17-year land-use struggle continues for Merlin resident

By SCOTT JORGENSEN
IVN Staff Writer

Ward Ockenden's 157-acre piece of property in Hugo looks much as it did when he purchased it in 1991 -- because it has remained undeveloped all that time.

But not because Ockenden wants it the way.

"My dream was to buy acreage, have 80 acres for myself to live on and sell off the rest to fund building my house, and live happily ever after," Ockenden said.

He has been trying to rezone the property to develop it for residential use since 1992. He said that he has spent hundreds of thousands of dollars trying to do so. But all he has to show for it so far is a gigantic stack of paperwork, receipts for attorney's fees, a chip on his shoulder and the feeling that the same government that is supposed to help him has spent nearly two decades trying to deprive him and his family of their share of the American Dream.

On the positive side, Ockenden's struggle against Josephine county planners, the Oregon Dept. of Land Conservation and Development (DLCD) and Land Use Board of Appeals (LUBA), land-use activists and environmentalists has actually served to strengthen his resolve. That has resulted in his quite active participation in county government during the past few years.

It's also had the accidental effect of turning Ockenden into a martyr of sorts for grass-roots organizations like Americans for Prosperity (AFP). It uses his story as a rallying point for what it views as government, environmentalism and land-use restrictions run amok.

In 1973, Ockenden's property was zoned SR-5 for suburban residential 5-acre parcels. It had been changed to Woodlot Resource by the time Ockenden first approached the Josephine County Planning Office about a zone change.

Bob Hart was on the other side of the counter, and remembers that first encounter with Ockenden. Hart said that after Ockenden inquired about the possibility of changing the zoning, he pulled out the county maps, looked at the official soils documents and determined that the property was "clearly not good resource land."

Hart advised Ockenden to apply for a comprehensive plan amendment and sent him on his way.

Even though local planning officials doubted that the parcel was really woodlot resource, Hart said that the state pressured the county into rezoning large tracts.

He noted, "When we had to redo the comprehensive plan, they told us that anything that was not developed and was over 20 acres in size had to be zoned for resource land, because we had too much residential land for the county.

"Ward's was one of the parcels that got rezoned."

Harold Haugen served as a Josephine County commissioner from 1981 to 1989 and from 1991 to 2005. As such, he's become quite familiar with Ockenden's battle.

During the 1970s, Haugen said, Josephine County was called one of the "slippery six" counties in the state by the land-use advocacy group, 1000 Friends of Oregon, because it wouldn't go along with its recommendations. Haugen said that Ockenden's property was among those that caused the conflict between the county and 1000 Friends of Oregon.

"Back then, we believed it was residential land, not resource land," Haugen said. "What he's proposing is the best use for that particular piece of land."

Haugen said that a lot of the land that's been fought over throughout the last few decades is marginal and not suited for their resource designations.

He added, "A lot of the lands today, where land owners are coming in and asking us to change to residential, a good portion of those are lands that, had the state let us as a county make the decision, most of those lands would have been left in residential because they are not resource land and the owners wouldn't have had to go through this expensive process."

Unexpected Opposition

On Sept. 8, 1992, Ockenden filed his first application for a zone change. He said that he didn't anticipate any difficulty, as there are several 1 and 2.5- acre parcels immediately adjacent to the south of his property.

Aside from that, Ockenden had hired a soil scientist to confirm that the soil was not good resource land. That was included in Ockenden's application.

But when the matter came before the county's Rural Planning Commission on Jan. 11, 1993, Ockenden noticed that there were approximately 60 people present at the courthouse. He assumed that they must have been there regarding another issue, and was surprised when they began protesting his application.

"I figured nobody was there to oppose it," Ockenden said. "It's a simple little project. I didn't know there was going to be a fight."

During that hearing, it was determined that some of the soil classifications for Ockenden's property were incorrect. He was granted a continuance to May 10 to provide that information to Josephine County.

Ockenden returned to the county planning office, where he was advised to hire a soil scientist and an attorney. He said it also was recommended to him that he get a topography map, a process which cost some $25,000.

"Those are huge dollars, and I didn't even start anything yet," Ockenden said.

After a continuance was granted, Ockenden's application was approved by the Rural Planning Commission on June 28, '93. He was directed to prepare the findings, which were approved by the commission on July 16. That body then recommended that the county commissioners adopt the findings and approve the application.

