

HOUSE COMMITTEE ON LAND USE AND REGULATORY FAIRNESS

March 15, 2001
4:00 p.m.

Hearing Room 357
Tapes 5-6

MEMBERS PRESENT: Rep. Max Williams, Chair
Rep. Kurt Schrader, Vice-Chair
Rep. Chris Beck
Rep. Betsy Close
Rep. Kathy Lowe
Rep. Susan Morgan

MEMBER EXCUSED: Rep. Karen Minnis

STAFF PRESENT: Virginia Gustafson Lucker, Counsel
Jane Bodenweiser, Committee Assistant

MEASURE/ISSUES HEARD: Land Use & Regulatory Fairness

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 5, A		
005	Chair Williams	Calls the meeting to order at 4:10 p.m.
009	Gov. John Kitzhaber	Governor, State of Oregon Testifies about land use issues and Measure 7. Says based on conversations with citizens, community leaders, representative of business and labor and environmental organizations, he has concluded the following broad areas to address: fair compensation legislation, no rollback of current environmental laws and land use laws, and means to provide compensation that does not force implicit reductions in public service areas. Comments that this committee faces a difficult task in creating a fair system of compensation and designing new ways of dealing with state and local regulations associated with Measure 7. Offers his full support of this committee.
056	Rep. Close	Asks about the "lot of record" issue, and wonders if there is any room for review.
069	Gov. Kitzhaber	Replies that he feels that through the passage of HB 3661 in 1993, and SB 379 in 1997, substantial steps have been taken to address the issue.
082	Chair Williams	Wonders about the need for identifying some source for compensation and when it should be addressed.

096	Gov. Kitzhaber	Says that he agrees that it must be addressed, and should come after the policy differences have been resolved. Discloses that there are a number of provisions in existing law that provide compensation.
115	Rep. Beck	Discusses measures that have ultimately been declared unconstitutional, and wonders about Measure 7 with regard to the role of this committee.
133	Gov. Kitzhaber	Replies that it is a complicated issue, but one that demands public attention because it is important to the people and it isn't going away.
155	Rep. Lowe	Wonders about the time issue as the measure goes through the courts and asks about a stalling tactic.
169	Gov. Kitzhaber	Says that a stall tactic is not prudent. Says that the issue of fundamental fairness needs to be addressed.
200	Jana Jarvis	Oregon Association of Realtors Says they took no position on Measure 7 because of the wording of the measure and its potential impact on communities. Says that when planning and zoning regulations go too far by creating undue burdens and hardships on landowners, the regulations themselves undermine communities and destabilize markets. Says there are 2 kinds of unfair land use regulations. Proposes a simple constitutional amendment, plus a state variance law.
357	Vice Chair. Schrader	Wonders about the simple constitutional amendment she is referring to that does not have funding or definitions to address this issue.
363	Harlan Levy	Staff Attorney, Oregon Association of Realtors Replies that it might be advisable to amend Article 1, Section 18 of the Oregon Constitution to include the word "damage" to the takings clause, as some other states have done.
380	Rep. Schrader	Inquires if some definition and some other requirements would be needed in the constitution in order for the Realtors' proposal to work.
383	Levy	Replies not necessarily, but it is one possible solution.
393	Vice Chair Schrader	Wonders about the problem of different interpretation.
408	Levy	Replies that is a concern that the legislative body would have to address.
410	Vice Chair Schrader	Asks for examples of other states' amendments.
415	Levy	Says he will be happy to provide that information to the committee.
416	Rep. Morgan	Asks about the variance issue and compensation.
424	Levy	Replies that variance law is used to prevent undue hardship.
445	Rep. Morgan	Asks if compensation might be the granting of a variance.
448	Levy	Says that would be one option, but not necessarily the only option.
TAPE 6, A		
017	Rep. Beck	Asks where to draw the line on determining compensation.
024	Jarvis	Replies there is no easy answer.
038	Rep. Beck	Talks about loss of value to landowners and wonders what the realtors want in terms of a percentage.
044	Jarvis	Says they have not come up with a percentage.
046	Rep. Beck	Asks if it would be fair to say Realtors' concerns tend to be

