

1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

3
4 CRAIG CARVER, DON HUTCHINSON,
5 LARRY WEBER and JOHN HOLLAND,

6 *Petitioners,*

7 vs.

8
9 DESCHUTES COUNTY,

10 *Respondent,*

11 and

12
13 SILVERSTAR DESTINATIONS, LLC,

14 *Intervenor-Respondent.*

15
16 LUBA Nos. 2008-119 and 2008-120

17
18 FINAL OPINION

19 AND ORDER

20
21 Appeal from Deschutes County.

22
23 Robert S. Lovlien, Bend, filed the petition for review and argued on behalf of
24 petitioners. With him on the brief was Bryant, Lovlien & Jarvis, P.C.

25
26 Laurie E. Craghead, Assistant Legal Counsel, Bend, filed a response brief on behalf
27 of respondent.

28
29 Liz Fancher, Bend, filed a response brief and argued on behalf of intervenor-
30 respondent.

31
32 HOLSTUN, Board Member; BASSHAM, Board Chair, participated in the decision.

33
34 RYAN, Board Member, did not participate in the decision.

35
36 AFFIRMED

02/09/2009

37
38 You are entitled to judicial review of this Order. Judicial review is governed by the
39 provisions of ORS 197.850.

NATURE OF THE DECISION

Petitioners appeal comprehensive plan and zoning ordinance amendments affecting the Sunriver Urban Unincorporated Community in Deschutes County.

MOTION TO INTERVENE

Silverstar Destinations, LLC, the applicant below, moves to intervene on the side of the respondent in this appeal. There is no opposition to the motion, and it is granted.

FACTS

In this consolidated appeal, petitioners challenge Deschutes County Ordinances 2008-013 and 2008-015.

The Deschutes County Comprehensive Plan for unincorporated communities is codified at Deschutes County Code (DCC) Chapter 23.40. The Deschutes County Comprehensive Plan for the Sunriver Urban Unincorporated Community appears at DCC 23.40.025. Prior to the adoption of Ordinance 2008-013, the existing central commercial area for Sunriver was designated “Commercial District.” Ordinance 2008-013 amends DCC 23.40.025 to amend the text of the “Commercial District” and to add a new comprehensive plan district, the “Town Center District.” DCC 23.40.025(B)(2)(b) and (c); Record 44.¹ Ordinance 2008-013 also adopts new comprehensive plan policies for the new Town Center District. DCC 23.40.025(E)(1)(d).

¹ The text of the new comprehensive plan “Town Center District” is set out below:

“Town Center District. The Town Center District was created in an effort to preserve and enhance the area around the commercial core of Sunriver, formerly referred to as the Sunriver Village Mall. The objective for the Town Center District is to combine a mixture of complementary land uses that may include retail, offices, commercial services, residential housing and civic uses to create a vital commercial core that will support the tourist component of the community and residents living within Sunriver. The Town Center District is designed to strengthen the commercial core area of Sunriver as the heart of the community, to improve the community’s economic base and to enhance the appearance of the area through high-quality design.” DCC 23.40.025(B)(2)(c).

1 Ordinance 2008-015 adopts several amendments to DCC Title 18, the county's
2 zoning ordinance. The most significant amendments are to DCC Chapter 18.108, the Urban
3 Unincorporated Community Zone – Sunriver. Before Ordinance 2008-015, the Sunriver
4 Urban Unincorporated Community Zone had a total of 17 different zoning districts. DCC
5 18.108.030 through .190. Ordinance 2008-015 amends DCC Chapter 18.108 to add a “Town
6 Center” zoning district. DC 18.108.055; Record 23-29. Ordinance 2008-015 also amends
7 the solar setback requirements in the Sunriver Urban Unincorporated Community. DCC
8 18.108.020(B); Record 22. Finally, Ordinance 2008-015 adopts amendments to a number of
9 other DCC Chapters, including (1) DCC18.04.030 (definitions), (2) DCC 18.116 (special
10 parking provisions for the new Town Center zoning district), and (3) DCC 18.124 (site plan
11 review).

