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BEFORE THE LAND USE BOARD OF APPEALS
OF THE STATE OF OREGON

DEPARTMENT OF LAND CONSERVATION)
AND DEVELOPMENT,)
)
Petitioner,)
)
vs.)
)
DOUGLAS COUNTY,)
)
Respondent.)

LUBA No. 98-119

FINAL OPINION
AND ORDER

Appeal from Douglas County.

Celeste J. Doyle, Assistant Attorney General, Salem, filed the petition for review. With her on the brief were Hardy Myers, Attorney General, David Schuman, Deputy Attorney General and Michael Reynolds, Solicitor General. Roger A. Alfred, Assistant Attorney General, Salem, argued on behalf of petitioner.

Allen L. Johnson, Eugene, filed the response brief and argued on behalf of respondent. With him on the brief was Johnson & Sheraton.

BASSHAM, Board Member; HOLSTUN, Board Chair; BRIGGS, Board Member, participated in the decision.

REMANDED 11/5/99

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

1 Opinion by Bassham.

2 **NATURE OF THE DECISION**

3 Petitioner appeals the county’s adoption of an ordinance adopting a population
4 forecast for the county and jurisdictions within the county.

5 **FACTS**

6 In 1996, the county began a process to establish and maintain a forecast of the
7 county’s population, as required by ORS 195.036.¹ At about the same time, the Oregon
8 State Office of Economic Analysis (OEA) began preparing a statewide and county
9 population forecast. Petitioner appeared in the proceedings before the county, questioning
10 the methodology for the county’s proposed population forecast. In addition, petitioner
11 requested, along with OEA, that the county continue its proceedings until OEA’s forecast
12 was available. However, the county declined to continue its proceedings and, in October
13 1996, the county board of commissioners (commissioners) adopted an amendment to the
14 population element of its comprehensive plan.

15 Petitioner appealed that decision to LUBA. We remanded, agreeing with petitioner
16 that the county had failed to exchange information with and adopt findings responding to the
17 concerns raised by affected agencies, as required by Statewide Planning Goal 2 (Land Use
18 Planning). *DLCD v. Douglas County*, 33 Or LUBA 216, 222-23 (1997) (*Douglas County I*).
19 Further, we agreed with petitioner that the county had failed to identify any evidence in the
20 record supporting the county’s in-migration and out-migration projections, and that the
21 county’s decision was therefore not supported by an adequate factual base as required by
22 Goal 2. *Id.* at 224.

¹ORS 195.036 provides:

“The coordinating body under ORS 195.025(1) shall establish and maintain a population forecast for the entire area within its boundary for use in maintaining and updating comprehensive plans, and shall coordinate the forecast with the local governments within its boundary.”

1 On remand, the county conducted meetings with petitioner and OEA in an effort to
2 coordinate with those agencies. Petitioner continued to object to the assumptions and
3 methodology supporting the county's population projections. In November 1997, the
4 commissioners adopted a plan amendment containing revised population figures that
5 projected a county population of 153,557 residents in the year 2020, considerably larger than
6 the OEA's estimate of 120,671 residents in the year 2020. Petitioner appealed that decision
7 to LUBA, and filed a petition for review arguing that the county had again failed to respond
8 to petitioner's concerns regarding the assumptions and methodology supporting the county's
9 projection. Petitioner also argued, essentially for the same reasons, that the county's
10 decision was not supported by an adequate factual base. The county then moved for
11 voluntary remand to address the issues raised in the petition for review. The Board granted
12 the motion on March 9, 1998. *DLCD v. Douglas County*, __ Or LUBA __ (LUBA No. 97-
13 253, March 9, 1998) (*Douglas County II*).

