BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

RICHARD R. ALLM, KENDALL M. BARNES, RUSSELL A. COLGAN, STEVEN L. KRASIK, and PENTACLE THEATRE ASSOCIATION, Petitioners, vs. POLK COUNTY, Respondent, and NORTHWEST FARM BUREAU INSURANCE COMPANY, Respondent-Participant.	LUBA No. 84-105 FINAL OPINION AND ORDER
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT, Petitioner, vs. POLK COUNTY, Respondent, and NORTHWEST FARM BUREAU INSURANCE COMPANY, Respondent-Participant.	LUBA No. 85-001

Appeal from Polk County.

Richard M. Allm, Kendall M. Barnes, Russell A. Colgan and Steven L. Krasik, Pentacle Theater Association, Salem, filed the petition for review and Kendall M. Barnes argued the cause on behalf of petitioners.

Michael A. Holstun, Salem, filed the petition for review and argued the cause on behalf of Department of Land Conservation and Development Commission.

John R. Miller, Salem, filed a response brief and argued the cause on behalf of Respondent-Participant Northwest Farm Bureau Insurance Company.

No appearance by Polk County.

KRESSEL, Referee; BAGG, Chief Referee; DUBAY, Referee, participated in the decision.

REMANDED 06/24/85

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

Opinion by Kressel.

NATURE OF THE DECISION

Petitioners appeal the county's approval of comprehensive plan and zoning map amendments affecting a 12.7 acre parcel in rural Polk County.

FACTS

The parcel is located approximately two miles outside the Salem Urban Growth Boundary, northwest of the intersection of 52nd Avenue and Highway 22. About one and a half acres are designated "Commercial" by the plan and are zoned Commercial Retail (CR). The plan designation of the remainder of the parcel is "Rural Lands." The zoning is "Acreage Residential" (AR-5). The county's plan and implementing measures were acknowledged by LCDC in 1981. At that time, the designations for the property were approved as part of an exception to Goal 3 (Agricultural Lands).

Like the parcel in question, properties to the north, east and west are designated "Rural Lands" by the plan and are zoned AR-5. However, a commercial use (Pentacle Theater) is located on the adjacent property to the north. A few small properties across Highway 22 to the south are designated "Commercial" by the plan and are zoned CR. The commercial uses on these properties are Ernie's Mini-Mart and Gas Station, OK Motors (car sales), another gas station and a fruit stand. To the southwest of the property are resource lands designated "Farm-Forest" by the plan and zoning ordinance. Some small,

industrially zoned parcels are also in the vicinity.

Northwest Farm Bureau Insurance Company (NWFBIC) applied in May, 1984 for plan and zone changes to permit retail commercial use of the entire 12.7 acres. The property was proposed for use as the headquarters for the insurance company and the Oregon Farm Bureau Federation. Almost 43,000 square feet of commercial office space and 10,000 square feet of warehouse space were to be developed in a campus setting. The application indicated the headquarters would be occupied by a maximum of 200 employees.[1]

The application was initially reviewed by the Polk County Economic Development Committee and the County Planning Commission. Thereafter, it was approved by the Board of County Commissioners. County Ordinance 313, approving the application and adopting findings of fact and conclusions of law, was signed by the governing body on December 12, 1984.

PARTIES

Two appeals of the decision have been filed. In LUBA No. 84-105, petitioners are three individuals and the Pentacle Theatre Association. In LUBA No. 85-001, petitioner is the Department of Land Conservation and Development (DLCD). NWFBIC has filed respondent's briefs in both appeals. No brief has been filed by the county.

Many, but not all of the issues raised in the two petitions overlap. Our discussion in assignments of error one through five follows the sequence of the petition in No. 84-105. The

discussion also addresses all but one of the issues presented in DLCD's petition in No. 85-001. In assignment of error six we discuss the remaining issue presented in No. 85-001.

STANDING

NWFBIC objects to DLCD's standing in No. 85-001. The claim is that under the statutes governing standing before this Board only "persons" may file appeals. See ORS 197.620; 197.830. NWFBIC argues DLCD is outside the scope of this term.

We reject the challenge to DLCD's standing. ORS 197.015(14) defines "person" in terms broad enough to include the agency:

> "'Person' means any individual, partnership, corporation, association, governmental subdivision or agency or public or private organization of any kind."

