

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

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WESTSIDE NEIGHBORHOOD )  
QUALITY PROJECT, INC., )  
a nonprofit corporation )  
and chartered citizen )  
involvement committee, )  
DAVID FIDANQUE, BRIAN )  
SIMONITCH, PAULA MAHAN, )  
MIKE GRAHAM, and )  
SANDRA BISHOP, )  
Petitioners, )  
vs. )  
SCHOOL DISTRICT 4J )  
BOARD OF DIRECTORS, )  
Respondents. )

LUBA No. 81-096  
FINAL OPINION  
AND ORDER

Appeal from Lane County School District 4J

Bill Kloos, Eugene and H. Thomas Andersen, Eugene, filed the Petition for Review and argued the cause on behalf of Petitioners.

Corinne C. Sherton, Salem, filed the brief and argued the cause on behalf of Respondent.

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

AFFIRMED 2/16/82

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 Petitioners appeal the decision of Eugene School District  
4 4J (hereinafter "district") to close Lincoln Elementary School  
5 (hereinafter "Lincoln"). Petitioners seek reversal of the  
6 decision on the following grounds:

7 1. The decision violated the Eugene-Springfield  
8 comprehensive plan which specifically requires  
that Lincoln should remain open.

9 2. The district failed to address relevant plan  
standards.

10 3. The district's findings rely on evidence  
11 which is not properly part of the record.

12 4. The district violated Goal 5 by failing to  
13 adopt a program to deal with the negative impacts  
on Lincoln's historical value which would result  
from closing Lincoln.

14 5. The district violated Goal 1 by failing to  
15 allow petitioners the opportunity to address some  
of the standards applied by the district.

16 6. The district erred in concluding that keeping  
17 Lincoln open would violate the district's equal  
educational opportunity policy.

18 The district argues that the decision to close Lincoln is  
19 not a land use decision subject to review by this board  
20 pursuant to Chapter 772, Oregon Laws 1979. In the alternative,  
21 the district asserts it has not erred in the respects urged by  
22 petitioners.

23 STATEMENT OF FACTS

24 Lincoln Community School ("Lincoln") was an elementary  
25 school which had served the Eugene area for many years until  
26

1 closed by the Board of Directors for School District 4J on  
2 August 5, 1981. This decision was the last in a series of  
3 three closure decisions made by the district dating back to  
4 March 18, 1981. The first decision (Lincoln I) was made  
5 following public hearings held on March 4 and 8, 1981. That  
6 decision was appealed to this board but dismissed following the  
7 district's rescission of the decision on May 18, 1981. See  
8 Fidanque v School District 4J, \_\_\_ Or LUBA \_\_\_ (LUBA No.  
9 81-046, 1981). As part of its decision to rescind, the  
10 district scheduled a hearing to take more testimony,  
11 particularly on the land use issues involved. This hearing was  
12 held on May 27, 1981.

13 The district superintendent submitted recommended findings  
14 to the district at its May 27th hearing. Matters about the  
15 closure identified by the district to be considered included  
16 issues relating to land use, safety, fiscal responsibilities,  
17 lack of financial resources and educational program  
18 requirements. Petitioners submitted an extensive written  
19 presentation as well as oral testimony addressing budgetary and  
20 facility issues, land use implications and applicability of  
21 statewide planning statutes. Petitioners also asserted that an  
22 amendment to the Eugene-Springfield Metropolitan Area General  
23 Plan ("MAGP") was necessary before Lincoln could be closed  
24 because the MAGP, through its implementing refinement plan for  
25 the west Eugene area, the Westside Neighborhood Plan ("WNP"),  
26 specified that Lincoln remain open. On June 8, 1981, the

1 district again voted to close Lincoln. This decision (Lincoln  
2 II) was also appealed to this board and dismissed following the  
3 district's decision to rescind Lincoln II on August 5, 1981.  
4 At this same meeting, the district adopted new findings of fact  
5 and voted for the third time to close Lincoln. It is the  
6 district's August 5th decision to close Lincoln (Lincoln III)  
7 which is the subject of the present appeal.

8 On August 5, 1981, and prior to the district's vote to  
9 close Lincoln, petitioners requested an opportunity to review  
10 and respond to the district's proposed findings. The district  
11 denied this request.

12 The district's findings in support of closing Lincoln rely  
13 largely on the district's lack of finances to bring the Lincoln  
14 school building up to certain safety standards. These safety  
15 standards are contained in district policy 8600 which require  
16 the district "to provide for the safety of all pupils,  
17 employees and members of the public at all times while they are  
18 engaged in school district activities." Certain "fire and life  
19 safety requirements" were identified by both the fire marshall  
20 and district architect as needing to be met. Based upon  
21 reports from the fire marshall and architect, the district  
22 found that it would be necessary to spend between \$167,630 and  
23 \$207,370 to keep Lincoln open more than one year. Chief among  
24 matters needing to be done included updating an early warning  
25 fire detection system, installing a fire sprinkler system, and  
26 patching, sealing and repainting walls.

1 The district also found that it was "strongly recommended  
2 as funds become available" to spend an additional \$483,570 -  
3 \$573,750 to further upgrade the building.

4 The district then analyzed its budget for the 1981-82  
5 school year, adopted in May of 1981. Of \$104,465 allocated for  
6 building improvements and alterations district wide, the  
7 district found Lincoln's share was \$890. The district also  
8 examined other funding options:

9 "The District's budget also contains a  
10 contingency fund of \$3,648,480 for the year 1981-1982  
11 (Budget, p.47). However, salary negotiations  
12 resulting in teacher raises will probably consume most  
13 of these funds. The remaining amount must be held in  
14 reserve for unexpected emergencies that may arise  
15 during the year, such as severe weather damage or  
16 beams breaking in a gym (as happened last year).

17 "The District also has a fund of money from its  
18 1978 bond sale. As of May 29, 1981 the bond fund had  
19 a balance of \$1,486,750. (Appendix A, Ex. JJ) Energy  
20 conservation projects in progress should require  
21 \$344,850 to complete. Energy conservation projects  
22 not yet started should require \$322,420 to complete.  
23 Additional energy conservation projects, not  
24 originally recommended for funding, should require  
25 \$282,310 to complete. Non-energy conservation  
26 projects which have not yet been started should  
require \$296,240 to complete. A clerk of the works  
costs \$30,000.

27 "Thus, the total amount committed to projects in  
28 progress or not yet started is \$1,275,820. Simple  
29 subtraction would make it appear that approximately  
30 \$211,000 of this fund is surplus or not yet  
31 committed. However, it is impossible to anticipate  
32 all the costs incurred on many of these projects,  
33 especially the energy conservation ones. Also, the  
34 more energy conservation projects that are done, the  
35 more that are discovered to be needed and the more  
36 that are moved from the 'not recommended' to  
37 'recommended' category. Thus, this paper \$211,000 is  
38 not a true surplus free to be used to meet safety  
39 standards at Lincoln School.

