

HOUSE COMMITTEE ON TRANSPORTATION

May 19, 1999 Hearing Room D

8:00 a.m. Tapes 104 - 105

MEMBERS PRESENT: Rep. Bob Montgomery, Chair

Rep. Mike Lehman, Vice-Chair

Rep. Richard Devlin

Rep. Jim Hill

Rep. Jeff Kropf

Rep. Jerry Krummel

Rep. Jane Lokan

Rep. Jackie Taylor

Rep. Vicki Walker

Rep. Larry Wells

STAFF PRESENT: Janet Adkins, Administrator

Brad Daniels, Administrative Support

MEASURE/ISSUES HEARD: SB 86 Public Hearing

SB 849 Public Hearing

SB 773A 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.

TAPE/#	Speaker	Comments
TAPE 104, A		

004	Chair Montgomery	Opens the meeting at 8:10 a.m. Opens the public hearing on SB 86.
<u>SB 86 PUBLIC HEARING</u>		
010	Janet Adkins	Introduces the SB 86 ñ2 amendments (EXHIBIT A).
026	Sen. Veral Tarno	District 24. Supports SB 86. Mentions access problems that occurred in Coos Bay and Coquille. Underlines the seriousness of the access problem.
051	Rep. Lehman	States that a process is needed to resolve access disputes, which does not currently exist.
075	Adkins	Distributes an explanation of the ñ2 amendments (EXHIBIT B).
080	Grace Crunican	Director, Oregon Department of Transportation (ODOT). Notes the ubiquity of the access management problem. Stresses that safety in the context of development is ODOT's primary goal, not attacking individual property owners (EXHIBIT C).
103	Craig Greenleaf	Director, Transportation Development Division. Defines access management and the areas it involves. Indicates that the attempt to manage access is connected to safety and mobility. Examines the history of the permit and points-of-control requirements (EXHIBIT D).
152	Greenleaf	Discusses reservations of access, which do not guarantee that the permit will be issued.
164	Sen. Neil Bryant	District 27. Explains his involvement in condemnation and access issues as a lawyer. Outlines an example of a client who had a deeded access that was denied by ODOT on the basis of other reasonable access. Describes the access situation involving Rolling Hills Church and the legislative response, SB 849.
220	Sen. Bryant	States that he does not want property owners to be compensated if there is no loss of value.
236	Chair Montgomery	Asks if access should be a condition of use. Asks if an owner does not necessarily deserve unlimited access if the use of the property changes
240	Sen. Bryant	Replies yes. Adds that other considerations, like zone changes, may be involved. Cites another example of ODOT's unreasonable denial of access.
272	Rep. Lehman	Notes that ODOT has also made reasonable decisions on access.
282	Rep. Hill	Asks about the ñ2 amendments.

289	Sen. Bryant	Replies that the ñ2 amendments are still being worked, and additional changes can be made in the Senate in conference committee.
300	Rep. Hill	Asks if the intention is to require ODOT to compensate property owners whose access goes from unlimited to limited.
328	Sen. Bryant	Replies that the ñ2 amendments address different situations: closing an approach road or denying an application. Adds that changes in existing use need to be discussed in the context of the property value.
357	Rep. Hill	Asks if the intent of the bill and the ñ2 amendments is to allow possible compensation in situations where previously unlimited access is restricted.
363	Sen. Bryant	Replies yes. Reiterates that the ñ2 amendments address the issue of closing a road or denying a permit. Expresses uncertainty about the effect of the ñ2 amendments in the situations cited by Rep. Hill.
372	Greenleaf	States that the permit may need to be revised or rewritten.
388	Sen. Bryant	Comments that the specificity of the permit is also an issue.
400	Greenleaf	Describes the number of permits issued and denied per year. Notes that access management questions arise out of land use proceedings.
TAPE 105, A		
007	Greenleaf	Discusses ODOT's current attempts to address the access management issue, including integration with the Highway Plan, specification of administrative rules, establishment of an internal review and pursuit of further staff to deal with access management.
038	Rep. Lehman	Relates a hypothetical example of an access question involving an owner whose property abuts a state highway and who has a deed with specified access points. Asks if this owner would be able to build a driveway to the state highway at a deeded access point.
044	Greenleaf	Replies that the owner would still have to secure a permit to answer engineering and other questions.
052	Chair Montgomery	Asks if answering these questions is included in the safety portion of ODOT's budget.
054	Greenleaf	Replies that it is in the safety portion of the budget.
058	Rep. Lehman	Asks if there is no other access to the hypothetical property would ODOT be

