BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

L.E. HEADLEY and CINDY HEADLEY, Petitioners, vs. JACKSON COUNTY, Respondent, and ALBERT KNAPP and KNAPP MACHINE SHOP, Intervenors-Respondent.	LUBA No. 89-144 FINAL OPINION AND ORDER

Appeal from Jackson County.

Claudette L. Yost, Medford, filed the petition for review and argued on behalf of petitioners.

Georgia Daniels, Medford, filed a response brief and argued on behalf of respondent.

Steven L. Pfeiffer, Portland, filed a response brief and argued on behalf of intervenors-respondent. With him on the brief was Stoel, Rives, Boley, Jones and Grey.

HOLSTUN, Referee; SHERTON, Chief Referee, participated in the decision.

AFFIRMED 04/19/90

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

Opinion by Holstun.

NATURE OF THE DECISION

Petitioners seek review of a county order granting site plan review approval for a machine shop.

MOTION TO INTERVENE

Albert Knapp (the applicant below) and Knapp Machine Shop move to intervene on the side of respondent. There is no opposition to the motion, and it is allowed.

FACTS

` The applicant operates a machine shop on a two acre parcel designated Rural Residential (RR-5) on the Jackson County Zoning Map and Comprehensive Plan Map (zoning map).[1] The applicant initially requested a zoning map amendment for his property to General Industrial (GI) in order to allow expansion of his machine shop.[2]

On December 24, 1987, the county commissioners adopted Order 416-87 which is a resolution of intent to rezone the subject property provided certain conditions are satisfied.[3]

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[1]Jackson County has a combined zoning and comprehensive plan map.

[2]Because machine shops are not listed as a permitted or conditional use in the RR-5 zone, the applicant's machine shop is a nonconforming use and may not be expanded. Therefore, to expand the machine shop, the applicant must first have the plan and zoning map designation for the property changed to a designation that allows machine shops.

[3]Section 2.2 of the resolution of intent to rezone provides as follows:

> "Based on the record of the public hearing on this matter, the Board of Commissioners intends to rezone [the subject property]

On March 30, 1988, the applicant submitted an application for site plan approval and a request for a variance from setback requirements. The planning commission and board of commissioners approved the site plan and variance request. Petitioners' subsequent appeal of the county's approvals was remanded by LUBA, pursuant to a stipulation by the parties. Headley v. Jackson County, ___ Or LUBA ___ (LUBA No. 88-095, December 27, 1988).

Following remand by LUBA, an amended site plan was submitted by the applicant. The amended site plan proposes no expansion of the existing building. The amended site plan was approved by the planning commission. Following an appeal, the county commission adopted Order 406-89, approving the amended site plan.[4] This appeal followed.

> to General Industrial. Rezone shall not occur until the applicant:
>
> "1) Submits for Planning Commission approval a commercial site plan application for the proposed structural development; and
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> "2) Has such a commercial site plan finally approved by the County; and
>
> "3) Implements all conditions and requirements of the site plan to the satisfaction of the County.
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> "These conditions are imposed because the Board of Commissioners finds that it is in the public interest to do so in order to minimize the impact of the zone change on residential neighbors. * * *." Record 86.

[4]More precisely, the challenged order approves the site plan subject to a number of conditions and provides that an ordinance redesignating the property from RR-5 to GI will be adopted when those conditions are met.

INTRODUCTION

In order to simplify our review of petitioners' assignments of error, we first discuss the effect of the resolution of intent to rezone on the land use approval criteria applicable to the county's decision to approve the site plan, which is the decision challenged in this proceeding.[5] The parties dispute the legal effect of the resolution of intent to rezone.

The "Intent to Rezone" procedure followed by the county in this case is set forth in Jackson County Land Development Ordinance (LDO) 277.040, which states as follows:

> "The Planning Commission may recommend conditional approval of a minor map amendment. If the Board of Commissioners determines that the public interest would be served by the map amendment recommended by the Planning Commission, it may adopt a 'Resolution of Intent to Rezone' for the properties involved. This resolution shall include conditions which the Board feels necessary to require as a prerequisite to final action on the application. Fulfillment by the applicant of the stipulations contained in the resolution shall make such resolution a binding commitment on the Board of Commissioners. Upon compliance by the applicant, the Board of Commissioners shall effect the map amendment change in accordance with this resolution. Failure of the applicant to meet any or all of the stipulations contained in the resolution shall render the resolution void." (Emphasis added.)

