

HOUSE COMMITTEE ON LAND USE AND REGULATORY FAIRNESS

June 07, 2001
1:00 p.m.

Hearing Room 357
Tapes 25 - 27

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: **HB 3998 Public Hearing**

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.

<u>TAPE/#</u>	<u>Speaker</u>	<u>Comments</u>
TAPE 25, A		
004	Chair Williams	Calls the meeting to order 1:20 p.m. and opens a public hearing on HB 3998.
<u>HB 3998 PUBLIC HEARING</u>		
028	Rep. Morgan	Introduces the -2 amendments to HB 3998. Gives a sectional analysis of the amendments (EXHIBIT A).
096	Chair Williams	Referring to page 3 line 24 through 30 asks about the limitation to dividing property.
101	Rep. Morgan	Explains the limitation as five acres or six parcels.
118	Vice Chair Schrader	Asks for further explanation of dividing property.
129	Rep. Morgan	Replies that further discussion is needed on this subject.
149	Vice Chair Schrader	Discusses "tract" versus "parcel" and asks if there is a particular reason to use one over the other.
160	Rep. Morgan	Responds that a tract is defined as a platted sub-division that could introduce an element of confusion.
170	Vice Chair Schrader	Expresses concern about the bill going beyond compensation issues to include building issues.
189	Rep. Morgan	Believes that Ballot Measure 7 refers to building as well as compensation.
238	Governor John A. Kitzhaber, M.D.	Governor, State of Oregon Says the framework of his original principals is still the best way to respond to the issues raised by Ballot Measure 7. Supports the establishment of a fund to compensate those who cannot build a home on their property due to the decision to preserve our farm and forestlands. Asks that the committee continue its work.
284	Vice Chair Schrader	Asks for clarification of the framework he is referring to.

285	Gov. Kitzhaber	Replies that he is referring to the general principals as outlined at a previous meeting of this committee.
292	Rep. Beck	Asks about what date would be appropriate for an election if the committee is successful in putting something back on the ballot.
299	Gov. Kitzhaber	Replies that a general election would probably be most appropriate.
304	Vice Chair Schrader	Asks about his interpretation of compensation.
321	Gov. Kitzhaber	Says the committee needs to make that determination, but he would not support a waiver as compensation.
352	Rep. Lowe	Asks if it is possible to redefine “takings” compensation.
369	Gov. Kitzhaber	Says politically it would be difficult to use the existing judicial process. Discusses the prospective and retrospective aspect of this legislation.
400	Rep. Morgan	Asks at what level of bureaucracy this issue should be administered.
413	Gov. Kitzhaber	Replies that retrospectively it should be administered at the state level, and prospectively there is more latitude.
443	Rep. Morgan	Asks why the retrospective aspect should be handled at the state level.
449	Gov. Kitzhaber	Replies that it should be based on the statewide land use laws.
TAPE 26, A 036	Rep. Close	Introduces the –6 amendments and gives a sectional analysis of the amendments (EXHIBIT B).
075	Chair Williams	Asks about section 2 page 2, beginning on line 22 of the amendments.
089	Harlan Levy	Oregon Association of Realtors Explains the criteria described in the amendments and the investment-backed expectations.
124	Chair Williams	Reads line 15, page 2 and asks about the language needed in order for local government to make a determination about whether something is necessary to insure a fair and just system.
139	Jana Jarvis	Oregon Association of Realtors Replies that a determination would be made on a case-by-case basis.
163	Vice Chair Schrader	Asks about reference made to a Supreme Court Case.
165	Levy	Cites the <i>Lucas v. South Carolina Coastal Commission</i> case.

