BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

CITIZENS AGAINST ANNEXATION,
LEA PATTEN and ROBERT L. CHRISTIAN,
Petitioners,

vs.

CITY OF FLORENCE,
Respondent.

LUBA No. 2007-129

DEBBY TODD and CITIZENS FOR FLORENCE,
Petitioners,

vs.

CITY OF FLORENCE,
Respondent.

LUBA No. 2007-130

FINAL OPINION
AND ORDER

Appeal from City of Florence.

Daniel J. Stotter, Eugene, filed a joint petition for review and argued on behalf of petitioners Citizens Against Annexation, Lea Patten and Robert L. Christian. With him on the brief were Jannett Wilson, Goal One Coalition and Irving & Stotter LLP.

Jannett Wilson, Eugene, filed a joint petition for review and argued on behalf of petitioners Debby Todd and Citizens for Florence. With her on the brief were Daniel J. Stotter, Irving & Stotter LLP and Goal One Coalition.

Ross M. Williamson, filed the response brief and argued on behalf of respondent. With him on the brief were Emily N. Jerome, and Harrang Long Gary Rudnick P.C.

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

AFFIRMED 12/17/2007

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

Opinion by Holstun.

NATURE OF THE DECISION

Petitioners appeal two decisions. The first decision is a resolution that initiates annexation of 48 acres that are adjacent to the city and inside the city's urban growth boundary. The second decision is an ordinance that applies city zoning to the property.

JURISDICTION

There is no dispute that we have jurisdiction to consider petitioners' appeal of the rezoning ordinance.

The annexation resolution simply initiated annexation of the property by the Lane County Boundary Commission. The Lane County Boundary Commission makes the final decision concerning the annexation and the boundary commission's final decision is subject to appellate review by the Court of Appeals.[1] The city contends that the city's annexation resolution is not a final decision and therefore LUBA lacks jurisdiction to review the annexation resolution. We agree with the city. *Vancouver Federal Savings v. City of Oregon City*, 17 Or LUBA 348, 358 (1989).[2]

STANDING

The city challenges the standing of petitioners Christian and Citizens for Florence, arguing that neither of those petitioners appeared below.[3] At oral argument petitioners contended that page 276 of the record establishes that petitioner Christian appeared and

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[1] At oral argument, LUBA was advised that the boundary commission has approved the annexation and petitioners' appeal of that decision is pending at the Court of Appeals.

[2] The notices of intent to appeal that were filed in LUBA No. 2007-129 and LUBA No. 2007-130 both list the city's annexation resolution and the city's rezoning ordinance as the subject of the appeal. In other words, both notices of intent to appeal improperly appeal more than one decision. Therefore, we will simply limit our review to the rezoning ordinance, which is the only decision that is properly before us in this appeal.

[3] Under ORS 197.830(2), to have standing to appeal to LUBA a petitioner must have "[a]ppeared before the local government * * * orally or in writing."

pages 141 and 240 of the record demonstrate that petitioner Todd appeared locally on behalf of petitioner Citizens for Florence.

Record 276 is a page of a planning staff report and is sufficient to establish that petitioner Christian appeared. Although the letters that begin at Record 141 and 240 could make it clearer that petitioner Todd was appearing on her own behalf as well as on behalf of Citizens for Florence, we conclude those letters are adequate to constitute an appearance for Citizens for Florence. All petitioners have standing in this appeal.

FACTS

The relevant facts are concisely stated in the city's brief, and are set out below:

> "The challenged zoning ordinance is part of an ongoing annexation process. The subject property is located north of the city, inside the city's urban growth boundary. The property is made up of approximately 48 acres. In general terms, the property can be described in two parts: the first, comprising the majority of the area, is the Fawn Ridge Subdivision and the second, at less than an acre, is the Ures property. The Fawn Ridge portion of the subject property has a comprehensive plan designation of low density residential and the Ures portion is designated medium density residential. The property is currently zoned by Lane County as suburban residential. * * *
>
> "The annexation is proceeding through the Lane County Boundary Commission process pursuant to procedures set out in ORS 199.490. As part of the annexation process, the City concurrently proceeded with establishing the city zoning for soon-to-be annexed property.
>
> "After the City's Planning Commission recommended annexation and adoption of city zoning for the property, the annexation and zoning proposals came to the City Council for review and action. The City set May 21, 2007 as the first hearing date for the potential annexation—requesting that the Lane County Boundary Commission process the application—and for a potential zoning ordinance establishing city zoning for the property. The notice for this initial hearing was sent 12 days before the May 21 hearing, or May 9. The notice was then published in the Siuslaw News for one day, May 19 and in the Register Guard Newspaper for two days, May 20 and 21. These notices pertained to both the annexation resolution and the zoning ordinance.
>
> "At the May 21 hearing, the Council took evidence and heard testimony. * * * The council then continued the hearing on both [the annexation and rezoning] until the Council's next meeting on June 4, 2007. Notice for the continued hearing was provided on May 25, 2007.