Although not discussed by the parties, a threshold

[5]The county's December 24, 1987 resolution of intent to rezone was not appealed to this Board.

question in determining the legal effect of a resolution of intent to rezone adopted pursuant to LDO 277.040 is whether a resolution of intent to rezone is a "final" decision or simply a "preliminary" decision which does not become final, for purposes of appeal to this Board, until a determination concerning compliance with the conditions stated in the resolution of intent to rezone is rendered.[6] If, as

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[6]As we explained in Kirpal Light Satsang v. Douglas County, ___ Or LUBA ___ (LUBA No. 88-082, January 18, 1989) slip op 18, n 15, remanded 96 Or App 207, modified on reconsideration 97 Or App 614, rev den 308 Or 382 (1989), either approach is permissible under the controlling statutes.

> "* * * [N]ot all requests for land use approval need be considered in continuous or consolidated proceedings leading to a single land use decision by the county. Although ORS 215.416(2) directs counties to 'establish a consolidated procedure by which an applicant may apply at one time for all permits or zone changes needed for a development project,' that section also makes clear the consolidated proceeding is to be made optional and need not be adopted until the county's first periodic review under ORS 197.640. Nothwithstanding [sic] the benefits that may attend a consolidated review proceeding leading to a single final decision, land development projects can result in more than one land use decision. Hemstreet v. Seaside Improvement Comm.,[16 Or LUBA 630, 637 (1988)]; Tides Unit Owners Assoc. v. City of Seaside, 11 Or LUBA 84, 90 (1984).
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> "There are practical considerations that may favor a land use decision making process with multiple final decisions. For example, a developer may want to be assured of a favorable decision on needed rezoning or plan amendments, and expiration of appeal periods for such decisions, before developing costly engineering or architectural plans and specifications needed for design review or other approvals. In our view, the statutes allow local governments to pursue either a continuous/consolidated proceeding leading to a single decision or a more fragmented process resulting in more than one separately appealable decision. The fact that both approaches are permissible need not result in confusion as long as the local government makes clear which approach is being followed, either at the time application is made or in its communications

respondent and intervenors assume, the resolution of intent to rezone was a final, appealable land use decision, many of the issues petitioners assert in this appeal of the city's subsequent decision approving the site plan are foreclosed. On the other hand, if the resolution of intent to rezone was not a final decision, it does not have the effect of barring petitioner from contesting the issues respondent and intervenors contend were resolved in the resolution of intent to appeal. See McNulty v. City of Lake Oswego, 14 Or LUBA 366, 370 (1986).[7]

If the first of the three sentences of LDO 277.040 emphasized above is read in isolation, it supports an interpretation of LDO 277.040 that the resolution of intent to rezone is not a final decision. However, when that sentence is read with the second and third of the above-

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with the applicant and other parties after a permit application is filed."

In reversing our decision in Kirpal Light Satsang v. Douglas County, supra, the Court of Appeals rejected our characterization of the process followed by Douglas County in that case, but the court did not reject or discuss our view of the options available to local governments quoted above.

[7]As we explained in McNulty v. City of Lake Oswego, under then existing statutory provisions, a person participating in a local land use proceeding could raise substantive issues for the first time in an appeal to LUBA and need not first raise such issues during the local proceedings leading to the challenged land use decision. But see ORS 197.763. However, even under McNulty v. City of Lake Oswego, if a local government adopted two final decisions in granting requested land use approval, a person could not fail to challenge the first decision and then, in an appeal of the second decision, challenge determinations rendered in the first decision. Corbett/Terwilliger Neigh. Assoc. v. City of Portland, 16 Or LUBA 49, 52 (1987).

emphasized sentences, it is reasonably clear that a resolution of intent to rezone is final, at least to the extent the county commission could not, consistent with LDO 277.040, reconsider determinations reached in the resolution of intent to rezone concerning compliance with approval standards. Under LDO 279.040, the only issues the county commission may properly consider after a resolution of intent to rezone is adopted is whether conditions included in the resolution of intent to rezone are met.

