



**Follow-up Testimony by City of Wilsonville Planning Director
Miranda Bateschell Opposing HB 3414-6 and Supporting HB 3414-5:**

***-6 Amendment Harms Housing Production, Equity, and Climate Goals;
-5 Amendment Provides for Implementable Process that Protects Community
Standards and Advances Statewide Goals to Increase Housing Production***

Responding to issue raised at public hearing held on May 9, 2023,
before the House Committee On Rules

Chair Fahey, Vice-Chairs Breese-Iverson and Kropf, and Members of the Committee:

The right to housing is at the core of the work to which I have dedicated my life. I have served the public for 23 years as a social worker for the houseless, and as a planner, in local government and non-profit housing development. Currently, I serve as the Planning Director for the City of Wilsonville.

Please see [testimony submitted by Mayor Fitzgerald on May 9, 2023](#), detailing how HB 3414-6, does not solve the problems it sets out to, and actually undermines efforts to reduce barriers to building much needed housing. As a seasoned practitioner, with direct experience on these issues and who will be called upon to implement these new rules, I offer the following examples of how every version of HB 3414, except the -5 Amendment, is not bold but rather flawed and reckless.

The City of Wilsonville is among the cities that are deeply concerned that **HB 3414-6 allows developers to bypass our recently adopted housing and climate policies for any reason**. There are no clear exclusions specific to these groups of policies and there is no performance expectation (like affordability or preservation of trees) for a developer to receive relief from these policies.

- One housing production strategy (HPS) policy the City has is *unit type variety standards* to ensure a mix of housing is achieved. The City will lose the ability to enforce this, limiting our ability to guarantee the production of needed housing types identified in our HNA/HCA.
- Inclusionary Zoning is also a land use regulation, an important HPS that under HB 3414-6 developers could get an automatic exemption for.

- Developers can also bypass CFEC rules around EV charging, parking standards, tree canopy and green energy, and development standards that will help us build Climate Friendly Areas.

Villebois is an award-winning, Smart Growth neighborhood in Wilsonville, with diverse housing and thoughtful design, and is the **most demographically diverse** part of the City and broader school district.

- Under -6, the community would have lost a lot of housing variety, including townhouses, small scale condominium buildings, and other middle housing, as there was pressure at the time from developers to reduce housing variety.
- Under -6, the community would not have realized the interconnected park system that links to regional trails and open space, providing recreation, community gathering, open space and air opportunities for the surrounding high density housing.
- With -6, the neighborhood would have lost out on architectural variety and addressing requirements, removing a sense of place, particularly around open spaces, and resulting in a monotonous built environment.
- Under -6, the City will not be able to require the preservation of large, healthy, and historic trees, **one of our greatest tools in fighting climate change**. In Villebois, many trees were removed for development, but particularly significant trees became the focus of the neighborhood design, and provide shade, community focal points, and mental health benefits to residents.

A number of proponents of HB 3414-6 testified that the bill would reduce the impact of NIMBY (Not In My Back Yard) participants in both the land use decision and appeal process. **HB 3414-6 will actually result in more power for NIMBYs and longer timelines and less certainty for developers.**

In two recent projects, a 6-plex development and a three building mixed-use multi-family residential development, the City received numerous complaints from the neighbors. None could substantiate an appeal against the clear and objective code. However, **with no limitations for complaints to the HAPO (in Section 4), these residents most certainly would have filed complaints with HAPO**, slowing down a final decision and construction of these much needed housing projects. In Oregon that can mean the difference between beginning construction this year or twelve months from now. HB 3414-6 does not even

limit the filing of a complaint within the normal state mandated appeal timelines. Removing all certainty to these developers that the decision on their projects is actually final.

Furthermore, **without providing a specific list of what adjustments are allowed, which is clear and objective, and does not require findings or evidence, HB 3414-6 sets itself up for lawsuits.** Many of the exceptions in Section 2 of HB 3414-6 are highly subjective language and good fodder for hungry appellants and the courts. What falls under “health, safety, and habitability” would garner far different answers depending on who you ask and will be argued from different angles.

The language is just not specific enough to be implemented by local cities or to provide adequate certainty that important goals beyond housing are protected. During the hearing, it was stated by proponents of HB 3414-6 that CFEC and Climate Friendly Areas are protected. I do not see any exception in that list that would cover CFEC or CFAs. This will only open the door to challenges if a City makes such an interpretation. Findings and evidence drafted by cities provides just more information to be argued if someone does not agree with the conclusion.

