BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

GRANADA LAND CO.,
*Petitioner,*

vs.

CITY OF ALBANY,
*Respondent.*

LUBA No. 2007-172

GRANADA LAND CO.,
*Petitioner,*

vs.

LINN COUNTY,
*Respondent.*

LUBA No. 2007-173

WORKERS FOR A LIVABLE OREGON,
LOU CHRISTIAN and MIKE BRADBURY,
*Petitioners,*

vs.

CITY OF ALBANY,
*Respondent.*

LUBA No. 2007-182

WORKERS FOR A LIVABLE OREGON,
STEVE CARLSON and MIKE BRADBURY,
*Petitioners,*

vs.

LINN COUNTY,
*Respondent.*

LUBA No. 2007-183

FINAL OPINION
AND ORDER

Appeal from City of Albany and Linn County.

Mark D. Shipman, Salem, filed a petition for review and Kris Jon Gorsuch argued on behalf of petitioner Granada Land Co. With him on the brief was Saalfeld Griggs PC.

Robert T. Yamachika, Portland, filed a petition for review and William A. Monahan argued on behalf of Workers For a Livable Oregon, Lou Christian and Mike Bradbury. With him on the brief were William A. Monahan, Timothy V. Ramis, and Jordan Schrader Ramis PC.

James V.B. Delapoer, Albany, filed a joint response brief and argued on behalf of City of Albany. With him on the brief were Michael E. Adams and Long, Delapoer, Healy, McCann & Noonan.

Michael E. Adams, Civil Deputy District Attorney, Albany, filed a joint response brief and argued on behalf of Linn County. With him on the brief were James V.B. Delapoer, and Long, Delapoer, Healy, McCann & Noonan.

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

REMANDED 04/28/2008

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

Opinion by Ryan.

**NATURE OF THE DECISION**

In LUBA Nos. 2007-172 and 2007-182, petitioner Granada Land Co. (Granada) and petitioners Workers for a Livable Oregon, Lou Christian and Mike Bradbury (together, WFLO) (together, petitioners) appeal a decision by the city adopting an urban renewal plan. In LUBA Nos. 2007-173 and 2007-183, petitioners appeal a decision by the county adopting the same urban renewal plan.

**FACTS**

In 2006, the city, the county, and various other public and private parties entered into a development agreement (Development Agreement). The Development Agreement provided for construction of a manufacturing plant by a party to the agreement and certain improvements to transportation infrastructure in the area of the plant to be completed by the city. City Record 220-45.[1] In early 2007, in anticipation of the formation of the Oak Creek Urban Renewal Area (URA), the city prepared the Oak Creek Urban Renewal Plan (Plan) and forwarded it to the planning commission. The city planning commission held public hearings on the proposed Plan on July 23 and July 30, 2007. Prior to the first planning commission hearing, on July 19 and 20, 2007, the city sent copies of the proposed Plan to affected taxing districts. City Record 717-35.

The proposed Plan reviewed by the planning commission called for 458 acres of land located both in the city limits and in the county to be included in the URA. The Plan also contained a description of the projects to be funded from tax revenues generated by the development envisioned by the Plan and established a maximum indebtedness of $16 million. At the conclusion of the second planning commission hearing, the planning

[1] In our December 14, 2007 order settling the record in these appeals, we clarified that the consolidated record submitted by respondents in these appeals would be referred to as the City Record, which includes volumes 1 and 2 of the consolidated record, and the County Record, which includes volume 3 of the consolidated record. Accordingly, we refer to the records in the same way in this opinion.

commission voted to recommend to the city council that the city council not adopt the Plan in part because the URA boundaries did not contain an area that encompassed Lochner Road. City Record 459-67. That recommendation was forwarded to the council.

The first city council hearing on the proposed Plan was held on August 8, 2007. Prior to that hearing, city planning staff prepared a staff report that contained a map showing potential expanded boundaries for the URA that would add additional acreage and include Lochner Road. City Record 161. Petitioner Granada testified at the hearing and proposed that the URA boundary be expanded and the maximum indebtedness be increased, and that additional projects be included in the project list. After public testimony had concluded, the council adopted a first reading of the proposed ordinance adopting the Plan, and began discussing expanding the URA boundaries by adding additional properties. At the conclusion of the August 8, 2007 city council hearing, the city left the record open for written submissions until the next scheduled meeting, on August 22, 2007.

