

Remarks by Bob Stacey
Executive Director of 1000 Friends of Oregon
Bellingham City Club
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In the past six months, more than 1000 property owners have filed claims against state and local governments in Oregon, demanding payments totaling more than one billion dollars, or—in the alternative—the right to build thousands of houses and millions of square feet of commercial development on Oregon's rural countryside.

What horrible misconduct of government has given rise to this avalanche of claims? In case after case, the same pattern emerges. 25 to 30 years ago, the county government, in response to state planning laws, zoned the landowner's property for farm or forest use. In nearly all of these cases, that was the use being made of the land at the time. Some of the land had been in some sort of low-density rural zoning, but in many cases the land had simply never been zoned before.

And what harm or damage did these property owners suffer? In most cases, none whatsoever. A generation ago, when these zoning decisions were being made, their land was rural farm or forest land well outside of town in a state with a small population. Farm and forest land values ranged from several hundred dollars to a few thousand dollars per acre. By the early '80s, when the last of this zoning program was completed, the state had entered a recession and was losing population. There was little demand for development in cities and towns, much less in the countryside. The zoning did not reduce land values. In fact, by protecting farm and forest uses, it increased the value of land for those purposes.

Today, the value of rural land in Oregon has increased three to four times the values of twenty-five years ago.

Yet these property owners are filing claims for compensation or the right to develop in violation of zoning. The way they see it, now that Oregon has doubled in population and is experiencing a housing boom, if they can just get out from under the farm zoning—and that zoning continues to apply to all their neighbors-- why, that will be like winning the Irish Sweepstakes!

All over Oregon, county governments are granting these lucky landowners their wishes: a million square feet of retail approved on a quiet country road through Willamette County farmland and 340 one-acre lots on prime bottomland outside McMinnville's urban growth boundary.

County and state governments are bogged down in a blizzard of paperwork responding to these claims. If they fail—if they take more than the 180 days they're permitted under M 37 to act on a claim—

Then the owner not only gets his development jackpot, but the county has to pay his attorney fees and court costs just for missing the deadline.

It doesn't stop there. These are just the effects of measure 37 on existing zoning. Measure 37 also applies to all future land use regulations. So cities across the state are suspending land use planning projects. They can't adopt new zoning laws without being prepared to pay property owners to comply with the changes. Oregon has been transformed—overnight—from a national leader in land use planning to the state where cities can't even amend their zoning codes.

And that transformation is exactly what the anti-planning zealots at Oregonians in Action hoped for when they put together their crafty little ballot measure.

On November 2, 61 percent of Oregonian voters approved ballot measure 37. They read this title on the ballot:

“Governments must pay owners, or forgo enforcement, when certain land use restrictions reduce property value.”

What a title. What a slogan: “Governments must pay owners.”

The measure passed in 35 of 36 counties. It passed despite the opposition of 15 of the 18 county farm bureaus that took a position on the measure, despite the unanimous opposition of every newspaper editorial published on the measure, and despite the opposition of mayors, unions, state elected leaders, conservation groups, and the Oregon Business Association. It passed even though the opposition coalition raised and spent \$2.8 million, more than twice what the “yes” campaign spent.

It even passed in Multnomah County, where Portland is located, a progressive hotbed that cast more than 70 percent of its ballots for John Kerry, that voted to keep the state's only county income tax, and voted against a ban on same-sex marriage that passed handily statewide. Even these radicals voted that “Governments must pay owners.”

Measure 37—which swings a wrecking ball at Oregon's land use laws—was overwhelmingly approved by a state electorate who also tell pollsters that:

- 60 percent of them believe state land use laws are “about right” or “not strong enough”
- 64 percent believe that protecting farmland is “very important”; and
- 70 percent support public planning over private market decisions, and protecting land for future needs

So what caused this disconnect? How can Oregonians support these values and then vote for Measure 37?

Oregon voters believed this measure was about preventing government from treating property owners unfairly. Oregon voters support “property rights” and oppose unfair government action. In other words, they believe that “governments must pay owners” when “restrictions reduce property value”—just as the ballot title reads.

Voters *refused* to believe this measure was about land use planning, or that passage of Measure 37 would allow development on farmland. I know; I watched the focus groups. The opponents of Measure 37 weren’t able to use the argument that measure 37 would undercut land use laws and allow haphazard development on farmland. The actual consequences of M 37 weren’t available to opponents. They weren’t believable to voters, who knew that no matter how nasty and corrupt government is, government won’t allow our farmland to be paved over. Any argument to the contrary lacked credibility; and even with \$2.8 million there wasn’t time to persuade the voters of an argument they didn’t believe.

And so the “No” campaign talked about other, more believable, consequences: higher taxes, more bureaucracy, a field day for lawyers. Voters believed these arguments. But in the end these issues weren’t nearly as powerful persuasion as the simple appeal to fairness: government should have to pay when it jerks people around.

Our legislature has spent the last six months trying to find a way through this mess. But measure 37’s backers—self-made timber barons intent on evading the state’s forest practices rules and extremists who oppose all land use laws—aren’t looking for compromise. They’re eagerly awaiting the train wreck, and hoping that a demoralized public will abandon its 30-year-long support for Oregon’s heritage of planning for the future.

In the months ahead, we’ll be working in court and in the public debate to limit the damage from measure 37 and to ultimately change this terrible law.

But one thing is clear. When property rights zealots try to sell this same bill of goods to Washington voters, they will have a hard time convincing you that this has nothing to do with farmland, nothing to do with land use, nothing to do with planning a better future for your state. There won’t be any “disconnect” for Washington voters. All you’ll have to do is look south across the Columbia and see what is happening to Oregon.