

Looking Forward

*A publication of Oregonians In Action Education Center
on land use and property rights*

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OIA Passes Important Property Bill In 2016 Legislative Session, But Relief For Eastern Oregon Ignored Again

The Oregon Legislature recently concluded its 2016 annual legislative session. The 2016 session was a “short session,” lasting just over a month. At the end of the session, Oregonians In Action scored a victory on an important annexation bill, but the legislature failed again to move OIA’s bill to provide relief to struggling Eastern Oregon counties.

Annexation – SB 1573

On the positive side, among the bills passed by the legislature was Senate Bill 1573, a bill requested by Oregonians In Action and the Oregon Homebuilders Association. SB 1573 is a significant victory for urban property owners and for OIA. Since 1995, at least one OIA requested bill has been approved in every regular Oregon legislative session.

SB 1573 resolves a longstanding conflict between two important objectives – the public’s right to vote and the right of private property owners to use their property. The conflict was created when voters in over 30 Oregon cities approved amendments to their city charters that required a public vote on any proposed annexation of land into the city. In those cities, which include larger Oregon cities such as Salem, Corvallis, Oregon City, Sherwood, West

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The *Looking Forward* is

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Education Center* staff.

Printed by:
Lynx Group, Inc.
Salem, OR

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Linn, and McMinnville, a property owner who wishes to annex their property into the city must obtain voter approval by the voters of the city at an election.

If the voters reject the annexation proposal, the property is not allowed to annex into the city, even if the property owner has satisfied all of the requirements to annex and has received annexation approval from the city council.

Annexation is an important requirement for property owners near cities who wish to develop their property. A property owner who owns land inside an urban growth boundary but outside of the city limits of the city must annex into the city to receive the sewer, water, and other infrastructure needed to develop the property. When the property owner plays by the rules and meets all of the development criteria, the decision to annex shouldn't be left to a public vote. SB 1573 fixes that problem.

Annexation voting has become a significant problem in Oregon. For example, Sherwood voters have continually rejected annexation proposals from property owners whose land is adjacent to the city and has been inside the urban growth boundary for over a decade. The property owners meet all of the city's criteria to annex, and have been approved by the city council for annexation on multiple occasions. However, each time the city council approves the annexation request, it is sent to the voters, who have rejected it repeatedly.

The same is true in Oregon City, where voters have rejected multiple requests to annex property that the City has planned for development, and which has been inside the urban growth boundary for over 20 years. In North Plains, the city brought land inside its

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urban growth boundary in 2003 because the city was growing rapidly and they needed more land for residential development, but the owners of the land brought into the boundary have been unable to develop the property because voters reject every annexation request made by the property owners.

SB 1573 makes a significant change in voter annexation requirements. Under the bill, if a property owner (or group of property owners) want to annex into a city, meet all of the city's criteria for annexation, own land that is adjacent to the current city limits and inside the urban growth boundary, and receive approval from the city council, then the annexation is approved, and does not go to the city voters for an election.

SB 1573 does not apply to property owners who do not want to annex into the city. In other words, if a city attempts to force a property owner or group of property owners into the city, the provisions of SB 1573 do not apply, and the requirement for a public vote remains. SB 1573 only applies when the property owner requests approval to annex.

SB 1573 has been approved and signed by Governor Brown, and is now the law of the land in Oregon.

Eastern Oregon Relief – SB 1588

Unfortunately, OIA was unable to gain legislative approval for Senate Bill 1588, a bill which would allow eight Eastern Oregon counties – Harney, Malheur, Baker, Grant, Wallow, Sherman, Gilliam, and Wheeler – to adopt and enforce their own land use regulations and plans, even if those plans and regulations did not comply with the Oregon Land Conservation and Development Commission's Statewide Planning Goals and administrative rules.

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SB 1588 is patterned after Washington's Growth Management Act, a 1990 Washington law that created Washington's land use planning system. Like Oregon's statewide, centralized land use planning system, the GMA authority to state agencies to set planning and zoning requirements for Washington cities and counties. However, the level of state oversight in Washington is much less significant than in Oregon, where LCDC has adopted a one-size-fits-all planning approach, and micromanages Oregon's cities and counties planning and zoning laws.

One of the most important features of the GMA is the opt out provision, which allows Washington counties with small populations and little or no growth to opt out of the GMA requirements. The Washington legislature correctly determined that there is no need for state agencies to dictate planning and zoning requirements for Washington counties where there are few people and no growth, so the GMA expressly allows those counties to opt out of GMA compliance. This GMA feature has been wildly successful.

Of the 39 Washington counties, 10 have used the opt out provision to opt out of GMA compliance. In those counties and cities, planning and zoning decisions are made by local elected officials, as they are in the rest of the United States – except for Oregon.