1           "Conclusions. Lincoln Elementary School  
2 currently does not meet life and safety standards for  
3 an elementary school. To bring it up to standards  
4 would definitely require \$168,000 to \$207,000 before  
5 the next school year and probably require an  
6 additional \$484,000 to \$574,000 when available over  
7 the next few years. Money to enable Lincoln School to  
8 meet these safety standards is not available from  
9 either the District's general fund budget for  
10 1981-1982 or its 1978 bond fund."

11           The district also found it would be unable to achieve its  
12 district-wide teacher/pupil ratio at Lincoln and provide needed  
13 programs, thus violating the district's "equal educational  
14 opportunity" policy. The district found Lincoln would be  
15 entitled to 7.8 teachers based on its adopted staffing ratio of  
16 18.4 students per teacher. The district found that, assuming  
17 one teacher for each grade (K - 6), only .8 teachers would be  
18 available "to provide the special education, physical  
19 education, art, music and counselling/guidance programs  
20 required by the district policies." The district decided the  
21 only way to meet program requirements at Lincoln would be to  
22 increase staff. Increasing staff at Lincoln above 7.8,  
23 however, would result in a lower student-teacher ratio at  
24 Lincoln than other schools. To avoid violating the district's  
25 equal educational opportunity policy, the overall district  
26 staffing ratio would have to be lowered to equal the ratio at  
27 Lincoln. Lowering the student-teacher ratio district wide to  
28 the level the district concluded would be needed to meet  
29 program standards at Lincoln would result in an additional 144  
30 teachers being required in the district at a cost of \$3,600,000.

1 After analyzing both the safety issue and program standards  
2 issue, the district made the following "overall conclusion;"

3 "Within the District's currently projected  
4 1981-1982 financial resources, and considering our  
5 policy to provide equal educational opportunity  
6 throughout the district, we cannot afford to upgrade  
7 the Lincoln Elementary School building to meet fire  
8 and life safety standards and/or to maintain a program  
9 meeting our instructional standards at Lincoln School."

10 The district's findings also examined district policy 8430  
11 "Factors For Use In Considering A School Closure." To be  
12 considered under Policy 8430 are enrollment projections,  
13 transportation of students, program considerations, facility  
14 considerations, community impacts and fiscal impacts. The  
15 district found that Lincoln's students could be absorbed by  
16 three other elementary schools without exceeding these schools'  
17 capacities based on either present or projected enrollments.  
18 About half of the Lincoln students would be within one mile of  
19 their new school and thus be able to walk safely to school.  
20 The other half would require transportation which could be  
21 handled by existing bus runs. Additional transportation costs  
22 were estimated at \$1,200 per year.

23 The district found closure would have minimal effects on  
24 the educational and auxiliary services provided by the  
25 consolidated schools. Present instructional programs at these  
26 schools would be adequate for the Lincoln students. Under  
27 facility considerations, the district was required to examine  
28 impact of school closure on operation of the school buildings  
29 receiving students as well as on the building to be closed.

1 The district found existing schools had sufficient space to  
2 absorb displaced Lincoln students. It also found the district  
3 would save \$114,000 (less \$14,000 in mothball costs) by closing  
4 Lincoln. In addition the district estimated revenue from  
5 leasing Lincoln to be \$135,000 per year.

6 The district found there would be no long term adverse  
7 impacts on the community. Community and adult school  
8 activities operated by the City of Eugene in the Lincoln  
9 building could continue despite the district's discontinued use  
10 of the building for elementary school purposes. The district  
11 acknowledged the concerns expressed by the City of Eugene and  
12 residents within the Lincoln School area. However, the  
13 district noted that the only study of which it was aware of the  
14 effects of school closures found little or no impact from  
15 school closures on property values and the community  
16 environment.

17 The district's findings addressed the statewide planning  
18 goals as well as what it believed were the applicable  
19 comprehensive plan policies. In its findings under the goals,  
20 the district determined it had complied with Goal 2's  
21 coordination requirement.<sup>1</sup> The district found as follows:

22 "We have considered the concerns of the City of  
23 Eugene as expressed in Appendix A (ff). However,  
24 because of our pressing budgetary constraints, the  
25 safety hazards of the Lincoln School building and the  
26 District's declining enrollment, we were unable to  
accommodate those concerns."

Under Goal 5 (Open Spaces, Scenic and Historic Areas and

1 Natural Resources), the district made the following finding:

2 "The grounds of Lincoln School are open space.  
3 Our decision to close the school does not affect their  
4 open space quality. Likewise, whatever historic  
5 significance the building and site may have is not  
6 affected by merely ceasing to use the building as an  
7 elementary school site."

8 Under Goal 8 (Recreational Needs), the district found:

9 "Lincoln School and its grounds can be considered  
10 a recreational resource. Merely closing the building  
11 to school use by elementary students does not destroy  
12 the value of the area for recreational use. We shall  
13 continue to attempt to work out an arrangement with  
14 the City of Eugene and any other interested parties  
15 whereby the building and grounds can continue to be  
16 used as a community center.

17 Goal 10 (Housing), was addressed by the district as follows:

18 "The closure of Lincoln School for elementary use  
19 does not decrease or otherwise affect the housing  
20 units available in the neighborhood. Understandably,  
21 the closure of the school may make the neighborhood a  
22 less desirable place to live for some families with  
23 school-age children. On the other hand, its closure  
24 will probably not affect the residential desirability  
25 of the area for those without school-age children.  
26 (See Appendix A(KK)). The area already has the lowest  
27 student/dwelling unit ratio of any elementary school  
28 attendance area in the District. (See Appendix G)"

29 The following finding addressed Goal 11 (Public Facilities and  
30 Services):

31 "Section I A of these findings demonstrates that  
32 the closure of Lincoln School is necessary to enable  
33 us to meet the instructional and safety standards of  
34 our educational program within the District's  
35 financial resources. Section I B demonstrates that  
36 Lincoln area students will be efficiently accommodated  
37 at other District schools, that the overall program of  
38 the District will benefit thereby and that all  
39 ramifications of the closure have been considered."

40 The district specifically addressed numerous policies of  
41 both the Metro Area General Plan ("MAGP") and the Westside

1 Neighborhood Refinement Plan ("WNP").

2 The district addressed the following MAGP policies:

3 1. "Maintain existing neighborhoods which have a  
supply of rehabilitative housing."

4 2. "Encourage a variety of new residential  
5 development in and near the downtown area."

6 3. "Encourage in-filling and utilizing existing  
undeveloped subdivision lots in urban areas."

