



1 Opinion by Kressel.

2 Nature of Decision

3 The Wasco County comprehensive plan was adopted in 1979.  
4 Prior to September, 1985, the plans of all cities within the  
5 county were incorporated by reference in the county's plan. On  
6 September 4, 1985, the ordinance at issue deleted those plans  
7 from the county's plan, except those portions of the city plans  
8 applicable to urban growth areas.<sup>1</sup> Petitioner objects to the  
9 portion of the ordinance deleting the Rajneeshpuram plan from  
10 the county's plan. We affirm the county's decision.

11 Facts

12 On November 3, 1982, the Wasco County Court adopted the  
13 Rajneeshpuram plan as part of the county plan. Since then,  
14 however, the county has endeavored to put distance between its  
15 plan and the Rajneeshpuram planning program. In July, 1984,  
16 Respondent deleted the city's plan from its own plan. However,  
17 the effort was turned back by this Board on procedural grounds.  
18 Rajneesh Medical Corp. v. Wasco County, \_\_\_ Or LUBA \_\_\_ (LUBA  
19 Nos. 84-064-067, November 2, 1984), aff'd Rajneesh Medical  
20 Corp. v. Wasco County, 300 Or 107, \_\_\_ P2d \_\_\_ (1985). In  
21 February, 1985, Respondent adopted an ordinance again deleting  
22 the city's plan from the county plan. A related ordinance also  
23 deleted all portions of the inventory in the county plan  
24 referring to the city. Those ordinances were turned back under  
25 Statewide Goal 2 in Rajneesh Travel Corp. v. Wasco County, \_\_\_  
26 Or LUBA \_\_\_ (Nos. 85-012-13, 015-16, June 14, 1985). We held

1 that (1) Respondent adopted the plan amendment without inviting  
2 comment from affected interests (the Rajneeshpuram Rural Fire  
3 Protection District) and (2) the deletion of all land planning  
4 data concerning Rajneeshpuram undermined the factual foundation  
5 of Respondent's comprehensive plan.

6 The decision at issue here represents an attempt to cure  
7 the previous deficiencies. The amendment was adopted after  
8 coordination with affected municipalities, citizens, and  
9 groups, including Petitioner. As noted, the amendment does not  
10 focus exclusively on the Rajneeshpuram planning program, but  
11 deletes from the county plan all (or most) of the planning  
12 documents of cities within the county. The challenged  
13 amendment also includes findings discussing the decision in  
14 terms of the statewide planning goals and policies in the  
15 county plan.

16 Among other things, the county's findings state that the  
17 amendment does not alter the county's plan inventory for lands  
18 over which the county has land planning jurisdiction. This  
19 finding, and the related conclusion that the amendment  
20 satisfies Statewide Goal 2 (plans must have adequate factual  
21 base) are the principal targets of petitioner's attack.

#### 22 INTERVENTION

23 Rajneesh Investment Corporation (RIC), which owns all the  
24 real property in Rajneeshpuram, moves to intervene on the side  
25 of Petitioner. It claims that intervention may be necessary to  
26 preserve LUBA's jurisdiction over the appeal, because the legal

1 status of Petitioner city of Rajneeshpuram is in doubt.<sup>2</sup> We  
2 allow the motion.

3 ORS 197.830(5) states:

4 "Within a reasonable time after a petition for review  
5 has been filed with the board, any person may intervene  
6 in and be made a party to the review proceeding upon a  
7 showing of compliance with subsection (2) or subsection  
8 (3) of this section."

9 We have adopted a rule in connection with this statute.  
10 The rule requires that a motion to intervene as a Petitioner  
11 must be filed within the time scheduled for the filing of the  
12 petition. OAR 660-10-050(a).

13 The petition for review in this appeal was filed on  
14 November 16, 1985. Wasco County filed its response brief on  
15 January 15, 1986. Oral argument was conducted on January 23,  
16 1986. RIC filed the motion to intervene after oral argument,  
17 on January 31, 1986.

18 Respondent argues that the motion was not timely filed and  
19 should therefore be denied. However, although the motion was  
20 untimely under our rules, we do not consider this a persuasive  
21 reason to deny it. The critical point, as we see it, is that  
22 RIC does not seek intervention to raise new issues or present  
23 new responses to the county's brief. Allowance of the motion  
24 will therefore not delay issuance of our final opinion. The  
25 sole consequence would be to permit RIC to pursue this appeal  
26 in the event Rajneeshpuram loses the legal capacity to do so.  
Although the county's involvement in this matter might  
therefore be extended, we do not consider this a ground to deny

1 the motion. cf Duddles v. City of West Linn, 21 Or App 310,  
2 315, 535 P2d 583 (1976). Under the unusual circumstances  
3 presented, we do not view the motion as outside the  
4 reasonableness standard set forth in ORS 197.830(5).

