BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

MARION R. GRINDSTAFF AND NELLIE LEE GRINDSTAFF, Husband and Wife, and MARION F. GRINDSTAFF and MILDRED I. GRINDSTAFF, Husband and Wife,	)	LUBA No. 86-060
Petitioners,	)	FINAL OPINION AND ORDER
vs.	)	
CURRY COUNTY,	)	
Respondent.	)	

Appeal from Curry County.

Karen C. Allan, Medford, filed the petition for review on behalf of Petitioners. With her on the brief were Foster & Purdy.

No appearance by Curry County.

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

REMANDED 10/31/86

1. Local Government Procedure - Compliance with Rules and Ordinances. Where plan provisions are not policies or standards for application of rural residential zoning designation, the county was not obliged to apply the provisions to a zone change proceeding.

2. Administrative Law - Findings. Where county order is ambiguous with respect to conditions imposed on zone

change, LUBA will remand to require the county to indicate the nature of any limitation on the rezoning approval.

3. Administrative Law - Substantial Evidence. Substantial evidence challenge requires respondent to direct our attention to evidence in the record that is sufficient to meet the challenge, and failure to do so requires a remand.

4. Administrative Law - Findings. Where county order does not articulate whether county believes zoning authorized urban or rural uses, county approval of rezoning outside urban growth boundary will be remanded for county determination as to what densities and levels of services are allowable in the zone.

Opinion by Kressel.

NATURE OF DECISION

The county governing body rezoned 4.33 acres from RR-5 (Rural Residential, five-acre minimum lot size) to RR-1 (Rural Residential, one-acre minimum lot size). Owners of a neighboring parcel appeal.

FACTS

The property is in a hilly, forested area just south of the Gold Beach Urban Growth Boundary (UGB). The property is part of an area that is subject to the statewide resource protection goals. However, the county has taken an exception to the resource goals for the area (known as the Boomer Bend/Thimbleberry area) on the grounds that parcelization and residential development have committed it to nonresource use. Pursuant to the exception, the area had been zoned RR-5. LCDC acknowledged the exception, but the acknowledgement order was overturned by the Supreme Court. 1000 Friends of Oregon v. LCDC (Curry County), 301 Or 447, ___ P2d ___ (1986).

The parcel is at the end of Thimbleberry Road. Most of the road is steep, narrow and in poor condition. The parcel is also steep, rising sharpley from north to south. A mobile home occupies an excavated area on the southern portion. Adjacent to the mobile home is an additional building site, on which the applicant proposes to construct a residence.

The mobile home is served by a septic tank and drainfield. A second tank has been installed on the property but the tank is

not in use. Domestic water is supplied from a spring-fed tank located on the adjoining property to the east. Petitioners own this property.

Petitioners' principal objections to the increased density allowable under RR-1 zoning are that the water supply is inadequate and the land cannot accommodate waste disposal for additional dwellings.

The planning commission denied the application. However, after considering the applicant's appeal at a public hearing, the county governing body approved the application. The final order responds to petitioners' concerns by noting that the sanitarian found the site suitable for the existing mobile home and for an additional one-bedroom dwelling. The order does not limit use of the property to only a one bedroom home, but finds that

> "...as a practical matter, that the subject parcel contains only two building sites even though RR-1 zoning would theoretically allow one (1) dwelling per acre." Record at 4.

FIRST ASSIGNMENT OF ERROR

Respondent's comprehensive plan designates land for rural residential use at various densities, depending on the availability of necessary services and the parcelization pattern. Petitioners direct our attention to the following language in the Public Facilities and Services section of the plan:

> "Plan designations and zoning have been applied to lands within the county that are appropriate to the identified service levels. The county has developed several rural residential zones which are applied to

lands that have only rural services. These zones have minimum lot sizes which are appropriate for the provision of water and disposal of sewage on individual lots. The following land use zones are applied to rural lands:

"1) Rural-Residential (5 acre minimum) - used where lands are presently parcelized at that size and water availability is uncertain.

"2) Rural-Residential (2.5 ac. min.) - used where lands are presently parcelized at that size and water availability is known to some extent.

"3) Rural-Residential (1 ac. min.) - used where lands are highly parcelized and public or community water is available or approved individual wells exist on each lot proposed in a division of land." Curry County Comprehensive Plan Section 11.10, pp. 246-247.

