

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

SUSAN GARRETT CROWLEY,
Petitioner,

vs.

CITY OF HOOD RIVER,
Respondent.

LUBA No. 2019-054

FINAL OPINION
AND ORDER

Appeal on remand from the Court of Appeals.

Susan Garrett Crowley represented herself.

Daniel Kearns represented respondent.

ZAMUDIO, Board Member; RUDD, Board Chair, participated in the
decision.

RYAN, Board Member, did not participate in the decision.

REVERSED 03/05/2021

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

NATURE OF THE DECISION

Petitioner appeals a city council decision rezoning a portion of land currently occupied by a city park from Open Space/Public Facilities (OS/PF) to Urban High Density Residential (R-3).

BACKGROUND

The present appeal is on remand from the Court of Appeals. *Crowley v. City of Hood River*, 308 Or App 44, ___ P3d ___ (2020). In LUBA’s decision on review to the court, we affirmed the city’s decision to adopt comprehensive plan map and zoning map amendments for land currently occupied by a city park, Morrison Park, to allow for high-density residential development. *Crowley v. City of Hood River*, ___ Or LUBA ___ (LUBA No 2019-054, Jul 9, 2020). We described the background and procedural history in that opinion. In affirming the city’s decision, we deferred to the city’s interpretation of Hood River Comprehensive Plan (HRCP) Goal 8, Policy 1, under ORS 197.829(1) and *Siporen v. City of Medford*, 349 Or 247, 243 P3d 776 (2010). HRCP Goal 8, Policy 1, provides that “[e]xisting park sites will be protected from incompatible uses and future expansion alternatives at some sites will be developed.”

FIRST ASSIGNMENT OF ERROR

In the first assignment of error, first subassignment, petitioner argued that the city’s interpretation is inconsistent with the text, purpose, and underlying policy of HRCP Goal 8, Policy 1, and thus not affirmable even under the

1 deferential standard of review that LUBA must apply under ORS 197.829(1) and
2 *Siporen*. The Court of Appeals agreed with petitioner. Accordingly, the first
3 assignment of error, first subassignment, is sustained.

4 The Court of Appeals concluded that its “decision obviates the need” for
5 it “to address other issues” that petitioner raised to the court. *Crowley*, 308 Or
6 App at 45. In the first assignment of error, second subassignment, petitioner
7 argued that the city cannot rezone the property from OS/PF to R-3 while it is
8 listed on the city’s Goal 8 inventory, found in the Background Report. Petitioner
9 argues that inventoried parks must remain zoned OS/PF unless and until the parks
10 inventory is revised through a comprehensive plan text amendment. We agreed
11 with the city that the inventory issue could have been but was not raised before
12 LUBA during a prior appeal in the same proceeding. *Beck v. City of Tillamook*,
13 313 Or 148, 150, 831 P2d 678 (1992); *Green v. Douglas County*, 63 Or LUBA
14 200 (2011). Accordingly, we did not reach or decide the first assignment of error,
15 second subassignment. The court’s opinion does not require us to revisit that
16 disposition.

17 The first assignment of error is sustained, in part.

18 **SECOND ASSIGNMENT OF ERROR**

19 In the second assignment of error, petitioner argues that the city erred by
20 finding a conflict between HRCP Goal 10 (Housing) and HRCP Goal 8
21 (Recreational Needs) and balancing the need for affordable housing against the
22 HRCP Goal 8 policy of protecting existing public park sites from incompatible

1 uses. We concluded that the issues raised in petitioner's second assignment of
2 error are either issues that LUBA had previously, conclusively decided adversely
3 to petitioner or issues that could have been but were not raised before LUBA
4 during a prior appeal in the same proceeding. *Beck*, 313 Or at 150; *Green*, 63 Or
5 LUBA 200. Accordingly, we did not reach or decide the second assignment of
6 error. The court's opinion does not require us to revisit that disposition.

7 **DISPOSITION**

8 As we understand the court's opinion, the court concluded that HRCP Goal
9 8, Policy 1, as a matter of law prohibits the city from rezoning a portion of land
10 currently occupied by a city park from OS/PF to R-3 because allowing the park
11 to be developed for high-density residential development fails to protect the park
12 from incompatible uses. Thus, the appropriate disposition on remand to LUBA is
13 reversal. *See* OAR 661-010-0071(1)(c) (LUBA will reverse a land use decision
14 when "[t]he decision violates a provision of applicable law and is prohibited as a
15 matter of law").

16 The city's decision is reversed.