

LAND USE  
BOARD OF APPEALS

Nov 8 4 52 PM '89

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

KEITH EDDY, )  
 )  
 Petitioner, )  
 )  
 vs. )  
 )  
 MULTNOMAH COUNTY, )  
 )  
 Respondent, )  
 )  
 and )  
 )  
 CBH COMPANY, )  
 )  
 Intervenor-Respondent. )

LUBA No. 89-072

FINAL OPINION  
AND ORDER

Appeal from Multnomah County.

Thane W. Tienson, Portland, filed the petition for review and argued on behalf of petitioner. With him on the brief was Mitchell, Lang and Smith.

John L. DuBay, Portland, filed a response brief and argued on behalf of respondent.

William A. Monahan, Portland, filed a response brief and argued on behalf of intervenor-respondent. With him on the brief was O'Donnell, Ramis, Elliott and Crew.

SHERTON, Chief Referee; HOLSTUN, Referee; KELLINGTON, Referee, participated in the decision.

AFFIRMED 11/08/89

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

1 Opinion by Sherton.

2 NATURE OF THE DECISION

3 Petitioner appeals an order of the Multnomah County Board  
4 of Commissioners affirming an order of the Multnomah County  
5 Planning Commission applying the county's Planned Development  
6 (PD) zoning subdistrict to a 6.48 acre site.

7 MOTION TO INTERVENE

8 CBH Company moves to intervene on the side of respondent in  
9 this proceeding. There is no opposition to the motion, and it  
10 is allowed.

11 FACTS

12 The subject property is designated Medium Density  
13 Residential by the Multnomah County Comprehensive Plan (county  
14 plan) and is zoned Urban Medium Density Residential (MR-4). The  
15 property is undeveloped. Under the MR-4 zoning district, a  
16 maximum of 70 residential units could be constructed on the  
17 site. The MR-4 zone requires multi-family units to be in a  
18 "side-by-side" style. The approved zone change applying the PD  
19 subdistrict allows development of a 74-unit multi-family complex  
20 including "garden style" apartments.<sup>1</sup>

21 The property has been designated Medium Density Residential  
22 in the county plan since 1974. The City of Fairview (city)  
23 adopted its comprehensive plan (city plan) in June, 1979. The  
24 city plan maps include areas within the city's "planning area

---

25  
26 <sup>1</sup>The approved "garden style" apartments consist of apartment units  
stacked one above the other in two-story four-plex structures. Record 20.

1 boundary" that are outside city limits and, therefore, are  
2 currently within the planning jurisdiction of the county. The  
3 legend of the city plan map depicting plan designations (Map 6)  
4 notes that "[l]and uses outside the city limits are from the  
5 Multnomah County Comprehensive Plan." This city plan map  
6 erroneously depicts the subject property as being designated  
7 "Low Density Residential."

8 Also in June of 1979, the city and the county adopted an  
9 Urban Planning Area Agreement (UPAA), including the subject  
10 property in the designated "urban planning area" for the city.<sup>2</sup>  
11 The UPAA states that "[t]he City has identified no specific  
12 conflicts with the Multnomah County comprehensive frame-work  
13 plan for the designated urban planning area of this Agreement."  
14 Record 38.

15 On May 25, 1988, the city notified the Portland  
16 Metropolitan Area Local Government Boundary Commission of its  
17 intent to annex property within the UPAA designated urban  
18 planning area, including the subject property. Record 69. On  
19 September 6, 1988, an amendment to the UPAA (UPAA amendment) was  
20 adopted. In the amendment, the city and county recognize that  
21 the city "will eventually assume land use jurisdiction" over the  
22 designated urban planning area and, therefore, is "the logical  
23

---

24  
25 <sup>2</sup>The "planning area boundary" depicted on the city plan maps and "urban  
26 planning area" identified by the UPAA are not identical. However, the  
subject property is within both the "planning area boundary" and the  
designated "urban planning area."

1 entity to assume the lead role in long range comprehensive  
2 planning for the area." Record 40. The city and county agree  
3 that the city will "assume responsibility for meeting the  
4 requirements of comprehensive plan periodic review for the urban  
5 planning area pursuant to ORS 197." Id.

