



Current Planning Public Comments and Testimony

Please fill out the form, below, to submit written comments on a pending land use application or an appeal of a tree removal request. All written comments and materials are due by the deadline listed on the Notice. Written submittals received by the deadline will be entered into the public record of file and will be considered by the decision body. Contact the staff coordinator listed on the Notice if you have questions.

Case Number * Please see Notice for correct LU or tree appeal number.
LU 23-0002/AP 23-04: A request for an RP District (wetland) Unavoidable Crossing to Install a Sewer Line and Serial Lot Line Adjustments.
If you do not see your case here the comment period is not open. Please check back later.

Case Number - Verification * LU 23-0002/AP 23-04: A request for an RP District (wetland) Unavoidable Crossing to Install a Sewer Line and Serial Lot Line Adjustments.
Please re-select your case number to ensure it routes to the appropriate case.

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Stance: *
 Support
 Opposition
 Neither for nor against

Please type your comments below, or you may upload a PDF of your comments. If you have other media types, please contact planning@lakeoswego.city to coordinate its addition to the public record.

Comments Third submission uploaded below.

File Upload Third Supplemental Testimonial Submission 47.18KB
Opposing LU 23.docx.pdf
PDF format only

Third Supplemental Testimonial Submission Opposing LU 23-0002

As previously pointed out, under home rule, constitutionally the voters have the authority to govern the use and development of city's parks and the city's sewage system, provided in exercising that authority they do so consistent with state statutory authority that address the same areas. If the voters have properly exercised their authority, then contrary action by governmental officials is invalid.

The Charter Amendment is voter governance that limits development in the natural areas of the city parks, including that of sewer facilities, to protect their natural areas. It is democracy in action. The very fact that the citizens felt the need to do so clearly underscores their observation of a failed governance whose actions seldom, if ever, truly champion natural areas over development. It is drafted reasonably to allow sewer utilities to support the beneficial users of the parks and no more. It is consistent with statewide Goal 11 and the provision of sewer system utilities to meet the land use it directly serves. It limits sewer facilities for park users and visitors (the public) as a reasonable nexus to benefit the park users, and by so limiting, preserves from additional loss to the natural areas from sewer facilities serving extra territorial (outside the park boundaries) private development. As previously noted, it can be read consistently with Goal 5 and the City's Comp Plan and eco healthy provisions.

But it is also consistent as well with Goal 11 for the provision of infrastructure and after the Amendment fact of the city's narrowly drawn connection ordinance for land division. The Charter Amendment doesn't bar the five-lot subdivision's development from connecting to a city sewer system. An alternative is available to provide sewer line extension and connection to city lines outside the park, which is pumping. Grinder pump systems are often used with single family homes that need to push sewage up-hill for long distances to connect to a manhole of a gravity line or to a pressure main. And a second alternative in the form of septic systems if they did not negatively affect the wetlands more than the proposed sewer line and the potential of the sewer line for both infiltration and leakage in a wetland.

Nor does the Development Review Board need to find the Charter Amendment needs to be a land use decision to exclude the private sewer line that is sought as a condition of approval. It can be viewed as an ownership decision that otherwise is consistent with the affected land use law, is not precluded, and invalidates the proposed sewer line conditions. The Design Review Commission simply does not have the authority to approve the condition of allowing the sewer line extension from the private development to cause a loss to the natural area. City staff's argument that reclamation will save the day underscores what is there now and what the voters intended to be preserved will, in fact, be lost. Wounds may heal, but they leave scars; especially clear cutting a swath through a natural area to dig a 25-foot trench for over 500 feet.

Alternatively, there are two tests that support the Charter Amendment is the controlling final decision. In *Heritage Enterprises v City of Corvallis*, 300 Or 168, 708 P2d 601 (1985), the court found the voters' decision overturning the City Council's decision approving an annexation, based on the Council's making the required findings that the statewide land use Goals were met, was not a final land use decision under ORS 197.015(10) defining land use decisions. It found the city council's decision to refer was consistent with the Charter provision calling for a vote on annexation by the electorate; however, the referral simply called upon the voters to approve the Council's decision and did not address the goal findings that are required. Because the electorate did not address the goal findings under the particular

circumstances of an annexation, it was not a final land use decision (to disapprove a finding must be made that one or more of the goals were not met), leaving LUBA without jurisdiction to hear the appeal. The facts in Heritage are distinguishable. The Heritage election took place after the City's decision, not before as is the case here. There wasn't the home rule governance issue as presented here, although even in Heritage, in passing, recognized there could be cases where the electorate was the governing body: "We do not exclude the possibility that the electorate might be a "local government" within the meaning of ORS 197.015 (10)". Also, the Amendment is consistent with the applicable land use laws as stated above, which laws were based on goal findings. A determination limiting development of sewer facilities for the particular purpose of providing protection for natural areas of 15 parks and any future park natural areas differs from an annexation decision. The Charter Amendment provision does not address annexation. It meets the ORS 197.015 (10) (A) (iv) definition of a new land use decision which implements the Comp Plan goal 5 protection for natural areas and open spaces.

In addition to the statutory test, there is a second test developed by case law when a governmental decision has a significant land use impact now and in the future. *Kerr v City of Pendleton*, 294 Or 126, 653 P2d (1982). See also, *Billington v Polk County*, 299 Or 471, 703 P2d (1985). In *Kerr*, the decision locating a road was found to have significant impact for two undeveloped subdivisions and was held to be a land use decision. In *Bollington*, the court found a vacation of a road opposed by only one adjacent property owner did not have significant impact and was not a final land use decision. The Amendment Limiting Park Development to certain types and kind provides standards to protect natural areas for not only the 15 existing parks with natural areas, but extends those protections to the natural areas of future parks. This meets the second test for a land use decision. The charter amendment is intended to and does have a significant impact on how current and future park natural areas may be developed. As a final land use decision, it must be followed by the Development Review Commission.

Respectfully submitted,

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