14 On remand, the county conducted further proceedings and revised its population
15 projection from 153,557 to 145,335 residents in the year 2020. On June 24, 1998, the
16 commissioners adopted the revised population projections, incorporating several staff
17 memoranda and communications as part of its findings.²

²The additional findings include:

- "1. Douglas County Population Model Analysis, June 18 [1998] Draft. [Record 691-772].
- "2. June 24, 1998, special Board [of Commissioners] findings. [Record 690].
- "3. Coordination chronology. [Record 772-73].
- "4. June 22, 1998, county planning [staff] response to June 17 [1998] DLCD [Department of Land Conservation and Development] letter. [Record 25-27].
- "5. June 24, 1998, staff memo to Board of County Commissioners. [Record 19-23].
- "6. June 18, 1998, staff memo to Board of County Commissioners. [Record 561-71].

1 This appeal followed.

2 **SECOND ASSIGNMENT OF ERROR**

3 In the second assignment of error, petitioner contends that certain key assumptions
4 underlying the county's population projection are not supported by any evidence in the
5 record, and thus that the county's decision is not supported by an adequate factual base, as
6 Statewide Planning Goal 2 (Land Use Planning) requires.

7 LUBA has held that the Goal 2 requirement for an adequate factual base requires that
8 a legislative land use decision be supported by substantial evidence. *1000 Friends of Oregon*
9 *v. City of North Plains*, 27 Or LUBA 372, 377-78, *aff'd* 130 Or App 406, 882 P2d 1130
10 (1994). Substantial evidence exists to support a finding of fact when the record, viewed as a
11 whole, would permit a reasonable person to make that finding. *Dodd v. Hood River County*,
12 317 Or 172, 179, 855 P2d 608 (1993). Where the evidence in the record is conflicting, if a
13 reasonable person could reach the decision the county made in view of all the evidence in the
14 record, the choice between conflicting evidence belongs to the county. *Mazeski v. Wasco*
15 *County*, 28 Or LUBA 178, 184 (1994), *aff'd* 133 Or App 258, 890 P2d 455 (1995).

16 Petitioner argues that the county's population projection is flawed in its reliance on
17 unsupported assumptions and policy choices that no reasonable decision maker would rely
18 upon, especially given the alternative presented by OEA's population projection, which

"7. June 10, 1998, county planning [staff] response to June 9 [1998] DLCD, letter. [Record 653].

"8. May 6, 1998, county planning [staff] response to DLCD re issues raised by DLCD's petition for review [in *Douglas County II*]. [Record 660-70].

"9. March 25, 1998 letter from Keith Cubic to DLCD re February 20, 1998 DLCD planning bulletin. [Record 671-72].

"10. February 17, 1998 memo to DLCD re DLCD and county approaches to population forecasting. [Record 1187]." Record 18.

1 petitioner submits is better supported by the available data and more reasonable
2 assumptions.³

3 **A. 1991 to 1997 Data**

4 The first error petitioner identifies is the county's failure to correct flaws in its model
5 for the years 1991 through 1997. Petitioner explains that the county chose 1990, the last
6 decennial census, as its base year. However, petitioner argues, from that starting point the
7 county applies an overly optimistic methodology that predicts population figures for the
8 years 1991 to 1997 that are higher than the state's official estimates of the county's actual
9 population. The state's official estimates are developed by the Center for Population
10 Research and Census (CPRC), and are used in the OEA analysis. For example, petitioner
11 notes, the county's methodology predicted a 1996 population of 102,418 persons, whereas
12 the official state estimate shows that the county's population in 1996 was only 98,600
13 persons. Petitioner argued to the county that its projections for 1991 to 1997 "[do] not
14 accurately predict 'known' population estimates from 1991 through 1997. Therefore, the
15 county's forecast to 2020 is not likely to be accurate either." Record 779. Petitioner argues
16 that the county's projections for 1991 to 1997 are unsupported by any evidence in the record,
17 and contradicted by the best evidence available: the official state estimate of actual county
18 population. Worse, petitioner contends, the county's erroneous figures for 1991 to 1997
19 compound other errors, discussed below, because the county's inflated figures are used as the
20 basis to multiply the county's projections for long term growth.

