BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

JAMES JUST,
Petitioner,

vs.

CITY OF LEBANON,
Respondent,

and

THE CORNELL FAMILY TRUST,
Intervenor-Respondent.

LUBA No. 2003-044

FINAL OPINION
AND ORDER

Appeal from City of Lebanon.

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

No appearance by City of Lebanon.

Wallace W. Lien, Salem, filed the response brief and argued on behalf of intervenor-respondent. With him on the brief was Wallace W. Lien, PC.

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

REMANDED 08/22/2003

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

Opinion by Briggs.

NATURE OF THE DECISION

Petitioner appeals a city ordinance that annexes approximately 61 acres to the city and zones the property Residential Mixed Density (RM).

MOTION TO INTERVENE

The Cornell Family Trust (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 includes approximately 61 undeveloped acres, and has been cultivated for grass seed in the recent past. The property is located outside city limits, with its eastern boundary abutting city limits. The property is located within the city's urban growth boundary (UGB), which is coterminous with the parcel's southern boundary. The property is designated Mixed Density Residential on the Lebanon Comprehensive Plan (LCP) map. The subject property is zoned Urban Growth Area, Urban Growth Management with a 10-acre minimum parcel size (UGA-UGM-10) by Linn County. The challenged decision annexes the property to the city and applies the city's RM zoning designation to the property.

The property is bounded on the east by South Fifth Street, a designated collector street improved to county standards. Oak Creek traverses the northeastern portion of the property and renders approximately 10 acres unsuitable for residential development. Surrounding land uses include: agricultural fields to the east, west, and northwest; rural residences to the north, northeast, and southwest; and a private school campus to the south. None of the properties that abut the property on the north, west or south are within city limits. The private school is located outside the UGB, in unincorporated Linn County.

A 16-inch water main is located along South Fifth Street. A 10-inch sewer line is located to the north of the subject property, and would need to be extended to the property, if development occurs prior to the construction of a planned interceptor sewer line. A

development proposal was not submitted in conjunction with the annexation request, however, it is anticipated that the property will be developed for residential use.

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

MOTION TO FILE REPLY BRIEF

Petitioner moves to file a reply brief to respond to intervenor's arguements that petitioner does not have standing to appeal the city's decision. A reply brief accompanies the motion. A reply brief is warranted to respond to a challenge to a petitioner's standing. Petitioner's motion is granted.

MOTION TO DISMISS

Intervenor moves to dismiss the appeal on the grounds that petitioner does not have standing to bring this appeal because he has not demonstrated that the challenged decision has any practical effect on him. Intervenor also argues that because petitioner appeared below as a representative of Friends of Linn County, petitioner does not have standing to appeal as an individual.

A. Practical Effect

Intervenor challenges petitioner's standing based on the Court of Appeals' decision in *Utsey v. Coos County*, 176 Or App 524, 32 P3d 933 (2001), *rev allowed* __ Or __ (2002), *dismissed at intervenor's request* __ Or __ (2003). In *Utsey*, the court held that an appellant seeking review by the Court of Appeals must demonstrate that the outcome of the proceedings will have a practical effect on that party. According to intervenor, petitioner does not live in the City of Lebanon, the decision will not have any practical effect on him, and we should dismiss the case for those reasons. As intervenor acknowledges, we have already rejected similar challenges to standing at LUBA. *See Central Klamath County CAT v. Klamath County*, 41 Or LUBA 524, 527 (2002) (standing before LUBA determined by statute rather than practical effect). Intervenor urges us to reconsider our position that a

petitioner may have standing to appeal a local government's land use decision to LUBA under ORS 197.830(2), even though that petitioner may not have standing to seek judicial review of LUBA's decision by the Court of Appeals. However, intervenor provides no compelling reason to revisit our prior decisions, and we decline to do so.

B. Individual Standing

Intervenor contends that petitioner did not appear before the city on his own behalf, but rather appeared as a representative of the organization Friends of Linn County. According to intervenor, petitioner therefore does not have standing to pursue this appeal as an individual under ORS 197.830(2).

Petitioner stated orally and in writing that he was appearing both on his own behalf and for Friends of Linn County. However, intervenor argues that because petitioner failed to specify which parts of his testimony he was submitting as an individual and which parts of his testimony he was submitting for the organization, he has not demonstrated that he appeared in his individual capacity. We do not agree. When a person specifically states that he is appearing on his own behalf *and* on behalf of an organization he need only identify the parts of his testimony that correspond to his personal or representative capacities where he intends to present limited testimony in each capacity. Where a petitioner does not expressly limit his testimony to his appearance in a particular capacity, we will assume the entirety of his testimony is submitted in both capacities. Petitioner has shown that he appeared on his own behalf before the city. Therefore, petitioner has satisfied the appearance requirement of ORS 197.830(2)(b) and has standing to appeal the city's decision to LUBA.

