

February 22, 2019

Dear Senators,

Proposed Senate Bill 8 is unnecessary, unjust and an egregious violation of Goal 1 - Citizen Involvement.

The new provision reads:

(5) Notwithstanding ORS 197.830 (15), a person who petitions the Land Use Board of Appeals to challenge a local government's approval of development of affordable housing shall pay to a prevailing intervening applicant, as described in ORS 197.830 (7)(b)(A), the applicant's costs and attorney fees, including any costs and attorney fees on subsequent appeals from the board.

Oregon Administrative Rules and Oregon Revised Statutes already provide reasonable protect for applicants against abuse of the LUBA appeal procedure or errors by the local decision makers:

DIVISION 10 RULES OF PROCEDURE FOR APPEALS

ORAR 661-010-0075 Miscellaneous Provisions

(1) Cost Bill and Attorney Fees:

(a) Time for Filing: The prevailing party may file a cost bill or a motion for attorney fees, or both, no later than 14 days after the final order is issued. The prevailing party shall serve a copy of any such cost bill or motion for attorney fees on all parties.

* * * *

(e) Attorney Fees:

(A) Attorney fees shall be awarded by the Board to the prevailing party **as specified in ORS 197.830(15)(b)** [See below]; a motion for attorney fees shall include a signed and detailed statement of the amount of attorney fees sought.

(B) Attorney fees shall be awarded to the applicant, against the governing body, if the Board reverses a land use decision or limited land use decision and orders a local government to approve a development application pursuant to ORS 197.835(10).

(C) Attorney fees shall be awarded to the applicant, against the person who requested a stay pursuant to ORS 197.845, if the Board affirms a quasi-judicial land use decision or limited land use decision for which such a stay was granted. The amount of the award shall be limited to reasonable attorney's fees incurred due to the stay request, and together with any actual damages awarded, shall not exceed the amount of the undertaking required under 197.845(2).

ORS 197.830(15)(b) The board shall also award reasonable attorney fees and expenses to the prevailing party against any other party who the board finds presented a position without probable cause to believe the position was well-founded in law or on factually supported information.

As is clear, ORS already provides an applicant protection against meritless appeals whose sole purpose is to delay a development project of any kind.

SB 8 adds no protection against *meritless* appeals. Instead SB 8 not only allows, but aids, suppressing *legitimate* appeals because of the unavoidable risk of an unfavorable decision by

LUBA. In the past, wiser Oregon legislators understood the anti-democratic use of the threat of legal costs by powerful corporations against land use advocates -- the so-called "SLAPP" -- Strategic Lawsuit Against Public Participation. In response, and to protect the rights of citizens to have their day in court, Oregon was one of many states that adopted an "Anti-SLAPP" statute:

ORS 31.150(2) A special motion to strike may be made under this section against any claim in a civil action that arises out of:

- (a) Any oral statement made, or written statement or other document submitted, in a legislative, executive or judicial proceeding or other proceeding authorized by law;
- (b) Any oral statement made, or written statement or other document submitted, in connection with an issue under consideration or review by a legislative, executive or judicial body or other proceeding authorized by law;
- (c) Any oral statement made, or written statement or other document presented, in a place open to the public or a public forum in connection with an issue of public interest; or
- (d) Any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest.

Yet now, an unholy alliance of developers and density fanatics proposes to essentially institute a built-in "SLAPP" provision in the quasi-judicial land use appeal proceedings. In practice, this will mean that no individual -- no matter how wronged or how legitimate his or her case -- will dare to file a LUBA appeal.

The shameless, unjust intent of this bill is glaringly apparent in that a petitioner challenging an approval is not awarded attorney fees if the petitioner prevails.

If Tom McCall were Governor today, he would fiercely condemn this proposal. It has no valid purpose beyond existing OAR and ORS provisions other than to shut down citizen involvement by means of intimidation.

Please withdraw the bill without further consideration.

Thank you,

Paul Conte
Eugene, OR 97402
541.344.2552
paul.t.conte@gmail.com

Accredited Earth Advantage
Sustainable Homes Professional