

HOUSE COMMITTEE ON ENVIRONMENT AND ENERGY

March 19, 1997 Hearing Room E

1:00 P.M. Tapes 38 - 40

MEMBERS PRESENT:

Rep. Leslie Lewis, Chair

Rep. Frank Shields, Vice-Chair

Rep. Michael Fahey

Rep. Mike Lehman

Rep. Dennis Luke

Rep. Mark Simmons

Rep. Jim Welsh

STAFF PRESENT:

Pat Zwick, Policy Analyst

Marjorie Taylor, Administrative Support

MEASURE/ISSUES HEARD:

HB 2643 Public Hearing

HB 2021 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 38, A		
004	Chair Lewis	Calls the meeting to order at 1:16 p.m. and opens the public hearing on HB 2643.
HB 2643 PUBLIC HEARING		
018	Pat Zwick	Policy Analyst, summarizes the provisions of HB 2643.

024	Don Duhrkopf	Polk County resident, also chairman of the Polk County Planning Commission. Presents testimony on behalf of self and the Board of Commissioners. Explains that under current rules an appellant does not need justifiable cause for an appeal against a land use applicant. The process of appeal costs time and money to the applicant. States that if a person is truly harmed by a land use action, that should be easy to prove. The appeals process is used as a way of working out different interpretations of the law between different levels of government. States that an innocent land use applicant shouldn't be dragged into the appeals process and an appellant should provide evidence of adverse affect when filing an appeal of a land use decision. Expresses support for HB 2643 (EXHIBIT A)
059	Duhrkopf	Explains the views of the Polk County Board of Commissioners. Expresses their support for HB 2643. States that residents should not have to bear the costs of political arguments. Suggests that the legislature limit the procedural right of appeal to those persons directly affected by a land use decision (EXHIBIT B).
078	Howard Paine	Representative, Alliance for Responsible Land Use in Deschutes County. Expresses opposition to HB 2643. States that HB 2643 could result in more litigation. Asks how adverse effects can be determined. Indicates that the current land use system and appeal process is working just fine. Indicates that the attempt to reduce citizen involvement in the land use process is wrong. States that there must be balance in the land use system for citizen involvement (EXHIBIT C).
122	Larry George	Executive Director, Oregonians in Action. Explains that the intention of the bill was not to interfere with citizen involvement in the planning process. Two amendments will be proposed for HB 2643. The first amendment will limit what affects quasi-judicial decisions. A second amendment will define "adversely affected." Restates that the intent of the bill is to lessen the appeal burden on individuals (EXHIBIT D).
174	Jack Stewart	Polk County resident. Relates a personal story of land use application and appeal. Their land use application was approved by the county and then appealed by 1000 Friends of Oregon and the Department of Land Conservation and Development (DLCD). The Stewarts cleaned the piece of property and built farm buildings so that it could be a useable farm. Explains that when 1000 Friends of Oregon and DLCD were asked why they were appealing the application they stated that there was a problem with the county, not their property. States that people should not be able to appeal an application for a land use permit if they aren't affected by the land use decision (EXHIBIT E).
217	Rep. Welsh	Asks how many similar cases there are in the state.
221	George	Indicates that it is difficult to identify. Explains that the cases DLCD and the Land Conservation and Development Commission appeal to prove legal theories, tend to fall on people like the Stewarts.
246	Rep. Welsh	Asks if local control is truly local control if any interest group can appeal a land use petition.