21 The county adopted findings responding to petitioner's concerns as follows:

³The relevant major differences between the two projections can be summed up as follows: (1) the OEA projection gives greater weight to county population and economic data from the 1980s than the county's model, when the county experienced economic difficulties related to the timber industry; (2) the OEA projection assumes that the state economic growth will converge with the national average over time, while the county assumes the state economy will continue to exceed the national average; and (3) the OEA projection assumes that the county's economic growth will continue to lag behind the state's, while the county assumes that it will converge with the state rate of growth over time.

1 “[T]he discrepancy between the [state’s] 1996 estimate of 98,600 and the
2 County’s 1996 estimate of 102,418 is not a matter of rejecting the [state’s]
3 1996 population estimate as factually incorrect. Rather, it is a matter of
4 maintaining internal consistency in the model for a long-term growth
5 projection. * * * The County’s analysis assumes a base year beginning with
6 the last authoritative decennial census, 1990. The nature of that trend is
7 determined in part by reliance upon the official certified estimates for the
8 years 1990-1995. The 1996 figures in both the OEA and County tables are
9 not estimates but projections. It is not a matter of differing with the CPRC
10 estimate, which may be correct but which cannot appropriately be plugged
11 into the model the day it is issued.” Record 667.

12 In its response brief, the county emphasizes that its model is a 30-year projection, and
13 that the 1996 figure is simply one point on a trend line. The county argues that the
14 differences between the two 1996 figures are insignificant, and further rejects petitioner’s
15 compounding argument, citing to evidence that, in response to petitioner’s objections, county
16 staff amended the county’s model using the state and federal figures for 1996 and found
17 “similar outcomes” compared to the county’s unamended model. Record 562. The county’s
18 model, amended with the official state estimates from 1990 to 1995, projected a county
19 population of 140,073 in 2020, compared to 145,348 in the county’s unamended model.
20 Record 566.

21 In *Concerned Citizens v. Jackson County*, 33 Or LUBA 70 (1997), we discussed the
22 role of the official state population estimates developed by the CPRC:

23 “ORS 190.510 to 190.610 delegate state census responsibilities to the State
24 Board of Higher Education (State Board). The State Board in turn has
25 delegated these responsibilities to the [CPRC], established in 1965 at Portland
26 State University (PSU). OAR 577-050-0005.

27 “ORS 190.520 requires the State Board (*i.e.*, CPRC) to estimate annually the
28 population as of July of each city and county in the state and by December 15
29 to prepare a certificate of population showing that estimate. If requested, any
30 city must ‘furnish such available information as may be required by the [State
31 Board] in securing accurate data and information upon which to base its
32 estimates.’ ORS 190.590. Each city may on its own initiative supply
33 additional data, including housing data, group quarters data, annexation data,
34 and utility data, that can be used to evaluate the population estimate. OAR
35 577-050-0020(4). If officially requested, the State Board will conduct[,] at a
36 city’s expense, an actual count of the population of a particular area and

1 prepare a certificate of population based upon such a count. Under ORS
2 190.530, a city may petition for reconsideration.

3 “The population shown in the certificate of population becomes the ‘official
4 population’ of the city, and is ‘the official and exclusive basis for determining
5 per capita allocation and payment of funds to such city * * *.’ ORS
6 190.540(2). The U.S. Bureau of Census recognizes CPRC conducted
7 censuses and surveys and accepts CPRC figures for federal revenue sharing
8 estimates. OAR 577-050-0020(5).” 33 Or LUBA at 98-100.

9 In *Concerned Citizens*, petitioners challenged on evidentiary grounds the county’s reliance
10 on studies of population growth from 1990 to 1993 used to support a population projection
11 demonstrating need for an expansion of the urban growth boundary. The study results
12 differed considerably from the 1990 U.S. Census Bureau figure, and differed from the
13 official state estimates for the years 1991 to 1993 by as much as 17 percent. We stated that:

14 “The CPRC estimates are rendered more credible by the opportunity provided
15 to the city to challenge them and the incentive (higher tax distributions) for
16 the city to do so. However, the U.S. Census Bureau and the CPRC figures are
17 presumably not infallible. If the figures used and the analysis found in the
18 [studies the county relied upon] would permit a reasonable person to make the
19 challenged findings in light of the U.S. Census Bureau and the CPRC figures,
20 we must find the disputed population projections are supported by substantial
21 evidence in the whole record.” 33 Or LUBA at 101.

