

HOUSE COMMITTEE ON NATURAL RESOURCES ENVIRONMENT AND ENERGY SUBCOMMITTEE

March 10, 1993                      Hearing Room D 1:30 p.m.                      Tapes 42 - 44  
MEMBERS PRESENT: Rep. Bob Repine, Chair Rep. Marilyn Dell, Vice-Chair  
Rep. Sam Dominy Rep. Bill Fisher Rep. Carl Hosticka Rep. Dennis Luke  
Rep. Bill Markham Rep. Ray Baum MEMBER EXCUSED: Rep. Nancy Peterson  
STAFF PRESENT: Kathryn Van Natta, Committee Administrator Karen  
McCormac, Committee Clerk MEASURES CONSIDERED: Public Hearing - Land  
Use "Lot of Record" Issues - HB 2700

WITNESSES:                      RICHARD BENNER, Land Conservation and Development  
Department DAVE SMITH, Oregonians in Action BILL MOSHOFSKY, Oregonians  
in Action THOR BERG, Citizen DIANE GARDENER, Jackson County Citizens  
League TED LOPUSZYNSKI, Yamhill County Commissioner DENNIS GOECKS,  
Yamhill County Commissioner

These minutes contain materials which paraphrase and/or summarize  
statements made during this session. Only text enclosed in quotation  
marks report a speaker's exact words. For complete contents of the  
proceedings, please refer to the tapes.

TAPE 42, SIDE A

005            CHAIR REPINE: Calls meeting to order at 1 38 p m.

OPENS PUBLIC HEARING ON LAND USE "LOT OF RECORD" ISSUES

011            RICHARD BENNER, Land Conservation and Development  
Department:            Provides background information on "lot of record"  
issues. Defines "lot of record" as lot or parcel with some record of  
having been legally established. This can become significant when a zone  
change Subcommitttee on En~iro ~ent sod Energy House Committee on Natural  
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occurs. If someone owns a five-acre parcel and zoning changes restrict  
the building of a dwelling to ten-acre parcels, the property owner is  
not entitled to build a new house on the fiveacre parcel.

053            REP. DOMINY: Could the owner rebuild an existing home?

058            BENNER: An owner could replace existing dwellings even if the  
minimum lot size is increased. The one exception would be if the owner  
had acquired a vested right to continue. A lot of record simply means  
you have a legal lot that can continue to be bought and sold. A vested  
right occurs when an owner obtains a building permit. If you had a  
five-acre lot and obtained a building permit and began construction, and  
suddenly a zone change occurred which changed the minimum lot size from  
five to ten acres, you probably have a vested right to continue  
completion of the house.

083            CHAIR REPINE: What if an owner has only finished preliminary  
steps when the zone change occurs, such as securing the building permit  
and septic system? 085            BENNER: The Oregon case law on vested rights  
is not crystal clear. In most cases, you cannot obtain a vested right  
until you've obtained the permit. In Clackamas County v. Holmes, the  
Supreme Court lay out a set of factors such as how much money was spent.  
These tend to be decided on a case-by-case basis. 108            REP. DOMINY:  
Does the vested right change once you are out of the urban growth  
boundaries? 109            BENNER: No. A statute added several sessions ago

states that a person is entitled to have their application processed by the county based upon the law in effect at the time the application is filed. 120 CHAIR REPINE: According to an article in my office, planners in the process of qualifying applications informed the public that if they had the documentation in by a specific date, they would proces those applications so the people would be eligible to use the land. LCDC then shortened the time of elibility, which caused people to "get caught in the cracks." 143 REP. LUKE: Is the lot of record and the vested right to continue in the Oregon Revised Statutes or administrative rules? 146 BENNER: The protection that a lot has once it's legally established is in ORS Chapter 92. Whether you can build on a lot or what type of dwellings can be built is from land-use law. In some cases, it is affected by a state rule, county ordinance or city comprehensive plan. All of those things affect lots of record. The issue, about lots of record, did not originate with the state land-use planning program, but has been an issue since cities and counties began planning and zoning in the 1920s. As soon as a minimum lot size or list of uses is established or changed, the lot of record issue comes up. 163 REP. LUKE: If a person owns a 5-acre parcel on which they plan to eventually build a home and the minimum lot size changes to 10 acres, they would not be able to build on that property?

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170 BENNER: That is a possibility.