At the August 22, 2007 hearing, planning staff presented a modified Plan that expanded the boundaries of the URA by an additional 459 acres, for a total of 917 acres. The modified plan included no additional indebtedness and no additional projects. The city did not allow public testimony at the August 22, 2007 hearing, although petitioners and other parties attempted to present both written and oral testimony at the hearing. At the conclusion of the August 22, 2007 hearing, the city council approved the Plan as modified to include 917 acres within its boundaries by adopting Ordinance 5681 (Ordinance). No other modifications were approved.

On August 15, 2007, the county board of commissioners considered the Plan at its hearing, and continued the hearing until August 23, 2007. At its August 23, 2007 hearing, the county adopted a resolution and order approving the Plan (the Resolution). County Record 41-44. These appeals followed.

**REPLY BRIEF**

Petitioners move to file a reply brief to address new matters raised in the response briefs. There is no opposition to the motion and the reply brief is allowed.

**JURISDICTION**

The county moves to dismiss LUBA Nos. 2007-173 and 2007-183, because, the county argues, the county's decision approving the Plan is not a land use decision as defined in ORS 197.015(10)(a)(A).[2] As noted, part of the URA is within the city and part of the URA is located outside the city limits in the unincorporated area of the county. The county adopted Resolution and Order No. 2007-666 on August 23, 2007, and found in relevant part that the areas located within the county are "blighted" as defined in ORS 457.010(1), and that the Plan conforms to the county's comprehensive plan. County Record 41-44.

The county maintains that the county adoption of the Plan is not a statutory land use decision because the county was not required to approve the Plan or apply any Statewide Planning Goals, comprehensive plan provisions, or land use regulations, and it did not actually apply any of the planning standards when making its decision. In support of its argument, the county relies primarily on ORS 457.105, which provides in relevant part:

> **"Approval of plan by other municipalities.** In addition to the approval of a plan by the governing body of the municipality under ORS 457.095, when any portion of the area of a proposed urban renewal plan extends beyond the boundaries of the municipality into any other municipality and, in the case of a proposed plan by a county agency, when any portion of such area is within

---

[2] ORS 197.015(10)(a)(A) provides that a land use decision includes:

> "A final decision or determination made by a local government or special district that concerns the adoption, amendment or application of:
>
> "(i) The goals;
>
> "(ii) A comprehensive plan provision;
>
> "(iii) A land use regulation; or
>
> "(iv) A new land use regulation[.]"

> the boundaries of a city, *the governing body of the other municipality may approve the plan and may do so by resolution, rather than by ordinance*. * * *" (Emphasis added.)

The county argues that the county's participation in the adoption of the Plan is entirely voluntary, rather than mandatory, such that the county is not *required* to take any action regarding the Plan. As such, the county argues, there are no approval standards that the county must apply in determining whether to approve the Plan. Finally, the county argues that the general statement in the county's decision that the plan conforms to the county's comprehensive plan was not sufficient to actually apply comprehensive plan provisions to the Plan. County Record 43.

Petitioners respond that the county was both required to apply and in fact did apply its comprehensive plan provisions in adopting the appealed decision. Petitioners argue that ORS 457.105, when read in conjunction with ORS 457.085(6), makes clear that the only difference between the city's approval of the plan and the county's approval of the plan is that the county may approve a plan by resolution rather than by ordinance.[3] Petitioners point out that the county's interpretation of ORS 457.105, if correct, would mean that neither the county nor the city has any obligation to ensure that the Plan is consistent with the county's comprehensive plan or any other applicable county approval standards. Petitioners argue that the most plausible interpretation of the use of the word "may" in ORS 457.105 is that if the Plan contains land within the county, then the county *may* approve the Plan by resolution or ordinance but in any event, the county *must* consider whether the Plan is consistent with its comprehensive plan. Petitioners also argue that the fact that the detailed findings required of the city's decision in ORS 457.095 are not required of the county's decision does not make the county's decision any less a land use decision.

---

[3] ORS 457.085(6) provides:

> "No urban renewal plan shall be carried out until the plan has been approved by the governing body of each municipality pursuant to ORS 457.095 and 457.105."

Finally, petitioners point out, the county decision adopted findings regarding the Plan's compliance with the criteria set forth in ORS 457.085 and 457.095, and the county's comprehensive plan. Petitioners argue that, therefore, the county decision is a land use decision within the meaning of ORS 197.015(10)(a)(A), because the county in fact considered and applied its comprehensive plan. *Jaqua v. City of Springfield*, 46 Or LUBA 566, 574 (2004).

