

A BILL FOR AN ORDINANCE )  
ADOPTING THE 2004 )  
COMPREHENSIVE PLAN )  
FOR THE CITY OF LEBANON )

ORDINANCE BILL NO.  
for 2004 14  
ORDINANCE NO. 2367

**WHEREAS**, the Planning Commission for the City of Lebanon conducted hearings and subsequently made findings recommending the adoption of the 2004 Comprehensive Plan for the City of Lebanon on November 17, 2004; and

**WHEREAS**, the City Council, pursuant to the provisions of the Lebanon Municipal Code, after appropriate notice given, has conducted hearings to take testimony, hear arguments and to consider all of the evidence text amendment, such hearings conducted on December 1, 2004, with the City Council tentatively adopting the Plan and continuing the matter for the adoption of this ordinance as its final decision on December 8, 2004; and

**WHEREAS**, all parties and interested persons have been allowed to submit evidence after the public hearing referred to above; and

**WHEREAS**, the City Council has considered all relevant evidence and deliberated in making its decision herein..

**NOW, THEREFORE**, the City of Lebanon ordains as follows:

**Section 1.** The City Council, in addition to the findings made above, does hereby adopt and find those matters contained in Exhibit "A", which is incorporated herein by this reference as if set forth at this point.

**Section 2.** Based upon the findings adopted herein, the text of the 2004 Lebanon Comprehensive Plan is adopted as provided in Exhibit "B" which is incorporated herein by this reference set forth at this point.

**Section 3.** The City also considers and adopts the findings of the Lebanon Planning Commission after its hearing on the 2004 Lebanon Comprehensive Plan on November 17, 2004. Said findings are listed in the City's Staff report, and are incorporated herein by this reference.

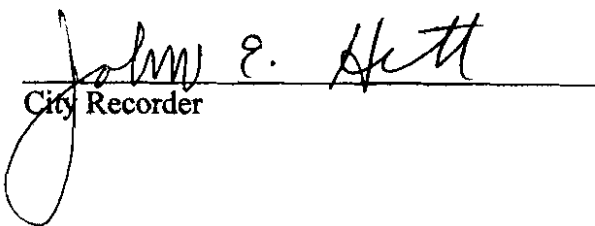
**Section 4.** A copy of this ordinance shall be forwarded to Linn County, Oregon, to the Oregon Land Conservation and Development Commission and any other entities as required by law for review.

Passed by the Lebanon City Council by a vote of 5 for  
and 7 against and approved by the Mayor this 8th day of December,  
2004.



Mayor

ATTEST:

  
City Recorder

## EXHIBIT A

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December 8, 2004

File #: CPTA-04-01

### CITY OF LEBANON CITY COUNCIL ACTION on DECEMBER 8, 2004 PUBLIC HEARING on COMPREHENSIVE PLAN TEXT AMENDMENTS

#### ADOPTED FINDINGS

#### 1. ***Based on the Identified 1980 Comprehensive Plan Criteria***

**Finding # 1:** The proposed 2004 Comprehensive Plan in its entirety complies with the 1980 Comprehensive Plan Administrative Policies and Recommendations, **Policy #1**, (page 1-P-1) that states that the Comprehensive Plan shall be maintained as an ongoing decision-making guideline. These amendments are crucial to the maintenance of the ongoing decision-making guideline function of the Comprehensive Plan, especially given the fact that the Comprehensive Plan provisions being revised, updated and replaced were, by and large, written nearly a quarter of a century ago, and have been known to be in need of revision and updating since at least the mid-1990s.

**Finding # 2:** The proposed revised, updated, and amended new Comprehensive Plan in its entirety complies with the 1980 Comprehensive Plan Administrative Policies and Recommendations, **Policy #2**, (page 1-P-1) that states that the Comprehensive Plan and Implementing Ordinances *shall be reviewed annually and may be revised and amended as needed to reflect changing needs and conditions within the planning area*. These amendments are essential to reflect changing needs and conditions within the community. In fact, many of these changes were initiated by the 1999 Citizen task Forces who participated in the early stages of the current update and revision of the City's Comprehensive Plan. The need for such changes have become quite urgent given that much has changed in our nation, our state and our community since the late 1970s when the original Comprehensive Plan was written.

**Finding # 3:** The proposed revised, updated, and amended new Comprehensive Plan in its entirety complies with the 1980 Comprehensive Plan Administrative Policies and Recommendations, **Policy #2.1**, (page 1-P-1) that states the *Planning Commission shall conduct a formal review and update of the Comprehensive Plan including the factual data base and all Implementing Ordinances at least once every (2) years unless an annual review indicates the need for an earlier update*. This hearing is in compliance with this Policy.

**Finding # 4:** The proposed revised, updated, and amended new Comprehensive Plan in its entirety complies with the 1980 Comprehensive Plan Administrative Policies and Recommendations, **Policy #3**, (page 1-P-1) that states *All proposed revisions or amendments to the adopted policies shall be reviewed at public hearings before final action*. This hearing is in compliance with this Policy. [Note: The Planning Commission is the City's designated Committee for Citizen Involvement (LCP page 1-9), as per the City's compliance with Statewide Planning Goal 1.]