22 We then considered the figures and analysis in the studies relied upon by the county, and
23 concluded that a reasonable person would not rely on those studies, in large part because
24 “without any explanation of why the data used or the methods that generated the CPRC
25 figures are deficient, they abandon the CPRC figures for the years after 1989 in favor of an
26 analysis that relies on incomplete data and changing and unsupported assumptions.” *Id.* at
27 105.

28 In the present case, we understand the county to argue that the 1991 to 1997 figures
29 used in its model are projections that begin, as do the CPRC’s estimates, with the 1990
30 Census Bureau figure. From that starting point, the county’s model projects and totals births,
31 deaths and migration figures for each year for a number of age-based cohorts. Record 731-
32 34. The county argues that petitioner does not challenge the basis for any of the county’s

1 specific projections for births, deaths and migration patterns for the years 1991-1997, but
2 merely takes issue with the fact that the county's totals for each year differ from the CPRC
3 totals for the same years.

4 Further, the county points out that the CPRC estimates for 1991-1997 are based on a
5 July 1 date for each year, while the county's are based on a December 31 date for each year.
6 The county argues that, if the two sets of estimates are adjusted to cover the same period of
7 time, the differences between them decrease markedly. For example, in its June 22, 1998
8 letter to petitioner, the county pointed out that:

9 "[T]he July 1, 1995 CPRC estimate was 97,700 and the July 1, 1996 CPRC
10 estimate was 98,600. The interpolated December 31, 1995 number is 98,150.
11 Douglas County's population model projected a [December 31] 1995
12 population of 98,575, a difference of 425 people or .04%. The CPRC
13 estimates occur within a ten year projection. The margin of error increases
14 with each year that passes. Therefore, a reasonable person can assume [that] a
15 0.4% difference in 1995 * * * between the CPRC estimate and the County
16 projection is statistically acceptable and based on the acceptable differences in
17 modeling techniques." Record 26.

18 Although the issue is a close one, we agree with the county that a reasonable person
19 could rely on the county's population figures for 1991 to 1997, notwithstanding that those
20 figures differ from the official state estimates for those years. Unlike the studies at issue in
21 *Concerned Citizens*, the county's figures are based on the 1990 U.S. Census Bureau figures,
22 which both parties agree are authoritative. Further, petitioner does not challenge the
23 county's method of calculating births, deaths and migration patterns for the years 1991 to
24 1997, but merely contends that the county's totals for those years are not reliable, because
25 they differ from the corresponding CPRC figures. Finally, as we noted in *Concerned*
26 *Citizens*, the CPRC figures are credible but not infallible. As the county explained, the
27 CPRC estimates are themselves partially based on projections, and contain a small but
28 significant margin of error that increases every year. A reasonable person could conclude
29 that the county's figures for 1991 to 1997, when adjusted to cover the same period of time,
30 are close enough to the corresponding CPRC figures as to be essentially consistent with each

1 other. Consequently, we conclude that the county's 1991 to 1997 figures are supported by an
2 adequate factual base.

3 This subassignment of error is denied.

4 **B. Employment Growth**

5 The second flaw petitioner identifies is the county's assumption that, beginning in
6 2006, the county's average annual employment growth will increase from 1.3 percent toward
7 the statewide average of 2.2 percent. That assumption is the basis for the county's further
8 assumption that increased employment growth will attract in-migration of people to the
9 county, causing a large increase in the county's population between 2006 and 2020.
10 However, petitioner argues that the assumption that the county will achieve a 2.2 percent
11 economic growth rate by the year 2006 is based on nothing but the county's aspirations for
12 economic development.