Section 14.7 of the plan provides as follows:

"The rural residential areas fall into three distinct categories which are then used to delineate zoning. Those areas where community water is available can support a more dense level of development and a one acre minimum lot size has been applied. Where community water source is not available, and the average parcel size within an area is less than five acres, a 2.5 acre minimum lot size has been applied, and where the average parcel size is 5 acres or more, a 5 acre minimum lot size has been applied." Curry County Comprehensive Plan p. 312.

Petitioners contend that the quoted language permits RR-1 zoning only where (1) the area is already divided into one-acre lots and (2) public or community water is available or individual wells have been approved on each lot proposed in a division of land. They add that the 4.33 acres at issue meets neither standard. Accordingly, they claim the rezoning violates the plan.

The county's final order does not address the plan language relied on by petitioners. Instead, the order states that the governing approval standard is found in the zoning ordinance.

The order states:

> "16. The criteria to be applied in determining whether the minimum lot size should be changed on a parcel with rural residential zoning is contained in Sec. 2.0530 of the Curry County Zoning Ordinance. The relevant portion states as follows:
>
> > "'Changes in minimum lot size designation within this zone to a smaller lot size shall only be approved by the Planning Commission upon a determination by the appropriate sanitary authority that the proposed lot is adequate for proper sewage disposal and has a suitable source of water for residential use.'" Record at 4.

The order concludes that the zoning standard is satisfied because the parcel has adequate sewage disposal capacity and a suitable source of water.

This assignment of error requires us to answer the threshold question of whether the plan provisions relied on by petitioners have binding legal status. If the provisions are standards governing approval of the requested rezoning, the assignment of error has considerable force. On the other hand, if the cited plan language serves to describe previous zoning designations of rural areas rather than to dictate standards for future decisions, the plan violation charge would be untenable. That is, the county could rezone the property without reference to these provisions.

Petitioners do not address the legal status of these plan provisions. Their assumption seems to be that the plan as a whole must be applied as a case-by-case decisionmaking tool. The assumption is not warranted. Plan provisions may or may not constitute decisionmaking standards, depending on a variety of

factors. See e.g., Downtown Community Association v City of Portland, 80 Or App 336, ___ P2d ___ (1986); McCoy v. Tillamook County, 14 Or LUBA 108, 110 (1985).

As in cases involving statutory construction, the intent of the plan drafters is critical in determining the function played by these plan provisions. In discerning intent, we look to the plan text as well as the context of the specific provisions in question. Where the plan is ambiguous, other documents, including the zoning code, may provide clues to the intended meaning of particular plan provisions. Downtown Community Association v. City of Portland, supra, 80 Or App at 339 n. 4.

The plan does not state which of its provisions are decisionmaking standards and which are not.[1] We note that respondent's plan is organized into chapters according to subject matter (e.g., Public Facilities and Services, Urbanization). Plan "policies" are enumerated at the end of each chapter. However, the provisions petitioners rely on are not policies. Rather, they precede plan policies concerning public facilities and services and urbanization.

We assume that respondent intends plan policies to be given binding legal effect. See ORS 197.015(5) (defining "comprehensive plan" as a "generalized, coordinated land use map and policy statement that interrelates all functional and natural systems and activies relating to the use of lands..."). Further, we assume that other portions of respondent's plan may also be decisionmaking standards, but we will not give them that status

unless the text or the context clearly warrants it.

Guided by the foregoing principles, we conclude that the plan provisions relied on by petitioners are not standards governing this rezoning decision. As noted, the provisions are not in the policy sections of the plan. Further, they read as though they were intended to describe past actions, rather than prescribe standards for the future application of the various rural residential zoning designations. By contrast, Section 2.0530 of the zoning ordinance, on which the county relied in rezoning the property, expressly governs the circumstances under which rural residential densities may be increased. The zoning ordinance addresses considerations similar to those referred to in the plan provisions, but it is worded as a decisionmaking standard. It reads:

> "...Lot Size. The RR zone has minimum lot sizes of 5, 2.5 and 1 acre where specified by the comprehensive plan and shown on the Comprehensive Plan/Zoning Maps. Changes in minimum lot size designation within this zone to a smaller lot size shall only be approved by the Planning Commission upon a determination by the appropriate sanitary authority that the proposed lot is adequate for proper sewage disposal and has a suitable source of water for residential use." Section 2.0530, Curry County Zoning Ordinance (emphasis added).

Based on the foregoing, we hold that the county was not obligated to apply the plan provisions relied on by petitioners as decisionmaking standards in this case. Petitioners' first two claims under the county's plan therefore are rejected.

