

SENATE COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES Subcommittee on
Land Use

April 5, 1993 Hearing Room 137 4:30 p.m. Tapes 15 -16
MEMBERS PRESENT: Sen. Ron Cease, Chair Sen. Bob Shoemaker Sen. Gordon
Smith MEMBERS EXCUSED: None STAFF PRESENT: Chris Warner,
Administrator Pamella Andersen, Committee Clerk VISITING
MEMBERS: Rep. Ray Baum, District 58 Sen. Stan Bunn, District 2 Rep.
Bob Repine, District 49 MEASURES CONSIDERED: SB 763 SB 891 . 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 15, SIDE A

004 CHAIR CEASE: Calls the meeting to order at 4:42 p.m. - Requests
Representatives Baum and Repine offer a report on land use issues and
possible approaches to addressing those.

028 REP. BOB REPINE: Reports on House activity relative to land use
issues. - Notes matrix they have created organizing subject matter
relative to land use and offers to provide copies to the committee. -
Lists subjects they have been reviewing. 044 - We are seeking to
combine all possible subject matters into one comprehensive bill. -
Reviews the issues that may be addressed in such a bill: EFU and forest
lands, right to forest, right to farm, right to mine, appeals issues,
configuration of the commission.

062 REP. RAY BAUM: Adds other issues they are reviewing. - They are
working on two drafts relating to secondary lands. - They are reviewing
the Smith case, the Clark case, appeal process streamlining, right to
farm, forest practices and references to mining.

088 SEN. SHOEMAKER: We have been addressing right to farm as a separate
bill. Will your bill be imbedded in another secondary lands bill? . ,
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REP. BAUM: Another concept is lot of record. - Under existing secondary
land rules, something must exist to protect existing farm and forest
uses. - The land owners need to be protected to ease the tensions of the
public and address legitimate land rights concerns. 110 - We will not
be inserting the right to farm bill in our bill.

CHAIR CEASE: On right to farm, any such bill is a land use bill. - If
you protect some of the practices you are protecting the maintenance of
that land for farming purposes?

REP. BAUM: Are you referencing existing or proposed use?

CHAIR CEASE: In agricultural use you get into issues of how much EFU
land you should protect. - How do you view the relationship between
right to farm and maintenance of land for EFU purposes?

137 REP. BAUM: In a case where you are allowing a dwelling next to an
existing farming operation?

CHAIR CEASE: There seem to be some basic conflicts. - Doesn't a conflict
arise the more development is allowed? - Where do you draw the middle

line to not allow for so many more uses that you increase your interfacing conflict problems?

REP. BAUM: Right to farm legislation goes hand in hand with that. 158 - Part of the upside of allowing dwelling on some of the forest land is you are getting better management. - Those issues could be addressed using existing lots of record.

CHAIR CEASE: The more houses allowed in these areas, the more difficult it becomes to farm and produce trees.

176 REP. BOB REPINE: The purpose of embodying right to farm and right to forest language is it creates a defined point of obligation. - People need to be aware of the problems so they can make knowledgeable decisions relative to their land ownership and use as it impacts surrounding land.

197 SEN. SMITH: These land use issues are dealing with conflict mitigation. - You wish to move that activity to the local level and the individual?

REP. REPINE: When you couple the use of dwellings in those particular locations and have a document setting forth rights, you eliminate some of the conflicts that exist. - People don't know what has precedence.

CHAIR CEASE: Are you trying to accommodate uses? Senate Committee on Agriculture and Natural Resources Land Use Subcommittee April 5, 1993 - Page 3

REP. REPINE: Yes. Some parties have acquired lands at one time with a purpose of development and have learned they have lost all right to do that due to re-zoning.

REP. BAUM: We are only intending to make some modifications. - We won't be doing anyone any favors unless we can do it in a less complicated way.

242 SEN. SHOEMAKER: Are you saying the problem is the rules are complicated rather than fundamentally unjust?

REP. BAUM: They are both. - The problem with secondary lands rules is they are complicated, and we are uncertain as to how they would work. - Planners have been trained sufficiently that we can return these decisions to the counties. - In northeast Oregon 70 percent of the forest land is owned by the US government, requiring an entirely different land use planning scheme than for an area such as Washington County. 277 About 90 percent of Denny Jones' district is owned by the Bureau of Land Management, a problem which is not recognized by the rules.

