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Institute of Portland Metropolitan Studies

Planning at the Ballot Box: Better Decisions or the End of Planning?

Ethan Seltzer and Shayna Rehberg

June 11, 2002

Introduction...

Oregonians are on the verge of embracing yet another trend from our neighbor to the south. For some years, land use planning issues in California have been showing up on local ballots in significant numbers. In most cases, these have been questions about whether to allow something to happen, or whether to prevent it, rather than in a larger sense whether to plan at all. Oregon in recent years has seen an increase in the number of planning issues on local ballots, though measures in this state have addressed both project level questions about annexation and more general concerns about a range of planning issues, ranging from property rights to the planning powers of Metro, the regional government in the Portland area.

In any case, land use planning in a variety of forms has been coming to the ballot box in Oregon more frequently in recent years, and this raises a host of issues for citizens, planners, advocates of all stripes, and elected officials alike. Will we make planning decisions through deliberative, inclusive public processes, or will planning amount to “yes-no” questions put before voters in the form of ballot measures? Will representative elected bodies be the decisionmakers, or will we bypass them completely with new applications of direct democracy?

To help identify and describe this trend, this paper reviews the current literature on ballot box planning as a means for helping metropolitan area communities get ready for what is likely to be an increasing volume of planning-related electoral activity. Here, “ballot box planning”

refers to the use of initiatives and referenda in deciding land use planning matters (Caves, 1992). Citizen initiatives and referenda are tools of direct democracy, and in the literature are also referred to as tools for “direct legislation.”

Background...

Although the third state to pass laws allowing initiatives and referenda, Oregon was the first state to use direct legislation with two ballot measures in the 1904 election. Despite this humble beginning, more than 100 measures appeared on Oregon ballots over the next ten years (Ellis, 2002). Even advocates of direct legislation warned about abuse of initiatives and referenda and called for their discrete and limited use. The Taxpayer’s League of Portland was among those who viewed direct legislation as a power to be “cautiously administered” (Ellis, 2002).

The last twenty years has seen an explosion of initiatives and referenda in the United States similar to that of the early years in Oregon. This recent explosion has included land use planning by direct legislation. Elections held in November 1998 featured some 240 state and local ballot measures concerning conservation and growth management in the United States. November 2000’s ballot registered 35 state measures and 518 local measures related to growth (Myers, 1999; Myers and Puentes, 2001).

Despite this surge in ballot box planning, the literature addressing ballot box planning is limited. Most ballot box planning stories and analysis come to us from California. The Solimar Research Group of Southern California surveyed 671 land use ballot measures on California ballots from 1986 to 2000. Just over one-third (34%) of the measures were identified as “pro-growth,” 58% as “slow-growth,” and the last 8% as neutral (Fulton et al, 2000). During that

same time period, the passage rate for slow-growth measures exceeded that pro-growth by some twenty percent on average.

After peaking in 1996, however, the popularity of growth management measures waned and passage rates of pro-growth measures have pulled within ten percentage points. Studies suggest that the rise and fall of growth management measures coincides with economic cycles. Citizens in California, as well as the rest of the nation, seem to be more supportive of growth management when times are relatively prosperous (Fulton et al, 2000; Gavin, 2001).

Oregon...

Oregon's experience with ballot box planning provides an instructive comparison to California's experience. Unlike California, Oregon possesses a statewide land use planning and growth management program established in 1973 by SB 100. Zoning in Oregon is a product of local government quasi-judicial decision-making, and the state does not face the many ballot challenges to re-zoning proposals that California does. Yet Oregon has endured ballot threats to its land use planning foundation over the last 25 years. The entire program was contested outright in 1976, 1978, and 1982 (Larmer, 1994). All three challenges failed.

Recent challenges to the program have been more indirect. In 1998 and 2000, "administrative rules review" measures were placed on the ballot, providing an easy avenue to overturn rules that carry the force of land use and environmental regulations in the state (ACLU 1998; Defenders of Wildlife, 2000). Both attempts failed.

Also carrying implications beyond its ballot title, Measure 7 on the 2000 ballot championed compensation for owners whose property values are reduced by regulations. Argued by proponents as a measure about fairness, the initiative was also argued as a blow to the

state's planning program. Jurisdictions unable to pay the many claims that could arise from Measure 7's unclear criteria for compensation would be forced to repeal the regulation that gave rise to the claim in the first place. The measure passed but has been legally challenged and is pending judgment in the Oregon Supreme Court (Mareth, 2002; Defenders of Wildlife, 2000).

Another challenge to planning surfaced recently in metropolitan Portland directed at the planning powers delegated to Metro, the regional government. Appearing on the May 21, 2002 ballot, Measure 26-11 would have prohibited Metro from assigning minimum densities to jurisdictions within its boundaries. The measure, sponsored by the anti-land use planning advocacy group, Oregonians in Action, was quickly countered by measure 26-29, added to the ballot by the Metro Council. Measure 26-29 promised the same kind of certainty to existing residential zones offered by Measure 26-11, but did so without compromising the value of the regional urban growth boundary or the planning responsibilities and powers of Metro. On May 22, after a vigorous campaign, Measure 26-11 failed 57% to 43% and Measure 26-29 passed 66% to 34%.

