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

EXCELSIOR INVESTMENT CO., NAVIGATOR'S
LANDING, LLC, SEDONA PROPERTIES, LLC,
REGINALD P. BREEZE and ANNETTE C. BREEZE,
Petitioners,

vs.

CITY OF MEDFORD,
Respondent,

and

JACKSON COUNTY AIRPORT AUTHORITY,
Intervenor-Respondent.

LUBA No. 2003-019

FINAL OPINION
AND ORDER

Appeal from City of Medford.

James D. Howsley, Portland, filed the petition for review and argued on behalf of petitioners. With him on the brief was Lane Powell Spears Lubersky LLP.

No appearance by City of Medford.

Steven R. Rinkle, Senior Assistant County Counsel, Medford, filed the response brief and argued on behalf of intervenor-respondent.

BASSHAM, Board Chair; BRIGGS, Board Member; HOLSTUN, Board Member, participated in the decision.

AFFIRMED

05/19/2003

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

NATURE OF THE DECISION

Petitioners appeal a city decision that approves a change in the comprehensive plan map designations for 21.6 acres of a 291-acre parcel.

MOTION TO INTERVENE

Jackson County Airport Authority (intervenor), the applicant below, moves to intervene on the side of respondent. There is no opposition to the motion, and it is allowed.

FACTS

Intervenor owns and operates the Rogue Valley International-Medford Airport. The airport is located on a 291-acre parcel, which includes several different comprehensive plan map and zoning map designations. In 2001, intervenor adopted an airport master plan that identifies areas for development of airport related uses. The first phase, which culminated in the decision challenged in this appeal, involves amending the comprehensive plan map designation for two 10.8-acre areas within the 291-acre parcel. The first area (Area A) is redesignated from Airport to General Industrial. The second area, (Area B), is redesignated from General Industrial to Airport. The second phase, a zoning map change for Area A from Community Commercial to Light Industrial, and a corresponding zoning map change for Area B from Light Industrial to Community Commercial, is pending. The two areas are currently undeveloped. The master plan anticipates that once the appropriate land use designations are in place, Area A will be developed with a parking lot and Area B will be developed with a hotel or other supporting commercial uses.

Area A is separated from Area B by Lone Pine Creek. Both areas are located south of the airport terminal and are accessed from Biddle Road, which is designated as a minor arterial street in the city’s transportation plan. Area B is also accessed from the south via Lawnsdale Road, a collector street that intersects with Biddle Road. The areas are bordered by the airport property to the north, east and southeast, and by properties designated for

1 industrial and commercial uses on the south and west. About half of the surrounding
2 properties are developed with commercial and industrial uses.

3 Petitioners appeared before the city and opposed the application. The city council
4 adopted a decision approving the comprehensive plan map amendments. This appeal
5 followed.

6 **FIRST ASSIGNMENT OF ERROR**

7 The Review and Amendments Section of the Medford Comprehensive Plan (MCP)
8 provides different sets of criteria for different types of MCP amendments. In a preface, the
9 MCP explains:

10 “Because of the important functional differences among the various [MCP]
11 components, no common set of criteria can be used to assess all proposed
12 [MCP] amendments. Below are listed the criteria which must be considered
13 when evaluating proposed amendments to each of the specified [MCP]
14 components. While all of the criteria may not apply to each proposed
15 amendment, all must be considered when developing substantive findings
16 supporting final action on the amendment, and those criteria which are
17 applicable must be identified and distinguished from those which are not.”
18 MCP Review and Amendments 2.

19 The MCP sets forth seven criteria or considerations applicable to amendments to
20 MCP designations.¹ The challenged decision treats the proposal to switch the MCP

¹ Those criteria or considerations are set out below:

“Map Designations – Amendments shall be based on the following:

- “1. A significant change in one or more Goal, Policy, or Implementation strategy.
- “2. Demonstrated need for the change to accommodate unpredicted population trends, to satisfy urban housing needs, or to assure adequate employment opportunities.
- “3. The orderly and economic provision of key public facilities.
- “4. Maximum efficiency of land uses within the current urbanizable area.
- “5. Environmental, energy, economic and social consequences.
- “6. Compatibility of the proposed change with other elements of the City Comprehensive Plan.

