

SENATE COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES Subcommittee
on-Land Use

March 22, 1993 Hearing Room 137 4:30 p.m. Tapes 11-12
MEMBERS PRESENT: Sen. Ron Cease, Chair Sen. Gordon Smith MEMBERS
EXCUSED: Sen. Bob Shoemaker STAFF PRESENT: Chris Warner,
Administrator Pamella Andersen, Committee Clerk MEASURES
CONSIDERED: Informational Meeting: Overview of Land Use Appeals
Process SB 130 WITNESSES: Corinne Sherton, Land Use Board of Appeals
Greg Wolf, Department of Land Conservation and Development Roy Burns,
Lane County Brent Curtis, Washington County Blair Batson, 1000 Friends
of Oregon Lois Kenagy, Agriculture for Oregon Clif Kenagy, Agriculture
for Oregon

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TAPE 11, SIDE A

004 CHAIR CEASE: Calls the meeting to order at 4:41 p.m. Opens the informational meeting.

OVERVIEW OF LAND USE APPEALS PROCESS

010 CORINNE SHERTON: (introduces EXHIBIT A) Gives history and purpose of the Land Use Board of Appeals. - Notes the dramatic increase in the number of appeals heard by the board.

CHAIR CEASE: Could you explain the breakdown of appeals, the types filed and which are most common?

037 SHERTON: (introduces EXHIBIT B) Reviews information on Exhibit B, "Land Use Decisions Appealed to LUBA" - Lists most prevalent types of appeals they have heard. - Reviews Exhibit A, "Land Use Decision Appellate Review Process." Senate Committee on Agriculture and Natural Resources Land Use Subcommittee March 22, 1993 - Page 2

- Notes the board's experience with requests for reconsideration of an appeal. - Only one reconsideration made continued to be challenged by the petitioner.

072 CHAIR CEASE: How would one continue to challenge?

SHERTON: An amended notice of intent to appeal would be filed within 21 days after the decision on reconsideration. - Notes the opportunity for anyone to file an objection that certain information be included in the record. - Reviews the time line for various portions of an appeal. 109 - Reviews the Court of Appeals process on page 2.

CHAIR CEASE: So this process might take a year prior to the Supreme Court review?

SHERTON: Only approximately 15 percent of LUBA's decisions are appealed to the Court of Appeals. - Eighty percent of our appeals become final after we have issued them.

CHAIR CEASE: How many of your actions are remanded back to the state or

local government for further action?

SHERTON: (introduces EXHIBIT C) References Exhibit C, "Disposition of Appeals Filed at LUBA 1989-92." - Twenty to thirty percent of the cases were remanded back to the local government or state agency. - Reviews other statistics on Exhibit C.

149 SEN. SMITH: Are there other states with systems similar to LUBA? I suspect there are not.

SHERTON: I don't know.

SEN. SMITH: I would expect other states to handle these cases through their court system. - I am wondering what the cost/time comparison would be.

CHAIR CEASE: That is an issue we may wish to review. - More of these are being done at the court level. - The courts have less expertise with these issues and would require a longer time period to conclude.

176 GREG WOLF: The advantage of the LUBA process is the speedy disposition of land use cases. - Some urban issues are difficult and move back and forth from the local jurisdiction to LUBA, creating concern over the ~ping pony. effect.

197 BLAIR BATSON: There is evidence the appeals process in Oregon works much faster than in other states. - I will find forward that information to the committee. to the committee.

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- The consensus is LUBA appeals are not a problem, but local governments have mushy, subjective standards that invite appeals. - We need directions for local governments to have clearer standards in local ordinances and comprehensive plans. CHAIR CEASE: How much of that mushiness is due to politics at the local level?

BATSON: Mushiness occurs when there is disagreement on the outcome.

