

1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

3
4 FRIENDS OF EUGENE and COALITION
5 FOR HEALTH OPTIONS IN
6 CENTRAL EUGENE-SPRINGFIELD,
7 *Petitioners,*

8
9 vs.

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11 CITY OF EUGENE,
12 *Respondent,*

13
14 and

15
16 PEACEHEALTH,
17 *Intervenor-Respondent.*

18
19 LUBA No. 2003-188

20
21 FINAL OPINION
22 AND ORDER

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24 Appeal on remand from Court of Appeals.

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26 Jannett Wilson, Eugene, represented petitioner.

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28 Emily N. Jerome, Eugene, represented respondent.

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30 Steven L. Pfeiffer, Portland, represented intervenor-respondent.

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32 HOLSTUN, Board Chair; BASSHAM, Board Member; DAVIES, Board Member,
33 participated in the decision.

34
35 REMANDED

02/25/2005

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

1 Holstun, Board Chair.

2 In our decision dated April 20, 2004, we affirmed the city’s decision amending its
3 zoning ordinance regarding the siting of hospitals. *Friends of Eugene v. City of Eugene*, 46
4 Or LUBA 721 (2004). Petitioners appealed our decision to the Court of Appeals, which
5 reversed and remanded our decision. 196 Or App 771, ___ P3d ___ (2004).

6 Although petitioner only asserted one assignment of error, we recognized, as did the
7 Court of Appeals, the petitioner was challenging the city’s amended ordinances in two
8 particulars: that the amended ordinances violated the Metro Plan regarding siting of hospitals
9 in residential zones and in commercial zones.¹ Petitioner prevailed on both of those
10 particulars at the Court of Appeals. In its brief with LUBA, petitioner requested that we
11 reverse the city’s decision because “it violates applicable law and is prohibited as a matter of
12 law.” Petition for Review 1.

13 Although the Court of Appeals recognized that the challenged decision did not apply
14 to a particular proposal or piece of property, the court held that there were no guarantees that
15 any future proposed hospitals would indeed be “auxiliary uses” in a residential zone. The
16 Court, however, recognized that some hospital proposals could qualify as an auxiliary use.
17 Therefore, the Court did not appear to hold that the amended ordinances were beyond repair.

18 “* * * we are unwilling now, to hold that a hospital, clinic, laboratory, or
19 similar use can *never* be an auxiliary use in a residential zone under the Metro
20 Plan. * * *

21 “Under the ordinance in this case, a proposed hospital and related
22 development would be an outright permitted use in certain residential zones.
23 In some circumstances, a proposed development may qualify as an auxiliary
24 use under the Metro Plan. In other circumstances, however, the proposed
25 development may not qualify. Because the parties have not cited to us
26 provisions in the ordinance that require a proposed development to be
27 consistent with the Metro Plan, we understand that the ordinance in this case

¹ We refer to petitioner in the singular because we dismissed Friends of Eugene from the case before LUBA because it had not established that it had standing. 46 Or LUBA at 722. The Court of Appeals did not disturb that ruling.

1 would allow both types of proposed development. In other words, the parties
2 have not identified anything in the ordinance that ensures that any proposed
3 hospital and related development will be consistent with the Metro Plan's
4 provision that such a proposed use be 'auxiliary' to a residential use.
5 Additionally, the parties have not identified anything in the ordinance that
6 ensures that any proposed development will be consistent with the provision
7 of the Metro Plan that limits the area available for auxiliary uses to
8 approximately 32 percent of residentially designated land. Because the Metro
9 Plan limits auxiliary uses to a certain percentage of the residentially
10 designated land, and because we hold * * * that an auxiliary use on
11 residentially designated land under the Metro Plan must be 'supplemental' or
12 must function 'in a subsidiary capacity' to the primary residential use, some
13 mechanism to ensure that a proposed development complies with the Metro
14 Plan is essential." 196 Or App at 777-78.²

15 As the Court of Appeals has left open the possibility that the city's ordinances could
16 be amended to address the problems identified by the court, reversal of the city's decision
17 would not be appropriate. Therefore, the city's decision is remanded pursuant to the Court of
18 Appeals' opinion.³

² The court reached a similar conclusion regarding the siting of hospitals in commercial zones.

³ The city filed a cost bill seeking to recover petitioners' deposit for costs. The city is no longer the prevailing party. Therefore, the city's cost bill is denied.