

MINUTES OF THE METRO BALLOT MEASURE 37 TASK FORCE MEETING

Monday, June 20, 2005
Metro Council Chamber

Members Present: Judie Hammerstad (Chair), John Leeper, Sheila Martin, Mary Kyle McCurdy, Bonny McKnight, Keith Fishback, Jack Hoffman, Robert Liberty, Carl Hosticka, Wayne Kingsley, David Whitehead, Dorothy Cofield, Lane Shetterly, Jack Hoffman.

Staff Present: Lydia Neill, Dan Cooper

Others Present: Mark Cullington, DEQ, Barry Norris, Water Resources Department, Doug Woodcock, Water Management Division, Bill White, USDA

Chair Hammerstad convened the Ballot Measure 37 Task Force Meeting at 5:43p.m.

1. WELCOME AND INTRODUCTIONS

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

2. APPROVAL OF MINUTES

The May 16, 2005 minutes were approved, with a correction from Mary Kyle McCurdy, noted as follows:

Mary Kyle McCurdy was present at the May 16, 2005 meeting.

3. UPDATES ON CLAIMS AND STATUS OF LEGISLATION

Report: Legislation

Dan Cooper from Metro presented the proposed amendments to House Bill 3120. Dan noted that Bill 3120 is an attempt to balance more farm protection with more certainty for claimants. He reported that this proposal is dead in both the House and the Senate. The House thinks it takes too much from Measure 37 and the Senate thinks it is not protective enough of the Oregon land use system. It is unlikely they will come to agreement on anything regarding Measure 37 except perhaps a watered-down version of pieces of the amendment. The legislature will adjourn in a week or so without doing anything.

Discussion

Chair Hammerstad noted it would be much more difficult to make recommendations on things over which the committee has no control, for example, transferability. Metro would not have the authority to make changes.

Councilor Liberty noted that there had been discussion of a smaller procedural bill that may or may not include a time limit on claims.

Dan Cooper responded that it is possible that the Senate may resurrect a bill with a claims process with time limits and a judicial review section. However, it is not likely that the House would pass it unless they added sections on transferability or other elements to which the Senate

would not agree. People are not likely to vote for something they think an opponent could use. It makes it difficult for people in the House to vote for anything that appears to be a “narrowing” of Measure 37.

The recommendation which this bill had from Oregonians in Action has been withdrawn. Jack Hoffman asked if there would be a “son of Measure 37”?

Dan Cooper responded that it is possible. There are varied opinions on the fact that Measure 37 does not address transferability; some feel this is a more serious issue than others. Financing questions are real at this point. Whether or not the courts will be able to address transferability early on is an issue. Crook County adopted an ordinance to provide for transferability. However, the state can intervene to oppose their ability to create transferability. This could lead to a ruling soon to address the transferability issue, which would then need to go to appeal.

Another issue is the current practice of the authority to grant a waiver (Lane Shetterly has this authority). This authority is subject to a challenge in litigation, which would say the waivers approved are not valid.

This is less of a concern to local governments than to the legislature. There has been no action by the legislature to delegate authority to grant the waivers. One possibility is that proposed amendments to the bill would say that the agency responsible for administering the statute has the authority to decide not to apply it when there is no compensation available from the state.

Regarding the question of tracking Measure 37 lawsuits, there is no list but one could be put together.

Report: Tracking Claims

Lydia Neill presented a map current to June 7. She reported upon the total number of acres in the claims to date. There are claims totaling 13,000 acres so far. Washington County has 7,600 acres, Clackamas County has 5,000 acres, and there are a couple of hundred acres in Multnomah County. The majority of all of the claims are located outside the urban growth boundary. There are larger acreage claims in Washington County than in Clackamas County. The 180 day deadline is approaching, so next meeting there will likely be more approved claims on the map.

Discussion

Megan noted that approximately 15% of the claims submitted to the state have final orders prepared, and the ratio is about 8 to 1 approved. Mr. Hoff's claim was approved

John Leeper said that as of last week, Washington County had 250 claims, with most in rural areas and four in urban areas.

Lydia Neill said that of the claims she sees, almost all are approved by the city or county. The only adjustment is in the number of units or in the amount being requested by the applicant.

Councilor Liberty noted that Wal-Mart has proposed a development on a family owned property north of the Milwaukie city line. Wal-Mart intends to develop without buying, because of the transferability problem. This is a significant urban claim with real impact. It impacts the Johnson Creek floodplain and the 1996 flood area. There are also traffic issues. This will come before Portland City Council.

Doug Bowsby commented on the trends in the claims: almost every application requests a lot division of some kind, ranging from two to 150 lots. Lydia Neill added that the outcome is not known until approval of the claim by the city or county; what the property owners ask for and what is approved often differs.

