



Property Rights and Property Wrongs



In November 2000 Oregonians passed the first statewide "property rights" measure in the nation involving compensation for regulations that diminish land value. Measure 7 was overturned by the courts on a technicality, and now Oregonians have a chance to rethink this issue. The Legislature is doing so right now.

We can gain insight into the property rights issue by considering a classic conundrum from Economics 101 in which we seek to maximize enjoyment value for two adjacent apartment residents, one who likes to listen to loud music, and one who likes peace and quiet. Should one be able to make as much noise as he/she wants without regard to the impacts on the other? Should the one who likes peace and quiet be forced to pay the other to turn down the volume? And what about the rest of the

neighbors in the apartment complex? Clearly some compromise, or balance, is in order.

Similarly, if one individual seeks to maximize his/her economic gain by fully exploiting the property he/she owns, then the property values of surrounding land owners could be adversely impacted. The "property rights" advocates seem to be fixated only on the rights of those seeking to exploit their property, even though it may be at the expense of the rights of neighboring land owners, or the whole community. For example, if you have invested in a home in a quiet rural setting and your adjoining neighbor decides that a shooting range or an auto racetrack would make a nice profitable use of his land, who's property rights are at stake?

Shouldn't the rights of all land owners be considered? And isn't there a benefit to present and future residents from having an orderly, well-planned community? Most people would also recognize the additional benefit of having clean air and water and of protecting environmental quality.

Good land use regulation seeks to achieve a careful balance that promotes property values while maintaining public health, safety and general welfare (including environmental protections).

Some regulation is easy: You don't want a hog farm next to your residential subdivision and the hog farmer doesn't want a subdivision next to his farm. Both groups of property owners are better off for land use regulations that

A Kinder Destiny

As Bush lays the rhetorical groundwork for a pre-emptive strike on Iraq for oil and manifest destiny, those of us who would manifest a kinder destiny seek common ground in Lane County. Against pre-emptive attacks on the McCall legacy, LandWatch fields a spirited defense using education, outreach and, when necessary, legal appeals.

The resistance is gaining ground.

Robert Emmons

seek to separate incompatible land uses. In this way, good regulation helps optimize property values.

But, of course, not all regulation is good or simple. The solution to bad regulation is to identify and to fix the errant regulation as quickly as possible. It's not to throw out the baby with the bath water by overhauling our system of land use planning. Nor is it to force taxpayers to compensate landowners for all the financial impacts of land use regulations.

Measure 7 would have crippled new planning programs and hindered the implementation of existing ones. And it would have cost taxpayers a fortune. A legislative replacement is not needed. We can do the job by striving for good land use policies that optimize land values and property rights, while maintaining the safeguards we all want.

Eben Fodor

New Jersey Governor Speaks Ferently on Sprawl

While Oregon's governor vows to ease regulations on development, here's some recent news from New Jersey (excerpted from the New York Times, January 15, 2003).

Gov. James E. McGreevey of New Jersey has issued a fervent call to legislators in that state, the most congested in the nation, to curb the development and sprawl that he says are devouring 50 acres a day.

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(New Jersey sprawl, contin-



Perhaps the Leaches "didn't know" that racecars don't fly.

Cottage Grove Airport Speedway

On January 18th racers associated with the Cottage Grove Speedway took a dangerous and further illegal turn in their theater of the absurd. To prove that cars with mufflers are quieter than those without them, dozens of racecar owners converted the Cottage Grove Airport into a racetrack—with the Cottage Grove mayor, two city councilors and speedway attorney Bill Kloos in attendance.

According to Daren Griffin, State Airport Manager, "This activity was not authorized by the Oregon Department of Aviation (ODA) and was a gross misuse of airport property. It created a very serious safety hazard at the airport for both users of the airport and the people in attendance to watch the racing. During this event, the airport was still open for normal use by aircraft.... All of this racing activity is considered tres-

passing by ODA." As reported by the Register Guard, Bob Leach, who co-owns the Speedway with his brother Russell, said "he attended the event and believed that the organizers had permission to use the place although he said he didn't know who gave the permission." He declined to release names of the racecar owners saying, "They were all trying to help." Russell Leach also confessed that "as far as the actual person who said that we could use the airport, I don't know who that was."