176	Vice Chair Schrader	Asks if the variance modification refers to use or something else.
180	Levy	Replies that the variance is to the criteria that results in undue hardship.
202	Vice Chair Schrader	Asks if businesses are defined as owners.
210	Levy	Replies that a business entity could be a current owner under this definition.
216	Vice Chair Schrader	Asks if there would be an objection to not including large timber companies as current owners for the purpose of Measure 7 compensation.
227	Levy	Replies that he does not have an answer at this time.
229	Rep. Lowe	Asks about out-of-state versus in-state owners.
243	Levy	Replies that it would be unconstitutional to differentiate.
258	Rep. Beck	Asks about the purchase of property with a zone restriction already in place.
268	Levy	Replies that the intention of this legislation is to get at someone's reasonable investment-backed expectation.
292	Chair Williams	Asks how the court would determine what someone's reasonable investment-backed expectation would be.
311	Levy	Replies that the court would look at the evidence.
323	Jarvis	Explains that the bill does not deal with speculation.
348	Rep. Lowe	Asks if easements and restrictions purchased by the government should run with the land.
361	Levy	Explains redressing a past wrong by the government.
391	Rep. Lowe	Asks what harm would be done by filing easements and restrictions in the deed.
403	Levy	Explains that it could make property unmarketable.
TAPE 25, B		
010	Vice Chair Schrader	Asks about the Endangered Species Act.
017	Levy	Replies that is an optional program.
031	Chair Williams	Asks about a timeline for the retroactive portion of this legislation.
046	Levy	Replies that the statute of limitation deals with the proactive piece.
055	Chair Williams	Asks if it is intended that someone who is currently subject to a retroactive application would have a limited period of time to seek compensation.
058	Levy	Replies that is something to be considered.
081	Vice Chair Schrader	Asks for clarification of section 5, page 5 of the -6 amendments.
089	Levy	Explains what this case-by-case analysis might be.

126	Chair Williams	Introduces the draft constitutional piece LC 4258-1 and gives a sectional analysis (EXHIBIT C). Asks for discussion.
199	Rep. Lowe	Asks about the constitutional debt limitation.
207	John Phillips	Department of Revenue Explains that Section 11b of Article 11 of the Constitution is Measure 5, and 11 is Measure 50.
249	Chair Williams	Recesses the meeting at 2:10 p.m.
255	Chair Williams	Reconvenes the meeting at 2:40 p.m.
264	Dr. Matthew Gruber	Salem, OR Testifies with regard to land use planning. Contends that the courts should be involved as little as possible. Says that variances are more acceptable in many counties than compensation.
TAPE 26, B		
067	Rep. Morgan	Asks for his comments on compensation and how intent of use would be established.
087	Dr. Gruber	Replies with examples of property tax statements and property sales.
123	Susan Dutton	Canby, Oregon Testifies that she voted for Measure 7 and does not want compensation, but wants to be able to build a home on the 5-acre parcel she and her husband purchased in 1985.
160	Rep. Beck	Asks what the regulation is that is preventing the building of a home.
164	Dutton	Says it is under the \$80,000 rule.
172	Rep. Beck	Asks if the property could be sold for the currently assessed value of \$122,000.
185	Dutton	Replies, no.
197	Rep. Lowe	Asks why they didn't build in 1985 when they had the permit to build.
200	Dutton	Says they were waiting for retirement.
207	Rep. Lowe	Asks when the zoning changed.
209	Dutton	Says it was not until March of this year, 2001.
300	David Hunnicutt	Oregonian in Action Testifies in support of the -2 and -6 amendments. Says that the two amendments could be melded together. Talks about the purchase of stock versus real property as investments.
TAPE 27, A		
035	Jeremy Wright	Director, Oregon Community Protection Coalition Testifies with regard to increases of property value as opposed to decreases due to government regulation.
050	Rep. Lowe	Adjourns the meeting at 3:20 p.m.

Submitted By,

Reviewed By,

Jane Bodenweiser,
Committee Assistant

Virginia Gustafson Lucker,
Counsel

EXHIBIT SUMMARY

A – HB 3998, -2 amendments submitted by staff, dated 5/31/01, 5 pp

**B – HB 3998, -6 amendments submitted by Rep. Betsy Close, House District 36, dated
6/6/01, 3 pp**

C – LC 4258-1, draft submitted by staff, dated 6/4/01, 2 pp