

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

April 22, 1991Hearing Room E 1:00 p.m.Tapes 129 - 132

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

PRESENT: Kathryn VanNatta, Committee Administrator Andy Sloop, Committee Assistant

MEASURES CONSIDERED: HB 3570 (WRK) HJM27 (PUB) HB 3472 (PUB)

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 129, SIDE A

06REP. WHITTY: Calls the meeting to order at 1:04 p.m. Representatives Parkinson, Naito, Burton, and Repine not present and excused.

(Tape 129, Side A) WORK SESSION - HB 3570 Witnesses:Bill Moshofsky, Oregonians In Action Bill Hansel, Umatilla County Commissioner Bill Blosser, Chairman, Land Conservation and Development Commission Hector MacPherson, Land Conservation and Development Commission

15BILL MOSHOFSKY, OREGONIANS IN ACTION: Testifies in opposition to the measure.

>Too little land would be designated as secondary.

>Section 3: The factors local technical advisory committees would consider under HB 3570 should be considered during the use stage in the proposed process, not the designation stage. Specifically:

-Soil quality, yield and landform are legitimate local considerations.

-Parcel size and ownership patterns are factors of productivity and therefore are legitimate local considerations.

-Proximity to urban growth boundaries is not a relevant local

consideration in designating secondary lands. However, it could be in determining uses.

-Physical barriers that separate commercial and secondary land could be relevant, but concerned about how "physical barriers" might be interpreted by local advisory committees.

56-LCDC goals, 5, 7 and 17 have no relevance in designation of secondary lands.

-Goal 5 matters should include compensation.

85-Fire hazards should be considered as uses rather than as designation factors.

-Provision of services should be a use consideration, not designation criteria.

(Rep. Parkinson arrives 1:15)

118 MOSHOFSKY: Not imperative that counties start with comprehensive regulations dealing with every piece of secondary land. Suggest, instead, that regulations be adopted and implemented in same fashion as the LCDC goals were when the state land-use system was established. The LCDC goals were applied by counties pending development of comprehensive plans, at which time the goals merged into the plans.

123 REP. WHITTY: The "ifs" are not as important as the "whos" in this situation.

129 REP. NORRIS: Your contention is that statutes should be more specific. Confused because in past state has been too specific.

138 MOSHOFSKY:

>Want flexibility and local control, but reality is that whatever emerges from this Legislature will involve LCDC at some point in the review process. So, whether the Land Use Board of Appeals or LCDC review local/county decisions, need specificity, otherwise there won't be any secondary lands.

163 >OIA is deferring many matters to use-regulatory stage so that designation doesn't get bogged down.

196 >Uses have nothing to do with designation process. Uses do have relevance later in process, after secondary land designated.

223 >The way this is written, could pore over every word and every word could be used as a negative.

>OK to build a house on 10 or 20 acres, given a strong right-to-farm and right-to-forest statute, which is in HB 3570. So many regulations intended to protect farm and forest activities already that it is "highly irregular" to prohibit dwellings of this sort.

>Regulation of hobby farms on prime land should be based on use productivity criteria.

>Consideration of "historical use" of properties in designation of secondary lands is too broad.

272 CHAIR PARKINSON: Page 3 of the bill says local advisory committees "shall consider" the factors you have mentioned. That doesn't absolutely bind advisory committees, nor does it mean those factors shall occur.

280 MOSHOFSKY: If counties shall consider listed factors, LCDC and LUBA could consider too. Need tight criteria so that there is not too much room for argument.

294 REP. COURTNEY: So, if the levels of review were fewer, you wouldn't be taking the position you are?

300 MOSHOFSKY: The issue is who, not how much, as Rep. Whitty said. Good planning system shouldn't try to anticipate every possible use that could occur on a particular piece of land.

349 MOSHOFSKY: Land-use has been greatly restricted to date, so there won't be any parcelization pattern. Consequently, considering parcelization patterns would effectively be maintaining status quo.

360 MOSHOFSKY: Minimum lot sizes and lots of record should be considered at county level.

375 CHAIR PARKINSON: "As I understand it, line 26 provides for future divisions of land . . . That wouldn't have anything to do with the lot of record today."

