

MEMORANDUM

TO : Metro Charter Committee
FROM : Frank Josselson
DATE : November 14, 1991

PROPOSAL

Amend Article VII of the outline by addition of the following sentence:

"Require that discretionary local land use decisions governing the approval and denial of new land uses be based on standards and criteria which are so clear and objective that they lead to predictable decisions."

Reasons For Proposal

One principal purpose of ^SCB 100 and the statewide planning process has been to introduce greater certainty into land use decisionmaking, to make local land use decisions more predictable. This has not happened. Notwithstanding LCDC and state statutes requiring clear standards and criteria, standards for local land use decisions continue to contain empty words and phrases which 10 different decisionmakers can interpret 10 or more different ways. This leaves applicants, local government staffs, and elected officials in untenable positions. It converts the land use process from one of sound planning standards to one governed by the whims and caprices of often inexperienced, disinterested, or politically motivated officials. The courts have described the positions in the following terms:

"An applicant,***should be able to know the standards by which his application will be judged before going to the expense in time, investment and legal fees necessary to make application." Sun Ray Drive-In Dairy v. OLCC, 16 Or.App. 63, 517 P.2d 289 (1973) (Judge Tanzer)

"An applicant, be he seeking a liquor license or a subdivision, should not be put in the position of having his success or failure determined by guessing under which shell lies the pea." Commonwealth Properties, Inc. v. Washington County, 35 Or.App. 387, 399 (1978) (Chief Judge Schwab).

"The planning of energy facilities takes too much effort, time and expense to be exposed to rejection under a standard which the applicant could not have known even in broad terms and which it might not have undertaken to meet." Marbet v. PGE, 277 Or. 447, 460, 561 P.2d 154 (1978) (Justice Linde).

The purpose of the proposal is to require regional oversight to ensure that discretionary local decisions be based on sound planning standards and criteria and not the political power of the developer or the size and aggressiveness of the neighborhood opposition.