

LAND USE
BOARD OF APPEALS

BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

AUG 4 4 37 PM '83

1
2
3 THOMAS H. TONGUE,)

4 Petitioner,)

5 v.)

6 MARION COUNTY and SALEM)
7 DEVELOPMENT INC.,)

8 Respondents.)

LUBA NO. 83-029

FINAL OPINION
AND ORDER

9 appeal from Marion County.

10 M. Chapin Milbank, Salem, filed a petition for review and
11 argued the cause for Petitioner. With him on the brief were
12 Schlegel, Milbank, Jarman & Hilgemann.

13 Robert C. Cannon, Salem, filed a brief and argued the cause
14 for Marion County.

15 Daniel A. Ritter, Salem, filed a brief and argued the cause
16 for Applicant Salem Development Co. With him on the brief were
17 Harland, Ritter, Saalfeld & Griggs.

18 BAGG, Board Member.

19 REMANDED

08/04/83

20 You are entitled to judicial review of this Order.
21 Judicial review is governed by the provisions of Oregon Laws
22 1979, ch 772, sec 6(a), as amended by Oregon Laws 1981, ch 748.
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1 BAGG, Board Member.

2 NATURE OF THE DECISION

3 Petitioner appeals the grant of "Outline Plan" approval for
4 a 55 unit planned unit development in Marion County.
5 Petitioner asks the Board to reverse the decision.

6 FACTS

7 In July of 1982, the Salem Development Co. applied for a
8 conditional use to build a 55 unit planned unit development on
9 a 22.5 acre tract adjacent to Salem city limits and within the
10 Salem Urban Growth Boundary. There is a 188 acre tract within
11 the Salem city limits bordering the subject property on the
12 west and south. The Illahe Hills Estate Development lies to
13 the northeast, and the Illahe Country Club and several
14 multi-family housing units are to the north. The property is
15 zoned RA (Residential Agriculture) and is in active farm use.
16 The property can be served by an existing private sewer and
17 water system.

18 On August 26, 1982, the Marion County Planning Commission
19 granted the application for "outline approval" of the proposed
20 project subject to various conditions. Record 99-103. The
21 Planning Commission decision was appealed to the county
22 commissioners, and the county board heard the matter on
23 December 1, 1982. On March 9, 1983, the county board granted
24 outline approval for a conditional use to build the planned
25 unit development, with conditions. This appeal followed.

26 ASSIGNMENT OF ERROR NO. 1

1 "The County erred in approving this development
2 because it had been disapproved by the City of Salem."

3 In this assignment of error, petitioner alleges the Salem
4 Area Comprehensive Plan (hereinafter SACP) controls
5 urbanization of all lands outside the Salem city limits and
6 within the Salem Urban Growth Boundary. Petitioner alleges the
7 board was, therefore, compelled to comply with requirements of
8 the SACP when it considered this application. One of the
9 policies in the plan calls for city and county agreement on
10 development proposals.

11 "If the City and a County disagree as to the action
12 which should be taken on proposals or land use actions
13 noted in the above policies, or if there is a need for
14 clarification of issues, the proposal should be tabled
15 until the County Board of Commissioners and the City
16 Council resolve the issue. If an impasse is reached
17 the jurisdiction having authority to take the action
18 is free to act, and the other jurisdiction is free to
19 appeal such action to the Land Use Board of Appeals."
20 SACP III A Coordination Policies 6, p. 31.¹

21 Petitioner argues this plan policy is applicable because
22 the city council disapproved of this project on August 16,
23 1982. This alleged "disapproval" took the form of a letter from
24 the city manager advising the county commission that the PUD
25 might only be developed "within the City of Salem under the
26 urban growth management ordinance." Record 124. In other
words, the city would require annexation prior to approval.
See Record 124-127. Petitioner complains the county's answer
to the city's annexation requirement was to place a condition
on the development. The condition calls for either city

1 approval of the PUD or a court decision that the developer has
2 a vested right to proceed. Condition 10, Record 11. As the
3 Board understands petitioner's argument, petitioner says the
4 county was wrong not to "table" the proposal pursuant to the
5 coordination policy.

6 Applicant Salem Development, Inc. argues there is no need
7 to table the proposal. The applicant points to the above
8 mentioned condition and argues there is no disagreement, only a
9 condition that requires agreement or a court decision before
10 final plan approval.

11 The applicant adds that the policy allows the development
12 to proceed notwithstanding disagreement once an impasse is
13 reached. The city's remedy is to appeal the approval.
14 Therefore, the conditions imposed by the county commissioners
15 provided petitioner greater protection than had the county
16 simply declared an impasse and gone ahead to approve the
17 development, according to the applicant.

18 In this case, it is possible to construe the county's
19 findings as a decision the city and county were at an impasse.
20 The city had expressed its opposition to the project; the
21 county approved the project. Tabling the proposal was
22 unnecessary since the purpose of this step is to allow the
23 county and city to resolve the issue. The county impliedly
24 decided the issue was not resolvable. The policy does not
25 require a conference between the two governing bodies, nor is
26 tabling mandatory. Therefore, this policy was not violated by

1 the county approval. The policy is a dispute resolution
2 mechanism, not a prohibition on project approvals.

3 Assignment of error no. 1 is denied.

4 ASSIGNMENT OF ERROR NO. 2

5 "The county erred in approving this application
6 subject to future approval by either the city or by a
7 court."

8 Petitioner begins by quoting conclusion of law no. 3 in the
9 county's order as follows:

10 " * * * the Board concludes that an outline approval is
11 appropriate in this instance, provided the developer
12 can negotiate an agreement with the City regarding the
13 annexation issues or provided that a court of
14 competent jurisdiction grants the right to proceed.
15 The County cannot rule on the question of vested
16 rights. The Board finds that it is necessary for the
17 County to proceed with the decision so as to allow the
18 applicant and the City to understand the County
19 requirements for such a PUD, and to allow resolution
20 of the issue of vested rights in court if the City
21 does not agree to allow the development without
22 annexation." Record 5.

23 This conclusion is implemented by a condition requiring the
24 applicant prior to final plan approval, to

25 "either obtain the consent of the City to use the
26 existing sewer and water systems to service the
development or obtain a decision from a court of
competent jurisdiction that the applicant has a vested
right to proceed." Record 11.

27 Petitioner charges the county's conclusion of law and the
28 accompanying condition were improper because the duty of the
29 county board was to either approve, disapprove or table the
30 application. Petitioner claims no statute, ordinance or plan
31 authorizes the county to make a land use decision granting

1 outline approval subject to conditions like the one quoted
2 above. Petitioner argues the effect of the condition is to
3 make the outline approval order no more than an advisory
4 opinion.

