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

THE CITY OF ALBANY,
Petitioner,

vs.

LINN COUNTY,
Respondent.

LUBA No. 2019-113

FINAL OPINION
AND ORDER

Appeal from Linn County.

M. Sean Kidd, Albany, filed the petition for review and argued on behalf of petitioner. With him on the brief was Delapoer Kidd, P.C.

Kevan J. McCulloch, Deputy County Attorney, Albany, filed the response brief and argued on behalf of respondent.

RUDD, Board Chair; RYAN, Board Member; ZAMUDIO, Board Member, participated in the decision.

AFFIRMED 02/07/2020

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

Opinion by Rudd.

NATURE OF DECISION

Petitioner the City of Albany (City) appeals a Linn County Board of Commissioners' decision adopting amendments to the text of the chapter of the county's zoning ordinance that regulates development of property within the city's urban growth boundary (UGB).

BACKGROUND

The urban fringe is that area located within the city's urban growth boundary but outside the city limits. Areas within the urban fringe are intended for future urban expansion, requiring the county and city to establish a structure for working together to facilitate the future transfer of land use management authority over properties within the urban fringe from the county to the city. In 1988, the county and city entered into an Urban Growth Boundary Management Agreement (the Agreement) in order to establish "a joint management procedure * * * for the implementation of the Albany Urban Growth Boundary and plan for the [urban fringe]." Record 124.

The Agreement is referenced in Linn County's Comprehensive Plan (LCCP). Linn County Code (LCC) 905.600 *et seq.*[1] LCC 905.610(D) explains that "The cities' right to review and comment on county land use decisions within the planning area is secured within the UGB management agreement." For

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[1] The county has adopted a unified comprehensive plan and land use code.

example, the Agreement provides that the parties must agree in order to change the zoning of property within the urban fringe. Record 125. The Agreement also provides that the county will obtain input from the city with respect to development applications for property in the urban fringe, such as conditional use permits or variances, but does not require that the city and county agree as to the appropriate disposition of those development applications. Record 126.

This appeal follows two recent LUBA cases in which the city objected to the county's approval of variances to parcel size for parcels within the urban fringe. In *City of Albany v. Linn County*, 78 Or LUBA 1 (2018) (*Albany I*), we reversed the county's approval of a variance from the zone's minimum 20-acre parcel size, that allowed an existing 1.98-acre parcel to be divided into two approximately one-acre parcels. Applicable approval criteria for the variance required that the county find that the variance was consistent with the city's comprehensive plan. We concluded that the proposed partition allowed an urban scale of development within the urban fringe in contravention of the city's comprehensive plan.

In *City of Albany v. Linn County*, ___ Or LUBA ___, ___ (LUBA No 2019-034, June 13, 2019) (*Albany II*), we reversed the county's decision approving a variance to the zone's 20-acre minimum parcel size and approving the division of a 16.7 acre parcel into an 11.7-acre parcel and a 5-acre parcel. The zoning code established four Urban Growth Area/Urban Growth Management (UGA-UGM) zones distinguished only by their minimum parcel sizes of 2.5, 5, 10 and 20 acres

and provided that an interchange of densities between the zones required city consent. The LCC did not include a definition of "density." We reversed the county's decision approving the variance because we concluded that, applying a common definition of the word density, the county approved an interchanging of density within the UGA-UGM zones without city consent.

Following our decision in *Albany II*, the county adopted amendments to its zoning code. The amendments (1) adopt a definition of the word "density" and (2) modify zoning code provisions relating to modifications of minimum parcel sizes in certain zones. The city opposed the amendments.

The city claimed the amendments violated the Agreement, the city's and the county's comprehensive plans, and the LCC provisions governing text amendments. The city contended that the county was amending the code to facilitate the reduction of parcel sizes in the urban fringe through the use of variances, which, under the Agreement, do not require city concurrence, as opposed to zone changes, which, under the Agreement, do require city concurrence. On October 8, 2019, the county adopted the code amendments.[2]

This appeal followed.