183 REP. HOSTICKA: Does this concept apply to other land uses?

186 BENNER: Yes. Changes can affect industrial land as well as residential land. 200 REP. LUKE: The difference is that changing an industrial zone to a light industrial zone still allows the land to be used. In rural areas, nothing can be built.

205 BENNER: That would be unconstitutional. The regulation would have to be ~removed, or the property owner should be compensated.

216 REP. DELL: Has LCDC tried to gather data on the human impact of some of these changes?

233 BENNER: Over the years, the commission has tried to obtain information regarding the number of parcels that are in farm and forest zones. Other than county-by-county piecemeal data, we never initiated a full-scale statewide effort.

257 REP. HOSTICKA: The definition of a lot of record is a lot or parcel with some record of having been legally established. Can these be separate parcels?

262 BENNER: Separating parcels would have no bearing on the ability to sell those tracts, but could affect the ability to obtain a permit to build a house on one of those parcels.

268 REP. HOSTICKA: Suppose I tell the assessor these will be treated as one parcel?

272 BENNER: A tax lot is created for taxation, but it is not a lot of

record.

Continues testimony. In 1975 and 1977, lot of record bills were introduced in the legislature but were not passed. In 1979, an initiative petition entitled "Protects Right to Build House" was appealed to the Oregon Supreme Court on grounds that there is no right to build a house in the law. Because there is no "right to build a house" in the law, the title had to be changed. This petition did not receive enough signatures to be added to the ballot.

338 CHAIR REPINE: Who challenged the title?

340 BENNER: The League of Women Voters.

Continues testimony. In 1981, a lot of record bill passed the legislature, but sunsetted in 1985. According to farm-reporting records, 25 to 30 homes were approved during those four years. In 1983, the lot of record provision in the marginal lands law was implemented in Washington and Lane counties. During the 1990-91 reporting year, sixteen homes were approved on lots of record in these two counties.

374 REP. DOMINY: Are there restrictions on lots of record in Washington or Lane County?

377 BENNER: Yes. Lots of record did not apply to certain EFU zones, such as the greenway or

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designated hazard areas. This information can be found in ORS Chapters 215 and 197. 398 REP. LUKE: When did the definition of a non-farm dwelling first include the home of the farming family? 404 BENNER: Non-farm dwelling provisions in the exclusive farm use statute are aimed at the homes of people who are not farming. In order to qualify, you must demonstrate that the land is unsuitable for farm use, and that the dwelling would not interfere with farm use, etc. so you would not expect a farm family moving into a non-farm dwelling. Rules and county ordinances authorize farm dwellings in farm zones which are aimed at housing the farmer and farm help. 424 REP. LUKE: The LCDC appealed a Deschutes County decision in which a family raising cattle on their property wanted to make the top of their barn habitable so they could live there and tend the cattle. How long has a farmer not been able to live on his own land? 444 BENNER: I would have to look at that individual case. There are limitations in the rules and case law regarding the circumstances under which a farmer could put a farm dwelling on a lot. TAPE 43, SIDE A 000 Continues testimony. The last action on lot of record occurred in 1982, when small-scale resource land was eligible for dwellings without having to satisfy a test. The equity issue has always accompanied lot of record legislation, such as determining whether it is fair for a change in zoning to affect rights which were previously accorded under earlier zoning. Should the state offer compensation? Will there be an erosion of the farmland or forestland base if housing is approved for all lots of record? It has been difficult for previous legislators to act on this issue because it is difficult to know future consequences. 080 Introduces schematic drawing of an orchard composed of separately saleable lots. Shows how

the building of homes on individual lots would adversely affect the orchard. 134 REP.BAUM: Is this within the urban growth boundary?  
142 BENNER: No. This is currently zoned exclusive farm use.  
177 REP.DELL: If there was a lot of record proposal which allowed only one building site on contiguous lots and under the same farm management, would that satisfy your concerns? 183 BENNER: Yes.  
186 REP.BAUM: What about the "right-to-farm"? 195 BENNER: The right-to-farm law would discourage some complaints. It doesn't protect orchard owners from conflicts brought about by rural residential areas, such as trespass, etc. In Jefferson County, there are 800 lots of record in the EFU zone. In F1 and F2 forest zones and EFU zones in Lane County, there are 10,000 lots of record. Counties have not been able

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to distinguish between lots of record and tax lots, so some of these are tax lots. There are between 1,176 and 1,500 lots of record in resource zones in Yamhill County.

230 CHAIR REPINE: Are those based on the total land base acreage? Are these within a four mile radius or within 400 acres?

