

HOUSE COMMITTEE ON LAND USE

March 09, 2005 Hearing Room 50

1:30 P.M. Tapes 36 - 37

MEMBERS PRESENT: Rep. Bill Garrard, Chair

Rep. Mitch Greenlick, Vice-Chair

Rep. Robert Ackerman

Rep. Mary Nolan

Rep. Patti Smith

Rep. Mac Sumner

MEMBER EXCUSED: Rep. Gordon Anderson, Vice-Chair

STAFF PRESENT: Sam Litke, Committee Administrator

Lindsay Luckey, Committee Assistant

MEASURES/ISSUES HEARD:

HB 2356 – Work Session

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.

TAPE/# Speaker Comments

TAPE 36, A

002 Chair Garrard Calls the meeting to order at 1:35 p.m. and opens a work session on HB 2356.

HB 2356 – WORK SESSION

008 Sam Litke Committee Administrator. Reviews the public hearing, resulting work group and proposed amendments for HB 2356.

025 Rep. Sal Esquivel HD 6. Discusses -1 amendments (**EXHIBIT A**) as a result of the work group and explains that it revises two statutes; land use definitions in ORS 197 and the subdivision and partitions process in ORS 92.

048 Chair Garrard Asks if the amendment has his approval.

049 Rep. Esquivel Responds affirmatively.

050 BJ Smith Public and Government Relations Director, Clackamas County. Directs committee to location of discussed changes on (**EXHIBIT A**) Page 6, lines 22-23. ORS 197.015.12 clarifying the definition of a limited land use decision and notes the addition of the word “tentative” and “plan”.

065 Rep. Greenlick Asks if the amendments replace the bill and if the amendments are the same as the bill up to this point.

071 Smith Responds that it is not exactly the same because there has been reorganization of the form and style. Wants to point out the two places where substantive changes have been made.

078 Smith References a second change on (**EXHIBIT A**) Page 3, lines 26-30 which adds a section, ORS 92.100 (6), to the chapter on approval of subdivisions and partitions. Explains that the language clarifies that the last step is ministerial and not a land use or limited land use decision.

108 Chair Garrard Asked who in Legislative Counsel worked with them on these amendments.

- 110 Smith Answers that Harrison Conley was the legislative counsel.
- 112 Chair Garrard Requests that staff call Harrison Conley to the meeting.
- 120 Art Schlack Association of Oregon Counties. References the addition of an emergency clause on Page 8, lines 4-6 (**EXHIBIT A**) explaining it will make the provisions of HB 2356 effective immediately after passage. Notes the intent of the -1 amendments to go back to original statutes. Discusses reorganization done by Legislative Counsel and points out a section removed from Page 2, lines 12-15 and replaced on Page 3.
- 145 Schlack Discusses ambiguities in ORS 92 and challenges in reaching consensus. Submits memorandum requesting a number of groups be added to the bill as requestors and a report from the work group on the -1 amendments (**EXHIBIT B**) both illustrating consensus.
- 160 Schlack Raises concern about language of amendment on Page 3, line 26 which reads “approval or denial of a final subdivision or partition plat” (**EXHIBIT A**) and clarifies that the party described “approves or fails to approve” and explains why “denial” is inappropriate. Requests a conceptual amendment on Page 3, line 26 after “approval or” delete “denial of” and insert “failure to approve”. With this request, urges the committee to send HB 2356 with the amended -1 amendments to the floor with a do-pass recommendation.
- 220 Chair Garrard Discusses conceptual amendment to the amendment and asks for the input of Harrison Conley.
- 225 Harrison Conley Deputy of Legislative Counsel. Cites his concern with connotation of the word “failure”. Expresses acceptance to make the requested change but asks if the same would apply to the amendments in ORS 197.015 which uses the wording “approve or deny”.
- 240 Chair Garrard References committee to Page 6, line 22.
- 242 Schlack Emphasizes the centrality of this issue to the legislation explaining the process of “approval or denial” in reference to tentative subdivisions or partition plans and the “approval” or “failure to approve” not “deny” final subdivisions or partition plats.
- 250 Chair Garrard Confirms that “failure to approve” would apply to a delay of approval due to administrative error, whereas a “denial” would end the process.

