

REDISTRICTING BOUND FOR APPEALS COURT?

Lane County's recent redistricting fight will likely go to the Court of Appeals rather than the Oregon Supreme Court, according to plaintiffs' attorney David Force, but, he says, "either way it could be too late to get this issue to the voters."

Delaying the appeals process is the fact that Circuit Court Judge Charles Carlson "did not sign the judgment dismissing our petition for writ of mandamus until sometime this past Friday, and as of this morning (Dec. 20) he has not yet 'entered' the judgment in the Judgment Register," says Force. "No appeal can be filed until the judgment has been entered."

The plaintiffs are intent on blocking what they call gerrymandered redistricting by the Tea Party majority on the county Commission. Commissioners Rob Handy and Pete Sorenson voted against the redistricting plan Oct. 26, but lost to the conservative majority of Sid Leiken, Jay Bozievich and Faye Stewart. A citizen group organized to put the decision on the ballot, but the county administration and elections division said redistricting is administrative, not legislative, and therefore not subject to a public vote. The citizen group sued Cheryl Betschart, the county clerk in charge of elections, but Betschart's decision to not allow the petition was upheld by Judge Carlson Dec. 9.

Plaintiff Duncan Rhodes of the Whiteaker Community Council says he is getting a transcript made of the audio file of Carlson's Dec. 7 hearing on the case in order to create a written record necessary for the filing.

"I don't know if the court could reset the clock," says Rhodes. "It does not seem to be covered in the regulations/law. This means that the county has effectively deprived the voters of any input except in an election. It seems to me that if this ruling stands it means that the county could do whatever it pleases, and refuse to issue the required paperwork for any referendum, thus disenfranchising us all."

"I agree with Duncan that the consequences of this case are far-reaching," says Force. "In effect, a majority of commissioners can now prevent referendums on all county legislation."

Meanwhile, *The New York Times* reported Dec. 9 that the U.S. Supreme Court has agreed to hear a complex case involving gerrymandered redistricting in Texas that reportedly benefits Democrats and Latino voters. The federal Voting Rights Act prohibits racial discrimination in redistricting, but partisan redistricting has been upheld in the courts.

— Ted Taylor

WRONG GOAL FOR GOSHEN?

A recent county vote aimed at jobs is raising concerns it also facilitates a water grab. As part of a goal-setting agenda the Lane County Board of Commissioners unanimously voted Dec. 7 on a strategic plan for the next five years. The plan targets property crime, fetal/infant mortality and helping rural businesses. The plan also calls for transforming "existing industrial land in Goshen to support development resulting in jobs that pay no less than 150 percent of the

median wage." All goals are set for completion by 2017.

Alex Cuyler, intergovernmental relations manager for Lane County, says that Goshen is mostly zoned "rural industrial" now, and that has limits for building sizes, which would not meet the needs of those who would develop industrial sites, "whether that be a campus type industrial or a traditional manufacturing type industrial." He says, "This planning effort would ultimately result in an urban industrial zone," which would allow for larger buildings.

The effort to change the zoning in small, rural Goshen was already under way before the commissioners' vote. Last February the commissioners directed the Land Management Division to initiate a process to seek an exception to Oregon statewide planning requirements to allow "an urban level of employment uses" to develop within Goshen. Presentations at public hearings have featured images of industrial parks, and maps show Goshen as changing from a largely rural area to an industrial corridor.

Cuyler says Goshen "has great rail access, large blocks of undeveloped land, a state highway immediately adjacent to I-5, all positives." But he adds, "Lacking is access to the public sewer and water infrastructure, and the current zoning."

The water issue is a source of concern for many, including for Lane County Planning Commissioner Dennis Sandow. Goshen is home to Willamette Water Company, a quasi-municipal water source that currently supplies water to about 100 residential customers and 60 or so businesses and industries in Goshen.

According to a December 2009 Water Utility Annual Report, the corporation has two stockholders — Greg Demers and Melvin McDougal. Jeff Demers is the director of operations.