**2. Based on the Identified Criteria of Statewide Planning Goals (See Exhibit "C" of Staff Report)**

**Finding # 5:** The proposed revised, updated, and amended new Comprehensive Plan in its entirety is consistent with the applicable Statewide Planning Goals. This finding is supported by Angelo Eaton's October 29, 2004 Final Audit (**Exhibit F-1 of Staff Report**) of the 2004 Comprehensive Plan, and Compliance Matrix (see **Exhibit F-2 of Staff Report**), and by ECONorthwest's 2004 *Policy Document -- Evaluation of Draft Policies For Goal Consistency* (see **Exhibit G of Staff Report**). ECONorthwest's 2004 Lebanon Urbanization Study and Buildable Lands Inventory also support this finding (see **Exhibit H of Staff Report**). **Staff Report Exhibits F-1, and F-2**, detail compliance with *all* the applicable Statewide Planning Goals. **Staff Report Exhibits G and H** detail compliance with Statewide Planning Goals 9, 10, 11 and 14. In addition, the November 30, 2004 Letter (see **Exhibit Q of Staff Report**) to the Lebanon Mayor and City Council from Leon Laptook, of the Community Development Law Center (representing Linn County Affordable Housing), indicates support of the Chapter 6 on Housing and compliance with SWPG 10. By reference, **Exhibits C, F, G and Q of the Staff Report** in their entirety are incorporated into this finding.

**3. Based on the Identified Criteria of ORS 197.628 (See Exhibit "B" of Staff Report)**

**Finding # 6:** The proposed revised, updated, and amended new Comprehensive Plan in its entirety is consistent with the applicable provisions of ORS 197, including 197.628. In part, 197.628 requires "*periodic review of comprehensive plans and land use regulations in order to respond to changes in local, regional and state conditions to ensure that the plans and regulations remain in compliance with the statewide planning goals . . . , and to ensure that the plans and regulations make adequate provision for needed housing, employment, transportation and public facilities and services.*" The update of the Lebanon Comprehensive Plan was undertaken precisely because of the need to respond to changes in local, regional and state conditions since the original Plan was developed in the late 1970s. This new Comprehensive Plan fully incorporates all requirements regarding needed housing, employment, transportation and public facilities and services, as is attested to by Angelo Eaton's October 29, 2004 Final Audit (**Exhibit F-1 of Staff Report**) of the 2004 Comprehensive Plan, and Compliance Matrix (see **Exhibit F-2 of Staff Report**), and by ECONorthwest's 2004 *Policy Document -- Evaluation of Draft Policies For Goal Consistency* (see **Exhibit G of Staff Report**). ECONorthwest's 2004 Lebanon Urbanization Study and Buildable Lands Inventory also support this finding (see **Exhibit H of Staff Report**). In addition, the November 30, 2004 Letter (see **Exhibit Q of Staff Report**) to the Lebanon Mayor and City Council from Leon Laptook, of the Community Development Law Center (representing Linn County Affordable Housing), indicates support of the Chapter 6 on Housing and compliance with SWPG 10. By reference, **Exhibits C, F, G and Q of the Staff Report** in their entirety are incorporated into this finding.

**4. Based on the Identified Criteria of City's DLCD Periodic Review Work Program (Revised 10/16/2003; DLCD Order No. 0012556) (See Attachment "A" of Staff Report)**

**Finding # 7:** On October 16, 2003, DLCD issued a REVISED PERIODIC REVIEW WORK PROGRAM SUMMARY to the City of Lebanon that in part reads, Task 6: Comprehensive Plan Update -- Subtask 6.2: Comprehensive Plan Update, Product: Comprehensive Plan updates not included in subtask 6.1 (*Amend the Comprehensive Plan Policies and text related to the Annexation Process.* -- Product: *Updated Comprehensive Plan Policies and text related to Annexation Process*). In short, between both subtasks of Task 6, the REVISED PERIODIC REVIEW WORK PROGRAM requires a completely updated and revised Comprehensive Plan in its entirety. The proposed revised, updated, and amended new 2004 Comprehensive Plan and Map are in direct compliance with this DLCD directive. (See Exhibit "I," as well as Exhibits F and G of Staff Report). By reference, Exhibits A, F, G, and I of the Staff Report in their entirety are incorporated into this finding.

**5. Based on LUBA's 2003 Annexation Related Rulings (See Exhibit "D" of Staff Report)**

As noted in Exhibit D of the Staff Report, in all instances LUBA affirmed in its 2003 rulings that the City's practices and procedures regarding annexations were consistent with the applicable Statewide Planning Goals and ORS provisions, but in a number of instances could not be adequately supported by the wording of the 1980 Comprehensive Plan Policies and portions of narrative text. These problematic portions of the 1980 Comprehensive Plan were amended by CPTA-03-01, and are further refined in the 2004 Lebanon Comprehensive Plan at this time (CPTA-04-01). LUBA's 2003 commentary at a number of points, either directly or indirectly, indicated suggested remedies that have been incorporated into the amendments embodied in CPTA-03-01 and CPTA-04-01. In all cases, the problematic language cited by LUBA has been amended and resolved in this updated 2004 Comprehensive Plan (and in the 2003 Annexation Ordinance) so that the ambiguities cited by LUBA in 2003 no longer exist. The findings below reference the ten major excerpts (in order) as found in Exhibit D, which is hereby incorporated by reference into these findings. DLCD and LCDC have approved the changes embodied in CPTA-03-01 (See Exhibit E of the Staff Report, also hereby incorporated in these findings.)

