

MINUTES OF THE METRO BALLOT MEASURE 37 TASK FORCE MEETING

Monday, April 25, 2005

Metro Council Chamber

Members Present: Judie Hammerstad (Chair), John Leeper, Robert Liberty, Dan Cooper, Dorothy Coefield, Martha Schrader, Todd Sheaffer, Doug Bowsby, Jim Chapman, Bonny McKnight, Keith Fishback, Domonic Biggi, Jack Hoffman, Carl Hosticka, Wayne Kingsley, David Whitehead, Charlie Gregorio.

Staff Present: Lydia Neill, Principal Regional Planner
Melissa Bergstrom, Administrative Secretary

Others Present: Lane Shetterly, Director of Land Conservation and Development, State of Oregon

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

1. WELCOME AND INTRODUCTIONS

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

2. APPROVAL OF MINUTES

The March 21, 2005 minutes were approved.

3. LEGISLATIVE UPDATE

Dan Cooper, Metro Attorney, gave a Legislative update on Measure 37.

4. REVIEW TASK FORCE OBJECTIVES: ASSESSMENT, COORDINATION AND POLICY RECOMMENDATIONS CONCERNING IMPACT OF MEASURE 37 ON 2040 GROWTH MANAGEMENT POLICES (SEE ATTACHED)

After Mr. Cooper's legislative update Chair Hammerstad asked for questions from the committee. She commented that she imagined there were probably many questions, where Mr. Cooper responded that unfortunately there are not a lot of answers. Chair Hammerstad shared with the committee that it would be her policy not to dig too deep into this until they actually know what they are dealing with, otherwise they go down a road which will not lead them anywhere. She thanked Mr. Cooper for his update.

Chair Hammerstad turned the committee's attention to a review of the Task Force objectives. She said that in the last few meetings they have hit upon some different issues without being particularly focused on the purpose of the committee. She reminded the group that the purpose of the committee is to look at Measure 37 claims and how these claims will affect the 2040 Growth Concept. They do not have time to argue about what Measure 37 means, nor are they going to be able to settle issues like the transferability of ownership because it will most likely have to be litigated. Although these issues are important, there are many unanswered questions, and the committee's primary purpose is to examine the issues and give recommendations to Metro on policy changes that should be made in order to make the 2040 Growth Concept and Measure 37 work.

In this meeting Ms. Lydia Neill, Metro, will present two case studies: one case located proximate to the UGB, and the second case study located far from the UGB. The case study approach should help focus the committee on the availability of services, including issues such as wells, septic systems, transportation, fire safety and emergency services. Chair Hammerstad said she hoped that by the end of the meeting they would have a better idea about how the issues would play out by looking at real claims that have been filed. This approach will be used in the next few meetings until it becomes clear that there are patterns and issues that need to be addressed and then recommendations made to Metro. She reminded the group that essentially the committee has been assembled to determine how the implementation of Measure 37 affects orderly growth and make recommendations to the Metro Council on how to integrate the 2040 Growth Concept and Measure 37 claims.

Claims Update Presentation by Metro Councilor Liberty.

The Committee was referred to the Memorandum dated April 18, 2005, prepared by Ms. Neill regarding the implications of Measure 37 on the 2040 Growth Management Policies (memo attached). If the claims continue at their current rate in 10 years the claims would consume an area about the size of the UGB. Mr. Liberty indicated that in about half the claims, it is not even clear what the claimant proposes to do with the property if the waiver is granted. There has not been a coordinated detailed registry of claims, and it continues to be difficult for staff to get good claims information from the State.

Impact on Metro's Urban Growth Management Function Plan (UGMFP).

There are several titles that may be affected by waiving regulations in response to Measure 37. Those include: Title 1, Requirements for Housing and Employment Accommodation; Title 3, Water Quality, Flood Management and Fish and Wildlife Conservation; Title 4, Industrial and Other Employment Uses; and Title 11, Planning for New Urban Areas.

If there is substantial development outside the UGB, there will be regional transportation issues; the demands on rural roads could create transportation problems or could require investment of transportation money to address them. Some of the tools to address the impacts on the 2040 Growth Policies include: Payment; Conservation Easements; Transfer of Development Rights of Credits; Incentive Programs; UGB Expansion or Designation of Urban Reserves; and Use of Strategic Annexations.

He concluded that our objective is to implement Measure 37 and the 2040 Growth Concept.

