

How Free Can We Be?

by Bob Bowman

With this issue, *Freedom Matters Inc.* starts its second decade of existence. We began out of a concern to defend property rights, which we saw as the most endangered of our constitutional rights, and with good reason.

Too many people want something for nothing, and act to seize their neighbor's property, or control over it. The greater the wealth, the more nuanced the motivation and the more contentious the problem: e.g., **is "social justice"** (the redistribution of wealth by force of law) **merely a name for greed?**

We believe that, too often, it is. The solution is to *let no law stand that fails to reduce to a minimum any element of greed.* For example, one civil right that graces our federal constitution is the *equal protection of the law.* Clearly, that principle is the only legitimate meaning of "social justice." (We put the term "social justice" in quotes because it is a redundancy. "Justice" as a concept is unique to humans, whereby it has no sensible meaning except a social one!)

As for equal protection of the law, where better to apply it than to property rights? Hence, that's where our federal constitution has *specifically* applied it. In its fifth amendment, it prohibits government from taking private property for public use without just compensation. And there we meet the devil, for "the devil is in the details."

States' rights, or the pale vestige that remains of them (a topic for a future issue), has allowed our governmental system to experiment with the equal protection of property rights. The State of Oregon, took the lead over 20 years ago in enacting "smart growth" (aka "sustainable growth"), a frank elimination of property rights in land. It recently took the lead in trying to restore those rights, an effort that is most instructive.

In Oregon, citizens can *amend their constitution* by referendum. By referendum they can also directly *enact statutes.* In a word, a popular majority can supersede all. By this method, the Oregon citizens in 1978 established a Metro government in the Portland area, and in 1992 gave it "home rule" and identified its primary mission as "planning." It is run by a 7 person council directly elected from its geographical districts. This Metro government came to national fame for confirming and enforcing "urban growth boundaries" whereby almost all residential development is inside those boundaries. This is central command and control of virtually all land use.

Not surprisingly, this led to political opposition from property owners. In 2000, Oregon citizens by 53% approved a constitutional amendment (Measure 7) that required government to pay compensation to landowners whose property was devalued via state or local land use laws. The Oregon Supreme Court struck that down because it excluded porn shop owners from such compensation, thereby making two constitutional changes that were "not closely related" in one ballot measure, which the court said violated the state constitution.

By this and other actions, the court encouraged voters to govern via statutes rather than via the constitution, ostensibly so that "rash" voter results were more easily corrected. Those opposed to Metro's land use regulations hence moved to enact Measure 7 as a statute, called Measure 37. That measure passed **by 64%** in 2004, and in 2006 was upheld completely by the Oregon Supreme Court, who validated citizen rule as having legislative rights equal to those of the legislature, and validated a legislative right to roll the clock back to stronger legal protection of property rights in land.

By early 2007, over 7000 claims were filed under Measure 37 asking for more than \$20 billion in compensation on over 800,000 acres. Most of this involved residential subdivisions just outside urban growth boundaries, and some claims asked for more extensive commercial uses than foreseen. The latter, in the language of "Northwest Hub" (an online 501(c)3 group with an avowed mission to be an independent, reliable news source inclusive of all perspectives) led to "public resentment" which fueled a ballot initiative, called Measure 49, designed to amend Measure 37 by **limiting** its compensation to small scale residential development (a maximum of 10 homes per claimant). Support for Measure 49 came not only from environmentalists, but also included large donations by commercial interests; e.g., businesses acting to protect their enterprises from conflicting or competitive development.

Measure 49 passed in 2007 by a 67% majority of those voting, and was later ruled by the Oregon Supreme Court to invalidate most of the regulatory waivers granted to claimants under Measure 37. *The legal interactions of Measures 37 and 49 are still being sorted out in court,* and as a result, only a few of the Measure 37 claims have resulted in the payment of compensation or the waiver of land use regulations.

Meanwhile, in 2005, the Oregon legislature set up the *Big Look Task Force* (Senate Bill 82) to review and make recommendations regarding statewide land-use planning. Despite concerns over whether such planning impeded economic development and private property rights, the recommendations of this task force, which were in the process of legislative enactment in 2009, stress statewide and regional planning. **In other words, the state continues to set in cement the effective ownership of all land by the central government;** e.g., Oregon's local governments cannot make changes in land use without approval by the statewide *Land Conservation and Development Commission* (LCDC). Private landowners can only beg, and are lost if lacking political connections.

What lesson does this history offer for how free we can be? *It says we can only be as free as our neighbors let us be.* That was the issue that underlay the American Revolution and inspired our *Declaration of Independence,* and which vexed the architects of our later federal constitution: **how do we insure that our inalienable rights are inalienable?** When we pay money to buy a piece of land, how much of the neighboring land does that payment also buy? How does the government own what we bought without paying us for it? **Ultimately, do our rights exist only by the power of the gun?**

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