**Finding # 8-1:** LUBA 2003 Excerpt # 1 cites potential ambiguity regarding the status of the Statewide Planning Goals (SWPGs) and the 1980 Lebanon Comprehensive Plan (LCP), and whether or not the City intended to adopt them "*in the sense that individual annexation decisions must be reviewed against the goals.*" This was clearly NOT the City's intention. This potential ambiguity was originally remedied by CPTA-03-01. This remedy is further embodied in the new 2004 LCP, for example in Section 2.0 of Chapter One, and General Policy P-1 in Chapter One. (See Exhibit "I" – The Updated Comprehensive Plan)

**Finding # 8-2:** LUBA 2003 Excerpt # 2 cites potential ambiguity in the 1982 Annexation Ordinance (replaced in 2003) and in the 1980 LCP regarding annexations, zoning, not requiring specific development proposals for annexations, and questions about urban services, and whether or not the City's practices were consistent with Statewide Planning Goals 11 and 14. LUBA observed in part that: *"the threshold question is whether the city's decision to annex and apply city zoning to annexed property would be inconsistent with Goals 11 and 14, if that decision is adopted without requiring a specific development proposal and without requiring that the urban services and facilities that such a specific development proposal will require either be in place or be provided with the specific development proposal . . . The short answer to petitioner's Goal 11 and 14 arguments is that neither goal identifies annexation or application of city zoning as the decision points at which (1) a specific development proposal must be approved and (2) any public service or facility inadequacies at the property must be corrected. . . . neither goal mandates development approval and provision of all urban services and facilities at the time of annexation. The many mandates that are included in those goals are much more general and leave to local governments significant flexibility in determining how to ensure an adequate supply of developable urbanizable lands that have the necessary public facilities and services to support urban development. Petitioner's approach would impose a significant limit on a city's ability to annex land. . . We reject petitioner's argument that, under Goals 11 and 14, a city may not annex property unless the city also approves a specific development proposal for the annexed property and unless the full panoply of urban services and facilities is already available to the annexed property or provided as part of an approved specific development proposal."* The potential ambiguity between the City's practices (which LUBA found to be consistent with SWPGs 11 & 14) and the text of the City's documents noted above was originally remedied by CPTA-03-01 (and the 2003 Annexation Ordinance). The **language** of the documents was changed to conform with the City's practice and SWPGs 11 and 14. The remedy is further embodied and refined in the new 2004 LCP, for example in Section 3.0 of Chapter Three, and Annexation Policies P-19 through P-25 (Subsection 9.5) of Chapter Three. (See **Exhibit "I" -- The Updated Comprehensive Plan**)

**Finding # 8-3:** LUBA 2003 Excerpt # 3 cites similar potential ambiguity in the 1982 Annexation Ordinance (replaced in 2003) and in the 1980 LCP regarding annexations, zoning, not requiring specific development proposals for annexations, and questions about urban services, and whether or not the City's practices were consistent with ORS 197.752 and 197.754. LUBA observed in part that: *"For essentially the same reasons we reject petitioner's Goal 11 and Goal 14 arguments, we reject petitioner's argument that ORS 197.752 and 197.754 mandate approval of a specific development proposal and provision of all urban services and facilities at the time of annexation and application of city zoning that would allow urban uses. ORS 197.752(1) simply mandates that land within the urban growth boundary must be made available for urban development "concurrent with the provision of key urban facilities and services in accordance with locally adopted development standards." . . ORS 197.754 does not prohibit annexing land or zoning land for urban uses and requiring that needed urban facilities and services be provided at the time a specific development plan for that annexed and zoned land is approved at a later date."* We reject petitioner's argument that, under ORS 197.752 and 197.754, a city may not annex and zone property for urban use unless the city also approves a specific development proposal for the annexed property and unless all urban services and facilities are already available to the annexed property or provided as part of an approved specific development proposal." The potential ambiguity between the City's practices (which LUBA found to be consistent with ORS 197.752 and 197.754) and the text of the City's documents noted above was originally remedied by CPTA-03-01 (and the 2003 Annexation Ordinance). The **language** of the documents was changed to conform with the City's practice and ORS 197.752 and 197.754. The remedy is further embodied and refined in the new 2004 LCP, for example in Sections 3.0 and 5.0 (& related policies) of Chapter Three, and Annexation Policies P-19 through P-25 (Subsection 9.5) of Chapter Three. (See **Exhibit "I" -- The Updated Comprehensive Plan**)