1 designations of Area A and Area B as a single proposal, and addresses both plan designation
2 amendments in a single set of findings. Petitioners argue that the above-quoted portion of
3 the MCP requires that each amendment be addressed separately, and that the city must
4 explain which criteria apply and which do not. Therefore, petitioners argue, the city erred by
5 failing to adopt findings that separately address each amendment. According to petitioners,
6 the city decision treats Areas A and B together, ignoring the fact that each area has different
7 street frontages, different adjoining uses, and different locations in relation to the airport.

8 Intervenor-respondent (intervenor) responds that nothing in the MCP requires the city
9 to treat the subject application as two separate proposals, or otherwise prevents the city from
10 addressing the applicable criteria in a single set of findings. Intervenor emphasizes that areas
11 A and B are portions of a single split-zoned parcel and that both areas are identical in size
12 and similar in most if not all respects.

13 We agree with intervenor that the portions of the MCP cited to us do not necessarily
14 require that the city separately address Area A and Area B in approving an application to
15 switch the plan designations for those two areas. Petitioners make no effort to demonstrate
16 that there is any meaningful difference between the two areas that requires separate
17 consideration or additional findings under the seven applicable criteria quoted at n 1.

18 The first assignment of error is denied.

19 **SECOND ASSIGNMENT OF ERROR**

20 Petitioners argue that the city’s findings with respect to criterion 6, quoted at n 1, are
21 inadequate. Criterion 6 requires consideration of the “[c]ompatibility of the proposed change
22 with other elements of the [MCP].” According to petitioners, it is incompatible with the
23 MCP to change the plan designation of Area A from “Airport” to General Industrial.
24 Petitioners cite the description of the Airport designation in the General Land Use Plan

“7. All applicable Statewide Planning Goals.” MCP Review and Amendments 3.

1 section of the MCP (hereafter GLUP), which states that the Airport designation “identifies
2 the area that makes up the Rogue Valley International-Medford Airport and its specifically
3 affected environs.”² Because Area A is part of the airport or at least its “specifically affected
4 environs,” petitioners argue, the city cannot designate Area A anything other than Airport.

5 Intervenor disputes petitioners’ premise that the GLUP description of the Airport
6 designation requires that all portions of the airport and its environs be designated Airport.
7 Intervenor notes that the airport parcel that includes Areas A and B is split-zoned and
8 different GLUP designations apply to different parts of the parcel. For example, Area B is
9 designated General Industrial by the GLUP. It is clear, intervenor argues, that in adopting
10 the original designations the city did not consider the GLUP to require that all portions of the
11 parcel on which the airport is located be designated Airport.³ Further, intervenor emphasizes
12 that the challenged decision simply swaps GLUP designations for two nearly identical
13 portions of the airport parcel.

14 The city’s decision includes extensive findings addressing compatibility with a
15 number of comprehensive plan elements, but those findings do not appear to address
16 compatibility with the GLUP description of the Airport designation.⁴ Nonetheless, we
17 disagree with petitioners that the absence of findings addressing that point is error.

² The GLUP describes the “Airport” plan designation as follows:

“This designation identifies the area that makes up the Rogue Valley International-Medford Airport and its specifically affected environs. The I-L (Light Industrial) zoning district best accommodates the airport area and its associated uses. The A-A (Airport Approach) overlay zone, which is intended to minimize restrictions on airport operations caused by incompatible development, covers most of the area in the Airport designation, although the two are not exactly contiguous.” GLUP 4.

³ Intervenor also notes that petitioners’ property, which is not designated Airport, is closer to the airport’s terminals and runways than either Area A or B. Under petitioners’ broad view of the scope of “specifically affected environs,” intervenor argues, petitioners’ property is more likely to warrant the Airport designation than is Area A or Area B.

⁴ It may be that the city’s findings do not address that issue because no one raised it below. However, intervenor does not argue that the issue was not raised below.

1 Petitioners' argument depends on their view that the Airport designation *must* be applied to
2 all property that makes up the airport and its specifically affected environs. However, the
3 GLUP description of the Airport designation does not say that, and the city clearly did not
4 operate under that view when adopting the original GLUP designations for Area B and other
5 areas of the airport parcel that are not designated Airport. Neither did the city operate under
6 that view in adopting the challenged decision. In short, petitioners' arguments under this
7 assignment of error depend on petitioners' interpretation of the Airport designation, an
8 interpretation that is inconsistent with the city's prior and current applications of the Airport
9 designation.

