

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

3
4 JAMES JUST,
5 *Petitioner,*

6
7 vs.

8
9 CITY OF LEBANON,
10 *Respondent,*

11 and

12
13 GILBERT LIMITED PARTNERSHIP,
14 *Intervenor-Respondent.*

15
16 LUBA No. 2003-043

17
18 FINAL OPINION
19 AND ORDER

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22 Appeal from City of Lebanon.

23
24 James Just, Lebanon, filed the petition for review and argued on his own behalf.

25
26 Thomas A. McHill, Lebanon, and Andrew J. Bean, Albany, filed a joint response
27 brief. Thomas A. McHill argued on behalf of respondent. Edward F. Schultz argued on
28 behalf of intervenor-respondent. With them on the brief was Morley, Thomas, McHill &
29 Phillips, LLC, and Weatherford, Thompson, Cowgill, Black & Schultz, PC.

30
31 BRIGGS, Board Member; BASSHAM, Board Chair; HOLSTUN, Board Member,
32 participated in the decision.

33
34 REMANDED

08/22/2003

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

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NATURE OF THE DECISION

Petitioner appeals a city ordinance that annexes a 70-acre parcel to the City of Lebanon and zones the parcel Limited Industrial.

MOTION TO INTERVENE

Gilbert Limited Partnership (intervenor), the applicant below, moves to intervene on the side of respondent. There is no opposition to the motion and it is allowed.

FACTS

The subject property is contiguous to the existing city limits and lies within the urban growth boundary (UGB). The property is undeveloped and consists of a grass field. The parcel is bounded on the north by Oak Street, a portion of which is also included in the annexation request. Oak Street is a designated arterial and truck route. Approximately one-half of the segment of Oak Street annexed by this decision is improved to city standards. The remaining half is improved to county standards. The property is bordered by the Lebanon Airport to the east, the UGB to the west, and unannexed industrially-designated but largely undeveloped lots to the south.

Prior to the annexation request, the property was subject to the county zoning designation of Urban Growth Area, Exclusive Farm Use, 80-acre minimum parcel size (UGA-EFU-80). The property is designated Light Industrial on the Lebanon Comprehensive Plan (LCP) map, and the annexation ordinance rezones the property to the city’s Limited Industrial zoning designation. No development proposal was submitted in conjunction with the annexation request; however, the decision anticipates that the property will be developed with airport related storage and hangar facilities.

The city planning commission recommended approval, and the city council approved the annexation request. This appeal followed.

1 **INTRODUCTION**

2 This appeal is one of a series of appeals that petitioner and Friends of Linn County
3 have filed challenging city annexation and rezoning decisions. The petitions for review
4 follow the same format and, with minor variations, allege the same errors. The variations in
5 the assignments of error reflect the different locations of the parcels to be annexed, public
6 services that are available and needed to serve the parcels, and proposed uses on those
7 parcels. We issue final opinions in five of those appeals today. *Just v. City of Lebanon*, __ Or
8 LUBA __ (LUBA No. 2003-044, August 22, 2003) (*Just I*); *Friends of Linn County v. City of*
9 *Lebanon*, __ Or LUBA __ (LUBA No. 2003-046, August 22, 2003); *Just v. City of Lebanon*,
10 __ Or LUBA __ (LUBA No. 2003-066, August 22, 2003); and *Just v. City of Lebanon*, __ Or
11 LUBA __ (LUBA No. 2003-067, August 22, 2003).

12 As we explained in *Just I*, annexations to the city are evaluated pursuant to policies
13 set out in Resolution 11 (1982) (Annexation Policies). In addition, the city must find that the
14 annexation is consistent with Lebanon Comprehensive Plan (LCP) policies pertaining to
15 annexations.

16 **FIRST ASSIGNMENT OF ERROR**

17 This assignment of error includes nine subassignments of error. The subassignments
18 of error challenge city council interpretations of Annexation Policies and LCP policies. The
19 subassignments of error also challenge findings the city adopted to support its decision and
20 the evidentiary basis for those findings. Where our disposition of petitioner’s arguments in
21 this appeal is the same as our disposition of his arguments in *Just I*, we will refer to our
22 decision in *Just I*, and will not repeat our analysis here.

