

1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

3
4 WASHINGTON COUNTY,)

5)
6 Petitioner,)

7)
8 and)

9) LUBA No. 93-142

10 CITY OF BEAVERTON,)

11) FINAL OPINION

12 Intervenor-Petitioner,) AND

13 ORDER

14)
15 vs.)

16)
17 CITY OF PORTLAND,)

18)
19 Respondent.)

20
21
22 Appeal from City of Portland.

23
24 David C. Noren, Assistant County Counsel, Hillsboro,
25 filed a petition for review and argued on behalf of
26 petitioner.

27
28 Pamela J. Beery, City Attorney, Beaverton, filed a
29 petition for review and argued on behalf of intervenor-
30 petitioner.

31
32 Peter A. Kasting, Senior Deputy City Attorney,
33 Portland, filed the response brief and argued on behalf of
34 respondent.

35
36 HOLSTUN, Referee; KELLINGTON, Chief Referee; SHERTON,
37 Referee, participated in the decision.

38
39 REMANDED 05/06/94

40
41 You are entitled to judicial review of this Order.
42 Judicial review is governed by the provisions of ORS
43 197.850.

1 Opinion by Holstun.

2 **NATURE OF THE DECISION**

3 This appeal is one of three related appeals concerning
4 the establishment of an Urban Services Boundary (USB) for
5 the unincorporated area of eastern Washington County located
6 between the City of Portland (hereafter Portland) and the
7 City of Beaverton (hereafter Beaverton). In City of
8 Portland v. City of Beaverton, ___ Or LUBA ___ (LUBA No. 92-
9 225, May 6, 1994), decided this date, we remand Beaverton's
10 November 10, 1992 decision amending its comprehensive plan
11 to adopt a USB. In City of Portland v. Washington County,
12 ___ Or LUBA ___ (LUBA No. 93-195, May 6, 1994), also decided
13 this date, we remand Washington County's October 26, 1993
14 decision amending its comprehensive plan to adopt a USB.

15 The ordinance challenged in this appeal amends
16 Portland's acknowledged comprehensive plan to define and
17 designate a USB. The challenged decision adopts the
18 following definition:

19 "[An Urban Services Boundary is] a line within
20 which the City plans for public facilities and
21 urban services in areas of potential future
22 annexation to the City. Furthermore, the USB is a
23 general, not a precise, line which is
24 approximately 400' wide. Its precise location
25 will be determined when the Boundary Commission
26 acts on annexation or extraterritorial proposals
27 for specific properties within or contiguous to
28 the 400'-wide USB line." Record 7.

29 In addition, the challenged decision directs that the
30 current Urban Planning Area Agreement between the Portland

1 and Washington County be amended at some time in the future
2 to reflect both the challenged decision and the Interim USB
3 Agreement Proposal prepared during a Metropolitan Service
4 District (Metro) sponsored attempt to reach agreement
5 between Portland, Beaverton and Washington County concerning
6 the location of a USB. See City of Portland v. Washington
7 County, supra, slip op at 5.

8 **MOTION TO INTERVENE**

9 Beaverton moves to intervene on the side of petitioner
10 in this proceeding. There is no opposition to the motion,
11 and it is allowed.

12 **INTRODUCTION**

13 As explained in City of Portland v. City of Beaverton,
14 supra, slip op at 2-3:

15 " * * * Beaverton, Portland and Washington County
16 have attempted over a number of years to reach
17 agreement on a location for a USB in the
18 unincorporated area between Beaverton and
19 Portland. Such a USB would separate those
20 portions of the unincorporated area that
21 ultimately will receive urban services from and be
22 annexed by Beaverton, from those portions that
23 ultimately will receive urban services from and be
24 annexed by Portland. Those negotiations have not
25 produced agreement among the county and two cities
26 on the appropriate location for Portland's and
27 Beaverton's USB." (Footnote omitted.)

28 In City of Portland v. City of Beaverton and City of
29 Portland v. Washington County, we discuss the legal and
30 factual context in which the decisions challenged in these
31 appeals arise, and we do not repeat that discussion here.