6 On February 3, 1989, intervenor-respondent CBH Company  
7 (intervenor) filed an application with the county for approval  
8 of a zone change to allow the proposed 74-unit planned  
9 development. On February 27, 1989, the county mailed notice of  
10 the planning commission's March 13, 1989 hearing on the proposed  
11 zone change to the city and others. Record 124. On March 6,  
12 1989, the city sent a letter opposing the zone change to the  
13 planning commission. Record 43-45. The city manager testified  
14 against the zone change at the planning commission hearing.  
15 Record 83-88. On March 20, 1989, the planning commission issued  
16 its decision approving the zone change.

17 On April 3, 1989, petitioner and the city appealed the  
18 planning commission's decision. Also on April 3, the city sent  
19 a letter to the county planning director requesting that the  
20 city be contacted regarding any proposals affecting the subject  
21 property. Record 64. The letter also notes that "[t]he City of  
22 Fairview has had several discussions with your staff" regarding  
23 the subject property. Id. On June 6, 1989, after an additional  
24 hearing for argument and limited additional evidence, the board  
25 of commissioners issued its order affirming the planning

1 commission's decision. This appeal followed.<sup>3</sup>

2 ASSIGNMENT OF ERROR

3 "The County violated its Urban Planning Area Agreement  
4 in approving Order #89-112, thereby failing to comply  
5 with provisions set forth in its Comprehensive Plan  
and, consequently, ORS 197.175(2)(d)."

6 Petitioner contends that neither the notice provided by the  
7 county nor the decision reached by the county in this case  
8 comply with the coordination requirements of the county plan and  
9 the UPAA. We address each of these issues separately below.

10 A. Notice

11 Petitioner argues that under ORS 197.175(2)(d) and  
12 ORS 197.835(3) this Board is required to reverse or remand a  
13 county land use decision which is inconsistent with the county  
14 comprehensive plan. Petitioner contends that county plan  
15 Policy 4 states that "it is the county's policy to participate  
16 in intergovernmental coordination efforts with \* \* \* local  
17 governments [and the county ensures] land use planning will be  
18 coordinated with adjacent jurisdictions through the adoption of  
19 urban planning area agreements \* \* \*." Petitioner argues that  
20 the UPAA and UPAA amendment also implement the county plan  
21 Policy 4, Strategy 1.b requirement that the county  
22 "[p]articipate in coordinative efforts to resolve the urban  
23 services issues and to ensure a smooth land use planning  
24 transition upon jurisdictional changes."

---

25  
26 <sup>3</sup>We note that the city did not join in petitioner's appeal, and is not a party to this appeal proceeding.

1           Petitioner points out that section 1 of the UPAA requires  
2 the county to give the city "full notification" of any  
3 quasi-judicial decision which may affect the city, provide the  
4 city with a reasonable response time and include any city  
5 response in the county's record of decision. Record 38.  
6 Petitioner also points out that the UPAA amendment acknowledges  
7 the city as the eventual comprehensive planning authority and  
8 urban service provider for the area, and designates the city to  
9 "assume the lead role in long range comprehensive planning for  
10 the area." Record 40.

11           Under these circumstances, petitioner argues, a "heightened  
12 coordination standard control[s]." Petition for Review 7.  
13 Citing Twin Rocks Water Dist. v. Rockaway, 2 Or LUBA 36, 46  
14 (1980) (Twin Rocks), petitioner maintains that in this case the  
15 UPAA and UPAA amendment do not allow the county to treat the  
16 city the same as other persons in the area, but rather requires  
17 that the county give the city "something more than the standard  
18 notice extended to common adjacent landowners." Id.

19           The county and intervenor (respondents) contend county plan  
20 Policy 4 merely calls for the county to participate in a  
21 cooperative planning process, and does not establish what  
22 actions are necessary to satisfy that plan policy. Respondents  
23 further contend that the UPAA does not define the kind of notice  
24 the county is required to give to the city, and does not require  
25 some form of "enhanced" notice to the city. Respondents argue  
26 that the county fully complied with the notice requirements of

1 the UPAA by giving the city written notice of the proposal in  
2 advance of the planning commission hearing. Respondents also  
3 point out that petitioner identifies no other statute, plan or  
4 ordinance provision requiring the county to give some form of  
5 "special" notice to the city.