Because the URA extends outside the city and includes unincorporated county territory, there can be no dispute that ORS 457.105 is implicated. In construing a prior version of ORS 457.105 the Court of Appeals held in *Dennehy v. City of Portland*, 87 Or App 33, 740 P2d 806 (1987) that while the county was not legally obligated under that statute to approve an urban renewal plan that affected the county, unless the county did approve such an urban renewal plan, the urban renewal plan could not be carried out under ORS 457.085(6).[4] Although ORS 457.105 was subsequently amended to eliminate the requirement that counties approve urban renewal plans that are located entirely within incorporated cities, that holding is not affected by those amendments to ORS 457.105. Just as the prior version of ORS 457.105, the current version provides that other municipalities "may approve" an urban renewal plan, and although ORS 457.085(6) was also amended to conform to the amendments to ORS 457.105, the ORS 457.085(6) requirement for approval

---

[4] As set out in the Court of Appeals' decision in *Dennehy*, that prior version of ORS 457.105 provided in material part:

> "'In addition to the approval of a plan by the governing body of the municipality under ORS 457.095, the governing body of each other municipality in which any portion of the area of a proposed urban renewal plan is situated may approve the plan by proper resolution.'" 87 Or App at 35.

Based on the above statutory language, the petitioner in *Dennehy* argued that Multnomah County approval was required under ORS 457.105 even though the URA was located entirely within the City of Portland, presumably because that portion of the City of Portland lies in Multnomah County.

by other affected municipalities under ORS 457.105 remains. *See* n 3. While the county was not legally obligated to approve the disputed Plan, unless it did so, the Plan could not be carried out under ORS 457.085(6).

The county is correct that ORS 457.105 does not require the county to take action to approve the Plan. Although the county did not do so here, it could have declined to approve the Plan. However, the fact that the county was not legally required to issue a decision approving the plan does not mean that the county's decision actually approving the Plan is not a land use decision, where the county found that the Plan complies with the county's comprehensive plan. We agree with petitioners that the county, in determining that the Plan complies with the county's comprehensive plan, applied its comprehensive plan in such a way that it made a land use decision as defined in ORS 197.015(10)(a)(A). Therefore, the county's motion to dismiss LUBA Nos. 2007-173 and 2007-183 is denied.

**FIRST ASSIGNMENT OF ERROR (WFLO)**

In this assignment of error, WFLO argues that the city erred in failing to provide notice of the proposed and final adoption of the Plan to the Department of Land Conservation and Development (DLCD) under ORS 197.610(1) and ORS 197.615(1), and the Albany Development Code (ADC) Section 1.640 and 1.650.[5] Those provisions generally require

---

[5] ORS 197.610(1) provides:

> "A proposal to amend a local government acknowledged comprehensive plan or land use regulation *or to adopt a new land use regulation* shall be forwarded to the Director of the Department of Land Conservation and Development at least 45 days before the first evidentiary hearing on adoption. The proposal forwarded shall contain the text and any supplemental information that the local government believes is necessary to inform the director as to the effect of the proposal. The notice shall include the date set for the first evidentiary hearing. The director shall notify persons who have requested notice that the proposal is pending." (Emphasis added).

ORS 197.615(1) provides:

> "A local government that amends an acknowledged comprehensive plan or land use regulation or adopts a new land use regulation shall mail or otherwise submit to the Director of the Department of Land Conservation and Development a copy of the adopted text of the comprehensive plan provision or land use regulation together with the findings adopted by

notice to DLCD of proposed and final adoption of a new land use regulation. WFLO argues that the Ordinance is a new "land use regulation," as defined in ORS 197.015(11), because the Ordinance establishes standards for implementing the city's comprehensive plan.[6] Respondents dispute that the Plan is a land use regulation as defined in ORS 197.015(11) because, respondents argue, the Plan does not establish standards for implementation of any city comprehensive plan provisions. Respondents maintain that the city's determination that the Plan conforms to the city's comprehensive plan as a whole is not the same thing as determining that the Plan implements the city's comprehensive plan.

WFLO does not cite to any provision of the Plan that establishes standards for implementing the city's comprehensive plan. Although WFLO points to language in the city's supplemental findings that explain that in determining whether the Plan conforms to the city's comprehensive plan, the city evaluated whether the Plan conforms with specific policies set forth in the comprehensive plan, that language does not indicate that the Plan implements the city's comprehensive plan, only that the city found that the Plan conforms to the comprehensive plan. We agree with respondents that WFLO has not demonstrated that the Plan establishes standards for implementing the city's comprehensive plan and as such, have not demonstrated that the Plan is a land use regulation requiring notice to DLCD.

This assignment of error is denied.

