

MINUTES OF THE METRO MEASURE 37 TASK FORCE MEETING

Tuesday, February 15, 2005

Metro Council Chamber

Members Present: Robert Liberty (Chair), Carl Hosticka (Vice-Chair), Doug Bowlsby, Jim Chapman, Keith Fishback, Margaret Kirkpatrick, Ed MacMullan, Sheila Martin, Bonnie McKnight and Martha Schrader.

Members Absent/ Possible members: Brenda Davis, Judy Hammerstad, Jack Hoffman, Paul or Barbara Iverson, Adelle Jeike, John Leeper, Mary Kyle McCurdy, Sherie Nishikawa, Tod Scheaffer, Ariel Stone-Halpern

Staff Present: Dan Cooper, Kate Marx, Lydia Neill, Jenny Dempsey Stein

Others Present: Meg Fernekes, John Ross

Chair Liberty convened the Measure 37 Task Force Meeting at 5:31 p.m.

1.a) WELCOME AND INTRODUCTIONS

Chair Liberty said members in this task force have many skills and they appreciated the time investment in this challenging project of understanding and reconciling Measure 37 with Metro's other responsibilities and goals.

Councilor Hosticka was the council member from District 3 including Beaverton in the North to Wilsonville in the South. It was his 5th year on the council. He was a professor.

Clackamas County Commissioner Chair Martha Schrader had a high interest in land use planning issues and was starting a new four year term, after an appointed 2-year term, filling Michael Jordan's, Chief Operating Officer, position.

Sheila Martin was director of the Institute for Portland Metropolitan Studies at Portland State University (PSU) and an economist by training. She spent 5 years studying economic development policy in Governor Locke's office and worked briefly with growth management issues. PSU, the School of Urban Studies, and the Institute have a strong interest in the future of land use planning and how Measure 37 played out in the long term.

Doug Bowlsby was a senior vice president and credit officer with Bank of America. He worked in a government-banking group. He had worked in banking for 20 years and for the last 7 years had been involved with underwriting and making loans to municipal governments.

Bonnie McKnight coordinated Portland's city-wide group made up of all the neighborhood coalition land use chairs and interested persons. There was a mailing list of 500 people that enabled outreach about these issues. In December the group began organizing to have a public presence in Measure 37 and to attempt to bring neutral information to the public so they would have a better idea of its impacts.

Pete Fishback was Vice President of the Washington County Farm Bureau giving another perspective to this group. The Bureau thought Measure 37 would have more of a detrimental impact to agriculture than any urban growth boundary expansion because growth would pop up anywhere in the EFU areas. He raised nursery stock, as well as commodity crops, grass seed and

clover wheat. He started his farm in the Bethany area, which had been widely publicized as it used to be a rural residential area 30 years ago. His base of operations in Banks was a 200-acre farm completely surrounded by long-term residents with potential Measure 37 claims. His satellite farm was 150 acres and an adjoining neighbor had just filed a claim to subdivide his 100-acre plot into 5-acre tracts.

Jim Chapman was President of Legend Homes Corp. and the Homebuilders Association. Legend Homes built 500 homes a year between Portland, Corvallis and other western U.S. states. He was confident that Measure 37 could be worked out.

Jenny Dempsey Stein had been working with Metro's Parks and Solid Waste and Recycling departments and would be helping with the meeting minutes.

Lydia Neill was a principal regional planner at Metro whose work for the last few years had been related to the urban growth boundary and Metro's analysis of land both inside and outside of the boundary. She was assigned to Councilors Hosticka and Liberty to be the project manager and lead staff person to this task force. She would develop a work program with a lot of different research elements and provide beneficial information to the committee in order to make decisions.

Meg Fernekes of the Department of Land Conservation and Development (DLCD) stated there were 100 statewide claims filed as of last week and DLCD was processing 65 of them.

Ed MacMullan was with EcoNorthwest.

John Ross worked with the Planning Association.