252	Rep. Simmons	Asks if Mr. Stewart is a land developer.
257	Stewart	No, the property in question is for personal use.
262	Rep. Shields	Asks how long it took to clean up the property.
270	Stewart	Approximately three years.
271	Rep. Shields	Asks if the intention was to fix the property and then build a home.
273	Stewart	Explains that when the property was purchased, a farm use plan was created. Livestock, roads, and buildings were added after the property was cleared.
291	Rep. Shields	Asks if there is a way to resolve the issue without altering state law.
304	Stewart	Explains that there have been times when any solution would have been fine, the problem is not limited to the Stewarts. Agrees that farmland should remain as farmland, but other properties should be available for other uses. The proposed use can be a "win-win" for everybody.
333	Rep. Simmons	Asks if the Stewarts have any legal recourse to recovery attorney fees by suing DLCDC and 1000 Friends of Oregon.
341	George	Indicates that if it is a frivolous appeal, there can be an award, but the problem is that DLCDC does have merit since they are trying to prove a political point. Explains that DLCDC can raise questions with counties through the Enforcement Order process, but it is costly.
365	Chair Lewis	States that it is very difficult to prove that a lawsuit is frivolous.
380	Rep. Lehman	Agrees that it is difficult to recover attorney fees unless there is a provision in an agreement or statute indicating the prevailing party is entitled to the fees. States it is virtually impossible to prove a claim is frivolous.
390	Chair Lewis	Verifies that the Stewarts have a breeding operation which requires constant attention to the livestock, but the land use appeal process initiated by DLCDC and 1000 Friends of Oregon has destroyed their dream.
407	Stewart	Answers affirmatively.
409	Rep. Luke	States that HB 2643 focuses on land use decisions only, not homes.
TAPE 39, A		
018	Bob Rindy	Representative, Department of Land Conservation and Development. States that the department has reviewed the bill and has several concerns with it. First, the bill will prohibit local interest groups, state agencies, and citizens from participating in land use decisions. It will slow the land use decision and appeal process. It will not allow citizens to take part in the decision process of the planning of their communities. It will prevent state agencies from enforcing land use laws. Second, DLCDC was not created to enforce the land use laws of the state, but was given a costly and cumbersome

		enforcement process. Third, if HB 2643 passes, DLCDC, citizens, and local agencies will have to rely on DLCDC's enforcement process even more. States that DLCDC uses the appeals process when local governments are in violation of land use laws (EXHIBIT F).
076	Rep. Shields	Asks what data would show if a referenced chart was extended back to the 1980's.
079	Rindy	The information is available, and during the 1980's there were fewer land use appeals.
085	Rep. Shields	Asks for the information to establish the deletion of standing in 1989. Asks if there would be a significant increase in the current total of appeals now in comparison to the pre-1989 data.
090	Rindy	States that there would be fewer appeals before 1989 since fewer representatives from DLCDC had the standing to appeal.
100	Chair Lewis	Verifies that prior to 1989 when language for "adversely affected" was in place, there were fewer appeals.
104	Rindy	Indicates that there were fewer appeals since there was less land use activity.
106	Chair Lewis	The counties were working on comprehensive plans which was a ripe time for activity. States that there were less appeals when "adversely affected" language was in place.
109	Rindy	That wasn't the language.
110	Chair Lewis	States that the language was similar.
111	Rindy	There was a broad standings test.
114	Rep. Simmons	Verifies that DLCDC does have a costly enforcement process and asks how that can be compared to individuals who must spend time and money to gain a land use permit. States that DLCDC is abusing their authority.
120	Rindy	States that the enforcement process will affect individual citizens. Indicates that there can be no enforcement process run by an agency or citizens which will not catch innocent people in the battle. The legislature established DLCDC and the enforcement process to follow and enforce state and local land use laws.
142	Rep. Simmons	Asks how many appeals are lost by DLCDC.
145	Rindy	The exact number can be provided later, but it is very small percentage.
148	Rep. Shields	Asks where the Stewarts violated the law with their land.
151	Rindy	Does not have total familiarity with the case, but indicates that there was disagreement between DLCDC and other parties about the state law regarding siting of a dwelling on farmland. DLCDC tried to meet with the county to resolve the issue, but DLCDC had to enter the appeal process. The appeals were settled in favor of DLCDC and the county had to change their process to one that follows the law.
175	Rep.	Asks if the issue had been resolved with the county before the appeal

