

Nov 2 11 57 AM '84

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

1
2
3 RAJNEESH MEDICAL CORPORATION,)
4 Petitioner,)
5 vs.)
6 WASCO COUNTY,)
7 Respondent.)

LUBA No. 84-064

8 RAJNEESH TRAVEL COPORATION,)
9 Petitioner,)
10 vs.)
11 WASCO COUNTY,)
12 Respondent.)

LUBA No. 84-065

FINAL OPINION
AND ORDER

13 MA ANAND SAGUN, MA AVA,)
14 and MA PREM HOMA,)
15 Petitioners,)
16 vs.)
17 WASCO COUNTY,)
18 Respondent.)

LUBA No. 84-066

19 CITY OF RAJNEESHPURAM,)
20 Petitioner,)
21 vs.)
22 WASCO COUNTY,)
23 Respondent.)

LUBA No. 84-067

24 Appeal from Wasco County.
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1 Swami Anutosh Nion, Rajneeshpurham, filed the Petition for
2 Review and argued the cause on behalf of Petitioners, Rajneesh
3 Medical Corporation, Rajneesh Travel Corporation and Ma Anand
4 Sagun, et al.

5 Ma Prem Sangeet, Rajneeshpuram, filed the Petition for
6 Review and argued the cause on behalf of the City of
7 Rajneeshpuram.

8 Wilford K. Carey, Hood River, filed a response brief and
9 argued the cause on behalf of Respondent County.

10 BAGG, Chief Referee; DUBAY, Referee; KRESSEL, Referee,
11 participated in the decision.

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1 Opinion of the Board.

2 NATURE OF THE DECISION

3 Petitioners appeal an ordinance adopted by the Wasco County
4 Court on July 11, 1984. The ordinance repeals an earlier
5 ordinance which adopted the City of Rajneeshpuram Comprehensive
6 Plan as an amendment to the Wasco County Comprehensive Plan.

7 FACTS

8 On November 3, 1982, the Wasco County Court adopted the
9 City of Rajneeshpuram Comprehensive Plan as a part of the
10 county's comprehensive plan. This act was in keeping with the
11 county's practice of incorporating into its comprehensive plan
12 the plans of the various cities in the county.¹

13 In August, 1983, the Land Conservation and Development
14 Commission (LCDC) acknowledged the Wasco County Comprehensive
15 Plan as in compliance with the statewide land use goals except
16 for two areas. The areas LCDC did not acknowledge are known as
17 Seven Mile Hill and Rancho Rajneesh.² The geographical
18 limits of the City of Rajneeshpuram are within Rancho Rajneesh.

19 The challenged ordinance removed the Rajneeshpuram city
20 comprehensive plan from the county's plan. Evidently, this was
21 done in part because of questions about acknowledgement raised
22 by LCDC and because of court rulings declaring the
23 incorporation of the City of Rajneeshpuram to be inconsistent
24 with statewide goal requirements. See 1000 Friends of Oregon
25 v. Wasco County Court, ___ Or LUBA ___ (LUBA No. 81-132,
26 9/30/83); aff'd, 68 Or App 765, ___ P2d ___ (1984).

1 ASSIGNMENT OF ERROR

2 "Wasco County Failed to Follow the Required Procedures
3 For A Legislative Revision to its Comprehensive Plan
and So Its Action is Void and Must be Remanded"

4 In this single assignment of error, petitioners make
5 several arguments. First, they argue the decision violates the
6 citizen involvement requirements in the county plan and in
7 statewide planning Goal 1, (citizen involvement). Petitioners
8 also argue the county failed to consider certain criteria in
9 its plan applicable to all plan amendment decisions. Last,
10 petitioners argue the county failed to coordinate its decision
11 with the City of Rajneeshpuram, a requirement of ORS 197.190,
12 statewide planning Goal 2 and a portion of the county's plan.³

13 A. Citizen Involvement

14 Petitioners allege the county failed to comply with its
15 citizen involvement program. Petitioners cite to the following
16 policies and implementation measures:

17 "POLICY 1 Improve the availability of planning
18 information to all of the residents in the
County.

19 Implementation

20 "A. Hold at least one Citizen Advisory Group
21 meeting per year. Other meetings shall
22 be held as needed to inform the group of
proposed changes in the Comprehensive
Plan or other land use actions.

23 "B. The Chairmen of the planning areas shall
24 be advised on all agency meetings or
hearings on actions affecting land use.

