

BEFORE THE LAND USE BOARD OF APPEALS

NOV 4 9 56 AM '81

OF THE STATE OF OREGON

HOME BUILDERS ASSOCIATION OF)
METROPOLITAN PORTLAND AND)
CENTURY 21 HOMES, INC.,)

Petitioners,)

LUBA NO. 81-052

v.)

FINAL OPINION
AND ORDER*

PORTLAND METROPOLITAN AREA)
LOCAL GOVERNMENT BOUNDARY)
COMMISSION,)

Respondent.)

Appeal from Portland Metropolitan Area Local Government
Boundary Commission.

Kevin Hanway, Portland, filed the petition for review and
argued the cause for Petitioner.

Frank Ostrander, Portland, filed a brief and argued the
cause for Respondent.

Bagg, Referee; Reynolds; Chief Referee; Cox, Referee;
participated in the decision.

Affirmed.

11/04/81

You are entitled to judicial review of this Order.
Judicial review is governed by the provisions of Oregon Laws
1979, ch 772, sec 6(a).

*In order to comply with Oregon Laws 1979, ch 772, sec
6(3), LCDC's comments regarding this opinion have been
incorporated in their entirety by attachment hereto.

1 BAGG, Referee.

2 NATURE OF THE DECISION

3 This case is about the Portland Metropolitan Area Local
4 Government Boundary Commission's denial of a petition for
5 annexation of land to the City of Tualatin. The Boundary
6 Commission action was taken pursuant to ORS 199.410 to ORS
7 199.512, statutes controlling annexations of territory under
8 the jurisdiction of local government boundary commissions. In
9 this annexation action, the property owners consented to the
10 annexation, and the annexation was requested by the City of
11 Tualatin.

12 FACTS

13 The parties submitted a stipulated set of facts. The
14 property to be included within the City of Tualatin totalled
15 80.88 acres and involved ten ownerships. The annexation was
16 required because water service, a prerequisite to any
17 development of the property, is available only to land within
18 the City of Tualatin. The city endorsed the annexation on
19 November 24, 1980, and the Boundary Commission denied the
20 annexation on February 25, 1981 at the third of a series of
21 meetings held to consider the matter.

22 The property lies within the Portland Metropolitan Urban
23 Growth Boundary, and except for Tax Lots 901 and 1201
24 (comprising approximately 12 acres), all the territory to be
25 annexed lies within an area designated as immediate urbanizable
26 in the City of Tualatin's comprehensive plan. Petition for

1 Review 4. There are no development plans for the area, but the
2 applicants proposed eventual low density residential use.

3 The Portland Metropolitan Urban Growth Boundary was
4 acknowledged as being in compliance with statewide planning
5 goals by the Land Conservation and Development Commission in
6 January of 1980.

7 The city presented studies showing that at the time of the
8 proceedings before the Boundary Commission, there were 852 lots
9 in various stages of platting and development available for
10 single family developments. The City of Tualatin projected
11 that supply to be adequate for two years, however, it was the
12 experience of the city that it takes some two years from the
13 time a developer begins work to the time a lot is ready for the
14 issuance of a building permit. Planning consultants testified
15 that if the land proposed to be annexed were, in fact, annexed,
16 the lots would be ready for building at about the time the
17 current supply of lots would be exhausted. The city planners
18 also presented evidence that this property was needed for
19 annexation to keep lot prices from escalating. Testimony was
20 given that undeveloped land prices in the city had doubled in
21 18 months time, after the adoption of the Metropolitan Urban
22 Growth Boundary. There was testimony that this particular land
23 would be needed for development within the next five years.

24 An individual opposed to the annexation testified that the
25 city had 1,000 buildable lots "and that the 371 net buildable
26 acres in the city identified by the boundary commission staff

1 'translates [sic] into 1,865 buildable homesites at the current
2 packing density.'" Petition for Review at 8. In other words,
3 a dispute existed as to the number of available lots and,
4 therefore, whether there was a need for further residential
5 development.

6 The area is within the Sherwood School District, although
7 most of the City of Tualatin is within the Tigard School
8 District. The Sherwood School District opposed the
9 annexation. The district opposed the annexation on the ground
10 that the district's schools are full, and a bond issue for a
11 new elementary school had been defeated on two occasions during
12 the previous year. The district cited "the potential impact of
13 the increased number of children on the provision of adequate
14 school services in the area." Petition for Review at 9.