Dan Cooper was Metro's Attorney.

Linnea Nelson was a Council Support Specialist working with Councilors Hosticka and Liberty.

Margaret Kirkpatrick was with LCDC and an attorney in Portland.

Kate Marx was the director of Metro's Public Affairs.

- b) Membership status in this work program that the task force was about to examine was not confirmed. The committee had started ahead of the Metro Council so all of the members, including Councilors Liberty and Hosticka, were not officially confirmed members of the committee, but a preliminary discussion of the committee members did not yield any objections.

2. DISCUSSION OF COMMITTEE ORGANIZATION, PURPOSE AND WORK PLAN

- (a) Review Purpose Scope of work.

The scope of work had budget implications, which had not been settled. The purpose and potential activities were expansive, and based on the committee's advice and resources. There may be a narrower or slightly different program. The objective for this meeting was to clarify why the committee was here, its tasks and schedule. There would be an update and

opportunity to share information on claims and the status of legislation. Copies of a draft of duties and responsibilities and the resolution passed in November were available (and included in the record). The Chief Operating Officer was identified as the convener but this has devolved to two councilors chairing the committee. The work program and purpose was to review and advise Metro Council on the impacts of Measure 37 claims on property owners, the ability of Metro to manage the Urban Growth Boundary (UGB) and the implementation of goals contained in the 2040 Growth concept. The addition of other perspectives to the committee was expected but has not been confirmed. Dan Dolan, a supporter of Measure 37, was not available. A list of confirmed, provisional and potential members would be available.

Councilor Liberty asked for comments about the scope of work and referred to the February 10, 2005 Draft Duties and Responsibilities of the Metro Measure 37 Task Force Item 3. It was advising Council on how Measure 37 would affect UGB implementation and general growth management functions, and sharing information and advice regarding technical issues.

Councilor Hosticka stated the Metropolitan Policy Advisory Committee (MPAC), which was a group of local government elected officials and citizens, reviewed this and expressed interest in sharing information among local governments about how the local governments are handling claims, with a goal of more consistency and a way for them to understand what neighbors actions mean to them. Information sharing. By charter, the Metro Council was ultimately responsible for the Urban Growth Management Functional Plan, the urban form indicated by this map, and adopted goals and objectives. The Council was concerned how Measure 37 changed its ability to accomplish these goals, and what tools were not currently being used to do so in light of legal framework changes. Research and information sharing were also essential.

(b) Review and Comment on Proposed Workplan

Councilor Liberty referred to three Draft headings under the Work Program and Purpose. Estimating Measure 37 implications for the region was technically complicated and involved imagining where claims might be filed based on the potential for claims and on the location and nature of filed claims. Implications for agriculture and the provision of and demand on services will be reviewed. It was assumed that claims would not be paid but uses authorized. Cumulative impacts of, for example, the water quality implications of 10,000 new lots on septic systems in Clackamas County, would be examined. Given the relative low density of developments, it may or may not have a significant effect on land supply calculations in providing residential housing needs. If industrial lands were used for commercial uses, this may have implications for Metro's recent industrial lands analysis. Lastly, he addressed making recommendations and Metro's role. Metro was not the state or legislature, but had a plan represented by the growth concept, and had a responsibility to determine what the implications of Measure 37 were in fulfilling this mandate and reconciling this with Metro's growth concept.

There would be some effort to reconcile claims made against Metro, local governments, and the state. There would be information for and opportunities for public comment. Actions by local governments and the state agencies that might help this effort would be evaluated. A list of major meeting topics would be shaped by the committee's recommendations. Philosophical discussions about what was fairness in terms of land regulation and how to

approach in future. How to implement the growth concept overall was a complicated effort and was the subject of three meetings. Examining a way to accommodate claims in one part of the region and linking to provision of services, transferable development rights and integrity of the working landscape in Clackamas County was challenging. Potential urban claims may be the most varied and difficult to analyze, and local governments may not fully tackle this.