		required to give the owner a permit to access the state highway.
060	Greenleaf	Replies that there are two possibilities, issue a permit or compensate the owner for the entire value of the parcel.
065	Rep. Lehman	Asks if ODOT can deny access based on the presence of other reasonable access.
067	Greenleaf	Replies yes.
069	Rep. Krummel	Asks if the proximity of the alternative access point to the state highway is another issue.
075	Greenleaf	Replies yes. Adds that, if the result is the denial of all reasonable access, then ODOT either must issue a permit or provide compensation.
080	Rep. Krummel	Asks how close to the state highway ODOT will allow access.
083	Greenleaf	Replies that they have differentiated statewide from district-level highways.
088	Crunican	Replies that it depends on the function and use of the highway.
093	Rep. Krummel	Asks about ODOT's treatment of unrestricted deeded access or easement.
100	Greenleaf	Reviews the definition of unrestricted and the past specificity of permit language with respect to use. Notes that unrestricted was intended to mean with respect to use, not turn movements or other traffic control questions.
119	Rep. Lehman	Asks if a person with a deeded access that is subsequently denied has any appeals process to challenge the decision and if the amendments to SB 86 seek to rectify this problem.
127	Greenleaf	Replies yes.
129	Rep. Lehman	Asks if litigation is the last resort for property owners.
132	Greenleaf	Replies yes.
133	Chair Montgomery	Asks about the definition of unrestricted.
137	Greenleaf	Replies that the term is used by ODOT with respect to the land use of the property.

139	Rep. Lokan	Cites a company in Sherwood that has reservations of access and problems with this issue. Asks if the amendment will help people with these difficulties.
152	Greenleaf	Replies that the bill is intended to ameliorate these problems.
167	Rep. Lehman	Acknowledges that SB 86 and SB 773A work together. Describes the current problem, which is not the denial of access, but the lack of an appeals process when property owners are told to use an alternate access point. States that ODOT is constrained by the Highway Trust Fund in the use of money to compensate owners for devaluation of property. Explains the contested claims process established by the ñ2 amendments and the goal of resolving claims without litigation.
205	Rep. Walker	Cites line 15 of the ñ2 amendments. Asks about the switch from "may" to "shall" concerning the Director's power.
211	Rep. Lehman	Replies that some issues will not benefit from mediation. Adds that the intent is to address the cases where mediation is the best available option.
218	Rep. Walker	Asks who pays for the mediation.
220	Rep. Lehman	Replies that ODOT pays.
224	Melanie Mansell	Attorney. Describes an access problem faced by one of her clients, who has been left with unreasonable access to his business.
233	Rep. Lehman	Asks if the owner has deeded access.
234	Mansell	Replies yes. Continues to explain her client's situation. Underlines the problem of the alternate access, the location of the side road, and the negative impact on his business. Describes ODOT's proposed, but inadequate, solution to the problem.
284	Mansell	Underscores that her client has no remedy for compensation under current law.
296	Rep. Lehman	Asks why ODOT is changing the access to the highway.
302	Mansell	Concedes that ODOT has a legitimate safety interest in changing the access.
313	John Liljegren	Westwood Development Corporation. Stresses that ODOT's deeds should mean what they say. Cites page 2 of EXHIBIT E and the language of the original deed. Criticizes ODOT's actions and the implication of ambiguity, stressing the need for ODOT to honor deeds that it writes (EXHIBIT E).
393	Liljegren	Underlines that "unrestricted" should mean unrestricted, especially as used in a

