

LAND USE
BOARD OF APPEALS

BEFORE THE LAND USE BOARD OF APPEALS Oct 20 4 31 PM '86

OF THE STATE OF OREGON

3 WALTER and PEGGY ALONIS,)
FRANK WARNACK and DON VILES,)
4) LUBA No. 86-017
Petitioners,)
5) FINAL OPINION
vs.) AND ORDER
6)
CITY OF GARIBALDI,)
7)
Respondent.)

9 Appeal from City of Garibaldi.

10 Kenneth S. Eiler, Seaside, filed the petition for review
and argued on behalf of petitioners.

11 Donald R. Moeller, Tillamook, filed a response brief and
12 argued on behalf of Respondent City of Garibaldi.

13 Tim R. Laughlin, Garibaldi, filed a response brief and
argued on his own behalf as respondent-participant.

14 BAGG, Referee; DuBAY, Chief Referee; KRESSEL, Referee;
15 participated in the decision.

16 REMANDED 10/20/86

17 You are entitled to judicial review of this Order.
Judicial review is governed by the provisions of ORS 197.850.

1 Opinion by Bagg.

2 NATURE OF THE DECISION

3 Petitioners appeal City Ordinance No. 133 which rezones
4 certain property in the City of Garibaldi.

5 FACTS

6 In January, 1986, the applicant requested that certain
7 property be rezoned from Residential (R-1) to Commercial (C-1)
8 in order to develop a recreational vehicle park. The planning
9 commission approved the change. The city council then
10 considered the matter at its March 10, 1986 meeting. The
11 council enacted Ordinance 133 effecting the change.

12 Thereafter, petitioners filed a notice of intent to appeal to
13 this Board.¹

14 JURISDICTION

15 Respondent city objects to our jurisdiction in this
16 matter. The city states the petitioners made no appeal of the
17 planning commission's decision to the city council. Because of
18 this failure to appeal, respondent insists we can not hear
19 petitioners' complaint. According to respondent, the city
20 council action simply "implemented the unappealed final
21 decision of the planning commission." We understand the city
22 to argue that the city council action was a mere formality, and
23 that the land use decision was made by the planning
24 commission.

25 The city's zoning ordinance is unclear whether the planning
26 commission has authority to amend the zoning ordinance. The

1 planning commission appears to have considered the application
2 as though it was required to make a recommendation to the city
3 council. Record at 23-24.

4 At the city council meeting to discuss the matter, the city
5 council acted to approve the zone change. The council
6 considered the merits of the proposed change and heard argument
7 about it.

8 Given these facts, we reject respondent's assertion that
9 failure to "appeal" the planning commission action deprives
10 this Board of jurisdiction. The city council acted on this
11 proposal and enacted an ordinance approving the zone change.
12 The council made a final land use decision. ORS 197.015(10).
13 Collins Foods International v. Oregon City, ___ Or LUBA ___
14 (LUBA No. 85-092, January 30, 1986).

15 ASSIGNMENT OF ERROR²

16 "The city's decision does not indicate compliance with
17 the applicable comprehensive plan policies and
18 therefore violates ORS 197.175(2) and Statewide
19 Planning Goal 2."

20 Petitioners point out certain implementation policies in
21 the plan requiring the city to consider the following:

22 "2. In order to evaluate proposals for change in land
23 use planning, Commissioners and City Councilmen shall
24 determine conformance with the Plan, the character of
25 the area in which the change is proposed and whether
26 or not the action would have a positive or negative
effect on the area. Considerations shall include at
least property values, appearance, nuisance and
environmental damage potential and potential economic
advantages and disadvantages.

"3. In circumstances where a proposal will have an
effect on the existing character of the area, the

1 burden of proof is on the applicant to show a public
2 need and that the proposal will enhance rather than
detract from the community."

3 Petitioners allege the city failed to comply with these
4 requirements. They argue the evidence in the record does not
5 demonstrate there is a need for an RV park in this area.
6 Petitioners then conclude the decision violates the
7 comprehensive plan because it allows RV traffic through a
8 residential neighborhood in contravention of the plan's mandate
9 that:

10 "stable and viable residential neighborhoods shall be
11 protected from conflicting and inappropriate land
12 uses. The planning commission shall require
13 buffering, screening or other conditions to accomplish
14 this end with regard to future development where a
15 proposed land use is obviously incompatible with an
16 existing use, the proposed use should not be allowed."