Mr. Bowsby asked whether all of this would be done by Sept 1. Councilor Liberty replied no, that work would be sorted.

Ms. Kirkpatrick commented that changes in the task force direction would depend on what the state legislature did and required flexibility. Councilor Liberty affirmed this and stated his understanding from Jack Hoffman, the chair of MPAC, an ex-officio member and land use attorney; that for many local governments, consequences of Measure 37 were so significant that they deferred to legal counsel. This would not work for Metro. Basic questions of interpretations of the measure may have big effects. The committee needed to understand the measure. As a land use attorney, he stated that interpretations that were adopted or challenged would create different implications. Referring to the work plan, Metro Council and not the task force may choose to directly make recommendations to LCDC.

Mr. Chapman noted that the work plan approach was logical in sequence. Commissioner Schrader commented about Ms. Martin's excellent analysis and initial bills, including one forwarded by Kurt that had a hearing already, and asked about other pending legislation. This information would help frame the discussion and help the committee answer questions. Councilor Liberty answered that Mr. Cooper would give an update on potential legislation. The conventional thinking was that legislation would not happen soon, and Laura Oppenheimer's article of February 14, 2005 discussed the reasons to not make changes. Given the way the measure was playing out, there may be more sentiment for change over time.

Ms. Martin had maintained a list of the land use bills going through the legislature. She noted that Senator Schader's bill was the most significant, but there were other bills that addressed small changes such as the "Dorothy English" bill which passed the Senate and was now in the House. Court decisions would affect how Measure 37 played out, and many were waiting to see how it was interpreted before trying to change it.

Mr. Bowsby noted that he was in contact with Ken Sherman and the Oregon Banker's Association (OBA) had no official view on measure 37. They were focusing on the technical issues, particularly whether Measure 37 rights were unique to the individual or the land. Sometimes bank customers finance improvements by receiving strictly personal waivers. Beyond this issue no one was prepared, and the industry was taking a wait and see approach, just like with Measure 7.

Ms. McKnight stated the city of Portland would have a resolution before council to establish a Measure 37 fee and process in the next two weeks. The city was waiting to see how this moved. There were only 9 claims so far, with 6 based on environmental codes and one for \$440,000 for selling cars on one's property. There was no definition for how to assess the impact and it was a set of value judgements. There needed to be baseline information, input from the real estate industry, and a way to discern truth from estimates. She was working directly with Hannah Zuhn, the manager of the city of Portland's Measure 37 claims, and Ms.

Zuhn would be interested in reporting information to this task force. Portland was not yet as besieged as other areas in terms of volume. One claim was over \$1 million, but most were relatively small. One approach was to make decisions before this continued.

Mr. Fishback added that the 180-day deadline and Measure 37's vagueness were problematic. The quick approvals in Yamhill County had been without full consideration of all implications. Jurisdictions should slow down to reevaluate and fully understand consequences of these decisions.

Councilor Liberty explained that some of the measures passed in November and December 2004 and 2000 after Measure 7 had policy choices made by local governments embedded in them and not necessarily with the recognition of the people voting on them. How to handle claims and waivers were big questions. Mr. Hoffman emphasized the importance of discussion of real evaluation and merits to claims, what leaves were being offered, whether a public role was offered, and this discussion would occur at the third meeting.

Councilor Liberty asked if the DLCD was acting as a lead agency with the other agencies in responding. Ms. Kirkpatrick confirmed that Lane Shetterly of DLCD would be the state lead, and all other agencies were involved, including transportation and environmental quality.

Mr. Chapman expressed hope to avoid encircling the UGB with a penetrable barrier of large gentleman farms which could certainly happen. A study of the issues would be helpful. Mr. Fishback countered from an agricultural perspective gentleman farms could encircle the UGB, but the problem would be farms "fingering out" into the center and the UGB being held too tight may have caused this problem. There needed to be a dialogue to address this.

