

SENATE COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES

July 20, 1993 Tapes 247 - 248 Hearing Room C 6:00 PM

MEMBERS PRESENT: Senator Ron Cease, Chair Senator Jim Bunn, Vice-Chair
Senator Joyce Cohen Senator Bob Kintigh Senator Bob Shoemaker Senator
Gordon Smith Senator Shirley Gold

STAFF PRESENT: Chris Warner, Research Associate Kus Soumie,
Clerk Bhima Olrech, Committee Page

MEASURES HEARD: HB 3661 WRK

[--- Unable To Translate Graphic ---] 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.
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TAPE 247, SIDE A

006 CHAIR CEASE: Calls meeting to order at 6:00 p.m.

WORK SESSION ON HB 3661 -- EXHIBITS A to E

WITNESSES: George Reid, Deschutes County Planner Dick Benner,
LCDC Brian Curtis, Planning Commissioner, Washington County Dick Benner,
Land Conservation and Development Dept. Bruce Andrews, Department of
Agriculture Larry Hill, NW Sports Fishing Industry
Association and Oregon Guides and Packers

010 CHAIR CEASE: Tonight we'll outline where we are and what the
problems are.

061 GEORGE REID, Deschutes County Planner: Presents overview of
potential development if a lot of record provision is adopted by the
Legislature

(EXHIBIT A). -600 lots of record have no services such as water. -It is
unknown just what this law would do. It would be a major change. -The
lot of record should be a ministerial function and that should be

talked about. 112 CHAIR CEASE: Would you take the option to opt into
the rules over the lot of record and why?

REID: Yes. It would be expensive to implement the rule, but it's
better. -Deschutes wants to keep what farmland we have. -This could
raise the cost of farmland. -The problem is the group of lots that are
not large enough to be called farms. -Statute requires dwellings to be
situated on land not farmable. -Three hundred to four hundred parcels
are vacant and need to get

dwellings. Lot of records would help those people. -Lot of record has
the advantage of being simple and less costly. -There is a trade off and
I'm not sure if the trade off is good.

187 SEN. COHEN: Could you give us an outline of what would be important for your county's determination of some form of compatibility.

190 REID: We don't have a big compatibility problem. It's mainly livestock.

SEN.. COHEN: Is talking about water and antelope and things like that.

REID: We don't mind the non-farm statute if you added the word "commercial". -If you put in, "the tract is not suitable for commercial farm

production". -He doesn't know if we need secondary lands.

SEN.. CEASE: What about the Smith case?

212 REID: What is wrong with fixing the Smith case? -Growth pressure could be used for a preservation tool for open space. -If you allow someone to create an isolated unproductive piece of

non-farm land, as a condition of approval, you can require them to keep the remaining farmland intact in perpetuity. -You can do some good things if you break off non-productive farmland. -Please reverse Von Lubkin. -We are stuck in appeals and do not know the validity of our ordinances we've changed as part of our periodic review--it's a nightmare.

268 DICK BENNER, Land Conservation and Development Department: Refers to page 2, EXHIBIT A. -Could you explain how there would be 500 more houses using lot of

record rather than the commission rules?

289 REID: It's our opinion when you do lot of record, everything immediately gets a dwelling. -Under our non-farm tracts a certain percentage would not get a dwelling and would not qualify. -I can't give you a good explanation at this time. I'll get back to you with an answer. 303 CHAIR CEASE: We'll need an answer right away. -What is the problem with Horse Ridge?

REID: There are 600 vacant lots between five and 20 acres.

CHAIR CEASE: What classification of land are you dealing with?

REID: Zoned EFU 320. -There's an antelope winter range overlay.

CHAIR CEASE: Commissioner Throop questioned whether they'd be available under a lot of record and what it might do to that area.

REID: It would be buildable under a lot of record.

CHAIR CEASE: What's the classification of the soil in that area?

