Tanya Saltzman

From: SUZANNE LADY <DRSDL@msn.com>
Sent: Wednesday, July 10, 2019 6:34 AM
To: Tanya Saltzman
Cc: Phil Henderson; Patti Adair; Nick Lelack; Tony DeBone
Subject: Deschutes County Ordinance No. 2019-012 PUBLIC TESTIMONY

Dear County Chair Henderson and Commissioners, Adair and DeBone,
I would like to submit this written testimony as my support of the decision for Deschutes County to OPT OUT of any new marijuana production operations.

Measure 91:

Measure 91 passed with a very small margin in Deschutes County. Furthermore, the majority of rural voters rejected Measure 91, yet they have been the ones who have been forced to endure the impact of marijuana operations in their communities.

HB3400:

Measure 91 only asked voters whether they wanted to allow marijuana use, nowhere was it stated on the ballot that marijuana would be grown in agricultural areas. HB3400, decided by handful of pro-marijuana legislators, without any voter input, designated cannabis as an agricultural crop, thus granting marijuana Oregon's Right-to-Farm protection on lots that have been zoned for Exclusive Farm Use (EFU).

Deschutes County's EFU's Are Surrounded by Rural Residences:

Over time Deschutes County has permitted much of its farmlands to be chopped up and rezoned. This afforded landowners to profit from the sale of a portion of their land and afforded the County the ability to impose higher tax rates on the newly created lots. In areas like Tumalo the dividing up of large EFU lots has resulted in 20, 30, 40 and even 60 acre lots now being adjacent to small 2, 5 and 10 acre lots that have been rezoned as Multiple Use, or Rural Residential.

The county permitted these new lots to have residential homes built on them. Often due to the limitations of the size of the lots it's not uncommon to find that a home is located a mere 100 feet from a property line. In the past when most of Deschutes County's farmlands were being farmed for hay the activities associated with farming, like dust from harvesting a couple of times a year, were tolerated as acceptable "periodic and reasonable" farming practices. In contrast, marijuana production is carried out 365 days a year, it is an industrial, commercial, enterprise that does not belong a mere few hundred feet from rural residence.

Right-To-Farm, or the Right-To-Harm?

Right-to-Farm laws are increasingly becoming a "Right to Harm." They are being used as a "get of jail free card," for any "new" get-rich quick industry, no matter what costs their operation has on the quality of life and property values of ***existing*** neighboring property owners. Someone who acquires a rural property has the right to expect said property will continue to afford them, within reason, the same quality of life that was evident when the property was purchased. RTF laws that were originally created to protect farmers from those who "came to the nuisance," are now frequently being used to guarantee protection for all/any future farming practices, no matter how burdensome and unreasonable to others. **When do Right-to-Farm Laws Go Too Far*? ****

Commercial marijuana cultivation involves multiple plastic hoop houses, industrial fans that run 24/7, grow lights that spoil our night skies and creates a pervasive foul skunk odor that travels large distances, preventing neighboring residents from being able to enjoy the use of their own properties, or sleep with their windows open. Rural land that was once a part of a peaceful neighborhood has been turned into a commercial enterprise, with multiple staff, dogs, ATV's and traffic utilizing previously quiet rural roads. These operations are more industrial in nature than they are agricultural and why Colorado, unlike Oregon, insisted that marijuana be grown in industrial warehouses away from ***all*** rural and urban residences. California also granted marijuana a crop status, resulting in residents complaining about offensive odors permeating their neighborhoods. This has subsequently resulted in several counties like Sonoma putting a ban on hemp production due the lack of odor control.

Op-In Decision:

Despite the considerable push back Deschutes County received from rural homeowners during public hearings, the County Commissioners decided to Opt-In on the grounds they could put reasonable "time place and manner" restrictions on marijuana production, including that of EFU zoned property. Additionally, a Marijuana Advisory Committee (MAC) was formed to create regulations. The MAC was primarily made up of those who were either currently working in the marijuana industry or hoping to do so in the future, thus the regulations that were generated were done so with the approval of those in the marijuana industry. However, six months after Deschutes County put rules in place these same individuals were attempting to get Salem Representatives to overrule them.

Non-Compliance:

Predictably, since the Opt-In many in the marijuana industry have failed to comply with even the State's regulations. The Oregon Liquor Control Commission's (OLCC) 2018 "Operation Good Harvest," found Deschutes County's marijuana producers to have only a 55% compliance rate, worse than the State average.

Massive Overproduction:

According to Time Magazine, Oregon's pot supply is running twice as high as demand, meaning that the surplus from last year's harvest alone could amount to roughly 2.3 million pounds of marijuana, by the OLCC's figures. That's the equivalent of over 1 billion joints. Oregon has one of the highest imbalances among the 10 states that have legalized recreational marijuana.

https://time.com/5598922/oregon-weed-pot-supply/

The fact is we don't need more marijuana production in Oregon.

In conclusion it's worth noting that two of the County Commissioners who made the decision to Opt-In were thrown out by voters in subsequent elections. What does that tell you? Rural voters have spoken, and they don't want marijuana production in their neighborhoods. **Opt-Out of any new marijuana production now.**

Thank you.

Suzanne Lady and Ann Goldmann, Deschutes County rural residents

***Boston College Environmental Affairs Law Review:**

"Governments and Unconstitutional Takings: When do Right-to-Farm Laws Go Too Far?"

Statutes protecting **existing** activities from nuisance lawsuits by future neighbors incorporate an equitable coming to the nuisance doctrine. However, a few legislatures have adopted right-to-farm law provisions that go further and grant a preference whereby future incompatible activities are protected against nuisance lawsuits. Under a provision protecting future nuisances, the interference with a neighbor's property rights may be so great that it operates to affect a regulatory taking.

Right-to-farm laws that extend their protection to minor adjustments of activities should withstand scrutiny. However, laws that foist significant burdens on neighboring property owners by providing a defense for new nuisance activities may go too far. Statutes that allow major expansion or extensive changes might produce an unconstitutional taking.

Tanya Saltzman

From: John Doe <jd693235@gmail.com>
Sent: Friday, July 12, 2019 8:47 AM
To: Tanya Saltzman
Subject: OPT OUT

Dear Tanya,

I'm a resident and landowner in Deschutes County. Adjacent properties are producing cannabis illegally and this has caused disruptions, negative impacts on our neighborhood and local community.

Impacts including but not limited to:

- Traffic
- Odor
- Safety concerns
- Potential criminal activity and persons
- Negative impact on land values
- Quality of life

Our ability to gather information and engage law enforcement or other agencies responsible for inspection, permit verification, mitigation enforcement and other regulations is non-existent.

We have no transparency, no recourse, no enforcement of the law or current regulations. I understand the realities of legalization have caught everyone off-guard and there is considerable confusion, further legislation and litigation pending. But currently, the impacts are being absorbed by the community, not the people who benefit, legally or illegally, from unregulated cannabis production. This is backwards and wrong.

Until Deschutes County has an implemented and functioning infrastructure to address this obvious injustice it has the obligation to opt out until that framework is fully established to protect its citizens and I encourage you to do so until such time. It's the right thing to do.

Sincerely,

A concerned, tax paying and voting resident of Deschutes County.