1 “During the June 4 hearing, the Council again took evidence and heard
2 testimony concerning the annexation resolution and zoning ordinance. * * *
3 At the end of the hearing, the Council held the record open for seven more
4 days for additional comments. The Council received additional comments
5 during this seven day period which they reviewed for their deliberation
6 meeting on June 18, 2007. * * *” Respondent’s Brief 4-5 (record citations
7 omitted).

8 **FIRST ASSIGNMENT OF ERROR**

9 In their first assignment of error, petitioners argue that the notices the city gave on
10 May 9, 2007 and May 25, 2007 were untimely and that the May 25, 2007 notice listed
11 criteria that were not listed in the May 9, 2007 notice. Petitioners also argue the city erred in
12 the way it published notice of the May 21, 2007 hearing in the newspaper.

13 **A. The May 9, 2007 and May 25, 2007 Written Notices**

14 Under Florence City Code (FCC) 10-1-1-5(B)(1), the city is required to provide
15 written notice to the applicant and nearby property owners “[a]t least twenty (20) days prior
16 to a quasi-judicial hearing * * *.” The notice that the city provided before the May 21, 2007
17 public hearing was given on May 9, 2007, which was only 12 days before the May 21, 2007
18 public hearing. At the May 21, 2007 public hearing, petitioners objected to the city’s failure
19 to provide 20 days notice as required by FCC 10-1-1-5(B)(1). After petitioners objected to
20 the city’s failure to provide the required 20 days notice, the city council voted to continue the
21 public hearing until June 4, 2007. Supplemental Record 64. A written notice of that June 4,
22 2007 continued public hearing was mailed on May 25, 2007. Record 202. At the conclusion
23 of the June 4, 2007 public hearing, the public hearing was closed, but the record was held
24 open for an additional seven days for additional public comment. The evidentiary record
25 closed on June 11, 2007.

26 The rezoning that is the subject of this dispute has been complicated by the city’s
27 decision to consider the annexation and rezoning together without much effort to
28 differentiate the proposed rezoning from the proposed annexation. Under FCC 10-1-1-
29 5(C)(1)(b), the city’s notice is required to “[l]ist the applicable criteria from the ordinance

1 and the plan that apply to the application at issue." The May 9, 2007 notice listed the
2 following as applicable criteria: (1) the Statewide Planning Goals, (2) the city's
3 comprehensive plan, (3) FCC Title 10, Chapter 1 and specifically FCC 10-1-3; (4) the FCC
4 Restricted Residential Regulations, (5), ORS 197.752, (6) ORS 199.490, and (7) ORS
5 Chapter 222.[4] The May 25, 2007 notice listed the following as applicable criteria: (1) city
6 comprehensive plan chapter 14, policy 1; (2) the city comprehensive plan discussion of the
7 low density residential and medium density map designations, (3) FCC 10-1-1-5-E-3, FCC
8 10-1-2-3, and FCC 10-1-3-B4, and (4) ORS 199.490.[5] As compared to the May 9, 2007
9 notice, the May 25, 2007 notice (1) omits references to ORS 197.752 and ORS chapter 222,
10 (2) provides more precise citations to the city comprehensive plan, and (3) provides more

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[4] The May 9, 2007 notice listed the applicable criteria as follows:

> "OAR 661-015-0000 STATEWIDE PLANNING GOALS AND GUIDELINES NO. 1 THROUGH NO. 19
>
> "2000/2020 FLORENCE COMPREHENSIVE PLAN
>
> "FCC, TITLE 10, CHAPTER 1, ZONING REGULATIONS, 10-1-3 AMENDMENTS AND CHANGES
>
> "FCC, TITLE 10, CHAPTER 10, RESTRICTED RESIDENTIAL REGULATIONS
>
> "ORS 197.752 – LANDS AVAILABLE FOR URBAN DEVELOPMENT
>
> "ORS 199.490 PROCEDURE FOR MINOR (BOUNDARY) CHANGES
>
> "ORS CHAPTER 222 – CITY BOUNDARY CHANGES; OREGON STATEWIDE PLANNING GOALS & GUIDELINES" Record 325.

