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

GRAVILLE PROPERTIES, LTD., an)
Oregon limited partnership,)
)
Petitioner,) LUBA No. 94-023
)
vs.) FINAL OPINION
) AND ORDER
CITY OF EUGENE,)
)
Respondent.)

Appeal from City of Eugene.

Paul V. Vaughan, Eugene, filed the petition for review and argued on behalf of petitioner. With him on the brief was Hershner, Hunter, Moulton, Andrews & Neill.

Glenn Klein and Anne C. Davies, Eugene, filed the response brief and argued on behalf of respondent. With them on the brief was Harrang Long Gary & Rudnick.

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

REMANDED 08/08/94

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

1 Opinion by Kellington.

2 **NATURE OF THE DECISION**

3 Petitioner appeals an ordinance adopting a minor
4 amendment to the Bethel-Danebo Refinement Plan.

5 **FACTS**

6 The Eugene-Springfield Metropolitan Area General Plan
7 (Metro Plan) covers the area within the urban growth
8 boundary for the cities of Eugene and Springfield, including
9 the subject property situated within the boundaries of the
10 City of Eugene. The Bethel-Danebo Refinement Plan is part
11 of the Metro Plan. The Eugene Commercial Lands Study is
12 also a refinement plan to the Metro Plan. Both the
13 Bethel-Danebo Refinement Plan and the Eugene Commercial
14 Lands Study cover the subject property. The Barger-Beltline
15 development node (node) is identified in the Bethel-Danebo
16 Refinement Plan. The node is also identified in the
17 Commercial Lands Study. The node consists of approximately
18 99 acres of land, including 5 acres of land designated
19 Commercial, surrounded by approximately 16 acres of land
20 designated High-Density Residential, with the remaining
21 78 acres designated Medium-Density Residential.

22 The applicant applied for permission to amend the
23 Bethel-Danebo Refinement Plan to decrease the acreage
24 designated Medium-Density Residential and, correspondingly,
25 increase the acreage in the node designated Commercial. The
26 acreage designated High-Density Residential would remain at

1 16 acres. Specifically, the proposal is to increase the
2 amount of Commercial land in the node from 5 to 15 acres,
3 and to amend the text of the refinement plan to state that
4 commercial development of the 15 acres should be at an
5 intensity or level consistent with Community Commercial
6 (C-2) zoning.¹ However, although the city approved the
7 proposal to increase the amount of land designated
8 Commercial to 15 acres, the city amended the text of the
9 refinement plan to state that commercial development of the
10 subject 15 acres should be at a level consistent with
11 Neighborhood Commercial (C-1) or General Office (G-O)
12 zoning.² This appeal followed.

13 **PRELIMINARY ISSUES**

14 **A. Is the Challenged Decision a Comprehensive Plan**
15 **Amendment?**

16 The city contends the challenged decision is not a
17 comprehensive plan amendment. There is no serious dispute
18 that the challenged decision amends the Bethel-Danebo
19 Refinement Plan. The Bethel-Danebo Refinement Plan is part
20 of the Metro Plan. The Metro Plan, at I-5, explains the
21 relationship between itself and refinement plans as follows:

¹Sometime after the application was submitted to the city, the city renamed its C-2 zone "General Commercial."

²The Commercial plan designation apparently can be implemented by any of several commercial zoning districts. Prior to the challenged decision, the 5 acres designated Commercial were zoned C-1. The city has not approved any zone change for the land within the node.

1 "Where the [Metro Plan] is the basic guiding land
2 use policy document, it is not the only such
3 document. [T]he [Metro Plan] is a framework plan,
4 and it is important that it be supplemented by
5 more detailed refinement plans, programs and
6 policies. * * *

7 "* * * In all cases, the [Metro Plan] is the
8 guiding document, and refinement plans and
9 policies must be consistent with the [Metro Plan].
10 * * *"

11 Eugene Code (EC) 9.138(2) defines "refinement plan" as
12 follows:

13 "'Refinement plan' means a comprehensive land use
14 plan for a discrete part of the geographic area
15 regulated by the [Metro Plan.] 'Refinement Plan'
16 includes special area studies and those refinement
17 plans and special area studies listed in the
18 [Metro Plan.]"

