

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

JUN 14 2 32 PM '85

3 RAJNEESH TRAVEL CORPORATION,)
RAJNEESH MEDICAL CORPORATION,)
4 RAJNEESH NEO-SANNYAS INTERNATIONAL)
COMMUNE, RAJNEESH INVESTMENT)
5 CORPORATION, RAJNEESH PURAHM RURAL)
FIRE PROTECTION DISTRICT, SWAMI)
6 ANAND VIDEH and SWAMI SHARANANANDA,)

LUBA No. 85-015

7 Petitioners,)

8 vs.)

9 WASCO COUNTY,)

10 Respondent.)

11 _____)
RAJNEESH NEO-SANNYAS INTERNATIONAL)
12 COMMUNE, RAJNEESH INVESTMENT)
CORPORATION, RAJNEESH MEDICAL)
13 CORPORATION, RAJNEESH PURAHM RURAL)
FIRE PROTECTION DISTRICT, SWAMI)
14 ANAND VIDEH and SWAMI SHARANANANDA,)

LUBA No. 85-016

15 Petitioners,)

FINAL OPINION
AND ORDER

16 vs.)

17 WASCO COUNTY,)

18 Respondent.)

19 _____)
CITY OF RAJNEESH PURAM,)

20 Petitioner,)

LUBA Nos. 85-012
85-013

21 vs.)

22 WASCO COUNTY,)

23 Respondent.)

24
25 Appeal from Wasco County.

1 Swami Premasukh, Rajneeshpuram, filed the Petition for
Review and Edward J. Sullivan, Portland, argued the cause on
2 behalf of Petitioners Rajneesh Travel Corporation, et al and
Rajneesh Neo-Sannyas.

3 Ma Prem Sangeet, Rajneeshpuram, filed the Petition for
4 Review and argued the cause on behalf of Petitioner City of
Rajneeshpuram.

5 Wilford K. Carey, Hood River, filed a response brief and
6 argued the cause on behalf of Respondent Wasco County.

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

8 REVERSED

06/14/85

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

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1 Opinion by DuBay.

2 NATURE OF DECISION

3 Two county ordinances amending the county's comprehensive
4 plan, both adopted on February 6, 1985, are the subject of
5 these appeals. One ordinance (Ordinance I herein) repeals a
6 prior ordinance which incorporated the comprehensive plan for
7 the City of Rajneeshpuram as part of the county's comprehensive
8 plan.¹ The other ordinance (Ordinance II herein) amends the
9 county's plan by deleting portions of the plan's inventory
10 section. Generally, the deletions are all references to the
11 city in the inventory document.²

12 FACTS

13 On November 3, 1982, the county amended its comprehensive
14 plan by incorporating the city's comprehensive plan into the
15 county plan.³ In August, 1983, the Land Conservation and
16 Development Commission (LCDC) acknowledged the county
17 comprehensive plan as in compliance with statewide planning
18 goals except for two areas, one of which is known as Rancho
19 Rajneesh and encompasses the city.

20 The county first attempted to delete the city's plan from
21 the county plan on July 11, 1984 by repealing the November 3,
22 1982 Ordinance. That decision was appealed to this Board and
23 was remanded for noncompliance with citizen involvement
24 provisions in both the county's comprehensive plan and in the
25 statewide planning goals. Rajneesh Medical Corporation et al
26 v. Wasco County, ___ Or LUBA ___ (1984) (LUBA Nos.

1 84-064/065/066/067, Slip Opinion dated November 2, 1984). On
2 February 6, 1985 the county adopted Ordinance I which again
3 repealed the November 3, 1982 Ordinance incorporating the
4 city's plan into the county plan. At the same time the county
5 adopted Ordinance II.

6 Before Ordinances I and II were adopted, a meeting of all
7 four citizen advisory groups in the county was held in the
8 county seat, The Dalles. All four advisory groups recommended
9 adoption of the two ordinances. The county planning commission
10 also recommended adoption of both ordinances after holding a
11 public hearing. The county court followed these
12 recommendations and adopted both ordinances. These appeals
13 followed.