HB 3414-6 proponents stated the latest amendment reduces red tape and the burden on cities. This is simply not true. Section 2 says the local government is the one responsible to document in writing how the denial relates to an exception, including substantial evidence if the denial is related to health, habitability, or safety. Developers are currently responsible for findings on how they meet adopted policies and regulations. **The -6 Amendment continues to shift the burden, and require substantially more city staff resources and time to process housing applications with these variance requests.**

Given the issue raised about CFEC and CFAs, local governments will have to produce substantial evidence when making a denial, since the ambiguity would almost certainly open things up to a legal challenge. During the hearing, someone asked about the State wildfire maps and DLCD staff responded that it cities could easily write findings for that issue. For anyone who has been through an appeal knows it is not easy to write findings you know will be subject to litigation. **But more importantly, why should a local government even be in a position to deny variance requests and make findings to defend policy initiatives of the State, particularly relating to a natural hazard risk?**

Like most cities, Wilsonville already has an adjustment process, which is successful and has not resulted in project denials. **Wilsonville opposes HB 3414-6 because it will make this process more cumbersome, time consuming, and apply to standards that will**

result in significant negative impacts for communities throughout the State. It absolutely will have a substantial impact on tree canopy, water quality, and all aspects of the natural environment. As we already experience significant increases in extreme temperatures, ice storms, and wildfires, balancing development with the environment is critical to building communities where residents can survive (and thrive) despite these changing conditions.

Despite those negative impacts, at the request of HB 3414-6 proponents asking for housing to be prioritized over other goals, **there is no guarantee the state will see increased housing production in exchange for the variance(s).** Why is there no requirement for the developer to justify or show how the variance resulted in the ability to build the project, increase the number of housing units, or achieve better affordability? It seems developers can bypass any number of standards they want to, in order to build the same number of housing units they could have built if they followed already adopted clear and objective standards.

These issues are resolved in the -5 Amendment presented by Representative Gamba.

Only the -5 Amendment supports the goals of increased housing production, reduced development timelines, and improved affordability – while minimizing red tape and administrative burden on local government. The -5 Amendment creates a specific list of adjustments that while substantial, do not threaten livability or our environment. The list is composed of barriers non-profit homebuilders have experienced, including those outlined in Home Forward’s testimony, combined with the most common development standards developers request adjustments for from cities. **These adjustments are clear and objective and will be easy for developers to obtain and cities to implement.**

- The -5 Amendment provides developers and cities a clear administrative path allowing flexibility on a wide range of development standards for middle housing and multifamily development.
- The approach in the -5 Amendment is more appropriate since the allowed adjustments in Section 2 are specific, discrete, clear and objective.
 - This eliminates the need for either party to develop findings or substantial evidence specific to each adjustment. The developer just needs to demonstrate the adjustment does not negate overall intent of that standard, or that intent is met in some other way.

- This removes the red tape and burden to cities, and will not substantially increase the review time for housing applications. It also does not increase the burden beyond what applicants are currently required to do.
- **This also reduces risk of litigation.**
- The -5 Amendment list of standards clearly protects climate-friendly policies, including CFAs, trees, and open space.
- The -5 Amendment list will not impact cities abilities to implement housing production strategies like housing variety rules or inclusionary zoning.
- The -5 Amendment (in Section 4) also narrows the complaint and enforcement function of the HAPO to reduce administrative burden on local staff, avoid NIMBY complaints, and focus on housing production.
- The -5 Amendment limits who can complain, establishes time periods for filing complaints, and provides necessary clarity on when a complaint has a final decision and development can go forward, which is critical to our production goals.
- Importantly, the -5 Amendment requires an applicant to demonstrate that the adjustment(s) will: reduce development time, increase housing production, or improve affordability. **The focus is on getting the results HB 3414 aspires to.**

Multiple proponents of HB 3414-6 testified, at the May 9 hearing, asserting that local governments are just really uncomfortable because this approach is “bold and different” which means it must be good. This is troublesome. There is nothing bold about saying rules do not matter, and that if there are problems, we can just fix them later. The creation of housing and communities should not be treated like a laboratory experiment. The subject of this debate is, or should be, about creating places for people to live – and these places will be around for decades if not longer. We cannot just erase a neighborhood that did not turn out well. Everyone lives with the consequences of bad development. **The reason why planning professionals and local governments offer critique of this legislation is because we have the education and expertise to understand that what is proposed is not workable, is rife with potential legal challenges, and will not solve the challenges of increasing housing production.**

Cities welcome bold changes, many cities in Oregon are already implementing bold changes. We should not be entertaining a housing at all costs mentality at the expense of

good policies that create equitable housing in livable communities. **Our focus should instead be on bold new ideas that address the real barriers to producing needed housing, specifically affordable housing — recognizing that the cost and timeline to construct infrastructure is the biggest obstacle to producing housing.** In order for the State to meet its goals for housing production, we need to meaningfully fund infrastructure and improve how it can be financed.

To hit our housing targets, we also need to be streamlining processes by ensuring there is a clear and objective path to approval, with less room for appeals, not the opposite. **The -5 Amendment are critical, since they present an approach that can actually be implemented and is truly focused on increased housing production, reduced development timelines, and improved affordability.**

The City of Wilsonville respectfully urges the committee to table HB 3414 or adopt HB 3414-5. Affordable housing is a critical issue but HB 3414-6 takes an unreasonable approach that undermines many local and state goals. Only the -5 Amendment addresses the intent of the bill, is implementable, and ensures we can still implement our climate and housing production policies.

Sincerely,

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