Ms. Neill commented that the task force needed to spend time figuring out how to analyze this from a staff perspective, and what kind of information was available to be able to flesh out issues. Staff did an initial assessment of this from county assessors and the Data Resource Center (DRC), but did not find an easy access that would allow staff to hone in on where the claims might come from and how to quickly assess that for Metro and the task force. This task force will be instrumental in developing a good methodology to tackle these issues.

(c) Review and Comment on Proposed Meeting Topics

Councilor Liberty summarized that members seem comfortable with the work plan so far, but need time to review it. Time at the next meeting will be allowed for further review. The purpose is set in the resolution, but work program and meeting topic suggestions are welcome. Secondly, the level of Metro's investment given its budget will be clarified. Local government and state agency connected members should be able to state their contributions to this value added effort.

Ms. Kirkpatrick commented that banking association representatives and realtors were assessing what measure 37 would mean if it bogged down and lenders made decisions not to lend or title companies not to issue title insurance. They should all be represented on this task force. Councilor Liberty answered that the deadline for the first lawsuits was June 2nd so answers to these questions may come later. Members were welcome to invite others to these meetings. At the next meeting, prospective attendees could be invited. Another suggestion was to hold the meeting at 7 or 8 p.m. Members could comment on claims funding options.

Item 4 related to public attitudes and perceptions, will ask for briefings, from people involved in campaigns and opinion research, both focus group and polling. What voters wanted framed a lot of these results. Members may not agree with their assessments and be surprised by the information. There was an expectation that claims would be paid, although there had been no movement yet in this direction. The committee owed voters a discussion of how this would work. It related to legislation proposed in 2001 and Senator Schrader's bill.

Mr. Bowsby clarified that he would share information with the committee and the OBA, but he was not an official representative.

c) Review, Discuss and Revise Meeting Dates, Times and Length

Councilor Liberty noted meeting time conflicts with 2 councilors meeting and continuing education. He proposed the 1st and 3rd Wednesdays opposite MPAC. Meeting times of 5:30-7 p.m. at Metro were proposed for March 2nd and 16th, April 6th and 20th, May 4th and May 18th, June 1st and 15th, and July 6th and 20th. Meeting minutes and a tape copy as requested would be provided after meetings. Alternate members may attend as necessary. The March 2nd meeting may be longer.

3. OVERVIEW OF CLAIMS FILED

Lydia Neill explained that Metro initially wanted to get an idea of filed claims, although other agencies were tracking claims too. Metro called all of the cities and counties, went to available websites and built its own database. One handout lists single claims, and the 11 by 17 sheet contained some duplicates because people filed in more than one place for the same claim. This sheet had additional information from the Data Resource Center's (DRCs) Regional Land Information System (RLIS), such as land and building values, and year built. Metro staff compiled a list of current claims. The state Department of Revenue was tracking claims, but this database was incomplete, probably because not everyone was reporting claims to the state. One of the legislative fixes that would be great was if all cities and counties had to report all of their claims to one central repository. Portland State University was also tracking claims and working with 1,000 Friends of Oregon to conduct analysis of claims and enter into their database. Metro would like to compare its database to this one. A database was only as good as it was regularly maintained.

This map depicts information as of February 3rd. Most of the claims were in Washington County, with 1,500 acres in Washington County, 1,100 acres in Clackamas county and 30 acres in Multnomah County. A majority of claims were rural and only a handful was inside the existing urban growth boundary. Most of the claims outside of the UGB were for residential, single family homes. Metro has not analyzed individual city or county claim applications yet. It had entered summary information into the database and pulled data from there. PSU's analytical work would be of interest to this committee and to Metro. The committee needed to decide whether Metro continued maintaining its database, or pick up where PSU left off. The state level information would not be usable because it was not complete.