12 The above described amendments were adopted to facilitate and in anticipation of
13 future redevelopment of the existing commercial core at Sunriver. It is anticipated that the
14 redevelopment will include both commercial and residential development. The challenged
15 decisions do not apply the new plan and zoning Town Center Districts to any property at this
16 time, and the decisions do not precisely identify which properties will be included in the new
17 plan and zoning districts.²

18 **FIRST ASSIGNMENT OF ERROR**

19 In their first assignment of error, petitioners argue the county erred by adopting
20 Ordinances 2008-113 and 2008-115 as legislative rather than quasi-judicial land use
21 decisions. Had the county adopted the ordinances as quasi-judicial decisions, petitioners

² The county's findings explain:

“The general area where Town Center zoning may be applied is the south part of the area
platted as the Sunriver Country Mall and adjacent properties in the commercial core area of
Sunriver. This area is located between Abbot Drive and Beaver Drive, as depicted on the plat
of the Sunriver Country Mall. The exact location of the new zoning district will be
determined by quasi-judicial zone and plan map amendments. It is expected that a number of
quasi-judicial applications will be filed to create the new district. * * *” Record 51.

1 argue, the county would have been required to apply DCC 18.136.020 and the decision
2 makers would have been required to declare any *ex parte* contacts.³

3 Petitioners only identify two actions that they claim the county failed to take and
4 should have taken if the ordinances are properly viewed as quasi-judicial. First, petitioners
5 contend the county should have applied DCC 18.136.020(D) and demonstrated “[t]hat there
6 has been a change in circumstances since the property was last zoned, or a mistake was made
7 in the zoning of the property in question,” which would justify adding hotel and residential
8 development in the commercial core. Second, petitioners speculate there may have been
9 undeclared *ex parte* contacts that would have to be declared if the decisions are quasi-
10 judicial.

11 The simple response to the first point above is that the challenged decisions do not
12 change the zoning of any properties, and DCC 18.136.020 only applies when the zoning of
13 property is being changed. As the challenged decisions explain, quasi-judicial
14 comprehensive plan map and zoning map amendment decisions must be adopted in the future

³ DCC 18.136.020 provides:

The applicant for a quasi-judicial rezoning must establish that the public interest is best served by rezoning the property. Factors to be demonstrated by the applicant are:

- “A. That the change conforms with the Comprehensive Plan, and the change is consistent with the plan’s introductory statement and goals.
- “B. That the change in classification for the subject property is consistent with the purpose and intent of the proposed zone classification.
- “C. That changing the zoning will presently serve the public health, safety and welfare considering the following factors:
 - “1. The availability and efficiency of providing necessary public services and facilities.
 - “2. The impacts on surrounding land use will be consistent with the specific goals and policies contained within the Comprehensive Plan.
- “D. That there has been a change in circumstances since the property was last zoned, or a mistake was made in the zoning of the property in question.”

1 before the new zoning and comprehensive plan districts will apply to any property. In
2 response to the second point, the county contends that the board of county commissioners
3 declared all *ex parte* contacts at its June 25, 2008 public hearing in this matter and no party
4 objected to or challenged the adequacy of those disclosures. Respondent’s Brief 4.
5 Petitioners have not challenged the county’s representations regarding *ex parte* contact
6 disclosures. Therefore, even if the challenged ordinances were properly viewed as quasi-
7 judicial, petitioners identify no error that resulted from the city’s decision to adopt those
8 ordinances as legislative decisions.

9 Moreover, we agree with respondent and intervenor that the challenged ordinances
10 are clearly legislative in nature. The challenged ordinances amend the comprehensive plan
11 and zoning ordinance text to create new comprehensive plan and zoning districts, without
12 applying the new comprehensive plan and zoning districts to any property. Such ordinances
13 are legislative decisions, not quasi-judicial decisions. *See OCAPA v. City of Mosier*, 44 Or
14 LUA 452, 468 (2003) (ordinance that adopts a number of distinct land use regulation text
15 amendments is not rendered quasi-judicial or a hybrid legislative/quasi-judicial decision even
16 if the legislation is motivated in part by a desire to preclude future use of a particular road).

17 If the nature of the challenged ordinance is properly determined by local law, the
18 challenged decisions are legislative:

19 “‘Legislative changes’ generally involve broad public policy decisions that
20 apply to other than an individual property owner. These include, without
21 limitation, amendments to the text of the comprehensive plans, zoning
22 ordinances, or the subdivision or partition ordinance and changes in zoning
23 maps not directed at a small number of property owners.” DCC 22.04.020.

