

HOUSE COMMITTEE ON LAND USE

June 03, 2004 Hearing Room 50

1:30 P.M. Tapes 114 - 116

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:

SB 863 – Public Hearing

SB 413A – Informational Meeting

HB 3120 – 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 114, A

002 Chair Garrard Calls the meeting to order at 1:36 p.m. and opens a public hearing on SB 863.

SB 863 – PUBLIC HEARING

005 Don Schellenberg Oregon Farm Bureau. Introduces the members of the panel. Speaks in support of SB 863 and explains its provisions. Submits written testimony explaining the provisions and issuing support for SB 863A **(EXHIBIT A)**.

039 Dave Vanache Washington County Farm Bureau. Submits written testimony in support of SB 863 **(EXHIBIT B)**.

067 Dave Tonges Tonges Farms, Hillsboro. Submits pictures of the dwellings on their property they hope to replace **(EXHIBIT C)** and explains how SB 863 will benefit them.

083 Rep. Anderson Asks if the purchase of the property was to expand their farm operation or to buy and hold these houses for another time.

Tonges Responds that the houses came with the land.

Rep. Anderson States that if they tear the houses down, they will have lost the value of the house.

Vanache Explains they don't want to lose the value that they already paid for although they may have preferred to buy the land without the houses on it.

104 Rep. P. Smith References Page 3, and verifies that they want the option to rebuild the dwellings as long as they own the property.

Schellenberg Confirms this.

Chair Garrard Closes the public hearing on SB 863 and opens an informational meeting on SB 413A.

SB 413A – INFORMATIONAL MEETING

- | | | |
|-----|--------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 121 | Rep. Gene Whisnant | HD 53. Reports that the committee had formed a work group with Rep. Ackerman and notes parties who are not satisfied with the language. Discusses attempts at resolution of the issue. Defers to Rep. Ackerman. |
| 158 | Rep. Ackerman | Gives background on SB 413 describing the court cases and appeals between private land owners and a public utility. Discusses the possible rerouting of a line and possible continuing resolution outside of legislation. |
| 188 | Chair Garrard | Closes the informational meeting on SB 413 A and opens a work session on HB 3120. |

HB 3120 – WORK SESSION

- | | | |
|-----|----------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 200 | Chair Garrard | Makes announcements and remarks they will not accept amendments today but will on Monday June 6, 2005. Makes introductory comments opening a discussion on HB 3120 and Ballot Measure 37 (2004) (M37). |
| 255 | Sam Litke | Committee Administrator. References Section 4, pages 1-6 of HB 3120 -1 amendments (EXHIBIT D) which would replace the contents of the bill and discusses a large part of the content as coming from SB 1037. |
| 284 | Rep. Greenlick | Discusses the process which resulted in SB 1037 and wonders about the objective of the committee, noting possible directions to take. Asks what criteria they will use to know they have succeeded. |
| | Chair Garrard | Responds that the committee will be focused on fixing known problems with M37 and addressing how to make it better. |
| | Rep. Greenlick | Comments he agrees with the Chair but will not support expanding the scope of M37 in areas that would be destructive to land use planning. Notes support of integrated claims process. |
| 351 | Chair Garrard | Relays there isn't intent to expand. Comments that the major issues of those testifying before the committee were transferability and compensation. Believes SB 1037 was not successful because it denied benefits awarded by M37. |
| | Rep. Greenlick | |

References the meeting held in Medford and discusses those arguing for transferability and the many more who argued for compensation. Asserts they need to focus on compensation.

396 Chair Garrard Discusses difficulty in acting on the compensation issue in the limited time remaining and notes suggestions to set compensation aside until the next session. Asks Rep Nolan for direction in how to move forward in regards to the compensation issue.

TAPE 115, A

003 Rep. Nolan Responds that she can't answer yet and that the committee is still analyzing information from the public hearing. Believes that compensation is not an isolated issue and needs to be looked at in context. Notes the first 3 words of the ballot measure were "government shall compensate" and believes the committee should work to find a compensation mechanism.

