

**HOUSE COMMITTEE ON**  
**LAND USE AND REGULATORY FAIRNESS**

March 06, 2001  
3:30 p.m.

Hearing Room 357  
Tapes 1 - 4

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

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

**MEASURE/ISSUES HEARD:**      **Land Use and Regulatory Fairness**

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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.

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<b>TAPE/#</b>	<b>Speaker</b>	<b>Comments</b>
<b>TAPE 1, A</b>		
004	Chair Williams	Calls the meeting to order at 3:30 p.m.
007	Chair Williams	Introduces the Committee Rules ( <b>EXHIBIT A</b> )
<b>010</b>	<b>R. Lowe</b>	<b>MOTION: Moves to ADOPT the proposed Committee Rules dated 3/6/01.</b> <b>VOTE: 7-0-0</b>
<b>014</b>	<b>Chair Williams</b>	<b>Hearing no objection, declares the motion CARRIED.</b>
017	Chair Williams	Reads his opening remarks ( <b>EXHIBIT B</b> ) and the Statement of Principles in Responding to Ballot Measure 7 ( <b>EXHIBIT C</b> ).
070	Vice Chair Schrader	States that this committee is an opportunity to complete the land use system as originally envisioned.
083	Chair Williams	Introduces Ginny Gustafson Lucker as legal counsel for the committee.
094	<b>Hardy Myers</b>	<b>Attorney General</b>  Submits testimony and testifies on issues that the legislature might need to consider in developing legislation to implement Measure 7 as well as issues that may be appropriate to consider if the legislature were to propose a legislative substitute for Measure 7 ( <b>EXHIBIT D</b> ). Issues addressed include claims processing, scope of government regulation, remedy of diminution in value, government action triggering liability, claimants, payment of claims, mandatory regulatory programs, relationship between state and local government, government interest and determination of value for purposes of compensation.

430	Rep. Beck	Asks about Measure 7 definitions in Section E which say “reduction in fair market value shall mean the difference in the fair market value before and after application of the regulation and shall include the net cost the landowner of an affirmative obligation to protect, provide or preserve wild habitat natural areas, wetlands...,” and wonders if this creates a predisposition in terms of the types of regulations Measure 7 was addressing.
464	<b>Stephanie Striffler</b>	<b>Special Counsel to the Attorney General</b> Replies that the language does not limit the kinds of restrictions on use that are covered.
<b>TAPE 2, A</b>		
021	Rep. Beck	Wonders if it is possible to glean some legislative intent from this measure.
030	Attorney General Myers	Replies that it is the obligation of the assembly, in terms of taking any action bearing on the measure, to make the best effort to correctly understand what the measure means.
043	Vice Chair Schrader	Asks if the language relating to continuous ownership in the measure is as straightforward as it seems.
052	Striffler	Replies that the opinion does not address the meaning of the word “owner”.
068	<b>Larry George</b>	<b>Executive Director, Oregonians in Action</b> Submits testimony and testifies in support of Measure 7 ((EXHIBIT E). Talks about the history of measure 7 and says that he believes that the measure will withstand a constitutional challenge. Discusses the fairness issue of the taking of property.
108	<b>Dave Hunnicutt</b>	<b>Director of Legal Affairs, Oregonians in Action</b> Reviews the history of government taking of property and discusses the three types of takings (Exhibit E). Explains that it is sometimes financially impossible for people to file a regulatory takings claim under the current law.
290	George	Continues to discuss the Oregon Legislative history of Measure 7, and points out SB 849 and SJR 25 from the 1973 session addresses land use planning and property rights.
387	Hunnicutt	States that the committee will probably hear comments that the court will decide the outcome of Measure 7 and that this committee doesn’t need to do anything. Reviews a 1910 amendment included in Exhibit E and says that, if challenged, he believes Measure 7 will prevail.
<b>TAPE 1, B</b>		
048	Rep. Beck	Wonders where the language came from in Section E regarding fair market value.