255	Schlack	Confirms.
257	Chair Garrard	Asks if this also applies to Page 6, line 24 which also uses the wording “approval or denial”.
260	Schlack	Responds negatively and explains its appropriateness.
275	Rep. Greenlick	Suggests the wording “approve or withhold approval”.
288	Schlack	Expresses agreement and confirms that it would have the same effect.
290	Rep. Greenlick	Asks Conley if there are limits to what the legislature can say is not a land use decision.
295	Conley	Responds that it is within the legislature’s purview to define “land use decisions” and “limited land use decisions”.
300	Rep. Greenlick	Notes its possible relevance in thinking about Measure 37.
305	Chair Garrard	Confirms that for the conceptual amendment they would be deleting the words “denial of” and replacing them with “withholding approval” and asks if that would be acceptable to Conley.
310	Conley	Suggests “approving or failing to approve a final subdivision or partition plat”. Corrects to use word “withholding”.
315	Chair Garrard	Directs committee to stand at ease at 1:55 p.m.
316	Chair Garrard	Calls the meeting back to order at 1:58 p.m.
320	Conley	Suggests on Page 3, line 26 removing the words “approval or denial” and in their place substituting “approving or withholding approval”.
325	Chair Garrard	Repeats the change and clarifies that the final word added is “approval” or “approving”.
327	Conley	Confirms “approval”.
330	Chair Garrard	Corrects the change to be “approval or withholding approval”.

335	Rep. Nolan	Suggests the wording “granting approval or withholding approval”.
340	Chair Garrard	States that on Page 3, (7), line 26 the conceptual amendment will be a deletion of the words “approval or denial” and insertion of the words “granting approval or withholding approval”.
346	Conley	Confirms this change.
349	Chair Garrard	Asks if this change is acceptable to Smith and Schlack.
352	Smith and Schlack	Affirms that it is.
355	Rep. Ackerman	Refers to page 3, line 26 and asks if under the Administrative Procedures Act their intent could be misinterpreted.
357	Conley	Asks Rep. Ackerman to repeat his question.
359	Rep. Ackerman	Describes the process under the Administrative Procedures Act for a non-contested case and wants to make sure the amendments are not creating an unintended channel.
365	Conley	Responds he is not familiar enough with the uncontested case procedures to answer.
371	Rep. Ackerman	Doesn’t want to delay action but expresses concern in understanding all possible consequences.
375	Chair Garrard	Asks for Rep. Ackerman’s suggestion.
380	Rep. Ackerman	Responds that it may be wise to have counsel review the issue unless there is a more exclusive provision elsewhere in the bill.
385	Chris Crean	Land Use Practitioner. Explains the judicial review process for final plats.

TAPE 37, B

001	Crean	Mentions that the bill does not address judicial review of the planning staff in final plat approvals.
004	Conley	Agrees with Crean but restates his understanding of the question Rep. Ackerman asked and states that he is not clear if they have created the right for an administrative hearing.
011	Rep. Ackerman	Asks what the method of reviewing the subdivision or partition “standing alone”.
018	Conley	Responds that it is unclear if they have created the need for an administrative hearing.
020	Rep. Ackerman	Concludes that it is not a process that leads to administrative decisions that could be appealed elsewhere.
022	Conley	Responds that they are taking it out of the land use process and the Land Use Board of Appeals’ (LUBA) jurisdiction.
024	Rep. Ackerman	States satisfaction with conclusions.
028	Chair Garrard	Asks Rep. Ackerman if he agrees with the corrected wording.
030	Rep. Ackerman	Confirms.
032	Chair Garrard	Asks Smith, Schlack and Crean if they agree to the wording “granting approval or withholding approval”.
035	Smith, Schlack, Crean	Agree.
040	Rep. Greenlick	MOTION: Moves to ADOPT HB 2356-1 amendments dated 3/9/05.
		VOTE: 6-0-1
		AYE: In a roll call vote, all members present vote Aye.
		EXCUSED: 1 - Anderson
	Chair Garrard	The motion CARRIES.

045 Rep. Greenlick **MOTION: Moves to AMEND HB 2356-1 on page 3, in line 26, after "approval," delete "or denial," and on page 3, in line 26, after "(7)," insert "granting approval or withholding".**

046 Rep. P Smith Asks if the first “approval” will remain.

047 Chair Garrard Responds affirmatively and notes it will now become the last word.

VOTE: 6-0-1

AYE: In a roll call vote, all members present vote Aye.

EXCUSED: 1 - Anderson

Chair Garrard The motion CARRIES.

055 Rep. Greenlick **MOTION: Moves HB 2356 with -1 amendments AS AMENDED to the floor with a DO PASS recommendation.**

VOTE: 6-0-1

AYE: In a roll call vote, all members present vote Aye.

EXCUSED: 1 - Anderson

Chair Garrard The motion CARRIES.

REP. ESQUIVEL will lead discussion on the floor.

079 Chair Garrard Closes the work session on HB 2356 and adjourns the meeting at 2:10 p.m.

EXHIBIT SUMMARY

A. HB 2356, -1 Amendments, Rep. Sal Esquivel, 8 pp

B. HB 2356, memorandum and written testimony, Art Schlack, 2 pp