

City Club of Portland

BULLETIN

Portland, Oregon

Vol. 57, No. 22

Benson Hotel, Mayfair Room

12:00 Noon

Friday, October 29, 1976

THE PROGRAM: City Club members will have the opportunity to discuss and vote on four November ballot measure reports, which are printed herein. The reports will be presented in the order shown below:

STATE MEASURE NO. 10

REPEALS LAND USE PLANNING COORDINATION STATUTES

The Committee: Pauline Anderson, A. B. Herman, Michael C. Kaye, Gary N. Pennington, William N. Stiles, Don A. Wrenn, William K. Blount, *Chairman.*

STATEMENT ON STATE MEASURE NO. 11

Oral Report by Alex Pierce, Chairman, Standing Committee on Health, Welfare & Social Services.

STATE MEASURE NO. 12

PROPOSED REPEAL OF COMPREHENSIVE AUTHORITY FOR INTERGOVERNMENTAL COOPERATIVE AGREEMENTS AND REGIONAL COUNCILS OF GOVERNMENT ("COGS") AND ENABLING STATUTE FOR COLUMBIA REGION ASSOCIATION OF GOVERNMENTS ("CRAG")

The Committee: Robert S. Ball, A. E. Brim, Dennis Hartman, Stephen R. Moore, Leslie Roberts, Durward E. Wright, William N. Gross, *Chairman.*

MEASURE NO. 26-15

PORT OF PORTLAND

SHIPYARD AND DRYDOCK BONDS

The Committee: Paul Fellner, James Kirkham Johns, David J. Lewis, James C. Wolfard, Robert G. Yingling, Jr., Ann Hoffstetter, *Chairman.*

VOTE NOVEMBER 2

Following is a summary of committee reports on November ballot measures, with the committee recommendation and the Club vote. (Reports yet to be voted on, as of the preparation of this publication, show no Club action.)

STATE MEASURES

#1 VALIDATES INADVERTENTLY SUPERSEDED STATUTORY AMENDMENTS

Committee Majority NO
 Committee Minority YES
 Club Vote NO

#2 ALLOWS CHANGING CITY, COUNTY ELECTION DAYS

Committee NO
 Club Vote NO

#3 LOWERS MINIMUM AGE FOR LEGISLATIVE SERVICE

Committee YES
 Club Vote YES

#4 REPEALS EMERGENCY SUCCESSION PROVISION

Committee NO
 Club Vote NO

#5 PERMITS LEGISLATURE TO CALL SPECIAL SESSIONS

Committee Majority NO
 Committee Minority YES
 Club Vote NO

#6 ALLOWS CHARITABLE BINGO

Committee Majority YES
 Committee Minority NO
 Club Vote YES

(Continued on page 180)

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DISCLAIMER

This is to reaffirm the policy stated by the Board of Governors in an earlier edition of this Bulletin this year that the City Club does not approve or condone the use of the Roster for solicitation purposes, political or otherwise.

REPORT ON
STATE MEASURE NO. 10
REPEALS LAND USE PLANNING COORDINATION STATUTES

Purpose: Repeals Oregon statutes adopting state coordination and control of land use planning, statewide land use goals and guidelines, and state agency review of local comprehensive plans and land use decisions; repeals statutes creating the Land Conservation and Development Commission (LCDC) and the Department of Land Conservation and Development.

To the Board of Governors,
The City Club of Portland:

I. INTRODUCTION AND SCOPE OF RESEARCH

A *yes* vote on State Measure No. 10 would repeal Senate Bill 100 and abolish the Land Conservation and Development Commission (LCDC). The land planning process would then depend on non-centralized governmental controls.

Your Committee interviewed the witnesses listed in Appendix I. Your Committee believes that these witnesses provided a representative group for the study of State Measure No. 10. Witnesses opposed to the measure were generally easier to locate than those in favor. Some of the research information used by the Committee is listed in Appendix II. In spite of the limited time to analyze thoroughly all aspects of State Measure No. 10 and the LCDC, your Committee believes that the witness interviews coupled with available data were sufficient to come to the unanimous conclusions of this report.

