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NATURE OF THE DECISION

Petitioner appeals the county’s decision to deny an application for a plan amendment, zone change and annexation.

FACTS

The subject property is a 45.93-acre parcel located within the City of Hermiston’s urban growth boundary and generally lies north of the existing city limits. East Theatre Lane is an east-west street that runs generally along the southern edge of the subject property and along the northern edge of the existing city limits. NE Fourth Street, a north-south city street, terminates at East Theater Lane to the south of the subject parcel. On the city’s transportation system plan, NE Fourth Street is planned as an urban major collector to be extended through the subject property to intersect with East Punkin Center Road, which is located to the north of the subject property.

The subject property is designated Medium Density/Mobile Home Residential on the City’s comprehensive plan map. In accordance with the city and county’s joint management agreement (JMA), the County designated the subject property Medium Density/Mobile Home Residential to correspond with the city’s comprehensive plan map designation.

Petitioner, the applicant below, applied to the city for annexation of the property, and a city comprehensive plan map amendment to change the existing comprehensive plan map designation to Low Density Residential for 19.70 acres of the subject property and to Medium Density Residential for 16.79 acres of the subject property. Once annexed, the petitioner proposes to rezone the 19.70 and 16.79 acres to Duplex Residential (R-2) and Multi-Family Residential (R-3), respectively.

If the annexation of the subject parcel is approved, four tax lots lying between the subject property and East Theater Lane to the south will be subject to county jurisdiction, but will be surrounded by property located within city limits.

1 The city council reviewed the proposed comprehensive plan amendment and
2 annexation application and adopted an ordinance approving the proposed comprehensive
3 plan amendment. The city ordinance and findings refer to the annexation petition, but the
4 ordinance itself does not approve the annexation of the subject property. Pursuant to the
5 JMA, the city then referred the ordinance to the county for co-adoption, and referred the
6 annexation request for review and comment. The county planning commission reviewed the
7 application and recommended that the county board of commissioners approve the co-
8 adoption and the annexation request. The Umatilla Board of County Commissioners
9 reviewed the application, and determined that the city failed to adequately address the effect
10 the use of the property would have on the construction of the NE Fourth Street extension as
11 shown in the transportation system plan, and did not address the creation of islands of county
12 jurisdiction surrounded by city limits. The county remanded the decision to the city for
13 further deliberations.

14 On remand, the city again approved the application without addressing the issues the
15 county raised, because it determined that the county's issues did not pertain to any particular
16 approval criterion. After receiving the city's response, the county considered the application
17 and adopted an ordinance denying the co-adoption and the annexation requests, based on the
18 city's failure to address the county's concerns.¹

19 This appeal followed.

20 **THIRD ASSIGNMENT OF ERROR**

21 The JMA provides that, generally, annexations to the city shall follow the procedures
22 set out in ORS chapter 222. The JMA further provides that

¹It is not clear from the county's final decision whether the board of commissioners intended to address zoning map amendments as well as the comprehensive plan map amendments and annexation proposal. The caption on the county's decision refers only to the comprehensive plan map amendment, but the text of the decision refers to the zoning map amendment and to the annexation request.

1 “The City shall refer all annexation proposals to the County Planning
2 Commission, Board of Commissioners, and the Road Department for review
3 and comment at least ten * * * days prior to the first public hearing on the
4 annexation. The City will allow additional County review and comment [in
5 the event] changes [are] to be made in the annexation proposal following
6 initial or subsequent hearings.” JMA p. 5.

7 Petitioner argues that the county exceeded its jurisdiction when it made a decision to
8 deny petitioner’s annexation request. Petitioner contends that, while the annexation was
9 associated with the plan amendment, the JMA only provides the county an opportunity to
10 review and comment on annexation petitions before the city. The county’s decision in this
11 case, petitioner argues, was beyond the county’s jurisdiction because it purported to deny the
12 annexation as well as the plan amendment.