Like Washington, Oregon has a number of counties where growth rates are non-existent, and have been so for decades. Many areas of Eastern Oregon have experienced declining growth rates in the last half century. Unlike the Willamette Valley, where rapid growth is occurring, Eastern Oregon counties are shrinking in population, as people leave the area to find jobs in cities. Of the eight Eastern Oregon counties that would be impacted by SB 1588, six have smaller populations than they did in 1950.

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The emptying out of Eastern Oregon is not healthy for our state, and is harmful for the few residents of each county. Concentrating all of Oregon's population in the Willamette Valley, on the state's best farmland, is the exact opposite of what Governor McCall had in mind with Senate Bill 100. Yet the system he created has resulted in that effect.

SB 1588 applies the same opt out criteria for Oregon counties that the GMA applies for Washington counties. Under the bill, the eight Oregon counties that could opt out, if county elected officials chose to do so, would be able to plan and zone for their communities in ways that would encourage growth and development, to stem the tide of job loss, population loss, and increased poverty for the few remaining residents. Simply put, what we are doing now isn't working for rural Oregon – it would do no harm to try something different that is working well for our neighbor to the north.

OIA will bring this bill back in 2017 and future sessions, if need be, until it passes. There's no shame for Oregon to admit that sometimes Washington has ideas that are worth considering. ■

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OIA Education Center Holds Land Use Forum In Dallas - Next Forum Scheduled For April 26 in Baker City

Over 150 people attended the Oregonians In Action Education Center's recent Land Use Mini Forum in Dallas, Oregon. The Education Center has changed the way in which it holds its land use events. Rather than having a single, day long annual Land Use Forum in Wilsonville, which the Education Center held for nearly 20 years each April, the Education Center now sponsors "mini forums" in communities throughout Oregon. The goal is to bring the forum to people around the state, rather than asking the public to drive long distance to come to Wilsonville.

The Forum featured three separate panels. Shaun Jillions, lobbyist for the Oregon Association of Realtors, discussed the United States Environmental Protection Agency's new "Clean Water Rule," also known as the "WOTUS Rule". The rule, which was adopted by EPA in May, 2015, greatly expands federal jurisdiction over streams, ditches, waterways, ponds, and rivers throughout the country, and has received near unanimous opposition from industry and trade associations and groups representing property owners, like OIA.

Although the new rule was enacted by the EPA in May, it is currently on hold, as the United States Court of Appeals for the Sixth Circuit issued a nationwide stay of the rule pending further court proceedings. The court directed EPA to halt further enforcement of the rule. There is no timetable set for further court proceedings, but the final appeals court decision will likely be appealed to the United States Supreme Court, regardless of the outcome.

Jon Chandler, CEO of the Oregon Homebuilders Association, discussed rule changes to the National Flood Insurance Program (NFIP) operated by the Federal Emergency Management Agency (FEMA). Chandler discussed the brewing battle between FEMA and another federal agency, the National Marine Fisheries Service

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(NMFS). NMFS is preparing a biological opinion on native fish in Oregon, and is demanding that FEMA address the impact of development on native fish through its new floodplain rules. If FEMA accepts NMFS recommendations, the impact on land use and development in Oregon, both urban and rural, would be devastating. As a result, OIA, industry groups, and the Oregon Department of Land Conservation and Development (DLCD) are playing close attention to NMFS proposal.

Fortunately, as Chandler noted, FEMA is resisting NMFS' efforts to force FEMA to change its rules to address development impacts on native fish. FEMA does not believe that it has the authority under the NFIP to address NMFS concerns, and even if it did, whether NMFS concerns and proposed solutions are warranted. As a result of the battle between two different federal agencies, the White House Council on Environmental Quality has stepped into the battle, and is working with both FEMA and NMFS to resolve the problem. Reports from Washington D.C. industry associations are that the controversy between the two agencies may be significant enough to simply kill the proposed changes to the NFIP. That would be a huge win for Oregon property owners.

The second panel was entitled "Oregon Water Law 101 –What Every Oregon Property Owner Should Know". Martha Pagel, attorney at Schwabe, Williamson and Wyatt, and former director of the Oregon Water Resources Department and Oregon Department of State Lands, discussed all aspects of Oregon water law, from the basics to more technical issues, with a focus on obtaining a water right certificate from the Water Resources Department, and how to maintain the certificate that has been obtained.

During the course of her presentation, Pagel was peppered with questions from the audience – as we've noted in past editions of the

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Looking Forward, water law in Oregon is a very hot topic right now, and will only grow in importance in coming years. This was a very informative discussion, and was well received from the audience.

