

MINUTES OF THE METRO BALLOT MEASURE 37 TASK FORCE MEETING

Monday, August 8, 2005

Metro Council Chamber

Members Present: Judie Hammerstad, Chair, Dominic Biggi, Douglas Bolwsby, Keith Fishback, Jack Hoffman, Wayne Kingsley, John Leeper, Robert Liberty, Sheila Martin, Mary Kyle McCurdy, Bonny McKnight

Staff Present: Lydia Neill, Dan Cooper, Chris Deffebach, Andy Cotugno

Others Present: Sparkle Anderson, Farwest

Chair Hammerstad called the meeting to order at 5:35 pm.

1. WELCOME AND INTRODUCTIONS

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

2. APPROVAL OF MINUTES

The July 11, 2005 minutes were approved.

3. CLAIMS UPDATE

Lydia Neill reported that there are currently 17,000 acres of claims in the Metro area: Clackamas County has 7,800 acres, Multnomah County has 381 acres, and Washington County has 9,500 acres. The number of claims approved has increased to 1,500 acres. More approvals are expected as the 180-day deadline approaches. Only a couple hundred acres of claims have been withdrawn.

Lydia gave an update on the meeting with MTAC that took place last Wednesday. Two items were brought forward for feedback: the Measure 37 recommendation that the Task Force is going to take to Metro Council, and the claims ordinance. There were not many comments on the ordinance as it is similar to other ordinances that have been adopted around the region.

MTAC did, however, have comments on the recommendation. In particular, having a uniform claims process in the region is attractive but they felt it could present problems. Washington County and Clackamas County were concerned about the appraisal evaluation requirements. From their perspective, there is no money at all to pay claims, no matter the size of the claim. They did not see a reason to have an appraisal as part of the application. They felt that a statement of diminished value would satisfy the requirement. No one mentioned that any claims had been paid out so far. Transfer of development rights brought concern from Washington County. A couple of other jurisdictions raised questions about using a case study approach to provide an illustration of how the TDR program would work. Specifically, they thought that it might create expectations among property owners involved in the case study that Metro would bring those areas into the UGB or take some other action. If the case study approach is used, we need to be clear about how the information will be used.

Mary Kyle expressed that this idea is relatively new to the people at MTAC; they did not have a map, and did not know the boundaries for the exercise, for example.

Robert Liberty noted that their concerns are understandable and that it is important to help people understand that we would involve these properties for research purposes only.

Lydia continued her report. MTAC members discussed the conservation easement program and questioned why Metro should lead this effort, saying that Clean Water Services has been using a conservation easement program. They did acknowledge that this type of program could have a role in protecting agriculture. There was discussion and disagreement on the water resources issue. Lydia had

stated the task force's concerns that the long-term impacts are not being studied by either agency; a succession of claims could lead to detrimental effects, creating problems for property owners, local governments serving the areas, and others. Doug McClain felt he had stated that DEQ would be looking at the long-term impacts. Lydia felt they differed on this point. There was also a discussion about why claims should continue to be tracked. Some felt that claims should be tracked to estimate the impacts of the measure itself and others felt that since we don't know how the claims are going to play out it would be simpler to, just track the building permits and the subdivisions that are a result of approving the claims.

Chair Hammerstad noted if transferability is allowed, the owner of vacant land could flip it, and then the land might sit for some time before being developed. Bonny McKnight concurred, noting that an individual could make a claim and then "put it into the bank," not doing anything with the property for 8-10 years. Metro cannot plan for anything unless they know which claims are granted.

Robert Liberty asked if claims so far have gone to local governments first for approval, and then to the state? Lydia replied that she would have to find out, but that claims do have to go through all levels eventually.

Dan Cooper clarified that special districts are not written into Measure 37.

Lydia continued her report, saying that the possibility of providing services outside the UGB generated considerable discussion, ranging from governments' ability to provide services, to their willingness to provide services, to looking at specific situations where a property is on the UGB boundary, to long-term issues, which may affect a city. Most said it this is something that would be used sparingly.

Andy Cotugno added that they don't see the need to do an appraisal, because they are dealing with EFU land. They feel that the value difference between land you can build on and land you cannot build on is so obvious that no matter the actual value, it is still a reduction in value. The issue under review is Metro's claims process, which was adopted to deal with habitat and wildlife claims, open spaces versus decreased land value. They acknowledge that this situation is one that needs to be quantified.

Chair Hammerstad asked if some claims are aimed at other regulations.

Lydia replied that they do keep track of these in their database, but would only know if an applicant has indicated that in the claim.

Chair Hammerstad said that they had Lake Oswego received a claim under the tree ordinance which prevented the landowners from harvesting timber, which they thought would decrease the value of their land. But does it or does it not devalue the land? The neighbors might think trees enhance the value. It is a Measure 37 claim. Lake Oswego will be considering some changes to the tree ordinance.

Lydia pointed out during the MTAC discussion that an appraisal would be useful to establish value if Metro developed a transfer of development program.