	Shields	process, the Stewarts would not be in their current situation.
178	Rindy	Answers affirmatively.
179	Rep. Shields	Asks if the county is equally as liable as DLCD.
184	Chair Lewis	Asks if DLCD's resolution with the county would have been to deny the Stewarts their house.
186	Rep. Luke	Expresses discomfort with DLCD's notion to appeal until counties see the error of their ways. States that the courts and legislature are designed to decide that.
190	Rindy	States that if any cases had been lost, DLCD would have conceded.
194	Rep. Simmons	Verifies that DLCD lost the case with the Stewarts because they have a building permit now.
197	Rindy	Explains that he will come back with the details of the case.
204	Rep. Simmons	Asks if the attorney's statement in the Stewart case "it's nothing personal, it's the county we're after" is accurate.
210	Rindy	Will not agree with the statement. DLCD wants the counties to follow the land use laws. Explains that a dispute resolution system is in place which is a way to solve disputes outside of litigation.
222	Chair Lewis	Based on the testimony, asks if Mr. Rindy believes the Stewarts are farmers.
225	Rindy	Does not want to speak to the case.
226	Chair Lewis	States that he heard the testimony and asks if it sounds like farming.
229	Rindy	The testimony sounds like farming, but whether it is or not should be the subject of legislation. If the legislature believes that standards are too high, they should be dealt with rather than taking away citizens' rights to appeal a land use decision.
237	Chair Lewis	The standard of the \$80,000 test was adopted by rule by DLCD and is not in statute. Asks if DLCD would approve of the legislature reducing the \$80,000 requirement.
241	Rindy	No.
242	Chair Lewis	States that on one hand DLCD doesn't want the legislature to override the \$80,000 rule, but on the other hand DLCD wants to be able to appeal land owners when they believe a county is not acting in accordance with the law.
246	Rindy	States that the \$80,000 test was not in effect for the Stewart case.
248	Chair Lewis	According to the Stewart's testimony, the \$80,000 test was keeping them from having the dwelling permit.
249	Rindy	Wants to return with information on the case, but DLCD will defend the \$80,000 test.
256	Chair Lewis	States that Mr. Rindy suggested that the legislature change the standards if they feel they are wrong instead of changing the appeals process. States that she asked if DLCD would be amenable to changing the standards and he said

		no, leaving no options for people like the Stewarts.
264	Rep. Simmons	Asks how he feels about state agencies and the counties settling disputes at the cost of innocent citizens.
270	Rindy	Personally, it is not something that should be in the system, but no system can be designed without it.
285	Rep. Shields	Asks what the rationale was for deleting the standing requirement during the 1989 legislative session.
298	Rindy	Indicates that the courts were spending much time and money trying to solve standing issues which got in the way of solving the real issues. The compromise was to allow people to raise the issue at the local level, and only issues raised locally could be appealed.
321	Cathee Brown	Multnomah County farm owner. Expresses support for HB 2643. Explains personal story of trying to obtain a replacement dwelling on their farm since 1993. Due to rezoning of their land, the application was denied. Indicates that all of the guidelines were followed but HB 3661 ('93) was passed and then the \$80,000 test was applied (EXHIBIT G).
386	Dennis Brown	Explains that appeals are being made to the Multnomah County Board of Commissioners and the Land Use Board of Appeals.
391	C. Brown	Explains that if their property was zoned all one zone, there would be no problem, but since the property has two zones there is a language problem. Explains that during the last appeal process an individual from Forest Park, who is not related to the issue or community, objected to the replacement dwelling.
412	D. Brown	States that it isn't fair for this person who has no bearing on the situation to have an impact on their property. They have spent 3.5 years trying to resolve the issue. Explains that there are other ways for an individual to file an appeal.
TAPE 38, B		
022	C. Brown	States that nobody had opposition at any other point in the process until it was at the Multnomah County Commissioner's office.
026	D. Brown	Explains that they haven't spent a large amount of money in the appeals process, but the issue is that it's unfair for a stranger to disrupt the process.
031	Mike Olberding	Yamhill County resident. Has six comments about the bill. Explains that in all other sections of the law provides that people involved with litigation and appeal must have interest in the matter. Second, if people without financial interest are involved in changing laws, they should do so in the political arena. Third, states that anyone to appeal land use issues, the system is open for abuse. Fourth, Oregon has a land use process that is working well. Fifth, the law recognizes a person's property rights. Finally, suggests that there needs to be a test for the legitimacy of an appeal. Proposes that appellants provide a bond before appealing a decision.

077\tChair Lewis\tAsks for a summary about the Sumitomo Corporation in Newberg.\t\t084
\tOlberding\tAll land use issues were prepared for the corporation to work in Newberg, but an appeal stalemated the company move. Indicates that none of the appeals were brought by local residents. Oregon lost jobs and industry with the appeal.\t\t103\tRep. Lehman\tAsks if the individuals would have