It is conceivable that the county intended through LDO 277.040 to make resolutions of intent to rezone final and binding only on the county commission, but not final decisions in the sense that resolutions of intent to rezone may be appealed to this Board by those aggrieved by determinations of compliance with applicable approval criteria made in the resolution of intent to rezone. However, in the absence of any argument by any party that such a result is intended by the above quoted language, we believe it is far more likely, as the county explains in its decision, that the county intended a resolution of intent to rezone to be a final decision, and therefore an appealable decision, as to all issues decided in the resolution of intent to rezone. Record 3. Viewed in this way, the only question that remains to be decided after a resolution of intent to rezone is adopted is whether the conditions stated in the resolution of intent to rezone are met. This

interpretation allows disputed issues to be appealed and reviewed by this Board expeditiously, as the issues are decided by the county commissioners.[8]

Although multiple step approval processes, such as that adopted by Jackson County, can present difficulties in addition to questions concerning finality,[9] this Board and the appellate courts have determined that requests for land use approval may be divided into multiple stages and approved by adoption of more than one decision. Heritage Enterprises v. City of Corvallis, 300 Or 168, 172, 708 P2d 60 (1988); Meyer v. City of Portland, 67 Or App 274, 280, 678 P2d 741, rev den 297 Or 82 (1984); Commonwealth Properties v. Washington County, 35 Or App 387, 394-396, 582 P2d 1384 (1978); Bienz v. City of Dayton, 29 Or App 761, 767, 566 P2d 904, rev den 280 Or 171 (1977); Hemstreet v.

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[8]Admittedly LDO 277.040 could make it clearer that a resolution of intent to rezone is a final appealable decision. No party cites, and we are unable to locate, any general provision in the LDO governing which decisions under the LDO are final decisions appealable to this Board. However, petitioners do not contend they failed to appeal the resolution of intent to rezone because they thought it was not a "final" decision, within the meaning of ORS 197.015(10)(a)(A) (land use decision includes "[a] final decision or determination made by a local government * * *").

[9]For example, local governments may not, by imposing conditions, defer to later stages of the approval process the findings of compliance with approval criteria that are required to be made in the first stage. Foland v. Jackson County, ___ Or LUBA ___ (LUBA Nos. 89-105 and 89-111, February 7, 1990); MACC/ECOS v. Clackamas County, 8 Or LUBA 78 (1983). Neither may a local government use conditions to defer discretionary decisions concerning compliance with approval standards to later stages, where there is no notice or opportunity for a public hearing. Holland v. Lane County, 16 Or LUBA 583, 596 (1988). Neither of these potential difficulties is present in this appeal.

Seaside Improvement Comm., supra; Tides Unit Owners Assoc. v. City of Seaside, supra. For the reasons explained above, we conclude the resolution of intent to rezone adopted by the county on December 24, 1987 was a final, appealable decision and, under the county's "Intent to Rezone" procedure, it was the decision where the city determined the rezoning in this case met all applicable goal, plan and code approval standards that were not included as conditions of approval in the resolution of intent to rezone.[10] With this understanding of our scope of review in this review proceeding, we turn to petitioners' assignments of error.

FIRST ASSIGNMENT OF ERROR

> "Jackson County erred in it's [sic] adoption of an amended site plan in violation of the Resolution of Intent to Rezone and requirements of Chapter 282, Jackson County Land Development Ordinance Applicable Criteria and Standards for Site Plan Review."

A. The Resolution of Intent to Rezone is Void

As noted above, LDO 277.040 provides, in part, that

> "* * * Failure of the applicant to meet any or all of the stipulations contained in the resolution shall render the resolution void."

Petitioners contend that because LUBA remanded the first site plan approval decision to the county for further

[10]However, as explained later in this opinion, we agree with petitioners that the conditions of final approval must be construed consistently with the balance of the resolution of intent to rezone and with the findings adopted by the county in support of the resolution of intent to rezone.

deliberations, the resolution of intent to rezone is now void.

We do not agree that the stipulated remand of the earlier site plan approval necessarily means the applicant failed to meet one of the stipulations in the resolution. Although parties to a LUBA proceeding may agree that a matter should be remanded to the local government for additional proceedings without a decision by LUBA on the merits, that agreement does not establish that the decision is in fact defective.

More importantly, as intervenors point out, there is nothing in the resolution of intent to rezone that sets a time limit for the applicant to secure approval of the site plan or requires that the applicant secure approval of a site plan in his first attempt.

This subassignment of error is denied.