7 4. "Provide the necessary public facilities and  
8 services to allow economic development."

9 5. "Manage open space areas for their diverse  
and mutiple values."

10 6. "Establish or maintain a sense of identity  
11 and character for local and neighborhood areas."

12 7. "Public and private facilities shall be  
designed and located in a manner that preserves  
13 and enhances desirable features of local and  
neighborhood areas and promotes their sense of  
14 identity."

15 8. "Provide public utilities, services and  
facilities to serve existing development and  
16 closely coordinate them with the land use  
elements of the General Plan as a means of  
17 encouraging orderly and sequential growth."

18 9. "Optimize the utilization of existing  
facilities."

19 10. "Provide at least the minimum level of key  
20 urban services to all urban development within  
the metropolitan area."

21 11. "Facility and program planning in the  
22 metropolitan area shall use the General Plan as a  
basis for decisions to ensure that the needs of  
23 the metropolitan area are met in an orderly and  
efficient manner."

24 12. "Support financial and other efforts to  
25 provide elementary and community schools in  
central city areas in order to maintain and  
26 increase the attractiveness and stability of

1 those areas for residential purposes."

2 13. "Special agencies and districts operating in  
3 the metropolitan area, and Springfield, Eugene  
4 and Lane County shall provide one another the  
5 opportunity to review and comment on proposed  
6 public facilities, plans, programs, and public  
7 improvement projects or changes thereto that may  
8 affect one another's area of responsibility."

9 14. "Close gap between the current supply of park  
10 and recreation facilities and the projected  
11 demand."

12 15. "Develop mechanisms and processes by which  
13 residents of an area to be served by a  
14 neighborhood park, neighborhood center, or play  
15 lot can participate in the design, development,  
16 and maintenance of the facility."

17 In summary form, the district made the following findings  
18 which addressed the above quoted MAGP policies:

19 1. "Rehabilitation efforts in Lincoln  
20 neighborhood have had no discernible effect on  
21 the declining school enrollment."

22 2. "Other schools (Edison, Patterson &  
23 Whiteaker) are within walking distance of all  
24 residential areas and have space to accommodate  
25 displaced students."

26 3. "Closure of Lincoln might reduce property  
taxes by reducing inefficient operation of school  
services and actually stimulate residential  
development near the downtown where residential  
development costs presently are high."

4. "Utilization of the building and its grounds  
for community and recreational purposes and the  
concept of Lincoln as the focal point of  
neighborhood are not affected by ceasing to use  
the building for elementary education purposes.  
The ultimate disposition of the building (lease  
to the city, for example) will be determinative."

5. "Closure will enable the District to provide  
an adequate educational program within the  
District's current financial resources. The  
District lacks funds to maintain underutilized

1 school buildings and still provide all students  
2 with safe facilities and an adequate  
3 instructional program."

4 A WNP policy addressed by the district spoke to conserving  
5 older housing units as a valuable resource. The district found  
6 this policy not to be compatible with keeping Lincoln School  
7 open because it is basically a "status quo" policy. The "status  
8 quo" has resulted in decreased enrollments at Lincoln and the  
9 lowest student/dwelling unit ratio in the school district.

10 A second WNP policy spoke to encouraging a feeling of  
11 neighborhood, to be "fostered by providing for varied and  
12 accessible recreational and social service opportunities and  
13 protection of the historic, physical and cultural  
14 characteristics of the area." The district believed closure of  
15 Lincoln for elementary school purposes was not contrary to this  
16 policy, but that the ultimate disposition of the property would  
17 be "determinative." Were the building and grounds to be  
18 maintained as a community center, the district found closure of  
19 Lincoln would comply with this policy.

20 Finally, the district addressed the following WNP policy:

21 "Maintain Lincoln Community School, in  
22 cooperation with School District 4J, as the  
23 educational, social, recreational and community center  
24 of the Westside Neighborhood, by strengthening both  
25 the physical facility and programs provided there.  
26 (emphasis added),"

and made this finding:

"Opponents of the closure of Lincoln School have  
argued that this policy prevents us from closing  
Lincoln School. We do not agree. This policy is not  
directed to District 4J, but rather to the

1        City--telling it to do what it can to maintain Lincol  
2        Scool [sic] 'in cooperation with School District 4J.'  
3        The policy should not and cannot be interpreted as an  
4        attempt by the City to usurp the statutory authority  
5        of the school district over educational programs.  
6        Given the fact that we had to close the school for  
7        educational and safety reasons, this policy can be  
8        interpreted to require the City to make very effort to  
9        negotiate with us an agreement for it to use the  
10       building as a community center." (Emphasis in  
11       original).

12        OPINION

13        1.    Jurisdiction

14        We discuss first the district's assertion that its decision  
15        to cease using Lincoln School for elementary school purposes is  
16        not a land use decision over which this board has review  
17        jurisdiction.

18        A land use decision over which this board has review  
19        jurisdiction is defined as:

20                "(a) A final decision or determination made by a  
21                local government or special district that  
22                concerns the adoption, amendment or application  
23                of:

- 24                        (A) The goals;  
25                        (B) A comprehensive plan provision, or  
26                        (C) A land use regulation; or

27                (b) A final decision or determination of a state  
28                agency other than the commission with respect to  
29                which the agency is required to apply the goals."

30                ORS 197.015 as amended by 1981 Oregon Laws,  
31                Chapter 748, Section 1.

32        Petitioners argue the decision to close Lincoln is a land  
33        use decision because it requires application of the goals as  
34        well as a comprehensive plan (here, the MAGP and WNP). The  
35        district asserts that whether the decision required application

1 of the goals and, through Goal 2, the MAGP and WNP, depends  
2 upon whether the decision was an exercise of the district's  
3 land use planning responsibilities or an action with respect to  
4 programs affecting land use under ORS 197.185. The district  
5 equates the language in ORS 197.185 with that contained in ORS  
6 197.175(1). The Supreme Court interpreted ORS 197.175(1) as  
7 referring to "planning activities which will have a significant  
8 impact on present or future land uses." Petersen v Klamath  
9 Falls, 279 Or 249, 253-254, 466 P2d 1193 (1977). The district  
10 says, using the standard clarified in Petersen, the decision to  
11 close Lincoln is not a land use decision because it is only  
12 speculation as to whether closure will have a significant  
13 effect on land use in the surrounding area. The district says  
14 there is no claim a closure decision directly affects the  
15 present or future capability of surrounding property to be used  
16 or developed, such as an annexation or street extension would.  
17 The only claim, says the district, is that closure of Lincoln  
18 would indirectly affect the land by making the Lincoln area  
19 less desirable as a residence for some people. Not only is  
20 this indirect effect not sufficient under Petersen, claims the  
21 district, the assertion itself is pure speculation. Finally,  
22 the district argues any impact on land use from closing Lincoln  
23 can only be minor since there are so few school children in the  
24 area and, thus, so few people actually affected by the decision.

