

NATURE OF THE DECISION

Petitioner appeals a city comprehensive plan map and zoning map change to rezone a .75-acre parcel from Light Industrial and Low Density Residential to Public/Semi-Public.

FACTS

The subject property is an undeveloped .75-parcel area located south of Stayton High School, across Locust Street. Further to the south is property zoned and developed for light industrial uses. To the east is property zoned and developed for residential uses. To the west is property owned by the school district and a parcel developed with a single-family dwelling.

The property is part of a larger parcel owned by Norpac, Inc. (Norpac). In 2003, Norpac offered to donate the subject property to the city, at the request of a group of citizens who sought to develop a privately operated, publicly owned skate park for the city’s youth. In order to develop the proposed skate park, Norpac and the city applied for (1) a partition, (2) a plan map and zoning map amendment, and (3) site plan review approval from the city council. The site plan review application proposes a skate park, a children’s playground, parking, a rest room, benches, a viewing stand, and pedestrian paths. The city planning commission conducted a hearing October 27, 2003, on all three applications and recommended approval of the three applications. The applications were forwarded to the city council for review.

After receiving significant testimony in opposition to the skate park proposal, the city council chose to deny the site plan review application.¹ However, the city approved the partition and plan and zone change, which would allow development of a public park.² The city’s notice of adoption

¹ The city denied the site plan review application in a separate order, on the grounds that (1) the “nature of the site plan” was not timely, (2), the “design of the park facility” was inadequate to meet adjacent owners’ concerns, and (3) “[p]ublic support for such a facility, at this time, was minimal[.]” Record 16-17.

² Stayton Land Use and Development Code (LUDC) 17.16.750 allows the following uses as permitted uses in the Public/Semi-Public zone, subject to site plan review approval:

1 to the Department of Land Conservation and Development (DLCD) stated that “[The] proposal
2 originally was for a ‘skatepark.’ The adopt[ed plan and zone amendment is for] a ‘park’ only.”
3 Record 1A.

4 Petitioner, an opponent below, appeals the city’s plan map and zoning map amendment
5 decision.

6 **FIFTH ASSIGNMENT OF ERROR**

7 Petitioner argues that throughout the proceedings before the planning commission and city
8 council the “intended use” for purposes of approving the requested zone change under
9 LUDC 17.12.430(5)(a) was the skate park proposed in the site plan review application.³

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- “a. All publicly owned buildings and facilities (typical uses: City halls, community centers, libraries, schools, fire stations, water and sewage facilities).
 - “b. Semi-public facilities (churches, temples, lodges, cemeteries, mortuaries, crematoriums, golf courses, etc.), subject to site plan review.
 - “c. Public outdoor recreational facilities (playgrounds, parks, swimming pools, golf courses, picnic grounds).

“* * * *”

³ LUDC 17.12.430(5) requires findings that:

- “a. The *proposed zone change and intended use* [are] compatible with the surrounding area, as measured by:
 - “1) Land use patterns.
 - “2) Traffic generation and circulation.
 - “3) Population density and impacts of population concentrations.
 - “4) Potential adverse impacts such as noise, odors, appearance, hazards to the public, generation of waste products, excessive glare of lighting, and demand on public services and facilities.
 - “5) Other similar factors deemed to be of importance to the decision by the Planning Commission or council.
- “b. Other properly zoned land is not available in sufficient quantity within the City to satisfy current and projected needs.

“* * * *” (Emphasis added).

1 Relatedly, petitioner argues that the planning commission findings addressing
2 LUDC 17.12.430(5)(a), which the city council decision adopts verbatim, are based on the skate
3 park proposal presented in the site plan review application.⁴ Petitioner argues that no other intended
4 use was proposed or discussed during the evidentiary proceedings before the planning commission
5 or city council.

