

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

3
4 JAMES JUST,
5 *Petitioner,*

6
7 vs.

8
9 CITY OF LEBANON,
10 *Respondent.*

11
12 LUBA No. 2003-067

13
14 FINAL OPINION
15 AND ORDER

16
17 MEMORANDUM OPINION
18 (197.835(16))

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20 Appeal from City of Lebanon.

21
22 James Just, Lebanon, filed the petition for review and argued on behalf of petitioner.

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24 Natasha A. Zimmerman, Lebanon, filed the response brief and argued on behalf of
25 respondent. With her on the brief was Thomas A. McHill and Morley Thomas McHill &
26 Phillips, LLC.

27
28 HOLSTUN, Board Member; BASSHAM, Board Chair; BRIGGS, Board Member,
29 participated in the decision.

30
31 REMANDED

08/22/2003

32
33 You are entitled to judicial review of this Order. Judicial review is governed by the
34 provisions of ORS 197.850.

DECISION

Petitioner appeals a city ordinance that annexes 2.19 acres of land to the city and applies the city’s Residential Mixed Density (RM) zoning to the property. ORS 197.835(16) provides:

“The board may decide cases before it by means of memorandum decisions and shall prepare full opinions only in such cases as it deems proper.”

For the reasons set out below, we do not believe a full opinion is necessary in this case.

We decide *Just v. City of Lebanon*, ___ Or LUBA ___ (LUBA No. 2003-044, August 22, 2003) (*Just I*) today. The only notable difference between that appeal and this appeal is the size of the property. The annexed property in *Just I* includes approximately 61 acres and the annexed property in this case includes 2.19 acres. In both cases, the annexed properties are (1) located inside the city’s urban growth boundary, (2) designated Mixed Density Residential by the City of Lebanon Comprehensive Plan (LCP), and (3) subject to Linn County zoning.¹ Both decisions annex the subject properties to the city and replace the county’s zoning with the city’s RM zoning designation.

Petitioner alleges two nearly identical assignments of error in both appeals. In the first assignment of error, petitioner alleges that the city’s decision violates Goals 11 (Public Facilities and Services) and 14 (Urbanization) and ORS 197.752 and 197.754. We reject petitioner’s statewide planning goal and statutory arguments in *Just I*. *Just I*, slip op at 5-9. We reject them in this appeal for the same reasons.

However, petitioner also argues in his nine subassignments of error under the first assignment of error in both appeals that the city erroneously interpreted and applied five city Annexation Policies and four LCP policies. We sustain those subassignments of error in *Just*

¹ In both cases the properties are subject to Linn County’s Urban Growth Area, Urban Growth Management-10-Acre Minimum zone.

1 *I. Just I*, slip op 10-21. Petitioner alleges nine nearly identical subassignments of error
2 under his first assignment of error in this appeal, and we sustain those subassignments of
3 error for the same reasons.

4 In petitioner's second assignment of error in *Just I*, he alleges that the city erred in
5 applying the city's RM zone to the subject property. We rejected petitioner's arguments in
6 support of the second assignment of error in *Just I. Just I*, slip op at 21-23. However, we
7 nevertheless remanded the city's rezoning decision in *Just I* because the city's rezoning
8 decision depends on its annexation decision. *Id.* at 23. We reach the same conclusions
9 regarding petitioner's nearly identical second assignment of error in this appeal, for the same
10 reasons.

11 The city's decision is remanded.