

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

3 CARTER KERNS, LOUIS LEVY, )  
and GEORGE COREY, )

4 Petitioners, )

5 vs. )

6 THE CITY OF PENDLETON, )

7 Respondent, )

8 and )

9 FRITZ HILL and MARY ANN )  
10 HILL, )

11 Respondents. )

LUBA NO. 79-001

FINAL  
OPINION AND ORDER

12  
13 Appeal from City of Pendleton

14 Stephen T. Janik, Portland, argued the  
15 cause and filed the petition for  
review for petitioners.

16 Dana Anderson, City Attorney, Pendleton,  
17 argued the cause and filed the brief  
for Respondent City of Pendleton.

18 William J. Storie, Pendleton, argued the  
19 cause and filed the brief for  
20 Respondents Fritz and Mary Ann  
Hill.

21 Reynolds, Chief Referee, Cox, Referee, Bagg,  
22 Referee participated in the decision.

23  
24 Reversed.

3/17/80

1 REYNOLDS, Chief Referee

2 INTRODUCTION

3 Nature of Proceedings

4 Petitioners' appeal concerns the validity of an annexation  
5 and subsequent rezoning of 12.36 acres of land (hereinafter  
6 referred to as the "Hill property" or "property") to the City  
7 of Pendleton. The annexation ordinance became final on  
8 September 4, 1979, and the rezoning ordinance became final  
9 on September 18, 1979. Petitioners have challenged these  
10 ordinances as in violation of both LCDC goals and Fasano pro-  
11 cedural requirements.

12 Standing

13 The facts giving rise to the standing of the petitioners  
14 are set forth in the Petition for Review. Neither Respondent  
15 City of Pendleton nor Respondents-Applicants Fritz and Mary Ann  
16 Hill specifically contest the standing of the petitioners.  
17 Respondents-Applicants Hills in their brief specifically concede  
18 that all three petitioners live within sight and sound of the  
19 property but state that the record does not support the remainder  
20 of the standing allegations made by the petitioners. The Hills  
21 do not specifically deny the remainder of the standing allega-  
22 tions, and without such a denial, no issue of the petitioners'  
23 standing has been brought before the Board.

24 Issues petitioners seek to have reviewed.

25 Petitioners set forth eleven assignments of error in their  
26 petition. With respect to violations of the Statewide Goals,

1 petitioners allege that the city failed to properly coordinate  
2 with Umatilla County and failed to give proper notice of the  
3 proposed annexation and zoning to "affected persons" thereby  
4 violating Goal 2. Petitioners also allege that the city violated  
5 Goals 1 and 2 in failing to postpone for two weeks the date at  
6 which it intended to take final action on the annexation request  
7 so that petitioners' expert witness could appear before the city.  
8 Petitioners also allege that the city violated the substantive  
9 requirement of Goal 3, 11, 12 and 14, as well as the annexation  
10 rule (OAR 660-01-315).

11 Petitioners also allege procedural, non-goal related errors,  
12 were committed by the city. Petitioners contend that the City  
13 failed to consider or apply the applicable legal standards in  
14 a meaningful fashion, and that the failure to continue the  
15 hearing as requested by petitioners violated Fasano's procedural  
16 requirement that persons be afforded an opportunity to be  
17 heard. Petitioners finally assert that the city's findings were  
18 conclusory, inadequate and not supported by the evidence in the  
19 record and that the city attempted to amend its comprehensive  
20 plan without advising the public that such an amendment was at  
21 issue.

#### 22 FACTS

23 The Hill property is situated in the North Hill area, which  
24 includes both incorporated and unincorporated land. The property  
25 was subdivided many years ago into 23 lots. All of the property  
26 except one lot was, at the time the annexation proceeding was

1 commenced, owned by Fritz and Mary Ann Hill. The owner of the  
2 remaining lot was Pacific Northwest Bell. During the pendency  
3 of the annexation/rezoning proceedings, the Hills were negotia-  
4 ting with Pacific Northwest Bell for the purchase of Pacific  
5 Northwest Bell's lot. At oral argument it was revealed that  
6 legal title to the lot transferred unconditionally to the  
7 Hills on November 15, 1979, ten days after the Notice of Intent  
8 to Appeal was filed in this matter.