24 More generally, the factors that must be applied to determine whether a decision is
25 legislative or quasi-judicial were set out in *Strawberry Hill 4 Wheelers v. Benton Co. Bd. of*
26 *Comm.*, 287 Or 591, 602-603, 601 P2d 769 (1979). *Strawberry Hill 4 Wheelers* requires
27 consideration of three factors:

28 “1. Is ‘the process bound to result in a decision?’

1 “2. Is ‘the decision bound to apply preexisting criteria to concrete facts?’

2 “3. Is the action ‘directed at a closely circumscribed factual situation or a
3 relatively small number of persons?’” *Valerio v. Union County*, 33 Or
4 LUBA 604, 607-608 (1997) (applying the considerations enumerated
5 in *Strawberry Hill 4 Wheelers*).

6 The more definitely the questions are answered in the negative, the more likely the decision
7 under consideration is a legislative land use decision. *Id.*

8 In this case intervenor argues that under DCC Chapter 22.12 legislative changes to
9 the county land use laws can be initiated by individuals, but DCC Chapter 22.12 does not
10 require the city to make a decision on such applications. Intervenors appear to be correct.

11 Turning to the “apply existing criteria to concrete facts” factor, that factor is present
12 to some extent in all land use decisions. *Valerio*, 33 Or LUBA at 607. This factor is
13 therefore less important than the other two factors, particularly where, as is the case here, the
14 decisions are adopting new land use laws rather than applying existing land use laws to grant
15 land use approval for a single property or a small number of properties. *Churchill v.*
16 *Tillamook County*, 29 Or LUBA 68, 71 (1995); *McInnis v. City of Portland*, 27 Or LUBA 1,
17 5-7 (1994).

18 With regard to the final *Strawberry Hill 4 Wheelers* factor, petitioners contend that
19 “the applications are directed to a single parcel of property and to benefit only one entity
20 [intervenor].” Petition for Review 7. Intervenor disputes that contention and argues as many
21 as 26 acres qualify for the new Town Center district designations and that a number of
22 parcels other than those owned by intervenor are eligible.

23 Petitioners cite nothing in the record that would support their contention that only
24 intervenor’s property is eligible for the new plan and zoning designations, and as we have
25 already noted the county’s findings suggest otherwise. *See* n 2. In any event, as we have
26 already noted, the new comprehensive plan and zoning districts have not yet been applied to
27 one property or to any properties for that matter. The challenged decision concedes that

1 those future actions will likely be quasi-judicial in nature. The county’s decision to amend
2 its comprehensive plan and zoning ordinance to add the Town Center District without
3 applying that new zoning district to any property is not directed at a closely circumscribed
4 factual situation or a relatively small number of persons.

5 Based on the *Strawberry Hill 4 Wheelers* factors, the challenged ordinances are
6 legislative rather than quasi-judicial.

7 The first assignment of error is denied.

8 **SECOND ASSIGNMENT OF ERROR**

9 Petitioners contend that the challenged amendments violate the Land Conservation
10 and Development Commission’s Unincorporated Communities administrative rule. OAR
11 chapter 660, division 22. OAR 660-022-0030(4) requires that new commercial uses in
12 unincorporated communities be limited to “[s]mall-scale, low impact uses,” and “[u]ses
13 intended to serve the community and surrounding rural area or the travel needs of people
14 passing through the area.”⁴

15 Ordinance 2008-013 adopts a plan policy that limits the size of commercial uses.
16 DCC 23.40.025(E)(1)(d)(1).⁵ Under DCC 18.108.055(A)(5), a number of commercial uses

⁴ OAR 660-022-0030(4) provides:

“County plans and land use regulations may authorize only the following new commercial uses in unincorporated communities:

“(a) Uses authorized under Goals 3 and 4;

“(b) Small-scale, low impact uses;

“(c) Uses intended to serve the community and surrounding rural area or the travel needs of people passing through the area.”

⁵ DCC 23.40.025(E)(1)(d)(1) provides:

“Small-scale, low-impact commercial uses shall be developed in conformance with the requirements of OAR Chapter 660, Division 22. Larger, more intense commercial uses shall be permitted if they are intended to serve the community, the surrounding rural area or the travel needs of people passing through the area.”

