



P.O. Box 928 • Salem, Oregon 97308
(503) 588-6550 • (800) 452-0338 • Fax: (503) 399-4863
www.orcities.org

March 14, 2013

To: Rep. Brian Clem, Chair
Rep. Kevin Cameron, Vice Chair
Rep. Lew Frederick, Vice Chair
Members of the House Committee on Land Use

From: Erin Doyle, Intergovernmental Relations Associate

Re: HB 3362 – Requiring issues to be raised in local proceedings during legislative decisions on land use prior to raising issue on appeal

As you know, land use decisions are intrinsically local decisions. Cities work with their citizens to formulate appropriate land use plans that reflect the direction and character of a city as it grows and adapts. Cities make these changes in two ways, referred to as “quasi-judicial” and “legislative” processes. Currently, if a person wants to appeal the results of a quasi-judicial hearing to the Land Use Board of Appeal (LUBA), they are required to raise an issue at the local level if they will use it as a ground for appeal to LUBA. This is often referred to as the “raise it or waive it” requirement.

If, however, the land use decision is accomplished by a legislative process, the raise it or waive it requirement does not exist. This can result in a person participating at the local level raising a number of issues during the legislative process, but then appeal the decision to LUBA based on a number of different issues. The local government will therefore not have an opportunity to address the issue at the local level first. Instead both the city and the citizen must go through the expense of an appeals process to address a newly raised concern. This is inherently less efficient and more costly.

When an issue is raised at the local level, particularly in the legislative process, the city can more quickly address the concerns either by researching and adopting findings that directly relate to the issue or by working with the citizen to find a better solution to the problem. If the city is required to address the issue for the first time at LUBA, it is less likely that the city can address the citizen’s concerns without a remand back to the city to complete the legislative process again. This decision can then also be appealed, which can lead to a long string of decisions and appeals that delay a finalization of land use decisions. All of this could be circumvented if there is a requirement that a citizen raise the issues first with the local government.

Not only will it be a cost savings to all parties, but such a requirement will also insure that such decisions are made at the local level. The land use planning system intends that local governments should carry the burden of land use decisions. Maintaining such local control allows citizens to participate in a meaningful manner as changes to comprehensive or zoning plans are decided by being involved in the public planning process. When decisions are instead decided on an appeal to LUBA, there is limited citizen participation because only one voice is represented in the appeal. If a citizen is aware of any issues, it is best raised before the local government and not as surprise ground for appeal. This gives the community a chance to weigh-in on the issue and decide at the local level to either make a change to the plan or to disagree that it is an issue. Extending the “raise it or waive it” standard to the legislative land use process will encourage just that.

For these reasons, the League of Oregon Cities supports HB 3362 and asks you for your support as well. Thank you for the opportunity to address this important issue.