

1 REYNOLDS, Chief Referee.

2 INTRODUCTION

3 Petitioners appeal the city's rezoning of their property
4 from C-2/SR (Community Commercial District with Site Review) to
5 R-2 (Limited Multiple Family Residential). The rezoning was
6 initiated by the city and approved on January 26, 1981.

7 Petitioners contend the city erred in two respects. First,
8 petitioners argue the city's decision is contrary to the "Metro
9 Plan," adopted by the City of Eugene in 1980, which petitioners
10 contend designates their property as industrial. Petitioners'
11 second assignment of error is that the city violated Goal 1 in
12 considering a staff factual presentation after "closing" the
13 public hearing and without giving petitioners an opportunity to
14 respond.

15 FACTS

16 The City of Eugene, together with Springfield and Lane
17 County, adopted the 1990 Plan in 1972. In 1978, Eugene adopted
18 an update, or "refinement" of that plan, referred to as the
19 "Whiteaker Refinement Plan." The Whitaker Plan states:

20 "The Whiteaker Refinement Plan is a refinement of
21 the 1990 General Plan for the Eugene-Springfield
22 Metropolitan Area. Along with the city-wide 1974
23 Community Goals and Policies, the 1990 General Plan
24 provides the context for this refinement plan." (Page
25 1, Whiteaker Refinement Plan).

26 The Whiteaker Refinement Plan designated petitioners' property
for residential use.

In 1980, Eugene adopted the "Metro Plan" which, in its

1 preface, states that it "is the first update of the
2 Eugene-Springfield Area 1990 General Plan."

3 The relationship generally of refinement plans, such as the
4 Whiteaker Refinement Plan, to the Metro Plan, is discussed at
5 pages I-4 and I-5 of the Metro Plan:

6 "While the Metropolitan Area General Plan is the
7 basic guiding land use policy document, it is not the
8 only such document. As indicated in the Purpose
9 Section above (Number 8), the General Plan is a
framework plan and it is important that it be
augmented by more detailed refinement plans, programs
and policies.***

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11 "Refinement plans and policies adopted subsequent
12 to the 1990 General Plan remain in effect where they
13 do not conflict with the updated Metropolitan General
Plan. In cases of conflict, the Metropolitan Plan
will prevail.***"

14 In "The Plan Diagram" section of the Metro Plan under "Land
15 Use Designations" there is a discussion specifically as to the
16 relationship of the Metro Plan Diagram to local plans and
17 policies:

18 "Land use designations shown on the Plan Diagram
19 are depicted at a Metropolitan scale. Used with the
20 text and local plans and policies, they provide
21 direction for decisions pertaining to appropriate
22 reuse (redevelopment), urbanization of vacant parcels,
23 and additional use of underdeveloped parcels. They
are not intended to invalidate local zoning or land
uses which are not sufficiently intensive or large
enough to be included on the diagram. They are based
on local plans and policies."

24 The Metro Plan Diagram is drawn to a scale of 1 inch equals
25 8,000 feet. A 20 mile wide area is thus represented on a map
26 14 inches wide.¹ The location of varying uses within the

1 area covered by the Metro Plan is depicted on the diagram by
2 the use of contrasting colors. On the face of the plan diagram
3 is the following statement:

4 "The Plan Diagram is a graphic depiction of: (1)
5 the broad allocation of projected land use needs in
6 the Metropolitan area, and (2) goals, objectives, and
7 recommended policies embodied in the text of the
8 plan. One cannot determine the exact designation of a
9 particular parcel of land without consulting with the
10 appropriate local jurisdiction. Local jurisdictions
11 make more specific interpretations of the general
12 diagram through refinement plans and zoning. The
13 relationship of the diagram to text, goals,
14 objectives, and policies and to refinement plans and
15 zoning is explained on page I-4. Large scale,
16 detailed maps of the site specific of the urban growth
17 boundary are on file with the Lane Counsel of
18 Governments in the planning offices of Springfield,
19 Lane County and Eugene."(emphasis added)

20 Petitioners' property which is the subject of this dispute
21 is approximately 3/4 of an acre in size. It is 236 feet long
22 by 132 feet wide. The parcel is part of a larger ownership of
23 petitioners which is bounded by Polk Street on the west and
24 Railroad Avenue on the south. Polk Street runs generally in a
25 north-south direction. Railroad Avenue borders the Southern
26 Pacific Railroad track and runs in a generally
northwest-southeast direction. From the map attached to
petitioners' brief, it appears that the southwest corner of
petitioners' property, which is the subject of this dispute, is
approximately 80 feet due north of Railroad Avenue and 80 feet
due east of the intersection of Polk Street and Railroad
Avenue. The northwest corner of petitioners' property is
approximately 212 feet due north of Railroad Avenue and 80 feet

1 due east of Polk Street. If a line were drawn parallel to
2 Railroad Avenue approximately 300 feet from Railroad Avenue,
3 the parcel in dispute in this case would lie between that line
4 and Railroad Avenue. None of the subject parcel, however, is
5 closer to Railroad Avenue than approximately 75 feet.

