

Presentation before the House Rural Communities Committee in its deliberations regarding HB 4029

I'm Jim De Young, a City Councilor of Damascus and member of the group, Citizens for Moving Damascus Forward. I'm here representing only myself and the group, CMDF. I'm not speaking on behalf of the City Council.

Thank you for the opportunity to speak today in opposition to HB 4029.

Even though the word "Damascus" does not occur in the HB 4029, it is clear that this bill is aimed solely at Damascus, since it is the only City in the State that was incorporated between 2000 and 2005 (Damascus was incorporated in 2004), and it has not yet forwarded to the State and LCDC a comprehensive plan for acknowledgement (and this is the concern of this bill).

While I can well appreciate the position of those who wish to withdraw from Damascus in order to develop property (for I too am a land owner in Damascus, and have been for more than 42 years), I think the proposed legislation is misconceived, contrived, and actually detrimental to the development of Damascus and the timely production of a comprehensive plan--which is the common goal of the bill and all who testify here today, I believe.

Let me explain my opposition.

First, I note that the term "withdraw" is repeatedly used to describe the concern of the bill: to allow property owners to withdraw their property from the City. The bill proposes to allow owners of land on the boundary of the City to withdraw their property from the City; and it prohibits the City from preventing such land from being annexed by an adjoining city. Why does the bill use the word, "withdraw," and not, "de-annex"? Is it done to avoid the inherit conflict with the language of the charter of the City of Damascus? The latter says it is the sole discretion of the City Council to allow de-annexations, and that the one criterion is: Is the de-annexation in the best interests of the City? Further, is it not unfair for the bill to target only those properties on the boundary of the City, and not others within it?

The second issue is that of authority. It seems to me that the Charter gives sole authority for de-annexation or withdrawal of land from the City to the City Council. Where then does the State Legislature derive such authority to grant withdrawal of land from the City? If it can exercise this authority what prevents it from usurping other authority and committing other onerous actions, such as the disincorporation of a city? Or, the forced annexation of adjacent lands to it? Or, a host of other troublesome, unlawful actions? Have we in this State come to the place where the State can impose its power upon sovereign cities? If this action is pursued against Damascus, should not other cities fear that similar actions could be forced upon them based on other newly created reasons?

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And notice the reason for such action as stated in this bill. It is because the City has not forwarded a Comprehensive Plan to the State agency within a period of four years (as the ordinance or law stipulates). But other cities prior to the year when this regulation was implemented had no such stipulation in years. And, after all is said and done, is the violation of a time period just cause to foist upon a City action that violates its own charter and poses a dangerous precedent? After all, we are not talking here about some overt refusal of a City Council to submit a plan or some other unlawful deed. We're dealing with the reality that Damascus was placed into the UGB without a vote of the people; that the City decided to incorporate to protect itself against the very issue the bill seeks to address—annexation to an adjoining city; that the City is composed of diverse interests that range from those who want to develop property (mainly on the west) and those who want to live for the foreseeable future in a rural area (mainly those in the east); and then it embarked on a way to get a comprehensive plan done that represents diverse and competing interests.

Third, it is claimed that Damascus has experienced dysfunction for the last ten years. This is overstatement. Damascus rejected the Concept plan in 2002, then incorporated in 2004. It adopted a comprehensive plan and presented it to the State on 12/14/ 2010, and it was partially acknowledged by LCDC. In the meantime, a group of people gained influence (and this was in conjunction with outside forces) to hobble government in Damascus, and to use Damascus as a lackey to challenge State land use laws (as reported in an article from the Oregonian in 2010). Thus the issues in Damascus have greater depth and scope than parochial concerns. It probably is true that there are few other cities in the State who've been so targeted as Damascus has.

Let me finish the history of what has been taking place in Damascus. On 12/29/2010 LCDC requested more items, and the City complied on 1/29/2011. In 2011 the opposition group supported a citizen initiative that saw the first Comprehensive plan defeated on 5/12/11 by a 2 to 1 margin. Then on March 13, 2012, this same group got an amendment to the City charter passed by citizen initiative that required all future plans that are going to the State (including LCDC) or Metro to be first ratified by a double majority vote of the people in an election. These events have contributed greatly to the so-called dysfunction of Damascus; and it did not begin in earnest till 2010 or 2011. Thus it has had a life of less than four years.

Fourth, let me point out that if the above rehearsal of history is correct, it is not totally improper to say that where Damascus is today is partially the fault of LCDC. Theoretically, if LCDC had acknowledged all or most of our comprehensive plan forwarded to them in 2010 we would not have such dysfunction, as it is called, and there would be no occasion for HB 4029 or SB 708 of last year. Where the City is today is in part the fault of LCDC.

Fifth, I suspect that this bill is an end-run around the recent decision handed down (on Jan. 18, 2014) by the hearings officer appointed by LCDC to recommend to LCDC a resolution of the dispute with the City of Damascus. I attended some of the sessions held before the hearings officer in late 2013, as did the chairman, Richard Johnson, of the group, Citizens for Moving

Damascus Forward. This group was granted limited party status in the hearings. Mr. Fred Wilson recently recommended that no punitive action should be taken against Damascus, such as withholding about \$300,000 in shared revenue from the State, to pay back a grant from LCDC, until after the May, 2014, primary. On this day probably three comprehensive plans will be voted on: first, a citizen initiative presenting the original comp plan finalized in 2013 but rejected by a majority (4 to 2) vote of the Council; and two others, one a revision of the comprehensive plan done by the Mayor, and another revision of the comp plan done by Councilor Jackman. The latter two plans will be forwarded to the May primary by a majority of the Council. They are still to be finalized.