SEN. SMITH: Will we have less land use conflict if we return control to the local level, or will we just shift the conflict to the courts?

REP. BAUM: You will make the counties the focal point. - We are trying to shift the burden of proof to the appellants rather than the counties or the applicants.

310 REP. REPINE: Most planners are experienced and familiar with their land base. - The concern that favors will be given by planners at the local level is unfounded as land use is well watched at the county level

and determined according to concept and logic.

SEN. SMITH: By shifting this to the local area, are we just shifting the form and amount of dispute?

362 REP. REPINE: There are probably sections of land over which commissioners and planning staff can have a relatively strong enforcement activity and regulatory overview. - There are other types of land that might lend themselves to appeal.

REP. BAUM: Let the land owners take issue with their commissioners rather than bringing it here.

CHAIR CEASE: Reduction of conflict is essential. - If a person has any energy, money and/or time, they will continue to pursue their goal. - Wouldn't certain conflicts become more heated at the local level?

REP. BAUM: The question is how far do we allow the counties to go? 450 - We are trying to move the most contentious issue to the local courthouse. .

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SEN. SHOEMAKER: You are suggesting we work out a lot of record bill with a grandfathering approach? - Would you leave to the counties general secondary land issues?

TAPE 16, SIDE A

REP. BAUM: LCDC is beginning to receive maps from the counties. - We could end up with the secondary lands rules as they are written, or another proposal that simplifies that process and gives more control to local counties, or we could address specific issues and leave the secondary lands issue as drafted. . CHAIR CEASE: Would you agree the lot of record issue has more commonality than other land use issues?

REP. BAUM: Yes.

036 REP. REPINE: We have circulated the original draft of SB 100 (1973) as a primer to return to where it all began. - We are trying to bring to closure the goal of the crafters of that legislation. CHAIR CEASE: Opens the public hearing on SB 763 and SB 891.

PUBLIC HEARING ON SB 763 and SB 891- EXHIBITS A through B

WITNESSES: Senator Stan Bunn, District 2 Ted Lopuszynski, Yamhill County Commissioner John Pinkstaff, Assistant County Counsel, Yamhill County James Monroe, Linn County Farm Bureau Tom Brawley Clif Kenagy Lois Kenagy, Agriculture for Oregon

058 SEN. STAN BUNN: Comments on the two lot of record bills, one of which is SB 891. - Notes the two goals for lot of record bills which have been viewed as mutually exclusive. - One of the strongest drives against land use planning in Oregon is because it has been unfair and inequitable. - In the secondary lands area there is a "best use" issue and a fairness issue, the latter of which could be resolved if the

lot of record issue were removed. 091 - Solving the lot of record issue would also remove any barriers to sound land use planning.

- Lists related specifics. - Fear has precluded consideration of allowing development on some agricultural lands. - Evidence is developing that indicates in allowing existing lots of record to develop, bad things will not happen to existing farm and forest lands.
- Mentions some creative ideas that can be included in the bill such as placing limitations in the bill. - If this allows some class I agricultural lands in the Willamette Valley to be used for a family's home, with 99.9 percent remaining and this issue is defused, it is worth it.

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154 - The small scale resource activity imbeds in it a prejudice against any agricultural lands to be used for other purposes.

167 TED LOPUSZYNSKI: (introduces EXHIBIT A) Offers testimony in support of these bills. - Reviews his personal involvement working with land use planning. 227 - Mentions his most difficult decision as a county commissioner. - Mentions recent case where a landowner was refused permission to build on his land which was unsuitable for farming. - The periodic review process will require 80 acre minimum lot sizes in the future. 263 JOHN PINKSTAFF: (introduces EXHIBIT B) Offers personal background and experience. - Reviews the expected impact of SB 763. - Explains why SB 763 will be necessary if the lot of record bill does not pass. - Lists five propositions which lead him to identify a problem:

- There are rules that farm parcels be a certain size; - There are certain rules for non-farm dwellings that are smaller; - There are rules proposed by the county to carry out statewide rules (notes specific case); - Most applicants must seek to prove they are a commercial operation so they can have a dwelling; - New Goal 3 rules have come out that don't alleviate the problem. 362 - States specifics of why he believes this is so. - Lists hurdles facing the non-farm dwelling landowner.

TAPE 15, SIDE B

PINKSTAFF: The rule attempts to fill the gap between parcels that are not productive enough to meet the income requirement and those that are capable of earning income but are not considered commercial because they don't make enough money. - The non-farm dwelling designation has anti-conflict provisions built in already. - We are trying to establish a clear line between the commercial and non-commercial activities in the resource zone. - Section (3)(e) contains another safety valve.