FIRST ASSIGNMENT OF ERROR

The county amended its code to add a definition of "density":

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[2] The challenged decision does not amend the Linn County Comprehensive Plan.

> "'Density' when applied to a zoning district means the minimum designated property size that may be permitted without a separate land use decision or property size variance. Unless otherwise stated in the Comprehensive Plan or the Land Development Code[,] 'density' does not mean 'dwelling units per acre' or 'persons per acre'." Record 5.

LCC 921.824(A) provides that a zoning code text amendment may be approved if "(1) [t]he amendment is consistent with the intent and purpose statement of the affected Chapter or subchapter of the [LCC]; and (2) [t]he amendment is consistent with the intent of the policies within the applicable section(s) of the Comprehensive Plan." The city's first assignment of error is that the newly adopted definition of density is inconsistent with the intent of county comprehensive plan policies and violates the Agreement, city and county comprehensive plans, and LCC 921.824.

A. Standard of Review

ORS 197.835 provides in part:

> "(7) LUBA shall reverse or remand an amendment to a land use regulation or the adoption of a new land use regulation if:
>
> > "(a) The regulation is not incompliance with the comprehensive plan; or
> >
> > "(b) The comprehensive plan does not contain specific policies or other provisions which provide the basis for the regulation, and the regulation is not in compliance with the statewide planning goals."

LUBA will reverse or remand a land use decision if LUBA finds that the local government improperly construed applicable law. ORS 197.835(9)(a)(D). The

county argues that LUBA should defer to the county's conclusion that the amendments are consistent with the county comprehensive plan.

ORS 197.829 provides in relevant part:

> "(1) The Land Use Board of Appeals shall affirm a local government's interpretation of its comprehensive plan and land use regulations, unless the board determines that the local government's interpretation:
>
> > "(a) Is inconsistent with the express language of the comprehensive plan or land use regulation;
> >
> > "(b) Is inconsistent with the purpose for the comprehensive plan or land use regulation;
> >
> > "(c) Is inconsistent with the underlying policy that provides the basis for the comprehensive plan or land use regulation; or
> >
> > "(d) Is contrary to a state statute, land use goal or rule that the comprehensive plan provision or land use regulation implements."

We will review a county board of commissioners' interpretation of its own regulations under ORS 197.829(1) and affirm it, so long as that interpretation is not inconsistent with the express language of the regulation or its underlying purposes and policies. *Siporen v. City of Medford*, 349 Or 247, 259, 243 P3d 776 (2010).

The city argues that no *Siporen* deference is afforded to the county's decision because ORS 197.829(1) is expressly limited to interpretations and in this case, the board of county commissioners did not engage in any interpretation of any relevant provisions. We conclude that in this case, the board of

commissioners adopted no reviewable interpretations of any relevant comprehensive plan provision or land use regulation, so there is nothing to defer to. *West Coast Media v. City of Gladstone*, 44 Or LUBA 503 (2003), *aff'd*, 192 Or App 102, 84 P3d 213 (2004).

B. The Definition of "Density" is Consistent with County Comprehensive Plan Policies

The city argues that the definition of "density" conflicts with a provision of the LCCP at LCC 905.600(D), which provides:

> "It is important not to create a development pattern within or on the fringe of the UGB which could be detrimental to long-range community planning goals. An inefficient use of land within the UGB has two negative effects. First, a sprawling development pattern results in higher costs when services such as sewer, water and utilities are extended, and followed by underutilization of the same services. Underutilization of service occurs because the random land use and ownership pattern is not easily converted to a *denser*, and more economical service area. Second, *a poorly managed* UGB will result in the need for additional land to accommodate community growth. The expansion of an UGB may result in the loss of productive resource lands. Therefore, the wise use of an UGB is critical because of its relationship to resource land, cost of services, and community planning." (Emphases added).

