



government citizen involvement programs to provide for a citizen advisory committee(s) may establish an approval standard for the adoption or amendment of local government citizen involvement programs, it does not establish substantive or procedural requirements for the review of other types of plan amendments.

**2. Goal 1 - Citizen Involvement.**

Where appealed comprehensive plan amendments do not amend or affect the acknowledged citizen involvement program in the comprehensive plan, the only way petitioners can demonstrate a violation of Goal 1 is by demonstrating a failure to comply with that acknowledged citizen involvement program.

Opinion by Sherton.

**NATURE OF THE DECISION**

Petitioners challenge Lane County Ordinance No. PA 980, which amends the Eugene-Springfield Metropolitan Area General Plan (Metro Plan) to allow the City of Eugene to provide sewer service to developed properties in the River Road/Santa Clara area without annexation.

**MOTION TO INTERVENE**

The City of Eugene moves to intervene in this proceeding on the side of respondent. There is no opposition to the motion, and it is allowed.

**MOTION TO SUPPLEMENT RECORD**

The city moves that the local government record be supplemented with the following materials:

1. Joint Planning Commission Committee meeting notes for November 20, 1989.
2. Lane County Order 84-6-26-5.
3. Lane Manual 3.510.
4. City of Eugene Ordinances Nos. 19726 and 19729.

There is no opposition to the motion, and it is allowed.

**FACTS**

On February 8, 1977, the Cities of Eugene and Springfield and Lane County entered into an intergovernmental agreement to form the Metropolitan Wastewater Management Commission. Under that agreement, the local governments received federal funding for and built a

regional sewage treatment center with capacity to serve the entire metropolitan area, including River Road/Santa Clara.

In April 1978, the Environmental Quality Commission (EQC) imposed a moratorium on septic tanks in the River Road/Santa Clara area. The Lane Council of Governments commissioned the River Road/Santa Clara Groundwater Study (groundwater study), which was completed in February 1980. The groundwater study found that some existing nitrate concentrations within the study area exceeded the Department of Environmental Quality (DEQ) planning limit, at least 97 percent of the wells sampled exceeded bacterial limits for drinking water and the shallow aquifer was generally contaminated. Record 371.

The Metro Plan was acknowledged by the Land Conservation and Development Commission in 1982. The 1982 Metro Plan stated that sewers were necessary in the River Road/Santa Clara area "[i]n order to achieve urban densities." Metro Plan, p. II-D-5. The "River Road and Santa Clara" section of the 1982 Metro Plan included the following policies:

"1. Eugene and Lane County shall, through an active citizen involvement program, develop the River Road-Santa Clara Service Plan 'for the entire River Road and Santa Clara area.'

"\* \* \* \* \*

"3. Eugene will plan, design, construct, and maintain ownership of the entire sanitary sewer system which services the River Road and Santa Clara areas. This will involve

extraterritorial extension which will be supported by Lane County before the Lane County Boundary Commission and all other applicable bodies.

"\* \* \* \* \*

"5. The City of Eugene shall provide urban services to the River Road and Santa Clara neighborhoods upon annexation.

"\* \* \* \* \*" 1982 Metro Plan, p. II-D-5.

On September 8, 1984, the City of Eugene (city) received a \$6 million EPA grant for construction of interceptor sewers in the River Road/Santa Clara area. The EPA grant included a condition that 15% of existing residential, commercial and other wastewater sources be connected to the city's River Road/Santa Clara sewer system by the end of 1988, 30% by the end of 1990, 75% by the end of 1995 and 100% by the year 2000. The grant also provided that if the connection of existing wastewater sources is not accomplished in accordance with the above schedule, EPA will regard the grant funds as having been used in part to provide unnecessary sewerage capacity, and will consider pursuing action to recover a proportionate amount of the grant award. Record 429.

