

Al Burns

#332176 | November 2, 2022

Testimony to the Planning and Sustainability Commission on the Planning Commission Code Amendments, Proposed Draft

November 2, 2022 To: Members of the Planning and Sustainability Commission From: Al Burns
Subject: Comments on the Planning Commission Code Project Dear Commission Chair and Members of the Commission, Thank you for the opportunity to provide this testimony for some small but important changes to various titles of the Portland City Code. I agree with both the proposed amendments and the reasons stated in the staff report for making them. I write to offer what I believe to be two improvements on the code language proposed by staff, one general and one more particular. The global improvement concerns what the name of the commission should be. On December 26, 1918, the Portland City Council adopted Ordinance No 34870. This is the ordinance that first established a “City Planning Commission.” I propose retuning to the original name “City Planning Commission” rather than just “Planning Commission.” Unlike other municipal boards, committees, and commissions, which may advise only one department or bureau, Oregon land use law empowers, and in some cases requires, planning commissions to advise councils on a wide variety of matters concerning the development and redevelopment of a city without regard to how municipal governance may be organized. So, to emphasize that the commission exercises city-wide competence, and is not an appendage to just one bureau, I recommend the name “City Planning Commission.” The other improvement is particular to the special relationship between the commission and the comprehensive plan, and how this relationship might be better described in the proposed amendments to Portland City Code 33.710.040 A. While I have no objection to the removal of the word “stewardship” in the staff’s proposal, the absence of a reference to the commission’s role in periodic plan updates is a serious omission. Plan maintenance and update are not the same. Maintenance addresses minor and usually unanticipated issues that might arise during course plan administration, like changing the name of the commission. Plan update involves revisiting the assumptions upon which a comprehensive plan is based, and if deemed necessary and prudent, changing course. Since Oregon comprehensive plans have three parts, a set of policies stating official intent, a map depicting a desired future settlement pattern, and list of significant public works projects deemed necessary to support the type and intensity of settlement depicted on the map and described in policy. A plan update may address any or all of these three components. Both the original Code 33.710.040 A and the proposed amendments fail to sufficient distinguish between plan itself, plan supporting documents, and plan implementing measures. City adoption of a plan supporting document as recommended by the commission is a land use decision, and these documents remain as the factual basis of a comprehensive plan until they are replaced by a

subsequent land use decision. Employment of arguably newer facts or better assumptions than those contained in acknowledged comprehensive plan supporting documents can lead to the unravelling of important decisions. Such unfortunate circumstances are probably best described in an Oregon Court of Appeals holding that reversed a decision of the Oregon Department of Transportation to build a highway bypass. The court stopped the highway from being built because the agency's decision relied on a new city inventory of buildable lands that had not been recommended by the city's planning commission and adopted by the city council as land use decision. The court found that the city's last acknowledged buildable lands inventory, even though that inventory was 15 years old, was still the controlling document. In concluding, the court stated: The comprehensive plan is the fundamental document that governs land use planning. Citizens must be able to rely on the fact that the acknowledged comprehensive plan and information integrated in that plan will serve as the basis for land use decisions, rather than running the risk of being "sandbagged" by government's reliance on new data that is inconsistent with the information on which the comprehensive plan was based. 1000 Friends of Oregon v City of Dundee, 203 Or. App. 207, 124 P.3d 1249 (2005) As an aside, the proposed reference to the City's core values in 33.710.040 A commits an error similar to the one described in the case above. The referenced values were adopted by council resolution as binding city policy, but did not benefit from a recommendation from the commission or adoption by council ordinance as a land use decision. Upholding these values would place the commission in an unfortunate double bind. It would obligate the commission to make findings of fact demonstrating how the core values were upheld by its recommendations, but in doing so the commission would introduce error into city land use decisions by considering equity and community involvement objectives different from those included in the comprehensive plan. To the extent that the core values say something more or better than very similar statements already in the comprehensive plan, they should be amended into the plan. So, getting back on track, it is important to periodically review and make needed updates to comprehensive plan supporting documents. A non-exhaustive list of supporting documents that have been recommend by the commission and adopted by the Portland City Council would include an inventory of buildable residential land, an inventory of buildable employment land, a natural resource inventory, a city-wide systems plan, and a transportation systems plan. The proposed code should make reference to the commission's responsibility for not only the comprehensive plan but also the supporting documents that contain the facts and reasons upon which the plan is based. The proposed code language could also do better at distinguishing the comprehensive plan itself from the plan's implementing measures. The comprehensive plan is city policy, the zoning code is only one of several ways the plan is carried out. There are a variety of projects and programs that carry out the plan that do not involve the application of land use regulations. In summary, I recommend placing the word "City" before each occurrence of "Planning Commission." I also recommend rephrasing 33.710.040 A to read "Purpose. The City Planning Commission advises City Council on land use planning policies, programs, and regulations. In making recommendations and decisions, it considers the economic, environmental, and social well-being of the city in an integrated fashion. The Commission has specific responsibility for the development, maintenance, and update of the City's Comprehensive

Plan, Comprehensive Plan supporting documents, and Comprehensive Plan implementing measures, particularly the City Zoning Code.” It may also be advisable to place some of the reasoning above in the report commentary. Again, thank you for the opportunity to provide this testimony.

Testimony is presented without formatting.