The record indicates DLCD participated in the county's proceedings leading to adoption of the challenged, post acknowledgement measures. Accordingly, the agency has standing to bring the appeal. ORS 197.620(1).[2]

Apart from the above, we believe ORS 197.090(2) authorizes DLCD to appear as a party in this case. The statute provides:

> "(2) Subject to local government requirements and the provisions of ORS 197.830 to 197.845, the director may participate in and seek review of a land use decision involving the goals, acknowledged comprehensive plan or land use regulation or other matter within the statutory authority of the department or commission under ORS 197.005 to 197.430 and 197.610 to 197.850. The director shall report to the commission on each case in which the department participates and on the positions taken by the director in each case." (Emphasis added.)

The petition filed by DLCD alleges violations of certain statewide goals and provisions of the county's aknowledged plan. Although the statute literally authorizes only the director of DLCD to initiate appeals, the director is the administrative head of the department. ORS 197.090(1)(a). We conclude designation of DLCD as the petitioner is not error and that petitioner has standing.[3]

FIRST ASSIGNMENT OF ERROR

Petitioners first assert the county failed to inform them of the substantive standards governing consideration of the proposed plan amendment. They allege this failure made it difficult for them to "meaningfully participate in the hearing process." Petition at 1. NWFBIC replies that the applicable law consists of public documents and that petitioners must be presumed to know the law.

We agree that parties to a plan and zoning map amendment proceeding are entitled to know what standards will govern the request, so they can "address the import of the standards." See Marbet v. Portland General Electric, 277 Or 447, 463, 561 P2d 154 (1977). See also Morrison v. City of Portland, 70 Or App 437, 442, 689 P2d 1027 (1984); Commonwealth Properties v. Washington County, 35 Or App 387, 399-400, 582 P2d 1384 (1978). A remand would be in order if the county's decision was based on approval standards petitioners could not have known would be applied. OAR 661-10-070(1)(C)(3).

Parts of the county's order are undeniably vague on the

question of the controlling plan amendment standards. For example, one portion of the order states:

> "The relevant criteria for reviewing this comprehensive plan and zone change is (sic) found within the statewide planning goals, Oregon Administrative Rules, the Polk County Comprehensive Plan, and the Polk County Zoning Ordinance." Record at 392.

However, other portions of the order make it clear the decision was based on the proposal's conformity with certain statewide planning goals and a county policy authorizing plan map amendments to "correct error" in the original designation. Under the heading "The Standards Issue," the final order states, in pertinent part:

> "This board finds the farm bureau request can be approved based upon their demonstrated compliance with Statewide Planning Goals 1, 2, 6, 9, 11, 12 and 13. Additionally, this board finds the 'error' argument meets the standard set forth by the county. The error was made because prior planners did not set aside enough 'commercial' land upon the parcel to allow proper development of the site and did not follow property lines as was common practice. The Goal 3 and 14 issues will be addressed later." Record at 393.

Petitioners were on notice the statewide goals would be applied in the county's review of NWFBIC's plan amendment application. The applicability of the goals in this post-acknowledgement plan amendment proceeding is a matter of statutory law. See ORS 197.175(2)(a); ORS 215.416(4). See generally South of Sunnyside Neighborhood League v. Board of County Commissioners of Clackamas County, 280 Or 3, 569 P2d 1063 (1977); Green v. Hayward, 275 Or 693, 552 P2d 815 (1976). The record is unclear as to whether all petitioners were on

notice of the county's plan-error policy before the governing body's hearings on the proposal.[4] However, we conclude later in this opinion that the county could not rely on the policy as a basis for approving the amendment. See p. 10, infra. Accordingly, this aspect of petitioners' claim is of no consequence.

The first assignment of error is denied.

SECOND ASSIGNMENT OF ERROR

Petitioners next contend the county's final order[5] fails to discuss the relationship between the proposed plan map amendment and certain policies in the comprehensive plan. The cited policies, which we quote below, concern the location of commercial uses, land use outside the urban growth boundary, and the permissible level of public facilities and services in rural areas.

In response to this challenge, NWFBIC makes three arguments: (1) the cited policies are irrelevant because the plan map amendment corrects an error in the original designation of the property, (2) the map amendment includes a corresponding amendment of the plan text, and (3) the county's findings should be construed to address the policies petitioners claim were not addressed.

