



1 REYNOLDS, Chief Referee.

2 Introduction

3 Petitioner Margaret McGee appeals Cave Junction Ordinance  
4 No. 205 which adopts a comprehensive land use plan for all  
5 lands within the boundaries of the City of Cave Junction and  
6 also adopts the Cave Junction Urban Growth Boundary.

7 Petitioner names as a co-respondent Josephine County because  
8 Josephine County adopted the urban growth boundary for Cave  
9 Junction some seven days after Cave Junction adopted its  
10 comprehensive plan.<sup>1</sup>

11 Petitioner contends Cave Junction's comprehensive plan  
12 violates numerous statewide goals. Petitioner contends there  
13 is no substantial evidence in the record to support the city's  
14 projected population of 5,000 people to the year 2000 and the  
15 city's determination that sewer and water services will be  
16 available to serve the projected population. This lack of  
17 substantial evidence is a violation of Goal 2, according to  
18 petitioner. Petitioner also argues the deficiencies in the  
19 comprehensive plan relating to sewer and water service also  
20 violate Goals 6 and 11.

21 Petitioner argues the urban growth boundary contains almost  
22 twice as much land as is needed for future development to the  
23 year 2000. Petitioner contends there is no provision for  
24 orderly and efficient transition from rural to urban  
25 development in violation of Goal 14. Having more land in the  
26 urban growth boundary than is justified by the factual base is

1 a violation of Goal 2, according to petitioner, and failure to  
2 have an orderly transition from rural to urban development is a  
3 Goal 14 violation. Petitioner also contends that because the  
4 city relies upon the market place to dictate when and where  
5 development should occur, it forecloses citizens from  
6 participating in the planning process in violation of Goal 1.

7 Petitioner argues that the city improperly included within  
8 the urban growth boundary agricultural and forest land because  
9 the city's exceptions are not supported by substantial evidence  
10 and fail to justify compelling need. Finally, petitioner  
11 argues that the inclusion within the urban growth boundary of  
12 some land that is subject to flooding and designating that land  
13 single family in the comprehensive plan is a violation of Goals  
14 2 and 7.

#### 15 SUMMARY OF FACTS

16 We begin our analysis of petitioner's assignments of error  
17 with a review of Cave Junction's comprehensive plan and some of  
18 the background involved in the make-up of that plan. Cave  
19 Junction is one of two incorporated communities in Josephine  
20 County, the other being Grants Pass. Cave Junction is the only  
21 incorporated city within the Illinois Valley. In 1950 Cave  
22 Junction had a population of 283 people. In 1970 that  
23 population was 415. By 1977, Cave Junction's population had  
24 grown to 840, equalling 1.65% of the county's total  
25 population. The plan states if the city's share of the county  
26 population were to increase steadily at the rate which the

1 population increased between 1970 and 1977, by the year 2000  
2 Cave Junction would have 3.26% of the county's population.

3 The comprehensive plan identifies four estimated  
4 projections for the county's population at the year 2000.  
5 These estimates range from 71,600 to 102,500 people. If Cave  
6 Junction's population is 3.26% of the county's population as a  
7 whole, Cave Junction's population will be between 2,330 and  
8 3,340. However, if Cave Junction's estimated population is  
9 based upon a compounded percentage increase, there is a  
10 projected population of 8,528 people in Cave Junction to the  
11 year 2000.<sup>2</sup>

12 Cave Junction selected, as its target population to the  
13 year 2000, the figure of 5,000 people. This figure was  
14 selected for two apparent reasons: (1) it is a mid-range  
15 compromise between the high and low projected populations for  
16 Cave Junction to the year 2000, and (2) it reflects the number  
17 of people for whom sewer and water services can be made  
18 available to the year 2000.<sup>3</sup>

19 The population section of the comprehensive plan concludes  
20 by saying:

21 "All of these factors have lead to the conclusion  
22 that growth in Cave Junction will accelerate rather  
23 than continue at a constant rate. A near term growth  
24 limit based on water and sewer capacity provided a  
25 functional projection rather than one based on a  
26 mathematical formula applied to the past. Where  
change is expected, the past is not a reliable  
guide." Comprehensive Plan, p. 10.

Cave Junction estimated in its comprehensive plan that its

1 year 2000 household size would be 2.2 persons. Using 2.2  
2 persons per household as a guide, and a projected population of  
3 5,000 people, the city computed its total residential acreage  
4 needs for the year 2000 to be 364. It also estimated its  
5 acreage needs based upon a projected population of 3,000 people  
6 to be 275 acres.

