

New Meadows ballot proposal raises legal questions

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Story by: Raelynn Ricarte

Legal questions have arisen over whether a proposed ballot measure regarding Mt. Hood – even if approved by voters – is enforceable.

The issue is an initiative filed by the newly formed Let the People Decide (LPD) political action committee. The proposed ordinance seeks to give voters the right to affirm or deny any county approval of 25 or more homes or overnight lodging units on property zoned for a forest use. LPD contends the measure was “inspired” by Mt. Hood Meadows’ plans to build a major housing development on land that provides water to the Crystal Springs Water District.

Dave Riley, Meadows’s general manager, said he welcomes the new opportunity to engage in conversation that addresses citizen concerns. He has assembled an advisory group with a cross section of two dozen local residents to give input on future plans for the private Cooper Spur property owned by Meadows.

“We are blessed in this state with a land-use process that has many opportunities for public involvement and I’m quite happy to participate in a broad dialogue with the community,” Riley said.

Last week, Hood River District Attorney John Sewell drafted the title, voter question, and summary text for the measure. However, the lead prosecutor said it is not his role to determine the validity of the initiative.

“By statute my job is simply to prepare and submit an impartial ballot title and the court will determine later if it is enforceable,” Sewell said.

But an attorney for Meadows’ contends the LPD is violating the Oregon constitution with its proposal. Richard Allan from the Portland firm of Ball Janik, LLP, argues that a citizen initiative cannot be used to circumvent an administrative, or “quasi-judicial,” land-use process. He said state planning goals set out clear guidelines for deciding applications of a specific property, as well as proper channels for appeals. He said the crucial test for determining whether the subject of an initiative or referendum is legislative or quasi-judicial is whether the ordinance is making a law or executing a law already in existence.

“... In sum, to hold that a land use decision may be referred to the electorate would be the equivalent of holding that it need not be made in compliance with the procedural and substantive requirements of state statutes,” quoted Allan from the Court of Appeals case of Dan Gile and Associates versus Mclver.

But Brent Foster, LPD’s attorney with a private practice in Mosier, said the proposed ordinance is “legislative” in context because it can be broadly applied. He said if approved, it would affect all properties that lie within a forest zone and not just one specific parcel. To support his argument, Foster highlights the Oregon Supreme Court case of Heritage Enterprises versus the City of

Corvallis. He said that ruling centered on Heritage's fight to overturn voter denial of an issue referred to them by the city council. The initiative followed city approval for Heritage and Oregon State University to annex 345 acres within the urban growth boundary.

"The court held that while the city council's decision was a quasi-judicial land-use decision, the vote of the electorate was not," stated Foster in a memorandum on the issue.

However, Allan pointed out that an argument involving annexation is "off the mark" since state law has already made that government action a two-part process that allows a citizen vote. Allen said annexation and incorporation are "political decisions" that are not held to the same stringent regulations as a specific land-use application.

"It is clear that Oregon law would not allow referral to the voters of a land-use decision approving dwellings on a specific property zoned for forest use," Allan said.

Meanwhile, as pro and con arguments mount, the LPD is undertaking a signature drive to qualify the issue for the ballot. Lee Shissler, county elections supervisor, said six percent of the county's 10,400 registered voters must be listed on the petition before it can be scheduled for the polls.