---

> the local government. The text and findings must be mailed or otherwise submitted not later than five working days after the final decision by the governing body. If the proposed amendment or new regulation that the director received under ORS 197.610 has been substantially amended, the local government shall specify the changes that have been made in the notice provided to the director. If the text and findings are mailed, they shall include a signed statement by the person mailing them indicating the date of deposit in the mail."

ADC Sections 1.640 and 1.650 contain nearly identical provisions.

[6] ORS 197.015(11) provides that "land use regulation" means:

> "any local government zoning ordinance, land division ordinance adopted under ORS 92.044 or 92.046 or similar general ordinance establishing standards for implementing a comprehensive plan."

**SECOND AND FIFTH ASSIGNMENTS OF ERROR (WFLO)/FIRST ASSIGNMENT OF ERROR (GRANADA)**

In these assignments of error, petitioners allege that the city's refusal to allow public testimony at the August 22, 2007 city council hearing violated ORS 457.095 and ORS 457.085(1). The crux of petitioners' complaint is that the city violated ORS 457.095 when it refused to allow testimony during the August 22, 2007 city council hearing regarding the revised Plan that added 459 acres to the URA, and that the city's actions also amounted to a failure to provide for public involvement in the development of the revised Plan. ORS 457.095 provides in relevant part:

> "The governing body of the municipality, upon receipt of a proposed urban renewal plan and report from the municipality's urban renewal agency and *after public notice and hearing and consideration of public testimony* and planning commission recommendations, if any, may approve the urban renewal plan. * * *"

ORS 457.085(1) requires the urban renewal agency to "provide for public involvement in all stages in the development of an urban renewal plan."

Respondents respond initially by arguing that because petitioners have not named the city's urban renewal agency, the Albany Revitalization Agency, as a respondent in this appeal, petitioners may not raise assignments of error that are directed towards functions that the urban renewal agency is charged with performing.[7] However, respondents cite no authority for their proposition. Petitioners counter that it is not legally significant that the

---

[7] Respondents' argument is set forth in its entirety:

> "[Respondents] also do not believe LUBA has jurisdiction to consider any challenge based upon ORS 457.085 because that statute imposes obligation[s] on the Urban Renewal Agency, a separate 'public body corporate and politic' pursuant to the provisions of ORS 457.035(1). The Urban Renewal Agency has not been named as a party to these appeal proceedings and is not now subject to LUBA's jurisdiction. Assignments of Error which may only be properly directed against a non-party should not be considered by the Board." Response Brief to WFLO's Petition for Review 13.

Although respondents frame their argument as a jurisdictional challenge, we understand respondents to argue that LUBA's scope of review cannot include review of arguments that are directed at actions of the urban renewal agency rather than actions of the city council.

city's urban renewal agency was not named as a respondent in this appeal, because the plain text and context of the urban renewal statute contemplate that LUBA's scope of review includes review of challenges to the Plan's compliance with ORS 457.085. Petitioners point out that ORS 457.085 requires the urban renewal plan to be proposed by an urban renewal agency, but finally approved, if at all, by the governing body.

Petitioners further point out that respondents' proposed interpretation of the statute is inconsistent with the city's actions throughout the proceedings. Petitioners explain that throughout the proceedings, the city's actions when functioning as the urban renewal agency were indistinguishable from the city's actions as the city, and note that the final decision states that "* * * the [city council] has elected to have the powers of an urban renewal agency exercised by the council itself * * *." City Record 12. Finally, petitioners cite our decision in *Holladay Investors, Ltd. v. City of Portland*, 18 Or LUBA 271, 276 (1989), where we explained:

> "In order for us to perform our review function, the city must adopt findings adequate for us to determine whether the city complied with the requirements of ORS 457.085 and 457.095. * * * Accordingly, the city must make findings explaining how the statutory standards are met[.]"[8]

First, we disagree with respondents' contention that our scope of review does not extend to challenges to the Plan's compliance with the provisions of ORS 457.085. The urban renewal statute contemplates a multi-step process, during the first part of which the urban renewal agency prepares a plan that conforms to ORS 457.085. The plan is then forwarded to the planning commission and then to the city council for a final determination on whether to approve the plan. The city council's final determination on whether to approve the plan necessitates a city council decision regarding whether the plan complies with the provisions of ORS 457.085, and we are authorized to review that city council

[8] In *Holladay*, the city's urban renewal agency was not named as a respondent, but rather intervened on the side of respondent, presumably as a party interested in the outcome of the appeal.

decision. In the course of an appeal of that city council decision to LUBA, petitioners may challenge alleged errors or omissions committed by the planning commission and/or urban renewal agency as part of that multi-step process, although it is possible that the city council proceedings may cure certain planning commission or agency errors, or that those errors may not provide a basis for remand of the city council decision for other reasons. In the present case, moreover, it is noteworthy that the city council acting through city staff entirely assumed the statutory duties of the urban renewal agency. We see no reason why, if the city staff failed to perform those duties correctly, and the city council failed to correct that staff failure, error cannot be assigned to such failures on appeal of the city council decision to LUBA.