23 Most of the applicable annexation policies fall within one of two categories: (1)
24 policies that require a demonstration that the proposed annexation is needed; and (2) policies
25 that require a demonstration that adequate public facilities and services are available to serve

1 the property to be annexed. We address arguments petitioner makes with respect to these two
2 policy categories, before turning to petitioner’s remaining subassignments of error.¹

3 **A. Need for Additional LI-zoned Land (Annexation Policy 5 and LCP**
4 **Urbanization Element, Annexation Policy 1)**

5 Annexation Policy 5 provides:

6 “It shall be the burden of proof of the applicant that a public need exists for
7 the proposed annexation and that the annexation is in the public’s interest.”

8 LCP Urbanization Element, Annexation Policy 1 provides:

9 “The city shall annex land only within the Urban Growth Boundary on the
10 basis of findings that support the need for additional developable land in order
11 to maintain an orderly compact growth pattern within the city’s service
12 capability.”

13 Petitioner disputes the city’s findings that there is a public need for the annexation.
14 According to petitioner, the evidence the city relies upon to establish need only shows that
15 the subject property is “attractive and available” to be developed for the light industrial uses
16 allowed in the LI zone, not that the light industrial uses cannot be located on other,
17 appropriately zoned property within city limits. Petition for Review 21. Petitioner argues that
18 until all available land within city limits designated for light industrial uses have been fully
19 developed, the city cannot find that there is a public need for additional land zoned for those
20 purposes. Petitioner contends that there is no evidence in the record that shows that all
21 available industrially zoned land within city limits has been developed.

22 Petitioner also disputes that the findings and evidence lead to the conclusion that the
23 annexation (1) will be in the public interest; and (2) will maintain an orderly, compact

¹ As in the other appeals, petitioner argues in this appeal that the city’s interpretation of its annexation and comprehensive plan policies are not consistent with Goals 11 (Public Facilities and Services) and 14 (Urbanization) or ORS 197.752 and 197.754. As we explained in *Just I*, we do not believe that the city’s interpretations of its policies are inconsistent with what those goals and statutes require. Petitioner’s arguments in this appeal provide no basis for us to revisit that conclusion here. Accordingly, we deny those aspects of petitioner’s arguments that allege that the city’s interpretations are inconsistent with the statewide planning goals the policies are designed to implement or are inconsistent with ORS 197.752 and 197.754, and do not address those arguments further in this opinion.

1 growth pattern within the city's service capability. Petitioner further argues that, in the
2 absence of a specific development proposal, the city cannot be assured that the needs
3 identified by the city will be satisfied by annexation of the subject property.

4 We do not agree with petitioner that the city has not demonstrated that the property is
5 needed for light industrial development within the meaning of the city's annexation and LCP
6 policies. The city's public need findings state that (1) a public need exists to expand the
7 airport and airport-related development; (2) additional light industrial areas are needed to
8 encourage economic growth and bring new industry into the area; (3) no other sites zoned
9 light industrial are large enough to accommodate the types of uses proposed to be developed
10 on the subject property; and (4) public services sufficient to address the demand generated by
11 the industrial development are readily available. Record 14C-E.² Unlike the decision in *Just*

² The findings with respect to Annexation Policy 5 state, in relevant part:

"The proposed annexation complies with [Annexation Policy 5] in that a public need exists to expand the Lebanon State Airport and other airport-related development. As noted in a *Lebanon Express* article of September 4, 2002 * * * and in a letter * * * the Oregon Department of Aviation views the upgrading and expansion of the airport facility and related adjacent uses as essential to the long-term interest of this local transportation facility.

"In addition the need expressed in the above letters, the [LCP] states that light industrial areas are needed to encourage economic growth and bring new industry into the community. [LCP 5-17.] The objective of light industrial areas is to 'attract new diversified non-polluting industry. With the existing economic base so heavily reliant on the wood products industry, there is an obvious need for diversification.' *Id.* Economic development is a key component to the City's Goal 9 [(Economy)] objectives. Ensuring that adequate light industrial property exists to attract potential businesses is a critical component to ensuring Goal 9 objectives. Providing for the annexation also serves the airport overlay objectives and community need that the property provide for consistent and compatible land use application with surrounding properties.