13 The county responds that it reviewed the application as it was presented to the county
14 planning commission and the board of commissioners by the city and the applicant. The
15 application included the annexation request. By allowing the inclusion of the annexation with
16 the plan amendment, the county argues, petitioner acceded to the county’s decision-making
17 authority over the annexation.²

18 The JMA provides an opportunity for comment by the “County Planning
19 Commission, Board of Commissioners and Road Department” prior to the first public
20 hearing on annexations. The agreement also provides for additional review by the county if
21 the annexation petition is amended. The JMA does not give the county the right to approve
22 or disapprove annexations, even if an annexation is referred to in the findings that support the
23 city’s ordinance approving the plan amendments. We agree with petitioner that the fact that

²The JMA describes the process for county review of comprehensive plan amendments as follows:

“The County Planning Commission and Board of Commissioners will hold public hearings on all proposed amendments following receipt of City recommendations or co-adoption referrals. The County will take final action on all proposed amendments within 120 days after the application is deemed complete * * *. If approved, the amendments will be adopted by ordinance into the County Comprehensive Plan and Land Development Code, for application only within the UGB, following formal amendment by the City of its Comprehensive Plan and implementing ordinances.” JMA, p. 4.

1 the application before the county included a proposed annexation did not mean that the
2 county had the authority to make a binding decision regarding that aspect of the application.

3 The third assignment of error is sustained.

4 **FOURTH, SIXTH AND SEVENTH ASSIGNMENTS OF ERROR**

5 Petitioner argues that the decision the county made does not set out the criteria it used
6 to review the application, nor does it adopt findings to respond to the applicable criteria.
7 Petitioner argues that the findings that the county did make to support its denial of the plan
8 amendment refer only to issues arising out of the proposed annexation; therefore, the
9 county’s decision regarding the plan amendment does not have findings to support it.
10 Further, petitioner argues, even if the county’s findings supporting its decision were directed
11 to the plan amendment, they are not supported by substantial evidence.

12 The county responds that it did adopt findings in support of its decision, and that
13 those findings relate to the impact the proposal would have on transportation and on orderly
14 development of the urban growth area. Those issues, respondent argues, are legitimate
15 planning concerns that pertain to the application. Because the county denied the application,
16 it only had to adopt a single adequate basis for the denial for this Board to affirm its decision.
17 Respondent alleges that both of the reasons for denial are supported by substantial evidence;
18 therefore, the decision should be affirmed.

19 The county’s decision is a two-page document. The majority of the document
20 contains recitals that describe the procedural history of the application. The relevant
21 decisional recitals state:

22 “WHEREAS, The Board of Commissioners held a public hearing on
23 June 2, 1998, at which time they voted to remand the Copper Basin
24 comprehensive plan amendment and proposed annexation back to the city of
25 Hermiston, with the directive that they address the issues of the creation of
26 county islands with city annexations, and the alignment of NE 4th Street
27 northward to Punkin Center and Sagebrush Road; and

28 “* * * * *

1 “WHEREAS, On August 6, 1998 the Board of Commissioners
2 revisited the Copper Basin proposal and reviewed the City’s response to the
3 Board’s remand; after which they voted unanimously to deny co-adoption of
4 both the comprehensive plan and zoning map amendment requests and the
5 proposed annexation, based on the fact that the issues the County asked the
6 City to address (pertaining to the Copper Basin annexation creating county
7 islands of non-city land, and the alignment of NE 4th Street) were not
8 satisfactorily addressed by the city.” Record 2-3.

9 The county’s findings must (1) identify the relevant approval standards; (2) set out
10 the facts relied upon; and (3) explain how the facts lead to the conclusion that the decision
11 does or does not satisfy the approval standards. *Le Roux v. Malheur County*, 30 Or LUBA
12 268, 271 (1995). The county’s findings neither list nor refer to the relevant approval
13 standards. The JMA provides that the county applies the city’s comprehensive plan, zoning
14 and subdivision standards to decisions within the city’s urban growth boundary. The county
15 does not identify which provisions of the city’s plan and ordinances it considered when it
16 reviewed the subject application. Without reference to approval standards in the decision
17 itself, we cannot perform our review function.

18 Our review of this case is further hampered by the combination of the annexation
19 request with the plan amendment. The findings appear to pertain to the annexation alone,
20 which is not within the county’s authority to deny. However, it is not clear whether the
21 findings also have some bearing on relevant approval criteria. Accordingly, we must remand
22 so the county may identify the relevant approval criteria, and adopt findings in support of its
23 conclusion that the amendments either satisfy or fail to satisfy those criteria.

24 Because we determine that the findings are inadequate, we do not reach petitioner’s
25 substantial evidence argument. *DLCD v. Columbia County*, 15 Or LUBA 302, 305 (1987).

