

JUL 10 1 03 PM '81

BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

CITY OF GRESHAM,

Petitioner,

vs.

CITY OF FAIRVIEW, and  
TEKTRONIX, Inc.,

Respondents.

LUBA No. 80-172

FINAL OPINION  
AND ORDER

Appeal from the City of Fairview.

Thomas Sponsler and Matthew Baines, Gresham, filed the Petition for Review and argued the cause on behalf of petitioner.

Stephen T. Janik and Thomas R. Page, Portland, filed the brief and argued the cause on behalf of Repondent Tektronix, Inc. With them on the brief was William Brunner on behalf of Respondent City of Fairview.

REYNOLDS, Chief Referee; COX, Referee; BAGG, Referee; participated in this decision.

REVERSED

7/10/81

You are entitled to judicial review of this Order. Judicial review is governed by the provisions of Oregon Laws 1979, ch 772, sec 6(a).

1 REYNOLDS, Chief Referee.

2 INTRODUCTION

3 Petitioner City of Gresham appeals Fairview Ordinance No.  
4 6-1980 amending the City of Fairview comprehensive plan and  
5 Resolution No. \_\_\_\_, 1980, amending Fairview's zoning map. The  
6 effect of these amendments is to change the designation on a  
7 116 acre site from Low Density Residential to General  
8 Industrial in the comprehensive plan and from R-7.5  
9 Single-Family Residential to M-2 General Manufacturing on the  
10 zoning map.

11 Petitioner challenges Fairview's ordinance and resolution  
12 on the basis of alleged violations of the acknowledged Fairview  
13 comprehensive plan as well as on the basis of alleged  
14 violations of the statewide planning goals. Petitioner's  
15 comprehensive plan challenge consists mainly of three  
16 arguments: (1) that the City of Fairview failed to completely  
17 reanalyze its comprehensive plan in light of the magnitude of  
18 the change effected by the ordinance and resolution; (2) that  
19 the City of Fairview failed to demonstrate that there was a  
20 "public need" for the change; and (3) that the City of Fairview  
21 failed to show that any need which may exist would be best  
22 served by changing the classification on this 116 acre site as  
23 well as failed to show no other property was available to meet  
24 whatever public need may exist. Petitioner's Goal 10 challenge  
25 is that the plan and zone change fails to provide for the  
26 housing needs of the citizens of Fairview because (1) it fails

1 to compensate for the loss of land designated for residential  
2 use, which loss was caused by the plan amendment and zone  
3 change, and (2) fails to take into consideration how the  
4 additional housing required by the amendment and zone change  
5 will be accommodated. Petitioner's Goal 11 argument is that  
6 Fairview failed to have a plan that would ensure the  
7 availability of sanitary sewer service to the 116 acre site to  
8 meet the need posed by the plan amendment and zone change.  
9 Finally, petitioner argues Goal 2 was violated because the City  
10 of Fairview failed to make findings which were adequate to show  
11 compliance with Goals 10 and 11.

12 STATEMENT OF FACTS

13 On September 19, 1980, Tektronix, Inc. (Tek) applied to the  
14 City of Fairview to amend the comprehensive plan designation  
15 and zoning map for a 116 acre tract of land located within the  
16 City of Fairview. Tek requested that the plan designation for  
17 the property be changed from low density residential to general  
18 industrial and that the zoning map be amended from R-7.5  
19 (Single-Family Residential) to M-2 (General Manufacturing).

20 The site of the proposed amendment to the plan and zoning  
21 map was annexed to the City of Fairview one year before Tek  
22 applied to the city for the plan amendment and zone change.  
23 This property had been designated both on the Multnomah County  
24 comprehensive plan and the Fairview comprehensive plan to  
25 accommodate 576 housing units out of a total projected need for  
26 Fairview to the year 2000 of 2,100 housing units. At the time

1 of Tek's application, the City of Fairview, Multnomah County  
2 and the City of Gresham all had comprehensive plans which had  
3 been acknowledged by LCDC.

4 The City of Fairview held hearings on Tek's application  
5 both before the planning commission and the city council.  
6 Gresham objected in writing before the planning commission to  
7 the Tek application because of the need to resolve planning,  
8 engineering and sewer contract issues. Gresham, under a sewer  
9 agreement with the City of Fairview, is the sole provider of  
10 sewer services to the City of Fairview. Gresham stated its  
11 belief that in order to provide sewer service to the 116 acre  
12 site that the sewer agreement would have to be amended.

13 The planning commission approved a resolution recommending  
14 to the city council approval of the proposed comprehensive plan  
15 amendment and zone change based on the findings and  
16 recommendations of the staff. After three public hearings, the  
17 City of Fairview approved the plan amendment and zone change  
18 based upon the findings of the planning commission. Ordinance  
19 6-1980 amended the Fairview comprehensive plan by changing the  
20 plan designation for the 116 acre site from low density  
21 residential to general industrial. Resolution No. \_\_\_\_, 1980,  
22 amended the zoning map by changing the zoning designation from  
23 R-7.5 (Single-Family Residential) to M-2 (General  
24 Manufacturing).

