

**HOUSE COMMITTEE ON LAND USE**

**January 26, 2005 Hearing Room 50**

**1:30 PM Tapes 7 - 8**

**MEMBERS PRESENT: Rep. Bill Garrard, Chair**

**Rep. Gordon Anderson, Vice-Chair**

**Rep. Mitch Greenlick, Vice-Chair**

**Rep. Robert Ackerman**

**Rep. Mary Nolan**

**Rep. Patti Smith**

**Rep. Mac Sumner**

**STAFF PRESENT: Sam Litke, Committee Administrator**

**Lindsay Luckey, Committee Assistant**

**MEASURES/ISSUES HEARD & WITNESSES:**

**HB 2356 – Public Hearing**

**Rep. Sal Esquivel**

**Thomas Gallagher, Professional Land Surveyors of Oregon**

**John Watt, Jackson County**

**Art Schlack, Association of Oregon Counties**

**B.J. Smith, Clackamas County**

**Bob Rindy, Dept. of Land Conservation and Development**

**These minutes are in compliance with Senate and House Rules. Only text enclosed in quotation marks reports a speaker's exact words. For complete contents, please refer to the tapes.**

<b>TAPE/#</b>	<b>Speaker</b>	<b>Comments</b>
<b>TAPE 7, A</b>		
003	Chair Garrard	Calls the meeting to order at 1:38 PM and opens a public hearing on HB 2356. Notes that they will not have a work session as amendments to the bill are expected.

**HB 2356 - PUBLIC HEARING**

015	Rep. Sal Esquivel	Representative, Sponsor of HB 2356. Gives personal example exemplifying the necessity of the bill. Asserts that state law has inadvertently changed the role of county surveyor into land use planner.
046	Rep. Esquivel	Discusses the increase in expenses and unnecessary complexities in the plat approval process.
056	Rep. Esquivel	Reiterates the role of the surveyor.
062	Rep. Esquivel	Announces support for HB 2356. Comments he is also open to amendments.
075	Chair Garrard	Reviews the content of the bill. Confirms that Section 1 will amend ORS 92.100 for clarity.
076	Rep. Esquivel	Agrees.
079	Chair Garrard	Confirms that Section 2 will amend ORS 197.015 and restates language HB 2356 (Page 4, line 2).
080	Rep. Esquivel	Agrees.
081	Chair Garrard	

Confirms that Section 3 amends ORS 94.508 for clarity and asks for further explanation.

- 085 Rep. Esquivel Asks what the Chair would like specifically clarified.
- 087 Chair Garrard Restates request for clarification of Section 3.
- 093 Rep. Esquivel Reads from Section 3 (1) and Section 3 (2).
- 098 Chair Garrard Confirms that the amending will change “shall” to “may”
- 100 Rep. Esquivel Agrees.
- 103 Rep. Greenlick Wonders about an added “A” (HB 2356 Page 5, Line 3).
- 105 Sam Litke Committee Administrator. Attempts to clarify.
- 107 Rep. Greenlick Wants to know if the “A” refers to one specific item or the entire list.
- 109 Litke Answers that it will refer to one specific item.
- 117 Rep. Esquivel Believes it is a “housekeeping issue”.
- 123 Chair Garrard Confirms that in Section 4 (3)(a) the only change is the addition of an “A”.
- 124 Rep. Esquivel Confirms.
- 125 Chair Garrard Confirms the understanding of what will be amended in Section 5 and asks for an explanation.
- 127 Rep. Esquivel Responds that there will be greater flexibility in collecting fees.
- 136 Rep. Greenlick References Page 1, Lines 25-32. Notes the deletion which requires the surveyor to review the plat and wonders if there is another place that the plat will be reviewed to check for applicable provisions.
- 145 Rep. Esquivel

Clarifies, speaking to the differences between city surveyor and county surveyor. Verifies that the plats are thoroughly reviewed and then go through a final process with the county surveyor.