Intervenor's motion to dismiss is denied.

INTRODUCTION

This appeal is one of a series of appeals that petitioner and Friends of Linn County have filed challenging city annexation and zoning map designation decisions. The petitions for review follow the same format and, with minor variations, allege the same errors. The

variations in the assignments of error reflect the differing locations of the parcels to be annexed, public services that are available and needed to serve the parcels, and proposed uses on those parcels. We issue final opinions in five of those appeals today. *Just v. City of Lebanon*, __ Or LUBA __ (LUBA No. 2003-043, August 22, 2003); *Friends of Linn County v. City of Lebanon*, __ Or LUBA __ (LUBA No. 2003-046, August 22, 2003); *Just v. City of Lebanon*, __ Or LUBA __ (LUBA No. 2003-066, August 22, 2003); and *Just v. City of Lebanon*, __ Or LUBA __ (LUBA No. 2003-067, August 22, 2003). This opinion addresses the common arguments, and discusses those arguments in some detail. The other opinions, to the extent they concern assignments of error based on the same arguments, will be less detailed and when appropriate will refer to the analyses set out in this opinion.

FIRST ASSIGNMENT OF ERROR

A. Statewide Planning Goal and Statutory Arguments

A central theme in petitioner's first assignment of error is that, *at the time property is annexed and zoned to allow urban development*, (1) a specific development proposal must accompany the annexation and zoning request; and (2) the urban services that will be required for that specific development proposal must either already be in place or, if not, must be provided as part of that development proposal. Petitioner argues that these requirements are imposed by Goals 11 (Public Facilities and Services) and 14 (Urbanization).[1] Petitioner also argues that ORS 197.752 and 197.754 impose these same

[1] Goal 11 provides, in relevant part:

> "Urban and rural development shall be guided and supported by types and levels of urban and rural public facilities and services appropriate for, but limited to, the needs and requirements of the urban, urbanizable, and rural areas to be served. A provision for key facilities shall be included in each plan. * * *
>
> "* * * * *
>
> "[K]ey facilities [include] the following: police protection; sanitary facilities; storm drainage facilities; planning, zoning and subdivision control; health services; recreation facilities and services; energy and communication services; and community governmental services."

1 requirements.[2] Finally, in nine subassignments of error, petitioner argues that particular city

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Goal 14 provides, in relevant part:

> "Land within the boundaries separating urbanizable land from rural land shall be considered available over time for urban uses. Conversion of urbanizable land to urban uses shall be based on consideration of:
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> "(1) Orderly, economic provision for public facilities and services;
>
> "(2) Availability of sufficient land for the various uses to insure choices in the market place;
>
> "(3) LCDC goals or the acknowledged comprehensive plan; and,
>
> "(4) Encouragement of development within urban areas before conversion of urbanizable areas."

"Urban Land" is defined in the goals as:

> "[T]hose places which must have an incorporated city. Such areas may include lands adjacent to and outside the incorporated city and may also:
>
> "(a) Have concentrations of persons who generally reside and work in the area[; or]
>
> "(b) Have supporting public facilities and services." Statewide Planning Goals Definitions 6.

"Urbanizable Land" is defined in the goals as:

> "[T]hose lands within the urban growth boundary * * * which are indentified and
>
> "(a) Determined to be necessary and suitable for future urban uses[;]
>
> "(b) Can be served by urban services and facilities[; or]
>
> "(c) Are needed for the expansion of an urban area." Statewide Planning Goals Definitions 6.

[2] ORS 197.752 provides:

> "(1) Lands within urban growth boundaries shall be available for urban development concurrent with the provision of key urban facilities and services in accordance with locally adopted development standards.
>
> "(2) Notwithstanding subsection (1) of this section, lands not needed for urban uses during the planning period may be designated for agricultural, forest or other nonurban uses."

ORS 197.754 provides, in relevant part:

annexation policies and LCP policies impose those requirements. We first address petitioner's goal and statutory arguments before turning to the annexation and LCP policies that petitioner cites in his subassignments of error.