25 "C. Make all pertinent land use information
26

1 from all agencies available to the
Citizen Advisory Group chairmen.

2 "POLICY 2 A Citizen Involvement Program shall encourage
3 the participation of citizens representing a
broad cross-section of the population.

4 Implementation

5 "A. A diversified geographic and vocational
6 cross-section of citizens will be
7 encouraged to participate in Citizen
Advisory Groups.

8 "B. The Wasco County Planning Office shall
9 provide clear and concise notice of the
opportunities for citizen involvement.

10 "C. Encourage open attendance and
11 participation by all people at Citizen
Advisory Group meetings.

12 "POLICY 3 Encourage involvement of citizens and property
owners in the land use planning process.

13 Implementation

14 "A. Notices of all Citizen Advisory Group
15 meetings should be given at least ten
(10) days prior to the meetings.

16 "B. Notices of all Citizen Advisory Group
17 meetings should be posted by the Wasco
County Planning Office in the Wasco
18 County Courthouse, at least two public
places in each planning area, and shall
19 be advertised in the newspaper of general
circulation throughout the County.

20 "C. When revising or adopting the
21 Comprehensive Plan, there shall be a
22 minimum of two public hearings held
within the affected planning area."

23 Petitioners allege the county failed to meet each of the
24 implementation measures of Policy 1 by failing to hold a
25 meeting of the appropriate citizen advisory group. Because the
26 county did not hold citizen advisory group meetings, the county

1 failed to comply with implementation measure C of Policy 2
2 requiring it to "encourage open attendance and participation by
3 all people at citizen advisory group meetings." Further,
4 petitioners claim violation of Policy 3 because the county
5 failed to give notice of this ordinance amendment as required
6 by implementation measures A, B and C. They assert no meeting
7 was held with the citizen advisory group which would ordinarily
8 be involved in discussions on changes affecting the
9 Rajneeshpuram area.

10 Respondent does not dispute these facts, but raises a
11 series of defenses.

12 The county first claims adoption of the challenged
13 ordinance is not a reviewable land use decision under ORS
14 197.805-835. Although the statute defines land use decision as
15 a decision that concerns amendment of a comprehensive plan, ORS
16 197.015(10), the county distinguishes between repeal of a plan
17 provision, as here, and an amendment to the plan. However, we
18 find the distinction unconvincing. The county court undertook
19 to alter its comprehensive plan by striking a portion of it.
20 In so doing, the county amended its plan. See Peterson v.
21 Klamath Falls, 279 Or 249, 566 P2d 1193 (19877). Amendments to
22 county comprehensive plans are land use decisions subject to
23 our review. ORS 197.015(10)(a)(A)(ii); 197.825.

24 Respondent next argues the citizen involvement provisions
25 of the Wasco County Comprehensive Plan do not apply to the
26 situation in question. Respondent argues the citizen

1 involvement procedures are only applicable when an amendment
2 will change the permitted uses of the land rather than, as
3 here, reflect changes in the legal status of land. Respondent
4 insists the only notice required in this case is the notice
5 given for adoption or repeal of a county ordinance. The county
6 states it complied with these less stringent notice
7 requirements.

8 We are cited to nothing in the Wasco County Comprehensive
9 Plan limiting the citizen involvement process to changes in
10 land use designation. Although the county claims there is
11 little a citizen involvement group could say about a strictly
12 legal issue, we view this argument to be beside the point. The
13 plan policy applies to all amendment actions. It is possible
14 the county's action, regardless of the considerations prompting
15 it, would be altered or accompanied by other measures after
16 consideration of citizen comments. We believe the county's
17 citizen involvement program exists to promote just such
18 communications.

19 Therefore, we agree with petitioners that the county has
20 violated the three citizen involvement policies in its
21 comprehensive plan. Policy 1 is violated because the county
22 failed to hold a citizen advisory group meeting "as needed to
23 inform the group of proposed changes in the comprehensive
24 plan...." Because no meeting was held, implementation measures
25 requiring chairmen of the various planning areas to be advised
26 of meetings or hearings on actions affecting land use

1 (implementation measure B) and implementation measure C,
2 requiring information to be available to citizen advisory
3 chairmen were also violated. Citizen involvement Policy 2 was
4 violated because the county failed to encourage open attendance
5 and participation at citizen advisory group meetings as
6 required by implementation measure C. Policy 3 is violated
7 because none of the required notices were published.

