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LandWatch



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Two years ago, after Lydia Kaye replaced Matt Laird as the Lane County Land Management Division (LMD) Director, LandWatch Research analyst Lauri Segel and I began to meet periodically with Kaye and her planning supervisor to discuss common county land use policies and practices. Our goal was to avoid time-consuming and costly appeals. Even though Ms. Kaye came to her new position from Public Works Transportation with little experience in land use law, we were optimistic that her academic work in environmental studies and her openness to discussion would provide the resonance and perspective missing in the development bias of previous directors.

Because Lane County is a popular place to live and move to, Kaye and her staff have had to process far more land use applications than any other Oregon county. This disproportionate ratio has prevailed for close to a quarter of a century and can only

have increased exponentially with the massive influx of new arrivals over the last few years. It stands to reason that an increase in applications has led to an increase in appeals.

Frustrated by the number of appeals her staff has had to process, in late June 2018 Kaye presented to the County's Finance and Audit Committee a proposal to increase the fee from \$250 to \$950 for asking the Board of County Commissioners (BCC) not to hear an appeal of the county Hearing Official's (H.O.) decision. With the exception perhaps of Commissioner Sorenson, a former environmental attorney, the Board is not sufficiently familiar with or knowledgeable about the complexities of land use law to make an informed decision about most of the appeals that come their way. Unless there's a political or special interest that leads them to hear an appeal, they almost always elect not to.

In 2008 I was a member of a Board-appointed, broad-based committee

that proposed an alternative to the almost \$4000 required to appeal to the commission. At that time if the commissioners chose not to hear an appeal the appellant was refunded—eventually—two-thirds of the amount. The Board understood, as did the committee, that this step was cumbersome and inequitable, effectively shutting out the average citizen.

Committee members unanimously agreed to propose an “elect-not-to-hear” option and set the fee at \$250, the same amount required to appeal a Planning Director's decision to the Hearing Official, and regulated by state statute. All members understood that the new fee would not fully recover the costs for planning staff to prepare the documentation for the elect-not-to-hear option and administrative overhead. However, we recognized the importance to citizens, and to a democratic county, of keeping the fee low enough to meet the requirements of State Planning Goal One: Citizen Involvement.

(Goal One Postmortem, continued on page 2)

(Goal One Postmortem, continued from page 1)

There was no concern for public participation in the Planning Director's request to quadruple the elect-not-to-hear fee. In addition to attributing to LandWatch appeals that were brought by others, Kaye's proposal offered no data to support her claim that it took planning staff "5 to 7 hours" or more to prepare documentation for an elect-not-to-hear agenda item. When LandWatch asked for an explanation of what is required to process such an appeal, actual hours spent and the cost of those hours, Kaye sent us a four-year-old study of the county's development permit and appeal fee structure. While claiming that elect-not-to-hear preparation would take 34 hours and cost the county \$4679—with no explanation of how these figures were determined—the study also revealed that for most of the LMD's big-ticket development applications, such as for farm and forest dwellings, fees were grossly under the cost for processing and administration.

When Lauri and I met with County Administrator Steve Mokrohisky, Public Works Director Dan Hurley, and Planning Director Kaye in June to discuss her proposed increase, they agreed to an analysis of how documentation for the Board's consent calendar, including administrative oversight, might be done with more efficiency and less cost. The commission gains deference by acting on a consent calendar item, in the case of an elect-not-to-hear appeal, by agreeing not to hear the case. The dilemma is how deference might be less costly to provide if, as the county administrator and his directors appeared willing to explore and the Board Chair amenable to consider, the elect-not-hear appeal is eliminated and the commission adopts the hearing official's decision as its own.

In the interests of economy and equitability, the administrator and directors also acknowledged the need for an updated study of the county's entire fee system with the goal of bringing fees in line with costs.

On July 10, 2018, with no supportive data, Ms. Kaye presented her proposed \$950 appeal fee to the BCC as an absolute necessity that still didn't cover her real costs. There was no mention of any effort on her part to streamline the division's appeal preparation or any advocacy for making the Hearing Official the final local land use arbiter.

For his part, Commissioner Bozievich characterized the application-appeal paradigm as a "subsidy" for appellants. In contrast he conjured an image of poor "mom and pop" applicants just trying to get a little something on their own property being forced to reach deep into their frayed pockets to defend themselves against intolerant neighbors and public interest watchdogs.