had standing to file an appeal. \t105\tOlberding\tThey could file the appeal if they could show that they were "adversely affected" by the land use decision. \t113\tRep. Fahey\tAsks if there was more to Sumitomo's move to Phoenix than land use issues. \t116\tOlberding\tNot really, the company was devoted to staying in Newberg and had parts of their buildings made in Newberg and shipped to Arizona. \t128\tLois Kenagy\tBenton County resident. States that in the 1970's the legislature decided that land use planning was important to Oregon. Indicates that Oregon has a strong framework of commitment to the protection of farmland since it provides food for citizens and a good economy. Explains that no system of enforcement was created when the land use system was set up, but a citizen involvement component was created to look after the interests of professional farmers. \t195\tLois Kenagy\tExplains that if a publicly funded monitoring system of land use policy is not in place, and the incentive for farmers to testify on local land use concerns is lost, then problems will occur. The state is concerned about the preservation of commercial agriculture, therefore, the state benefits when farmers can testify and monitor the land use process. \t228\tRep. Lehman\tVerifies that before getting to the primary issues of a case, they would first have to litigate standing. \t231\tKenagy\tResponds affirmatively and states that the farmers must pay out of their pockets to do so. \t241\tRep. Lehman\tVerifies that if there was a problem with standing issues, those would be settled by the courts first and then get to the factual issues. \t245\tKenagy\tAnswers affirmatively. \t246\tRep. Simmons\tAsks if having a history of standing issues streamlines the process for the future. \t248\tKenagy\tNot sure. \t251\tRep. Simmons\tStates that information from DLCDC, concerning numbers of appeal cases, requested by Rep. Shields would be useful. \t261\tElmer Werth\tExplains that the current appeal process is lengthy and unnecessary. States that the process is open for appeal from any party which could destroy any project supported by a majority in support of it. States that a person making an appeal should show adverse affect and decisions should be made in a timely manner (**EXHIBIT H**). \t299\tRep. Luke\tNoticing that Mr. Werth is from Grand Ronde, asks how much input local citizens had in the placement of the casino there. \t301\tWerth\tNone. \t302\tRep. Luke\tVerifies that the state made the plans. \t303\tWerth\tAnswers affirmatively. \t307\tRep. Luke\tStates that through various testimony heard, it sounds like there wouldn't be a problem if people living in a county appealed a decision, but there are problems if appeals come from outside the county. \t315\tPatty Hottmann\tWashington County resident. Explains personal history with regard to land use appeals in Yamhill County. Owns 42 acres of farmland and bought it with the intention of building a farm. They turned in a farm management plan one day too late and were denied. They continued to farm the 42 acres, but the land use process has taken a toll emotionally and financially. Explains personal attacks where people questioned their intentions and character. States that after winning the right to farm, they were appealed by 1000 Friends of Oregon and the Land Conservation and Development Commission. Explains that those groups are not directly involved in their land and community and doesn't understand why they are denying a house. Disagrees with the personal attacks for wanting to farm. Expresses support for HB 2643 (**EXHIBIT I**). \t414\tChair Lewis\tAsks how far away she lives from the Yamhill County property. \t415\tHottmann\tApproximately 37 miles. \t416\tChair Lewis\tVerifies that it is a livestock operation needing constant attention. \t417\tHottmann\tAnswers affirmatively. \t421\tChair Lewis\tExpresses familiarity with the property and explains that the Hottmann's have greatly improved the property. \tTAPE 39, B\t039\tHoward Haynes\tRepresentative, League of Women Voters of Oregon. Expresses opposition to HB 2643. States that the bill would not allow citizens to testify before the Land Use Board of Appeals (LUBA). The League does not find a legitimate reason for the proposed legislation, but does recognize that individual cases vary and suggests mediation as a solution (**EXHIBIT J**). \t061\tHoward Haynes\tRepresentative, Citizen Involvement Advisory Committee. Expresses strong opposition to HB 2643 indicating that it would deny citizen involvement in land use decisions. States assumptions regarding the number of appeals to LUBA are not fact based. The conclusion is that if HB 2643 is passed, more litigation regarding standing would occur (**EXHIBIT K**). \t114\tSteven Shipsey\tRepresentative, Oregon Shores Conservation Coalition. Expresses

