

1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

3
4 HOLGER T. SOMMER,
5 *Petitioner,*

6
7 vs.

8
9 CITY OF GRANTS PASS and
10 JOSEPHINE COUNTY,
11 *Respondents,*

12
13 and

14
15 COPELAND PAVING, INC.,
16 *Intervenor-Respondent.*

17
18 LUBA No. 2007-121

19
20 FINAL OPINION
21 AND ORDER

22
23 Appeal from City of Grants Pass and Josephine County.

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25 Holger T. Sommer, Merlin, filed the petition for review and argued on his own
26 behalf.

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28 No appearance by City of Grants Pass and Josephine County.

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30 James R. Dole, Grants Pass, filed the response brief and argued on behalf of
31 intervenor-respondent. With him on the brief was Cauble, Dole & Sorenson.

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33 RYAN, Board Member; HOLSTUN, Board Chair; BASSHAM, Board Member,
34 participated in the decision.

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36 AFFIRMED

12/10/2007

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

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NATURE OF THE DECISION

Petitioner appeals a decision by the city and the county approving an amendment to the city’s urban growth boundary (UGB) to add approximately 1.2 acres, and establishing residential comprehensive plan map and zoning map designations for a portion of the property.

FACTS

Intervenor applied to add approximately 1.2 acres, including a .68-acre parcel and a .52-acre parcel of adjacent public right of way, to the city’s UGB, and to establish a Low Density Residential (LDR) comprehensive plan map designation and a low density residential (R-1-8) zoning map designation on the .68-acre parcel. The property borders the city’s UGB on its eastern boundary.

The joint city and county Urban Area Planning Commission held a hearing on the application on April 25, 2007, and recommended approval to the city council and the board of county commissioners. On June 6, 2007, the city and county (together, respondents) held a joint hearing, and approved the application. Record 14-15. This appeal followed.

FIRST ASSIGNMENT OF ERROR

Petitioner argues that respondents erred in approving the UGB amendment because the proposal violates Statewide Planning Goal 14, which requires local governments that are evaluating changes to the UGB to consider the “orderly and economic provision of public facilities and services.” As explained above, the property proposed to be included within the UGB includes a county road. Record 10, 16. Petitioner argues that the requirements of Goal 14 are not met because the county failed to implement a speed limit restriction on that county

1 road that, petitioner argues, was required by a condition of approval of an earlier county land
2 use decision.¹ Petitioner’s entire argument under the first assignment of error is as follows:

3 “Changing the location of the [UGB], when the change will include a non-
4 completed condition of a permit (or a condition which is in the process to be
5 completed but has not been finished), is not an orderly provision of public
6 facilities. Liabilities and responsibilities between the jurisdictions become
7 diffuse and undefined.” Petition for Review 6.

8 The condition that petitioner is referring to required the county to petition the State of
9 Oregon to reduce the speed limit on a portion of the county road adjacent to intervenor’s
10 property. It did not require the county to force the state to reduce the speed limit or take any
11 other action to ensure that the speed limit was in fact reduced. It is undisputed that the
12 county has petitioned the state to limit the speed on the road. Rec. 77. To the extent we
13 understand petitioner to argue that the county was required to secure a reduction in the speed
14 limit before making any more land use decisions regarding property that borders that county
15 road, we reject that argument.

16 The remainder of petitioner’s argument regarding the proposal’s compliance with
17 Goal 14 is insufficiently developed for our review, and for that reason we reject it.
18 *Deschutes Development v. Deschutes County*, 5 Or LUBA 218, 220 (1982) (petitioners must
19 not only allege facts supporting a claim, they must explain the basis on which LUBA might
20 grant relief).

21 The first error of assignment is denied.

22 **SECOND ASSIGNMENT OF ERROR**

23 Petitioner argues that respondents failed to meet the requirements of Grants Pass
24 Comprehensive Plan (GPCP) 13.6.2. GPCP 13.6.2 is entitled “Boundary Amendments” and
25 states in relevant part:

¹ That land use decision was affirmed by LUBA in *Ghena v. Josephine County*, 51 Or LUBA 681 (2006).

1 “The City and County shall mutually amend the Urban Growth Boundary
2 from time to time, making both minor and major amendments.

3 “ * * * * *

4 “(c) * * * either minor or major amendments [to the UGB] may be
5 considered at any time upon mutual consent of the City Council and
6 Board of County Commissioners *using the latest Annual Development*
7 *Report and revisions to the data base as a guide* to the need and
8 appropriateness of such amendments.” (Emphasis added).

9 Petitioner argues that the city erred because it did not use the “latest Annual Development
10 Report [ADR] and revisions to the data base” as a guide in making its decision.

