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# Hood River News

Official Newspaper, City of Hood River and Hood River County



Gorge Weather

January 24, 2005

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## Critics argue land-use law violates fairness

By **RAELYNN RICARTE**

*News staff writer  
 January 18*

Measure 37 is being legally challenged on grounds that it "violates basic protections for fairness" under the Oregon Constitution.

However, the authors of the new law contend that if the lawsuit is successful it will jeopardize the entire state land use system.

Farm bureaus in Linn, Washington, Marion and Yamhill counties have joined with 1000 Friends of Oregon to file a lawsuit they hope will invalidate the law. The suit filed in Marion County Circuit court on Friday asserts that Measure 37 violates Article 1, Section 20 of the constitution. That clause states, "No law shall be passed granting to any citizen or class of citizens privileges, or immunities, which upon the same terms, shall not equally belong to all citizens."

"Measure 37 really pits neighbor against neighbor because it takes away zoning safeguards and due public process," said Dan Eisenbeis, staff planner for 1000 Friends.

Ralph Smiley, president of the Hood River County Farm Bureau, said the local organization plans to stay neutral on the fray over Measure 37 — at least for now. The county bureau joined the opposition against the measure but Smiley said it is now law and that has to be given strong consideration.

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"We will be discussing this but will probably not take a stand until the legislature does," he said.

Eisenbeis said the law, which went into effect on Dec. 2, creates a "privileged" class of citizens with special rights. Measure 37 requires government agencies to either compensate a landowner when a regulation devalues property by taking away its use, or remove the "offending" restriction. Eisenbeis said because the measure is retroactive, it grants more development rights to property owners who purchased holdings before Oregon's planning rules were set in place. He said that right strips away the security of neighbors who bought properties with guarantees about usage brought by the state zoning regulations.

In addition, Eisenbeis said Measure 37 does not require government entities to notify neighbors about possible land use changes when claims are filed. Both Hood River County and the City of Hood River have elected to advertise before action is taken on a claim, but Eisenbeis said that not all agencies may choose to take that route.

"Once you begin asking questions, more questions get raised because of the ambiguities in the measure and its failure to take a broader view," he said. "Our primary concern is that Measure 37 threatens our quality of life and undermines our land use protections as well as our economic prosperity in the state of Oregon."

Oregonians in Action, the property rights group that wrote Measure 37, claims that the legal challenge could have far-reaching consequences. For example, Ross Day, director of OIA legal affairs, said the arguments used in the lawsuit could ultimately eliminate tax deferrals for farm and forest landowners.

Plus, citizens in rural areas subject to more land use regulations could argue against the greater use given to urban residents. Farmers could also contest having to earn \$80,000 per year in order to build a house on their agriculture land when residential property owners were not held to that same standard.

But OIA does not believe the lawsuit will prevail since it "incorrectly" applies the constitutional clause. Day said all laws benefit some citizens more than others, but the equality argument can only be made if the law is directly prejudiced against a particular class of people, such as gender, ethnicity or sexual orientation.

"The reason that Measure 37 passed by a supermajority of the voters was that it addressed a basic question of fairness, 'Why should land use planning build wealth for some on the backs of others?'" said Day. "There are no ambiguities here unless you are trying to get around the

law.”

He said it is interesting to see 1000 Friends fight for notification to neighbors of pending changes in zoning related to Measure 37. According to Day, 1000 Friends was one of the most outspoken opponents against Measure 56, which requires advertisement of land use decisions.

“There is a lot of hypocrisy in this lawsuit. The people who have brought it forward on the guise of protecting property owners were fine with the government taking actions to make places like Hood River County the personal playground of urbanites,” said Day.

He said OIA will seek to intervene in the lawsuit on behalf of Measure 37’s chief petitioners.

If successful in that request, Day said a motion to dismiss the lawsuit will be filed on the grounds that it is “frivolous” and being used as a “political maneuver” both to thwart the will of voters and as a fundraiser.

In November, Measure 37 passed by a 60 percent margin statewide and Day contends that the people have spoken loudly and clearly and should be respected.

“If I was holding a seminar on frivolous lawsuits this would be Exhibit A. When 1000 Friends was fighting against Measure 37 they tried to scare voters with warnings that it would lead to litigation — they just didn’t say it would be litigation that they caused,” said Day.

1000 Friends contends the lawsuit is necessary to protect a land use system that has preserved natural resources for the past three decades. The conservation group said Oregon’s tourism base has increased substantially because of the scenic beauty brought by development restrictions.

“Oregon is a great place to live, work and raise a family. People actually move to Oregon without knowing where they will work because they know this is a special place. Oregon is not Oregon by mistake, but because of careful stewardship,” said Bob Stacey, executive director of 1000 Friends.

Day said the organizations involving themselves in the lawsuit could end up incurring legal costs if the challenge is thrown out or overturned. He said several years ago 1000 Friends found a “sympathetic” judge in Marion County to help overturn Measure 7, but he is hopeful that a second and even stronger vote on the same issue will bring a quick end to the current action. Measure 7 was a constitutional amendment that passed by a 54 percent margin statewide but was rejected by

the court because it was found to illegally address two issues instead of the allowable one.

Under Measure 7, an exception for compensation could be made for pornographic businesses and nude dancing establishments.

Those same provisions have been included in Measure 37 but, as a statute, it allows for greater flexibility in language.

It could be amended by the legislature and Eisenbeis said 1000 Friends also plans to work for changes on the political front. The conservation group plans to advocate for a compensation package that will aid landowners who have been adversely affected by the existing land use rules.

"Our hope is that we can all work together to craft some kind of replacement measure that honors all parties and preserves the integrity of Oregon's land use system," said Eisenbeis.

Day believes that if 1000 Friends was truly interested in compensation it would have taken the lead long ago to raise funds. He said OIA also plans to advocate on behalf of landowners before the legislature, especially if amendments to Measure 37 are given consideration.

OIA has suggested that a compensation fund be established from monies gained by the state when tax deferrals are lifted from forest and farm lands that gain development rights by a Measure 37 claim.

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