25 The district argues, in the alternative, that even if the  
26 decision to close Lincoln were deemed to significantly affect

1 land use under the Petersen test, the decision is still not one  
2 which required application of the goals based upon the  
3 reasoning in State Housing Council v Lake Oswego, 48 Or App  
4 525, 617 P2d 655 (1980), rev denied \_\_\_ Or \_\_\_, \_\_\_ P2d \_\_\_  
5 (1981). The district says its decision to close Lincoln was  
6 one concerned with how best to allocate the district's limited  
7 financial resources. The legislature did not, says the  
8 district, intend to subject such decision making to scrutiny  
9 under the goals.

10 We conclude the decision of the district to close Lincoln  
11 School for elementary education purposes is a land use decision  
12 over which this board has review jurisdiction. The MAGP and  
13 the WNP contain policies which specifically address Lincoln and  
14 its importance to the downtown Eugene area and the west Eugene  
15 neighborhood of which it is a part. The district does not  
16 contend that the MAGP and the WNP policies pertaining to  
17 schools in general or Lincoln in particular are not valid or  
18 were outside the authority of the City of Eugene to adopt. At  
19 most, the district's position is that it simply was not  
20 required to consider the policies of the MAGP and WNP in  
21 arriving at its closure decision.

22 In Jackson County v Bear Creek Sanitary Authority, 53 Or  
23 App 823, \_\_\_ P2d \_\_\_ (1981), the Court of Appeals compared the  
24 respective planning authorities of a county and a special  
25 district (in that case, a sanitary district). Although the  
26 sanitary district had been given specific plan making authority

1 by the legislature in ORS 450.825, the Court held the  
2 district's plan making authority was secondary and subservient  
3 to that of a county.

4 "The city and county are the primary planning  
units in the land use scheme.\*\*\*

5 "The policies adopted by the county relating to  
6 sewer services are, on their face, within the category  
7 of policies which the county is empowered to include  
8 within its comprehensive plan. ORS 197.015(5). The  
9 policies are general in that they are not made  
10 applicable to specific tracts of land but are couched  
11 in 'broad categories.' Although LUBA characterizes  
12 them as being 'fairly specific,' they do not approach  
13 a level of specificity inappropriate for comprehensive  
14 planning. Furthermore, the policies pertain to a  
15 matter required under ORS 197.015(5) and Goal 11  
16 (public facilities and services) to be included in the  
17 comprehensive plan. Finally, no statutory provision  
18 has been cited to us, and we have found none, that  
19 limits the policy making power of the county to  
20 matters relating more to regulating or directing  
21 growth, a distinction made by LUBA in its order. ORS  
22 197.015(5) defines a comprehensive plan as a land use  
23 map and policy statement which interrelates activities  
24 relating to the use of lands, a broader concept than  
25 that of merely regulating growth.

16 "Although both the sanitary district and the  
17 county appear to have statutory authority to formulate  
18 policy concerning sewer services, we conclude that the  
19 sanitary district's policy making role is subordinate  
20 to that of the county, and that the county was within  
21 its statutory authority in adopting the policies in  
22 question. We reach that conclusion because ORS  
23 197.185(1) specifically requires special districts to  
24 exercise their planning duties 'in accordance with  
25 state-wide planning goals.' So must counties. ORS  
26 197.175. To avoid a stand off between planning  
agencies, Goal 2 (supra, n. 7) requires that special  
district plans be consistent with the comprehensive  
plans of counties." 53 Or App 827 - 829.

24 Policies with respect to the provision of school services  
25 are also, on their face, within the power of cities to adopt.  
26 ORS 197.015(5) defines a comprehensive plan as the map and

1 policy statement "that interrelates all functional and natural  
2 systems and activities relating to the use of lands, including  
3 but not limited to sewer and water systems...educational  
4 systems,..." Goal 11 also requires cities "to plan and develop  
5 a timely, orderly and efficient arrangement of public  
6 facilities and services to serve as a framework for urban and  
7 rural development" The goal defines "timely, orderly and  
8 efficient arrangement" as "a system or plan that coordinates  
9 the type, location and delivery of public facilities and  
10 services in a manner that best supports the existing and  
11 proposed land uses." "Urban facilities and services" as used  
12 in Goal 11 "refers to key facilities" which are, in turn,  
13 defined to include "public schools."

14 While it may be argued in the present case that the city's  
15 policies pertaining to schools in general or Lincoln School in  
16 particular are, as the Court of Appeals implied, possibly too  
17 specific and, hence, outside the city's planning authority,  
18 that argument has not been made. Nor do we think such an  
19 argument would be meritorious given the Court of Appeals'  
20 opinion in Jackson County. The Court of Appeals said not only  
21 that the special district's plan must be consistent with that  
22 of a city or county, but that the special district's  
23 policy-making authority as to how it is going to provide the  
24 needed facilities and services is also subordinate to the city  
25 or county's. As stated above, Goal 11 under the Court of  
26 Appeals' interpretation of the planning scheme, gives cities

1 the power, presumably at least, to go so far as to dictate the  
2 general location of public facilities and services (here,  
3 schools) to be provided by special districts.<sup>2</sup>

4 We do not believe the decision to close Lincoln was a  
5 "fiscal policy" decision which is exempt from application of  
6 statewide goals and local land use planning considerations  
7 within the meaning of State Housing Council v City of Lake  
8 Oswego, 48 Or App 525, \_\_\_ P2d \_\_\_ (1980), rev den \_\_\_ Or \_\_, \_\_\_  
9 P2d \_\_\_ (1981). The district's decision here did not involve  
10 the adoption of fiscal policy; rather fiscal policy was simply  
11 the expressed motivation for the decision. Motivation is not,  
12 we submit, a yardstick by which can be measured whether a  
13 particular decision must comply with statewide goals and local  
14 comprehensive plans. To do so would, as petitioners point out,  
15 enable local governing bodies to insulate themselves from  
16 having to comply with land use planning requirements simply by  
17 expressing that the reason for the decision is to save money or  
18 to increase revenues. As obvious example of the latter would  
19 be the rezoning of land from a residential to an industrial use  
20 which would have the effect of increasing tax revenues.  
21 Another example might be a decision to annex land to a city,  
22 again for the purpose of increasing tax revenues. Thus, we  
23 believe to say express motivation for a decision determined  
24 whether the decision is one subject to land use planning  
25 requirements is to carry the decision in State Housing Council  
26 far beyond that intended.