What did this unauthorized test on state property demonstrate other than the thoughtless audacity of the trespassers and the selective amnesia of the owners? That the types of mufflers they are using on their racecars today don't seem to be any better than the "fake" mufflers they claim to have used in 1982. In fact the test produced decibel numbers higher than 95 dBA. This is important because the racetrack touts 95 dBA as a significant decrease in the noise level they claim to hold the racers to.

This most recent disregard for law and safety fits a longstanding pattern. Incredibly, in an attempt to justify current noise levels, the racers swear that their cars were louder in 1982 because at that time they ignored and circumvented the law. But, again, owners Bob and Russell Leach say they just "didn't know". They "didn't know" they needed permits to build bleachers, a large elevated viewing platform, and an overhead walkway. They "didn't know" they must go through a land use process to expand a non-conforming use. Yet, we know that Bob Leach owns another racetrack in Albany, which is a non-conforming use that required he go through a land use process some years ago. And we know he has been red-flagged numerous times for not getting building permits at that property.

At the January 30th hearing one woman, who identified herself as an official at the track, boasted that the racers don't want to see her come into the pit because they know if she says they are too loud "That's it - they don't race!" Citizens who live within 5 miles of this track deserve the same power. Industries and commercial businesses cannot produce over 55 dBA at the closest noise sensitive unit, nor can airplanes at the airport. Why should a racetrack, whose sole purpose is entertainment, be allowed to produce 40 or more dBA above that?

One racetrack supporter conceded that citizens have a right to peace and quiet—

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Landwatch Vigilant in Efforts to Reform Lane County's Land Management Division

During the past year, LandWatch work to protect the farm and forest lands of Lane County from harmful, and often unlawful, development and growth has garnered the attention of lead County planning staff and elected officials.

In September, LandWatch was invited to participate on a task force established by the Board of Commissioners for the purpose of reviewing, and making recommendations on, the function of planning division operations and services. LandWatch succeeded in influencing actions intended to maintain long range planning, and in recommending that staffing be increased significantly from the current bare-bones level. Although progress was made toward reform of business-as-usual practices, it was disappointing (but not surprising) that most task force members (developers/real estate agents/planning and land use consultants) were reluctant to take a firm stand on serious options for generating planning revenue. Our next step is to meet with county commissioners to discuss outstanding concerns.

Regardless of the task force's failure to address mismanagement and reorganization

issues, LandWatch continues to make progress toward our goal of reforming the LMD. At a meeting with the Planning Director in early January, we pointed out that his use of discretionary authority too readily and too often favors development interests at the expense of the common good. LandWatch requested and offered to pay for notice of pending planning actions, but, true to his reputation for loyalty to developers and in violation of state law, the Planning Director has denied this request. As a result, LandWatch will take the issue to the Board of Commissioners (BCC).

In the next few months, LandWatch intends to seek approval from the BCC for a Critical Habitat Conservation Zone ordinance that will provide improved riparian setbacks for county waterways. We'll seek commissioners' help in developing an open space program using conservation easements, land grants, land banking and mitigation, acquisition of development rights, or a creative combination, to protect our farms, forests and open space from sprawl. And, to help us do our job better, we will request that the board recognize LandWatch Lane County as a "community organization," thereby allowing it free notice of proposed planning actions and the waiver of certain appeal fees.

These are important issues and ones that may be accomplished this year. There are of course many others, and we welcome your suggestions.

**Lauri Segel and
Robert Emmons**

New Jersey Governor Speaks Fervently on Sprawl

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PeaceHealth Hearing Before Springfield Council: Vision or Nightmare?

Would the PeaceHealth campus at Gateway be a healing utopia or an epidemic of traffic and sprawl? PeaceHealth CEO Alan Yordy testified to the Springfield City Council that amendments to the area's comprehensive and neighborhood planning documents would allow PeaceHealth to "set the stage" for research institutes, collaborative efforts with the University of Oregon, and the latest and greatest in medical technology. He urged the Council to be "flexible" on Planning Commission conditions limiting the height of buildings to preserve the view from the river and across the land to the hills beyond and on Springfield planning staff provisions requiring nodal development to actually conform to the nodal development sections of the Springfield Development Code.

