

1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

3
4 ROBIN JAQUA and JOHN JAQUA,
5 *Petitioners,*

6
7 and

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9 LANE COUNTY and 1000 FRIENDS
10 OF OREGON,
11 *Intervenors-Petitioner,*

12
13 vs.

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15 CITY OF SPRINGFIELD,
16 *Respondent,*

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18 and

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20 PEACEHEALTH,
21 *Intervenor-Respondent.*

22
23 LUBA Nos. 2003-072 and 2003-073

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25 COALITION FOR HEALTH OPTIONS IN
26 CENTRAL EUGENE-SPRINGFIELD,
27 ANNE S. HEINSOO,
28 LINDA MAUREEN CHENEY
29 and FRED C. FELTER,
30 *Petitioners,*

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32 and

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34 LANE COUNTY and 1000 FRIENDS
35 OF OREGON,
36 *Intervenors-Petitioner,*

37
38 vs.

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40 CITY OF SPRINGFIELD,
41 *Respondent,*

42
43 and

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2 PEACEHEALTH,
3 *Intervenor-Respondent.*

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5 LUBA Nos. 2003-077 and 2003-078

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7 FINAL OPINION
8 AND ORDER
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10 Appeal on remand from the Court of Appeals.

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12 Allen L. Johnson, Portland, represented petitioners Jaqua. William H. Sherlock, Eugene,
13 represented petitioners Coalition for Health Options in Central Eugene-Springfield, *et al.*

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15 Stephen L. Vorhes, Assistant County Counsel, Eugene, represented intervenor-petitioner
16 Lane County. Michael K. Collmeyer, Portland, filed a petition for review on behalf of intervenor-
17 petitioner 1000 Friends of Oregon.

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19 Meg E. Kieran, Springfield, represented respondent.

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21 Steven L. Pfeiffer, Michael C. Robinson, and Steven P. Hultberg, Portland, represented
22 intervenor-respondent.

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24 BASSHAM, Board Member; Holstun, Board Chair; Davies, Board Member, participated
25 in the decision.

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27 REMANDED

08/19/2004

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

Opinion by Bassham.

The ordinances challenged in this appeal amend the Eugene/Springfield Metro Area General Plan (Metro Plan) and a refinement of that plan, and facilitate the future rezoning of 99 acres within the city, to allow for approval a large regional hospital complex proposed by intervenor-respondent PeaceHealth on land that is planned Medium Density Residential (MDR). On appeal to LUBA, we remanded the ordinances for additional findings with respect to two statewide planning goals, but otherwise affirmed. In particular, we rejected petitioners Jaquas' claims that the challenged ordinances violate the Metro Plan description of residential plan designations, which allows certain nonresidential uses as "auxiliary" uses in areas planned for residential use.

The Jaquas appealed LUBA's decision to the Court of Appeals, and the city and PeaceHealth filed cross-petitions for review. The court agreed with the Jaquas that LUBA erred in affirming the city's determination that the proposed regional hospital complex is an "auxiliary" use on land designated for residential use. The court stated:

"[T]he city's actions in this case change the universe of primary use of the area from residential to nonresidential. The proposed regional hospital project and adjoining medical and commercial services authorized by the ordinances are not mere adjuncts or supplements to residential use. They will become, in fact and in effect, the primary uses of the land; and they will, by their intrinsic nature, change the overall use of the land in the area from residential to commercial. We therefore conclude, based on our understanding of the meaning of the word 'auxiliary' as used in the context of the Metro Plan, that the kinds of uses contemplated by the challenged ordinances are not permitted uses in an area designated for residential use. If the city wishes to use the area in question for the commercially-related uses authorized by the ordinances, it will have to undertake a zone change or other change authorized by the plan.

"Our conclusion should not be understood to subscribe to the notion apparently asserted by the Jaquas that the Residential policy operates to prohibit every hospital or commercial use in MDR designated areas. The 'such auxiliary uses' language refers to a wide range of permitted uses including 'neighborhood commercial services.' It is certainly conceivable that a hospital could be a neighborhood commercial use within the meaning of the plan, at least to the same extent that other neighborhood commercial uses are similarly auxiliary and supportive. The text and context of the policy, however, require that such uses do not become the primary use in a MDR designated area, such as occurs under the ordinances. Thus, it is the

1 extent and the pervasiveness of the proposed change in use that renders it legally
2 incapable, within the meaning of the plan, of being characterized as auxiliary uses. In
3 summary, our disagreement with LUBA’s treatment of the city’s ordinances under
4 the Residential policy, a disagreement dictated by the plain meaning of the word
5 ‘auxiliary,’ requires that we remand its decision.” *Jaqua v. City of Springfield*,
6 194 Or App ___, ___ P3d ___ (A123624, July 9, 2004).

7 The court reversed and remanded LUBA’s decision on the Jaquas’ petition, but otherwise
8 affirmed LUBA’s decision.

9 The court essentially held that the proposed regional hospital complex that the challenged
10 ordinances make possible is inconsistent with the Metro Plan residential designation. Arguably,
11 under the court’s analysis, the challenged ordinances violate a provision of applicable law and are
12 prohibited as a matter of law. If so, our rules require us to reverse, rather than remand, the
13 challenged ordinances.¹

14 However, we continue to believe that remand is the appropriate disposition. The court’s
15 decision simply remands the appeal to LUBA; it does not instruct us to dispose of the city’s
16 decision in any particular manner. *Cf. DLCD v. Yamhill County*, 183 Or App 556, 53 P3d 462,
17 *petition for review dismissed as improvidently allowed* 336 Or 126, 81 P3d 709 (2003)
18 (reversing and remanding to LUBA with instructions to remand to the county for denial of the
19 application). Indeed, footnote 8 in the court’s opinion discusses findings the city “should be able to

¹ OAR 661-010-0071 provides in relevant part:

“(1) The Board shall reverse a land use decision when:

“* * * * *

“(c) The decision violates a provision of applicable law and is prohibited as a
matter of law.

“(2) The Board shall remand a land use decision for further proceedings when:

“* * * * *

“(d) The decision improperly construes the applicable law, but is not prohibited
as a matter of law.”

1 provide” with respect to one of LUBA’s bases for remand, which does not suggest that the court
2 felt that its disposition of Jaquas’ petition for review rendered moot or unnecessary further
3 proceedings on remand. Further, the challenged ordinances adopt a number of amendments and
4 other actions, some or all of which may survive notwithstanding the court’s conclusion that the
5 regional hospital complex facilitated by the ordinances is inconsistent with the Metro Plan. In short,
6 we cannot say that the challenged ordinances are “prohibited as a matter of law.” Accordingly,
7 remand is the appropriate disposition.

8 The challenged ordinances are remanded.