13 In letters dated October 1 and 23, 1997, petitioner argued to the county that the
14 county's employment growth rate has historically lagged behind the state rate, and that the
15 county itself projects a 1.3 percent growth rate for the period 1995 to 2005, which would lag
16 behind the projected state growth rate of 2.2 percent for the same period. Petitioner also
17 noted that OEA projected that the state employment rate would decline after 2003,
18 converging with the national average over time. In light of the foregoing, petitioner argued
19 that there is no justification for and no evidence supporting the county's assumption that
20 county employment growth would increase toward 2.2 percent after 2006.

21 The challenged decision states:

22 "The [commissioners find] that the state model is but one possible
23 interpretation of limited data using debatable assumptions and a methodology
24 with acknowledged limitations. The county's model is another interpretation
25 also based on limited data and a methodology with acknowledged limitations.
26 However, the county's model is more consistent with long-term county
27 growth trends. It is also more consistent with the growth assumed and
28 provided for in the county's acknowledged comprehensive plans.

1 “The [commissioners find] that the state model is less reasonable than the
2 County’s model in assuming that state-imposed constraints on land and
3 facility supplies will have the same effect over the next 20 years in areas with
4 substantial remaining capacity as in areas where that capacity has been
5 substantially used up. The County model reasonably assumes that Douglas
6 County will be in a much better position to market its ready access to I-5, its
7 lower land and housing prices, and its unused acknowledged urban carrying
8 capacity as the comparative disadvantages of currently faster-growing I-5
9 communities continue to increase.” Record 16-17.

10 In addition, the decision adopts a May 6, 1998 letter from county staff to petitioner as
11 part of its findings. In that letter, the county responded to petitioner’s objections regarding
12 employment growth:

13 “Douglas County’s employment would have to decline, not grow from current
14 levels to reach 2.2 percent after the year 2006. Nonagricultural employment
15 grew 3.3 percent in 1996, 4.0 percent in 1995, and 2.4 percent in 1993,
16 coming off two very bad years coming at the end of the restructuring and
17 before the beginning of the current recovery. Average employment growth
18 during the past four years is 2.8 percent. If we are looking at trend lines, the
19 trend since 1992, and for the past decade, is upwards, so that if extended to
20 the year 2006, the average would be well above 4 percent per year. Based on
21 employment data that everyone accepts[,] Douglas County’s employment rate
22 growth has been trending steadily towards the state average over the past
23 decade. It seems, therefore, that Douglas County has a basis in fact for
24 convergence upwards that is notably lacking from the OEA’s assumptions
25 concerning a sudden downwards convergence of state and federal growth
26 rates following the year 2003.” Record 667-68.

27 In its response brief, the county argues that the foregoing findings, based upon
28 undisputed data for the four most recent years, demonstrate that the county’s assumption that
29 employment growth will increase toward 2.2 percent after 2006 is supported by substantial
30 evidence. In essence, the county argues that it can reasonably rely upon recent employment
31 data as a true indicator of the county’s long-term growth potential, and need not take into
32 account historical data from the 1980s, when the county had a much less diversified economy
33 based on the troubled timber industry.

34 While it may be, as petitioner argues, that the OEA analysis is more consistent with
35 historical data, and based on more reasonable assumptions regarding long-term growth, if the

1 evidence supporting the county’s assumptions would permit a reasonable person to reach the
2 same conclusion the county does in light of OEA’s contrary analysis, we must find the
3 county’s assumptions are supported by substantial evidence in the whole record. *Concerned*
4 *Citizens*, 33 Or LUBA at 101. In our view, a reasonable person could conclude, as the
5 county did, that the economic trends of the last four years are indicative of the county’s long-
6 term economic prospects, given its strategic advantages vis-à-vis other population centers in
7 the state and the increasing diversity of its economy, notwithstanding the different
8 conclusions drawn by OEA’s analysis.