15 Certain alternatives were brought forward as possible
16 solutions to the district's concerns. One such alternative was
17 to transfer jurisdiction of this area from the Sherwood to the
18 Tigard School District. No action has been taken on this
19 proposed transfer. There is also evidence in the record that
20 the Superintendent of the Sherwood School District had advised
21 a property owner in the area that a transfer of jurisdiction
22 would require several years, and would also take several years
23 beyond that to build a school to accommodate students. The
24 record further includes evidence that the Tigard School
25 District has an elementary school near the northeast corner of
26 the proposed annexation, and the school has a capacity of 600

1 with a current enrollment of 570.

2 FIRST ASSIGNMENT OF ERROR

3 "The findings and conclusions concerning the
4 availability of schools violates Goals 2 and 11 and
5 exceeds the authority granted the Boundary Commission
6 by ORS Ch. 199."

7 This assignment of error is divided into three parts as follows:

8 "A. Goal 11 does not require, for approval of an
9 annexation, a finding that school facilities are or
10 will be available to serve the annexed area."

11 "B. The Boundary Commission violated Statewide
12 Planning Goal 2 by failing to properly coordinate the
13 school districts' planning efforts with those of the
14 City of Tualatin."

15 "C. The Boundary Commission exceeded its statutory
16 authority in using schools as a basis for denial."

17 As to the first of these three suballegations, petitioner
18 challenges the commission's conclusion that Goal 11 has been
19 violated because school service is not available. Statewide
20 Goal 11 says, in pertinent part,

21 "Urban and rural development shall be guided and
22 supported by types and levels of urban and rural
23 public facilities and services appropriate for, but
24 limited to, the needs and requirements of the urban,
25 urbanizable and rural areas to be served. A provision
26 for key facilities shall be included in each plan. To
meet current and long-range needs, a provision for
solid waste disposal sites, including sites for inert
waste, shall be included in each plan."

Petitioner says that schools are not listed as one of the nine
different public facilities listed in the definition of "Urban
Facilities and Services" in the goal. Also, petitioner notes
the guidelines for Goal 11 make no reference to schools.

Petitioner concludes that any reference to schools is

1 irrelevant in considering compliance with Goal 11. The
2 definition of "Urban Facilities and Services" is as follows:

3 "refers to key facilities and to appropriate types and
4 levels of at least the following: police protection;
5 fire protection; sanitary facilities; storm drainage
6 facilities; planning, zoning and subdivision control;
7 health services; recreation facilities and services;
8 energy and communication services; and community
9 governmental services."

10 Respondent says that the list of urban facilities and
11 services that must be provided in each plan in order to comply
12 with Goal 11 does not deliberately exclude schools. The list
13 of nine key facilities is preceded by the words "at least," and
14 respondent says that schools are "obviously" a requirement for
15 orderly development within the meaning of Goal 11.

16 We agree with respondent. The definitions accompanying all
17 of the statewide planning goals include a definition of key
18 facilities. The definition states that key facilities are

19 "basic facilities that are primarily planned for by
20 local government but which also may be provided by
21 private enterprise and are essential to the support of
22 more intensive development, including public schools,
23 transportation, water supply, sewage and solid waste
24 disposal."

25 That definition of key facilities must be read with the
26 definition of "urban facilities and services" contained within
27 Goal 11. When the definitions are read together, it becomes
28 clear that schools are among the "public facilities and
29 services" that Goal 11 requires be included in a land use plan.

30 This conclusion makes some sense, especially when one
31 considers that whether or not schools are available in an area

1 is of critical importance in deciding whether the area should
2 be developed, particularly for residential uses. Where
3 development is allowed to occur with no reference to the
4 availability of schools, providing for school children
5 generated by the development could be inconvenient at best and
6 more likely a very costly proposition for the school district
7 required to assume the children.

8 Additionally, the Attorney General has had occasion to
9 comment on whether availability of public schools had to be
10 considered in a county's deliberation on a proposed
11 subdivision. In 38 Op Atty Gen 1956 (1978), the Attorney
12 General construed public school to be a public facility within
13 the meaning of Goal 11. The Attorney General said that Goal 11

14 "requires a plan or system that coordinates the
15 delivery of urban services and facilities, including
16 public schools, with a need imposed by existing and
proposed land uses." 38 Op Atty Gen at 1959 (Emphasis
in original).