"The applicant proposes to use the property for airport-related development and for light industrial industry. Doug Parker, the City Planning Director, noted that this site is one of the four biggest industrial sites in the community. The site is one of five industrial sites adjacent to the truck route and the biggest along the truck route for the City. Mr. Parker stated that the other industrial land in the City does not contain this type of access or the acreage needed for a large-scale distribution center like the subject property can provide. Doug Parker testified that the property's proximity to the airport and the improved Highway 34 and Interstate 5 makes it an ideal location for further industrial and commercial development.

1 I, the council concluded in this decision that the unique characteristics and location of this
2 property, in addition to the need for additional, appropriately zoned industrial property in
3 general, establish the need for annexation of the subject property. These findings are
4 adequate to explain why the subject property is “needed” within the meaning of Annexation
5 Policy 5. The fact that there may be other vacant land zoned for industrial uses within city
6 limits does not satisfy the city’s need for light industrial-zoned property adjacent to the
7 airport. However, as we discuss below with regard to LCP Annexation Policy 3, we agree
8 with petitioner that the city’s failure to require a specific development proposal in
9 conjunction with the annexation petition undermines the city’s findings that the subject
10 property will be developed in a manner consistent with the reasons the city used to justify the
11 need for the annexation.

“Mr. Parker noted that the property is part of the [LCP’s] West-Side Light Industrial Reserve. The West-Side Light Industrial Reserve provides excellent air, highway and arterial access, has water and other utilities easily available, and is compatible and comparable with airport activities. Annexation of the subject property fulfills the goals of the City’s Comprehensive Plan.

“The council also heard testimony from the Oregon Development Group President and CEO, Larry Walsh. Mr. Walsh testified that the subject property has distinct advantages that satisfy the public need for adequate light industrial property. First, the property is one of a limited amount of properties [that include] at least 50 acres [located] near I-5. The property is on flat * * * ground, [is] easy to develop to suit and has ready water and sewage access. Mr. Walsh indicated that this size and location are crucial for the development needs for many potential businesses wishing to locate in Oregon. * * *

“Finally, Mr. Walsh concluded, the site’s proximity to community colleges and major universities [such as] the University of Oregon and Oregon State University, its proximity to available city services, and available housing in Lebanon for its employees make this site the most desirable large tract of land for potential light industrial development in the area. The city finds these arguments persuasive in demonstrating a need for annexation of this site.

“* * * * *

“Additionally, truck and other traffic servicing this site will not have to travel through the center of town. This may help eliminate current traffic congestion and ensure that truck traffic does not unnecessarily travel through residential districts or the heart of the City. * * * Other existing industrial sites in the City cannot provide these assurances.” Record 14C-14E.

1 With respect to LCP Urbanization Element, Annexation Policy 1, petitioner cites to
2 findings adopted by the planning commission and argues that those findings are inadequate
3 to explain why the city believes the proposed annexation is needed to ensure compact and
4 orderly development within the city’s service capabilities.³ According to petitioner, there is
5 no evidence in the record that there is a shortage of undeveloped land zoned LI within city
6 limits. Petitioner also argues that there is no evidence that the subject property will be able to
7 be developed immediately in light of a plan policy that does not allow sewer extensions to
8 “areas of medium and low priority” until 75 percent of the high priority service areas are
9 developed.⁴ Petitioner contends that there is no evidence in the record that (1) the subject
10 property is located within a high priority service area; or (2) that at least 75 percent of the

³ Those findings state:

“The proposed annexation complies with [LCP Urbanization Element, Annexation Policy 1] based on several facts:

“First, the proposed annexation is within the City’s [UGB].

“Second, the need for additional developable land is noted in a *Lebanon Express* article of September 4, 2002 * * * and in a letter from Oregon Department of Aviation. This article establishes that the Oregon Department of Aviation views the upgrading of the local airport facility as a very important move. With the shortage of FAA investment dollars, private development on this adjacent property can go a long way towards meeting the needs for the enhancement of this significant community and County transportation facility.