25 OPINION

26 1. Comprehensive Plan

1 Respondents object to petitioner being allowed on appeal to  
2 challenge Fairview's land use decision on the basis that it  
3 violates Fairview's comprehensive plan. Respondents contend  
4 that Gresham did not appear in this proceeding until the last  
5 hearing before the city council and then did so only to attempt  
6 to get Fairview to renegotiate the sewer contract between  
7 Fairview and Gresham. Gresham did not raise the issue of  
8 compliance with Fairview's comprehensive plan. Respondents  
9 argue, in accordance with our holding in Twin Rocks v Rockaway,  
10 2 Or LUBA 36 (1980), petitioner should not be allowed to raise  
11 the issue of compliance with the comprehensive plan because  
12 petitioner was "lying in the weeds" and its failure to raise  
13 issues below that it now seeks to raise on appeal should not be  
14 condoned.

15 We do not think it has been shown that petitioner was  
16 "lying in the weeds" as we intended that phrase to mean in Twin  
17 Rocks. Petitioner stated at oral argument that it did not have  
18 a copy of the Fairview comprehensive plan until February, some  
19 three months after the city's final hearing in this matter.  
20 Petitioner argues it did not know the contents of the city's  
21 comprehensive plan, and therefore could not be said to have  
22 been holding anything back during the hearing before the City  
23 of Fairview. There is no proof or any indication in this case  
24 that Gresham knew Fairview's decision was in violation of its  
25 comprehensive plan and refrained from pointing that out to the  
26 city. Accordingly, we find no basis for holding that

1 petitioner should be prevented from raising on appeal  
2 allegations that Fairview violated its comprehensive plan in  
3 approving this comprehensive plan amendment and zone change.

4       Petitioner argues Fairview's plan and zone change is of  
5 such magnitude and would have such an impact on the city that  
6 Fairview was required to completely reanalyze its comprehensive  
7 plan, goals and objectives before approving the amendment and  
8 zone change. Petitioner relies on section 5 of the Citizen  
9 Involvement section of the comprehensive plan which provides:

10               "The planning commission, at its regular monthly  
11 meeting, will completely review the plan every five  
12 years. Its recommendation(s) will be given to the  
13 city council. If the planning commission recommends a  
14 plan change, the procedure outlined in paragraphs 4A  
15 through 4D, above, will be followed by the city  
16 council."

17 It appears to be petitioner's argument that the city was  
18 required to "completely review the plan" in this instance  
19 because the amendment to the plan was of such significance that  
20 it was the equivalent of a five year periodic review.

21 Respondents disagree. Respondents say that the only provision  
22 of the comprehensive plan governing Fairview's amendment to its  
23 comprehensive plan was section 4B of the Citizen Involvement  
24 section of the comprehensive plan. That section states as  
25 follows:

26               "Major revisions (i.e., land use changes that  
27 have widespread and significant impact beyond the  
28 immediate area such as quantitative changes producing  
29 large volumes of traffic; a qualitative change in the  
30 character of the land use itself, such as conversion  
31 of residential to industrial use; or a spatial change  
32 that affects large areas or many different ownerships)

1 will require rethinking of the public need expressed  
2 in the plan."

3 Respondents contend that this provision governed the city's  
4 action in this case, and that the city did "rethink" the public  
5 need expressed in the plan.

6 We conclude respondents are correct that section 4B and not  
7 section 5 did control the city's action. While it may well  
8 have been advisable for the City of Fairview to rethink not  
9 only the public need but to "completely review the plan" in  
10 light of the impact this decision will have on the city, we do  
11 not believe the city's comprehensive plan required it to do  
12 so.<sup>1</sup>

13 Petitioner argues that subsection (3) and (4) of section 4D  
14 of the Citizen Involvement section of the Fairview  
15 comprehensive plan were not met by Fairview's plan and zone  
16 change. Section 4D sets forth the criteria to establish  
17 justification for a proposed plan amendment or zone change.  
18 Those criteria are as follows:

19 "(1) The change is in conformance with the goals  
20 and policies of the comprehensive plan.

21 "(2) The change is in conformance with the  
22 factors set forth in ORS 215 and any other applicable  
23 legislation.

24 "(3) There is a public need for the change and  
25 that public need is best served by changing the  
26 classification on that property under consideration.

"(4) A public need will be met by a plan or zone  
change which is not already met by other available  
property in the area.

"(5) It is necessary to introduce this change

1 into an area not previously contemplated for this use  
2 and surrounding property owners should bear the burden  
of the proposed departure.

