

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

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4 MOLLY JACOBSEN and DANA JACOBSEN,  
5 *Petitioners,*

6  
7 vs.

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9 CITY OF WINSTON,  
10 *Respondent,*

11 and

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13  
14 DON JENKINS and JOELL JENKINS,  
15 *Intervenor-Respondents.*

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17 LUBA No. 2006-155

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19 FINAL OPINION  
20 AND ORDER

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22 MEMORANDUM DECISION

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24 (ORS 197.835(16))  
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26 Appeal from City of Winston.

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28 Jannett Wilson, Eugene, filed the petition for review and argued on behalf of  
29 petitioners. With her on the brief was the Goal One Coalition.

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31 Douglas M. DuPriest, Eugene, filed a response brief and argued on behalf of  
32 respondent. With him on the brief were Zack P. Mittge and Hutchinson, Cox, Coons,  
33 DuPriest, Orr & Sherlock, PC.

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35 Corinne C. Sherton, Salem, filed a response brief and argued on behalf of intervenor-  
36 respondents. With her on the brief was Johnson & Sherton, PC.

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38 RYAN, Board Member; HOLSTUN, Board Chair; BASSHAM, Board Member,  
39 participated in the decision.

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41 AFFIRMED

11/27/2007

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

Opinion by Ryan.

Petitioners appeal a city decision adopting a comprehensive plan and zoning map amendment changing the plan and zone designations for the subject property from medium residential (M-R) to agriculture and open space (A-O) for a 3.5 acre property. The present appeal is an appeal of the city’s decision on remand from our decision in *Jacobsen v. Winston*, 51 Or LUBA 602 (2006) (Jacobsen I).<sup>1</sup> On remand, the city adopted findings that interpreted a WZO provision regarding minimum lot sizes as only applying to new lots or parcels, and not to the subject property, which is not being divided. Record 35. The city also adopted findings that interpreted the meaning of a WCP policy requiring “buffer zones,” and explained why that policy is satisfied. Record 33.

In this appeal, petitioners argue that (1) the city erred by not requiring a variance, and (2) the city failed to comply with the WCP by not requiring an adequate buffer area. Respondents provide responses to those assignments of error and argue that the city’s interpretation of the relevant provisions of the WZO and WCP is entitled to deference under ORS 197.829(1) and *Church v. Grant County*, 187 Or App 518, 524-25, 69 P3d 759 (2003). Response Brief of Intervenor-Respondents 4, 9; Response Brief of City of Winston 3-4, 8. Respondents also maintain that the required buffer area is adequate. Response Brief of City of Winston 8-9. We agree with respondents’ arguments.

ORS 197.835(16) provides:

“The board may decide cases before it by means of memorandum decisions and shall prepare full opinions only in such cases as it deems proper.”

For the reasons set out above, we do not believe a full opinion is proper in this case.

The city’s decision is affirmed.

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<sup>1</sup> In *Jacobsen I*, we remanded the decision back to the city to determine in the first instance whether a variance to the Winston Zoning Ordinance (WZO) provision regarding minimum lot sizes was required, and to adopt findings addressing a Winston Comprehensive Plan (WCP) policy that requires the city to provide buffer zones between residential and conflicting land uses. *Id.* at 622, 626-27.