		inside urban growth boundaries.
059	Jarvis	Replies that they are not specifically interested in those lands within an urban growth boundary.
067	Rep. Close	Asks about the percentage taken by the Oregon Courts in “takings” issues.
073	Levy	Replies that Oregon courts follow the same interpretations as the federal courts. Explains the difference between regulatory and compensatory takings.
080	Rep. Close	Asks if that means in Oregon the percentage has to be 100% for compensatory takings.
081	Levy	Replies, yes.
083	Vice Chair Schrader	Asks if we should limit the specific lands that Measure 7 would address, as other states do.
089	Levy	Replies that relief from excessive land use regulation is what the Realtors’ hope will be addressed.
099	Vice Chair Schrader	Asks about how they would suggest the funding issue be addressed.
106	Jarvis	Replies that there has been much discussion on this issue.
118	Tim Bernasek	Oregon Farm Bureau Submits testimony and testifies on Measure 7 (EXHIBIT A). Discusses the definition of property rights and how it has evolved over time. Expresses the need for individual owners to be made aware of limitations on the use of their property before coming into ownership. Says that when changes in land use are for the “public good”, individuals should be compensated for any loss they may incur.
255	Don Schellenberg	Oregon Farm Bureau Submits testimony and testifies on Measure 7 (EXHIBIT B). Says that the Bureau took a neutral stand on Measure 7 for 3 reasons: they (1) support compensation for regulatory taking; (2) strongly support land use planning as a protection of the agricultural infrastructure; (3) contend that Measure 7 did not provide a method for funding the compensation for regulatory taking.
306	Rep. Close	Asks about the inalienable rights discussed by Thomas Jefferson with regard to property.
326	Bernasek	Replies that Jefferson thought that for American society to best serve democracy, it should be made up of small landowners.
369	Rep. Morgan	Asks for an example of regulatory takings for which there was no compensation given.
378	Schellenberg	Gives examples.
390	Rep. Morgan	Asks if the Farm Bureau would view a variance as compensation.
398	Schellenberg	Replies that they would be concerned about its application to farmland.
416	Vice Chair Schrader	Asks at what point in time is primary zoning determined.
425	Bernasek	Replies that would depend on individual circumstances.
TAPE 5, B		
025	Rep. Lowe	Asks about the statute of limitation and if compensation is due when a landowner has been informed of a use change and did nothing about it for many years.
045	Bernasek	Replies that this would be a case-by-case situation.
062	Rep. Lowe	Regarding compensation - wonders about notice of an intended change being given an owner who in turn fails to act or protest.

071	Bernasek	Says he does not know.
076	Mitch Rohse	American Planning Association Submits testimony and testifies on Measure 7 (EXHIBIT C). Talks about the areas he hopes the committee will address. Expresses his desire that any action by the committee would <u>not</u> be retroactive.
211	Rep. Lowe	Asks if there may be a rippling effect of “takings” claims.
226	Rohse	Says that is exactly correct. Asserts that there are benefits to regulation that are often ignored, and that under Measure 7, that protection may be in jeopardy.
250	Dorothy English	Portland, OR Submits Testimony and testifies in support of Measure 7 (EXHIBIT D). Discusses problems she has had with the county regarding the division of her property in the west hills of Multnomah County.
328	Betty Wiemers	Fall Creek, OR Submits testimony and testifies in support of Measure 7 (EXHIBIT E). Expresses her concerns about the land use regulations that have changed the use of her property making it impossible to divide and sell it.
389	Marguerite Coxe	Oregon City, OR Submits testimony and testifies in support of Measure 7 (EXHIBIT F). Talks about the change made by the Land Conservation and Development Commission (LCDC) to her property making it impossible for her to sell a 10-acre parcel to help her financial situation.
433	Rep. Lowe	Asks Mrs. Coxe to identify her property.
438	Coxe	Replies.
455	Rep. Lowe	Asks if development has surrounded her.
457	Coxe	Replies, yes there are houses all around us.
TAPE 6, B		
027	Paula Krane	President, League of Women Voters of Oregon Submits testimony and testifies in opposition to Measure 7 (EXHIBIT G). Says that the League supports the Speaker’s principles and would include one to address identifying revenue sources required to pay for qualifying claims.
051	Rep. Close	Asks why the League deems the issue of revenue sources necessary.
060	Krane	Contends that it is not necessary to compensate in all cases, but the integrity of our land use process needs to be maintained.
073	Chair Williams	Adjourns the meeting at 5:45 p.m.

Submitted By,

Reviewed By,

Jane Bodenweiser,
Committee Assistant

Virginia Gustafson Lucker,
Counsel

EXHIBIT SUMMARY

- A – Written testimony submitted by Tim Bernasek, dated 3/15/01, 3 pp**
- B – Written testimony submitted by Don Schellenberg, dated 3/15/01, 1 p**
- C – Written testimony submitted by Mitch Rohse, dated 3/15/01, 5 pp**
- D – Written testimony submitted by Dorothy English, dated 3/15/01, 1 p**
- E – Written testimony submitted by Betty Wiemers, dated 3/15/01, 1**
- F – Written testimony submitted by Marguerite Coxe, dated 3/15/01, 1 p**
- G – Written testimony submitted by Paula Krane, dated 3/15/01, 1 p**
- H – Written testimony submitted by Brooks Koenig, 1 p**