

HOUSE COMMITTEE ON LAND USE

April 13, 2005 Hearing Room 50

1:30 P.M. Tapes 60 - 62

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:

HB 3314 – Public Hearing

HB 3081 – Public Hearing

HB 2705 – Work Session

HB 3135 – 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 60, A

002 Chair Garrard Calls the meeting to order at 1:42 p.m. and opens a public hearing on HB 3314.

HB 3314 – PUBLIC HEARING

004 Sam Litke Committee Administrator. Introduces HB 3314.

Litke Summarizes letter from Michael Carrier, Governor's Natural Resource Policy Director, in opposition to HB 3314 (**EXHIBIT A**).

Charlotte Leman Mayor, Wilsonville. Submits and reads written testimony in opposition to HB 3314 (**EXHIBIT B**).

092 Alex McPhail Coalition to Save the Valley. Notes that even if there will be no action on HB 3314, his comments may be germane to other bills in the future. Discusses the effectiveness of Oregon land use program which allows citizen participation. Notes frustration with aspects of the legislative process.

124 Linda Ludwig League of Oregon Cities. Reports opposition to this type of stringent super-siting bill.

140 Art Schlack Association of Oregon Counties. Expresses opposition to HB 3314 as an advocate for local control and responsibility. Notes his appreciation for the letter from the Governor's office.

Rep. Anderson Comments that while he is favor of local control, especially in regards to annexation, he can see the benefit of the possibility outlined in this bill in an economic emergency. Recalls a situation in the Medford area when a possible firm did not site there.

The following material is submitted for the record without public testimony:

Rob Drake Mayor, City of Beaverton. Submits written testimony in opposition to HB 3314 (**EXHIBIT C**).

199 Chair Garrard Closes the public hearing on HB 3314 and opens the public hearing on HB 3081.

HB 3081 – PUBLIC HEARING

220 Sam Litke Committee Administrator. Introduces HB 3081.

Rep. Patti Smith HD 52. Introduces constituents and outlines their situation which involves their unknowing purchase of an illegally partitioned parcel. Also references future amendments to the bill.

250 Tom Newberg Resident, Sandy. Discusses details of their situation and their inability to do anything with their property.

300 Leslie Newberg Resident, Sandy. Submits binder of information (**EXHIBIT D**) and reads a prepared statement (**Page 1-2, EXHIBIT D**). Asks that the bill is amended such that terminology of “unlawfully created parcels” be added and that “development permits” including “mechanical residential permits” are referred to or some verbage regarding a home that preexisted the permitting process.

TAPE 61, A

024 Chair Garrard Wants to verify the amendments suggested by L. Newberg are in line 11.

Rep. P. Smith Confirms this. Adds that there are amendments coming which will broaden the scope of the bill and expresses concern for this statewide issue.

L. Newberg References proposed changes outlined on Page 3 of (**EXHIBIT D**).

Rep. Greenlick Refers to the section “Other Properties” in her binder (**EXHIBIT D**) and notes a news article on the Kreitz property and asks if their situation has been resolved.

L. Newberg Responds that it has not been resolved to her knowledge.

045 Rep. Greenlick Notes a meeting with the Kreitz’ and their neighbors and expresses his understanding that Multnomah County was going to resolve the issue, but had statutory constraints.

	L. Newberg	References a meeting with Mrs. Kreitz.
	Rep. Ackerman	Assuming that the Newbergs get a development permit, asks if there is any prohibition from the county on selling an unlawfully divided lot.
	L. Newberg	Responds that she does not think the county has the authority to do that explaining why their property has been able to be sold 3 times.
	Rep. Ackerman	Asks if one thinks they need the protection, why would they go get a development permit, convey the property to a third party that doesn't know if was illegally formed and then leave themselves open to being sued and asks if this process shouldn't be settled up front.
	L. Newberg	Responds affirmatively stating that they would like to be a lot of record and do not just want to be able to obtain a permit. Elaborates on details of the their quest for permits and discusses changes to Multnomah code 37.056.
	T. Newberg	Discusses deficiencies in the Oregon land use system and the possibility of hundreds of lots in their situation. Expresses support for intelligent planning.
140	Stefanie Soden	Multnomah County. Introduces Derrick Tokos.
	Derrick Tokos	Principal Planner, Multnomah County Land Use Planning. Submits written testimony raising concerns about HB 3081 and suggested amendments (EXHIBIT E).
	Rep. Greenlick	Asks if he knows if the Kreitz situation has been resolved.
	Tokos	Responds that he can speak to that issue and outlines the details of the situation. Notes that the issue was decided in the 1980's and that they do not have the authority to change the ruling now.
237	Rep. Greenlick	Verifies that their decision was to say if it was legal then, it is legal now.
	Tokos	Responds that they can not revisit the decision now.