The commissioners conducted a hearing on Sept. 1 and approved the zone change, pending the findings of fact. Those were adopted by the board on Jan. 26, '94, at which point the board officially granted Ockenden his zone change.

At this point, it appeared that Ockenden's due diligence had paid off and that he was on track toward finally beginning his project. But on Feb. 8, '94, the project was appealed to LUBA, and DLCD joined as an intervenor.

In a sense, Ockenden had come that far -- just to begin again.

Ockenden's case came before LUBA on May 25, '94. That body ruled that the county erred in using soils not included in its comprehensive plan and that the county failed to prove its due diligence that the property was not right for forest or farm designation.

The matter was remanded to the county. LUBA ordered it to include the soils on Ockenden's property in its comprehensive plan.

On Aug. 8, Ockenden, attorney Walt Cauble and Josephine County Planning Director Mike Snider met and agreed to hold the application in abeyance until a text amendment could be made to the county's comprehensive plan to include the new soil types. Ockenden agreed to pay for a soil expert and forester.

The soil scientist Ockenden originally hired to work on his property had died during this process, so he had to hire another one.

The text amendment application was filed with the county on Oct. 31 and a remand hearing was scheduled. Upon receiving further data, the Rural Planning Commission recommended approval to the county commissioners on April 17, '95.

On July 26, '95, the board approved the text amendment and held a rezoning hearing immediately afterward. Some of the same activists who brought the matter before LUBA were present. They threatened to repeat the same action, claiming that the text amendment was inaccurate and used incorrect slope data. In response, the board granted a continuance.

The Next Level

Ockenden's patience with the system was wearing thin by this point, and on Feb. 10, '97, he filed a complaint against the county. He alleged that it refused to grant the zone change even though he had met all the requirements. The factual allegations in the complaint were incorporated into a stipulation of support of a consent decree signed by Ockenden's attorney.

Josephine County commissioners directed county Counsel Steve Rich to sign the decree on April 4, but didn't notify the DLCD director of their intent to do so. Three days later, the final consent decree was signed by the court.

But Ockenden didn't feel as though the county was honoring that decree. On June 3, he filed civil contempt proceedings. In response, the court issued two orders to the county to show cause.

In early July, the county filed a motion for relief from the decree, claiming that it constituted an impermissible land-use decision. The county did not repudiate its admission that it violated Ockenden's civil rights and caused him damage.

The state Land Conservation and Development Commission (LCDC) moved to intervene on July 7, and that motion was granted by the court on Aug. 28.

On Sept. 11, the state moved to vacate the consent decree, claiming that it violated state land-use laws. But it did not challenge the county's concession that it had violated Ockenden's rights.

