

1 Opinion by Hanna.

2 **NATURE OF THE DECISION**

3 Petitioner appeals a city council decision following a
4 remand by LUBA to determine if two provisions of the city's
5 comprehensive plan are approval criteria for the subject
6 application.

7 **MOTION TO INTERVENE**

8 Gary Parmenter, Ramon Parmenter, and WGK Development
9 Corporation of Oregon, the applicants below, move to
10 intervene in this proceeding on the side of the respondent.
11 There is no opposition to the motion, and it is allowed.

12 **FACTS**

13 Intervenors applied to the city for the extension of
14 water and sewer services to a residential subdivision. The
15 city approved the application. Petitioner appealed the
16 approval to LUBA. See Fraser v. City of Joseph, 28 Or LUBA
17 217 (1994) (Fraser I). In Fraser I, we concluded that we do
18 not have jurisdiction under ORS 197.015(10)(a)(A)(i),
19 197.015(10)(a)(A)(iii) or the significant impact test.¹ We

¹ORS 197.015(10)(a)(A) provides:

"A final decision or determination made by a local government or special district that concerns the adoption, amendment or application of:

"(i) The goals;

"(ii) a comprehensive plan provision;

"(iii) A land use regulation; or

1 remanded the decision for the city to determine if two
2 comprehensive plan provisions from the background section of
3 Chapter VI (Air, Water, and Land Resources Quality) of the
4 City of Joseph Land Use Plan (comprehensive plan) constitute
5 approval criteria. If they do, we have jurisdiction under
6 ORS 197.015(10)(a)(A)(ii).

7 The two comprehensive plan provisions state:

8 "Currently, the City's policy regarding extensions
9 of water and sewer service beyond the City limits
10 is that such extensions not occur. There are no
11 sewer services outside the city. Those water
12 services now existing beyond the City limits are
13 charged twice the rates of water users inside the
14 City.

15 * * * * *

16 "The City will continue to cooperate with DEQ
17 (Department of Environmental Quality) by not
18 allowing uses that do not meet DEQ requirements.
19 The City will rely on DEQ's regulations regarding
20 air, water, solid/hazardous waste and noise
21 pollution in reviewing land use
22 changes/applications." Comprehensive plan, p.
23 30.²

24 On December 6, 1994, the city made its decision on
25 remand. Petitioner filed a Notice of Intent to Appeal with
26 LUBA on December 16, 1994. On the same day, the city
27 withdrew the December 6, 1994 decision, as permitted by ORS
28 197.830(12)(b). The city council rendered its final

"(iv) a new land use regulation; * * *"

² The city amended the plan in 1986 specifically to allow for the provision of water and services to land outside the city limits but within the urban growth boundary. Plan 45.

1 decision on February 7, 1995. This decision concludes that
2 the two plan provisions are not approval criteria.

3 **JURISDICTION**

4 It is petitioner's burden to establish that we have
5 jurisdiction. Billington v. Polk County, 299 Or 471, 475,
6 705 P2d 232 (1985), Bowen v. City of Dunes City, 28 Or LUBA
7 324, 330 (1994).

8 Petitioner asserts that the city council decision is a
9 "final decision of a local government concerning the
10 application of state and local land use regulations and plan
11 provisions," and therefore, the decision is a land use
12 decision under ORS 197.015(10)(a)(A). Intervenors respond
13 that because the city concluded the two comprehensive plan
14 provisions are not approval criteria, it is not a land use
15 decision and LUBA has no jurisdiction.

16 The city found that the two plan provisions are not
17 approval criteria by examining the context of the two
18 provisions as explained in the format of the plan:

19 "The format of the ensuing plan will use each goal
20 as a separate topic to be addressed as applicable.
21 Each goal or topic will consist of:

22 "* * * * *

23 "2. A background which is intended as a general
24 expression of the City Council's and
25 residents' evaluation and history of the
26 topic. Additional background information
27 will be contained in the Appendix."
28 Comprehensive Plan, pp. 1-2.

29 Based on its examination of the comprehensive plan, the

1 city concluded the two provisions are not approval criteria.
2 We are required to affirm the city's interpretation of its
3 comprehensive plan unless it is clearly wrong. ORS 197.829;
4 Gage v. City of Portland, 319 Or 308, 316, 877 P2d 1187
5 (1994); Clark v. Jackson County, 313 Or 508, 514, 836 P2d
6 710 (1992).

7 Petitioner's argument is not clear. To the extent
8 petitioner challenges the city's interpretation of the plan
9 format and provisions, and its conclusion that the two plan
10 provisions are not land use regulations, petitioner's
11 arguments do not explain how the two plan provisions are
12 more than background as explained in the February 7, 1995
13 decision. See Downtown Comm. Assoc. v. City of Portland, 80
14 Or App 336, 722 P2d 1258 (1986). Petitioner's arguments do
15 not establish that the city's interpretation of the
16 contested plan provisions is clearly wrong. Petitioner has
17 not established that the city decision to extend water and
18 sewer services is a land use decision over which we have
19 jurisdiction.

20 The appeal is dismissed.