Chair Hammerstad thanked Councilor Liberty for his summary and informed the committee that an article in the Oregonian mentions a conference that would be held on Saturday April 30, 2005 at Marylhurst University regarding Measure 37.

5. STAFF PRESENTATION: CLAIMS UPDATE AND MAPPING EFFORTS

Ms. Neill informed the committee that staff is still trying to make a coordinated effort to look at claims information that they are gathering from the counties, Portland State University (PSU) and the State. Information is not always consistent. One of the things that they have noticed is that people are bypassing the local jurisdictions and going straight to the State with claims. Most of the claims are outside the UGB; particularly they are seeing claims in Washington County near Banks and in Clackamas County in the Stafford Basin south of I-205. She indicated that her memo outlined what they are seeing so far. They don't have very good information on the demands that people are making with the claims. If they had that information, it would allow staff to analyze the impacts. Once they are able to get more information, she can provide better statistics. She indicated that with only three months of information, it is hard to make any determination as to what the information means. Claims are increasing at a greater rate, but she does not know whether that will continue through the year.

Mr. Lane Shetterly, Director of Land Conservation and Development for the State of Oregon, addressed the issue of the central claims registry. He said that the Department of Administrative Services (DAS) is having budget issues with creating the claims registry. He indicated that there is a registry of state claims, although it is not a coordinated registry between counties. It was his understanding that the counties said they would not participate.

Ms. Neill responded that it has been her experience that the counties have been great to work with. She stated that mapping the claims is key to understanding development patterns, but that planners do not have the staff, time or means to do the extensive research which would be required to accurately predict where the claims will arise. . A map of the current claims was shown-- most of the claims are outside the current UGB on farmlands, forest and some rural residential property. There is not a definite pattern as to where claims are arising, which adds to the difficulty of making predictions on the unpredictable.

Chair Hammerstad asked for any questions that the committee members may have before moving on to the two case studies. Councilor Liberty noted that the map looks like a scatter diagram, with a concentration of claims in the farmlands of Washington County.

Effect of the Notice Provisions; State Claims.

Councilor Liberty referred to a comment made by Commissioner Schrader that the notice provision – notifying the public of M37 claims--seems to stir up more interest in making claims. Commissioner Schrader clarified that it does seem to generate more claims when they notify people will come to watch the process and often times make claims. They caution folks when they go through the process that they will have to go to the state as well.

Mr. Shetterly agreed that what the local jurisdictions are experiencing is also what the state has been experiencing. He also stated that it continues to be an issue that people file with the State but not the local jurisdiction or vice versa. The only consistency is inconsistency. The State has roughly 300 claims with about half outside the UGB. The state numbers are approximately 74% land divisions, 15% single residential, and the remainder of claims are generally undetermined.

Chair Hammerstad directed the committee to look at the Measure 37 Task Force objectives, which directs them to assess, coordinate and recommend as they go through the two case studies. She asked the committee to make note of any thoughts they may have regarding the particular issues that are coming forward because they will need to make recommendations to Metro. They will be looking at waivers vs. compensation, and the group will be asked at some point to make recommendations about compensation tools. It is necessary to know how claims are being processed so they can decide if they want to recommend a uniform ordinance throughout the metropolitan area. We will need legislation that will be able to address that uniformity if the group feels it is needed.

There have been two scenarios that have been chosen to examine for case study purposes. She cautioned the committee that these scenarios are not strictly grounded in fact, but are presented to help illicit discussion on issues. The first scenario is a claim that is adjacent to the UGB within the Stafford Triangle. The second scenario is a claim for a subdivision that is distant from the UGB. Maps were handed out to the committee for reference (attached). The time was turned over to Ms. Neill to go over the scenarios. The PowerPoint presentation that was given by Ms. Neill is attached.

6. CASE STUDY DISCUSSION – TWO SCENARIOS:

- a. Claim for subdivision near UGB within Stafford Triangle.**
- b. Claim for subdivision on Pete’s Mountain**

Stafford Basin claim: infrastructure issues re: roads and services.

Ms. Neill went over the two case studies and pointed out issues of concern with development in these areas. She began with the Stafford Basin scenario, which is near the UGB. This property is about 53 acres; the applicant is proposing to subdivide the property into one to two acre-sized lots. This would be consistent with the other subdivisions in the area inside the UGB. The applicants are also claiming a reduction in value of the property in the amount of \$9.6 million, based on purchase offers for the property. The application also requests removal of wildlife habitat designation by the County and Metro.

