

Linda Peters for Save Helvetia
Exceptions re: Goal 1 and Procedural Errors
August 8, 2011

Introduction:

Regulatory checks and balances are integral to Oregon's Land Use Planning System, as are Goal 1 policies and practices. In the past decade, however, we've drifted toward preference for "partnerships" with collaboration and consensus, sometimes advantageously involving stakeholders with opposing views early in planning processes. Senate Bill 1011 allowed Portland-area counties and Metro to use these methods to designate urban and rural reserves by mutual Intergovernmental Agreements which jurisdictions then adopted as Land Use Ordinances. Many stakeholders who took part in framing SB1011 expected something quite different from what happened, especially with Washington County.

In the reserves process, as in any consensus-dependent process, one partner can hold the whole enterprise hostage. The holdout can limit its advisers, open with outrageous requests, bargain back to what it wanted and refuse to yield. Partners most committed to reaching consensus may back down, settling for unsound or unsustainable decisions. They may even cover for the holdout, spinning the outcome to seem less disastrous, more credible than it may in fact be.

It grieves me that the holdout here was/is my county. When I was Chair of the Washington County Board of Commissioners, we and our regional partners took leadership on the Smart Growth that has distinguished us on the world stage. Its rhetoric survives, but the action? Not so much.

Good public servants whom I once respected have been caught up in "Reserves groupthink", spinning a faulty process and product to look like success, while in fact violating the very purposes of the reserves legislation.

Washington County worked around Goal 1 requirements by declaring the reserves process "not land use planning", although it clearly was the first stage of planning for Ordinance decisions. And following LCDC's remand without an Order and Findings, much mischief followed.

So, I submit to LCDC the following exceptions.

Exception #1

DLCD has provided no sound recommendations in response to Save Helvetia's Goal 1: Procedural Objections to 2010 or 2011 reserves processes.

Evidence was clear in our 2010 Objections that in Washington County, the IGA consensus process violated the spirit and letter of Goal 1 and the norms of effective public involvement by:

- a) excluding many major community stakeholders from its Reserves Coordinating Committee, and from Goal 1-required opportunities to influence designation recommendations, instead involving NAIOP as contributors to its technical work, holding secret "technical" planning director meetings originally advertised as open, from which citizens and press were then excluded as important policy development and decisions were undertaken;
- b) bypassing its CCI, CPO's, Planning Commission and even its Board of Commissioners for initial designations and finding submitted the Core 4;

- c) allowing only a last-minute hearing opportunity to citizens and the Board, the night before Core 4 maps were to be adopted, with only half the people signed up allowed to testify;
- d) using the debatable definition of Reserves IGA proceedings as “non land use actions” as an excuse to evade Goal 1 requirements.,

This pattern of Goal 1 violations should have been recognized by DLCD’s analysis and corrected by LCDC action in 2010. Instead, Goal 1 objections were overlooked entirely in the 2010 staff report to LCDC, and only a last-minute opportunity for unscheduled remarks on the topic was offered during the October hearings. LCDC took no action on Goal 1 objections.

Predictably, the pattern of limiting citizen input (substituting private behind-the-scenes deal-making) became even more entrenched with DLCD’s failure to produce an Order and Findings formalizing LCDC’s remand decision and giving Washington County and Metro clear directions to follow.

The 2011 Objections submitted by Robert Bailey for Save Helvetia also got short shrift in this year’s staff report, despite our inclusion of clear and explicit public records documenting attempts to forestall citizen input and predetermine the outcome of Washington County and Metro map revisions.

Chair Brian’s memo of Nov. 10, 2010 to his senior planning staff and incoming Chair Andy Duyck ends in a “SPECIAL NOTE”:

“We are attempting to keep these ideas CONFIDENTIAL and do not want to give potential *opponents* [italics added; did he mean “citizens?”] any more lead time than legally provided. So,.... please keep these discussions and options as confidential as possible for the time being.”

He follows with a November 14 memo to Brent Curtis Re:URRs:

“Seems there is strong interest in moving to an IGA before the end of the year. If we can, that is fine...*but I want to make sure we have three solid votes on the current AND future Boards.* [italics added].”

Chair Brian’s memo of December 4, 2010 to his Board and senior staff says:

“Andy and I have been working with staff, legal counsel, Metro counselors, and the LCDC [sic] director to develop this proposed response to LCDC’s decisions (and likely official order). We have reviewed substantial LCDC meeting notes and our staff and counsel have been working with their counterparts at Metro and LCDC to avoid misunderstandings and to hopefully, arrive at a response that is acceptable to our board, the Metro Council and the LCDC. We apologize in advance for the length of this discussion, but as you know it is complex and there have been a lot of discussions and meetings in the past month.

(Curiously, we note that the public records request to DLCD yielded no record of conversations between Director Whitman and a Washington County official)

Chair Brian continues, stating his goal of replacing 1) Cornelius (624 acres) and Forest Grove (28 acres) remnants “‘acre for acre’ as near as practicable” and 2) “‘type for type’, in other words, employment land for employment land, residential land for residential land.”

And at point 6):

“*There is general agreement that sufficient analysis and public comment is in the record from which the amendment can be fairly considered; neither Metro nor the county feels it is necessary to re-open the analysis process or conduct an extensive outreach and public information effort.*” [italics added].