For the reasons set forth below we reject each of NWFBIC's arguments and sustain petitioners' challenge.

The plan policies cited by petitioners have obvious relevance to the proposal in question. They read as follows:

"Economic Development Policy 5.1

> "Polk County will require commercial uses to locate within existing municipalities, except for basic neighborhood commercial services required by existing rural community centers and the necessary highway-service commercial uses.

"Urban Land Development Policy 2.11

> "Polk County will maintain the area outside the urban growth boundaries with low-density living areas, open space lands, agricultural uses and other uses compatable (sic) with the intent and purpose of the adopted urban growth policies of the city and county land use plans.

"Public Facilities and Services Policy 9.1

> "Polk County will require that domestic water and sewage disposal systems for rural areas be provided or maintained at levels appropriate for rural use only. Rural services are not to be developed to support urban uses."

As noted earlier, the county's decision does not discuss these policies. Instead, it endorses NWFBIC's contention the amendment corrects a mistake in the plan map. Implicit in the order is the idea that the mistake makes it unnecessary to evaluate the proposal in terms of comprehensive plan policies. The order states:

> "Additionally, this board finds the 'error' argument meets the standard set forth by the county. The error was made because prior planners did not set aside enough 'commercial' land upon the parcel to allow proper development of the site and did not follow property lines as was common practice." Record at 393.

The legal basis for the county's reliance on the plan-error rationale is unclear. No statute, statewide goal, plan or ordinance provision embodying the theory has been brought to

our attention. Whatever its basis, we conclude the mistake theory could not obviate the state law requirement to address applicable policies in the comprehensive plan text.[6] See ORS 197.175(2)(d); 197.835(3); ORS 215.416(4); South of Sunnyside Neighborhood League v. Board of Commissioners of Clackamas County, 280 Or 3, 569 P2d 1063 (1977). Since local plan amendment standards are subservient to state law, LaGrande/Astoria v. PERB, 281 Or 137, 576 P2d 1204, aff'd on rehearing, 284 Or 175, 586 P2d 765 (1978); City of Roseburg v. Roseburg City Firefighters, 2982 Or 266, 639 P2d 90 (1981), the plan error rationale is insufficient to meet petitioners' challenge.[7]

NWFBIC's second and third responses to this assignment of error are similarily unpersuasive. We find absolutely no basis in the county's final order to sustain NWFBIC's suggestion that the plan map amendment included a corresponding change in the plan text. The record leaves no doubt a plan map amendment only was proposed and approved. Finally, the argument the final order should be construed as addressing the plan policies cited by petitioners cannot be sustained. The order simply is silent on plan policy questions.

In this assignment of error petitioners urge us to reverse rather than remand the county's decision. Reversal is warranted, they claim, because the decision clearly contravenes the cited plan policies, e.g., Economic Development Policy 5.1 and Public Facilities and Services Policy 9.1. Although

petitioners' interpretation of the policies is certainly supportable,[8] we believe the appropriate course is to remand the county's decision. As the Supreme Court has noted, the county governing body has the initial responsibility to interpret and apply its plan. Anderson v. Peden, 284 Or 313, 318, 587 P2d 59 (1978); Fifth Avenue Corp. v. Washington County, 282 Or 591, 599-600, 581 P2d 50 (1978). This responsibility has yet to be carried out. Of course, we remain available to review any such interpretation. See Gordon v. Clackamas County, 73 Or App 16, 20-21, ___ P2d ___ (1985); Mason v. Mountain River Estates, 73 Or App 334, 340, ___ P2d ___ (1985).

The second assignment of error is sustained.

THIRD ASSIGNMENT OF ERROR

As noted, the county's order explains that the "Rural Lands" plan designation of all but 1.4 acres of the tract was a mistake. According to the order, insufficient commercial land was set aside by the plan drafters to allow proper development of the site. Additionally, the order indicates a mistake was made because the plan did not follow property lines, as was allegedly the common practice, but instead gave a split designation to the property. In this assignment of error, petitioners argue these grounds are legally insufficient to support the plan amendment. Beyond that, petitioners assert there is no substantial evidence in the record to support the county's conclusion that ownership lines generally guided

county planners when the plan map was developed. Indeed, petitioners claim the record supports the conclusion that, at least in this instance, the split designation of the property was intentional.

