

House Committee on Environment and Energy March 25, 1991 - Page

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.

HOUSE COMMITTEE ON ENVIRONMENT AND ENERGY

March 25, 1991Hearing Room E 1:00 p.m. Tapes 89 - 92

MEMBERS PRESENT:Rep. Parkinson, Chair Rep. Whitty, Vice-Chair Rep. Burton Rep. Courtney Rep. Naito Rep. Norris Rep. Repine Rep. Van Leeuwen Rep. Watt

VISITING MEMBER:Rep. Ted Calouri Rep. John Meek

STAFF PRESENT: Kathryn VanNatta, Committee Administrator Andy Sloop, Committee Assistant Holly Blanchard, Transcriber

MEASURES CONSIDERED:HB 2261 (PRW) HB 2150 (WRK) HB 2797 (PUB) HB 2745 (PUB) HB 2796 (PUB) HB 2795 (PUB)

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TAPE 89, SIDE A

08CHAIR PARKINSON calls the meeting to order at 1:07 p.m. Representatives Whitty, Burton, Repine and Naito not present and excused. Explains that HB 2261 is being brought back for reconsideration because it needs a subsequent referral to Ways and Means due to a fiscal impact. Entertains motion to suspend rules for reconsideration.

22MOTION:REP. NORRIS moves to suspend the rules to reconsider the vote by which HB 226 1 was passed out of committee.

(Rep. Repine arrives 1:09)

25VOTE:In a roll call vote, the motion carries, with all members present voting AYE.

28CHAIR PARKINSON: Opens work session on HB 2261.

(Tape 89, Side A)

WORK SESSION - HB 2261

30MOTION:REP. NORRIS moves to reconsider the vote by which HB 2261 was sent to the floor with a do pass recommendation.

35VOTE:Hearing no objection, CHAIR PARKINSON so moves.

62MOTION:REP. NORRIS moves HB 2261 to the floor with a do pass recommendation with a re-referral to Ways and Means.

72VOTE:In a roll call vote, the motion carries with Representatives Courtney, Norris, Parkinson, Repine, Vann Leeuwen, and Watt voting AYE, and Representative Naito voting NAY.

(Tape 89, Side A)

WORK SESSION - HB 2150

84CHAIR PARKINSON: No one has signed up to testify. Further amendments will be forthcoming.

92KATHRYN VAN NATTA, COMMITTEE ADMINISTRATOR: Reviews status of the measure.

100 CHAIR PARKINSON: Not aware of any objections to the measure.

(Rep. Burton arrives 1:16)

(Tape 89, Side A)

PUBLIC HEARING - HB 2797

Witnesses:Charles Hales, Home Builders Association of Metropolitan Portland Jon Chandler, Common Ground Rep. Ted Calouri, District 7 Greg Wolf, Land Conservation Development Commission Pam Edens, Citizen (Beaverton) Bob Kloos, Land Use Attorney (Eugene)

(Rep. Whitty arrives 1:17)

110 CHARLES HALES, HOME BUILDERS ASSOCIATION OF METROPOLITAN PORTLAND: Supports HB 2797 and summarizes ORS 197.505 - 540 that applies to Oregon's moratorium law (EXHIBIT B):

>To prohibit "political" moratoria; >To specifically connect building or development moratoria to the framework of the state's land use planning laws; and >To require that a correction program be adopted shortly after the imposition of a moratorium.

239 REP. BURTON: Asks for explanation of proposed language "economic development" (EXHIBIT C).

240 JON CHANDLER, COMMON GROUND: Explains the bill (EXHIBIT C).

>Reference to "economic development" was added to reflect that more than just housing would be impacted by a declaration of moratorium.

263 HALES: Explains the bill was drafted by the Home Builders Association and other groups in response to housing moratoriums enacted

in Beaverton and elsewhere. Didn't consider the possibility that there would be moratoriums on commercial development as well.

330 REP. VAN LEEUWEN: How would this apply in the case of an emergency when something needs to be constructed?

341 HALES: We're talking about a moratorium on building permits. There are local codes already that include provisions for emergencies such as you have described.

TAPE 90, SIDE A

03REP. BURTON: Refers to HB 2797, Page 2, Section 3(c) concerning "findings", and asks if there's a statutory reference as to what those findings would be based on?

10CHANDLER: Current moratorium law sets forth the type of investigation local government has to do before declaring a moratorium. Refers to page 2, lines 9 - 36 of the bill.

18HALES: But that statute doesn't come right out and say cities must show legal findings describing how they did their homework.

24REP. BURTON: Is a public hearing intended to be a quasi-judicial activity on the part of the local government?

26HALES: Current law doesn't classify a moratorium as land-use decision, but the law does spell out that moratoria are reviewable at LUBA.