17 In the second suballegation, petitioner claims the Boundary
18 Commission failed to coordinate school district planning
19 efforts with those of the City of Tualatin. Petitioner asks
20 that if we should conclude that schools are an urban facility,
21 we should find that the Boundary Commission did not give
22 schools "proper consideration." That is, to deny the
23 annexation only on the basis of unavailability of schools is to
24 violate Goal 2's coordination requirement.¹ Petitioner says
25 that the "goals do not require that every urban facility plan
26 be given a veto power over the timing of the extension of other

1 urban facilities." Petition for Review at 15. The petitioner
2 reads Goal 2 to require that the Sherwood School District have
3 a plan to serve the area of the annexation. Petitioner advises
4 that if there are problems with money and school space,
5 shifting of school schedules might be used to alleviate the
6 problem.

7 We believe Petitioner's argument can be construed in two
8 ways. One possible interpretation is that the Boundary
9 Commission had a duty to bring the City of Tualatin and the
10 Sherwood School District together to work out a solution to the
11 school space problem. Petitioner is asking that the Boundary
12 Commission place itself in a position similar to that of a
13 county when reviewing plans within county boundaries. ORS
14 215.255 requires counties to advise cities and special
15 districts within the county as to whether their respective
16 comprehensive plans are in compliance with statewide goals. We
17 are aware of no such requirement placed upon boundary
18 commissions, and to ask the Boundary Commission to bring the
19 school district and the city to agreement is to ask the
20 Boundary Commission to fulfill a role with which it is not
21 charged.

22 The other possible, although less likely, interpretation of
23 petitioner's assignment is that the Boundary Commission had an
24 affirmative duty to "accommodate" the needs of the city and the
25 district as much as possible. To do so, the Boundary
26 Commission would have to seek to find a solution to the problem

1 of school availability for the expected increase in
2 enrollment. If one accepts petitioner's proposition, then the
3 Commission's "coordination" requirement would have the
4 Commission working to accommodate the "needs" of the district
5 and the city. However, in this case, the Boundary Commission
6 did not find that a need existed for additional residential
7 sites in the City of Tualatin. The Commission based its
8 conclusion that there was no need on the following:

9 "a. The city's land use planning consultant estimates
10 there are currently 371 net buildable residential
11 acres inside the city at present. This figure
takes into consideration exclusions for roads and
a 25% market factor.

12 "b. Using a very conservative 30 - 70% multi-family
13 to single family residential ratio, the current
14 available acres could accommodate 5,306 more
persons within the current city limits.

15 "c. The city could grow at a rate of 1,061 persons
16 per year until 1985 and still have enough land to
accommodate the projected growth." Record 95.

17 Given the Boundary Commission's findings that no need
18 existed for the annexation, there was no requirement for the
19 Boundary Commission to work to coordinate the school district
20 plan (or the lack of it) with the plan of the City of
21 Tualatin.²

+ 22 Our review of the decision suggests to us that if a Goal 2
23 violation exists here, it exists in the Boundary Commission's
24 failure to fully evaluate alternative courses of action that
25 were presented to it. The Boundary Commission's finding on the
26 matter of school availability is as follows:

1 "6. The bulk of the city is within the Tigard School
2 District. The area to be annexed and a
3 substantial amount of the city's urban growth
4 area is within the Sherwood School District. The
5 Sherwood District objects to the annexation
6 because it needs additional classrooms and has
7 not recently been successful in getting a bond
8 issue passed.

9 "The Tigard District has an elementary school very
10 close to the northeast corner of the area to be
11 annexed, but this school is near capacity. The Tigard
12 District also recently lost a bond election to build a
13 new elementary school in the Tualatin area. The
14 districts do not necessarily oppose a transfer of the
15 territory, but that is a long involved process in
16 which the districts might not agree eventually and
17 which is remonstrable by the people living in the
18 area, many of whom vehemently oppose the annexation
19 to the city.

20 "Based on the above information the Commission does
21 not find that adequate school service is available to
22 accommodate the potential development of the area to
23 be annexed." Record 5, 6.

24 The material in the record available to support this
25 finding does not show more than a cursory inquiry into school
26 capacities and a possible transfer of school district
territories. We do not believe the finding quoted above and
the cursory inquiry illustrated in the record is sufficient to
support a finding that schools are not available where, as
here, alternatives to solve the school availability problems
were suggested. We agree with petitioner in his comment that
the Boundary Commission may not inhibit needed residential
development on the school district's assertion that there is no
room in the schools. The inquiry must go beyond that
assertion. Holmstrom v. Marion County, ___ Or LUBA ___ (LUBA
No. 80-170, 1981); see also Faye Wright Neighborhood League v.