3 "(6) The potential impact upon the area  
4 resulting from the change has been considered."

5 Petitioner claims there was no showing of a public need, or  
6 that if a public need exists, it could be best met on this site.

7 Concerning the "public need" requirement, petitioner argues  
8 that the need evidenced in this case is for additional  
9 employment opportunities in east Multnomah County, not in the  
10 City of Fairview. There is no evidence, according to  
11 petitioner, that Fairview "needs" Tektronix or that Tektronix's  
12 location in the City of Fairview will fulfill a public need for  
13 the City of Fairview.<sup>2</sup>

14 The evidence and findings indicate that east Multnomah  
15 County has a need for additional employment opportunities for  
16 its residents. The evidence and findings indicate that  
17 Tektronix will help at least some east Multnomah County  
18 residents realize employment opportunities if Tektronix builds  
19 its plant. We think there is sufficient evidence and findings  
20 that Tektronix's location in Fairview will fulfill a public  
21 need of providing employment opportunities for residents of  
22 east Multnomah County.

23 Petitioner's second argument concerning "public need"  
24 within the context of the Fairview comprehensive plan is that  
25 there has not been a satisfactory showing that the need for  
26 additional employment opportunities can best be accommodated on

1 this particular 116 acre site. Petitioner points to the  
2 Columbia Community Area consisting of 300 acres north of Sandy  
3 Boulevard and designated in the acknowledged Multnomah County  
4 comprehensive plan as potential industrial land. Petitioner  
5 claims this land has not been shown to be unavailable to meet  
6 the need for land proposed by Tektronix.

7 Respondents argue that there was a complete and thorough  
8 analysis of the several parcels which make up the 300 acre  
9 Columbia Community Area as well as other potential sites within  
10 the Tri-County area and, in particular, east Multnomah County.  
11 The result of this analysis was a conclusion that the 116 acre  
12 site was the best available to satisfy the need for land  
13 proposed by Tektronix. Tek's report, which accompanied its  
14 application for a plan amendment and zone change, analyzed the  
15 various parcels contained in the Columbia Community Area.  
16 According to Tek's report, these parcels range in size from  
17 24.23 acres to 86.28 acres. The 86.28 acre parcel as well as a  
18 smaller 26.84 acre parcel, were said in the report to have  
19 "inhibited development potential" due to "severe subsurface  
20 disposal limitations or moderate to severe foundation  
21 limitations." The remaining five parcels, while available  
22 immediately for development, were said to be too small to  
23 satisfy Tek's acreage needs and were not located so as to  
24 permit aggregation into a site large enough to meet Tek's  
25 desires. These sites range in size from 24.17 acres to 40.15  
26 acres and total 144.79 acres.<sup>3</sup> There was no contrary

1 testimony in the record.

2       However, Fairview, in finding that the 116 acre site was  
3 the best available site, did so

4               "because of its proximity to the labor market,  
5       proximity to existing and planned housing, together  
6       with easy accessibility."

7 As this finding clearly shows, Fairview did not base its  
8 determination that the 116 acre site was the best available  
9 site on Tek's representations that other parcels were too small  
10 or had inhibited development potential. The staff analysis  
11 which precedes the findings adopted by the city council states  
12 as follows with respect to alternative sites:

13               "Tektronix has been interested for a number of  
14 years in acquiring a suitable site in the eastern  
15 portion of the Portland Metropolitan Area. Although  
16 various sites were evaluated in terms of their  
17 suitability for industrial use, the Fairview site was  
18 selected on the basis of three factors which included  
19 regional location, site characteristics, and  
20 unsuitability of other sites (REF: Part II of  
21 Tektronix's Application Document, pages 49-62). The  
22 site offered proximity to the labor market, proximity  
23 to existing and planned housing, and accessibility to  
24 the various modes of transportation. Of particular  
25 significance was the accessibility to the Portland  
26 International Airport since nearly all distribution of  
Tektronix's products to market areas outside the  
Pacific Northwest is made by air freight. In the site  
selection process, Tektronix's requirements were  
weighed against the number of potential parcels. This  
site was selected on the basis of the evaluation  
criteria which included the availability of the site  
for purchase; proximity to shipping and transit modes;  
proximity to labor markets, availability of services;  
accessibility; and site size and potential for future  
additions."

27 The staff analysis goes on to say that the site search process  
28 involved an analysis of a number of alternative sites but that

1 all but the Fairview site were determined to be unsuitable  
2 based on an analysis of certain characteristics, including lack  
3 of necessary services, small parcel size, flood plain location,  
4 isolation from other uses, soil foundation problems and lack of  
5 availability for purchase.