The city argues that put into practice, defining density in a manner which allows the county to approve substandard size lots will result in the loss of productive resource lands and a mismanaged UGB.

We disagree. The above LCCP policy is a general policy that uses the term "denser" to describe the relative concentration of development in a water, sewer and utility service area. In contrast the adopted definition of "density," by its

terms, applies only to instances where the term is applied to a zoning district, in which case density refers to the minimum property size allowed in a given zoning district without a variance or other land use action such as a zone change. The definition of "density" the county adopted does not conflict with LCC 905.600(D).

The city also alleges that the definition conflicts with LCC 905.610(E), which provides that, "The Urban Growth Management (UGM) district is intended to protect and retain the urban growth area for future urban development." We agree with the county that the definition of density does not conflict with LCC 905.610(E). As the county observes, although LCC 905.610(E) refers to protection of the urban growth area, it also describes the relevant zone district as a "management" district. LCC 905.610(A) expressly discusses management of this area as well, providing:

> "As previously discussed throughout the text of the Plan, the retention of resource land for resource use is of prime importance. To that end, various policy and implementation measures have been established which will separate and in some cases prohibit conflicting uses from occurring on resource lands. In order to identify, *manage*, and amend urban growth boundaries, the cities and county have entered into urban growth boundary management agreements (on file at the planning department)." (Emphasis added.)

Part of the county's stated policy for the urban fringe is to manage the boundaries through the use of urban boundary management agreements. "Protect" is not defined in the LCC. LCC 920.100 provides that a term undefined in the code shall have its "ordinary accepted meaning within the context in which it has been used.

The most current edition of Webster's New Collegiate Dictionary shall be considered the source of accepted meanings." To "protect" is "1 : to cover or shield from exposure, injury or destruction[.]" *Webster's Ninth New Collegiate* 946 (1991). Management of the urban fringe is consistent with shielding the urban fringe from types of development which would result in the need for additional land to accommodate community growth and potentially the loss of productive resource lands. As a result, the county may interpret management to result in protection.

In addition, the Agreement sets forth how different types of applications are processed, and the density definition does not change the process identified in the Agreement as applicable to variances. Further, LCC 905.600(D) also references the dangers of a poorly *managed* UGB, lending support to the county's position that the county can protect the urban fringe by managing it in a way that supports its future conversion to efficient urban use. We conclude that the definition of density is not in conflict with the LCC 905.610(E).

C. The Agreement is Not a Part of the County's Comprehensive Plan

The Agreement is intended to establish a joint management procedure for the urban fringe. The Agreement establishes the review process for comprehensive plan amendments and development proposal review and states that the city and county agree that the city's public facilities plan will be the prevailing guide for planning and improving public facilities described therein.

The introductory section of the Agreement includes the statement, "The urban fringe is defined as the area situated inside the Albany Urban Growth Boundary and outside the Albany city limits. *Other definitions are located in the glossary of the Comprehensive Plan.*" Record 124 (emphasis added). The city argues that this language incorporates the *city* comprehensive plan's glossary into the Agreement. The city comprehensive plan glossary defines density as "number of living units per acre of land."[3]

The city argues that the city definition of "density" is part of the Agreement, and the Agreement is part of the county comprehensive plan, and so, the city maintains, the amendment results in the county comprehensive plan containing two, conflicting definitions of density: the definition from the city comprehensive plan glossary, and the newly adopted definition. For the reasons explained below, we conclude that the Agreement is not a part of the county's comprehensive plan, and therefore, even if the city's definition of density is part of the Agreement, there is no conflict.

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[3] Neither party argues that the term density is defined within the Agreement or discusses whether the Agreement provision, "Other definitions are located in the Glossary of the Comprehensive Plan," is properly read to limit the applicability of the glossary to terms used in the Agreement itself. Record 124. We therefore assume for purposes of this opinion that the Agreement intended to broadly adopt glossary definitions from the city's comprehensive plan and apply those definitions to any document which incorporates the Agreement.