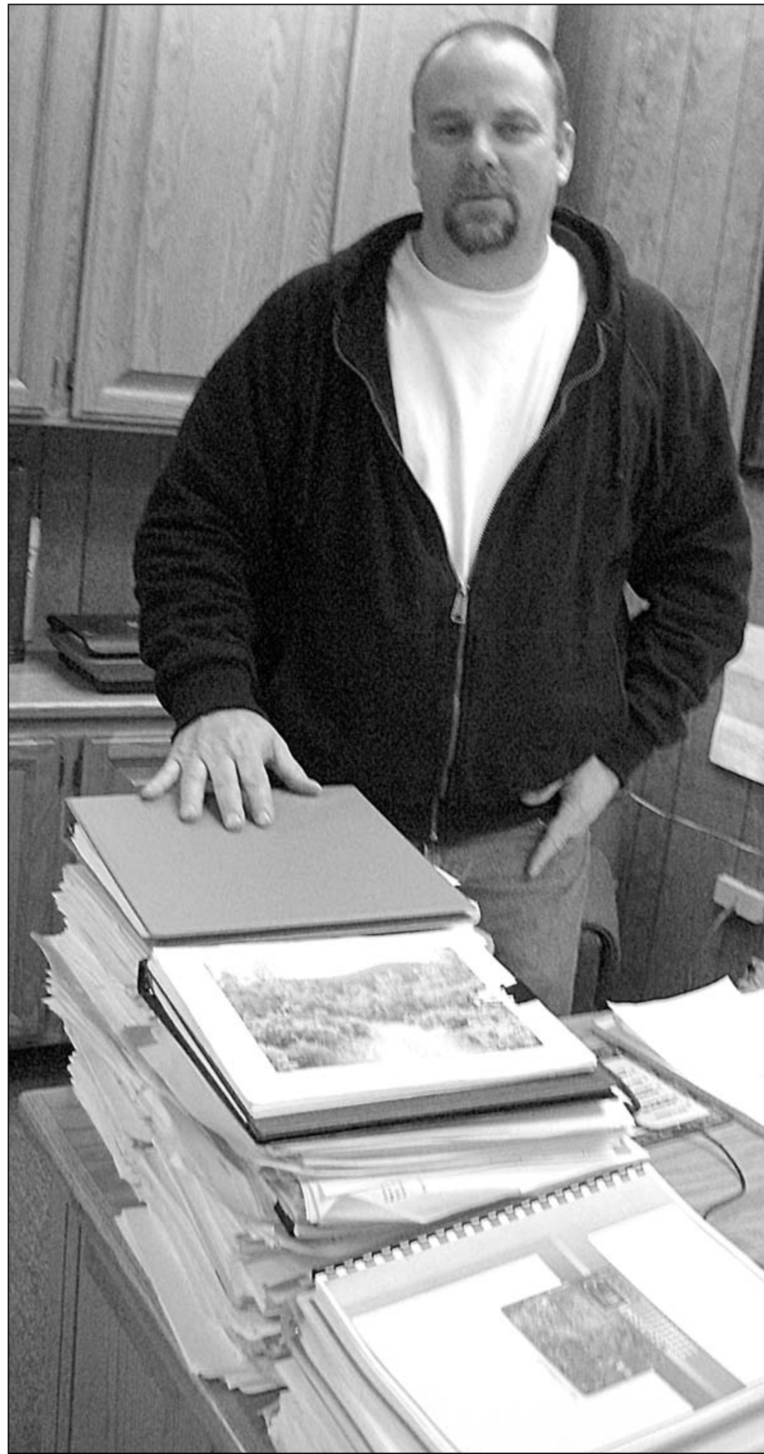
U.S. District Court Judge John P. Cooney ruled on Dec. 23, '97 that the defendants had misrepresented or withheld information in the stipulations supporting the consent decree and granted the DLCD relief from the decree. Ockenden appealed that ruling on May 4, '99, which was upheld two weeks later.

Ockenden appealed to the U.S. Supreme Court that October -- it refused to hear his case.

Through all of this, the county had been ordered to pay Ockenden $20,000 in reimbursement, despite the fact that he had paid, he said, "in excess of $200,000 in legal fees."

Ockenden said that when he approached the county for that money, he was given a check for $10,000 and had to lobby Haugen for the rest of what was owed him.

(Continued Next Issue. Read the entire article online at illinois-valley-news.com)



Ward Ockenden at his office with some of the paperwork accumulated through 17 years of contention over the use of his property. (Photo by Scott Jorgensen, *Illinois Valley News*)

CJ seeks collection of LUBA judgement

(Continued from page 3)

more complex daily and I am constrained in my financial freedom," Sommer wrote.

The contents of the Feb. 9 e-mail were disclosed during the council's meeting that evening. Kelly updated councilors on the state of the collection efforts, and said that the next step will involve a debtor's exam. It would require Sommer to answer questions about his assets and finances under oath.

Kelly told the council that he would continue to seek the fees unless they objected. None of the councilors indicated objection. If a debtor's exam becomes necessary, he said, Sommer could soon be subpoenaed into court.

"I expect that in two weeks time, maybe three weeks, he'll be appearing before a judge to answer questions, and we'll go from there," Kelly said.

In a Feb. 12 e-mail, Sommer referred inquiries to his attorney, John Cameron Howry of the firm he has engaged.

"It's the firm's policy not to comment to the media in open cases," Howry said.

Kelly said that he does not want to go after Sommer's assets, but is willing to if all else fails.

"People who have five Mercedes without liens on them generally can pay debts," Kelly said. "We don't have to do a debtor's exam. We could garnish his bank accounts. We could have the sheriff tow one of his cars away.

"But I don't want to cause excessive trouble. I just want the bill paid," concluded the city attorney.

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