Oregon has also seen recent measures aiming to enhance conservation and citizen involvement in land use planning. The passage of Measure 66 in 1998 dedicated lottery dollars to provide parks and wildlife habitat (Myers, 1999). Citizen votes on annexations are lobbied by organizations like Oregon Communities for a Voice in Annexations "because they [citizens] want a greater say in how their communities grow and in who pays for that growth" (OCVA, 2002). This parallels growth-related citizen initiatives in California. Voter annexation in Oregon, however, does not *substitute* for the planning and discretionary decision-making process. Rather it adds voter approval as the final step to that process. Currently 30 cities in

Oregon, representing one-fifth of the state's population, have amended their city charters to allow for voter annexation (OCVA, 2002).

Pro and Con...

Much of the published analysis in support of ballot box planning hails from California where comprehensive statewide planning is absent. *Land Use Planning: The Ballot Box Revolution* by Roger Caves of San Diego State University emphasizes the direct democracy benefits of ballot box planning, claiming that it may help level the playing field for issues on which grassroots proponents would normally be outspent and overtaken (Caves, 1992; Harris, 1992). Caves identifies the ballot box planning phenomenon as citizen response to seemingly unmanaged growth, the changing character of their communities, and unresponsive local officials (Caves, 1992; Harris, 1992).

The California Chapter of the American Planning Association President Tony Lettieri cites voter resistance to rezoning rural land for development as an example of the type of ballot box planning that will persist in California until statewide growth management is adopted (Boxall, 2000). Another American Planning Association argument comes from Bruce McClendon (1990) who views ballot box planning as a way to reclaim planning "by the people and for the people" instead of "by public officials for some of the people," where citizens are treated more like enemies than customers of the planning process.

Yet for every argument in favor of ballot box planning there are one or more protests to its use, especially its prolific use. On the pro-growth side, land use ballot measures are viewed as posing frequent challenges to developers' plans, thereby creating extra costs and risks. These ultimately translate into greater transaction costs which either discourage land and economic

development or are passed on to customers as much higher prices for development (Staley, 2001).

Ballot box planning is criticized repeatedly for being too crude for use as a planning tool. A ballot measure is inflexible once filed and it potentially over-simplifies issues (San Francisco Chronicle, 2000; Schrag, 1999; City Club of Portland, 1996). To some its crudity borders on irresponsibility. As with the general explosion of ballot initiatives, recent ballot box planning is attacked for: (1) unnecessarily making constitutional amendments out of statutory matters; (2) generating unfunded mandates; (3) becoming an arena for monied players, especially in the “business” of signature gathering; (4) providing a forum for back-and-forth between certain interest groups instead of true and more varied democratic exchange; and (5) lacking accountability and explicit statements of the impacts and implications related to the ballot measures (City Club of Portland, 1996; Caves, 1992; Ellis, 2002).

Yet the most frequent argument against ballot box planning is the subversion of the public process. Any progress toward greater inclusion, deliberation, consensus-building, and analysis that planning has made over the last 25 years could effectively be erased by growing reliance on ballot box planning (Callies and Curtain, 1990; City Club of Portland, 1996; Schrag, 1999; San Francisco Chronicle Opinion, 2000).

Increasingly, ballot measures are ending up in court. Between 1998 and 2000, one-fifth of the cases before the Oregon Supreme Court were protests of ballot measure titles (Ellis, 2002). Since 1960, roughly half of all successful ballot measures nationwide have been challenged in court. California has exceeded that rate, contesting two-thirds of their successful ballot measures, and Oregon, Washington, and Colorado have contested between two-fifths and one-half of theirs (Ellis, 2002).

Concluding Remarks...

Awareness of and the desire for more comprehensive planning are on the rise, according to a poll by the Public Policy Institute of California. Two-thirds of the respondents felt that good planning could mitigate growth-related problems (Baldassare, 2001). However, when asked *who* should be conducting this planning, the reply was resoundingly “the voters,” with 63% preferring the ballot box as opposed to 35% responding “local elected officials” and public planning processes (Baldassare, 2001). Although California is a state that has had to use ballot box planning to secure growth management and conservation measures, this statistic should give thoughtful pause to jurisdictions and states nationwide. Despite criticisms of ballot box planning, it appears that citizens will not give it up willingly or quickly.

In fact, it appears that once ballot box planning takes hold, it leads to ever increasing numbers of land use-related ballot measures. As author William Fulton puts it, “One of the cardinal rules of ballot-box zoning in California is that ballot measures beget ballot measures.” (Fulton, 2002) It seems likely that Oregon can expect no less.

Whether planners and elected officials can or are willing to stem the tide of ballot box planning remains to be seen. The notion embedded in Oregon’s statewide planning goals that land use planning is an inclusive process characterized by local participation and extensive dialogue and interaction will have a tough time surviving in this environment. On the other hand, if land use planning in Oregon can be made a more inclusive and responsive process than many seem to regard today, then perhaps the move to the ballot box can be replaced with something more thoughtful, and certainly more akin to good planning.

For now, the following messages for planners and decisionmakers can be gleaned from the literature and recent experience:

- 1) Distinguish between ballot measures focused on the big picture—whether to plan, when to plan, how to plan—versus measures focused on specific sites or projects. Avoid the temptation to send site or project-level measures to the ballot.
- 2) Don't sign petitions that enable friends or foes of land use planning to sidestep representative decisionmaking processes or established public vehicles for planning.
- 3) Improve the responsiveness of planning and plan implementers now. When voters feel alienated from or ineffective as participants in the process of community growth and change, whether as participants in planning and/or development processes, the ballot box will appear relatively more attractive.
- 4) Build community continuously. Cohesive communities that can articulate their interests and sustain an inclusive civic style are far more likely to take the time to do planning right.
- 5) Celebrate planning successes. Help to make the value and outcomes of intentional, proactive, future-oriented planning visible to citizens and other decisionmakers.

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