6 Respondents point out that both petitioner and the city  
7 appeared before the planning commission and the board of  
8 commissioners. Respondents argue that even if the notice given  
9 to the city was inadequate, such an error would be procedural in  
10 nature and, therefore, would provide no basis for reversal or  
11 remand of the county's decision unless petitioner's substantial  
12 rights were prejudiced by the error. ORS 197.835(8)(a)(B).  
13 Respondents contend petitioner does not show how his rights were  
14 prejudiced by any alleged defect in the county's notice to the  
15 city.

16 Section 1 of the UPAA contains the following provisions  
17 applicable to the zone change proceeding at issue in this case:

18 "Multnomah County will provide full notification to  
19 the City of Fairview of \* \* \* any quasi-judicial or  
20 administrative decision made pursuant to said  
21 comprehensive plan which may substantially affect the  
22 City. The County will provide a reasonable response  
23 time and include any responses by the City within the  
24 County's record of proceedings and decision on the  
25 concerned proposal." (Emphasis added.) Record 38.

26 Petitioner does not argue that the city did not receive  
notice from the county of the proposed zone change. Neither  
does petitioner argue that the city did not have adequate time  
to respond to the notice or that the city's response was not

1 included in the county's record of its proceedings. Rather,  
2 petitioner argues, based on county plan policy 4, introductory  
3 clauses in the UPAA, the UPAA amendment and our decision in Twin  
4 Rocks, supra, that the "full notification" provided for in  
5 section 1 of the UPAA requires that the city receive more notice  
6 than would be given to other affected property owners.

7 County plan policy 4 provides in relevant part:

8 "It is the county's policy to participate in  
9 intergovernmental coordination efforts with federal,  
10 state and local governments and with special service  
11 districts. The county will ensure that the  
12 responsibility and support for land use planning will  
13 be coordinated with adjacent jurisdictions through the  
14 adoption of urban planning area agreements which will  
15 recognize:

16 "A. That it is not the county's primary role to  
17 provide urban services, and

18 "B. That the county's comprehensive framework plan  
19 and component community plans and implementing  
20 ordinances will be the primary plan for  
21 unincorporated areas until and during any  
22 jurisdictional transition, and

23 "C. The county has a responsibility to support the  
24 planning process for unincorporated areas and

25 "D. Establish and participate in a cooperative  
26 process to address the future of urban service  
27 provision issues.

28 "\* \* \* \* \*"

29 This policy states the county will achieve coordination through  
30 urban planning area agreements with other units of government  
31 and describes general objectives for such agreements. The  
32 policy does not require that any particular type of notice be  
33 given by the county to a city concerning a proposed zone change



1 for a planned development in the urban planning area.

2 The introductory clauses to the UPAA cited by petitioner  
3 establish only that the UPAA is intended to satisfy statutory  
4 coordination requirements and that coordination "can best be  
5 accomplished through the exchange of relevant information on  
6 land use issues before binding decisions are made \* \* \*."  
7 Record 38. The UPAA amendment recognizes that annexation of  
8 land in the designated urban planning area will eventually  
9 occur, and establishes that the city should take the lead role  
10 in long range comprehensive planning for the area in the  
11 county's periodic review process. Nothing in these provisions  
12 alters the notice requirements found in UPAA section 1.

13 In Twin Rocks, supra, we did state "[w]hen a city is  
14 required by its own plan to coordinate its decision making with  
15 affected special districts, \* \* \* it is not sufficient  
16 procedurally or substantively for the city to treat the special  
17 district as it would any other person in the area." However,  
18 our statement in Twin Rocks must be interpreted in light of the  
19 facts of that case, not as establishing a general principal of  
20 law that coordination in all instances requires governmental  
21 units be given more notice of proposed land use actions than  
22 affected property owners.<sup>4</sup>

23 \_\_\_\_\_  
24 <sup>4</sup>In Twin Rocks, the city's comprehensive plan was not acknowledged, the  
25 decision at issue was legislative (an annexation), there was no planning  
26 agreement between the city and the special district, the city had not sent  
the service district any notice of the proceedings and there had been no  
meetings between city staff and the service district. We note that in this