Respondents next respond to petitioners' challenges that the city's refusal to allow testimony on the revised plan violated ORS 457.095 and 457.085(1), by arguing that the city's August 22, 2007 meeting was not a public evidentiary hearing, but rather was a non-evidentiary decisional "meeting," so that it was proper to prohibit testimony from the public. Respondents also argue that petitioners had a full opportunity to prepare and submit their case during the planning commission hearings and August 8, 2007 city council hearing. Finally, respondents argue that even if the city committed procedural error in refusing to allow testimony at the August 22, 2007 meeting, petitioners have not demonstrated that that error prejudiced their substantial rights.

Respondents appear to miss the point of petitioners' challenge to the city's refusal to allow testimony on the *revised* Plan. The record indicates that sometime after the public hearing was closed on August 8, 2007, city planning staff prepared and forwarded a revised Plan to the city council that doubled the size of the URA. When petitioners learned of the revised Plan at the August 22, 2007 hearing, petitioners requested that they be allowed to testify on the revised Plan, but the city refused. We agree with petitioners that when the city revised the Plan between the August 8, 2007 hearing and the August 22, 2007 hearing, the

city was required under ORS 457.095 to allow testimony on that revised Plan. The city's failure to do so violated that statute and prejudiced petitioners' substantial rights under ORS 457.095, which requires the city to approve or disapprove an urban renewal plan only after " * * * public notice and hearing and consideration of public testimony* * *."

For the same reasons, we also agree with petitioners that the city's actions violated ORS 457.085(1), which requires public involvement in all stages of the development of an urban renewal plan. We do not mean to suggest that any modification in the Plan is necessarily a separate stage of the development for which public involvement must be provided. But the disputed revision doubled the size of the URA. Such a significant change in the Plan is properly viewed as a "stage of the development" of the Plan that required public involvement under ORS 457.085(1). The ORS 457.085(1) requirement for public involvement in that stage of development likely could have been achieved by simply allowing public testimony on the revised Plan at a city council hearing. But to make such a significant change without providing an opportunity for public input at all violates ORS 457.085(1).

These assignments of error are sustained.

**THIRD ASSIGNMENT OF ERROR (WFLO)/SIXTH ASSIGNMENT OF ERROR (GRANADA)**

In these assignments of error, petitioners allege that the city erred in failing to forward the revised Plan to the governing body of each taxing district affected by the Plan. ORS 457.085(5) provides:

> "An urban renewal plan and accompanying report shall be forwarded to the governing body of each taxing district affected by the urban renewal plan and the agency shall consult and confer with the taxing districts prior to presenting the plan to the governing body of the municipality for approval under ORS 457.095. Any written recommendations of the governing body of each taxing district shall be accepted, rejected or modified by the governing body of the municipality in adopting the plan."

Petitioners argue that the statute required the city to forward the revised Plan to the affected taxing districts and that the city's failure to do so violated the statute. The City Record indicates that the city provided a copy of the proposed plan and report to six taxing districts on July 19 and 20, 2007 and to one taxing district on August 17, 2007. City Record 717-737. The City Record also indicates that after the city revised the plan to include additional acreage, the city contacted some of the taxing districts by telephone to inform them of the changes. The City Record does not contain any written recommendations from any taxing district, and no party argues that any taxing district provided any such recommendations.

Respondents respond that the city's initial letters providing the affected taxing districts with a copy of the Plan and report were sufficient to comply with the statute, and that the statute does not require the city to re-notice the taxing districts based on revisions to the Plan. In any event, respondents note, petitioners have not alleged that any failure by the city to comply with the statute prejudiced their substantial rights, and as such, petitioners' assignment of error provides no basis for reversal or remand.

We agree with respondents that the city's actions in providing the initial notice and copies of the plan and report to the taxing districts were sufficient to comply with the statute, and that the statute does not require the city to provide the taxing districts with copies of revisions to the Plan. Moreover, petitioners have not explained how, even if the city failed to comply with ORS 457.085(5), their substantial rights were prejudiced. ORS 197.835(9)(a)(B); *Bollam v. Clackamas County*, 52 Or LUBA 738, 751 (2006).

