

## MINUTES OF THE METRO BALLOT MEASURE 37 TASK FORCE MEETING

Monday, July 11, 2005

Metro Council Chamber

Members Present: Judie Hammerstad (Chair), Sheila Martin, Doug Bowsby, Jim Chapman, Mary Kyle McCurdy, Keith Fishback, Jack Hoffman, Robert Liberty, Carl Hosticka, Wayne Kingsley, David Whitehead, Charlie Gregorio, Lane Shetterly.

Staff Present: Lydia Neill, Chris Deffebach, Dan Cooper

Others Present: Doug McClain, Clackamas County Planning  
Kelly Ross, HBA Consultant  
Meg Fernekees, DLCDC  
Mary Gibson, MWGLLC  
Sherie Nishikawa, Real Estate Executives  
Al Burns, Portland Bureau of Planning

Chair Hammerstad convened the Ballot Measure 37 Task Force Meeting at 5:38 p.m.

### 1. WELCOME AND INTRODUCTIONS

Chair Hammerstad asked the members to go around the table and introduce themselves.

### 2. APPROVAL OF MINUTES

The June 20, 2005 minutes were approved.

### 3. REVIEW OF METRO CODE- Measure 37 Claims Process

Dan Cooper said that the proposed Measure 37 claims process would go to Metro council, be referred to MPAC, and then go back to Council for adoption and public hearings.

Lydia added that a requirement for an appraisal was included in the ordinance, in order to get an accurate picture of the devaluation of land for the claim. They will have a set fee that will cover Metro staff time. A public hearing will be held. When a claim is received, it will be posted on Metro's website.

Robert Liberty noted that claims will go to council based on staff review, and one of the issues is whether or not there are resources to evaluate the claim properly. This is meant to accompany the Nature in Neighborhoods regulatory program. Details are still to be worked out.

Dan Cooper talked about Metro's views on property ownership by an LLC or an irrevocable trust. They agree with the Attorney General's office that this kind of a transaction is a change in ownership. The date for relating back to the time of regulation is the recording of the deed and not the original acquisition by person who created the LLC or trust. He stressed that it must be an irrevocable trust to be considered in this manner.

Lane Shetterly asked if there was a distinction in claims granted where there is the prospect of compensation that results from a family member designation/transfer.

Dan responded that if they were asked to advise on compensation as mandated by Measure 37, they would agree that it go back further but they haven't looked at that issue yet because the source of compensation is the same status.

Chair Hammerstad noted that in Lake Oswego, they have spelled out criteria.

Dan responded that Measure 37 can be reduced into two questions:

1. Has the person making the claim owned the property long enough to predate the regulation?
2. Does the regulation actually result in a devaluation of the property?

The ownership is the simpler issue, as it there is factual documentation. The valuation issue is of more concern because of the nature of the functional plan requirements that trigger the claims, compared to city and county zoning requirements and state regulations that restrict development. There are goals, regulations, and statutes since 1975, but then in 1998, narrower regulations were adopted that could trigger a Title 3 streamside floodplain protection issue. They also create narrow factual questions that have to be decided on a case-by-case value. For example, if you are not allowed to build near the stream, it does not necessarily mean that your property is worth less or even the overall value is diminished. The Nature in Neighborhoods program creates the same issues for future claims, and the council trying to work its way through that issue.

Another area where there is a potential for claims is land added to the UGB where our functional plan requirement prohibit lot divisions into less than 10 acres. People believe they may have a claim because they are brought into the UGB and they don't want to wait until the comprehensive plans get adopted. They may think that their land is worth more now that they are in the UGB and the land is now considered urban land.

Dan Cooper said that if there were a hearing, Metro would notify the local jurisdiction so that there is a reciprocal sharing of information.

#### 4. CLAIMS UPDATE

Lydia Neill reported that there are over 13,000 acres of claims that have been tracked so far. At the next meeting she will provide a new updated map.