Ms. Martin addressed PSU's ultimate objective of ensuring a fairly complete statewide database. The state Department of Administrative Services (DAS) was going out to bid for a web enabled database system. PSU ensured that 1,000 Friends of Oregon, the Associations of Cities and Counties, Metro and PSU were at the table developing requirements documents for this database. It was especially important to involve cities and counties so that they would persuade local

government members to use this database. Claims must be entered and updated as decisions were made. Over time, disposition of claims would yield important information. Ms. Martin would check with DAS. 1,000 Friends and cities and counties were providing comments about required database fields. 1,000 Friends had been using its volunteer network to collect and fax current paper copies of statewide claims to its office, where staff then entered them into their database. PSU offered data entry assistance from PSU student volunteers. Almost 140 claims had been entered, with 35 new ones received today. 175 statewide claims were known, but these did not include claims that were solely against the state, and not also against local governments. Ultimately when the DAS web enabled database was ready, PSU could upload all this updated data, and local governments would update it with new claims and updates of existing claims instead of entering a backlog of existing claims. PSU hoped to ensure a complete database with a minimal amount of work and the greatest amount of compliance.

Councilor Liberty stated that local governments would be of most help in providing more complete, up to date information, and more qualitative as well as quantitative developments. This map didn't reflect big differences between Stafford Basin half-acre lots versus other claims with one house on an existing parcel or farm. It would be helpful to display this in both map and tabular forms. Not everyone was asking for compensation. Comparison and evaluation of the different claims would be part of public information.

Ms. Neill referred to the Clackamas and Washington County websites. Washington County's database was really complete. A number tracks each claim and the database displayed the property address and was linked to a map, where highlighted claims were geographically located. The state database did not include complete property addresses or map and tax lot numbers, which were key elements to spatially locate and link to Metro's GIS system. From a technical standpoint, Ms. Neill would work on a standardized format to ensure complete and useful information.

Ms. Martin added that PSU and Metro's GIS department had been assessing the format of tax lot sections or grid information in the state database. Once this was web enabled, it would link to a mapping site, and immediately display claim locations.

Councilor Hosticka asked if the committee could see a data text entry template and how the database would work in sorting categories. Ms. Martin responded that the original 1,000 Friends Access database included drop down menus for types of use requested, such as residential, different kinds of subdivisions and partitions. The database was trying to categorize this data in ways that would be sortable.

Councilor Liberty asked if the committee found this map useful and several members answered yes. Ms. Neill added that she had made two versions of the map, one with jurisdictional boundaries, which would be useful if more claims are filed inside the urban growth boundary.

Councilor Liberty described a simple map characterizing the kind of relief sought, either monetary or non-application of the regulation. It was an easy mistake to assume all the claims were valid. Conversely, Measure 37 meant that claimants might be entitled to multiple claims, which may apply to different regulations at different times. If the relief was a development pattern, this may obviate one's ability to take advantage of a second claim. A property may have sequential or layered claims. This committee would understand Measure 37's uncertainty. Sequence of claims and whether there was a peak of initial claims and leveling off or an upward trend is unknown, partly because of legislative uncertainty and funding availability. A farmer

could see grant waivers in his vicinity and think he's out of business. Over time, members would have a better idea of urban claims, which may never surface, but come up in negotiations over approvals. With a property on Burnside that's been zoned commercial or industrial for 30 or 40 years, project managers could go through design review and pay the city, or skip design review. Such negotiations in planning departments would be helpful for the committee to understand.

Ms. Neill spoke to the importance of tracking claims resolution; in terms of how quickly and what kinds of waivers were granted, and in what sequence jurisdictional partners approach claims. Partners may wait until the end of the 180-day period to issue decisions, or schedule hearings for claims as they come in and make decisions. On the 11 by 17 handout, fields of information included land and building total value, year built and sale date. Sale date information was crucial, but was not consistent in the three counties. Measure 37 was structured so that it turns on when the property changed hands, relative to changes in zoning, comprehensive plan designations and code requirements made at the local jurisdictional level. A query of sale date data from the county assessor's database revealed that in the early 70's and 80's this data field was beginning to be entered, and for over half of all claim records outside of the UGB, no sale date was entered digitally. Many property transactions that occurred prior to when the counties went digital were not accessible. The only way to ascertain change in ownership for individual parcels would be to research the deed record trail. So potential claims were difficult to determine digitally. Ms. Neill had called title companies and asked about a better way to access this information. They had attempted to create digital records of some information, but their databases did not produce answers to this type of inquiry. Sale date information provided by the county assessor may be incorrect or not correspond to that provided in claims.