6 The significance of the foregoing is in attempting to
7 determine what the land use designation for petitioners'
8 property is based solely upon on the Metro Plan Diagram. There
9 appears on the Metro Plan Diagram bordering Railroad Avenue in
10 the area of petitioners' property a shaded area approximately
11 1/16 inch wide. Using the Plan Diagram scale of 1 inch equals
12 8,000 feet, 1/16 inch would equal 500 feet. Thus, based solely
13 upon the Metro Plan Diagram, petitioners' property being wholly
14 within 300 feet of Railroad Avenue, would appear to be included
15 within the shaded area adjacent to Railroad Avenue. This
16 shaded area is designated in the Metro Plan Diagram as
17 industrial.

18 The Whiteaker Refinement Plan along Railroad Avenue
19 designates much of the property within 500 feet of Railroad
20 Avenue as industrial or as allowing an industrial use. The
21 exception, however, is for an area bounded on the west by Polk
22 Street and the east by Grand Street. This area, approximately
23 1 block wide and 2 blocks long, cuts into the 500 foot
24 industrial strip and is designated medium density residential.
25 Petitioners' property is included within this area.

26 In contrast to the Metro Plan Diagram, the Whiteaker

1 Refinement Plan Land Use Diagram is at a scale of 1 inch equals
2 1,000 feet. It shows, for example, Whiteaker School which is
3 located across Grand Street from petitioners' property, whereas
4 the Metro Plan Diagram has no designation identifying Whiteaker
5 School.

6 The rezoning of petitioners' property was initiated by the
7 City of Eugene. The request was to change the zoning from
8 commercial to R-2 (Limited Multiple-Family Residential).
9 Petitioners argued before the city that the zoning requested by
10 the city for petitioners' property was in conflict with the
11 Metro Plan Diagram which designated their property industrial.
12 In approving the zone change, the city adopted as its own the
13 specific affirmative findings contained in the planning
14 department staff notes of November 4, 1980, and the planning
15 commission minutes of November 4, 1980. Based upon those staff
16 notes and the planning commission minutes, the City of Eugene
17 concluded that the "zone change classification is in
18 conformance with the General Plan."

19 The staff notes recommended R-2 zoning as the most
20 appropriate zoning district for the area. The recommendation
21 was supported by the following specific findings and
22 considerations:

23 "1. The R-2 zoning designation appears to be
24 appropriate given the refinement plan designation of
25 medium density residential development at densities of
26 10 - 20 units per acre.

26 "2. The current C-2/SR and M-2 zoning
designation is inappropriate because it allows

1 commercial and industrial development in an area that
2 is developed residential or has the potential for
3 residential development and is designated for
4 residential development.

5 "3. The proposed R-2 zoning is flexible and will
6 recognize and permit single family, duplex, and
7 multiple family development similar to the existing
8 residential mix in the area.

9 "4. R-2 will enable development of the larger
10 vacant lot with development up to 16 units per acre.

11 "5. R-2 will encourage retention of family
12 oriented housing close to Whiteaker School and
13 maintainence of the existing neighborhood character."

14 Under a discussion of "public need," the staff notes stated as
15 follows:

16 "Finally, the proposed zone change is needed to
17 implement the Whiteaker Refinement Plan. The medium
18 density designation in the plan was recommended in
19 response to existing development and supports adopted
20 city goals and policies, especially those of compact
21 urban growth form. The proposed R-2 zoning district
22 achieves the balance of these goals, is consistent
23 with the medium density plan designation, and provides
24 for a compatible mix and diversity of housing stock
25 reflective of the Sladden Area of the Whiteaker
26 community."

Petitioners, as reflected in the minutes of the Eugene
Planning Commission, appeared before the planning commission
through their attorney and objected to the proposed designation
of their parcel to residential use. Petitioners contended
there had been no mention of the Metro Plan in the staff notes
and said that the area within which their parcel lay was
designated for industrial use on the Metro Plan Diagram.
Petitioners acknowledged that while it might be argued the
Metro Plan Diagram "is not site specific and the light to

1 medium industrial designation along Railroad Avenue was not
2 intended to be deep," petitioners "felt the designations should
3 be deep enough to be functional" and that "all of the property
4 should be available for light to medium industrial use if it is
5 to be functional." Petitioners argued that the city's action
6 would leave industrial zoning on the remainder of their
7 property south and west of the subject parcel, and that the
8 rezoning would probably result in either non-owner-occupied
9 housing or in housing units not intended for families with
10 children. This would be contrary to the housing policies
11 contained in the Whiteaker Refinement Plan, according to
12 petitioners, which encouraged owner-occupied dwellings for
13 families in this area.

