TESTIMONY IN OPPOSITION TO HB 2565, HB 2283 and SB 458

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I have carefully reviewed the Introduced versions of HB 2565, HB 2283 and SB 458. I am an Earth Advantage accredited "Sustainable Homes Professional" and "Accessory Dwelling Specialist." I am very experienced in reviewing and writing zoning code.

HB 458 would cause serious unintended consequences from omissions and oversights in the bill.

Duplex Lot Divisions

First, considering HB 2565 (and the duplex provisions of SB 458), which is limited to partitioning a duplex so that each unit lies entirely on its own lot.

If *intelligently* enacted (which these bills are not), the concept might have merit. City of Eugene already allows such "Duplex Division Lots" with sensible standards. If *intelligently* enacted, being able to divide a lot under a side-by-side duplex could 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 (and SB 458) are silent on that aspect of the definition of "Duplex."

   Senators should be aware that the "Middle Housing" OAR exceeded its authority by expressly authorizing local jurisdictions to define two independent, detached dwellings as a "duplex," despite that such a definition would fly 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 local control of "duplex partitions" requires that at least such an extreme dictate be applied only to actual side-by-side, attached 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 "Middle Housing" OAR) would then allow each dwelling to be converted to a duplex on the new lot, which could then be divided again, and on and on.

   Recommendations:

   a) Define "duplex" as a single structure comprising two attached 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 dwellings in addition to the duplex, without any means for a local jurisdiction to ensure reasonable outcomes, is an invitation to "gaming" the intent of "middle housing" and well-a sensible 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: Before dictating the division of duplex lots, 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 is also egregiously anti-democratic and flouts **Statewide Planning Goal 1**. The lawful, though inadvisable, means to crush citizen engagement is to declare that such partitions aren not "land use decisions" (even though partitions obviously *are*) and force appeals to the Circuit Court. For example, as found 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 decisions."

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<u>Triplex, Quadplex, Cottage Cluster and Rowhouse Lot Divisions</u>

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.

Note that "Cottage Clusters" and "Townhouses" are already permitted to be on individual lots:

660-046-0020

2. "Cottage Cluster" means a grouping of no fewer than four detached dwelling units per acre with a footprint of less than 900 square feet each that includes a common courtyard. A Medium or Large City may allow Cottage Cluster units to be located on a single Lot or Parcel, or on individual Lots or Parcels.
17. "Townhouse" means a dwelling unit that is part of a row of two or more attached dwelling units, where each unit is located on an individual Lot or Parcel and shares at least one common wall with an adjacent dwelling unit.

There is simply no need to provide *any* additional legislation for the two approaches that are <u>intended</u> to allow forms of one dwelling per lot, either detached as cottages or attached as rowhouses.

The intent of "plexes" is to allow more units on a lot in the form of a compact, single structure. If a developer wants to create one unit on each of several smaller lots, a rowhouse of two or more units is allowed. If a developer wants to develop four or more units on each of several smaller lots, a cottage cluster is allowed.

This poorly crafted bill also doesn't even anticipate a typical, resource-efficient, 2-up-2-down quadplex structure. There would be no way to provide a new lot for either of the two upper units. Consequently, SB 458 (HB 2283) create an incentive for a developer to design *less* resource efficient quadplexes in the same form as a 4-unit rowhouse, which – as the authors of this bill apparently overlooked – can already be done as a rowhouse.

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

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In general, HB 458 (and HB 2565, HB 2283) are three more half-baked efforts to deregulate housing and turn critical housing decisions over to the real estate investor funds.

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

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

Thank you for your consideration.

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Earth Advantage Accreditations:

- ❖ Sustainable Homes Professional
- ❖ Accessory Dwelling Unit (ADU) Specialist