420 MOSHOFSKY: On page 11 of HB 3570, suggests clarification so that lot of record could be any size, not just greater than the 10-acre minimum lot size prescribed in HB 3570.

TAPE 130, SIDE A

15MOSHOFSKY: If arbitration process involved land owners and others, and it was final, it might be acceptable. As it is written, however, there will ultimately be appeals to LUBA, which will negate arbitration benefits. "We fear it's almost a suspenders and belt situation - redundancy." Also, arbitration panel would be like three hearings officers, and that's expensive.

50BILL HANSEL, UMATILLA COUNTY COMMISSION: Advocates local control.

60REP. WATT: Do you have opinion on defining primary or secondary first?

63HANSEL: Haven't thought about it.

68REP. NORRIS: Notes that Hansel is past president of Association of Oregon Counties, so he has a statewide perspective.

(Reps. Burton and Repine arrive 1:45)

71BILL BLOSSER, LAND CONSERVATION AND DEVELOPMENT COMMISSION: Commission hasn't examined this or companion bills yet.

96CHAIR PARKINSON: Do you intend to have a commission member here at every meeting to help us.

99BLOSSER: Will at least have staff present.

101 CHAIR PARKINSON: Staff reluctant to comment.

105 BLOSSER: It's difficult to get a vote from a seven-member commission spread all over the state. Will try to have phone conferences.

117 BLOSSER: Comments on Section 3

>Keep parallel between county criteria and commission review of what counties do.

>Generality of listed uses leaves many decisions to arbitrators, who ultimately will have to weigh proposals based on legislative criteria. LCDC won't be deciding issues, arbitrators will. With vague rules, outcomes heavily contingent on who arbitrators are.

>Fact that this can go back to LUBA and Court of Appeals could open appeals process to never ending appeals. Again, need specific criteria.

168 CHAIR PARKINSON: Counties may have changed their minds about the appeals process.

170 BLOSSER: We have heard they don't want endless appeals. The vaguer criteria, the more open decisions are to appeals.

178 REP. BURTON: Can you be more specific about the kind and degree of specificity you are seeking with respect to designation criteria?

196 BLOSSER: SB 91 is a step in right direction. That bill specifies number of cubic feet of production required for forest designation, for example.

204 REP. BURTON: What's the relationship between criteria specificity and local control/flexibility?

216 BLOSSER: "There is a trade off. No question about it."

252 CHAIR PARKINSON: "This is the guts of the bill. Right here. The argument over strict criteria statewide or local option. If it was easy to write strict criteria statewide, we'd have no problem."

265 BLOSSER: Expands on Chair Parkinson's point about flexibility versus specificity.

>LCDC has been struggling with designation criteria and approach for the last two years.

>LCDC has developed a two-track approach to this question. On one track, counties could take specific criteria and come to a final conclusion. On the other, counties would be allowed to consider local factors in addition to statewide criteria. Second track includes local technical advisory committees to tailor criteria to local conditions.

>Vida facilitator said this issue comes down to finality and certainty versus getting the "right" answer. If want the "right" answer, need multi-level appeals process that allows everybody a voice. If want a final answer in a timely fashion, need guidelines to cut off deliberations at some point.

(Rep. Naito arrives 2:00)

309 REP. NORRIS: Can you think of a simple definition for secondary lands?

318 BLOSSER: "Less productive soils with limited capability for crop, forest or range production." However, commission decided that even most specific designation criteria leave room for reasonable deliberation. That's why the commission advocates local technical advisory committees.

340 REP. NORRIS: Should we be considering principally soil characteristics and quality, or should we be considering those factors along with other environmental factors?

343 BLOSSER: The commission feels there are two issues here: identification of poor land that doesn't deserve protection as primary farm/forest land; and buildability/serviceability.

306 REP. WATT: What is your opinion about defining primary land first and designating the remainder as secondary?

415 BLOSSER: Appropriate to define secondary lands first. Primary and secondary are two sides of the same coin. Logical to pull secondary lands out of existing exclusive farm use zones. The commission also felt the Legislature would favor identification of secondary lands first because DLCD just spent \$250,000 analyzing secondary lands.