“Third, the proposed Annexation promotes an orderly, compact growth pattern in that the areas immediately to the east, north and northwest of the subject property are already within the City limits.

“Fourth, as noted in the comments of the City Engineer, this annexation and subsequent development of the subject property are well within the City’s service capability.” Record 106.

⁴ That policy provides:

“Ensuring the maximum efficiency of land use means that land is put to its highest and best use. One of the things [that] this implies within the existing urban area is utilizing existing vacant land resources. The adopted phased extension policies on public facilities particularly will encourage utilization of vacant land resources. Sewer extensions to areas of medium and low priority will not be made until high priority service areas reach at least 75 percent of development capacity.” LCP 4-13.

1 high priority areas have been developed and, therefore, sewer lines may be extended to the
2 subject property. In the absence of such evidence, petitioner argues, the city cannot conclude
3 that the subject property is currently needed for orderly and compact growth, because sewer
4 service will not be extended to nonpriority areas unless 75 percent of the priority areas have
5 been developed.

6 Intervenor argues that the findings conclude that, unlike other land needs that do not
7 require a particular location, the need here is for land located adjacent to the airport. In
8 addition, intervenor argues that the city could find, based on the evidence presented, that of
9 the land located near the airport that could be developed for airport related industrial uses,
10 the subject property will result in orderly and compact development, because it is adjacent to
11 existing city limits at three points. Further, intervenor argues that there is testimony in the
12 record that there is adequate capacity to serve light industrial uses on the subject property
13 and there is nothing in the record that demonstrates that the property *cannot* be served by
14 existing sewer and water lines. Therefore, intervenor argues, the city could reasonably find
15 that the challenged decision is consistent with LCP Urbanization Element, Annexation Policy
16 1. We agree.

17 The fifth subassignment of error is sustained. The seventh subassignment of error is
18 denied.

19 **B. Specific Development Proposal**

20 LCP Annexation Policy 3 provides:

21 “Unless otherwise approved by the city, specific development proposals shall
22 be required for annexation requests on vacant land adjacent to the city to
23 insure completion within a reasonable time limit in conformance with a plan
24 approved by the city.”

25 The subject property is undeveloped, and no development proposal was submitted in
26 conjunction with the annexation petition. Petitioner argues that LCP Annexation Policy 3

1 prohibits approval of annexations that are not accompanied by development proposals, unless
2 development proposals have been already approved for the property.

3 In *Just I*, we concluded that the city’s failure to require a specific development
4 proposal undermined its findings that adequate public facilities were available to serve the
5 residential uses that would be allowed in the city’s Multiple Density residential zone. In *Just*
6 *I*, as here, the applicant did not present a specific development proposal in conjunction with
7 its annexation request.

8 For the reasons explained in *Just I*, we conclude that the city erred in failing to
9 require that a specific development proposal accompany the annexation request.
10 Accordingly, the eighth assignment of error is sustained.

11 **C. Requirements for Public Facilities (Annexation Policies 1, 2, 3 and Public**
12 **Facilities Policy 2)**

13 Petitioner argues that the challenged decision does not comply with Annexation
14 Policies 1, 2, and 3 and LCP Public Facilities and Services Element, General Policy 2 (Public
15 Facilities Policy 2).⁵ Petitioner also argues that the city’s findings with respect to Annexation

⁵ Annexation Policy 1 provides:

“The City of Lebanon shall require proof that urban services are available or can be made available to serve the property considered for annexation and that the additional demands that would be placed on those services will not overburden their present capacities.”

Annexation Policy 2 provides:

“Public rights-of-way necessary for the safe and efficient movement of traffic, bicycles and pedestrians shall be provided with the annexation and without obligation to the City of Lebanon.”

Annexation Policy 3 provides:

“Parties involved in seeking the annexation or who may be included in the annexation shall initiate a program to upgrade any urban services and/or public facilities within the area considered for annexation that do not meet standards as may be established by the City of Lebanon.”