The city argues that Statewide Land Use Planning Goal 2 (Land Use Planning), which requires land use planning coordination between affected governmental units, supports the city's position that the Agreement is part of the county comprehensive plan. However, nothing in Goal 2 specifies that an agreement between a county and city to manage land within an urban growth boundary is either incorporated by law into a local jurisdictions' comprehensive plans or county codes, or mandates that local governments take action to do so.

Second, the city argues the Agreement is referenced in a variety of LCC sections. For example, the Agreement is referenced in Linn County code provisions LCC 905.610(A) and (D), which provide that the Agreement is intended to govern the procedure between the city and county, and is on file in the planning department.

However, we see nothing in the LCC that states that the Agreement is incorporated into the LCCP, and a mere statement that the Agreement is intended to govern procedures is not sufficient to demonstrate that the Agreement is a part of the LCC, or LCCP. The LCC states that the Agreement is on file in the planning department. We decline to find that the Agreement has been adopted into or incorporated into LCC or LCCP. Accordingly, we reject the city's argument that the county has adopted two definitions of "density" that are inconsistent with each other.

D. The Amendments are Consistent with City Comprehensive Plan

We understand that the Agreement is attached as an appendix to the city's comprehensive plan. Assuming for purposes of this opinion that inclusion as an appendix to the comprehensive plan makes the Agreement part of the city comprehensive plan, Goal 2 requires that county comprehensive plans are consistent with those of local governments, and therefore, the city argues, Goal 2 requires the county to use the city's definition of density. The city argues that state law requires that code language be consistent with the city and county comprehensive plans it implements. Petition for Review 10.

On October 1, 2019, a county senior planner submitted to the county board of commissioners a memo responding to comments received from city. The senior planner stated in the memo that county comprehensive plan text amendments do not have to be consistent with the city comprehensive plan. Record 36. The county argues in its response that LCC 921.824(A) establishes the standards for legislative code text amendments is consistent with ORS 215.050(1), "which allows counties to revise their comprehensive plans and zoning ordinances from time to time." Response Brief 11. The county argues that LCC 921.824 does not require that the County make a finding of consistency with the city's comprehensive plan, and therefore, the county maintains, "it would be improper to insert one. ORS 174.010." Response Brief 19. Citing LUBA's standard of review at ORS 197.835(7), the county also argues that the statewide planning goals are not applicable because (1) specific policies and provisions in

the comprehensive plan provide the basis for the amendments and, (2) development applications must be consistent with the affected city's comprehensive plan. Response Brief 12–13.

We agree with the City that the county comprehensive plan must be consistent with the city comprehensive plan. Goal 2 provides that "City, county, state and federal agency and special district plans and actions related to land use shall be consistent with the comprehensive plans of cities and counties and regional plans adopted under ORS Chapter 268." We conclude, however, that the amendment is consistent with the city's comprehensive plan because city comprehensive plan policies will continue to apply to development actions within the urban fringe. As the county explains, "[L]and use applications for *development*, as opposed to text amendments, within an urban growth boundary [area] are required to be consistent with the affected city's comprehensive plan. Record 36, 38, 39, 42, 43, 44, 60." Response 13. By evaluating consistency at the development stage, the county ensures that the plans are applied in a consistent manner.

E. The County Has Coordinated with the City

Goal 2 requires that "[a county's comprehensive] plan and related implementation measure[s] shall be coordinated with the plans of affected governmental units." The city argues that the county's code revisions violate the county's Goal 2 coordination obligation. The city argues that, in adopting the

challenged code amendments, the county unilaterally changed the manner in which the urban fringe is managed without coordinating with the city.