7 The city computed its commercial and industrial land needs,  
8 as well as the land needed for streets and public uses.  
9 Including the 364 acres determined to be needed for residential  
10 use to the year 2000, the city arrived at a total additional  
11 lands need of 1,070 acres. Counting land not suitable for  
12 development (102 acres) and land which is already developed  
13 within the urban growth boundary (332 acres), the city  
14 identified a need for 1,498 acres within the urban growth  
15 boundary. In addition to this amount, however, the city  
16 included 1,111 acres designated as open space/undeveloped  
17 land. The city's stated reason for including this additional  
18 1,111 acres within the urban growth boundary is as follows:

19 "The target population of 5,000 people projected  
20 in a dense urban pattern does not require the acreage  
21 available within the adopted boundary. The 'extra'  
22 1,000 acres is intended as an urban reserve area based  
23 on the contingency of more rapid growth than is now  
24 anticipated and on likely growth beyond the current  
25 planning period. The city considered the approach of  
26 designating this reserve area as not available for  
urban development. However, this approach was  
rejected for the following reasons:

"-The adopted boundary is a natural limit to  
the ultimate expansion of Cave Junction. The  
Illinois River on the south and west is a barrier  
to development in those directions. Public lands

1 on the north and west provide a logical boundary.

2 "-There are several large acreages of vacant  
3 land which are ready for development but are now  
4 reserved by the property owners as estate lands.  
5 If these lands are not available for development,  
6 they could be so designated in the plan.  
7 However, since these lands are logical for  
8 development, no purpose would be served by  
9 designating them as reserve in the plan.

10 "-Given that with a target population of  
11 5,000 people not all lands within the boundary  
12 will be developed, the decision on which lands  
13 are developed is somewhat arbitrary. Hazard  
14 areas and resource areas have been inventoried;  
15 after eliminating these, the elimination or the  
16 inclusion of various properties within the  
17 boundary would penalize some property owners  
18 while rewarding others. As a basic value, the  
19 city has decided to allow economic (market)  
20 considerations rather than the political or  
21 statutory authority of the city to make this  
22 determination.

23 "-Most of the unincorporated area within the  
24 boundary is planned for residential use by  
25 Josephine County. Much of this area has either  
26 very limited ground water or very marginal septic  
drain field capability. The real possibility  
exists that the city will eventually be forced to  
annex these areas. The greater areas now  
designated as agriculture and forest use will  
force more rural residential development to the  
unincorporated area surrounding Cave Junction."  
Comprehensive Plan, pp. 79-80. (Emphasis added).

27 With respect to the provision of public facilities and  
28 services within the urban growth boundary, Cave Junction made  
29 the following finding under Factor 3 of Goal 14:

30 "It is the policy of the city that each new  
31 development area will be required to pay its own way.  
32 With such a policy, it is not necessary to use the  
33 boundary to constrict growth; economic considerations  
34 (development costs) will naturally provide an orderly,  
35 economic, and compact growth form." Comprehensive  
36 Plan, p.80.

1 A similar statement is found under a discussion of Factor 4 of  
2 Goal 14 as follows:

3 "The increasingly high costs of land development  
4 will ensure that land is developed at efficient urban  
5 densities. This plan and the zoning ordinance allow  
6 and promote dense residential development."<sup>4</sup> Id.

7 As previously mentioned, one of the primary reasons for  
8 choosing a target population of 5,000 people was because this  
9 figure represented the maximum number of people which the city  
10 believed it could serve with sewer and water services. With  
11 respect to water services, the city presently has the  
12 capability of serving 3,000 people. In order to serve the  
13 projected additional 2,000 people, the city will be required to  
14 locate additional water sources. Two possibilities exist:  
15 acquiring additional water rights from the Illinois River or  
16 developing additional wells. The city's finding in its  
17 comprehensive plan concerning water source is as follows:

18 "This amount of water, 3.4 CFS [cubic feet per  
19 second] or 2.2 MGD [million gallons per day],  
20 represents the raw resource the city has to utilize  
21 for treatment and pumping. The current supply is  
22 adequate to provide water for more than 3,000 people.  
23 An additional 2,000 people (total 5,000 population)  
24 would require an additional 2.4 cubic feet per second  
25 water source in terms of river water rights or wells.  
26 A total population of 9,000 would require a total  
water availability of 9.5 cubic feet per second.

27 "To make comparisons with the city's existing  
28 water rights easier, the amounts of water required are  
29 expressed in CFS. Since it is unknown at this time  
30 whether additional water rights may be obtained from  
31 the Illinois River, the additional water required for  
32 each projection is also expressed in terms of  
33 additional wells. The wells are assumed to pump the  
34 effective average of wells #1 and #3 in the summer,  
35 which is also the peak demand period, or .20 CFS

1 each. Obviously, more effective wells would reduce  
2 the number required. This way, however, the future  
3 need may be compared to an existing situation."  
4 Comprehensive Plan, p. 55.