5 The applicant argues the use of a condition calling for
6 city approval is consistent with past county land use
7 decisions. Applicant points to the approval of Illahe Hills
8 Estates Phase III. In that case, the city was presented with
9 the county's detailed order of preliminary approval with a
10 condition requiring city concurrence, and the city concurred
11 with the county's order. The developer was then free to
12 proceed with the project. The present action, and that of
13 Illahe Estate Phase III, show a consistent interpretation of
14 the coordination requirement in the SACP, and LUBA should
15 uphold this consistent interpretation, according to applicant.

16 Outline approvals under the Marion County Zoning Ordinance
17 are controlled by Section 121.224. As the Board understands
18 the process, certain information must be submitted, including
19 information on utilities, in the application. Section
20 121.211. The information provided by the applicant is then
21 tested against applicable county criteria to determine whether
22 or not outline approval may be given. See Section 121.600, et
23 seq. Presumably, outline approval will not be given without a
24 showing that all of the parts of the development, the
25 utilities, transportation systems, locations of buildings,
26 topography and public uses and facilities meet or can be

1 conditioned to meet county standards. This stage demonstrates
2 the project, with all its basic components, is feasible under
3 county criteria. See Margulis v City of Portland, 4 Or LUBA 89
4 (1981).

5 The finding and condition complained of by petitioner
6 recognize that sewer and water systems can not be provided
7 without city consent. The county has written a condition over
8 which it has no control. It is not a condition which, under
9 its ordinance, is imposed to protect the "public health, safety
10 or welfare," but one that goes to the matter of whether the
11 development may be constructed with basic services. Without a
12 showing basic services can be provided, the outline plan is
13 incomplete. The PUD is, therefore, not feasible without city
14 annexation or approval. See Margulis, supra.

15 Even if the condition is not permissible, Respondent Marion
16 County claims there is no error. Marion County argued at the
17 hearing before the Board that a further public hearing was
18 possible in order to resolve any question about provision of
19 sewer and water services. During the further hearing, the
20 issue of whether the developer obtained city consent could be
21 aired with full participation by all parties. It was argued
22 this process would protect the petitioners.

23 Under Marion County Zoning Ordinance Section 121.223, a
24 public hearing "may be held based on the entire outline plan or
25 on the entire detail plan at the option of the developer as
26 provided below * * * *" There is no requirement for a public

1 hearing at the next stage, the detail plan stage, where a
2 hearing has been held on the outline plan. Only if the
3 developer chooses not to seek outline plan approval must he
4 have a public hearing at the detail plan stage. 121.224. The
5 public hearing in this case has already been held on the
6 outline plan. The next step, therefore, is detail plan
7 approval.

8 Under 121.233(b), it is the planning commission or the
9 hearings officer that grants approval of the detail plan if it
10 conforms substantially to the outline plan. The county
11 ordinance provides the planning commission or the hearings
12 officer "shall grant approval of the detail plan in whole or in
13 phases if it conforms substantially to the outline plan and the
14 standards set forth in this ordinance." There is no
15 requirement for notice and a public hearing for this function.
16 The only hearing possible at this stage is when there is
17 disapproval of the detail plan. Should the detail plan not be
18 approved or modified to conform to the outline plan,

19 "the developer may have a public hearing on the
20 proposed detailed plan, provided he supplies the
21 planning commission or hearings officer with a list of
22 current owners of property in the affected area. The
planning commission or hearings officer will set the
date of hearing and give notice in the manner provided
in 121.913 (Public Hearing)." 121.234

23 The Board does not understand the order adopted by Marion
24 County in this instance or the Marion County Zoning Ordinance
25 to require a public hearing in order to see whether a
26 particular condition of approval has been met. The

1 significance of the procedure in this case is to deprive the
2 petitioner and interested parties of knowing whether, in fact,
3 the city has indeed "agreed" to the provisions of sewer and
4 water service to this development. Because there is no further
5 public review of the provision of sewer and water service to
6 this development, and because sewer and water service is a
7 critical element in the approval of any development within the
8 Salem Urban Growth Boundary, the Board believes the condition
9 improperly leaves to a ministerial setting a critical decision
10 on the feasibility of this development and its compliance with
11 basic plan criteria. The Board's view might be different had
12 the county conditioned its order on further public hearings on
13 this issue. See Turner v. Washington County, ____ Or LUBA ____
14 (LUBA No. 83-014, 1983). Even then, a question might arise as
15 to whether or not the outline plan approval was indeed final.

16 Applicant argues any deficiency in the condition is moot.
17 Applicant asks the Board to notice an agreement between the
18 developer and the City of Salem. The agreement provides that
19 the City of Salem will annex this property. The agreement goes
20 on to say the developer may develop this PUD as long as the
21 development does not exceed the capacity of the private sewer
22 and water system. The agreement also says the city's "urban
23 growth management provisions, such as those requiring the
24 developer to obtain a development review permit and to extend
25 [city] sewer, water, and roadway improvements, shall not
26 apply." Annexation Agreement at Appendix 2 of Applicant's

1 brief. Applicant urges the annexation will render any question
2 of the city's consent to this development moot.

3 The Board does not believe this issue is moot. The
4 agreement cited by applicant is an agreement to annex
5 property. While the terms of the agreement include a city
6 consent to the planned unit development, the agreement is
7 predicated on the city's commitment, recited in the agreement,
8 to annex this property. The Board does not understand how the
9 city may enter into an agreement to annex property. There is
10 no citation to any such authority. Annexation of property
11 normally requires a procedure including notice and hearing. It
12 is not a subject of the city's contractual authority, but a
13 legislative process. The city may not bargain away the outcome
14 of that process. ORS 222.005 to ORS 222.310; 2 McQuillin
15 Municipal Corporations, Sec 7.13 (3d. ed., 1979), hereinafter
16 "McQuillin;" 10 McQuillin, Sec 29.92 (3d. ed., 1981).

17 The Board does not understand how the annexation agreement,
18 which appears on its face to be invalid, can constitute a
19 consent to this development.²

20 This assignment of error is sustained.

21 ASSIGNMENT OF ERROR NO. 3

22 "The County erred in approving this development
23 without requiring annexation to the City of Salem
24 because Salem Development Company had agreed not to
25 oppose annexation."

26 Petitioner claims Marion County's approval of this
development without requiring annexation was not proper because

1 it allowed the applicant "to nullify its written commitment not
2 to oppose annexation, a commitment made without attaching any
3 conditions whatever." Petition for Review at 11.

4 Applicant Salem Development, Inc. states the county has no
5 power to require an unconditional annexation. Applicant argues
6 all the county did was to pass the question of annexation to
7 the city, the sole jurisdiction with the power to annex
8 property to the City of Salem.

