

Senate Bill 964

Sponsored by Senator SMITH DB

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Amends certain land division criteria and processes.

A BILL FOR AN ACT

Relating to residential land use; amending ORS 197.360, 197.365 and 197.375.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 197.360 is amended to read:

197.360. (1) As used in *[this section]* **ORS 197.360 to 197.380**[:]

[(a)] "expedited land division" means a division of land under ORS 92.010 to 92.192, 92.205 to 92.245 or 92.830 to 92.845 by a local government that[:]

[(A)] includes only land that is zoned for residential uses and is within an urban growth boundary. **and that:**

[(B)] **(A)** Is solely for the purposes of residential use, including recreational or open space uses accessory to residential use[:];

[(C)] **(B)** Does not provide for dwellings or accessory buildings to be located on land that is specifically mapped and designated in the comprehensive plan and land use regulations for full or partial protection of natural features under the statewide planning goals that protect:

[(i)] *Open spaces, scenic and historic areas and natural resources*[:];

[(ii)] **(i)** The Willamette River Greenway;

[(iii)] **(ii)** Estuarine resources;

[(iv)] **(iii)** Coastal shorelands; and

[(v)] **(iv)** Beaches and dunes[:];

[(D)] **(C)** Satisfies minimum street or other right-of-way connectivity standards established by acknowledged land use regulations or, if such standards are not contained in the applicable regulations, as required by statewide planning goals or rules[:]; **and**

[(E)] **(D)** Will result in development that either:

(i) Creates enough lots or parcels to allow building residential units at 80 percent or more of the maximum net density permitted by the zoning designation of the site; or

(ii) Will be sold or rented to households with incomes below 120 percent of the median family income for the county in which the project is built[:]; **or**

(b) *["Expedited land division" includes land divisions that create]* **Creates** three or fewer parcels under ORS 92.010 to 92.192 *[and meet the criteria set forth in paragraph (a) of this subsection]*.

(2) An expedited land division *[as described in this section]* is not a land use decision or a limited land use decision under ORS 197.015 or a permit under ORS 215.402 or 227.160.

(3) The provisions of ORS 197.360 to 197.380 apply to all *[elements of]* **applications required by**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 a local government comprehensive plan and land use regulations applicable to a land division **and**
 2 **further development of the site**, including any planned unit development standards and any pro-
 3 cedures designed to regulate:

4 (a) The physical characteristics of permitted uses;

5 (b) The dimensions of the lots or parcels to be created; or

6 (c) Transportation, sewer, water, drainage and other facilities or services necessary for the
 7 proposed development, including but not limited to right-of-way standards, facility dimensions and
 8 on-site and off-site improvements.

9 (4) An application for an expedited land division submitted to a local government [*shall describe*
 10 *the manner in which the proposed division complies with each of the provisions of subsection (1) of this*
 11 *section*] **must specify how the expedited land division criteria, as outlined in subsection (1) of**
 12 **this section, are met.**

13 **SECTION 2.** ORS 197.365 is amended to read:

14 197.365. Unless the applicant requests to use the procedure set forth in a comprehensive plan
 15 and land use regulations, a local government shall use the following procedure for an expedited land
 16 division, [*as described in ORS 197.360,*] or **for** a middle housing land division under ORS 92.031:

17 (1)(a) If the application for a land division is incomplete, the local government shall notify the
 18 applicant of exactly what information is missing within 21 days of receipt of the application and
 19 allow the applicant to submit the missing information. For purposes of computation of time under
 20 this section, the application shall be deemed complete on the date the applicant submits the re-
 21 quested information or refuses in writing to submit it.

22 (b) If the application was complete when first submitted or the applicant submits the requested
 23 additional information within 180 days of the date the application was first submitted, approval or
 24 denial of the application shall be based upon the standards and criteria that were applicable at the
 25 time the application was first submitted.

26 (2) The local government shall provide written notice of the receipt of the completed application
 27 for a land division to any state agency, local government or special district responsible for providing
 28 public facilities or services to the development [*and to owners of property within 100 feet of the entire*
 29 *contiguous site for which the application is made. The notification list shall be compiled from the most*
 30 *recent property tax assessment roll*]. For purposes of appeal to the referee under ORS 197.375, this
 31 requirement shall be deemed met when the local government can provide an affidavit or other cer-
 32 tification that such notice was given. [*Notice shall also be provided to any neighborhood or commu-*
 33 *nity planning organization recognized by the governing body and whose boundaries include the site.*]

34 (3) The notice required under subsection (2) of this section shall:

35 (a) State:

36 (A) The deadline for submitting written comments;

37 (B) That issues that may provide the basis for an appeal to the referee must be raised in writing
 38 prior to the expiration of the comment period; and

39 (C) That issues must be raised with sufficient specificity to enable the local government to re-
 40 spond to the issue.

41 (b) Set forth, by commonly used citation, the applicable criteria for the decision.

42 (c) Set forth the street address or other easily understood geographical reference to the subject
 43 property.

44 (d) State the place, date and time that comments are due.

45 (e) State a time and place where copies of all evidence submitted by the applicant will be

1 available for review.

2 (f) Include the name and telephone number of a local government contact person.

3 (g) Briefly summarize the local decision-making process for the land division decision being
4 made.

5 (4) After notice under subsections (2) and (3) of this section, the local government shall:

6 (a) Provide a 14-day period for submission of written comments prior to the decision.