231 BENNER: These are only in farm and forest zones, and do not already have residences. I can provide you with that information.

239 REP. LUKE: Much of Jefferson County is non-irrigated dry land. How many of these lots of record are on dry land as opposed to prime farmland? 244 BENNER: They are in the EFU zone, not the rangeland zone, although zoning lines do not distinguish between dry and irrigated land. 260

REP. BAUM: It seems meaningless to know how many lots of record there are without also knowing whether these lots already have dwellings on them, etc. 263 REP. DELL: Do you feel we need to make any changes in lots of record? 269 BENNER: We are looking at a system which has been tried in other parts of the country which allows the transfer of a building opportunity from one rural area to another rural area. For example, Mrs. Jones has a five-acre tract without a dwelling in a farm zone. She cannot build on that land, but she can sell a building opportunity to a farmer on adjacent property. New Jersey established this system in a one million-acre area, which has been in effect for about ten years. 302 REP. BAUM: Can you explain these transfer rights again? I didn't understand. 310 BENNER: Explains process.

397 REP. DELL: Requests informational material on the New Jersey Plan.

400 CLOSES PUBLIC HEARING ON LAND USE "LOT OF RECORD" ISSUE

OPENS PUBLIC HEARING ON HB 2700

433 DAVE SMITH, Oregonians in Action: Presents written testimony (EXHIBIT A) in support of HB 2700. Explains bill.

TAPE 42, SIDE B

085 REP. DELL: You use the word "lawfully created lots," but then use "deed" or "contract" or "subdivision" or "major and minor partitioning." What is your intent in this bill when someone creates two five-acre

parcels from one ten-acre zone?

090 SMITH: The definition adopted for this bill is the definition used in Oregon real estate law in . . . . . These minutes contain materials which paraphrase and/or summarize statements made during this session. Only text enclosed in quotation marks report a speaker's exact words. For complete contents of the proceedings, please refer to the tapes. Subcommittee on Environment and Energy House Committee on Natural Resources March 10, 1993 - Page 6

ORS Chapter 92. There are circumstances in which lots or parcels were lawfully created by something other than compliance with a partition or subdivision ordinance. Today, if a lot or parcel is not created by compliance with a partition and subdivision ordinance, it is not lawful.

106 BILL MOSHOFSKY Oregonians in Action: We would be happy to participate in developing any amendments which would resolve problems in the bill.

120 THOR A. BERG, Citizen: Presents written testimony (EXHIBIT B) in opposition to HB 2700. 159 REP. MARKHAM: Questions final sentence of testimony wherein witness states he has never accepted money from a Political Action Committee (PAC). 163 BERG: It doesn't seem that citizens' voices are heard on issues such as HB 2700. Suggests holding hearings in the evening so average working citizens can attend and provide input. 167 REP. MARKHAM: I think those derogatory comments you are making about accepting money are unacceptable. 169 BERG: I am entitled to my opinion. When legislators accept considerable amounts of money from PACs, they have compromised the right to decide on behalf of the people. Lists PAC's that contributed to Rep. Markham's campaign. 199 CHAIR REPINE: Reminds witness to keep testimony germane to HB 2700.

200 BERG: Suggests that committee allow voters to decide issue through ballot measure.

208 CHAIR REPINE: In your testimony, you refer to your constituents. Are you here as a representative of the city or as a citizen?

213 BERG: I am not a representative for the city. I am here on behalf of those constituents who support the wise use of our land-use resources. 226 REP. LUKE: Do you think people who are not allowed to build on their land due to zoning changes should be compensated?

231 BERG: Yes. 226 REP. HOSTICKA: If HB 2700 passed, and the value of previously unused land increased, should the owners of the land share that increase with the state? 249 BERG: They will do that by paying more taxes. 260 DIANA GARDENER, Jackson County Citizens League,

Agriculture for Oregon: Presents written testimony (EXHIBIT C) in opposition to HB 2700, expressing concern regarding the inability of fire fighters to reach inaccessible housing built on forestland.

365 REP. OSHER: There will always be problems with fire in forestland.

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399 GARDENER: Fires in brush and wood areas will increase with an increase in population. It is a very costly problem which society can

ill afford. The good of the community should outweigh speculative land values.

472 REP. LUKE: How many homes are located on your property?

031 GARDENER: On the property we manage, there are no houses on our 2,000-acre and 160-acre forestland parcels. On our 260-acre orchard, we have the manager's house, a summer house, and about ten houses for year-round employees. The forestland is managed from the orchard base and is about a forty-five drive. There has never been any need to have residences on the forestland.

