

HOUSE COMMITTEE ON ENVIRONMENT AND ENERGY

April 4, 1997 Hearing Room E

1:00 P.M. Tapes 50 - 51

MEMBERS PRESENT:

Rep. Leslie Lewis, Chair

Rep. Frank Shields, Vice-Chair

Rep. Michael Fahey

Rep. Dennis Luke

Rep. Mark Simmons

Rep. Jim Welsh

MEMBER EXCUSED: Rep. Mike Lehman

STAFF PRESENT:

Pat Zwick, Policy Analyst

Marjorie Taylor, Administrative Support

MEASURE/ISSUES HEARD:

HB 2774 Public Hearing

HB 2645 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 50, A		
003	Chair Lewis	Calls the meeting to order at 1:06 p.m. and opens a public hearing on HB 2774.
HB 2774 PUBLIC HEARING		
017	Pat Zwick	Policy Analyst, summarizes provisions of HB 2774.
		Director of Governmental Affairs, Oregon Building Industry Association.

025	Jon Chandler	States that -1 amendments will be further amended. Explains that the bill proposes to codify a 1994 U.S. Supreme Court case, <u>Dolan v. City of Tigard</u> , and Oregon Law. The case describes what burden of proof must be shown by a local government in a "takings" case. States that HB 2774 is not a takings bill, but it attempts to accomplish three goals: Clarify holdings; clarify that <u>Dolan v. City of Tigard</u> not only applies to quasi-judicial acts but also legislative acts; clarify that local governments are liable for a property owners' attorney fees if they violate the Dolan case (EXHIBIT A).
074	Chandler	Explains that what happens now is a property owner will challenge a local land use decision and when it's been shown that the government is wrong, the property owner will only get a permit. This bill proposes to also award attorney fees. The bill will create a level playing field such that the property owner and local government won't be as eager to file suits against each other. Encourages support for the bill.
114	Rep. Luke	Verifies that in a described example, a property owner was ruled not to have to build a road on his property, but the local government asked him to do it anyway.
118	Chandler	States that he is only presenting one side, but the imposition of a road requirement was found to be unconstitutional but the local government reimposed it.
126	Rep. Luke	States that the land owner was lucky to have the funds to go to court.
130	Chandler	States that it takes extraordinary circumstances for a Dolan-type case to develop, including an owner that has the resources to fight a case, and a local government that makes unusual land use actions.
146	Rep. Luke	Relates a similar personal experience.
154	Chandler	Stresses that some portions of the bill may seem one sided, but under the Dolan holding, changes were made to land use law. Explains that the government imposing a land use burden must also have the burden of proving the constitutionality of the use. Even if the bill doesn't pass, the government must still show proof of constitutionality.
191	Art Schlack	Land Use Specialist, Association of Oregon Counties. Indicates that HB 2774 has implications beyond the <u>Dolan v. City of Tigard</u> case. Urges the committee to form a work group on the bill to work through all of the legal implications.
223	Rep. Luke	Asks for written testimony.
226	Schlack	Will submit testimony at a later date.
230	Rep. Luke	Asks who will represent the general public in the work group.
233	Schlack	City and county officials are the first candidates, but others may be included in the discussion.
239	Rep. Luke	Suggests that a non-elected official be included.