These assignments of error are denied.

**FOURTH ASSIGNMENT OF ERROR (WFLO)**

In their fourth assignment of error, WFLO argues that the city should have provided new notice under ORS 457.120(1) after the city revised the Plan to add an additional 459 acres to the URA. ORS 457.120(1) provides:

> "In addition to any required public notice of hearing on a proposed urban renewal plan or substantial amendment or change to a plan, as described in

> ORS 457.085(2)(i) and 457.220, the municipality shall cause notice of a hearing by the governing body on a proposed plan for a new urban renewal area or on a proposed change containing one of the types of amendments specified in ORS 457.085 (2)(i) to be mailed to each individual or household in one of the following groups:
>
> "(a) Owners of real property that is located in the municipality;
>
> "(b) Electors registered in the municipality;
>
> "(c) Sewer, water, electric or other utility customers in the municipality; or
>
> "(d) Postal patrons in the municipality."[9]

ORS 457.120(1) requires a municipality that is considering adopting an initial urban renewal plan or a substantial amendment to an adopted plan to provide both any notice of a hearing that is required by its local code and any applicable statutes, and also a general broader mailed notice to residents of the municipality, and that can be accomplished by choosing among (a) through (d) above.

It is undisputed that the city provided notice of the initial city council hearing on the proposed plan as required by ORS 457.120. City Record 592-93. However, we understand WFLO to argue that this section, read in context with ORS 457.085(2)(i), also required the city to provide a new notice when the proposed plan was amended to add additional acreage.

We do not think the statute requires a new notice to be mailed as provided in ORS 457.120(1)(a) through (d) when a governing body considers revisions to proposed plans that have not yet been adopted. The statute requires notice of a hearing on a proposed plan and on substantial amendments to *previously adopted* plans. And as with other legislative decisions by municipalities, presumably, providing notice of an initial hearing on a proposed

---

[9] ORS 457.085(2)(i) provides that the urban renewal plan must include a description of the types of future amendments to an adopted plan that are "substantial amendments" to the plan that will require new notice, hearing, and approval procedures, and includes as substantial amendments those amendments that add land to the urban renewal area boundaries, unless the total land added is not more than one percent of the existing urban renewal area. ORS 457.085(2)(i)(A).

plan under ORS 457.120 allows interested persons to appear at the initial hearing and participate in any continued hearings on the plan if that is what occurs. As long as the city conducts a public hearing on a revision to a proposed plan, persons who appear at the initial hearing should learn of and have the opportunity to attend any continued hearings and hence learn of any proposed revisions to the original plan.

This assignment of error is denied.

**SIXTH AND SEVENTH ASSIGNMENT OF ERROR (WFLO)/ THIRD THROUGH FIFTH ASSIGNMENTS OF ERROR (GRANADA)**

These assignments of error challenge the Plan's compliance with ORS 457.085(2) and (3) and allege that the city's findings that were adopted in order to comply with ORS 457.095(1) through (7) are inadequate. We have sustained petitioners' challenge to the city's adoption of the Plan as violating ORS 457.085(1) and ORS 457.095, because the city did not allow petitioners to testify on the revised Plan that doubled the size of the URA. On remand, the city must allow the public to present testimony regarding the revised Plan. It is possible that such testimony could change the outcome of the entire plan approval process, or result in revisions to the Plan such as increases in the maximum indebtedness, or changes to the city's findings and determinations regarding approval of the Plan, if the city in fact approves the Plan on remand. Therefore, it would serve no purpose for us to address challenges to the city's findings and determinations regarding the Plan under ORS 457.085(2) and (3) and ORS 457.095, and we therefore do not address these assignments of error.

**SECOND ASSIGNMENT OF ERROR (GRANADA)**

In this assignment of error, Granada alleges that the city failed to publish notice of the adoption of the Ordinance as required by ORS 457.115 no later than four days following the adoption of the Ordinance. Respondents respond that the city did in fact publish notice of the adoption of the Ordinance, and that respondents simply failed to include an affidavit in the record to establish that the required notice was published. Respondents attach the

affidavit to their response brief. Petitioners do not dispute the accuracy of the affidavit. As such, this assignment of error provides no basis for reversal or remand.

This assignment of error is denied.