9 This subassignment of error is denied.

10 **C. In-Migration**

11 Petitioner explains that the county’s population projections to 2020 rest in large part
12 on high levels of projected in-migration, based on the assumption that higher job growth
13 would attract new residents to the county. Petitioner states that “[a]lthough facially
14 plausible, the county’s assumption that the increased in-migrations will be triggered and
15 driven by increased employment opportunities fails, since the underlying assumption that
16 employment opportunities will increase so significantly is unsupported on this record.”
17 Petition for Review 13.

18 The petition for review does not challenge the county’s assumptions regarding in-
19 migration on any other basis than its underlying assumption regarding employment growth
20 after 2006. Because we found, above, that the county’s assumption regarding employment
21 growth after 2006 is supported by substantial evidence, petitioner’s arguments regarding the
22 county’s in-migration assumptions do not demonstrate that the county’s decision lacks an
23 adequate factual base.

24 This subassignment of error is denied.

1 **D. Household Size**

2 Petitioner explains that the county’s population projection is based in part on an
3 assumption that household size until 2020 will remain constant at 2.6 persons per household.
4 However, petitioner argues that the county’s assumption is inconsistent with another county
5 assumption that its already substantial elderly population will continue to increase at a rate
6 significantly higher than the rate experienced by the state. Petitioner points out that from
7 1990 to 1996, 65 percent of the county’s net in-migration was comprised of elderly retirees.
8 Petitioner argues that the county’s assumption that the household size will remain constant at
9 2.6 persons per household is not supported by substantial evidence, because it fails to take
10 into account that elderly residents typically have smaller households, and that an increasing
11 percentage of the county’s households will consist of elderly residents.

12 Although petitioner does not explain the role the household size assumption plays in
13 the county’s model, the county does not dispute petitioner’s premise that it must account for
14 smaller senior households in crafting its model’s assumptions. However, the county cites its
15 May 6, 1998 letter as demonstrating that it has done so:

16 “In your [petitioner’s] earlier correspondence, you have indicated that
17 DLCD’s concern with this figure is that it fails to recognize the increasing
18 number of elderly households, which will bring the average [household size]
19 down. That is incorrect, and it is also irrelevant because of the way the
20 county’s model is constructed. As you can see from the notes to the county’s
21 model, household size and employment are separately calculated for persons
22 of retirement age, and household size for retirees is assumed to be only 1.5.
23 For example, the county’s model shows 4875 people reaching retirement age
24 in the period 1995-2000. It is assumed that 80% of those people, or 3900, will
25 retire. It is further assumed that the average retired household has 1.5, not 2.6
26 persons, so that the resulting number of retired households is only 2600.
27 Finally, it is assumed that those newly-retired households will continue to fill
28 an average of .5 jobs, for a total of 1300 jobs. The result is that the
29 requirement of 4875 people opens up only 2600 jobs in the County model.
30 * * *” Record 669.

1 In its petition for review, petitioner acknowledges the county’s response, but argues
2 that it cannot find any information in the record confirming that the county’s assumed
3 household size for retirees is 1.5 persons per household rather than 2.6.

4 The county’s response refers to the notes accompanying its model, but neither that
5 response nor the county’s brief identifies evidence showing that the county’s model assumes
6 1.5 persons per household for retirees rather than 2.6. Instead, the notes accompanying the
7 county’s model seem to state that the 2.6 persons per household figure includes retiree
8 households. Record 696. Accordingly, we agree with petitioner that the county has not
9 demonstrated that its assumptions regarding household size incorporated into its projection
10 are supported by substantial evidence.