The final panel was entitled “What’s Going on in the Country? Agri-tourism, Forestry Setbacks, and Other New Rules for Rural Property Owners”. Dave Hunnicutt, OIA President, presented this panel. The focus of Hunnicutt’s presentation was on new state agency rules and Oregon legislation affecting rural Oregon property owners. Hunnicutt discussed the Oregon Board of Forestry’s recent rules that increased streamside setbacks along many western Oregon rivers and streams, and the potential rights of property owners who are impacted by the new rules, including relief under Measure 49.

Hunnicutt also discussed the 2015 Oregon legislation that changed the rights of Measure 49 claimants to adjust the boundaries of the parcels that were created by Measure 49, and ways to obtain land use approval for agri-tourism events on rural property, such as weddings, company picnics, concerts, campgrounds, and other entertainment events.

Lunch was provided by the Willamette Valley Multiple Listing Service, and realtors in attendance received continuing education credits. The mini forums have turned out to be quite successful, and are a great way for people to keep up with Oregon land use and property issues that affect their land.

The Education Center’s next mini-forum is scheduled for April 26 in Baker City. The Education Center is partnering with the Oregon Mining Association, Baker Count Economic Development, the Oregon Concrete & Aggregate Producers Association, and the Eastern Oregon Mining Association to put on a mining symposium. Both land use and mining issues will be discussed. ■

View From Scholls

By David Hunnicutt

Since we first began publishing the Looking Forward in the early 1990's, we've had the benefit of having our two co-founders, Frank Nims and Bill Moshofsky, end each publication with an editorial. With this edition of Looking Forward, that good fortune has ended.

As many of you know, Bill Moshofsky passed away on March 16, with his family by his side. Bill meant so much to so many, and his passing marks a sad day for all of us whose lives he touched, and made better. His impact at Oregonians In Action is impossible to replace, including his work on Looking Forward.



Bill Moshofsky
March 30, 1923-March 16, 2016

But as Bill made clear, Oregonians In Action's work is not complete. Our mission of protecting Oregon property owners from inflexible and poorly thought out land use and zoning laws and regulations is as important today as it was nearly 30 years ago, when OIA was first formed. That work includes writing and publishing the Looking Forward. So today, for the first time, the editorial duties fall to me.

For nearly 20 years, Frank Nims wrote the View From Sherwood. Frank's column reflected his communication style and military training – short, direct, and to the point. It didn't take long to know where Frank stood on land use and property issues.

But time affects everyone, and Frank "retired" from Oregonians In Action in 2012, at the tender age of 93. At that point, Bill took over the last page writing duties, and the name of the article changed to the View From Murrayhill.

Bill's writing style was different from Frank's, and was based on his legal training. His column was more subtle and nuanced than the View From Sherwood. But like Frank, Bill was

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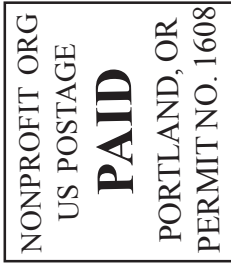
certainly capable of staying on message, and reading his column left no doubt where Bill stood.

My goal is to blend Bill and Frank’s writing styles, while injecting a “human element” into this column. In my work at the Oregon legislature on behalf of OIA, I often find that a complex, complicated, outdated land use law or regulation that we’re trying to change is much easier to explain by simply telling the story of an Oregon property owner who is being impacted by the law. Like most people, legislators relate to a human interest story, and we hear these stories from Oregon property owners every day at OIA. Sharing them with the public, the legislature, and the courts is part of our mission.

Our work is not sexy – you won’t often find stories about land use and property rights on the front page of the local paper, as a story on the local TV news, or in your favorite blog. But land use affects everything in America – from our economy to our housing choices and daily commutes to the emptying out of our rural areas – land use touches every aspect of our lives. And like it or not, Oregon has been the petri dish for land use experiments since Senate Bill 100 was first adopted in 1973. I’ll talk about these issues in this column, just as Frank and Bill did.

Most importantly, with this column and the rest of Looking Forward, we’ll continue to provide you with up to date information on new laws, court decisions, and proposals that will directly impact property owners in Oregon. Since the first edition of Looking Forward so many years ago to today, our readership has grown exponentially – we now reach more than 17,000 Oregon households. Given the importance of the topic, there’s no reason that number shouldn’t double, or triple. Share this publication with your friends, and ask them to join the list, via hard copy or email. Either way is free.

So today, while the name of the column is changed to the View From Scholls, I will continue the work of Bill and Frank. I hope you’ll join me. ■



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Yes, I support OIA Education Center's efforts to protect private property rights!

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