37REP. BURTON: Refers to page 2, lines 3 - 4 of the bill concerning the intent of the language.

38HALES: Current law says certain tests must be met; challenges are directed to LUBA.

45REP. TED CALOURI, DISTRICT 7: Advocates including schools under the definition of "public facilities" that need to be in place before development applications may be approved.

>Suggests using HB 3301, which defines schools as public facilities, as a prototype amendment to HB 2797.

87CHAIR PARKINSON: This sounds a little bit like a chicken-and-egg question.

90REP. CALOURI: That isn't the intent. If schools are lacking in an area targeted for development, school construction should be considered in development planning.

148 HALES: One of the affects of this clarifying language is to make sure that a moratoria can only be declared for the traditional municipal services of water, sewer, and streets. Scenario: Beaverton runs out of school space, and the school district asks the city for a residential moratorium. Who gets to adopt the moratorium? The city. And who has to deal with development strain? The city. That shouldn't be.

174 REP. CALOURI: The city should consider school space when deciding whether or not to declare moratoria. Local governments would make the argument they aren't even allowed to consider school space. It's

unclear if they should be allowed to consider it.

200 REP. VAN LEEUWEN: When apartments are constructed, don't local governments require that something be put toward schools?

205 HALES: HB 2797 wouldn't change communication between cities and school districts, but it does clarify the policy that a moratorium is not declared for a public facility over which the municipality has no control. The other distinction of this bill is that a moratorium would not be declared for a responsive facility; a moratorium is only declared for basic facilities such as water, sewers, and streets.

237 REP. NAITO: Because schools are expensive, communities might use HB 330 1 to discourage families.

240 REP. CALOURI: To some extent, this is a local control question. Current statute does not allow local municipalities to even consider school space in moratoria decisions.

271 HALES: If HB 3301 were implemented in Hillsboro, where there are six school districts, it would allow a moratorium in a district with inadequate facilities, even if an adjacent district had empty buildings. This would preempt or undermine alternative corrective measures, such as consolidation, that might make more sense.

307 CHANDLER: Allowing schools to vote for moratoria would open the door for fire, police, parks and schools to wield effective veto power on development. HB 2797 clarifies moratorium criteria and termination dates.

368 REP. COURTNEY: Where are you on public safety? If sewers are important, why wouldn't police and fire be right in there?

387 HALES: This bill is based on a mathematical relationship between new development and those three basic systems (i.e., water, sewer, and streets). There is flexibility in responsive services based on service boundaries, hours of operation, etc. whereas with water, sewer, and streets it's a very mechanical formula.

TAPE 89, SIDE B

33REP. NORRIS: Does this require local government, in any way, to address deficiencies that lead to moratoria?

40HALES: Implicitly, yes.

42REP. NORRIS: In this day of fiscal stringency, that's kind of ridiculous.

44HALES: Well, we have urban growth boundaries inside of which land is supposed to be ready and available for development.

50REP. NORRIS: We also have communities that simply can't handle growth.

54HALES: Then those communities should be down-zoned to reflect that.

65REP. NORRIS: Conceptually, I agree with this; but I'm sensitive about mandating cities to develop infrastructure.

98REP. WHITTY: Notes that many cities with land that can be developed do not have adequate water reserves to accommodate population growth.

116 CHANDLER: Local government should have the authority to deal with lack of critical resources like water. We're not arguing with that.

152 CHAIR PARKINSON: HB 2797 is ambiguous about defining schools as key public facilities. According to moratoria law, this bill would say they are not key facilities. Would HB 3301 reverse that ambiguity to say that school are key facilities?

158 HALES: It's not a clear reversal; that is, HB 3301 says schools "are" key facilities and HB 2797 says "all the responsive facilities", schools, fire, library, and police are not key facilities.

169 GREG WOLF, ASSISTANT DIRECTOR, LAND CONSERVATION DEVELOPMENT COMMISSION (LCDC): Supports concept, but suggests amendments.

>Probably unreasonable for cities to expand public facilities within 60 days. Recommend giving cities some provision to extend moratoria beyond 60 days.

>Recommend the 30-day notice to the DLCD be changed to 45 days to be consistent with current plan amendments that are required to be submitted 45 days prior to a public hearing.

>Concerned about how HB 2797 would be implemented in emergency situations.

>DLCD will be developing administrative rules and convening a task force in early April to address the distinction between infrastructure facilities and responsive services.

214 REP. BURTON: Is there a way to modify this bill so that it is more specific with respect to Goal 9, which pertains to economic development?

224 WOLF: Yes. Thinks a specific definition for economic development could be provided.

250 CHAIR PARKINSON: How long does it take now until DLCD knows about local moratoria?

257 WOLF: Cities are not required to tell us about moratoria, but the Department usually is aware of most moratoria through compliance with the state housing goal.