10 Petitioners also argue under this assignment of error that the city's decision does not
11 adequately explain why the General Industrial designation is appropriate for Area A.⁵
12 However, the city's findings explain that applying the General Industrial designation would
13 facilitate construction of a parking lot closer to the terminal, consistent with the airport
14 master plans and recently imposed security requirements.⁶ We agree with intervenors that

⁵ The GLUP describes the General Industrial designation as follows:

"This designation permits the I-L (Light Industrial) and the I-G (General Industrial) zoning districts. The most appropriate zoning district for each site designated General Industrial shall be determined based upon the following:

"The I-L zone is intended for office uses and light manufacturing. The I-L zoning district is suitable for areas near residential and commercial properties.

"* * * * *" GLUP 3.

⁶ The city's findings explain:

"The result of the two land use actions will be to have the I-L zoned land replacing C-C zoned land in the area closer to the terminal [Area A] and vice versa slightly further from the terminal [Area B]. The land closer to the terminal [Area A] can then be used for future parking and will result in improved security in this area close to the airport terminal. In light of the September 11, 2001 terrorism, the current commercial area [Area A] is located too close to the Airport terminal facility and would not be easily secured. In the future, the Airport Master Plan indicates that this area will be used for airport parking, a use that can be more easily monitored and protected. * * *" Record 82.

1 those findings are adequate to explain why the General Industrial designation is appropriate
2 for Area A.

3 Finally, petitioners contend that there is no need to redesignate Area A as General
4 Industrial, because the alleged reason for doing so, to facilitate construction of additional
5 parking in Area A, can be accomplished by simply rezoning Area A from C-C to I-L, which
6 would not require a plan amendment.

7 Intervenor responds that it is irrelevant whether Area A could be rezoned to provide
8 for parking without a plan amendment, because the broader purpose of the application was to
9 swap the designations and ultimately the zoning for Areas A and B to facilitate construction
10 of parking areas and a hotel in a manner consistent with the airport master plan and current
11 security requirements. We understand intervenor to argue that that broader purpose would
12 not be accomplished by simply rezoning Area A to I-L.

13 We agree with intervenor that the city was not required to consider rezoning Area A
14 to I-L, in place of the challenged GLUP amendment. Petitioners' argument presumes that
15 there is some requirement that the applicant accomplish its parking goal by the most minimal
16 means, and if the parking goal can be accomplished either by a GLUP amendment and a
17 subsequent zone change or simply by a zone change, the city must approve the latter.
18 However, petitioners do not cite us to the source of that alleged requirement, and we are
19 aware of none.

20 The second assignment of error is denied.

21 **THIRD AND FOURTH ASSIGNMENTS OF ERROR**

22 In the third assignment of error, petitioners contend that the city failed to adopt
23 adequate findings explaining why it did not require intervenor to submit a Traffic Impact
24 Analysis (TIA), as required by LDO 10.461(3).⁷ In the fourth assignment of error,

⁷ LDO 10.461(3) provides:

1 petitioners argue that the city adopted inadequate findings explaining why the proposed
2 amendments do not “significantly effect” transportation facilities, and thus trigger the
3 requirements of OAR 660-012-0060.⁸

4 Petitioners advance essentially the same arguments under both LDC 10.461(3) and
5 OAR 660-012-0060. According to petitioners, the city’s approach under both of these

“If a proposed application has the potential for generating more than 250 net average daily trips (ADT) or the Public Works Department has concerns due to operations or accident history, a TIA will be required to evaluate development impacts to the transportation system. The Public Works Department may waive a TIA if it is concluded that the impacts are not substantial.”

⁸ OAR 660-012-0060 provides, in relevant part:

“(1) Amendments to functional plans, acknowledged comprehensive plans, and land use regulations which significantly affect a transportation facility shall assure that allowed land uses are consistent with the identified function, capacity, and performance standards (e.g. level of service, volume to capacity ratio, etc.) of the facility. This shall be accomplished by either:

“(a) Limiting allowed land uses to be consistent with the planned function, capacity, and performance standards of the transportation facility;

“(b) Amending the [Transportation System Plan (TSP)] to provide transportation facilities adequate to support the proposed land uses consistent with the requirements of this division;

“(c) Altering land use designations, densities, or design requirements to reduce demand for automobile travel and meet travel needs through other modes; or

“(d) Amending the TSP to modify the planned function, capacity and performance standards, as needed, to accept greater motor vehicle congestion to promote mixed use, pedestrian friendly development where multimodal travel choices are provided.