9 Pendleton does not have an acknowledged comprehensive plan  
10 nor an acknowledged urban growth boundary. It appears that at  
11 the time of this annexation, Pendleton did not have an officially  
12 adopted Goal 14 urban growth boundary, but had only a draft urban  
13 growth boundary upon which it relied. There is no evidence in  
14 the record as to when Pendleton expects to complete its compre-  
15 hensive plan and submit this plan to LCDC for acknowledgment.

#### 16 Annexation

17 The city council adopted three planning commission staff  
18 reports as its findings of fact and conclusions of law in support  
19 of the annexation. The first report analyzed the annexation  
20 in light of the Statewide Planning Goals. With respect to Goals  
21 3 (Agricultural Lands), 10 (Housing), 11 (Public Facilities  
22 and Services) and 14 (Urbanization), the planning staff report  
23 found as follows:

24 "3. AGRICULTURAL LANDS. Soils in this area  
25 range from an Anderly type (class 3-4) on flatter  
26 areas to Lickskillet (class 5-7) on steeply sloping  
areas. The topography of the parcel in itself pre-  
cludes effective use of the property for farming.

1                   "\* \* \*

2                   "10. HOUSING. This proposed annexation will  
3 likely add to the size and variety of the housing  
4 stock within the community. The North Hill area  
5 currently has few available building sites; thus,  
6 a need exists for more developable land in this  
7 vicinity.

8                   "11. PUBLIC FACILITIES AND SERVICES. There  
9 are existing sewer and water utilities located on  
10 the south side of this annexation which will serve  
11 the property. Any extension of utilities into this  
12 previously subdivided area will be at the expense  
13 of the developer. The area is traversed by a  
14 natural storm drainage draw which at the time of  
15 street improvement (N. Main) adequate provisions  
16 need to be made to insure proper containment of  
17 storm water runoff.

18                   "\* \* \*

19                   "14. URBANIZATION. The property proposed for  
20 annexation is well within the Comprehensive Plan  
21 identified Principal Urbanizing Area and is adjacent  
22 to existing residential development. Thus; this  
23 annexation would be an orderly growth to the  
24 community."

25                   The first planning commission report went on to conclude:

26                   "A comparative review of the site, surrounding  
27 area, and the City in view of the five adopted city  
28 annexation criteria was conducted with the following  
29 results:

30                   "A. The area is contiguous to the City on  
31 its west and south sides in an area of prior  
32 residential development. A portion of the proposal  
33 contains previously subdivided lands with dedicated  
34 street rights of way existing. Annexation as proposed  
35 would allow the development of these streets and  
36 housing construction to occur; thus, encouraging the  
37 logical growth of the community." Planning Staff  
38 Report, July 5, 1979.

39                   This report concluded that the annexation request met all  
40 of the Statewide Goals provided certain conditions could be

1 imposed with respect to Goals No. 8 (Recreation), 11 (Public  
2 Facilities and Services) and 12 (Transportation).

3 The second staff report made additional findings in the  
4 areas of transportation and recreation.

5 The third planning staff report analyzed the annexation  
6 request in light of LCDC's annexation rule (OAR 660-01-315).<sup>1</sup>  
7 With respect to the requirement in the annexation rule that  
8 "public facilities and services can reasonably be made avail-  
9 able to service the property," the report stated:

10 "An 8" sewer line exists in N. Main to the  
11 point where it intersects with N.W. Horn Avenue.  
12 An 8" sewer line exists in N.W. Ingram Lane, and  
13 a 6" line in N.W. Johns Lane.

14 "A 6" (east-west) water line exists in N.W.  
15 Horn Avenue that traverses N. Main. A 6" water  
16 line exists in N.W. Johns Lane and N.W. Ingram  
17 Lane. This area of the City (above 1200 ft. in  
18 elevation) is served by a pressure system whose  
19 current pump size is close to capacity. An  
20 engineering study would have to be undertaken  
21 prior to any development to insure proper  
22 service to the existing residences, the ones  
23 in this annexation, and future residents to the  
24 north.