Bozievich raised the issue so compellingly I began to wonder if I should feel remorse for trying to prevent Pop Norm and Pop Mel McDougal, with land throughout the Northwest, California, and Montana, from scamming yet another unsuspecting landowner with false assurances, clear-cutting the cheaply purchased property, creating illegal lots on land zoned for farms and forests and selling the degraded, urbanized result for triple what they paid for it.

And what's Big Daddy Demers with 12 children and, I'm told, an army tank, an arsenal of guns, and a statue of the Virgin Mary in his backyard to do but join the other pops and clear-cut as much land as he can finagle, mine it, try to monopolize the water supply of its community, sell what's left to refugees from other states and "moms and pops" and consider it God's work.

In fact the development applications LandWatch typically challenges are subsidized by weak land use law, biased interpretation and anti-regulation ideologues who provide the ears, the pockets and the Board Orders for applicants such as those mentioned above.

Any subsidy of an appeal fee, assuming data is provided to support the allegation that a "subsidy" is necessary—which was not the case at the 7/10 meeting nor was it expected by the three Board members who came with prejudged conclusions—should be considered a titling, a bargain, for the protection of Lane County's farm and forestland, natural areas and open space and for the right and opportunity of neighbors to protect themselves and their surrounds.

Truth and concern for the common good were in short supply on the 10th of July. Neighbors who had offered comments concerning the importance of judicial access were largely ignored during the morning session and were not even ghosts in the afternoon proceedings. Commissioner Sorenson was the only one in the room who defended and advocated for the public's interest and Goal One.

From the staff presentation and administrative silence to a pro-development Board majority that confirmed what it was predisposed to hear, the fee increase was a foregone conclusion. For someone in denial it was a reminder of the dictates of bureaucracy, how it self-reinforces, self-preserved and self-perpetuates—without compassion or imagination.

The kangaroo court pronouncing prejudgment on 7/10 appears to be part of a concerted effort pushed by the undermining schemes of land use agents for developers and the political will of the BCC majority to curtail or shut down our public interest work. Notwithstanding, LandWatch will endure, and, with our supporters, legal expertise and a commitment to social and environmental justice, we will prevail.

Robert Emmons

Vineyards at Gimpl Hill Update

Developed by Roy Carver in 2007, The Vineyards at Gimpl Hill is a housing subdivision in a water-starved rural area west of Eugene with nine Measure 49 lots zoned RR-5 (rural residential) and 131 acres zoned F-2 (impacted forest land). On July 18, 2017 the Lane County Planning Commission recommended denial of Carver's application to rezone the 131 acres from F-2 to non-resource land, then to RR-5 and create another 14 residential lots. (See "The Vineyards at Gimpl Hill: An Empty Promise and Dry Wells" in the LandWatch, Summer 2017, newsletter; www.landwatch.net)

On March 29, 2018, Carver's attorney submitted an amended application to the Lane County Board of Commissioners (BCC) that proposed rezoning two 40-acre lots within the 131 to RR-5. For the remaining acreage offered as "open space," and an existing 7-acre vineyard, he requested RR-5 zoning that would somehow be protected by a covenant restricting development.

At the June 6, 2018, BCC hearing, 19 members of our neighborhood group attended the hearing, 13 offered written testimony and 9 members spoke. Members expressed concerns about why the two 40-acre lots would be zoned RR-5 if there was a deed restriction prohibiting future building on them. Sean Malone, attorney for the Gimpl Hill Neighborhood group, proposed the use of a conservation easement that would preclude the possibility of future owners of the lots being able to subdivide them. Carver has shown no interest in this proposal.

The BCC will decide in late August whether to accept or deny Carver's amended application. If they accept it, the neighborhood group will meet to consider taking our case to the Land Use Board of Appeals.

Bob Cattoche
Gimpl Hill neighbor



Electronic Well Monitoring in Benton County

Articles in our Winter 2013 and Winter 2016 newsletters reported the purchase, logging and proposed development by the McDougal brothers of Davidson Hill near scenic Bellfountain in Benton County. LandWatch worked with neighbors to successfully challenge the development proposal, which failed to adequately test for well water availability in a water-deprived area.

As a consequence of neighborhood resistance, a citizen action committee was formed, and members of that committee now weigh in on other development applications in Benton County. Because a development's impact on groundwater is an abiding concern and a seminal land use issue, an increasing number of residents are installing electronic well monitoring devices made by a Wisconsin company named Wellntel. Following is a condensed version of a press release regarding the usefulness of this new monitoring tool.