	Rep. Greenlick	Verifies that they are legal now.
	Tokos	Responds that they advised the property owners to file an application and go through a land use process. Adds that only one person has gone through the process and that the Kreitz' have not yet.
	Chair Garrard	Asserts that it is either legal or it is not legal.
	Rep. Nolan	Comments that Tokos has already stated he is not an attorney and therefore probably not qualified to give legal opinions.
	Rep. Greenlick	States that it may not be a legal opinion but that he is telling the property owners to file claims. Wants to know what was told to his constituents. Notes the helpful nature of the planning staff and his interest in finding out what happened.
	Tokos	Reviews the determination of his department.
	Rep. Ackerman	Wants to make sure that HB 3081 gives these people remedy. States understanding that the Newbergs got a mechanical permit from the City of Gresham for a woodstove, and notes that the act says that the permit must be issued by the governing body which he assumes is Multnomah County so asks if they have remedy.
296	Tokos	Responds that Gresham acts as an agent under Multnomah County under contract.
	Rep. P. Smith	Raises the point that it was her understanding that a development permit was any permit that was issued, and asks why a mechanical permit would not be considered a development permit.
	Tokos	Explains that they interact with the public on land use matters, and building and mechanical permits do not fall into that category.
	Rep. P. Smith	Disagrees and reports that she was told by Multnomah County that a development permit was any permit issued on any property in Multnomah County. Continues that the issue of what constitutes a development permit needs to be explored.
348	Chair Garrard	Asks who is at fault when an illegal lot, illegal parcel or illegal subdivision is created.

	Tokos	Responds that it is usually the land owner who creates the illegal division, and if they have done so without checking on its legality, it should be their responsibility.
	Chair Garrard	Asks what County Land Use Planning divisions' function is.
	Tokos	Responds that during their evaluation, they check for legality of the property when people want to develop their property.
370	Chair Garrard	Wants to clarify who is at fault when something illegal is done, and notes Tokos' assertion that the property owner is at fault.
	Rep. Greenlick	References a situation when a property owner divided and sold parcels of his property without ever filing with the county.
	Chair Garrard	Clarifies that illegal partitioning can be done without county approval.
	Tokos	Confirms and adds that many illegal land divisions are done without their knowledge in many cases.
	Rep. P. Smith	States this issue should be a part of the larger discussion, but in this particular case, that was a condition of the approval given by Multnomah County.
	Tokos	Responds that the illegal division happened without their knowledge, their staff found the illegal partition, contacted the property owner to provide the remedy and the property owner did not follow through.
395	Rep. Sumner	Asks how a lot of record get on Multnomah tax rolls without being determined legal.
	Tokos	Speculates that assessment offices would relay that they assess property as its used not if it was created legally or not.
412	Art Schlack	Association of Oregon Counties (AOC). Speaks on unlawfully created parcels and explains that Oregon has partition and subdivision regulations elaborating on the details of each.

	Schlack	Continues that one of the major problems in land use planning is determining the legality of parcels as one can create tax lots for the purpose of assessment absent from legality. Attributes many of problems to these ambiguities.
	Chair Garrard	Comments on how surprising the situation is.
046	Schlack	References discussions with Rep. P. Smith, DLCDC and Legal Counsel from Multnomah County and have identified a possible fix and possible amendment to HB 3081 and explains that it would create a 1-lot partition allowing the possibility to create a legal lot out of a parcel that was approved by a local government through a preliminary partition but not recorded.
062	Chair Garrard	Asks if one has an illegal property which is then approved by a government agency, if that now makes the parcel legal.
	Schlack	Asks for clarification.
	Chair Garrard	Restates his hypothetical that if you have an illegal property, but somehow through the process the property is approved by the governing body, asks if that makes the property legal.
	Schlack	Responds that if the county had issued a building permit for a house, there are circumstances where the county would then recognize the lot as a lawfully created parcel. Discusses effects of proposed amendment.
090	Rep. Anderson	Asks if the specific properties discussed could be covered by the 1-lot partition.
	Schlack	Explains that it will be difficult to encompass all the properties due to the widespread nature of the problem.
	Rep. Ackerman	States he is still concerned about the point of subsequent conveyances of illegal lots. Suggests a process which may include a disclaimer on the deed or include the information as part of the selling process.
115	Schlack	Comments that once a one lot partition has been approved, it is a lawfully created parcel and would no longer have negative associations.