25 "There is a 24" storm sewer line in N. Main  
26 at N.W. Furnish."

27 With respect to the second requirement in the annexation  
28 rule, that the property be found to be either physically  
29 developed for urban uses or within an area physically developed  
30 for urban uses, the report stated:

31 "B. (1) The proposed annexation has residential  
32 development adjacent on the east (a portion), south  
33 and west sides."

34 As to the third requirement in the annexation rule, that

1 there is a need for the urban use and circumstances exist which  
2 make it clear that the property will be within the urban  
3 growth boundary when that boundary is acknowledged by LCDC to  
4 be in compliance with the Statewide Goals, the report stated:

5 "B. (2) Development within the city for the  
6 last several years has occurred almost entirely in  
the south and southwest areas of the community.

7 "Residential development on the North Hill has been  
8 limited to College View Addition (43 lots of which  
9 17 are vacant) approximately 1 mile to the west;  
10 Parkridge North Condominiums (24 units under con-  
11 struction) approximately 1/4 mile to the west;  
12 and Grandview Heights Addition (22 lots, 8 of  
which are vacant) adjacent to the west side of  
this annexation. Available residential lots  
on the north hill are scarce and annexation of  
23 platted lots will add diversity to the  
Pendleton housing market area.

13 "The 1964 Comprehensive Plans Principal Urbanizing  
14 Area boundary is approximately 1/2 mile due north  
15 of the proposed annexation. The city's draft new  
Urban Growth Boundary is approximately 1/4 mile  
to the north."

16 Based upon the above quoted facts, the report concluded:

17 "Therefore, the proposed area for annexation  
18 has adequate public facilities and services if  
19 conditions are imposed, is within a physically  
20 developed area for urban uses, and will be within  
the city's urban growth boundary; thus, the  
property can be annexed.

21 "CONCLUSIONS

22 "That the request meets the three LCDC Admini-  
23 strative Rule Criteria for affirmative considera-  
tion of the annexation, if imposition of conditions  
are considered."

24 Rezoning

25 The city council adopted a two-page staff report which  
26 analyzed the zoning in light of the Fasano criteria as well

1 as the Statewide Planning Goals. The public need requirement  
2 of Fasano was addressed as follows:

3 "Approximately 810 acres of land within the  
4 City are zoned R-1 of which 502 acres are vacant.  
5 New R-1 lands are scheduled for development in  
6 the S.W. area of Pendleton; but the only new R-1  
7 land in the North Hill vicinity is the Whitney  
8 property proposed for 24 condominium units.  
9 Thus; there is a need for more developable R-1  
10 land in this vicinity."

11 With respect to the Statewide Planning Goals, in particu-  
12 lar Goals 3, 10, 11, 12 and 14, the reported stated as follows:

13 "3. AGRICULTURAL LANDS. Soils in this area  
14 range from an Anderly type (class 3-4) on flatter  
15 areas to Lickskillet (class 5-7) on steeply sloping  
16 areas. The topography of the parcel in itself pre-  
17 cludes effective use of the property for farming.

18 "\* \* \*

19 "10. HOUSING. This proposed annexation will  
20 likely add to the size and variety of the housing  
21 stock within the community. The North Hill area  
22 currently has few available building sites; thus,  
23 a need exists for more developable land in this  
24 vicinity.

25 "11. PUBLIC FACILITIES AND SERVICES. Provisions  
26 will be made via annexation agreement to ensure ade-  
quacy of public facilities and services to serve the  
site.

"12. TRANSPORTATION. Provisions will be made  
via annexation agreement to ensure transportation  
facilities are developed to serve the property and  
the vicinity in an efficient manner.

"\* \* \*

"14. URBANIZATION. The property and proposed  
use is well within the Comprehensive Plan identified  
Principal Urbanizing Area and adjacent to the existing  
city limits. No change on the growth boundary is  
affected, thus, the Goal is inapplicable."