opposition to HB 2643. Indicates implementing the bill would be costly and it would increase litigation. Explains that HB 2643 would reinsert a requirement for an appellant to be adversely affected by a land use decision. States that in 1989, HB 2288 deleted the "adversely affected" requirement. Explains that LUBA should focus on land use issues not issues of standing. The courts have described what "adverse affects" are. Encourages the committee to preserve citizens' rights to appeal land use decisions. \t178 \tShipsey\tStates that he will submit written testimony.\t185\tChristine Cook\tStaff Attorney, 1000 Friends of Oregon. Expresses opposition to HB 2643. States that the bill is not necessary since there is no flood of land use appeals at LUBA. Explains that there is a standard at LUBA where attorney fees must be awarded in frivolous cases, but that occurs very infrequently (**EXHIBIT L**).\t211 \tCook\tStates that two assumptions that have been made are that few people are interested in land use decisions and that local decisions should be protected from scrutiny. Criteria indicate if a petition should be filed, but at times local governments don't follow the criteria. Indicates that the ability to appeal a decision is an immediate method to enforce the existing laws. The land use system is implemented at the local level where citizens can retain an interest in implementation of land use law. \t240 \tCook\tSuggests if the land use appeal system is to be returned to the pre-1989 ways, the system should be changed to really "retro". Pre-1989, there were several standards for a person to appeal other than "adversely affected", including appearing before LUBA at the local level, showing that they were "aggrieved", or if they were in the "notice" area. \t286\tRep. Luke\tAsks if in an industrial zone, a building permit equates to a land use decision.\t293\tCook\tAnswers affirmatively. \t295\tRep. Luke\tVerifies that the bill does not relate to farmland only. \t299\tCook\tAnswers affirmatively. \t303\tRep. Luke\tExplains that the point has been made that the bill does not relate to farmland only. \t305\tCook\tThat is correct, but points out that the proposed legislation would allow non-residents to appeal decisions made by the Portland Neighborhood Association inside their boundaries, which is wrong.\t312\tRep. Luke\tIndicates that under current law, citizens not living in Portland can protest a business proposed to be built in the city. \t319\tRep. Simmons\tAsks what 1000 Friends of Oregon can do to solve land use issues besides courtroom confrontation.\t329\tCook\tAgrees that processes of conciliation are good, and mediation has been suggested as a solution, but doesn't work. States that a "just" system has accommodation for individual hardship and needs. \t357\tChair Lewis\tVerifies that citizens wanting to be involved can appear at the local level in person and in writing.\t363 \tCook\tResponds affirmatively.\t379\tRep. Lehman\tAsks about the definition of "adversely affected" and wonders if it can be applied to businesses competing against each other. \t393\tCook\tStates that it is possible that businesses could qualify as "adversely affected" but each case is different.\tTAPE 40, A\t009\tShipsey\tStates that there is a possibility that a business could be "adversely affected" but the bill states that the county or LUBA would have to determine that.\t017\tRep. Luke\tTo make a point clear, states that the bill does not apply to farmland only.\t020\tHaynes\tStates that the primary concern of the Citizen Involvement Advisory Committee is that neighborhood and citizens groups won't be excluded from appeals.\t030\tChair Lewis\tCloses the public hearing on HB 2643 and opens the work session on HB 2021 (**EXHIBIT M**). \tHB 2021 WORK SESSION\t036\tRep. Luke\t**MOTION: Moves to recede from -1 amendments dated 2/25/97 and adopted 2/28/97.**\t051\tChair Lewis\t**Hearing no objections, declares the motion CARRIED.**\t054\tRep. Luke\tStates that Legislative Counsel will have amendments ready soon.\t057\tChair Lewis\tCloses the work session on HB 2021 and adjourns the meeting at 3:10 p.m.\t

Submitted By, Reviewed By,

Marjorie Taylor, Pat Zwick,

Administrative Support Policy Analyst

EXHIBIT SUMMARY

- A - HB 2643, Written testimony, Don Duhrkopf, 2 pp.**
- B - HB 2643, Written testimony, Don Duhrkopf, 1 p.**
- C - HB 2643, Written testimony, Howard Paine, 1 p.**
- D - HB 2643, Written testimony, Larry George, 3 pp.**
- E - HB 2643, Written testimony, Jack Stewart, 2 pp.**
- F - HB 2643, Written testimony, Bob Rindy, 2 pp.**
- G - HB 2643, Written testimony, Cathee Brown, 2 pp.**
- H - HB 2643, Written testimony, Elmer Werth, 1 p.**
- I - HB 2643, Written testimony, Patty Hottmann, 3 pp.**
- J - HB 2643, Written testimony, Howard Haynes, 3 pp.**
- K - HB 2643, Written testimony, Howard Haynes, 2 pp.**
- L - HB 2643, Written testimony, Christine Cook, 2 pp.**
- M - HB 2643, Faxed and E-mail testimony, Committee Staff, 36 pp.**