

March 5, 2010

Members of the Oregon Land Conservation and Development Commission
Richard Whitman, Director, Oregon Department of Land Conservation and Development
Sent care of Larry French
Oregon Department of Land and Conservation Development
635 Capitol St., NE, Ste. 150
Salem, OR 97301-2540

Re: Written Exceptions to Directors Report dated February 25, 2010; Bend UGB Expansion

Dear Commissioners and Director Whitman:

In this letter I summarize my additional exceptions to the DLCD's Directors Decision on the City of Bend's (the City) urban growth boundary (UGB) proposal. In submitting these exceptions, I comply with OAR 660-025-0150, 660-025-0160 and 660-025-0085.

The Director recommends that much of the City's and Deschutes County's proposed amendments to Bend's UGB be remanded for compliance with Oregon's land use planning statutes, administrative rules and goals. The Director has also requested that the City make corrections and revisions that resolve issues with the factual base on which its UGB proposal rests. While I agree with the vast majority of the Director's decision, I take five (5) exceptions to it:

Exception 1: Site Visit/Tour

I take exception to the Director's decision to grant the City's request of a Commission tour of the proposed expansion area. I am concerned about which entities will set the tour's agenda and determine the sites to be visited. If the tour does not also orient the Commission to the various appellants' areas of concern, I fear it will prejudice the process. To paint a realistic picture, the site visit must not only document the City's rationale for its expansion proposal, but also reveal and document the basis for other appellants' concerns (my own included). Further, I fear that the amount of time each appellant has to present to the Commission will be unnecessarily truncated if such time is redirected to this tour, which I believe is unnecessary and could prejudice the procedure.

Exception 2: The Written Record for the Proceeding

I take exception to the Director's narrow definition of the "*Written Record For This Proceeding*". While all items listed on page 5, Agenda Item 9 of the Director's Decision are indeed part of the Written Record, they by no means represent the entire Record. To accurately portray the UGB expansion process, the Record must include the many memos from City Long Range Planning Staff to its Planning Commission, minutes from Planning Commission and City Council meetings, audio recordings of public meetings, and the hundreds of documents that private citizens, attorneys, business interests and agencies provided during the multi-year UGB expansion initiative. I assert that these documents, maps, and recordings are and will be useful to all parties as they move forward in this process. The Commission (and other bodies) must have an opportunity consider them.

Exception 3: Efficiency Measures

While not an exception, I noted in my original appeal that in February 2008, the City asserted that it could apply Measures to support the construction of an additional 1,600 units within its UGB, with 1,000 additional units being constructed along 3rd Street and 600 coming from the downtown core area. (R. at 8448, 8470). Shortly thereafter, in March 2008, the City reduced the number of 3rd Street infill units from 1,000 to 500, stating that its current budget and schedule would not permit its Planning Commission and City Council to convene to pass the required zoning ordinances to

support such redevelopment densities (R. at 8188). The City’s inability to commit to Statewide Land Use Planning Goal 14 and ORS 197.296(7)-(9) concerns me. Why was the schedule so accelerated that City decision makers could not find the time to convene and pass the zoning ordinances that increase the likelihood that future residential development meets its housing needs, particularly the urgent need for affordable housing. The City has not succeeded in providing this needed housing in the past, thus there is a need for the Commission to remand its UGB proposal.

Exception 5: Reiteration of My Earlier Objection: Goal 1 Violations

Oregon Statewide Land Use Planning Goal 1 is, “To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.” I reiterate: the City violated Goal 1. Its Bend Area General Plan, Chapter 1 (R. at 1228) states: “...the City of Bend Planning Commission (*is*) responsible for advising the City Council on planning matters related to the Bend urban area... is the official Citizens’ Involvement Committee for the urban area, and advises the elected bodies on land use planning programs and policy”. The City denied its own Planning Commission access to key documents and rushed the process in a manner that precluded true citizen involvement. These actions and decisions violate the letter and spirit of Goal 1.

The Public Record for the Bend UGB Expansion formally closed on December 1, 2008 at 5:00 pm. The City placed important material into the Record dated after this time, thereby denying the Planning Commission, its Citizen Involvement Committee, full access to decision making material. The Director’s Decision notes that “Goal 1 establishes requirements for local citizen involvement programs. Its provisions do not apply to comprehensive plan amendments unless those amendments include the government’s citizen involvement program. The city and county submittals do not amend or affect either the city’s or county’s citizen involvement program.”

Yet, the City *did* amend its Bend Area General Plan Chapter 1 that contains its Citizen Involvement Program (see a screen capture of Exhibit G of the City’s UGB expansion website which states, “The following list of exhibits include the city’s findings, map and text amendments”

The following list of exhibits include the city’s findings, map and text amendments, background technical reports and memoranda on the UGB expansion.