1 In this case, we believe the UPAA requirement for "full  
2 notification" was satisfied by the notice of hearing mailed to  
3 the city, particularly since there is no allegation that the  
4 response time provided to the city was inadequate, and the  
5 record shows both that the city did submit written and oral  
6 testimony to the county and that there were several discussions  
7 between city and county staff concerning the subject property.<sup>5</sup>

8 This subassignment of error is denied.

9 B. Decision

10 Petitioner points out that county plan Policy 4 recognizes  
11 that "it is not the county's primary role to provide urban  
12 services" in the designated urban planning area. Petitioner  
13 argues that the UPAA and UPAA amendment recognize that the city  
14 will eventually assume jurisdiction over the designated planning  
15 area and should logically take the lead role in comprehensive  
16 planning for the area. Petitioner contends that under these  
17 circumstances the city's continued reliance on its plan's Low  
18 Density Residential designation of the subject property in its

19  
20  

---

21 case, by contrast, the county's plan is acknowledged, the decision at issue  
22 is a quasi-judicial development proposal, there is a planning agreement  
23 entered into by the county and city which addresses notification  
24 requirements, the county mailed the city notice of the proposal and there  
25 have been several discussions concerning the property between county and  
26 city staff.

27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49  
50  
51  
52  
53  
54  
55  
56  
57  
58  
59  
60  
61  
62  
63  
64  
65  
66  
67  
68  
69  
70  
71  
72  
73  
74  
75  
76  
77  
78  
79  
80  
81  
82  
83  
84  
85  
86  
87  
88  
89  
90  
91  
92  
93  
94  
95  
96  
97  
98  
99  
100  
101  
102  
103  
104  
105  
106  
107  
108  
109  
110  
111  
112  
113  
114  
115  
116  
117  
118  
119  
120  
121  
122  
123  
124  
125  
126  
127  
128  
129  
130  
131  
132  
133  
134  
135  
136  
137  
138  
139  
140  
141  
142  
143  
144  
145  
146  
147  
148  
149  
150  
151  
152  
153  
154  
155  
156  
157  
158  
159  
160  
161  
162  
163  
164  
165  
166  
167  
168  
169  
170  
171  
172  
173  
174  
175  
176  
177  
178  
179  
180  
181  
182  
183  
184  
185  
186  
187  
188  
189  
190  
191  
192  
193  
194  
195  
196  
197  
198  
199  
200  
201  
202  
203  
204  
205  
206  
207  
208  
209  
210  
211  
212  
213  
214  
215  
216  
217  
218  
219  
220  
221  
222  
223  
224  
225  
226  
227  
228  
229  
230  
231  
232  
233  
234  
235  
236  
237  
238  
239  
240  
241  
242  
243  
244  
245  
246  
247  
248  
249  
250  
251  
252  
253  
254  
255  
256  
257  
258  
259  
260  
261  
262  
263  
264  
265  
266  
267  
268  
269  
270  
271  
272  
273  
274  
275  
276  
277  
278  
279  
280  
281  
282  
283  
284  
285  
286  
287  
288  
289  
290  
291  
292  
293  
294  
295  
296  
297  
298  
299  
300  
301  
302  
303  
304  
305  
306  
307  
308  
309  
310  
311  
312  
313  
314  
315  
316  
317  
318  
319  
320  
321  
322  
323  
324  
325  
326  
327  
328  
329  
330  
331  
332  
333  
334  
335  
336  
337  
338  
339  
340  
341  
342  
343  
344  
345  
346  
347  
348  
349  
350  
351  
352  
353  
354  
355  
356  
357  
358  
359  
360  
361  
362  
363  
364  
365  
366  
367  
368  
369  
370  
371  
372  
373  
374  
375  
376  
377  
378  
379  
380  
381  
382  
383  
384  
385  
386  
387  
388  
389  
390  
391  
392  
393  
394  
395  
396  
397  
398  
399  
400  
401  
402  
403  
404  
405  
406  
407  
408  
409  
410  
411  
412  
413  
414  
415  
416  
417  
418  
419  
420  
421  
422  
423  
424  