Doug McClain reported that Clackamas is considering a Measure 37 claim regarding 187 acres of prime farmland with a farm designated as a historic landmark in the Molalla Prairie View Historic Farm Corridor. The owners, who have owned it since 1956, are proposing a surface mine operation.

#### 5. DISCUSSION OF TASK FORCE RECOMMENDATION TO THE METRO COUNCIL

Chair Hammerstad introduced the draft *Task Force Recommendations to the Metro Council* and asked for input on the document from the task force.

##### 1. Overview and Background

Carl Hosticka asked if development outside the UGB itself is a problem given the goals of the **2040 Growth Concept** or is the problem providing urban services? He suggested including a statement in the document.

Sheila Martin said that it compromises the execution of the **2040** plan.

Regarding the second point, Jack Hoffman noted that it is not a challenge to municipalities or counties to provide urban level services; they just would not provide them. Rather, it is a problem for landowners to acquire services.

##### 2. Task Force Findings

Robert Liberty noted that it complicates the ability to plan for UGB expansions as we do not know how much it is, in addition to the uncertainty of claims.

Doug was concerned about providing urban services. The task force agreed to combine Robert's and Doug's concerns under the findings.

##### 3. Short-Term Recommendations

###### *Transfer of Development Rights/Credits (TDR/TDC)*

This section suggests that Metro consider two pilot projects with landowners who have indicated they want to participate.

Wayne Kingsley questioned whether Metro has an obligation to provide land for housing and industry, and would they take land that is part of the twenty-year supply?

Robert Liberty answered that it could be part of the twenty-year supply or in addition to the twenty-year supply. Land might be tied to a transfer of development rights.

Wayne asked about the cost of the pilot projects.

Robert answered that there was a budget amendment in May to set aside \$120,000 of staff time and project expenses if additional work needs to be done.

Chair Hammerstad noted that this pilot project would investigate how the process might work as it is difficult to visualize the specifics.

Sheila Martin said that the twenty-year supply would include some of the land that might be a part of this program. This program doesn't have to change what is done with the twenty-year supply.

Wayne Kingsley's initial reaction is that it is cheating the public; there is the twenty-year supply, but in order to develop it they would have to come up with development credits. It would be a change in the intent of the law.

Robert responded that we have a twenty-year supply but it is not being developed because of lack of infrastructure.

Wayne reiterated a concern that some of the reserve could then only be developed under additional requirements.

Judy said that this area requires further discussion.

Lydia said that perhaps the range of administering the program should be looked at, that it's not just a substitution of land inside the UGB that would require buying credits. She asked if it would be better to look at two options, including one that is in addition to the twenty-year supply.

Wayne said he also questioned the cost of running the program compared to paying claims. We don't know how many claims will come up, will it taper off, and will we reach a stabilizing point?

Lydia added that if we reached an equilibrium point, the cost would be more known.

Chair Hammerstad expressed to Lydia that this section may need to be expanded.

The task force agreed with this first recommendation.

#### *Conservation Easement Program*

The task force agreed with this recommendation.

#### *Extra-territorial Extension of Services*

Chair Hammerstad said that this recommendation would only be applicable within a study area or urban reserve, one to two miles from the UGB.

Doug McClain expressed concern that if you extend sewer and water there is a density concern. If you extend to property that was **unzoned** at the time they acquired it, you remove the only impediment to major urban development and this will also exacerbate problems with schools, transportation, etc.

Lydia Neill said that if we develop right outside the UGB to non-urban standards, it is next to impossible to come back and re-develop at urban densities with a street grid, meaningful open spaces, etc.

Al Burns said that we cannot presume that there will be a problem with water and septic.

Chair Hammerstad responded that the picture changes if you have a subdivision of 150 houses.

Mary Kyle McCurdy expressed agreement with Doug's concerns and disappointment with the presentations of the water agencies. She would like to see those agencies take a more proactive role in dealing with the potential impacts of Measure 37. The potential of contamination of water or septic system problems could be an exemption from Measure 37 based on public safety.