LCP Public Facilities and Services Element, General Policy 2 provides:

1 Policies 1, 2, 3 and LCP Public Facilities Policy 2 are inadequate and not supported by
2 substantial evidence. Petitioner argues that unless a development proposal is submitted with
3 the annexation petition, the city has no basis to conclude that there is adequate water and
4 sewer capacity to serve light industrial uses located on the subject property. Petitioner further
5 argues that there is evidence that existing sewer capacity is being overallocated, and that the
6 testimony the city relied on to find that services are adequate is qualified and does not stand
7 for the principal that there is adequate capacity to serve all of the properties that have been
8 recently annexed. In addition, petitioner argues that the statements from public service
9 providers that the city relied upon to find that adequate fire, police, school, library, parks,
10 water, sewer and storm drainage can be provided are not substantial evidence to support a
11 finding that Annexation Policies 1, 2, 3 and Public Facilities Policy 2 have been met.

12 The challenged decision in this case contemplates a general use of the property for
13 aviation related distribution and storage facilities; however, the annexation is not conditioned
14 on any particular development proposal. The findings conclude that adequate public facilities
15 are in place to satisfy demands expected to be generated by the anticipated uses.⁶ In addition,

“The city shall consider impacts on community facilities before building, rezoning, or annexation requests are approved.”

⁶ The findings state, in relevant part:

“The proposed annexation complies with [Annexation Policy 1] in that some services can be made available to serve the property. Water and sanitary service can be extended west to the subject property along Oak Street * * *. The land uses identified in the preliminary development plan represent minimal or limited demand on infrastructure capacity.

“* * * * *

“Allen Dannen, City Engineer for the City of Lebanon Community Development Center submitted a written statement stating that an extension of the Oak Street water main could provide up to approximately 2,500 gallons per minute for the subject property. This is more than enough to accommodate the proposed future development project along with many more future developments in the area.

“Jim Ruef, from the City Public Works Department stated [the] wastewater treatment system has significant capacity to accommodate the proposed future development. Mr. Ruef also stated the sewerage system can reach overcapacity during times of intense flooding. To the best

1 the city relies on the city’s conditional use and site plan review processes to guarantee that
2 adequate public facilities are in place to serve any specific light industrial use of the subject
3 property at the time development commences on the subject property, if those uses will result
4 in unanticipated demands. For the reasons we identified in *Just I*, we disagree with
5 respondents that the annexation policies allow for deferral of a determination regarding the
6 adequacy of public facilities to future site design and building permit decisions. The public
7 facilities policies, like LCP Annexation Policy 1, contemplate that a specific proposal is
8 before the city. Because no specific development proposal is given for the subject property,
9 we agree with petitioner that the city’s generalized findings that rely on the theoretical needs
10 of a general type of light industrial use are not adequate to satisfy Annexation Policies 1, 2, 3
11 and Public Facilities Policy 2.

12 Petitioner makes an additional challenge in this appeal. According to petitioner, the
13 city failed to adopt findings addressing issues he raised below regarding OAR 340-041-
14 0034(3).⁷ According to petitioner, OAR 340-041-0034(3) prohibits additional sewer loads on

of the City’s knowledge, the system hit overcapacity only once, during the high flooding in 1996. However, the system will hit overflow regardless of the proposed development on the property. In other words, Mr. Ruef stated, the proposed development will not impact the [sewage] system’s ability to avoid overflow during times of high flooding. * * *

“Any inadequacies [in] urban services caused by future development are mitigated via building permit and site plan review process[es.] The Comprehensive Plan requires the City to ‘insure that adequate public facility capability exists, including adequate public water supply and sewerage capability, to handle all development proposals within its jurisdiction as part of the city’s building permit and site review procedures. * * * The subject property is zoned ‘Light Industrial.’ Under the Lebanon City Zoning Code for Light Industrial, all new development is subject to the conditional use process and requires the submission of a site plan. Both the site plan review and conditional use process give the City authority to ensure that the development provides for adequate urban services. Consequently, the City ordinance can ensure that any development after annexation will not overburden City services.