5 Respondent also urges us to deny the motion on grounds that  
6 RIC lacks standing to challenge the county's decision. We  
7 reject the challenge to RIC's standing for the reasons set  
8 forth below.

9 The challenged amendment is legislative in nature.  
10 Strawberry Hill 4-Wheelers v. Board of Commissioners of Benton  
11 County, 287 Or 591, 601 P2d 769 (1979). Under ORS 197.830(2),  
12 a person may appeal a legislative land use decision to LUBA if  
13 the person:

14 " (a) filed a notice of intent to appeal the decision  
15 as provided in subsection (1) of this section; and  
16 " (b) Is aggrieved or has interests adversely  
17 affected by the decision."<sup>3</sup>

18 As previously noted, RIC owns the real property within the  
19 city limits of Rajneeshpuram. Its motion to intervene  
20 addresses the standing question as follows:

21 "RIC is....adversely affected and aggrieved by the  
22 ordinance under review, which will, if the city is  
23 declared invalid [in federal court litigation] render  
24 most if not all of RIC's lands, buildings, and  
25 activities nonconforming or illegal uses, subjecting  
26 RIC to losses in the millions of dollars." Motion to  
Intervene at 1.

27 RIC's standing allegation is terse but it is  
28 nonetheless sufficient. As we understand it, RIC claims  
29 that the challenged decision may, given the pending

1 challenges to the city's validity, have the effect of  
2 altering the zoning status (i.e., downzoning) of its  
3 land. Underlying the claim, as we read it, are these  
4 points: (1) Invalidation of the city would reinvest the  
5 county with land planning authority over RIC's land and  
6 (2) the urban use designations for RIC's lands reflected  
7 in the current Wasco County plan, i.e., the plan before  
8 this amendment was adopted, are more favorable to RIC than  
9 other designations the county could impose<sup>4</sup> after  
10 invalidation of the city. Thus, even though the county  
11 now has no land planning jurisdiction over RIC's land, the  
12 challenged amendment makes possible the exercise of that  
13 jurisdiction in a manner less favorable to RIC than would  
14 be the case without the amendment.

15 We recognize that, in a sense, RIC's standing theory  
16 depends on a chain of future events, thus raising doubt as  
17 to whether RIC can be considered adversely affected or  
18 aggrieved by the county's action. ORS 197.830(2)(b);  
19 Benton County v. Friends of Benton County, 294 Or 79, 92,  
20 653 P2d 1249 (1982). However, the assumed chain of events  
21 is not without factual basis. The Federal District Court  
22 has barred the state from recognizing the municipal status  
23 of the City of Rajneeshpuram. We believe that, for  
24 standing purposes in this case, it is sufficient that the  
25 city's validity is in doubt and that, but for adoption of  
26 the challenged measure, RIC would continue to benefit from

1 the urban zoning reflected in the county plan.

2 We turn next to the challenges presented in the  
3 petition for review filed by the city. In doing so we  
4 assume RIC embraces the city's assignments of error.

5 FIRST ASSIGNMENT OF ERROR

6 Petitioner contends the deletion of the Rajneeshpuram  
7 plan from the county plan violates Statewide Goal 2 (Land  
8 Use Planning). In pertinent part, the goal is to  
9 "establish a land use planning process and policy  
10 framework as a basis for all decisions and actions related  
11 to use of land and to assure an adequate factual base for  
12 such decisions and actions." (emphasis added).

13 Petitioner argues that the amendment violates the  
14 emphasized portion of the goal because the deleted  
15 material contains information about the environment within  
16 and outside the boundaries of the city. Petitioner adds  
17 that the deleted material is relevant to issues addressed  
18 in the county plan. The petition states:

19 "The county correctly argues that it was not required  
20 to incorporate a city's plan into the County Plan.  
21 However, once it chose to adopt city plans, this  
22 resulted in a certain inventory emphasis. In order to  
23 remove the city plans, the County was required to  
24 either make a finding that the inventory information  
25 was incorrect or transfer the correct inventory  
26 information to the inventory section of the County  
Plan. Petition at 7 (citations omitted).