018 Rep. Anderson Responds to Rep. Greenlick's comments on the Medford meeting. Addresses concerns that M37 will open up rural lands to be overdeveloped. Estimates impacts of claims and asserts many will be single family dwellings on large parcels of land.

Chair Garrard Asks the committee if it believes the intent of M37 was meant for subdivisions or residential, single family dwellings.

Rep. Greenlick Believes M37 was about fairness. Asserts that M37 aside, if people had the right to build a house on their land at one time, that right should be restored. Highlights those properties who have received huge benefits from land use planning.

085 Rep. Sumner Asserts that while they do not want to expand the scope of M37, they also do not want to restrict the scope. Discusses claimants who wish to use their property and are not asking for compensation, and notes intention to focus his thoughts in this direction.

090 Rep. P. Smith Echoes concern that M37 was about fairness and notes there was a companion bill of SB 100 (1973) that was never enacted. Believes that compensation should be addressed at some time.

106 Rep. Anderson Believes they should limit deliberations to what was in M37.

Rep. Ackerman

Outlines reasons why he believes compensation was not the main focus of M37 although he believes the issue should be addressed. Asserts the compensation piece should be addressed in an interim committee and brings up the issue of how the compensation should be allocated once raised.

152	Rep. Nolan	Raises the issue of previous ballot measures which have demanded action from the legislature and submits this is a similar situation.
	Rep. Ackerman	Reiterates Rep. Nolan's comments and adds that M37 was overwhelmingly passed while a recent poll suggests a majority of Oregonians support land use.
	Rep. Anderson	Asks about damage to land use planning.
	Rep. Ackerman	Outlines possible protections and limits that would mitigate harmful effects.
187	Rep. Greenlick	Raises the issue of determining whether or not zoning within urban growth boundaries is a land use action.
	Rep. Nolan	Discusses implications of M37 in the future.
	Chair Garrard	Opens discussion of HB 3120 with amendments.
	Rep. Greenlick	Suggests the committee look at the ballot title and explanatory statement of M37 (EXHIBIT G) to determine voter intent.
	Rep. Ackerman	Notes multitude of issues and makes suggestions for determining which the committee will act on.
261	Chair Garrard	Asks staff to go through the text of M37 (EXHIBIT F).
288	Litke	Reads and explains Section 1 of M37.
	Rep. Ackerman	Notes he will save his comment.
315	Rep. Anderson	Asks a question about the effective date.
	Litke	Responds.

	Rep. Anderson	Asks a follow-up question on M37 application in the future.
	Rep. Greenlick	Comments on the possible future application.
331	Litke	Reads text of Section 2 of M37.
	Chair Garrard	Notes Section 2 contains the question of whether an assessed valuation is necessary during the claims process.
	Litke	Discusses questions raised in Section 3.
	Rep. Greenlick	Makes comments about implications of the reduction of fair market value as read in Section 2.
	Rep. Ackerman	Points out that on Page 2 of the -1 amendments (EXHIBIT D) adjustments are made for valuations based on current dollars and raises questions about this provision. Notes this is a place where M37 has to be interpreted and filled in. Adds that M37 also applies to real property or any interest therein and raises questions on its application, including its effect on easements.
	Litke	Relays previous testimony from a city who raised the concern of how to deal with easements.

TAPE 114, B

005	Litke	Relates changes in made to Section 3 in Page 2 of the -1 amendments (EXHIBIT D) as expanded to include other safety regulations which would be exempt from M37 claims.
023	Chair Garrard	Asks about possible M37 claims in mudslide areas.
	Litke	Responds that there is uncertainty and comments on legislation in the past on hazard areas.
047	Chair Garrard	Notes this is an expansion of M37 and asks the committee if they feel they should remove things that will alter M37.
	Rep. Greenlick	Comments that they shouldn't have a problem restricting M37 if they expand it.