1 The report further noted that the existing comprehensive  
2 plan land use map designated the Hill property for low density  
3 residential usage and that appropriate zoning was thus recom-  
4 mended to be R-1 low density residential.

5 OPINION

6 An LCDC administrative rule, OAR 660-01-315, requires that  
7 an annexation of land to a municipality prior to acknowledgment  
8 of the jurisdiction's comprehensive plan must be reviewed in  
9 light of three criteria. Those criteria are as follows:

10 "For the annexation of lands not subject to  
11 an acknowledged plan the requirements of Goal No.  
12 3 (Agricultural Lands) and Goal No. 14 (Urbaniza-  
13 tion) OAR 660-10-060 shall be considered satis-  
14 fied only if the city or local government boundary  
commission, after notice to the county and an  
opportunity for it to comment, finds that adequate  
public facilities and services can be reasonably  
made available; and:

15 "(a) The lands are physically developed for  
16 urban uses or are within an area physically developed  
for urban uses; or

17 "(b) The lands are clearly and demonstrably  
18 needed for an urban use prior to acknowledgment  
19 of the appropriate plan and circumstances exist  
20 which make it clear that the lands in question  
will be within an urban growth boundary when  
the boundary is adopted in accordance with the  
goals.

21 "Lands for which the findings above cannot  
22 be made shall not be annexed until acknowledgment  
23 of an urban growth boundary by LCDC as part of the  
appropriate comprehensive plan."

24 The city council adopted the planning commission's staff  
25 reports as its findings in support of the annexation/rezoning.  
26 The conclusion in the staff reports is that the annexation

1 would comply with those criteria. The Board finds, however,  
2 that the findings for the most part are conclusory in nature,  
3 are not supported by substantial evidence in the record and  
4 are, therefore, not adequate to satisfy the annexation rule's  
5 requirements.

6 Concerning the question of whether public facilities and  
7 services can reasonably be made available, the city found that  
8 adequate water service could be provided to the Hill property.  
9 The planning staff report states:

10 "A 6" (east-west) water line exists in  
11 N.W. Horn Avenue that traverses N. Main. A  
12 6" water line exists in N.W. Johns Lane and  
13 N.W. Ingram Lane. This area of the city  
14 (above 1200 feet in elevation) is served by  
15 a pressure system whose current pump size is  
16 close to capacity. An engineering study would  
17 have to be undertaken prior to any development  
18 to insure property service to the existing  
19 residences, the ones in this annexation,  
20 and future residences to the north."

21 The feasibility of providing water service to an  
22 area should be addressed prior to annexation of property,  
23 not subsequently, in order to comply with the public faci-  
24 lities requirement of the rule. The finding of the city  
25 leaves the impression that without an engineering study the  
26 feasibility of providing water service is unknown.

27 However, when the finding concerning water service is  
28 read in conjunction with the testimony before the planning  
29 commission at which the staff report incorporating this  
30 finding was discussed, it appears that the need for the  
31 engineering study was for the purpose of determining which

1 alternative, available methods should be used to supply water  
2 to the property:

3 "RHODES: In discussing with the Engineering  
4 Department, I guess the area can be dealt with  
5 in one of two ways. One of the ways may be the  
6 oversizing of the pump to increase, you know, the  
7 area which it is serving. Another alternative  
8 [inaudible] would potentially be coming off the  
9 existing high level reservoir system, which is up  
above Skyline Heights. Coming off with a feeder  
line from there down over to this area which would  
then give a gravity feeding system. Those are the  
two basic alternatives and it depends on what one's  
looking for in that total eventualities of the  
system." TR 232.

10 Thus, while the finding does not specifically state  
11 that water service can be reasonably made available to ser-  
12 vice the property but that an engineering study would have  
13 to be undertaken prior to any development to determine  
14 which method of providing service should be used, it appears  
15 that this was the intent of the finding. As such, it satis-  
16 fies the annexation rule's requirement at least with respect  
17 to availability of water service.