B. Expansion Required

Petitioners correctly point out the county refused to reconsider the resolution of intent to rezone in the proceedings leading to approval of the amended site plan. Petitioners reason it is therefore not possible to determine, as the county did, that the resolution of intent to rezone was not conditioned on expansion of the existing machine shop. Petitioners contend that expansion was contemplated at the time the resolution of intent to rezone was adopted. Therefore, petitioners argue a site plan for

only the existing machine shop is inconsistent with or improperly revises the condition in the resolution of intent to rezone which requires that a site plan for the proposed development be approved. See n 3, supra.

Intervenors concede the record shows that one of the reasons the resolution of intent to rezone was adopted was to accommodate the applicant's anticipated expansion of the existing machine shop, but point out no specific development or time frame for expansion was proposed at the time the resolution of intent to rezone was adopted.[11] Intervenors contend the record makes it clear that the resolution of intent to rezone did not require new development, but only imposed site plan review requirements because new development was then proposed. According to intervenors, the site plan review requirement essentially became moot when the applicant abandoned immediate plans to expand development on the property, but the county nevertheless required site plan review for the existing development prior to rezoning and added a condition that any future development would be subject to site plan review at the time it is proposed.[12]

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[11]Intervenors also note the county's findings adopted in support of the resolution of intent to rezone refer to the proposed map amendment complying with the applicable approval standards, rather than referring to the proposed expansion.

[12]Respondent points out that site plan review for expansion of the machine shop would be required in any event by LDO 240.040.

The findings adopted in support of the resolution of intent to rezone make it clear that while the applicant and county may initially have been motivated by the applicant's need to expand his machine shop, the rationale supporting the county's decision was its determination that the property was improperly zoned RR-5 in the first place.[13] The findings go to explain why the county believed the county's mapping criteria support GI zoning for the property.[14]

The county explained in its decision that since the applicant no longer planned to expand its existing machine shop, it interpreted the resolution of intent to rezone to require site plan review of the existing development before the property could be rezoned. We find no error, and we reject petitioners' contention that the resolution of intent to rezone must be interpreted to require additional development, and site plan review approval of such

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[13]The findings that follow the copy of the resolution of intent to rezone included in the record of this proceeding are not the findings that were in fact adopted by the board of commissioners in support of the resolution of intent to rezone. Following oral argument, at the Board's request, respondent supplied a copy of the findings adopted in support of the resolution of intent to rezone, and we take official notice of those findings. See Sunburst II Homeowners Assoc. v. City of West Linn, ___ Or LUBA ___ (LUBA No. 89-130, January 26, 1990), slip op 4; Murray v. City of Beaverton, ___ Or LUBA ___ (LUBA No. 89-008, May 22, 1989), slip op 30, n 18; Faye Wright Neighborhood Planning Council v. Salem, 6 Or LUBA 167, 170 (1982); Oregon Evidence Code Rule 202(7).

[14]As explained earlier in this opinion, because the resolution of intent to appeal is not the decision challenged in this proceeding, we express no opinion on the adequacy of the findings adopted in support of the resolution of intent to appeal to show the mapping criteria are satisfied.

additional development, as a condition of rezoning.

This subassignment of error is denied.

C. LDO Chapter 282

The county's site plan review provisions are contained in LDO chapter 282. The purpose section of LDO chapter 282 provides in part:

> "* * * The site plan review process should be applied to all commercial and industrial properties, and other situations where special review of development proposals is warranted because of the nature of the surrounding area, nature of the proposed use, public safety concerns, and other unique conditions of the site." LDO 282.010.

Petitioners contend that because no new development is proposed and LDO 282.010 governs "development proposals," it is clear that the amended site plan is a "sham to fulfill the 'conditions' of the [resolution of intent to rezone] and permit implementation of the rezone application following the remand of the original site plan." Petition for Review 9.

Intervenors argue petitioners' reading of LDO 282.010 is strained and that nothing in LDO 282.010 precludes county application of site plan review in situations where the county determines such review is warranted, simply because no new or expanded development is currently contemplated. Intervenors go on to point out that in this case application of site plan review resulted in a number of additional site improvements being required by the board of commissioners.

It is not entirely clear whether petitioners argue under this subassignment of error that the county's approval of the amended site plan violates LDO 282.010 or the resolution of intent to rezone or both. In any event, we agree with intervenors that the language in LDO 282.010 referring to "development proposals" and "proposed use" does not support petitioners' argument that the county erred by approving the amended site plan.[15]

Petitioners next claim there is no evidentiary support for the board of commissioners' finding that the site plan submitted by the applicant complies with LDO 282.030(2), which provides:

> "The landscape element of a site plan shall be prepared by an individual registered with the American Society of Landscape Architects, or other qualified landscape design professionals as determined by the Planning Director. Registered engineers, professional planning consultants, real estate agents, surveyors, and members of other professions will not be considered as qualified landscape design professionals unless the individual can demonstrate to the satisfaction of the Planning Director that training and practical experience in developing such plans allows him to be so qualified."