[5] The May 25, 2007 notice listed the applicable criteria as follows:

> "2000/2020 FLORENCE COMPREHENSIVE PLAN CHAPTER 14 Policy 1
>
> "2000/2020 FLORENCE COMPREHENSIVE PLAN CHAPER 2, Section on Residential – Background (Low Density designation and Medium Density designation)
>
> "FCC TITLE 10, CHAPTER 1, ZONING REGULATIONS; SECTIONS 10-1-1-5-E-3 & 10-1-2-3 & 10-1-3-B4
>
> "ORS 199.490 – PROCEDURE FOR MINOR (BOUNDARY) CHANGES" Record 202.

1 precise citations to the FCC. However, neither the May 9, 2007 notice nor the May 25, 2007
2 notice make any attempt to distinguish between those criteria the city proposed to apply to its
3 annexation decision and those criteria it proposed to apply to its rezoning decision.

4 Petitioners contend that the city's failure to provide at least 20 days notice before the
5 May 21, 2007 public hearing prejudiced their substantial rights and requires remand.[6]
6 Petitioners contend the second notice that preceded the June 4, 2007 public hearing was
7 similarly defective, in that it was provided only 10 days before the June 4, 2007 public
8 hearing. Although petitioners challenge the city's failure to give the full 20 days of notice
9 that is required by FCC 10-1-1-5(B)(1), they do not otherwise challenge the adequacy of the
10 above notices, other than to observe that the May 25, 2007 notice "substantially changed the
11 applicable land use criteria." Petition for Review 5.

12 The city argues that petitioners simply claim that the city's failure to provide at least
13 20 days notice prejudiced their substantial rights, without explaining how or why that is the
14 case. The city contends that its action in continuing the May 21, 2007 hearing to June 4,
15 2007 was sufficient to avoid any prejudice to petitioners' substantial rights.

16 The FCC 10-1-1-5(B)(1) requirement for notice "[a]t least twenty (20) days prior to a
17 quasi-judicial hearing" is pretty straightforward. We do not know why the city gave notice
18 only 12 days before the May 21, 2007 public hearing.[7] However, after discovering its error
19 on May 21, 2007, the city council apparently tried to avoid any resulting prejudice to
20 petitioners' substantial rights by continuing the hearing until June 4, 2007. Other than to
21 note that the May 25, 2007 notice listed additional criteria, petitioners make no attempt to

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[6] Under ORS 197.835(9)(a)(B) LUBA must reverse or remand a local government decision if LUBA finds that the local government "[f]ailed to follow the procedures applicable to the matter in a manner that prejudiced the substantial rights of the petitioner."

[7] We note that ORS 197.763(3)(f) requires that notice be mailed at least 20 days before the evidentiary hearing in a quasi-judicial land use matter, or at least 10 days before the first hearing if more than two evidentiary hearings are held. Because there was more than one evidentiary hearing in this matter, the city's May 9, 2007 notice complied with ORS 197.763(3)(f).

1 explain why the continuance to June 4, 2007 was an inadequate response on the city's part in
2 this case, to avoid prejudice to petitioners' substantial rights.

3 But for the differences in the May 9, 2007 notice and the May 25, 2007 notice, it is
4 difficult to see how continuing the May 21, 2007 hearing to June 4, 2007 could not be
5 sufficient to avoid any prejudice in not giving at least 20 days of notice. After all, the May 9,
6 2007 notice preceded the June 4, 2007 hearing by 25 days and preceded the close of the
7 record by 32 days. As previously noted, petitioners do not challenge the adequacy of either
8 the May 9, 2007 notice or the May 25, 2007 notice other than to observe that the May 25,
9 2007 notice listed several additional criteria. But notice of those additional criteria was
10 given 10 days before the June 4, 2007 hearing and 17 days before the record closed. The
11 additional criteria are neither numerous nor particularly complicated. Petitioners make no
12 attempt to show how failure to have the full 20 days' notice of those additional criteria
13 prejudiced their substantial rights. Absent such an attempt, petitioners' challenge to the
14 timing of the May 25, 2007 notice provides no basis for reversal or remand.