243	Schlack	States that a county official would be willing to serve.
248	Brent Curtis	Planning Manager, Washington County. Urges the committee to form a work group on the bill. Agrees that the Dolan case is important, but the bill goes beyond that. Indicates that it is important to codify a case when it is generally understood and used by the public, but the Dolan case is not well understood. Explains that local governments condition approvals not denials. Comments on the current requirements of land use decisions where governments must show evidence that a case needs to be mitigated. States that legislative matters are very different from local land use issues. Therefore, it would be hard to apply the Dolan test to them. The extraordinary matters that allow for a Dolan-type case to form will become routine. States that the bill needs the attention of a work group.
331	Rep. Luke	Asks how much landscaping the county requires of developments.
336	Curtis	It depends on different circumstances.
340	Rep. Luke	Asks if developers can design their own landscape plans, or if there are requirements.
342	Curtis	Explains that there are standards in the code.
346	Rep. Luke	Asks what the justification is for the ordinance.
348	Curtis	States that the standard comes from other community standards developed to benefit citizens' health, safety, and welfare.
364	Rep. Luke	Asks how landscaping affects the health, safety, and welfare.
376	Curtis	The standards allow developers to take varying circumstances into account. In the past, citizens have wanted to mitigate contrasting land uses.
394	Rep. Fahey	Indicates that there appear to be different standards for citizen and local governments. States that if a local government wants to place a building, it is very easy to do under administrative rules, but if a private citizen wants to build, there are other standards that they must follow.
417	Curtis	States that the county subjects its own facilities to similar standards as public facilities.
TAPE 51, A		
013	Chair Lewis	States that if Yamhill County wants to build something in the city, many fees are waived for them.
018	Rep. Luke	Asks if a county builds a building within city limits it must improve roads, transportation and other items before they build.
022	Curtis	Agrees that is the case.
025	Rep. Luke	Asks to see it in writing.
032	Charles Swindells	Representative, 1000 Friends of Oregon (EXHIBIT B).

042	Swindells	Expresses opposition to HB 2774 as drafted, but endorses the testimony of Jon Chandler. Supports the idea of codifying the Dolan rule, but suggests deletions in the proposed amendment, particularly those dealing with fees. Strongly objects to the attorney fees provisions.
084	Rep. Luke	Asks if the whole concept of a development is approved first and then individual sections are approved in phases.
086	Swindells	Does not know for sure.
088	Rep. Luke	States that an overall approval comes first and then development in phases.
092	Swindells	Doesn't know if there would be individual conditions needing to be met at each phase. Suggests that if attorney fees are included they should go both ways.
117	Rep. Luke	Indicates that not all court cases are bad, if you win.
120	Chair Lewis	Asks for specific written testimony to be provided.
126	Aileen Schnitzler	Resident of Willamina. States that she is currently appealing a land use decision. Explains that when a planning commission places conditions on a development they don't understand the consequences. Relates land use plans and process of a local development. Explains that the effects of land use decisions in the development are cumulative. States that there needs to be a clear division between the impacts of small and large land developments (EXHIBIT C) .
206	Dave Hunnicutt	Representative, Oregonians in Action. Expresses support for HB 2774. Relates a story that highlights the needs for HB 2774. If the Dolan case is codified into law, city planners can spend their time planning instead of studying the law. Requests to be in the work group that will be formed.
305	Bob Rindy	Representative, Department of Land Conservation and Development. Expresses concerns with the bill as written. Indicates that he has not seen the amendments and that codifying the Dolan case will be very difficult. Suggests another system for awarding payments when the Dolan case is violated (EXHIBIT D) .
338	Mike Robinson	Private Attorney, Expresses support for HB 2774. Agrees with Mr. Chandler's testimony. Explains the importance of codifying <u>Dolan v. City of Tigard</u> so that it will be in the statutes where citizens can find it. States that Dolan is no more confusing than the <u>Clark v. Jackson County</u> case which has already been codified. States that the Oregon Court of Appeals has determined that the Dolan case does apply to legislative action. Indicates that HB 2774 will require local governments to take a serious look at what they are requiring in their land use planning and it "levels the playing field" for all of those involved. Relates a land use story from Washington County. States that for the most part, planning departments do well with their actions, but it is easy to rely on old plans (EXHIBIT E) .
TAPE 50, B		
	Phillip	Representative, League of Oregon Cities. Expresses concerns with HB 2774