REID: It's mostly 7. -It goes up to 2 or 3 with irrigation. -There is no water there.

350 BRENT CURTIS, Planning Director, Washington County: The replacement dwelling issue has been discussed in the -A48 amendments.

-The issue deals with what happens when you change a land use ordinance that deals with EFU to the existing dwellings. -There are two kinds of general questions: -1. What happens when you want to alter one of those preexisting uses? -2. What happens when you want to replace an existing dwelling with a

new dwelling? -The law now provides for nonconforming uses. -We are not seeking an amendment for nonconforming uses. -Providing for replacement dwellings as an allowed permitted use in EFU zones would be an expansion of existing policy. -Each time we change the law for EFU we make all of the dwellings

nonconforming uses.

408 CHAIR CEASE: Review the AOC amendments for us.

421 CHRIS WARNER, Research Associate: Reviews -A66 Proposed Amendments. -The first issue is mediation and arbitration. -The second issue is the membership of the commission. -The third issue is individual land use decisions. -The fourth issue deals with LUBA appeals.

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025 CHAIR CEASE: There seems to be general agreement to reverse Von Lubkin, but there's no consensus on retroactivity.

WARNER: 1000 Friends of Oregon are not in favor of reversing Von Lubkin. -There are other discussions on what date to use or whether or not a date is needed.

054 DICK BENNER, LCDC: "We spoke about these [HB 3661-A62 Proposed Amendments (EXHIBIT B)] briefly the last time you were together and this is an effort to respond to the Clark case by -- to put it briefly --

codifying it in part and reversing it in part.

"If you look at section 30 in subsections 1 through 4. The first three are a paraphrase -- pretty close to the words of the opinion itself. And sub-4 is the part which would change the holding. And it makes -- what we try to do is make a distinction between those ordinance provisions in a comprehensive plan or a land use regulation which are aimed at implementing some local purpose or object. And those which are aimed at implementing state law, state statute, rule, goal, etc.

"So the effect of 1, 2, 3, 4 would be that when LUBA or the Court of Appeals is reviewing a local government's interpretation of an ordinance, they would review it as a matter of law, and would be able to interpret it as they saw fit as a matter of law, if it was there because

it was implementing state law. But they would give deference to the local government and assume that the local government interpretation of its own ordinance is correct otherwise.

"And that's what subsections 1, 2, 3 say."

075 CHAIR CEASE: "Would it be fair to say that this is in the nature of kind of a balancing act? I don't say that negatively."

BENNER: "That's a fair way of putting it, as a way of responding to the Clark case itself. It doesn't reverse it, it doesn't codify it, it does a little bit of both."

CHAIR CEASE: "And this is in comparison with, I think, the House Bill 3661, which would pretty much put it at the local level, would it not? And then I think the other approach would try to put most of it all at the state level."

082 BENNER: "That's right. 3661 as it came over from the House, not only codified Clark, but it went a bit further than that by word change to,

in our estimation, insulate -- inappropriately in some instances -- interpretations of local ordinances."

090 BRIAN CURTIS, Planning Commissioner, Washington County: "I've had the opportunity to review this on behalf of Washington County. On behalf of the county planning directors, we have been interested in seeing that

the Clark decision was maintained. We did have the opportunity for Washington County to review the -A62 amendments and we find them to be a very reasonable, balanced approach to dealing with this issue and would find them satisfactory."

CHAIR CEASE: There has been some suggestion that if we reverse Smith for eastern Oregon, it ought not include Deschutes and one or two other counties. -We were not talking about a reversal of the Smith case applying to the south.

112 SEN. J.BUNN: I have the sense that there was not an advocacy for a complete reversal of Smith in the valley.

119 SEN. KINTIGH: What do you exactly mean by the valley?

CHAIR CEASE: At this point we're just talking about Lane County. -Let's talk about it in terms of Eastern Oregon and the rest of the state and exclude the valley for the moment.