"Concerns about groundwater availability and development pressure in rural South Benton County have spurred local residents to form a community groundwater monitoring network to study local groundwater resources and possibly impact policies governing rural housing development.

At present, the 14-member group called the South Benton Community Groundwater Network (SBCGN) is a 'citizen science' project using well-monitoring equipment designed for domestic pumping wells to gather a range of data on groundwater levels and fluctuations - such as static water levels, pumping impact, and well recovery rates after water draw downs. Gathering such data is possible through emerging technologies that monitor wells less invasively and more economically than prior technologies. The new technology enables network members to view fluctuations and seasonal trends of their own wells and the whole network in real time.

The number of local failed and low-producing wells resulted in growing concerns for rural South Benton County residents who depend on

(Electronic Well Monitoring, continued from page 3)

domestic wells. Residents with concerns about the productivity of their wells need data to provide the basis for water-management decisions.

‘My well so far has never failed, and I seem to have plenty of water, but I know that can change,’ said SBCGN member Garrick Balsly. Without data about the current status of his well, Balsly added, ‘I would be unable to see any trends in water availability. Without data from the community groundwater network, we would be unable to see broader patterns or trends.’

‘We all came together because we saw a need, and public resources were not readily available,’ noted network member Evelyn Lee. ‘My well causes me a lot of concern. I know this project will not give me more water, but I believe it as important to see and understand local trends and be aware of local risks. This project makes it possible for the community to view groundwater-pumping impacts on neighbors, and to see seasonal variations and impacts on the resource. With understanding, we have the opportunity to make good choices. Without it we have only our concerns and stress.’

For more information contact:

Evelyn Lee
541-847-6028



Interview with Tim Lewis

Tim Lewis is the father of Blair Lewis and a Eugene area independent video producer for the past 35 years.

LW: *Publically, you're perhaps best known for your videography of grass-roots activism and police brutality. When and how did you get started doing video documentaries? Who or what influenced your perspective?*

TL: People might find my beginning as a video producer a bit unusual. A friend and I formed a production company to videotape onboard cruise ships. Our first contract was a 100-day world cruise. This is where I sharpened my skills as a video producer.

Over the years, though, I went from champagne and caviar to dumpstered bagels and cheap beer. I embedded myself in an Earth First campaign that blockaded a logging road for over a year to prevent the salvage logging of Warner Creek just east of Oakridge, and ended up producing a feature length documentary about the campaign titled “pickAxe.” I took this “Gonzo” journalism style into town and helped the radicals of Eugene create their own media, including pickaxe productions, Cascadia Alive, Eugene Copwatch, Cascadia Media Collective, and pictureEugene. With all the dramatic conflicts among police, liberals, politicians and the radicals in Eugene during the 1990s, it was ripe for a video producer to try to tell these stories from a radical perspective. That’s what I’ve tried to stay true to over the years.

LW: *What did you learn from your experience filming All About Parvin, a compilation of interviews with neighbors, activists and others affected by Lane County's refusal to provide site review for Greg Demers' and the McDougal Brothers' proposal to turn Parvin Butte near the community of Dexter into gravel? How might the effort to stop it have been more effective? What, in your opinion, was achieved?*

TL: After learning something about what the neighbors of Dexter went through in trying to save their little community from sleazy attorneys, bought and paid for county commissioners and wannabe billionaire fat cat resource extractors, I saw that the game was rigged, and to play by their rules was not a winning formula. “All About Parvin” was an episodic series that wasn’t afraid to shed a bright light upon these players and bring their disturbing behaviors out into the open so the court of public opinion could apply continual pressure on them. With up-to-date episodes playing every other week we thought they would start feeling that pressure. In the short time “All About Parvin” was fresh and new to the public, Greg Demers threatened a lawsuit against me, came to the premiere showing with a couple of thugs for protection, and canceled a lunch date and an interview; so just after five episodes we were being effective in this approach. On my end, I would sustain the character-driven episodic series concept so a more angry/educated local viewership rises together with applied political and street pressure.