14 FIRST ASSIGNMENT OF ERROR

15 Petitioners claim the county did not provide adequate
16 opportunity for citizen participation in accordance with
17 statewide land use planning goals and the county's
18 comprehensive plan.⁴ Their principal objection is that the
19 citizen involvement provisions in the comprehensive plan and
20 statewide planning goals were violated because:

- 21 1. The citizen advisory groups did not include
22 residents of the city in proportion to the city's
population;
- 23 2. The advisory group meetings were not held at a
24 time and place convenient for city residents; and
- 25 3. The county did not address objections raised by
petitioners.

26 The first of these objections is based on the claim that

1 the 15 member Southern Wasco County Advisory Group (of which
2 two persons are from the Rajneeshpuram area) is not broadly
3 representative of geographic areas and interests related to
4 land use decisions. Petitioners claim the majority of non-city
5 members represent sparsely populated rural areas and do not
6 represent the majority of people in Southern Wasco County,
7 i.e., those who live in Rajneeshpuram or on Rancho Rajneesh.

8 Policy 2 of Goal 1 in the county comprehensive plan states:

9 "A citizen involvement program shall encourage the
10 participation of citizens representing a broad cross
11 section of the population."

12 This plan policy reflects the citizen involvement component
13 of Statewide Planning Goal 1 which provides in part:

14 "As a component, the program for citizen involvement
15 shall include an officially recognized Citizen
16 Advisory Committee or Committees broadly
17 representative of geographic areas and interests
18 related to land use and land use decisions."

19 Neither the comprehensive plan nor Goal 1 specifies how
20 different geographic areas and interests are to be represented
21 on citizen advisory committees. That is, no particular method
22 is prescribed to designate geographical areas or interests or
23 to measure the adequacy of representation of such areas and
24 interests.

25 We read these Goal 1 provisions to lay down a general rule
26 that a citizen involvement program should include citizens with
viewpoints representative of the range of interests existing in
the jurisdiction. Contrary to petitioners' assertions, we do
not consider Goal 1 to require a citizen involvement committee

1 to be structured in the manner of a representative government.
2 As long as a committee's membership reflects the diversity
3 existing in the planning area, the goal is satisfied.⁵

4 There were two residents from the Rajneeshpuram area on the
5 Citizens Advisory Group for Southern Wasco County.⁶ We do
6 not believe Goal 1 or the county's citizen involvement program
7 requires more.

8 Petitioners next say the advisory group meetings were held
9 at a time and place precluding effective participation by
10 citizens residing in and near Rajneeshpuram. According to
11 petitioners, the county's citizen involvement program requires
12 advisory group meetings to be held in a convenient and safe
13 location for citizens affected by a proposed action.

14 Petitioners say meeting in The Dalles requires a 200 mile round
15 trip for city residents. Further, petitioners say the county
16 refused to reschedule the meeting after being requested by
17 petitioners to do so on the basis of telephoned threats of
18 physical harm to city residents should they attend.

19 Assuming petitioners are correct in their view that Goal 1
20 and the county's citizen involvement program require the county
21 to schedule advisory group meetings in a convenient and safe
22 location, we do not believe petitioners make a convincing claim
23 the county failed in such duty. When a single meeting is
24 scheduled for considering matters of countywide concern,⁷ it
25 is inevitable that some travel by some advisory group members
26 will be necessary. What is then convenient for some will be

1 inconvenient for others. The time, place, agenda and structure
2 of the meeting are some of many factors to be balanced in order
3 to insure "the opportunity for citizens to be involved" in the
4 planning process as Goal 1 requires. When security of the
5 meeting and safety of those attending became an issue, the
6 availability of law enforcement resources in The Dalles was a
7 valid consideration. We do not believe the county's decision
8 to hold the meeting as scheduled was the result of unreasonable
9 balancing of these factors nor that the county's citizen
10 involvement program or Goal 1 was violated by holding the
11 advisory group meetings in The Dalles as scheduled.⁸

12 The last argument of petitioners in this assignment of
13 error alleges the county failed to respond to citizen's
14 concerns, i.e., the written objections made by petitioners and
15 other affected citizens. Although not explicitly stated by
16 petitioners, we understand petitioners to allege the county did
17 not comply with the "feedback" requirement of Goal 1, which
18 states in part:

19 "FEEDBACK MECHANISMS - To insure that citizens will
20 receive a response from policymakers.