Doug McClain said that many claimants owned the property before it was zoned. The decision on the number of lots is based on whether they have access to public water (for example, two acres if they don't have public water, and considerably less if they do).

4. DOMESTIC AND GROUNDWATER IMPACTS

Chair Hammerstad noted that issues around septic tanks and digging of wells become prominent when looking at subdivisions outside of the UGB where there is no service district or ability to get city water. The task force is interested in knowing how the agencies regulate water safety and use issues in these circumstances.

Presentation: Septic Tanks and Municipal Systems

Mark Cullington of the Department of Environmental Quality (DEQ) reported that DEQ has statutory authority to regulate septic systems statewide. They provide environmental protection onsite to ground and surface water. Chapters 340, divisions 71 and 73 allow a county or state agent to deny a permit if there is physical availability to a municipal system. There are three general citations in that chapter:

1. If a sewage system is topographically available, they need to hook up to that system. The single most used reference here is if the single-family dwelling is within 300 feet of a municipal sewer system, the agent can deny permitting a new septic system or repairs to an existing system.
2. If there is a single-family dwelling or small business with a projected sewage flow of 900 gallons per day, that establishment has to be within 200 feet multiplied by the number of dwellings in proximity to that sewer line. For example, if there were a small subdivision with five homes that meets the flow requirements of this rule, and they were within 1000 feet of the municipal sewer system, they would need to hook up to the system.
3. There is a general provision for a proposed subdivision or other development with more than five single-family dwellings. The agent will determine sewer availability.

Discussion

Councilor Liberty asked about the example of a 150 lot subdivision. Would that be 30,000 ft or six miles and is it a land use decision?

Mark Cullington responded yes, and that it is a land use decision. This rule was adopted twenty-five years ago as a planning tool. It is not invoked for environmental reasons. There have not been many instances over the years where this rule has been challenged.

How does this interact with the extension of services beyond the urban growth boundary?

Chair Hammerstad asked the following: If you have a proposed subdivision of thirty homes two miles outside of the UGB and according to the formula you have to hook up to the urban service, but the city can't extend services, what decision would be made regarding limiting development or not letting it go ahead at all?

Mark Cullington responded that DEQ would not enforce the rule under that circumstance. Typically this rule would apply to single-family homes with an onsite system where there is a new municipal system available and a way to require hookup to that system. It is often cheaper to hook up to a municipal system than to fix the onsite system. This rule was adopted in 1981.

Chair Hammerstad noted that if a claim were prior to 1981, this rule would be waived. Councilor Liberty said that this would help claimants. Dorothy Cofield said that the state law that does not allow them to extend sewer outside of the UGB would have to be waived.

Mary Kyle McCurdy said she had seen claims from long time property owners who asked for a waiver to build a few more units, and then the next year they would ask to build a few more, etc. The only limits seem to be water treatment and provision. Does DEQ evaluate for cumulative

impact or make provisions for planning for water for new schools? Does Measure 37 address this?

Mark Cullington said that the property owner files an application and DEQ determines if the request meets their requirements (turnaround time 21 calendar days). They evaluate each property's environmental characteristics and then evaluate the construction of the septic system, etc.

Chair Hammerstad asked about an example of sixty acres within two miles of city where a person could build thirty houses. Would you permit one system for all the houses, or do it house by house?

Mark Cullington responded that if the land use designation allows for individual onsite systems, they could permit that. The land use designation determines what they can permit. In the case of a subdivision outside of the UGB, the land use law requires them to permit individual onsite systems for each of the homes. There are many wastewater treatment systems that are technically available, but land use law limits them as to what they can approve.

Councilor Liberty asked what the approximate cost would be for a wastewater treatment system for 300 homes. Mark Cullington estimated \$3-5 million for capital only.

Presentation: Water Resources Department

Barry Norris of the Water Resources Department showed a slide presentation on water quality and use issues. There are requirements for locating wells near septic systems, and the Water Resources Department works closely with DEQ to determine safety.

The Water Resources Department issues permits for water rights statewide for service or groundwater. The department is required to look at water availability. Exceptions are 'exempt uses', which means users who are exempt from making an application for a permit. An example would be individual wells (which are still subject to regulation). Properties with lawns and other non-commercial irrigation are exempt up to 15,000 gal/day. Each person with a well could use this much water. They are subject to duty use without waste. The department may require information about type of use and the ground water condition.

The department is currently developing exempt use rules to respond to the growing economy and issues such as Measure 37.

Household users will typically put in a shallow well. Water in the aquifer gets drawn down and people with shallow wells get mad as they run out of water, and then wonder why the water supply is not protected. This is a typical problem. The aquifers are slow to recharge.

Other ground water management options include withdrawal of unappropriated water, classification of waters (for example, for domestic use only), declaring a serious water management problem area, regulating for substantial interference, and declaring a critical ground water area.