9 Whether a developer agreed he would not oppose annexation
10 of his property at some particular time does not control the
11 outcome of this case. The case is controlled by whether or not
12 the applicant has met all the applicable land use criteria.
13 The Board is not cited to any requirement that the developer
14 consent to annexation.

15 This assignment of error is denied.

16 ASSIGNMENT OF ERROR NO. 4

17 "The County erred in that its order does not
18 sufficiently explain the basis for its decision or
address and decide vital issues relating to SACP
19 requirements."

20 ASSIGNMENT OF ERROR 4(a)

21 "The order does not address SACP requirements that
22 lands adjacent to Salem city limits be annexed prior
to development."

23 Petitioner begins by quoting requirements in the SACP that
24 address development outside city limits. Petitioner alleges
25 these provisions were violated because the city has refused to
26 approve the application unless the tract is first annexed to

1 the city. Petitioner further argues that because there is no
2 "sector plan" for this particular area, controlling provisions
3 in the plan were not met. Petitioner relies on the following
4 provisions of the SACP:

5 "Annexations must take place in advance of demand for
6 serviced, buildable land to allow adequate time for
7 the provisions of the necessary facilities to serve
8 new development. Annexations must also be considered
9 in relation to the length of time required to complete
10 the various governmental processes and construction
11 projects. If major sewer, water, and street
12 facilities are required, it is not unusual that it may
13 be five to six years between initiation of annexation
14 and occupancy of a new home or business. The process
15 involves several steps:

16 " * * *

17 "As most of these areas are outside the current
18 developed area, they are subject to the requirements
19 of the Urban Growth Development Program. Subdivision
20 and development of these areas must be preceded by the
21 preparation of a sector plan for the areas." SACP II
22 A 3, Plan Map Designations b (4), pp. 11-12.

23 Applicant counters with the following provisions of the

24 SACP:

25 "2)(b) The City and Counties have agreed through
26 policies in the Salem Area Comprehensive Plan
that (a) no new service districts will be
created within the Urban Growth Boundary to
provide sewer or water services, and (b) that
areas must be annexed to the City before those
services will be provided, except as may be
agreed to by the City and appropriate
County." SACP II A 3, Plan Map Designations b
(2)(b), p. 10.

27 "4) * * * Full urban services are not immediately
28 available to these lands. These lands lie
29 outside the city limits and the county service
30 districts. Therefore, they must be annexed to
31 receive those services unless other
32 arrangements are approved." Ibid, (4), pg. 11.

1 Applicant argues it already has a sewer and water system
2 and no new sewer and water system or service district is being
3 created. Applicant claims an exception to the urban growth
4 management policies is allowed because the policy permits the
5 city and the county to agree to "other arrangements" for these
6 services.

7 The policy quoted by petitioner requiring annexations in
8 advance of demand for buildable land does not prohibit this
9 development. There is no clear mandate for a public sewer and
10 water system. Agreements between the county and the city for
11 other kinds of systems are allowed under SACP II A 3, Plan Map
12 Designations 2(b) and 4, supra.³

13 The other policy cited by petitioner referring to the Urban
14 Growth Management Program and to "sector plans" which must be
15 completed prior to subdivision approvals in areas outside the
16 "current developed area" is found in Ch 66 of the Salem City
17 Code. Ch 66 appears to control development in the area of the
18 subject property. It refers to the development of sector
19 plans, and it requires the issuance of an "urban growth area
20 development permit" prior to any development within the area
21 called the "urban growth area" which is that territory between
22 the "current developed area" and the urban growth boundary.
23 Chapter 66 has not been applied in this case.

24 The Board will not find Marion County in error for not
25 addressing Ch 66. It is not clear that Marion County has
26 adopted Chapter 66 of the city's zoning code. However, the

1 Board notes Ch 66 may be applicable to the city in that
2 adherence to Ch 66 may be required before the city can grant
3 its consent to a development within the county. See discussion
4 under Assignment of Error 4(b)(B), infra.

5 ASSIGNMENT OF ERROR 4(b)

6 "The order does not address SACP and Salem Urban
7 Growth Management Ordinance (requirements) that
8 property within the UGB cannot be developed unless and
9 until city sewer and water services are extended to
10 it."

11 A.

12 Under this assignment of error petitioner first advises
13 that the City of Salem refused to approve this application.
14 See Record 131. Petitioner then alleges the following
15 provisions of the SACP require an agreement that does not exist
16 in this case.

17 "Within the urban growth boundary, residential
18 subdivisions, commercial and industrial development
19 shall be permitted only within the county service
20 districts or within the City of Salem where public
21 sewer and water services are available and other urban
22 facilities are scheduled pursuant to an adopted growth
23 management program. Exceptions to this policy may
24 only be permitted if mutually agreed to by the City
25 and the appropriate County." SACP III D, Growth
26 Management b(8), p. 38.

Also,

27 "Sewer or water service will not be extended to
28 subdivisions developing outside city limits and county
29 service districts. Such areas must be annexed to the
30 city to receive these services except as may be agreed
31 by the City and appropriate County." SACP III C Urban
32 Growth Policies 9, p. 35.

33 Petitioner alleges the only possible showing of compliance with

1 these SACP provisions is the finding and conclusion saying that
2 a private water and sewer system with capacity to serve the
3 development exists. See Record 4. Petitioner alleges a
4 private water and sewer system does not satisfy these
5 requirements which specifically requires services to be
6 provided either by the city, a service district or by
7 agreement.

8 Petitioner also points to provisions in the SACP as follows:

9 "9. In those portions of the urbanizable area where
10 the City has not yet formulated and adopted
11 implementation measures, the relevant county
12 shall prohibit all development which would be
13 inconsistent with the adopted facilities and
14 service standards of the area."

15 "15. The Counties shall develop standards compatible
16 with the City of Salem standards for facilities
17 construction and improvements for streets, sewer
18 and water mains and storm drains within the urban
19 growth boundary." SACP III D Growth Management
20 b(9)(15), p. 38.

21 Petitioner alleges there has been no showing that Salem has
22 adopted any implementation measures for urbanization of the
23 area or that the county has any such standards for sewer and
24 water within the UGB. Petitioner concludes the development
25 must be prohibited.

26 Applicant states the policies cited on pages 35-38 of the
SACP concern themselves with extension of sewer and water to
areas unserved. Here, sewer and water service exists.
Applicant argues Policy 8 on page 38 allows for exceptions to
growth management standards as may be agreed by the city and
county. As the county conditioned the PUD approval on city

1 agreement, any error committed here is harmless, according to
2 the applicant.