6 Petitioner explains that, after the close of the public hearing before the city council, the city
7 council decided to deny the site plan review application for the proposed skate park, but to
8 approve the requested zone change to Public/Semi-public. Based on the DLCD notice of adoption,
9 petitioner argues, it appears that the city now views the “intended use” for purpose of
10 LUDC 17.12.430(5)(a) to be a generic “park” rather than a skate park.

11 According to petitioner, this course of events resulted in several related errors. First,
12 petitioner argues that the city committed procedural error in changing the “intended use” from “skate
13 park” to “park” after the close of the evidentiary record, without providing participants such as

⁴ The city’s findings addressing LUDC 17.12.430(5)(a) state, in relevant part:

“A.) Land Use Patterns

“Finding: Land use patterns in the area consist of a public school complex on the north side of Locust Street, directly across the street from the proposed park. The park’s southerly property line abuts industrial-designated property owned by Norpac. The easterly property line abuts a low density property and a high density parcel and to the west a parcel owned by the public school district and a single family residence. The objective is to accommodate the skate park activity in the center of the property away from the residences. The exception would be a single family home on Locust Street on the east property line. This may require some type of buffering adjacent to this property.

“B.) Traffic generation and circulation.

“Finding: The proposed parking lot would accommodate six vehicle parking stalls. Added vehicular traffic to Locust Street would be insignificant.

“* * * * *

“D.) Potential adverse impacts.

“Finding: A potential impact from the park activity could be noise generated by park users. This may require some type of noise buffer in some areas of the park.” Record 6-7.

1 petitioner an opportunity to present argument and evidence directed at the new intended use.
2 Petitioner notes that the city is both the applicant and the decision maker, and argues that the city
3 cannot take advantage of that dual role to change the proposed use after the close of the evidentiary
4 record in a manner that prejudices the participants' substantial rights.⁵ In addition, petitioner notes
5 that where the applicant proposes substantial changes to a land use application before the city
6 council, LUDC 17.12.417 requires that the city council remand the application to the planning
7 commission for consideration of the changes.⁶ Petitioner argues that the city violated
8 LUDC 17.12.417 in failing to remand the application to the planning commission to consider the
9 change in the intended use from "skate park" to "park."

10 Second, petitioner argues that the generic term "park" is so vague and nonspecific that it
11 cannot constitute an "intended use" for purposes of LUDC 17.12.430(5)(a), which requires among
12 other things consideration of "traffic generation and circulation" and "potential adverse impacts such
13 as noise, odors, appearance" etc. Without a reasonably specific proposal for a "park," petitioner
14 argues, neither the city nor participants can meaningfully address whether the "intended use" is
15 compatible with the surrounding area, under the criteria at LUDC 17.12.430(5)(a).

⁵ We understand petitioner to contend that several of the applicable approval criteria are of such nature that the proposed use must be identified before the approval criteria can be applied.

⁶ LUDC 17.12.417 provides, in relevant part:

"In the event at the City Council level, the applicant proposes changes to the land use application under consideration that make the application substantially different from that proposal that was considered by the Planning Commission, the City Council shall remand the case to the Planning Commission for consideration by the Planning Commission of the additional changes. Changes that shall constituted making the application substantially different include, but are not limited to substantial changes to the following:

- "1. Change in access, including size, number and location.
- "2. Elimination of landscaping.
- "3. Change in the size or configuration of the subject property.
- "4. Increase in the density of the proposal.
- "5. Change in the location of the parking areas."

1 Finally, we understand petitioner to argue that the findings addressing
2 LUDC 17.12.430(5)(a) are based on consideration of the impacts and other characteristics of the
3 proposed skate park. Because the city council effectively rejected that intended use, petitioner
4 argues, the city's findings under LUDC 17.12.430(5)(a) fail to establish that the "intended use" is
5 compatible with the surrounding area.