1. Statewide Planning Goals 11 and 14

Petitioner argues Goal 11 and 14 apply directly to the city's annexation decision because LCP Administrative Policy 8 adopts the goals.[3] It is not altogether clear to us that LCP Administrative Policy 8 actually adopts the Statewide Goals in the sense that individual annexation decisions must be reviewed against the goals. However, petitioner is correct that the city's plan and implementing regulations must be interpreted and applied consistently with the goals. Therefore, the threshold question is whether the city's decision to annex and apply city zoning to annexed property would be inconsistent with Goals 11 and 14, if that decision is adopted without requiring a specific development proposal and without requiring that the urban services and facilities that such a specific development proposal will require either be in place or be provided with the specific development proposal.

The relevant language from Goals 11 and 14 is set out at n 1. The short answer to petitioner's Goal 11 and 14 arguments is that neither goal identifies annexation or application of city zoning as the decision points at which (1) a specific development proposal must be approved and (2) any public service or facility inadequacies at the property must be

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> "(1) A local government may identify land inside an urban growth boundary for which the local government intends to provide urban services within the next five to seven years. The local government may evidence its intent by adopting a capital improvement plan reasonably designed to provide the urban services.
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> "(2) A local government that identifies an area for planned urban services and adopts a capital improvement plan may zone the area for urban uses. A city that identifies land that is outside the city's boundary but inside the urban growth boundary shall coordinate with the appropriate county to zone the area for urban uses."

[3] LCP Administrative Policy 8 provides:

> "The City of Lebanon hereby adopts the applicable Statewide Planning Goals as they apply to the community, and reinforces them through specific goals, objectives, and policies in response to community needs."

corrected. While it might be *consistent* with Goals 11 and 14 for a city to adopt a comprehensive plan and land use regulations that impose those requirements at the time property is annexed and city zoning replaces county zoning, neither goal mandates development approval and provision of all urban services and facilities at the time of annexation. The many mandates that are included in those goals are much more general and leave to local governments significant flexibility in determining how to ensure an adequate supply of developable urbanizable lands that have the necessary public facilities and services to support urban development. Petitioner's approach would impose a significant limit on a city's ability to annex land. Whatever public policy reasons might support assigning such limits to city annexation decisions, there is no basis in the language of either Goal 11 or Goal 14 to limit city annexation decisions in the manner that petitioner argues.

We reject petitioner's argument that, under Goals 11 and 14, a city may not annex property unless the city also approves a specific development proposal for the annexed property and unless the full panoply of urban services and facilities is already available to the annexed property or provided as part of an approved specific development proposal.

2. ORS 197.752 and 197.754

ORS 197.752 and 197.754 are set out at n 2. For essentially the same reasons we reject petitioner's Goal 11 and Goal 14 arguments, we reject petitioner's argument that ORS 197.752 and 197.754 mandate approval of a specific development proposal and provision of all urban services and facilities at the time of annexation and application of city zoning that would allow urban uses. ORS 197.752(1) simply mandates that land within the urban growth boundary must be made available for urban development "concurrent with the provision of key urban facilities and services in accordance with locally adopted development standards." ORS 197.752(2) states an exception to the requirement in ORS 197.752(1) that appears to authorize not making land that could be provided "key urban facilities and services in accordance with locally adopted development standards" available for urban development, if

such land is "not needed for urban uses during the planning period." ORS 197.752 does not address annexation and does not assign the significance to a city decision to annex and zone property that petitioner argues it does.

Turning to ORS 197.754(1), that statute simply authorizes a city to identify land within its urban growth boundary that it "intends to provide urban services within the next five to seven years" and to adopt a capital improvement plan to implement that intent. ORS 197.754(2) then provides that after a city has adopted such "a capital improvement plan [it] may zone the area for urban uses." Like ORS 197.752, ORS 197.754 does not specifically mention annexation decisions at all. ORS 197.754(2) provides that a city "may" zone an "area for urban uses" if the area is subject to a capital improvement plan under ORS 197.754(1). Petitioner reads a negative inference into ORS 197.754(2) so that it would provide that a city "may" *not* annex or zone an area to allow urban development *unless* that land is already subject to such a capital improvement plan. While ORS 197.754(1) specifies one way to allow land within an urban growth boundary to be provided needed urban facilities and services and developed, it does not specify the *only way*. In particular, for purposes of this appeal, ORS 197.754 does not prohibit annexing land or zoning land for urban uses and requiring that needed urban facilities and services be provided at the time a specific development plan for that annexed and zoned land is approved at a later date.

We reject petitioner's argument that, under ORS 197.752 and 197.754, a city may not annex and zone property for urban use unless the city also approves a specific development proposal for the annexed property and unless all urban services and facilities are already available to the annexed property or provided as part of an approved specific development proposal. Having rejected petitioner's arguments that these requirements are imposed by Goals 11 and 14 and ORS 197.752 and 197.754, we turn to petitioner's arguments that particular city annexation policies and LCP policies impose those requirements at the time of annexation, without regard to whether the goals and statutes require that the city do so.