3 The policies cited by petitioner controlling development
4 where no city implementation measures exist, Policies 9 and 15,
5 do not prohibit this PUD. The policies (1) require adherence
6 to all adopted standards, and (2) call for the adoption of
7 specific standards for streets, sewers and other utilities.
8 These policies then, only call for adherence to other
9 standards, they do not supply specific standards that are
10 clearly violated by this approval. Petitioner has not cited
11 the Board to facilities and service standards that the
12 development proposal would violate, other than the above quoted
13 SACP policies on sewer and water service. As discussed supra,
14 those standards may be waived by "agreement between the city
15 and county." The error here is that no agreement existed at
16 the time of approval. Without such agreement, the policy is
17 violated.

18 B.

19 The second part of this subassignment of error alleges the
20 applicability of the Salem Urban Growth Management Ordinance,
21 Salem City Code Chapter 66. Petitioner alleges the ordinance
22 requires the developer to obtain a development permit. The
23 permit is a requirement of 66.050. Further, part of the
24 ordinance requires a development be "linked" to the Salem
25 "current developed area" by construction of sewer lines. A
26 similar provision exists as to sewers. See 66.110 and 66.120.

1 As discussed earlier, Ordinance Chapter 66 has not been
2 adopted by Marion County, and the petitioner has not explained
3 how the county is required to apply Ch 66. The Board will not
4 speculate at this time as to how Ch 66 fits into the approval
5 process in this area.⁴

6 C.

7 The next complaint in this subassignment of error is based
8 on the fact that the sewage facility is an "interim" facility
9 according to DEQ and must be replaced "when area-wide
10 facilities are available." Petition for Review at 17. The
11 Board understands this argument to be that the county cannot
12 consider sewer service available to the project because the
13 existing sewer service is not a permanent system.

14 The applicant argues that though the treatment facility is
15 interim and the DEQ will require it be abandoned and replaced,
16 that does not mean that there is no existing sewer.

17 Petitioner has not shown how the interim system is
18 inadequate or fails to comply with the UGMP. A statement that
19 it is a private system, required to be replaced at some time in
20 the future, is not enough. There must be a connection between
21 this private interim system and a standard or policy
22 prohibiting such systems.

23 ASSIGNMENT OF ERROR NO. 4(c)

24 "The order does not address requirements of the Salem
25 Urban Growth Management Program relating to sewer and
26 water services."

1 As the Board understands this subassignment of error,
2 petitioner complains the Salem Urban Growth Management Program,
3 which requires new development to bear the cost of further
4 extension and improvement of sewer and water service, will be
5 violated. See Salem Urban Growth Management Program, Sec I(5),
6 pg. 1. Petitioner argues adjacent landowners within the city
7 limits will be required to pay the cost of extension of city
8 water lines to this area, while the developer and landowners
9 within the PUD will not. According to petitioner, if all
10 properties were annexed and service then provided, the cost
11 would be spread evenly. Allowing the PUD to develop outside
12 the city does not force the developer to bear the full cost of
13 extension of sewer and water.

14 Applicant's only argument is that there is no extension of
15 services. The services are already in place.

16 The UGMP is a 1979 resource document that includes
17 recommendations and policies on public facilities and services
18 within the urban growth boundary. It is a guide to conversion
19 of the urbanizable area to urban development. See SACP II A 3,
20 Plan Map Designations b(4), p. 11. The UGMP appears to
21 recognize problems associated with extending urban services in
22 undeveloped areas. The Board has been cited to nothing in the
23 UGMP, however, that prohibits a private sewer and water
24 service. There is nothing in the UGMP that prohibits
25 agreements between the city and county to allow for extension
26 of urban services without prior annexation. It has not been

1 made clear to the Board how the UGMP will be violated by this
2 development proposal. Without being cited to specifics within
3 the UGMP showing how it is that this development proposal and
4 the manner in which it has been approved will violate mandatory
5 provisions of the UGMP, the Board will not sustain petitioner's
6 argument.

7 ASSIGNMENT OF ERROR NO. 4(d)

8 "The order fails to address SACP requirements that
9 resources be conserved by encouraging orderly
10 development beginning with lands inside the current
11 developed area (CDA) where full urban services are
12 available."

11 Petitioner alleges this property is in the far southwest
12 corner of the urban growth boundary and a mile away from the
13 "Current Developed Area" as designated by the Salem City Code
14 Ch 66. Petitioner then cites to the following policies in the
15 SACP and the Marion County Comprehensive Plan:

16 "The necessity of managing urban growth over time in
17 accordance with the ability to provide urban support
18 services such as sewer, water, streets and recreation,
19 which would occur after annexation." SACP II A 3,
20 Plan Map Designations a(2)(c), p. 8

21 * * *

22 "To encourage locating residential development where
23 full urban services, public facilities, and routes of
24 public transportation are available." SACP II A 3,
25 Plan Map Designations a(1)(g), p. 8

26 * * *

"Conversion of urbanizable areas to urban development
will be guided by the growth management policies in
the Comprehensive Plan and be [sic] the Urban Growth
Management Program." SACP II A 3, Plan Map
Designations (b)(4), p. 11.

1 * * *

2 "All parties shall work toward the development of the
3 most efficient and economical method for providing
4 specific urban services t [sic] the area within the
urban growth boundary." SACP III Urban Growth
Policies, pg. 34.

5 * * *

6 "All parties should encourage the orderly annexation
7 to the City of Salem of the land within the urban
growth boundary." Ibid.

8 * * *

9 "Development of land with existing urban services
10 should be encouraged before the conversion of
urbanizable lands to urban uses." Ibid, pg. 35.

11 * * *

12 "Elimination of (urban) sprawl and creation of a more
13 compact urban expansion pattern should help in
14 achieving this goal." (i.e., "Conservation and
intelligent use of our land and related resources.")
Marion County Comprehensive Plan, pg. 60.

15 * * *

16 "Development of the urban area should proceed with its
17 center outward." Ibid.

18 * * *

19 "Development should occur in areas of existing
20 services before extending new services." Ibid, pg. 64.

21 * * *

22 "Growth in the Salem Area shall be managed through
23 cooperative efforts of the City of Salem, Marion and
24 Polk Counties, and shall be in accordance with plans
for the timing, phasing and financing of public
facilities and services." SACP III B, General
Development 5, pg. 32.

25 * * *

26 "The jurisdictions will determine specific criteria

1 for the location of multifamily development and
2 specify the location and intensity of residential
3 development for subareas as a result of completing
4 plans for facility development such as sector plans,
5 and completing plans for neighborhood redevelopment,
6 such as renewal and in-fill studies, and neighborhood
7 plans." SACP III E, Residential Development #17, pg.
8 41.