14 The minutes of the planning commission reflect that the
15 following took place after petitioners presentation:

16 "Ms. Smernoff said the Whiteaker Plan is in
17 compliance with the Metro Plan because the Whiteaker
18 Plan was incorporated into the Metro Plan. She
19 reviewed the history of zone changes for tax lot 6100
20 [the subject parcel] and said the commission in 1973
21 had reiterated its desire not to expand the industrial
22 zoning because of a potential impact on the
23 residential area to the north. She said the Whiteaker
24 Community Council felt residential zoning on tax lot
25 6100 would provide an appropriate buffer for the
26 residential properties to the north. A number of
children reside in the apartment dwellings to the
north. Tax lots 3700, 3800, 4001, and 6100 are across
the street from the Whiteaker Community School and
their proximity to the school was one reason for
rezoning them to a residential designation. She said
the neighborhood organization and the refinement plan
support more housing in the neighborhood."

The minutes reflect that additional concern was expressed by

1 planning commission members about implementing the Whiteaker
2 Refinement Plan. However, no further discussion appears in the
3 minutes of the planning commission's meeting concerning the
4 designation of this property on the Metro Plan Land Use Diagram.

5 OPINION

6 Petitioners' first assignment of error is that the city
7 council erred in designating petitioners' property for
8 residential use because this designation conflicts with the
9 Metro Plan Land Use Diagram's designation of the property for
10 industrial use. We conclude that the city did not act in
11 violation of the Metro Plan in designating petitioners'
12 property for residential use.

13 The relationship of refinement plans to the Metro Plan is
14 stated in the Metro Plan and pertinent portions have been
15 quoted previously in this opinion. We believe it was the
16 intent of the Metro Plan, particularly with respect to
17 interpreting the Metro Plan Land Use Diagram, that the
18 refinement plan land use diagrams be used in attempting to
19 ascertain on a site specific basis the intended use of a
20 particular parcel of property. It may not always be true that
21 the specific designation in a refinement plan land use diagram
22 will control over the more general land use designation
23 contained in the Metro Plan Diagram. Where there is a clear
24 conflict between the two diagrams, the Metro Plan Diagram must
25 control. We do not believe, however, that anything approaching
26 a clear conflict exists in this case. The only fact which

1 suggests there may be a conflict in this case between the Metro
2 Plan and the Whiteaker Refinement Plan is the existence of a
3 1/16 inch wide shaded area adjacent to Railroad Avenue on the
4 Metro Plan Land Use Diagram. Given the statements contained in
5 the Metro Plan that the plan is a graphic depiction of the
6 broad allocation of projected land use needs in the
7 Metropolitan area, that one can not determine the exact
8 designation of a particular parcel of land without consulting
9 with the appropriate local jurisdiction; that more specific
10 interpretations of the general plan diagram are made through
11 refinement plans; that the land use designations on the Metro
12 Plan Diagram are based on local plans and policies, and that
13 the Whiteaker Plan designates most of the area included within
14 the shaded area on the Metro Plan, Diagram as industrial, we are
15 unable to conclude that the City of Eugene erred in its
16 position that there was no conflict between the Metro Plan and
17 the Whiteaker Plan. There is industrial land located along
18 Railroad Avenue designated in both the Whiteaker Refinement
19 Plan and the Metro Plan. The only question is the depth of
20 that industrial land along the length of Railroad Avenue. To
21 say that the Metro Plan Diagram intended that depth to be 500
22 feet or 300 feet or any particular depth at any particular
23 point is simply not required given the statements in the Metro
24 Plan concerning its reliance upon and reference to more
25 specific refinement plans. Petitioners' first assignment of
26 error is, therefore, denied.

1 Petitioners' second assignment of error asserts that Eugene
2 violated Goal 1 because the city council, after closing the
3 public hearing, allowed the planning department staff to
4 present information to the council not mentioned during its
5 oral address to the council. Petitioners do not assert that
6 the staff's presentation concerned matters that were not in the
7 record. Petitioners do contend, however, that because they
8 were denied an opportunity to respond and to refute the remarks
9 made by the staff, petitioners contend they were denied the
10 opportunity "to be involved in all phases of the planning
11 process" in violation of Goal 1.