B. Annexation Policy and LCP Policy Arguments

1. Need for Additional RM-Zoned Land (Annexation Policy 5 and LCP Urbanization Element, Annexation Policy 1)

In the City of Lebanon, annexations may be initiated at the property owner's request. Annexation requests are evaluated pursuant to annexation policies set out in City of Lebanon Resolution 11 (1982) (Annexation Policies) and must be consistent with LCP policies.

Annexation Policy 5 provides:

> "It shall be the burden of proof of the applicant that a public need exists for the proposed annexation and that the annexation is in the public's interest."

LCP Urbanization Element, Annexation Policy 1 provides:

> "The city shall annex land only within the Urban Growth Boundary on the basis of findings that support the need for additional developable land in order to maintain an orderly compact growth pattern within the city's service capability."

The city's 1997 Buildable Lands Inventory (1997 BLI) estimated that the city will need approximately 390 acres of residential land to be developed over the next 20 years.[4] The city found that some of that need has been met by other annexations, but that an additional 281 acres of residential land must be annexed to the city to satisfy the city's 20-year need for residential land. The city also found that the annexation of the subject property will help to satisfy that need.[5]

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[4] The 1997 BLI states, in relevant part:

> "Needed acreage and housing projections reveal that if the current housing density and mix remains constant, Lebanon will need only 390 acres or approximately 25% of its 1,331 available vacant residential acres to support residential development over the next 20 years." Record 90.

[5] The city's findings regarding public need state:

> "The proposed annexation complies with [Annexation Policy 5], in that a public need exists regarding a variety of issues. Based on current and projected rates of population growth, the City has a need to incorporate more residential land to accommodate such projected growth. If the land is not incorporated to provide areas of higher densities of residential development, then the rural areas will be under increased pressure to urbanize thus threatening to create sprawl conditions and encroachment of farmland. The City's 1997 Residential Lands Study

Petitioner argues that the 1997 BLI concluded that the city has almost 1000 more acres of residentially planned land within its UGB than is needed to satisfy the city's housing requirements over the next 20 years. Petitioner explains that the 1997 BLI does not distinguish between vacant, developable residential lands that were already located within city limits and vacant lands outside city limits. Petitioner argues that as a result, there is no evidence in the record to support the city's conclusion that *any* land must be annexed to the city to allow for the development of needed housing.

A copy of the city's 1997 BLI is not in the record. An excerpt of the 1997 BLI is attached to intervenor's brief. However, we cannot tell from that excerpt whether the BLI concludes that 390 acres must be annexed to the city to meet the city's 20-year housing needs or whether the 1997 BLI simply concludes that only 390 of the 1,331 acres of residentially designated land that is already included within the UGB will be needed within the 20-year planning period, without identifying how many of those needed 390 acres are already within the city and already planned and zoned for residential use. Therefore, the city's findings that the proposed annexation is needed and is consistent with Annexation Policy 5 and LCP Urbanization Element, Annexation Policy 1 are not adequate and are not supported by

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> states that the City will need at least 390 acres of land to support residential development to the year 2017. Only 109 acres of land have been annexed into the City since 1997, and several of these properties were already developed. Thus, there is a need for at least 281 more acres of land to be annexed into the City in order to meet residential housing requirements by 2017.
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> "The area within the UGB has already been determined to be necessary for urbanization. The Comprehensive Plan specifically states * * * that the UGB contains urbanizable lands [that] are:
>
> "1. Determined to be **necessary** and suitable for future urban uses;
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> "* * * * *
>
> "3. Are **needed** for the expansion of the urban area.
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> "There is no requirement in the Comprehensive Plan or Zoning Ordinance that says land within city limits available to meet the public need must be identified and inventoried." Record 11F-11G (bolding in original).

substantial evidence.

Accordingly, the fifth and seventh subassignments of error are sustained.

2. Requirement for a Specific Development Proposal (LCP Urbanization Element Annexation Policy 3)

LCP Urbanization Element Annexation Policy 3 provides:

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

Petitioner argues that this policy requires that a development proposal be submitted in conjunction with the annexation request. Because no development proposal was submitted to the city for the annexed property, petitioner argues that the city's decision violates LCP Urbanization Element Annexation Policy 3. Intervenor responds that petitioner misreads the policy. According to intervenor, the city interpreted the policy to allow the city the discretion to defer a specific development proposal until after the annexation.[6] Intervenor argues that the interpretation is consistent with the language of the policy and therefore LUBA should defer to that interpretation.