6 What this staff analysis seems to do is explain why  
7 Tektronix selected this site. It is not, however, a finding  
8 made by Fairview that this site was the best site.<sup>4</sup>

9 The findings adopted by the city do not explain why any or  
10 all of the parcels contained in the 300 acre site designated  
11 for potential industrial development in the Multnomah County  
12 comprehensive plan were not suitable or available. Tek  
13 testified that it could not use any of the 300 acres due to  
14 parcel size, location of the parcels and inhibitions on  
15 development on two of the parcels. No where in the findings  
16 does the city adopt Tek's statement as to unsuitability of  
17 these parcels. A review of the record indicates the parcels  
18 within the 300 acre industrial development area are also  
19 proximate to the labor market and to existing and planned  
20 housing, and have easy accessibility, being located just off  
21 Sandy Boulevard. Hence, the findings adopted by the city do  
22 not explain why Tek could not use any of the parcels within  
23 this 300 acre area.

24 Moreover, it is not as though the 116 acre site selected by  
25 Tek was ideal. Tek stated in its report it "preferred" a 200  
26 acre site, but found the selected site "acceptable because

1 there is the potential for additions."<sup>5</sup> At oral argument Tek  
2 conceded that the potential additions to the site were located  
3 across Glisan and Halsey Streets from the 116 acre site and,  
4 thus, would not be susceptible to "aggregation" into one large  
5 site.

6 This is the same problem - inability to aggregate parcels  
7 into one large site - which Tek stated was a reason the parcels  
8 within the 300 acre Columbia Community Area were unacceptable.  
9 The city does not explain in its findings why existing  
10 parcelization in the 300 acre Columbia Community Area is an  
11 adequate reason for not using parcels within that site, while  
12 the parcelization which exists around the 116 acre site is not  
13 a problem. Such an explanation is necessary to satisfy the  
14 comprehensive plan requirements that the change in  
15 classification best serves the public need and that no other  
16 available property exists to meet the public need.

17 In short, parcelization appears to be a limitation at both  
18 sites. No explanation is offered, however, as to why it is  
19 less of a problem at the selected site than within the 300 acre  
20 Columbia Community Area. As previously mentioned, the city's  
21 findings do not even address the parcelization issue, but state  
22 the 116 acre site was the best because of its close proximity  
23 to the labor market, to existing and planned housing and its  
24 easy accessibility.

25 In addition to the foregoing, there is no statement either  
26 by Tek in the record or by the city in its findings as to why

1 the two sites in the Columbia Community Area identified by Tek  
2 as having inhibited development potential could not be used for  
3 some purpose integral to the design of Tek's facilities (e.g.,  
4 parking lots or open space). Tek states in its report the  
5 reason these parcels have an inhibited development potential is  
6 due to "severe subsurface disposal limitations or moderate to  
7 severe foundation limitations." Yet, Tek does not indicate to  
8 what extent these conditions inhibit the use of the two parcels  
9 or how Tek is precluded from designing its development around  
10 the conditions.

11 The point of this discussion is that the standard with  
12 which the city was required to comply is not what Tek "prefers"  
13 or what is easiest for Tek to develop. The city's  
14 comprehensive plan requires a showing that no other property  
15 already designated for the proposed use is available to meet  
16 the public need identified. Tek has explained in the record  
17 why it preferred the 116 acre site over the Columbia Community  
18 site. The city did not find, however, that the Columbia  
19 Community site was not available.

20 2. Goal 10

21 The second major issue in this case concerns Fairview's  
22 compliance with Goal 10. Petitioner's first argument under  
23 Goal 10 challenges to the city's removal of approximately  
24 one-fourth of the land it needed to meet its projected year  
25 2000 housing needs. This 116 acre site was designated in  
26 Fairview's comprehensive plan to provide 576 housing units out

1 of a projected year 2000 need of 2,100 additional housing  
2 units. The city did not, contemporaneous with approving the  
3 Tek application, amend its comprehensive plan to provide for  
4 this short fall in housing. All the city did was change the  
5 comprehensive plan and zoning map from residential to  
6 industrial. The city concluded in its findings that the best  
7 way to replenish this loss of housing would be to increase  
8 densities in other areas of the city. The finding states:

9 "A number of sites are available within the city  
10 limits and the planning area that are suitable to  
11 accommodate increased densities. The city will pursue  
12 appropriate changes to its zoning ordinance in order  
13 to accomplish the replacement of the residential  
14 planned units to be lost as a result of the plan  
15 change. This activity will take place immediately  
16 after approval of the plan and zone changes by the  
17 city council."

18 No action was taken to assure, prior to approval of the plan  
19 and zone change that the short fall could be rectified.  
20 Petitioner argues it was error for the city under Goal 10 to  
21 delay or defer until after the zone and plan amendment had been  
22 approved the increase in densities mentioned in the findings.

23 Tek argues in response that the City of Fairview was not  
24 required under Goal 10 to effect the increased densities  
25 mentioned in the findings at the same time it made the plan and  
26 zone change. It was enough, argues Tek, for the city to state  
27 that it "will pursue appropriate changes." We believe Tek is  
28 in error. Goal 10 provides, in pertinent part, as follows:

29 "Goal: To provide for the housing needs of  
30 citizens of the state.

