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Small Communities Sitting Ducks for Development

Cottage Grove, Creswell and Veneta stand in the cross-hairs of developers' sights, a reality that will transform the small town, rural character of these communities.

Much of the development push in smaller Lane County communities is related to the Eugene Homebuilders Association's mantra that we're running out of buildable lands inside the Eugene-Springfield UGB. That isn't true, but that doesn't stop the Homebuilders from repeating it, and it doesn't stop those who hear it over and over from believing it. The real "problem" is that Eugene, and, to a lesser extent, Springfield, have finally gotten their acts together and closed many – but not all – of

the planning loopholes that allowed builders to turn our rural edges into acres of big boxes, office parks, and subdivisions of McMansions.

Now developers and builders are turning to the ill-prepared small towns in the county where they find easy pickings due to loopholes in comprehensive plans and zoning codes that haven't been updated for decades. The way some developers and their lawyers run small town city staffs through the wringer verges on criminal mischief.

The baloney about needing to build "affordable" housing is, well, just baloney. Developers have had plenty of opportunity to build affordable housing in Eugene, but they chose instead to build mostly

McMansion subdivisions, because, of course, they could make more money off McMansions. Subdivisions of McMansions are exactly what they're proposing in Lane County's small towns, too. They have no intention of providing affordable housing, and, since the small town zoning maps allow plenty of one-acre residential (R-1) parcels, that's where they're going. This translates to low density residential buildout – ample houses with large yards and multi-car garages.

New housing has never been intended to be "affordable." For decades, a family's first home has almost always been a used home. People then trade up later in life, using the equity in their first (used) home to buy a new home.

The idea that new homebuyers should be able to afford what most developers are building today is a stretch. The vast majority of new subdivisions in Lane County are not comprised of affordable housing. Developers reap a handsome profit by building upscale subdivisions not by constructing affordable housing.

Hats off to the people in Cottage Grove and Veneta who are standing up to shortsighted planning that permits developers to exploit vulnerable rural communities.

Jan Wilson
 Public Interest Attorney

Clearing of Cottage Grove Landmark Reveals Planning Flaws



Early this year the trees atop Mt. David, Cottage Grove's landmark butte, were cut within a matter of hours, and the community was awakened to the prospect of not one but two proposed developments directly adjacent to each other on the mountain, one of 250 homes, the other of 200. Either of these developments would easily qualify as the largest in Cottage Grove's history. Although this land has been intended for residential use for thirty years, access to water and sewer services are problematic, soils in places will require specialized engineering due to clay, springs and seeps, and much of the upper elevations is designated as landslide hazard zones.

Shocked by the threat of two large subdivisions, my neighbors and I re-energized the Friends of Mt. David, a community advocacy group working to ensure that proposed developments are well planned and responsive to the unique concerns of landscape and community. What we've discovered, however, is a system driven by outdated planning that

continually marginalizes public involvement. We've interfaced with a process that was never intended to cope with developments of this size and intricacy, and a city staff that is overworked, under-funded, and unable to stay abreast of land use policy. And we've found that Cottage Grove's situation is not unique. These issues face many, if not most, small communities in Oregon, where deficiencies in planning leave holes developers can drive projects through, bypassing the public in the process.

Cottage Grove's Comprehensive Land Use Plan has not been publicly reviewed for twelve years, and our Transportation Systems Plan allows for standards that are unacceptable when compared with statewide standards. The TSP contains no conceptual roads for the Mt. David parcels, even though they encompass the largest buildable residential lands within the Urban Growth Boundary, contain steep hillsides, and have no direct access to central arterial roadways.

Our experiences in the public process have highlighted a lack of understanding city-wide about land use issues. Confusion about the process itself has created an environment of fear. The city government fears litigation, and this prevents officials from having an unobstructed view of their options regarding land use issues. It prevents citizens from being effective, as fear of ex parte contact prohibits two-way conversations with our elected representatives on the city council. The lack of clear, comprehensive planning and an open, educated process even disadvantages the developer, to whom time is money. When they cannot move forward on their projects, developers blame citizens, who are simply exercising their right to raise reasonable objections.

SunRise Ridge, Todd Alberts' 250 home Planned Unit Development next to Mt. David, was scheduled for its final public hearing before the city council when his attorney filed a petition for a Writ of Mandamus against the City of Cottage Grove claiming the city had violated the 120-day state deadline for action on Alberts' PUD application. This removed the application from the public and the City, placing it in the hands of the circuit court. The same day, bulldozers began to break ground on the SunRise Ridge property. At this writing, all of the roads for Phase I of the project are being graded and graveled. The application is suspended pending court action, and Alberts is proceeding with his project

without the approval of the city or its citizens.