We must sustain a local government's interpretation of its own legislation unless it is inconsistent with the express language of the plan or regulation, is inconsistent with the purpose of the plan or regulation, is inconsistent with the underlying policy providing the basis for the plan or regulation, or is contrary to a state statute, land use goal or rule that the comprehensive plan provision or land use regulation implements. ORS 197.829(1); *Church*

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[6] The city's findings state, in relevant part:

> "The unambiguous language of [LCP Urbanization Element Annexation Policy 3] allows the City to waive the requirement for a specific development proposal. The provision of key urban facilities and services is made in accordance with locally adopted development standards. These standards include the ability of the City to waive the development proposal requirement. This makes sense from an economic standpoint, since few developers will go to the time and expense of coming up with a detailed set of development plans unless they are assured that property can be annexed in the first place. The City is not requiring a specific development plan in this case." Record 11H-11I.

v. Grant County, 187 Or App 518, __ P3d __ (2003).[7]

We do not agree with the city and intervenor that LCP Urbanization Element Annexation Policy 3 can be fairly read to allow the city to defer submission of a specific development proposal until an unspecified future date. The city's urban growth management agreement with the county permits applicants to seek and receive specific development approval from the city, prior to annexation, provided the application complies with relevant city standards. *See* City of Lebanon/Linn County Urban Growth Management Agreement (1995) 5 (city and county may enter into delayed annexation agreements with a developer in order to permit city approval of a development plan based on city development standards prior to annexation). When read in context with the urban growth management agreement, the first clause of LCP Urbanization Element Annexation Policy 3, "[u]nless otherwise approved by the city," allows the city to consider a request to annex vacant land without requiring that a specific development proposal accompany the annexation request, if a specific development proposal has already been "approved by the city." The urban growth management agreement identifies at least one instance where a specific development proposal may already have been approved by the city for land that has not yet been annexed to the city. That clause does not provide the city with open-ended authority to simply

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[7] ORS 197.829(1) provides:

> "The Land Use Board of Appeals shall affirm a local government's interpretation of its comprehensive plan and land use regulations, unless the board determines that the local government's interpretation:
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> "(a) Is inconsistent with the express language of the comprehensive plan or land use regulation;
>
> "(b) Is inconsistent with the purpose for the comprehensive plan or land use regulation;
>
> "(c) Is inconsistent with the underlying policy that provides the basis for the comprehensive plan or land use regulation; or
>
> "(d) Is contrary to a state statute, land use goal or rule that the comprehensive plan provision or land use regulation implements."

"waive" the LCP Urbanization Element Annexation Policy 3 requirement for a specific development proposal where no specific development proposal has been "otherwise approved by the city." The city's reading of the first clause of LCP Urbanization Element Annexation Policy 3 to grant it unqualified discretion to "waive" the requirement for a specific development plan is not consistent with the language of LCP Urbanization Element Annexation Policy 3.

Our reading of LCP Urbanization Element Annexation Policy 3 is also supported contextually by other annexation and LCP policies that seem to contemplate consideration of specific development proposals when assessing the adequacy of public facilities and services to serve the annexed property. *See*, *e.g.*, Annexation Policies 1, 2, 3 and LCP Public Facilities and Services Element, General Policy 2 (Public Facilities Policy 2), set out in n 9, and discussed later in this opinion. Read together, those policies anticipate that the city will consider the impact of a specific development proposal on public facilities, and whether, as proposed, the development and annexation will foster the "orderly and efficient" growth of the city.[8]

The eighth subassignment of error is sustained.

3. Requirements for Adequate Public Facilities (Annexation Policies 1, 2, 3 and Public Facilities Policy 2)

Petitioner argues that the challenged decision does not comply with Annexation

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[8] We recognize that our interpretation of LCP Urbanization Element Annexation Policy 3 is somewhat at odds with the LCP Public Facilities Capability Policy, which provides:

> "The city shall insure that adequate public facility capacity 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." LCP 4-P-2.

However, we read this policy to require that the city assure that adequate public facilities are in place when evaluating specific development proposals for property that is *already* located within city limits. This requirement is in addition to the requirements imposed by the Annexation Policies and Public Facilities Policy 2, which require an evaluation of the city's capacity to absorb the additional demands placed on its public facilities by virtue of a proposed annexation, and to take appropriate steps to ensure that adequate facilities are available for its annexed property at the time the property is annexed.