1 Salem, 1 Or LUBA 246 (1980) and Deters v. Clackamas, 1 Or LUBA
2 217 (1980).

3 In sum, we believe the Boundary Commission's findings that
4 schools were not available to serve the subdivision are
5 insufficient in the face of petitioner's evidence of
6 alternatives for coping with increased school enrollment and
7 the findings' failure to explain why these alternatives were
+ 8 not feasible. This failure is not one of "coordination,"
9 however, it is one of failure to evaluate fully "alternative
10 courses of action" and to supply an "adequate factual base" for
11 the decision.³

12 The above noted deficiencies in the decision do not render
13 the decision invalid, however, as the Boundary Commission has
14 other means within Chapter 199 to deny this proposed
15 annexation. The Boundary Commission need not base its denial
16 on any applicable statewide goals so long as it had sufficient
17 reason under ORS 199.461 to deny the application. Were the
18 Boundary Commission to have denied the annexation only on the
19 basis of statewide goals, we would return the decision to the
20 Boundary Commission for further proceeding. Also, were the
21 Boundary Commission to have granted the annexation and
22 erroneously applied (or failed to apply) the statewide goals,
23 we would return the decision to the commission. Where, as
24 here, there exist independent reasons for Boundary Commission
25 action that are beyond our review, we see little point in
26 returning the decision to the Boundary Commission, and we

1 decline to do so. See discussion in ORS ch 199 below.

2 Subpart C of this first assignment of error alleges that
3 the commission exceeded its statutory authority in relying on
4 public schools as a basis for denial. The petitioner's
5 argument rests on the policy statement in ORS 199.410
6 identifying the purpose of a boundary commission. Noting the
7 absence of schools in this statutory policy statement,
8 petitioner concludes that the Boundary Commission exceeded its
9 authority by using schools as a basis for denial.

10 Respondent advises that we may not consider issues raised
11 by a petitioner concerning ORS Ch 199. ORS Ch 199 includes
12 within it a system of appeal. ORS 199.461 provides that
13 appeals of boundary changes such as the one proposed here are
14 governed by the provisions of ORS 183.480 to ORS 183.500
15 concerning review of agency orders. Only if the decision
16 involves the application of statewide planning goals is appeal
17 to this Board possible under Oregon Laws 1979, Chapter 772,
18 Sections 4-6. ORS 199.461(3). Respondent views our review to
19 be limited strictly to matters of application of statewide
20 planning goals. Other considerations and standards which the
21 Boundary Commission must apply are reviewable elsewhere.

22 We agree with respondent. The statutory scheme is clear
23 and has been construed in a recent Court of Appeals case.

24 "When a boundary commission decision is challenged on
25 any ground other than alleged inconsistency with the
26 statewide planning goals, review is immediate in the
Court of Appeals. Such an appeal must be filed in
this court pursuant to the cross-reference in ORS

1 199.461(3) to the judicial review provisions of the
2 APA, ORS 183.480 et seq." City of Wood Village v.
3 Portland Met LGBC, 45 Or App 585, 589, 609 P2d 375
4 (1980).

5 The first assignment of error is denied.

6 SECOND ASSIGNMENT OF ERROR

7 "OAR 660-01-315 does not apply to applications for
8 annexation concerning land within acknowledged urban
9 growth boundaries."

10 As part of its denial of the proposed annexation, the
11 Boundary Commission found that there was no need for this
12 annexation as that "need" is found in OAR 660-01-315, the LCDC
13 annexation rule. Petitioner claims that the LCDC annexation
14 rule does not apply because the urban growth boundary for the
15 area has been acknowledged as being in compliance with the
16 statewide planning goals.

17 Respondent argues that the urban growth boundary for the
18 metropolitan area is not an acknowledged comprehensive plan as
19 the term is used in the annexation rule. Respondent argues
20 there is no complete "plan" for the area; and, therefore, the
21 provisions of the annexation rule are applicable to this
22 proposed annexation. We disagree.

23 The annexation rule, in pertinent part, is as follows:

24 "(2) For the annexation of lands not subject to
25 an acknowledged plan, the requirements of Goal #3
26 (Agricultural Lands) and Goal #14 (Urbanization) OAR
660-15-000, shall be considered satisfied only if the
city or local government boundary commission, after
notice to the county and an opportunity for it to
comment, finds that adequate public facilities and
services can be reasonably made available; and:

1 "(a) The lands are physically developed for
2 urban uses or are within an area physically developed
3 for urban uses; or

4 "(b) The lands are clearly and demonstrably
5 needed for an urban use prior to acknowledgment of the
6 appropriate plan and circumstances exist which make it
7 clear that the lands in question will be within an
8 urban growth boundary when the boundary is adopted in
9 accordance with the goals.