**Finding # 8-4:** LUBA 2003 Excerpt # 4 cites potential ambiguity in the nature and application of Buildable Lands Inventories (BLIs), and several provisions of the 1982 Annexation Ordinance (replaced in 2003) and in the 1980 LCP regarding annexations and “need” for land. LUBA observed in part that: “. . . we cannot tell from that excerpt [1997 BLI] whether the BLI concludes that 390 acres must be annexed to the city to meet the city’s 20-year housing needs or whether the 1997 BLI simply concludes that only 390 of the 1,331 acres of residentially designated land that is already included within the UGB will be needed within the 20-year planning period, without identifying how many of those needed 390 acres are already within the city and already planned and zoned for residential use. Therefore, the city’s findings that the proposed annexation is needed and is consistent with Annexation Policy 5 and LCP Urbanization Element, Annexation Policy 1 are not adequate and are not supported by substantial evidence.” The potential ambiguity noted between the City’s practices (and the nature of BLIs) and the text of the City’s documents noted above was originally remedied by CPTA-03-01 (and the 2003 Annexation Ordinance). The remedy is further embodied and refined in the new 2004 LCP, for example in Sections 3.0 and 5.0 (& related policies) of Chapter Three, and Annexation Policies P-19 through P-25 (Subsection 9.5) of Chapter Three. Additional remedies are found in an explicit discussion of the nature, status and applicability of BLIs at several points in the 2004 LCP, including: Sections 1.0, and 2.0 of Chapter Three; Section 4.0 of Chapter Four; Sections 3.5 and 3.6 in Chapter Five; and, Section 2.7 (especially page 6-13), and section 5.0 in Chapter Six. (See **Exhibit “I” -- The Updated Comprehensive Plan**) Further details are found throughout ECONorthwest’s 2004 Lebanon Urbanization Study and BLI (see **Exhibit H of Staff Report**). In summary, BLIs do not typically distinguish, for a variety of technical reasons, whether needed lands will come from land already inside the City limits or from the Urban Growth Area (UGA), or some combination thereof. As with ECONorthwest’s 2004 BLI for Lebanon, BLIs typically conclude that the land needs will be met from land within the Urban Growth Boundary (UGB), and cannot give further specificity.

**Finding # 8-5:** LUBA 2003 Excerpt # 5 cites potential ambiguity in several 1980 LCP policies, and in conjunction with Section 5 of the 1995 City of Lebanon/Linn County Urban Growth Management Agreement (UGMA), that was adopted 15 years after the Comprehensive Plan was written, and the City’s discretionary authority to require or not require specific development proposals to be submitted with annexation requests. As cited above in **Findings 8-2 and 8-3**, the issue of **not** requiring specific development proposals to be submitted with annexation requests has been addressed. The remedies are now further embodied and refined in the new 2004 LCP, for example in Sections 3.0 and 5.0 (& related policies) of Chapter Three, and Annexation Policies P-19 through P-25 (Subsection 9.5) of Chapter Three. Furthermore, the ambiguities involving Section 5 of the 1995 UGMA and DELAYED Annexations is addressed in the 2004 LCP: Section 6.0 (especially Subsection 6.3), UGMA Policies P-15 through P-18, and Delayed Annexation Policies P-28 and P-29 in Chapter Three. (See **Exhibit “I” -- The Updated Comprehensive Plan**)

**Finding # 8-6:** LUBA 2003 Excerpt # 6 cites potential ambiguity in a number of 1980 and 1982 policies surrounding urban services, annexation, and development. The City long maintained that the proper interpretation of the 1980 LCP Public Facilities Policy #2 in conjunction with 1982 Annexation Policies 1, 2, and 3, which set forth parameters for the provision of for adequate public facilities, lead to two plausible conclusions. As argued at LUBA, the "language of [this] policy means that urban services are available or can be made available to serve the property in its current state. However, the policy could be interpreted to mean that services are available or can be made available to serve [a] property when it is developed." Accordingly, the City maintained that it is appropriate to defer its determinations concerning the need for public facility improvements to serve a specific proposed development of property until a specific development proposal was submitted at some future date. Thus, such determinations did not need to be made at the time of annexation, since annexation in and of itself had no impacts on public facilities.

For over twenty years, the City's annexation procedures had not been problematic regarding the City's authority to make determinations regarding an annexation territory concerning the need for public facility improvements to serve future development of property until a specific development proposal was submitted. It is at that point that historically a development proposal had been addressed by the City in a separate process under the appropriate provisions of the zoning and ordinance and other land use regulations. However, LUBA noted that at this juncture several points of confusion and conflict could be argued in the interpretation and implementation of 1982 Annexation Policies 1-3, 1980 LCP Public Facilities and Services Element, General Policy 2 (Public Facilities Policy 2). (See Exhibit D, #6, for LUBA's reasoning at this point.

A number of the remedies included in CPTA-03-01 and the 2004 LCP have been noted above in **Findings 8-2** and **8-3**. In addition, numerous changes in Narrative Text, Goals, and Polices in 2004 LCP Chapter Nine, *Public Facilities and Services*, have further addressed these problematic provisions from the 1980 and 1982 documents. (See **Exhibit "I" -- The Updated Comprehensive Plan**)

**Finding # 8-7:** LUBA 2003 Excerpt # 7 cites a potential remedy for the ambiguities noted above in **Finding 8-6** regarding which urban services should be considered by the City. City practice primarily took into account streets, drainage, water and sanitary sewer. LUBA stated that *"If the city now believes that the adequacy of only those four urban services need be considered at the time of annexation, it must amend the policies to so provide."* The City included this suggestion of from LUBA at appropriate points in the 2003 Annexation Ordinance and the Annexation related changes made by CPTA-03-01 (see **Findings 8-2** and **8-3**). Language regarding these four key City-Provided Urban Utility Services is found throughout the 2004 LCP. (See **Exhibit "I" -- The Updated Comprehensive Plan**)