The first public hearing on the revised reserves proposal was in March 2011, months after a map had been agreed to, and Chair Duyck scolded the Planning Commission publicly for voting independently on it. The one Board hearing on the Duyck-Hughes proposal was the joint meeting with Metro held at 10am on a Tuesday. Citizens who signed up to testify at that time were not able to speak until 3pm, effectively excluding participation by citizens with daytime jobs.

Although the Duyck-Hughes map was modified in that marathon joint meeting, it was a public example of the sort of trading that had characterized map development throughout the reserves process: deal-making to get a majority, with little or no reference to substantive consequences.

Exception #2

DLCD glosses over errors leading up to Ordinance 740's introduction; e.g.,

- **precluding early "citizen influence" called for in Goal 1;**
- **omitting "the opportunity to review and make recommendations on proposed changes in comprehensive land use plans prior to the public hearing process" as required by Goal 1;**
- **DLUT's role in strategizing to limit citizen involvement in revision processes.**

Here is Metro's Richard Benner on Jan. 5, 2010 to county and Metro senior staff and Council:

"I do not know what Richard Whitman has decided about entry of a remand order ... He told me weeks ago that he was mulling the question and would not issue an order without checking with us. (I've urged him NOT to enter an order but, rather, to cut down on litigation, wait til we re-submit and enter a final order after approval.) [Emphasis added.] If the department decides not to issue a remand order, that means your two counties have an opportunity to "fix" anything that you think makes the designations vulnerable to the inevitable appeals of the LCDC approval order to the court of Appeals."

Our Objections cite the lack of required property-owner notice, delayed publication of proposed revision maps prior to hearings, and other offenses to procedures required in preparation of Comprehensive Plan Revisions.

Yet DLUT simply lists hearings held prior to ordinance adoptions, then concludes that both Washington County and Metro "followed their public involvement programs throughout the reserves process" and recommends the Commission reject "this objection" [sic].

Actually, this perfunctory treatment is applied to the whole group of Objections 1-4:

- Objection 1: County violations of Goal 1 in responding to LCDC remand of October 2010;
- Objection 2, County violation of its own Resolution and Order No. 86-58; treating the revision planning process as an internal matter and choosing not to engage citizens;
- Objection 3, Failure to assure an adequate factual base and to evaluate alternative courses of action per Goal 1 in preparation of Ordinance 740;
- Objection 4, County's failure to comply with Rural/Natural Resources Plan element, Policy 2, Citizen Involvement, which commits to involving citizens in "all phases."

The conclusion that "citizen involvement programs were followed" trivializes both the concept and practice of citizen involvement. It mocks people who've devoted thousands of hours of private or family time and given/raised thousands of dollars exercising our rights to influence reserves decisions toward their adopted purposes and goals.

The Department's summary dismissal is merely absurd in reference to reserves processes following the October 2010 remand, a period into which approved reserves citizen involvement plans did not extend. The memos tell the story of how public input was deliberately limited.

Exception #3

Re: Objection 6: Oregon Public Meetings Law

The kernel of our objection is the excuse given repeatedly by Washington County and Metro staff in hearings and publications for the inapplicability of Goal 1 to the reserves process: This isn't Land Use, because the reserve process is a "Legislative Mandate". Two questions:

- Since the Reserves process was not imposed but *allowed* by the passage of SB1011, how does that constitute a mandate?
- How can a process that results in the imposition of 30-50 year limitations on permissible land uses within large designated areas be determined "not land use" in any defensible sense? It is at the very least the first stage of planning for Comprehensive Plan Amendments, and as such should invoke Goal 1 protections/rights for citizens. I hope for expeditious resolution of this conundrum.

Exception #4

Re: Objection #7 -- Lack of a written order

Much cost, confusion and questionable behavior could have been averted had DLCD issued a timely order and findings making explicit:

- the content and specific instructions as to the actions that must be taken on remand,
- the facts, reasoning and authority for it,
- clear directions for revising designations and findings to meet with Commission approval;
- rules of citizen engagement for the IGA revision phase;
- rules applicable to inter-agency communications regarding the subject remand.

Reserves politics since last October have been an extra-legal twilight zone: rich with opportunity for seasoned deal-makers, but an impenetrable maze for citizens still committed to open, ethical government, the rule of law, and policy making for a sustainable future.

Summary:

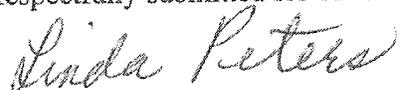
We urge LCDC--and the CIAC--to re-evaluate the reserves process as it actually developed. Were Citizen Involvement Plans sufficient in the light of events to meet Goal 1 principles and rules? Did reserves officials behave ethically, and with respect for citizens? For the purposes and goals of the "Making a Great Place" project? For the purposes and goals of Oregon Land Use Planning?

What sanctions or incentives would motivate public officials to give more than lip service to citizen involvement, to learn how to use rather than battle the talents, skills, and insights of citizens who are committed to the health and livability of their communities?

I hope Commissioners have the courage to think clearly here, outside the frame of needing to "save" a process they wanted to work. What needs saving is our farmland, our natural resources, and the hope that Oregon will devise ways to thrive sustainably in a future of economic and environmental challenges.

To do that, governments must engage their citizens. If we fulfill our responsibilities to use the checks and balances the law provides, *and* to work cooperatively toward the common good, there's hope for us yet.

Respectfully submitted for Save Helvetia,



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