Ms. Neill had talked with Clackamas County's planning director Doug McLain, concerning its series of zoning comprehensive plan and code changes that applied to different parts of the county. There was no magic date like 1980 which all sale dates could be compared to. With 3 counties and 25 jurisdictions, it was difficult to assess claims even with sales date information.

Councilor Liberty mentioned that the Clackamas County planning office was flooded twice and records were destroyed, which meant even knowing what regulations affected a particular property could be very difficult. Measure 37 did not include an application process or clear responsibility regarding whether a claimant needed to assert a claim and an agency had to disprove it. The burden of proof may shift after 180 days.

He added that his next-door neighbor had owned a vacant lot for 50 years in a neighborhood that was zoned commercial, and then for a freeway alignment. Finding records would require one to read every amendment to a plan or zoning ordinance to find out when they went into effect and applied to certain properties. The committee's task did not include assessing administrative costs in evaluating claims, but this information would be useful.

Councilor Hosticka suggested it would be impractical to analyze potential claims because information was inaccessible and it was unclear what the committee would do with this analysis as part of its work plan. Councilor Liberty added that the function of planning was to evaluate long-term consequences of many small decisions. A map could illustrate claims distribution over 2 years based on an extrapolation of the first 20 weeks of claims. One potential solution could be designating an area to be developed and giving compensation to people that was incanted through improvements and sewers. It would be difficult to fit solutions to the scale of claims over time.

Councilor Liberty encouraged members to review the meeting schedule and work plan and recommend people, subjects, sources of information or websites that were particularly useful for each topic. Measure 37 for and against campaign staff and polling information would be present at and added credibility to the public attitudes and perceptions topic. The Farm Bureau was studying prospective claims in Washington County and would be a good addition.

4. UPDATE ON CLAIMS, STATUS OF LEGISLATION AND OTHER MATTERS

Dan Cooper, Metro Attorney, reviewed recent filed legislation, the atmosphere in Salem and several Measure 37 claims against Metro. Senator Schrader had two bills: SB 308 and SB 406. SB 406 had a hearing. Both bills looked similar to the work product that never got far in the 2001 formal process, but many people worked on. After Measure 7 passed and while it was tied up in court, there was a serious attempt in the legislature to substitute another constitutional amendment for the voters to replace the language of Measure 7, and have a comprehensive legislative package that would implement the new constitutional provision. Those proposals never progressed due to meltdown and a variety of reasons. There were 19 versions of one bill, and there were several bills. SB 308 was introduced first and would have repealed Measure 37 by substituting a compensation package.

SB 406 did not mention Measure 37. According to his testimony, the Senator wanted to put in front of the legislature a record of 2001 efforts, so that this work product was a template for further work. The 22-page comprehensive bill detailed who got compensation for what, who decided what this compensation was on a state basis and what tools local governments and the state would have to create a compensation fund. The state fund was designed to come from a new voter approved, constitutionally authorized tax on givings; when property values were increased because of new land use regulations, a new tax would apply. Proceeds of the tax would go into a fund to pay claims to those suffering from takings. Several sections deal with creation of transfer of development rights, by authorizing receiving areas where development could occur where it currently cannot, and value could be transferred to denominated sending areas. People with claims could then receive value and not be able to build on their property, but instead transfer rights to someone else who would pay cash equivalent for this right.