**Finding # 8-8:** LUBA 2003 Excerpt # 8 cites potential ambiguity in a number of 1980 and 1982 policies, annexations, and once again a lack of understanding about the nature and application of Buildable Lands Inventories (BLIs) [see **Finding 8-4** on BLIs]. The City had long maintained that it was within the City's authority to determine that a proposed annexation is an appropriate addition to the City limits if the subject property was contiguous to the existing City limits. And furthermore, the City contended that it was appropriate to proceed on the basis that all territory inside the Urban Growth Boundary (UGB) had been acknowledged for over twenty years by both the City and the State as land needed by the City for its growth overtime, and that this acknowledgement does not need to be repeated each time an applicant with property in the UGB wishes to become part of the City. However, LUBA noted that at this juncture several points of confusion and conflict could be argued in the interpretation and implementation of 1980 LCP Urbanization Element, Phased Growth Program, Policy 1 that concerns a Compact Urban Growth Pattern. LUBA's reasoning (in LUBA No. 2003-044) follows:

*"LCP Urbanization Element, Phased Growth Program, Policy 1 (Phased Growth Policy) provides in pertinent part:*

*"[T]he city shall maintain a compact urban growth pattern that expands the city limits incrementally in an orderly and efficient manner within the service capabilities of the city."*

*Petitioner's argument under this assignment of error is three-fold. Petitioner first argues that the proposed annexation is not "compact" because the subject property juts out into the surrounding rural landscape. . . . Second, petitioner repeats his arguments regarding the availability of urban services. . .*

*Third, petitioner also argues that because the city did not consider whether part or all of the 390 acres of needed residential land may already be located within the city, it is not possible to determine whether the challenged annexation will simply cause land that is already within the city to be bypassed in favor of the newly annexed property at the fringe of the city. Petitioner contends that if this is the case, the annexation cannot be viewed as producing a "compact urban growth pattern."*

*While the concept of a "compact urban growth pattern" is somewhat subjective, we agree with petitioner that until the city establishes that there is not sufficient vacant land already within the city to meet its 20-year need for residentially planned and zoned land the disputed annexation appears to be at odds with a policy that favors a "compact urban growth pattern" and incremental, orderly and efficient expansion of city limits."*

A number of the remedies included in CPTA-03-01 and the 2004 LCP have been noted above in **Findings 8-2** and **8-3**. In addition, numerous changes in 2004 LCP Chapter Nine, *Public Facilities and Services*, have further addressed these problematic provisions from the 1980 and 1982 documents. In point of fact, the LUBA cited ambiguous (subjective) term and concept of "compact urban growth pattern" is NOT part of the 2004 LCP (See **Exhibit "I" -- The Updated Comprehensive Plan**). Also see **Finding 8-4** for a proper understanding of BLIs.

**Finding # 8-9:** LUBA 2003 Excerpt # 9 (in LUBA No. 2003-045) cites similar issues regarding the eligibility of properties to be annexed based on the degree of contiguity with City limits and the resulting configuration of City limits after annexations along with the other issues noted above. LUBA concluded that,

*The findings focus on the proximity of the subject property to city limits and the negligible increase in demand that is likely to be generated by the annexed property. It does not address, as the policies require, all of the public facilities that will be needed to serve a particular development proposal. Neither do those findings address petitioner's other points: that the creation of a bulge in the city limits that is surrounded by unincorporated territory and includes undeveloped residential land is neither needed to address a particular public need, nor will result in a "compact growth pattern." The findings are not adequate to demonstrate that the proposed annexation is consistent with LCP Phased Growth Policy 1, LCP Public Facilities Policy 2 or LCP Annexation Policy 1.*

A number of the remedies included in CPTA-03-01 and the 2004 LCP have been noted above in **Findings 8-2** and **8-3**. In addition, numerous changes in 2004 LCP Chapter Nine, *Public Facilities and Services*, have further addressed these problematic provisions from the 1980 and 1982 documents. Also, as noted in **Finding 8-8**, the LUBA cited ambiguous (subjective) term and concept of "compact urban growth pattern" is NOT part of the 2004 LCP (See **Exhibit "I" -- The Updated Comprehensive Plan**).

**Finding # 8-10:** LUBA 2003 Excerpt # 10 cites potential ambiguity in a portion of the NARRATIVE TEXT from Chapter 4 of the 1980 Comprehensive Plan (1980 LCP, page 4-13). The City had long exercised a flexible growth policy that was not locked into a rigid phased program for the extension of public services and the annexation of property on such a basis. LUBA had noted ambiguity at this point, as well as potentials for conflict and confusion based this section of the narrative text. [In the material that follows LUBA incorrectly called this portion of the narrative text a "Policy." In point of fact, all 1980 LCP Policies were in separate sections of each chapter and were signified as such with a distinctive pagination that was clearly not the case for this narrative text.]