Policies 1, 2, and 3, and Public Facilities Policy 2.[9] All of these policies require a demonstration that public facilities are available or can be made available to serve the property. Petitioner argues that the city misconstrued these policies by not interpreting them to require that all urban services (1) are adequate to serve the specific development proposed, and (2) are in place before the annexation is approved or provided with the development. Petitioner argues that if those urban services are not available, those policies require that intervenor provide a timetable and funding for those services as a condition of annexation. In addition, petitioner argues that the city failed to address *all* relevant urban services that residential development of the property will require. According to petitioner, those services include: schools, parks, water and sewerage facilities, storm drainage, solid waste facilities, and fire and police protection. Petitioner further argues that the city may not rely on the fact that the currently vacant property has no demand for those services and facilities. Petitioner contends that the required inquiry under these policies is whether the relevant facilities and services are adequate to serve the specific proposed development that annexation will make

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[9] 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:

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

possible.

Finally, petitioner argues that even if the policies allow the city to defer the implementation of a public facilities plan to ensure adequate facilities are available to serve the property, the city's conclusion that such public facilities will be made available is not supported by substantial evidence. Petitioner argues that without a specific development proposal for the property, there is no way for the city to make the assessment as to whether the types and levels of services that will be needed to serve the property are available or will be made available.

The city found that, with respect to Annexation Policy 1, there were two plausible interpretations of that policy.

> "The language of [this] policy means that urban services are available or can be made available to serve the property in its current state. However, the policy could be interpreted to mean that services are available or can be made available to serve the property when it is developed. Both interpretations are plausible and are met by the applicant." Record 11B.

The city found that the proposed annexation is consistent with both interpretations of Annexation Policy 1 because urban services, such as public water and transportation facilities, are available and adequate to serve the property in its current undeveloped state, and because the annexation is conditioned on the submittal of a development proposal in the future that will assure adequate urban services for that particular development.[10] The city

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[10] Those conditions of approval are:

> "1. Future development of the site will require a right-of-way dedication for the Reeves Parkway. Additional improvements as needed to [South Fifth] Street, Reeves Parkway, and local street extensions will be determined by planning staff and public works as part of any development plan and site plan review.
>
> "2. Additional water main extensions and connection to City water as required for future site development will be determined by planning staff and public works as part of any development plan and site plan review.
>
> "3. Upon review of any future development plan and site plan review, the City shall require a right-of-way dedication along Oak Creek in order to facilitate City

adopted similar findings with respect to Annexation Policies 2 and 3, and Public Facilities Policy 2.[11] In the case of each of these policies, the city defers its determinations concerning the need for public facility improvements to serve a specific proposed development of property until a specific development proposal is submitted in the future.

We agree with petitioner that the policies that he cites are not concerned with the adequacy of public facilities and services to serve the subject property in its current

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maintenance of the drainage way. Piped and/or surface drainage improvements shall be required as determined by planning staff and public works.

"4. A review of available sewer capacity will be made at the time of a specific development proposal. Limitations in sewer discharge and/or downstream improvements to the collection system may be required at that time, as well as imposition of costs for service lines, plumbing permit fees, and a sanitary sewer system development charge. Theses costs and conditions shall be determined by planning staff and public works as part of any development plan and site plan review." Record 17J.

[11] Those findings state, in relevant part:

"[Annexation Policy 2 unambiguously] requires that the necessary rights-of-way be based on the property as it exists at the time of annexation. The [subject] property * * * consists of a farm with no residential uses. The adjacent county road, [South Fifth] Street, has a 60 [foot] right-of-way and is sufficient to provide safe and efficient movement of traffic to and from the property to be annexed based on its current development * * *.

"Alternatively, the proposed annexation also complies with [Annexation Policy 2] in that appropriate public right-of-way will be provided as the property actually develops. * * *"

"[Annexation Policy 3] requires a program to update services that 'do not meet standards' rather than services that 'will' not meet standards. The [subject] property is not currently serviced by urban utility services other than water and streets. * * * [Intervenor] cannot present a program to upgrade the other facilities because they do not exist. Other types of services (police, fire, etc.) currently serve the subject property and the annexation itself will not cause any increased demand on those services. As currently developed, the property does not require any upgrade in services.

"Alternatively, the proposed annexation complies with [Annexation Policy 3] in that public infrastructure improvements will be provided as the property actually develops * * *." Record 11D.

"[Public Facilities Policy 2] states that the City shall consider impacts on community facilities before annexation requests are approved.