We turn next to certain other claims petitioners make in connection with the plan. As noted below, these claims involve

plan policies. Consequently, they do not present the threshold question just addressed.

Policy 9 in the plan chapter concerning Public Facilities and Services reads:

> "9. Curry County recognizes the rural areas of the county as being a rural service area and does not encourage the provision of additional public services into these areas in order to preserve their rural character." Curry County Comprehensive Plan, p. 247.

Policy 5 in the chapter concerning urbanization reads:

> "5. Curry County recognizes rural lands in the county and their use of individual water sources and septic systems for sewage disposal and seeks to retain the rural character of these lands by limiting the development of higher levels of public facilities which will change the density of development." Curry County Comprehensive Plan, p. 314.

Petitioners claim that the rezoning violates the plan policies in the following ways:

> "It increases the density of development in a way that has a significant and damaging impact on neighboring lands. It overloads the services presently available, particularly relating to water and road. It burdens a steep and unstable area with further traffic and excavations for construction and drainfield." Petition for review at 10.

The quoted policies discourage public facilities and services that would change the character of rural service areas. Petitioners stress that the overall objective is to preserve the rural character of these areas, but we note that the policies have a specific focus, i.e., they limit or discourage "higher levels" of facilities and services in rural areas. Moreover, the context in which these policies appear

indicates that specific types of facilities and services are covered. These include sewer, water and protective services, i.e., fire protection, law enforcement, public health and education, electrical energy and communication services. See Curry County Comprehensive Plan, Section 11.2, p. 236. .

Petitioners overlook the focus of the policies in this assignment of error. For example, they allege the policies are violated because the rezoning may have adverse environmental consequences (noise, dust, invasions of privacy). However, the cited plan policies do not broadly protect against these consequences. Rather, they seek to preserve an area's rural character by discouraging higher levels of public facilities and service.[2]

The petition more accurately acknowledges the focus of the quoted plan policies in alleging that the rezoning may "...promote the need for a community water system which is a higher level of public facility than the comprehensive plan provides." Petition at 11. Petitioners support the charge by citing evidence that the 4.33 acres depends on an occasionally dry spring for domestic water.

The final order discusses this issue in connection with Section 2.0530 of the zoning ordinance rather than the plan policies cited by petitioners. The order states that there is a suitable source of water to serve the property under RR-1 zoning. Given the finding, petitioners' charge that the decision violates the policy on public facilities and services

amounts to a claim that there is not substantial evidence in the record to support the county's "suitability" determination. ORS 197.835(8)(a)(c). We note that the claim is made again in the second assignment of error. We consider it there.

The first assignment of error is denied.

SECOND ASSIGNMENT OF ERROR

In this assignment of error, petitioners direct attention to the rezoning standards in Section 2.0530 of respondent's zoning ordinance. As noted earlier, the ordinance requires "a determination by the appropriate sanitary authority that the proposed lot is adequate for proper sewage disposal and has a suitable source of water for residential use." The county found that the standards were satisfied. Petitioners claim the findings lack evidentiary support.

With respect to sewage disposal, the county found:

> "17. The Curry County Sanitarian, Delbert P. Cline, R.S., has conducted two (2) on site inspections of the property and has provided to the Board two (2) letter opinions based on those inspections and he did also give oral testimony at the hearing.
>
> "18. Based upon the expert testimony of the Curry County Sanitarian, we find that the existing septic tank and drain field system presently installed on the property is adequate for proper sewage disposal from the existing mobile home and for a one (1) bedroom dwelling proposed to be built by the applicant upon the second building site." Record at 4.

Petitioners contend that the evidence provided by the sanitarian is "...not an adequate determination on which to

base the zone change." Petition at 13. Specifically, they claim that the reports referred to in the final order are equivocal about the adequacy of the existing sewage disposal system. They add that the second report predicts the system will eventually fail. We construe this part of the petition to allege that the evidence submitted by the sanitarian is not "substantial evidence." See Braidwood v. City of Portland, 24 Or App 477, 546 P2d 777 (1976) (substantial evidence is evidence a reasonble person would rely on in reaching a conclusion).

The sanitarian's reports are equivocal. The first indicates that the parcel can accommodate an additional one bedroom unit, but adds that if the system fails, the unit would have to be removed because repair "...may not be either physically or economically feasible." Record at 44. The second report states that a replacement system (sand filter and disposal trench) might be feasible. However, the report concludes:

> "Therefore, when, in the future, the drainfield fails, the owner at that date can choose either to remove the second unit to reduce the sewage disposal or request the installation of a sand filter system or equivalent." Record at 43 (emphasis added).