21 "Recommendations resulting from the citizen
22 involvement program shall be retained and made
23 available for public assessment. Citizens who have
24 participated in this program shall receive a response
25 from policymakers. The rationale used to reach land
26 use policy decisions shall be available in the form of
a written record."

25 Petitioners fault the county's failure "to address the
26 substantive issues raised in letters submitted by petitioners

1 and other affected citizens." Petition at 10. However,
2 petitioners do not specify the substantive issue or issues that
3 should have been addressed. The petition for review refers to
4 several letters in the record as well as a citizen's petition.
5 Generally, the letters and petition voice objection to holding
6 public meetings in the Dalles. They also express opposition in
7 general terms to the county's proposed actions which were
8 deemed by the writers to be detrimental to the city. We
9 decline to speculate which citizen's comments petitioners deem
10 sufficiently focused to require a specific response from the
11 county court.

12 The ordinances at issue here do include a response to
13 citizens' comments expressing opposition to the proposed
14 ordinances in only general terms. The findings provide the
15 response by explaining the county's rationale for its action,
16 i.e., that the city's clouded legal status impaired its ability
17 to adopt a valid comprehensive plan and that including the
18 city's plan in the county's plan is not legally required. The
19 rationale may be objectionable to petitioners, but in the
20 absence of a more specific allegation of error we cannot say it
21 fails to meet the "feedback" standards of Goal 1. This
22 assignment of error is denied.

23 SECOND ASSIGNMENT OF ERROR

24 Petitioners allege the county failed to coordinate the plan
25 amendments with an affected special district, the Rajneeshpuram
26 Rural Fire Protection District. This failure was a violation

1 of the coordination requirement in Goal 2 and the county's own
2 plan, according to petitioners.

3 Petitioners allege the district's boundaries cover a large
4 part of Rancho Rajneesh and the district and the city have a
5 consolidated fire department. They argue the district is an
6 affected governmental unit with whom the county is required to
7 coordinate. Petitioners say the district had no opportunity to
8 review the proposed amendments to the comprehensive plan and to
9 make comments to the advisory committee or planning commission.

10 The record includes a letter dated November 5, 1984, from
11 the district to the planning commission noting the district
12 first heard from a planner about the proposed changes to the
13 county's comprehensive plan. In the letter the district also
14 requested time to review the proposed changes and an
15 opportunity to make comments to the planning commission. The
16 record does not show any further communication from the
17 district to the county prior to adoption of Ordinances I and II.

18 The concept of coordination as a necessary characteristic
19 of a comprehensive plan has its source in both Goal 2 and in
20 ORS Chapter 197. Goal 2 states in part:

21 "Each plan and related implementation measure shall be
22 coordinated with the plans of affected governmental
units."

23 Goal 2 also defines affected governmental units as:

24 "...those governments, state and federal agencies and
25 special districts which have programs, landownerships,
or responsibilities within the area including the
plan."

26 Goal 2 notes the definition of "coordinated" is in ORS

1 197.015. ORS 197.015(5) states:

2 "A plan is 'coordinated' when the needs of all levels
3 of governments, semi-public and private agencies and
4 the citizens of Oregon have been considered and
5 accommodated as much as possible."

6 We read these provisions to describe two procedural
7 hallmarks of a comprehensive plan that is coordinated with
8 other governmental units:

- 9 1. The makers of the plan engaged in an exchange of
10 information between the planning jurisdiction and
11 affected governmental units, or at least invited
12 such an exchange.
- 13 2. The jurisdiction used the information to balance
14 the needs of all governmental units as well as
15 the needs of citizens in the plan formulation or
16 revision.

17 We conclude the county did not take these steps to
18 coordinate its plan as required by Goal 2.

19 We read Goal 2 and ORS 197.015(5) to place the burden of
20 coordination on the county.⁹ To carry out this obligation,
21 the county must at least take steps to invite an exchange of
22 information between the governmental bodies. The record does
23 not show the county made any effort to elicit the views of the
24 district or to engage it in a dialogue about how the proposed
25 amendments might affect the district. Even though the district
26 may have indirectly acquired some knowledge of the proposed
27 amendments, the burden on the county to coordinate its plan
28 requires more than passive reception of comments. See Twin
29 Rocks Water District v. Rockaway, 2 Or LUBA 36 (1980). If the
30 district had been invited to comment on the proposed

1 amendments, and did so, its input may or may not have been
2 accommodated in the county's plan amendment. Without the
3 district's comments, however, the county was not able to
4 balance the needs of the district with other considerations of
5 the county, i.e., to accommodate the needs of all levels of
6 governments, agencies and citizens.