We have previously stated that approval of the plan map amendment could not be granted without discussion of the applicable policies in the acknowledged comprehensive plan. We are aware of no authority which would permit the county to substitute the mistake rationale for application of pertinent plan policies.

Given the preceding discussion, it is unnecessary to take up petitioners' substantial evidence claim. Since the county's justification for the plan amendment is legally insufficient, it is of no concern whether the associated findings are supported by substantial evidence.

The third assignment of error is sustained.

FOURTH ASSIGNMENT OF ERROR

During the county's hearings on NWFBIC's application, opponents argued approval would allow urban development outside the urban growth boundary, thereby violating Goal 14 (Urbanization) and OAR 660-14-040. The cited LCDC rule requires a jurisdiction to take an exception to Goal 14 where incorporation of a new city or establishment of new urban development is proposed on undeveloped rural land. In response to these challenges, the county's final order states (1) Goal 14 and the LCDC rule are inapplicable in this instance and (2)

alternatively, NWFBIC presented adequate grounds for a Goal 14 exception. Petitioners challenge both of the county's contentions. For the reasons set forth below, we sustain the challenges.

The county's order presents two reasons why Goal 14 and OAR 660-14-040 are inapplicable in this case. First, it is noted the goal and rule prevent urban development of rural land. According to the county, the challenged decision does not authorize urban development, but instead merely authorizes the intensification of a rural center. Second, the county argues NWFBIC's project was initiated before LCDC interpreted Goal 14 to require an exception where urban development is proposed on undeveloped rural land. Therefore, it is claimed it would be unfair to apply the policies set forth in the goal and OAR 660-14-040 to this project.

We agree with petitioners that these plan and zone amendments authorize urban development of rural land. As noted earlier, the property is outside the Salem Urban Growth Boundary.[9] The office and warehouse uses proposed by NWFBIC, as well as many of the other uses permitted by the rezoning of the property to the CR district, cannot reasonably be classified as rural commercial, i.e., those appropriate for and limited to the needs of rural residents. To the contrary, the authorized uses plainly constitute urban commercial development. Compare Conarow v. Coos County, 2 Or LUBA 190, 192-93 (1981) with City of Ashland v. Board of Commissioners of

Jackson County, 2 Or LUBA 378 (1981). Accordingly, regardless of the merits of the county's claim that some other commercial uses in the vicinity constitute a "rural center," it is clear the decision in this case authorizes urban uses required by Goal 14 to be located inside an urban growth boundary. See 1000 Friends of Oregon v. Wasco County Court, 68 Or App 765, 769, 786 P2d 375 (1984); Carmel Estates Inc. v. LCDC, 66 Or App 113, 117, 672 P2d 1245 (1983); City of Ashland v. Jackson County, supra; City of Sandy v. Board of Commissioners of Clackamas County, 3 LCDC 139, 148-49 (1979). We therefore reject the claim the decision merely "intensifies" a rural community center.

We also reject the county's second argument for considering Goal 14 inapplicable to the proposal. The final order states the argument as follows:

> "A third argument is they [NWFB] acquired the land in August 1983, with the clear and specific intention of constructing their corporate headquarters. This was only after they had made an honest and sincere effort to locate their headquarters in south Salem. They contend their project was initiated in August 1983 and they could not comply with rules that did not exist. This board is persuaded by the farm bureau's position that Goal 14 requirements do not apply in this case. At very (sic) least, the farm bureau should be granted relief from Goal 14 because they had previously tried to locate within an urban growth area and then acquired property prior to the 'urbanization' rule with the clear objective of constructing their corporate headquarters. In any case, the retroactive application of the new requirements to existing projects has severe and unforeseen consequences." Record at 394-395.

This argument must fail for a number of reasons. First,

the prohibition on the establishment of urban uses outside the urban growth boundary is traceable directly to Goal 14, not merely to the more recently enacted urbanization rule. See 1000 Friends of Oregon v. Wasco County Court, supra, 68 Or App at 777-80. Second, even if only OAR 660-14-040 stood in the way of approving NWFBIC's application, neither the undisputed facts nor accepted legal principles would support the county's decision not to apply the rule. OAR 660-14-040 was promulgated as a temporary rule in July 1983, one month before NWFBIC purchased the property. By its terms the temporary rule took effect immediately. Individual notice to landowners was not required.