11 This subassignment of error is sustained.

12 **E. City Population Projections**

13 ORS 195.036 requires that the county “coordinate the [county’s population] forecast
14 with the local governments within its boundary.” On June 17, 1998, petitioner submitted a
15 letter to the county arguing that the county’s coordinated population projections for several
16 cities were not supported by the record. The June 17, 1998 letter noted that the county had
17 projected a 3.5 percent annual growth rate for the City of Canyonville. However, as
18 petitioner argued in its letter and again in its petition for review, the record shows that
19 Canyonville’s population decreased by 53 people between 1980 and 1995, and the CPRC
20 population estimate for that city for 1997 shows no increase in the city’s population from
21 1980 to 1997. According to petitioner, there is nothing in the record justifying a 3.5 percent
22 annual growth rate for Canyonville, particularly in light of the historical data. Similarly,
23 petitioner argues, the county’s projections for the City of Roseburg appear to miscalculate
24 the growth rate, and improperly take into account increases in city population due to
25 annexations, which are not increases in population but are merely changes in jurisdictions.

1 The county’s response in a June 22, 1998 letter, and its response brief do not address
2 petitioner’s arguments regarding the coordinated population projections, but instead argue
3 that petitioner raised these concerns for the first time only two weeks before the county
4 adopted the challenged decision. In its June 22, 1998 letter, the county states that “[e]ach
5 city’s average annual growth rate, as agreed to in the local coordination workshops during
6 the summer of 1996, was provided to [petitioner] with our notice of proposed amendment in
7 September 1996.” Record 25. The county argues that petitioner has known of the
8 coordinated city projections for almost two years, and had never raised any objections to
9 those projections in *Douglas County I*, or at any point in the proceedings below until June 17,
10 1998. The county contends that, pursuant to the “law of the case” doctrine, petitioner’s
11 failure to raise issues in *Douglas County I* or during the proceedings subsequent to our
12 remand in *Douglas County I* regarding the city projections now precludes it from raising
13 those issues before LUBA.

14 At oral argument, petitioner responded that it first raised the issue of the city
15 population projections in letters dated October 1, 1997, and October 23, 1997, just before the
16 county adopted the decision appealed in *Douglas County II*. Petitioner does not argue, and it
17 does not appear to be the case, that the petition for review filed in *Douglas County I* or the
18 petition for review filed in response to the county’s November 1997 population projection
19 challenged the county’s city population projections. Petitioner does not dispute the county’s
20 argument that the city population projections at issue were part of the county’s initial
21 decision appealed in *Douglas County I*, and that those projections have not been altered or
22 revisited in either of the proceedings leading up to the present case.

23 The overriding principle of the law of the case or, more accurately, the waiver
24 doctrine, is that issues in land use cases must be brought to finality at the earliest available
25 opportunity. *McKay Creek Valley v. Washington County*, 122 Or App 59, 64, 857 P2d 167
26 (1993). As relevant here, the doctrine means that, after a local government decision is

1 remanded by LUBA or the Court of Appeals and a subsequent local government decision
2 adopted in response to the remand is appealed to LUBA, only issues that could not have been
3 raised in the first appeal may be raised in the later appeal. *Mill Creek Glen Protection Assoc.*
4 *v. Umatilla County*, 88 Or App 522, 526-27, 746 P2d 728 (1987) (stating principle); *Schatz*
5 *v. City of Jacksonville*, 23 Or LUBA 40, 48, *aff'd* 113 Or App 675, 835 P2d 923 (1992)
6 (same); *Hearne v. Baker County*, 16 Or LUBA 193, 195 (1987) (same). Conversely, issues
7 that could have been but were not raised before LUBA in the first appeal may not be asserted
8 before LUBA for the first time on appeal of the second decision. *See Kalmiopsis Audubon*
9 *Society v. Curry County*, 131 Or App 308, 312, 884 P2d 894 (1994) (the only issues
10 petitioners could raise in an appeal of a subsequent decision are issues that could not have
11 been raised in an unappealed first decision).

12 We agree with the county that petitioner could have challenged the city population
13 projections in *Douglas I*, and its failure to do so waives the right to challenge those
14 projections in the present appeal. Having failed to challenge those projections in *Douglas I*,
15 petitioner may not bring that challenge as part of the present appeal.

16 This subassignment of error is denied.

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

18 **FIRST ASSIGNMENT OF ERROR**

19 In the first assignment of error, petitioner argues that the county failed to respond to
20 the concerns raised by petitioner regarding some of the same assumptions challenged in the
21 second assignment of error, and thus that the county failed to satisfy the Goal 2 coordination
22 requirement.