“The applicant has also submitted letters from City fire, police, school, library, parks, public works, and community development stating that the proposed annexation that these respective services can accommodate the proposed annexation and subsequent development. * * *”
Record 14A-14B (underlining in original.)

⁷ OAR 340-041-0034 sets out the Oregon Department of Environmental Quality’s policies regarding the funding of public sewer projects. It provides:

-
- “(1) Oregon’s publicly owned sewerage utilities have since 1956 developed an increasing reliance on federal sewerage works construction grant funds to meet a major portion of the cost of their sewerage works construction needs. This reliance did not appear unreasonable based on federal legislation passed up through 1978. Indeed, the Environmental Quality Commission (EQC) has routinely approved compliance schedules with deadlines contingent on federal funding. This reliance no longer appears reasonable based on recent and proposed legislative actions and appropriations and the general state of the nation’s economy.
- “(2) The federal funds expected for future years will address a small percentage of Oregon’s sewerage works construction needs. Thus, continued reliance by DEQ and public agencies on federal funding for sewerage works construction will not assure that sewage from a growing Oregon population will be adequately treated and disposed of so that health hazards and nuisance conditions are prevented and beneficial uses of public waters are not threatened or impaired by quality degradation.
- “(3) Therefore, the following statements of policy are established to guide future sewerage works planning and construction:
- “(a) The EQC remains strongly committed to its historic program of preventing water quality problems by requiring control facilities to be provided prior to the connection of new or increased waste loads;
- “(b) The EQC urges each sewerage utility in Oregon to develop, as soon as practicable, a financing plan which will assure that future sewerage works construction, operation, maintenance and replacement needs can be met in a timely manner. Such financing plans will be a prerequisite to Department issuance of permits for new or significantly modified sewerage facilities, for approval of plans for new or significantly modified sewerage facilities, or for access to funding assistance from the state pollution control bond fund. The Department may accept assurance of development of such financing plan if necessary to prevent delay in projects already planned and in the process of implementation. The Department will work with the League of Oregon Cities and others as necessary to aid in the development of financing plans;
- “(c) No sewerage utility should assume that it will receive grant assistance to aid in addressing its planning and construction needs;
- “(d) Existing sewerage facility plans which are awaiting design and construction should be updated where necessary to include [evaluation of additional alternatives, and reevaluation of the costs of listed alternatives; consideration of phased construction; and adoption of a financing plan based on local funds;]
- “(e) New sewerage works facility planning initiated after October 1, 1981 should not be approved without adequate consideration of alternatives and phased construction options, and without a financing plan which assures adequate funding for construction, operation, maintenance and replacement of sewerage facilities[;]

1 systems that are already overburdened. Petitioner argues that in this case, he presented
2 evidence that the city’s sewer system overflowed during the 1996 floods and, therefore, the
3 city’s sewer system does not have adequate capacity to withstand additional development.

4 We disagree with petitioner that OAR 340-041-0034(3) provides any approval
5 standards that are applicable to the city’s annexation decisions. OAR 340-041-0034(3)
6 merely sets out the policy considerations EQC uses to evaluate and fund public sewer
7 projects. Accordingly, the city’s failure to adopt findings addressing OAR 340-041-0034(3)
8 does not provide a basis for reversal or remand.

9 The first subassignment of error is sustained in part.⁸ The second, third and ninth
10 subassignments of error are sustained.

11 **D. Compact Urban Growth Pattern (LCP Urbanization Element, Phased**
12 **Growth Program, Policy 1)**

13 LCP Urbanization Element, Phased Growth Program, Policy 1 (Phased Growth
14 Policy) provides:

“(f) Sewerage Construction programs should be designed to eliminate raw sewage bypassing during the summer recreation season (except for a storm event greater than the one in ten year 24 hour storm) as soon as practicable. A program and timetable should be developed through negotiation with each affected source. Bypasses which occur during the remainder of the year should be eliminated in accordance with an approved longer term maintenance based correction program. More stringent schedules may be imposed as necessary to protect drinking water supplies and shellfish growing areas;

“(g) Any sewerage utility that is presently in compliance and foresees a need to plan for future expansion to accommodate growth but elects to wait for federal funds for planning and construction will make such election with full knowledge that if existing facilities reach capacity before new facilities are completed, a moratorium on new connections will be imposed. Such moratorium will not qualify them for any special consideration since its presence is deemed a matter of their choice;

“(h) The Department will continue to assist cities to develop interim and long-range programs, and construction schedules and to secure financing for essential construction.”