1 are allowed in the Town Center zoning district in buildings that do not have more than 8,000
2 square feet of floor space. Under DCC 18.108.055(A)(7), recreational facilities are similarly
3 allowed in the Town Center zone in buildings that do not have more than 8,000 square feet of
4 floor space. In the case of both DCC 18.108.055(A)(5) and DCC 18.108.055(A)(7) the uses
5 authorized by those sections may be housed in buildings that have more than 8,000 square
6 feet if the uses are approved as a large scale use under DCC 18.108.055(C).⁶

7 Petitioners do not challenge the county’s apparent assumption that the 8,000 square
8 foot floor space limit is sufficient to ensure that new commercial uses in the Town Center
9 district will comply with OAR 660-022-0030(4)(b) and (c). Neither do petitioners challenge
10 the adequacy of DCC 18.108.055(C) to ensure that uses located in buildings with more than
11 8,000 square feet will comply with OAR 660-022-0030(4)(b) and (c). Instead, petitioners
12 appear to argue that the development that intervenor plans to construct once its property has
13 been zoned Town Center is inconsistent with OAR 660-022-0030(4)(b) and (c):

14 “[Intervenor] made an extensive effort to explain what its proposal would
15 include. For instance, the proposal called for a ‘destination club’ which
16 would be a fractional ownership property. This would not be a residential use
17 of property. This should be considered a commercial venture for the sole
18 purpose of providing additional rental units.

19 “The project which the Intervenor * * * calls the ‘Village at Sunriver’ has
20 been indentified as a ‘vacation destination and resort community.’

⁶ DCC 18.108.055(C) provides:

“Special Requirements for Large Scale Uses. Any of the uses listed in DCC 18.108.055(A)(5) or (A)(7) may be allowed in a building or buildings each exceeding 8,000 square feet of floor space if the Planning Director or Hearings Body finds:

- “1. That the intended customers for the proposed use will come from the Sunriver community and surrounding rural area. The surrounding rural area is the area identified as all property within five miles of the boundary of the Sunriver Urban Unincorporated Community; and/or
- “2. The use will meet the needs of the people passing through the area.”

1 “It was clear in the presentations made by the intervenor * * * that they were
2 attempting to substantially enlarge the commercial use and the number of
3 rental units to be able to create a viable commercial center. However, there
4 are no findings to indicate how those would be construed as ‘small scale’ or
5 ‘low impact’ uses. There has been no attempt to describe how those uses
6 were intended to serve the existing community or surrounding rural area or in
7 particular, the travel needs of people passing through the area.” Petition for
8 Review 12 (record citations omitted).

9 What the county approved in the challenged ordinances is a new zoning district and a
10 comprehensive plan policy that impose limits to comply with OAR 660-022-0030(4)(b) and
11 (c). Petitioners arguments under this assignment of error do not challenge the adequacy of
12 that comprehensive plan policy or the Town Center zoning district limits to comply with
13 OAR 660-022-0030(4)(b) and (c). At least petitioners do not do so in any way that we can
14 understand. Instead, petitioners argue that the development that intervenor anticipates
15 constructing on its property in the future after its property has been rezoned to Town Center
16 will not comply with OAR 660-022-0030(4)(b) and (c). As we have already noted, the
17 challenged decision neither approves Town Center zoning for intervenor’s property nor
18 approves any particular development on intervenor’s property. Because petitioners’ entire
19 argument under this assignment of error is based on an assumption that the challenged
20 ordinances do something that they do not do, petitioners’ assignment of error provides no
21 basis for reversal or remand.

22 The second assignment of error is denied.

23 **THIRD ASSIGNMENT OF ERROR**

24 Petitioners contend that the county erred by imposing a requirement in the Town
25 Center zone that applicants for Town Center zoning must have a signed development
26 agreement with the homeowners’ association. DCC 18.108.055(M) provides:

27 “Any application for a zone change to the Town Center District shall include
28 a copy of a signed development agreement between the property owner, the
29 applicant, if different than the property owner, and the homeowners
30 association.”

1 According to petitioners the term “development agreement” is not defined so it is unclear
2 what must be included in the development agreement required by DCC 18.108.055(M).
3 Petitioners also claim there is more than one homeowners association in Sunriver so it is
4 unclear what homeowners association is referenced in DCC 18.108.055(M). Finally,
5 petitioners argue:

6 “A homeowner’s association could construe this requirement as giving it
7 authority over the plans being submitted for the town center, abrogating the
8 authority of Deschutes County to be the final decision maker.” Petition for
9 Review 13.