18 With respect to adequacy of sewer service, the staff  
19 reports state that two eight inch sewer lines and a six inch  
20 sewer line exist at various points adjacent to the Hill  
21 property. However, there is no discussion in the staff  
22 report as to whether the size of the sewer lines will be  
23 adequate to take care of any additional load that might be  
24 placed upon the sewer lines by the development of the  
25 property. In the absence of some testimony that it would  
26 be adequate, we cannot presume that the size of the sewer

1 lines will be adequate.

2 The finding of the staff report that the property  
3 is within an area physically developed for urban uses is not  
4 supported by evidence in the record. The city found that  
5 "the proposed annexation has residential development adjacent  
6 on the east (a portion), south and west sides," and further  
7 found that:

8 "The area is contiguous to the City on its  
9 west and south sides in an area of prior residential  
10 development. A portion of the proposal contains  
11 previously subdivided lands with dedicated street  
12 rights of way existing. Annexation as proposed  
13 would allow the development of these streets  
14 and housing construction to occur; thus, encour-  
15 aging the logical growth of the community."

16 Depending upon the particular location of a parcel of  
17 property, the fact that intense residential development may  
18 exist on two sides and a portion of the third side of a pro-  
19 posed piece of property does not necessarily mean that the  
20 property is "within an area physically developed for urban  
21 uses." Because city boundaries are not always drawn in  
22 straight lines but often consist of zigs and zags, many parcels  
23 of property outside city limits are bound on two sides by  
24 residential development within the city. We doubt that  
25 LCDC, in adopting the annexation rule, intended that all  
26 such parcels of property could be annexed to the city  
27 prior to acknowledgment of the comprehensive plan containing  
28 a Goal 14 urban growth boundary just because residential  
29 development exists on two sides and public facilities and

1 services may abut the property. Certainly many such parcels  
2 of land could be productive, readily farmable agricultural  
3 land. Alternatively, such parcels may need to be left vacant  
4 as a buffer in order to allow agricultural activities to  
5 take place on adjacent lands, free from the interferences  
6 which urban development impose.

7 Moreover, the finding made by the City of Pendleton as  
8 to residential development adjacent to the property is unsupported  
9 by any evidence in the record, and in fact, is contrary to that  
10 evidence which is in the record. The only evidence concerning  
11 the nature and intensity of residential development adjacent  
12 to the Hill property is that which appears from a review of  
13 the maps which are included in the record. At oral argument,  
14 the Board was informed by respondents that these maps were  
15 drafted in 1960-1962. The reliability of these maps for pur-  
16 poses of accurately depicting the nature and intensity of  
17 adjacent residential development at the time of this annexa-  
18 tion request is obviously suspect. These maps are, nevertheless,  
19 the only evidence which was in the record of the city's pro-  
20 ceedings. We cannot presume that the residential development  
21 in the area is other than that which the evidence in the  
22 record shows it to be.

23 Specifically, Exhibit 10 is a map which outlines in  
24 broken line form the Hill property and its relationship to  
25 nearby residential development. This map reveals that to the  
26 north and east of the Hill property there has been no resi-

1   dential development adjacent to the property. Adjacent to the  
2   southeast corner of the Hill property, there appears to be one  
3   building which may or may not be of a residential nature,  
4   but other than this one building, there is no development of  
5   any kind immediately south of the Hill property. There is  
6   residential development which appears to be of a fairly  
7   intense nature adjacent to the southwest corner of the Hill  
8   property but otherwise west of the Hill property this exhibit  
9   reveals there is no residential development, save and except for  
10   approximately seven residences constructed on N.W. Ingram Lane  
11   and N.W. 4th Street. There was, however, additional evidence  
12   in the record that west of the Hill property all but eight lots  
13   which are platted in the area have been developed. Northwest  
14   of the property also appears to be virtually vacant of  
15   residential development except for one building which appears  
16   to exist some 250 to 300 feet northwest of the northwest  
17   corner of the Hill property.