19 In addition, the city submitted a notice to the Land
20 Conservation and Development Commission concerning the
21 challenged decision and checked the box on that notice
22 indicating the challenged decision is a postacknowledgment
23 comprehensive plan amendment.

24 The challenged decision is a comprehensive plan
25 amendment, and will be treated as such for purposes of our
26 review.

27 **B. Nature of the Challenged Decision**

28 The city contends the challenged decision is
29 legislative in nature, not quasi-judicial and, therefore,
30 the challenged decision need not be supported by findings or
31 substantial evidence. We have previously stated that
32 regardless of the nature of a proposed plan amendment, Goal

1 2 (Land Use Planning) requires an adequate factual base for
2 all plan amendments, including legislative amendments. 1000
3 Friends of Oregon v. City of North Plains, ___ Or LUBA ___
4 (LUBA Nos. 93-154, 93-159 and 93-160, June 23, 1994),
5 slip op 5. This requires either (1) findings supported by
6 substantial evidence in the record, establishing the factual
7 basis for the challenged decision; or (2) an explanation of
8 the basis for the challenged decision in the briefs, showing
9 that the record establishes an adequate factual basis.
10 Redland/Viola CPO v. Clackamas County, ___ Or LUBA ____
11 (LUBA No. 93-196, July 26, 1994), slip op 5-6. Thus, for
12 purposes of our review here, the important difference
13 between a quasi-judicial and legislative decision is that
14 there is no specific requirement that the latter be
15 supported by findings demonstrating compliance with relevant
16 standards. Therefore, we must determine whether the
17 challenged decision is legislative or quasi-judicial in
18 nature.

19 In Strawberry Hill 4-Wheelers v. Benton Co. Bd. of
20 Comm., 287 Or 591, 602-03, 601 P2d 769 (1979), the Oregon
21 Supreme Court identified three factors to be considered in
22 determining whether a local government decision is
23 quasi-judicial. Those factors may be summarized as follows:

- 24 1. Is "the process bound to result in a
25 decision?"
- 26 2. Is "the decision bound to apply preexisting
27 criteria to concrete facts?"

1 3. Is the action "directed at a closely
2 circumscribed factual situation or a
3 relatively small number of persons?"

4 These factors must be weighed together; no single factor is
5 determinative. Estate of Paul Gold v. City of Portland, 87
6 Or App 45, 740 P2d 812, rev den 304 Or 405 (1987); Leonard
7 v. Union County, 24 Or LUBA 362, 369 (1992).

8 The challenged decision results from a private
9 development application, and a city decision was bound to
10 result concerning that application. Further, the challenged
11 decision was "bound to apply preexisting criteria to
12 concrete facts," because the adoption of the proposed
13 amendment to the Bethel-Danebo Refinement Plan must comply
14 with criteria established in the Statewide Planning Goals
15 (goals) as well as the Metro Plan.

16 In addition, we believe the city's decision to
17 redesignate the subject property was "directed at a closely
18 circumscribed factual situation." In this regard, the
19 challenged amendment is limited to a specific area,
20 involving one property owner and a single property. See
21 Hummel v. City of Brookings, 13 Or LUBA 25, 29-32 (1985).
22 Therefore, the challenged decision is quasi-judicial in
23 nature, and findings are required.

24 **FIRST AND FOURTH ASSIGNMENTS OF ERROR**

25 Petitioner contends the challenged decision to amend
26 the refinement plan to state the subject 15 acres should be
27 developed consistent with G-0 and C-1 zoning, instead of C-2

1 zoning, is inconsistent with the Commercial Lands Study.
2 Petitioner cites Implementation Strategy 19.1 of the
3 Commercial Lands Study, which provides as follows:

4 "[C]onsider expanding the commercial site at the
5 northeast corner of Barger Avenue and Beltline
6 from the present size of 5 acres to a total of 15
7 acres to serve both neighborhood commercial needs
8 and as a community commercial center. Initiate
9 the necessary amendments to the Bethel-Danebo
10 Refinement Plan and the Metro Plan."

11 The city argues in its brief that neither the
12 Commercial Lands Study nor its Implementation Strategy 19.1
13 is an approval standard with which the city must demonstrate
14 compliance. Rather, the city contends both the Commercial
15 Lands Study and its Implementation Strategy 19.1 are simply
16 aspirational statements of policy which the city is free to
17 ignore.

