exists because of  
17 development on surrounding residential property.

18 Respondent notes again the USDA Soil and Conservation  
19 Service shows the soil is 95% rich silt loam, with 2-7% slopes  
20 and with a cubic foot site class rating of 3, well within  
21 county criteria for woodland resource zoning. Respondent  
22 asserts the testimony of experts cited by petitioners was from  
23 an earlier proceeding concerning a different piece of  
24 property. The evidence relied on by petitioners was submitted  
25 to support application for a major partition on different land  
26

1 to the south of the subject property. Respondent asserts the  
2 application was approved by the county commissioners and an  
3 exception to the statewide goals was taken for that property.  
4 The subject property was not part of the exception and is not  
5 subject to the experts' discussion. The statement that the  
6 experts were talking about different property was not rebutted  
7 by petitioners at oral argument, and we will accept it as  
8 accurate.

9 The evidence in the record regarding petitioners' property  
10 is found at volume II, pages 2 through 10. Included are  
11 minutes of one of the meetings at which Mr. John Pierce  
12 appeared, a staff report on the soils on petitioners' property,  
13 a soils interpretation sheet, and maps of the subject site.<sup>6</sup>  
14 This information shows the property to have a forest site class  
15 of IVE and IIE assigned to 95% of the property. This  
16 classification brings the property within the woodland resource  
17 zoning criteria as found at volume I, page 350 of the  
18 record.<sup>7</sup> It is clear from the minutes and the staff report  
19 that the county did consider petitioners' objections to the  
20 criteria and to the zoning of their property.<sup>8</sup>

21 We conclude, therefore, that the county did not error in  
22 designating the property woodland resource pursuant to its own  
23 criteria. We further conclude that the county adequately  
24 considered the information presented by petitioners as  
25 evidenced by the minutes cited above.

26 As to whether or not the property meets the Goal 4

1 definition for forest lands, we note the Land Conservation and  
2 Development Commission acknowledged the Jackson County plan and  
3 implementing ordinances at its April 22, 1983 meeting.<sup>9</sup>

4 With respect to whether the property is committed to  
5 non-resource use because of the existence of development and  
6 residential property in the vicinity, we found the record shows  
7 subdivisions exist on three sides of the property. The record  
8 does not reveal extensive development within these  
9 subdivisions. Further, we are not aware of any prohibition  
10 zoning a piece of property for resource use notwithstanding the  
11 development around it. Rezoning of property based on the  
12 notion that it is somehow committed to non-resource use is an  
13 option available in certain cases; it is not a mandate. The  
14 county has not chosen such an option here, but has relied on  
15 its own criteria to determine that the property is subject to  
16 protection. Because we find sufficient evidence in the record  
17 to support the county's decision that the property qualifies  
18 for woodland resource zoning, we do not find any fault with the  
19 county for failure to conclude that the property is somehow  
20 committed to some other use or designation.

21 Assignments of error nos. 3, 4, and 5 are denied.

22 The decision of Jackson County is affirmed.

FOOTNOTES

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Section 277.100 appears to grant full quasi-judicial review proceedings to those persons who did not participate in the legislative process. That is, if for any reason a landowner did nothing during the course of Jackson County's rezoning, he might then come in later under Section 277.100 and request a review. As we understand the terms of the ordinance quoted supra, the commissioners are bound to conduct a review upon request. We believe this process has the indicia of a quasi-judicial and not a legislative process. See Strawberry Four Wheelers v Benton County Board of Commissioners, 287 Or 591, 601 P2d 769 (1979). As petitioners do not raise an equal protection argument, we will not address whether this scheme violates equal protection provisions of the United States and Oregon Constitutions.

11 2

The directive from LCDC did not mandate specific changes in county plan and ordinance documents, but pointed out deficiencies in the county's existing plan and ordinance documents.

15 3

On a conference call held May 5, 1983, the county counsel advised that there were changes made to the existing woodland resource designation. Criteria for choosing property subject to woodland resource zone were changed, but precisely how the criteria were changed was not revealed nor are the changes shown in the record. What is shown in the record is a notation on the bottom of the woodland resource portion of the map designation element of the Jackson County Comprehensive Plan appearing at pages 349 to 351 of the record as follows:

"Amended by permanent Ordinance #82-26, adopted 10-20-82, effective 12-20-82; and emergency Ordinance #82-31, adopted and effective 11-10-82."

23 4

The Court in Newberger recognized that decisions may have both elements present:

"The fact that policy decisions had to be made is not, however, determinative large-scale decisions of specific applicability frequently, if not inevitably,

1 require the decision-maker both in the creation and  
2 application of policy. Cf Marbet v Portland Gen.  
Elect., 277 Or 447, 460, 561 P2d 154 (1977)."  
3 Newberger, 288 Or at 164.

4 5

"GOAL: To conserve forest lands for forest uses.