055	Hunnicut	Replies that they did not draft Measure 7, but thinks the language says it shall include, but it is not limited to those regulations.
061	Rep. Beck	Asks about Senate Joint Resolution (SJR) 25 relating to issue of bonds and wonders if this is what they are suggesting for enactment this session.
069	George	Replies that it was put in for historical context only.
083	Rep. Schrader	Asks if SB 849 from the 1973 session is a reasonable template from which to work.
087	George	Replies that he believes that Measure 7 completes what was started by SB 849.
101	Rep. Schrader	Asks if SB 849 should be used as a template.
103	Hunnicut	Replies that they remain open to any ideas that address the combination of existing rights with a compensation mechanism. Comments that it is important that local governments have maximum flexibility.
118	George	Explains SB 849 is probably not where this committee wants to start because it actually goes beyond Measure 7.
131	<b>Charlie Hales</b>	<b>Chair, League of Oregon Cities</b> Submits testimony and testifies about land use issues with regard to Measure 7 ( <b>EXHIBIT F</b> ). Says that he supports a solution to Oregon's property rights issues that is fair, reasonable and practical. Gives examples of how local governments exercise "police power". States that the League welcomes the opportunity to engage in a process with the Governor, the legislature, and other interested parties that will result in a fair and positive resolution.
280	<b>Steve Bryant</b>	<b>Albany City Manager</b> Talks about some of the issues he has grappled with in his experience as a city planner dealing with property rights. Talks about the need for ways to fund the implementation of Measure 7 without bankrupting local government.
<b>TAPE 2, B</b>		
045	Rep. Close	Wonders where the line is drawn between a safety issue and a political agenda.
060	Hales	Replies that land use decisions are governed by rules, not by the whims of interest groups. Says that the safety boundary issue is murky.
108	<b>Art Slack</b>	<b>Association of Oregon Counties</b> Submits testimony and testifies that the Association proposes to address voters' concerns by adopting a set of inter-related principles for future action ( <b>EXHIBIT G</b> ). States that the Association recognizes that a substantial catalyst to the passage of Measure 7 may have been regulatory relief not just expanded compensation. Recognizes that fairness in the regulatory system for the property owners and to our communities, as a whole is essential.
257	<b>Steve Pfeiffer</b>	<b>Chairman, Land Conservation &amp; Development Commission</b> Applauds the committee for its efforts in this difficult task and offers his Commission's help. Says that he sees the goal as one that will achieve some form of balance in the regulatory system as applied to individual properties in particular. Urges the

committee to look for remedies to resolve those balance questions on a site-specific basis. Talks about what would happen if regulatory regulations were lost. Expresses concern about funding.

455 **John Chandler**

**Oregon Home Builders Association**

States that they did not get involved with Measure 7, not because they didn't think the issue was important, but because of the difficult language used. Says that since passage of Measure 7 his association has been involved extensively trying to keep faith with what the voters want, make some corrections to the land use system, and do so in such a way that doesn't bankrupt the state or destroy the land use planning system.

**TAPE 3, A**  
060

**Jim Mark**

**CEO, Melvin Mark Properties, Portland**

Says the certainty of the land use laws is important to the metropolitan area of Portland. States that he did not support the passage of Measure 7 because of the language problems he saw in the process.

086 Chandler

Expresses his concern about "when government goes too far." States that there should be a process different from the one now, including a clean line of demarcation between state and local, easy to administer, focused in its application, and focused on the intent of making land use systems work.

129 Rep. Lowe

Asks about Mr. Chandler's statement "being true to the expectations of our property owners when they purchase the property" and wonders if that means compensation should depend on the intended use of the property when purchased.

145 Chandler

Replies that he intended to be more general in nature with that remark and states that the system doesn't work well if the zoning, local regulation, etc. isn't applied.

162 Mark

Talks about the frustration of having a myriad of regulations when purchasing property, then having the rules change, or one more added in the process. Says what happens is that it erodes the value or completely stops the project.

173 Rep. Lowe  
189 Chandler

Asks about property use under existing land use law.

Replies that there is a fundamental difference between purchase of land with an intended use, and owning property for a number of years and changing your mind about what you want to do with it.

200 Rep. Beck

States that he would look to Oregon Home Builders to advise where to draw the line on continuum.

252 **Randy Tucker**

**1000 Friends of Oregon**

Submits testimony and addresses the views of 1000 Friends with regard to Measure 7 (**EXHIBIT H**). Says that what the voters meant by passing Measure 7 is as unclear as the measure itself. States that Measure 7 does not deal with Oregon's nationally admired land use planning program. Says that 1000 Friends has joined in the creation of the Oregon Community Protection Coalition (OCPC) to respond to the passage of Measure 7, and believes the response needs to focus broadly on the issue of fairness.

