

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

IN THE MATTER OF PERIODIC REVIEW)	
TASK 1 AND THE AMENDMENT OF)	REMAND ORDER
THE URBAN GROWTH BOUNDARY)	12-WKTASK-001814
FOR THE CITY OF MCMINNVILLE)	

This matter came before the Land Conservation and Development Commission (Commission) on February 28, 2012, on partial reversal and remand of the Commission's Order on Reconsideration of Approval Order 08-WKTASK-001760 from the Court of Appeals, pursuant to ORS 183.482 and ORS 197.650(1).

History and Summary of Task 1 and UGB amendment

The Department of Land Conservation and Development (department) approved the City of McMinnville's (city) periodic review work program on August 26, 1994. The city submitted Task 1, "Inventory of Commercial Lands", of its approved work program to the department for review pursuant to ORS 197.633 and OAR chapter 660, division 25. The city also submitted the amendment of its urban growth boundary (UGB) to the department for review pursuant to ORS 197.626, OAR 660-025-0040(1)(a), and OAR 660-025-0175(1). The Commission partially approved and partially remanded the submittal on December 6, 2004 by order 04-WKTASK-001645. In response to the remand, the city submitted Ordinances 4840 and 4841, the subject of the present matter.

Recitals

1. On January 17, 2006, the department received Ordinance 4840 from the city and on January 31, 2006, the department received Ordinance 4841 from the city in response to partial approval and remand order 04-WKTASK-001645. The department considered the submittal complete on January 31, 2006.
2. On January 23, 2006, the department received an objection from Mark Davis. On February 3 and February 17, 2006, the department received objections from 1000 Friends of Oregon, Friends of Yamhill County, and Ilsa Perse. The objections were timely filed.
3. On May 31, 2006, the department approved Task 1 and the UGB amendment by order 001696 and notified the city and the objectors.
4. On June 22, 2006, the department received an appeal of order 001696 from 1000 Friends of Oregon, Friends of Yamhill County, and Ilsa Perse.
5. On September 12, 2006, the Commission held a hearing on the appeal of the director's approval of a completed periodic review work task and an UGB amendment.

6. During the course of the September 12, 2006 hearing, the city requested that the Commission amend its periodic review work program to add Task 4, the rezoning of the West Hills and West 2nd Street areas from R-1 to R-2.

7. On November 8, 2006, the Commission issued Approval Order 06-WKTASK 001709, which approved the city's Task 1 and UGB amendment submittal, pursuant to OAR 660-025-0150 and 660-025-0160, and approved the city's request to amend its periodic review work program to add Task 4, the rezoning of the West Hills and West 2nd Street areas from R-1 to R-2.

8. On August 1, 2007, petitioners 1000 Friends of Oregon, Friends of Yamhill County, and Ilsa Perse filed their opening brief in the Court of Appeals on judicial review of the Commission's order. Petitioners' opening brief assigned error to the Commission's interpretation of certain statutes, statewide planning goals and prior Commission position thereon.

9. By order dated November 20, 2007, the Commission found that petitioners raised issues concerning the interpretation of law that merited reconsideration. The Commission also found that withdrawal of its approval order offered the most efficient means of resolving petitioners' concerns, to the benefit of the city, petitioners, and the Commission. Therefore, pursuant to ORS 183.482(6) and ORAP 4.35, the Commission withdrew Approval Order 06-WKTASK 001709 for reconsideration under the authority delegated to the director under OAR 660-002-0010(5).

10. In early 2008, the parties explored settlement. The city subsequently informed the petitioners and the department that it would no longer pursue settlement.

11. On November 17, 2008, the Commission issued Order on Reconsideration of Approval Order 08-WKTASK-001760, which approved Periodic Review Task 1, "Inventory of Commercial Lands" and the city's UGB amendment submittal, as illustrated in Figure 6 (Exhibit B) of Ordinance 4841, pursuant to OAR 660-025-0150 and 660-025-0160; and approved the city's request to amend its periodic review work program to add Task 4, the rezoning of the West Hills and West 2nd Street areas from R-1 to R-2 at the time of completion of the Transportation System Plan (Task 2 of the city's periodic review work program).

12. In 2009, the parties again explored settlement. In the fall of 2009, the city subsequently informed the petitioners and the department that it would no longer pursue settlement.

13. On October 13, 2009, petitioners filed a supplemental opening brief in the Court of Appeals on judicial review of the Commission's revised order (08-WKTASK-001760).

14. On June 9, 2010, the department issued order 001790 approving the city's Task 2 submittal regarding the Transportation System Plan.

15. On judicial review of the orders, the Oregon Court of Appeals reversed and remanded for reconsideration of the decision to add land to the UGB, but did not otherwise address 08-WKTASK-001760. *1000 Friends of Oregon v. LCDC*, __ Or App __, __ P3d __ (2011). The court directed the Commission to make additional findings regarding petitioners' contentions or take appropriate action in review of the city's UGB submittal to:

“(1) determine what particular and quantified land use need are to be accommodated by any additional land to be added to the McMinnville UGB; (2) apply ORS 197.298 to determine the land available to accommodate those quantified land use needs; (3) apply Goal 14 to justify the inclusion of suitable land in any amended UGB; and (4) take any other necessary action under a correct interpretation of the governing standards, including a determination of whether the city's submission, ‘on the whole conform[s] with the purposes of the goals and any failure to meet individual goal requirements is technical or minor in nature’ under ORS 197.747.” Slip op at 60.

Findings of Fact

1. On July 13, 2011, the Court of Appeals filed its decision on judicial review of the Commission's Order on Reconsideration of Approval Order 08-WKTASK-001760.
2. On January 31, 2012 the State Court Administrator sent a copy of the appellate judgment to the Commission and the Court of Appeals decision became effective on that date pursuant to ORAP 14.05.

Conclusion

Based on the decision of the Court of Appeals, Work Task 1 is affirmed. The court directed the Commission to make additional findings regarding petitioners' contentions or take appropriate action in review of the city's UGB submittal. However, such determinations, for example the initial determination of the particular and quantified land use needs that are to be accommodated by any additional land to be added to the McMinnville UGB, are the purview of the city and not the role of this Commission. Therefore, under the court's direction, the only appropriate action is to remand the city's UGB submittal. On remand, the City of McMinnville must either determine its land use needs and apply ORS 197.298 and Goal 14 in the manner announced by the court's decision, or otherwise fulfill the requirements of accommodating its identified needs in compliance with the statewide planning goals and consistent with the court's decision.

THEREFORE, IT IS ORDERED THAT:

The Commission modifies its Order on Reconsideration of Approval Order 08-WKTASK-001760 to reverse the approval of the city's UGB amendment submittal, as illustrated in Figure 6 (Exhibit B) of Ordinance 4841, and to remand the city's UGB amendment submittal, as illustrated in Figure 6 (Exhibit B) of Ordinance 4841, for further findings consistent with the court's final opinion and order. On remand, the city may either (a) include the city's UGB amendment submittal, as illustrated in Figure 6 (Exhibit B) of Ordinance 4841, based on (1) findings of its particular and quantified land use need that are to be accommodated by any additional land added to the McMinnville UGB that are supported by substantial evidence; (2) application of ORS 197.298 to determine the land available to accommodate those quantified land use needs; (3) application of Goal 14 to justify the inclusion of suitable land in any amended UGB; or (b) fulfill the requirements of accommodating its identified needs, including by amending the city's UGB, in any other manner that complies with the statewide planning goals.

DATED THIS 29th DAY OF FEBRUARY, 2012.

FOR THE COMMISSION:



Jim Rue, Acting 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 197.650.