We note also that OAR 660-14-040 was enacted as a permanent rule in December 1983, one year before the county made the challenged land use decision. We have been cited to no legal authority which would exempt a contemplated development from existing requirements, as contrasted with an approved and completed (or nearly completed) development. The case law in this area is contrary to the county's position. See e.g., Polk County v. Martin, 292 Or 69, 636 P2d 952 (1981); Clackamas County v. Holmes, 265 Or 193, 508 P2d 190 (1973); Twin Rocks Watseco Defense Committee v. Sheets, 15 Or App 445, 516 P2d 472 (1973).

We conclude the application by NWFBIC was subject to Goal 14. We turn next to petitioners' challenge to the validity of the Goal 14 exception incorporated in the final order.

As a preliminary matter, we recognize that a Goal 14 exception would not be required if, as the county and NWFBIC claim, a valid Goal 3 exception authorizes the proposed uses. As Chief Judge Joseph has recently stated in 1000 Friends of Oregon v. LCDC, 73 Or App 350, ____ P2d ___ (1985):

> "We have held that, under some circumstances, a local government may be required to take an exception to Goal 14 to allow an urban use on rural land. 1000 Friends of Oregon v. Wasco County Court, 68 Or App 765, 774-75, 686 P2d 375, rev allowed 298 Or 68 (1984); Perkins v. City of Rajneeshpuram, 68 Or App 726, 732, 686 P2d 369, rev allowed 298 Or 238 (1984); cf. Branscomb v. LCDC, 297 Or 142, 681 P2d 124 (1984) (when a local government's urban growth boundary is first established, the decision to include agricultural lands in the UGB is subject to Goal 14 rather than Goal 3). However, neither the Supreme Court nor we have held that a county or an incorporated city that has taken exceptions to Goals 3 and 4 to permit the nonresource use of land that is subject to the resource use requirements of those goals must also taken an exception to Goal 14 in order to allow the same use. We now hold that a Goal 14 exception is not required under the facts here." 73 Or App at 357.

We conclude later in this opinion that the Goal 3 exception relied on in the county's final order is insufficient to authorize redesignation of NWFBIC's property for commercial retail use. See pp. 19-21, infra. Accordingly, the validity of the Goal 14 exception must be considered.

A single challenge is presented to the county's Goal 14 exception.[10] Petitioners contend the record includes evidence that areas inside urban growth boundaries (i.e., areas where a Goal 14 exception would not be required) could reasonably accommodate the proposed commercial use. We

understand petitioners to claim the exception is insufficient because it does not address these alternatives.

LCDC's urbanization rule, OAR 660-14-040(3)(a), requires a showing that "the proposed urban development cannot be reasonably accommodated" inside an urban growth boundary or by intensification of development at existing rural centers. Findings demonstrating compliance with the "alternative areas" standard must be adopted in conjunction with the exception. ORS 197.732(4).[11]

We agree the county's Goal 14 exception statement does not satisfy the standard. The record contains evidence of areas inside urban growth boundaries which might accommodate the use proposed by NWFBIC, and the decision neither addresses the suitability of these areas nor discusses other areas where an exception would not be required.[12] A remand of the decision is therefore in order. ORS 197.732(4).

The fourth assignment of error is sustained.

FIFTH ASSIGNMENT OF ERROR

The fifth assignment of error presents a claim of procedural error. During a hearing on the proposal by the county commission, Petitioner Barnes requested that the planning director and a representative of NWFBIC be required to indicate agreement or disagreement with written statements prepared by Barnes. Although the transcript of this part of the hearing is difficult to follow, it appears the request was denied by the commission chairman, after which Barnes was

advised his points could be made by way of rebuttal. Record at 342-343. Petitioners assign error to the chairman's ruling, claiming it denied their right to confront adverse evidence.

The nature and scope of the procedural right petitioners say should have been recognized is unclear. The petition vaguely asserts a right to "some form" of confrontation of adverse evidence. Petition at 18. However, the only authority cited is an Oregon case recognizing a party's right "to present and rebut evidence" in a quasi-judicial land use hearing. See Columbia Hills Development Company v. LCDC, 50 Or App 482, 492, 624 P2d 157 (1981); rev den 291 Or 9 (1981). Evidently, petitioners believe the right to present and rebut evidence includes the right to confront, i.e., compel testimony by, witnesses who have presented adverse evidence during the course of the land use hearing.