074 SEN. BUNN: In SB 891, the date July 1, 1989, is mentioned in section 2(1) as the "prior to" date. - Since 1973, lots have been created under the then legitimate land use activities that have since been outlawed by new regulations and rules. - The 1989 date may need to be amended. SEN. SHOEMAKER: Assuming SB 763 is an appropriate tool, do you still need SB 891? SEN. BUNN: If we had SB 763, SB 891 could be narrowed. - The criteria of SB 763 are very restrictive. - Lists some of the criteria, all of which must be met.

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- 107 SEN. BUNN: If we can identify that not many of these cases exist, we can let them all become legal at the same time and be done with it. LOPUSZYNSKI: Mentioned his suggestion in past years of notifying all land owners they had five years to develop or dispose of their property, following which no activity could take place.

130 JAMES MONROE: Reviews specific instance in Linn County in 1989 that led to their land use planning. - Reads from the Linn County Policy Manual relative to opposition to non-agricultural and non-forest use of commercial land outside urban growth boundaries. - If land use decisions are sound in law and concept, why has Linn County prevailed in hearings against LUBA only once? - The best way to get rid of LCDC is to ghe them nothing to do.

196 SEN. SMITH: Are we just shifting LCDC's fight to the local level, and would this be alleviated by right to farm legislation?

MONROE: That legislation will help, but it is not a panacea as it does not contain a prohibition on the right to sue and the right to harass. 216 - In managing commercial agriculture, we create an environment desirable to many. - Their non-farm activity extends beyond their plot and detracts from legitimate farming. 250 - Reads testimony of David Lett, Yamhill County, to the Portland City Club. - The attempt on these two bills is to loosen up land for other uses, and the surrounding parties will be unaware of the use change until it is too late.

305 TOM BRAVVLEY: I am a farmer with problems with additional dwellings and people in our community. - The original intent of SB 100 has been skewed. - If we open up the lots of record we will have non-farm people all over the farming community complaining about farming practices such as field burning, etc.

CHAIR CEASE: Why isn't the farming community showing greater opposition to these bills?

BRAWLEY: The farming community isn't here in great numbers because they have to leave their operations to be here. - Farmers are unanimous in many areas, but anytime you have people you will have dissension and disagreement. - In the Farm Bureau, we probably have 70 percent majority. 424 - We can't make a profit coming to these hearings. Others do profit financially by coming here.

SEN. SMITH: We are trying to satisfy what works for the farm community. - There is little understanding on the part of the farm community as to what these land use plans do for them.

TAPE 16, SIDE B B

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CHAIR CEASE: I represent a totally urban district but I want to protect farm and forest lands. - I have problems creating more land use conflicts.

BRAWLEY: The pressure on this issue will never really subside. - If you have to put a date on these lots of record, I recommend you use an early date in the 1970's.

050 CLIF KENAGY: Notes the change in the residential boundaries near his farm over the years. - One reason farmers aren't here is they have yet to be personally impacted. - Farm Bureau people aren't here because they are anxious to build membership and therefore don't remain with committed farmers. 087 - The right to farm bill would be okay if it addressed only those homes now existing. - Distributes pictures for review. - Gives example of conflicts between farm and non-farm land users: residents in the duplexes by his farm dumped sod onto his land that probably had flatgrass which he had been eradicating from his farm.

127 LOIS KENAGY: Farmers are independent people. - Many do not have retirement plans, but intend to sell some or all of their land at that time, not thinking with a commitment to resource preservation. 169 - Mentions the need to let the secondary land rules remain in place for a few years before tampering with them. - On SB 891, the year 1989 is unconscionable; go back to 1975. - With respect to the statement in SB 763, "land that does not contribute to commercial agriculture enterprise," there is use for land that on the surface appears not to contribute to commercial agriculture enterprise.

208 CHAIR CEASE: Adjourns the meeting at 6:25 p.m.

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

EXHIBIT LOG:

A Testimony on SB 763 and SB 891 - Ted Lopuszynski - 3 pages
B Testimony on SB 763 - John Pinkstaff - 4 pages CTestimony on SB
763 and SB 891 - Art Coolidge- 2 pages DTestimony on SB 763 and SB
891 - Diana Gardener - 2 pages