12 The question raised by petitioners is not whether Goal 1
13 requires a party in a quasi-judicial proceeding to be entitled
14 to rebut evidence presented by an opposite party to the
15 proceeding. See: Fasano v Board of County Commissions,
16 Washington County, 264 Or 574, 507 Pd 23 (1975). Rather,
17 petitioners argue that a party to a quasi-judicial proceeding,
18 after making a presentation, is entitled to rebut oral
19 statements made by a planning staff which are based on evidence
20 which is already in the record. While it is common practice on
21 the appeal of a decision to a higher review body to allow the
22 petitioner an opportunity to rebut the arguments raised by the
23 respondent, there is no legal requirement of which we are aware
24 that the petitioner be granted the opportunity for rebuttal.
25 We do not see any such requirement imposed by Goal 1. The
26 citizen involvement program mandated by Goal 1 must contain

1 certain elements: (1) citizen involvement, (2) communication,
2 (3) citizen influence, (4) technical information, (5) feedback
3 mechanisms and (6) financial support. The "communication"
4 element requires that "mechanisms shall be established which
5 provide for effective communication between citizens and
6 elected and appointed officials." The "citizen influence"
7 element provides that "citizens shall have the opportunity to
8 be involved in all phases of the planning process." The
9 "feedback mechanism" element requires, essentially, that
10 citizens who have participated in the citizen involvement
11 program receive a response from policy makers. None of these
12 elements speaks directly or indirectly to allowing a petitioner
13 or proponent of a land use decision after having presented oral
14 argument to rebut oral argument based upon matters already in
15 the record and presented by an opposite party to the proceeding.

16 We also note that petitioners were present at the city
17 council hearing at the time the staff made its presentation.
18 Nothing in the minutes indicates that petitioners requested the
19 opportunity to rebut the oral presentation of the staff. Not
20 only did petitioners fail to raise the alleged procedural error
21 in order to allow the city council to alter its procedure,
22 petitioners have not indicated in their petition how they have
23 been harmed by the staff's presentation. See: Dobaj v City of
24 Beaverton, 1 Or LUBA ____ (1980); Thompson v Metropolitan
25 Service District, 2 Or LUBA 56 (1980).²

26 For the foregoing reasons, therefore, we affirm City of
Page Eugene Ordinance No. 18752.

FOOTNOTE

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We were advised by the city at oral argument that this map is the plan diagram and is not a condensed version of a much larger map which is the official plan map diagram. In other words, the plan diagram which appears in the comprehensive plan text is the official plan map diagram.

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***We further believe that any failure to comply with the mailed notice requirement in the county charter is not sufficient, in the context of Goal 1, to give rise to a violation of sufficient magnitude to warrant invalidation of the ordinance. This is particularly so since the record does not reflect that anyone was harmed in the least as a result of not mailing individual notice of the proposed adoption of Ordinance 80-95. Cf Oregon Laws 1979, chapter 772, section 5(4)(a)(B). Thompson v Metropolitan Service District, supra, 2 Or LUBA 56 at 67.



STATE OF OREGON

INTEROFFICE MEMO

TO: MEMBERS OF THE LAND CONSERVATION AND DEVELOPMENT COMMISSION DATE: 6/09/81

FROM: THE LAND USE BOARD OF APPEALS

SUBJECT: CARLSON v EUGENE
LUBA No. 81-025

Enclosed for your review is the Board's proposed opinion and final order in the above captioned appeal.

Petitioners appeal the city's rezoning of their property from a commercial designation to a residential designation. The only aspect of the appeal of concern to the Commission is an asserted procedural error concerning Goal 1. Petitioners contend Eugene violated Goal 1 because the city council, after closing the public hearing, allowed the planning department staff to present information to the council not mentioned during its oral address to the council. Petitioners contend they were denied an opportunity to respond and to refute the remarks made by the staff and that, as a result, they were denied the opportunity "to be involved in all phases of the planning process" in violation of Goal 1.

The Board found no Goal 1 violation in this case. The statements made by staff were in the nature of oral argument based on evidence already in the record. While it is common practice to allow a petitioner in an appeal the opportunity for rebuttal, there is no legal requirement in Goal 1 that rebuttal be granted to petitioner.

For purposes of review of the proposed opinion, the Commission need only be concerned with pages 11 and 12 of the proposed opinion.

The Board is of the opinion that oral argument will not assist the commission in its understanding or review of the statewide goal issues involved in this appeal. Therefore, the Board recommends that oral argument before the commission not be allowed.



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