1 "Buildable lands for residential use shall  
2 be inventoried and plans shall encourage the  
3 availability of adequate numbers of housing units  
4 at price ranges and rent levels which are  
5 commensurate with the financial capabilities of  
6 Oregon households and allow for flexibility of  
7 housing location, type and density."

8 Guideline A.2. (Planning) provides in part as follows:

9 "Plans should be developed in a manner that  
10 insures the provision of appropriate types and  
11 amounts of land within urban growth boundaries."

12 In Guideline A.2 quoted above, LCDC has interpreted Goal 10  
13 as requiring that a comprehensive plan provide within the urban  
14 growth boundary sufficient land to provide for the housing  
15 needs of citizens within the area covered by the plan.<sup>6</sup>

16 Fairview's comprehensive plan was acknowledged by LCDC as in  
17 compliance with Goal 10, among others. At the time of  
18 acknowledgment Fairview had sufficient land within its city  
19 limits and a zoning density scheme which would enable it to  
20 provide for its projected housing needs to the year 2000.<sup>7</sup>

21 Once the city removed from a housing classification an amount  
22 of land designated to accommodate one-fourth of its projected  
23 year 2000 housing needs, the city's plan could no longer be  
24 considered to be in compliance with Goal 10. The city could  
25 not, therefore, consistent with Goal 10, amend its  
26 comprehensive plan if to do so would have the effect of causing  
its plan to no longer comply with Goal 10.

Thus, when faced with such a proposed change in its  
comprehensive plan, Fairview was required to develop and adopt  
an alternative plan by which it could meet its projected year

1 2000 housing needs. As the city failed to adopt such an  
2 alternative plan which shows how the city could meet its  
3 housing needs, the city failed to comply with Goal 10.

4 The requirement that Fairview adopt a program for solving  
5 its housing needs contemporaneous with a plan and zone change  
6 which negatively impacts housing is necessary in order to  
7 ensure that such a program can be developed consistent with the  
8 statewide goals and regional planning considerations. If, for  
9 example, a city were to attempt to solve its housing shortage  
10 solely by upzoning (increasing densities) on land designated  
11 for low densities, it may violate Goal 10 by not encouraging an  
12 adequate mix of single-family and multi-family housing. It may  
13 also violate regional planning considerations if the effect  
14 will be to cause a significant number of people who would  
15 otherwise choose to live in a low density area within the city  
16 to have to move to another city in order to enjoy the low  
17 density lifestyle. In effect, the city may be pushing off onto  
18 other cities within the region a housing responsibility it is  
19 required to assume. See *Seaman v Durham*, LCDC No. 77-025  
20 (1978).

21 Petitioner's second argument under Goal 10 is that there is  
22 no indication in the findings as to how the additional housing  
23 which Tektronix will generate will be absorbed either by the  
24 City of Fairview or the region. There is no finding in the  
25 staff report adopted by the city council which addresses the  
26 problem of how the additional housing needs generated by the

1 Tek employment center are going to be accommodated. Tek  
2 estimates it will have 500 employees by the year 1985 and 3,000  
3 employees by the year 2000. A certain percentage (the exact  
4 percentage unstated by Tek) of those employees will be  
5 residents who already live in the east Multnomah County area.  
6 A certain percentage, however, of those employees will, as Tek  
7 conceded during oral agrument, come to the area solely as a  
8 result of Tek's location there. Tek's location in the east  
9 Multnomah County area will, therefore, put an additional burden  
10 on the housing needs forecast for the area. Fairview does not  
11 address in its findings how that additional housing need is  
12 going to be taken care of. Failure to address how this  
13 additional housing is to be provided is a violation of Goal 10.

14 3. Goal 11

15 Petitioner argues under Goal 11 that the City of Fairview  
16 has not planned for an orderly and efficient means to extend  
17 sanitary services to this area because it has no means of  
18 assuring that sewer services will be provided. Gresham and  
19 Fairview have a sewer contract which provides that Gresham will  
20 supply Fairview with its sewer needs. There is a dispute  
21 between Gresham and Fairview, however, as to whether this  
22 contract encompasses the subject land. The Tek site was  
23 annexed to the city after 1978. Gresham takes the position  
24 that the sewer agreement with Fairview only includes the  
25 Fairview city limits as of 1978 and does not include any land  
26 annexed to the city after that date. Accordingly, Gresham

1 argues that Fairview has no means of supplying sanitary service  
2 to this area unless Fairview enters into an amended sewer  
3 agreement with Gresham, which Fairview has not done.