TAPE 129, SIDE B

25CHAIR PARKINSON: Is it apparent to you in HB 3570 that once the designation process is completed, counties would zone allowable uses?

28BLOSSER: Yes, but also apparent that "intensity" of uses could be set by LCDC.

43CHAIR PARKINSON: That's an oversight that needs to be addressed.

48BLOSSER: Continues comments on HB 3570.

>Vague about number of members on technical advisory committees.

>Could leave out all of Section 4 (a) without changing substance of bill. If retain Section 4, could strengthen it by adding "shall consider and make findings".

>On page 5, lines 12 and 13, should include other LCDC goals besides just 5, 7 and 17.

>Significant fiscal impact on counties to implement this bill, especially in Eastern Oregon. No need to mandate some counties to go through this.

94CHAIR PARKINSON: Mr. Blosser, for your information, don't think implementation of this would be mandated because a county government, after going through the designation process, would not have to adopt the ordinance authorizing implementation of the designation map.

96BLOSSER: No, but they would have to do all the work to prepare the map.

103 BLOSSER: Continues comments.

>Page 9, subsection 4 is basically existing law which has resulted in most abuses of LCDC goals 3 and 4. Given subsection 3, logic would dictate that subsection 4 should be deleted.

>Arbitration process basically good, but LUBA provision doesn't create finality.

117 REP. WATT: Can you tell me more about abuses you're worried about with respect to subsection 4 on page 9?

121 BLOSSER: It's an enforcement issue. People have perception that state agencies enjoy taking people to court. Some counties have policies of approving virtually every application and settling disputes in court. If really want to provide protection for resource lands, should be "extraordinary limitations, if not prohibitions," on non-farm dwellings in those areas because of the problems they create.

142 REP. WATT: Give me some examples.

145 BLOSSER: This is not the case of the existing farmer who wants to build an additional house for his son to work the farm. The problem is with the "pure non-farm dwelling" owned and/or occupied by someone who has no intention of farming the land on which the dwelling sits. Counties, theoretically, have to ensure that non-farm dwelling applications like this satisfy several criteria. Some counties do this very rigorously and permit very few non-farm dwellings. Others are quite open, which creates a situation where LCDC has to be the enforcer. "We would prefer to have the Legislature decide whether you want to protect primary farmlands or not. The way to make it clear that you do intend to do that is to remove subsection 4."

165 BLOSSER: Appropriate to deal with lot-of-record issue in this or other secondary lands bills. Don't need separate bill.

177 REP. BURTON: Curious what implications of using an administrative rule as a criteria, as is proposed in HB 3570.

187 CHAIR PARKINSON: Intention of bill framers' is to repeal the forestry rule that LCDC promulgated in the later part of 1990 which says there will be no non-forest dwellings permitted in the state 30 days after passage of secondary lands legislation. Counsel didn't know any other way to repeal that rule.

201 REP. WHITTY: Really hard to read lines 29 and 30 on page 9. "I really do want to know who wrote that . . . I hope she gets a headache when she reads this, because I do."

210 REP. COURTNEY: What's significant about September 13, 1975, which is cited on lines 19 and 20, page 8?

213 CHAIR PARKINSON: Directs the committee administrator to research Rep. Courtney's question.

221 HECTOR MACPHERSON, LCDC COMMISSIONER: Comments on the measure (EXHIBIT A)

305 CHAIR PARKINSON: Jackson County said the commission entirely disregarded comments of their local advisory committee in LCDC's pilot

project.

310 MACPHERSON: Lots of politics involved in the Jackson Count pilot project. Coos County did a responsible job and demonstrated that local technical advisory committees can work.

348 REP. VAN LEEUWEN: Why is the Department of Agriculture, rather than the Extension Service, included on these local technical advisory committees?

355 MACPHERSON: LCDC received good advice and input from the departments of Agriculture and Forestry in developing LCDC pilot criteria. Desirable to have experts about farming and forestry involved in this process.