LW: *Beyond capturing a visual record what do you hope to accomplish by filming a protest event—a tree-sit, an occupation, a hearing disruption? Who and what is the footage for?*

TL: First and foremost I’m a cameraman, and I like to go where conflict is happening and see what might take place in protest events. If I’m focused on capturing events around me that tell a side of the story that’s rarely seen, then I feel like I’m being successful in my work. There are lots of other reasons for videotaping an event; just having a camera present changes the attitude of protesters, counter-protesters and cops. Footage can be used in court often to counter police reports. You can sell footage to local or national newscasts if they were not at the event; 20 years later that footage might be valuable archival footage. And, not least, you can use it in your own production, which provides the side of the story that typically isn’t shown.

LW: *To help neighbors protect farm and forestland and natural areas LandWatch has to work with code and statutes that have been weakened by development bias and a political and bureaucratic system favorable to that bias. Can you suggest other tools and strategies that might effectively challenge this self-reinforcing paradigm? For example, is there anything the aerial spray ban protest, which has been legally blockaded, might better do to accomplish its goal?*

TL: Again I harken back to telling our own no-holds-barred stories through the episodic series format, because it’s the people who are being

directly affected telling the story that has a powerful impact upon viewers. Because a documentary can take up to 5 years to complete, by then its subject matter has become dated or the issue may have been decided. An episodic series can run almost parallel to current events, and, if done in a character-driven, dramatic and entertaining way, I feel it can establish a strong local following and can galvanize people into a forceful movement.

LW: *What do you see as the biggest environmental/ecological problems in Lane County? The nation? The world? Can what you and your subjects do help stop the bleeding, or in your opinion are the human impacts irreversible?*

TL: Well I think that our biggest problem is us filthy little humans running amok on such a beautiful planet thinking it’s somehow only for us. I don’t know if there’s anything that we could do to reverse the damage we’ve done-- except die. On a more positive note, we in Oregon live in one of the most beautiful areas on this planet; we should all enjoy what we have left before it’s completely destroyed. Those are some big ass questions and who would even care what my opinion is. Are we so desperate that we’re even reaching out to aging, crusty, and mostly uneducated video producers for answers? That’s a scary place.

LW: *Recently, at the last track meet at Hayward Field before its imminent destruction to make way for an out-of-scale new facility, you came out of the stands at the end of the 5000 meters race, took a lap in protest of*
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(Tim Lewis interview, continued from page 5)

the demolition and were arrested. The historic East Grandstand and the rest have now been demolished. What do you feel you accomplished in your lap around the track, and what has been the public response?

TL: I'm a third generation Oregonian, born in the timber town of Roseburg and grew up here in Eugene. At that time, Ken Kesey was writing books and running from the law for smoking weed, and Tom McCall was fighting to protect Oregon from Californians and industry.

Being a runner, I'd stop by to watch Bill Bowerman put Steve Prefontaine through interval training at Hayward field before the 1972 Olympics. For a young Oregon boy these Oregonians were my living heroes and I always thought they were the kind of individuals that populated this state.

When I took to the track that day last June, people were supporting my message "Hallowed Grounds". I hoped that others would join me, like being the first on the dance floor then everyone else follows. Unfortunately, that didn't happen, so I ran alone dodging cops and security, trying to honor this place and the people in my past that helped form me as a man.

Public Involvement and Private Interests

As LandWatch's efforts to protect farm and forest land from unlawful land divisions and nonfarm and nonforest uses continue to achieve success in favorable Hearing Official decisions and more complete responses from staff to our referral comments, attorneys who work on behalf of large development interests have resorted to personal attacks when their legal arguments fail them.

For average citizens and groups that come together to challenge development proposals in their neighborhoods and communities, personal affronts, as well as high appeal fees and other legal costs, can inhibit or prohibit citizen involvement. Crude criticism of planners by development representatives during a public hearing, which are occurring with more frequency since a little of the ink on the rubber stamp has dried up, can have a chilling effect on citizens considering whether or not to speak. When no one from the County publicly refuses to tolerate this calculated psychological assault, it can discourage anyone working in the public's interest from participating—which is exactly what these bullies want and expect.

The development hacks whose applications LandWatch has often challenged appear to believe they are entitled to approvals without having to appeal -- the way it used to be for them in the good old days a few years ago. Attorney Bill Kloos even complained about this to the Hearings Official during a recent appeal hearing, saying that because "staff today have no institutional memory" he now has to count on appealing an unfavorable decision by the planning director. In other words if Kloos can't get the approval he has come to expect from staff—every time—he expects the Hearings Official to provide it.