7 (b) Make a decision to approve or deny the application within [63] **180** days of receiving a
8 completed application, based on whether it satisfies the substantive requirements of the applicable
9 land use regulations. An approval may include conditions to ensure that the application meets the
10 applicable land use regulations. For applications subject to this section, the local government:

11 (A) [Shall] **May** not hold a hearing on the application; [and]

12 **(B) Is not required to accept or consider written comments from any person other than**
13 **the applicant and the persons receiving notice under subsection (2) of this section; and**

14 [(B)] (C) Shall issue a written determination of compliance or noncompliance with applicable
15 land use regulations that includes a summary statement explaining the determination. The summary
16 statement may be in any form reasonably intended to communicate the local government's basis for
17 the determination.

18 (c) Provide notice of the decision to the applicant and to those who received notice under sub-
19 section (2) of this section within [63] **180** days of the date of a completed application. The notice of
20 decision shall include:

21 (A) The summary statement described in paragraph [(b)(B)] **(b)(C)** of this subsection; and

22 (B) An explanation of appeal rights under ORS 197.375.

23 **SECTION 3.** ORS 197.375 is amended to read:

24 197.375. (1) An appeal of a decision made under ORS 197.360 and 197.365 or under ORS 92.031
25 and 197.365 shall be made as follows:

26 (a) An appeal must be filed with the local government within 14 days of mailing of the notice
27 of the decision under ORS 197.365 (4) and shall be accompanied by a \$300 deposit for costs.

28 (b) A decision may be appealed by:

29 (A) The applicant; or

30 (B) Any person [or organization] **receiving notice under ORS 197.365 (2)** who files written
31 comments in the time period established under ORS 197.365.

32 (c) An appeal shall be based solely on allegations:

33 (A) Of violation of the substantive provisions of the applicable land use regulations;

34 (B) Of unconstitutionality of the decision;

35 (C) That the application is not eligible for review under ORS 92.031 or 197.360 to 197.380 and
36 should be reviewed as a land use decision or limited land use decision; or

37 (D) That the parties' substantive rights have been substantially prejudiced by an error in pro-
38 cedure by the local government.

39 (2) The local government shall appoint a referee to decide the appeal of a decision made under
40 this section. The referee may not be an employee or official of the local government. However, a
41 local government that has designated a hearings officer under ORS 215.406 or 227.165 may designate
42 the hearings officer as the referee for appeals of a decision made under ORS 197.360 and 197.365.

43 (3) Within seven days of being appointed to decide the appeal, the referee shall notify the ap-
44 plicant, the local government, the appellant if other than the applicant[, any person or organization
45 entitled to notice under ORS 197.365 (2) that provided written comments to the local government] and

1 all providers of public facilities and services entitled to notice under ORS 197.365 (2) and advise
2 them of the manner in which they may participate in the appeal. A person [*or organization*] that
3 provided written comments to the local government but did not file an appeal under subsection (1)
4 of this section may participate only with respect to the issues raised in the written comments sub-
5 mitted by that person [*or organization*]. The referee may use any procedure for decision-making
6 consistent with the interests of the parties to ensure a fair opportunity to present information and
7 argument. The referee shall provide the local government an opportunity to explain its decision, but
8 is not limited to reviewing the local government decision and may consider information not pre-
9 sented to the local government.

10 (4)(a) The referee shall apply the substantive requirements of the applicable land use regulations
11 and ORS 92.031 or 197.360. If the referee determines that the application does not qualify as an
12 expedited land division or a middle housing land division, as defined in ORS 92.031, the referee shall
13 remand the application for consideration as a land use decision or limited land use decision. In all
14 other cases, the referee shall seek to identify means by which the application can satisfy the appli-
15 cable requirements.

16 (b) For an expedited land use division, the referee may not reduce the density of the land divi-
17 sion application.

18 (c) The referee shall make a written decision approving or denying the application or approving
19 it with conditions designed to ensure that the application satisfies the land use regulations, within
20 42 days of the filing of an appeal. The referee may not remand the application to the local govern-
21 ment for any reason other than as set forth in this subsection.

22 (5) Unless the governing body of the local government finds exigent circumstances, a referee
23 who fails to issue a written decision within 42 days of the filing of an appeal shall receive no com-
24 pensation for service as referee in the appeal.

25 (6) Notwithstanding any other provision of law, the referee shall order the local government to
26 refund the deposit for costs to an appellant who materially improves his or her position from the
27 decision of the local government. The referee shall assess the cost of the appeal in excess of the
28 deposit for costs, up to a maximum of \$500, including the deposit paid under subsection (1) of this
29 section, against an appellant who does not materially improve his or her position from the decision
30 of the local government. The local government shall pay the portion of the costs of the appeal not
31 assessed against the appellant. The costs of the appeal include the compensation paid the referee
32 and costs incurred by the local government, but not the costs of other parties.

33 (7) The Land Use Board of Appeals does not have jurisdiction to consider any decisions, aspects
34 of decisions or actions made under ORS 92.031 or 197.360 to 197.380.

35 (8) Any party to a proceeding before a referee under this section may seek judicial review of
36 the referee's decision in the manner provided for review of final orders of the Land Use Board of
37 Appeals under ORS 197.850 and 197.855. The Court of Appeals shall review decisions of the referee
38 in the same manner as provided for review of final orders of the Land Use Board of Appeals in those
39 statutes. However, notwithstanding ORS 197.850 (9) or any other provision of law, the court shall
40 reverse or remand the decision only if the court finds:

41 (a) That the decision does not concern an expedited land division [*as described in ORS*
42 *197.360*] or middle housing land division as defined in ORS 92.031 and the appellant raised this issue
43 in proceedings before the referee;

44 (b) That there is a basis to vacate the decision as described in ORS 36.705 (1)(a) to (d), or a basis
45 for modification or correction of an award as described in ORS 36.710; or

1 (c) That the decision is unconstitutional.

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