386 MACPHERSON: Parcelization is major difference between senate and house bills. Commission recognizes that highly parcelized area not attractive for commercial farming. However, Clackamas County, which is highly parcelized, has the second largest agricultural production of any county in the state. Clackamas County has achieved this by siting nursery crops in parcelized areas.

TAPE 130, SIDE B

00REP. VAN LEEUWEN: Are you advocating that smaller parcels on good rural land should be used for agriculture, or that some of them would be classed as secondary due to parcelization?

08MACPHERSON: There are 750,000 acres of rural residential land in state, mostly in Western Oregon. There is lots of land, particularly in Western Oregon, set aside for the really small tracts, i.e., less than five acres. Support a third classification for highly parcelized tracts of good farmland, between 10 and 20 acres in size, that would have different uses, like productive hobby farming, than commercial or secondary lands. In addition to the 750,000 acres of rural residential lands, there innumerable small tracts in EFU and forest zones that have never been counted. Nobody has ever proposed that those small tracts ever be taken away. General feeling of farming community is that shouldn't try to develop nodes of development throughout farm and forestland.

50CHAIR PARKINSON: Closes work session on HB 3570 and opens public hearing on HJM27.

(Tape 130, Side B) PUBLIC HEARING - HJM27 Witnesses:Mike Grainey, Department of Energy

60REP. NORRIS: Introduces and explains the bill.

>This is opportunity to recognize Washington as a player in the Hanford cleanup process.

75REP. CEASE: Washington State has introduced similar legislation. Obviously, this is limited, as memorials go. Have written to Sen. Mark Hatfield asking him to take the lead in cleaning up Hanford. Page 2, line 4 should include reference to Washington State.

103 MIKE GRAINEY, DEPARTMENT OF ENERGY: Testifies in support of the memorial. In addition to aforementioned reasons, this would add to momentum for Hanford cleanup.

111 CHAIR PARKINSON: How many jobs would this create?

114 GRAINEY: Don't know off hand, but cleanup effort has substantially increased jobs at Hanford, and this certainly would be an important part of that effort.

122 CHAIR PARKINSON: Closes public hearing on HJM27 and opens work session on HJM27.

(Tape 130, Side B) WORK SESSION - HJM27

124 MOTION:REP. BURTON moves to amend HJM27 by deleting line 4 on page 2 of the bill, and inserting "states of Oregon and Washington; and".

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

140 REP. VAN LEEUWEN: Is there reason to limit this just to Oregon and Washington?

146 REP. CEASE: No. Makes sense to extend to Idaho. Initial proposal only for Oregon and Washington because they are considering legislation already.

153 MOTION:REP. BURTON moves HJM27 to the floor as amended with a "do pass"

recommendation.

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

158 CHAIR PARKINSON: Assigns Representatives Norris and Cease to work out who will carry the bill on the floor. Closes the work session on HJM27 and calls for break at 2:50. Reconvenes at 3 p.m. and opens public hearing on HB 3472.

(Tape 130, Side B) PUBLIC HEARING - HB 3472 Witnesses:Eric Carnahan, Legislative Assistant to Rep. Stan Bunn Ted Lopuszynski, Yamhill County Andy Zedwick, Lincoln County Bill Hansel, Umatilla County Commission Mike Brandt, Yamhill County Planner Jerry Smith, McMinnville Property Owner Kristi Halvorson, Portland Citizen Kelly Ross, Oregon Association of Realtors Dennis Goecks, Yamhill County Commissioner

160 ERIC CARNAHAN, LEGISLATIVE ASSISTANT TO REP. STAN BUNN: Testifies in support of the measure (EXHIBIT H).

240 TED LOPUSZYNSKI, YAMHILL COUNTY: Testifies in support of the measure.

>Land use regulations too restrictive.

>Lots of inequities in land-use system.

>Lot-of-record issue especially important in Yamhill County, where most lots existed prior to land-use planning.

>Yamhill County's request for more than 48,000 acres of farmland to be exempted from LCDC's agricultural goal, because the land had been

subdivided, was cut down to 21,000 when LCDC acknowledged the county's comprehensive plan. This immediately left 27,000 acres of land that was too parcelized to be farmed. Much of that land is small lots dating back to the turn of the century.