017	Fell	and asks to be included in the work group.
026	Chair Lewis	Indicates that a work group will be formed to study HB 2774.
028	Chandler	States that the process has already started and that they will have a meeting with Legislative Counsel to work on the language.
031	Rep. Luke	Requests that a private citizen who is not a land use planner or developer be involved with the work group.
039	Chandler	States that participants will be found.
040	Chair Lewis	Closes the public hearing on HB 2774 and opens a public hearing on HB 2645.
<u>HB 2645</u> <u>PUBLIC</u> <u>HEARING</u>		
049	Sen. George	State Senator, District 2. Expresses support for HB 2645. Indicates that one of the current problems in his district is that citizens can't build additional dwellings on rocky ground that is zoned for farm use, but they can build dwellings on prime farm soil that isn't. States that the unbuildable land is really secondary farmland that is located where growth should be occurring.
084	Sen. George	Explains that there has been growth on prime farmland and a population decrease on secondary lands. Asks the committee to look at the land use system carefully to determine if it is truly protecting farm ground. Indicates that the Governor suggested that growth be directed away from farmlands. Citizens that bought farmland with the intention to build a dwelling should be able to do so since they really belong there.
110	Dave Hunnicutt	Representative, Oregonians in Action. Accompanies and introduces Mr. Gary Waite.
116	Gary Waite	Clackamas County resident. Representing his father, describes the purchase of land with the intention of building a home on it. Explains that many other homes were in the area at the time of purchase, but due to illness in the family, the house wasn't built immediately. In 1994, when an attempt was made to build a dwelling on the land, it was not deemed possible since the legislature had passed a restrictive law that would not allow it. In 1995, a perimeter test was passed that included Class 1 and 2 soils, but the land was primarily Class 2 and 3. Explains that currently, there are two ways to build a dwelling on the land: first, prove that the land is not farmable and build a non-farm dwelling, or second, qualify for a farm dwelling which requires the farm to gross at least \$80,000 during the year.
150	Waite	Explains that a very small portion of the 13.5 acres is farmable, but local farmers have stated that it is not of use. Asks for support of HB 2645. Explains that his father got a letter from Governor Kitzhaber after the 1995 session indicating that he could build on his property. Plans were drawn for the new house, and permits were approved by the county. A few weeks later, the county planning department denied the permit because the legislature included only Class 1 and 2 soils in the perimeter test. States that the land which was to be built upon is currently surrounded by 12 houses.

188	Hunnicutt	Explains that the land surrounding Mr. Waite's property is surrounded by homes and Mr. Waite's property is not farmable. States that Mr. Waite could have built a dwelling on the property when it was purchased. States that Mr. Waite's case is not an exception.
222	Tom Brawley	Marion County resident. Expresses concern that HB 2645, if passed, will undermine the current land use process. Indicates that he has high value crops on his farmland and that he agreed to have his land rezoned to exclusive farm use. States that conflicts arise from the development of small farm parcels. States that it is the legislature's responsibility to maintain integrity in the farm zones.
275	Rep. Fahey	Asks if he would oppose farm zones remaining farm zones if they are next to the urban growth boundary.
285	Brawley	Agrees that farmland should remain farmland and that the urban growth boundary should expand onto poor land.
291	Rep. Shields	Verifies that Mr. Brawley's 65 acres could be divided into 5 acre parcels and separate homes be built on each parcel.
312	Brawley	Answers affirmatively.
314	Chair Lewis	Explains how -1 amendments restrict the building of more dwellings.
323	Brawley	States that he owns six tax lots.
325	Chair Lewis	Indicates that the -1 amendments would only allow for one dwelling to be built on the cumulative six tax lots.
341	Rep. Shields	Asks about the competing usage of the roads due to population growth.
352	Brawley	Explains that people are ignorant of what is on the country roads.
363	Rep. Shields	Verifies that he is emphasizing the incompatible uses of the road.
365	Brawley	Answers affirmatively.
373	Rep. Simmons	Verifies that the bill requires that the land be in the ownership of the original purchaser when a dwelling was allowed to be built on the property.
377	Chair Lewis	Answers affirmatively.
378	Brawley	Asks if the ownership can extend to other members of the family.
381	Chair Lewis	Explains that a family can put their land in trust for their children.
392	Jim Monroe	Lebanon area resident. Indicates that he would support the bill if the population of the state would remain the same as of the time that the land was purchased. States that population pressures are taking away from agriculture.
TAPE 51, B		
		States that farmers want to practice agriculture, but bills like HB 2645 interfere with the process. Explains that some property owners are relentless