6 The city has not filed a response brief in this appeal, and we have no basis to question
7 petitioner's characterization of the city's decision and the course of the proceedings below.
8 Petitioner appears to be correct that the city council, in rejecting the site plan review application for
9 a skate park, but approving the zone change to Public/Semi-public, effected a change in the
10 intended use from a skate park to a generic "park." That change occurred after the close of the
11 record, and no notice or opportunity was provided for participants to present legal argument or
12 evidence with respect to that seemingly substantial change in the application.

13 As petitioner correctly notes, LUDC 17.12.430(5)(a) requires identification of an "intended
14 use," presumably so that the impacts and characteristics of that use can be measured against the
15 zone change criteria. Those criteria in turn require consideration of specific impacts such as traffic
16 generation, noise, odors, appearance, demand on public services and facilities, etc.

17 We agree with petitioner that the city erred in effectively changing the "intended use" after
18 the close of the record, without providing an opportunity for petitioner and others to present legal
19 argument and evidence with respect to the new intended use. The nature of the applicable zone
20 change criteria are such that we cannot conclude that that error was harmless or did not prejudice
21 petitioner's substantial rights. As noted, the zone change criteria require consideration of specific
22 impacts. Nothing in the record cited to us addresses the impacts of a generic "park." Relatedly, we
23 agree with petitioner that the city's findings addressing LUDC 17.12.430(5)(a) appear to be based
24 on consideration of the rejected skate park. *See, e.g.*, Record 6 ("The objective is to
25 accommodate the skate park activity in the center of the property away from the residences").

1 Those findings are inadequate to demonstrate that the new intended generic “park” use complies
2 with LUDC 17.12.430(5)(a).

3 We do not necessarily agree with petitioner that the change in the “intended use” violates
4 LUDC 17.12.417 or that that provision required the city council to remand the zone change
5 application to the planning commission. LUDC 17.12.417 is arguably directed at permit
6 applications or land use applications other than zone changes. Neither do we necessarily agree that
7 the zone change criteria require that a specific park site plan review application accompany the plan
8 and zone map amendment application.⁷ However, on remand the city council should address these
9 issues in the first instance and determine whether (1) LUDC 17.12.417 is applicable and, if so,
10 whether remand to the planning commission is required, and (2) whether LUDC 17.12.430(5)
11 requires that a specific site plan accompany the plan and zone map amendment proposal.

12 The fifth assignment of error is sustained.

13 **FIRST ASSIGNMENT OF ERROR**

14 Petitioner argues that the city cannot approve comprehensive plan and zoning map
15 amendments to allow use of the subject property as a public park, when the site plan review
16 application for the particular park use requested, a skate park, was denied. According to
17 petitioner, LUDC 17.12.340 and 17.12.430(5)(a), read together, require the city to consider and
18 approve a specific application for use of the property, in order to approve the requested plan and
19 zoning changes.⁸

⁷ It may be that impacts that must be considered under LUDC 17.12.430(5) can be adequately addressed without a specific site plan, although addressing those impacts would obviously be easier with a specific site plan.

⁸ LUDC 17.12.430(5)(b) is quoted in n 3, above. LUDC 17.12.340(1) provides in relevant part:

“* * * Combined or multiple requests by the same applicant(s) for approvals of different land use and development permits which are governed by the provisions of this chapter and which affect the same property or properties, shall be considered concurrently by the City. In the case of different applications requiring Planning Commission final action for one and Council final action for another, the Council may act upon both together.”

1 Earlier in this opinion we agreed with petitioner that the city erred in changing the “intended
2 use” for purposes of LUDC 17.12.430(5)(a), without sufficiently identifying the nature and hence
3 the potential impacts of the new intended use. It does not follow, however, that the city can
4 approve the plan and zone changes only if it concurrently approves a specific site plan or application
5 for development. LUDC 17.12.340(1) merely requires that the city address all related applications
6 concurrently; it does not require that an applicant submit all applications necessary for development
7 at the same time, or prevent the city from approving those applications properly before it,
8 notwithstanding that further applications may be necessary, as petitioner suggests.