>Tells personal horror stories.

>If this Legislature doesn't address the lot-of-record issue, which is at the heart of public complaints about the state's land-use system, citizens will put forth an initiative petition.

322 ANDY ZEDWICK, LINCOLN COUNTY COMMISSION: Testifies in support of the measure.

>Relates personal stories.

>Current system forces local officials to decide myriad of complex land-use issues.

403 BILL HANSEL, UMATILLA COUNTY COMMISSION: Testifies in support of the measure.

>No greater citizen issue than lot-of-record because the current system stonewalls opportunity for redress when individuals purchase property for future residential development and then can't pursue plans because of rezoning.

>HB 3472 is an opportunity to address equity and fairness issues that haunt land-use system.

>Huge percentage of land-use squabbles could be taken care of if lot-of-record issue resolved through this legislation.

>Relates representative cases.

TAPE 131, SIDE A

46MIKE BRANDT, YAMHILL COUNTY PLANNER: Testifies in support of the measure.

>Gives background on county lot-of-record ordinances.

>Misconception that lot-of-record provision will lead to construction on every buildable lot.

>Relates representative cases.

>This bill would allow planned development without adverse impacts.

>HB 3472 provides other mechanisms besides zoning to ensure planned development.

>Over 95 percent of non-farm uses allowed in EFUs in Yamhill County have been on lots-of-record. If had lot-of-record provision, many people wouldn't have had to go through unnecessary procedural steps.

151 REP. BURTON: How many legal lots-of-record are there in Yamhill County?

156 BRANDT: In neighborhood of a couple thousand.

161 JERRY SMITH, McMinnville Property Owner: Testifies in support of the measure.

>Paid taxes on land for 24 years and have tried for last two years to get building permit.

>This bill would provide needed fairness and equity.

185 KRISTI HALVORSON, Portland: Testifies in support of the measure. (EXHIBIT I)

>Father wanted to develop a residential subdivision on Parrot Mountain in Clackamas County. Bought lots, but after creation of the state land-use system, 1000 Friends of Oregon challenged zoning in Clackamas County. Went through 10 years of appeals. LCDC hearings officer copied 1000 Friends' findings and adopted as state findings.

>Clackamas County has a definite agenda to zone everything possible as farmland.

>Clackamas County's application of current land-use provisions for non-farm permits in farm zones is inconsistent.

>Lot-of-record provisions are only consistent way for land owners to develop non-farm uses in farm zones.

>My land is inadequate for farming, and too small for farm management plan. Can't get permit for non-farm dwelling, yet my land is still assessed as a \$30,000 homesite value.

>HB 3472 would significantly lessen complaints about Oregon's land-use system.

>If a secondary lands program is developed, and it includes an optional lot-of-record provision, many counties might not adopt and implement it.

363 KELLY ROSS, Oregon Association of Realtors: Testifies in support of the

measure.

>Not clear if right to establish dwellings is transferrable to subsequent owners. Suggest amendment on line 17, after the word "person" inserting "or subsequent owners of the property."

390 REP. NAITO: Shouldn't lot-of-record and secondary lands be addressed as one package?

398 ROSS: That's a political judgement call. Ideally, these issues should be addressed as a package on secondary lands.

409 REP. BURTON: On the question of transferability, if someone establishes a lot of record before 1973 and that property was subsequently held by several other owners, would this bill take those subsequent owners into account?

TAPE 132, SIDE A

04ROSS: Concern is that if this bill is adopted, it would affect

current owners in 1991, and it's unclear if those current owners would be able to transfer lots of record to subsequent owners.

12DENNIS GOECKS, YAMHILL COUNTY COMMISSIONER: Testifies in support of the measure.

>Commissioners from Polk and Curry Counties also had planned to testify in support.

>Should think about people not just land.

>Even when counties approve applications and property owners have paid taxes, only those with enough money to battle appeals can build.

>Relates representative cases.

>Submits letter of support, with proposed amendments, from Leslie and Don Lewis of Newberg (EXHIBIT J).

>Many people believe Oregon's land-use system is designed to keep people off land rather than to ensure that resource land is farmed.

