

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

LAUREL HILL VALLEY CITIZENS,
Petitioner,

vs.

CITY OF EUGENE,
Respondent,

and

ENVIRON-METAL PROPERTIES, LLC,
Intervenor-Respondent.

LUBA No. 2021-067

FINAL OPINION
AND ORDER

Appeal from City of Eugene.

Sean Malone filed the petition for review and reply briefs and argued on behalf of petitioner.

Lauren Sommers filed a response brief and argued on behalf of respondent.

Bill Kloos filed a response brief and argued on behalf of intervenor-respondent.

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

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

AFFIRMED

10/26/2021

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

NATURE OF THE DECISION

Petitioner appeals a planning commission decision approving with conditions a tentative plan for a planned unit development (PUD), standards review, traffic impact analysis, and adjustment review for a clustered residential development.

MOTION TO INTERVENE

Environ-Metal Properties, LLC (intervenor), the applicant below, moves to intervene on the side of the city. The motion is unopposed and allowed.

FACTS

The subject property is 98.31 acres, of which 74.76 acres are zoned Low-Density Residential with Water Resources Conservation and Planned Unit Development overlays and 23.55 acres are zoned Park, Recreation, and Open Space. The property to the east is outside the urban growth boundary, is designated forest land, and has been acquired by the city for use as part of a park system. The property immediately to the west is city-owned parkland and right-of-way. The property further west has residential development.

Intervenor's proposal, known as the Laurel Ridge PUD, is a clustered residential development consisting of 372 multi-family units, two detached single-family units, public streets, associated infrastructure, wetland preservation, and conservation areas. The dispute in this appeal centers on the approved street system that will serve the PUD, which we describe further below.

1 A hearings official held a public hearing and issued a decision
2 conditionally approving the application. Petitioner appealed that decision to the
3 planning commission, which, after a public hearing, issued a final order affirming
4 the hearings official's decision. This appeal followed.

5 **ASSIGNMENT OF ERROR**

6 Eugene Code (EC) 9.8320(2) requires the city to find that "[t]he PUD is
7 consistent with applicable adopted refinement plan policies." The subject
8 property is located within the boundaries of an adopted refinement plan, the
9 Laurel Hill Plan, which applies to an area in the southeastern hills of Eugene. The
10 plan area is bounded by a ridgeline that runs along Hendricks Park at the west.
11 Interstate Highway 5 (I-5) lies generally north and east of the plan area. The
12 southern boundary is a ridgeline that runs from 30th Avenue in the southwestern
13 corner of the plan area to I-5 in the east. Record 621. The Glenwood Boulevard
14 interchange with I-5 is located in the northern part of the plan area. As we
15 understand it, Glenwood Boulevard passes over I-5 and becomes what at a
16 previous time was referred to as the Glenwood Collector, which becomes
17 Brackenfern Road as it enters the plan area.¹

18 The Laurel Hill Valley neighborhood is in the northwestern portion of the
19 plan area. Laurel Hill Drive runs generally north-south through the middle of the

¹ In the challenged decision, the city uses the names Glenwood Collector and Brackenfern Road interchangeably. We do the same in this opinion.

1 plan area. The East Laurel Hill area is that area east of Laurel Hill Drive and
2 south of I-5, extending southeasterly to the ridgeline. Record 600, 621. As we
3 understand it, the subject property lies within both the Laurel Hill Valley and the
4 East Laurel Hill areas. Record 81.

5 Under a sole assignment of error, petitioner argues that the city's decision
6 violates a policy in the transportation element of the East Laurel Hill area section
7 of the Laurel Hill Plan, which we will refer to in this decision as the Glenwood
8 Collector Policy.² It provides:

9 "Introduction

10 "The commercial/residential development node area in East Laurel
11 Hill will have the Glenwood collector as its primary access. The
12 extension of the proposed Glenwood collector shall be in an
13 alignment and located to extend southward from the terminus of the
14 Glenwood Boulevard approach in a southeasterly direction. * * * It
15 will take into consideration the safest and most efficient intersection
16 with Laurel Hill Drive, and be designed sensitive to topography,
17 vegetation, and safe access.

18 "Policy

19 "The Glenwood collector shall be designed to avoid breaking up
20 large and existing properties, improve the intersection alignment of
21 the Laurel Hill-Glenwood overpass, and maintain safe sight
22 distance. It shall serve as the primary access to future residential
23 development south of the floating node, but terminate and diffuse
24 into other roads serving the area. No connection to 30th Avenue

² The same transportation policy and the development of the Glenwood Collector and Brackenfern Road were at issue in *Dep't of Transportation v. City of Eugene*, 38 Or LUBA 814, 832-35 (2000).

1 shall be made.” Record 619.

2 As approved, the Laurel Ridge PUD will be accessible via Brackenfern
3 Road on the north boundary of the subject property.³ The PUD includes a local
4 residential street that will connect Brackenfern Road to 30th Avenue on the
5 southwest boundary of the subject property. Record 83 (site plan map).