9
10 Petitioner alleges the county failed to show compliance with
11 these policies.

12 The Board believes the policies cited by petitioner do
13 indeed encourage development from the center outward. However,
14 the policies are not stated in mandatory terms. There is no
15 specific policy quoted that prohibits a development where
16 services are provided. Here, the county has found services are
17 provided. In this case, there are other criteria that control
18 development, and the Board believes it appropriate for the city
19 and the county to proceed as long as existing applicable plan
20 and ordinance policies and requirements are followed.

21 ASSIGNMENT OF ERROR NO. 4(e)

22 "The order fails to address SACP requirement that
23 development of agricultural lands within the UGB be
24 prohibited absent [sic] a demonstrated NEED."

25 Petitioner begins by quoting SACP II, "Urban Growth Policy
26 #3," "[t]o preserve farmland and open space," page 17.

27 Petitioner then cites an agricultural land policy in SACP.

28 "Where lands in part-time agricultural use have been
29 included within the urban growth boundary, the
30 agricultural use shall be encouraged to continue until
31 such lands are needed for urban uses. Properties in
32 agricultural use will be considered for deferral of
33 City sewer and water assessments and City tax

1 differential upon annexation." SACP III M, Scenic and
2 Historical Area, Natural Resources and Hazards Policy
1, Agricultural Land, pg. 51.

3 Petitioner argues this policy is consistent with the Marion
4 County Comprehensive Plan Policy to "direct development away
5 from agricultural areas composed of major units of Class I
6 through IV soils." M CCP at 62. Petitioner then cites facts in
7 the record showing that agricultural use exists on the property
8 and that the property contains SCS Class III agricultural land
9 soils. Record at 108, 112, 123.

10 Petitioner goes on to quote SACP Urban Growth Policy #8
11 (SACP, pg. 35) calling for the development of land with
12 existing urban services before conversion of urbanizable land.
13 Petitioner posits there is no need for this PUD, and as the
14 plan calls for agricultural use until needed for urban
15 development, the property should be left alone until a finding
16 of need is made.

17 Applicant argues the policy simply permits agricultural use
18 to continue; there is no mandate that such use continue. The
19 policy encourages farm use until services such as sewer and
20 water are available, according to applicant. When those
21 services are available, development is encouraged. Applicant
22 cites the following policy in support of this argument:

23 "The conversion of urbanizable land within the urban
24 growth boundary to urban uses shall be guided by a
25 growth management program which provides for the
26 orderly and economically efficient extension of public
facilities and services, while taking into
consideration the need for an adequate supply of land
to meet future housing requirements. The growth

1 management program shall encourage the development of
2 vacant lands that have urban services before the
3 extension of services beyond presently served areas."
SACP III D, Growth Management (2), p. 36.

4 Applicant goes on to distinguish this case from that of
5 Philippi v City of Sublimity, 294 Or 730, ___ P2d ___ (1983).
6 In that case, the city had a comprehensive plan policy
7 mandating preservation of agricultural land until needed for
8 development. The zone on the subject property was
9 residential. The Court held the "need" requirement in the plan
10 mandated a finding of need for residential use before the land
11 could be developed. See Philippi, 294 Or at 736. Here,
12 according to applicant, the policy is only permissive.

13 Applicant cites the following county finding to show
14 satisfaction with a SACP goal to "promote and encourage
15 residential densities...and to ensure varied living areas and
16 housing types...." SACP III E, Residential Development Goal,
17 pg. 39.

18 "The proposal allows the opportunity for providing
19 varied living areas and housing types for residents
20 because it is in close proximity to the Illahe Country
21 Club and Illahe Golf Course, which offers a unique
location for residential living that is oriented
toward the golf course." Record at 5.

22 The SACP policies on agricultural land are confusing. The
23 SACP Urban Growth Policy 3 announces an intent to preserve
24 farmland. SACP II C, Urban Growth Policies 3, p. 17. However,
25 the agricultural land policy at III(M) (pg. 51) only encourages
26 the continuation of part-time agricultural use. To further

1 confound the matter, Urban Growth Policy 7 states "Urbanizable
2 areas within the urban growth boundary shall be considered
3 available for annexation and urban development." SACP III C
4 Urban Growth Policies 7, p. 35. Also, the Board notes the
5 property is in an RA zone. The RA designation is Marion
6 County's residential agricultural zone. The RA zone falls
7 within the SACP "Developing Residential" designation. That
8 designation recognizes "agricultural uses on these lands will
9 be permitted until they are needed for urban development."
10 (Emphasis added). SACP II A 3, Plan Map Designations b(2)(f),
11 p. 10.

12 In sum, the SACP seems confused as to whether these lands
13 are to be held in agricultural use pending a need for
14 residential use or not.

15 The Board concludes petitioner is correct to the extent he
16 argues the SACP requirements on development of agricultural
17 lands must be addressed in this proceeding. The Board does not
18 know whether the county and the city intended a showing of need
19 before development could be allowed or not. However, the Board
20 believes the county should interpret these apparently
21 conflicting provisions.

22 At a minimum, the county should consider:

23 (1) whether the policies carry an implicit recognition
24 that land in agricultural use must continue in that
25 use until needed;

26 (2) if so, what are the criteria for establishing need;

1 (3) is placement of land in the RA zone a recognition the
2 land is needed for residential uses, or is more
3 required;

4 (4) does SACP Policy III M on agricultural land (p. 51)
5 even apply to the property in question in that the
6 land is in full time rather than part-time
7 agricultural use;

8 (5) if so, how does it apply?

9 This assignment of error is sustained in part, as
10 summarized below:

11 4(b)(A). The county violated SACP Policy III(C) and
12 (D) in approving this development without
13 prior annexation since no agreement for an
exception to these policies existed between
the city and the county.

14 4(e). SACP policies requiring preservation of farm
15 land must be addressed by the county on
16 remand, consistent with the Board's holding
on this subassignment of error.

17 In all other respects, this assignment of error is
18 dismissed.

19 ASSIGNMENT OF ERROR NO. 5

20 "The County erred in that several of its findings and
21 conclusions are not supported by substantial evidence
and do not support the approval of this development."

22 In this assignment of error, petitioner attacks individual
23 findings and conclusions in the county's order. Many of
24 petitioner's issues echo complaints discussed earlier, and the
25 Board declines to repeat its earlier holdings. The Board will
26 discuss some of petitioner's concerns in the hope of offering

1 guidance to the parties.