Standing alone, the two reports provide a questionable foundation for the county's positive determination under Section 2.0530 of the zoning ordinance. However, the reports are supplemented by the sanitarian's testimony. As summarized in the minutes of the governing body's hearing, that testimony

unequivocally affirms that the existing system "...will support the present two bedroom home and the requested one bedroom home." Record at 9 (emphasis added).

The sanitarian's testimony constitutes substantial evidence for the finding that the existing system "...is adequate for proper sewage disposal from the existing mobile home and for a one (1) bedroom dwelling proposed...upon the second building site." Record at 4. However, although the evidence supports the finding, we question whether it also supports the decision to rezone the property to RR-1. See ORS 197.835(8)(a)(C). Our difficulty arises because portions of the decision indicate that the approval authorizes only a one bedroom dwelling, while other portions do not reflect this important limitation. Notably, the operative language in the rezoning does not qualify the approval in the way suggested by the sanitarian's testimony or the county's findings. The order ambiguously authorizes the applicant to

> "...make use of her property consistent with the terms of the Curry County Zoning Ordinance, subject to the requirements and restrictions that may be lawfully imposed by the Curry County Sanitarian and the Curry County Building Inspector." Record at 6.

(2) The evidence provided by the sanitarian meets the substantial evidence test if the county's decision is limited to approval of a one bedroom dwelling. If the decision is not so limited, as petitioners suggest, the evidence does not meet the substantial evidence test. Given the ambiguity in the order, and the fact that the decision must be remanded on other

grounds (discussed below), we conclude that this assignment of error should be sustained. On remand, the county should expressly indicate the nature of any limitations on the rezoning approval in the final order.

This assignment of error includes one additional claim. Petitioners remind us that there is conflicting evidence on whether the water supply can serve the property under RR-1 zoning. The county's finding states:

> "19. The mobile home presently upon the subject property receives its domestic water supply from a spring fed tank located upon the adjoining parcel to the east. The subject property is benefitted by an easement across the adjoining parcel allowing installation, maintenance and repair of the existing water system. The water system has been in existence for several years and has continued to supply a suitable source of water for residential use. In addition to the easement for the waterline and tank, the applicant is the holder of a water right issued by the Water Resources Department of Oregon to appropriate .01 cubic feet per second of water from the present source to be used for two (2) families including the irrigation of one-half acre of lawn and a non-commercial garden. The priority date of this permit is January 13, 1981.
>
> "20. We conclude that the foregoing does constitute a suitable source of water for residential use to supply the exising mobile home and an additional one bedroom residence." Record at 6.

Petitioners direct our attention to evidence that the spring serving the rezoned property was dry in the fall of 1984 and 1985. Their contention, as we read the petition, is that the county's suitability finding is not supported by substantial evidence.

The petition is not answered by a response brief. We

therefore do not know what evidence the county relied on in concluding that the water supply meets the suitability standard. A substantial evidence challenge requires the respondent to direct our attention to evidence in the record that is sufficient to meet the challenge. City of Salem v. Families For Responsible Government, 64 Or App 238, 249, 668 P2d 395 (1983); 1000 Friends of Oregon v. Washington County, 13 Or LUBA 65, 67-68 (1985). This has yet to be done. Under the circumstances, we must uphold this challenge.

The second assignment of error is sustained.

THIRD AND FOURTH ASSIGNMENTS OF ERROR

As previously noted, the rezoned property is in an area excepted from the limitations imposed by the statewide resource protection goals as a result of a previous county action. In the third assignment of error, petitioners contend that the previous exception does not justify rezoning this property from RR-5 to RR-1.

LCDC has adopted a rule governing the permissible planning and zoning designations of areas subject to goal exceptions. See OAR 660-04-018. The section explaining the rule's purpose states, in pertinent part:

> "Physically developed and irrevocably committed exceptions under OAR 660-04-025 and 028 are intended to recognize and allow continuation of existing types of development in the exception area. Adoption of plan and zoning provisions which would allow changes in existing types of uses requires application of standards outlined in this rule." OAR 660-04-018(1).