425  
426  
427  
428  
429  
430  
431  
432  
433  
434  
435  
436  
437  
438  
439  
440  
441  
442  
443  
444  
445  
446  
447  
448  
449  
450  
451  
452  
453  
454  
455  
456  
457  
458  
459  
460  
461  
462  
463  
464  
465  
466  
467  
468  
469  
470  
471  
472  
473  
474  
475  
476  
477  
478  
479  
480  
481  
482  
483  
484  
485  
486  
487  
488  
489  
490  
491  
492  
493  
494  
495  
496  
497  
498  
499  
500  
501  
502  
503  
504  
505  
506  
507  
508  
509  
510  
511  
512  
513  
514  
515  
516  
517  
518  
519  
520  
521  
522  
523  
524  
525  
526  
527  
528  
529  
530  
531  
532  
533  
534  
535  
536  
537  
538  
539  
540  
541  
542  
543  
544  
545  
546  
547  
548  
549  
550  
551  
552  
553  
554  
555  
556  
557  
558  
559  
560  
561  
562  
563  
564  
565  
566  
567  
568  
569  
570  
571  
572  
573  
574  
575  
576  
577  
578  
579  
580  
581  
582  
583  
584  
585  
586  
587  
588  
589  
590  
591  
592  
593  
594  
595  
596  
597  
598  
599  
600  
601  
602  
603  
604  
605  
606  
607  
608  
609  
610  
611  
612  
613  
614  
615  
616  
617  
618  
619  
620  
621  
622  
623  
624  
625  
626  
627  
628  
629  
630  
631  
632  
633  
634  
635  
636  
637  
638  
639  
640  
641  
642  
643  
644  
645  
646  
647  
648  
649  
650  
651  
652  
653  
654  
655  
656  
657  
658  
659  
660  
661  
662  
663  
664  
665  
666  
667  
668  
669  
670  
671  
672  
673  
674  
675  
676  
677  
678  
679  
680  
681  
682  
683  
684  
685  
686  
687  
688  
689  
690  
691  
692  
693  
694  
695  
696  
697  
698  
699  
700  
701  
702  
703  
704  
705  
706  
707  
708  
709  
710  
711  
712  
713  
714  
715  
716  
717  
718  
719  
720  
721  
722  
723  
724  
725  
726  
727  
728  
729  
730  
731  
732  
733  
734  
735  
736  
737  
738  
739  
740  
741  
742  
743  
744  
745  
746  
747  
748  
749  
750  
751  
752  
753  
754  
755  
756  
757  
758  
759  
760  
761  
762  
763  
764  
765  
766  
767  
768  
769  
770  
771  
772  
773  
774  
775  
776  
777  
778  
779  
780  
781  
782  
783  
784  
785  
786  
787  
788  
789  
790  
791  
792  
793  
794  
795  
796  
797  
798  
799  
800  
801  
802  
803  
804  
805  
806  
807  
808  
809  
810  
811  
812  
813  
814  
815  
816  
817  
818  
819  
820  
821  
822  
823  
824  
825  
826  
827  
828  
829  
830  
831  
832  
833  
834  
835  
836  
837  
838  
839  
840  
841  
842  
843  
844  
845  
846  
847  
848  
849  
850  
851  
852  
853  
854  
855  
856  
857  
858  
859  
860  
861  
862  
863  
864  
865  
866  
867  
868  
869  
870  
871  
872  
873  
874  
875  
876  
877  
878  
879  
880  
881  
882  
883  
884  
885  
886  
887  
888  
889  
890  
891  
892  
893  
894  
895  
896  
897  
898  
899  
900  
901  
902  
903  
904  
905  
906  
907  
908  
909  
910  
911  
912  
913  
914  
915  
916  
917  
918  
919  
920  
921  
922  
923  
924  
925  
926  
927  
928  
929  
930  
931  
932  
933  
934  
935  
936  
937  
938  
939  
940  
941  
942  
943  
944  
945  
946  
947  
948  
949  
950  
951  
952  
953  
954  
955  
956  
957  
958  
959  
960  
961  
962  
963  
964  
965  
966  
967  
968  
969  
970  
971  
972  
973  
974  
975  
976  
977  
978  
979  
980  
981  
982  
983  
984  
985  
986  
987  
988  
989  
990  
991  
992  
993  
994  
995  
996  
997  
998  
999  
1000

<sup>5</sup>Because we do not find that the county failed to give the notice required by coordination provisions of the county plan and UPAA, we need not decide whether such a failure would be procedural in nature, and petitioner required to identify harm to his substantial rights in order to obtain reversal or remand of the county's decision.

