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County asks circuit court to clarify Measure 37

Crook County files lawsuit asking for clarification

Crook County last week filed a lawsuit against itself in the circuit court of Crook County asking local courts to determine whether its ordinance implementing Measure 37 passed by voters in November is lawful.

Measure 37 provides that local governments which reduce property values through land use regulations must either pay compensation or reinstate those rights.

"We have implemented Measure 37 to the best of our ability," noted Crook County Judge Scott Cooper. "But there has been great confusion statewide as to various ways that some provisions might be interpreted. It's important to Crook County to be able to tell its citizens with certainty what the law means, at least in this circuit. The lawsuit seems like a straightforward way to get at that question."

Some of the issues the County Court, which is the governing body for the county of 20,500 people, hopes the circuit court will address include: Can local governments establish processes which claimants must follow? Can local governments require claimants to cover costs of processing applications? What type of evidence, if any, can local governments require claimants to submit to prove loss of value? If development rights are reinstated, are those rights transferable to subsequent owners?

Judge Cooper noted that the County Court doesn't hope to influence the circuit court one way or another with the lawsuit. "We'll live within the rules, whatever they are," he said. "This procedure seems tailor-made to get that question answered."

Cooper said Crook County proceeded to court because of uncertainty about where the Legislature might go. "There are lots of ideas floating around the Capitol," he said, "Maybe a bill will pass and maybe it won't. Maybe the governor will sign it, maybe he won't. Meanwhile, time is ticking by." Time is of concern to local governments because local jurisdictions have 180 days to process Measure 37 claims or claimants can go straight to circuit court and demand that local governments pay compensation and their attorneys fees.

No trial date was assigned at press time, and the case hasn't yet been assigned to one of Crook County's three circuit judges. Any decision of the Crook County Circuit Court would not set precedent for other circuits in Oregon. A pre-trial conference has been set for May 16, according to Wilson.

"We need to settle this," Cooper said. "Voters in this county and in 35 of 36 counties said this was a direction the State should go. Arguing about whether the votes meant what they said is futile. A majority favored the measure, and governments need to hammer out the details and get moving. This isn't a statewide fix to the problems, but it should settle things down in this county."

Crook County Counsel Jeff Wilson said the county filed suit under a little-known and little-used provision of Oregon law which allows local governments to seek advance rulings from circuit courts as to the "regularity, legality and correctness" of local ordinances. He said circuit court also has the ability to declare the legality of any decision of local government that raises novel or important legal issues.

"We filed the lawsuit on Feb. 3 and we're in the process of publishing summons in the newspaper," Wilson added. "Probably the major reason for filing the lawsuit is that the county doesn't know if the procedures that it adopted in implementing Measure 37 will pass judicial scrutiny. Right now, if a claimant appeals the county's decision under Measure 37 to circuit court, the claimant (can get) attorney fees," Wilson said. He said there's a risk to the county if a circuit court judge would say the county's procedures are not legal.

"So one of the things I'm hoping to get from circuit court is a declaration of whether or not the procedures comply with Measure 37 and if not, how they should be amended," Wilson noted. He said the county has received seven Measure 37 claims so far and as of Friday, Feb. 4, only one of those claims has been "deemed complete."



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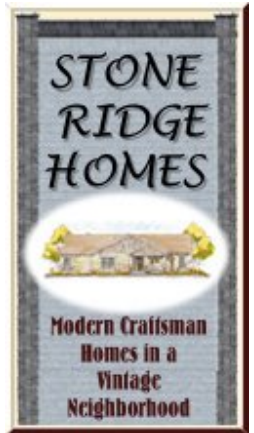
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