



American Planning Association
Oregon Chapter

PO Box 3674 Wilsonville, OR 97070
 8699 Sun Place Wilsonville, OR 97070
 PHONE: (503) 594-0323 • FAX: (503) 210-0860
oapa@oregonapa.org • <http://www.oregonapa.org>

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May 23, 2013

Representative Brian Clem, Chair
 House Committee on Land Use
 State Capitol
 Salem, Oregon 97301

RE: Proposed Amendments to SB 77 (Relating to appellate review of land use decisions)

Dear Representative Clem,

The Oregon chapter of the American Planning Association (OAPA) represents nearly one thousand professional and citizen planners in Oregon. The organization supports state policies and legislation that fosters good community planning.

Joining OAPA in opposition of the proposed amendments to SB 77 are two former LUBA referees, Corinne Sherton and Peter Livingston.

These amendments were not offered, nor have they been previously discussed in the Senate. Instead, they are offered at the last moment before most people have had a chance to review or comment on them. The amendments purport to allow LUBA to rule a land use decision to be both valid and invalid at the same time, rather than for that decision to be clearly affirmed, reversed or remanded. Under this proposal, a quasi-judicial zone change decision can be valid for some purposes and, at the same time, invalid for others (for example there is no evidence on traffic or a finding is inadequate). Under current law, that decision would be remanded and the local government must correct it, if it decides to do so. However, correcting the bases on which that decision was remanded could involve other evidence or findings that could affect those portions of the decision that were not the basis for the remand.

Similarly, one provision of a legislative decision could be remanded, while other provisions are affirmed. Unless the remanded provisions are completely severable from the remainder of the decision, the local government could find itself in the position of not being able to correct the remanded provisions of the decision because it cannot reopen consideration of the portions of the decision that were affirmed. A local government might be asked to make further land use decisions based on the affirmed portions of the legislative decision, before it knows how such further decisions might be affected by corrections to the remanded portions of the legislative decision.

These are not easy issues and should not be brought up with five weeks to go in the session. The effects of these changes are significant and they should not go ahead without more study than the time left in the session allows.

We ask the Committee not to adopt these amendments. Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jeannine Rustad".

Jeannine Rustad, J.D.
Chair, Legislative and Policy Affairs Committee

cc: OAPA Board