The county correctly observes that ORS 197.835(7) governs our review of the county code text amendments and only requires reversal or remand if the amendment is "(a) * * * not in compliance with the comprehensive plan," or "(b) [t]he comprehensive plan does not contain specific policies or other provisions which provide the basis for the regulation, and the regulation is not in compliance with the statewide planning goals." The county first responds that "[t]he statewide planning goals are not applicable in this appeal" because the LCCP contains specific policies and provisions which provide the basis for the amendments. Response Brief 12. The county argues that the newly adopted definition of density is consistent with the use of that term in the LCCP and LCC. Response Brief 14–15. However, ORS 197.835(7)(b) requires more than a demonstration that a text amendment is not inconsistent with the comprehensive plan. Instead, ORS 197.835(7)(b) requires the county to identify "specific policies or other provisions" in the comprehensive plan that "provide the basis for the regulation." The county has not identified any such policies or provisions in the LCCP. Thus, we assume for purposes of this decision that Goal 2 applies to the text amendments.

In *Columbia Pacific Building Trades Council v. City of Portland*, 76 Or LUBA 15, 49 (2017), *rev'd on other grounds*, 289 Or App 739, 412 P3d 258, *rev*

den, 363 Or 390 (2018), we applied Goal 2 in our review of legislative text amendments to the city's zoning ordinance and explained:

> "The Goal 2 requirement to coordinate comprehensive plan and implementing measures with the plans of affected governmental units is satisfied by (1) inviting an exchange of information between the planning jurisdiction and affected governmental units, and (2) using the information gained in that exchange to balance the needs of all affected government units and the citizens they represent." (Internal citations omitted.)

The county argues that it coordinated with affected local governments because it provided notice of the proposed amendments and extended the comment period to allow local governments additional time to provide input on the amendments. Although we do not believe that providing notice and an extended open record period would, alone, necessarily fulfill the requirement to coordinate if, in a given case, local government input was not given meaningful consideration, we understand the county to have responded to the issues raised by city as well as other local affected government units and incorporated some comments it received into the amendments. Record 35–43. We conclude that the county has met its Goal 2 coordination requirement.

We also agree that in fulfilling its coordination obligation, the county is only required to consider legitimate interests of the local government. The county argues that the legitimate interests of the city in the efficient use of land within the UGB are protected because a request for a variance to allow substandard parcel sizes requires both a partition application and identification of a proposed

use, and both of those procedures allow, and may require, city involvement in the decision-making process.

More specifically, LCC 920.500 provides in part:

> "(3) Based on zoning district and the uses permitted, an applicant seeking approval for a partitioning of land must at the same time file an application in which the applicant seeks approval for a proposed use that is allowed or permitted on such property in the zoning district.
>
> "(a) Approval of an application for a partition does not grant approval for any use.
>
> "(b) Approval of any proposed use permitted on the parcel must be sought in an independent application at the same time as the application for partitioning."

LCC 924.200(10) in turn provides for city review and comment on a partition application:

> "When property proposed for partitioning is within a city's urban growth area (UGA), appropriate time shall be given for a city's review and comment pursuant to the urban growth boundary management agreement. Partitions within an urban growth area may require an urban conversion plan approved by the city."

LCC 924.200(10) ensures that the city will have an opportunity for input regarding any specific request for a variance for a reduction in parcel size.

More importantly, the approval criteria for a variance include a requirement that the county find the variance is consistent with the city comprehensive plan. LCC 938.340. Under LCC 920.500(3)(b), the city will know what use is proposed for the reduced size parcel and will be given an opportunity

to comment on the proposal, including its consistency with the city comprehensive plan.

In an argument under the first assignment of error, and in a portion of the third assignment of error, the city argues that, based on our decisions in *Albany I and II*, the county will conclude that after adoption of these amendments, the county will be free to grant variances to all property owners seeking to create a parcel at least five acres in size.[4] The city overstates this risk.