“(2) A plan or land use regulation amendment significantly affects a transportation facility if it:

“* * * * *

“(c) Allows types or levels of land uses which would result in levels of travel or access which are inconsistent with the functional classification of a transportation facility; or

“(d) Would reduce the performance standards of the facility below the minimum acceptable level identified in the TSP.”

1 provisions was based on the view that the relevant question is whether the proposed
2 amendments would allow an increased level of development or traffic impacts, compared to
3 the previous GLUP designations. Under that approach, if there is no intensification of uses
4 allowed and no net increase in traffic impacts under the new designations compared to the
5 previous designations, then the code and rule are satisfied.

6 Petitioners dispute that approach. According to petitioners, while a hotel is
7 theoretically possible on Area A as currently planned and zoned, for security reasons a hotel
8 is not likely to be built on Area A whatever the GLUP designation. No hotel is possible on
9 Area B under the current GLUP designation and zoning. As a result of the city's decision,
10 petitioners argue, Area B will be redesignated and ultimately rezoned to allow a hotel. The
11 net result, according to petitioners, is that the city's decision facilitates development of a
12 traffic-intensive use that is likely to exceed the 250 ADT threshold for a TIA under
13 LDO 10.461(3), and that will likely "significantly affect" transportation facilities, within the
14 meaning of OAR 661-012-0060.

15 In addition, petitioners argue, the city's presumption that swapping GLUP
16 designations between Areas A and B will not result in increased traffic impacts is flawed.
17 Petitioners contend that that presumption is flawed, because the city failed to consider the
18 fact that, while both Areas border Biddle Road, Area B has more frontage and is located
19 closer to Interstate-5. According to petitioners, development of a hotel on Area B will likely
20 have more traffic impacts than development of a hotel on Area A. For these reasons,
21 petitioners argue, the city should have required a TIA under LDO 10.461(3), and the city
22 should have adopted findings addressing the requirements of OAR 660-012-0060.

23 The Oregon Department of Transportation (ODOT) submitted a letter opining that
24 "traffic generated from this proposal is not likely to have a significant impact upon state
25 highway facilities." Record 146. A staff report concluded that the proposed GLUP
26 amendments did not trigger the 250 ADT threshold in LDO 10.461(3), because the proposal

1 simply swapped GLUP designations between two identically sized portions of the airport
2 parcel. Record 76. The city director of public works submitted a memorandum concluding
3 that the proposed GLUP amendments would not cause a significant increase in traffic or
4 significant impacts on transportation facilities. Record 19. Based on this testimony, the
5 city’s decision finds:

6 “[A]s the City planning staff and [ODOT] have concluded, there will be no
7 significant affect to a transportation facility since the level of development
8 currently allowed will not change with approval of this application. There
9 will be no increase in intensity of use. The impact to intersections both north
10 and south of the proposed sites will remain exactly the same. The same
11 streets, the same infrastructure and the same creek corridor influence the two
12 areas proposed for the exchange.” Record 26 (original emphases omitted).⁹

13 Under the city’s approach, it considered only whether exchanging GLUP
14 designations between two identically sized and similarly located portions of the airport
15 parcel would cause a net increase in the intensity of uses or traffic impacts. In making that
16 comparison, the city did not consider extrinsic limitations on future development of Area A,
17 such as recently arisen security concerns. Although petitioners disagree with that approach,
18 petitioners do not explain why taking that approach is reversible error under either
19 LDO 10.461(3) or OAR 661-010-0060, and we do not see that it is.

20 Petitioners are correct that Area B has more frontage along Biddle Road than Area A,
21 and appears to be located slightly closer to Interstate-5, but petitioners do not explain why
22 those facts, in themselves, are sufficient to undermine the city’s conclusion that exchanging
23 GLUP designations between Areas A and B would have no net increase in traffic impacts,
24 given their similarity, proximity and mutual location along Biddle Road.

