

Cities: Plan spells trouble

Property rights: Backer says landowners need protection; Caldwell, Nampa mayors say measure will hamper efforts to manage growth

By Dan Black - Idaho Press-Tribune, July 16, 2006

TREASURE VALLEY — Property rights activist Laird Maxwell of Boise is spoiling for a fight. The sponsor for a statewide initiative to curb urban planning is watching for advertisements by local governments that oppose the fall ballot measure.

"I've got a whole bucket of money right here," he said, adding that "15 lawyers across the state" are lined up ready to sue local governments that campaign against the initiative.

He won't likely get a chance, said Caldwell Mayor Garrett Nancolas, who opposes the proposition.

"There's not a municipality I know of" that would use taxpayer money to campaign against a statewide initiative, Nancolas said.

Behind the bluster is a serious issue.

Proposition 2, which earned its way onto the ballot in November, would allow individuals to sue local governments for lost value because of regulations, such as planning and zoning laws.

The move is an effort that Maxwell and his national supporters are pushing to curb government's power.

In fast-growing Canyon County, the initiative would at least pressure cities and the county to give developers greater latitude in doing what they want with their land.

Critics contend that the measure would make it difficult for planners to effectively manage growth.

And according to some officials, it would entirely erase government's role in urban planning and invite expensive litigation.

Both Maxwell and his foes agree on the basic function of the proposition. If it passes, a property owner could sue local governments to be paid for any loss of land value caused by regulations.

Beyond that description, its potential effects on residents are up to interpretation.

"It forces the government to be a good neighbor," Maxwell argued, adding that it would prevent city officials from trying to micro-manage activity on private land.

"Planners are always two years behind the trend," the lead supporter of the measure said, contending that the city or county shouldn't try to map out how an area grows.

Nampa Mayor Tom Dales sees it differently.

"If this measure passes," Dale said, it would prevent cities from planning for the future, which would create numerous conflicts.

Dale said Oregon has been reeling from the effects of a similar measure. More than \$4 billion in claims have been filed under a law there that has nearly identical language as Idaho's ballot, he said.

Maxwell said the courts are an appropriate venue for these disputes. The key legal principle in the ballot, Maxwell said, is that government should compensate landowners for the "highest and best use" of a property that is impacted.

That could potentially put cities in a lose-lose situation, Nancolas said.

The Caldwell mayor said if one property owner asks to build something that decreases a neighbor's property value, the city would be liable for losses if it allows, or denies, the request. If one property owner doesn't

sue, he said, the other could to recoup that property's "highest and best use" value.

Source of the dispute

Maxwell explained that the property rights movement got a boost last year after the U.S. Supreme Court narrowly ruled that municipalities have the right to condemn, using eminent domain, for economic reasons. It also ruled that states have the right to define what public uses qualify for eminent domain.

Within a year, 45 states passed limits to eminent domain, defining the narrow instances that qualify, such as for roads, schools and parks.

Idaho also passed its own version in the last legislative session and Maxwell said, "they almost did a good job."

He said it should have also protected property owners from incremental value loss caused by regulation. That's why he sought and received help to place the issue on the ballot.

Out-of-state interests

Dale said Maxwell's group has been largely financed by out-of-state organizations, a claim backed up by state reports. Maxwell admits out-of-state groups helped pay signature-gatherers to place the measure on the ballot, but said the national movement is simply helping state organizations.

"You have Idaho money helping Montana and Montana money helping Idaho," Maxwell said.

According to the state's disclosure reports, "This House is MY Home" received \$100,000 from Montana-based America At its Best and \$237,000 came from New York-based Fund for Democracy. Maxwell paid \$322,834 to Kennedy Enterprises of Colorado Springs, Colo., to gather signatures.

Maxwell asserted that Idaho citizens who contribute to the cause may face retribution from government, so it helps that like-minded people help from other states.

Different interpretation

Nampa's mayor said he has been told by the Idaho Association of Cities and his legal staff that the initiative would apply to any and all governmental rules. Maxwell said it would apply only to new rules.

The state attorney general's office certified the ballot measure for the election but warned its constitutionality may be up for interpretation because it seems to raise two issues, so-called "takings" of property value as well as eminent domain. By law, an initiative must only deal with one issue.

Maxwell said it's one issue and that the measure cannot be disqualified until it is passed and challenged in court. He added that it might not be perfect legislation, but "citizens have the right to make imperfect laws."