	Teresa Gonzalez	Resident, Sandy. Describes the process of legally purchasing her property, permitted remodeling and during a second remodel, being told their property was illegally divided. Reports denied attempts to get a lot of record determined and their taxes appealed. Notes they are waiting for a decision on an appeal hearing. Reiterates their inability to solve their problem.
190	Rep. P. Smith	Asks who issued the permit for her remodel.
	Gonzalez	Responds that it was from Multnomah county.
	Rep. Anderson	Asks how the title company handled this.
	Gonzalez	Responds that they were told by the title company that they do not cover land use. Notes that her seller was under the impression that it was a legal lot.
	Rep. Anderson	Suggests the testimony from the attorneys later could address what title insurance insures.
	Rep. Sumner	Comments that Rep. P. Smith asked the question he had had.
214	Dave Hunnicutt	Oregonians in Action. Relays his support of HB 3081. In reference to the question from Rep. Anderson on title insurance, notes there is an express exclusion in title insurance policies for zoning decisions. Discusses difficulties in holding title insurance companies accountable. Reports that while the focus today has been on Multnomah County, this is a statewide problem. Distinguishes between possible reasons for illegally created parcels. Asserts that either way “screams” for legislative solution. Notes some changes to language of the bill are needed.
280	Harlan Levy	Senior Staff Attorney, Oregon Association of Realtors. Speaks in support of the concept but adds there may be changes necessary to the bill. Describes HB 3081 as a grandfathering bill and asserts need to protect innocent purchasers.
339	Chair Garrard	Discusses surprise at finding everyone addressing the committee was a victim and there is no one party to pin the blame on.
	Levy	Responds that that is exactly the case.

Chair Garrard

Asks for notification when amendments to the bill are ready. Closes the public hearing on HB 3081 and opens a work session on HB 2705.

HB 2705 – WORK SESSION

371 Dave Hunnicutt Oregonians in Action. Reviews history of HB 2705 and the provisions of the -1 amendments (**EXHIBIT G**) and how they address the various concerns raised in the first public hearing.

TAPE 61, B

002 Hunnicutt Asserts the bill makes sense environmentally and with the property owner. Speculates on the concerns from the Department of Land Conservation and Development. Asks that the -1 amendments are adopted and HB 2705 be passed to the floor.

Rep. Nolan Notes that the amendments set a minimum number of properties to participate in community sewer districts and asks if there is a practical or statutory maximum.

Hunnicutt Responds that there is nothing in rules or statutes that would set a maximum but that there is practical maximum and elaborates on the difficult dwelling criteria in resource zones.

100 Rep. Nolan Refers to -1 amendment and notes that the new section 2 requires that cluster dwelling approach an adjacent sewer district before developing their own. Asks if those who want to propose a community sewer district have to accept service from an existing provider if they are willing to offer it, or if it is a discretionary decision.

Hunnicutt Responds that the language is taken directly from the special districts and states that if the district was willing to take in the proposed community, they would have to accept rather than develop their own.

Rep. Ackerman Confirms that this bill is only to apply to cluster dwellings that are preexisting and not clusters built in the future.

Hunnicutt Does not confirm and states that there is nothing that limits the bill to clusters already in existence. Adds that future dwellings would still have to meet all the requirements under existing laws.

Rep. Ackerman	Reads on line 5, and states assumption that the bill only applies to preexisting dwellings which form a cluster, not dwellings sited in the future and asks if he is wrong in this assumption.
Hunnicutt	Responds that one could read bill that way but that was not the intent. Relays that their intent was that it should not matter if they are there already or sited subsequently.
Chair Garrard	Asks Sam Litke if there was ever anyone who spoke in opposition to HB 2705.
Sam Litke	Committee Administrator. Responds that Lane Shetterly from the Department of Land Conservation and Development had voiced some concerns.
Chair Garrard	Verifies that these concerns were addressed.
Litke	Responds that there may still be some debate on whether or not those concerns were adequately addressed.
140	Rep. Anderson MOTION: Moves to ADOPT HB 2705-1 amendments dated 4/12/05.
Rep. Ackerman	Reports he is still concerned that the bill may apply to beyond preexisting dwellings and announces he will vote “no” at this time and give it more thought before the bill reaches the floor.
Rep. Nolan	Remarks that she thinks the -1 amendments improve the bill but not enough and will support the amendments but not the bill.
Rep. P. Smith	Asks why it would matter whether the dwelling was existing or not.
Rep. Ackerman	Responds that preexisiting would limit the scope of the bill and elaborates on possible further consequences. Remarks on his initial reading of the bill and would like the sponsors to clarify their intent rather than letting the court of appeals decide.
Chair Garrard	Recalls Hunnicutt and asks if it is possible to amend the language to alleviate Rep. Ackerman’s concerns.
Hunnicutt	

Responds that he is not opposed to further limiting the scope to existing dwellings and notes that Rep. Ackerman's question was if that was their intent which he responded negatively to.

