

Judge blocks 43-lot subdivision in South Salem

By Michael Rose

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After a long-running battle about a proposed 43-lot subdivision in Marion County, neighbors opposed to the project might finally have won.

A Marion County judge has issued an oral decision that blocks the proposed Ridge View Estates development in the South Salem Hills. The decision reverses a 2007 ruling by the Marion County Board of Commissioners. It also could end a bitter fight in which both sides asserted that their property rights were being trampled on.

The project — commonly called the Laack subdivision after one of its owners — was among the first to seek a waiver in Marion County under Measure 37 in 2005. Voters later scaled-back Oregon's sweeping property-rights law, which cleared the way for development on rural parcels in many instances, with the passage of Measure 49.

"They are actually people out there who honestly believe they have the right to tell you what you can do on your property," said Greg Eide, one of the owners of the 217-acre site in the 9800 block of Liberty Road SE.

He said that the people fighting the subdivision were opposed to all development.

About a half-million dollars has been spent on improvements to get the property ready, Eide said.

Eide's late father, Mel, was among a group of owners who bought the land as an investment in the 1970s. The group had always intended to build houses on the site, but Oregon's land-use laws changed before that happened.



Kobbi R. Blair | Statesman Journal file
Duane Rawlins, (left) and LeRoy Laack, part owners of land in South Salem that they hoped to develop as a 43-lot subdivision, walk the property in 2008.

About the rules

What did the original Measure 37 do?

Longtime landowners, whose property values may have been reduced by land-use regulations could seek payment from governments that imposed the regulations or seek waivers to create subdivisions and build on their property.

How did Measure 49 change that?

Measure 49 generally limits a landowner to three home sites on property classified as high-value farmland or forest land, or in a groundwater-limited area. However, the measure allowed landowners who had done enough work on their sites under Measure 37 to assert "vested rights" and continue building. Measure 49 did not define vested rights, which was at the core of this court case.

At issue

In 2005, LeRoy Laack and other landowners applied for a waiver in Marion County under Measure 37. The rural property is in a limited-groundwater area in the hills south of Salem. Neighbors, who rely on wells, said they were worried about their drinking water supplies and repeatedly appealed the approvals for a 43-lot subdivision.

The dispute may finally be winding down. Earlier this month, a Marion County judge issued an oral decision that overturned a

Measure 37 provided an opening for the owners of the Laack site to pursue a subdivision project. The subsequent passage of Measure 49 complicated those plans and gave opponents of the development leverage.

Marion County Board of Commissioner's decision that allowed subdivision to be built. A final written order is expected to be filed in September.

— Staff reports

Neighbors, who get their water from wells, say they went to court to protect their limited water supply. Developers had intended to use wells to supply the proposed subdivision.

"The good majority of wells out there are pretty marginal," said Don Dean, one of the neighbors in the nearby Spring Lake subdivision that opposed the project. He is a member of the neighborhood's Keep Our Water Safe Committee.

Experts hired by both sides in the dispute disagreed about whether the aquifer was sufficient.

And opponents were skeptical of the developer's claim that a "community water system" could be built, which would serve new homes and those in the existing subdivision.

In Dean's view, Measure 37 never was intend to allow major developments on land zoned for farming. Dean said he picked the Spring Lake area, in part, because he was assured by the county that the Laack site would stay zoned exclusively for farm use.

Earlier this month, Marion County Judge Nely Johnson ruled that the subdivision backers failed to show they had "vested rights," which would have allowed them to proceed with the development under Measure 49.

Vested rights are based on the type and dollar-value of previous improvements done on a property. The judge determined that improvements on the Laack site were too minimal to qualify for vested rights.

Ralph Bloemers, an attorney with the Crag Law Center, who represents opponents of the development, said the Laack site's owners were "racing" to complete improvements before the passage of Measure 49.

The law doesn't recognize "mere preparation" for establishing vested rights, he said. Owners of the property took a business risk that didn't play out, he said.

What someone does on their land does have an effect on neighbors as this case shows, he said.

"We can't go back to the 19th century philosophy of every man for himself," Bloemers said.

A final written order in the case is expected to be filed in September.

The property owners — the Eide family, the Laack family, M. Duane Rawlins and Andrew and Margaret Rainone — can still take their case to Oregon Court of Appeals.

A decision on seeking an appeal hasn't yet been made, said Mark Shipman, one of the property owners' attorneys.

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