

An Update on City Club's Measure 37 Advocacy Efforts

Last November, Oregon voters overwhelmingly passed Measure 37, Oregon's second regulatory takings initiative. The Measure has gained nationwide attention and, in the process, has become many different things to different people — good and bad.

City Club extensively reviewed the pros and cons of regulatory takings compensation and waiver when predecessor Measure 7 passed in 2000 (see *Measure 7 and Compensation for the Impacts of Government Regulation* available at www.pdxcityclub.org/pdf/Measure7_2002.pdf).

As that report detailed, last time around, then Oregon House Speaker Simmons called for legislation to respond to Measure 7's passage. The House formed a standing committee, chaired by then Representative Williams, with then Representative [now Senator] Schrader as vice-chair. They drafted a bill for substantive discussion (much like Senator Ringo and the current Senate's committee drafted Senate Bill 1037, a bipartisan omnibus Measure 37 bill). Subsequently, 14 amendments to the Measure 7 bill were made in committee, but discussions stumbled primarily on the issue of funding (the same issue that stymied similar discussion in the 1970s and 1980s).

When the Legislature adjourned, the bill died in committee. Representative Williams indicated the underlying difficulty was an unwillingness of special interest groups to compromise or move from their basic positions.

Based on this earlier Measure 7 report, City Club opposed Measure 37 (see City Club's Board of Governors Resolution *Opposition to Ballot Measure 37* at www.pdxcityclub.org/pdf/Measure37_2004.pdf).

The Board of Governors formed an Measure 37 Advocacy & Awareness Committee, which participated with others

opposing Measure 37. The Committee ultimately produced a program broadcast over cable television.

Measure 37 is now Oregon law. Folks from across the political spectrum still are actively shaping a legislative response. Senate Bill 1037 was the major vehicle for bipartisan Measure 37 implementation provisions, and your committee actively advocated for awareness of the Report's principles, focusing in particular on the following points:

- Oregonians have a strong interest in protecting, through regulation, the use of land resources.
- Oregon's land use regulation enforcement occasionally puts unfair burdens on certain landowners, who should be compensated for such burdens.
- The overarching focus should be on compensation, not 'waiver' of otherwise uniform regulation. Where compensation is merited, the public should:
 - Only pay for proven real losses above a reasonable minimum;
 - Have several compensation options besides cutting a check (e.g., property swaps, tax abatements, etc.); and
 - Acquire property-related rights in return (e.g., easements).
- Payments should be funded, to the extent practicable, from property that has benefited from changes in land use regulation.
- Oregon's land use and regulatory takings compensation laws should emphasize certainty and stability, as well as fairness:
- There should be clear and definite baseline time limits for both those regulations subject to claims, and to the claims themselves.
- Waivers should be systematically controlled, to prevent abuse and ensure consistency across locations and over time.

See also *League of Women Voters of Oregon*

Principles Regarding Measure 37 Legislative Proposals, Including SB 1037, HB 2652 and SB 82 (<http://www.lwvor.org/M37Principles.htm>).

The Senate committee finally sent Senate Bill 1037 to the floor of the Senate, but the Senate sent it back to the Rules Committee, where it was anticipated it would languish and die at the end of the current legislative session.

The House started working on House Bill 3120. The Senate is still working on legislation that would provide for more study in an effort to craft longer term legislation — Senate Bill 82. Although the Bills are still in draft form — and we offer no opinion on any particular at this point — we support these efforts to improve upon Measure 37, both in the short term, and the longer term. Here's why:

Measure 37 discussions first focused on implementation at the local level, where claims were filed beginning last December. Each jurisdiction may fashion its own rules for claims consideration. Various local and state bodies are granting or denying claims, each using different sets of guidelines.

For example, Washington County, with over 200 claims and counting, notes: "Although there is a compensation component in Measure 37, the more likely result will be a decision to modify or not apply regulations that have devalued property since the current owner obtained it."

Various news reports and interviews suggest this will be the trend for many jurisdictions. That is, unless the current legislative efforts clarify standard statewide criteria, and create some kind of compensation mechanism — including acknowledging the viability of options other than straight monetary payment, like those in the original City Club report.

Senator Ringo, regarding Senate Bill 1037, basically echoed the comments of Representative Williams outlined above. Our discussions with various parties suggest the same stall, and the same unwillingness, may yet defeat efforts to get appropriate legislation completed this session.

We urge all parties to renew efforts to

honor the votes of the people, and pass appropriate legislation — for both the short term and the long term — this session. To that end, your committee submitted an opinion piece published by The Oregonian on Friday, June 10, 2005 (see *In my opinion: Legislature must act now on Measure 37* at www.pdxcityclub.org/club-info/documents/06-10-05Oregonian.pdf)

Since our opinion piece ran in The Oregonian, the House apparently has stopped work on House Bill 3120, the Club's Board has endorsed Senate Bill 82, and the Senate has resuscitated its work on Senate Bill 1037A. There is yet some hope that this Legislature will accomplish what has eluded previous sessions — advancing fair resolution of the occasional but significant clash of land use regulations and unfair burdens on individual landowners.

— *City Club of Portland Measure 37
Advocacy & Awareness Committee
June 17, 2005*