1           Accordingly, we believe given the holding in Jackson County  
2 that the district was required in reaching its decision to  
3 close Lincoln, to consider and apply the policies in the MAGP  
4 and WNP. As such, the district's decision "concerns  
5 the...application of...a comprehensive plan provision" within  
6 the meaning of OPS 197.015 and 1979 Oregon Laws, chapter 772,  
7 section 4(1), as amended by 1981 Oregon Laws, chapter 748,  
8 section 35.

9           2. First Assignment of Error

10           Petitioners' first assignment of error is that the district  
11 violated the city's comprehensive plan which "explicitly"  
12 requires Lincoln to remain open. In particular, petitioners  
13 cite the following policy contained in the WNP:

14                   "To provide adequate facilities and services for  
15 the westside area and to enhance its feeling of  
neighborhood, the City of Eugene should:

16                           "1. Maintain Lincoln Community School, in  
17 cooperation with School District 4J as the  
18 educational, social, recreational and community  
center of the Westside Neighborhood, by  
19 strengthening both the physical facilities and  
programs provided there;"

20           The MAGP, which incorporates the WNP, states as primary  
21 policies to achieve compact urban growth, revitalize the  
22 downtown Eugene area and preserve existing neighborhoods.  
23 Schools are identified as important in achieving these policies:

24                   "Elementary and community schools represent  
25 important features to residential neighborhoods and  
the lack of such facilities can reduce the livability  
26 of an area in terms of neighborhood needs." MAGP at  
III-G-3.

1 "Residents of central city neighborhoods have  
2 identified the presence of elementary and community  
3 school facilities as important contributors to the  
4 stability of their neighborhoods to attract a range of  
5 families and households, including families with  
6 school age children." Id.

7 "Support financial and other efforts to provide  
8 elementary and community schools in central city areas  
9 in order to maintain and increase the attractiveness  
10 and stability of those areas for residential  
11 purposes." MAGP at III-G-5.

12 Lincoln School's importance in particular is addressed in  
13 the statement from the WNP quoted at the beginning of the  
14 discussion of this assignment of error as well as in the  
15 following policy:

16 "Lincoln Community School is one of the Westside  
17 Neighborhood's most important institutions, serving  
18 the educational, social, recreational and civic needs  
19 of the area. The school building needs rehabilitation  
20 so that it can continue to serve both the neighborhood  
21 and the city." WNP at 19.

22 While we recognize the importance that the City of Eugene  
23 places on Lincoln in achieving the city's overall plan  
24 policies, we do not interpret the MAGP, and WNP in particular,  
25 as mandating that Lincoln remain open as an elementary school.  
26 We agree with the district that the specific policy relied upon  
by petitioners contained in the WNP and quoted at the beginning  
of the discussion of this assignment of error is one aimed at  
the city, defining its responsibility, rather than the  
district's responsibility. It is obvious the city believes  
retaining Lincoln as an elementary school is important. The  
city is telling itself to do what it can to cooperate with the  
district to try to keep the school operating. But, as we

1 interpret the city's plan policies, this responsibility extends  
2 to more than just doing what it can to have Lincoln stay open  
3 as an elementary school. It also involves the other uses of  
4 the school and school grounds which are not necessarily  
5 dependent upon its use as an elementary school. These uses  
6 include recreational, social and community and adult  
7 educational uses.

8 That is not to say the district can ignore the policies in  
9 the plan which speak to the importance of Lincoln and other  
10 schools in the central city area. Quite to the contrary. The  
11 district must respect these policies because they are  
12 expressions of need by the city. Goal 2 requires coordination  
13 when a special district proposes to act. Coordination in this  
14 context requires the district to consider and accommodate as  
15 much as possible the needs of the city. (See Footnote 1). The  
16 city's identified a need to retain Lincoln as a viable part of  
17 the Westside Neighborhood. The district must consider and  
18 accommodate that need "as much as possible." But this  
19 responsibility to accommodate does not mean the district cannot  
20 close Lincoln without violating the city's plan. We do not  
21 interpret either the MAGP or WNP as mandating that the district  
22 keep Lincoln open no matter the circumstances, financial or  
23 otherwise. Such an interpretation would not only require  
24 reading into the plan that which is not expressly there, but  
25 would be to give to the city power and authority beyond what we  
26 believe the legislature ever would have intended, Jackson

1 County v Bear Creek Sanitary Authority, supra,

2 notwithstanding. Petitioner's first assignment of error is  
3 denied.

4 3. Second Assignment of Error.

5 Petitioner's second assignment of error is that the  
6 district ignored certain relevant standards contained in the  
7 city's plan. One plan policy allegedly ignored is "to shape  
8 and plan for a compact urban growth form." Petitioners allege  
9 policies calling for more residential and economic growth in  
10 the downtown Eugene area and increasing residential densities  
11 within one mile of downtown were also ignored. Petitioners  
12 complain that the city erred in not addressing policies calling  
13 for infilling, facilities to maintain the quality of life and  
14 maximizing the efficiency of the existing transportation system.

15 We agree with the district, however, that the district did  
16 address these policies, particularly when the findings are read  
17 as a whole. Petitioners do not cite any testimony or evidence  
18 which indicates the closure of Lincoln would frustrate city  
19 policies relating to a "compact urban growth form," encouraging  
20 high densities and infilling. Moreover, the district found  
21 that efforts to rehabilitate the Westside Neighborhood had not  
22 increased enrollments, so there was no reason to believe  
23 closing Lincoln should necessarily adversely affect  
24 rehabilitation efforts. Because so few people who presently  
25 live in the Westside Neighborhood in multi-family housing have  
26 school age children (one student per 100 dwelling units), it is

1 difficult for this board to believe that closure of Lincoln  
2 would significantly affect efforts to increase densities or  
3 otherwise attract people to the Westside Neighborhood.  
4 Petitioners do not explain how the policies which they cite  
5 might be at variance with the district's decision to close  
6 Lincoln or how it is the findings made by the district do not  
7 adequately address these issues. Petitioners' second  
8 assignment of error is denied.

9 4. Third Assignment of Error

10 Petitioners' third assignment of error is that the findings  
11 of fact adopted by the district rely on a budget document that  
12 is not properly part of the record of the district's  
13 proceedings. Petitioners say neither the budget figures nor  
14 the budget document from which they were drawn were in the  
15 record as it stood prior to the Lincoln II decision on June 8,  
16 1981. Because the Lincoln II record is also the Lincoln III  
17 record, the findings rely on evidence not in the record, say  
18 petitioners. The district argues that the budget figures were  
19 in the Lincoln II and, hence, Lincoln III record.