In 1986, the city adopted an annexation program for the River Road/Santa Clara area. However, by the end of 1988, only 4% of the sewer connections had been completed and the city requested renegotiation of the above described condition. In November 1989, EPA amended the connection

schedule to require 15% connection by the end of 1991, and additional connections to be achieved in 15% increments each year thereafter. Record 446-448. Also in November 1989, the city initiated a process to amend the Metro Plan. The city's proposed amendments included amending River Road and Santa Clara Policy 3, quoted above, to allow the city to provide sewer service to developed properties in the River Road/Santa Clara area without annexation.

The Joint Planning Commission Committee (JPCC), a group of planning commissioners from the Cities of Eugene and Springfield and Lane County, reviewed the proposed plan amendments on November 20, 1989, and had no objections. The Eugene and Lane County Planning Commissions held a public hearing on the plan amendments on January 18, 1990. On February 6, 1990, the Eugene and Lane County Planning Commissions voted to recommend approval of the plan amendments.<sup>1</sup>

A joint public hearing of the Eugene and Springfield City Councils and Lane County Board of Commissioners was held on April 11, 1990. Petitioners appeared and questioned the technical accuracy and validity of the 1980 groundwater study. In response to the concerns raised by petitioners, on May 30, 1990, the county board of commissioners directed the county administrator to hire a consultant to review the

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<sup>1</sup>On March 7, 1990, the Springfield Planning Commission held a public hearing on the proposed plan amendments and voted to recommend approval.

1980 groundwater study and give some response to the board at its work session on June 12, 1990.<sup>2</sup> Sec. Supp. Record 92.<sup>3</sup> The board of commissioners also scheduled another public hearing on the proposed Metro Plan amendments for June 13, 1990.

On June 6, 1990, petitioners' attorney appeared during the public comment portion of the board of commissioners meeting, and informed the board that his clients retained a consultant who drafted a series of questions for review by the consultant selected by the county to review the groundwater study. Petitioners' attorney submitted to the board of commissioners and the county administrator a letter raising concerns about the technical accuracy of the 1980 groundwater study. Record 196-197. A document entitled "Potential Questions Regarding the 1980 Groundwater Study," containing 42 questions concerning the methodology used in the study, was attached to the letter. Record 198-206.

Also on June 6, 1990, the county administrator selected a consultant to review the groundwater study. Sec. Supp. Record 92. The consultant was directed to provide to the board of commissioners at its June 12, 1990 work session, (1) a preliminary review of the 1980 groundwater report,

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<sup>2</sup>The Cities of Eugene and Springfield proceeded to adopt the proposed Metro Plan amendments in April and May 1990, respectively.

<sup>3</sup>The Board received two documents entitled "Supplemental Record" from the county, on August 9 and September 21, 1990. We cite the document received on September 21, 1990 as "Sec. Supp. Record."

including general comments on the validity of the methodology used and a determination on whether the sampling data relied on demonstrate contamination caused by septic systems, and (2) a proposal for a detailed review of the groundwater report. Id. On June 8, 1990, the county administrator sent petitioners' attorney a letter in which he described the process being followed and stated that petitioners' 42 questions could not be answered as part of the consultant's preliminary review because "[t]he short time available will not allow work at the level you desire." Sec. Supp. Record 93. The administrator also stated that if the board of commissioners decided to proceed with the more detailed review of the 1980 groundwater report, much more time would be allowed and petitioners' questions could be specifically considered. Id.

The preliminary review of the 1980 groundwater study and testimony by its hydrogeologist author were submitted to the board of commissioners at the June 12, 1990 work session. The preliminary review found that the methodology used in the 1980 groundwater study was adequate and that the basic groundwater and nutrient loading data used appeared to be valid. Record 163.

A final public hearing was held by the board of commissioners on June 13, 1990. Petitioners appeared and expressed concerns about the quality of the data used in the 1980 groundwater study and the lack of a citizen's advisory

committee to provide "the force to get [petitioners'] information to the independent consultant." Supp. Record 2. On that date, the board of commissioners adopted the challenged Metro Plan amendments.<sup>4</sup>

#### **ASSIGNMENT OF ERROR**

"The record of the amendment process to the Metro Plan does not comply with [Statewide Planning] Goal 1."