6 Petitioner argues that the last sentence of the Glenwood Collector Policy
7 categorically prohibits any street connection between the Glenwood Collector
8 and 30th Avenue. Petitioner argues that the city’s decision violates the Glenwood
9 Collector Policy because it allows the development of streets that will connect
10 the Glenwood Collector to 30th Avenue.

11 The hearings official and the planning commission rejected that argument
12 and interpreted the Glenwood Collector Policy to prohibit collector, arterial, or
13 limited access road connections between the Glenwood Collector and 30th
14 Avenue, but not to prohibit indirect connection through local streets. Thus, the
15 city determined that the Laurel Ridge PUD proposal, which includes local streets
16 that connect to and between the Glenwood Collector and 30th Avenue, is
17 consistent with the Glenwood Collector Policy.

18 As mentioned above, EC 9.8320(2) requires that PUDs be consistent with
19 applicable refinement plan policies. However, intervenor points out that the

³ The hearings official’s decision explains that Brackenfern Road will be extended to the subject property as part of the approved East Ridge Village PUD north of the subject property. Record 41.

1 Laurel Hill Plan defines its “[p]olicies” as being “adopted by the City Council as
2 *guidance* for decision-making related to the plan area.” Record 600 (emphasis
3 added). Accordingly, intervenor argues that the Glenwood Collector Policy is not
4 a mandatory approval criterion and, thus, petitioner’s argument that the city’s
5 decision violates that policy provides no basis for reversal or remand.

6 We have previously explained that the city may be required to consider
7 refinement plan policies, even though they are not independently applicable,
8 mandatory approval criteria, and that “the exact nature and extent of the role
9 played by any [refinement plan] policy depends, presumably, on the actual text
10 and context of the particular policy.” *Bothman v. City of Eugene*, 51 Or LUBA
11 426, 439 (2006); *see also Friends of the Hood River Waterfront v. City of Hood*
12 *River*, 67 Or LUBA 179, 187 (2013) (citing *Save Our Skyline v. City of Bend*, 48
13 Or LUBA 192, 209-10 (2004)). We proceed to analyze the text and context of the
14 Glenwood Collector Policy and ultimately conclude that the city adequately
15 considered and correctly interpreted that policy.

16 We review the planning commission’s interpretation of the Glenwood
17 Collector Policy to determine whether the planning commission “[i]mproperly
18 construed the applicable law.” ORS 197.835(9)(a)(D). In construing the law, we
19 will consider the text and context of the law at issue in order to determine the
20 intent of the enacting body. *PGE v. Bureau of Labor and Industries*, 317 Or 606,
21 610-11, 859 P2d 1143 (1993); *State v. Gaines*, 346 Or 160, 171, 206 P3d 1042
22 (2009).

1 While the last sentence of the Glenwood Collector Policy, read in isolation,
2 could be interpreted as petitioner suggests—to prohibit *any* connection between
3 the Glenwood Collector and 30th Avenue—that sentence must be read in the
4 context of the overall policy. That policy provides that the Glenwood Collector
5 will serve as the primary access to future residential development but also that it
6 will “terminate and diffuse into other roads serving the area.” The term “diffuse”
7 is not specifically defined for purposes of the Glenwood Collector Policy. The
8 plain meaning and dictionary definition of “diffuse,” used as a verb in the policy,
9 means “to spread out” and “to break up and distribute.” *Webster’s Third New*
10 *Int’l Dictionary* 630 (unabridged ed 2002). In that context, the city correctly
11 interpreted the last sentence of the policy, that “[n]o connection to 30th Avenue
12 shall be made,” to mean that future development should not result in a direct (*i.e.*,
13 not diffuse) connection from the Glenwood Collector to 30th Avenue. As
14 approved in the Laurel Ridge PUD, the Glenwood Collector will terminate (*i.e.*,
15 end) and diffuse into (*i.e.*, connect to) other, lower functional class roads serving
16 future residential areas.

17 Two policies in the transportation element of the Laurel Hill Valley
18 neighborhood section of the Laurel Hill Plan provide useful context and support
19 the city’s interpretation of the Glenwood Collector Policy:

- 20 “1. No arterial or limited access road will be allowed within the
21 boundaries of the Valley which would connect the Glenwood
22 interchange on Interstate 5 to 30th Avenue or Spring
23 Boulevard (see goal #1).

1 “2. No arterial or limited access road will be allowed within the
2 Valley except as necessary to serve Valley residents, as it
3 would physically divide and thus destroy the neighborhood.”
4 Record 609.