10 "(3) Lands for which the findings in section (2)
11 of this rule cannot be made shall not be annexed until
12 acknowledgment of an urban growth boundary by Land
13 Conservation and Development Commission as part of the
14 appropriate comprehensive plan.

15 The annexation rule serves as a "shortcut" through
16 compliance with LCDC Goals 3 and 14. The rule is "intended to
17 boil down the three sets of conversion standards set forth and
18 cross-referenced" in LCDC Goals 2, 3 and 14. Polk County v.
19 Marion-Polk County Local Government Boundary Commission, LCDC
20 No. 78-003 (1978). It is clear from paragraph 3 of the rule
21 that the rule is intended to apply only until an urban growth
22 boundary is drawn and acknowledged. It is the acknowledgment
23 of an urban growth boundary and not a whole comprehensive plan
24 that ends the usefulness of the annexation rule. In this case
25 the change from rural land (agricultural land, forest land) to
26 urbanizable land was accomplished by drawing an urban growth
boundary. The urban growth boundary met requirements for such
conversion, in Goal 14 and was acknowledged by LCDC.⁴ As the
seven "factors" controlling establishment of urban growth
boundaries have been properly considered and, presumably, as
the procedural requirements of Statewide Goal 2 have been

1 applied, there is no longer any need to apply the annexation
2 rule. See OAR 660-01-315(3) supra. All the annexation rule
3 does is provide a shortcut through a process that would
4 normally be utilized in making an urban growth boundary
5 determination.

6 Our view that the annexation rule does not apply, however,
7 does not invalidate the Boundary Commission's decision.
8 Perhaps the Boundary Commission findings that no need existed
9 for more residential land could be used as findings justifying
10 commission action in this case under ORS 199.462(1).⁵

11 Simple misapplication of the LCDC acknowledgment rule to
12 the effect that the rule applies when it does not, does not
13 invalidate the basic findings of fact made by the Boundary
14 Commission. Sunnyside Neighborhood v. Clackamas Co., 280 Or 3,
15 569 P2d 1063 (1977).

16 The second assignment of error is denied.

17 THIRD ASSIGNMENT OF ERROR

18 "Statewide Planning Goal 2 coordination requirements
19 were violated by the finding and conclusion relating
denial to the creation of unincorporated islands."

20 In this assignment of error, petitioner begins by stating
21 that an island of unannexed properties would be created by the
22 proposal under review. Petitioner says such a configuration is
23 consistent with (and apparently the result of) the City of
24 Tualatin's policy not to enforce annexation on unwilling
25 owners. The creation of the unincorporated island is, however,
26 in opposition to a proposed policy of Washington County. This

1 proposed policy would require county opposition to any
2 annexation which would create such islands. The Boundary
3 Commission made a finding that while Washington County does not
4 oppose the annexation, the county is considering such a
5 policy. The Boundary Commission's finding, however, is not
6 clearly worded as a reason for denial.

7 "4. The county does not oppose this annexation by
8 virtue of a city-county agreement in which the
9 county agreed not to oppose City of Tualatin
10 annexations within its urban growth area. The
11 county is, however, considering general county
12 policy of approving of the formation of islands
within cities only when the cities agree to
actively pursue and annex the islands. Tualatin
has an unstated but historically supported policy
of not annexing island areas against the property
owners' will."

13 Based on this finding, the Commission determined that:

14 "The proposed annexation would create an island and
15 the city staff testified that the city has a policy
16 against taking in islanded residents against their
17 will. This conflicts with a draft county policy which
if adopted will encourage the taking of islands by
cities to eliminate jurisdictional confusion and
problems of service delivery by the county.

18 The petitioner concludes that this proposed policy was
19 improperly used as a basis for denial of the proposed
20 annexation. Petitioner says, in effect, that to deny this
21 annexation on the basis of a unadopted policy and without
22 regard to the conflict resolution procedures included in the
23 agreement between the city and the county, is unjustified.

24 Respondent urges that there is, in fact, no Goal 2
25 violation allegation in this assignment of error. Respondent
26 says that the problems that are associated with the creation of

1 islands of unincorporated territory are within the Boundary
2 Commission's jurisdiction under Chapter 199 and do not involve
3 Goal 2.

