

HOUSE BILL REPORT

HB 1265

*As Reported By House Committee on:
Local Government*

Title: An act relating to dedications.

Brief Description: Restricting subdivision alterations that diminish dedications.

Sponsor(s): Representatives Valle, Heavey and Scott.

Brief History:

Reported by House Committee on:
Local Government, March 6, 1991, DPS.

**HOUSE COMMITTEE ON
LOCAL GOVERNMENT**

Majority Report: *That Substitute House Bill No. 1265 be substituted therefor, and the substitute bill do pass.*
Signed by 15 members: Representatives Haugen, Chair; Cooper, Vice Chair; Ferguson, Ranking Minority Member; Mitchell, Assistant Ranking Minority Member; Bray; Edmondson; Franklin; Horn; Nealey; Nelson; Rayburn; Roland; Wood; Wynne; and Zellinsky.

Staff: Steve Lundin (786-7127).

Background: The Subdivision and Platting Act requires the review and approval of each division of land by the county, city or town that has planning jurisdiction over the land, if the smallest resulting lot is less than five acres. Certain divisions are exempted from review or are subject to a review procedure differing from the normal subdivision review procedures.

Legislation was enacted in 1987 providing for an expedited procedure to alter boundaries between lots, if the alteration does not create any additional lot and each resulting lot meets the applicable width and area requirements for a building lot. Where this expedited process is used, the normal subdivision review process does not apply. An application for this expedited process must be signed by at least a majority of those persons having an ownership interest in the lots that are proposed to be altered. However, an alteration involving a violation of a covenant must include an agreement to terminate the covenant

that has been signed by all the parties subject to the covenant. A covenant related to real property is a promise or obligation that is made between two or more property owners that binds these property owners and their successors in interest.

The county, city, or town governing body must determine the public use and interest in the proposed alteration as part of its review process. Where the alteration contains a dedication to the general use of persons residing within the subdivision, such dedicated land may be altered and divided equitably between adjacent property owners.

The 1987 law does not describe how, if at all, a common area can be affected if undivided interests in the common area are held by the owners of each lot in a subdivision.

The state constitution prohibits the taking of private property for public or private use without the payment of just compensation.

Summary of Substitute Bill: Easements established by a dedication are property rights that cannot be extinguished or altered without the approval of the easement owners, unless the document creating the easement provides otherwise.

Substitute Bill Compared to Original Bill: A total rewrite eliminates the original provisions that dealt with the subdivision law and limiting evidence courts could use to invalidate recorded dedications.

Fiscal Note: Not requested.

Effective Date of Substitute Bill: Ninety days after adjournment of session in which bill is passed.

Testimony For: (Original bill): An easement to our community beach was illegally altered by a judge. We bought our homes with the clear recorded plat showing an easement. Afterwards, the developer filed a document with the county limiting the easement rights to 30 years. When we found out a lawsuit ensued. One judge ruled in our favor, but the case was transferred and another judge ruled against us. Our property rights were taken. We don't have the money to appeal.

Testimony Against: (Original bill): We just reformed plat alteration procedures several years ago.

Witnesses: (Pro): Eugene and Susan Hoglund, Vanna Baltrusch, and Ronald Carnell, Ocean View Community. (Con):

Jim Williams, Master Builders Association.