In the La Pine area of Deschutes County, the county had developed a transfer of development rights program by using a square mile of Bureau of Land Management (BLM) land acquired for a modest price. The county was buying rights to develop property near the upper Deschutes River, which was currently platted for dense development on septic tanks that won't work; and transferring those rights to this BLM land where septic tanks will work. 1/16 of this land had been sold to a developer to fund this mechanism, so the county could continue to prevent development in a previously approved area and encourage it in a less harmful area.

SB 406 was a model for how this could be done and created a tax on property value increases that would be another funding mechanism. Four other senate bills had been introduced and two were the Dorothy English bills, one of which passed the Senate, and one did not. SB's 348 and 349 were both introduced by Senator Ringo and would have allowed either 7 or 8 building lots in Multnomah County. One passed. That was one of the Metro claims outside of the UGB.

Senator Ringo also introduced SB 350 with no hearing yet scheduled, but would put a time out on implementation of Measure 37 and move the first possible litigation date from June 2nd to Dec 2nd to allow more time for understanding of its implications. Lastly, SB 353 was introduced and

would require any deed recorded after the effective date of Measure 37, to contain notice that Measure 37 had passed. One of the senate bills contained language that property owners adjacent to you had a right to harm your property values. A disclaimer telling buyers to check planning department land use regulations had been statutory language on all Oregon deeds for several years, as well as notification if a property was outside of a rural fire protection district.

Councilor Liberty asked if SB 308 had a limit on respective devaluations. Mr. Cooper confirmed both SB's 406 and 308 contained thresholds on how much one had to lose before one had a claim. One needed to demonstrate a 25% loss of value due to one regulation, or if claiming that multiple regulations had cost value decreases both prospective and retrospective, then, a 45% threshold or cumulative effect within a certain time period needed to be crossed for a claim. Mr. Cooper's sense of Salem's atmosphere was summed up in Laura Oppenheimer's 2/15/2005 Oregonian article. There was not a lot of momentum to do anything. Some would like to clarify personal rights versus runs with land. Others sought a compensation fund inserted as a more comprehensive fix and alternative to decisions not to apply. Legislators were reluctant to spend time on solutions that may not pass both sides of the legislature and the governor.

There were four claims against Metro from 3 different property owners. Dorothy English's claim for 8 lots or \$1.15 million arrived on Dec 2nd. The claim form made vague allegations about Metro regulations. Metro was asking Ms. English's legal counsel to substantiate which regulations applied. Metro did not have extraterritorial jurisdiction. Don Staley's claim for 78 acres or \$540,000 was also on property outside of Metro's boundary. Title 3 stream setbacks may be involved.

The third and fourth claims for \$5 million were inside the Metro boundary and seeking a waiver of statutes because there were statutory prohibitions against developing EFU land outside of the UGB. Metro had no authority to waive statutes. Measure 37 specified state statutes were subject to claims. On the local side, Metro's functional plan requirements, land comprehensive plans, land use, zoning or transportation ordinances were not statutes. These claims would be tracked for the committee.

Councilor Liberty asked the committee about other legislation or prospects. Mr. Cooper replied it was likely that more bills would be presented in the Senate and House before the deadline. Councilor Liberty added that a number of constituents thought that if a neighbor built thanks to waiver then they would have a claim since this reduced their property value, when they wouldn't. It was assumed there was a cause of action for value loss due to a neighbor's use of property, which was not true unless it was a nuisance.

Mr. Cooper stated some local jurisdictions that have adopted claims procedures ordinances had created a cause of action for neighboring property owners who claimed that they wanted compensation from the owner who had received the waiver due to diminished property value. The legal basis for this ordinance came from recent cases in Oregon, where a city of Portland ordinance purported to create a private cause of action for discrimination based on sexual preference in housing. The city said private individuals had the right to sue, and this ordinance was upheld. Oregon courts had recognized the rights of local governments to create a cause of action, and this was the legal underpinning of these ordinances. There was no state statute that did this. Measure 37 clearly did not and nuisances were exempt from it.