In fact, much of the testimony from PeaceHealth employees and physicians during the first night of the two-night hearing last month focused on the need for more space and better technology at the existing

Sacred Heart Medical Center in Eugene and on the "healing environment" the new site would provide. Without disputing the need for better facilities, advocates for inclusive planning, neighborhood livability, natural public spaces, and compact urban growth focused much of their testimony on the problems and costs that PeaceHealth's "vision" would impose on the natural environment and the community at large. By doing so, they suggested that the meaning of health and healing is much broader and more profound than the narrow, self-serving spin doctored by PeaceHealth at Gateway supporters.

Traffic issues dominated the list, since the development would require more than 100 million dollars in roads and would bring thousands of daily auto trips to an already congested neighborhood.

But respect for the extensive, inclusive process that produced the Gateway Refinement Plan was also on the minds of neighbors, especially those who had participated in that process. Neighbor Anne Heinsoo urged the Council to remember the "Great River" designation bestowed on the scenic McKenzie. Springfield Planning Commissioner Bill Carpenter and McKenzie Flyfisher Bob Bumstead each presented the "modified" city logo designed by

Land Watch board member Chris Berner, attempting to illustrate the need to protect the river view from PeaceHealth's plans for a sky-scraping hospital building.

Pete Sorenson, chairman of the Lane County Board of County Commissioners, presented a letter from the board, urging inter-governmental cooperation on a decision that impacts residents and taxpayers all across the county. A regional hospital, said Sorenson, deserves regional scrutiny, and the Gateway proposal would impact regional transportation projects, regional emergency services, and regional health care choices. East Lane County Commissioner Tom Lininger also testified about the need for a more inclusive decision-making process.

Springfield's community hospital was on the minds of some who testified. With McKenzie-Willamette's January announcement that it had found a capital partner to fund its own new facility, it became clear to many that Springfield will not end up with two hospitals. A number of speakers asked the Council to send PeaceHealth back to Eugene and thus assure that McKenzie-Willamette could stay and serve Springfield and east Lane County. At briefings to the two cities' councils and the county board, McKenzie-

Willamette CEO Roy Orr had said that no discussion of sites would begin until the partnership agreement with Triad is finalized sometime this summer. Orr did state, however, that he personally preferred "360 degree access," presumably favoring a central city location.

The official record on PeaceHealth's proposal, already voluminous, was held open for additional written testimony until 5 p.m. on Feb. 26th. PeaceHealth then had one week for written rebuttal testimony (though no new evidence could be submitted during that time), and the Council will spend the month of March reviewing the record. The Council is tentatively scheduled to deliberate and decide on the proposal at its March 31st meeting.

Jan Wilson, CHOICES



SpringPeace

Land Management Division Task Force Sunsets

From the start it was a daunting endeavor. In September 2002, Norm Maxwell, representing LandWatch Lane County, and Lauri Segel, representing 1000 Friends of Oregon, signed on to participate on a Lane County task force. The stated objective of the task force was to assess the structure and operation of the Land Management Division (LMD) and offer subsequent policy and funding recommendations to the Board of County Commissioners (BCC).

Most of the participants seemed, at first blush, heavily predisposed to promoting development at the expense of the environment. However, to some extent differing perspectives and experiences ultimately led task force members to acknowledge that the LMD was understaffed and underfunded. And with Norm's well-earned prodding, lot line adjustments were acknowledged as an uncontrolled virus needing a remedy.

Unfortunately, the task force was micromanaged by staff. From the onset, one of our main concerns (staff reorganization) was given short shrift, even though the basis for our concern was substantiated in department audit reports that were distributed early on to task force members. The departmental audits suggested that special favors for special interests were not addressing overall customer and staff satisfaction.