4 Even if the sewer contract with Fairview does cover this  
5 land, however, Gresham argues that there is an inadequate  
6 finding by the city that the discharge from the Tek site into  
7 the sewer system can be accommodated by the allotment given to  
8 Fairview for sewer services in the sewer agreement. In other  
9 words, the discharge from the Tek site, combined with that  
10 which will come from the additional housing needed to offset  
11 the displacement caused on the 116 acre Tektronix site, will  
12 exceed the allotment to Fairview in the Gresham-Fairview sewer  
13 agreement. In addition, there is some question as to whether  
14 the strength of discharge (i.e., toxicity) and suspended solids  
15 will be able to be handled by the Gresham waste treatment plant.

16 Respondent contends, with respect to the volume and  
17 strength of discharge issue, that these matters are conditioned  
18 in the city's approval. Tek is limited to .138 mgd (millions  
19 gallons per day) in volume discharge by the city's ordinance  
20 and resolution. Condition 4 in the staff report, adopted by  
21 the city council provides that:

22 "\*\*\*If the strength of the Tektronix sewage  
23 exceeds agreed upon standards between Gresham and  
24 Fairview for the types of processing Tektronix will  
have, sewage pretreatment will be required."

25 Assuming the sewer agreement between Gresham and Fairview  
26 covers the Tek site, we think the conditions imposed by the

1 City of Fairview on the Tek site are adequate to satisfy the  
2 concerns expressed by the City of Gresham. We find that the  
3 conditions imposed by the city are, in fact, conditions. Tek  
4 could be forced in appropriate judicial proceedings to conform  
5 to these conditions of approval.

6 However, we do not know whether the City of Fairview has  
7 provided for sewer service to this area because there is a  
8 dispute between the cities as to whether the sewer agreement  
9 covers this area. This is a contract question which must be  
10 resolved in a court of law, not before this Board, unless the  
11 parties are able to come to an agreement. Until the parties  
12 come to an agreement or a court settles the issue, however, the  
13 question of whether Fairview can provide sewer services to the  
14 Tek site is a matter for debate. Fairview did not condition  
15 approval of the zone change upon resolution of this question.

16 It is our opinion that where, as here, a city depends upon  
17 a necessary service from another jurisdiction, any dispute as  
18 to whether that jurisdiction will or is obligated to provide  
19 service to the city must be resolved or an alternative plan  
20 adopted before the city can allow the land use changes for  
21 which services are in dispute. Presumably, under most  
22 circumstances, this would be a matter to be resolved through  
23 coordination between the jurisdictions. In any event, it is  
24 premature for a city to authorize a major land use change such  
25 as proposed here when that change is dependent upon the  
26 provision of services, and whether those services can or will

1 be provided is subject to debate.

2 Fairview's findings in support of the plan amendment with  
3 respect to Goal 11 simply state:

4 "Although the property has not previously been  
5 developed, adequate services and facilities exist in  
6 the area to accommodate the proposed development by  
7 Tektronix."

8 With respect to the zone change, the findings state:

9 "Public facilities and services that exist in the  
10 area are adequate to accommodate the proposed phased  
11 development by Tektronix. Future required public  
12 facilities and services can be developed in a timely  
13 and orderly manner."

14 These conclusions of the city do not even mention the sewer  
15 agreement dispute, let alone explain how the city intends to  
16 fulfill its servicing requirements to the Tektronix site if its  
17 interpretation of the sewer agreement is erroneous. We believe  
18 Fairview violated Goal 11 in approving this zone change without  
19 first either (1) having worked out with the City of Gresham the  
20 sewer agreement problem, or (2) having an alternative plan for  
21 providing sewer service to the Tek site in the event Fairview  
22 is wrong in its interpretation of the sewer agreement.

#### 23 4. Goal 2

24 Petitioner's Goal 2 argument is that the city failed to  
25 demonstrate compliance with its own comprehensive plan and  
26 Multnomah County's Comprehensive Plan, at least until it  
27 produced new information on supporting new findings upon which  
28 to base a new designation, and with Goals 10 and 11.<sup>8</sup>

29 Petitioner contends there are inadequate findings and an

1 inadequate evidentiary base to support the city's zone change  
2 and plan amendment. Petitioner is correct in light of LCDC's  
3 interpretation of Goal 2 that findings are required for any  
4 quasi-judicial land use decision. See Kerns v City of  
5 Pendleton, \_\_\_ Or LUBA \_\_\_ (LUBA No. 80-138, 1981). For the  
6 reasons previously stated, the city has failed to demonstrate  
7 compliance with Goals 10 or 11 because the findings fail to  
8 demonstrate how the housing needs will be accommodated and how  
9 the public facilities will be provided as a result of the  
10 decision.

11 This matter is remanded to the City of Fairview for further  
12 proceedings consistent with this opinion.

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FOOTNOTES

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We do not address whether such a review may be required by some other standard, such as Goal 2.