2 Conclusion No. 1, Record at 4. Petitioner claims the
3 county's conclusion that the development is consistent with the
4 standards in the RA zone is not proper because the property is
5 inside the urban growth boundary. The proper test, according
6 to petitioner, is whether the proposal complies with the SACP
7 which controls the unincorporated area of Marion County between
8 the urban growth boundary and the Salem city limits.
9 Additionally, petitioner complains that the statement in the
10 conclusion that the proposal is compatible with the density and
11 character of surrounding development is not supported because
12 there is undeveloped agricultural land on the west, south and
13 east.

14 Applicant does not completely address this complaint.
15 Applicant appears to agree that the SACP applies, but adds that
16 county zoning ordinances are applicable because the property is
17 nonetheless within the county. In addition, the Board
18 understands respondent to view compatibility issues to be
19 controlled by application of the county's PUD ordinance, Marion
20 County Zoning Ordinance Ch 121.

21 Petitioner does not explain how it is that the finding
22 about compliance with the RA Zone is wrong. Applicant is
23 correct that the property is still subject to county zoning
24 along with the SACP. The Board will not find fault with a
25 conclusion that a particular proposal is consistent with
26 applicable standards without a clear showing of how the finding

1 is mistaken. Petitioner must supply some explanation of his
2 claim of error where the county has found a standard to have
3 been met. See Lee v. Portland, 57 Or App 798, 646 P2d 662
4 (1982); Publishers Paper v. Benton County, 6 Or LUBA 182, 63 Or
5 App 632, ___ P2d ___ (1982).

6 As to the matter of compatibility with the density and
7 character of surrounding development, the Board notes the
8 finding is only about development. The finding does not even
9 purport to consider agricultural land. Petitioner does not
10 cite the Board to a requirement that the county consider
11 compatibility of the development with a neighborhood or an
12 area.⁵

13 Conclusion No. 3, Record at 5. Petitioner complains the
14 conclusion that the circumstances in the instant case are
15 similar to those in a related development, Illahe Hills Estates
16 Phase 3, is improper and is not substantial support for
17 approval of the project under review here.

18 The Board does not believe a recitation of how one
19 development is similar to another is determinative of the
20 outcome of this case. Whether or not this proceeding is indeed
21 the same followed in Illahe Hills Estates Phase 3 does not
22 control the adequacy of the county's order and does not control
23 the Board's review. The finding is surplusage only.

24 The operative part of this county conclusion, however,
25 requires comment. In the conclusion, the county says:

26 "The Board finds that it is necessary for the County

1 to proceed with the decision so as to allow the
2 applicant and the City to understand the County
3 requirements for such a PUD, and to allow resolution
4 of the issues of vested rights in Court if the City
5 does not agree to allow the development without
6 annexation." Record at 5.

7
8 The Board understands this statement to be a reason for
9 approving this development without the expressed consent of the
10 city. The Board does not agree this method of securing
11 approval is the only way to proceed. Indeed, as SACP policies
12 speak to the necessity for annexation or intergovernmental
13 agreement on alternate sewer and water services, it seems more
14 reasonable that the policy is fulfilled only where such an
15 agreement exists prior to approval of the project.

16 Conclusion No. 5. Conclusion No. 5 is a general finding
17 concluding that the "Residential Development" goals and
18 policies of the SACP have been met. Petitioner objects to
19 Conclusion No. 5 because it does not meet a SACP Policy that
20 requires provision of multi-family housing in areas close to
21 the city core.⁶ The Board does not understand this
22 development to be multi-family housing, but single family
23 dwellings in a single family zone. The Board concludes the
24 policy does not control this development.

25 Conclusion No. 6, Record at 5 through 7. Petitioner
26 complains that the county has not addressed all the relevant
SACP residential development policies. Petitioner claims the
county has talked about only three of the eighteen policies.
See SACP III E, Residential Development 1-18, pp. 39-41.

1 Petitioner does not cite any requirement that the county
2 address all residential policies nor does petitioner set out
3 particular policies which he believes are applicable and have
4 not been addressed. Absent some degree of specificity, the
5 Board cannot determine whether or not a violation has
6 occurred.⁷

7 To the extent the petitioner does take the time to attack
8 particular findings of compliance with particular residential
9 development goals and policies, the Board will consider those
10 arguments.

11 Petitioner attacks the county finding claiming compliance
12 with Residential Policy No. 1 on the ground that the finding
13 does not show a sufficient basis for approving the development
14 without sewer and water. The Board understands this complaint
15 to be a repeat of petitioner's earlier complaints that an
16 interim sewer system is not sufficient to meet SACP goals and
17 policies. The Board has already discussed this issue.

18 Next, petitioner argues that the county's finding under
19 Policy 1 that "public and private costs of providing necessary
20 urban facilities and services have been considered * * *" is
21 not supported by evidence in the record.

22 The Board agrees with petitioner. The findings do not
23 discuss and the applicant has not cited the Board to any
24 evidence in the record about costs of development other than a
25 statement by the applicant that some \$5 million would be needed
26 to run sewer and water to the area and to improve the roadway.

1 See Record 114-115. The Board believes this SACP policy and
2 others call for findings of fact on the costs of development.
3 See also SACP III D, Growth Management, Environmental Cost
4 Considerations, No. 7 and No. 11, pp. 37-38.

5 Further, although the Board declined to find the proposal
6 in violation of the Urban Growth Management Program, the Board
7 believes any discussion of the costs of this development should
8 consider the Urban Growth Management Program. It may be that
9 the county and the city view the Urban Growth Management
10 Program as only a general guide and not a set of mandatory
11 requirements, but such a view has not been argued by applicant
12 or respondent in this proceeding. In short, the county must
13 make an analysis of the costs of the development as required
14 under SACP policies, and that analysis may need to include a
15 discussion of the Urban Growth Management Program including,
16 whether or not the UGMP is even applicable.

17 Petitioner's next attack is on that portion of the county's
18 finding under policy 1 that holds

19 "The character of the existing neighborhood, which
20 consists of the Illahe Country Club, the Illahe
21 Terraces Cooperative Units north of the proposed
22 condominium project, and the substantial number of
23 single-family units which are east of the proposed
24 development and stretch out along the golf course,
25 have all been considered. By clustering development
26 within the planned unit development concept, the
27 proposed condominiums will preserve the maximum amount
28 of open common ground and will also limit access off
29 the Illahe access road to minimize the impacts on the
30 existing neighborhood." Record 6.

31 Petitioner focuses on the county comment about "clustering

1 development within the planned unit development concept." As
2 the Board understands the complaint, it is the same complaint
3 made earlier that this development does not meet a SACP Policy
4 controlling multi-family housing. See footnote 7, supra.