24 The county answers the Goal 2 challenge by arguing that the  
25 plan amendment leaves intact the inventories contained in the  
26 county plan. Those inventories address social and

1 environmental resources, public facilities, transportation,  
2 housing, education, and other related matters. The supporting  
3 findings state:

4  
5 "b. This plan amendment does not affect any inventory  
6 in the County's plan. Its adoption does not  
7 require the adoption of any new inventory or  
8 information to support the decision, beyond these  
9 findings. Representatives of Rajneeshpuram and  
10 the city of Rajneesh expressed concern that the  
11 proposed amendment would change inventories in  
12 the County Comprehensive Plan. Any inventory  
13 material removed as result of the deletion of  
14 city plans is irrelevant to the County's planning  
15 process because such city inventory information  
16 would be inapplicable to the lands and decisions  
17 under the County's jurisdiction. The County  
18 would continue to recognize the plans adopted by  
19 the cities within Wasco County and would  
20 recognize inventories within those plans in its  
21 coordination with cities, however, it is not  
22 necessary to incorporate city plans to accomplish  
23 this goal. The representative from the  
24 Department of Land Conservation and Development  
25 testified that the amendment was endorsed by that  
26 agency and that it was a procedural matter only  
which has no effect on the substance of the  
County's Plan or required Plan inventories.

"Further, the acknowledgment review of the Wasco  
County Plan did not include review of city plans  
within the County even though the County had  
incorporated such city plans at the time of the  
review." Record at 15.

Although we question the county's claim that any of the  
deleted inventories must be "irrelevant to the county's  
planning process," we nonetheless conclude that the Goal 2  
attack cannot be upheld. A comprehensive plan is required to  
have an "adequate factual base," not a base built upon all  
conceivably relevant data. The city asserts, no doubt

1 correctly, that its plan contains much information about  
2 climate, drainage and topography, landforms, soil conditions,  
3 ground water and other matters relevant to the environmental  
4 issues in and around Rajneeshpuram. However, the county  
5 maintains that its plan, standing alone, contains an adequate  
6 Goal 2 inventory. The challenged ordinance states:

7 "Under the amendment, the County's Plan will remain  
8 consistent with the plans of cities in the County.  
9 The plan will continue to be supported by an adequate  
10 factual base." Record at 16.

11 Petitioner broadly insists that "[u]nder any circumstances,  
12 once the county has adopted certain inventory information as  
13 relevant, the county must...retain it." Petition at 7. We  
14 construe this to mean that the deletion of the Rajneeshpuram  
15 plan somehow undermines the factual foundation (and therefore  
16 the validity under Goal 2) of the county's plan. However,  
17 Petitioner does not support its broadly stated goal violation  
18 claim with specific points. The petition does not explain or  
19 demonstrate in what way(s) the inventories remaining in the  
20 county's plan are inadequate. We will not assume the city's  
21 inventories are essential to the validity of the county plan;  
22 nor will we independently review all the county's plan  
23 inventories to determine their adequacy to support planning  
24 decisions.

25 The first assignment of error is denied.

26 SECOND ASSIGNMENT OF ERROR

Petitioner next takes issue with the county's finding that

1 the inventories in the city's plan are "...inapplicable to the  
2 lands and decisions under the county's jurisdiction." Record  
3 at 15. Petitioner claims the finding is incorrect because an  
4 injunction issued by the Wasco County Circuit Court has given  
5 Respondent land use decision-making authority inside the  
6 Rajneeshpuram city limits since October, 1983.

7 We reject this claim. As Respondent points out, the  
8 injunction requires that county planning officials be advised  
9 of permits the city proposes to issue and authorizes the county  
10 to file objections to such permits with the Circuit Court. The  
11 order does not give Respondent land use decision-making  
12 authority inside city limits. Petitioner has not demonstrated  
13 why the injunction prevents Respondent from deleting the  
14 Rajneeshpuram plan from the county plan.

15 The petition also asserts that the county erred by failing  
16 to make findings demonstrating that the plan amendment conforms  
17 to Statewide Goals 3-14. Petitioner adds that the county erred  
18 because it did not "...address the findings in the city's plan,  
19 as they relate to various Goals." Petition at 10. However,  
20 petitioner has not explained why the county was obligated to  
21 address Goals 3-14 in enacting the measure in question. On its  
22 face, the measure simply recognizes the city's jurisdiction to  
23 conduct planning activities for land within city boundaries.  
24 The county must coordinate its planning efforts with the city,  
25 Rajneesh Medical Corp. v. Wasco County, supra 300 Or at 110,  
26 but petitioner has not explained why the coordination rule

1 prohibits the "you-go-your-way, we'll-go-ours" approach  
2 reflected here. We recognize that the county must exercise its  
3 planning and zoning responsibilities in accord with the  
4 statewide goals, ORS 197.175(1), but with respect to land  
5 inside Rajneeshpuram, the county has no such responsibilities.  
6 The ordinance in issue here recognizes this fact. Since the  
7 petition does not present a legal theory for the contention  
8 that Goals 3-14 had to be addressed in this instance, we reject  
9 the challenge.<sup>5</sup>

10 The second assignment of error is denied.

11 THIRD ASSIGNMENT OF ERROR

12 Petitioner's final contention is that the challenged  
13 ordinance fails to demonstrate compliance with four criteria  
14 for plan amendments in the county's plan. However, two  
15 criteria Petitioner relies on require consideration of a matter  
16 we have already addressed--compliance with the statewide  
17 goals. We need proceed no further on goal issues.