Development consultants who criticize LandWatch for our interpretations of law, who allege as Kloos has in letters

to the Board of Commissioners and in public testimony, that we are a "private litigation club," a bunch of "serial litigators" who appeal just to slow things down for his and his colleagues' clients, get away with their tactical insults and insinuations because elected and appointed administrators tolerate and enable their behavior.

Kloos supplemented his most recent attacks with a push for weakening Lane Code to restrict appeals. Although staff initially rejected his effort, a July 10 staff memo betrayed that the planning division had taken direction from the Board of Commissioners to incorporate Kloos's proposed amendment concerning who's allowed to appeal a "Type II" decision. Type II decisions are permit decisions such as dwelling approvals, property line adjustments, events on farm/forest land, and land divisions. In a tactic baldly meant to prevent LandWatch from participating and appealing, Kloos maneuvered staff to add "any person who is adversely affected or aggrieved by the application" to the requirements for appeal eligibility. In a recent case the Hearing Official determined that Landwatch met that standard for legal standing.

While Kloos has publically asserted--without evidence-- that LandWatch is costing the county thousands of dollars in "subsidized" appeals, development consultants routinely ask for and receive reductions and even total exemptions related to application, refund, and appeal fees. This year a 30+ year old County filing error resulted in a free appeal for a developer and his agent--and a greater than \$2500 loss for the county. Instead of commissioning a long overdue audit of its entire fee structure, the county bureaucracy has rewarded the underhanded schemes of sycophants such as Kloos and his associates with an appeal fee increase they hope will bleed us dry.

Lauri Segel
LandWatch Research Analyst



Lynn Bowers

In Memorium: Lynn Bowers 1942-2018

Aside from the pig roast she held on her Fox Hollow property every year, Lynn Bowers was perhaps best known for her decades of opposition to aerial herbicide spraying and any use of herbicides. Tirelessly, she rallied her neighbors and the community, was instrumental in gathering enough signatures to more than qualify an anti-spray initiative on the Lane County ballot, and was outspoken in her response to the County Commissioners' sabotage of that effort.

Less known is that Lynn was an original board member and, until her death, president, of Northwest Land Conservation Trust, an accredited organization that has protected Oregon properties in perpetuity for close to 25 years.

Both activities attest to the grit, determination, and commitment to long-range environmental protection this potter and costume maker brought to her engagements with corporate logging, politicians and the general public.

During a visit with her shortly before she died, I was astounded by her calmness and good humor, the honest, straightforward acceptance of her condition and the orderly planning of her succession. Lynn lives on through her good works and in the memories and work of family, friends and others who carry them forward.

Robert Emmons



Neal Miller

In Memorium: Neal Miller 1934-2018

Those of us in Lane County's environmental community knew Neal Miller as a strong advocate for land use protections. A founding member of LandWatch Lane County, he was also our first president. He could always be counted on to offer intelligent, level-headed and articulate commentary on environmental defense and social justice in letters and op-eds in the Register Guard and Eugene Weekly and in oral testimony before the county's board of commissioners.

At the Public Interest Environmental Law Conference in March of this year, I talked with Neal at a panel on the local initiative to ban aerial

herbicide spraying in Lane County. He was gaunt and told me then that his prostate cancer had metastasized. Shortly before he died, when others in his condition may have withdrawn in despair, Neal stood before the county commission and let them know their blockade of the aerial spray initiative was an affront to justice and democracy.

That is largely the Neal Miller I knew. An earlier version earned degrees in chemical and industrial engineering and worked in corporations for a number of years in Chicago where he grew up. Later he renovated vintage Chicago buildings. As he makes clear in an interview with songwriter and friend, Rob Tobias, <https://soundcloud.com/robtobias/neal-miller-train-of-thought>, Neal left the corporate world when he'd had enough of its focus on jockeying for advancement.

A chance encounter led to realizing Neal's interest in filmmaking, both as a screenwriter and producer. He created 6 films in the American Playhouse series for PBS and several features and other shorts with well-known actresses and actors, such as Susan Sarandon and Christopher Walken.

In his spare time Neal extended his years playing championship high school basketball with a life-long dedication to playing, then coaching, senior basketball around the world. The teams he played on and coached won 11 world championships and included as many as 143 worldwide teams in competition.

Up until his death Neal was working on a feature length version of his one-hour play, "Who Am I This Time" adapted from a Kurt Vonnegut story and on at least one other play as well. Perhaps his wife, Nancy, who edited his work, will bring them to fruition.

Robert Emmons