"The findings * * * discuss the potential impacts on community facilities, both in the property's current state, and if developed for residential use. * * * The proposed annexation complies with this policy in that the annexation will not result in an adverse impact on community facilities." Record 11I.

unincorporated and undeveloped status. Rather, the policies are concerned with the adequacy of public facilities and services for the specific development proposal that the annexation decision will make possible.

Given the absence of a specific development plan, which would allow the city to know whether existing public facilities are adequate to serve that development, the city was in no position to establish that adequate public facilities are or will be in place at the time of development. Therefore, the city did the only thing it could do after it erroneously interpreted LCP Urbanization Element Annexation Policy 3 to allow it to consider and approve the annexation proposal without a specific proposal for development of the annexed property property—it deferred final determinations on whether particular public facilities are inadequate, and it deferred its final determination of what improvements and dedications will be required of the applicant to make any inadequate facilities adequate to serve the annexed property. Just as the city erroneously interpreted LCP Urbanization Element Annexation Policy 3 to allow it to consider and approve the annexation proposal without a specific proposal for development of the annexed property, the city erroneously interpreted Annexation Policies 1, 2, and 3 and Public Facilities Policy 2 to allow it to defer identifying and requiring that the applicant consider the impacts of its proposed development and to provide any dedications and make any improvements to transportation, sewer, water and stormwater facilities that will be needed to adequately serve the proposed development.

We also agree with petitioner that the city must consider the adequacy of all urban services and establish that they are adequate to serve the specific proposed development. There is simply no support in the language of the policies for the city to limit their applicability to streets, drainage, water and sanitary sewer. If the city now believes that the adequacy of only those four urban services need be considered at the time of annexation, it must amend the policies to so provide.

The first, second, third and ninth subassignments of error are sustained.[12]

4. Compact Urban Growth Pattern (LCP Urbanization Element, Phased Growth Program, Policy 1)

LCP Urbanization Element, Phased Growth Program, Policy 1 (Phased Growth Policy) provides in pertinent part:

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

Petitioner's argument under this assignment of error is three-fold. Petitioner first argues that the proposed annexation is not "compact" because the subject property juts out into the surrounding rural landscape. The city's findings regarding compact growth state:

> "The proposed annexation complies with this policy. The areas immediately to the east of the subject property are within the City limits, as are the properties further to the northwest * * *. By annexing this larger parcel, it will provide 'economies of scale' by spreading the cost of improvements over several lots, as recognized in * * * the Comprehensive Plan. Future development of the parcel will extend utility services, allowing intervening property owners to tie into those services. This will reduce their costs and increase their incentive to annex into the City, leading to an orderly, compact growth pattern." Record 11G-11H.

Second, petitioner repeats his arguments regarding the availability of urban services. As we have already discussed, we agree with petitioner that the policies he cites require that the applicant submit a specific development proposal and require that adequate public facilities for that development proposal be in place or be provided with the development. However, petitioner's repetition of those arguments under Phased Growth Policy 1 offers no additional basis for remand.

Third, petitioner also argues that because the city did not consider whether part or all of the 390 acres of needed residential land may already be located within the city, it is not

[12] Because we agree with petitioner that the city misconstrued the relevant policies, we do not address petitioner's findings and evidentiary challenges.

possible to determine whether the challenged annexation will simply cause land that is already within the city to be bypassed in favor of the newly annexed property at the fringe of the city. Petitioner contends that if this is the case, the annexation cannot be viewed as producing a "compact urban growth pattern."

While the concept of a "compact urban growth pattern" is somewhat subjective, we agree with petitioner that until the city establishes that there is not sufficient vacant land already within the city to meet its 20-year need for residentially planned and zoned land the disputed annexation appears to be at odds with a policy that favors a "compact urban growth pattern" and incremental, orderly and efficient expansion of city limits.

The sixth subassignment of error is sustained.

5. Conformance with LCP Goals and Policies (Annexation Policy 4)

Annexation Policy 4 provides:

> "No annexation shall be considered that does not conform with the Lebanon Comprehensive Plan and its goals and policies."

The city's findings state that the proposed annexation complies with the comprehensive plan and discusses how the proposal is consistent with the mixed density residential comprehensive plan designation along with the RM zoning designation. Record 11F. The decision goes on to discuss certain other benefits that will accrue from the annexation, including a creekside trail system, improved right-of-ways, and increased housing opportunities. Petitioner argues that the city failed to address issues petitioner raised regarding compliance with the city's Annexation Policies and the LCP policies discussed in the above subassignments of error. Petitioner also argues that the findings are not supported by substantial evidence.

