



Property rights and Lake Cd'A

By: Randal O'Toole – April 20, 2013

The basic principle of property rights is that people should be able to do what they want with their land so long as they don't directly harm others. Unfortunately, this idea has been steadily eroded by the Supreme Court.

In 1927, the Court ruled that cities could regulate peoples' land if there was a possibility that they might create a nuisance, such as noise or smoke. Cities did not have to wait until the nuisance actually occurred; just the possibility was enough to allow them to impose any regulation they wanted.

In 1976, the Court ruled that cities did not even need the excuse of a possible nuisance to regulate land. Instead, cities could take away most uses - and most of the value - of someone's property for any reason at all, so long as they allowed some use, even if that use did not have much value.

Decisions such as these have made land-use regulation the first thing many cities and counties turn to when confronted with property issues. That's why some have proposed to protect Lake Coeur d'Alene by limiting new construction and development near the lake.

Pollution from septic tanks, golf courses, and other developments comes under the rule that peoples' use of their property should not harm others. But land-use regulation is not the best solution.

For one thing, there is an important question of whether people who already own homes and other developments should be allowed to regulate people who may want to build such homes. Since many of the people already there vote, while people who may want to move there in the future don't, the latter have little or no say in the question.

For this reason, an important principle is that any regulation should apply to everyone, not just new construction. If people are forbidden to build within 75 feet of the lake, for example, fairness dictates that any existing home within 75 feet be torn down. That obviously is not going to be popular.

Instead of regulating land uses, the county should simply limit the amount of pollution any property owner may allow into the lake so that the sum total of all pollution is a safe amount. Instead of prescribing how people limit their pollution, property owners should be allowed to find their own solutions. For best results, people should also be allowed to buy and sell their pollution rights.

For example, several low-cost techniques can reduce nitrogen effluent from septic tanks by two-thirds or more. Letting people choose the system they use will help promote innovation as someone who finds a way to dramatically reduce pollution can sell some of their pollution rights to others.

I realize this leaves open questions of how much pollution is safe and how to measure that pollution. But those are questions confronting any proposal. My argument is that a plan that works with property rights instead of against them is more likely to protect the lake.