Councilor Hosticka asked if nothing happened to a filed claim in 180 days, then claimants went to court. If the claim went to court in July, and the legislature changed the law in August, what law

would determine the claim? Mr. Cooper replied the decision could be retroactive to an effective date or not. Legislature could limit statutory rights in different ways.

Councilor Hosticka asserted that proponents of Measure 37 would come to the legislature when they became unhappy with how the measure was being administered. This may occur after the courts started issuing decisions based on the measure, or when cities and counties start taking action. Ms. Martin added it could be when title companies and lenders decide they would not do business under that level of uncertainty.

Mr. Bowsby stated when some owners find it to be difficult to build these permitted structures with cash they would come to lenders and title companies and finally force this issue. Councilor Hosticka asked when this issue would come to lenders, and whether legislative action in this session would happen if enough people were motivated by the July or August deadlines. Ms. Neill answered it would depend on how fast the decisions were made.

Councilor Liberty stated if government deliberately decided not to do anything, what kind of risks would lenders have, because there had been no evaluation of basis of claims. Government could take the position of watching what lenders do, and if it didn't agree, they would start enforcement, which would be unsettling. To wait 1 or 2 years without financing, there would be a risk of being challenged, with no devaluation. There were so many scenarios and uncertainty. The committee may think about at what point it should make helpful solution or alternative recommendations to the legislature.

Ms. Martin added that if there were enough pressure among supporters of these claims moving forward and sufficient concern before these issues come to a head, then this would lead the legislature to do something because proponents will be pushing for it.

Councilor Liberty predicted a change in public perception of what the measure was about might depend on the way claims were handled statewide. Public reaction may stem from those who thought the measure pertained to a small number of victimized and compensated owners rather than development of farmland without compensation. Ms. Kirkpatrick added that there were already proponents working on bills that answered some of these questions, but they were not likely to be passed by both the Senate and the House.

Councilor Hosticka predicted that in mid July serious negotiations would yield decisions by August 15th. Ms. Schrader stated her agreement with Ms. Martin, that the turbulence in the marketplace would drive changes. She expressed concern that unless the House had a legislator with a strong interest in land use that any bill would be stopped. More information was needed about funding mechanisms. Clackamas County would not be starting any decision making until March 16th and starting with the most straightforward claims.

Councilor Liberty stated the concern if counties choose to waive state laws, LCDC could take action. Ms. Kirkpatrick posed the question whether anyone, even a state agency could waive a state law.

Councilor Liberty mentioned the litigation initiated by 1,000 Friends and referred to MPAC, which was more complicated and raises delegation of authority questions, and had raised constitutional issues that had not been discussed. If this litigation succeeded it would add more turbulence. Proponents of the measure knew they could get something passed again. This combination of factors including public reaction, a successful challenge, questions about

interpretations may lead to addressing the measure's drawbacks. It was helpful to understand public perception of fairness and regulations because this would enable Metro Council to plan for the future.

Ms. Schrader mentioned that Lane Shetterly was at AOC for a bill looking at the 30-year look at land use. Even some Clackamas County colleagues thought it was asking for too much money and going too slow. Councilor Liberty added that based on prior legislation, planning legislation has undergone systematic and substantial change, amendments to planning laws since 1997 were extensive.

The next meeting would discuss contents of Measure 37, the work plan and schedule. Suggestions for presenters and topics were welcome. A list of links to look at other information and a calendar of meeting dates will be emailed to members.

5. ADJOURN

There being no further business to come before the Metro Measure 37 Task Force, Chair Liberty adjourned the meeting at 7:04 p.m.

Prepared by,

Jenny Dempsey Stein

ATTACHMENTS TO THE PUBLIC RECORD FOR THE MEETING OF FEBRUARY 15,
2005

Item	Topic	Doc Date	Document Description	Doc. Number
3	Claims	None	To: Measure 37 Committee Members From: Lydia Neill, Planning Department Re: Measure 37 claims	021505m37-01