5 In summary then, Cave Junction has a present water capacity of  
6 3.4 CFS which is sufficient to serve a population of 3,000  
7 people. To serve the additional 2,000 people projected to live  
8 in Cave Junction by the year 2000, the city will be required to  
9 develop additional water sources sufficient to provide 2.4  
10 CFS. The ability of the city to acquire 2.4 CFS is, however,  
11 unknown.

12 Cave Junction has a sewer plant with a present capacity of  
13 serving 2,625 people. Apparently, it is possible to expand the  
14 plant treatment capability to serve the city's projected  
15 population of 5,000 by the year 2000. Cave Junction's problem  
16 with expanding its sewer service lies not with its plant but  
17 with the effluent spray field. The city's comprehensive plan  
18 states the following with respect to this issue:

19 "The limitation in this instance is not the  
20 package plant, but the size of the effluent spray  
21 field. The existing field is sufficient only for  
22 Phase I [population 1,125]. Expansion of a spray  
23 field on the site is not possible, for intended  
24 development in the recent Green Valley investment  
25 annexation blocks expansion to the east and south,  
26 while the golf course blocks expansion to the north  
and west. The engineer guesses that the golf course  
has the capacity to receive effluent from a population  
equivalent from 5,000 to 7,000, or an actual  
population of 3,750 persons to 5,250 persons. If the  
golf course is not used, Phase I is the site limit.\*\*\*

"When the golf course capacity for spraying  
effluent is used up, more fields will have to be  
found, or a more intensive treatment used, or an  
additional plant sited down river. There is

1 considerable prime agricultural land to the north and  
2 west of the present treatment plant. Limited water  
3 rights constrict the usefulness of this land  
4 considerably. It would seem that the reuse of treated  
waste water would make the surrounding agricultural  
land more valuable and productive." Comprehensive  
Plan, p. 53.

5 To summarize the city's findings concerning expanding its  
6 sewer capacity, expansion to serve a projected population of  
7 5,000 is possible if the golf course can accommodate the  
8 effluent from a population above 1,125 people. Presuming the  
9 golf course owners would consent to having the effluent sprayed  
10 on the golf course, the big question is whether the golf course  
11 can absorb the additional effluent. The comprehensive plan  
12 does not find that it can but only that the engineer "guesses"  
13 it can. If the golf course cannot absorb all of the additional  
14 effluent then the possibility exists that the additional  
15 effluent may be disbursed on nearby agricultural lands located  
16 across the Illinois River from Cave Junction.

17 OPINION

18 Petitioner's assignments of error are, for the most part,  
19 interrelated in that they involve the central issue of whether  
20 there are sufficient findings to justify the size of the urban  
21 growth boundary chosen by Cave Junction. Petitioner contends  
22 the size of the urban growth boundary was based upon a  
23 determination as to what the population would be by the year  
24 2000, and that the population by the year 2000 was based upon a  
25 determination of the sewer and water facilities that could be  
26 provided. Petitioner contends the city's findings that it can

1 accommodate 5,000 people with sewer and water services is  
2 speculative at best and that the city could not, therefore,  
3 rely upon being able to provide for the needs of a population  
4 of 5,000 people. Not being able to rely upon providing for the  
5 needs of a population of 5,000, the city erred in designing an  
6 urban growth boundary that would accommodate 5,000 people.  
7 Petitioner also argues that even if the city's population  
8 projections were all right, the city erred in including an  
9 additional 1,111 acres of land designated for single-family  
10 residential use

11 "based on the contingency of more rapid growth  
12 than is now anticipated and on likely growth beyond  
13 the current planning period." Comprehensive Plan, p.  
14 79.

15 We agree with petitioner with respect to both of her  
16 contentions. First, Cave Junction's ability to provide sewer  
17 and water service to a projected population of 5,000 people, is  
18 at best, speculative. Goal 2 requires a factual base to exist  
19 in the record to support decisions made with respect to the  
20 provision of public facilities and services. Here, even  
21 assuming a population projection of 5,000 people is realistic,  
22 there is no factual evidence to support the city's conclusion  
23 it can provide either sewer or water service for 5,000 people.  
24 Until the city can develop factual information which  
25 demonstrates that it can provide sewer and water services to a  
26 population of 5,000 people, the city cannot draw an urban  
growth boundary based upon a projected population of 5,000

1 people.