We have already concluded that the city erred in interpreting LCP Urbanization Element Annexation Policy 3 to allow the city to consider and approve the disputed annexation request without a specific development proposal. We have also concluded that

the city misinterpreted Annexation Policies 1, 2, 3 and Public Facilities Policy 2 to allow the city to defer the public facility considerations mandated by those policies until a specific development proposal is submitted. We therefore agree with petitioner that the city erred in concluding that the proposed annexation conforms with the LCP and its goals and policies relating to annexations.

The fourth subassignment of error is sustained.

The first assignment of error is sustained.

SECOND ASSIGNMENT OF ERROR

Lebanon Zoning Ordinance (LZO) 3.050 provides:

> "All areas annexed to the City shall be placed in a zoning classification in accordance with the adopted Comprehensive Plan. If a zoning designation other than one in accordance with the Comprehensive Plan is requested by an applicant, the zoning requested shall not be granted until the plan is amended to reflect concurrence."

The city found:

> "This proposed annexation is in compliance with Zoning Ordinance Section 3.050. Currently the subject property does not have a City zoning designation because it is not within the City limits. However, since the property is within the City's Urban Growth Boundary, the current Comprehensive Plan designation on the subject property is Mixed Density Residential. The corresponding City zoning designation for a Comprehensive Plan designation of Mixed Density Residential is Residential Mixed Density (RM). The applicant is requesting a Residential Mixed Density (RM) zoning designation for the subject property. * * *
>
> "The unambiguous language of LZO 3.050 does not require a separate zone change application * * * in order to change the zoning on the subject property in conjunction with its annexation." Record 11I.

The property is designated Mixed Density Residential on the LCP map. Petitioner argues that three residential zoning designations could be potentially applied to the subject property: RM, Residential Low Density (RL) and Residential High Density (RH). LCP 5-6. Petitioner does not dispute that the RM zoning that the city applied to the annexed property is a zoning map designation that is consistent with the annexed property's Mixed Density

Residential LCP map designation.

We understand petitioner to suggest that there are three zoning map designations that could have been applied "in accordance with the [LCP]," as LZO 3.050 requires. However, we do not understand petitioner to argue that the city's error under the second assignment of error was selecting the RM zone rather than one of the other two zones that the city could have applied without first amending the existing Mixed Density Residential LCP map designation. Neither does petitioner identify any standards that govern the city's selection of a zone among the three that it could have applied. As far as we can tell, petitioner's argument under the second assignment of error only faults the city for failing to require a separate zoning map amendment application and for failing to process that zoning map amendment application in the manner required by LZO 9.010.[13]

Petitioner does argue that the city erred in failing to respond to arguments petitioner made before the city council that before the RM zoning map designation is applied, the city must find that (1) there is a demonstrated community based need for the proposed zoning map amendment; (2) that the property described in the application is the site that best addresses this community based need; (3) that the proposed amendment is consistent with LCP goals and policies; (4) that the amendment is orderly and timely, considering the pattern of development in the area; and (5) that utilities and services can be efficiently provided to serve the proposed uses. Petitioner asserts that because those requirements are included on the city's zoning map amendment application form, those requirements must also be met when a zoning map designation is applied to property annexed to the city.

We do not agree with petitioner that, in the absence of specific city legislation to that

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[13] 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.]"

effect, a zoning map amendment form sets out applicable approval standards. *See St. Johns Neighborhood Assoc. v. City of Portland*, 38 Or LUBA 275, 289-290 (2000) (questioning whether development director had authority to establish additional standards for establishing eligibility for a fee waiver when those standards were not based on provisions of the city's zoning code). In any event, the first, second and fourth of the above requirements do not appear to contemplate the circumstance we have in this case, *i.e.*, the first application of city zoning to property that already has a city comprehensive plan map designation. It is difficult to see how the city could apply those requirements in any meaningful way in a circumstance where property already has a city comprehensive plan map designation, with a limited number of implementing zoning map designations, but has never had a city zoning map designation. Petitioner may well be correct that there are LCP goals or policies that would favor selecting RS or RH zoning for the subject property over the RM zoning that the city applied. However, as we have already noted, petitioner does not appear to argue that the city's error was in not selecting one of those other zones.

We conclude that petitioner's second assignment of error does not provide a basis for remanding the city's rezoning decision, and for that reason we deny the second assignment of error. Nevertheless, the city's decision to rezone the subject property depends on the validity of its annexation decision. Because we sustain petitioner's first assignment of error, the city's annexation decision must be remanded. Accordingly the city's rezoning decision must also be remanded, albeit not for the reasons advanced by petitioner under his second assignment of error.

The city's decision is remanded.