

HB 3362 B STAFF MEASURE SUMMARY

Carrier: Sen. Prozanski

Senate Committee On Natural Resources**Action Date:** 05/17/23**Action:** Do pass with amendments to the A-Eng bill. (Printed B-Eng.)**Vote:** 4-0-1-0**Yeas:** 4 - Golden, Prozanski, Smith DB, Taylor**Exc:** 1 - Girod**Fiscal:** Has minimal fiscal impact**Revenue:** No revenue impact**Prepared By:** Laura Kentnesse, LPRO Analyst**Meeting Dates:** 5/3, 5/17**WHAT THE MEASURE DOES:**

Allows a county to approve an application to validate a unit of land acquired by an innocent purchaser prior to January 1, 2023 if the county: before the acquisition, approved an application for the recognition of the unit of land as a lawfully established unit of land and approved an application for a property line adjustment to that unit of land; and after acquisition, revoked these approvals. Exempts such applications from specified minimum lot or parcel sizes. Defines "innocent purchaser." Sunsets county authority on January 2, 2025. Allows any person, notwithstanding standing requirements or deadlines, to file with the Land Use Board of Appeals (LUBA) a notice of intent to appeal a land use decision made by a county if: the challenged decision approved an application for a template dwelling; the applicant is not an "innocent purchaser" under the definition provided in this Act; and the applicant owned the property that was the subject of the challenged land use decision on January 1, 2023. Requires that LUBA conduct an evidentiary hearing to allow the parties to supplement the record for an appeal. Prohibits the county from approving a new application for a template dwelling on the lot or parcel if the challenged decision is overturned on appeal. Prohibits LUBA from awarding attorney fees or expenses to any party based on an appeal.

ISSUES DISCUSSED:

- Relationship between the LUBA ruling, appeal, and this legislative effort
- Narrowness of statute expansion to innocent purchasers that experienced this sequence of approval and revocation events
- Decisionmakers on, and evidence needed for, a determination of "innocent purchaser"
- Families that purchased the two lots were represented by realtors
- Impact of legal validation on purchasers' lenders, title companies, mortgages, home equity, and ability to resell
- Potential consequences and liability for the land use attorney
- Impact of litigation on the title of the one lot the attorney retained
- Lessons learned by Lane County

EFFECT OF AMENDMENT:

Allows any person, notwithstanding standing requirements or deadlines, to file with the Land Use Board of Appeals (LUBA) a notice of intent to appeal a land use decision made by a county if: the challenged decision approved an application for a template dwelling; the applicant is not an "innocent purchaser" under the definition provided in this Act; and the applicant owned the property that was the subject of the challenged land use decision on January 1, 2023. Requires that LUBA conduct an evidentiary hearing to allow the parties to supplement the record for an appeal. Prohibits the county from approving a new application for a template dwelling on the lot or parcel if the challenged decision is overturned on appeal. Prohibits LUBA from awarding

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attorney fees or expenses to any party based on an appeal. Removes the emergency clause.

BACKGROUND:

Prior to 2007, the Department of Land Conservation and Development reported that parcels of land that had not been lawfully established had been sold in Oregon without the buyer's knowledge of the illegality. In some cases, the land may have been illegally divided to create a separate tax account. In other cases, local governments had granted building permits on unlawfully established lots without proof of legal land division, which reinforced the appearance of a legal parcel to prospective buyers. Purchasers of illegally divided lots experienced city and county denials of building or other permits necessary to use or develop their land. Title insurance policies left buyers with limited recourse after unwittingly purchasing an illegal lot.

In 2007, the Legislative Assembly enacted House Bill 2723 to provide clear authority for counties and cities to be able to validate an established unit of land if the unit was unlawfully created by a previous owner, or if the county or city had approved a permit for the construction or placement of a dwelling or other building on the land after the sale to a new owner. It also authorized a county or city to approve a permit application for the continued use of a dwelling or other building on the unlawfully established unit of land if the structure had been lawfully established and the permit didn't change or intensify the use of the structure.

In 2021, a unique situation of alleged fraud by a Eugene land use attorney was discovered by Lane County. The attorney was a property owner that allegedly forged deed details in 2011 that allowed her lot to be split into three developable lots. She sold two of the lots to allegedly innocent purchasers and retained the remaining lot. Following the discovery, Lane County rescinded all permits, including those of the purchasers, effectively making the purchasers' lots and dwellings no longer valid. There is currently active litigation on the issue.

House Bill 3362 B would allow a county to approve an application to validate a unit of land acquired by an innocent purchaser under specified circumstances, and would allow any person to file a notice of intent to appeal a related land use decision that meets certain requirements with the Land Use Board of Appeals.