2       Second, even if the city could demonstrate that it could  
3 serve a projected population of 5,000 people, the city clearly  
4 has not shown that it can serve a population in excess of 5,000  
5 people. Therefore, the city cannot include within the urban  
6 growth boundary additional land to accommodate unanticipated  
7 increases in population when there is no factual basis  
8 demonstrating that the city has any capability of serving that  
9 additional population with water and sewer services.

10       For the foregoing reasons, we conclude that the  
11 comprehensive plan for the City of Cave Junction violates Goal  
12 2. This matter must be remanded to the city for further  
13 proceedings consistent with this opinion.

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1 FOOTNOTES

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4 The parties stipulated at oral argument that the Board need  
5 only address the validity of Cave Junction's decision.

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7 Cave Junction's comprehensive plan explains the compounded  
8 percentage increase as follows:

9 "This method assumes a constant percentage  
10 increase compounded each year. This results in an  
11 increasing number of people added each year. Taking  
12 the period from 1970 to 1977 yields a compounded rate  
13 of 10.6% for a projected population of 8,528 to the  
14 year 2000."

15 3  
16 With respect to the provision of sewer and water  
17 services as it relates to population, the plan states as  
18 follows:

19 "A final method of population projection assumes  
20 that due to the desirability of Cave Junction as a  
21 place to live, the new restrictions on rural  
22 residential development of forest lands due to the  
23 statewide goals, and the hugh invluxes [sic] of people  
24 experienced by the city in 1973 and 1977, that the  
25 city will grow as fast as public services can be  
26 provided. The section of this plan on public  
27 facilities shows that water and sewer are the critical  
28 services. It is projected that water and sewer  
29 capacity can be expanded to serve 5,200 people."

30 4  
31 In its brief, respondent has stated an additional  
32 reason which does not appear in the comprehensive plan as  
33 to why 1,111 acres is needed:

34 "This additional 1,111 acres is also needed for  
35 the proper development of Cave Junction's sewer and  
36 water delivery systems. These systems were designed  
37 on the basis of geologic features. Several integral  
38 components of these systems lie within the disputed  
39 1,111 acre zone. Private development of the urban  
40 reserve areas may be needed to assist in the

1 development of these integral outline components. For  
2 example, a needed reservoir lies on the extreme  
3 periphery of the boundary (cr. 71). Private  
4 development between the reservoir site and the  
5 boundary areas' core will most likely be needed in  
order to assist in the financing of extending main  
lines to connect the reservoir to the city water  
system. Without permitting such development, the city  
could suffer from limited reservoir capacity."

6 Because this rationale does not appear anywhere in the  
7 comprehensive plan, we do not consider it as a basis for  
8 supporting the 1,111 acre "open space/urban reserve" land  
9 designation.

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## STATE OF OREGON

## INTEROFFICE MEMO

TO: MEMBERS OF THE LAND CONSERVATION AND DEVELOPMENT COMMISSION      DATE: 6/09/81

FROM: THE LAND USE BOARD OF APPEALS

SUBJECT: MCGEE v CAVE JUNCTION  
LUBA No. 80-166

Enclosed for your review is the Board's proposed opinion and final order in the above captioned appeal.

This appeal involves a challenge to the Cave Junction Comprehensive Plan. Petitioner contends, primarily, that there is no substantial evidence to support the amount of land included within the urban growth boundary, and that this lack of substantial evidence is a violation of Goal 2. Specifically, petitioner contends there is no substantial evidence in the record to support the city's projected population of 5,000 people to the year 2000 and the city's determination that sewer and water services can be made available to serve the projected population. Petitioner also argues the urban growth boundary contains twice as much land as is needed for urban development to the year 2000.

The Board agrees with petitioner in both respects. There was no substantial evidence in the record that the city could provide sewer and water services for a population of 5,000 people by the year 2000. Because there was insufficient evidence in this regard, the city could not draw an urban growth boundary large enough to accommodate a population for whom it had not shown it could provide services. Secondly, the urban growth boundary contains approximately 1,100 acres of land which is not needed to meet the needs for a projected population of 5,000 people. This land was included "based on the contingency of more rapid growth than is now anticipated and on likely growth beyond the current planning period." Comprehensive Plan, p. 79. The Board concluded the city clearly had not shown it could serve a population in excess of 5,000 people and that, therefore, the city could not include within the urban growth boundary additional land to accommodate unanticipated increases in population above 5,000 people. The Board recommends that the decision of Cave Junction be remanded to the city.

The Board is of the opinion that oral argument will not assist the commission in its understanding or review of the statewide goal issues involved in this appeal. Therefore, the Board recommends that oral argument before the commission not be allowed.