WWC has a small water right on the McKenzie River of 4 cubic feet per second (cfs) right now, but it wants to

MINING DESTROYS SCENIC BUTTE

It's a double-edged sword, says Dexter resident Arlen Marcus. Lane County has issued a notice of violation to the mine operators at Parvin Butte for mining without a site review. But Marcus says rather than stopping the heavy machinery, the devastation of the Dexter landmark has only increased. Neighbors say the near daily destruction starts in the morning and lasts until after dark at the butte surrounded by homes and the rural community of Dexter.

The \$330 per day fine is "what they've decided this is the cost of doing business," says land use attorney Dan Stotter who represents the Parvin Butte neighbors fighting to stop the mine. "There's more profit in breaking the law than in paying the fines in a cost-benefit analysis," he says. Marcus agrees. "It's like a dime to them," he says. The fines as of Dec. 20 totaled \$4,680.

Kim Metzler, who like Marcus is a member of the steering committee for the effort to save Parvin Butte, says machinery is now removing the top of the butte. Parvin Butte neighbors have taken video and photos showing machinery digging rock, moving it next to a rock crusher on the site, and more recently, loading the rock into McDougal Bros. trucks at the butte.

The notice was issued to ATR Land, LeeLynn and Wiley Mt., which like Lost Creek Resources, the name on the Department of Geology and Mineral Industries (DOGAMI) permit, are all companies under the aegis of Norman and Melvin McDougal and Greg Demers. Demers and his brother Jeffrey Demers are involved in the Willamette Water Company (see news brief this issue).

The site was zoned for gravel mining but has been dormant for at least 50 years, says Marcus. The mine operators have a DOGAMI permit, but according to the notice of violation they were notified twice that a "site review application in conjunction with DOGAMI permit 20-164 was required to continue any mining activity on the property." The mine has appealed the notice. The appeal

written by attorney Larry Gildea argues that the mine does not need a site review because it is 200 feet from exterior boundaries and that Lane County cannot meet its burden of proof.

A site review allows for the public to have a say on mining operations before the trucks, noise and dust begin in a community.

Lane County's compliance officer, Jane Burgess, says because an appeal was filed, the next step in the county's administrative enforcement process is to hold a hearing in front of the Lane County hearings official.

Gary Lynch, assistant director at DOGAMI, says that the DOGAMI permit rests on whether the land was zoned for gravel mining and DOGAMI would have an issue only if the land use approval was somehow denied. He says the land use decisions made 30 or 40 years ago to allocate resources were good at the time but "don't measure up well today. Some of our opinions have changed."

County Commissioner Rob Handy says the county's inability to stop the mining despite the community uproar is "very disappointing." He says, "If the fines are looked at as the cost of doing business then there's something wrong with that picture." According to Handy the commissioners could have some discretion in the issue when it comes to the greater public interest, but he doubts the current board majority would choose to weigh in.

When asked about Parvin Butte, Faye Stewart, the commissioner who represents Dexter, referred the question to county legal counsel. Assistant County Counsel Marc Kardell says the county is attempting to schedule a hearing for Jan. 5: "The hearing, should the county be successful, would both levy fines and compel a review process that the county believes is necessary in this zone." Fines, he says, are continuing to be assessed.

Stotter says if it can be proved that the mine operators are not just moving rock around on the site, but engaging in commercial activity, the fines can increase to three times as much. He says it was "a crucial turning point in that Lane County has gone on record that there is a violation of law."

Stotter adds that it is rare in his 20 years of practice to see Lane County issuing stop letters and pointing at a mining operation and saying they are violating the law.

"It's even more rare that the mining company ignores it," he says.

According to Stotter one action the neighbors could take is to file a civil suit against the mine.

Stotter says that the mine operators "mistakenly think that my clients, the neighbors, will give up, based on seeing Parvin Butte cut down and destroyed. I think they will see the opposite is true."

— Camilla Mortensen



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