1 ongoing capital improvement planning process is reasonable.<sup>6</sup>  
2 Petitioner argues that in this case, therefore, the county erred  
3 by approving a zone change it knew to be inconsistent with the  
4 city's plan designation for the property.

5 Respondents argue that nothing in the UPAA requires the  
6 county to defer to the city or its plan with regard to  
7 development proposals in the designated urban planning area.  
8 Intervenor points out that ORS 215.130(2) and section 4 of the  
9 UPAA provide that even after annexation of the subject property  
10 by the city, the county plan would continue to apply until the  
11 city acted to apply its own plan designation to the property.

12 Respondents also argue that both ORS 197.175(2)(d) and  
13 215.416(8) require it to base its decision in this case on the  
14 acknowledged county plan and land use regulations. Respondents  
15 contend that, regardless of coordination requirements, these  
16 statutes bar denial of the proposed development based on the  
17 city's desires.

18 ORS 197.175(2)(d) provides that if a local government's  
19 comprehensive plan and land use regulations have been  
20 acknowledged by LCDC, it must "make land use decisions in

---

21  
22 <sup>6</sup>The city's letter to the county in opposition to the proposed planned  
23 development states:

24 " \* \* \* the City will soon be completing and adopting a Capital  
25 Improvement Plan. Water and sewer demand for this area has  
26 been calculated based on single-family density and has been  
projected for the next twenty years. Based on an 80% usage of  
property for housing development, this acreage would allow for  
approximately 30 single family homes; less than half of what is  
currently proposed." Record 44.

1 compliance with the acknowledged plan and land use regulations."  
2 Furthermore, county plan policy 4B requires that urban planning  
3 area agreements recognize that the county plan and implementing  
4 ordinances shall be applicable to unincorporated areas until  
5 annexation occurs. We agree with respondents that neither the  
6 statutes nor the county plan allow the county to deny a  
7 requested zone change which is consistent with applicable county  
8 plan and code provisions because the city would prefer a  
9 different use of the property.<sup>7</sup>

10 Coordination requires the county to consider and  
11 accommodate the city's needs as much as possible.  
12 ORS 197.015(5); see Rajneesh v. Wasco County, 13 Or LUBA 202,  
13 210 (1985). The county's decision and findings show it  
14 considered the issues raised by the city, and explained why  
15 applicable provisions of the statutes and its acknowledged plan  
16 require it to approve the proposed zone change based on the  
17 standards in the acknowledged county plan and code. This is

---

19  
20 <sup>7</sup>Of course the city could have requested, through the county's periodic  
21 review process, or through a plan amendment/zone change application, that  
22 the county change its plan and zoning designations for the subject  
23 property. However, the city did not do so. Once intervenor's zone change  
24 application to the county was complete, the county was required to base its  
25 approval or denial of the application on the standards and criteria  
26 applicable at the time the application was filed. ORS 215.428(3); see  
Kirpal Light Satsang v. Douglas County, 96 Or App 207, 212, \_\_\_ P2d \_\_\_,  
adhered to 97 Or App 614, rev den 308 Or 382 (1989); Territorial Neighbors  
v. Lane County, \_\_\_ Or LUBA \_\_\_ (LUBA No. 87-083, April 27, 1988), slip op  
7-9. Furthermore, ORS 215.428(1) requires the county to take final action  
on an application for a zone change within 120 days after the application  
is deemed complete. Thus, the county could not choose, in the name of  
coordination, to simply delay action on the application until the city's  
proposed annexation of the subject property was completed.

1 sufficient to satisfy the coordination requirements of the  
2 county plan and UPAA.

3 This subassignment of error is denied.

4 The assignment of error is denied.

5 The county's decision is affirmed.  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26