20 The budget document contains budgetary figures showing  
21 funds available for district wide building improvements,  
22 alterations and contingencies. The budget document was adopted  
23 in revised form by the district on May 18, 1981. The budget  
24 document originally submitted with the record was a revised  
25 version of the May 18, 1981, document adopted by the district  
26 in September and after the close of its public hearings

1 concerning the Lincoln School issue. At oral argument, the  
2 district advised the board the September budget was submitted  
3 by mistake. The district has since substituted for the  
4 September budget document the budget document adopted on May  
5 18, 1981. Petitioner, however, has not withdrawn its objection  
6 to inclusion of the May 18 budget document in the record. We  
7 consider, therefore, petitioners' third assignment of error to  
8 relate to the May 18, 1981, budget document rather than the  
9 later budget document which has been withdrawn from the record.

10 We deny petitioners' third assignment of error for two  
11 reasons. First, the record in this matter was transmitted to  
12 this board on September 18, 1981. The Petition for Review  
13 challenging the inclusion of the budget document in the record  
14 was not received until October 21, 1981. LUBA Rule 6(C) sets  
15 forth the procedure to be followed when an objection to the  
16 accuracy of the record is made as well as the time limit within  
17 which that objection is to be made. The objection must state  
18 that the party first attempted to resolve the objection with  
19 the governing body but was unable to do so before filing the  
20 objection with the board, and the objection must be filed with  
21 the board within ten days following service of the record on  
22 the person filing the objection. The objection that the record  
23 is inaccurate because it includes material not properly part of  
24 the record was not timely filed, as it was filed with the board  
25 more than 30 days from the date the record was transmitted to  
26 the board and, presumably, served on the petitioners. In

1 addition, the objection contained in the Petition for Review  
2 does not state that petitioners attempted to resolve the  
3 objection with the district before filing the objection.

4 Second, we believe the district did consider the budget  
5 document or at least the figures contained therein in arriving  
6 at its decision in this case and that, as a result, the budget  
7 document was part of the record. The budget document was  
8 adopted by the district on May 18, 1981. On May 27, 1981, the  
9 district held its last public hearing at which testimony was  
10 received concerning the matter of closing Lincoln. The issue  
11 of the sufficiency of the district's resources to operate  
12 Lincoln was or at least should have been well known to all  
13 participants in the Lincoln closure decision. No one should be  
14 able to claim surprise that the district, in arriving at its  
15 decision concerning Lincoln, relied upon facts and figures  
16 contained in the budget document. The budget document and its  
17 figures were available at the May 27 hearing since it had been  
18 adopted only nine days earlier. To say the district could not  
19 rely upon these figures because they may not have been  
20 physically in front of the district members would appear to us  
21 to be unreasonable. An announcement by the district that it  
22 intended to rely upon the budget document seems unnecessary,  
23 under these circumstances, to adequately protect the  
24 petitioners and the public. The budget document figures were  
25 considered by the district and, in our judgment, not improperly.

1           5. Fourth Assignment of Error

2           Petitioners assert in their fourth assignment of error that  
3 the district erred in concluding, based on the evidence in the  
4 record, that simply ceasing to use Lincoln for elementary  
5 school purposes would not affect "whatever historic  
6 significance the building and the site may have." Petitioners  
7 say the district was required under Goal 5 to do more than  
8 simply protect the physical shell of the building. Petitioners  
9 contend the district was required to develop a program to  
10 protect the historic resource and that this program had to be  
11 "developed and adopted before or contemporaneous with the  
12 closure decision that negatively impacts its historic value."  
13 Petition for Review at 41.

14           The district argues that the City of Eugene has not  
15 identified Lincoln in its comprehensive plan as an historic  
16 resource to be protected and that LCDC has already agreed with  
17 its determination. We believe the district is correct and,  
18 therefore, conclude that the district's finding concerning Goal  
19 5 was not in error.

20           The City of Eugene requested that LCDC acknowledge its  
21 comprehensive plan as in compliance with the statewide goals  
22 pursuant to ORS 197.251. The DLCD staff submitted its report  
23 dated August 14, 1981, which recommended that the MAGP be  
24 deemed not to be comply with Goal 5. The staff report set  
25 forth additional work which needed to be done in order for the  
26 plan to be brought into compliance with Goal 5. The commission

1 in its order dated November 6, 1981, adopted the staff report  
2 and ordered that the City of Eugene perform additional planning  
3 work in order to make the MAGP comply with Goal 5, among other  
4 goals. However, one aspect of the MAGP which was deemed to be  
5 in compliance with Goal 5 was the City of Eugene's plan and  
6 ordinance provisions pertaining to historic resources under  
7 Goal 5. The staff report, adopted by the commission, stated as  
8 follows:

9 "Historic Resources

10 "Springfield has not shown which of the sites or  
11 structures on the inventory of historic sites and  
12 structures is to be protected by the City's Historic  
13 Landmarks Ordinance. Eugene's historic preservation  
14 efforts meet or exceed Goal 5 requirements. Lane  
15 County has not adopted an historic preservation  
16 ordinance (see also Lane County Acknowledgment  
17 Report)." (Emphasis added).

18 Eugene's historic preservation efforts referred to in the  
19 DLCD staff report include Ordinance No. 18097 concerning  
20 historic landmarks. That ordinance states as its purpose:

21 "To encourage programs that will provide public  
22 awareness of the city's origin, development, and  
23 historic significance and to facilitate  
24 restoration and upkeep of historic buildings,  
25 structures, other physical objects, and  
26 geographic areas by establishing procedures,  
incentives, and criteria for their designation as  
historic landmarks, subject to special  
regulations for permitted uses, development,  
alterations, moving, demolition, renovation, and  
maintenance."

As we read the ordinance, the city has no authority to order,  
nor is anyone prevented, from discontinuing use of a building  
because to do so might lessen the historic significance of the

1 building. Moreover, it does not appear that at the time the  
2 district made its decision concerning Lincoln that Lincoln  
3 School was even considered by the city to qualify as an  
4 historic structure. Respondent has attached to its brief an  
5 excerpt from the City of Eugene comprehensive plan background  
6 document which lists the city register of historic landmarks.  
7 The Lincoln School building is not listed on the city's  
8 register. Accordingly, it does not appear to us that the city  
9 has designated the Lincoln School building as an historic  
10 resource. But even if the city had so designated the Lincoln  
11 School building, nothing in the city's historic preservation  
12 ordinance would preclude the district from ceasing to use the  
13 building for school purposes. Because the city's historic  
14 preservation ordinance has been determined by LCDC to satisfy  
15 Goal 5's requirements pertaining to preservation of historic  
16 resources, we cannot hold that the district has violated Goal  
17 5.<sup>3</sup> Cf Fujimoto v Metropolitan Service District, 1 Or LUBA  
18 93 (1980), aff'd; Fujimoto v MSD, 52 Or App 875, \_\_\_ P2d \_\_\_  
19 (1981).