CHAIR CEASE: Gives example of the siting of the Fred Meyer store in northeast Portland near the freeway. - Throughout the administrative process, the recommendation was made against the siting. When heard by the city council, the recommendation was to approve the siting. - How do you deal with such a situation? BATSON: A standard such as requiring a development in a certain area to be consistent with the visual characteristics of the neighborhood, lends itself to differing interpretations - There isn't a right answer in such situations. 270

CHAIR CEASE: In states where the appeals system is predominantly in the courts, would the legislature be less involved?

WOLF: There is chaos in these other states, with the courts playing a dominant role. - The ability to correct actions taken through that type of method is difficult. - Court appeals also take much longer.

CHAIR CEASE: Wouldn't development groups prefer more be done by the courts? Why is that so?

310 BATSON: The Homebuilders support the development process through LUBA, stating there is more certainty and it is much faster. WOLF: One of the interests of the Homebuilders is to eliminate some categories of

land use decisions from any appeals. CHAIR CEASE: Closes the informational hearing. - Opens the public hearing on SB 130.

PUBLIC HEARING ON SB 130

338 GREG WOLF: Lists the three things the bill accomplishes. Reviews the need for these changes.

375 CHAIR CEASE: Since we have representatives from Lane and Washington County who are opposed to this bill if those acreages qualify as small scale resource lands, what is the merit of the objection?
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WOLF: It is the other provisions which set levels of requirements for farm dwellings. - References the "Smith" case in eastern Oregon and the impact of this bill on it. - We believe some parcels there can be partitioned for non-farm dwellings in a way that will not hurt the larger ranch parcel.

404 CHAIR CEASE: The case would not affect only eastern Oregon?

WOLF: Our proposal would be to fix it only for eastern Oregon. - The court case applies statewide. - Notes why the transfer of development rights study is needed. - We would like to study that problem and offer a recommendation to the Legislature next session.

443 ROY BURNS: Lane County is opposed philosophically and pragmatically to the repeal of the marginal lands provisions. - There is a trend by LCDC to remove flexibility in the land use planning process.

TAPE 12, SIDE A

BURNS: This bill, when first passed, was a trade-off. - Only Washington and Lane Counties have exercised this option and other counties have become discouraged from doing so. - References the "Smith" case, stating the department is expanding the case to include a requirement that compatibility with farm and forest related activities must both be shown. - There should be no distinction between eastern and western Oregon. - Transfer of development rights are complex and difficult to understand. 041 BRENT CURTIS: Offered testimony in opposition to SB 130. - The marginal land option is a needed option. - We need a statewide solution. - This may not rise to the top of the list for expenditure of resources. - The Board of County Commissioners of Washington County opposes this bill. - It removes the authority of the county over a large part of its rural area. - In 1983, the marginal land bill allowed us to settle rural land issues in two specific categories.

079 CHAIR CEASE: Was the Washington County acreage figure you mentioned accurate?

CURTIS: Yes. - Explained how that figure was determined, using their two district types. - Elaborates on the specifics of the designations and their size. - We appreciate that existing system and would like to see the marginal lands option remain. - References a decision made at the LCDC meeting the previous Friday. - The DLCD report on urbanization

indicates 96 percent of all development in Washington County occurs inside the urban growth boundary.

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119 SEN. SMITH: Is there anything in the new rules and regulations that prohibits you from reviewing the new system while continuing under the existing system?

CURTIS: If you repeal the law, we have to go to a new system. - States their deadline for moving to a new system. SEN. SMITH: The problem is with this bill and not the new regulations?

133 CURTIS: We questioned the utility of the new regulations. - We expect to find very little small scale resource land. - We have worked hard to gain strong support for land use planning in Washington County. - To be forced into a new system may cause the citizens to perceive the state planning program as a problem again. 154 CHAIR CEASE: Do you believe little small scale resource land will be found because the quality of the land is so high? CURTIS: Reviews the rule requirements for making determinations. - Questions asked would be: - Does this land have a history of commercial farm use? - Is the land capable of generating \$20,000 in income? - "Capable" of generating income is difficult to determine in our area. - If we had our own system and ability to perform a local analysis and form conclusions we would come out with better results. - We would like to have the option of continuing under the marginal lands provisions while evaluating the new rules.