262 REP. VAN LEEUWEN: Questions language allowing moratorium because of "compelling need"

275 WOLF: There is no definition in law of "compelling need", but courts have defined that language through decisions. It's not an easy test.

293 PAM EDENS, BEAVERTON CITIZEN: Testifies in opposition to the measure. (EXHIBIT D)

TAPE 90, SIDE B

27REP. BURTON: Looking at the Washington County or City of Beaverton comprehensive plans, there isn't anything to address where they might go

to accommodate key facilities, such as schools, yet they supposedly comply with LCDC goals and standards?

33EDENS: It's in the documents but in actuality and practice it becomes very difficult for interpretation for approval or denial of developments.

60BILL KLOOS, LAND USE ATTORNEY, EUGENE: LUBA has ruled that "compelling need" must meet the five findings in ORS 197.015.

125 CHAIR PARKINSON: Calls for 10-minute break at 2:40. Reconvenes at 2:52 and opens public hearing on HB 2745.

(Tape 90, Side B) PUBLIC HEARING - HB 2745

Witnesses: Mike Dewey, Oregon Cable Television Association Bill Kloos, Country Cablevision, Ltd.

130 MIKE DEWEY, OREGON CABLE TELEVISION ASSOCIATION: Testifies in support of the measure.

>The definition of "necessary" that came out of the ruling on McCaw Communications, Inc. v. Marion County, is very narrow (EXHIBIT E).

>Government needs to recognize the practical need for some non-farm uses on land that is zoned for farming.

216 REP. WHITTY: Why just concerned about exclusive farm use zones and not forests?

220 DEWEY: The McCaw case only dealt with exclusive farm use zones which needed to be addressed.

223 BILL KLOOS, COUNTRY CABLEVISION, LTD., EUGENE: Testifies in support of the measure. (EXHIBITS E & F)

>The statute involved in this case deals just with uses allowed in EFU zones. Need to look at local zoning codes with respect to forest.

>Cable companies currently have to prove they can't locate structures in non-farm zones before they are permitted to locate structures in a farm zone. This puts cable companies in the situation of having to prove the negative. This is inefficient, costly, time-consuming and frustrating.

305 REP. WHITTY: Why don't we just pass the bill? The whole issue here seems to be whether you define cable as necessary or not.

350 CHAIR PARKINSON: Clarifies that a "head-in" could be a tower and/or dish, and/or office building, or other things. This is the permitted uses in the EFU and not the conditional use section.

364 REP. VAN LEEUWEN: You have said this would allow towers in EFUs. How much space would they take?

372 DEWEY: These are not obtrusive, and the antenna would be very much like antennas on top of houses. Also, cable companies would have to reach agreements with landowners to site towers.

TAPE 91, SIDE A

36REP. NORRIS: We should do whatever we can to expand cable in rural areas.

41CHAIR PARKINSON: Assume this does not pertain just to cable TV. Could it also be used for microwave telephone, for example?

45DEWEY: Yes, but this wouldn't force counties to do anything.

(Tape 91, Side A)

PUBLIC HEARING - HB 2796

Witness: Russ Nebon, Marion County

75RUSS NEBON, MARION COUNTY: Testifies in support of the measure.

>Cemeteries are not allowed as conditional or alternative uses in EFU zones in Marion County, so they require a goal exception.

>HB 2796 would remove cumbersome procedural requirements.

(Tape 91, Side A)

PUBLIC HEARING - HB 2795

Witnesses: John Thayer, Washington County Historical Society Joan Smith, Washington County Historical Society Rep. John Meek, District 5 Greg Wolf, Dept. of Land Conservation & Development

130 JOHN THAYER, PRESIDENT, WASHINGTON COUNTY HISTORICAL SOCIETY: Explains the bill. (EXHIBITS N & O)

160 JOAN SMITH, EXECUTIVE DIRECTOR, WASHINGTON COUNTY HISTORICAL SOCIETY: Explains the living history museum concept and describes model museum.

220 REP. BURTON: Does the bill address how this would dovetail with local comprehensive land use plans, especially infrastructure demands and access?

250 SMITH: This is merely adding another allowable use in EFU zones.

326 CHAIR PARKINSON: Does your proposal identify highway access?

330 SMITH: All of the sites we are looking at have direct, major highway access.

347 REP. NORRIS: Is your vision that there would be only one of these in the state?

387 THAYER: We see this as a tourist destination for the Northwest region.

395 REP. NORRIS: Could this be done now through a conditional use?

400 SMITH: Our research suggests it can't.

403 REP. NORRIS: Do we need to change statutes to do this?

407 REP. JOHN MEEK, DISTRICT 5: Our research suggests that legislation

is needed.