Under the rule, plan and zone designations of areas committed

to nonresource use (as in this instance) are limited to

> "(a) Uses which are the same as the existing types of land use on the exception site; or
>
> "(b) Rural uses which meet the following requirements:
>
> (A) The rural uses are consistent with all other applicable Goal requirements; and
>
> (B) The rural uses will not commit adjacent or nearby resource land to nonresource use as defined in OAR 660-04-028; and
>
> (C) The rural uses are compatible with adjacent or nearby resource uses." OAR 660-04-018(2).

The rule adds that

> "(c) Changes to plan or zone designations are allowed consistently with subsections (a) or (b) of this section, or where the uses or zones are identified and authorized by specific related policies contained in the acknowledged plan." Id.

The county's order concludes that the rezoning is consistent with the quoted rule because

> "...the designation limits the use of the subject property to the existing type of land use now in effect and is consistent with the Comprehensive Plan for the area which recognizes that the area is irrevocably committed to rural residential use and will satisfy the expressed housing needs of the County" Record at 5.

Petitioners maintain that the finding misconstrues LCDC's rule. They point out that the exception applicable to the Boomer Bend-Thimbleberry area authorized RR-5 (one dwelling per 5 acres) zoning, while the decision in question markedly increases the allowable density (one dwelling per acre). The petition states:

> "Among other items, subsection (2)(a) [of OAR 660-04-018] requires uses which are the same as the

> existing types of land use on the exception site. The existing types of land use on the exception site are homesites with an average of 6.5 acres. Zoning a 4.33 acre lot, already small for the area, so it can be divided into four 1 acre lots violates the standard that the use be the same as the existing types of land use on the exception site" Petition at 16.

Petitioners' claim may or may not be valid, depending on whether the allowed density of development constitutes rural residential use or urban residential use, as those terms are used in the statewide planning goals. We note that in the next assignment of error, petitioners insist that the rezoning authorizes "urban use" outside of the urban growth boundary and therefore violates the statewide goal on urbanization (Goal 14). If that claim is correct, it would also require us to uphold the claim under OAR 660-04-018. The rule does not permit urban use of land committed to rural, non-resource use. Accordingly, we turn our attention to whether the challenged decision violates Goal 14 by allowing urban use (i.e., urban residential density) of this rural parcel.[3]

In reviewing LCDC's acknowledgement of certain resource goal exceptions in Curry County's comprehensive plan, the state Supreme Court recently observed that a critical element in Goal 14 is the distinction it makes between rural and urban use. However, the court also noted that the line between the two types of use is difficult or impossible to draw because LCDC has yet to define "urban use." See 1000 Friends of Oregon v. LCDC (Curry County), 301 P2d 447, 502, ___ P2d ___ (1986). As a result, the court was not in a position to evaluate the

validity of claims that the exceptions acknowledged by LCDC violated Goal 14 by allowing urban uses outside the UGB.

The problem facing the court in the Curry County acknowledgement case also confronts us in this appeal. Here, as in the cited case, the dispute is whether Goal 14 allows Curry County to apply its RR-1 zoning district to certain land outside the UGB. The resolution of that question depends on whether RR-1 zoning (with whatever density limitations the county attaches) allows urban or rural residential use. This, in turn, requires definition of the two types of use.

The high court left no doubt about who should bridge the definitional gap," in Goal 14.[4] The court stated:

> "We reiterate that the interpretation of 'urban uses' is primarily for LCDC, subject to judicial review only for consistency with the statutes authorizing LCDC to adopt the goals and with the policies of the goals themselves. LCDC, however, must develop some interpretation of 'urban uses,' either by formulating a general definition or by elaborating the meaning ad hoc from case to case. LCDC may even choose to address that issue and other definitional problems noted in this opinion by amending the goals, guidelines, or definitions in accordance with ORS 197.235 to 197.245, or by promulgating new or amended administrative rules, in accordance with ORS Chapter 197 and ORS 183.325 to 183.410." 301 Or at 521-22.

The court also stated that the county should

> "...explain why it believes the uses allowed are not 'urban,' or, if they are 'urban,' make a record to demonstrate, as is required by ORS 197.732(4), that the standard for 'committed' exceptions to Goal 14 have been met (that is, that it is impracticable to allow any rural uses). Of course, the county may choose instead to seek 'reasons' exceptions to Goal 14 pursuant to ORS 197.752(1)(c), for any areas in which it concedes its zoning would allow 'urban uses,' but on which it believes it cannot prove impracticability

of rural use." 301 Or at 521.