25 The third and fourth assignments of error are denied.

⁹ The finding at Record 26 is directed at OAR 661-010-0060. The city council did not adopt the staff report addressing LDO 10.461(3) as part of its findings, and its other findings do not directly address provision. However, petitioners offer no reason why the city’s finding and rationale under OAR 661-010-0060 is not sufficient also to explain why no TIA is required under LDO 10.461(3).

1 **FIFTH THROUGH ELEVENTH ASSIGNMENTS OF ERROR**

2 In these assignments of error, petitioners advance several challenges to the city’s
3 findings under the seven criteria for GLUP designation amendments, quoted at n 1.

4 Petitioners repeat their general argument that the city’s findings must separately
5 address each amendment, and determine with respect to each of the seven criteria which
6 criteria apply to which amendment. Relatedly, petitioners argue that the city erred in failing
7 to separately identify which statewide planning goals apply to each proposed amendment.
8 We reject those arguments for the same reasons expressed in our discussion of the first
9 assignment of error. Petitioners also repeat their arguments and that the amendments are
10 inconsistent with the Airport and General Industrial GLUP designations, and that there is no
11 need for the proposed amendments, because parking may be allowed at Area A without a
12 GLUP amendment. We reject that argument for the same reasons expressed under the
13 second assignment of error.

14 The city found compliance with criterion two, which requires consideration of
15 “[d]emonstrated need for the change to accommodate unpredicted population trends, to
16 satisfy urban housing needs, or to assure adequate employment opportunities.” *See* n 1. The
17 city’s findings apparently rely on the “adequate employment opportunities” aspect of
18 criterion two, stating,

19 “[Intervenor’s] presentation thoroughly discussed increases to passenger
20 flights and cargo flights due to projected increases in business resulting from
21 the Airport’s Foreign Trade Zone status. In addition, [intervenor] discussed
22 the fact that thousands of business uses fit under the foreign trade zone status.
23 These all translate into significant increases in family-wage jobs for the
24 Medford region. This criterion is met.” Record 29.

25 Petitioners challenge this finding, arguing that the proposed amendments have
26 nothing to do with the airport’s foreign trade zone status. Intervenor responds that the point
27 of the above-quoted finding is that the airport’s foreign trade zone status has led to increased

1 flights and business at the airport, and that improvements such as a hotel or additional
2 parking will help translate that additional economic activity into family-wage jobs.

3 We agree with intervenor that petitioners' challenge is misplaced. Whatever the
4 above-quoted finding is intended to say, it does not say that the proposed amendments will
5 allow the airport to qualify for foreign trade zone status, as petitioners suggest.

6 The city found compliance with criterion three, which requires consideration of "the
7 orderly and economic provision of key public utilities," by concluding that the amendments
8 simply exchange GLUP designations between areas of equal size and thus there will be no
9 "net increase" in impacts on public utilities or facilities. Petitioners challenge that
10 conclusion, repeating their arguments under the third and fourth assignments of error. We
11 reject that challenge, for the reasons expressed in our discussion of those assignments of
12 error.

13 Criterion four requires consideration of the "maximum efficiency of land uses within
14 the current urbanizable area." The city's findings conclude that the proposed amendments
15 will result in a more efficient pattern of land use at the airport, a pattern that is more
16 consistent with the master plan. Record 30, 96. Petitioners argue that those findings are
17 conclusory and not supported by reference to specific MCP or master plan policies.
18 However, petitioners do not cite any MCP or master plan policies that they believe the city's
19 findings should have addressed.

20 Finally, criterion five requires consideration of "environmental, energy, economic
21 and social consequences." The city's discussion of "social consequences" states that the
22 proposed amendments address "social consequences driven by the unfortunate terrorism
23 events of September 11." Record 30. Petitioners argue that there is no explanation or
24 evidence demonstrating that the airport will be any more secure after the proposed
25 amendments than before. In response, intervenors cite to other findings that explain why a
26 hotel on Area A is more of a security concern than a hotel on Area B. Record 31, 82, 94.

1 We agree with intervenors that the city's findings adequately explain the proposed
2 amendments will facilitate security at the airport. Petitioners make no other challenge to the
3 city's findings under criterion five.

4 The fifth through eleventh assignments of error are denied.

5 The city's decision is affirmed.