

**BEFORE THE
LAND CONSERVATION AND DEVELOPMENT COMMISSION
OF THE STATE OF OREGON**

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| IN THE MATTER OF THE ENFORCEMENT) ORDER FOR THE CITY OF DAMASCUS) PURSUANT TO ORS 197.324)) | FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ENFORCEMENT ORDER |
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This matter came before the Land Conservation and Development Commission (Commission) on February 14, 2014, for a determination whether to adopt a proposed final order pursuant to OAR 660-045-0140(3) following a contested case proceeding before a hearings officer. The Commission fully considered the hearings officer’s findings of fact, conclusions of law, and proposed order; oral argument and exceptions of the parties; and the report of the Department of Land Conservation and Development. The Commission hereby adopts the proposed final order, exhibit A to this order, as modified herein.

BACKGROUND

The Commission initiated an enforcement action against the City of Damascus pursuant to ORS 197.324. The City of Damascus (city) incorporated in 2004. State law requires a newly incorporated city to adopt a comprehensive plan and land use regulations that are acknowledged as complying with the statewide planning goals within four years of incorporation. ORS 197.757. The city does not have an acknowledged comprehensive plan and land use regulations. The city has been working with the Department of Land Conservation and Development (department or DLCD) to achieve this statutory requirement. Compliance schedules for various tasks necessary for acknowledgement have been established, and multiple continuances to those compliance schedules have been provided. The most recent continuance extended certain deadlines until August 2013.

The Commission initiated this enforcement proceeding and appointed a hearings officer to conduct the contested case proceeding and prepare findings of facts, conclusions of law, and recommended actions. As identified in the Notice of Contested Case Hearing, there are four issues to be considered in this proceeding: (1) Whether the city failed to make satisfactory progress toward its compliance schedule; (2) Whether the city failed to comply with LCDC orders; (3) Whether the city failed to adopt a comprehensive plan and land use regulations within four years of the date of incorporation; and (4) What corrective actions and/or interim measures LCDC should impose under an enforcement order. The Commission finds that the hearings officer properly identified the parties and limited parties to this contested case proceeding; identified the record; and ruled on procedural matters.

FINDINGS OF FACT

The Commission accepts the findings of fact made by the hearings officer as modified below:

1. The Damascus area was added to the Urban Growth Boundary (UGB) by Metro in 2002, with conditions of approval requiring certain planning activities to occur under Title 11 of the Metro Functional Plan within identified timeframes.
2. The City of Damascus was incorporated by a vote of the people on November 2, 2004.
3. The first mayor and city council were sworn into office on January 3, 2005.
4. The first resolution passed by the city council was to adopt the applicable Clackamas County land use regulations, which had already been acknowledged by LCDC.
5. Clackamas County and the City of Damascus entered into intergovernmental agreements under ORS 190 for the county to perform land use and planning services for the city. The county provides current planning functions for the city under contract and other mutually agreeable planning projects at the request of the city. Planning functions include the processing of daily land use applications, issuing building permits, and performing inspections. The county also performs code enforcement services for land use and building code enforcement issues. The county provides transportation engineering services to the city.
6. On December 26, 2004, the City of Damascus, Metro and DLCD executed a Memorandum of Understanding agreeing to a work plan and regulatory framework for the development and adoption of the Damascus comprehensive plan and implementing land use regulations.
7. On August 14, 2007, LCDC acknowledged the Citizen Involvement Program of the Damascus Comprehensive Plan as being in compliance with Statewide Planning Goal 1.
8. In November 2008, the DLCD director granted the City of Damascus a one-year extension.
9. On January 21, 2010, LCDC approved a compliance schedule pursuant to OAR 660-014-0010(4) for the completion of the comprehensive plan and implementing ordinances.
10. On December 14, 2010, the City of Damascus adopted an ordinance that adopted a comprehensive plan, comprehensive plan maps, and findings of fact in support of the comprehensive plan and maps.
11. On December 16, 2010, the City of Damascus submitted notice of adoption of the comprehensive plan to DLCD and requested LCDC grant acknowledgement of compliance as required by Oregon law.
12. On December 29, 2010, DLCD requested further items, which the City of Damascus provided on January 19, 2011.
13. On April 22, 2011, LCDC reviewed the request on the record as required by ORS 197.251(1) and (4) and found that the submittal did not comply with all of the statewide planning goals.