##### **A. ORS 197.160(1)(b)**

ORS 197.160(1)(b) provides:

"Each city and county governing body shall submit to the [Land Conservation and Development] commission, on a periodic basis established by commission rule, a program for citizen involvement in preparing, adopting and amending comprehensive plans and land use regulations within the respective city and county. Such program shall at least contain provision for a citizen advisory

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<sup>4</sup>The adopted amendments include the following changes to the River Road and Santa Clara section of the Metro Plan:

- (1) Addition of Findings 12-15, concerning past EQC and EPA decisions concerning the area's groundwater quality problems and lack of success in satisfying the schedule for connections imposed as a condition of the EPA grant through incremental and voluntary annexation.
- (2) Addition of Objective 6 ("eliminate ground water pollution from individual septic tank disposal systems in River Road and Santa Clara").
- (3) Deletion of Policy 1 and amendment of Policy 5, quoted supra, to provide:

"The City of Eugene shall provide urban services to the River Road and Santa Clara neighborhoods upon annexation. In the meantime, to reduce the ground water pollution problem, Eugene will extend sewers to developed properties." (New language emphasized.) Record 11.

committee or committees broadly representative of geographic areas and of interests relating to land uses and land use decisions." (Emphasis added.)

Petitioners contend that the citizen advisory committee required by ORS 197.160(1)(b) was not formed or utilized by the county in the process of adopting the challenged Metro Plan amendments. Petitioners argue the absence of participation by such a citizen advisory committee in the plan amendment process restricted citizen participation because petitioners' evidence and questions challenging the accuracy of the 1980 groundwater study were not submitted to the independent consultant retained by the county to review that study.

1 The provision of ORS 197.160(1)(b) emphasized above concerns the content of local government citizen involvement programs submitted to the Land Conservation and Development Commission (LCDC).<sup>5</sup> Such programs must provide for a

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<sup>5</sup>We note that LCDC has implemented this provision of ORS 197.160(1)(b) in the following provisions of Statewide Planning Goal 1 (Citizen Involvement):

"The citizen involvement program shall involve a cross-section of affected citizens in all phases of the planning process. As a component, the program for citizen involvement shall include an officially recognized committee for citizen involvement (CCI) broadly representative of geographic areas and interests related to land use and land-use decisions. \* \* \*

"The committee for citizen involvement shall be responsible for assisting the governing body with the development of a program that promotes and enhances citizen involvement in land-use planning, assisting in the implementation of the citizen involvement program, and evaluating the process being used for citizen involvement." (Emphasis added.)

citizen advisory committee. However, ORS 197.160(1)(b) does not establish what role such a citizen advisory committee should perform in the review of proposed comprehensive plan amendments. Therefore, although ORS 197.160(1)(b) may establish an approval standard for the adoption or amendment of local government citizen involvement programs, it does not establish substantive or procedural requirements for the review of other types of plan amendments.

Because the challenged decision does not adopt or amend the county's citizen involvement program, ORS 197.160(1)(b) is not applicable to the challenged Metro Plan amendments.

This subassignment of error is denied.

**B. Statewide Planning Goal 1 (Citizen Involvement)**

Petitioners contend the county's findings on Goal 1 are erroneous because they state that Goal 1 "has little or no application to individual plan amendments which do not affect the citizen involvement program." Record 18. Petitioners also argue that county findings concerning Goal 1 compliance are irrelevant because they describe citizen involvement in development of the 1982 Metro Plan and 1986 River Road/Santa Clara Urban Facilities Plan, rather than the subject plan amendment proceedings. Petitioners argue that although compliance with Goal 1 need

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We also note that amendments to Goal 1 adopted on March 31, 1988, replaced the original term "citizen advisory committee" with "committee for citizen involvement," as emphasized in the above quote.

not be addressed by specific findings, such compliance must appear in the record of the county proceedings. According to petitioners, because the record in this case is silent with regard to a citizen involvement process in the plan amendment proceedings, the challenged decision must be remanded. Cordill v. City of Estacada, 8 Or LUBA 215, 219 (1985).