Lane Shetterly said that statutes limit the agencies' charge; he is not sure how much flexibility they will have on their own to develop new strategies. A couple of years of Measure 37 claims could lead to some rethinking of outmoded water laws if there are impacts.

Chair Hammerstad felt that limitations include statute, culture, tradition, and fear. She expressed the possibility of the task force impacting policies of those two agencies.

Robert Liberty expressed unease about extending services in anticipation of problems with ground water quality. The Task Force has also talked about contingent UGB expansion and clusters to address these issues.

Charlie Digregario said that there is a lot of expansion going on everywhere. Can't we piggyback on work being done in other areas? There is a lot to be gained by looking at how things are done elsewhere.

Chair Hammerstad noted that there are laws against extraterritorial extension of services.

Chair Hammerstad said that they will rework this section and send it out, and invite people to send back comments.

#### *Address State Agency Response to Proliferating Rural Residence Claims*

Doug McClain noted that both levels of government are restricted from dealing with water resource issues. Except in the areas where critical water supplies are designated, most comprehensive plans do not address water issues. Clackamas County attempted to address it, but got objections from Water Resources Department. The county can assess traffic impacts and the possibility of onsite sewage disposal, and tries to deal with water as best they can.

An example was given where 51 homes are allowed, and then home number 52 is not allowed because too much sewage is already being produced. Sheila Martin said that there is a need to look at the cumulative impact when claims are granted or waived so the developer knows what he is getting into so that this kind of situation does not arise.

Lydia Neill asked what Metro should do about it: conduct a study, ask the two different departments to conduct long term planning, or other possibilities?

Lane Shetterly said that by the time this is released the fate of the thirty-year review will already be decided. It would be good to incorporate water capacity and land use planning. Measure 37 is forcing us to look at this.

Chair Hammerstad said that Metro doesn't have a lot of authority in this, but that these concerns need to be reinforced. If there is an interim committee of the state, this report should be forwarded to that group.

Wayne Kingsley asked if Metro could look at its own boundary areas, working out something within the Metro area and in the undeveloped land outside of the UGB, in order to have some analysis to look at other areas.

Robert Liberty pointed out the Growth Concept Map that includes a rural reserve. Metro has no political authority outside of the boundary, but they do have an interest in the three counties in the northern Willamette valley.

Chair Hammerstad said that if the recommendations are good, they would probably stand up in other areas if they are applicable. She noted consensus on this recommendation.

The last sentence of this recommendation will be deleted. Otherwise, there is consensus on this recommendation.

#### *MPAC Review*

Doug McClain asked if consistency referred to jurisdictional interpretation of issues.

Chair Hammerstad replied that MPAC should discuss this issue.

Jack Hoffman concurred, saying that consistency of process is important. If Measure 37 is going to be around for years, it will be important to coordinate between jurisdictions.

Mary Kyle McCurdy suggested that the point of using conservation easements and TDr/TDC's be used in a broader way and applied to other issues.

Robert Liberty said that communities do not have equal resources to evaluate claims and we can get different results on the same claim depending where we are. We are using different legal theories to evaluate Measure 37, but as this gets straightened out, we should have more opportunity for coordination and consistency.

Al Burns brought up the issue of due diligence.

Lane Shetterly said that this is a political issue as some jurisdictions are more inclined to be more diligent; it is also a resource issue. The Attorney General requires a minimum level of diligence and this will be tested on a claim-by-claim basis.

Jack Hoffman thought that MPAC would be willing to take on the consistency issue.

Funding Mechanisms: The suggestion was made to delete "outside the UGB". In the recommendation, add "consider capture of increased value" and "no funding mechanism currently available".

Carl Hosticka asked whether Measure 37 gives people the right to have the regulation waived, to have the structure to develop?

Robert Liberty replied that this is connected to ways of capturing value or creating incentive to clear claims. Is there a way to develop infrastructure and clear claims at the same time?

