

4004 NW Thurman St.
Portland, OR 97210
May 24, 2017

Oregon State Senate Committee on
Environment and Natural
Resources
State Capitol
Salem, OR 97301

Re: HB 3245

Chair Dembrow and Committee Members:

I am Edward J. Sullivan, who retired in 2014 after more than forty-five years in the field of planning law. I have represented developers, neighborhood groups and local governments over the course of my career, continue to write extensively in the field and to teach planning law at the post-graduate and law school level.

I became acquainted with HB 3245 following a case brought by Housing Land Advocates (HLA), a nonprofit advocate for affordable housing, against the City of Happy Valley to challenge a redesignation of property from a multifamily to a single family category. The case was lengthy, chiefly because the City attempted to impose an appeal fee from the planning commission decision in the amount of \$1000 and a special "deposit" for the City Attorney to review the case in the amount of \$1500. We were able to convince LUBA that current law did not allow the imposition of fees and an appeal process on citizens, amounts that would likely discourage them from challenging decisions they believed were unlawful.

HB 3245 would allow for city councils to adopt the very appeal process and fees that were rejected in the Happy Valley case. Proponents of this bill suggest that cities couldn't or wouldn't take this path. I don't know about the "wouldn't" part of

that argument, but it is clear to me that the original version of this bill would allow for that result. Thus, I opposed the bill.

Before this committee, the City of Salem proposed an amendment that would allow city councils to approve plan amendments by order. In itself, we can live with that concept. Our objection is to the silence over the process by which a city council could adopt an order approving or rejecting a plan amendment. After extended discussions with representatives of the City of Salem, we came up with additional language to follow the amendment language presented to the Senate by the City of Salem:

“A party to a final determination in a proceeding on an application for an amendment to a city’s comprehensive plan map may seek review under ORS 197.830 to 197.845.”

The language proposed meets the needs of the City of Salem, which, as I understand it, is to be able to adopt plan amendments by order, rather than by Ordinance, which may take more than one reading and is unnecessary, especially in the event of an uncontested plan amendment. It also meets citizen involvement concerns because it allows a party to the proceeding that results in a council order approving or denying a plan amendment to seek review at LUBA. A party is someone that appears orally or in writing during the proceeding. At any event, the “raise it or waive it” requirements of ORS 197.763 apply in such a situation, so that a party could not “lie in the weeds” and raise new facts or arguments at LUBA.

With these amendments and understandings, I would support the amended version of the legislation. I would be happy to respond to questions or comments by members of the Committee. Thank you for your time and attention.

Sincerely,

Edward J. Sullivan