TAPE 43, SIDE B

046 TED LOPUSZYNSKI, Yamhill County Commissioner: Presents written testimony

(EXHIBIT D) in support of HB 2700. 124 REP. LUKE: Are you saying that LCDC is forcing Yamhill County to rezone minimum lot sizes?

126 LOPUSZYNSKI: We have been told that the only way our plan would be approved would be if the minimum lot size for most of the lots in the county is increased to 80 acres. 1,000 Friends is telling us that in some areas, the minimum lot size should be even more than 80 acres.

137 REP. LUKE: During the debates a few years ago when SB 100 was being drafted, did the senators view this as a state plan or county plan? 144

LOPUSZYNSKI: It was supposed to be a county plan. Yamhill County has grown 18% in the last decade, but in the unincorporated areas (including exceptions areas and urban growth boundaries), growth was only 2%. There has not been a lot of development outside the cities in Yamhill County. 167

REP. DELL: Based upon the amount of activity that occurred when there was opportunity for building, would you expect a great stampede for development on these parcels with the passage of HB 2700? Also, do you think you could get stronger broad-based support for state land-use planning if there was a reasonable lot of record bill? 176

LOPUSZYNSKI: I would not expect a tremendous stampede if people knew their right to develop would be protected for several years. If there was a reasonable lot of record bill, there would be fewer negative feelings for state land-use planning than there currently are.

204 CHAIR REPINE: Who are you representing today? And do you believe there is community support in increasing the minimum lot size to 80 acres? 218

LOPUSZYNSKI: I am representing the Board of Commissioners of Yamhill County, and I believe I represent the views of a significant number of people who live in the county. I think there will be significant opposition to the increase. . These minutes contain materials which paraphrase and/or summarize statements made during this session. Only text enclosed in quotation marks report a speaker's exact words. For complete contents of the proceedings, please refer to the tapes. Subcommittee on Environment and Energy House Committee on Natural Resources March 10, 1993 Page 8

248 DENNIS GOECKS, Yamhill County Commissioner: Provides anecdotal evidence of problems with restrictive land-use laws. 382 REP. DELL: Would you like to say anything about Yamhill County's commitment to good farmland? 394

LOPUSZYNSKI: During the periodic review process, Yamhill County obtained a grant with LCDC's help to determine what is adequate for the preservation of farmland. We have never advocated dividing good agricultural land for development. 438 GOECKS: Within the last six months, the Board of Commissioners unanimously passed a Yamhill County right-to-farm ordinance. About a year ago, we produced a pamphlet entitled, "So You Think You Want to Live in the Country?"

wherein we show that rural residents do not have the same amenities as urban residents. Problems with roads, septic systems, water, etc. are not taken care of for you. We are not interested in the development of urban sprawl.

TAPE 44, SIDE A

015 CHAIR REPINE: Approximately six more people signed up to testify today, but there is not enough time to hear their testimony. We will re-schedule a hearing on Monday to allow them the opportunity to testify. In a newspaper article a few weeks ago, someone was quoted as saying that county commissioners cannot be trusted on land-use issues.

027 GOECKS: We have to deal with land-use issues in a fair and equitable way. 035 LOPUSZYNSKI: In virtually every case which comes before us, the three of us go out to study and view the affected area. We know our county. We understand the laws, and when necessary, we do turn people down.

056 CHAIR REPINE: CLOSES PUBLIC HEARING ON HB 2700 Adjourns meeting at 3:41 p.m. Additions to the record: HB 2700 Staff Measure Summary (EXHIBIT E) HB 2700 Notice of Possible Revenue Impact (EXHIBIT F) HB 2700 Testimony of Charles and Penelope Farrington (EXHIBIT G)

Submitted by: Reviewed by:

Karen McCormac Kathryn Van Natta Assistant Administrator

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EXHIBIT LOG:

A - HB 2700 Testimony - Dave Smith - 3 pages B - HB 2700 Testimony - Thor A. Berg - 1 page C - HB 2700 Testimony - Diana V. Gardener - 2 pages D - HB 2700 Testimony - Ted Lopuszynski - 3 pages E - HB 2700 Staff Measure Summary - Staff - 2 pages F - HB 2700 Notice of Possible Revenue Impact - Staff - 1 page G - HB 2700 Testimony - Charles and Penelope Farrington - 1 page

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