She showed some photographs of the property and pointed out that currently there are rural residential roads servicing the property that are not developed to urban standards. This would be one of the issues that would come up later in the subdivision approval process.

Pete's Mountain claim: health and safety issues re: fire hazards and availability of water.

The second case study is located in the Pete's Mountain area south of I-205. This property is approximately 66 acres. Applicants are proposing to subdivide into one acre sized lots. They are also asking for compensation in the amount of \$6.6 million, based on the property owner's estimate.

An issue pertinent to this case is that it is served by Pete's Mountain Water District. There are some definite impacts on groundwater supplies in the area. There are declining levels of groundwater that could be impacted if this type of subdivision were to be developed with wells, and drew down the water table, rather than being serviced by a municipal water supply that wasn't based on a well system.

In addition, there are safety concerns with wildfire hazards, which is another rural residential type development issue. Because of the water issues and fire hazard issues the number of lots may be questioned. The county could waive the regulations that would allow the subdivision, but later on during the subdivision approval process, the number of lots may have to be reduced. Ms. Neill turned the time back over to Chair Hammerstad.

Chair Hammerstad said that next they wanted to go over some of the questions that these case studies raise, but asked Commissioner Schrader and Mr. Doug McLain, Clackamas County Planning Director, if there was anything they would like to add from their experience with these two claims. Commissioner Schrader said that Ms. Neill had clearly outlined what Clackamas County has been dealing with. There are questions about the infrastructure issues and who will provide those services. She said that in the case on which the first case study is based, the City of West Linn has stated it has no intention of providing urban services such as transportation, water, sewer and fire safety. In the second scenario, the proposed development on Pete's Mountain has some serious water availability and fire safety issues, which causes a high level of concern to local governments.

Ms. Neill expressed Metro's concern that development of rural densities makes urbanization later more difficult. This would lead to more farmland being taken in the future. Counties and cities can't provide services very efficiently which drives up the costs. Commissioner Schrader asked if local governments should have a more active role in the planning of these claims that are approved. Ms. Neill replied that we need to look ahead and maybe shadow platting would be of benefit.

Ms. McKnight asked if the waiver holds throughout the development process? The answer was yes. Commissioner Schrader said it applies to the very narrow Measure 37 criteria. Mr. McLain said that we don't know how it will work. It is difficult to discriminate between those that are health issues and those that are not. The hope is that some of the questions about transportation and providing infrastructure will get more scrutiny. All of the claims are located outside the UGB.

Mr. Jim Chapman, Home Builders Association and Legend Homes Corporation, spoke about how it is to live in the City of West Linn. He prefers a low-density barrier and said that whatever we do, we will have to require jurisdictions to do something.

Looking at the Stafford Basin claim which is right next to the City, it is preferable to provide water and sewer, but the question is, how do you do it without moving the UGB. Is there a mechanism to provide these services?

Mr. Keith Fishback, Fishback Nursery, gave a perspective from an agricultural background. He said that the proposed developments that are the subject of the M37 claims don't necessarily have the planning needed. He suggested that it would be good to bring the land into the UGB. He sees the dilemma of having developments in rural areas without the necessary urban services.

Metro Councilor Carl Hosticka asked if services could be extended outside the UGB? He suggested that there might have to be some legislative changes to make that possible.

Mr. Wayne Kingsley, Chairman of Portland Spirit, asked if there should be a rigid interpretation of Measure 37 or if government should be allowed some flexibility? Maybe government sits down with developers to figure out a way to plan development with the option of creating higher density in the future.

Metro Councilor Liberty responded that the problem is that planning is planning for the future, and what works in one place may not work elsewhere. It would be one thing to have well water and septic on some of the property, but then there could be hundreds more similar situations. The validity of the claim and the amount of proven reduction in value needs to be evaluated. If it is not done correctly to provide relief there will be negative consequences. There are two kinds of relief-- waiver and payment-- and there should be a relationship between the two.

Mr. Shetterly supposed that providing urban services to developments on the fringes of the UGB could be addressed in a narrower bill. The reality is that it will take time to get things sorted out.

Chair Hammerstad reminded the group that many cities have requirements that voters approve annexation, which further limits their options. If you can't provide services without voter approval, then this option of providing services to developments on the edges of the UGB is limited. There would have to be a change in legislation for annexations to make this idea more useable.