Staffing issues, ranging from staff dissatisfaction to their relationship with the Board of Commissioners, have been alive and unwell in Lane County for a long time. Though this issue seemed well within the purview of the task force's directive, a sleight of hand by staff and disinterest by most task force members resulted in it ending up on the cutting room floor.

It became clear from the start that task force members were not going to establish the agenda. However, recognizing that LandWatch and 1000 Friends were interested in having some say in the selection of issues, staff proposed working up a wish list and options for funding the list that could be forwarded in the form of a recommendation to the BCC.

First wish on the list was more staff for long range planning. Staff presented three options for additional staffing and, in what seemed like a dream come true, task force members other than Lauri and Norm initiated a fourth and much more aggressive option. The option approved by task force members was to increase long range planning staffing levels from 2.5 Full Time Equivalents (FTE) to 4.5 FTE. The second wish was stronger attention to compliance and enforcement of Lane Code; again, members of the task force were in agreement, and recommended establishing a more aggressive policy for enforcing building code violations and resolving nuisance complaints.

Unfortunately, when the task force was faced with funding

options to pay for these programs, creative or otherwise, it was as if nothing but band-aids were available. Staff options were dismissed based on particular special interests of those present. Whatever common ground had been established evidently did not extend to the common good. One seemingly viable funding option would have entailed legislative action. Without follow up, that will go by the wayside.

Both Lauri and Norm were willing to ask hard questions knowing that no easy answers could be brought forward, and that support from task force members was often tepid. Frequently throughout these meetings, opinions or suggestions were stated and left hanging, unacknowledged and not acted on, particularly those of Lauri and Norm and of Mona Linstromberg and Bob Emmons who occasionally sat in for them.

The group "sunseted" February 24th, after almost five months of weekly meetings. However, stay tuned for Part 2: Lauri requested that a subcommittee be established to further explore true remedies for what ails the Lane County Land Management Division, including organizational issues. Not surprisingly, that suggestion barely received a lukewarm response. To follow up, LandWatch members may want to urge the Board of Commissioners to form a subcommittee to address these issues.

**Mona Linstromberg
Lauri Segel**

Director Silent on McKenzie Riprap

A photograph of a property on McKenzie Highway, taken just weeks ago, shows a riparian zone to the edge of the McKenzie denuded of vegetation and the riverbank shored up with riprap. The Lane County Land Management Division's (LMD) own history of these unauthorized events extends over three years and clearly reveals a property whose owner knowingly and flagrantly violated the required 50 foot riparian setback of native trees and shrubs. Further, the owner installed 130 feet of riprap on neighboring property, and it appears that he built his garage on the neighbor's land as well.

Instead of acting on staff's recommendation that the restoration process be treated as a land use decision and a fee of \$1,385 assessed to the property owner, LMD planning director Kent Howe acquiesced to the owner's agent's demand that he allow "a retroactive approval from the Soil and Water Conservation District (SWCD) for the restoration plan that has already been implemented" and "back off the requirement for the fee."

What we learn from this record is that the LMD, under Howe's direction, discretion or neglect has permitted an egregious violation of the riparian ordi-



Riprap ruins habitat along the McKenzie River; Land Management Division does nothing to stop it.

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Board of Commissioners Moves to Reduce Roadside Spraying

The Lane County Board of Commissioners moved recently to reduce pesticide use on the county's roadsides. At the Board's meeting on February 26, 2003, commissioners voted unanimously to ask two of the Board's advisory commit-

tees—the Vegetation Management Advisory Committee (VMAC) and the Public Health Advisory Committee (PHAC)—to determine how a "chemicals as a last resort" policy might be implemented by the Public Works Department.

At an earlier meeting on February 19th, concerned community members came before the board to ask that the two committees be involved in a review of the current Integrated Vegetation Management policy, which currently

includes herbicides as a tool for roadside vegetation control. Most of the people giving testimony asked that the commissioners' work toward eliminating the use of herbicides on our roadsides.

While Pete Sorenson supported banning herbicide use on county roadsides, both Tom Lininger and Bill Dwyer believed that herbicides should be reduced but still be available as a tool for managing weeds. Bobby Green supported taking a critical look at the policy to ensure that the county was not under constant criticism for its current practices. Anna Morrison didn't clearly state her opinion.