120 SEN. J. BUNN: There are three types of options: -1. The reversal of Smith. If it doesn't apply statewide, we have to

designate those counties that are reversed. -2. Apply the AOC language to a certain set of counties. -3. The county language, but not allow the creation of new parcels.

Allow homes on existing parcels, but not on new parcels.

CHAIR CEASE: We're agreeing that we did not want to authorize new parcels?

136 SEN. J. BUNN: Yes.

141 CHAIR CEASE: There are still questions on what would be done with the land on the valley floor and the foothills.

149 WARNER: There is one distinction for the definition of Lane County in different drafts: "That portion of Lane County that is west of the

Coast Range is not considered part of the Willamette Valley."

155 CHAIR CEASE: We spent most of our time on how we should deal with the valley. -We're looking at this in two and possibly three areas of the state.

165 SEN. SHOEMAKER: We have proposed amendments to the -A51 amendments, which are being drafted. -We decided we didn't need to specifically provide that farming

practices would not include ultra-hazardous or abnormally dangerous activity. That's provided for in other provisions. -The area that would be given immunity from trespass and nuisance suits would be farming practices outside of an urban growth boundary on lands zoned for farm and forest use. -Non-conforming farming and forest uses either inside or outside an

urban growth boundary would be protected so long as they did not increase. -This immunity would not apply to actions for relief seeking damages for damage to commercial agricultural products. -We also made it clear the Act wouldn't apply to certain rights of

action for either damages or injunctive relief. -We made it clear the attorney's fee clause applies to either party who prevails. -We agreed to make a small change in existing law to limit the right to farm provisions.

237 BRUCE ANDREWS, Department of Agriculture: We're in concurrence with Sen. Shoemaker.

244 LARRY HILL, NW Sports Fishing Industry Association and Oregon Guides and Packers: Currently there does not appear to be a remedy for an

individual who is claiming to suffer damage that is a result of a public nuisance, unless they can demonstrate some extreme or unusual personal damages. -The current language doesn't take anything away, because we

don't have anything.

281 SEN. SMITH: Bruce, would you comment that those who may use pesticides may be in a worse position than they are under current law.

288 ANDREWS: We have tried to craft the bill to remove that discussion and to keep the issue neutral.

291 SEN. J. BUNN: We need to make it clear for the record that it's the intent of the language to be neutral.

308 CHAIR CEASE: We'll look at that. -It's important to recognize that we're talking about it being neutral

and that current statute would be applicable here. -Let's look at lot of record.

344 WARNER: Reviews pages 3 and 4, section 4, HB 3661-A50 Proposed Amendments (EXHIBIT D).

376 SEN. J. BUNN: For discussion, if we use 50 acres as the level under which you qualify for lot of record for the 5,000 or 6,800 and he'll use the 160, although it could be 320. -In the -50, there are people with 100 acres who could not build a

dwelling. -Someone with two non-contiguous 80 acre parcels could not build a home, but someone with 160 acres could. -We discussed the idea that if someone had a lot of record over the

minimum threshold we set and if you combine tracts within that county or adjacent counties will total 160 or 320, they can be combined for

purposes of building a dwelling, but we'd require a deed designation

that would prohibit those properties to be used for the same purpose by somebody else in the future. -By setting 160 or 320 for a successful operation, whether it's one

tract or several tracts, we should recognize that for building a

dwelling. -When you get to one 320 acre tract you tend to get into the industrial lands. -That kind of division would be appropriate in eastern Oregon. In

western Oregon, half that would be appropriate. -You'd have 160 in western Oregon and 320 in eastern Oregon.

CHAIR CEASE: We'll need to talk about this.

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020 WARNER: The other component in the -50 is the accessory dwelling allowed in acreage over 320.

SEN. J. BUNN: We need to recognize the farm-forest mix.

028 CHAIR CEASE: We were looking at the farm-forest mix in reference to how we look at the lot of record in the valley. -We did not want to make the lot of record in the 1st and 2nd, except in some very unusual cases.