7 Respondent defends the county's action by asserting
8 petitioners have not shown harm or prejudice to the district.
9 Respondent argues LUBA may reverse or remand for procedural
10 error only if petitioners show their substantial rights have
11 been prejudiced, citing ORS 197.835(8)(a)(B).¹⁰ However, the
12 bases for reversal or remand by this Board are not limited to
13 those listed in ORS 197.835(8). Respondent does not take into
14 account ORS 197.835(2). That section states:

15 "The Board shall reverse or remand a land use decision
16 not subject to an acknowledged comprehensive plan and
land use regulations if the decision does not comply
with the goals."¹¹

17 Further, we find nothing in the goal or statutory provisions
18 regarding coordination to indicate showing harm is a
19 prerequisite to a challenge of land use decisions for
20 violations of the coordination requirement of Goal 2.

21 We find the record does not reflect compliance with the
22 statutory and statewide planning goal requirements that the
23 county's plan amendment be coordinated with other affected
24 governmental units. We therefore sustain this assignment of
25 error.

1 THIRD ASSIGNMENT OF ERROR¹²

2 Petitioners allege the county violated provisions of its
3 comprehensive plan setting forth general criteria to be
4 considered in all comprehensive plan amendment proceedings.

5 The relevant plan provision is as follows:

6 "VIII General Criteria

7 "The following are general criteria which must be
8 considered before approval of an amendment to the
Comprehensive Plan is given:

9 "1. Compliance with the statewide land use goals as
10 provided by the Land Conservation and Development
Commission, where applicable.

11 "2. Substantial proof that such change shall not be
12 detrimental to the spirit and intent of such
goals.

13 "3. A mistake in the original comprehensive plan or
14 change in the character of the neighborhood can
be demonstrated.

15 "4. Factors which relate to the public need for
16 healthful, safe and aesthetic surroundings and
conditions.

17 5. Proof of change in the inventories originally
developed.

18 "6. Revisions shall be based on special studies or
19 other information which will serve as the factual
20 basis to support the change. The public need and
justification for the particular change must be
established."

21 Petitioners first say Ordinances I and II do not show
22 compliance with the first and second criteria. According to
23 petitioners, the county failed to identify or show compliance
24 with applicable goals. Petitioners' second attack points to
25 the sixth criterion. They argue the county's amending
26

1 ordinances do not have a factual basis in the record, and
2 contain no findings showing public need or justification.

3 There is also a challenge to Ordinance II on the grounds
4 the county altered plan inventories without proof of a change
5 in the facts, as required by criterion 5.

6 Respondent makes a general answer to these charges, saying
7 the county complied with all relevant plan criteria.

8 Respondent's principal argument, however, is that the
9 amendments correct a prior mistake. The county contends the
10 original inclusion of the city's plan into the county plan was
11 a mistake considering decisions by LUBA and the courts that the
12 original incorporation of the city was defective for failure to
13 apply certain statewide land use planning goals. See 1000
14 Friends of Oregon v. Wasco County, 68 Or App 765, 686 P2d 375
15 (1984), rev allowed 298 Or 68, ___ P2d ___ (1984). Presumably,
16 the county considers correction of this mistake to comply with
17 the third general criterion for the plan amendment quoted above.

18 Whether correcting a mistake may be the sole basis for a
19 plan amendment depends upon whether Section VIII of the
20 revision section in the county plan is interpreted to condition
21 a plan amendment upon satisfaction of only one of the six
22 general criteria. The county's order is silent on this
23 question, and we do not have the benefit of the county's
24 interpretation. However, plan amendments must be made in
25 compliance with statewide goals in all events. ORS
26 197.175(2). We therefore first consider if the ordinances

1 comply with statewide land use goals.