The second of the proposed Mt. David developments, 200 unit Emerald Heights, was approved for annexation by the Lane County Boundary Commission on October 6. Again the Friends of Mt. David requested that the county deny annexation until publicly reviewed planning was in place. Again, we were told that our issues were best handled in the PUD process. Because we've learned that public participation is limited, we fear the Emerald Heights developer will circumvent our concerns the way Alberts has with SunRise Ridge.

As long as the planning process remains incomplete and outdated, developers may continue to take the path of least resistance and do the planning for us.

Friends of Mt. David may be contacted at 942-5422. All donations are tax deductible.

Lara Florez



200-year-old oak trees were destroyed to make way for rural sprawl.



Interview with Jim Just

Jim Just is executive director of the Goal One Coalition, a statewide nonprofit that helps people with local land use issues. He has been working with LandWatch to prevent the destruction of farm and forest land in Lane County. Together they are fighting the spread of commuter houses, with the longer term objective of getting the county to do its job of saying "no" to illegal development proposals.

LW: How did you become interested in land use?

JJ: I grew up and lived for most of 40 years in Sacramento, and saw the quiet little paradise of my youth sprout freeways and turn into a suburban hell, sprawling over hundreds of square miles of valley bottom and up into the foothills. I saw the same thing happen in Marin County – growth spread north like a cancer, up Highway 101 into Sonoma and Mendocino. As a business consultant, I traveled extensively in the western states

and fell in love with Seattle. I quit consulting to settle down, running a wine shop in the Pike Place Market. But Seattle succumbed, too. Too much growth, too much sprawl, too much traffic. Thinking we'd grow wine rather than sell it, my wife Irina and I found a piece of land here in the Willamette Valley. It wasn't long before we felt the hot breath of growth here, too. But this is home, and there's no place left to run. We've no option but to fight to protect our farms and forests, watersheds and open space that make Oregon so special. Land use laws are the tools that we've got to work with.

LW: How did you get started as a land use activist?

JJ: Right after we moved to our farm east of Lebanon there was a proposal to build a golf course on 200-plus acres of forest and pasture not far from our place. The site was beautiful – gently rolling hills with a year-round creek, supporting elk in the winter. A group of neighbors got together to fight the proposal, and we lost – badly. I saw that if we were going to have any chance to prevail, we'd have to get organized, learn the ropes, and develop resources to call upon. We founded Friends of Linn County, started to study up on the law and learn how the system worked. We affiliated with 1000 Friends of Oregon. We started to really pay attention to what the county was doing. The next time, we were ready. Linn

County was approving "lot-of-record" dwellings as fast as the applications could be filed, but they're only supposed to be approved when farm uses are "impracticable." We showed up at the hearings; prepared and presented testimony; and, with the help of attorneys provided by 1000 Friends through its cooperating attorney program, took the county to the Land Use Board of Appeals (LUBA) several times, and won. We've continued to aggressively monitor proposals that would result in more houses and other inappropriate development in rural areas. As a result, the county has pretty much stopped even considering development proposals, turning them back at the planning department counter.

LW: Where does Goal One come in?

JJ: Over the years I had gotten to know many land use activists around the state, becoming aware of the work they were doing and the problems they were facing. You can't expect to win at LUBA if your case isn't well prepared at the local level. Many people need help with this preparation. For LUBA appeals, there are only a handful of pro bono attorneys available. Historically, 1000 Friends would handle maybe a dozen or so cases a year throughout the whole state. That was before Measure 37 passed. What do you do if you can't get a free attorney? Most activists that I know don't have

a whole lot of money, so if they're going to appeal they have to do it themselves. That's where Goal One comes in. We help people build a case that can be won at the local level, and then show them how to win the case at LUBA. Relatively speaking, it can be done on a shoestring budget. As a bonus, when you do a good job at the local level, you often win at that level, and don't need to appeal to a higher body. Sometimes, too, when faced with competent and determined opposition, developers give up and go away.

LW: It seems that most people think that growth is good and desirable. Even those who don't, tend to think that it's inevitable. Doesn't fighting growth sometimes seem pointless or hopeless?

