

1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

3
4 HOLGER T. SOMMER,
5 *Petitioner,*

6
7 vs.

8
9 CITY OF CAVE JUNCTION,
10 *Respondent.*

11
12 LUBA No. 2007-120

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14 FINAL OPINION
15 AND ORDER

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17 Appeal from City of Cave Junction.

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19 Holger T. Sommer, Merlin, filed the petition for review and argued on his own
20 behalf.

21
22 Patrick J. Kelly, Grants Pass, filed the response brief on behalf of respondent.

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24 RYAN, Board Member; HOLSTUN, Board Chair; BASSHAM, Board Member,
25 participated in the decision.

26
27 AFFIRMED

12/19/2007

28
29 You are entitled to judicial review of this Order. Judicial review is governed by the
30 provisions of ORS 197.850.

NATURE OF THE DECISION

Petitioner appeals decisions by the city rezoning two parcels of land.

FACTS

The subject properties are located along Highway 199 on the north side of the city of Cave Junction, and are 1.4 acres and 1.77 acres in size. The subject properties were annexed by the city in ordinances adopted on May 29, 2007 (Annexation Ordinances). The Annexation Ordinances were not appealed.

The property owner applied to change the zoning of the properties from Josephine County’s Rural Commercial zoning designation to the city’s Commercial zoning designation. On May 29, 2007 and June 11, 2007, the city council held hearings on the rezoning applications. Record 56-7. At the June 11, 2007 hearing, the city council voted to approve the applications, and on June 12, 2007, the city adopted two ordinances, Ordinance 504 and Ordinance 505, that rezoned the subject properties. Record 4-8. This appeal followed.

FIRST ASSIGNMENT OF ERROR

In his first assignment of error, petitioner argues that the city failed to notify Josephine County of the proposed zone changes as required by an intergovernmental agreement (IGA) between the city and the county, and that the city also failed to notify the Oregon Department of Land Conservation and Development (DLDC) of the proposed zone changes as required by ORS 197.610(1) and OAR 660-018-0020.¹ The city responds that it notified both the county and DLCD as required. Record 40, 60. At oral argument, petitioner conceded that the city properly notified the county and DLCD of the proposed zone change.

The first assignment of error is denied.

¹ The cited statute and rule require notice to DLCD of the proposed amendments to the zoning map at least 45 days prior to the initial evidentiary hearing.

1 **SECOND AND THIRD ASSIGNMENTS OF ERROR**

2 In his second assignment of error, petitioner argues that the city’s findings are
3 inadequate to demonstrate that the annexations of the subject properties comply with the city
4 of Cave Junction Comprehensive Plan Goal 14 (Urbanization), which requires in relevant
5 part that, before land is annexed to the city, the property owner must demonstrate that urban
6 services are available to property that is being annexed or that the owner will pay the cost of
7 service extensions. In his third assignment of error, petitioner argues that the city’s decision
8 to annex the subject properties violates section 1.E of the IGA, which provides in relevant
9 part that “[a]nnexations to the [city] shall be approved only upon findings that urban level
10 services can be provided.”

11 The city responds that petitioner’s second and third assignments of error are
12 challenges to the Annexation Ordinances and not to the decisions that petitioner appealed in
13 the present appeal. As noted above, the Annexation Ordinances were adopted by the city on
14 May 29, 2007. Record 56, 62-3. The decisions that are being appealed in this appeal are the
15 two ordinances, Ordinances 504 and 505, that rezoned the subject properties from Rural
16 Commercial to Commercial.

17 We agree with the city that petitioner’s second and third assignments of error
18 challenge rezoning decisions based on criteria that apply only to annexation decisions.
19 Therefore, petitioner’s arguments provide no basis for reversal or remand.

20 The second and third assignments of error are denied.

21 The city’s decisions are affirmed.