2 We begin our analysis with the relevant language of Goal 2:

3 "To establish a land use planning process and policy
4 framework as a basis for all decisions and actions
5 related to use of land and to assure an adequate
6 factual base for such decisions and actions.

7 * * *

8 "All land use plans shall include...inventories and
9 other factual information....

10 * * *

11 "The required information shall be contained in the
12 plan documents or in supporting plan documents.

13 * * *

14 "The plan shall be the basis for specific
15 implementation measures."

16 The Goal 2 guidelines include the following in reference to
17 the composition of the required factual base:

18 "Inventories and other forms of data are needed as the
19 basis for policies and other decisions set forth in
20 the plan.

21 "This factual base should include data on the
22 following as they relate to the goals and other
23 provisions of the plan.

24 "(1) Natural resources, their capabilities and
25 limitations.

26 "(2) Manmade structures and facilities, their location
and condition.

"(3) Population and economic characteristics of the
area.

"(4) Roles and responsibilities of governmental units."

This language makes clear the Goal 2 emphasis on a
foundation of information set forth in the comprehensive plan.

1 The inventory and other data comprising this factual base are
2 the underpinnings of planning and zoning decisions. Although
3 removal or deletion of information from comprehensive plan
4 inventories is not explicitly proscribed by Goal 2, doing so
5 could erode the factual base necessary for a jurisdiction to
6 exercise its planning responsibilities. Also, deletion of plan
7 inventories may alter the bases on which prior plan policies or
8 other decisions were made, casting doubt on their validity.

9 We believe Goal 2 requires the inclusion of adequate
10 inventories in plan formulation and the retention of those
11 inventories unless they are revised to refine the factual base,
12 e.g., to reflect more accurate data or to remove data or
13 language of no consequence for land use planning purposes. To
14 interpret Goal 2 otherwise would sanction inaccurate
15 inventories.¹³

16 Ordinances I and II, for example, delete portions of the
17 inventory in the Wasco County Comprehensive Plan describing
18 significant population densities (equivalent to the second
19 largest community in the county) and the facilities supporting
20 such population. Descriptions of the Rajneeshpuram watershed,
21 the number and capacity of wells in the watershed, population
22 projections, available schools and medical facilities, and
23 acknowledgement of the economic impact on development are all
24 deleted. The county does not contend these items in its plan
25 inventories are inaccurate or irrelevant. We do not read the
26 language in Goal 2 requiring comprehensive plans to include

1 inventories and other factual information to permit the
2 Orwellian distortion of reality by omitting or deleting facts
3 known to exist.

4 On this basis alone we sustain this assignment of error.
5 Petitioners claim the county failed to consider other criteria
6 in the plan.¹⁴ In essence, these additional arguments attack
7 the amending ordinances for altering the factual bases of the
8 comprehensive plan, a defect we agree violates Goal 2 as
9 discussed above. We believe the foregoing discussion
10 adequately disposes of this issue, and no purpose would be
11 served by further considering whether the alteration of plan
12 inventories in these circumstances also violates other
13 criteria.

14 REMAINING ASSIGNMENT OF ERROR

15 There is one additional assignment of error for our
16 consideration. The city has assigned error to the adoption of
17 Ordinances I and II without coordination with the city.
18 However, in Rajneesh Medical Corporation v. Wasco County, ___
19 Or LUBA ___ (1984) (LUBA Nos. 84-064/065/066/067, Slip Opinion
20 dated November 2, 1984) we held the county was not obligated to
21 coordinate with the city. Our final order was based on the
22 city's lack of authority to exercise land use planning
23 responsibilities. See 1000 Friends of Oregon v. Wasco County
24 Court, 68 Or App 765, 686 P2d 375 (1984), rev allowed, 298 Or
25 68, ___ P2d ___ (1984).

26 Petitioners' additional arguments here do not convince us

1 that our decision in Rajneesh Medical Corporation, supra, was
2 incorrect. We therefore deny this assignment of error by
3 Petitioner City of Rajneeshpuram.

4 Reversed.

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FOOTNOTES

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4 Ordinance I is the subject of petitions for review in LUBA
Nos. 85-012/016.

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6 Ordinance II is the subject of review in LUBA Nos.
85-013/015.