We do not sustain petitioners on this point. We find nothing in Columbia Hills, supra, or related cases, to support the claimed right of confrontation. Petitioners assert that "confrontation is very important in this case", Petition at 17, but they fail to present a legal theory that would entitle them to employ the procedure. Our reading of the pertinent case law suggests their claim would not be upheld. South of Sunnyside Neighborhood League v. Board of Commissioners of Clackamas County, 27 Or App 647, 653-54, 557 P2d 1375 (1977); reversed 280 Or 3, 569 P2d 1063 (1977).[13] Apart from providing insufficient foundation for their claim, we note petitioners

also fail to demonstrate, as they must, how they were prejudiced by denial of the requested procedure.[14] See ORS 197.835(8)(a)(B).

The fifth assignment of error is denied.

REMAINING ASSIGNMENT OF ERROR

The petition filed by DLCD presents an additional assignment of error. DLCD claims the uses allowed by the county's decision conflict with Statewide Goal 3 (Agricultural Lands) and were not authorized by the exception to Goal 3 acknowledged by LCDC in 1981. In response, the county and NWFBIC do not contend Goal 3 permits commercial use of the land, but instead insist the previously acknowledged exception,[15] which characterized the land as "irrevocably committed" to non-resource use, is sufficient to exempt the land from Goal 3's limitations.

The validity of the acknowledged exception is not and cannot be challenged in this proceeding. ORS 197.732(9). However, the scope or legal effect of that exception is in issue. This is a consequence of DLCD's assertion that acknowledgement of the exception in 1981 did not authorize any and all non-resource uses of the property, but should be construed as limited to the specific uses permitted by the acknowledged AR-5 zoning designation. The argument is set forth in DLCD's petition as follows:

> "The requirements and the manner in which a county may adopt an exception for land irrevocably committed to non-resource uses are set forth in OAR 660-04-028(1).

> Polk County adopted as part of its comprehensive plan which was acknowledged in 1981 an irrevocably committed exception for Area IV 'D' which includes the property at issue. While some parcels in Area IV 'D' were planned and zoned for commecial use as part of that exception, the subject property was designated 'rural lands' in the plan and zoned Acreage Residential AR-5. While OAR 660-04-028 does not expressly require that a county identify what type of use the land is committed to, the requirement that it adopt plan and zone designations for the entire county does. In adopting the plan and zone designations that it did in 1981, Polk County identified the uses to which the parcels were committed." Petition of DLCD at 12-13 (citations omitted).

DLCD's argument for limiting the scope of the acknowledged exception is consistent with a rule adopted by LCDC in late 1983. OAR 660-04-068, entitled "Changes to Acknowledged Exceptions", states:

> "(1) When a jurisdiction changes the types or intensities of uses or zones allowed in an exception area which the Commission has previously acknowledged and when the new use or uses would have a substantial impact upon adjacent uses, a new or modified exception is required.
>
> "(2) A new or modified exception is not required where the changed uses or zones were clearly identified and authorized by the previously acknowledged exception."

As noted, the county's order and NWFBIC's brief claim the acknowledged exception is sufficient to authorize the proposal. In support, they point out that at the time of acknowledgement, the tract was planned and zoned for both commercial retail use (1.4 acres) and residential use (11.3 acres) and that other land in the area was also designated for such uses. In the context of LCDC's rule, we understand the

argument by the county and NWFBIC to be that no new exception is required because the decision allows "uses or zones clearly identified and authorized by the previously acknowledged exception." OAR 660-04-018(2).

Our review of the acknowledged exception convinces us OAR 660-14-068(2) cannot be applied. The exception indicates that some parcels in the area were improved with dwellings and other supported commercial structures. However, neither the number of structures in each category nor the percentage of land occupied by uses in each category is shown. Petitioners correctly point out that there has been minimal commercial development in the area.

The overall thrust of the acknowledged exception is that the area is suitable for rural residential use. This is consistent with the predominance of the "Rural Lands" plan designation and AR-5 zoning in the acknowledged documents. We conclude the proposed commercial use designation of the entire parcel was not "clearly identified and acknowledged" by the exception approved by LCDC in 1981. In the absence of a new Goal 3 exception, the county's decision cannot stand. OAR 660-14-068.

This assignment of error is sustained.

REMANDED.

FOOTNOTES

1

The property was purchased by NWFBIC in August, 1983, after its request for a zone change for a similar development in the City of Salem was denied.