	Chair Garrard	Asks if they are making it better.
	Rep. Nolan	Asserts that clarifying the process and making it more fair should be their criteria.
	Rep. Anderson	Asks if describing the process is expanding or clarifying M37.
	Rep. Ackerman	Comments that most is clarification. Notes in Section 3 (B) the terminology is “such as” not limiting them from adding to the list.
075	Chair Garrard	Concludes that by adding these things, they are clarifying and therefore should do it.
	Rep. Ackerman	States that the text allows this.
	Litke	Comments that there were additional amendments for protection areas in SB 1037 related to coastal and wetland areas.
	Chair Garrard	Asks the committee if they want to address adding protection areas.
085	Rep. Anderson	Responds that he supports health and safety regulations but does not support specifying certain areas of protection.
	Rep. Greenlick	Describes the attempt to balance placing some restriction on M37 claims while allowing some non M37 claims. Urges caution in expanding language.
	Rep. Anderson	Adds restricting language.
105	Litke	Explains M37 Section 3 (E) and reviews questions raised around the date of ownership and notes the changes made in the -1 amendments on Page 2, Section 1(e).
	Rep. Greenlick	Disagrees with Litke’s interpretation
	Rep. Anderson	Also disagrees.
	Litke	Clarifies his interpretation and refers to section 3.

	Rep. Greenlick	Interprets the language.
	Litke	Describes differing dates in M37 for waivers and compensation.
145	Rep. Greenlick	Asserts that claims can be made on any action that was made after the earliest date the family has owned the property.
	Chair Garrard	Asks Bob Rindy to help clarify the question.
156	Bob Rindy	Department of Land Conservation and Development (DLCD). Reports that his understanding is that the intent was that compensation would be awarded based on the earliest ownership but the waiver would be entitled to the regulation when the current owner bought the property.
177	Rep. Greenlick	Asserts that the language of M37 says if it doesn't relate to any regulation that took place before the very earliest date the family owned it, it applies to any regulation that happened after the early date.
	Rep. Nolan	References the compensation portion in Section 8 of M37 and outlines the difference between the date applied to waivers and compensation.
199	Rep. Greenlick	Continues discussion of Section 3 and their relation to 3(1).
	Litke	Discusses Section 5 on Page 3 of HB 3120-1 and outlines (A) – (C).
	Rep. Ackerman	Asks if they are prior claims or prospective claims.
	Litke	Responds that it does not say but is assumed in the future.
258	Rep. Greenlick	Asks how this relates to (B).
	Litke	Agrees that they seem to be in conflict.
244	Chair Garrard	Notes they are identifying areas of clarification.
	Rep. P. Smith	Suggests that compensation be dealt with separately.

	Rep. Greenlick	Explains the difference between (b) and (B).
255	Sam Litke	Discusses Section 1(C)(8) on transfers.
	Rep. Greenlick	Asks if Section 1(C)(6) clarifies the question of more than one application.
	Chair Garrard	Agrees.
	Rep. Greenlick	Continues point.
	Chair Garrard	Adds that it will also designate the entity involved in the land use decision the entity that will owe compensation.
	Rep. Ackerman	Points out that more than one entity could've enacted a regulation.
	Chair Garrard	Agrees.
	Rep. Greenlick	Comments on this issue related to county and state authority.
	Chair Garrard	Describes this as the separation of powers question.
	Rep. Ackerman	Asks for elaboration.
	Chair Garrard	Discusses a government's ability to waive regulations.
284	Rep. Nolan	Adds a comment on counties waiving state statutes. Continues, raising questions around the cumulative effect of several regulations and determining responsibility among multiple agencies for both compensation and waivers.
	Chair Garrard	Suggests using the regulation enacted first.
	Rep. Nolan	Comments that the issue deserves clarification.
	Rep. Greenlick	Points to section 1(C)(6) and notes that claimants must file multiple claims.