- Rep. Ackerman States that for his vote, the bill needs to be limited to existing dwellings.
- Chair Garrard Reports Hunnicutt is indicating he is willing to do that.
- Rep. Ackerman Notes that this change will require an amendment.
- Rep. Nolan Adds that this will alleviate many of her concerns as well.
- Rep. Anderson Asks if there is a fear that this would create more development in rural areas.
- Rep. Ackerman Responds affirmatively.
- Rep. Anderson Asks if that wouldn't be limited by zoning law.
- Rep. Ackerman Responds affirmatively.
- Rep. Anderson Asks if that isn't a double negative.
- Rep. Ackerman Responds negatively. Adds that you can site buildings through this provision that might otherwise might not be able to get sewage uses.
- Rep. Anderson Reports that his concern is that it may help alleviate problems when people run into problems with septic tanks and discusses possibilities with new technology.
- Rep. Nolan Adds that this issue substantively changes the scope of the legislation. Relays that if the legislation is aimed at existing dwellings, it would be a mechanism to protect existing ground water from existing discharges and has substantial benefit for the community at large and property owners effected. Adds that if it is extended to support new development it is much broader in scope.
- Rep. Anderson Responds that this is what he is saying. Adds that if there is new development, it would have to go through the existing zoning laws.

Remarks he doesn't think it opens up development, but facilitates what is being developed.

Rep. Nolan Remarks that if development law were settled he would have a stronger point, noting the committee will be engaged in helping to implement new development law.

240 Rep. Greenlick Comments that it does not make sense to him not to allow proper sewer models for houses that already exist and remarks he would like to move that issue forward in a non-controversial way. Suggests moving forward on the issue of the existing problem and allowing the larger issue to be dealt with in a broader context.

Hunnicutt Suggests that an "easy fix" would be to add the word "existing" before "dwellings" in Line 5 of existing bill. Reports that he disagrees from a policy perspective but would willing to accept this concession.

Rep. Anderson Withdraws his motion to adopt -1 amendment

Litke Reports that the rules say that the committee should not adopt conceptual amendments.

300 Hunnicutt States he can bring -2 amendments with the committee's proposed changes.

Chair Garrard Closes the work session on HB 2705 and opens the work session to HB 3135.

HB 3135 – WORK SESSION

Chair Garrard Asks Lisa Arkin to briefly describe the amendments to the bill.

Lisa Arkin Representative of a coalition of residents from Klamath Falls, Coburg and Turner. Comments on public hearing held and amendments brought forth as a result of valid concerns raised by opponents of the bill. Reports on the bill as it currently stands.

Chair Garrard Asks if the -1 (**EXHIBIT H**) and -2 amendments (**EXHIBIT I**) are included in the -3 amendments (**EXHIBIT J**).

Arkin Confirms that they are.

Chair Garrard Confirms that they are focusing on the -3 amendments now.

380 Lisa Arkin Reviews the three existing ways a facility can receive a citing certificate. Discusses the details of the amendments noting differences. Reports the intent of -2 and -3 amendments were to address legitimate concerns of PGE and PacifiCorp involving projects which would cross many local jurisdictions. Notes that she has just received the amendments and they do not seem reflect what she described as the intent of the amendments.

TAPE 62, A

020 Chair Garrard Announces they will take time to look at amendments and redraft them if necessary. Closes the work session on HB 3135. Makes announcements about the upcoming Medford meeting.

Litke Reports details of the meetings.

Chair Garrard Adjourns the meeting at 3:34 p.m.

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EXHIBIT SUMMARY

- A. HB 3314, written testimony, Michael Carrier, 1 p
- B. HB 3314, written testimony, Charlotte Leman, 1 p
- C. HB 3314, written testimony, Rob Drake, 1 p
- D. HB 3081, informational packet and prepared statement, Leslie Newberg, 81 pp
- E. HB 3081, written testimony, Derrick Tokos, 2 pp
- F. HB 2705, fiscal statement, staff, 1 p
- G. HB 2705, -1 amendments, Dave Hunnicutt, 1 p
- H. HB 3135, -1 amendments, Lisa Arkin, 5 pp
- I. HB 3135, -2 amendments, Lisa Arkin, 6 pp
- J. HB 3135, -3 amendments, Lisa Arkin, 6 pp