8 Petitioners' complaint that the county's decision violates
9 statewide Goal 1 is also well taken.⁴ A violation of the
10 county's comprehensive plan may also be a violation of a
11 statewide planning goal. Here, the county has not shown its
12 plan amendment action to be consistent with specific related
13 policies in its acknowledged plan. Therefore, the county is
14 not insulated from a goal related challenge. See ORS
15 197.835(4). Because we find the county failed to provide
16 opportunity for meaningful citizen comment at all phases of the
17 process leading to adoption of the challenged plan amendment,
18 we also find the county failed to comply with statewide
19 planning Goal 1.

20 B. Alleged Violation of Other Plan Provisions

21 Here, petitioners advise us the county plan includes the
22 following general criteria which must be considered before
23 approval of a plan amendment:

24 "General Criteria

25 "The following are general criteria which must be
26 considered before approval of an amendment to the
Comprehensive Plan is given:

- 1 "1. Compliance with the statewide land use goals as
2 provided by the Land Conservation and Development
Commission, where applicable.
- 3 "2. Substantial proof that such change shall not be
4 detrimental to the spirit and intent of such
goals.
- 5 "3. A mistake in the original comprehensive plan or
6 change in the character of the neighborhood can
be demonstrated.
- 7 "4. Factors which relate to the public need for
8 healthful, safe and aesthetic surroundings and
conditions.
- 9 "5. Proof of change in the inventories originally
developed.
- 10 "6. Revisions shall be based on special studies or
11 other information which will serve as the factual
12 basis to support the change. The public need and
justifications for the particular change must be
13 established." Wasco County Plan, Revision
Process, VIII, at 227-28.

14 Petitioners claim criteria 1, 2, 3, and 6 were violated in this
15 case.

16 Under the first and second criteria, petitioners argue the
17 county failed to follow its own citizen involvement procedure
18 and the procedure mandated by statewide Goal 1. We agree as
19 explained under "A", supra.

20 Under the third criterion, petitioners argue there has been
21 no proof of a mistake in the original comprehensive plan or a
22 change in the character of the neighborhood. We do not find
23 error as alleged. We do not construe the plan to require that
24 all six criteria must be met in order to authorize a plan
25 change.⁵ In this case the county did not (and was not
26 required to) base its action on the existence of a mistake in

1 the plan or change in the character of the neighborhood.

2 Therefore, we fail to find error as alleged.⁶

3 Finally, petitioners argue there is no factual base for the
4 plan amendment, as allegedly required by the sixth criterion.
5 However, they do not explain what sort of factual basis would
6 be required for the type of amendment in question. Petitioners
7 also argue the county has shown no need and justification for
8 the amendment.⁷

9 Petitioners assertion is mistaken. It is apparent the
10 reason for amending the plan was the county's understanding of
11 the city's legal status. The county concluded the City of
12 Rajneeshpuram is not a legal entity for land use planning
13 purposes. The county found:

14 "Whereas, the matter of Rancho Rajneesh and
15 specifically, Rajneeshpuram continues to be matter
16 litigated in the courts; and"

* * *

17 "Whereas, the Court of Appeals of the State of Oregon
18 has upheld the LUBA Decision of September 30, 1983,
19 No. 82-132, which held that the incorporation of
20 Rajneeshpuram violated certain land use goals and
21 therefore was invalid for land use planning
22 purposes...." Record, 7, 8.

23 We believe these findings are sufficient to state reasons
24 for the decision as required by the criterion cited by
25 petitioners.

26 C. Failure to Coordinate

In this subassignment of error, petitioners argue the
county failed to comply with the provision of its comprehensive

1 plan requiring coordination with "all other plans and programs
2 affected or having affect on land use within the County."
3 Wasco County Plan at 277. Petitioners claim the county made no
4 attempt to coordinate its land use plan with that of
5 Rajneeshpuram. Petitioners argue the county's actions were
6 "directly contrary to the position expressed by the City...."
7 Petitioners add this failure also amounts to a violation of ORS
8 197.190 and statewide planning Goal 2.