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A question arises as to whether the term "public need" as used in Fairview's comprehensive plan refers solely to Fairview's need or refers to the need of the east Multnomah County area as well. Fairview's plan simply says "public need." It is not expressly limited to just the need experienced or which may be experienced by the City of Fairview. Fairview apparently construed "public need" to mean more than just Fairview's need. We see no error in the city's construing its comprehensive plan in this fashion.

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The several parcels in the Columbia Community Area total 258 acres, yet the area is referred to as 300 acres in size. This discrepancy is not explained in the record as far as we can determine.

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The way the record is put together it appears that the city's ordinance and resolution approving the plan amendment and zone change adopt the entire staff report as the findings of the city in support of the changes. The table of contents says: "Amended Final Staff Report as Adopted by City Council on 11/19/80." (Emphasis added). The staff report is some 100 pages in length. It is broken down into six sections as follows: (1) Introduction, (2) Background Information, (3) Goal Analysis, (4) Comprehensive Plan Analysis and Zoning Considerations, (5) Findings, and (6) Recommendation. The section entitled "Findings" is five pages long. However Resolution No. \_\_\_\_, 1980, that appears on page 105 of the record and which amends the Fairview zoning map, provides:

"Now therefore be it resolved that the city council of the City of Fairview does hereby accept and approve the recommendation of the planning commission that the Land Use Zone of the real property described in Exhibit "A" attached hereto and made a part hereof by this reference be changed from R-7.5 Single Family Residential to M-2 General Manufacturing and does hereby adopt for such purposes the findings and

1 conclusions of said commission as a basis therefore.

2 "Be it further resolved that the conditions set  
3 forth by the planning commission, as amended to date by  
this council are approved."

4 Ordinance 6-1980 which amends the comprehensive plan also  
5 provides:

6 "Now, therefore, the City of Fairview ordains as  
7 follows: \*\*\* Section 2. Findings \*\*\* 2.4 The council  
8 has reviewed the findings and recommendations of the  
9 planning commission and finds them to be substantially  
supported by the evidence offered in this matter and  
hereby adopts those findings and recommendations as  
amended to date in support of this ordinance."

10 The planning commission resolution referenced in both  
Resolution No. \_\_\_\_\_, 1980 and Ordinance 6-1980 provides:

11 "WHEREAS, the Planning Commission has found,  
12 based on the finding and conclusins of the Staff  
13 Report, that there is a public need for the change and  
14 that the public need is best served by changing the  
15 plan and zone designation on the property described  
below, and that the change is in conformance with the  
applicable policies of the Comprehensive Plan and the  
Statewide Planning Goals; now 'therefore

16 "BE IT RESOLVED, that the Fairview Planning  
17 Commission recommends that the City Council adopt the  
18 attached Ordinance, designating the property described  
therein for "General Industrial" use, based on the  
findings and conclusions as set forth in the Staff  
Report, which shall be in the following form:

19 "An amendment to Fairview Land Use Plan Map  
20 changing the designation of the property west of  
21 223rd, south of N.E. Halsey and north of N.E.  
22 Glisan Streets, otherwise situated in portions of  
23 sections 28, 33, and 34, TIN, R3E W.M. (see  
Attachment A), from Low Density Residential to  
General Industrial, and an amendment to the  
Zoning Map changing the designation of the  
property described above from R-7.5 to M-2."  
24 (Emphasis added).

25 It is apparent from the foregoing that the city council  
26 only adopted the findings and conclusion section of the  
staff report as well as the staff report's  
recommendations, as amended. That which appears in the

1 staff report from page 1 of the staff report (record page  
17) up to page 5-1 of the staff report (record page 56)  
2 and the appendices attached to the staff report (record  
pages 65-104) were not adopted by the city council in  
3 either Resolution No. \_\_\_\_\_, 1980 or Ordinance 6-1980.  
Accordingly, we simply look at the finding section of the  
4 staff report which is five pages in length as the findings  
of the City of Fairview in support of this change.

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Tek's stated preference for large sites is consistent  
7 with what it stated its needs to be in a prior case. See  
Friends of Linn County v City of Lebanon, 1 Or LUBA 50,  
8 69(1980).

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While guidelines are not, generally speaking, binding  
11 (See ORS 197,015(a)), where they express LCDC's  
interpretation of a goal they should be given some  
weight. It would do this Board little good to ignore  
12 stated LCDC policy concerning the goals, whether found in  
guidelines or in policy papers, since LCDC must concur  
13 with our interpretations of goals. See Oregon Laws 1979,  
chapter 772.

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When Fairview annexed that land, the city, in effect,  
16 made a commitment to meeting a portion of the Multnomah  
County's housing needs, consistent with the Multnomah  
17 County plan for the area. Regional and local housing  
needs are met and implemented through the local  
18 comprehensive plan.