20 6. Fifth Assignment of Error

21 Petitioners' fifth assignment of error is that the district  
22 violated Goal 1 and notions of due process by considering and  
23 applying new standards in its findings in Lincoln III.  
24 Specifically, petitioners assert the district considered and  
25 applied "program standards" and made findings on those  
26 standards without advising the petitioners of their intent to

1 apply these standards and without giving the petitioners an  
2 opportunity to address these standards.

3 Under "program standards" the district stated the following:

4 "This board's policies with regard to  
5 instructional programs require each school to provide  
6 programs for the handicapped (Policy 5080); a  
7 curriculum which includes physical education, career  
8 education, environmental education, and the visual and  
9 performing arts (Policy 7210.1); a guidance and  
10 counselling program (Policy 7210.2); and a media  
11 center (Policy 7210.3)."

12 The district went on to find that with only 7.8 teachers being  
13 allotted to Lincoln under the district's staffing ratio, and  
14 with seven teachers needed to provide one teacher for each of  
15 grades kindergarten through sixth, only .8 teachers would be  
16 available to provide the special education, physical education,  
17 art, music and counselling guidance programs required by the  
18 district policies. The district found the only way it could  
19 meet these program requirements would be to increase the number  
20 of teachers allotted to Lincoln. This, however, would give  
21 Lincoln a lower teacher staffing ratio than other schools in  
22 the district and would violate the district-wide equal  
23 educational opportunity policy adopted by the district. To  
24 lower the district teacher staffing ratio to that which would  
25 be needed at Lincoln in order for Lincoln to be able to provide  
26 adequate programs would cost the district an additional 3.6  
million dollars. The district concluded, therefore, that it  
could not meet the district program standards.

We do not believe the district erred in citing specific

1 program standards and making findings with respect to its  
2 ability to meet those program standards. School district  
3 policy 8430 "School Closures" provides as follows:

4 "Because of declining enrollment and resources,  
5 the board believes that its obligation to provide  
6 equal educational opportunity district-wide may not  
7 permit the continued operation of all schools.  
8 Therefore, the board believes that a school should be  
9 closed upon demonstration that it cannot maintain,  
10 without additional resources, efficient operation of a  
11 program meeting District criteria.\*\*\*

12 "\*\*\*\*'District Criteria' mean those aspects of the  
13 program commonly provided in District schools that are  
14 essential to the instructional program, e.g.,  
15 auxiliary staffing, variety of offerings, flexible  
16 scheduling, etc."

17 There is no dispute that policy 8430 was a standard  
18 applicable at all times during the district's proceedings  
19 leading up to its decision to close Lincoln. This policy makes  
20 it clear that the district must consider its ability, given its  
21 resources, to provide a variety of educational offerings at a  
22 particular school. This policy is sufficient, we believe, to  
23 place people on notice that the district will be considering  
24 its ability to, at a minimum, meet offering requirements  
25 already spelled out in adopted district policies. While we  
26 would encourage governing bodies to do so when it is  
practicable, Goal 1 does not as petitioners seem to allege,  
require a governing body to announce orally in advance of its  
decision each and every policy or criteria which the governing  
body intends to apply in making its decision.<sup>4</sup> To impose  
such a burden on a governing body would, in our judgment, be

1 unreasonable. Petitioners were on notice by virtue of policy  
2 8430 that the district would be considering its ability to meet  
3 program requirements at Lincoln School. The program  
4 requirements addressed by the district were those contained in  
5 adopted policies. Petitioners were not deprived of a  
6 reasonable opportunity to address these program criteria during  
7 the district's public hearings. No error based upon Goal 1  
8 occurred in this case.<sup>5</sup>

9 7. Sixth Assignment of Error

10 Petitioners' sixth assignment of error is that the district  
11 misconstrued its policies in deciding to close Lincoln.  
12 Petitioners argue the district erred in construing its equal  
13 education opportunity policy to prohibit a lower teacher  
14 staffing ratio at Lincoln than could be allowed district wide.  
15 Petitioners also argue the district did not, in fact, find that  
16 a teacher staffing ratio of 16 to 1 was required at Lincoln in  
17 order to meet program requirements; and, as a result, the  
18 district's conclusion that to meet program requirements at  
19 Lincoln would cost the district 3.6 million dollars is  
20 unsupported by its findings.

21 The district's finding on program standards does not state  
22 that Lincoln cannot provide an adequate program with the  
23 district's present teacher staffing ratio of 18.4 students per  
24 teacher. Even if this conclusion were implicit in the  
25 district's finding, the district does not explain why it is  
26 that the present district staffing ratio which would allow 7.8

1 teachers at Lincoln is not sufficient to enable Lincoln to meet  
2 program standards. However, even if the district erred in  
3 concluding that a staffing ratio of 16 to 1 would be needed at  
4 Lincoln to meet program standards, and even if it erred in  
5 concluding that such a staffing ratio at Lincoln would violate  
6 the district's equal educational opportunity policy, the error  
7 would not affect the result in this case. The district did  
8 determine that, given present resources, it could not upgrade  
9 the Lincoln building to meet minimum fire and life safety  
10 standards. Roughly \$160,000 to \$200,000 is needed to upgrade  
11 the building to meet minimum requirements. The district found,  
12 however, that it did not have the resources available to make  
13 such an expenditure for Lincoln. Given this finding, we  
14 believe the district satisfied its school closure policy which  
15 basically states that a school should be closed if the district  
16 cannot, given present resources, provide the essentials to an  
17 instructional program such as meeting minimum safety  
18 standards. In other words, even if the district could meet  
19 minimum program standards, if the district cannot also meet the  
20 minimum safety standards the district is still justified under  
21 its school closure policy in closing the school.

22 Petitioners also attack, however, the district's  
23 interpretation of its school closure policy that would limit  
24 the inquiry into whether adequate resources were available in  
25 the building improvement budget, contingency fund budget and  
26 bond fund. Petitioners assert "there is no evidence, analysis

1 or findings on funds in other sources to support the overall  
2 conclusion." As we interpret petitioners' argument, it is that  
3 the district was required to look beyond just those resources  
4 which the district budget had set aside to meet such  
5 contingencies as having to upgrade a school building. As we  
6 understand petitioners' argument, the district was required to  
7 look to other areas of its budget to determine if \$150,000 to  
8 \$200,000 might be able to be made available to upgrade Lincoln  
9 School.