II. HISTORY AND BACKGROUND

Our founding fathers believed that private ownership of land was one of the basic rights of free men. The Fifth and the Fourteenth Amendments to the U.S. Constitution guarantee that no person shall be deprived of property without due process of law, and that no one's property shall be taken for public use without just compensation. The winning of the frontier was accomplished by Homestead Acts enabling millions of citizens to acquire, own and make a living from land.

With population growth and rapid urbanization, Americans have only recently acknowledged that their undeveloped land may be a dwindling resource. The nation has experienced a rapid build-up of sub-divisions, shopping centers, industrial plants and a multitude of related utility systems to serve this growth. Despite the need to plan for these changes, many regions have formulated decisions based on expediency, tradition and short-term economics without regard to their regional or state-wide impact. A principle now gaining increasing recognition is that one's free use of land cannot infringe upon the legally protected interests of other landholders or of the community.

In twentieth century America, zoning has been used to control use of land. More recently, some states have adopted various comprehensive land use plan systems. References to comprehensive land use planning in Oregon statutes have existed since 1919.

The Oregon legislature in 1969 adopted a most significant land use planning statute, Senate Bill 10 (S.B. 10). This statute required counties to have comprehensive plans which would conform to broad standards, but did not provide either the funds, or a workable enforcement agency, to insure that comprehensive plans would be adopted. By January 1974, thirteen of Oregon's 36 counties had not yet adopted comprehensive plans, and in some counties where plans had been adopted, the plans were not of high quality. Significant portions of S.B. 10 had been presented to the people on the 1970 ballot and received approval from the voters.

In 1973 the legislature enacted S.B. 100 to broaden, strengthen and enforce land use planning. S.B. 100 made state land use goals mandatory. S.B. 100 also created and funded an administrative agency, the Land Conservation and Development Commission (LCDC), to determine and define statewide land use goals and guidelines, coordinate comprehensive planning, and assure compliance by local planning units with the goals and guidelines. S.B. 100 requires active citizen involvement in the on-going land use planning process at all governmental levels.

The LCDC was directed to adopt by January 1, 1975 statewide planning goals and guidelines which would then be used by the 276 cities and counties in Oregon in preparing, adopting, revising and implementing comprehensive plans. LCDC used S.B. 10's ten broad goals as the base; these were refined and enlarged upon to develop the present fifteen statewide planning goals and guidelines. This task was accomplished by holding 56 public hearings around the state to ascertain citizen attitudes and concerns, and 18 additional public hearings and work sessions on the drafts of the goals. The goals and guidelines were formally adopted on December 27, 1974. The legislation provided that local government bodies would have one year in which to bring their comprehensive plans into compliance with the state goals, with time extensions possible upon evidence of "satisfactory progress."

In the event that local planning units fail to accomplish the prescribed planning task, LCDC must provide assistance or take on the job itself—the latter a responsibility it has yet to assume.

Other land use management bills were passed by the 1973 legislature, buttressing and complementing S.B. 100, covering farm use zoning, special assessments, uniform building code, subdivisions, and county and city planning commissions.

S.B. 100 requires the Joint Legislative Committee on Land Use to study and recommend to the legislature a program for compensating landowners for property value losses due to regulations and restrictions. No corrective legislation has yet resulted from this study.

In 1973 and 1975 the Oregon Supreme Court handed down two important decisions on land use planning. *Fasano v. Board of Commissioners of Washington County*, 264 Or. 574, 507 P2d (1973), held that local governing bodies making zoning decisions on particular parcels of property act in a quasi-judicial capacity and must be impartial on the matter, avoid any prehearing or ex parte contacts with contestants, must put the burden of proof for the change on those requesting the change, allow contestants to present and rebut evidence, and decide the matter based only on testimony and exhibits offered at the hearing. *Baker v. City of Milwaukie*, — Or —, 533 P2d 722 (1975) held that a comprehensive plan is the controlling land use planning instrument for a city (or county), and that upon enactment of a comprehensive plan, a city must conform prior, less restrictive zoning, and future zoning, to that plan.

These two decisions give more legal significance to comprehensive plans than the legislature may have envisioned in enacting S.B. 100. The *Fasano* decision provides some protection to the public from local governments making judicial land use decisions behind closed doors.

