

1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

3
4 JANET MILNE, PAUL SATTER
5 and RIVERSIDE NEIGHBORHOOD
6 ASSOCIATION,
7 *Petitioners,*

8
9 and

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11 1000 FRIENDS OF OREGON,
12 *Intervenor-Petitioner,*

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14 vs.

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16 CITY OF CANBY,
17 *Respondent,*

18
19 and

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21 NORTHWOOD INVESTMENTS,
22 *Intervenor-Respondent.*

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24 LUBA No. 2003-102

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26 FINAL OPINION
27 AND ORDER

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29 Appeal on remand from the Court of Appeals.

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31 Edward J. Sullivan, Portland, represented petitioners.

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33 Andrew H. Stamp, Portland, represented intervenor-petitioner.

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35 No appearance by City of Canby.

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37 Mark J. Greenfield, Portland, represented intervenor-respondent.

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39 HOLSTUN, Board Chair; BASSHAM, Board Member; DAVIES, Board Member,
40 participated in the decision.

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42 REMANDED

01/26/2005

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

1 Holstun, Board Chair.

2 In our decision dated January 14, 2004, we affirmed the city’s decision amending its
3 urban growth boundary (UGB) utilizing the “unneeded but committed” doctrine. *Milne v.*
4 *City of Canby*, 46 Or LUBA 213 (2004). Petitioners appealed our decision to the Court of
5 Appeals, who overruled their earlier decisions extending the “unneeded but committed”
6 doctrine to UGB *amendments*, and reversed and remanded our decision. *Milne v. City of*
7 *Canby*, 195 Or App 1, 96 P3d 1267 (2004).

8 The city’s decision amending its UGB relied upon the “unneeded but committed”
9 doctrine to avoid addressing the “need factors” that must be addressed to amend a UGB.
10 Therefore, the city cannot approve the application, without addressing the need factors, based
11 on this doctrine. The Court of Appeals, however, stated that:

12 “* * * we conclude that this court’s decisions in *Halvorson* and *Baker* must be
13 overruled to the extent that the court indicated that the ‘unneeded but
14 committed’ doctrine applied to UGB amendments. This does not necessarily
15 mean, however, that the city may not convert the disputed property here from
16 rural to urbanizable land without demonstrating that all seven factors of Goal
17 14 (*i.e.*, the two need factors and the five locational factors) are satisfied. In
18 the absence of a change in the governing law, it is possible that the city may
19 use the existing mechanisms for amending a UGB—that is, take an exception
20 to Goal 14 as authorized by LCDC or use the periodic review process in which
21 all of the goals and areas of jurisdiction are considered.” *Id.* at 19.

22 Because the Court of Appeals left open the possibility that the proposed amendment
23 could be granted on other grounds, we remand the decision consistent with the Court’s
24 opinion.