

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

3
4 FRIENDS OF EUGENE,)
5)
6 Petitioner,)
7)
8 vs.)
9) LUBA No. 95-234
10 CITY OF EUGENE,)
11) FINAL OPINION
12 Respondent,) AND ORDER
13)
14 and)
15)
16 HYUNDAI ELECTRONICS AMERICA,)
17)
18 Intervenor-Respondent.)

19
20
21 Appeal from City of Eugene.

22
23 David A. Bahr, Eugene, filed the petition for review
24 and argued on behalf of petitioner. With him on the brief
25 was Bahr & Stotter Law Offices.

26
27 Glenn Klein, Eugene, and Steven L. Pfeiffer and Frank
28 M. Flynn, Portland, filed the response brief on behalf of
29 respondent and intervenor-respondent. With them on the
30 brief were Harrang Long Gary Rudnick, and Stoel Rives.
31 Glenn Klein argued on behalf of respondent. Michael
32 Robinson and Frank M. Flynn argued on behalf of intervenor-
33 respondent.

34
35 LIVINGSTON, Referee; GUSTAFSON, Referee, participated
36 in the decision.

37
38 AFFIRMED 10/31/96

39
40 You are entitled to judicial review of this Order.
41 Judicial review is governed by the provisions of ORS
42 197.850.

1 Opinion by Livingston.

2 **NATURE OF THE DECISION**

3 Petitioner appeals a decision of the city planning
4 director in the form of a land use compatibility statement
5 (LUCS) provided to the Lane Regional Air Pollution Authority
6 (LRAPA).

7 **MOTION TO INTERVENE**

8 Hyundai Electronics America (intervenor), the applicant
9 for the LUCS, moves to intervene on the side of the
10 respondent. There is no opposition to the motion, and it is
11 allowed.

12 **FACTS**

13 Intervenor's proposed manufacturing site is zoned
14 Special Industrial District (I-1). Upon intervenor's
15 application, the city planning director provided a LUCS to
16 LRAPA. The LUCS is a summary form that describes the
17 proposed business as "[s]emi-conductor manufacturing
18 (electronic devices)." Record 5. It states the proposed
19 business or facility is an allowed outright use. To explain
20 the basis for the decision, the planning director attached a
21 nine-page memorandum prepared by the city attorney. Record
22 7-15.

23 **ASSIGNMENTS OF ERROR**

24 In three overlapping assignments of error, petitioner
25 challenges the city's findings in support of the LUCS, made

1 pursuant to OAR 660-31-026(2)(b)(B) and 660-31-035(2).¹ We
2 have interpreted OAR 660-31-026(2)(b)(B) to require the
3 local government to identify the applicable comprehensive
4 plan provisions and land use regulations and explain briefly
5 why they are satisfied. Knee Deep Cattle Company v. Lane
6 County, 28 Or LUBA 288, 300-02, aff'd 133 Or App 120 (1994).

7 Although the first assignment of error contends the
8 city failed "to make affirmative written findings in support
9 of the LUCS as required by law," Petition for Review 9,
10 petitioner does not argue in support of that contention.

¹OAR 660-31-026(2)(b)(B) provides:

"The applicant for a [Class B] permit must receive a land use approval from the affected local government. The affected local government must include a determination of compliance with the Statewide Planning Goals or compatibility with the Acknowledged Comprehensive Plan which must be supported by written findings as required in ORS 215.416([9]) or 227.173(2). Findings for an activity or use addressed by the acknowledged comprehensive plan in accordance with OAR 660-31-020, may simply reference the specific plan policies, criteria, or standards which were relied upon in rendering the decision and state why the decision is justified based on the plan policies, criteria or standards."

OAR 660-31-035(2) provides:

"Class B Permits: State agencies may rely on the affected local government's determination of consistency with the Statewide Planning Goals and compatibility with the Acknowledged Comprehensive Plan when the local government makes written findings demonstrating compliance with the goals or compatibility with the acknowledged plan in accordance with OAR 660-31-026(2)(b)(B)."

As used in OAR Chapter 660, Division 31, "acknowledged comprehensive plan" means a comprehensive plan and implementing ordinances that the Land Conservation and Development Commission has found to be in compliance with the Statewide Planning Goals pursuant to ORS 197.251. OAR 660-31-010(1).

1 Instead, under all three assignments, petitioner challenges
2 the city's application of the relevant standards.
3 Petitioner focuses its argument on the application of Eugene
4 Code (EC) 9.442 to 9.445.²

5 **A. EC 9.442**

6 We concluded in a related appeal, Friends of Eugene v.
7 City of Eugene, ___ Or LUBA ___ (LUBA No. 95-255, Order on
8 Motion for Stay, December 26, 1995) (Friends I) slip op 4,
9 that EC 9.442, a purpose statement,

10 "was adopted to guide the city in determining
11 which uses should be allowed outright in the I-1
12 district. EC 9.442 does not contain mandatory
13 approval standards applicable to individual
14 development applications for the outright uses
15 listed in EC 9.443."

16 Because EC 9.442 does not contain mandatory approval
17 standards, we do not address petitioner's arguments that the
18 challenged decision does not comply with EC 9.442.

19 **B. EC 9.445**

20 We also concluded in Friends I that intervenor does not
21 propose to develop the subject property as an industrial
22 park, and that the "industrial park site review approval
23 procedure" described in EC 9.445(c) therefore does not
24 apply.³ Id. at 2-3. Petitioner cites to nothing in the

²Petitioner does not contend that any comprehensive plan policies that should have been applied were not applied.

³EC 9.444, which lists buildings and uses in industrial parks, also does not apply.

1 record that persuades us otherwise.⁴

2 We adhere to our conclusion in Friends I that
3 EC 9.445(c) does not apply. We agree with intervenor that
4 the challenged decision correctly states the proposed use,
5 semi-conductor manufacturing, is a use permitted outright
6 under EC 9.443(d)(3). EC 9.443(d)(3) lists "permitted
7 buildings and uses," including the manufacturing and
8 assembly of "electronic components and accessories."

9 Finally, we reject petitioner's contention the city's
10 findings do not adequately address the balance of EC 9.445.
11 The balance of EC 9.445 contains development standards,
12 including landscaping restrictions and an underground
13 utilities requirement, which do not affect land use
14 compatibility.

15 The city's decision is affirmed.

⁴Petitioner attaches as appendices to its brief "some materials * * * which, while not susceptible to judicial notice, are offered for the purpose of providing a context to encourage clarity of the historical record." Petition for Review 11 n6. Our review is limited by ORS 197.830(13) to the record of the proceeding below, except in instances where an evidentiary hearing is authorized by ORS 197.830(13)(b). We may also take official notice of comprehensive plans, land use regulations and other local enactments which establish standards or criteria applicable to land use decisions on appeal. Sunburst II Homeowners v. City of West Linn, 18 Or LUBA 695, 698, aff'd 101 Or App 458, rev den 310 Or 243 (1990). Finally, we may take official notice of judicially cognizable law and state regulations. Blatt v. City of Portland, 21 Or LUBA 337, 340-43, aff'd 109 Or App 259 (1991), rev den 314 Or 727, 843 P2d 454 (1992).

We cannot take official notice of Appendices F to N, O and P to the Petition for Review, which include maps, letters, memoranda and agreements that pertain to earlier development applications on or near the subject property. We consider neither these materials nor petitioner's arguments based upon them.