18 The challenged decision does not reflect the
19 interpretation of the Commercial Lands Study and
20 Implementation Strategy 19.1 advanced by the city in its
21 brief. The challenged decision states the following
22 concerning the Commercial Lands Study and Implementation
23 Strategy 19.1:

24 "The proposed map and text changes to the
25 Bethel[-]Danebo Refinement Plan are prompted by
26 Policy 19 of the Eugene Commercial Lands Study and
27 its associated Implementation Strategy 19.1, which
28 recommends a 10-acre commercial addition to the
29 existing 5-acre designation and a corresponding
30 change to permit Community Commercial Uses. The
31 [Bethel-Danebo Refinement Plan] text changes that
32 are proposed are intended to reflect recommended
33 changes * * *.

1 "The Commercial Lands Study was adopted as a
2 'refinement plan' to the [Metro Plan] in 1992.
3 These proposed changes are therefore consistent
4 with the [Metro Plan] because it has been
5 'refined' by policies and recommendations of the
6 Commercial Lands Study.

7 * * * * *

8 "In addressing the direction and consistency of
9 the [Metro Plan], Bethel-Danebo Refinement Plan,
10 and the Eugene Commercial Lands Study, the staff
11 is recommending the following text and map
12 changes. The text is from the Bethel-Danebo plan
13 for the [node]. * * * Proposed changes to the
14 text and map for the [node] are based on
15 information, policies, and strategies developed
16 since adoption of the Bethel-Danebo Refinement
17 Plan in 1982 (i.e., Eugene Commercial Lands
18 Study). * * *" Record 21-22.

19 We turn to whether the challenged decision is
20 consistent with the Commercial Lands Study and,
21 specifically, Implementation Strategy 19.1. The challenged
22 decision adopts the following plan policy governing
23 development of the node:

24 "[A]llow development of the commercial site at the
25 northeast corner of Barger Drive and Beltline
26 beyond the present size of 5 acres to a total of
27 up to 15 acres to serve both neighborhood
28 commercial needs and as a community commercial
29 center. The commercial-residential development
30 node will consist of 15 acres of neighborhood and
31 community commercial, 16 acres of high-density
32 residential, and 68 acres of medium-density
33 residential * * *." Record 24.

34 This policy adopted by the challenged decision is consistent
35 with the Commercial Lands Study and Implementation
36 Strategy 19.1. However, the challenged decision also states
37 the following with regard to how the subject 15 acres are to

1 be developed and zoned:

2 "Commercial development should be at an intensity
3 or level of use consistent with General Office
4 (GO) or Neighborhood Commercial (C-1) zoning."
5 Record 25.

6 We must therefore determine whether limiting commercial
7 development of the subject 15 acres to a level consistent
8 with GO and C-1 zoning is consistent with the statements in
9 Implementation Strategy 19.1 and the newly adopted
10 refinement plan policy, quoted above, that development of
11 the subject 15 acres is "to serve both neighborhood
12 commercial needs and as a community commercial center."

13 Neither the Commercial Lands Study nor the refinement
14 plan explains what is meant by the terms "neighborhood
15 commercial" or "community commercial." However, the Metro
16 Plan section on "Land Use Designations" lists five use
17 categories under the Commercial designation -- Major Retail
18 Centers, Community Commercial Centers, Floating Nodes,
19 Existing Strip Commercial and Neighborhood Commercial
20 Facilities. Plan II-E-4 to II-E-5. Two of these, Community
21 Commercial Centers and Neighborhood Commercial Facilities,
22 appear relevant to the development of the subject 15 acres
23 allowed under Implementation Strategy 19.1 and the newly
24 adopted refinement plan policy.

25 With regard to Community Commercial Centers, the Metro
26 Plan states:

27 "This category includes more commercial activities
28 than neighborhood commercial but less than major

1 retail centers. Such areas usually develop around
2 a small department store and supermarket. The
3 development occupies at least [five] acres and
4 normally not more than 40 acres. This category
5 includes such general activities as retail stores;
6 personal services; financial, insurance and real
7 estate offices; private recreational facilities,
8 such as movie theaters; and tourist-related
9 facilities, such as motels. * * * Metro Plan
10 II-E-4.