The committee was reminded that Measure 37 did not wipe out all of the existing requirements of local jurisdictions. They are not meeting to discuss how to philosophically implement Measure 37, it isn't a choice, and it has to be done.

It was suggested that the group come up with some practical solutions and then figure out if it can be done legally. It was mentioned that developments could have special service districts, but that establishing these districts makes it difficult for cities to annex these areas in the future.

Commissioner Schrader discussed the difficulty and restrictions of providing services for special districts without adequate funding. The counties become "super mayors" of these areas without the funds to provide the services. Money is not actually saved by not annexing.

Commissioner John Leeper, Washington County, stated that Washington County provides services through a range of special service districts and Countywide services for the whole County. For example, people that are serviced by special districts pay a little more for the Sheriff's protection. The County is

struggling right now because some cities in the County are disproportionately paying for services. There is a study under way in Washington County to see if cities are paying more than they should, and if that is the case, then they will need to realign the property tax assessment.

With the dispersion of claims in Washington County, he can't see how an expansion of the UGB would have any credibility at all. Washington County will start processing claims next week. They will have the documentation that they need so they can send these claimants to the state. As he hears about the pending legislation and local jurisdictions' decisions, he is concerned that if the legislature comes out with some changes, will they be applicable to claims they have acted on or will they have to go through the process again. They only have 180 days to turn around their decisions. He is also unsure how the 180-day clock works if a claimant does not turn in the paperwork to the state and county on the same day. Since Measure 37 passed, there aren't any answers only more questions. We are in a quagmire and it will probably be something decided by the Supreme Court.

Another committee member asked what happens after the 180 days? There are so many unanswered questions, but they are forced to make decisions now. Commissioner Leeper responded that if the governments do not abide by the 180-day rule, applicants can take the jurisdiction to court and there are charges that can be quite extensive.

Commissioner Schrader wondered if it would be difficult to get financing for projects approved through the waiver process.

Mr. Jack Hoffman, MPAC Chair, asked how many developments are close to city limits and the edge of the UGB? The answer was not too many. So we are mainly talking about subdivisions that are outside of city limits and the UGB.

Mr. McLain stated that the next step [after review by local jurisdictions] would be to have claims reviewed by the State. The applicants must file a subdivision application, and at that time they would deal with some infrastructure issues. Once it is approved, it will go through a recording process, requirements would have to be met in subdivision review process, and then recorded lots can be sold.

Mr. Bowsby, Bank of America, asked why are we making those assumptions, we do not have any firm answers, it will be up to the courts to decide.

Councilor Liberty said that when you think about the level and amount of development you would barely notice it as an UGB issue in terms of small rural subdivisions. If something develops at an urban level it is in a different context.

Another committee member asked how the waiver process would work with the title transfer? Title companies have advised that they will not issue zoning endorsements on properties, which are developing with a M37 waiver. This means that banks will be unlikely to lend money for these developments. The consensus was that there is not any agreement about that question. There are some creative legal things going on and it will be a complicated question for lawyers to figure out.

Ms. Dorothy Coefield, Coefield Law Office, said she is advising her clients to find a developer and go into a joint venture to actually develop a property. Mr. Bowsby, responded that banks and title companies would be wary to loan to these claimants.

The committee discussed the issue of transferability and how it is being interpreted differently. The committee could recommend that Metro develop some uniformity in how this issue is being decided. Mr. Shetterly gave some perspective on the transferability issues.

The committee began to discuss the possibility of clustering development as having a lot of potential. By clustering some developments outside the UGB they could leave some open spaces. Someone asked if clustering could be something that would be required? Chair Hammerstad mentioned that she is running into a lot of people that want to cluster development because of the value of open spaces. Councilor Hosticka asked what it means to get there? An example would be the development in Stafford could be developed on 20 acres and 80 acres would be left as open spaces. Mr. Chapman responded that if clustering were to occur, then home values would be so high on that type of development that it would not allow for affordable housing and would create a barrier to expansion of the UGB. Commissioner Leeper said that the word clustering terrifies him. He felt that if there are going to be claims that then they should be legitimate claims, and government should not give people any ideas for clustering, because it will encourage more development.

Mr. Shetterly explained to the group some of what will happen with the State and local interplay. He said that some of the questions that will need to be answered about these claims include: What was the zoning of the property; what was the date of ownership; how does it relate to the county plan, and do the goals apply directly? Different results would occur with the way you apply criteria. The battle will be fought at the State level.

