Keep Our Water Safe Committee

Brian and Laurel Hines • 10371 Lake Drive SE • Salem, Oregon 97306
Phone: 503-371-8892 • Email: brianhines1@gmail.com

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Testimony submitted in opposition to House Bill 2229
House Land Use Committee public hearing

Dear Committee members:

My wife and I represent many neighbors who live on small acreages in the south Salem hills (Spring Lake Estates, Twin Hills Estates, and Liberty/Stonecrest areas). About 75 people have contributed over $30,000 to the Keep Our Water Safe committee, and many more support the committee's efforts.

These have been directed at protecting local ground and surface water from a 217 acre, 43 lot, Measure 37 subdivision that threatens wells and the springs that feed a community-owned lake.

For two and a half years we have experienced first-hand the problems that arise when county land use decisions are made on a "political" basis -- using this term broadly to mean preconceived biases unrelated to the facts of a land use situation.

So we strongly urge the House Land Use Committee to drop the provisions in HB 2229 that would allow two or more counties to rezone agricultural and forest lands. This actually would work against the Big Look Task Force's stated goal to "provide fairness and equity to all Oregonians." Again, we speak from experience.

Many counties in Oregon have three member commissions, as Marion County does. This means that one person often holds sway over land use decisions, casting the deciding vote in favor of additional development even in the face of factual information (in our case, a water study conducted by the county's own hydrogeology experts) that shows the folly of permitting a subdivision to sprout on farmland.

What HB 2229 would do is politicize the Oregon land use planning system to a even greater degree. Citizens in general, and local residents in particular, are almost entirely shut out of the rezoning process. The Land Conservation and Development Commission is required to only hold one public hearing on a proposed regional planning approach to farm and forest lands. Seemingly county governments wouldn't have to involve the public at all.

Here's our prediction of what would happen if HB 2229 became law in its present form:

Currently Measure 49 (approved by 62% of Oregonians) allows for three to ten homesites on farm, forest, or groundwater limited land where a residential use otherwise would be prohibited. So Oregon's statewide land use system already contains considerable flexibility in permitting small-scale residential development on resource lands.

However, Measure 49 prevents large-scale development such as was planned on the groundwater limited farmland in our neighborhood, unless the Measure 37 claimant is able to show that the project has been vested under common law.

In many or most cases vesting won't be demonstrated, which leaves the claimant three to ten homesites, with the remainder of the property capable of being used as farm or forest land (in our local situation, the property appears to be well-suited for a vineyard). It is easy to anticipate, though, that this won't satisfy some would-be large scale developers.

Hence, they would lobby county commissioners to rezone their land via the HB 2229 "regional definition" process. This would largely occur outside of public view, making a mockery of the fair and equitable land use planning process that the Big Look Task Force appropriately calls for.

All it would take to initiate a redefining of farm and forest land is for a majority of members on two county commissions to join together and say, "Let's go for it." Again, neighbors who would be affected by a rezoning of resource lands would have very little opportunity to express their concerns and knowledge of the problems that large-scale residential development would have on the area.

It appears to us that the regional planning provision of HB 2229 is intended, in part, to be an end-run around Measure 49 and the clearly expressed will of Oregon voters -- who said loud and clear at the ballot box in November 2007, "Protect this state's farm and forest land from unneeded development."

We want to stress that those who support the Keep Our Water Safe committee, which includes the vast majority of residents in our area, are not radical environmentalists or "tree-huggers." Our supporters are Republicans and Democrats, conservatives and progressives, older retired people and youngish working types.

What has united us through several years of often intense and time-consuming efforts to combat a large subdivision on farmland that hasn't been shown to have adequate water for residential development is our shared belief that those who would be most affected by a land use decision need to be listened to by planners and other land use decision-makers.

It is our understanding that 1000 Friends of Oregon and the Department of Land Conservation and Development have pointed out to your committee that Oregon already allows for regional variations in what sometimes is erroneously called a "one size fits all" planning system. So we see HB 2229 as a movement in the wrong direction.

It wouldn't promote more citizen involvement in local land use decisions. Instead, it would give politicians a green light to attempt to circumvent existing zoning of resource lands and Measure 49. Neighborhood groups like ours would be on the outside looking in as would-be subdivision developers bend the ear of county commissioners, urging them to rezone their property so it could grow asphalt and concrete rather than crops or trees.

Measure 49 hasn't yet been fully implemented. Legal cases are still wending their way through state and federal courts. The Department of Land Conservation and Development hasn't completed its review of "express" and "conditional" applications for home sites. This is no time to further stir up the land use waters, which are just beginning to calm down after intense debates over Measures 37 and 49.

We and our neighbors who support the Keep Our Water Safe committee urge you to strip the "regional definition" provision from HB 2229. It is a solution in search of a problem, and won't bring more clarity, fairness, and equity to Oregon's land use system.

Please keep in mind that for every property owner who considers that his or her farm/forest land is wrongly zoned and wants to turn it into a subdivision, there are many more neighbors of the property who also have property rights -- such as the right to not have their wells go dry from excessive development.

The Big Look task force appears to have focused on unfairness in the land use system as perceived by the first relatively small group of people. We can assure you, from extensive contacts with large numbers of neighbors, that many more people are concerned about another type of unfairness.

This occurs when local land use decisions are made not on the basis of facts and statutory standards, but from preconceived notions of decision-makers that stem from their political and philosophical beliefs regarding property rights, environmental protection, and other issues.

Obviously there's nothing wrong with having such beliefs. However, the land use system needs to be founded on a "rule of law" that is seen as applying to everyone equally. Our court system works as well as it does because judges generally are viewed as being able to let universal legal standards guide their decisions, not their personal biases.

So we can assure you that allowing county elected officials to initiate changes to how farm and forest lands are defined on a local level will be viewed by most people in our area as a movement away from fairness and equity for all Oregonians, the stated Big Look task force goal.

Oregon's land use system currently is working well. It is protecting irreplaceable farm and forest land, while allowing considered, carefully thought-out regional variations in land use practices. It would be wrong to pass the provisions of HB 2229 that encourage a politicalization of land use decisions. This is the wrong direction Oregon needs to go.

Sincerely,

Brian Hines