18 Criterion 5 requires the county to consider whether a plan  
19 amendment is justified by "proof of change in the inventories  
20 originally developed." The challenged amendment states that  
21 this criterion is inapplicable. The county's position is that  
22 the inventories originally developed by the county have not  
23 changed and are unaffected by the deletion of the city's plan.  
24 The county's brief states:

25 "The amendment did not require a demonstration of  
26 inaccuracies in inventory information of city plans  
because it is not deleting County Plan inventory. The

1 amendment recognizes city plans and the fact that the  
2 cities, not the County, have jurisdiction to plan over  
their own respective areas." Respondent's brief at 8.

3 The position is well taken. The amendment in question does not  
4 change any land use designation or purport to affect any land  
5 within the county's planning jurisdiction. We see no reason  
6 why the county was obligated to address criterion 5 under such  
7 circumstances.

8 The final claim is that the county did not adequately  
9 address criterion 6 for plan amendments. The criterion states:

10 "Revisions shall be based on special studies or other  
11 information which will serve as the factual basis to  
support the change. The public need and justification  
for the particular change must be established.

12 In connection with this criterion, the sole criticism offered by  
13 the petition is that "[n]o studies were done on the inventory  
14 information or on the effect the Amendment would have on a number  
15 of Goals. See the Second Assignment of Error." Petition at 12.  
16 Our discussion of this and the preceding assignments of error  
17 warrants rejection of this claim without further analysis.

18 The third assignment of error is denied.

19 The county's decision is affirmed.  
20  
21  
22  
23  
24  
25  
26

1 DuBay, Concurring.

2 I concur with the foregoing discussion of the merits of  
3 petitioner's claims. However, I cannot concur with the  
4 conclusion that Rajneesh Investment Corp. (RIC) has standing to  
5 intervene.

6 The rationale for holding RIC has standing, as I understand  
7 it, is based on a hypothetical series of events. That is, if a  
8 final decision in the federal courts determines the city violates  
9 constitutional norms, and if current land use regulations are  
10 replaced by regulations different than those now in effect, the  
11 landowner will be aggrieved or have interests adversely affected  
12 sufficient to confer standing.

13 This projection of events is not the only possible scenario,  
14 however. Whether the landowner will be adversely affected or  
15 aggrieved depends upon future events largely in the province of  
16 judicial and governmental decisionmaking. Although certainty of  
17 the future should not be essential to a determination of  
18 aggrievement or adversely affected interests in all cases, the  
19 uncertainty of future judicial and governmental decisions does  
20 not meet the requirement for standing in ORS 197.830(2) that one  
21 must be aggrieved or have interests adversely affected by the  
22 decision.

23 I would deny the motion to intervene.  
24  
25  
26

FOOTNOTES

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

---

1

The Rajneeshpuram city limits are coterminus with the city's Urban Growth Boundary. Therefore, the county deleted the entire Rajneeshpuram plan from the county plan.

---

2

In a suit by the State challenging the constitutionality of the city, the Federal District Court has entered a Summary Judgment Order in the State's favor. However, this judgment was stayed pending appeal (FRCP 62(d)) by the Ninth Circuit Court of Appeals on January 31, 1986.

---

3

Despite the literal text of ORS 197.830(5), we do not construe the intervention statute to require compliance with ORS 197.830(2)(a) (notice of intent to appeal). As we read the statute, the critical tests for a motion to intervene are (1) is the motion filed within a reasonable time and (2) does movant satisfy the applicable standing requirements, i.e., adverse affect or aggrievement?

---

4

We are advised that the county's plan map and zoning map, as adopted in 1979, designated RIC's property for exclusive farm use.

---

5

A legal theory that might warrant application of Goals 3-14 by the county is implied in RIC's motion to intervene (see our opinion at p. 4-7). However, as we have noted previously, a critical underpinning of our allowance of the motion is the fact that intervenor does not seek to raise any new issues. The petition filed by Rajneeshpuram does not reflect any of the ideas or arguments suggested in the intervention motion.