Sheila Martin said that in half of the statewide claims, people identify the ordinance. Most are EFU or forestland. Regarding the valuation issue, no one is talking about valuation because there is no money, but it is important to show people how much wealth is being transferred as a result of this. It is important to reveal that checks are written to some people, and not to others.

Bonny McKnight said there is a claim in north Portland coming to the City Council this month, which requests more units than the plan would allow. Smaller, higher end units generate more money.

Chair Hammerstad noted that it is hard to say if it increased the value or if there would be a potential increase in value.

Lydia said that not many claims are being denied, and they have not looked at the claims that were withdrawn to determine why they were withdrawn.

4. DISCUSSION OF TASK FORCE RECOMMENDATION

Overview Background

Regarding number three, Mary Kyle noted that the lack of ability to provide services isn't necessarily a negative; it could be a way to control development.

Sheila Martin said the negative consequence is the lack of control over where the ad hoc services are provided.

Chair Hammerstad suggested it is a lack of control over provision of urban level services.

John Leeper said that this seems to say that a lack of means to provide urban services is preventing us from mitigating claims. We have to look at this in the context of overall land use planning. In number three, stating that there is a lack of a mechanism to provide urban services to rural areas is going contrary to land use planning as we have known it since the 70's.

Chair Hammerstad replied that the reason it came out like this is because people in those rural areas are going to get sewer and water (traditionally urban services) through the rural mechanism of septic systems and wells. Is it better that they get urban services?

Lydia said the perhaps the point of this is a tool that would be used in a very specific instance. In Washington County, far from the UGB, extending services would not be practical, however in other areas like Stafford Basin, on the edge of the UGB, we might want to consider this.

Chair Hammerstad said they want to know the effect on the 2040 Growth Concept.

Wayne Kingsley said he understands that Metro has to provide a 20-year land supply. It seems that the UGB will expand, beyond Metro's boundaries. This wording seems to say that if the government wants to, they could consider expanding urban services if it was advantageous to do so.

Robert Liberty said that the wording is an issue. There is more to this; we could extend services as a technique for clustering development. The main thing is that we should we consider it as a tool.

Chair Hammerstad said that in this document the task force is trying to be neutral philosophically, neither preventing nor promoting development.

Lydia will rework this section to assure that it is neutral.

In the following sections, the proposed changes are noted in bold font.

Task Force Findings

First bullet: In parentheses, add EFU/**EFC**

Second bullet: Add **some** property owners and strike **large-scale**

Third bullet: Strike **claims** and add **land use approvals**

Additional discussion on this section ensued, and Lydia summarized suggested changes as follows:

Two bullets, one dealing with the difficulty of planning for and impacts on future UGB expansions, the second dealing with the potential for commercial/industrial claims, including potential significant employment numbers impacts.

Fifth bullet: Concern was voiced over the need to address the adequacy of public services related to safety and the subsequent cost of adequate safety. Specifically, this is related to forest zones and risk of fire. The decision was made to add **adequacy** in parentheses.

Sixth bullet: There was discussion on the issue of inconsistency including:

-The data requirements are consistent, but there can be inconsistency in how claims are processed. Agencies want to keep this independence.

-The question is not inconsistency so much as in standards used to decide a claim.

-It may be more of a problem with cities and streamside protection. It may cause concern if cities are taking different approaches to environmental protection.

-There is a responsibility in terms of compliance to the law; differences in compliance could cause inconsistencies. If they are not all fully evaluated where there is a claim, this could be a concern.

Strike **is an inconsistency** and add **are differences**.

Short Term Recommendations

Transfer of Development Rights/Credits (TDR/TDC)

- If you do this program, that land should not be a part of the twenty-year land supply.
- We should consider land in the 20-year supply. It may be a way, if there is excess demand, to capture and provide payment to people. Would not want to rule it out.
- If you have land in the UGB, why would a developer want to buy credits to develop that land? What does he get? An example would be if a property were zoned with a 45-foot height limit, but credits allowed building to 100 feet, there would be an opportunity for additional density. The relationship of how this program would work between Metro and the local government is unresolved.
- As Metro does not have an established program for this, TDR and TDC will require a considerable amount of study and documentation. If you are going to have a pilot project, add in the word “research.”
- There is concern about particular properties being named. We want to have a study because we want to come back at the end of the year and do something real. Naming the location of the property is not critical. It is important for people to know this is going on, rather than reading about it after the fact. This is not designed to smooth the way for particular UGB expansions.
- The properties we would be looking at are mixed; Cooper Mountain includes properties with and without claims, and the St Mary’s property does not have any claims.
- The main focus is to try to develop a mechanism to protect core agricultural areas, so that agriculture does not have to work around urban development.
- If there is an owner out on EFU land who submits a claim and wants to build a subdivision, how can we as a local jurisdiction say no, and turn the claim down?
- People submitting claims are motivated by increasing the value of their land. If they can sell land somewhere else and receive the same profits, they will.
- The value is the issue; if you can recoup the value you think you may lose, you can preserve the agricultural land and move the development somewhere more appropriate.
- This all voluntary for landowners; it just gives other options for the claims that may also achieve other goals at the same time.
- Local governments have the ability to pay or waive, and these short-term recommendations are exploring how we can fulfill funding mechanisms, which are absent from the measure.

