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SYMPOSIUM

BALLOT MEASURE 37: THE REDRAFTING OF OREGON'S LANDSCAPE

Editor's Note.....

Heath Curtiss

Ballot Measure 37.....

SYMPOSIUM ESSAYS

Goodbye to the Public-Private Divide

Eric T. Freyfogle

Private and public land ownership are far more similar and intertwined than we realize, contends Professor Eric Freyfogle in this wide-ranging exploration of property rights and land use in the West. In the case of both types of ownership, Freyfogle urges, our land-use problems would diminish if we could say goodbye to the presumed public-private divide and find new ways of blending private and public interests on all lands, thereby gaining the best of both ownership forms.

Oregon Land-Use Regulation and Ballot Measure 37: Newton's Third Law at Work.....

David J. Hunnicutt

In his essay, Mr. Hunnicutt traces the history and evolution of Oregon's unique and controversial experiment in statewide, centralized land-use planning, and the impact of that system on property owners in Oregon. The article discusses the failure of the Oregon appellate courts to provide clear and definable legal standards for regulatory takings, and the efforts of Oregonians to protect their own property through the adoption of Ballot Measure 7 (2000) and Ballot Measure 37 (2004), each of which have been declared unconstitutional. The article analyzes the recent Marion Court Circuit Court decision invalidating Measure

37, predicts the outcome of that litigation, and concludes with suggestions for changes to Oregon's land-use system that would make it more equitable and insure its future in light of voter discontent.

Oregon at a Crossroads: Where Do We Go from Here?.....

Caroline E.K. MacLaren

Ms. MacLaren contends that Measure 37 threatens to unravel Oregon's accomplishments utilizing land use planning as a tool to plan for the state's future, and removes communities' ability to engage in future land use planning efforts.

Measure 37: Paying People for What We Take

Leslie Marshall Lewallen, Timothy Sandefur, & Steven Geoffrey Gieseler

Ms. Lewallen, Mr. Sandefur, and Mr. Gieseler argue that Oregon's Measure 37 is a necessary—and constitutionally proper—mechanism to protect the rights of property owners. The authors detail both the theory of regulatory takings and the history of land use regulation in Oregon, and the intersection of the two that became Measure 37.

The Effects of Land-Use Regulations on Property Values

William K. Jaeger

Dr. Jaeger argues that two distinct economic concepts are being confused and used interchangeably in the context of landowner compensation laws like Oregon's Measure 37. As a result of this confusion, both land-owners and local governments have mistakenly concluded that compensation is due for a reduction in property values, even though land-use regulations may have actually increased property values in many cases.

Year Zero: The Aftermath of Measure 37

Edward J. Sullivan

Professor Sullivan discusses the features of Measure 37, and how Oregon public entities have dealt with the first claims brought pursuant to the Measure. It also suggests how the Measure might be altered in the near future and how it will impact Oregon's statewide land-use system.

Oregon Agriculture and Land-Use Planning

Tim Bernasek

Mr. Bernasek argues that agriculture is vital to Oregon's economy. A strong agricultural industry in Oregon requires a quality land base designated for agricultural uses. Mr. Bernasek goes on to argue that an effective statewide land-

use planning system would preserve the economic health of Oregon agriculture while maximizing private property interests. The article addresses sources of conflict that have arisen in Oregon's current land-use planning system. Finally, the article propose improvements to the current land-use system and regulatory environment designed to enhance the prosperity of Oregon's agricultural industry.

Transferring Measure 37 Waivers.....

Jona Maukonen

One of the critical Measure 37 issues, currently unresolved, is whether waivers granted by the government to Measure 37 claimants in lieu of compensation, may be transferred to subsequent landowners. Ms. Maukonen describes why Oregon courts are likely to conclude that waivers are personal rather than running with the land. The article then addresses how the courts could apply the principle of vested rights to Measure 37 waivers.

Give and Take Over Measure 37: Could Metro Reconcile
Compensation for Reductions in Value with a Regional Plan for
Compact Urban Growth and Preserving Farmland?.....

Robert Liberty

Measure 37 allows people who purchased rural land before the land was zoned for farm and forest use to develop that land in accord with the zoning in effect at the time of purchase, primarily, large-lot rural residential development. Owners of thousands of acres of land in farm and forest zones around the Portland metropolitan urban growth boundary have filed claims under Measure 37, seeking permission to develop their land. If approved, these claims could compromise the integrity of the region's effort to manage growth. This article examines whether or not Metro, under existing law, has the authority to impose a tax on the urban expansion windfall, and to use the proceeds from that tax to 1) acquire conservation easements (purchase development rights) from owners of farm and forestlands with valid Measure 37 claims, and 2) fund the new roads, sewers, water lines, schools, parks, etc. (infrastructure) needed to serve the new urban development. The author concludes that Metro does have the authority.

COMMENTS

The Environmental and Public Health Impacts of U.S. Patent Law:
Making the Case for Incorporating a Precautionary Principle.....

Shawn Kolitch

A primary purpose of patent law is to provide inventors with an incentive to invent. Many nations, but not the United States, have removed this incentive for inventions deemed

harmful to the environment or public health. Mr. Kolitch examines the consequences of granting patents irrespective of the potential impacts of the invention, and concludes that amending U.S. patent law in a manner consistent with the precautionary principle would reduce the harmful environmental and public health impacts of technological development in this country.

King County, Washington Ordinance 15053: Is “The Most Restrictive Land-Use Law in the Nation” Constitutional?.....

Thane D. Somerville

Effective January 1, 2005, King County, Washington prohibited rural landowners from clearing more than fifty percent of their land in order to protect rural water quality from the adverse impacts of deforestation and land development. Some call the new ordinance the most restrictive land use regulation in the nation. Mr. Somerville analyzes whether the regulation unconstitutionally takes private property without just compensation or violates the substantive due process rights of King County's rural landowners. The comment concludes that such constitutional challenges should fail due to the County's significant interest in protecting water quality and the insufficient economic impact on affected landowners.