5  
6 "Forest Lands - are (1) lands composed of existing and  
7 potential forest lands which are suitable for commercial  
8 forest uses; (2) other forested lands needed for watershed  
9 protection, wildlife and fisheries habitat and recreation;  
10 (3) lands where extreme conditions of climate, soil and  
11 topography require the maintenance of vegetative cover  
12 irrespective of use; (4) other forested lands in urban and  
13 agricultural areas which provide urban buffers, wind  
14 breaks, wildlife, and fisheries habitat, livestock habitat,  
15 scenic corridors and recreational use."

11 6

12 See respondent's brief, appendix pages 1 and 2. The  
13 materials appearing at volume II, page 4 of the record were  
14 included in error and the correct soils interpretation sheets  
15 are in respondent's appendix at pages 1 and 2.

15 7

"Zoning District Criteria and Characteristics:

16 "A) Criteria:

17 "1) Lands composed of existing and potential forest lands,  
18 identified as having a cubic foot site class rating ranging  
19 from two-plus through five or the equivalent. The lands  
20 are typically suitable for the sustained growing, managing,  
21 and harvesting of timber for commercial purposes, according  
22 to the Forest Land Guide Manual or the U. S. Forest  
23 Service's manual Field Instructions for Integrated Forest  
24 Survey and Timber Management Inventories - Oregon,  
Washington, and California, 1974; Jackson County Assessor's  
Data; USDA Soil Conservation Service soil mapping and soil  
interpretations, together with the department's Soil  
Resource Ratings; or Oregon Department of Revenue's Jackson  
County Forest Land Classification mapping, 1968 and as the  
inventory may have been updated by the Jackson County  
Assessor's office.

25 "2) Lands which generally occur within the following  
26 physiographic areas at, or below, the elevation/contour  
intervals specified.

1 require the decision-maker both in the creation and  
2 application of policy. Cf Marbet v Portland Gen.  
3 Elect., 277 Or 447, 460, 561 P2d 154 (1977).  
4 Newberger, 288 Or at 164.

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"Zoning District Criteria and Characteristics:

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"2) Lands which generally occur within the following physiographic areas at, or below, the elevation/contour intervals specified.

1 "a) Cascade slopes; northerly portion - 2,300 feet;  
2 southerly portion - 3,000 feet.

3 "b) Rogue-Umpqua Divide: 2,000 feet.

4 "c) South Siskiyou: 2,400 feet.

5 "d) Rogue-Applegate Upland: Rogue Valley slopes,  
6 2,000 feet; Applegate Valley slopes - 3,000 feet.

7 "3) Lands where the parameters and conditions of Category  
8 D of Policy 1, in the Public Facilities Element, for sewer  
9 and water facilities and service apply.

10 "B) Descriptive Characteristics:

11 "1) Lands where the existing parcel sizes generally range  
12 between 10 to 40 acres in size.

13 "2) Lands receiving a forest land tax designation or other  
14 tax deferral under ORS 321.257 (Western Oregon Forest Land  
15 and Severance Tax) or ORS 321.705 (Western Oregon Small  
16 Tract Optional Tax).

17 "3) Lands located within lower elevation, mountainous, and  
18 upland foothill areas, generally having steep to moderate  
19 slopes, which are predominantly in private, small woodland  
20 tract ownerships, along with some major private wood  
21 products industry companies, and publicly owned lands.

22 "4) Lands identified as being needed for watershed or  
23 aquifer recharge maintenance and protection.

24 "5) Lands valued for their ecological, botanical,  
25 geological, or other natural resource characteristics.

26 "6) Lands recognized for their recreational value.

"7) Lands which include critical fish and wildlife  
habitat.

"8) Land which have a particularly high value as  
scenic resource.

"9) Lands that serve as a natural buffer between the  
forest resource and areas committed to, or designated  
for, residential, commercial, or industrial  
development.

"10) Lands on which the predominant coniferous tree



1 species include Douglas fir, sugar pine, ponderosa  
2 pine, incense cedar, and western white pine. There  
3 are also hardwood species, live oak, pin oak, black  
4 oak, and madrone, and isolated or scattered open  
5 grasslands and meadows, manzanita, chaparral and other  
6 similarly associated shrub type plan communities.

7 "11) Lands which include public use reservoirs or  
8 lakes in these environs."

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13 Petitioners argued at the hearing that they had information  
14 in their possession to suggest that the USDA soils information  
15 for their property was mistaken. Petitioners' information does  
16 not appear in the record, and petitioners concede that it was  
17 not presented to the county during the course of the county's  
18 proceedings.

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23 We note in addition that Jackson County was not relying on  
24 Goal 4 when making its decision as to whether or not to include  
25 this property within a resource category. Jackson County was  
26 applying its own plan. Further, we are aware of nothing that  
27 would prohibit a county from restrictively zoning property as  
28 resource property whether or not the property fell within the  
29 protection of a statewide planning goal.