10 Taking petitioners last point first, DCC 18.108.055(M) applies to rezoning applicants,
11 not applicants for development plan approvals. In any event, if the county wants to require
12 that applicants who want to have their property rezoned to the new Town Center District
13 must first enter into a development agreement with the homeowners’ association we see no
14 reason why it cannot do so. That obviously could put the homeowners’ association in a
15 strong bargaining position with persons who might want to request Town Center zoning, but
16 we do not agree that doing so abrogates the county’s decision making authority. DCC
17 18.108.055(M) simply imposes a prior condition of seeking rezoning that a potential
18 applicant for rezoning may or may not be able to comply with. DCC 18.108.055(M) is not
19 much different than the relatively common requirement that where property is owned by more
20 than one person, all owners must sign an application for land use approval. In that
21 circumstance a single property owner can block the application by refusing to sign the
22 application.

23 We tend to agree with petitioners that the lack of any guidance about what must be in
24 a development agreement renders DCC 18.108.055(M) exceedingly ambiguous and
25 potentially of very limited value. The failure to specify which homeowners’ association
26 creates some ambiguity, but we assume DCC 18.108.055(M) refers to the homeowners’
27 association or homeowners’ associations that have jurisdiction over the property that is the

1 subject of the rezoning request. It is not reversible error to adopt ambiguous land use
2 legislation, particularly where petitioners make no attempt to show that the ambiguous
3 legislation was adopted to implement some other mandatory legal requirement, or is
4 necessary to implement some other mandatory legal requirement. Petitioners' arguments
5 under the third assignment of error provide no basis for reversal or remand.

6 The third assignment of error is denied.

7 **FOURTH ASSIGNMENT OF ERROR**

8 Petitioners' fourth assignment of error is set out below:

9 "The County erred in continuing to accept amendments and refinements to the
10 text language right up to the date of the decision, thus denying interested
11 persons any meaningful ability to comment." Petition for Review 14.

12 The only examples of "amendments and refinements" that petitioners cite are (1) removal of
13 property owned by the Sunriver Homeowners Association and (2) replacement of a dwelling
14 units per acre density limitation with a floor area ratio (FAR) density limitation. Petitioners
15 contend that these amendments were adopted with "very little public input" resulting in
16 violations of Statewide Planning Goal 2 (Land Use Planning) and DCC 23.52.010.

17 The current version of DCC 23.52.010 has nothing to do with public involvement or
18 participation.⁷ While petitioners may have meant to cite DCC Chapter 23.124 (Citizen
19 Involvement) or one of its subsections, they did not. Petitioners' DCC-based arguments
20 under this assignment of error are not adequately developed for review, and we reject them
21 for that reason. *Deschutes Development v. Deschutes Cty.*, 5 Or LUBA 218, 220 (1982).

22 Although petitioners do not identify which part of Goal 2 they rely on, intervenor
23 notes that Goal 2, Part 1 provides in part:

⁷ What was codified at DCC 23.52.010 apparently was re-codified at DCC 23.128.010 in 2002. That section does not have anything to do with public involvement or public participation either.

1 “Opportunities shall be provided for review and comment by citizens and
2 affected governmental units during preparation, review and revision of plans
3 and implementation ordinances.”

4 We will assume that this language in Goal 2, Part 1 is what petitioners rely on in their fourth
5 assignment of error.

6 We understand petitioners’ to contend that property owned by the Sunriver
7 Homeowners Association was removed from the application. Intervenor disputes that
8 contention and argues that the property owned by the Sunriver Homeowners Association
9 remains eligible for Town Center zoning in the future. As we have already noted, the precise
10 area eligible for Town Center zoning is less than clear, but intervenor appears to be correct.
11 In any event, petitioners do not identify when they think the property owned by Sunriver
12 Homeowners Association was removed from the area eligible for Town Center zoning and
13 do not explain how that was done in a way that prevented them from reviewing and making
14 meaningful comments on the proposal. Because petitioners’ contentions regarding the
15 property owned by the Sunriver Homeowners Association are not sufficiently developed for
16 review, we reject them. *Deschutes Development v. Deschutes Cty.*, 5 Or LUBA 220.