10 While it may have been permissible for the district to  
11 reexamine its budget document to determine whether \$150,000 to  
12 \$200,000 might be able to be made available from areas other  
13 than the contingency fund, bond fund or building improvement  
14 fund, we do not believe that the district misconstrued its  
15 school closure policy by not doing so. The school closure  
16 policy states, in pertinent part, as follows:

17 "\*\*\*\*Therefore, the board believes that a school  
18 should be closed upon demonstration that it cannot  
19 maintain, without additional resources, efficient  
operation of a program meeting district criteria."  
(Emphasis added).

20 The district has apparently interpreted "additional resources"  
21 as being resources in addition to those designated in the  
22 budget as available for "efficient operation of a program  
23 meeting district criteria." We note also that petitioners have  
24 not pointed to anywhere in the district's budget where monies  
25 sufficient to upgrade Lincoln to meet minimum fire and life  
26 safety requirements are available. Under these circumstances,

1 we do not believe the district erred in not reexamining its  
2 entire budget document to determine whether \$150,000 to  
3 \$200,000 might be made available to enable the district to  
4 upgrade Lincoln to meet minimum fire and life safety  
5 requirements. Petitioners' sixth assignment of error is,  
6 accordingly, denied.

7 For the foregoing reasons, the school district's decision  
8 to close Lincoln is affirmed.

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FOOTNOTES

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1 Goal 2 adopts the definition of "coordinated" used in ORS 197.015(5):

\*\*\*A plan is 'coordinated' when the needs of all levels of governments...have been considered and accommodated as much as possible.\*\*\*" ORS 197.015(5).

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2 As we discuss, *infra*, we do not believe this power extends even under the Jackson County holding to enabling a city to require that a particular school remain open no matter what the circumstances. But it probably would extend to enabling a city to tell a school district the areas in which schools are to be located.

---

3 A continuance order is a final agency order which LUBA must follow, at least with respect to issues relating to goals which are found to be complied with. ORS 197.251(8)(a)(C). Determinations made by the commission in a continuance order relating to goals not found to be fully complied with technically are not final determinations. However, it is the commission's position that LUBA should also follow such determinations.

---

4 The district does not argue Goal 1 is not applicable to this specific decision.

---

5 The district found it would be unable to meet program criteria given its present resources. Petitioners do not attack this finding on the basis that the finding lacks evidentiary support in the record. Petitioners only complaint, as understand it, is that the district erred in considering whether it was able to meet these program standards.



STATE OF OREGON

INTEROFFICE MEMO

TO: MEMBERS OF THE LAND CONSERVATION AND DEVELOPMENT COMMISSION

DATE: 1/19/82

RECEIVED

FROM: LAND USE BOARD OF APPEALS

ATTORNEY GENERAL

SUBJECT: WESTSIDE NEIGHBORHOOD v SCHOOL DISTRICT 4J

LUBA No. 81-096

SALEM, O

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

This case is about the decision of School District 4J to close Lincoln Elementary School in the City of Eugene. Petitioners made six assignments of error, only two of which involved goal violations. Petitioners contended the district violated Goal 5 by failing to adopt a program to deal with the negative impacts on Lincoln's historical value which would result from closing Lincoln. Petitioners also argued the district violated Goal 1 by failing to allow petitioners the opportunity to address some of the standards applied by the district.

We concluded Goal 5 was not violated in this case in view of LCDC's recent action concerning acknowledgment review of the City of Eugene Comprehensive Plan. In its order dated November 6, 1981, the commission adopted the staff report which stated that the Eugene Comprehensive Plan (the Metropolitan Area General Plan) satisfied Goal 5 requirements pertaining to historic resources. This plan did not require preservation of Lincoln nor could it be interpreted as precluding the district from closing Lincoln unless it had a program developed to protect Lincoln's historic value. We concluded, therefore, that the district's failure to adopt a program to protect Lincoln's historic value before deciding to close Lincoln did not violate Goal 5.

Petitioners asserted a violation of Goal 1 occurred because the district considered and applied standards without announcing in advance of its decision that those standards would be applied. The standards were specific program requirements which the district found could not be met at Lincoln given financial resources available. We said no violation of Goal 1 occurred, however, because the school district's school closure policy of which petitioners were aware put petitioners on notice that the district would be considering its ability to meet its adopted program requirements at Lincoln School. Hence, petitioners were not deprived of a reasonable opportunity to address these program criteria during the district's public hearings.



Contains Recycled Materials

Pages 26 to 31 address petitioners' goal allegations. The commission should also review the "Facts" section of the opinion as an aid to its consideration of the goal related assignments of error.

The Board is of the opinion that oral argument would 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.

BOARD OF APPEALS  
FEB 16 3 38 PM '82

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

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WESTSIDE NEIGHBORHOOD QUALITY )  
PROJECT, INC., a non-profit )  
corporation and chartered )  
citizen involvement committee, )  
DAVID FIDANQUE, BRIAN SIMONITCH, )  
PAULA MAHAN, MIKE GRAHAM, and )  
SANDRA BISHOP, )  
Petitioners, )  
v. )  
SCHOOL DISTRICT 4J, )  
BOARD OF DIRECTORS, )  
Respondents. )

LUBA No. 81-096  
LCDC DETERMINATION

The Land Conservation and Development Commission hereby  
approves the recommendation of the Land Use Board of Appeals in  
LUBA Case No. 81-096 with the following modification:

- 1. On page 28 of the opinion, at line 17 after "5," foot  
note 3 should be added. Footnote 3 should read:  
"3. A continuance order is a final agency  
order which LUBA must follow, at least  
with respect to issues relating to goals  
which are found to be complied with.  
ORS 197.251(3)(a)(C). Determinations  
made by the commission in a continuance  
order relating to goals not found to be  
fully complied with technically are not  
final determinations. However, it is  
the commission's position that LUBA  
should also follow such determinations.

DATED this 16<sup>th</sup> day of February, 1982.

For the Commission:  
*James F. Ross*  
James F. Ross, Director  
Department of Land Conservation  
and Development

1000  
Salem, Oregon 97310  
Phone 378-4400

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

WESTSIDE NEIGHBORHOOD )  
QUALITY PROJECT, INC., )  
a nonprofit corporation )  
and chartered citizen )  
involvement committee, )  
DAVID FIDANQUE, BRIAN )  
SIMONITCH, PAULA MAHAN, )  
MIKE GRAHAM, and )  
SANDRA BISHOP, )  
Petitioners, )  
vs. )  
SCHOOL DISTRICT 4J )  
BOARD OF DIRECTORS, )  
Respondents. )

LUBA No. 81-096  
PROPOSED OPINION  
AND ORDER

Appeal from Lane County School District 4J

Bill Kloos, Eugene and H. Thomas Andersen, Eugene, filed the Petition for Review and argued the cause on behalf of Petitioners.

Corinne C. Sherton, Salem, filed the brief and argued the cause on behalf of Respondent.

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

AFFIRMED

1/19/82

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).