23 Goal 2 requires that comprehensive plans be “coordinated with the plans of affected
24 governmental units.” A comprehensive plan is “coordinated” when the needs of all levels of
25 governments, including state agencies, “have been considered and accommodated as much as
26 possible.” ORS 197.015(5). Although a local government need not accede to every request

1 made by an affected local government or state agency, it must adopt findings responding to
2 legitimate concerns raised by such entities. *Douglas County I*, 33 Or LUBA at 221.

3 In its petition for review, petitioner explains that in letters dated October 1 and 23,
4 1997, it raised legitimate concerns regarding three assumptions underlying the county's
5 population projections: (1) the county's assumption that employment growth between 2006
6 and 2020 will increase over time toward the state average annual rate of 2.2 percent; (2) the
7 county's assumption that strong economic growth after 2006 will attract in-migration; and
8 (3) the county's assumption that the estimated household size of 2.6 persons properly took
9 into account senior households. Petitioner argues that it "questioned the lack of an adequate
10 factual base to support the county's assumptions generally, and the county's projected
11 growth in employment and population in particular." Petition for Review 7. Petitioner
12 contends that the findings adopted or incorporated into the challenged decision do not
13 respond adequately to these concerns.

14 In resolving the second assignment of error, we quoted portions of the county's May
15 6, 1998 letter, which was incorporated into the challenged decision, that respond to
16 petitioner's concerns regarding employment growth, in-migration and household size.
17 Petitioner acknowledges these responses, but argues that "[t]he May 6 letter does not identify
18 an adequate factual base for the county's projections and so is unresponsive to [petitioner's]
19 concerns on this point." Petition for Review 10. Thus, petitioner's coordination arguments
20 under the first assignment of error are fundamentally the same arguments made under the
21 second assignment of error: that some of the county's assumptions supporting its population
22 projection, and hence its projection, are not supported by an adequate factual base. The only
23 real difference is that, under petitioner's approach, the county no longer has the option of
24 demonstrating that its decision is supported by an adequate factual base by identifying and
25 discussing in its response brief the evidence in the record that supports the decision. *See*
26 *Redland/Viola/Fischer's Mill CPO v. Clackamas County*, 27 Or LUBA 560, 563-64 (1994)

1 (discussing principle). The logical result of petitioner’s coordination argument is that, where
2 an affected governmental body raises a concern regarding whether a county’s decision is
3 supported by an adequate factual base, the county must adopt the same kind of findings that
4 would be required for a quasi-judicial decision in responding to that concern.

5 As we pointed out in *Douglas County I*, 33 Or LUBA at 222, the Goal 2 requirements
6 for coordination and to support decisions with an adequate factual base are distinct
7 requirements. The question of whether the county has satisfied its coordination obligation by
8 responding to an affected agency’s legitimate concerns is a different question than whether
9 the county’s decision is supported by an adequate factual base. Petitioner’s combined
10 challenge under both Goal 2 requirements threatens to merge those requirements, and
11 convert the coordination requirement into an obligation to adopt adequate findings of the
12 type and specificity demanded of quasi-judicial decisions. We conclude that the county has
13 satisfied the Goal 2 coordination requirement in this case by responding to petitioner’s three
14 stated concerns. That those responses may not, in themselves, suffice to demonstrate that the
15 county’s decision is supported by an adequate factual base does not violate Goal 2. The
16 county is entitled to defend its legislative decision against a Goal 2 “adequate factual base”
17 challenge by explaining in its brief before LUBA where that adequate factual base is located
18 in the record. Because the petition for review does not identify any “legitimate concerns”
19 that petitioner raised below to which the county failed to respond, petitioner’s arguments
20 under the coordination requirement of Goal 2 do not provide a basis for reversal or remand.

21 The first assignment of error is denied.

22 The county’s decision is remanded.