The city and county originally agreed to the zoning of land within the urban fringe and applied UGM-UGA zoning to parcels where the only difference in the regulations applicable to the properties was the minimum parcel size. As we explained in *Albany II*, modifications to the *zoning* of these areas may only be made through the zone amendment process and only upon written concurrence of both the city and county. Record 125. The city argues that the UGA-UGM zones with 2.5, 5, 10 and 20-acre minimum lot sites were applied to properties through a coordinated city and county effort and the amendments undermine these revisions. Presumably, the physical characteristics of a property zoned UGA-UGM-10 differ from the characteristics of a property zoned UGA-UGM-

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[4] The city also complains the new definition of density essentially amends the Agreement unilaterally, and that the county failed to follow the amendment process set forth in the Agreement. The Agreement is a contract between the city and the county and resolving that city's contractual claim is not within LUBA's scope of review.

20. Given the specifics of a given case, a variance to create a new 5-acre parcel may not be consistent with the city's comprehensive plan.[5]

The first assignment of error is denied.

SECOND ASSIGNMENT OF ERROR

The city argues that county amendments to "vital purposes statements" in LCC 930.600 and LCC 930.700 are inconsistent with the city and county comprehensive plans, the Agreement, and the LCC. Petition for Review 17. Prior to the amendments, LCC 930.700(E) provided "[t]he density of one UGA-UGM zoning district is not interchangeable with the density of another UGA-UGM zoning district without prior review and approval by the affected city and Linn County." The amendment changed this section to provide "Land use actions within the UGA-UGM zoning district are subject to the provisions of the urban growth management agreement between the County and the affected city." A similar change was made with respect to the UGA-RR zone with amendments to LCC 930.600(C).[6]

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[5] As we held in *Albany I* and *Albany II*, *Siporen* deference is not due to the county's interpretation of the city comprehensive plan provisions because the county is not the enacting governing body. The city's definition of density will necessarily apply when the county evaluates consistency with the city comprehensive plan because the county's new definition of density is limited by its terms to cases where the LCCP or the LCC do not provide otherwise.

[6] UGA-RR is the rural residential zone in the urban fringe.

Pursuant to LCC 921.824(A), a zone code text amendment must be consistent with the policy section of the applicable code section and with the county comprehensive plan. The city does not argue that the amendments result in internal inconsistencies within the purpose statements. We concluded in our discussion of the first assignment of error that the city has not established that the Agreement is part of the county comprehensive plan. Assuming that the Agreement is part of the city comprehensive plan, to the extent Goal 2 requires city and county comprehensive plan consistency, we explained in our discussion of the first assignment of error that there is not a conflict with the city comprehensive plan and the zone code text amendments. Variance applications are required to establish consistency with the city comprehensive plan. We therefore focus on the consistency of the amendments with the county comprehensive plan.

LCC 930.700(B) provides that the intention of the zoning district is to protect the urban fringe for future urban density development. As revised, the purpose statement provides that the intent is to manage uses within the UGA in a manner that allows for effective development. The city focuses on county comprehensive plan policy LCC 905.610(E), which provides that "The Urban Growth Management (UGM) district is intended to protect and retain the urban growth area for future urban development." This policy may not, however, be read in isolation. Another comprehensive plan policy, LCC 905.600(D), recognizes: "It is important not to create a development pattern within or on the

fringe of the UGB which would be detrimental to long-range community planning goals." The same policy also recognizes that "a poorly managed UGB will result in the need for additional land to accommodate community growth." LCC 905.600(D). Other comprehensive plan policies anticipate managing the urban fringe. "The UGB lands surrounding cities are expected to develop during the planning period and provide most new home sites, and commercial and industrial opportunities." LCC 905.600(B). "In order to identify, manage, and amend urban growth boundaries, the cities and county have entered into urban growth boundary management agreements (on file at the planning department). LCC 905.610(A). We conclude that the amendments focus on managing the urban fringe in a manner which will support its conversion to urban use, and that those amendments are consistent with the county's comprehensive plan's purpose statement.

The second assignment of error is denied.