Councilor Liberty was skeptical of the legislature fixing this. There are a number of things that can be done that don't require legislation. He suggested that the committee focus less on the context of Measure 37 and figure out ways assuming it will work with the 2040 Growth Concept. Pollution control input could be a mitigating factor and raises a question of whether the County has authority to set limits? These impacts could be site specific or be cumulative.

In regards to environmental, health and safety issues, how safe is it for agriculture to be spraying 20 feet from neighboring homes? Mr. Fishback shared his experience with development close to his nursery, where he decided that spraying near developments was not worth the risk. He stated that agriculture may be impacted, and that clustering may not be such a bad term to keep the agriculture. In terms of fire safety at Pete's Mountain and other areas where there are trees, the fire issues are not going to go away. The Pete's Mountain claimant had talked to the jurisdiction about a fire that had occurred in the '70's, but he still wanted the waiver.

The impacts on the surrounding area are issues that have to be addressed in the subdivision planning process. Cities can authorize action with conditions to address impacts.

Chair Hammers tad discussed some of the tools that can be used to address impacts. In the last meeting they discussed capturing some of the value, the infrastructure of the land. People claim they have lost \$16 million in value due to regulations that they are subjected to, and that \$16 million would theoretically be subject to value capture, whether it would be property taxes, etc. Local jurisdictions don't have the ability to capture that. For the purposes of providing infrastructure, it seems a reasonable avenue to examine. A number of things will prevent the development of these claims and one of the biggest ones is that they simply don't have the infrastructure that subdivisions require, so how to pay for it is the big question. Councilor Hosticka asked if Chair Hammerstad was implying that government would have to provide infrastructure in these areas. She responded that the infrastructure has to be paid by someone, not necessarily the government. If you are capturing the increased value of the land, then that would be coming from a property owner, such as with increased SDCs. If you have to provide new infrastructure in these areas, you would need a different method of paying for it. Councilor Hositicka replied that then we are implying that government is required to provide infrastructure or can the government simply say they won't do it. A comment was made that under Goal 11; government might not be able to provide the infrastructure. Chair Hammerstad said that to have a subdivision in Pete's Mountain with no roads would

be difficult. Mr. Charlie Digregorio, CB Richard Ellis, asked what do we say when the existing infrastructure isn't adequate to cover the development that has already been done?

It was agreed that there are so many unknowns with this issue. Commissioner. Schrader asked if Chair Hammerstad was suggesting that we may have to look at changing our tax assessing capacity to allow for more captured value? Chair Hammerstad replied that it was certainly an option. Commissioner. Schrader shared her experience with a hearing that even if they waive regulations, but the land stays in farm production, people will still get their tax breaks at that level. There was discussion about the farm tax referral.

Councilor Liberty asked if the committee would be interested in looking at the research that has been done regarding the City of Damascus expansion of the UGB. He explained that the information might be useful in understanding expanding the UGB, rezoning and recapturing value. It was agreed that it would be interesting to see the numbers but that they don't need to dwell on it.

Chair Hammerstad referred to the meeting schedule, and said she hoped they could wrap up the meetings in July. She stated the committee needs to be focused on the relevance of 2040 growth concept.

7. NEXT MEETING

There being no further business to come before the Metro Measure 37 Task Force, Chair Hammerstad adjourned the meeting at 7:28 p.m.

Prepared by,
Melissa Bergstrom

ATTACHMENTS TO THE PUBLIC RECORD FOR THE MEETING OF APRIL 25, 2005

Item	Topic	Doc Date	Document Description	Doc. Number
Schedule	Measure 37	Undated	Draft Measure 37 Work Group Meeting Schedule	042505m37-01
Document	Measure 37	Undated	Discussion Issues for M37 Case Studies: Subdivisions both near and far from UGB	042505m37-02
Map	Measure 37	Undated	Map of Stafford Basin Case Study	042505m37-03
Map	Measure 37	Undated	Map of Pete's Mountain Case Study	042505m37-04
PowerPoint	Measure 37	Undated	Measure 37 Case Study Review: Subdivision both near and far from the UGB	042505m37-05
Newspaper Article	Measure 37	04/25/05	Oregonian article – Measure 37 questions, if not answers, will be aired	042505m37-6
Newspaper Article	Measure 37	04/22/05	Portland Tribune – Measure 37 tensions loom large in St. Johns	042505m37-7