4 The Boundary Commission did not find that Washington County
5 was in favor or opposed to the proposed annexation. The
6 Boundary Commission noted the existence of a proposed policy
7 which might prohibit the annexation and, at most, chose to
8 incorporate the logic of that proposed policy as a reason for
9 denial. It does not appear that the Boundary Commission acted
10 in violation of either the existing agreement or the proposed
11 policy. The fact that one jurisdiction says it will not
12 challenge another jurisdiction does not mean the Boundary
13 Commission, responsible for exercising its own judgment with
14 respect to the statewide goals, is in violation of a
15 coordination agreement. Also, an agreement not to challenge
16 may be impossible to follow if to do so would violate a land
17 use regulation. In short, we fail to see how it is that Goal 2
18 has been violated on the basis of what appears to us to be
19 notation of a proposed Washington County policy.⁶

20 The third assignment of error is denied.

21 FOURTH ASSIGNMENT OF ERROR

22 "The conclusion that Proposal No. 1665 is an illogiac
23 extension of a local government boundary is inadequate
24 to support a denial."

25 This assignment of error is divided into two parts. The
26 first part argues:

1 "A. The Conclusion concerning illogical extension is
2 not based on adequate findings nor is it supported by
substantial evidence in the record."

3 "B. The 'illogical extension' policy is impermissibly
4 vague and does not give applicants sufficient guidance
5 to adequately implement ORS Ch. 199 or Statewide
Planning Goal 11."

6 In this assignment of error, the petitioner is arguing that
7 the findings supporting the decision are inadequate. The
8 Boundary Commission found that the change in city boundaries
9 was "illogical." Petitioner argues that this finding merely
10 recites the standard in ORS 199.410(2), that there be no
11 "illogical extensions" of local government boundaries, and the
12 finding is inadequate.

13 Respondent correctly points out that this Board has no
14 power to review the logic of the Boundary Commission's
15 decision. As mentioned above, our review power is limited to
16 matters of statewide goal application, and compliance with the
17 criteria contained in Chapter 199 are beyond our power of
18 review.

19 As to the second part of this assignment of error,
20 petitioner attempts to bring in LCDC Goal 11 by saying that
21 Boundary Commissions control the provision and extension of
22 public facilities and that, therefore, the criteria contained
23 in ORS Chapter 199, in effect, implement Statewide Goal 11.
24 That is, Goal 11 provides "the best guidance as to what
25 constitutes an illogical extension."

26 We agree that Goal 11 and certain provisions of ORS Chapter

1 199 may overlap, but we do not believe that we may review the
2 criteria established in Chapter 199 under the guise of Goal
3 11. We do not believe Goal 11 controls ORS Chapter 199, and as
4 we can not review for anything but compliance with Statewide
5 Planning Goals, ORS Chapter 199 is beyond our power of review.

6 The fourth assignment of error is denied.

7 FIFTH ASSIGNMENT OF ERROR

8 "The findings and conclusions of the Boundary
9 Commission regarding schools and need for land are not
supported by substantial evidence in the record."

10 This allegation is divided into two parts. As we
11 understand petitioner in part "A", petitioner argues that the
12 three bases cited by the commission for the conclusion that
13 adequate school capacity was not available are not supported by
14 substantial evidence. Petitioner asserts the record does not
15 reveal evidence showing the commission to have fulfilled its
16 responsibilities. Petitioner says the commission's findings
17 are not entitled to any weight.

18 In part "B," petitioner claims the commission's belief that
19 there was no no need for additional land in the City of
20 Tualatin is inaccurate. Petitioner says the city presented
21 extensive evidence showing a need for land, and evidence
22 showing that the present number of available lots amounted only
23 to a two-year supply. Petitioner says that the findings
24 adopted by the Boundary Commission do not adequately respond to
25 or rebut evidence concerning the need for additional lots.
26 Petitioner says the findings are simply not responsive.

1 We view petitioner's argument in this assignment of error
2 to be an attack on the findings and the evidence available to
3 support the findings. Petitioner has made no allegation that a
4 statewide land use goal was violated as a result of inadequate
5 findings or insufficient evidence. The attack is more easily
6 understood as an attack on the adequacy of the commission's
7 order under ORS 199.462(1). As such, we have no powers to
8 review the commission's order under this assignment of error.

9 The fifth assignment of error is denied.

10 The decision of the Boundary Commission is affirmed.

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FOOTNOTES

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4 "A plan is coordinated when the needs of all levels of
5 government, semi-public and private agencies and the citizens
6 of Oregon have been considered and accommodated as much as
7 possible."

8
9 2
10 The requirement that plans be coordinated and that they
11 accommodate the needs of other jurisdictions as found in Goal
12 2's mandate that "[e]ach plan and related implementation
13 measure shall be coordinated with the plans of affected
14 governmental units." The word "coordinated" is defined in ORS
15 197.015(4). As in footnote 1, supra, a plan is not
16 "coordinated" until the needs of various jurisdictions and
17 citizens have been "accommodated as much as possible."