Remove references to any specific properties, substitute **illustrative** properties. Add **owners and developers expressed a willingness to participate** in such a project. Strike **pilot** (in the background information and in the recommendation) and replace with **research**.

- Is it important that these particular properties are used? How important is the aspect of willingness to participate? Perhaps there are better possibilities of properties for case studies.
- There is extreme interest in the Saint Mary’s property as there is no Measure 37 claim but there is a high value. Cooper Mountain has mix of claims and no claims. Property owners are motivated because they would like to get in the boundary.
- There are stakeholders other than property owners and developers.

Insert **must create value to make it the program successful**.

Conservation Easement Program

- It seems that it this is the same potential problem as with the 10 acre parcels. If you don’t select where the conservation easements occur, the whole region could end up in the UGB or you could end up with a conservation easement in an area where you want to develop.
- The point of the conservation easement program is to identify areas crucial for protection of farmland. The map shows projections indicating that there is enough land to accommodate growth to 2050 given a twenty-year supply.

- We should provide comments on provisions for reversal.

Add protection of farm and **forestland**.

Extra-territorial Extension of Services

Change consider to **considering**.

Add **environment, traffic, and fiscal** to the consequences.

Address State Agency Response to Proliferating Rural Residential Claims

-Limiting this recommendation to the Metro area (such as planning for the aquifer and potential sewage impacts) might make it more acceptable.

-Make recommendations for metro policy and also for lobbying; separate what Metro can do and what issues would require lobbying the state.

In last bullet under Task Force Findings, remove **area**; add Metro **counties**.

Metro Policy Advisory Committee (MPAC) Review

Change affect to **effect**.

It might be useful to look at evaluation as time goes on. There may be differences between counties as to which and how much Measure 37 development is approved. Add in as a discussion line: **Consideration of the impact of Measure 37 development should be reviewed.**

Funding Mechanisms

-The last line of the recommendation is too abbreviated and not clear. It seems to refer to the properties rather than to the increase in property values as a result of government action. Lydia will re-work this sentence.

Informal Working Group to Follow Up on Task Force Recommendations

-Is the word “informal” accurate? It would be a formal, not an ad hoc group.

- What timeline are we looking at for funding; is it present and future?

Add **present and future** funding mechanisms.

Insert **priority claims**.

Lydia will check with David regarding using the word “formal”; otherwise, delete **informal**.

Long Term Recommendations

First bullet: Remove **clear**; add **settled by means other than waiver**.

-With the expansion of the boundary, we have to make sure development occurs.

-The report focuses on development outside of the UGB. We have not addressed the issue of development inside the UGB that compromises the 20/40 growth concept. Sophisticated retail and residential developers will be coming in and asking for development, as is happening in Milwaukee. Jack will develop this idea and will forward it to Lydia.

- We need to note the possibility of a future special session of the legislature on focusing on Measure 37. If this occurs, it would be advantageous to be there.

Re-insert **the recommendation** that the report from this committee be used by any interim state committee if appointed.

5. STATUS OF LEGISLATION AND OTHER MATTERS

Dan Cooper reported that the legislature has adjourned, and that the Measure 37 legislation did not pass. One piece of the legislation passed in the House and Senate and had a provision that would have authorized state agencies to waive state statutory requirements. The legal issue is that a successful challenge could be brought to the current practice of the state delegating authority to Lane Shetterly to make decisions on behalf of the state. If a challenge were successful, the legislature would convene in a special session because none of the waivers granted would be valid. The fear is that the State's credit rating would be impacted because of the potential unknown financial disclosure. The remedy would be for those people to litigate seeking compensation. This scenario could result in a re-entry into negotiations that were not completed this last session.

The Metro Council meeting will be on August 18 at 2:00 pm. Lydia will send changes on the Task force recommendations out in the next week. Please forward any additional comments to Lydia. Thank yous and appreciations were expressed to Chair Hammerstad for leading the Metro Measure 37 Task Force.

6. ADJOURN

There being no further business, Chair Hammerstad adjourned the meeting at 7:40 pm.

Prepared by Laura Dawson Bodner

ATTACHMENTS TO THE PUBLIC RECORD FOR THE MEETING OF AUGUST 8, 2005

Item	Topic	Doc Date	Document Description	Doc. Number
Memorandum	Measure 37	July 18, 2005	Draft of Measure 37 Task Force Recommendations	080805m37-01
Correspondence	Measure 37	June 20, 2005	Measure 37 Solutions	080805m37-02
Correspondence	Measure 37	August 8, 2005	Measure 37 Task Force Findings	080805m37-03