17 Turning to the decision to modify the proposal to replace a 22-unit per acre
18 residential density limit with a FAR limitation, that change was one of a number of changes
19 that were proposed on May 16, 2008. The applicant submitted a fairly detailed explanation
20 of the FAR proposal on May 20, 2008. Record 414-20. The FAR proposal was endorsed by
21 the Sunriver Homeowners Association on June 4, 2008. Record 386-87. A large number of
22 written comments regarding the FAR proposal were received by the county, and the FAR
23 proposal was discussed at June 4, 2008 and June 25, 2008 public hearings before the board of
24 county commissioners. Petitioner Hutchinson commented on and presented an analysis of
25 the FAR proposal. Record 377-78, 393-94.

26 Given the above, and the lack of any attempt by petitioners to explain why they
27 believe the process the county followed in this matter prevented them from exercising their

1 Goal 2 right to review and comment on the FAR proposal, we reject petitioners' contention
2 that their rights under Goal 2 were violated.

3 The fourth assignment of error is denied.

4 **FIFTH ASSIGNMENT OF ERROR**

5 Under this assignment of error, petitioners argue that the county inadequately
6 addressed Statewide Planning Goal 7 (Areas Subject to Natural Hazards). We set out below
7 petitioners' entire argument in support of this assignment of error:

8 "The fi[f]th assignment of error is Respondent's failure to adequately address
9 Statewide Planning Goal 7. Respondent references a 2005 'Community Fire
10 Plan', but this was completed without consideration of 500 new residential
11 and/or hotel units in a new Town Center District. The Sunriver Service Fire
12 District has said the evacuation of Sunriver in the event of fire cannot be
13 mitigated." Petition for Review 16.

14 It is not clear to us what requirement of Goal 7 petitioners believe is implicated by the
15 county's decision to create the Town Center comprehensive plan and zoning districts. Goal
16 7 is "[t]o protect people and property from natural hazards." One of the natural hazards
17 identified in Goal 7 is "wildfires." It may be obvious to petitioners how Goal 7 is implicated
18 by county ordinances that adopt a new zoning district that is potentially applicable to
19 Sunriver's existing commercial core, but it is not obvious to us. *See Marine Street LLC v.*
20 *City of Astoria*, 37 Or LUBA 587, 614 (2000) (assignment of error that city erred by failing
21 to address lengthy plan policy is inadequately developed where petitioner makes no attempt
22 to identify the parts of the policy petitioner believes apply). Petitioners' failure to explain
23 how the county's decision implicates Goal 7 is a sufficient basis, in and of itself, to deny the
24 fifth assignment of error.

25 Petitioners appear to argue that the possibility that 500 new residential or hotel units
26 might be constructed in the new Town Center district will prevent evacuation in the event of
27 a fire. Even if we assume Goal 7 might be implicated in some way by such development, the
28 only support for their contention that the new zone will allow development that will have

1 impacts on evacuation that cannot be mitigated is their claim that someone with the fire
2 district said “evacuation of Sunriver in the event of fire cannot be mitigated.” Petition for
3 Review 16. We are not sure what that means, and petitioners provide no citation to the
4 record so we might go to the original source and see if its meaning is clearer in context.
5 Intervenor cites to several pages of the record where it does not seem the fire district has any
6 serious objection to the proposal. Record 496, 3061, 4066. Intervenor also cites to
7 testimony from a member of the county sheriff’s office who states that he does not believe
8 the proposal will compromise the ability of authorities to evacuate Sunriver if necessary.
9 Record 500. In short, petitioners cite no evidence that the proposal will significantly affect
10 the ability to evacuate Sunriver if necessary and intervenor cites some evidence that it will
11 not. Petitioners arguments under the fifth assignment of error fail to demonstrate that the
12 county inadequately addressed Goal 7.

13 **SIXTH ASSIGNMENT OF ERROR**

14 In their final assignment of error, petitioners contend the county failed to recognize
15 and apply three comprehensive plan criteria: DCC 23.52.010, DCC 23.36.054(E)(1)(c)(1)
16 and DCC 23.36.054(E)(1)(c)(4).

17 **A. DCC 23.52.010**

18 We reject this subassignment without much discussion. DCC 23.52.010 is no longer
19 part of the county’s comprehensive plan. Apparently what used to be codified at DCC
20 23.52.010 is now codified at DCC 23.128.020. DCC 23.128.020 is part of DCC Chapter
21 23.128 (Plan Flexibility and Updating). We agree with intervenor that to the extent
22 petitioners believe DCC 23.128.020 imposes an approval standard for comprehensive plan
23 amendments, petitioners misunderstand DCC 23.128.020. Petitioners DCC 23.128.020
24 arguments provide no basis for reversal or remand.