The county commissioners findings responding to petitioners challenge are as follows:

> "The opponent's agent states that the applicants' site plan was not prepared by a landscape

[15]We assume LDO 282.010 is written as it is because site plan review normally occurs where new development or expansion of existing development is proposed.

> architect. The Planning Director is delegated the authority to determine whether individuals, other than registered landscape architects are considered to be 'qualified landscape design professionals' based on their experience and training. The Board finds that the Planning Director exercised proper discretion in accepting an application from Craig Stone, based on the Director's personal knowledge of Mr. Stone's experience and training, and the other site design work he has submitted for County review thereby establishing his credentials as a designer. The Director's determination is not subject to a finding criterion, and in fact the original site plan application was accepted for review, also based on Mr. Stone's site design experience, and was not challenged by opponents." Record 5-6.

LDO 282.030(2) delegates to the planning director the responsibility to determine whether members of other professions may submit site plans under LDO 282.030(2). Aside from the above quoted findings, for which we are cited no supporting evidence in the record,[16] we do not know why the planning director accepted the site plan submitted by Craig Stone on behalf of the applicant. However, it is undisputed that the planning director did accept the site plan. We believe the above quoted findings are sufficient to express the position that LDO 282.030(2) is not an approval standard the county is required to address in its

[16]In responding to this subassignment of error, neither respondent nor intervenors identify any evidence supporting the quoted findings. In other circumstances this failure would require remand of the county's decision, as this Board does not independently search the record for evidence without some assistance from the parties.

findings and that the board of commissioners were given no reason to question the planning director's prior decision to accept the site plan submitted by Mr. Stone. In their petition for review, petitioners point to no evidence in the record that would raise questions about the planning director's decision to accept the site plan prepared by Mr Stone. Absent some explanation by petitioners, either at the local hearing or before this Board, of why they believe Mr. Stone is unqualified under LDO 282.030(2) to submit the site plan, we conclude the board of commissioners was not required to address the issue and was justified in refusing to question the planning director's decision to accept the site plan submitted by Mr. Stone.

This subassignment of error is denied.

The first assignment of error is denied.

SECOND ASSIGNMENT OF ERROR

> "The Jackson County Board of Commissioners made findings on matter which were not contained in the record, were not before the board and, therefore, were not supported by substantial evidence in the record."

Most of the issues raised by petitioners under this assignment of error have already been rejected earlier in this opinion and are not discussed further here. Petitioners suggest the county erred by adopting findings interpreting the meaning of the resolution of intent to rezone at the same time they refused to consider petitioners' arguments that the resolution of intent to

rezone violates numerous applicable standards. Petitioners further argue the findings included in the record following the resolution of intent to rezone are not the findings that were actually adopted by the county in support of the resolution of intent to rezone.

Although the county refused to reconsider its decision to adopt the resolution of intent to rezone, we fail to see how it could be error to interpret the conditions included in the resolution of intent to rezone or why the findings adopted to support the resolution of intent to rezone may not be consulted to determine whether the county correctly interpreted the resolution of intent to rezone. The county was not only entitled to adopt findings in this proceeding explaining how it interpreted the resolution of intent to rezone and why it believed the site plan complied with the conditions in the resolution of intent to rezone, it would have erred had it not done so. Further, we do not believe it is important that the findings included in the record are not the findings that were actually adopted to support the resolution of intent to rezone, or that the correct findings were not actually placed before the county commissioners during the hearing that led to the decision challenged in this proceeding. We already explained that we may take official notice of the correct findings, and affirm the county's decision if those findings demonstrate that the interpretive findings challenged in this proceeding are

correct.

As noted earlier in the opinion, under the county's "Intent to Rezone" procedure, the county was required to explain why the site plan submitted by the applicant satisfied the conditions in the resolution of intent to rezone. We reject petitioners' suggestion that the county was required to reconsider its resolution of intent to rezone before it could adopt findings explaining its interpretation of the meaning of the resolution of intent to rezone.

