

HOUSE COMMITTEE ON LAND USE

June 07, 2005 Hearing Room 50

1:30 P.M. Tapes 119 - 120

MEMBERS PRESENT: Rep. Bill Garrard, Chair

Rep. Gordon Anderson, Vice-Chair

Rep. Robert Ackerman

Rep. Mary Nolan

Rep. Patti Smith

Rep. Mac Sumner

MEMBER EXCUSED: Rep. Mitch Greenlick, Vice-Chair

STAFF PRESENT: Sam Litke, Committee Administrator

Lindsay Luckey, Committee Assistant

MEASURES/ISSUES HEARD:

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 119, A

Chair Garrard Calls the meeting to order at 1:27 p.m. and makes announcements.
Opens a work session on HB 3120.

HB 3120 – WORK SESSION

016 Rep. P. Smith Suggests asking if any audience members would like to speak.

025 Rep. Anderson Raises issues of lands outside urban growth boundaries (UGB) and preserving open spaces while allowing small clusters of developments. Discusses new technologies allowing for waste treatment in rural areas. Frames these issues as part of a larger discussion around land use.

069 Chair Garrard Comments that the issue of UGBs is addressed in the HB 3120-3 amendments (**EXHIBIT A**). Asks Bob Rindy to explain the distinction between lot of record and tract of record.

076 Bob Rindy Department of Land Conservation and Development (DLCD). Defers to Ron Eber.

Ron Eber Farm and Forest Land Specialist, DLCDC. Asks what specifics they would like to hear about.

Chair Garrard Responds the committee would like him to address all aspects of the issue.

Eber Explains the generic difference between “lot of record” and “tract of record”. Notes that lots are created by subdivisions and parcels are created by partitioning.

106 Rep. P. Smith Asks about what common ownership entails and gives her understanding.

Eber Agrees and reviews how the statute talks about contiguous ownership.

Rep. P. Smith Asks a question about how jurisdictions define ownership.

Eber

		Responds he is not aware of any county who has defined ownership more specifically and elaborates.
130	Chair Garrard	Asks if one wanted to contain the growth of M37 claims, this would be better done on a tract rather than by lot of record.
	Eber	Responds that there will be fewer dwellings if done on a tract basis rather than lot by lot basis and explains why.
	Chair Garrard	Asks about recordation of tracts and if a choice exists to have multiple lots or one tract.
148	Eber	Responds that the determination would be made at the time of application.
	Chair Garrard	Asks who awards the designation.
	Eber	Responds it is done at the county level as part of the land use application.
	Rep. Anderson	Verifies that on a lot of record one would allow for one house on each lot and a tract would allow for one house on the tract.
	Eber	Confirms this.
	Rep. Anderson	Verifies that the lots have to be contiguous to be considered a tract.
168	Eber	Confirms this.
	Rep. Anderson	Asks if it must be common ownership or just contiguous.
	Eber	Replies contiguous ownership.
	Chair Garrard	Asks if it is possible to have multiple tracts.
	Eber	Responds affirmatively and adds that if the tracts are contiguous, they become one tract.
17	Rep. Anderson	

Asks for clarification on the issue of having a choice to use a tract of record provision or a M37 application.

- Eber Responds he is not sure because of the variations of HB 3120.
- Rep. Ackerman Points to Section 19 in the -3 amendments.
- Rep. Nolan Defers the question until tomorrow when the proponents of the -3 amendments will be present.
- 198 Rindy Clarifies that when they refer to lot or tract of record, it means “as of a certain date”. Relays that part of the issue is determining what date should apply and the impact on M37 claims.
- 210 Rep. Anderson Asks if it is appropriate to put tract of record into HB 3120 or to handle it as a separate issue.
- Rindy Cannot respond on its appropriateness but comments it has been discussed by the work group.
- Chair Garrard Asks for elaboration on the judicial review portion.
- Rindy Responds that he cannot. Notes it would be generally positive to clarify the issue of judicial review.
- 147 Eber Agrees generally with Rindy. Reports on what the judicial review section elaborates on.
- Chair Garrard Verifies that this section appeared in SB 1037.
- Eber Confirms this.
- 267 Chair Garrard List parties who have spoken and notes difficulty in trying to determine areas of agreement. Asks for Eber’s opinion on what will happen to M37 claims if the attorney general’s opinion that claims are not transferable is not altered by the legislature.
- 290 Eber Explains his understanding of how a M37 waiver would be applied.
- Chair Garrard

Asks what happens to whatever was built with the waiver after the property is sold.

Eber Responds that if something was built with the waiver, it would remain. Notes that jurisdictions vary with how they deal with bringing buildings up to code.

Chair Garrard Verifies that one would never be able to sell it.

Eber Corrects to say that one would be able to sell. Clarifies what happens after land is sold and counters the suggestion that dwellings would be torn down once the lot was sold.