14. On May 12, 2011, the voters of the City of Damascus rejected, by initiative petition, the comprehensive plan that the city council had adopted.
15. On July 22, 2011, DLCD issued a continuance order implementing LCDC's ruling, which included a compliance schedule for remaining tasks the city was required to complete, with due dates for the submittal of the tasks.
16. The compliance schedule included tasks to be completed by December 2011 and June 2012 that the City of Damascus completed in a timely manner.
17. The compliance schedule included tasks to be completed by November 2012, which were not submitted to DLCD as complete as of January 24, 2013.
18. Throughout 2012, the City of Damascus worked towards the completion of a new comprehensive plan and accompanying documents.
19. The City of Damascus updated LCDC on the status of the compliance schedule on January 26, 2012 and September 20, 2012.
20. On March 13, 2012, the City of Damascus Charter was amended to read, "After March 1, 2011, the council shall not submit any ordinance or plan to Metro, the LCDC, the DLCD, or their successors until it is ratified by a majority vote of the city's qualified electors voting in an election where at least 50 percent of the registered voters cast a ballot, or the election is a General Election in an even-numbered year."
21. On January 8, 2013, the City of Damascus requested an extension of all tasks on the compliance schedule to June 2014, to accommodate the non-serial document preparation and anticipated simultaneous adoption.
22. The City of Damascus' Progress Report on LCDC Compliance Work Program in 2013 identified compliance tasks for each of the goals as well as a status update and strategy for moving towards completion of the tasks.
23. On February 7, 2013, DLCD issued a continuance order implementing LCDC's grant of an extension to the compliance schedule for tasks that were due to be completed on November 2012 to the end of August 2013 and directing staff to initiate enforcement proceedings under ORS 197.320 et seq. if the city had not adopted the tasks due in their revised compliance schedule.
24. In July 2013, a potential Damascus comprehensive plan, the 2013 Plan, was sent, as recommended by the planning commission to the city council for consideration. The city council considered the 2013 throughout July and August of 2013, but was unable to reach a political compromise to adopt the plan.
25. On October 10, 2013, the Damascus city council reached a compromise to prepare two comprehensive plans and send them to the voters for adoption of one.
26. In November 2013, an initiative petition was circulated by the citizens of Damascus to send the 2103 Plan to the voters. If sufficient signatures are gathered, that measure is expected to be placed on the ballot in May 2014.
27. The Damascus city council intends to refer the two new alternative plans as two ballot measures to the city's voters in May 2014. At the time the record was closed, such election had not been scheduled, or referral made.
28. On November 15, 2013, LCDC voted to initiate enforcement proceedings under ORS 197.324 against the City of Damascus for failure to make satisfactory progress towards its compliance schedule, failure to comply with LCDC orders, and failure to

adopt a comprehensive plan and land use regulations within four years of incorporation.

29. On November 22, 2013, LCDC provided the City of Damascus and interested persons notice of the contested case hearing.

Additionally, the Commission finds the following facts:

30. On January 9, 2014, the hearings officer appointed by the Commission held oral argument.
31. On January 18, 2014, the hearings officer issued his Findings of Fact, Conclusions of Law and Recommendation (Proposed Order).
32. On or before February 6, 2014, the department, on behalf of the commission, received timely filed exceptions from the City of Damascus, General Distributors, and Lowell Patton pursuant to ORS 197.328(4) and OAR 660-045-0140(2)(c)(D).
33. On February 13, 2014, the department issued a staff report that recommended that the commission adopt the Proposed Order, with specified exceptions.
34. On February 14, 2014, the Commission held a hearing to decide whether to adopt the proposed order as the final order, modify parts of the proposed order, or not use any part of the proposed order pursuant to OAR 660-045-0140(3).

CONCLUSIONS OF LAW

The Commission adopts the hearings officer's conclusions of law. In summary, the hearings officer concluded that the city failed to make satisfactory progress toward its compliance schedule; the city failed to comply with the Commission's orders; and the city failed to adopt a comprehensive plan and land use regulations within four years of the date of incorporation. As such, the hearings officer concluded that there is good cause to believe that grounds for enforcement exist pursuant to OAR 660-045-0130(9).

The hearings officer considered and rejected the city's arguments regarding defenses to the imposition of sanctions. The Commission adopts the hearings officer's rationale and conclusion. The hearings officer then turned to consideration of the parties and limited parties suggested corrective measures and interim measures. The proposed final order recommends that the Commission impose the following corrective actions: (1) withholding of state shared revenues beginning July 1, 2014, if the city has not adopted a comprehensive plan and land use regulations (approved by the voters in the May 2014 election) and submitted them to the department for acknowledgement; and (2) exploration of avenues to allow property owners to develop urban uses, if, as above, the city again fails to adopt a comprehensive plan and land use regulations at the May 2014 election. In addition to the corrective actions recommended by the hearings officer, the department recommended that the Commission order the city to adopt a comprehensive plan and land use regulations in compliance with the statewide planning goals.

CONCLUSION

Based on consideration of the record of proceedings before the hearings officer and his proposed order; the timely exceptions to the proposed order; the arguments of the parties and limited parties concerning the proposed order and exceptions; and the recommendations and information from the department, the Commission concludes that the city's failure to make satisfactory progress toward its compliance schedule; the city's failure to comply with the Commission's orders; and the city's failure to adopt a comprehensive plan and land use regulations within four years of the date of incorporation separately and collectively establish grounds for enforcement.

THEREFORE, IT IS ORDERED THAT:

1. The department shall notify the officer responsible for disbursing state-shared revenue to withhold that portion of state-shared revenues to which the city is entitled under ORS 221.770, 323.455, 366.762 and 366.800 and ORS chapter 471 which represents the amount of \$300,000.00, the state planning grant moneys previously provided the local government by the commission. The withholding shall begin on April 1, 2014 or at the first practicable disbursement date thereafter. Such withholdings will be released on the earlier date of either when this Commission acknowledges the city's comprehensive plan and land use regulations or otherwise terminates this enforcement order.

2. The city shall adopt a comprehensive plan and land use regulations in compliance with the statewide planning goals.

DATED THIS 13th DAY OF MARCH 2014.

FOR THE COMMISSION:



Jim Rue, Director
Department of Land
Conservation and Development

NOTE: You may be entitled to judicial review of this order. Judicial review may be obtained by filing a petition for review within 60 days from the service of this final order. Judicial review is pursuant to the provisions of ORS 183.482 and ORS 197.335(2).

Certificate of Mailing

I hereby certify that on this day I mailed a copy of the Findings of Fact, Conclusions of Law and Enforcement Order in the Matter of the Enforcement Order for the City of Damascus to the parties listed below:

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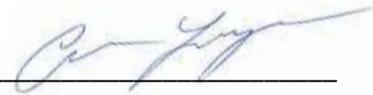
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Dated this 13th day of March, 2014.

Casaria Taylor



Casaria Taylor

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