For the 1975-77 biennium, the LCDC has a budget of \$5.7 million (after excluding a federal grant of \$1.7 million for the South Slough Sanctuary, Coos Bay). The source of these monies is \$1.7 million from various federal grants and \$4.0 million from State of Oregon general funds. The LCDC budget of \$5.7 million will be utilized as follows:

| | |
|---|----------------------|
| to cities and counties for planning | \$4.4 million |
| for county coordination in planning | 1.1 million |
| administration | .2 million |
| | <u>\$5.7 million</u> |

To some citizens of Oregon, land use planning as required by S.B. 100 is the usurpation by the state of private rights. To others it is the only way to maintain the integrity of the land resource which is the foundation of much of Oregon's ability to produce wealth and life quality.

Ballot Measure No. 10 seeks to repeal S.B. 100 and abolish LCDC.

III. ARGUMENTS PRESENTED IN FAVOR OF THE MEASURE

1. Seven persons appointed by the governor to the LCDC cannot know as much about local lands as do local officials.
2. LCDC takes away local control of land use planning.
3. LCDC adds another layer of government and bureaucracy.
4. LCDC has inexperienced commission members and staff. LCDC has at times been arrogant and unresponsive to the public.
5. The citizen involvement process has not been effective.
6. The LCDC goals and guidelines are too vague for planners to apply on a consistent basis throughout the state; some are just pipedreams.
7. The result of S.B. 100 will be only a patchwork plan rather than a statewide plan.
8. Comprehensive plans required by LCDC could be difficult to change.
9. Passage of Measure No. 10 would encourage the legislature and public to take a fresh look at land use planning.
10. If Measure No. 10 passes, the 1977 legislature can enact any legislation needed to obtain federal funding and restore any part of S.B. 100 which might have merit.
11. The goals and guidelines imposed by LCDC have indirectly resulted in economic hardships, for instance:
 - a) The minimum limit on farm sizes benefits only the wealthy few who can afford large size acreage;
 - b) The costs of complying with land use regulations are squeezing out the small developer and driving up the price of construction;
 - c) Urban containment boundaries cause an artificial scarcity of land for development, thus increasing the price of urban land.
12. S.B. 100 and LCDC do not just require planning, they impose regulations.
13. LCDC has excessive power and insufficient checks and balances. For instance:
 - a) It can impose a plan on any piece of land in Oregon and force compliance with that plan; and
 - b) By having both rule-making and appellate powers LCDC can decide in favor of itself.
14. City folk, environmentalists and "no growth" advocates use the goal of preserving prime farmland to disguise their real goal, which is to protect open space and restrict new development. In doing so, they are imposing unfair land use restrictions on farmers and developers.
15. There is no provision in S.B. 100 or by LCDC for compensation to owners for imposed restrictions on the use of their land, whether by downzoning, freezing land for agricultural use, drawing urban boundary lines, or otherwise. Planning can result in a cavalier attitude toward the traditional rights of the landowners to use their land.
16. We cannot afford very much land use planning and regulation and still keep a free enterprise, free marketplace, and self-regulating system. Persuasion, not coercion, should be used when making planning decisions. S.B. 100 and LCDC help to squelch the dynamism, initiative, ingenuity and flexibility of the private sector.

IV. ARGUMENTS PRESENTED AGAINST THE MEASURE

1. Oregon's land is disappearing beneath bulldozers and pavement. Almost everyone agrees that some land use planning is necessary. Some local jurisdictions just will not effectively plan without some prodding.
2. Proper planning will generate substantial economies for Oregon and its citizens and have favorable benefits related to noise, pollution, and other aspects of livability.
3. Substantial planning is needed quickly in some critical areas, such as the beaches and suburbs, before haphazard, ill-conceived, and irreversible development occurs.
4. LCDC can coordinate land use plans between adjacent local jurisdictions to the extent other agencies cannot. LCDC can act as an arbiter of disputes between neighboring jurisdictions.
5. LCDC can act as an appellate body with some expertise in disputes between public bodies, and private owners, and public interest groups.
6. LCDC can oversee state grants for local planning. A state agency such as LCDC is necessary in order to be eligible for some federal planning grants.
7. LCDC is responsible to the public, because members are appointed by the governor and must submit monthly reports to a legislative committee.
8. A statewide agency, such as LCDC, can be very helpful in defining, evolving and changing specific minimum planning standards.
9. S.B. 100 and LCDC provide a mechanism to minimize land exploitation.
10. Passage of the ballot measure would result in some uncertainties and gaps in the law.
11. LCDC has not abused its power. S.B. 100 and LCDC are new, and the time to test its worth has not been adequate.
12. LCDC has not been given sufficient funds by the legislature to do its assigned job.
13. All of S.B. 100 and LCDC should not be cast out just because some provisions of S.B. 100 or LCDC are weak or undesirable. If LCDC becomes too strong or insensitive, the legislature and governor could remedy the situation promptly.
14. Oregon needs to preserve its prime agricultural and forest lands to retain its economic base and employment opportunities.