- 173 Rep. Ackerman In reference to Section 1 (2), asks if he is restating correctly when he says that “the surveyor has authority to make decisions here outside of his/her scope of work”.
- 183 Rep. Esquivel Replies negatively. Notes that the surveyor should not be involved in interpretation of land use planning. Believes the surveyors will support this bill.
- 196 Chair Garrard Asks if Section 1, line 23, is the portion which “holds the surveyor to surveying”.
- 197 Rep. Esquivel Responds affirmatively.
- 203 Rep. Anderson Asks if this will add another fee and if they were handled privately in the past.
- 206 Rep. Esquivel Answers that the fees are long established and it sets a minimum.
- 218 Rep. Anderson Questions if this section is merely stating the fee or adding a fee.
- 223 Rep. Esquivel Believes that if the city has their own surveyor then the city can “sign off” on it.
- 226 Rep. Greenlick References Section 1, lines 8-9 verifying that the city surveyor would have the authority.
- 227 Rep. Esquivel Notes that those who don’t have city surveyors must take their claims to the county surveyor.
- 233 Rep. Sumner States his support for the concept. Remarks on the Sections 1 (a) and 1(b).
- 255 Thomas Gallagher Professional Land Surveyors of Oregon.
- 260 Chair Garrard Asks if surveyors would have any objection to this bill.

265	Gallagher	<p>Responds they would have no objection in principle. States 2 issues currently:</p> <ul style="list-style-type: none"> <li>• Surveyors’ actions became a land use decision through reference to a surveying statute in a LUBA (Land Use Board of Appeals) case which he believes needs to be corrected.</li> <li>• County surveyors are concerned about notice on plats.</li> </ul>
310	John Watt	Jackson County. Submits written testimony on behalf of Jackson County in support of HB 2356 ( <b>EXHIBIT A</b> ). Expresses interest in being a part of the work group.
318	Art Schlack	Association of Oregon Counties. Says that the “devil is in the detail”. Recalls that historically, final plats have never been land use decisions. Discusses the <i>Hammer vs. Clackamas County</i> case (2003).
343	Schlack	Notifies the committee that there is a legislative concept currently with the Legislative Counsel. Expresses interest in working with Esquivel. Notes concern with answering technical questions within the bill to avoid future uncertainties with intent.
375	Schlack	Informs the committee that there are parties beyond the surveyor who are required to sign a final plat including: the county assessor, elected officials from the governing body and the planning director. Wants to assure that all aforementioned parties are not making land use decisions or limited land use decisions.
400	Schlack	Requests more time to create a comprehensive amendment.

**TAPE 8, A**

011	Chair Garrard	Asks how much time the work group would require.
013	Schlack	Answers that they would need 30 days.
015	BJ Smith	Government Relations Director, Clackamas County. Discusses the <i>Hammer vs. Clackamas County</i> case (2003).
021	Smith	Stresses importance in watching language and discusses “limited land use decision”.
034	Smith	

Believes there needs to be an adjustment in the language so that the necessary review comes at the beginning of the development process instead of the end.

- 048 Smith Asserts that the county surveyor made a “limited land use decision” and should not have been subject to an appeal for that reason. Wants to work towards a solution.
- 058 Rep. Ackerman References Page 4, lines 6-8. Wonders why specific reference to ORS 92.100 was included instead of removal of the entire chapter 92.
- 073 Smith Asserts that the particular language has circularity. Desires clarification in this section. Worries about future court misinterpretation of intention.
- 084 Rep. Ackerman States he wanted to bring the issue up for work group to address.
- 085 Smith Agrees.
- 090 Chair Garrard Requests Bob Rindy give the position of the Department of Land Conservation and Development.
- 090 Bob Rindy Department of Land Conservation and Development. States that HB 2356 does not directly affect the department and that they have no problem with the bill or with the intent of bill.
- 098 Chair Garrard Requests that those who testified work to bring an amended bill back to the committee in 30 days.
- 108 Rep. Anderson Questions who the group will report to.
- 109 Chair Garrard Responds that they will report to the committee.
- 110 Chair Garrard Closes public hearing on HB 2356.
- 113 Chair Garrard Adjourns the meeting at 2:13 PM.

**EXHIBIT SUMMARY**

**A. HB 2356, written testimony, John Watt, Jackson County, 2pp**