**SEVENTH ASSIGNMENT OF ERROR (GRANADA)**

In this assignment of error, Granada argues that the city violated ORS 197.763 in various ways, and that certain county decision makers were biased.[10] Granada argues that the provisions of ORS 197.763 applied to the city and county decisions adopting the Plan because they were quasi-judicial, rather than legislative decisions. Granada argues that the decisions satisfy the three criteria for a quasi-judicial decision set forth in *Strawberry Hill 4 Wheelers v. Benton Co. Bd. of Comm.*, 287 Or 591, 602-03, 601 P2d 769 (1979). Respondents answer that decisions to adopt an urban renewal plan are legislative decisions, and that the criteria set forth in *Strawberry Hill* do not support Granada's position that the decision is quasi-judicial and support respondents' position that the decision is legislative.

In *Leonard v. Union County*, 24 Or LUBA 362 (1992), we summarized the three *Strawberry Hill* factors as follows:

> "1. Is 'the process bound to result in a decision?'
>
> "2. Is 'the decision bound to apply preexisting criteria to concrete facts?'
>
> "3. Is the action 'directed at a closely circumscribed factual situation or a relatively small number of persons?'" *Id*. at 368.

Granada argues that the city was bound to make a determination on the Plan because the Development Agreement obligates the city to construct infrastructure improvements by a specified date, and that without adoption of the Plan, the city could not fund construction of those projects. Respondents answer, and we agree, that the while the Development Agreement obligates the city to construct the projects, it does not obligate the city to form an

[10] Specifically, Granada alleges the city violated ORS 197.763(2)(a)(A), (3), (4), and (6), an that certain county decision makers were biased based on statements made prior to the adoption of the Plan.

urban renewal district to fund the projects, and that other financing options are available. The first *Strawberry Hill* factor supports respondents' view of the decision as legislative.

Granada argues that the second factor supports a finding that the challenged decision is quasi-judicial because ORS 457.085 and 457.095 require the city to prepare a detailed urban renewal plan that describes the properties to be included and the projects to be undertaken and require the city to adopt detailed findings regarding the plan. Respondents answer by distinguishing the city's decision from the decision at issue in *Estate of Gold v. City of Portland*, 87 Or App 45, 740 P2d 812 (1987), where the Court of Appeals found that a city decision amending an urban renewal plan that authorized condemnation of one specific property was quasi-judicial, rather than legislative, because it involved a closely circumscribed factual situation. *Id.* at 52.

The second *Strawberry Hill* factor is present to some extent in nearly all land use decisions, and is therefore less definitive. *Valerio v. Union County*, 33 Or LUBA 604, 607 (1997); *Churchill v. Tillamook County*, 29 Or LUBA 68, 70-71 (1995). All decisions adopting urban renewal plans must comply with the requirements of ORS 457.085 and 457.095, and those standards must be applied to a relatively concrete set of facts. Yet, not every decision adopting an urban renewal plan is a quasi-judicial decision. In our view, application of the second *Strawberry Hill* factor in the present case does not point strongly to either a legislative or quasi-judicial decision.

With respect to the third factor, whether the action is directed at a closely circumscribed factual situation or a relatively small number of persons, Granada argues that the URA was created and the Plan adopted for the sole purpose of satisfying the city's obligations under the Development Agreement. Moreover, Granada argues, the URA includes only 13 property owners, and approximately 30% of the URA is owned by Granada. Respondents answer that the decision to create the URA involved notice to more than 16,000 persons and six taxing districts, and that the URA encompasses an area totaling 917 acres of

land, which, respondents note, exceeds 8% of the city's total land area. Respondents also point to other LUBA decisions that suggest that the adoption of an urban renewal plan involving large acreages or multiple properties are legislative rather than quasi-judicial. *Zimmerman v. Columbia County*, 40 Or LUBA 483 (2001) (involving 900 acre site encompassing an industrial park); *Union Station Bus. Community Assoc. v. City of Portland*, 15 Or LUBA 4, 13 (1986) (involving an amendment to an urban renewal plan that added two properties to the urban renewal area).

We agree with respondents that the third *Strawberry Hill* factor supports a finding that the decision is legislative. The property included in the URA encompasses 13 parcels that encompass a large area that is equal to approximately 8% of the city's total land area. That fact strongly indicates that the decision was legislative. *See Zimmerman*, 40 Or LUBA at 491; *Davenport v. City of Tigard*, 22 Or LUBA 577, 580 (1992) (annexation of nine property owners' property was legislative decision). Considering the three *Strawberry Hill* factors together indicates that the city and county decisions have much more of a legislative than quasi-judicial character. Accordingly, because the decisions were legislative rather than quasi-judicial, it follows that the requirements of ORS 197.763 governing notice and hearings relating to quasi-judicial land use decisions do not apply. Similarly, Granada's challenge to the county's decision on the basis that certain decision makers were biased provides no basis for reversal or remand of a legislative decision.

