

1 Opinion by Sherton.

2 **NATURE OF THE DECISION**

3 Petitioners appeal two city council decisions changing
4 the comprehensive plan map designation of an approximately
5 43 acre undeveloped parcel from Industrial to Residential
6 and the zoning of the parcel from Industrial-Manufacturing
7 (I-M) to Residential (R-2 and R-3).

8 **FACTS**

9 On October 1, 1993, the owner of the subject parcel
10 submitted comprehensive and zoning map amendment
11 applications to the city. At that time, the entire 43 acre
12 parcel was within the city's urban growth boundary (UGB),
13 but an approximately 24 acre portion of the parcel was
14 outside city limits.¹ On November 8, 1993, the city adopted
15 a resolution annexing the 24 acres to the city. We remanded
16 the city's annexation decision in Roloff v. City of
17 Milton-Freewater, ___ Or LUBA ___ (LUBA No. 93-213,
18 March 25, 1994) (Roloff I). The city adopted the decisions
19 changing the comprehensive plan and zoning map designations
20 for the entire 43 acre parcel that are challenged in this
21 consolidated appeal proceeding on January 10 and 24, 1994,
22 respectively.

¹This 24 acre portion of the property was also designated and zoned for industrial use under the Umatilla County (county) comprehensive plan and zoning ordinance.

1 **FIRST ASSIGNMENT OF ERROR**

2 Petitioners contend that in view of our decision in
3 Roloff I, approximately 24 acres of the subject parcel are
4 outside of city limits. Petitioners argue the city exceeded
5 its jurisdiction by adopting final decisions amending the
6 comprehensive plan and zoning map designations for the 24
7 acres of the subject property outside city limits and under
8 the county's jurisdiction. According to petitioners, under
9 City of Milton-Freewater Comprehensive Plan (plan)
10 Urbanization Policy 4 and paragraph IV.D of the
11 Milton-Freewater Planning Area Joint Management Agreement
12 (management agreement), the county retains jurisdiction over
13 land within the UGB but outside city limits (this area is
14 variously referred to in the relevant documents as the
15 urbanizing area, urban growth area or UGA).²

16 Petitioners further argue that under paragraph IV.S of
17 the management agreement, applications to amend the plan map
18 or implementing ordinances for portions of the urbanizing
19 area are required to initially be reviewed and approved by

²Plan Urbanization Policy 4 provides:

"The County must, by law, have final jurisdiction for land in
the urbanizing area (between the City limits and the [UGB]).
* * *"

Paragraph IV.D of the management agreement provides:

"The county shall retain final decision-making responsibility
for all land use actions affecting the City urban growth area,
but such decisions shall only be made after the receipt of
timely recommendations from the City."

1 the city council, as occurred here, but then must be
2 referred to the county planning commission and board of
3 commissioners for final adoption as amendments to the county
4 plan or code, which did not occur here.³ Petitioners
5 contend their substantial rights were prejudiced when they
6 were denied the opportunity to participate in a review of
7 the proposed amendments by the county planning commission
8 and board of commissioners.

9 Because of our decision in Roloff I, a 24 acre portion
10 of the subject parcel is not within the city's jurisdiction.
11 According to the plan and management agreement, in these
12 circumstances, the county retains jurisdiction over the
13 24 acres. With regard to the 24 acres, the city must
14 process and review applications for plan and zoning map
15 amendments, but the city council's decision can only be a
16 recommendation, and that recommendation must be referred to
17 the county. The challenged decisions were made in reliance

³Paragraph IV.S of the management agreement provides:

"Amendments to the Comprehensive Plan and implementing ordinances applicable to the UGA may be initiated by the City, the County or an affected person by application through the City Planning Department. * * * All such applications shall be referred first by the City Planning Commission and then by the City Council. If any proposed amendments are approved by the City Planning Commission and City Council, they shall be referred to the County Planning Commission and Board of Commissioners for adoption as amendments to the County Comprehensive Plan and Land Development Code with respect to the UGA, following required public hearings. Unless the County adopts amendments approved by the City, such amendments shall not be applied in the UGA."

1 on city annexation of the 24 acres and purport to be final
2 decisions amending the comprehensive plan and zoning map
3 governing the entire 43 acre parcel. Therefore, with regard
4 to the 24 acres not within city limits, the challenged
5 decisions exceed the city's authority.⁴

6 The first assignment of error is sustained.

7 **SECOND ASSIGNMENT OF ERROR**

8 Petitioners argue that under ORS 197.175(2)(e) and
9 197.835(4), any amendment to the city's plan and zoning maps
10 must comply with the Statewide Planning Goals (goals).
11 Petitioners contend the challenged decisions are deficient
12 because they fail to address Goals 3 (Agricultural Land) and
13 14 (Urbanization).