	Chair Garrard	Agrees this is a confusing point.
	Rep. Nolan	Gives a scenario in which one would need to file claims to multiple agencies.
	Chair Garrard	Comments on state rule superseding county regulations.
	Rep. Nolan	Infers from his scenario that the claim would go to the state.
	Chair Garrard	Responds affirmatively.
	Rep. Nolan	Points out that some local regulations were enacted without state mandate.
343	Chair Garrard	Gives an example of a situation which had 3 possible jurisdictions involved.
373	Litke	Discusses Section 1(C)(8), Page 4 dealing with the transferability of waivers, noting that the attorney general's position was that waivers go with the property owner, not the land.
	Rep. Ackerman	Discusses the separation of powers issue and some confusion caused by the term "waiver".
	Litke	Notes the definition of "waive" is located on Page 8.

TAPE 115, B

005	Rep. Greenlick	Comments that Section 1(C)(8) on Page 4 is an expansion of the scope of M37 and if they choose to include this, there should be offsetting contractions.
	Rep. Anderson	Asks about compensation.
	Rep. Greenlick	Discusses the balance of transferability and other provisions in SB 1037.
	Rep. Anderson	Asks what provisions were offsetting allowing transferability.

	Rep. Greenlick	Responds that there were protections for prime farmland and others.
030	Rep. Anderson	Discusses giving local governments an alternative to compensation.
	Rep. Greenlick	Clarifies he was talking about the process of clarifying the measure and notes his reluctance to add provisions on one side without offsetting provisions to balance.
052	Rep. Anderson	Asks if he thinks the courts are more capable of dealing with this issue.
	Rep. Greenlick	Comments on making the decision on a political basis rather than through independent adjudication.
063	Rep. Ackerman	Disagrees and asserts that the ambiguities should be clarified by the legislature. Outlines reasons for allowing transferability.
	Chair Garrard	Adds that testimony heard indicates that transferability was assumed to be a part of M37.
	Rep. Greenlick	Responds that his constituents did not agree.
	Chair Garrard	Asks if M37 passed in his district.
	Rep. Greenlick	Reports that it was narrowly passed. Discusses effect of determining the transferability question in a political setting.
	Chair Garrard	Comments on the 61% of voters who voted for M37 and the issue of transferability.
	Rep. Ackerman	Interjects that the issue of transferability, among others, was not raised in the campaign.
093	Rep. Nolan	Submits that the testimony they have heard testimony from those who have a stake in M37 and not from disinterested voters. Comments on the issue of fairness and the will of the voters.
	Chair Garrard	Discusses what M37 is intended to do and the importance of transferability.

	Rep. Greenlick	Comments on voter interpretation of M37.
	Chair Garrard	Asks about this interpretation.
	Rep. Greenlick	Raises the issue of subdivisions rather than single family dwellings.
	Chair Garrard	Brings up the question of whether the intent of M37 was to allow for subdivisions or residences and asks the committee if that is a question that needs to be clarified.
134	Rep. P. Smith	Comments on the absence of the terms “transferability” and “subdivision”.
	Rep. Greenlick	Clarifies his comments on voter intent.
	Rep. Greenlick	Reiterates that the issue of transferability is more than simply clarifying the measure.
	Chair Garrard	Asks if there is an ambiguity in this issue to begin with.
	Rep. Greenlick	Responds that there is.
	Chair Garrard	States that some don’t feel that there is ambiguity.
	Rep. Greenlick	Responds that if there is no ambiguity than they can leave M37 as written.
158	Rep. Ackerman	Comments on prevailing thought in current real estate law and voter intention. Asserts they have the authority to legislate on these issue.
	Rep. Sumner	Discusses transferability rights and asserts the rights must transfer with the land.
187	Rep. Nolan	Contends that M37 fundamentally changes how rights are vested in real estate and elaborates.
216	Rep. P. Smith	Discusses expectations of purchasers at the time of purchase and how M37 does not change that.