9 In short, as long as sufficient information is submitted regarding the intended use to apply
10 and find compliance with the plan and zone change criteria, such as that in LUDC 17.12.430(5)(a),
11 we see no necessary contradiction in approving the plan and zone change, but rejecting a particular
12 site plan review application for failure to comply with site plan review criteria.

13 The first assignment of error provides no separate basis for reversal or remand, and
14 accordingly is denied.

15 **SECOND ASSIGNMENT OF ERROR**

16 In the second assignment of error, petitioner argues that the city failed to address
17 compliance with LUDC 17.12.420(5)(b), which requires a finding that “[a] demonstrated need
18 exists for the product of the proposed amendment (land use designation or plan text adjustment).”
19 Petitioner notes that the city adopted findings addressing other plan amendment criteria that discuss
20 “need,” but argues that those findings are based on the “specific recreational need” fulfilled by the
21 rejected skate park proposal, and do not demonstrate a need for generic parks.⁹

⁹ Petitioner cites to the following finding, which addresses a comprehensive plan policy that calls for provision of “parks and recreation facilities”:

“The City of Stayton’s draft Park and Recreation Master Plan identifies [that] there are 75.35 acres of park land within the City’s Urban Growth Boundary. The draft plan proposes that by 2020, there will be a need to secure an additional 181.42 acres to meet the needs of our citizenry. Although the proposed park represents a minuscule amount of acreage relative to the total amount desired by 2020, it fulfills a specific recreational need.” Record 5.

1 The city’s findings do not address LUDC 17.12.420(5)(b) at all. The second assignment of
2 error is sustained.

3 **THIRD ASSIGNMENT OF ERROR**

4 The zone change criteria at LUDC 17.12.430(5)(b) require a finding that “[o]ther properly
5 zoned land is not available in sufficient quantity within the City to satisfy current and projected
6 needs.” Under the third assignment of error, petitioner argues that findings addressing
7 LUDC 17.12.430(5)(b) fail to show a need to rezone the subject property for parks.¹⁰ To the
8 extent other findings might bear on that point, petitioner argues, those findings rely on the rejected
9 skate park proposal, and fail to demonstrate a need for generic “parks.”

10 We agree with petitioner that the findings addressing LUDC 17.12.430(5)(b) are
11 inadequate. The findings briefly describe other parks within the city, but do not address whether
12 “[o]ther properly zoned land is not available in sufficient quantity within the City to satisfy current
13 and projected needs.” While other findings addressing other criteria, such as that quoted at n 9,
14 might well have a bearing on compliance with LUDC 17.12.430(5)(b), petitioner is correct that
15 those findings appear to rely on the “specific recreational need” fulfilled by the rejected skate park,
16 rather than on a need for generic “parks.”

17 The third assignment of error is sustained.

18 **FOURTH ASSIGNMENT OF ERROR**

19 Petitioner argues that all of the evidence in the record was predicated on the development of
20 a skate park, and that there is no evidence in the record supporting a zone change to allow a generic
21 “park.”

¹⁰ The city’s findings addressing LUDC 17.12.430(5)(b) state in full:

“The City presently has seven public parks consisting of a total of 75.35 acres. Each of these parks has a specialized activity from the passive natural open space to active community parks.” Record 7.

1 We do not resolve petitioner’s fourth assignment of error. Under the first assignment of
2 error we concluded that the city erred in changing the intended use after the close of the record
3 without providing an opportunity to offer argument and evidence with respect to the new use.
4 Under the first, third and fourth assignments of error, we concluded that the city’s findings were
5 inadequate, largely because they are based on the rejected skate park proposal. These errors
6 require that the city reopen the evidentiary record and adopt different or additional findings.
7 Accordingly, there is no point in addressing petitioner’s challenge to the evidentiary sufficiency of the
8 present record.

9 The city’s decision is remanded.