14 The challenged decisions amend the city's acknowledged
15 comprehensive plan and land use regulations. An amendment
16 to an acknowledged comprehensive plan must comply with the
17 goals. ORS 197.175(2)(a). The plan map amendment at issue
18 here is not itself acknowledged, because it was appealed to
19 this Board. ORS 197.625(1). A land use decision made under
20 an unacknowledged plan amendment, such as the zone change
21 appealed here, must comply with those land use goals

⁴The challenged decisions do not exceed the city's authority with regard to the approximately 19 acre portion of the subject parcel within city limits. Nevertheless, because the supporting findings address only the entire 43 acre parcel, the decisions are not severable in this regard. However, we remand, rather than reverse, the challenged decisions because of the possibility that on remand, the city could choose to adopt decisions affecting only that portion of the parcel within its jurisdiction.

1 applicable to the unacknowledged plan amendment.
2 ORS 197.175(2)(e) and 197.625(3)(b). Additionally, any
3 amendment to an acknowledged land use regulation must comply
4 with all applicable goals if the plan "does not contain
5 specific policies or other provisions which provide the
6 basis for the regulation." ORS 197.835(5)(b).

7 Where Statewide Planning Goals are apparently
8 applicable to a comprehensive plan or land use regulation
9 amendment, a local government must either explain in its
10 decision why the amendment complies with such apparently
11 applicable goals, explain why those goals do not apply to
12 the proposed amendment, or explain why an exception to those
13 goals is justified. ODOT v. City of Newport, 23 Or LUBA
14 408, 414-15 (1992). Consequently, the challenged decisions
15 must explain why Goals 3 and 14 are inapplicable,
16 demonstrate compliance with any applicable requirements of
17 Goals 3 and 14 or adopt an exception to such applicable goal
18 requirements. As far as we can determine without aid from
19 respondent, the challenged decisions fail to do any of these
20 things.

21 The second assignment of error is sustained.

22 **THIRD ASSIGNMENT OF ERROR**

23 Petitioners contend the challenged plan and zoning map
24 amendments fail to demonstrate compliance with certain
25 provisions of the city's acknowledged comprehensive plan, as
26 required by ORS 197.175(2)(d) and 197.835(5)(a).

1 **A. Plan Urbanization Policy 1(d)**

2 Plan Urbanization Policy 1 provides, in relevant part:

3 "Conversion of urbanizable land to urban use shall
4 be based on:

5 "* * * * *

6 "d. encouragement of development within urban
7 areas before conversion of urbanizable
8 areas."

9 The only findings in support of either challenged
10 decision that appear to address this requirement are the
11 following:

12 "The subject property is within the [UGB] and the
13 City limits. Any development would occur in an
14 urban area." Record I 15.⁵

15 We agree with petitioners that the above quoted finding
16 is impermissibly conclusory and is based on the incorrect
17 premise that the entire 43 acre parcel is within city
18 limits.

19 This subassignment of error is sustained.

20 **B. Plan Urbanization Policy 2(g)**

21 Plan Urbanization Policy 2 provides, in relevant part:

22 "Establish and change the [UGB] based on the
23 following factors:

24 "* * * * *

25 "g. compatibility of the proposed urban uses with
26 nearby agricultural activities."

⁵The record submitted in LUBA No. 94-011 (appeal of plan map amendment) is cited as Record I. The local record submitted in LUBA No. 94-021 (appeal of zoning map amendment) is cited as Record II.

1 The entire 43 acre subject parcel is within the city's
2 acknowledged UGB. Therefore, the challenged decisions
3 neither establish nor change the city's UGB. Accordingly,
4 plan Urbanization Policy 2(g) does not apply.

5 This subassignment of error is denied.

6 **C. Other Plan Provisions**

7 Petitioners contend the challenged decisions fail to
8 comply with plan Urbanization Policies 7 and 8 and Public
9 Facilities and Services Conclusion 11-B-1.

10 Neither of the challenged decisions appears to be
11 supported by any findings addressing these plan provisions.
12 The city must adopt findings that either (1) explain why
13 these plan provisions are inapplicable to the challenged
14 plan and zoning map amendments, or (2) demonstrate the plan
15 and zoning map amendments comply with these plan provisions.

16 This subassignment of error is sustained.

17 The third assignment of error is sustained, in part.

18 The city's decisions are remanded.