	Rep. Ackerman	Comments on ownership issues and the reasons for restrictions on the types of people that can make claims.
234	Litke	Describes Section 1(C)(9) (Page 4).
244	Litke	Discusses Section 1(C)(10) dealing with compensation.
	Rep. Greenlick	Asks about a wordsmithing change.
	Litke	Responds it was done in Legislative Counsel (LC). Continues discussing (10).
163	Rep. Greenlick	References Page 5, Lines 15 – 17 and comments on transferability.
	Chair Garrard	Notes it is “an” owner not “the” owner.
	Rep. Greenlick	Asks if it would apply to any current owner.
	Chair Garrard	States it would apply to any owner.
	Rep. Greenlick	Gives an example of how this provision would work under his interpretation.
	Chair Garrard	Agrees with Rep. Greenlick’s interpretation.
	Rep. Greenlick	States it would imply non-transferability.
	Chair Garrard	States it could.
	Rep. Ackerman	Asks if there is another definition of owner.
	Litke	Comments on the issue of compensation.
	Rep. Greenlick	Remarks on the original words of M37.
	Rep. Ackerman	Notes that “owner” is defined as “present owner” and gives his interpretation.

	Chair Garrard	Asks where the discussed wording came from.
	Litke	Responds from M37.
	Rep. Greenlick	Clarifies they mean the changed language.
302	Litke	Responds it came from LC.
	Chair Garrard	Suggests they look to see what the original terminology in M37 was.
	Rep. Anderson	Reads “the” owner.
	Rep. Greenlick	Comments on the rights that would be granted to “the” owner.
	Rep. Anderson	Gives a different interpretation, asserting rights from further in the past would be granted.
	Rep. Nolan	Adds if the owner still owns the land.
	Rep. Anderson	States they could transfer the property to someone else as there was no restriction at the time of purchase.
	Rep. Nolan	Gives the example of zoning as a restriction.
	Rep. Anderson	Discusses rights still allowed even if zoning were changed.
	Rep. Nolan	Agrees.
	Chair Garrard	Points to the original definition of “owner” and notes it states the present owner of the property, or any interest therein.
340	Litke	Comments on the movement and alteration of the definitions section.
	Chair Garrard	Remarks on the debate spurred in the interpretation of M37.
	Litke	Points out Section 1(C)(11) on Page 6 of HB 3120-1 and explains the origin of this provision.

	Rep. Anderson	Asks if he is referring to building codes.
	Litke	Responds affirmatively and elaborates.
	Rep. Nolan	Adds electric codes to the list.
	Litke	Agrees and make suggestions.
400	Rep. Sumner	Asks if this also covers issues of buried utilities and house setbacks.
	Litke	Responds affirmatively and further explains county concerns.

TAPE 116, A

005	Chair Garrard	Notes they have identified points to clarify and gives their intention to listen to proposed amendments on Monday June 6, 2005.
	Rep. Anderson	Asks if the committee will hold another public hearing.
	Chair Garrard	Responds they are not planning one at this time.
	Rep. Anderson	Comments on invited testimony and asks when they will speak.
	Chair Garrard	States when they have a piece of legislation to review.
027	Rep. Nolan	Expresses desire to have a public hearing on amendments.
	Chair Garrard	Adjourns the meeting at 3:25 p.m.

EXHIBIT SUMMARY

- A. SB 863, written testimony, Don Schellenberg, 1 p
- B. SB 863, written testimony, pictures and , Dave Vanasche, 7 pp
- C. SB 863, pictures of collage, Dave Tonges, 2 pp

- D. HB 3120, -1 amendments, Staff, 60 pp**
- E. HB 3120, written testimony, Nikki Whitty, 3 pp**
- F. HB 3120, text of Ballot Measure 37 (2004), staff, 2 pp**
- G. HB 3120, ballot title and explanatory statement of Ballot Measure 37 (2004), staff, 2 pp**