V. DISCUSSION

Motivation Behind Introduction of State Measure No. 10

It appears that there are *two main concerns* which have prompted the sponsors of State Measure No. 10 to question the need for and desirability of S.B. 100 and LCDC. The first of these involves an individual's right to do with his property as he sees fit. The proponents of Measure No. 10 argue that the individual landowner can and will make better use of his land than an agency which does not understand its value. The proponents also argue that privately-held rural land will be prevented from development. Many people will not be able to realize the economic gain from their land due to the intrusion of land-use planning which is not based upon economic forces.

The second concern relates to a basic fear of increasing government regulation. LCDC is in its infancy. The proponents of State Measure No. 10 fear the potential power of LCDC and see it as yet another layer of government bureaucracy and red tape.

Discussion of Arguments For and Against State Measure No. 10

Your Committee believes that coordinated planning is a necessity, that it should be done at the most local level, and that S.B. 100 is consistent with this philosophy. Planning at local levels is the best way to make sure plans are responsive to local situations and are changed as conditions change.

S.B. 100 provides for planning to be done by the 276 cities and counties in Oregon. Counties are charged with coordination responsibility within their jurisdictions. S.B. 100

brought about LCDC which determined, after its numerous citizen involvement hearings, that the people of Oregon want to preserve and maintain certain of their natural and economic resources. The ideas expressed in these hearings helped form the basis for the fifteen goals and guidelines (including the Willamette River Greenway Plan) adopted by LCDC. With consistent interpretation and implementation of these goals and guidelines, coordinated planning can be achieved. Your Committee believes it unrealistic to expect local communities always to prepare land use plans which are in the best interest of all the people of the State of Oregon without some form of statewide coordination and assistance. The legislature gave LCDC both the authority and the means to require local comprehensive planning in compliance with statewide goals and guidelines.

LCDC has become the scapegoat for many people adversely affected by planning decisions. Partly, this is because the LCDC approach is still so new that there has not been enough time for most people outside the planning fraternity to learn what S.B. 100 really provides for. Certain misconceptions exist:

| Misconception | Response |
|---|--|
| 1. That LCDC prepares comprehensive plans. | LCDC may do' so if the local planning body fails to do so. |
| 2. That LCDC issues building permits and/or implements local zoning ordinances. | Only local governments have this power; LCDC does not. |
| 3. That LCDC controls local land uses on specific pieces of property. | This authority exists only in limited situations having broader areas of significance. |

Effects of State Measure No. 10

If State Measure No. 10 is approved by the voters land use planning will suffer a major setback. S.B. 100 will be repealed and LCDC with its statewide coordination of plans and its appellate process will be abolished. Some people think that all local comprehensive planning will cease. This will not happen. In the absence of LCDC, the state and federal governments would continue to do planning through other agencies, such as CRAG, DEQ, EPA, U.S. Forest Service, Bureau of Land Management, and the state and federal departments of transportation. Also, the great number of local governments would continue to do their planning and local comprehensive plans now in effect would remain in effect.

Your Committee was informed that some federal funds now channelled through LCDC could be disrupted or terminated in the absence of a statewide planning agency such as LCDC. For the present biennium, these federal funds are budgeted to be \$1.7 million.

VI. CONCLUSIONS

Your Committee concludes that coordinated land use planning is a necessity and that State Measure No. 10 should be rejected. However, to make S.B. 100 more acceptable and workable, the legislature should make a special review effort with particular attention to:

1. Enough resentment has accumulated from the issue of compensation of landowners for property value losses due to land use restriction, that the time has come for the legislature to solve this problem, as provided in S.B. 100.