**TAPE 4, A**  
014

**Jacquie Bushong**

**Crook County, Oregon**

		Submits testimony ( <b>EXHIBIT I</b> ), but does not testify.
023	<b>Ray Shumway</b>	<b>Powell Butte, Crook County, Oregon</b> Submits testimony and testifies in support of Measure 7 ( <b>EXHIBIT J</b> ). Explains his personal experience with land he purchased for investment that he cannot sell because of zoning.
094	<b>Marvin Ayres</b>	<b>Tarabon, Dechutes County, Oregon</b> Testifies in support of Measure 7. Tells his personal experience purchasing investment property and the frustrations of his land being use-restricted to the point that he cannot sell it. States that he does not expect compensation from the State, but he does expect to be able to use his 7.2 acres of land as he sees fit.
166	Rep. Beck	Asks if 1300 acres in Powell Butte is the only property Mr. Shumway has owned.
170	Shumway	Replies, no.
180	Rep. Beck	Asks how many acres have been converted to home sites.
183	Shumway	Replies just one.
207	Rep. Beck	Asks Mr. Ayres what he paid for his property in 1962.
211	Ayres	Replies \$14,500.
214	Rep. Beck	Asks how much he is selling it for.
216	Ayres	Replies that he is asking \$250,000, but doesn't know if he'll get it.
235	Rep. Lowe	Asks about the zoning on Mr. Shumway's property he bought for investment.
238	Shumway	Replies that it was not zoned.
261	<b>Trudy Margules</b>	<b>Salem, Oregon</b> Testifies in opposition to Measure 7. Explains that she wants tax money spent for things other than property rebates, such as bridge repairs, roads, libraries, services to people, home health, and medical care.
290	<b>Clif Kenagy</b>	Submits testimony and testifies in favor of strengthening our land use laws ( <b>EXHIBIT K</b> ).
330	<b>C. Kinley</b>	<b>Linn County, Oregon</b> Testifies in support of Measure 7. Talks about the land they purchased that was rezoned after the purchase, prohibiting them from living on the land. Feels that they are left with virtually nothing of value.
386	<b>Ed Cox</b>	<b>Portland, Oregon</b> Submits testimony and testifies that he is bitter about Oregon's unfair land use laws ( <b>EXHIBIT L</b> ). Says that he has been prohibited from building a home on land that he bought in good faith, and located in a housing neighborhood. Says the justification used was that it is for the "protection of wildlife and preservation of the environment".
<b>TAPE 3, B</b>		
032	<b>Janet Long</b>	<b>Salem, Oregon</b> Submits testimony and testifies in support of Measure 7 ( <b>EXHIBIT M</b> ). Says that property they purchased for retirement has been rezoned so that they cannot use it to build a home, or sell it for that purpose.
061	<b>Kathleen Mulqueeney</b>	<b>Beaverton, Oregon</b> Submits testimony and testifies in support of Measure 7

100	<b>Lee Archibald</b>	<p><b>(EXHIBIT N)</b>. Says that the measure is needed to provide protection for private property owners and to give balance between regulations and property rights.</p> <p><b>Albany, Oregon</b></p> <p>Submits testimony and testifies in support of Measure 7</p> <p><b>(EXHIBIT O)</b>. Relates his personal experience with zoning changes made to his property over several years without his knowledge. Asks for solutions to the unjust land use laws.</p>
156	<b>Leonard A. Rydell</b>	<p><b>Newberg, Oregon</b></p> <p>Submits testimony and testifies in support of Measure 7</p> <p><b>(EXHIBIT P)</b>. Says that Measure 7 passed because too many people were affected by unfair regulation taking away their rights. Stresses that fairness does not enter into the decision-making process of the Oregon Attorney General’s office.</p>
240	Chair Williams	<p>Thanks the witnesses, apologizes to those who did not get to testify and asks them to return to the next meeting. Adjourns the meeting at 6:30 p.m.</p>

Submitted By,

Reviewed By,

Jane Bodenweiser,  
Committee Assistant

Virginia Gustafson Lucker  
Counsel

**EXHIBIT SUMMARY**

- A – Proposed House Committee Rules, submitted by staff, dated 3/6/01, 1 p**
- B – Opening Remarks, submitted by Rep. Max Williams, dated 3/6/01, 2 pp**
- C – Statement of Principles, supplied by Speaker of the House, Rep. Mark Simmons, Submitted by staff, 2 pp**
- D – Written testimony submitted by Hardy Myers, Attorney General, dated 3/6/01, 61 pp**
- E – Written testimony submitted by David Hunnicutt and Larry George, dated 3/6/01, 33 pp**
- F – Written testimony submitted by Charlie Hales, dated 3/6/01, 4 pp**
- G – Written testimony submitted by Art Slack, dated 3/1/01, 2 pp**

**H – Written testimony submitted by Randy Tucker, dated 3/6/01, 3pp**  
**I – Written testimony submitted by Jacquie Bushong, 2 pp**  
**J – Written testimony submitted by Ray Shumway, 2 pp**  
**K – Written testimony submitted by Clif Kenagy, dated 3/6/01, 2 pp**  
**L – Written testimony submitted by Ed Cox, dated 3/6/01, 1 p**  
**M – Written testimony submitted by Janet Long, dated 3/6/01, 1 p**  
**N – Written testimony submitted by Kathleen Mulqueeney, 1 p**  
**O – Written testimony submitted by Lee Archibald, dated 3/6/01, 1 p**  
**P – Written testimony submitted by Leonard Rydell, dated 3/6/01, 2 pp**  
**Q – Written testimony submitted by John Shafer, 2 pp**