26 The fourth, sixth and seventh assignments of error are sustained.

27 **FIRST ASSIGNMENT OF ERROR**

28 The JMA requires that the county make a decision regarding an application subject to
29 the JMA within 120 days of the date the application is complete. Petitioner argues that the

1 failure of the county to make its decision within the requisite 120-day period means that the
2 county loses jurisdiction to review the application once 120 days have passed. Respondent
3 argues that the JMA does not provide a remedy for violation of the 120-day deadline, and to
4 the extent there is a violation, ORS 215.428(7) provides the remedy.

5 We agree with respondent. There is nothing in the JMA that establishes a remedy
6 when the county exceeds the 120-day period. The 120-day time period seems to be linked to
7 ORS 215.428(7); however, the agreement is not explicit on this point. Because the agreement
8 fails to provide a remedy for failure to comply with the deadline, petitioner has not shown
9 that the county lost jurisdiction merely by virtue of making a decision beyond the deadline
10 provided for in the agreement.

11 The first assignment of error is denied.

12 **SECOND ASSIGNMENT OF ERROR**

13 Petitioner argues that the county exceeded its jurisdiction by initially remanding the
14 city's approval of the application back to the city for further proceedings regarding two
15 points of concern for the county. Petitioner claims that by remanding to the city, the county
16 effectively abdicated its decision-making authority in favor of the city, and therefore the
17 county's later decision to deny co-adoption of the amendments must be reversed.

18 Respondent argues that the JMA requires that the county attempt to resolve
19 differences between the city and county prior to a final decision by the county on
20 applications before it within the urban growth boundary. The agreement does not specify the
21 manner in which such differences are resolved, and the county's remand was as good a way
22 as any to call the city's attention to the county's concerns.

23 The JMA provides, in relevant part:

24 "Attempts to resolve differences between City and County versions of an
25 acceptable amendment will occur prior to Board of Commissioners' adoption
26 [of its amendment]. Should the City and County fail to concur on amendment
27 proposals, the Board of Commissioners or City Council's decision may be

1 appealed to the appropriate tribunal, following final action by the Board of
2 Commissioners.” JMA p. 4.

3 Petitioner does not provide, nor do we find within the JMA, any particular process for
4 communicating concerns regarding an application that must be approved by both
5 governments. The assignment of error does not provide a basis for reversal of the challenged
6 decision.

7 The second assignment of error is denied.

8 **FIFTH AND EIGHTH ASSIGNMENTS OF ERROR**

9 Petitioner argues that the county misconstrued applicable law when it relied upon
10 Umatilla County Land Development Ordinance (UCLDO) 152.029 as an applicable criterion.
11 Petitioner also argues that, to the extent that the county’s decision is based on the devaluation
12 of a neighbor’s property, that finding is not supported by substantial evidence. Respondent
13 argues that nothing in the written decision of the county shows that the county relied on
14 either the county’s ordinance or a potential takings issue to support its denial of the
15 application.

16 We agree with respondent. The record shows that county staff referred to UCLDO
17 152.029 in a passing reference comparing it with the provisions of the JMA. The decision
18 does not rely upon any identified standards, much less UCLDO 152.029, to make its
19 decision. Further, LUBA reviews the final written decision rather than the oral deliberations
20 of the governing body. *Neuenschwander v. City of Ashland*, 20 Or LUBA 144, 156 (1990).
21 The reviewable decision is the ordinance and its supporting findings. The ordinance and
22 findings do not refer to either UCLDO 152.029 or a potential takings issue.

23 The fifth and eighth assignments of error are denied.

24 **NINTH ASSIGNMENT OF ERROR**

25 Petitioner argues that the county’s refusal to include a copy of the JMA in the local
26 record constitutes a procedural error that prejudiced the substantial rights of the petitioner,

1 and therefore the decision must be remanded. The parties agreed at oral argument that the
2 JMA is a legislative enactment that is subject to judicial notice pursuant to OEC 201.
3 Because the JMA is an official act of the city and county, it is not necessary that the
4 document be entered into the record before the board of commissioners for petitioner to refer
5 to it. In fact, petitioner did refer to portions of the document during testimony before the
6 board of commissioners, even after the board refused to admit the entire document into the
7 record. Petitioner has not shown how the board's failure to accept the entire JMA into the
8 record prejudiced its ability to present testimony and evidence before the county board of
9 commissioners.

10 The ninth assignment of error is denied.

11 **CONCLUSION**

12 In resolving petitioner's third assignment of error, we determined that the county
13 lacked jurisdiction to deny petitioner's annexation request. Therefore, we reverse the
14 county's decision on this point. We remand the remainder of the county's decision.

15 The county's decision is reversed in part and remanded in part.