2. The taxpayer should be informed how his planning dollars are being spent at all levels of government, and what benefits accrue from these expenditures. The public can then determine whether these costs are justified.

3. More attention by the "planning establishment" should be given to LCDC's Goal Number 9, "Economy of the State," especially to the depressing effect that over-emphasis on preservation of agricultural and recreational lands could have on that economy.

VII. RECOMMENDATION

Your Committee unanimously recommends a "NO" vote on State Measure No. 10 on November 2, 1976.

Respectfully submitted,

Pauline Anderson

A. B. Herman

Michael C. Kaye

Gary N. Pennington

William N. Stiles

Don A. Wrenn

William K. Blount, *Chairman*

Approved by the Research Board October 7, 1976 for transmittal to the Board of Governors. Received by the Board of Governors October 13, 1976 and ordered published and distributed to the membership for consideration and action October 29, 1976.

The Committee:

Pauline Anderson, elementary education teacher, on leave

A. B. Herman, businessman, President, Port Services Co.

Michael C. Kaye, independent writer, researcher and consultant

Gary N. Pennington, Tax Accountant, Peat, Marwick, Mitchell & Co.

William N. Stiles, Attorney, Sussman, Shank, Wapnick & Caplan

Don A. Wrenn, Stock Broker, Vice President, Herron Northwest

William K. Blount, Investment Advisor, Vice President, Blyth Eastman Dillon & Co., Inc.

APPENDIX I

Witnesses before City Club Committee on State Measure No. 10:

Date

| | | |
|---------|----------------------|---|
| 8-17-76 | Clif Everett | Geologist; Chairman, Committee to Restore Local Control of Planning (sponsors of the measure) |
| 8-19-76 | Henry Richmond | 1,000 Friends of Oregon |
| 8-20-76 | Steven R. Schell | Attorney; former LCDC member |
| 8-23-76 | David A. Cook | Manager, Columbia Custom Homes |
| 8-24-76 | Donald Drake | Real Estate Developer, Builder, Lucke, Drake, Van Houten & Co. |
| 8-26-76 | Arnold M. Cogan | Public affairs consultant; former LCDC Director |
| 9- 1-76 | Steve Hawes | Attorney; Associated Oregon Industries |
| 9- 7-76 | James R. Moore | Attorney, former Mayor of Beaverton |
| 9- 8-76 | William J. Moshofsky | Vice President, Georgia-Pacific Corp. |
| 9- 9-76 | Lynn Engdahl | Executive Director, Western Environmental Trade Association |
| 9-16-76 | Robert Tobin | Bureau of Planning, City of Portland |

APPENDIX II**Reference Material:**

- (a) "Oregon Land Use Legislation, Vol. 1 ANALYSIS," by local Government Relations Division Executive Department, State of Oregon and the Oregon State University Extension Service, 1973
- (b) "Oregon Land Use Legislation, Vol. II Enacted Bills," by local Government Relations Division Executive Department, State of Oregon and the Oregon State University Extension Service, 1973
- (c) "Oregon Land Conservation & Development Commission; Statewide Planning Goals & Guidelines," Provides an introduction to the goals and guidelines of LCDC, January 1, 1975.
- (d) "Willamette River Greenway Program," by LCDC covering the order adopting the preliminary plan and statewide planning goal #15, December 6, 1975
- (e) "The Changing Role of Government in the Subdivision & Partitioning of Land in Oregon," by Bureau of Governmental Research and Service, University of Oregon, January 1975
- (f) Pacific Northwest Regional Planning—A Review by Roy F. Bessey, State of Washington Division of Power Resources, 1963 (Concerns Development of Water and Columbia Basin)
- (g) "Vested Rights & Land Use Development," 54 *Oregon Law Review* 103, 1975
- (h) "Oregon's New State Land Use Planning Act—Two Views," 54 *Oregon Law Review* 203, 1975
- (i) "Regional Land Use Policy: Synthesizing Public Objectives" by Willamette Basin Land Use Study, Oregon Department of Commerce, 1954
- (j) "Goals for a Livable Oregon; an Action Partnership for the '70's," by the Executive Department (State of Oregon), 1970
- (k) "Federal Land Use Planning," by Lewis & Clark Law School - Northwestern School of Law, 1975, discussion of "The Vermont Experience"