25 This subassignment of error is denied.

1 **B. DCC 23.36.054(E)(1)(c)(1)**

2 According to petitioners, DCC 23.36.054(E)(1)(c)(1) provides:

3 “Small-scale, low-impact commercial uses shall be developed in conformance
4 with the requirements of OAR Chapter 660, Division 22. Larger, more
5 intense commercial uses shall be permitted if they are intended to serve the
6 community, the surrounding rural area and the travel needs of people passing
7 through the area.”

8 As was the case in the prior subassignment of error, the DCC provision that
9 petitioners rely on here was repealed. However, as we noted in our discussion of the second
10 assignment of error, identical language has been adopted as part of the Town Center District
11 section of the comprehensive plan. DCC 23.40.025(E)(1)(d)(1).⁸ Petitioners’ concern
12 appears to be with the possibility that hotel or residential development in the Town Center
13 District may be “[l]arger and more intense commercial uses” that are not permitted under
14 DCC 23.40.025(E)(1)(d)(1) unless they will “serve the community, the surrounding rural
15 area and the travel needs of people passing through the area.” Petition for Review 18
16 (underscoring in original).

17 It seems highly questionable to us that *residential* development qualifies as “larger,
18 more intense *commercial* uses.” Even if particular examples of residential or hotel
19 development might be properly viewed in that way, as we have already noted several times
20 in this opinion, the challenged ordinances approve no residential or hotel development. They
21 merely create the possibility that lands will be designated Town Center in the future and,
22 after that occurs, individual applications for residential or hotel development may follow.
23 Petitioners’ arguments under this subassignment of error are at best premature, and provide
24 no basis for reversal or remand.

25 This subassignment of error is denied.

⁸ See n 5.

1 **C. DCC 23.36.054(E)(1)(c)(4)**

2 According to petitioners, DCC 23.36.054(E)(1)(c)(4) provides:

3 “Multiple-family residences and residential units in commercial buildings
4 shall be permitted in the commercial area for the purpose of providing
5 housing which is adjacent to places of employment. Stand-alone multiple
6 family residential housing units shall be permitted on a maximum of three
7 acres of nine acres vacant as of December, 1997 in the Village Mall
8 commercial area. Single family residences shall not be permitted in
9 commercial areas.” Petition for Review 17.

10 Petitioners contend the challenged ordinances violate DCC 23.36.054(E)(1)(c)(4) because
11 they authorize multifamily development on areas that have already been developed
12 commercially and would not require that such residences be “designed to be housing ‘which
13 is adjacent to places of employment.’” Petition for Review 18.

14 Once again, the comprehensive plan policy that petitioners rely on has been repealed.
15 Although DCC 23.36.054(E)(1)(c)(4) has been recodified in modified form at DCC
16 23.40.025(E)(1)(c)(3), it does not apply within the Town Center zone.⁹ DCC
17 23.40.025(E)(1) sets out Policies that apply throughout the Sunriver Urban Unincorporated
18 Community. DCC 23.40.025(E)(1)(a) sets out General Land Use Policies that apply
19 throughout the Sunriver Urban Unincorporated Community. Subsequent subsections of DCC
20 23.40.025(E)(1) set out polices for each zoning district. DCC 23.40.025(E)(1)(c) sets out the
21 policies that apply within the Commercial District. DCC 23.40.025(E)(1)(c)(3) is the third of
22 those policies, and it applies only within the Commercial District. DCC 23.40.025(E)(1)(d)
23 sets out the policies that apply within the Town Center District. No policy like DCC
24 23.36.054(E)(1)(c)(4) or DCC 23.40.025(E)(1)(c)(3) appears at DCC 23.40.025(E)(1)(d).
25 Because petitioners’ arguments under this subassignment of error rely on a plan policy that

⁹ DCC 23.40.025(E)(1)(c)(3) provides:

“Multiple-family residences and residential units in commercial buildings shall be permitted in the commercial area for the purpose of providing housing which is adjacent to places of employment. Single-family residences shall not be permitted in commercial areas.”

1 does not apply in the new Town Center District, those arguments provide no basis for
2 reversal or remand.

3 This subassignment of error is denied.

4 The sixth assignment of error is denied.

5 The county's decision is affirmed.