Discussion

Barry Norris clarified that they do have the ability to deny the drilling of wells in a critical ground water area. An example would be in the Cooper Mountain/Bull Mountain area. They can also do that in a classified or ground water limited area. They can also require existing users to have a device to measure the amount of water they use. However, they cannot prohibit normal users. They would have to declare the area a classified or other type of area.

Question: Could a person come to you and ask you to regulate their neighbor's water use?

Answer: This happens all the time, when people with shallow wells notice they have less water. They would need to deepen their wells.

Question: If a person has a development with thirty houses, could they have a private water development for that subdivision?

Answer: This situation is subject to regulation just like any other.

Presentation: Water Management Division

Doug Woodcock of the Water Management Division presented a map showing groundwater limited areas consisting of Columbia River basalt aquifers. They provide an adequate, short-term water supply, often in highly valued view property areas. The idea has been put forward to “connect the dots” of these areas and classify them as a limited supply. Areas in between these areas have some problems, are being monitored, and have some Measure 37 interest.

Regarding public supply: they can be exempt if they stay below 15,000 gallons per day. If they exceed 15,000 gallons per day, they need to get a water right for that system. This causes a problem. For example, in Fairview a developer wants to put in sixty new homes on a single system. This would cause problems on a limited water system, so the developer goes the exempt route and gives everyone their own well. This leads to well interference issues. There is no easy way to regulate the well interference issue. Measure 37 is introducing new territory; they are seeing 45-50 claims at once.

Discussion

It is difficult to not allow exempt wells to go in. The groundwater management tools are largely reactive. We have to demonstrate that there is a groundwater problem and then we can go in after the fact.

Question: Can Water Resources or DEQ plan for the potential of 15,000-50,000 new wells north of the Marion and Yamhill borders?

Answer: We will monitor and when necessary we will create an administrative boundary to regulate current or cut off future use.

Question: Can action be taken ahead of time?

Answer: Yes, For example, if a Measure 37 claim caused someone to request that an area be classified, we would look at the water data and possibly a change could be made. However, we need very good supporting data in order to change a classification and to restrict water use.

Question: What if a large development goes in and an existing homeowner then experiences problems?

Answer: The homeowner would contact the water master at the water resources department. They will go out, look at the system, check water levels, map well locations, and then take the information to the groundwater section, which would determine if the new users are affecting the senior user. Most often it is an issue of the senior user needing to deepen their well. Normally the senior user would pay for this.

Chair Hammerstad noted that development on farm and forestland outside of the UGB would place new burdens on water use. This, combined with the reactive nature of the agencies, could cause hardships. This committee may need to make a recommendation regarding this situation.

Councilor Hosticka noted that twenty years ago there was talk of coordination between water resources and land use planning and he asked if this had occurred.

Answer: There is no policy, but we work as closely as we can with the planning departments.

Question: Are these rules subject to Measure 37 waivers?

Lane Shetterly responded that they would likely be tested on a case-by-case basis.

5. FEDERAL CONSERVATION EASEMENT PROGRAM

Bill White described the Farm and Ranchland Protection Program (formerly known as the Soil Conservation Service), which is part of USDA. It has been around the last 5-10 years, but Oregon has not accessed funding every year. Oregon received \$1.2 million in 2003, \$150,000 in 2004 and \$650,000 for 2005. The Working Lands Program provides funds for working farms and ranches and for an entity to purchase an agricultural conservation easement. A federal registry puts out a request for proposals and provides information on the availability of the program. The ability to hold an agricultural conservation easement is necessary. Funds are provided towards a cooperative agreement, to pay up to 50% of the value of that property. Types of properties they are looking at are under the threat of conversion to subdivisions or industry. It could also be subtler, as in the case of a working ranch being converted to a hobby ranch.

Chair Hammerstad asked how this would relate to a Measure 37 claim. Bill responded that an entity having the ability to hold and enforce the easement has to make the application. It could be two to three groups getting together to provide a variety of funding sources.

Funds are distributed based regions showing the greatest amount of backlog. The regions that have made best use of this for land use issues are the Mid-Atlantic States, western Washington, California, and some of the Lake States. It is seed money at best.

The more aggressive states have accessed upwards of \$10 million. Historically, the majority of groups have been more interested in wildlife habitat, etc., but recently there has been increased interest in this topic, from groups who are able to administrate easements, such as the real estate appraisal business.

Councilor Liberty asked what amount could be expected if agencies and organizations in Oregon got together and applied to this program? Ten million dollars?

Bill answered that several million might be a more realistic possibility. It does not have to be an application from the state, but whoever applies has to have the ability to hold and enforce the easement. The biggest challenge is a lack of experience in enforcing the easement.