18         Exhibit No. 4 is a map depicting the neighborhood parks  
19   serving the North Hill. This map also shows the lots which are  
20   platted in the North Hill area. There are virtually no lots  
21   platted north, east or southeast of the Hill property.

22         Exhibit No. 6 is a map showing critical access streets  
23   in the North Hill area. As does Exhibit 4, this map shows  
24   virtually no platted lots to the north, east or southeast of  
25   the Hill property.

26         In summary, the evidence in the record does not support

1 the finding that the Hill property is within an area "physically  
2 developed for urban uses." Residential development on one side  
3 coupled with very sparse, scattered residential development on  
4 a second side and a portion of a third side does not place the  
5 property "within an area physically developed for urban uses."

6 Another finding which is not supported by substantial  
7 evidence is the city's finding that the Hill property "will  
8 be within the city's urban growth boundary." The only finding  
9 of the city that supports this conclusion is the city's state-  
10 ment that

11 "The 1964 Comprehensive Plans Principal  
12 Urbanizing Area boundary is approximately 1/2  
13 mile due north of the proposed annexation.  
14 The city's draft new urban growth boundary is  
15 approximately 1/4 mile to the north."

16 The fact that this property is within Pendleton's draft  
17 urban growth boundary is not, standing alone, a sufficient  
18 circumstance that the property will clearly be within the  
19 city's urban growth boundary when that boundary has been adopted  
20 in accordance with the Statewide Goals to satisfy the annexation  
21 rule. The city did not incorporate into the findings in  
22 this case any of the findings in its draft urban growth boundary  
23 which justified the existence of that boundary. For all this  
24 Board knows, the draft urban growth boundary contains no  
25 findings which support its proposed location. The only circum-  
26 stance before the Board is the fact that a draft urban growth  
27 boundary has been prepared by the City of Pendleton and <sup>5</sup> this  
28 property falls within that draft urban growth boundary. The

1 inclusion of property within a draft urban growth boundary  
2 standing alone is not a sufficient "circumstance" justifying  
3 annexation of property prior to acknowledgment of the urban  
4 growth boundary.

5 Another finding of the city having to do with the need for  
6 an urban use of this property prior to acknowledgment is not  
7 supported by substantial evidence in the record. The staff report  
8 concludes that "available residential lots on the North Hill are  
9 scarce and annexation of 23 platted lots will add diversity to the  
10 Pendleton housing market area." With respect to this finding,  
11 the staff report stated that one mile to the west there were  
12 17 vacant lots in the College View Addition and that immedi-  
13 ately adjacent to the Hill property there were 8 lots vacant  
14 in the Grand View Heights Addition. In addition, one-quarter  
15 mile to the west, there were 24 condominium units under con-  
16 struction. This evidence does not, standing alone, support  
17 the conclusion of the city that residential lots on the North  
18 Hill are "scarce." In any event, need in this context may  
19 not be satisfied simply by singling out one area of a city  
20 and showing a scarcity of lots in that one area. Availability  
21 of lots within the city as a whole must be addressed and a  
22 need established based upon the number of lots available city-  
23 wide. If a city does single out one area, at a minimum, it  
24 should state the reasons why available lots elsewhere in the  
25 city will not satisfy the need which the city has identified.

26 The evidence reveals that development within the city



1 for the last several years has occurred almost entirely in  
2 the south and southwest area of the community and the  
3 staff report indicates that adding additional residential  
4 lots to the north would add diversity to the Pendleton  
5 housing market. Diversity may or may not be desirable  
6 It is not desirable if the diversity of housing is to be added  
7 in an area where that housing should not go. There is nothing  
8 in the record which indicates whether it is necessary or desir-  
9 able from a planning standpoint for Pendleton to provide more  
10 housing in the North Hill area. A statement that adding more  
11 residential lots will add diversity to the housing market is  
12 not the equivalent of saying there is a need for more residen-  
13 tial lots in this area.

14 For the foregoing reasons, the Board finds that the  
15 annexation by the city did not comply with the annexation rule,  
16 and is, therefore, invalid. Because the annexation was invalid,  
17 the city's attempt to rezone the property was without any legal  
18 effect.

