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Arts & Entertainment

Measure 37 gets 'special rights' challenge

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By DAVID BATES
Of the News-Register

A coalition of land-use activists and farmers filed suit Friday in Marion County Circuit Court seeking to have Measure 37 overturned on the grounds that it arbitrarily creates special rights for some landowners at the expense of others.

"Special rights" used to be the mantra of conservative groups opposing measures extending rights to gays. But it is being turned on its head in the current context.

Bob Stacey, executive director of 1000 Friends of Oregon, was flanked by three farmers in the Capitol's basement press room when he announced the action Friday morning and distributed copies of the 24-page complaint.

The Yamhill County Farm Bureau has joined three other Oregon farm bureaus in signing onto the litigation, which comes little more than a week before county commissioners are expected to review their first batch of Measure 37 claims.

Almost 50 parties have now sought and received letters of denial from the Yamhill County Planning Department, which is the only enforcement action officials are requiring to trigger a local Measure 37 claim. Six others are awaiting issuance of such letters and 16 previous recipients have already followed through on the filing of claims.

That makes Yamhill County a hotbed of Measure 37 activity.

Most local claimants are simply seeking to build an additional house or two on working farmland. But Maralynn M. Abrams wants to develop a residential subdivision and highway-oriented commercial complex on more than 330 acres west of McMinnville - a tract twice the size of the infamous Shadden Claim, which was repeatedly refused annexation by city voters.

That has alarmed land-use activists. They are demanding a public hearing - something the commissioners refused to build into the process as a routine element, but reserved the right to grant on a case-by-case basis.

The suit filed Friday does not seek a moratorium on the processing of claims already in the pipeline, Stacey said. But it aims to have the entire law thrown out on constitutional grounds, not just certain elements voided.

"Measure 37 actually creates inequality and unfairness," Stacey said. "It gives a privileged class of property owners special rights."

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Measure 37 requires governments to either waive the offending regulations or compensate property owners when land-use regulations enacted during their ownership served to diminish values and limits uses. The rights do not transfer to subsequent purchasers.

Reflecting years of frustration with Oregon's ground-breaking 30-year-old land-use laws, the measure passed in all but one Oregon county, garnering 61 percent of the statewide vote. It won approval by a wide margin in relatively conservative Yamhill County, despite opposition from the Farm Bureau and important elements in the wine industry.

Earlier this week, the local farm bureau's 10-member board voted to join the lawsuit, according to President David Cruickshank. The vote was not unanimous, he said, "but it wasn't far from it."

"We're losing enough farmland in the valley, and this is just going to make it worse," Cruickshank said. "It's always the farmland that gets developed, because it's easy to develop."

If the "special rights" argument sounds familiar, that's because it's been bandied about for years by conservative activists in the debate over measures affirming civil rights for gays.

In the present context, land-use activists say Measure 37 violates Article 1, Section 20 of the Oregon Constitution, which prohibits any law granting "to any citizen or class of citizens privileges or immunities which, upon the same terms, shall not equally belong to all citizens."

The lawsuit argues that Measure 37 violates that clause by allowing property owners who have been on the land the longest rights superior to those coming along later.

A reporter at Friday's press conference noted that this sort of seniority has been used for more than a century in the determination of water rights. Stacey said the group was limiting its focus strictly to Measure 37.

The compensation measure was crafted by Oregonians in Action, a group long serving as an advocate for private property rights. The group feels Oregon's land-use planning system is overrestrictive, allowing government to wield an overly heavy hand in deciding how private property can be developed.

Its leader, attorney David Hunnicutt, was out of the state Friday. Thus, he could not be reached for comment on the latest development.

1000 Friends of Oregon opposed Measure 37 in the fall campaign, but did not raise the constitutional issues it is now raising in its lawsuit. The organization did not begin exploring that line of attack until after the election, Stacey said.


Stacey said he favors "some form of compensation" for property owners whose land has lost value due to restrictions. He called on state lawmakers to craft replacement legislation to accomplish that, but without opening the floodgates the way Measure 37 allegedly does.



Citing claims filed across the state to build a casino, ring picturesque Wallowa Lake with subdivisions and subdivide a broad expanse of Hood River Valley pear orchards, Stacey said, "We're on the brink of marring the state's most special places."

In addition to 1000 Friends and the Yamhill County Farm Bureau, the plaintiffs include the farm bureaus in Linn, Marion and Washington counties, along with private individuals Hector MacPherson, David T. Adams, Mark Tipperman, James D. Gilbert, David A. Vanasche, Keith Fishback and Jack Chapin.

Earlier this week, it appeared that commissioners in Yamhill County might begin taking up Measure 37 claims Tuesday. But Commissioner Leslie Lewis is expected to be out of the office next week, so the discussion will presumably be pushed back to Jan. 25.

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