



OREGON PROPERTY OWNERS — ASSOCIATION —

March 30, 2023

Oregon State Legislature
House Agriculture, Land Use, Natural Resources and Water Committee
Oregon State Capitol

Re: House Bill 3362

Chair Helm and Committee Members:

Thank you for hearing HB 3362, a bill to address a narrow and extremely unfortunate situation in Lane County.

In a nutshell, beginning in 2011 and running over the course of approximately six years, a Lane County land use attorney received seven separate land use approvals from Lane County recognizing that an approximately 50-acre rural parcel owned by the attorney was composed of three separate parcels. After obtaining the original land use approval in 2011, the attorney proceeded to obtain approvals to adjust the property lines between the parcels and qualify two of the three parcels for new dwellings (the third parcel contained the original dwelling).

In November, 2015, the attorney listed the parcel with the original homestead dwelling with a realtor. Through their realtor, Tom and Shealene Vogel acquired the property for \$400,000. In 2018, the Johnsons found the listing for the second parcel, contacted the attorney's realtor, and purchased the property for \$160,000. Unlike the Vogel property, the Johnson parcel was smaller and contained no dwelling. After purchasing the property, the Johnsons constructed the dwelling, subject to land use approval from Lane County, and now live on their parcel. The attorney retains the third parcel.

Today, based upon all the land use approvals received from Lane County, the original 50-acre parcel is composed of three separate parcels, with three owners and a dwelling on each parcel. The Vogels and Johnsons each have mortgages on their home and property, obtained title insurance when they bought their parcels, relied on the County approvals to make sure they had legal lots and legal dwellings, and have built their lives on their homes and property.

In 2021, the County discovered that the evidence submitted by the land use attorney to obtain the original 2011 County approval was falsified and contained doctored deeds. Based upon that

discovery, the County revoked the 2011 approval and every single permit it had issued subsequent to the 2011 approval.

Overnight, the Vogels and Johnsons lives were thrown into chaos, as the County had effectively ruled that their parcels and homes were no longer valid. According to the County, the Vogel and Johnson parcels, as well as the parcel of the attorney who submitted the falsified deeds, are now illegal.

The Vogels and Johnsons, who purchased their property in good faith and relied on all the previous County approvals, had no possible way of determining that the attorney who sold them the property had falsified deeds years before she sold each parcel to them. Like other purchasers of property that was illegally divided, they are innocent purchasers.

After the County revoked their permits, the Vogels and Johnsons, and the attorney who sold them the property, each appealed the County decision to the Oregon Land Use Board of Appeals (LUBA). In February, LUBA overturned the County's decision, restoring the legal status to the Vogel and Johnson parcels, as well as the parcel owned by the attorney who submitted the original falsified documents. However, in March, LUBA's decision was appealed to the Oregon Court of Appeals, thus ensuring that the Vogel and Johnson's will continue to remain in legal limbo for months to come.

While the law gives the Vogels and Johnsons a legal remedy against the attorney who sold them the property (and possibly the County), a court that hears the case does not have the authority to ignore state law and authorize the Johnson and Vogel properties. While the legislature has recognized and created rights for property owners to validate units of land that were created illegally (see ORS 92.176), there is nothing in the law that would apply to a situation like the one that the Vogels and Johnsons find themselves in.

HB 3362 creates a new subsection in ORS chapter 92 to give the Vogels and Johnsons the right to seek approval from Lane County to validate their parcels. The bill applies only to an "innocent purchaser", which the bill defines narrowly in a manner to only apply to people who purchase property in good faith, with no knowledge that an earlier county decision was based on falsified evidence and no role in that subterfuge. The Vogels and Johnsons will have to prove to the County that they meet the standard for innocent purchaser before receiving approval. The lawyer who submitted the false evidence that created this mess will not benefit from this bill. It is intentionally drafted solely to benefit innocent purchasers.

To satisfy opposition to the bill, an amendment has been made to the bill to significantly narrow the scope of the bill to limit its applicability, and to sunset the bill on January 1, 2025. We believe that the legislature needs to have a broader discussion on situations where innocent purchasers buy land from unscrupulous sellers, but this is not the bill to have that discussion.

Some have suggested that the Vogels and Johnsons should pursue their litigation against the attorney who submitted the falsified deeds and sold them the property before seeking help from the legislature. That litigation will occur if the Court of Appeals overturns the LUBA decision and

this bill fails. As noted above, however, the court does not have the authority to grant Vogels and Johnsons the remedy they seek – validation of their parcels and homes. That’s what each family wants – the home and property they purchased based on the County’s representations. Only the legislature can give them that, as the legislature has done for many other property owners with circumstances very similar, but not identical, to the Vogels and Johnsons.

This is a narrow bill amended to make it even more narrow to satisfy the opponents of the bill. Please approve it and allow the Vogels and Johnsons the peace that they deserve.

Very Truly Yours,

A handwritten signature in black ink, appearing to read 'D. Hunnicutt', with a large, stylized initial 'D' and a flourish at the end.

David J. Hunnicutt