5 As stated in the Board's discussion at page 28, supra,
6 these are single-family units. The policy simply does not
7 apply. Further, Residential Policy No. 1 has only arguable
8 relevance to a particular development proposal. The policy
9 addresses the establishment of intensity of residential uses.
10 The policy lists criteria that must be considered when
11 "establishing intensity of residential uses." The Board
12 believes this consideration is a matter typically reserved for
13 the drawing of implementing ordinances such as zoning
14 ordinances. It is the zoning ordinance that will tell the user
15 what the intensity of a residential use in a particular area
16 will be.

17 The Board is uncertain as to why the county even addressed
18 this policy, but to the extent the county apparently believed
19 the policy should be addressed, the Board finds the county's
20 finding not objectionable in the manner urged by petitioner.

21 Petitioner next takes issue with the county's findings on
22 Residential Development Policy No. 3.⁸ The findings are as
23 follows:

24 "a) Convenient and safe access is now afforded to the
25 area from South River Road to the Illahe access
26 road. Applicant's evidence shows that the
applicant's driveway into the Illahe access road
will not adversely impact traffic, and past

1 experience has shown this access road to provide
2 a convenient and safe ingress and egress.

3 "b) The location of the planned unit development at
4 the proposed site will encourage the use of the
5 existing water and sewer facilities and also will
6 encourage the use of the Illahe Country Club and
7 Golf Course by residents of the condominiums to
8 be situated in the planned unit development.

9 "c) This development will produce an efficient and
10 economic land use, since the dwelling units will
11 be clustered for aesthetic appeal and to preserve
12 open land, but will be constructed in sufficient
13 density (55 units to 22.5 acres) to constitute a
14 prudent use of the land resource. The proposal
15 will serve to avoid unnecessary duplication of
16 facilities, since the sewage and water facilities
17 already exist to serve the proposed site."

18 As the Board understands this complaint, petitioner once
19 again challenges the private sewer and water system.
20 Petitioner's other complaint is that any reference to
21 "encouragement" of country club use is not relevant.
22 Petitioner finally says that any reference to "clustering" the
23 development is not proper because the development does not meet
24 a SACP policy calling for clustering of development.

25 The county's discussion about use of the country club is
26 not objectionable. The policy cited by petitioner calls for
encouragement of use of neighborhood facilities. The country
club is in the neighborhood, and the county is simply stating
that placement of this development next to the country club
will make it an efficient use of a neighborhood facility. The
finding is appropriate.

Petitioner's argument against the county's reference to
"clustering" in this development is a complaint about SACP

1 Residential Policy No. 7 calling for provision for multi-family
2 housing in "clusters around commercial, office and public
3 buildings." See footnote 7, supra. Once again, this policy
4 does not apply. The county's mention of clustering appears,
5 rather, to be a statement in support of the county's view that
6 this development will be an efficient and economic use of
7 land. See SACP III E, Residential Development (3)(d), p. 40,
8 footnote 9, supra. Petitioner does not attack the finding on
9 that ground.⁹

10 Petitioner's next attack is on Conclusion No. 7, Record 7
11 and 8. Petitioner attacks county findings of compliance with
12 the SACP urban growth policies. See SACP III C, Urban Growth
13 Policies, pp. 34-35. Specifically, petitioner attacks county
14 findings of compliance with policy 4 on the ground that the
15 private sewer and water system is not a method that can be
16 considered the most "efficient and economical method" of
17 providing services to this area.¹⁰ Petitioner goes on to
18 attack the county's claim that Urban Growth Policy No. 5 has
19 been met.¹¹ The policy calls for encouragement of orderly
20 annexation of property to the city. Petitioner claims the
21 applicant's statement that it would not oppose the annexation
22 of its property to the city does not satisfy this policy.
23 Similarly, petitioner claims Policy No. 6, requiring work
24 toward improved delivery systems of services is violated by
25 placement of this development.¹²

26 The Board wishes to note at the outset that Urban Growth

1 Policies Nos. 1-6 are the basis for implementing measures. The
2 following statement appears at the beginning of the urban
3 growth policies section of the SACP.

4 "The first six of the following policies were jointly
5 adopted by agreement on August 2, 1973, by the Salem
6 City Council, Marion County Board of Commissioners,
7 and Polk County Board of Commissioners. They are the
8 basis for many of the policies and implementing
9 measures to guide growth in the Salem urban area."
10 SACP III C, Urban Growth Policies, p. 34."

11 Policy 4 simply requires parties to "work toward"
12 development of "the most efficient and economical method for
13 providing specific urban services * * * *" Policy No. 5
14 encourages the orderly annexation of property to the City of
15 Salem, and Policy No. 6 urges the "parties," which the Board
16 understands to be City of Salem, Marion County and Polk County,
17 to "work toward improved delivery systems of services * * * *"
18 The Board does not believe these general policies mandate a
19 particular course of conduct with respect to a particular
20 development, so long as that development meets specific
21 comprehensive plan and zoning ordinance provisions that do
22 control individual developments. These policies are more in
23 the nature of guidelines for decisions on land use designations
24 and what kinds of uses will be permitted within particular
25 areas than policies to be applied to individual development
26 proposals. The Board does not believe the county has committed
27 error as alleged.

28 Next, petitioner's claim Urban Growth Policy 7 is unmet.

29 Policy 7 says:

1 "Urbanizable areas within the urban growth boundary
2 shall be considered as available for annexation and
urban development."

3 The policy is a statement that land in the UGB is to be
4 considered available for annexation. It does not set a
5 standard, it only states that urbanizable lands are to be
6 considered ready to be annexed. Whether or not they are
7 annexed depends on a host of other policies and criteria
8 including the will of the City of Salem. This policy is
9 neither violated or met by a PUD application.

10 Petitioner then attacks the finding on Urban Growth Policy
11 8, which encourages development of land with existing urban
12 services before conversion of urbanizable land to urban uses.
13 Petitioner claims that because there is a private sewer and
14 water system that DEQ believes has to be replaced, there are no
15 existing urban services. The Board does not think this policy
16 is violated per se by development of land without existing
17 urban services. The policy encourages; it is not mandatory.
18 Whether there is reason to differentiate between urban services
19 provided by the city and urban services provided on site by the
20 developer has not been adequately explained by petitioner. In
21 the absence of such explanation, the Board will not address
22 this issue.¹³

23 Petitioner next attacks Conclusion No. 8 that the proposal
24 satisfies requirements of Marion County Ordinance Section
25 121.211. Section 121.211 provides for a pre-application
26 conference between a developer and county planning staff.

1 Petitioner attacks the finding on the ground that record of a
2 preapplication conference does not appear in the record.