THIRD ASSIGNMENT OF ERROR

The city's third assignment of error is that the county erred in removing all review criteria within certain zones, thereby creating a situation where the county will be unable to make decisions consistent with the county and city's comprehensive plans, the LCC, the Agreement and statewide planning goals. Petition for Review 26.

As an example of what the city argues is the removal of decision criteria, the city points to pre-amendment provisions in LCC 930.730 providing (1)

additional conditions or restrictions may be applied in accordance with the Agreement, (2) conditional uses in the urban fringe will be subject to review by the city to ensure compliance and compatibility with the city's comprehensive plan, future zoning and city plans for provision of urban services, and (3) noting that consistency with the city comprehensive plan is vital given the urban fringe's importance to future city expansion and urbanization. The amendments deleted those sections from LCC 930.730.

We reject the city's arguments. First, as the county points out, the fact that LCC 930.730 was previously entitled "Decision Criteria" is not determinative. LCC 110.300 establishes that headings do not constitute part of the law and do not describe the scope of the text. Further, the amendments added to LCC 930.010(F), 930.600(C), and 930.700(E), which provide that review of development applications in the urban fringe are subject to the procedures of the Agreement. Thus, to the extent the Agreement provides for imposition of conditions, that power remains. The city also retains the ability to comment and make recommendations and suggest conditions of approval provided in LCC 933.100(A) ("Any land development decision resulting from a review required by the [LCC], may be subject to the imposition of permit conditions.") We also note that conditional use permits in the UGA-UGM zone still require a county finding of consistency with the city's comprehensive plan and zoning map designation for the property. LCC 933.260(B).

The city also argues that by removing the requirement in the code that required city *concurrence with* certain development applications, the county is removing provisions for coordination with the city and therefore was required to comply with Goal 2. The city argues that the zoning applied to the UGA-UGM parcels resulted from a coordinated process and the amendments undermine that process. However, we do not understand the city to dispute that the Agreement is intended to establish how the parties will coordinate land use actions. Reliance on the Agreement to govern these interactions and provide for coordination is consistent with LCC 905.600(D) and 905.610(B), which provide that the Agreement will govern city and county review of land use actions and newly adopted zoning code text.[7]

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[7] In this assignment of error, the city repeats its argument from *Albany II* that county approval of parcel size variances in the UGA-UGM (or-RR) zones should instead be handled as zone changes requiring city consent. The city explains that it has an overarching policy direction to discourage low density sprawl and create a compact city that allows for the efficient provision of urban services. The city maintains that it accomplishes this in part by minimizing the amount of development in the urban fringe until urban services are available. The city complains that the amendments will ultimately allow a variance process that would enable a substandard size property to be partitioned into additional substandard lots, encouraging premature urban development. Citing *Lovell v. Independence Planning Commission*, 37 Or App 3, 7, 586 P2d 99 (1978), the city argues: "[I]f the [local government] believes the lot size that would be left after the proposed partitioning is sufficient for its R-1 residential areas, then it should change its zoning restrictions to reflect that belief." As we explained in *Albany II*, the case law supporting a restrictive view of variances involved cases where the underlying code made hardship a prerequisite to a variance. Hardship is not a prerequisite to a lot size variance in the UGA-UGM (or R-R) zones.

Lastly, the city argues that in adopting the amendments the county removed "all" review criteria for variances in certain zones. Petition for Review 36. We disagree. Review criteria remain. For example, LCC 938.340(A) incorporates LCC 938.300(B)(2) and (3). LCC 938.300(B)(2) requires a finding that, "Granting a variance * * * will not have a significant adverse [e]ffect on property, improvements, or public health or safety in the vicinity of the subject property[.]" LCC 938.300(B)(3) requires that, "Approval of the variance is limited to the minimum necessary to permit otherwise normal development of the property for the proposed use." LCC 938.340(B) requires that the proposal be consistent with the affected city's comprehensive plan.

The third assignment of error is denied.

The county's decision is affirmed.