Sheila Martin said that the reason there is no funding is because Measure 37 is a false choice and it limits the choice that local governments have. It is more destructive to the tools of planning than it might appear. Perhaps we need to be more obvious about why it's a problem.

Chair Hammerstad said that the report needs to be philosophically neutral, and we might not want to use the words "false choice."

Charlie Gregario: The first words in the Measure are "shall pay", but a lot of people who voted for Measure 37 were thinking land use reform, not pay. There is a responsibility to raise the issue of funding mechanisms.

Chair Hammerstad suggested that the recommendation could include "to explore funding mechanisms".

Charlie Gregario asked if the polls indicated that the general public felt they would be paid in lieu of waiving the regulations?

Robert Liberty talked briefly about polling results on Measure 37. He said that the polls indicated that people thought the outcomes of Measure 37 would be waiver, payment, more bureaucracy, and more taxes. However, waiver was not more than 10%. He said that while they expressed support for Measure 37, support for farmers and families scored higher than Measure 37. They thought they were different subjects.

Regarding funding mechanisms, Jack Hoffman requested that "no funding mechanisms are currently available for local governments to compensate claimants" be inserted. Elected officials don't have the tools to make this choice, even though voters think that compensation is an option.

Chair Hammerstad directed the discussion to next section.

Robert Liberty suggested instead of monitor progress, insert "Follow up recommendations of the task force."

Carl Hosticka clarified that the task force would make recommendations, and an informal working group would flesh them out.

Chair Hammerstad added that the informal working group would report back to Metro council.

Robert Liberty said he would like to see the useful ideas brought forth by the task force developed into a useful set of options.

Wayne Kingsley requested that his name be taken off the list once the Task Force ends and the working group begins.

Chair Hammerstad suggested that this section requires more work.

#### 4. Long Term Recommendations

Keith Fishback noted that the agricultural community needs to focus on areas that are highly affected by Measure 37.

Robert Liberty clarified that "Claims should be cleared" means "settled."

Keith Fishback said that the main focus is to try to preserve farmlands. The farmers group fully supports the concept of some sort of funding mechanism on all future expansion. Long-term preservation of prime agricultural lands is important.

Chair Hammerstad raised the point of periodic review.

Mary Kyle McCurdy suggested changing this section to say "urban reserve study areas for the purpose of measuring impact on Metro's decision on expansion."

Chair Hammerstad suggested deleting the next recommendation, which begins "Work with local governments..." and move this recommendation to the TDR section.

A short discussion of Metro's jurisdiction ensued. Regarding the last recommendation, state where claims will be monitored: the three counties and twenty-five cities.

#### 6. UPDATES ON CLAIMS, STATUS OF LEGISLATION, AND OTHER MATTERS

Lane Shetterly said that the bill has been assigned to the State and Federal Affairs Committee. Rep Garrard would be given special compensation to work with the State and Federal Affairs Committee. The bill had no provision for transferability; it is possible that transferability will be added. The bill addresses the claims process, judicial review, and a new element allowing a single residence on a tract of record.

During the judicial review process, the judicial review process would be on the record and limited to the information provided to the government in the course of the claims process. It eliminates the provision to recover attorney fees. It will be hard to come to consensus on this and they could adjourn without a bill.

The next and final meeting of the task force will be August 8. The task force will report to Metro Council at their August 18 meeting.

## **7. ADJOURN**

There being no further business to come before the Metro Measure 37 Task Force, Chair Hammerstad adjourned the meeting at 7:15 p.m.

Prepared by Laura Dawson Bodner

### **ATTACHMENTS TO THE PUBLIC RECORD FOR THE MEETING OF JULY 11, 2005**

<b>Item</b>	<b>Topic</b>	<b>Doc Date</b>	<b>Document Description</b>	<b>Doc. Number</b>
Draft Report	Measure 37	July 11, 2005	Task Force Recommendations to Metro Council	071105m37-01

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