422 REP. NORRIS: Could this go on secondary land, if we identify it, or does it have to go in an EFU zone?

430 SMITH: It probably belongs in EFU area as an allowed use.

TAPE 92, SIDE A

29REP. VAN LEEUWEN: If you can't put this in, then how come the Intel's and Tektronix have been able to build on orchards and take away our best farmland?

37REP. MEEK: All of the land you refer to is inside urban growth boundaries.

48REP. VAN LEEUWEN: Most of that land comprises the small amount of Class I soils in the state.

52REP. MEEK: About 40 percent of that land is Class I.

55REP. MEEK: Testifies in support of the measure.

>Historic structures almost gone. Need to preserve some.

>If it is legally impossible to build this project, it will be impossible to raise the money needed to make it a reality. Need assurance that this is possible.

>The so-called "Conflicting Use" bill passed during the 1989 Legislature lists three criteria that need to be addressed to satisfy requirements for conditional-uses in EFU zones. This proposal would still have to meet those criteria.

149 CHAIR PARKINSON: Suppose a private party wanted to do this same thing?

156 REP. MEEK: A private party wouldn't be able to do it right now. That was a concern of the committee that worked on this legislation.

>Advises that this project would be an historic site and not an amusement park.

>Notes that a private party doing the same thing for profit would be required to meet other criteria.

169 CHAIR PARKINSON: Enters letter of support for the record (EXHIBIT P), from the Washington County Board of Commissioners, and notes a phone call of support from Glen Eton. Suggests that there should be something in the bill that addresses parking, and recommends that the bill be broader to allow similar projects around the state. "I'm really excited about your proposed project."

204 REP. BURTON: Would this be considered a community center or a park, because this may be permitted now.

212 CHAIR PARKINSON: Cites letter from the Washington County Commission (EXHIBIT P) indicating it would be impossible to cite this museum without this legislation.

222 REP. BURTON: The way this is written, it looks like it wouldn't allow reconstructions because the bill only allows "authentic" structures.

250 REP. MEEK: We're very open to any language that this committee thinks could help expedite this bill.

262 CHAIR PARKINSON: This is very similar to a bill this committee approved last year with regard to wineries, and that generated a battle.

277 GREG WOLF, DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT: Supports concept, but believes ORS 215.213 already allows.

301 CHAIR PARKINSON: Have you been in contact with Washington County on this?

303 WOLF: No.

305 CHAIR PARKINSON: Would you do that?

307 WOLF: Yes.

309 WOLF: Concerned about keeping language specific enough to prevent a Disneyland-like theme park.

360 REP. COURTNEY: Need authentic location in conjunction with authentic architecture to attract tourists.

377 CHAIR PARKINSON: Closes public hearing and adjourns the meeting at 4:07 p.m.

Submitted by, Reviewed by,

Holly Blanchard
Administrator

Kathryn Van Natta Transcriber

Committee

EXHIBIT LOG:

A - Revenue Impact Analysis, HB 2797, Legislative Revenue Office, 1 page
B - Written testimony, HB 2797, Charles Hales, Home Builders Association of Metropolitan Portland, 3 pages
C - Written testimony, HB 2797, Jon Chandler, Common Ground, 2 pages
D - Written testimony, HB 2797, Pam Edens, Citizen (Beaverton), 8 pages
E - McCaw Communications, Inc. v. Marion County, Oregon Court of Appeals, HB 2797, presented by Mike Dewey, Oregon Cable Television Association, 3 pages
F - Written testimony, HB 2797, Bill Kloos, Country Cablevision, Ltd., 10 pages
G - Preliminary Staff Measure Summary, HB 2745, Kathryn Van Natta, Committee Administrator, 1 page
H - Revenue Impact Analysis, HB 2745, Legislative Revenue Office, 1 page
I - Fiscal Impact Assessment, HB 2745, Legislative Fiscal Office, 1 page
J - Preliminary Staff Measure Summary, HB 2796, Kathryn Van Natta, Committee Administrator, 1 page
K - Revenue Impact Analysis, HB 2796, Legislative Revenue Office, 1 page
L - Preliminary Staff Measure Summary, HB 2795, Kathryn Van Natta, Committee Administrator, 1 page
M - Revenue Impact Analysis, HB 2795, Legislative Revenue Office, 1 page
N - Written testimony, HB 2795, John Thayer, Washington County Historical Society, 3 pages
O - Booklet, HB 2795, John Thayer, Washington County Historical Society, 19 pages
P - Written testimony only, HB 2795, by Joe Grillo, Washington County, submitted by

Chair Parkinson, 1 page