046 SEN. KINTIGH: We need clarification on what is farm and forest land in the valley. -Land owners are paying for fire protection even on farm land.

060 CHAIR CEASE: Apparently each county in the valley has designations that applies to those acreages in both.

WARNER: We were speaking of AF 20 in Yamhill County.

062 SEN. J. BUNN: Yamhill County's AF 20 zone is the hilly transition land. -Every county has some version of that.

067 CHAIR CEASE: The hearings officer was an important part of the discussion. -Their role would be limited to very special lots which would meet very special standards.

070 WARNER: We've worked on some language for the hearings officer: "Notwithstanding the requirements of: "(a) Single family dwelling not in conjunction with farm use may be sited on high value farm land if it meets other requirements of

sections 2 to 5 and the hearings officer of the State Department of Agriculture under the provisions of ORS determines that the lot

or parcel could not practically be managed for farm use by itself or in conjunction with other land due to extraordinary or unique circumstances inherent in the land or its physical setting that do not apply generally to other land in the vicinity."

078 CHAIR CEASE: The question is whether or not that language is too rigid. -The issue of the date that would apply for the lot of record is still

unresolved. -What about ownership?

091 SEN. J. BUNN: "I think the general sense was that the ownership should be continuous ownership within a family. And I don't know exactly how

we define family. But I think there was a feeling that it should not be one particular individual or you shouldn't have to inherit -- the original version, I believe, you had to inherit, you couldn't even buy from your parents and that seemed rather rigid in that expanding it to the family a little broader would be appropriate."

096 CHRIS WARNER, Research Associate: "Some language in ORS 659.340 dealing with the members of the family. A member of the family would include

the _wife, huSB and, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent or stepchild of the individual.'" (From ORS 659.340 (3)(b) EXHIBIT B.)

SEN. J. BUNN: "This would have another effect too, that is we have a requirement to combine contiguous lots. That means if I've got a lot next to my brother that's a lot of record, I can't build on that lot, because he or she are caught by that same net. So I think we create more combination, which is one of the goals; although you allow that property which has been in the family for eight years or longer to be a potential, you also create more that'll be rolled together."

110 SEN. KINTIGH: "Why do we need to drag into the family part here, why not just have it as the legally created lot?"

SEN. J. BUNN: "First, I'd like to mention one thing, if we do family I think we should include grandchildren."

"On the question -- dealing with the question of why should it be family? I have no problem with a wide open lot of record. It was legally created and you can build on it, but if you look at a map and see how many places you would open up, I don't think we can reach that point. If there was one member of the -- well anyway, I just think we're a long ways from that point. And that we have to find limits and the goal of the lot of record is not to provide more land for development. It is to take people that bought a parcel with a legitimate belief that they could build on that. We have changed the rule since and we're going back and saying, out of fairness, we'll give you that opportunity. We've got to draw the line somewhere. And either the individual that owned it is one way, and the simplest way. Or saying, if it's within a family, that's acceptable too."

SEN. KINTIGH: That's after the date we pick?

SEN. J. BUNN: Yes. He explains.

141 CHAIR CEASE: Lot of record has as an approach quite different than the rules. -You're talking about making some lands available based on equity. -The lot of record would make the issue much more administratively

feasible than the existing system. -As we deal with the valley we have to determine how we protect the

prime land, while making some lots available for development. -Whether we reverse Smith or make it applicable to the valley or the

rest of the state is a question. -We'll continue to discuss these issues. -Adjourns at 7:30 PM.

Transcribed by:

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EXHIBIT LOG:

A - Testimony on HB 3661 - George Reid - 8 pages B - -A62 Amendments to HB 3661 - Staff - 1 page C - -A69 Amendments to HB 3661 - Staff - 18 pages D - -A50 Amendments to HB 3661 - Staff - 30 pages E - ORS 659.340 - Staff - 1 page