In Holland v. Lane County, 16 Or LUBA 583, 597-598 (1988), we stated:

"Goal 1 requires local governments to adopt a citizen involvement program which 'insures the opportunity for citizens to be involved in all phases of the planning process,' and sets out requirements for such programs. After acknowledgment of a local government's plan and land use regulations a decision to amend the plan or regulations, other than an amendment to the citizen involvement program itself, complies with Goal 1 if it complies with the acknowledged citizen involvement program. Petitioner has not shown that the acknowledged program was not followed by the county, or that it was not applicable to the subject proceeding before the county. Petitioner, therefore, has not shown a violation of Goal 1." (Footnote omitted.)

2 The above quoted reasoning from Holland v. Lane County, applies to this case as well. Because the challenged Metro Plan amendments do not amend or affect the acknowledged citizen involvement program in the Metro Plan, the only way petitioners can demonstrate a violation of Goal 1 is by demonstrating a failure to comply with that acknowledged citizen involvement program. This issue is addressed below.

### C. Citizen Involvement Program

Petitioners contend the county is required to demonstrate in the record that it complied with its citizen involvement program in the process of amending the Metro Plan. Rajneesh Medical Corp. v. Wasco County, 12 Or LUBA 219, 225 (1984). Petitioners argue that the record in this case is silent with regard to compliance with the county's citizen involvement program.

Intervenor-respondent (intervenor) argues that under ORS 197.350(1), the "party appealing a land use decision made by a local government to the [Board] has the burden of persuasion." Intervenor contends this subassignment of error should be denied because petitioners have not explained how the acknowledged citizen involvement element of the Metro Plan was not followed in the proceedings below.

The citizen involvement element of the acknowledged Metro Plan includes an introduction, findings, a goal, objectives and policies. Metro Plan, p. III-K-1 to III-K-3. Petitioners provide no argument regarding which provisions of this citizen involvement program, if any, were violated by the county.<sup>6</sup> It is petitioners' responsibility to explain the basis upon which we may grant relief. Deschutes Development v. Deschutes County, 5 Or LUBA 218, 220 (1982).

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<sup>6</sup>By contrast, in Rajneesh Medical Corporation v. Wasco County, 12 Or LUBA at 222-223, the petitioners provided specific argument as to how the county's plan amendment proceedings had violated several policies and implementation provisions of the county's citizen involvement program.

Petitioners have not done so.<sup>7</sup>

This subassignment of error is denied.

The assignment of error is denied.

The county's decision is affirmed.

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<sup>7</sup>In its brief, intervenor raises the possibility that at the time of the subject plan amendment proceedings, the citizen involvement element of the Metro Plan may have required that a "metropolitan area planning advisory committee" review the proposed plan amendments. Intervenor argues that this role was filled at the time of the proceedings below by the JPCC, which reviewed the proposed amendments on November 20, 1989. Intervenor also points out that in October 1990, the Cities of Eugene and Springfield and Lane County adopted identical ordinances amending the citizen involvement element of the Metro Plan to provide that the JPCC is designated as the citizen advisory committee for the Metro Plan. City of Eugene Ordinance No. 19726.

Goal 1 and OAR 660-10-050(1) specifically allow planning commissions to be designated as the local government's citizen advisory committee. However, we note that even if the JPCC was not designated as the official "metropolitan area planning advisory committee" at the time of the proceedings below, and the body which was designated as such at that time did not review the challenged Metro Plan amendments, no purpose would be served by our remanding the plan amendments to the county, since they would be subject on remand to the provisions of the current Metro Plan citizen involvement program, which does designate the JPCC as the official "metropolitan area planning advisory committee."