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Need answers on Measure 37

If the 2005 Legislature does not provide some guidance in the administration of Measure 37, it will have failed in its job.

Plenty of guidance is needed. The measure enacted a simple principle, but carrying it out is proving difficult.

Under the new law, government must compensate property owners for land-use regulations that lower a property's value after the owner acquired it. If it doesn't want to pay, government can waive the regulation.

So, how exactly does somebody prove that a land-use rule has lowered the value of his farm? Somebody else might argue that the regulation has increased the value of the farm as a farm; without the regulation and whatever tax breaks came along with it, the farm might have ceased operating 20 years ago. With the demise of the farm, the income from farming would not have come in. So how to calculate the present value?

Second, which level or branch of government is supposed to do the compensating for lost value or the waiving of regulations?

In the case of Linn County, for example, its regulations on rural land are based entirely on state law. Without state law, it is doubtful that Linn County would have enacted exclusive farm zones and forest resource zones as extensive as they are.

So if somebody claims the restrictions imposed by those zones have reduced a property's value, should the county be held responsible or the state?

Further, what are the property rights of neighbors in existing regulations?

What if people bought property for a lot of money because it was on a hillside and enjoyed a view of an orchard below, an orchard protected by rural land-use zoning? Now the orchard owner decides he'd rather sell the place for a subdivision and makes a claim under Measure 37. The neighboring owner has an obvious claim for damages too, because his property value is being diminished by the loss of the view, not to mention the addition of close neighbors. So where does the neighbor file his claim — besides in the circuit court? With the orchard owner? Or with the local government that abrogated the regulation and granted a waiver? Or with the state which failed to fight the granting of the waiver by the local government?

Also, can a property owner who has won a waiver now sell the waiver along with his land? Or does the waiver apply only to existing owners. And once the owners sell, do the old restrictions fall back into place except for the fact there now may be a nonconforming use?

The courts might eventually sort some of this out. But we — those of us who often complain about the courts making law — should not leave matters like this to the courts. The people enacted Measure 37. Now let the people's representatives make it clear. (hh)

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