This assignment of error is denied.

**EIGHTH ASSIGNMENT OF ERROR (WFLO)**

In their eighth assignment of error, WFLO alleges that the county's findings regarding the Plan are inadequate and that the county failed to follow applicable procedures in adopting the Plan. The county's findings summarily conclude that the Plan is consistent with the county comprehensive plan, without explaining what comprehensive plan provisions apply or why the Plan is consistent with applicable provisions.

The county responds that the requirement to adopt findings and determinations set forth in ORS 457.095(1) through (7) applies only to the city's approval of the Plan, and that detailed findings for the county's approval of the plan are not required. We agree with the county that it is not required to adopt the detailed findings required in ORS 457.095(1) through (7). However, as noted, we conclude above that the county's decision approving the Plan is a land use decision. As such, ORS 197.835(8) requires the county's decision approving the Plan to be consistent with the county's comprehensive plan.[11] We might be inclined to agree with the county that its summary findings that the Plan conforms to the county's comprehensive plan are adequate if, for example, the city had adopted findings that explain how the city and county comprehensive plan may apply to the URA land located within the county and why including that county land in the URA is consistent with both comprehensive plans. However, as far as we can tell, the city did not adopt findings to that effect or otherwise determine how the county's comprehensive plan applies to the URA land located within the county.

Although the county's decision is a legislative decision and as such, the county is not required to adopt findings to support the decision, in order for LUBA to perform its review function, there must be "enough in the way of findings or accessible material in the record of the legislative act to show that applicable criteria were applied and that required considerations were indeed considered." *Citizens Against Irresponsible Growth v. Metro*, 179 Or App 12, 16 n 6, 38 P3d 956 (2002). The county does not point to anything in the record of the county decision to support its decision to show that applicable criteria were applied. The decision does not contain any discussion of applicable county comprehensive

---

[11] ORS 197.835(8) provides:

> "The board shall reverse or remand a decision involving the application of a plan or land use regulation provision if the decision is not in compliance with applicable provisions of the comprehensive plan or land use regulations."

plan provisions or analyze or explain how the Plan is consistent with those provisions. The findings are therefore inadequate.

This assignment of error is sustained.[12]

**EIGHTH ASSIGNMENT OF ERROR (GRANADA)**

In this assignment of error, Granada argues that respondents' adoption of the Plan violates Article I, Section 20 of the Oregon Constitution, the "privileges and immunities" clause.[13] Granada argues that the Plan funds infrastructure projects that primarily benefit a party to the Development Agreement to the detriment of Granada, and as such, that the Plan involves either unequal treatment of Granada or unequal treatment of property owners within the URA that are similarly situated to Granada, without rationally related legitimate reasons for doing so. Granada Petition for Review 48. Granada's argument in support of this assignment of error contends:

> "[Respondents are] irrationally and arbitrarily applying the financial tool of a URA [that authorizes formation of a local improvement district (LID)] to satisfy their contractual obligations and tax the surrounding properties for the benefit of [a party to the Development Agreement]. The inequities of this financing scheme are substantial and rise to the level of irrational and arbitrary governmental conduct that violates the Privileges and Immunities clause." Granada Petition for Review 49.

Respondents respond, and we agree, that Granada's concern that it will be unfairly assessed LID payments in the future if an LID is formed is premature, because the Plan merely authorizes future formation of an LID and neither requires that an LID be formed nor

---

[12] WFLO's argument that the county failed to follow applicable procedures is insufficiently developed for our review. *Deschutes Development v. Deschutes Cty.*, 5 Or LUBA 218, 220 (1982).

[13] Article I, Section 20 provides:

> "No law shall be passed granting to any citizen or class of citizens privileges, or immunities, which, upon the same terms, shall not equally belong to all citizens."

actually forms an LID.[14] Nor does the Plan compel any particular means of funding the proposed improvements. We agree with respondents that Granada has not demonstrated that the Plan's authorization of the city to form a future LID violates the Privileges and Immunities clause, and that any challenges to the future formation of an LID are premature. As such, the assignment of error provides no basis for reversal or remand.

This assignment of error is denied.

The city's and county's decisions are remanded.

[14] Respondents also note that challenges to the formation of an LID are not within LUBA's jurisdiction but rather are subject to review by the circuit courts.