LUBA's reasoning follows:

*"Petitioner also argues that there is no evidence that the subject property will be able to be developed immediately in light of a plan policy that does not allow sewer extensions to "areas of medium and low priority" until 75 percent of the high priority service areas are developed. Petitioner contends that there is no evidence in the record that (1) the subject property is located within a high priority service area; or (2) that at least 75 percent of the high priority areas have been developed and, therefore, sewer lines may be extended to the subject property. In the absence of such evidence, petitioner argues, the city cannot conclude that the subject property is currently needed for orderly and compact growth, because sewer service will not be extended to nonpriority areas unless 75 percent of the priority areas have been developed.*

A number of the remedies included in CPTA-03-01 and the 2004 LCP have been noted above in **Findings 8-2** and **8-3**. In addition, numerous changes in 2004 LCP Chapter Nine, *Public Facilities and Services*, have further addressed these problematic provisions from the 1980 document. In point of fact, the above noted 1980 terms and concepts of "areas of high, medium and low priority" for sewer extensions and the 75% threshold do NOT exist in the 2004 LCP.

Further more in the 2004 LCP, sections of Narrative Text (see Section 4.0) and Policies (P-10 through P-12) in Chapter One, as well as appropriate material in the Glossary, clearly distinguish between Narrative Text, and the official Goals, Policies, and Recommendations of the City so that in the future there can be no legitimate reason to confuse the LCP narrative text with the City's official Goals, Policies, and Recommendations. (See **Exhibit "I" -- The Updated Comprehensive Plan**.)

## 6. Friends of Linn County (FOLC) Testimony of November 17, 2004

On November 17, 2004, Jim Just representing the Friends of Linn County (FOLC) submitted written and verbal testimony to the Planning Commission regarding the proposed 2004 Lebanon Comprehensive Plan update. The complete written testimony is found in **Exhibit K1 of the Staff Report for the City Council**. **Exhibit K2 of the City Council Staff Report** contains the entire transcript of the Verbal Testimony by Just, complete with Questions and Comments from Planning Commissioners and City Staff, and Just's responses. The written testimony of FOLC was handed to each Planning Commissioner before Just began his verbal testimony, thus the Commissioners were able to read it and consult it during the verbal testimony.

**Summary of Exhibit K of the Staff Report:** FOLC contends that a number of provisions in Chapter 3 (Urbanization) are allegedly problematic and therefore do not comply with Statewide Planning Goal (SWPG) 14 (see **K1** for specifics). FOLC further contends (see both **K1** and **K2**) that the proposed remedy could be found in eliminating these provisions from the proposed Comprehensive Plan and replacing them with language from proposed draft, as of yet not adopted, changes to SWPG 14 that might be adopted next year, and an annexation process that would not assign City zoning to parcels that are annexed. FOLC indicated that if the City made these proposed changes FOLC would not challenge the adoption of the proposed Comprehensive Plan. FOLC further indicated that if the City did not adopt FOLC's proposed changes, FOLC would oppose and litigate the adoption of Lebanon's updated Comprehensive Plan. The Planning Commission was not persuaded by FOLC's arguments.

**Finding #9:** FOLC argues that the 2004 Lebanon Comprehensive Plan does not meet SWPG 14 requirements, but that proposed draft, as of yet not adopted, changes to SWPG 14 that might be adopted next year would assure compliance. This and related claims by FOLC are not credible in the face of a preponderance of evidence in the record to the contrary (verbal staff report and verbal testimony to City Council and Planning Commission, and full written Staff report, which in its entirety is incorporated into this finding):

- (a) In 2003, LUBA rulings indicated that the City's historic annexation practices, now fully embodied in this Comprehensive Plan Update, were consistent with applicable Statewide Planning Goals and ORS provisions (see Footnote # 1 on page 4 of the Staff Report, PC Findings 8-1 to 8-10 below, and Exhibit D of Staff Report).
- (b) Approval by DLCD Staff and LCDC of Periodic Review Work Program Subtask 6.1 (City Planning file # CPTA-03-01) to update annexation related portions of the Comprehensive Plan that are now embodied and refined in this new update (see Exhibit E of Staff Report for letters of approval from DLCD and LCDC for Subtask 6.1/CPTA-03-01).
- (c) Evaluation and conclusion by the ECONorthwest consulting team (as part of a DLCD funded project) that the policies and text in Comprehensive Plan Chapters 3, 4, 5, 6, and 9 are in Compliance with Statewide Planning Goals 9, 10, 11, and 14 (see Exhibit G of Staff Report).
- (d) Evaluation and conclusion by the consulting team (as part of another DLCD funded project) of Angelo Eaton and Associates (with Attorney at Law Mark Greenfield as a sub-consultant) that the policies and text of the entire updated Comprehensive Plan are in compliance with ALL applicable Statewide Planning Goals (see Exhibit F of Staff Report).