19 Even if the annexation were valid, however, the rezoning  
20 did not comply with the Statewide Goals, specifically Goal 14  
21 provisions concerning conversion of urbanizable land to urban  
22 uses. The city made no adequate finding that a need existed to  
23 convert this property to a residential use in light of the  
24 evidence in the record that out of approximately 800 acres in  
25 the city presently zoned for residential use, 500 such acres were  
26 vacant, see Herbert v. City of Eugene, LCDC No. 77-014 (1978),

1 and without identifying any criteria which would justify the  
2 city in singling out the particular area of the city in which  
3 the property was situated so as to allow the city to address  
4 the need which existed in that area alone.

5           <sup>6</sup>  
6           Reversed.

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FOOTNOTES

1

For the full text of the annexation rule see page 8, Infra.

2

While "public need" is no longer required to be addressed as one of the Fasano requirements for a zone change (see Neuberger v. City of Portland, 288 Or 155, 586 P2d 351 (1979), need must be addressed when at issue in the conversion of urbanizable land to an urban use within the meaning of Goal 14. Herbert v. City of Eugene, LCDC No. 77-014 (1978). The city's finding concerning public need will be treated as though directed at Goal 14 rather than Fasano's requirements inasmuch as the city made no independent finding of need under Goal 14.

3

Respondent city argues that the property is "irrevocably committed to non-farm uses" and is, therefore, "within an area physically developed for urban uses" within the meaning of the annexation rule. In making this assertion, the city relies upon Polk County vs. Marion-Polk County Local Government Boundary Commission, No. 78-003, in which LCDC stated:

"Items (a) and (b) are derived from an early LCDC case, 1000 Friends v. Marion County, LCDC 75-006 (1976) in which the Commission determined that the Agricultural Lands Goal need not be considered and the substantive exceptions criteria need not be applied to lands which are not available for farm use because they are already developed or irrevocably committed to development. In the course of the rule-making proceeding, the concept of irrevocable commitment was clarified to mean situated 'within an area physically developed for urban uses.' The idea behind excusing both property which is physically developed and property within a physically developed area is the same, namely, that such lands are 'no longer available for farm use.' Opinion and Order in 75-006 at 4. Land which is platted and undeveloped can be farmed. Land which has houses all over it can't. Neither

1 can land so nearly surrounded by houses that  
2 farming is no longer reasonably possible."

3 Irrevocable commitment to non-farm uses is a basis for  
4 allowing annexation under the annexation rule, however, only  
5 if the irrevocable commitment to non-farm uses is due to urban  
6 development on or surrounding the property sought to be annexed.  
7 In Polk County, the reason for irrevocable commitment was, as  
8 LCDC found, in part due to the existence of urban development  
9 on three sides of the property.

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11  
12  
13 4  
14 We note here that even if lots were platted in this  
15 area, the platting of lots without more would not con-  
16 stitute physical development of the area as required by  
17 the annexation rule.

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20  
21 5  
22 In its brief and at oral argument, the city has pointed out  
23 that subsequent to the approval of this annexation, a large area  
24 immediately east of the Hill property was also annexed to the city,  
25 resulting in the Hill property now being bound on three sides by  
26 incorporated land. This fact will undoubtedly have some bearing  
upon whether the Hill property ultimately falls within the urban  
growth boundary which LCDC acknowledges. However, this fact was  
not in the record inasmuch as the fact of annexation of this  
large parcel due east of the Hill property did not exist until  
after the Hill property was already annexed.

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32 The Board does not address the remaining ten issues raised  
33 by petitioners. To do so adequately would greatly increase the  
34 length of this opinion. (The Board is desirous of providing  
35 guidance to governing bodies and to assist them in avoiding  
36 repeating errors made when a land use decision which is reversed  
by the Board will likely again be before the governing body.  
The Board cannot, however, comply with the 90 day time limit  
imposed upon it by the Legislature and adequately review the  
other appeals before the Board if it addresses all issues  
raised that are not necessary to the outcome of the appeal  
under review.)