198 BLAIR BATSON: (introduces EXHIBIT D) Offers testimony on behalf of 1000 Friends of Oregon in opposition to SB 130. - Lists the reasons for their opposition. - This bill is inconsistent with the policy of retaining agricultural land in large blocks. 225 - DLCD's annual EFU reports showed there are hundreds of non-farm dwellings being approved now in farm zones. - LCDC's Farm Forest Study shows large quantities of non-farm dwellings being approved under the guise of farm dwellings, 40 percent of which produce no income. - We support the portions of the bill that repeal the marginal lands legislation. - We agree with the county planners that transfer development rights are not the way to address planning problems.

CHAIR CEASE: Your reason for opposition is opposite that of the counties?

BATSON: Of course.

292 CLIF KENAGY: I don't oppose the determinations made in the "Smith" case. - If you wish to reverse that in eastern Oregon, that is acceptable, but please don't do so in western Oregon. - A myth is going around that a little bit of bad ground on a farm isn't needed. .

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- Gives personal farming experience and the need for bad ground to locate storage and machine sheds. - Reviews the increase and shift in value on his land due to the installation of an irrigation system.
341 - Notes specific farmstead near him developed into houses, leaving no farmstead available for the remaining good ground.
- Displays picture of a small utility shed on that farm surrounded by water. There is no remaining ground high enough for a building.
373 - Recommends people within a jurisdiction buy a block of secondary land at farmland prices, and offer to trade small building parcels. - Recommends those who have a building site erect a temporary, manufactured home as a lifetime estate to be removed at the end of their life, saving the land for the next generation. 408 LOIS KENAGY: The marginal land bill developed did not turn out as we had hoped. - Addresses the illustration previously mentioned of determining income levels based upon the value in three acres of strawberries.

TAPE 11, SIDE B

L. KENAGY: Strawberries are planted one year and harvested two or three years later. Another crop is then planted. Several years transpire before you replant strawberries. - Value determinations need to consider this rotation. - We wish the new administrative rules could be implemented right away. - Agriculture for Oregon really supports this bill. - We disagree with 1000 Friends on some things and planning directors on others. 050 - It is crucial those rules not be tampered with this legislative session. - Give the rules a couple of years for the kinks to be worked out so all the work of this decade IS not in vain.

CHAIR CEASE: I find it interesting that one side says the rules give the store away and other side says they don't do anything.

L. KENAGY: That gives you a clue as to what kind of compromise was needed to arrive at the rules we now have.

072 C. KENAGY: Explains the moving of boundaries.

L. KENAGY: People will support land use planning if there are no restrictions. - With respect to the "Smith" case, a paradox exists. - I am frightened of the modifications of the "Smith" decision and how those may impact western Oregon. 112 - Comments on transfer development rights. - Suggests legislation be passed for transfer development rights research, and the department be urged to seek an out-of-state grant.

145 GREG WOLF: Transfer development rights are still a concept that needs study. - We are attracted to it because it addressed the fairness issue.

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Senate Committee on Agriculture and Natural Resources Land Use

- A foundation request would be a good idea that we could pursue. -
Notes program in New Jersey that is now operating well.

172 CHAIR CEASE: Closes the public hearing on SB 130. - Adjourns the
meeting at 5:50 p.m.

Submitted by, Reviewed by, Pamella Andersen Chris Warner
Clerk Administrator

EXHIBIT LOG:

A Land Use Decision Appellate Review Process, Corinne Sherton, 2
pages B Land Use Decisions Appealed to Date, Corinne Sherton, 1 page
C Disposition of Appeals Filed at LUBA 1989-92, Corinne Sherton, 1
page D Testimony on SB 130, Blair Batson, 3 pages E Testimony on
SB 130, David Smith, 3 pages

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