JJ: Forecasts are that the world's population will increase almost 50% by 2050, topping out at about 9 billion. Oregon's population is forecast to increase by about 2 million by 2040, to almost 5,500,000. Leaving aside whether that's desirable, is it possible? I don't think it is. We're already bumping up against constraints – energy, water, the ability of the atmosphere to absorb waste carbon dioxide. Large scale production and distribution of food has become dependent on cheap, abundant fossil fuels. But oil and natural gas are no longer abundant, and will become increasingly

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expensive. We'll begin to see food emerging as a constraint. We'll see birth rates go down, and death rates go up. It's just not realistic to project the growth and development patterns that we've seen over the past 50 years into the future. It can't happen, won't happen, and it would be hell if it did. We have to start now to build a future that will be radically different, that makes sense and will work over the long haul.

LW: How do you envision the near future?

JJ: We're going to have to abandon growth as an ideal and transition to sustainable economies. What will those look like? It would be foolish to predict, but you can bet that they will be more local than global, and that we'll make do with less energy rather than more. We have to stop building yesterday's communities, today. No more roads, subdivisions, shopping malls. The sooner we start the transition, the less traumatic it will be, and the greater our chances of success. Land use is critical to our survival. It guides where and how we build our communities, how much energy they require and how much waste they produce. Stopping sprawl is about more than aesthetics. We're going to need those farm and timber lands in our local economies, for our very survival.

LW: You mentioned Measure 37. How could voters have passed legislation intended to destroy land use protections that for 30 years have kept Oregon a beautiful and healthy place to live? What went wrong?

JJ: The promoters of M37 didn't operate in an intellectual vacuum. M37 is a product of 30 years or more of the right-wing attack on government, on the idea that government has a positive and vital role to play in the construction of a humane society. It was sold to the voters

as a question of "fairness." Its promoters portrayed property owners as victims of a bureaucracy run amok, as victims of theft by the government, as people whose hopes and dreams have been destroyed by mindless land use regulations. Very clever, very slick, very powerful, and fundamentally dishonest. The real objective - to eviscerate our communal authority to pursue the common good in general, and land use laws in particular - was kept hidden. And the opposition to Measure 37 ran a timid, cowardly campaign. It accepted the other side's framing and failed to argue for our values, for what we really believe in.

LW: What can we do to stop the bleeding?

JJ: The legal challenge mounted by 1000 Friends was brilliant and principled and resulted in the circuit court throwing out M37 as unconstitutional. This creates an entirely new situation. I think we'll see the M37 claims process grinding to a halt, but this is just the beginning of a new phase. We've already heard Mr. Hunnicut of Oregonians in Action ranting about activist judges ignoring the will of the populace. We'll have to take the legal arguments that were persuasive to the judge and translate them into policy arguments that will be persuasive to the public: government can't give away its power and responsibility to care for the common good, all citizens have to be treated equally, government can't waive laws for some but not for others. The legal battle isn't over; the circuit court's decision will be appealed to the Supreme Court. In the meantime, we must engage the court of public opinion. We must make the case that individuals can thrive only within healthy communities, communities in which mutual and shared obligations are taken seriously. We're faced with unprecedented challenges that can't be met by yesterday's ideology. Property rights will mean nothing if we don't figure out how to deal with the linked problems of population, energy and climate.

LandWatch and Goal One Coalition Stall Lane County Development

Over the last two years LandWatch and Goal One have been working jointly to slow down or stop unlawful development of farm and forest land in Lane County. The objective is not only to prevent specific proposals from being approved, but to change the county's practice of approving everything that's proposed without appropriate review.

Together LandWatch and Goal One have prepared and presented testimony on at least a dozen applications that would put more commuter houses on our farms, in our forests and along our waterways. We've testified at hearings before the Lane County Planning Commission and Board of Commissioners, and we've made it clear that unlawful applications approved by the county would be appealed to LUBA.

The results have been encouraging. The Lane County Land Management Division used to operate as an approval mill, with the result that new houses kept popping up in rural areas. But now, as a result of our oversight, planners are more cautious.

We won a reversal at LUBA in February on a "nonresource land" application (Grant). In June we lost a "marginal lands" case at LUBA (Carver). The setback was unfortunate, but we're not giving up on the legal issues at stake. Even a loss has some positive effect, as it demonstrates that we have the

resources and we're prepared to litigate. Vigorous opposition forces developers to spend a lot of time and resources on a proposal and throws the ultimate outcome into question.

