



[Michael Haley](#)

grape grower and citizen activist

## Is Measure U legally flawed?

Posted on September 18, 2012 at 8:01 pm

When I ran for county supervisor in 2010, I was a supporter of the eco village concept which at that time was proposed as about 350 housing units plus some commercial development in Angwin. I am a big supporter of Pacific Union College and remain so, it is an incredibly important asset in our community and deserves our support.

During the campaign, it became apparent to me that few people in Angwin, including those who work for the college or the students, wanted development there like the eco village.

I believe that people should be able to control their own community and not have things forced down their throats, so after that experience I changed my mind. I began to understand better the problems with trying to build a big housing development in a rural community that does not have the infrastructure to support it.

What happened recently that sparked the filing of Measure U is that the college put up land for sale to developers with the legal right for dense residential development. There could easily be hundreds and hundreds of multi-family units, along with greatly expanded commercial development, and once these things start they are very difficult to stop.

However, because of what I heard about it being legally flawed I became concerned that I could not support it. I therefore took the time to read all the documents, the legal analysis, the 9111 report, attorney letters, and also watched the Supervisors meeting on line to see what might be there.

You can find all that here:

<http://services.countyofnapa.org/AgendaNet/GranicusMeetingDocuments.aspx?id=3127>

There were a number of different legal issues that were brought up in the Measure U legal analysis. There was religious discrimination, unfair spot zoning, having an expanded sanitation system in an AWOS (Agriculture, Watershed and Open Space) general plan designation, and several other issues. All but one were deemed weak or unlikely to prevail.

One parcel in Angwin of about 26 acres is having its general plan designation changed from urban residential to public institutional, or PI, under Measure U. PI is also being barred from further subdivision, which is the one flawed issue that the analysis says violates the State map act and is likely to be thrown out in a suit. Let's look at that in more detail.

What the change from urban residential to public institutional means is that the parcel can be developed, but only for uses which directly contribute to the college mission like classrooms, dorms, or even stores if they are for the college's use. There is no legal issue there.

The acreage in question is already subdivided, although I do not know the exact number of parcels. The proponents said they added this because right now there are no minimum parcel sizes for the PI designation, unlike every other general plan designation in the general plan. They were afraid that even if the allowed use became institutional only, there was nothing to stop the college from subdividing the parcels down to very small lots and doing intensive building on the site.

The 9111 legal analysis says you have to control development by having minimum parcel sizes, and not by mandating that whatever parcels are there now have to stay that way, as Measure U does.

The best way to understand this is to look at the worst case scenario. Let's say that it is true and that PUC chooses to sue over freezing parcel sizes in PI and wins. The legal analysis agrees that that portion of Measure U is severable, meaning that only that specific portion of the measure will then be thrown out.

So what do they win? Really not much, because the ability of the ordinance to change the designation to PI is not in question. Only the minimum parcel size, on a lot that is only 26 acres to begin with and is already subdivided quite a bit. They would win the ability to add a few more buildings to the lot that only could pertain to college related uses. PI land is already limited in intensity of use to no more than 50% of each parcel. They would not win the ability to profit off the sale of the land, which is what they are after, in any case.

On top of that it would be difficult for them to prove that this harms them in any significant way, another legal principle that they would have to meet in order to have a case. Would they file a law suit over that small of a benefit? Maybe, but bear in mind that if it costs the county a million dollars it will also cost them that too.

Given all that, the only rational reason to file suit will be because they are angry, although that is usually why people file suits. Keeps lawyers rich, I guess.

The other point seems to be that new rules about what is allowed on PI designations will affect all the PI designated land in the county. The report pretty much dismissed all of that as a real concern, but I mention it for the sake of not appearing to avoid the issue.

That is really just a red herring because there are very few other properties designated PI, and they are unlikely to ever want to subdivide. Do we want the airport to subdivide and build

housing anyway? The State Hospital? And if that ever came to pass, the Supervisors could and probably would have to do a general plan amendment and change the designation away from PI anyway. That whole argument is moot.

Bear in mind too that many if not all major land use changes in Napa came with lawsuits, including ones where it was said that they were so flawed they would be thrown out. Three supervisors said Measure J was unconstitutional at the time, and it went all the way to the Supreme Court. The county won and the rest is history.

My conclusion is that the idea that Measure U is legally flawed is irrelevant as to whether you should vote for it or not. Any major land use change is likely to result in litigation in Napa. This could be the most well written ordinance in history and there would still be ways to sue if a party wants to.

You should vote for it if you fear like I do that this is too much development in that rural area and it is a threat to the ag preserve. It is a bad idea to allow this kind of development in that location, and flies in the face of all the elaborate land use planning that we have been doing for years.

I plan to vote yes on Measure U.