⁸ We deny that portion of the first assignment of error that pertains to the applicability of OAR 340-041-0034(3).

1 “[T]he city shall maintain a compact urban growth pattern that expands the
2 city limits incrementally in an orderly and efficient manner within the service
3 capabilities of the city.”

4 Petitioner challenges the planning commission findings of compliance with this criterion,
5 which state:

6 “The proposed annexation complies with the [Phased Growth Policy] in that it
7 would be an orderly and efficient expansion of City limits within City service
8 capabilities. The areas immediately to the east, north and northwest of the
9 subject property are within the City limits.” Record 105.

10 Petitioner argues that the annexation of the subject property is not consistent that plan
11 policy or with the general policy set out at n 4. As with his arguments with respect to LCP
12 Urbanization Element, Annexation Policy 1, petitioner argues that the city’s decision does
13 not respond to the argument he raised below that annexation of the subject property will
14 allow for industrial use of the property while other existing industrial lands located within
15 city limits remain vacant in violation of the 75-percent development policy. In addition,
16 petitioner argues that it is not clear from the record whether this property is within a high
17 priority service area. If it is not, petitioner argues that there is no justification for the
18 annexation, because the property will not be put to urban uses until such service is available.

19 As we explain in *Just I*, we do not know what the city means by “a compact urban
20 growth pattern.” It may be that, despite the fact that the subject property is not currently
21 within city limits, annexation is nonetheless consistent with this policy because, of all of the
22 property that has the locational characteristics described as necessary to provide airport
23 related development, the subject property provides the most “compact urban growth pattern.”
24 However, we agree with petitioner that the finding that the city did adopt is not adequate to
25 explain why such is the case.

26 The sixth subassignment of error is sustained.

27 **E. Conformance with LCP Goals and Policies (Annexation Policy 4)**

28 Annexation Policy 4 provides:

1 “No annexation shall be considered that does not conform with the Lebanon
2 Comprehensive Plan and its goals and policies.”

3 Petitioner argues that the proposed annexation is not consistent with LCP
4 development policies. As we stated in *Just I*, we do not believe that Annexation Policy 4
5 provides an independent basis for reversal or remand. If the challenged decision is consistent
6 with all applicable plan policies, then Annexation Policy 4 is satisfied as well. Here, we
7 conclude that the city erred in finding that the proposed annexation is consistent with LCP
8 Annexation Policy 3, because a specific development proposal must be submitted with an
9 annexation request. Therefore, the city also erred in concluding that Annexation Policy 4 is
10 satisfied.

11 The fourth subassignment of error is sustained.

12 The first assignment of error is sustained, in part.

13 **SECOND ASSIGNMENT OF ERROR**

14 The subject property is designated Light Industrial on the city’s comprehensive plan
15 map. In this assignment of error, petitioner argues that the city erred in failing to require that
16 intervenor submit a zoning map amendment application pursuant to Lebanon Zoning
17 Ordinance (LZO) 9.010 in addition to the annexation petition.⁹ Petitioner made the same
18 type of argument in *Just I*. As we decided there, the fact that the city did not require a
19 separate zoning map amendment process does not provide a basis for reversal or remand.
20 However, we nonetheless sustained the assignment of error, concluding that because the
21 annexation decision had to be remanded, it was appropriate to remand the zoning designation
22 decision as well. We make the same determination here.

⁹ LZO 9.010 provides, in relevant part:

“An amendment to the text of [the LZO] may be initiated * * * by application of a property owner. The request by a property owner for an amendment shall be accomplished by filing an application with the Planning Official using [prescribed forms.] A filing fee * * * shall accompany [the property owner’s application.]”

- 1 The second assignment of error is sustained.
- 2 The city's decision is remanded.