### Finding # 10

The November 17, 2004, FOLC written testimony included the following comment on Page 3 (Paragraph 4): *"No proposed policies address the availability of sufficient land for the various uses to insure choices in the market place or the encouragement of development within urban areas before conversion of urbanizable areas."*

Subsequent to the Planning Commission meeting on November 17, 2004, the City sent a written response to FOLC regarding their written and verbal testimony (included as **Exhibit O** of City Council Staff Report). In part that written response contained the following:

*"City staff, as well as ECONorthwest and AEA (in PC Staff Report see Exhibits F & G), believe that such issues are not only addressed in Chapter 3 as a whole, they are also addressed as a whole by Chapters 4, 5, and 6. Be that as it may, the City has decided to strengthen its Chapter 3 polices by adding subsection 9.7 and P-30 & P-31 to page 18 of Chapter 3 (see below). The City is appreciative of your comments pointing out this possible deficiency or weakness in Chapter 3, thereby providing the opportunity to strengthen this portion of the Plan.*

***9.7 Additional Considerations for Conversion of Urbanizable Land to Urban Uses:***

***P-30: [The City shall:] Manage its Urban Growth Boundary and the lands within so as to make available sufficient land for the various uses to ensure choices in the market place, through implementation of land use regulations and land use policies.***

***P-31: [The City shall:] Manage its Urban Growth Boundary and the lands within so as to encourage development within urban areas before conversion of urbanizable areas, through implementation of land use regulations and land use policies."***

Accordingly, the errata sheet (**Exhibit O** of City Council Staff Report) presented to the City Council on December 1, 2004, included the above noted subsection 9.7 and P-30 & P-31 to page 18 of Chapter 3. The City Council accepted this material and it was added to Chapter 3 of the Comprehensive Plan. (See **Exhibit "I" -- The Updated Comprehensive Plan.**)

## **7. Friends of Linn County (FOLC) Testimony of December 1, 2004 (See Exhibits P-1 and P-2)**

On December 1, 2004, Jim Just representing the Friends of Linn County (FOLC) submitted written and verbal testimony to the Council regarding the proposed 2004 Lebanon Comprehensive Plan update. The complete written testimony is found in **Exhibit P-1 of the Staff Report for the City Council**. **Exhibit P-2 of the City Council Staff Report** was prepared by staff to highlight the differences between the FOLC written testimony of November 17, 2004 and December. The written testimony of FOLC was emailed to the City on November 24, 2004, and was subsequently sent to each City Councilor prior to the December 1, 2004, hearing, thus the Council was able to read it and consult it during the Just's verbal testimony. The Council was also able to consult **Exhibit P-2** before and during Just's verbal testimony.

**Summary of Exhibit P-1 (& P-2) of the Staff Report:** For the most part, as seen is in **Exhibit P-2**, the FOLC written testimony of December 1, 2004, is identical to FOLC's written November 17, 2004, Testimony [**Finding # 9 is applicable in its entirety**]. A few phrases and words were deleted [P-2: last paragraph on page 2, and 3<sup>rd</sup> paragraph on page 4]. Also, there were a few new paragraphs added [P-2: two paragraphs on page 1; last paragraph on page 2; and four paragraphs and 2 phrases in middle of page 4]. Once again, FOLC contends that a number of provisions in Chapter 3 (Urbanization) are allegedly problematic and therefore do not comply with Statewide Planning Goal (SWPG) 14 (see P-1 and P-2 for specifics). The FOLC testimony again contends (see both P-1 and P-2) that the proposed remedy could be found in eliminating these provisions from the proposed Comprehensive Plan and replacing them with language from proposed draft, as of yet not adopted, changes to SWPG 14 that might be adopted next year, and an annexation process that would not assign City zoning to parcels that are annexed.

Not yet having seen the proposed new additions (subsection 9.7 and P-30 & P-31) to page 18 of Chapter 3, the FOLC written testimony again included the comments on Page 3 (Paragraph 5): "No proposed policies address the availability of sufficient land for the various uses to insure choices in the market place or the encouragement of development within urban areas before conversion of urbanizable areas." [**This is directly addressed by Finding # 10 above.**]

#### **Finding # 11**

Several of Just's comments in both his written testimony (**Exhibits P-1 & P-2** as well as **Exhibit K-1** of the Staff Report for the City Council) and verbal testimony contend that the ***first assignment of City Zoning [or "zoning for urban uses"] (that is consistent with the Comprehensive Plan Map designation) to an annexation territory is a Zoning Map Amendment*** and must therefore be the subject of a separate application and hearing process from the annexation process and hearing.

Jim just and FOLC have previously argued essentially this same point before the Oregon Land Use Board of Appeals or LUBA and lost (LUBA Case No. 2003-044), and that LUBA ruling was subsequently upheld by the Oregon Court of Appeals. In relevant part, LUBA Case No. 2003-044 (see **Exhibit N** of the Staff Report for the City Council) says:

" . . . petitioner's argument under the second assignment of error only faults the city for failing to require a separate zoning map amendment application and for failing to process that zoning map amendment application in the manner required by LZO 9.010 . . . We do not agree with petitioner that, in the absence of specific city legislation to that effect, a zoning map amendment form sets out applicable approval standards. . . In any event, the first, second and fourth of the above requirements do not appear to contemplate the circumstance we have in this case, *i.e.*, the first application of city zoning to property that already has a city comprehensive plan map designation. It is difficult to see how the city could apply those requirements in any meaningful way in a circumstance where property already has a city comprehensive plan map designation, with a limited number of implementing zoning map designations, but has never had a city zoning map designation [emphasis added]. . . . We conclude that petitioner's second assignment of error does not provide a basis for remanding the city's rezoning decision, and for that reason we deny the second assignment of error."