11 It is undisputed that no ADR exists. However, intervenor argues that GPCP 13.6.2(c)
12 does not establish a mandatory approval criterion for UGB amendments, and that an ADR is
13 to be used, if it exists, simply a “guide” for the city and county to determine the need for and
14 appropriateness of a proposed UGB amendment. Intervenor notes that the relevant standards
15 and criteria for a UGB amendment are found in GPCP 13.6.3, which is entitled “Criteria for
16 Inclusion.”

17 Petitioner apparently reads GPCP 13.6.2 to establish an essential and mandatory
18 approval criterion, in the sense that no UGB amendment is possible in the absence of an
19 ADR. We agree with intervenor that GPCP 13.6.2 does not establish such a mandatory
20 approval criterion. GPCP 13.6.2 is entitled “Boundary Amendments,” and provides that “the
21 latest” ADR be used “as a guide.” There is nothing in that language or any other provision
22 of the GPCP that *requires* the city to prepare an ADR, either annually or otherwise, or that
23 prohibits the city and county from proceeding with evaluating a proposed UGB amendment
24 in the absence of such a document.²

² Intervenor notes that, even though an ADR does not exist, the planning director confirmed that the relevant information that might be included in an ADR, such as data on housing, land supply and demand, was in fact considered in evaluating the proposed UGB amendment. Record 154.

1 The relevant approval criteria for a UGB amendment are found in GPCP 13.6.3, and
2 petitioner does not challenge the decision’s compliance with any of those criteria. As such,
3 petitioner’s second assignment of error provides no basis for reversal or remand of the
4 decision.

5 The second error of assignment is denied.

6 **THIRD ASSIGNMENT OF ERROR**

7 In his third assignment of error, petitioner argues that respondents were prohibited by
8 OAR 660-024-0060(2) from approving the proposed amendment of the UGB because the
9 city is currently engaged in a legislative review of its UGB.³ Intervenor responds that the
10 city was not obligated to apply any provisions of OAR chapter 660, division 24 to the
11 proposed UGB amendment because the proposed UGB amendment was initiated prior to
12 April 5, 2007. Under OAR 660-024-0000(3)(b), “a local government may choose not
13 to apply [division 24] to a plan amendment concerning the * * * amendment of a UGB,
14 regardless of the date of that amendment, if the local government initiated the UGB * * *
15 amendment prior to April 5, 2007.” The rule defines “initiated” to mean that the local
16 government notified the Department of Land Conservation and Development (DLCD) of the
17 proposed UGB amendment as required by OAR 660-018-0020.⁴ The record confirms that
18 respondents “initiated the UGB * * * amendment” prior to April 5, 2007 by notifying DLCD

³ OAR 660-024-0060(2) provides:

“Notwithstanding OAR 660-024-0050(4) and subsection (1)(c) of this rule, except during periodic review or other legislative review of the UGB, a local government may approve an application under ORS 197.610 to 197.625 for a UGB amendment proposing to add an amount of land less than necessary to satisfy the land need deficiency determined under OAR 660-024-0050(4), provided the amendment complies with all other applicable requirements.”

⁴ OAR 660-018-0020(1) provides in relevant part:

“A proposal to amend a local government acknowledged comprehensive plan or land use regulation or to adopt a new land use regulation shall be submitted to the Director at least 45 days before the first evidentiary hearing on adoption. * * *”

1 of the proposed amendment as required by OAR 660-018-0020. Record 587-88. We agree
2 with intervenor that the entirety of division 24 of the OAR is not applicable to the proposed
3 UGB amendment.

4 Even if OAR chapter 660, division 24 did apply, petitioner misreads the rule. The
5 crux of petitioner's argument is that the city is currently engaged in a "legislative review" of
6 its UGB and that because it is engaged in such a legislative review, it may not consider any
7 applications for UGB amendments. First, nothing cited to us in the record by petitioner
8 indicates that the city is engaged in a "legislative review" of its UGB. However, even if the
9 city is engaged in legislative review of its UGB, the rule does not prohibit UGB amendments
10 via post-acknowledgment plan amendments when a separate legislative review of the UGB is
11 pending. The rule prohibits a local government from adding less land than the amount
12 identified to satisfy an identified deficiency *through a periodic review process or a*
13 *legislative review of its UGB.* The rule specifically allows UGB amendments that add less
14 land than the total amount land that has been identified as needed if that UGB amendment is
15 adopted following a post-acknowledgement plan amendment process pursuant to ORS
16 197.610 to 197.625 outside of periodic review or a legislative review. Simply stated, the rule
17 specifically allows what petitioner argues it prohibits.

18 The third error of assignment is denied.

19 The city's decision is affirmed.