15 **B. The Published Notices**

16 Petitioners' final complaint under the first assignment of error concerns FCC 10-1-1-
17 5(B)(2), which requires that notice of a zoning map amendment must "be published three (3)
18 times in a newspaper of general circulation * * *." Petitioners interpret FCC 10-1-1-5(B)(2)
19 to require publication three times in the same newspaper. Petitioners contend the city erred
20 by publishing notice of the May 21, 2007 hearing for two days in one newspaper and one day
21 in a second newspaper, rather than three times in the same newspaper.

22 The city argues that petitioners waived this issue, by failing to raise the issue before
23 the city. ORS 197.763(1); 197.835(3).[8] The city also argues that FCC 10-1-1-5(B)(2) need

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[8] ORS 197.763(1) provides:

> "An issue which may be the basis for an appeal to the Land Use Board of Appeals shall be raised not later than the close of the record at or following the final evidentiary hearing on the

1 not be interpreted in the way petitioners argue and that the city's publication of notice in this
2 case complied with FCC 10-1-1-5(B)(2). Petitioners did not identify where they raised this
3 issue below, either at oral argument or in a reply brief. Accordingly, this issue is waived.
4 *Holloway v. Clatsop County*, 52 Or LUBA 644, 661-62 (2006), *aff'd* 210 Or App 467, 151
5 P3d 961 (2007); *Williamson v. City of Salem*, 52 Or LUBA 615, 618-19 (2006); *Wethers v.*
6 *City of Portland*, 21 Or LUBA 78, 92 (1991). We also agree with the city that FCC 10-1-1-
7 5(B)(2) need not be interpreted in the way petitioners argue.

8 The first assignment of error is denied.

9 **SECOND ASSIGNMENT OF ERROR**

10 Before turning to petitioners' arguments under the second assignment of error, we
11 note that the zoning that was applied in this case appears to be dictated by the city's
12 comprehensive plan.[9] In other words, it appears to us that when unincorporated property is
13 first annexed to the city, the city's comprehensive plan largely dictates how that property is
14 to be zoned, rather than the standards that generally govern amendments of the zoning
15 designations for property that is already within the city and already has a city zoning
16 designation. This appeal likely could have been avoided if the city had simply squarely
17 addressed that possibility in its notices and in its decision. With that observation, we turn to
18 petitioners' arguments under the second assignment of error.

19 Under their second assignment of error, petitioners argue:

> proposal before the local government. Such issues shall be raised and accompanied by statements or evidence sufficient to afford the governing body, planning commission, hearings body or hearings officer, and the parties an adequate opportunity to respond to each issue."

ORS 197.835(3) provides:

> "Issues shall be limited to those raised by any participant before the local hearings body as provided by ORS 197.195 or 197.763, whichever is applicable."

[9] The Florence Comprehensive Plan (FCP) Low Density designation provides "[t]he corresponding zoning district is Restricted Residential." The FCP Medium Density designation provides "[t]he corresponding zoning districts are Single Family Residential and Manufactured Home."

> "Although the City's Staff informed the City's decision-makers that the applicable land use criteria for the zoning decision that must be considered is consistency 'with the objectives of the Florence Comprehensive Plan and Zoning Code' * * * and although the Notice of Public Hearing sent to the public expressly lists the applicable land use criteria as being the 2000/2020 Comprehensive Plan, Chapter 14 (Policy 1) and Chapter 2, and [FCC] 10-1-5-E-3, 10-1-1-5-E-3 and 10-1-3-B-4 * * * a review of the City's final land use decision challenged herein does not set forth adequate findings that address **<u>any</u>** of these applicable land use criteria. * * *" Petition for Review 7 (emphasis in original).

Chapter 14, Policy 1 of the city's comprehensive plan concerns "[c]onversion of lands within the UGB outside City limits * * *."[10] Chapter 2 of the city's comprehensive plan is the Land Use chapter of the plan, and it is 31 pages long, exclusive of maps. There is no FCC 10-1-5-E-3. FCC 10-1-1-5-E-3 is a public need rezoning criterion.[11] FCC 10-1-3-B-4 provides, in part, that "[t]he applicant shall demonstrate that the requested [zoning] change is consistent with the Comprehensive Plan and Zoning Ordinance and is not contrary to the public interest."

The city raises a waiver defense under the second assignment of error. The city points out that the ordinance that is the subject of this appeal was available to the parties on June 4, 2007. Record 196-97. According to the city, no party objected to the adequacy of the findings that were included in the draft ordinance and petitioners may not do so for the first time in this appeal.