18
19 All parties to this appeal have assumed the Boundary
20 Commission has a duty to "coordinate" as that term is used in
21 Goal 2. We have made the same assumption for the purposes of
22 this opinion.
23

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25 3
26 Goal 2, in pertinent part, states:

27
28 "All land use plans shall include identification
29 of issues and problems, inventories and other factual
30 information for each applicable state-wide planning
31 goal, evaluation of alternative courses of action and
32 ultimate policy choices, taking into consideration
33 social, economic, energy and environmental needs. The
34 required information shall be contained in the plan
35 document or in supporting documents. The plans,
36 supporting documents and implementation of ordinances
37 shall be filed in a public office or other place
38 easily accessible to the public. The plans shall be
39 the basis for specific implementation measures. These
40 measures shall be consistent with and adequate to
41 carry out the plans. Each plan and related
42 implementation measure shall be coordinated with the
43 plans of affected governmental units."
44

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46 4
47 Goal 14 states, in pertinent part, as follows:

1 "Urban growth boundaries shall be established to
2 identify and separate urbanizable land from rural
land.

3 "Establishment and change of the boundaries shall
4 be based upon consideration of the following factors:

5 "(1) Demonstrated need to accommodate long-range
6 urban population growth requirements
7 consistent with LCDC goals;

8 "(2) Need for housing, employment opportunities,
9 and livability;

10 "(3) Orderly and economic provision for public
11 facilities and services;

12 "(4) Maximum efficiency of land uses within and
13 on the fringe of the existing urban area;

14 "(5) Environmental, energy, economic and social
15 consequences;

16 "(6) Retention of agricultural land as defined,
17 with Class I being the highest priority for
18 retention and Class VI the lowest priority;
19 and,

20 "(7) Compatibility of the proposed urban uses
21 with nearby agricultural activities.

22 "Before the establishment of an urban growth
23 boundary, all lands within the city limits shall be
24 urban or urbanizable. When the amount of lands within
25 a city's incorporated limits is determined to be
adequate to satisfy the needs set forth in factors (1)
and (2) above, the city limits may be designated as
the urban growth boundary without consideration of
factors (3) through (7) above."

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20 ORS 199.462(1) states:

21 "In order to carry out the purposes described by ORS
22 199.410 when reviewing a petition for a boundary change, a
23 boundary commission shall consider economic, demographic
24 and sociological trends and projections pertinent to the
25 proposal, past and prospective physical development of land
that would directly or indirectly be affected by the
proposed boundary change and, except as provided in ORS
197.275, the state-wide planning goals adopted under ORS
197.225."

26 We express no view as to the adequacy of the findings to meet
the standards set out above.

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To the extent that the Boundary Commission may have been erroneous in its reliance on this proposed policy, the Boundary Commission has committed an error, but we fail to see that the error rises to the level of the violation of Goal 2.

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

HOME BUILDERS ASSOCIATION,)	
)	
Petitioner(s),)	
v.)	LUBA 81-052
)	LCDC Determination
PORTLAND METROPOLITAN AREA)	
LOCAL GOVERNMENT BOUNDARY)	
COMMISSION,)	
)	
Respondent.)	

The Land Conservation and Development Commission hereby adopts the Land Use Board of Appeals proposed opinion in LUBA 81-052 with the following modifications:

1. On page 9, delete lines 22 through 25 and add:

Our review of the decision suggests that the Boundary Commission, in the light of alternative information which challenges the school district's conclusion that no capacity existed, should have referred the alternatives to the district for consideration and a response prior to taking final action. The Boundary Commission's findings on the...

2. On page 11, delete lines 8 through 11 and add:

not feasible. In light of contradictory information on school availability, the Boundary Commission has a responsibility to coordinate with the school district in order to have the district respond to alternatives presented to the Commission. Coordination requires the school district and Boundary Commission to consider and accommodate each other's views as much as possible. At some point in the process, the Boundary Commission must exercise its responsibility to make the decision on the annexation, based on its determination that adequate facilities exist.

3. On page 13, line 20, delete "We disagree."

4. On page 14, delete lines 15 through 26 and lines 1 through 15 on page 15 and add:

No. 78-003 (1978). Paragraph 3 of the rule requires that annexation of land not subject to section 2 of the rule be delayed until an urban growth boundary is acknowledged as part of an appropriate comprehensive plan. Because the boundary is only a portion of a plan and does not indicate land uses or phasing of development, the annexation under paragraph 3 must await acknowledgment of the "appropriate plan."