11 Concerning Neighborhood Commercial Facilities, the Metro
12 Plan states:

13 "Oriented to day-to-day needs of the neighborhood
14 served, these facilities are usually centered on a
15 supermarket * * *. They are also characterized by
16 convenience goods outlets (small grocery, variety
17 and hardware stores); personal services (medical
18 and dental offices, barber shops); Laundromats;
19 dry cleaners (not plants); and taverns and small
20 restaurants. * * * Minimum location standards
21 and site criteria include:

22 * * * * *

23 "(4) The site shall be no more than five acres,
24 including existing commercial developments.
25 The exact size shall depend on the numbers of
26 establishments associated with the center and
27 the population to be served.

28 "Neighborhood commercial facilities may include
29 community commercial centers when the latter meets
30 [sic] applicable location and site criteria * * *
31 even though community commercial centers are
32 generally larger than five acres in size.

33 * * * * * Plan II-E-5 to II-E-6.

34 The Metro Plan does not appear to contain any text
35 relating the five categories of use under the Commercial
36 plan designation to the commercial zoning districts
37 established in the Eugene Code -- Neighborhood Commercial

1 (C-1), General Commercial (C-2), Major Commercial (C-3),
2 Commercial Industrial (C-4) and General Office (GO).
3 Further, there is no explanation in the decision of how
4 zoning the subject 15 acres GO and C-1 will allow the area
5 to serve both neighborhood commercial needs and as a
6 community commercial center, as contemplated by
7 Implementation Strategy 19.1 and the new policy for the node
8 added to the refinement plan by the challenged decision.
9 Without an explanation by the city in its decision,
10 interpreting the relevant Metro Plan, Commercial Lands
11 Study, Bethel-Danebo Refinement Plan and Eugene Code
12 provisions, we cannot determine whether the newly adopted
13 refinement plan provision limiting zoning of the subject
14 15 acres to G-0 and C-1 is consistent with the Commercial
15 Lands Study and the newly adopted refinement plan policy.
16 Weeks v. City of Tillamook, 117 Or App 449, 454, 844 P2d 914
17 (1992).

18 One further point merits comment. Petitioner points to
19 the requirement of the Metro Plan that a neighborhood
20 commercial facility site be limited to five acres, as
21 necessarily establishing that limitation of the subject 15
22 acres to C-1 and G-0 zoning is inconsistent with the Metro
23 Plan as well as with the Commercial Lands Study.

24 On remand, the city must explain how limiting
25 commercial development of the subject 15 acres to an
26 intensity consistent with C-1 and G-0 zoning is consistent

1 with Implementation Strategy 19.1 and the Bethel-Danebo
2 Refinement Plan Policy. Assuming the city adopts such an
3 explanation, it must also explain why limiting commercial
4 development in that manner is consistent with the above
5 quoted Metro Plan descriptions of Community Commercial
6 Centers and Neighborhood Commercial Facilities. In the
7 absence of such an explanation, we cannot determine whether
8 the size limitations expressed in the Metro Plan
9 descriptions for Community Commercial Centers and
10 Neighborhood Commercial Facilities are satisfied or violated
11 by the challenged decision.

12 The first and fourth assignments of error are
13 sustained, in part.

14 **SECOND ASSIGNMENT OF ERROR**

15 Petitioner states the challenged decision fails to
16 establish compliance with Statewide Planning Goal 9
17 (Economic Development). The city essentially argues the
18 goals do not apply.

19 The challenged decision is a comprehensive plan
20 amendment. Plan amendments must comply with the goals. ORS
21 197.175(2)(a); 197.835(4). Goal 9 appears to be relevant to
22 the challenged decision. The challenged decision does not
23 address Goal 9, and this is error.

24 The second assignment of error is sustained.

25 **THIRD ASSIGNMENT OF ERROR**

26 Petitioner argues the challenged decision to limit

1 commercial development of the subject 15 acres to that
2 allowed under G-0 and C-1 zoning, lacks evidentiary support.
3 However, we state above the city failed to adequately
4 explain the basis for its decision. Without such an
5 explanation, we cannot review the evidentiary support for
6 the challenged decision, and therefore, do not consider this
7 assignment of error.

8 The city's decision is remanded.