		deed that addresses access. Notes that the term does not apply to land use, which is a zoning question, but access.
TAPE 104, B		
009	Rep. Taylor	States that the language of the deed did limit access for her.
015	Liljegren	Replies that the deed addresses access, and the purpose of the access is to allow turning movements. Acknowledges that ambiguity does exist. Cites page 3 of EXHIBIT E and further problems with deeded access.
040	Tim Ramis	Attorney. Indicates that he is not testifying on behalf of any particular client. Stresses that the ñ2 amendments would be a disaster for property owners. Explains that the flaw with the ñ2 amendments is that no right is established, nullifying the effectiveness of an appeals procedure. States that the original SB 86 would establish a right for property owners and return ODOT to the guiding compensation policies from the 1950s to the early 1990s. Underlines that SB 86 will not result in millions of dollars in administrative costs; cites past experience with two equal parties reaching a negotiated solution.
090	Ramis	Refers to an example of a person with deeded access and the successful negotiated solution.
104	Liljegren	Stresses that the legislature needs to define access as a property right, through the original bill, then look to establishing a procedure through the ñ2 amendments.
124	Lynn Peterson	1000 Friends of Oregon. States that they opposed the original bill and have concerns about the ñ2 amendments. Reviews changes proposed by the Access Management Committee. Cites Section 2, line 14 and questions how the value of property will be measured. Asks about the fiscal impact of the number of additional applications.
161	Chair Montgomery	Closes the public hearing on SB 86. Emphasizes that something needs to be done and a compromise needs to be reached. Opens the public hearing on SB 773A.
<u>SB 773A PUBLIC HEARING</u>		
180	Arthur Schlack	Association of Oregon Counties (AOC). Supports SB 773A and directing ODOT to adopt administrative rules related to access management. Supports enabling a local government to issue access permits on regional and district highways. Expresses no objection to the ñ9 amendments (EXHIBITS F & G).
217	David Barenberg	League of Oregon Cities. Agrees with Schlack. States that they have no problems with the ñ9 amendments.

233	Chair Montgomery	Asks who proposed the ñ9 amendments.
234	Adkins	Replies that the ñ9 amendments are from ODOT.
239	Ramis	States that he is not here on behalf of any particular client. Supports SB 773A but not the ñ9 amendments. Discusses the problem with land management that the bill is trying to address and the disconnect that is occurring between ODOT and developers. Describes the bill, its criteria for a rulemaking process and the call for ODOT to follow similar procedures as local governments.
295	Ramis	Discusses the ñ9 amendments and his reason for opposing them.
314	Peterson	Supports the ñ9 amendments as a way to address concerns about businesses' reliance on vehicle trips and the impact on safety. Cites Section 3 (3). Expresses concern about considering past uses of property. Suggests that this language should be eliminated.
353	Crunican	Reviews current problems within ODOT related to access management: lack of adequate employee training, an unclear appeals process and the absolute nature of the law. Supports the ñ9 amendments.
395	Rep. Lokan	Refers to the access problems of stakeholders in her community. Cites page 2, line 15 of the bill and asks about the decision-making power of ODOT.
409	Greenleaf	Replies that ODOT is attempting to clarify its decision-making process. States that the intent of the language is to create a clear appeals opportunity for the applicant without enlarging the appeals process to an unreasonable degree (EXHIBIT H).
TAPE 105, B		
010	Rep. Lokan	Asks if there is any public hearing opportunity for stakeholders in her area.
020	Crunican	Replies that the bill requires ODOT to seek participation from everyone in the process while not increasing the legal standing of the participants.
032	Chair Montgomery	Closes the public hearing on SB 773A. Opens the public hearing on SB 849.
<u>SB 849 PUBLIC HEARING</u>		
039	Adkins	Explains SB 849, which establishes rights to utility or service roads that serve parcels when a portion of the parcel has been acquired by ODOT.
050	Bill Colton	Pastor, Rolling Hills Community Church. Discusses the location and history of the purchase of Tax Lot 900, the planned use of a service road to connect to