1 In those decisions we explain that Washington County
2 presently has jurisdiction over this unincorporated area for
3 public facilities planning purposes, but both Portland and
4 Beaverton assert potential interests in providing urban
5 services to and annexing property in this area.

6 In our decisions in the other two appeals, we conclude
7 neither Beaverton nor Washington County may unilaterally
8 amend its acknowledged comprehensive plan in the manner they
9 have attempted. We reach this conclusion because the
10 Beaverton and Washington County comprehensive plans, as
11 amended, are rendered inconsistent with the provisions of
12 Portland's acknowledged comprehensive plan which apply in
13 this area of overlapping planning interests. In this appeal
14 we are presented with the question of whether Portland may
15 amend its acknowledged comprehensive plan provisions for the
16 disputed unincorporated area in ways that are inconsistent
17 with the acknowledged comprehensive plans of Beaverton and
18 Washington County. We conclude it may not.

19 **FIRST ASSIGNMENT OF ERROR**

20 Portland's acknowledged comprehensive plan includes
21 Public Facilities Policy 11.1(B), which provides, in part,
22 as follows:

23 "Outside its boundaries of incorporation, the City
24 of Portland shall:

25 "(1) Acknowledge the City's role as principal
26 provider of urban services within the City's
27 established Urban Services Boundary and plan
28 for the eventual delivery of urban services

1 according to a phased program of improvements
2 meeting the service needs of individual
3 areas.

4 "* * * * *"

5 The challenged decision, in conjunction with the above
6 plan policy, changes the existing land use planning status
7 quo under the acknowledged comprehensive plans of the three
8 parties.¹ As we explain in City of Portland v. Washington
9 County, supra, slip op at 8:

10 "[T]he acknowledged comprehensive plans of all
11 three jurisdictions, and the [Urban Planning Area
12 Agreements] that were entered into to secure
13 acknowledgment of those plans, explicitly defer
14 the issue of which city may ultimately annex, or
15 be responsible for providing urban services to,
16 particular portions of the disputed unincorporated
17 area."

18 The challenged decision asserts, unilaterally, that Portland
19 will be the principal provider of urban services within the
20 disputed unincorporated area.² Such an assertion is
21 inconsistent with the acknowledged comprehensive plans of

¹Because all three of the plan amendments challenged in these related appeals are remanded, they were never deemed acknowledged under ORS 197.625. See Von Lubken v. Hood River County, 118 Or App 246, 249, 846 P2d 1178, rev den 316 Or 529 (1993). Therefore, for purposes of each of these appeals, the relevant acknowledged comprehensive plans are the acknowledged comprehensive plans of the county and two cities, as they existed prior to the respective city and county decisions challenged in these three appeals.

²Portland's and Beaverton's acknowledged comprehensive plans assert both annexation and urban service provision interests in the disputed unincorporated area. However, neither of those acknowledged comprehensive plans claim the right to be "principal provider of urban services" within the disputed area or any portion of that area.

1 Washington County and Beaverton. For the reasons explained
2 in City of Portland v. Washington County, the challenged
3 decision therefore violates Statewide Planning Goal 2 (Land
4 Use Planning) and improperly exercises the coordination
5 obligation and authority explicitly assigned by ORS
6 197.190(1) and 268.385(1) to Metro.³

7 **REMAINING ASSIGNMENTS OF ERROR**

8 In view of our disposition of the first assignment of
9 error, we do not consider petitioners' remaining assignments
10 of error.

11 The city's decision is remanded.

³During the 1993 legislative session, the legislature amended a number of statutory provisions concerning intergovernmental coordination and adopted new provisions. Some of those new and amended provisions may be relevant to the decision challenged in this appeal on remand. However, the 1993 legislative amendments were not in effect when the challenged decision was adopted and all statutory references in this opinion are to the Oregon Revised Statutes as they existed on the date of the challenged decision. ORS 197.190(1) was recodified in 1993 and now appears at ORS 195.025(1)(1993).