Petitioners contend that they are not required to be clairvoyant and anticipate and challenge the adequacy of the "whereas" clauses in the draft ordinance to serve as findings to support the ordinance. We generally agree with petitioners on that point. *Lucier v. City of Medford*, 26 Or LUBA 213, 216 (1993). However, the parties' focus on the draft ordinance

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[10] By its term, it would appear that this plan policy applies to the city's annexation decision rather than its decision to apply city zoning that will be effective on the date of annexation, because on that date the land will be inside city limits.

[11] FCC 10-1-1-5-E-3 requires a showing "that a public need exists [for rezoning]; and that the need will be best served by changing the zoning of the parcel of land in question."

is misplaced. Regardless of whether the draft ordinance was available to petitioners, petitioners must raise some issue below concerning whether the proposed rezoning complies with the applicable standards noted above. Unless petitioners raised some issue with regard to whether the proposed rezoning complies with those standards and criteria, petitioners may not challenge the adequacy of the city's findings to demonstrate that the rezoning complies with those criteria. *Cornelius First v. City of Cornelius*, 52 Or LUBA 486, 495 (2006); *Bruce Packing Company v. City of Silverton*, 45 Or LUBA 334, 352-53 (2003); *Lucier v. City of Medford*, 26 Or LUBA at 216. We turn to that question.

The city stresses throughout its brief that the exclusive focus of opposition below was on the proposed annexation, not the proposed rezoning. According to the city, the opponents below opposed the proposed annexation; they did not separately oppose the change of the existing Lane County Suburban Residential zoning to City of Florence Restricted Residential and Single Family Residential zoning. Petitioners have provided citations to the record in the petition for review where they submitted testimony and documentary evidence below. We have reviewed the cited testimony and documentary evidence. Petitioners objected to the timing of the notices of hearing, which concern both the annexation and rezoning. However, with the exception of the objections to the timing of the notices, which we address in the first assignment of error, all arguments were directed at the annexation. If petitioners raised any issues below regarding whether the proposed zoning complies with any of the identified approval criteria, we have not been able to locate where those issues are raised on the record pages petitioners cite. Therefore, the issues petitioners raise under the second assignment of error regarding the adequacy of the city's findings to address applicable rezoning criteria are waived.

THIRD ASSIGNMENT OF ERROR

Petitioners argue under their third assignment of error that it was error for the city to adopt an ordinance that became final before the boundary commission took action on the annexation proposal.

Sections 1 and 2 of the appealed ordinance identify the portions of the property that are to be assigned Restricted Residential zoning and the portions of the property to be assigned Single Family Residential zoning. Section 3 then provides:

> "This zoning map assignment shall be effective on the effective date of the annexation, as approved by the Lane County Boundary Commission." Record 5.

Thus under section 3, although the rezoning ordinance was adopted and reduced to writing on June 18, 2007, it would not have the effect of rezoning the disputed properties unless and until the boundary commission annexed those properties.

The ordinance that was later signed by the mayor includes a hand-written Section 5, which provides:

> "This ordinance becomes effective 30 days after adoption." Record 5.

On their face, sections 3 and 5 appear to call for inconsistent effective dates, unless the boundary commission happened to annex the property 30 days after the rezoning ordinance was adopted on June 18, 2007. Under section 5, the rezoning would appear to be effective thirty days after June 18, 2007, without regard to what the boundary commission does. Under section 3, the rezoning would not be effective until the boundary commission annexed the property, even if that happened more 30 days after June 18, 2007.

The parties' arguments under the third assignment of error are frankly hard to follow and understand. Although we cannot be sure, petitioners apparently believe that if the city's rezoning ordinance had been adopted with section 3 and without section 5, the ordinance would have become both "effective" and "final," for purposes of appeal to LUBA on the same date, *i.e.*, when the boundary commission approved the annexation. Petitioners contend

1 that the city only has jurisdiction to rezone property that is within its city limits, ORS
2 221.720.[12] We understand petitioners to argue that the city may not adopt a *final* decision to
3 rezone the subject properties, even if the *effective date* of that rezoning is delayed until the
4 boundary commission approves annexation of the property.