330 Rindy Adds that this really becomes an issue with subdivisions.

Chair Garrard Asks Eber to elaborate on what happens when under M37 as currently written when an owner obtains a claim to allow subdivision and wants to sell to a prospective builder.

Eber Explains the scenario under M37 as currently interpreted by Department of Justice (DOJ).

Chair Garrard Verifies that an individual property owner could build the subdivision themselves.

Eber Confirms this.

400 Rep. Anderson Asks if one could co-venture with someone and retain ownership until the lots were build and sold.

Eber Responds he believes so. Remarks on possible interpretations of "interest therein".

TAPE 120, A

Chair Garrard Verifies that there is no minimum percentage of interest in a partnership one must have to retain interest.

Eber Confirms that there is no limit and comments on currently filed claims and how this effects waiver date.

017	Chair Garrard	Asks if a scenario would currently be allowed.
	Eber	Responds affirmatively.
	Rindy	Discusses ambiguities surrounding the issue of transferability.
025	Chair Garrard	Raises the issue of financial uncertainty in that situation.
	Eber	Speaks about one specific claim.
044	Eber	Comments on confusion in determining ownership.
055	Rep. Anderson	Asks if the panel has comments on putting a time limit on M37 claims.
	Rindy	Comments that the issue is important and elaborates on discussions and possible litigation on the issue.
072	Eber	Continues on possible interpretation of M37 limits.
	Rep. Ackerman	Asserts the statute goes into perpetuity unless there is a statute of ultimate repose and verifies there is no clear limit to when claims end.
	Eber	Agrees and explains how the timeline is pushed out when further regulations are enacted.
	Chair Garrard	Notes there has been a lack of discussion around this issue.
092	Rindy	Speculates there will be more discussion.
	Eber	Remarks on possible deadlines on the Senate side for claims.
	Chair Garrard	Asks if they would address the separation of powers issue.
	Eber	Responds that he is not an expert.
	Chair Garrard	Acknowledges that the panel will not address the issue.

103	Chair Garrard	Asks about minimum lot sizes.
	Eber	Reviews what the Farm Bureau discussed on minimum lot sizes in a prior meeting.
	Rindy	Comments on waiving statutes and the separation of powers issue.
	Chair Garrard	Asks for their opinion on the legislature giving counties the ability to designate their own minimum lot sizes.
131	Rindy	Responds there has not been much discussion on that point.
	Eber	Asserts that the question would be about the standard to base the lot size on. Reviews prior standards.
156	Rep. Ackerman	Asks what the problem with minimum lot sizes is.
	Chair Garrard	Remarks it was brought up by Don Schellenberg yesterday and asks him to come speak.
162	Don Schellenberg	Oregon Farm Bureau. Comments on the reason for separation of powers and its relation to minimum lot sizes. Relates this issue to M37 claims.
	Rep. Ackerman	Asks what standard would be used to determine what minimum lot size would apply.
	Schellenberg	Responds they would not be able to do a M37 claim and describes the tradeoff that would occur.
198	Rep. Ackerman	Asks a question about which lot standards would apply in a given situation.
	Schellenberg	Answers the later date would apply.
216	John Foster	Vice-President, Oregon Small Woodlands Association. Reports his organization did not take a position on M37 once it passed. Discusses SB 676 and template tests.
326	Chair Garrard	

Asks if there is anyone present who would like to address the committee.

- 336 Stephen Kafoury Responds to Rep. Anderson's comments allowing counties to decide their own minimum lot sizes outlining the problem. Advises the committee to work on the technical problems surrounding M37 and urges support for SB 82 which would allow for a comprehensive look at land use planning.
- Chair Garrard Comments on the fiscal impact of SB 82.
- Kafoury Reiterates support.
- Chair Garrard Comments that an interim group should be a part of the plan.
- 405 Rep. Ackerman Wonders about procedure with dealing with amendments and makes suggestions.

TAPE 120, A

- Chair Garrard Agrees with the suggestion and explains how the committee will proceed.
- 018 Rep. Ackerman Asks about a timeline.
- Chair Garrard Speculates they have at least a week.

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

- Lynn Lundquist Oregon Business Association. Submits Oregon Land Use Statewide Survey (**EXHIBIT B**).
- Laurel Hines Submits an article from the Seattle Times on Oregon land use (**EXHIBIT C**).
- Chair Garrard Closes the work session on HB 3120 and adjourns the meeting at 2:25 p.m.

EXHIBIT SUMMARY

- A. **HB 3120, -3 amendments, Staff, 32 pp**
- B. **HB 3120, Oregon Land Use Statewide Survey, Lynn Lundquist, 44 pp**
- C. **HB 3120, written testimony, Laurel Hines, 5 pp**