

Testimony of Bruce White
On Behalf of
River Meadows Improvement District
River Meadows Sanitary Sewer Corporation
River Meadows Home Owner's Association
HB 3096
House Committee on Land Use
March 12, 2013

I make these comments in support of the passage HB 3096. I am an attorney in private practice in Bend, Oregon and currently serve as the attorney for the River Meadows Home Owner's Association (RMHOA) and its associated entities, the River Meadows Improvement District (RMID) and the River Meadows Sanitary Sewer Corporation (RMSSC). I drafted the legislative concept for this bill and have been involved in drafting the proposed bill. My background includes 11 years in the Deschutes County Counsel's office where I advised county staff and elected officials on land use, special district and elections matters, among other things.

The Directors of the various River Meadows entities wish to consolidate the ownership and management of the utility functions serving their development into one entity. As Ray Yillik indicated in his testimony, separate corporate entities provide water and sewer services to the River Meadows community. The entity providing water is organized under ORS Chapter 554 as a non-profit, tax-exempt "public corporation" and was established in 1976. Such companies do not have statutory authority to own and operate sanitary sewer facilities. The River Meadows sewer system is owned and operated by a private, non-profit mutual benefit corporation established in 2004.

River Meadows' choice in consolidating these utility functions into one entity were as follows: (1) to establish a joint water and sanitary sewer special district under ORS Chapter 450.600; (2) to fold ownership and operation of the water company into the existing RMSSC; or (3) to seek legislation that would expand the purposes of ORS Chapter 554 improvement companies, such as the River Meadows Improvement District, to allow the ownership and operation of sanitary sewer systems.

Combining operations under the existing private, non-profit sanitary sewer company was not a desirable option because the property of such facilities owned by corporations established after 1997 are not tax exempt and because the corporation does not benefit from the kind of specialized enabling legislation for owning and operating utility type facilities, such as provisions found in ORS Chapter 554 and special district statutes establishing authority for imposing assessments or providing for bonding authority.

Forming an entirely new special district under ORS Chapter 450.600 to perform both sewer and water functions would provide for consolidated governance and management as well as providing the benefit of exempting the sewer and water facilities from assessment for ad valorem real property taxes. However, there are several downside of such an option for a community such as River Meadows. First, under state law, the Board members of such an entity must be elected in elections involving only those owners who are permanent residents of such a district, and only permanent

residents may stand for election to the District Board. This would result in disenfranchising about half of the River Meadows owners from governance and management of the River Meadows sewer and water facilities. This was not deemed to be desirable by the River Meadows directors. Second, governance and management of a municipal corporation such as a special district, with increased regulatory oversight, can be burdensome for a small community such as River Meadows. For example, elections would be subject to filing requirements and deadlines of the County Clerk, which might well discourage River Meadows owners from standing for election. Compliance with the Clerk's election schedule would be more difficult to co-ordinate with elections held to elect members of the Homeowners Association Board. Third, retaining the existing RMID and simply expanding its powers would lead to a seamless transition, without the need to create and transition to a wholly new entity. Given all that, it seemed to make sense to simply leave RMID in place and to seek to expand its authority to allow for ownership and operations of sewer sanitary sewer facilities. That is why we are before the committee with this proposed legislation.

A review of HB 3096 demonstrates that the legislation needed to accomplish River Meadows' purpose is relatively simple. Section 1 amends ORS 554.020 to expand the corporate purposes for an improvement district to include taking ownership and operating existing sanitary sewer facilities where an improvement district already exists and is already providing water within the district boundaries. Section 2 amends the powers of an improvement district to include collecting and treatment of sewage. Section 3 authorizes the improvement district board upon transfer to adopt as the plans and specifications for the sewer facilities the plans and specifications of the former owner of the facilities without need of going through the steps of drawing plans for new construction. The rest of the changes proposed in HB 3096 are basically housekeeping changes that Legislative Counsel undertook to modernize the statute and to coordinate those changes with the balance of Chapter 554 provisions. The housekeeping measures included in the bill are not changes that are essential to achieve River Meadows' objectives.

We are mindful that this legislation not be seen as an end run around Oregon's land use laws that prohibit providing sewer services outside urban growth boundaries. River Meadows was initially approved and platted prior to the adoption of the Statewide Land Use Goals. The sewer system has been subject to DEQ-issued permits continuously since 1974. Deschutes County has issued land use compatibility statements indicating that the River Meadows development is in compliance with applicable land use laws. The proposal in HB 3096 is drawn to apply only to already existing ORS Chapter 554 corporations that are currently providing water services and the legislation therefore could not be used by new development to avoid the state law prohibitions on providing sewer services to rural uses. In addition, any new DEQ-approved sewer would need to obtain a land use compatibility statement from the affected county before DEQ could issue a permit.

Last, although not included in the current draft of the bill, we ask that the legislation include an emergency clause. This would allow River Meadows to proceed in short order with the desired consolidation and also would allow the Improvement District to take steps to gain tax exempt status for the sewer facilities at least for the upcoming tax year if not the current tax year.