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It is not clear to LCDC that Fairview addressed the  
21 Rockwood Community Plan and the Multnomah County Framework  
Plan for this area, as required by the Urban Planning Area  
22 Policy Paper, the Urban Planning Area Agreement between  
the cities of Gresham and Fairview and the acknowledgment  
23 orders of the Cities of Fairview and Gresham and Multnomah  
County.

BEFORE THE  
LAND CONSERVATION AND DEVELOPMENT COMMISSION  
OF THE STATE OF OREGON

CITY OF GRESHAM,	)	
	)	
Petitioner(s),	)	
	)	
v.	)	LUBA 80-172
	)	LCDC Determination
CITY OF FAIRVIEW,	)	
	)	
Respondent.	)	

The Land Conservation and Development Commission hereby approves the recommendation of the Land Use Board of Appeals in LUBA 80-172, concerning allegations of Statewide Goal violations with the following modifications:

1. On page 15 at line 14 change the word "UGB" to read "city limits"
2. On page 15 at line 20 change the word "thereafter" to read "therefore"
3. On page 15 at the end of the sentence on line 16 add the following footnote, as footnote number 7:

"When Fairview annexed that land, the city, in effect, made a commitment to meeting a portion of the Multnomah County's housing needs, consistent with the Multnomah County plan for the area. Regional and local housing needs are met and implemented through the local comprehensive plan.

4. On page 20 after the word "plan" on line 21, insert the following language:

"and Multnomah County's Comprehensive Plan, at least until it produced new information on supporting new findings upon which to base a new designation,"

5. On page 20 after the words "Goals 10 and 11" on line 22 add the following language, as footnote number 8:

"It is not clear to LCDC that Fairview addressed the Rockwood Community Plan and the Multnomah County Framework plan for this area, as required by the Urban Planning Area Policy Paper, the Urban Planning Area Agreement between the cities of Gresham and Fairview and the acknowledgment orders of the Cities of Fairview and Gresham and Multnomah County."

DATED THIS 30<sup>th</sup> DAY OF JUNE, 1981.

FOR THE COMMISSION:



W. J. Kvarsten, Director  
Department of Land  
Conservation and Development

WJK:ER:cp  
5961A/5B





## 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: CITY OF GRESHAM v CITY OF FAIRVIEW  
LUBA No. 80-172

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

Petitioner City of Gresham appeals Fairview's amendment to its comprehensive plan and change in its zoning map to change the designation on a 116 acre site from residential to industrial. Petitioner alleges the city's decision violates Goals 2, 10 and 11. Petitioner's Goal 10 challenge is that the plan and zone change fails to provide for the housing needs of the citizens of Fairview because (1) it fails to compensate for the loss of land designated for residential use, which loss was caused by the plan amendment and zone change, and (2) fails to take into consideration how the additional housing required by the amendment and zone change will be accommodated. Petitioner argues Goal 11 was violated because Fairview failed to have a plan that would ensure the availability of sanitary sewer service to the 116 acre site to meet the need posed by the plan amendment and zone change. Petitioner's Goal 2 argument is that the city failed to make findings adequate to show compliance with Goals 10 and 11.

The Board, for the most part, agreed with petitioner's contentions concerning violation of the statewide goals. Fairview violated Goal 10, in the opinion of the Board, because it caused a one-fourth reduction in the amount of land designated for housing without contemporaneously adopting a plan to compensate for the shortfall in housing thus created. Moreover, because Tek would attract more people to the Fairview area and, therefore, put an additional burden on the housing needs forecast for the Fairview area, Fairview was required to address how that additional housing need would be taken care of. Fairview failed to address this additional housing need and thus violated Goal 10.

The Board concluded Fairview violated Goal 11 because it has no means of assuring that sewer services will be provided to serve the needs for this 116 acre site. Sewer services to the City of Fairview are provided by the City of Gresham under a sewer agreement with Gresham. There is a dispute between Gresham and Fairview as to whether this sewer agreement covers the 116 acre site. The Board said:



Contains  
Recycled  
Materials

01-125-1387

6P\*75683.125

"It is our opinion that where, as here, a city depends upon a necessary service from another jurisdiction, any dispute as to whether that jurisdiction will or is obligated to provide service to the city must be resolved or an alternative plan adopted before the city can allow the land use changes for which services are in dispute."

Because the dispute was not resolved and because no alternative plan was adopted the Board concluded Fairview violated Goal 11.

In view of its conclusions with respect to Goals 10 and 11, the Board concluded that Goal 2 had also been violated. Goal 2 requires findings for quasi-judicial land use decisions which demonstrate compliance with applicable statewide planning goals. Goal 2 was violated because the findings concerning Goals 10 and 11 in this case were inadequate.

Pages 5 through 13, line 18, need not be reviewed by the Commission as this section of the opinion is concerned with petitioner's contention that Fairview's decision violates the city's comprehensive plan.

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.