Fwd: Reply requested: Clarification and comments regarding HB 2565, HB 2283 and SB 458

Paul Conte <paul.t.conte@gmail.com> Sun, Mar 7, 2021 at 7:03 AM
Draft

---------- Forwarded message ---------
From: **Paul Conte** <paul.t.conte@gmail.com>
Date: Fri, Feb 26, 2021 at 7:02 PM
Subject: Reply requested: Clarification and comments regarding HB 2565, HB 2283 and SB 458
To: <Rep.MarkMeek@oregonlegislature.gov>, <Sen.LewFrederick@oregonlegislature.gov>, <Sen.DebPatterson@oregonlegislature.gov>, Rep.BrianClem@oregonlegislature.gov
Cc: <Rep.PaulHolvey@oregonlegislature.gov>, Sen Prozanski <Sen.FloydProzanski@oregonlegislature.gov>, Senator Manning <Sen.JamesManning@oregonlegislature.gov>

Dear Representatives Meek and Clem, and Senators Frederick and Patterson,

[Please record this as testimony.]

I've carefully reviewed the Introduced versions of HB 2565, HB 2283 and SB 458. I'm very experienced in reviewing and writing zoning code.

There appear to be potentially some serious unintended consequences from omissions and oversights in these bills.

First, considering HB 2565, which is limited to partitioning a duplex so that each unit lies entirely on it's own lot. If intelligently enacted, the concept might have merit. City of Eugene already allows such "Duplex Division Lots" with sensible standards. If intelligently enacted, this can provide new opportunities for home ownership of the separated properties. HB 2565, however, is fatally flawed -- not in principle, but in the apparent haste in which it was written and the sloppy results.

1. There is no clarity as to whether the duplex must be wholly within one structure.

Discussion: The "Middle Housing" OAR allows a local jurisdiction to define a "Duplex" as two detached dwellings. HB 2565 is silent on the definition of "Duplex."

Now, the "Middle Housing" OAR exceeded its authority by expressly authorizing local jurisdictions to define two independent dwellings as a "duplex," when that flies in the face of all accepted definitions of a "duplex." For practical purposes, the current version of HB 2565's absolute extinction of any meaningful control of "duplex partitions" requires that at least such an extreme constraint be applied only to actual duplexes. Note for example: With two detached dwellings considered as a "duplex" a partition could create two lots, each with a detached, single-family dwelling. ORS 197.158(2)(b) and (3) (and the OAR) would then allow each dwelling to be converted to a duplex on the new lot, which could then be divided agaon, and on and on.

Recommendations:
a) Define "duplex" as a single structure comprising two dwellings; and
b) Prohibit the conversion of either of the resulting dwellings to be part of any form of multi-unit dwelling (e.g., another duplex).

2. There appears to be no requirement that the duplex be the only dwellings on the lot. Allowing such a case, without any means for a local jurisdiction to ensure reasonable outcomes is an invitation to "gaming" the intent of middle housing and well-intentioned attempt to allow duplexes to be turned into two affordable properties.

Recommendation: Require the duplex be the only two dwellings on the lot.

3. There appears to be no ability for a local jurisdiction to apply any standards, such as prohibiting dwellings on lots with no direct access or access easement (i.e., "landlocked" lots). It also appears that a local jurisdiction would have

to allow a plethora of bizarre lot configurations, such as one new lot being just the exact footprint of one of the dwellings, lying wholly within the interior of the other new lot.

Recommendation: Research the ways that local jurisdictions, such as City of Eugene, have already provided for sensible "duplex division lots". See Eugene Code **9.2777 Duplex Division Lot Standards**.

4. Prohibiting all appeals is likely unconstitutional. It's also egregiously anti-democratic and flouts Statewide Planning Goal 1. The lawful way to crush citizen engagement is to declare such a partition isn't a "land use action" (even though it actually is) and force appeals to the Circuit Court. For example, in HB 4212:

> "SECTION 11. (5) The approval of an emergency shelter under this section is not a land use decision and is subject to review only under ORS 34.010 to 34.100."

Recommendation: Be honest! Allow the same land use appeals as for any other lot division, which are undeniably "land use actions."

* * * * *

Second, regarding HB 2283 and SB 458, take all the problems with HB 2565 and multiply them tenfold or more. Any half-clever planning student could demonstrate all the myriad ways an investor could "game" this terribly written bill to make -- literally -- mincemeat out of neighborhoods.

If you think it's a good idea to simply do away with minimum lot sizes and setbacks altogether, be honest about it instead of attempting to foist this swindle on local jurisdictions.

* * * * *

In general, these are two more half-baked efforts to deregulate housing and turn critical housing decisions over to the real estate investor class.

If you're going to crush local planning and decision-making regarding housing implementation, then at least make the effort to do it competently.

Both of these bills should be withdrawn until they can reflect adequate consideration of the potential problems they will create.

Thank you for your consideration.

Paul Conte
1461 W. 10th Ave.
Eugene, OR 97402
541.344.2552

_____
Earth Advantage Accreditations:
*** Sustainable Homes Professional**
*** Accessory Dwelling Unit (ADU) Specialist**