2

ORS 197.620(1) states:

"(1) Notwithstanding the requirements of ORS 197.830(2) and (3), persons who participated either orally or in writing in the local government proceedings leading to the adoption of an amendment to an acknowledged comprehensive plan or land use regulation or a new land use regulation may appeal the decision to the Land Use Board of Appeals under ORS 197.830 to 197.845. A decision to not adopt a legislative amendment or a new land use regulation is not appealable."

3

Under ORS 197.090(2), the director's ability to seek our review is made subject to "the provisions of ORS 197.830 to 197.845." As a result, it would appear the standing requirements set forth in ORS 197.830 must be satisfied by the director when appearing before us as a petitioner. Assuming that is the case, we conclude the necessary requirements have been met.

DLCD appeared before the county in opposition to these plan and zone change requests. Its interest in the matter was recognized by the decisionmakers and the outcome was unfavorable to the agency's interests. The statutory appearance and aggrievement tests are therefore satisfied. See ORS 197.830(3); Jefferson Landfill Commission v. Marion County, 297 Or 280, 686 P2d 310 (1984).

4

At least one petitioner (Barnes) was put on notice of the policy by correspondence with the county counsel. Record at 157.

[5] By "final order" we refer to the finding of fact and conclusions of law adopted by county ordinance 313.

[6] Conceivably, a plan amendment to correct a purely typographical or other clerical mistake must be approved soley on that basis. However, where, as here, there are plan policies that apply to the amendment, reliance cannot be placed on a mistake rationale. The pertinent plan policies must be considered. Cf John v. Umatilla County, 7 Or LUBA 161, 165 (1983).

[7] The petition filed by DLCD also claims the county failed to address relevant plan policies, characterizing that failure as as a violation of Statewide Goal 2 (Land Use Planning). In addition to the plan policies quoted in our opinion, DLCD cites Economic Development Policy 4.1 and Urban Land Development Policy 2.2. We agree that at least the latter policy should have been discussed in the county's final order. We also agree failure to discuss the relevant policies contravenes Goal 2.

[8] In particular, petitioners' challenge under Policy 5.1 seems to warrant the requested relief, i.e., reversal. OAR 661-10-070(1)(A)(3). However, since the county has yet to address the proposal in terms of the comprehensive plan, we believe a remand is the proper action.

[9] The parties advise us the relevant portion of the Salem UGB has been acknowledged.

[10] The challenge is presented only by petitioners in No. 84-105.

[11] We note also that when a jurisdiction takes a goal exception based on the need for the proposed use, the decision must demonstrate why "areas which do not require a new exception cannot reasonably accommodate the use." ORS 197.732(1)(c)(B). The standard is not applicable where the

exception is based on physical development of the land, ORS 197.732(1)(a), or irrevocable commitment of the land, ORS 197.732(1)(b) to uses not allowed by the goals. We do not read the Goal 14 exception taken by Polk County to rely on the later two exception theories.

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12 The exception does consider other undeveloped rural land in the immediate area, concluding that development of the site in question has significant advantages over these rural area alternatives. This portion of the exception, however, relates to a different standard than is set forth in ORS 197.732(1)(c)(B) and OAR 660-14-040(3)(a). See ORS 197.732(1)(c)(C) (requiring comparison between site in question and others also requiring an exception, in terms of long term environmental, economic, social and energy consequences of establishing the otherwise prohibited use).

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13 In Sunnyside, the Court of Appeals concluded that due process principles did not entitle plan change opponents to cross examine adverse witnesses; the opportunity to present their own case and to rebut the applicant's evidence was deemed sufficient. 27 Or App at 662-664. When the case reached the State Supreme Court, however, it was held that the issue had not been properly raised. 280 Or at 10.

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14 The petition offers a single illustration of what the proposed confrontation procedure was intended to reveal, viz., an admission that the exception taken in 1981 did not recognize the existence of commercial uses in the area. Regardless of whether some circumstances might warrant the type of procedure petitioners sought to employ, the illustrative circumstance clearly does not. Petitioners could surely offer proof of the terms of the acknowledged exception and of the nature of the past and present uses in the area by their own testimony.

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15 Although the final order refers to a Goal 3 exception statement submitted by NWFBIC, the record indicates the submitted statement relies entirely on the exception acknowledged by LCDC in 1981. Record at 215-216.

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