

1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

3
4 JERRY L. HILDENBRAND, NANCY A. HILDENBRAND,
5 KEN IMAMURA, JOEL K. IMAMURA, H. PETTER EILERS,
6 KAY G. EILERS, DONNA D. ROTH, KENNETH W. ROTH,
7 KEVIN L. ARMSTRONG, CAROL J. HUNTINGTON,
8 MICHAEL C. HUNTINGTON, MILLICENT A. BURTON-FUNK,
9 KENNETH H. FUNK II, BRUCE THOMSON,
10 SHAWN BARRETT and DANIEL BARRETT,

11 *Petitioners,*

12
13 vs.

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15 CITY OF ADAIR VILLAGE,

16 *Respondent,*

17
18 and

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20 JT SMITH, INC.,

21 *Intervenor-Respondent.*

22
23 LUBA No. 2007-092

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25 JERRY L. HILDENBRAND, NANCY A. HILDENBRAND,
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29 MICHAEL C. HUNTINGTON, MILLICENT A. BURTON-FUNK,
30 KENNETH H. FUNK II, BRUCE THOMSON,
31 SHAWN BARRETT and DANIEL BARRETT,

32 *Petitioners,*

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34 vs.

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36 BENTON COUNTY,

37 *Respondent.*

38
39 and

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41 JT SMITH, INC.,

42 *Intervenor-Respondent.*

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44 LUBA No. 2007-093

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1 FINAL OPINION
2 AND ORDER
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4 Appeal on remand from Court of Appeals.
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6 Jannett Wilson, Eugene, represented petitioners.
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8 No appearance by City of Adair Village.
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10 No appearance by Benton County.
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12 Roger A. Alfred, Portland, represented intervenor-respondent.
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14 RYAN, Board Member; HOLSTUN, Board Chair; BASSHAM, Board Member,
15 participated in the decision.
16

17 REMANDED

04/24/2008

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

1 Opinion by Ryan.

2 This matter is on remand from the Court of Appeals. *Hildenbrand v. City of Adair*
3 *Village*, 54 Or LUBA 734 (2007), *rev'd and remanded* 217 Or App 623, 177 P3d 40 (2008).
4 The appeal concerns the city's and county's approval of an expansion of the city's urban
5 growth boundary and amendments to the city's comprehensive plan map and zoning
6 designations to allow for high-density residential development and athletic fields on an
7 approximately 169-acre property. In their second subassignment of error under the second
8 assignment of error, petitioners argued that there was not substantial evidence in the record
9 to support the city's and county's assumptions that the newly added land would be developed
10 with lots that were an average of 6,000 square feet in size to support their finding that an
11 additional 118 acres of housing was needed. LUBA agreed with the respondents that it was
12 appropriate for the city and county to rely on a city comprehensive plan policy that provides
13 for new minimum lot sizes that will result in an overall average citywide lot size of 6,000
14 square feet in assuming an average lot size of 6,000 square feet on the newly added
15 residential land. 54 Or LUBA at 739.

16 On appeal to the Court of Appeals, petitioners argued that it was error for the city and
17 county to rely on a city comprehensive plan policy rather than the land's likely high-density
18 residential zoning designation, which provides for maximum lot sizes of 6,000 square feet.
19 Petitioners argued that because existing lots in the city are larger than 6,000 square feet, new
20 lots will necessarily be smaller than 6,000 square feet in order to maintain an "average"
21 citywide lot size of 6,000 square feet. Therefore, petitioners argued, LUBA erred in allowing
22 the city and county to assume an average lot size of 6,000 square feet on the newly added
23 land based on the city's comprehensive plan policy, when the likely zoning designation
24 provides for smaller lots. The Court of Appeals agreed with petitioners, finding that the
25 comprehensive plan policy relied on by the city and county does not mandate a 6,000 square
26 foot lot density for the subject property or any other part of the city. As such, the Court

1 explained, the city and county erred in failing to determine what residential density will be
2 required on the subject property in order to meet the comprehensive plan policy. 217 Or App
3 at 632. The Court explained:

4 “How much land is needed to site 694 dwelling units is a function of how
5 densely the land is developed, which depends, in part, on the residential
6 density permitted by the plan designation and likely zoning. The city plans to
7 use the urbanizing area for high-density residential uses and plans to zone it
8 accordingly. The necessary justification under Goal 14 of the quantity of land
9 to be added to the urban growth boundary requires a projection of likely
10 development under the densities allowed by the city’s high-density residential
11 zoning, the R-3 zoning district, rather than the local governments’ assumption
12 that all development will occur under the lowest density permitted by that
13 zoning. That unsupported assumption does not constitute substantial evidence
14 of a ‘demonstrated need’ under Goal 14, and the board’s conclusion to the
15 contrary is unlawful in substance.” *Id.* at 632.

16 The city’s and county’s decisions are remanded in accordance with our initial decision,
17 which sustained petitioners’ first subassignment of error under their second assignment of
18 error, and with the Court of Appeals’ decision that LUBA improperly denied petitioners’
19 second subassignment of error under their second assignment of error.