(4) The county's final order does not indicate whether the rezoning allows rural or urban residential use or the factual basis for such a conclusion. The order does provide some pertinent information. For example, parcel sizes in the area and the extent of development of those parcels are discussed. The order also advises that the area is not served by public sewer or water systems and that Thimbleberry road is in poor condition. We know from the order, too, that the rezoned parcel is adjacent to the Gold Beach UGB. However, the order does not advise what uses, densities and levels of service are considered urban in Curry County. Further, we do not have the benefit of either the county's or LCDC's view[5] as to what constitutes 'urban use' in situations of this sort.

Based on the foregoing, the third and fourth assignments of error are sustained.[6] The decision is remanded to Curry County.

FOOTNOTES

1

We do not have the benefit of respondent's understanding of the plan. Respondent did not file a brief in answer to the petition.

2

The petition also alleges that the quoted plan policies are violated by a finding in the county's order that: "The nature and quality of the road serving the subject property is not relevant to this proceeding and is therefore not considered in arriving at the ultimate decision in this case." Record at 3. We would view such a finding with some skepticism in any rezoning case. However, we are unable to accept petitioners' broad claim in this case that the finding constitutes a violation of the quoted plan policies.

First, as already stated, the policies discourage higher levels of certain public facilities and service in rural areas. The principal subjects covered are sewer, water and protective facilities and services. Transportation services are specifically addressed by other policies in the plan. See Chapter 12, Curry County Comprehensive Plan. On this basis alone we must reject the claim that the finding violates the quoted policies.

Apart from the foregoing point, we cannot equate the finding with petitioners' assertion that rezoning the 4.33 acres to RR-1 will violate the plan by encouraging construction of "higher levels" of road services to the area.

3

We do not consider whether the parcel must be designated for resource use because petitioners do not make that claim. We know the area was considered committed to nonresource use by a previous exception taken by the county. However, we do not know whether the exception for this area was one of those reviewed and remanded by the Supreme Court in 1000 Friends of Oregon v. LCDC (Curry County), supra.

4

We acknowledge that we have attempted to fill the definitional gap in Goal 14 in prior cases. See Halvorson v. Lincoln County, 14 Or LUBA 26 (1985) and Halvorson v. Lincoln County, ___ Or LUBA ___ (No. 86-009, June 4, 1986) (Court of Appeals review pending). In the Curry County acknowledgement

case, the Supreme Court took note of these decisions, expressing neither approval nor disapproval of the views we expressed on the scope of "urban use." See 301 Or at 507 n. 36. The court did make clear, however,that LCDC should define the key terms in the goal.

5

Like the Supreme Court, we would give some deference to any decision by LCDC concerning the meaning and application of the phrase "urban use" in the Statewide goals.

6

We direct the county's attention to the following language in the Supreme Court's opinion:

> "LCDC and LUBA decisions indicate that parcel sizes at either extreme are clearly urban or non-urban, but establish no bright line in the range presented by this county's exceptions areas -- one-acre to five-acre minimums. We accept the concessions of 1000 Friends that residential density of one house per ten acres is generally 'not an urban intensity,' and of LCDC that areas of 'half-acre residential lots to be served by community water and sewer' are 'urban-type.' We find no decisions which had trouble classifying lands at these extremes. However, absent an authoritative interpretation from LCDC so stating, it is not for us to generalize, as Metro suggests, that any development which requires a sewer system, 'usually * * * development of more than one unit per acre' is 'urban,' or as 1000 Friends urges, that any zoning at densities above one dwelling per three acres is 'urban.' Metro and the county persuasively identify sewer service as an important indicator of urbanization but cite no authority to prove that it should be conclusive; in any event, this record contains no finding about what residential density requires a sewer system under the particular conditions in Curry County. 1000 Friends' three-acre rule proposes a larger lot size than LCDC and LUBA have considerd as possibly urban in most cases; it also makes no allowance for considering other factors which LCDC and LUBA have treated as important such as the size of the area, its proximity to acknowledged UGBs, and the types and levels of services which must be provided to it. LCDC's lawyer stated at oral argument that 'because of the varying density of urban fabric you'll find in the State of Oregon, * * * it's virtually impossible to draw a line and say, one acre

lots are urban, two-acre lots are rural.' If that correctly states the agency's position, it is clear that LCDC is not prepared to draw a bright urban/rural line based on parcel size alone." 1000 Friends of Oregon v. LCDC (Curry County), 301 Or 447, 505, ___ P2d ___ (1986)