The respondent has correctly applied the annexation rule.³

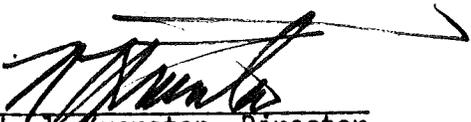
5. On pages 21 and 22, delete footnotes 3, 4 and 5 and add the new footnote 3 referenced in item 4 above to read:

³The application of the annexation rule and the statewide planning goals within an acknowledged urban growth boundary has become moot since the passage of HB 2754, which became effective June 30, 1981. The bill states that boundary commissions shall not apply the goals to decisions of boundary changes within acknowledged urban growth boundaries.

6. On page 23, footnote 6 should be renumbered accordingly.

DATED THIS 2nd DAY OF NOVEMBER, 1981.

FOR THE COMMISSION:


W. J. Kvarsten, Director
Department of Land
Conservation and Development

WJK:RS:mg
7065A/4B



STATE OF OREGON

INTEROFFICE MEMO

TO: MEMBERS OF THE LAND CONSERVATION AND DEVELOPMENT COMMISSION DATE: 10/13/81

FROM: THE LAND USE BOARD OF APPEALS

SUBJECT: HOME BUILDERS ASSOCIATION V. PORTLAND METRO ALGBC
LUBA NO. 81-052

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

This case is about a denial of an annexation to the City of Tualatin. Petitioners sought the annexation before the Portland Metro Area LGBC, and the Commission denied the annexation for several reasons. It is important to keep in mind that the Boundary Commission's action was guided in large part by ORS Ch 199. ORS Ch 199 controls Boundary Commissions. Our (and your) review of Boundary Commission decisions is limited to allegations of violation of statewide land use planning goals. It is not our responsibility to question Boundary Commission decisions on any other basis. ORS 199.461.

The first assignment of error contends the Boundary Commission violated Goals 2 and 11 by relying on unavailability of schools as a reason to deny the annexation. The petitioner claims that Goal 11 does not require a finding that school facilities are or will be available to serve an area to be annexed. Within the first assignment of error also is an allegation that Statewide Goal 2 was violated by the Boundary Commission's failure to coordinate Sherwood School District planning activities with those of the City of Tualatin.

We reject petitioner's view on Goal 11. School facilities are "public facilities" within the meaning of Goal 11 and must be considered.

As we understand petitioner's Goal 2 argument, either petitioner is arguing that the Boundary Commission should force the school district and the city to come up with a plan to provide schools or petitioner is arguing that the Boundary Commission itself should "accommodate" the needs of the City of Tualatin and those of the school district by coming up with its own plan. We determined, however, that the Boundary Commission had no duty to force the school district and city to work things out. We also noted that the Boundary Commission did not find a need existed for the annexation, and that absent a need for the annexation, the Boundary Commission was under no obligation to "accommodate" or "coordinate" Tualatin's nonexistent need for an annexation.



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In the second assignment of error, the petitioner correctly states the annexation rule does not apply to lands within acknowledged urban growth boundaries. The annexation rule was relied upon by the Boundary Commission in its denial of this annexation request. We don't view this error on the part of the Boundary Commission to be significant as independent reasons for denial of the annexation appear to exist that are quite beyond our review.

In the third assignment of error, petitioner again alleges a violation of Statewide Land Use Goal 2. In this case, the petitioner appears to be saying that an agreement reached between the City of Tualatin and Washington County (wherein the county agreed not to challenge annexations to the city) was violated. Our conclusion is that the Boundary Commission did not violate the agreement.

The fourth and fifth assignments of error are not about violations of statewide goals.

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

HOME BUILDERS ASSOCIATION OF)
METROPOLITAN PORTLAND AND)
CENTURY 21 HOMES, INC.,)
)
Petitioners,)
)
v.)
)
PORTLAND METROPOLITAN AREA)
LOCAL GOVERNMENT BOUNDARY)
COMMISSION,)
)
Respondent.)

LUBA NO. 81-052
PROPOSED OPINION
AND ORDER

Appeal from Portland Metropolitan Area Local Government
Boundary Commission.

Kevin Hanway, Portland, filed the petition for review and
argued the cause for Petitioner.

Frank Ostrander, Portland, filed a brief and argued the
cause for Respondent.

Bagg, Referee; Reynolds, Chief Referee; Cox, Referee;
participated in the decision.

Affirmed. 10/13/81

You are entitled to judicial review of this Order.
Judicial review is governed by the provisions of Oregon Laws
1979, ch 772, sec 6(a).