3 Petitioner adds the private sewer and water system does not
4 satisfy a requirement for sewer and water service.

5 A preapplication conference is called for in Section
6 121.211 of the zoning ordinance. It is an optional device to
7 ensure the application for an outline plan or a detail plan
8 will be complete. The subjects for discussion under Section
9 121.211 include matters of design, traffic, public utilities,
10 etc., that go to project feasibility. The preapplication
11 conference does not result in a written order or document under
12 Ordinance 121.211. The preapplication conference is simply
13 that, a conference. There is no requirement that a record of
14 this optional event be kept.

15 The Board can only conclude that the county's reason for
16 stating that 121.211 has been met is that the subjects of the
17 preapplication conference go to basic issues of feasibility.
18 Presumably, the county is trying to say all of the requirements
19 for an outline approval, that is requirements the developer
20 show he has adequate facilities and services, have been met in
21 this proposal.

22 There is, then, no requirement for an order in 121.211.
23 What is required is a showing that all of the criteria listed
24 in 121.211 have been addressed and shown to be sufficient under
25 county standards. Other than discussion of sewer and water
26 service, the Board does not understand petitioner to attack the

1 county's findings for failure to show compliance with these
2 other criteria.

3 Petitioner's last attack is on Conclusion No. 12 which
4 simply states that the project meets applicable standards.
5 Whether or not the project meets applicable standards has been
6 discussed elsewhere. It is not necessary for petitioner to
7 claim that the finding is no good in order to have this Board
8 understand that the development does not meet all applicable
9 criteria.

10 This assignment of error is sustained, in part.

11 This decision is remanded to Marion County for further
12 proceedings not inconsistent with this opinion.

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FOOTNOTES

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3 1
4 The Board has not been sited to any specific city or county
5 procedures whereby one jurisdiction can approve the development
6 in another. Presumably, some action would be required of the
7 city council or the county board, but what formalities
8 including notice (if any) would be followed is not evident in
9 the plan and ordinances before the Board. See SACP III C,
10 Urban Growth Policies 9, p. 35.

11 2
12 The agreement contains a statement that the city's urban
13 growth management provisions "such as those requiring the
14 developer to obtain a development review permit and extend
15 sewer, water and roadway improvements, shall not apply."
16 Annexation Agreement, p. 2, Appendix 2 to Applicant's Brief.
17 The Board does not understand how the city can agree to not
18 apply provisions of its ordinances. Presumably, Ch 66 of the
19 City Code is directly applicable to this development. Ch 66
20 contains no provision allowing waiver of its provisions.

21 3
22 Exactly what standards the county and city are to use in
23 reaching such an agreement are not given, however.

24 4
25 Applicant argues that Chapter 66 of the Salem Revised Code
26 applies only to the provision of new sewer and water services,
27 not existing services. Applicant says that because there is an
28 existing sewer and water service, the ordinance is not
29 applicable in any event. Applicant argues there may be an
30 exception to enforcement of Chapter 66 by city and county
31 agreement, citing SACP II D, Growth Management 8, p. 38.

32 The Board does not agree that the exception provided for in
33 Policy 8 will control whether or not the city must apply
34 Section 66 of its own code. Policy 8 does not allow for
35 deviation from all standards. The terms of the policy only
36 allow deviation from "this policy." While the SACP allows for
37 exceptions to a policy requiring development to occur only
38 within the city, there is nothing to indicate the exception may
39 completely do away with Chapter 66 of the Salem City Code.

1 The matter of the applicability of Section 66 of the code
2 and how it is to be used in particular instances is unclear.
3 It may be that Ch 66 controls whether the city will agree to a
4 development before annexation. That is, the city might test
5 the proposal against Ch 66 before it consents to a sewer and
6 water agreement under SACP III D, Growth Management (b)(8) p.
7 38. This issue is best left to the initial determination of
8 the parties.

5

6 But see SACP III E, Residential Development 1(c), p. 39.

7 "1. In establishing intensity of residential uses, the
8 following shall be considered:

9 "The character of existing neighborhoods."

6

10 Residential Development Policy No. 7 states:

11 "Provision shall be made for multifamily housing in
12 areas close to the city core, in clusters around
13 commercial, office, and public buildings and in areas
14 that have convenient access to major transportation
15 corridors."

7

16 A review of the residential development policy shows that
17 many of these policies do not call for findings at all but are
18 simply statements of direction to the parties to the SACP.
19 These directives presumably will find their compliance in the
20 zoning ordinances and implementing provisions of the various
21 jurisdictions. See for example Policy 12 calling for increased
22 housing densities in subdivision and zoning regulations.

8

21 Residential Policy No. 3 states:

22 "Residential uses and neighborhood facilities and services
23 shall be located in relation to each other so as to:

24 "a. Provide convenient and safe access.

25 "b. Encourage the use of all facilities and services by
26 residents.

"c. Avoid nuisances and hazards to residents.

1 and recreational facilities. Urban use is not
2 synonymous with residential, commercial or
3 industrial." SACP II E, General Definitions 4, pg. 18.

3 This definition is consistent with the common use of the term
4 "urban services" to mean those services necessary to support
5 urban development.

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1 "d. Produce the most efficient and economic land use
2 pattern, and avoid unnecessary duplication of
3 facilities."

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4 What is, indeed, "the most efficient and economic land use
5 pattern" is difficult to discern. Presumably, whether or not a
6 development is the most efficient and economic use of property
7 is a subjective question. The energies of the parties are
8 probably better spent trying to show compliance with specific
9 criteria instead of compliance with very broad criteria that
10 are vague and perhaps impossible to meet. The Board notes that
11 this kind of vague policy, without more specific implementing
12 criteria may be too vague to serve as a standard at all. To be
13 valid, it must rest on underpinnings of specific development
14 standards. Any attack on the policy must be to non-compliance
15 with the underlying standards, assuming there are underlying
16 standards. See Lee v City of Portland, 3 Or LUBA 31, 57 Or App
17 798, 646 P2d 662 (1982).

11
12 _____
13 10

12 "All parties shall work toward the development of the most
13 efficient and economical method for providing specific
14 urban services to the area within the urban growth
15 boundary." SACP III C, Urban Growth Policies 4, p. 34.

15
16 _____
17 11

16 "All parties should encourage the orderly annexation to the
17 City of Salem of the land within the urban growth
18 boundary." Ibid, Policy 5.

18
19 _____
20 12

19 "All parties shall work toward improved delivery systems of
20 services that require coordination by larger units of
21 government." Ibid, Policy 6, p. 35.

21
22 _____
23 13

22 "Urban services" is not defined. However, "urban use" is
23 defined.

23 "For purposes of the Salem Area Comprehensive Plan and
24 implementing ordinances, urban use refers to areas,
25 facilities or activities which are related to or
26 supportive of urban development. "Urban uses" can
include such things as sewage treatment plant, water
reservoir or well, gravel extraction operation, parks