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9 We understand the county had a policy at the time to adopt
10 the comprehensive plans of all cities in the county as part of
the county's coordination program. No contention has been made
11 by petitioners that adoption of the city's plan is legally
required.

12 4
13 The comprehensive plan provisions alleged by petitioners to
support their claim consist of the following:

14 "Goal 1: Citizen Involvement

15 "Policy 2: A Citizen Involvement Program shall
16 encourage the participation of citizens representing a
broad cross-section of the population.

17 "Implementation Measure A: A diversified geographic
18 and vocational cross-section of citizens will be
encouraged to participate in Citizen Advisory Groups.

19 "Implementation Measure C: Encourage open attendance
20 and participation by all people at Citizen Advisory
Group meetings.

21 "Policy 3: Encourage involvement of citizen and
property owners in the land use planning process.

22 * * *

23 "Goal 2: Land Use Planning

24 "Policy 1: Citizen Involvement shall be an integral
25 part of the planning process and shall be accomplished
through the County's Citizen Involvement Program.

1 "Policy 2: Comprehensive plans and implementing
2 ordinances shall be consistent with the statewide
3 goals and guidelines as well as the needs and desires
4 of citizens in the county."

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6 Petitioners cite Elkton Citizens Advisory Committee v. City
7 of Elkton, 3 LCDC 107 (1979) to support their argument. There,
8 however, the city's attempt to restrict membership on an
9 advisory committee would have excluded citizens living outside
10 the city but in the urban growth boundary. That committee
11 structure was held to be a violation of Goal 1. In the case
12 before us there was no effort to exclude citizens of
13 Rajneeshpuram as members of the citizens advisory group. We do
14 not consider Elkton as precedent for petitioners' claim.

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16 The county apparently includes one representative of each
17 city, regardless of size, on citizen advisory groups.

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19 The agenda for the meeting of all four county advisory
20 groups included, in addition to Ordinances I and II, a new
21 countywide land use and development ordinance, new policies for
22 annexations and development of urban growth boundary agreements
23 with cities and some plan map and zoning changes. LUBA No.
24 85-015, Record at 209.

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26 We note, too, that the location of the meeting did not
preclude participation by residents of the city as some did
participate by submitting written objections to the proposed
plan amendments.

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28 A county's responsibility for carrying out the coordination
29 function is also set forth in ORS 197.190(1). It provides:

30 "In addition to the responsibilities stated in ORS
31 197.175, each county, through its governing body,
32 shall be responsible for coordinating all planning
33 activities affecting land uses within the county,
34 including planning activities of the county, cities,
35 special districts and state agencies, to assure an
36 integrated comprehensive plan for the entire area of
the county. In addition to being subject to the

1 provisions of this chapter with respect to city or
2 special district boundary changes, as defined in ORS
3 197.175(1), the governing body of the Metropolitan
4 Service District shall be considered the county review,
5 advisory and coordinative body for Multnomah,
6 Clackamas and Washington Counties for the areas within
7 the district."

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ORS 197.835(8) states in relevant part:

"In addition to the review under subsection (1) to (7)
of this section, the Board shall reverse or remand the
land use decision under review if the Board finds:

"(a) The local or special district:...

"(B) Fail to follow the procedures applicable to
the matter before it in a manner that
prejudices the substantial rights of the
petitioners...."

11

See also ORS 197.835(4).

12

The third assignment of error in LUBA No. 85-012/016 is
included as the fourth assignment of error in LUBA No.
85-013/015. For convenience, both are referred to in this
opinion as Assignment of Error No. 3.

13

For example, the county contends Ordinance I deletes the
urban land use designation, marked by the city's urban growth
boundary, from the county's plan and zoning maps. The result,
according to the county, is that the zoning classification for
that area reverts to the classification existing prior to
adoption of the city's plan by the county, i.e., exclusive farm
use. Even if that were the result, and we have doubts prior
zoning would be re-instated automatically, it is not clear what
inventory information in the plan supports this designation.

14

Petitioners allege the county failed to comply with several
of the general criteria of Section VII of the Revisions Section
of the plan as above noted. In addition, the third assignment
of error in LUBA No. 85-013/015 alleges violations of various

1 comprehensive plan goals and policies because Ordinance II
renders the plan factually incomplete.

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