Ever since Norm Maxwell's "Fire Road" case, we've been trying to figure out how to get at Lane County's intertwined illegal practices of using the existence of roads to create new legal parcels and then allowing developers to use property line adjustments, without any county review, to reconfigure boundaries to create what are essentially new subdivisions.

We recently appealed to LUBA the county's approval of a "template dwelling" in the Little Fall Creek floodway (Legault). In this appeal we're directly challenging the county's position that it can consider the building of a road to have divided a single property into two developable properties. The Legault case also challenges the county's penchant for ignoring secondary fire setback requirements in riparian areas. However, if we win on the "roads dividing lots" issue LUBA probably won't rule on the fire breaks requirement.

We've also filed with LUBA a challenge of the county's new legal lot verification process, a procedure which allows for after the fact county approval of property line adjustments. We believe state law requires counties to regulate property

line adjustments, but Lane County thinks otherwise and has for decades refused to review and approve property line adjustments. We believe this case offers an opportunity for LUBA to weigh in on our side.

We're pleased with our progress in Lane County, and, because we're confident that the law is on our side, we believe that we'll prevail.

Jim Just



Measure 37 Claims in Lane County

Lane County received its first Measure 37 claim in early December, 2004, exactly a month after the initiative was approved by voters. To date, the number of claims submitted is about 40, while statewide the number is closer to 1200. The Board of Commissioners has approved three waivers of applicable land use laws, and a fourth waiver approval is pending more information from the claimant. Statewide, the Department of Land Conservation and Development has processed and mostly approved close to 200 waiver requests.

The area of the County experiencing the most Measure 37 claim activity is Pleasant Hill and Creswell. Both farm and forest lands are at risk as a result of these claims, which generally are

demanding waivers to allow rural subdivisions with lots as small as one to five acres. There have also been claims on properties just outside the Eugene and Springfield urban growth boundaries and on the coast.

In comparison to statewide statistics regarding the number of claims in various counties, Lane County's share looks like a drop in the bucket. But a significant, yet hidden, loophole poses a significant threat: waivers are being approved without a policy that provides a methodology for establishing that a property's use has been restricted and value reduced because of enforcement of a regulation. All that the County requires is a statement from a licensed appraiser noting a reduction in value. There is no consistency or requirement for compliance with a consistent standard that clearly and substantively establishes loss of value.

As a result of this failure to establish a consistent standard, "new" values are being established piecemeal, without basis, for farm and forest lands countywide. One claimant's subdivision dreams calling for one acre parcels may be promoted as being worth hundreds of thousands of dollars per acre, while another claimant's lost value may be worth "only" tens of thousands of dollars per acre.

Concerns about the impacts of Measure 37 are steadily increasing. Neighbors worry not only about negative effects on their own property values, but more and more often they are wondering and worrying about water availability, fire protection, and quality of life.

On October 14th, the Marion County Circuit Court ruled that Measure 37 is unconstitutional "because it grants special privileges and immunities, impairs the legislative body's plenary power, suspends laws and violates the separation of powers." In addition, the court ruled that "the law violates substantive and procedural due process guaranteed by the U.S. Constitution."

Oregonians in Action is expected to appeal this ruling to the Oregon Supreme Court. Meanwhile, it continues to file initiatives that reveal the real motivation behind Measure 37: to eliminate land use planning in its entirety, in one fell swoop.

Lauri Segel

What's going on in your neighborhood?

LandWatch strives to raise local citizens' awareness of land use decisions affecting open space, watersheds and farm and forest lands of Lane County. We welcome your ideas and suggestions for newsletter articles. Feel free to share your thoughts and concerns with newsletter editors Robert Emmons and Nena Lovinger at hopsbran@aol.com

Newsletter Credits:

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Veneta Neighbors Appeal Wetland Destruction



Though out of range of hurricanes, Oregonians might take a lesson from the disaster in New Orleans. Although Veneta, Oregon, is not in a delta where protected marshlands have been drained and built upon, the town's waterways have been manipulated and its wetlands diminished, its natural drainage channelized and paved over, for residential and commercial development. As a result, natural wildlife habitat is rapidly disappearing, and Veneta is at increased risk of flooding.

To accommodate a developer's recent proposal for 40,000 square feet in structures and 130 over-size parking spaces, the City of Veneta approved 9,120 cubic yards of fill on forested wetlands off Highway 126. As a result, more wetlands will be destroyed and majestic native oaks will die.