**Finding # 11:** The LUBA ruling supports the City's long standing policy and practice (reinforced in the New Comprehensive Plan) that the first assignment of City Zoning (that is consistent with the Comprehensive Plan Map designation) to an annexation territory is NOT a Zoning Map Amendment and therefore does **NOT** require a separate application and hearing process distinct from the annexation process and hearing.

**Finding # 12:** The City's master plans for facilities, as discussed especially in Chapters 3, 4, 8, 9 of the New Comprehensive Plan, are based on the anticipated needs of the development of all land inside the Urban Growth Boundary when assigned their City Zoning Map classification as designated by the Comprehensive Plan Map. Hence the services needs that would be triggered by the assignment of urban zoning once territory is annexed is already taken into account by the City's master plans for facilities.

Accordingly, the City Council made the following changes to make this fact explicit in **Chapter 4 (Land Use)** in the new Comprehensive Plan. *Change made by the City Council at hearing on 12-1-04 -- add the words "Facility Plans" to the first sentence and the word "plans" to the second sentence of Policy P-7 in Subsection 8.0 (General Policies for Land Use) on page 20, so that it now reads as follows:*

**P-7:** Require that land development proposals be consistent with the City's Comprehensive Plan, Development Code, Municipal Code, Facility Plans, and all adopted standards and enforcement codes of the City. The burden of proof regarding demonstration of compliance with the applicable standards, plans and codes lies with the applicant.

**Finding # 13:** Based on the verbal testimony of Marguerite Nabeta, DLCD Field Representative for this portion of the Willamette Valley, the City's New Comprehensive Plan should be based on compliance with existing SWPG language, not proposed draft language of changes that may or may not be adopted at some point in the future.

Accordingly the City Council made the following changes in the **Glossary** to make this fact explicit in the new Comprehensive Plan (see Exhibit L).

**Glossary:**

*Modify and/or add the following definitions to conform to existing State definitions:*

- **RURAL LANDS:** Those lands outside of the urban growth boundary.
- **URBAN LAND:** Urban areas are those places which must have an incorporated city. Such areas may include lands adjacent to and outside the incorporated city and may also:
  - (a) Have concentrations of persons who generally reside and work in the area
  - (b) Have supporting public facilities and services.
- **URBANIZABLE LAND:** Urbanizable lands are those lands within the urban growth boundary and which are identified and
  - (a) Determined to be necessary and suitable for future urban uses
  - (b) Can be served by urban services and facilities
  - (c) Are needed for the expansion of an urban area.

**Finding #14:** The City Council finds that Statewide Planning Goal 14 only requires that the consideration of impacts on city services occur at the time of development, nor does such consideration require specific findings at the time of annexation. All witnesses before the Council agreed that the process of annexation does not, in and of itself, make any changes “on the ground”. Annexations are separate processes from those associated with the evaluation of actual development proposals. Therefore, impact mitigation requirements can only accompany actual and realistic development proposals as part of the land use review process which is the most logical, reasonable and legally legitimate time for the establishment of mitigation requirements for a specific proposal. Goal 14 is satisfied.

**Finding #15:** City Council finds that the updated Comprehensive Plan is in compliance with the State’s Transportation Planning Rule (TPR). This finding is supported by Angelo Eaton’s October 29, 2004 Final Audit (**Exhibit F-1 of Staff Report**) of the 2004 Comprehensive Plan, and Compliance Matrix (see **Exhibit F-2 of Staff Report**). The City Council finds that the assertions made by FOLC regarding TPR compliance are not credible when considering the review of professionals that the City finds as more credible in evaluating the TPR requirements of the proposed 2004 Comprehensive Plan.

Opponents argue that the process of annexation, with commensurate first assignment of City zoning which must be consistent with the Comprehensive Plan, trigger application of the State Transportation Planning Rule (TPR). The City Council finds that all of the City’s existing facility plans, as well as future facility plans, have and will be based upon future Comprehensive Plan assigned City/urban zoning. The City Council finds that TPR compliance is established through the adoption of the City’s Transportation System Plan (TSP) and the transportation related elements of the Comprehensive Plan. Annexations and assignment of City/urban zoning are governed by the Comprehensive Plan and are therefore consistent with the TPR.

**Finding #16:** The City Council finds that to adopt the reasoning of FOLC (see written and verbal testimony), based upon the comments and information made by the City’s Administrator and the recent history of development in the City (see comments of Councilor Ron Miller) could effectively bring development, with its accompanying job and housing creation in the community to a halt. In addition, the Council finds that industrial and commercial developers inquiring about “shovel ready” land for such development (see also testimony of John Brown) would not be inclined to develop needed industrial or commercial sites because of uncertainty about zoning assignment. The process currently in practice by the City, reinforced in the proposed Comprehensive Plan, of assigning zoning consistent with the Comprehensive Plan and approved by LUBA cases cited herein, complies with Goal 14 and encourages such development which is consistent with Governor Kulongowski’s “Shovel Ready Initiative.”