17 We find the city's findings do not address the plan
18 criteria in sufficient detail. The city's findings state:

19 "FINDINGS OF FACT

20 The affected area is a part of a single parcel
21 consisting of 29,192 sq. ft., all of which previously
22 had been used for commercial purposes, all of which is
23 owned by Applicant and all of which is assessed and
24 taxed by the County Assessor as one parcel. The
25 parcel is located on the fringe of the commercial zone
26 where higher density use of property is encouraged and
it is bounded by and has access on the South from U.S.
Hwy. 101. The Southern one-half of the parcel is
zoned commercial, it has direct access from and to
U.S. Hwy. 101 and it is surrounded on 3 sides by
property which is zoned and used for commercial
purposes. The Northern one-half of the parcel is
zoned residential, it has and, like all other
commercially zoned property in the vicinity, it is
immediately adjacent to the residential zone. No
adverse effects have been shown to result to other
properties in the vicinity, the public interest is
more likely to be served and the entire parcel could

1 be more effectively used with the proposed zone change
2 and amendment of the Planning and Zoning Ordinance No.
107.

3 "CONCLUSIONS OF LAW

4 "A change of the affected North one-half of the parcel
5 from R-1 to C-1 classification would comply with the
6 zone boundary requirements of Garibaldi Ordinance Sec.
7 2.050 and would be consistent with the Comprehensive
8 Plan's statement of purpose which anticipates the
9 future conversion of residential areas on the fringe
10 of downtown -- as is the case with the affected
11 property -- to commercial uses. Such a change from
12 R-1 to C-1 further would be consistent with the
13 Comprehensive Plan's statement of policies which
14 provides for higher density useage of some properties
in a residential zone and with Garibaldi Ordinance
Sec. 3.030 which encourages commercial uses of
property which have direct access to U.S. Highway
101. Such a change would not affect the character of
the affected area or the other property in the
vicinity. It is more likely that the public interest
will be served without any adverse effects from the
adoption of proposed Ordinance No. 133, which provides
for a zone change and amendment of the Planning and
Zoning Ordinance No. 107."

15 The city's conclusion that there will be "no adverse
16 effects" [sic] is unexplained. Considering the comprehensive
17 plan requirement for analysis of "property values, appearance,
18 nuisance, environmental damage potential and potential economic
19 advantages and disadvantages," the city's conclusional findings
20 are not adequate. See South of Sunnyside Neighborhood League
21 v. Clackamas County, 280 Or 3, 569 P2d 1063 (1977). We reject
22 petitioners' charge that the comprehensive plan is violated by
23 this approval. Petitioners argument rests on the permise that
24 RV traffic through a residential area is per se incompatible
25 with residential use. Whether one use is incompatible with a
26 neighboring use is a matter requiring the exercise of some

1 discretion by the local government. That is, the City of
2 Garibaldi must first determine whether the proposed use is
3 compatible with the neighborhood. We then can review their
4 determination, but without their analysis our statement on this
5 issue would be premature. See Hoffman v. DuPont, 49 Or App
6 699, 621 P2d 63 (1980).

7 Petitioners' last charge, that the city violated Statewide
8 Goal 2, is not explained. Statewide Planning Goal 2 requires
9 that

10 "City, county and state and federal agency and special
11 district plans and actions related to land use shall
12 be consistent with the comprehensive plans of cities
and counties and regional plans adopted under ORS
197.705 through 197.795."

13 Presumably, petitioners believes that this land use action,
14 Ordinance 133, is not consistent with the city's plan.

15 The city's plan has been acknowledged by the Land
16 Conservation and Development Commission as being in compliance
17 with Statewide Planning Goals. A zone change affecting an
18 individual piece of property and not amending the comprehensive
19 plan or implementing measures is not subject to our review for
20 compliance with statewide planning goals. See ORS 197.175.
21 Without further explanation of petitioners' goal violation
22 theory, we must reject the claim.

23 Petitioners' assignment of error is sustained in part. The
24 decision is remanded to the city for further action consistent
25 with this opinion.

FOOTNOTES

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4 We held oral argument on September 18, 1986. Because the
5 city made no findings of fact or conclusions of law, the
6 parties agreed to permit respondent to prepare findings subject
7 to a renewed challenge by petitioners. Pursuant to the
8 agreement, a modified briefing schedule was established. Our
9 review is of the ordinance and new supporting findings.

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13 Because the parties agreed to allow the city to prepare
14 findings in support of this decision, we will not consider
15 petitioners' first assignment of error which alleged that the
16 city failed to prepare findings to support Ordinance 133.
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