9 While we agree that the county must coordinate its plan
10 with those of affected jurisdictions pursuant to statewide
11 planning Goal 2, ORS 197.190 and its own comprehensive plan, we
12 do not believe the requirement applies as petitioners contend.
13 The Court of Appeals has said the incorporation of the City of
14 Rajneeshpuram did not satisfy pertinent land use requirements.
15 1000 Friends of Oregon v. Wasco County Court, supra. For that
16 reason, we have also held that the city lacked authority to
17 incorporate new territory into its boundaries. Perkins, et al
18 v. City of Rajneeshpuram, ___ Or LUBA ___ (LUBA Nos. 83-094 and
19 83-095, 2/09/84), 68 Or App 226, ___ P2d ___ (1984). Although
20 citizen involvement policies required some measure of
21 consultation with affected citizens, see page 8, supra, the
22 county was not obliged to formally coordinate its land use
23 planning activity with those of Rajneeshpuram, given its lack
24 of legal capacity to exercise land planning authority.

25 The decision of the Wasco County Court is remanded. In the
26 event further proceedings are undertaken with respect to this

1 matter, the county must conduct in accord with its citizen
2 involvement program as set forth in the county's plan.

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FOOTNOTES

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4 The county counsel explains that the county may reconsider
5 its practice of incorporating the comprehensive plans with
6 various cities in the county into the county comprehensive
7 plan. We do not know why the county initiated the practice.
8 As we indicate in this opinion it is clear that, having done
9 so, the county must follow all applicable legal requirements in
10 removing city plans from its comprehensive plan.

11
12 ²
13 The Seven Mile Hill area has been replanned and submitted
14 to LCDC for acknowledgement.

15
16 ³
17 ORS 197.190 provides, in part:
18 "Regional coordination of planning activities;
19 alternatives. (1) In addition to the
20 responsibilities stated in ORS 197.175, each county,
21 through its governing body, shall be responsible for
22 coordinating all planning activities affecting land
23 uses within the county, including planning activities
24 of the county, cities, special districts and state
25 agencies, to assure an integrated comprehensive plan
26 for the entire area of the county.

27 Goal 2 provides, in part, that

28 "City, county, state and federal agency and special
29 district plans and actions related to land use shall
30 be consistent with the comprehensive plans of cities
31 and counties and regional plans adopted under ORS
32 197.705 through 197.795."

33 * * *

34 "Opportunities shall be provided for review and
35 comment by citizens and affected governmental units
36 during preparation, review and revision of plans and
37 implementation ordinances."

38
39 ⁴
40 Statewide planning Goal 1 provides, in part:

1 "1. Citizen involvement - To provide for widespread
2 citizen involvement. The citizen involvement program
3 shall involve a cross-section of affected citizens in
4 all phases of the planning process. As a component,
5 the program for citizen involvement shall include an
6 officially recognized citizen advisory committee or
7 committees broadly representative of geographic areas
8 and interest related to land use and land use
9 decisions. Citizen advisory committee members shall
10 be selected by an open, well-publicized public process.

11 "2. Communication - To assure effective two-way
12 communication with citizens.

13 "Mechanisms shall be established which provide for
14 effective communication between citizens and elected
15 and appointed officials.

16 "3. Citizen Influence - To provide the opportunity
17 for citizens to be involved in all phases of the
18 planning process.

19 "Citizens shall have the opportunity to be involved in
20 the phases of the planning process as set forth and
21 defined in the goal as guidelines for Land Use
22 Planning, including Preparation of Plans and
23 Implementation Measures, Plan Content, Plan Adoption,
24 Minor Changes and Major Revisions in the Plan and
25 Implementation Measures."

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For example, it would be illogical to require proponents of
a plan change to show that a mistake existed in the drafting of
the plan, under criterion 3, if there has been a change in the
basic inventory information under criterion 5.

6
Actually, the county's order can be read to include a
finding under criterion 3 (mistake). That is, the county found
inclusion of the Rajneeshpuram plan in its own plan was a
mistake because the city had not yet been incorporated in a
manner consistent with land use regulations.

7
Petitioners also repeat their argument that county
comprehensive plan provisions controlling citizen involvement
and statewide planning Goal 1 have been violated. Petitioners

1 say the findings were inadequate to show citizens' concerns
were heard and considered during the amendment process.

2 We believe we have adequately discussed the citizen
3 involvement issue. We hasten to caution, however, that
4 findings are not necessary to show compliance with a county
citizen involvement program or with statewide planning Goal 1.
5 The record will reveal whether the amendment process complied
with citizen involvement requirements, and findings expressing
compliance are unnecessary and would be surplusage.

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