Neighbors 4 Responsible Growth (N4RG) has appealed this reckless decision to Oregon's Land

Use Board of Appeals (LUBA). Contending that public need outweighed the adverse impact to wetlands, Veneta granted a variance to its own Wetland Protection Ordinance. While N4RG understands that commercial development will occur on this parcel, we maintain that it does not have to be at the total loss of wetlands, which comprise less than 25% of the property. N4RG's ecological consultant evaluated the site and, in part, concluded that "culverting runoff through these lots simply moves urban pollutants closer to their outfall in rivers where they can do their worst damage." We advocate incorporation of the wetlands, which provide natural drainage and natural filtration, into the design of the development.

Although our appeal should be about the merits of the case, the developer and her attorney have turned it into a sideshow. Even before all parties deemed the testimony and

evidence complete, the developer filed a motion to dismiss our appeal because the petitioners (N4RG and our president) had no standing, even though written testimony had been submitted on behalf of N4RG as required by law. Now, through a deposition process, the developer's lawyer is threatening to challenge the testimony submitted on our behalf by Jim Just of Goal 1 Coalition, and, if need be, depose and discover documents from the officers of N4RG and its individual members.

As to the purpose of these demands, Jim Just says it's a familiar obstructionist stratagem: when you've got neither the law nor the facts on your side, attack your opponent.

With the expert help of public interest attorney Jan Wilson, Jim Just and ecological consultant Ethan Perkins, N4RG expects to prevail at LUBA and to show that the developer's storm of accusations amount to no more than a little hot air.

Mona Linstromberg



This abandoned quarry near Fall Creek will remain abandoned thanks to the work of many concerned rural citizens.

Neighborhood Group Stops Proposed Quarry Operation

Last winter, my wife and I and our neighbors in Fall Creek were blindsided by a proposed land use change that would seriously degrade the livability of our area. With no prior warning or discussion, we were informed that a permit to start a rock crushing operation in the middle of our neighborhood was being considered by the Lane County Land Management Division. This rude awakening forced us to drop considerable time and money fighting for our quiet, rural way of life.

Our neighborhood was targeted for this development because of the existence of an abandoned quarry pit on the ridge between Big Fall Creek and Little Fall Creek near Lowell. Mining

operations at the site ended in 1985 after a decade-long series of legal struggles between the quarry property owners and an association of residents, resulting in repeated rulings that those operations were inappropriate in a relatively densely populated residential area.

The long dormant controversy resurfaced when city officials from Lowell, seeking to save money on local projects, approached the pit owners and persuaded them to apply for a conditional use permit from the County to establish quarrying operations. Their strategy was to label the operations "temporary" and hope the neighbors and county planners would overlook the impacts to livability caused by noise, traffic and dust. These projects, however, would require many months of crushing and transporting gravel—a dump truck rumbling by every few minutes on our narrow rural road.

Neighbors reacted quickly, calling meetings and getting right to work. Distracted and unconvinced that a plan to turn our quiet neighborhood into an industrial site would be a one-time occurrence, we began fundraising and hired land use attorney, Dan Stotter. Mr. Stotter advised us that we had to "make a wave or this thing is going to sail through."

Our many objections to the County about the very brief public comment period (10 days) resulted in the land-use planner scheduling a hearing for both sides to express their positions. The matter would be decided then based on criteria in the Lane Code—specifically whether this use of forestland for mining would significantly impact existing uses of nearby lands. In the immediate area those impacted uses are largely residential and agricultural. Our job was to show just how harmful this operation would be to our lives and lifestyles and livelihoods.

On the morning of the hearing we made a big wave, showing up with a large unified group of neighbors and supporters. Many more who couldn't show up submitted written testimony. Bolstering our case were reports from hired experts, most importantly, several noise analyses by an acoustic engineer. It was heartening to see how few testified in favor of the proposal, none of whom addressed the criteria. Instead they focused

on the Lowell projects and the temporary nature of the permit. We countered that the word "temporary" was essentially meaningless, since the applicants refused to give us any reassurance or guarantees about their future plans for the quarry property.

After several weeks of nervous waiting, the county published its decision to deny the permit, based mainly on evidence that the noise generated by the rock crusher would violate Oregon Department of Environmental Quality standards at some nearby residences. The neighbors were elated, and then doubly elated when the applicants decided not to appeal. While the ordeal was stressful and expensive, out of it arose a newfound cohesiveness in our neighborhood that we value and plan to maintain.

Jim Babson