There was also some disagreement about whether or not the Public Health Advisory Committee should be involved in the review of the current policy. Voicing their concerns about the health effects of pesticides, Pete Sorenson, Tom Lininger and Bill Dwyer advocated that the Health Advisory Committee play a key role in the review. Commissioners Dwyer and Lininger expressed special concern for children and the chemically sensitive. Bobby Green and Anna Morrison were reluctant to involve the PHAC.

After a protracted discussion and a fair amount of negotiation between commissioners, an agreement was reached. The VMAC and PHAC would both be involved in determining how a "chemicals as a last resort" policy might be implemented by the Public Works Department. The two committees (VMAC

and PHAC) are expected to report back to the Board of Commissioners in about two months.

Nena Lovinger of Land Watch has been involved in the effort and provided public testimony to the Commissioners. Staff from the Northwest Coalition for Alternatives to Pesticides (NCAP) also provided testimony, and will continue to be a resource to the Commissioners, Public Works Department, VMAC and PHAC during this process. If you'd like to get involved in the effort to reduce herbicide use on Lane County's roadsides contact Megan Kemple at NCAP at: 344-5044 ext. 20 or info@pesticide.org.



Roadside spraying may be only a "last resort" in the near future.

LandWatch Provides Plan for Riparian Restoration in Bristow Park

On February 15 twelve volunteers recruited by the Lost Creek Watershed group and Oregon Department of Fish and Wildlife's (ODFW) salmon/trout enhancement program planted 225 Oregon ash seedlings, 100 big leaf maples, 25 ponderosa pines and assorted shrubs along 1,000 feet of Lost Creek frontage at its confluence with the Willamette in Elijah Bristow State Park. This is the third year of a five-year plan to eliminate invasive species such as Himalayan blackberry, Scot's broom and Japanese knotweed by hands-on removal and replanting with native trees and shrubs.

In an effort to collaborate with Lost Creek and the ODFW, last fall LandWatch member and forester, Rich Fairbanks presented a proposal to the Mid-Willamette Watershed Council for the restoration of over 30 acres of riparian area along the Lost Creek-Willamette confluence. Its objectives include establishing forest along two waterways; reducing the population of non-native plants; and planting natives sufficient to compete with non-natives.

Planting a mix of conifers and hardwoods well adapted to the largely silt and sandy loam soils and to both episodic flooding and summer drought is the initial step to ensure survival past the first few years. Species such as red cedar, incense cedar and grand fir; cottonwood, ash and maple will eventually contribute long-lasting coarse woody debris and cast shade that will discourage non-natives, thereby providing healthier habitat for fish and other wildlife and a considerably richer aesthetic for park users.

But they'll need our help for at least the first couple of years. The use of shade cards may be necessary for some stock. Protective tubes should be installed on all plantings, especially the red cedars. Most importantly, all new plantings must be watered for 2-3 years during the heat and drought of summer.

In addition to planting the right plant in the right place, control of tenacious invasives is essential. Fairbanks suggests cutting the aerial portion of English ivy on cottonwoods near the river and knotweed on both sides of Lost Creek, with the latter subjected to continued aggressive deterrence.

In the second year a survival inventory should determine which trees and shrubs are surviving and why. Blackberry within five feet of seedlings would be cut-back as necessary and



Riparian areas such as this one along the Willamette River are being restored by volunteers.

unplanted areas mowed. The remainder of the areas will be planted with species that survived well in previous plantings, and bare spots in the first year planting will be replanted.

LandWatch looks forward to working with State Parks, ODFW, the Lost Creek Watershed Group and other volunteers in a major collaborative effort to extend riparian restoration along Lost Creek and the Willamette beyond the work already underway.

Meanwhile, several hundred yards upland, the LandWatch native plant study plots established in a white oak grove a couple of years ago are busy growing blackberry, thistle and other non-native invasives. To provide proper ground for a resurgence of native plants, we anticipate a long-awaited prescribed burn of both the oak grove and adjacent meadow in late fall 2003.

Robert Emmons

LandWatch
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