5 As an initial point, the date a land use decision becomes effective and the date a land
6 use decision is final for purposes of appeal need not be the same. Charter or code provisions
7 that delay the "effective date" of ordinances have no effect on their date of "finality," for
8 purposes of appeal to LUBA. *Century Properties, LLC v. City of Corvallis*, 50 Or LUBA
9 691, 693 (2005). The date of finality is generally governed by OAR 661-010-0010(3).[13]
10 Applying OAR 661-010-0010(3) here, the ordinance that is before us in this appeal became
11 final for purposes of appeal on June 18, 2007, when it was reduced to writing. The city's
12 efforts to delay the effective date of the ordinance have no impact on the date the ordinance
13 became final for purposes of appeal.

14 Turning to the question of when the ordinance became effective, Section 31 of the
15 city's charter governs when city ordinances take effect, and provides:

> 16 "**When Ordinances Take Effect**. An ordinance shall take effect on the
> 17 thirtieth day after its enactment. When the Council **deems** it advisable,
> 18 however, an ordinance may provide a later or different time for it to take
> 19 effect, and in case of an emergency, it may take effect immediately." (Bold
> 20 lettering in original.)

21 Therefore, if the ordinance that is the subject of this appeal had been adopted with no express
22 provision regarding its effective date, it would have become effective 30 days after June 18,

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[12] ORS 221.720(2) provides "[n]otwithstanding any other provision of law the jurisdiction and application of government of cities shall be coextensive with the exterior boundaries of such cities, regardless of county lines."

[13] OAR 661-010-0010(3) provides:

> "'Final decision': A decision becomes final when it is reduced to writing and bears the necessary signatures of the decision maker(s), unless a local rule or ordinance specifies that the decision becomes final at a later date, in which case the decision is considered final as provided in the local rule or ordinance."

1 2007. If the ordinance had been adopted with section 3 and without section 5, the zoning
2 map amendment adopted by the ordinance would have become effective on the date the
3 boundary commission annexed the property.

4 We are not sure why the city decided to add section 5. If the legal effect of section 5
5 is to make the zoning effective 30 days after June 18, 2007, that action would almost
6 certainly exceed the city's jurisdiction unless the boundary commission acted within 30 days
7 of June 18, 2007, which did not occur here. The city takes the position that section 5 makes
8 the ordinance effective 30 days after its enactment but that section 3 remains in effect and
9 delays the effective date of the rezoning that is accomplished by the ordinance until the
10 boundary commission acts. That would make more sense if the ordinance did something in
11 addition to rezoning the subject properties, but as far as we can tell rezoning the subject
12 properties is all the disputed ordinance does. But to read section 5 of the ordinance to make
13 the rezoning effective 30 days after June 18, 2007, even though section 3 expressly delays
14 that zoning until the boundary commission approves the rezoning, fails to give any effect to
15 section 3.

16 For lack of a better alternative, we interpret sections 3 and 5 in the way the city
17 argues they should be read in its brief. The challenged ordinance became effective 30 days
18 after June 18, 2007 but did not have any real legal consequence until the boundary
19 commission took action to approve the disputed annexation. On that date, the rezoning
20 became effective. We now consider whether such contingent rezoning is legally
21 impermissible, as petitioners argue.

22 Under FCC 10-1-2-3 the city is specifically authorized to do what it has done here.[14]
23 We decided long ago that a city may rezone property prior to annexation, so long as the

[14] 10-1-2-3 provides as follows:

> "**ZONING OF ANNEXED AREAS:** The City Council may establish zoning and land use regulations that become effective on the date of annexation. This zoning designation shall be

1 effective date of the rezoning is delayed until the date the property is annexed. *Allen v. City*
2 *of Banks*, 9 Or LUBA 218, 238 (1983). That holding was not affected by either *Recht v. City*
3 *of Newport*, 26 Or LUBA 316 (1993) or *Lodge v. City of West Linn*, 35 Or LUBA 42, 46-47
4 (1998), which reached different conclusions about whether that holding should be extended
5 to include permit decisions. We adhere to *Allen* here.

6 The third assignment of error is denied.

7 For the reasons explained earlier in this opinion, we do not have jurisdiction to
8 review the city's annexation decision. The city's rezoning decision is affirmed.

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consistent with the objectives of the Florence Comprehensive Plan and Zoning Code. When zoning is not established at the time of annexation, an interim zoning classification most nearly matching the existing County zoning classification shall be automatically applied until the City Council establishes zoning and land use regulations in accordance with the conditions and procedures of Chapter 1 of this Title."