018	Monroe	about taking agricultural land out of agricultural use. Encourages people to seriously consider the long range situation of removing agricultural land from agricultural processes.
053	Rep. Shields	Asks if he is a farmer and how many acres he farms.
054	Monroe	He farms 70 acres.
060	Arnold Schmidt	Marion County resident. Explains land use and farming on his property. States that there is an uninhabitable dwelling on the farm and that they have always planned to replace it. Indicates that he has built farm buildings on the property and suffered financial losses and much frustration since he can't live on the property. Urges the passage of HB 2645 (EXHIBIT F).
098	Rep. Luke	Asks why the existing house can't be torn down and a new one built.
099	Schmidt	The existing house is not worth fixing up. They asked Marion County if they could build but were told no, due to the \$80,000 rule.
108	Chair Lewis	Indicates that the \$80,000 is an administrative rule, but the dwelling must currently have modern conveniences.
112	Rep. Luke	Asks what would happen if he got a permit to put in basic conveniences.
115	Schmidt	The house is not situated properly on the property.
116	Rep. Luke	If the house was hooked up to water, sewer, and electric then a replacement dwelling could be built.
120	Schmidt	Indicates that they were told that and asks if that is the "right" way to work in the land use process.
121	Rep. Luke	No.
122	Schmidt	Expresses the desire to work through the issue the "right" way.
134	Don Duhrkopf	Polk County resident. Indicates that the land use system is a living system, but it can destroy people and their savings. Indicates that the current process for notification is part of the reason why people lose their right to build on their property. There is no notification when laws and administrative rules are changed and that is a big problem. Indicates that preparing for retirement and being able to build a home for that time is a part of livability. Does not agree with the proposed amendment; supports the bill as written.
189	Rep. Fahey	Asks if Mr. Duhrkopf farms.
190	Duhrkopf	Answers affirmatively.
191	Rep. Fahey	Asks if it is necessary to have Class A farmland to raise sheep and trees.
192	Duhrkopf	Agrees that it is better but not necessary.
	Anthony	Marion County resident. Explains that his properties without homes are very low value and almost worthless because they don't have homes on them. States that the chance to sell the property is much lower and therefore causes

205	DeSantis	him a great financial impact. Wants building permits for his land since he could have built dwellings on them when the properties were purchased. Expresses support for HB 2645.
278	Chair Lewis	States that farmers probably don't want to move their machinery all over to farm small parcels of property.
280	DeSantis	Agrees that farming would not be viable for someone far away. States that several years ago the properties were buildable so they should be now.
299	Jane Lamb	Polk and Washington County property owner. States that she is a cattle rancher and that she purchased a 1.13 acre property with the intent of building a dwelling on it. When they attempted to build, the permit was denied. Supports keeping farmland for agricultural use, but the property in question can't be farmed efficiently. Indicates that within sight of the property are three other homes on similar soil. Expresses support for HB 2645 (EXHIBIT G).
368	Chair Lewis	Closes the public hearing on HB 2645 and adjourns the meeting at 2:55 p.m.

Submitted By, Reviewed By,

Marjorie Taylor, Pat Zwick,

Administrative Support Policy Analyst

EXHIBIT SUMMARY

A - HB 2774, Written testimony, John Chandler, 1 p.

B - HB 2774, Written testimony, Charles Swindells, 7 pp.

C - HB 2774, Written testimony, Aileen Schnitzler, 1 p.

D - HB 2774, Written testimony, Bob Rindy, 1 p.

E - HB 2774, Written testimony, Michael Robinson, 4 pp.

F - HB 2645, Written testimony, Arnold Schmidt, 1 p.

G - HB 2645, Written testimony, Jane Lamb, 1 p.