- Exhibit A [Findings](#) in support of the UGB Expansion
- Exhibit B [Proposed UGB Map / Deschutes County Comprehensive Plan](#)
- Exhibit C [Proposed Deschutes County Zoning](#)
- Exhibit D [Proposed UGB General Plan Designations](#)
- Exhibit E Proposed Transportation System Plan Amendment
 - [TSP Chapter 6](#)
 - [TSP Chapter 9](#)
 - [TPR Findings](#)
- Exhibit F Proposed City and County TSP Maps [Bend County](#)
- Exhibit G Proposed amendments to the General Plan
 1. [Chapter 1](#) - Plan Management & Citizen Involvement
 2. [Chapter 2](#) - Natural Features & Open Space
 3. [Chapter 3](#) - Community Connections
 4. [Chapter 5](#) - Housing & Residential Lands + Appendix
 5. [Chapter 6](#) - Economy & Lands for Economic Growth
 6. [Chapter 7](#) - Transportation Systems
 7. [Chapter 8](#) - Public Facilities & Services

The City violated Goal 1 by placing into the Record, among others, a document dated December 4, 2008, three (3) days after it officially closed. This memo from City Senior Planner Brian Rankin was entitled, “Rights-Of-Way for Roadways Variable: Final Memorandum Post DLCDC Comments”. The memo provides a “final analysis calculating the amount of existing public and private right-of-ways for roadways in the proposed UGB expansion area.” It states in part that, “This memorandum has been prepared to replace previous memoranda on the subject. Notably, the methodology has been modified to address refinements suggested by DLCDC in their November 21, 2008 letter commenting on the Bend UGB proposal. The data sources used in the methodology are based on the finalized Buildable Lands Inventory (BLI) dated 2/25/08 and summarized 9/2/08. The result of the analysis is a public and private right-of-way for roadways estimate of 21% for the existing Bend UGB.”

I am troubled that, in the City's rush to push its UGB expansion project ahead, its Goal 1 Citizen Involvement Committee was not made privy to this document until it was too late to consider it. I do not fault Senior Planner Rankin for placing this document in the Public Record after it closed; he had no time to do otherwise. I do not fault Transportation Planner Rick Root for failing to place a key transportation document in the Record until 20 minutes before it closed. I do not fault Senior Planner Damian Syrnyk for failing to provide over 3,500 pages of the Record to appellants who filed a Precautionary Objection with LUBA in the spring of 2009. (I might add that I discovered the thousands of pages of missing documents, which led to the City's inclusion of them in the official record and the creation of a "Supplemental Table of Contents", pages from which were cited in the City's appeal of the Director's Report). What I object to is that the City moved at such a pace that its own Planning Commission could not keep up with the process. Its City Council set a schedule with deadlines so tight that they denied City staff the opportunity to do a thorough job, which resulted in the withholding of information from the Planning Commission.

The schedule set by City Council denied citizens the right to participate as they could only do so by interacting with the Planning Commission, the City's official Citizen Involvement Committee. Complaints in the Record about an inability to engage with the Planning Commission abound. They come from attorneys, private citizens, developers, Deschutes County Planning Commissioners, members of the Technical Advisory Committee and Citizen Advisory Committee (both created by the Planning Commission), and, most importantly, from members of the Planning Commission itself. In my initial appeal of the Bend UGB, I documented these complaints in detail and included hyperlinks to the on-line Public Record (Bayard UGB appeal, pages 27–33 and 65–74), providing exact quotes and/or summaries of over 70 Goal 1-related complaints. For instance, in Appendix A, I included quotes and summaries of remarks from three separate Bend Planning Commissioners (Senecal, Miller and Keilor). Commissioner Keilor said on September 22, 2008, "There's no way that this Commission has spent near enough time to bless actual uses on this map... The public hasn't had time to really chew on this and come in to talk to us about this".

Audio recordings of the Planning Commission meetings between August and October 2008 reveal that the Planning Commissioners often lamented the speed of the process, and expressed concerns that their ability to be involved and do a thorough job was being hindered by its accelerated pace.

How egregious and systematic must acts that deny citizen involvement in the process be in order to violate Goal 1? When members of a local government's own Planning Commission (its official Citizen Involvement Committee) make remarks such as the one made by Commissioner Keilor (and echoed by other Planning Commissioners), how is it that Oregon's DLCD Director dismisses them?

Conclusion:

For Oregon's Statewide Land Use Planning statutes and rules to be truly effective, everyday people must be able to play a meaningful role in their local government's land use planning process. The process is by its very nature complex and a bit daunting; it is not easy to participate. I choose to remain involved because I believe that Oregon's land use planning laws are of great consequence to the future of Bend. I want Bend to become affordable (as opposed to exclusive), navigable (as opposed to traffic constrained), with reasonably priced services (sewer, water, public safety, etc.). I want it to operate with a transparent style of government that follows the facts to the best possible outcomes for citizens. I want something different for Bend than we have had in the past. We can't afford to continue to play "fast and loose" in the future; the economy is far less forgiving these days.

I ask that the Commission support Director Whitman and his highly professional team in their efforts to help the City produce a UGB expansion proposal that complies with Oregon's Statewide Land Use Planning Goals and Guidelines and which is supported by facts and data. I thank you in advance for the important work you are doing on behalf of the citizens of Bend.

March 8, 2010

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Sincerely,

A handwritten signature in black ink, appearing to read 'Toby Bayard', with a long horizontal flourish extending to the right.

Toby Bayard
20555 Bowery Lane
Bend, OR 97701

cc:

City of Bend
Oregon DLCD
Bend Metropolitan Parks and Recreation District
Bend-La Pine School District
Swalley Irrigation District
Newland Communities
Shevlin Sand and Gravel, Inc.
Rose & Associates, LLC
Central Oregon Landwatch
Hunnell United Neighbors
Hilary Garrett