5 Petitioner does not challenge the city’s classification of the relevant streets.

6 The parties do not direct us to any applicable definition of “collector, “arterial,”
7 “limited access road,” or “local street.” The city’s street functional classification
8 is established by the City of Eugene Transportation System Plan (ETSP), which
9 is a land use plan required by Statewide Planning Goal 12 (Transportation). Goal
10 12 is implemented by OAR chapter 660, division 12. As provided in those rules,
11 “ “[l]ocal streets’ means streets that are functionally classified as local streets to
12 serve primarily local access to property and circulation within neighborhoods or
13 specific areas. Local streets do not include streets functionally classified as
14 collector or arterials.” OAR 660-012-0005(9). OAR 660-012-0005 does not
15 define “collector,” “arterial,” or “limited access road.” The city uses those terms
16 somewhat interchangeably in the challenged decision.

17 The ETSP describes different functional classifications for “major
18 arterials,” “minor arterials,” and “collector streets,” and it breaks “collector
19 streets” into the two subcategories of “major collector” and “neighborhood
20 collector.” The ETSP Street Classification Map shows Brackenfern as a “major
21 collector” between the I-5 interchange and Laurel Hill Drive. Brackenfern then
22 becomes a neighbor collector. We understand the city to have interpreted the
23 Glenwood Collector Policy as (1) prohibiting extending the Glenwood Collector,

1 as a collector street, to 30th Avenue and (2) prohibiting any arterial or limited
2 access road running through the plan area between I-5 and 30th Avenue.

3 As explained by the city's findings quoted below, the tentative plan for the
4 Laurel Ridge PUD does not include any arterial or limited access roads. Instead,
5 the tentative plan provides for local residential streets that will diffuse traffic from
6 the Glenwood Collector. We quote with approval the city's findings here:

7 "As described in the original 1972 [Laurel Hill] Plan, the drafters
8 sought to prohibit any *arterial or limited access road* through the
9 Laurel Hill valley, and therefore specifically prohibited any arterial
10 or limited access road that would '*connect the Glenwood*
11 *interchange on Interstate 5 to 30th Avenue or Spring Boulevard.*'
12 Essentially, they didn't want Glenwood—or any arterial or limited
13 access road—creating a 'short-cut' that divided the valley.

14 "When the [Laurel Hill] Plan was updated in 1982 the drafters
15 recognized that the Glenwood [Collector] was the 'primary access'
16 to the Laurel Hill neighborhood south of the Laurel Hill-Glenwood
17 overpass, but reiterated the intent of Policies 1 and 2 by clarifying
18 that, in as much as it would be the 'primary access,' that access
19 would not create a 'short cut' through the valley to connect to 30th
20 Avenue. Instead, the 1982 policy required that it was to '*terminate*
21 *and diffuse into other roads serving the area.*' Read in the context
22 of the rest of the policy—and the rest of the Laurel Hill Plan—the
23 final sentence of that 1982 policy '*No connection to 30th Avenue*
24 *shall be made*' refers to the Glenwood [Collector] —and reinforces
25 the 1972 policies that prohibit that Glenwood Collector itself from
26 connecting to 30th Avenue.

27 "As a whole, the 1982 policy is directed only at the Glenwood
28 [Collector] and prohibits that [collector] from becoming a major
29 thruway through the Laurel Hill Valley to the arterial at 30th
30 Avenue. Consistent with the 1972 policies, the 1982 policy
31 reinforced that even as it was extended to serve as the primary access

1 to the Laurel Hill area, the Glenwood [Collector] would terminate
2 and not connect to 30th Avenue. That policy, however, does not,
3 prohibit all vehicular access *between* the termination of the
4 Glenwood [Collector] and 30th Avenue. Instead, by its terms, the
5 1982 policy requires that the Glenwood Collector ‘terminate and
6 diffuse’ to other streets. Those other streets that it ‘diffuses’ to are
7 not addressed in the policy.—The policy neither speaks to nor
8 prohibits their connections to 30th Avenue.

9 “* * * * *

10 “[A]s it is proposed and designed, the proposed development fully
11 achieves and implements the 1982 policy: the design and function
12 of the Glenwood Collector (now Brackenfern) terminates as a
13 collector at the southern boundary of the approved development
14 north of the subject property and becomes a local street as it enters
15 the subject property. In accordance with the design requirements of
16 the city’s local neighborhood street classification, it will be a local
17 street from the property’s northern boundary until it fully terminates
18 and ‘diffuses’ at Road A. Road A is also proposed to be a local street
19 that includes a circuitous and relatively narrow design to provide
20 access to the planned residential development and provides the
21 necessary street connectivity for both residents and emergency
22 vehicles between Frontage Road (which ultimately connects to
23 Spring Street and then 30th Avenue) at its west end and the terminus
24 of Brackenfern Road at its east end.” Record 38-40 (emphases in
25 original).

26 The planning commission adopted the hearings official’s reasoning and
27 affirmed the hearings official’s decision. For the reasons explained above, the
28 planning commission and hearings official’s interpretation of the Glenwood
29 Collector Policy is correct and consistent with the text and context of that policy.

30 The assignment of error is denied.

31 The city’s decision is affirmed.