>Price of land forced down so much by rural zoning that only the rich can afford to farm.

155 REP. BURTON: If a person had a five-acre lot-of-record, could s/he subdivide that lot into five, one-acre lots?

162 GOECKS: Depends on exceptions in law. Also need to distinguish between rural living and transition living? County should not have to provide urban services to rural residents. As long as have that understanding, should be able to preserve rural areas.

184 REP. BURTON: How many buildable lots are "out in the middle of nowhere?" Wondering if there will be thousands of people in the future wanting to build in transition areas and demanding urban services?

207 GOECKS: Historically, we haven't seen many of those applications in Yamhill County. Also, depends on what services certain counties are willing to provide.

254 CHAIR PARKINSON: Thanks elected officials of Yamhill County for testifying. "I think it's been very helpful."

259 REP. NORRIS: Is there a particular problem in Yamhill County or have we heard from Yamhill County residents because they've been particularly perceptive about opportunities to testify?

263 GOECKS: "I am told that doing what we are doing in Yamhill County is extremely dangerous because of the potential of what could happen to us in later years in the ways laws might be interpreted. We have a board of commissioners that believes we have to bring this to the surface. . . We think the people in our county are at the point where they want us to do that. . . However, we did have other commissioners from other counties earlier that did point out that this does go beyond Yamhill County."

273 REP. NORRIS: Should we have a qualifier in this bill about lots-of-record being subject to zoning codes, etc.?

284 GOECKS: Believe that's already covered through local ordinances. Existing process adequately screens many proposed development.

297 CHAIR PARKINSON: In your county, do you have a hearings officer for planning?

301 GOECKS: No.

305 CHAIR PARKINSON: So the actions of the planning commission are appealable to the board of commissioners?

310 GOECKS: Yes.

313 REP. BURTON: This bill seems to say the right to establish a single family dwelling shall not be denied. Sure that's not the intent.

320 LOPUSZYNSKI: Addition of the phrase "subject only to the health and safety requirements that occur under the time" would be proper.

340 MOSHOFSKY: Testifies in support of the measure.

>There are people who own lots-of-record all over the state who are concerned and frustrated about this issue.

>This measure is not a complete solution, but it is a good partial solution.

>Support proposed amendments in terms of moving the date lots were acquired to January 1, 199 1, as other bills do, or leaving it out.

>Suggests amending line 16, deleting "a person acquired" and inserting "after record was acquired" so that sentence would read: "If at the time a lot of record was acquired..."

>Suggests amending line 17, deleting "to such person" so that sentence would read: "shall not be denied as a result of rezoning", so that provision would apply to the property regardless of transfers.

370 CHAIR PARKINSON: What about just changing the date to January 1, 1991?

372 MOSHOFSKY: That would update the effectiveness, but there haven't been many lots-of-record approved between 1973 and 1991 anyway. Tend to agree with Rep. Norris and others about the application of septic, water and other services. Supports adding language about availability of public services for clarity.

397 CHAIR PARKINSON: Closes public hearing and adjourns at 4:07.

Submitted by: Reviewed by:

Andy Sloop Kathryn VanNatta Committee Assistant Committee
Administrator

EXHIBIT LOG:

A -Testimony on HB 3560 and HB 3570 - Hector Macpherson, LCDC - 2
pages B -Preliminary Staff Measure Summary on HJM27 - Committee Staff
- 1 page C -Notice of No Revenue Impact of HJM27 - Legislative
Revenue Office - 1 page D -Notice of No Fiscal Impact of HJM27 -
Legislative Fiscal Office - 1 page E -Preliminary Staff Measure
Summary of 3472 - Committee Staff - 1 page F -Notice of No Revenue
Impact of HB 3472 - Committee Staff - 1 page G -Notice of No Fiscal
Impact of HB 3472 - 1 page H -Testimony on HB 3472 - Eric Carnahan,
Rep. Stan Bunn - 3 pages I -Testimony on HB 3472 - Kristi Halvorson,
Portland - 3 pages J -Testimony on HB 3472 - Leslie and Don Lewis,
Newberg - 3 pages