		Stafford Road and the prior court judgment granting unrestricted access. Notes that ODOT's current position relies on a sentence in an Attorney General's opinion: "The term 'unrestricted access' merely reserves a right to apply for a permit from ODOT" (EXHIBIT I).
108	Wendie Kellington	Reviews the history of the construction of the service road and the circuit court decision. States that the issue is not about access management, but about property rights. Cites a decision by a senior person at ODOT that there was not a restriction on access. Refers to the Attorney General's opinion. Underlines that there is no alternative access to Tax Lot 900 (EXHIBIT J).
156	Rep. Lehman	Asks if ODOT has entered into discussions concerning compensation.
161	Kellington	Replies no. Stresses that SB 849 is necessary to clarify a narrow problem. States that ODOT should not, and can not, imply a restriction years after a court judgement has defined access as unrestricted.
193	Crunican	Describes the location of the property and the service road (EXHIBIT K).
220	Chair Montgomery	Asks how the property was zoned when I-205 was built.
223	Greenleaf	Replies that it was farmland.
226	Chair Montgomery	Asks if the expected use of the property would have been for farms.
228	Greenleaf	Replies yes.
230	Crunican	Cites page 3 of EXHIBIT K . Expresses concern that the utility road is 300 feet from the interstate interchange as opposed to the preferred 800 feet. States that there is other reasonable access to the property through Borland Road.
265	Greenleaf	Indicates that the proposed use will increase the volumes of traffic at the particular access point. Underscores that the service road is not used very often (EXHIBIT L).
285	Rep. Krummel	Asks why I-205 was built.
290	Greenleaf	Replies that it was built to provide an alternate route to I-5.
292	Rep. Krummel	Asks if Portland was an urban area in 1968.
294	Greenleaf	Replies yes.
296	Rep. Krummel	Asks if growth was anticipated in the 1960s and was one of the reasons that I-

		205 was built.
300	Greenleaf	Replies yes.
302	Rep. Krummel	Asks if growth would be expected to reach this area.
307	Greenleaf	Replies yes.
309	Rep. Krummel	Asks, given these factors, why an engineer would allow access at this point.
316	Greenleaf	Replies that the intention was to provide access to a single family residence.
324	Crunican	Adds that the court order did not provide another alternative.
330	Chair Montgomery	Notes that ODOT is in a catch-22, criticized for, and for not, taking care of safety issues.
334	Rep. Devlin	Asks if access to Tax Lot 900 would have been denied without compensation if it was developed as a multi-family dwelling and was in an urban area.
353	Greenleaf	Replies that ODOT has been forced to grant permits or to purchase property in the past.
368	Crunican	Stresses that the future of the interchange needs to be examined.
372	Chair Montgomery	Closes the public hearing on SB 849. Adjourns the meeting at 10:00 a.m.

Submitted By, Reviewed By,

Brad Daniels, Janet Adkins,

Administrative Support Administrator

EXHIBIT SUMMARY

A ñSB 86, -2 amendments, staff, 2 pp.

B ñSB 86, explanation of ñ2 amendments, staff, 1 p.

C ñSB 86, written testimony, Grace Crunican, 4 pp.

D ñSB 86, written testimony, Craig Greenleaf, 2 pp.

E ñSB 86, written testimony, John Liljegrenegren, 5 pp.

F ñSB 773A, written testimony, Arthur Schlack, 1 p.

G ñSB 773A, -9 amendments, staff, 1 p.

H ñSB 773A, written testimony, Craig Greenleaf, 2 pp.

I ñSB 849, written testimony, Bill Colton, 9 pp.

J ñSB 849, written testimony, Wendie Kellington, 22 pp. (one oversized)

K ñSB 849, maps, Grace Crunican, 3 pp.

L ñSB 849, written testimony, Craig Greenleaf, 2 pp.