Petitioners' final argument under this assignment of error is that the county, by imposing a condition, improperly put off to a later date a determination that any future proposed development complies with site plan review requirements under the LDO.[17] We already rejected petitioners' contentions that the resolution of intent to rezone must be interpreted to require expansion or new development before site plan review and rezoning may be granted Absent some requirement that the county conduct site plan review for proposed development at this time, the county committed no legal error by imposing as part of its

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[17]The condition challenged by petitioners provides as follows:

"* * * * *

"I) Any future structural development or changes in use * * * shall be subject to site plan review.

"* * * * *" Record 7.

challenged decision the condition petitioners challenge. As respondent notes, site plan review would be required of expansion or new development on the subject property in any event. See n 12, supra.

THIRD ASSIGNMENT OF ERROR

> "Approval of the amended site plan and rezone, violates Jackson County Land Ordinance Section 277.080(2)."

LDO 277.080(2) provides the following criterion for rezoning property in Jackson County:

> "A public need exists for the proposed rezoning. 'Public need' shall mean that a valid public purpose, for which the Comprehensive Plan and this ordinance have been adopted, is served by a proposed map amendment. * * *"

Petitioners contend the public need that the county identified in its findings supporting the resolution of intent to rezone is a need for expansion of the applicant's machine shop on the subject property. Since expansion is no longer proposed, petitioners contend the public need criterion is violated by the county's decision to approve the site plan for the existing machine shop.

As an initial point, we agree with petitioners that if the findings adopted by the city demonstrated that the disputed conditions are correctly interpreted to require expansion of the existing machine shop as a condition of rezoning, the county would commit error by approving a site plan that proposed no expansion of the existing machine shop. However, the error would be approving a site plan

that was inconsistent with conditions of the resolution of intent to rezone, not violating the public need criterion.

As we explained earlier in this opinion, the county's findings make it clear that the primary reason it believed the requested rezoning complied with applicable approval standards, including the public need criterion, was its determination that a correct application of the mapping criteria supported G-1 zoning rather than RR-5. The county findings in support of the resolution of intent to rezone include the following:

> "* * * It can be found that a public need exists for appropriately sited industrial land which is consistent with mapping criteria. The site is committed to nonresidential use by virtue of 21 years of industrial activity on the property. The redesignation provides for a correct delineation of a zoning district boundary which should have occurred in 1973 had the land use inventory map been correct. * * *" Order 416-87, Exhibit A, p. 6.

Because the resolution of intent to rezone is not the decision properly challenged in this appeal, we express no position on the adequacy of the above findings, and the other findings adopted by the county, to demonstrate the county's decision to rezone the property is consistent with its public need criterion. However, the above findings support the respondent's contention that the county's findings of compliance with the public need criterion are not dependent on expansion of the existing machine shop.

The third assignment of error is denied.

FOURTH ASSIGNMENT OF ERROR

> "The amended site plan approval allows development of the applicant's property to any use permitted in the General Industrial Zone, outright or conditionally, and, therefore, violates LCDC Goal 14, Urbanization and the Resolution of Intent to Rezone."

FIFTH ASSIGNMENT OF ERROR

> "The justification of a comprehensive plan and zone change cannot be sustained on the major basis of a mapping error."

SIXTH ASSIGNMENT OF ERROR

> "The Exceptions Document taken during the preparation of the comprehensive plan will not support a change in the intensity of the use of the property."

Petitioners contend amendments to the county's acknowledged zoning map must comply with the statewide planning goals and applicable requirements in the county's acknowledged comprehensive plan and land use regulations. ORS 197.835(4) and (5); 1000 Friends of Oregon v. Jackson County, 79 Or App 93, 718 P2d 753, rev den 301 Or 445 (1986).

Respondent and intervenors do not dispute petitioners' argument. Rather, they contend that under the "Intent to Rezone" procedure, the county's decision that a change in its zoning complies with goal, plan, and land use regulation standards is made in the decision to adopt the resolution of intent to rezone. According to respondent and intervenors, any allegations concerning deficiencies in the findings

supporting the resolution of intent to rezone were required to be raised in an appeal to LUBA of the resolution of intent to rezone. No such appeal was filed, and respondents contend the issues asserted under the fourth through sixth assignments of error may not be presented in this appeal of the site plan approval.

For the reasons explained earlier in this opinion, we agree with respondents.

The fourth, fifth and sixth assignments of error are denied.

The county's decision is affirmed.