6. INTRODUCTION OF TOOLS DISCUSSION

Councilor Liberty described a summary containing tools available to address Measure 37 impacts (attachment number four). He expanded on the first topic, the Transfer of Development Rights of Credits, coupled with UGB expansion.

Three possible ways:

1. Property owners allow Metro to experiment with their property and the property owner comes with a designated number of cancelled Measure 37 claims.
2. Metro would expand the boundary but would require a land dedication for parks or schools, for example.
3. Cash. Metro would extend the boundary based upon payment, which would be used to buy claims.

Discussion

Bonny McKnight: First of all, there are hidden costs to this. Secondly, there is a great opportunity to bring some these issues to the public. Individual property rights are going to cost the rest of us.

Keith Fishback: On the surface it looks like something we could support. We would need to focus the money to protect agricultural lands. Then we would have to decide which agricultural land we want to protect. In addition, how do we deal with the 30 lots on 60 acres?

Chair Hammerstad: There could be priorities here that might be addressed through the contingent UGB expansion if we were getting a lot of claims in one area. I like the idea of the study area around the UGB which would identify the lower and higher priority agricultural lands and provide protection to the latter.

Jim Chapman: The possibilities I see take into account problems with infrastructure and planning. These tools may give us some tools for organized expansion planning.

Chair Hammerstad: One of the problems with expanding the UGB is that it demands development at a level that governments don't see as beneficial to their cities or possible because of the cost of more infrastructure. If we could approach it in a different way, maybe we could get that development on less than prime farmland.

Lydia Neill showed a map of St Mary's. It is about 500 acres and almost completely surrounded by UGB.

Councilor Liberty shared that St Mary's property owners suggested using their property as a hypothetical planning exercise to determine how much value could be extracted to estimate the cost of potential Measure 37 claims.

Keith Fishback said he is concerned about not just taking a small area, but seeing how it fits with the surrounding area.

Lydia Neill: Metro studied a lot of areas (75,000 acres) in the last UGB evaluation cycle and looked at land one mile from the UGB. If they looked at this again, they would look at this area.

Councilor Hosticka: Whatever area you take in, you would want some hypothetical capacity of that area. I know St Mary's has had a plan in the past for a designated number of units. How would you compare areas? Unit for unit, dollar for dollar?

Mary Kyle McCurdy: It is a good thing to study because it could illustrate potential policy problems. The focus might appear to be how many Measure 37 dollars you could get out of residential development where in another context that would not be the focus. With industry, you would not get as much value out of it.

Councilor Liberty: In Bethany and Demascus, the question came up of what it would mean for a region or county to put money in for infrastructure.

Councilor Liberty showed a map of Cooper Mountain with some areas having Measure 37 claims. He proposes using these as hypothetical areas to develop some data. He noted that a couple of issues have been raised. The first is that Metro has the competing interest of planning claims clearance. The second is determining priorities of agricultural land. He asked for help from Jim, Keith and others.

Jack Hoffman: How do you know if it is a legitimate Measure 37 claim?

Councilor Liberty: Hopefully it has gone through claims and been approved in Washington County. If we are offering money, are we going attract a lot more claims? I don't have any specific answers. If we offer a clearer process, people will take it.

Keith Fishback: If people perceive there is money, they may want to try to tap into it.

Bonny McKnight: There are costs to it either way.

Lane Shetterly: There are lots of issues coming up with value, with transferability. Trading claims is probably a premature point because until the development is complete it's hard to know what the values will be.

Dorothy Cofield: What about the increase in taxes?

Councilor Liberty: Like tax increment financing?

Chair Hammerstad: We are on a track to come up with some recommendations. I would like to defer this subcommittee and pilot project until after we do the work we are supposed to do. There will likely be other work we have to do. We are coming down to our last three meetings.

Councilor Liberty: Council set aside some additional money to put towards this to continue the work. It would be useful to have some indication what the group is recommending.

Chair Hammerstad: The first recommendation might be that we have a subcommittee to look at these pilot projects. We are in a place where we can start to identify other areas of a recommendation as well.

6. OTHER MATTERS

Chair Hammerstad suggested two meeting dates: July 11 and July 25. Lydia Neill agreed to check with Task Force members regarding these dates.

7. ADJOURN

There being no further business to come before the Metro Measure 37 Task Force, Chair Hammerstad adjourned the meeting at 7:39 p.m.

Prepared by Laura Dawson Bodner

ATTACHMENTS TO THE PUBLIC RECORD FOR THE MEETING OF JUNE 20, 2005

Item	Topic	Doc Date	Document Description	Doc. Number
Report	Measure 37	6/20/05	Proposed Amendments to House Bill 3120	062005m37-01
Summary	Measure 37	6/20/05	Tools to Address Measure 37 Impacts	062005m37-02