So Mr. Wilson is presently recommending that no action be taken contrary to the City, lest such action galvanize the residents in a position of opposition to the State's interference. He said: "Having the stigma of withheld funds looming over the elections would seem to make accomplishment of the required planning tasks less, rather than more likely." He did suggest that if no comprehensive plan wins in May, then LCDC should "explore what actions are legally available to allow property owners such as General Distributors, Inc. and Patton to develop urban uses despite the lack of an acknowledged comprehensive plan and land use regulations."

Now I've been told (by the sponsor of this bill, Mr. Kenemer) that LCDC has been involved in the formulation of this present bill. This suggests to me that LCDC is not content to abide by the hearings officer recommendation. It also seems that they think that the opinion of the hearings officer, about the negative effects of action taken now by LCDC, is either without foundation or can be ignored. Are the supporters of this bill willing to take the chance that they may be wrong, especially if there is a better way, that Mr. Wilson's words suggest and which I want to advocate?

Sixth, why is an emergency clause attached to the bill? Near the end (p. 3. Line 13, Section 5) it says: "This 2014 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2014 Act takes effect on its passage." I understand that right after passage in the House this bill could go immediately into effect upon the Governor's signature.

But what emergency exists that concerns "public peace, health and safety"? I don't see such in Damascus. Is this referring to Mr. Patton's health or that of the owner of GDI or that of the lawyers involved? May I suggest that if the legislature passes this bill into law, then the people may riot, may throw stones, may refuse to pay taxes, etc., etc. Of course, I'm being facetious and ridiculous, but not anymore, I think, than the sponsors of this bill. This emergency clause seems farcical and contrived!

Seventh, and last of all, is the matter of unintended consequences. This is the Achilles heel of Bill 4029. The two properties of Mr. Patton and GDI, if withdrawn, represent two of the largest parcels of commercial, residential, and industrial lands so designated in the current

comprehensive and zoning plans. If these are no longer part of Damascus, the City loses significant revenue to develop the City. Thus this legislation would decimate the City much like the vote of Nov. 5, 2013, to disincorporate would have done.

But even more damaging is this. The withdrawal of such properties and others on the northwest side of Damascus, including a large area designated general employment, will have dire consequences. These combined properties on the western side of Damascus represent almost half of all the land designated as industrial and general employment in the present comprehensive plan. The present comprehensive plan most assuredly would be rejected by LCDC as not having zoned for enough industrial and commercial land. They would not acknowledge it. The City would have to redraw and rezone the maps, and go through the entire process of recalculating densities, the buildable lands inventory, open space, set backs from streams—virtually everything would have to be redone. Probably years would be involved. This would delay even further a new comprehensive plan from Damascus. Thus just the opposite effect of what this bill intends would take place. Instead of having a comp plan near at hand it would be further removed. This is a grave unintended consequence.

There are certain provisions of the bill that do not make sense. For example, if in the end the refusal of the City Council to support any applications for withdrawal can be surpassed by automatic withdrawal anyway, why have the former step—Council consideration—included in the bill? And who is to have the authority then to grant the withdrawals? This brings us back to the matter of authority as dealt with above.

A second example of a strange provision is the last amendment proposed for page 2, line 19, where “public” is to replace “residents of the city.” Do the authors of the bill really want to allow non-residents of the City of Damascus “to appear” and “to be heard on the question” and help to decide whether a property owner of Damascus should be allowed to “withdraw” his land? Do you mean that people from Gresham or Happy Valley or Oregon City should contribute to determining the boundaries of Damascus? How would you feel if outside people could play a role in determining the boundaries of your respective cities?

A third strange provision. The bill frees any withdrawal of land from “any local governmental agreement, document or policy that could prevent the tract from being annexed by another jurisdiction.” This seems to allow such annexation to another city to be optional. Do we really want free-floating tracts of land? Or would they come under County regulations?

It seems to me that the intent of this legislation is ultimately to destroy the City. We recently survived a vote to disincorporate. This bill will bring about a similar result, with the only difference being that the decimation would be shrouded under the guise of legislation from the State.

So what can be done to allow property owners, both small and large, to develop their properties without changing the boundaries of the City? Yet let me suggest a better resolution of the

“problem of Damascus.” Let those who wish to develop their lands now do so according to the present comprehensive plan and in compliance with Metro standards. The plan has gone through the entire vetting process of citizen input and deliberations—at town halls, and before the code development committee, the planning commission, and the City Council. The three plans proposed for the May, 2014, primary are using almost the identical comprehensive plan/zoning map (only small changes from the Mayor’s revision would affect Mr. Patton’s property). Since this zoning map will be one of the assured results of the vote in May, let’s allow developers to proceed now—to get the process underway. Let’s allow LCDC either to acknowledge informally the pertinent elements of the 2013 comprehensive plan or to act, with Metro, as referee in its application.

This idea, or something like it, is not any more unlawful or unsavory than what this HB 4029 wants to do; and it doesn’t decimate the City.

Really HB 4029 is not an option for anyone who loves the City of Damascus, who affirms community, where we all work together to accomplish what is the good for all which none of us acting alone could accomplish.

Thank you.

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