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2. LAND USE: Measure 49 splits Oregon (11/01/2007)

Arthur O'Donnell, *Land Letter* editor

With less than a week before polls close on a special election, opponents of a measure to reform Oregon's controversial land-use compensation law face an uphill battle. "Our internal polls show we're down," said Dave Hunnicutt, president of Oregonians in Action and leader of the "Stop Measure 49" campaign, told *Land Letter* this week.

There are no formal political polls available, but an online survey conducted by the *Portland Business Journal* last week put the "Yes on 49" campaign ahead with about 61 percent, while "Stop 49" was at 33 percent, with 5 percent undecided.



Courtesy of the Stop-49 campaign.

Measure 49 essentially rewrites the previously approved Measure 37, which allowed property owners to obtain financial compensation from government agencies if certain land-use regulations reduced their property values.

Although no financial payments have been recorded to date, the state at the end of last year was swamped by more than 7,500 claims under Measure 37 involving 750,000 acres of land. According to the latest count by researchers at Portland State University's Institute of Portland Metropolitan Studies, claimants requested about \$13 billion in compensation.

Because they cannot pay all approved claims, counties and other local agencies had begun to waive their land-use regulations. In addition, there have been more than 125 lawsuits filed regarding Measure 37 claims decisions (*Land Letter*, April 5).

The deluge of compensation requests, waiver actions and lawsuits raised public and media attention, and Gov. Ted Kulongoski (D) earlier this year brokered a deal to put a Measure 37 reform initiative on the ballot. The resulting Measure 49 largely reflects the governor's proposals.

The changes would allow claimants to construct up to three residential units on a property, if development was allowed at the time they purchased their land. Up to 10 houses could be developed if that was allowed when the land was purchased and the owners can prove that their property values declined as a result of restrictions. There is a streamlined process for developments of up to three units, but a more involved appraisal process required for proving losses to value for the larger claims, under the proposed measure.

However, subdivisions of more than three units would not be allowed on high-value farmlands, forestlands or groundwater-restricted properties. Additionally claimants cannot use waivers to override zoning laws that limit commercial or industrial developments in residential, agricultural or timber areas.

Outspent and politically disadvantaged

Hunnicutt also said that despite numerous newspaper editorials questioning Measure 49, supporters will be able to outspend opponents by about double and can count on backing from the political establishment. "We have a governor who is spending his days at the 'Yes on 49' campaign headquarters making telephone calls," Hunnicutt lamented.

He also criticized lawmakers for bypassing the standard practice of having the state's attorney general write the ballot title, instead allowing proponents of reform to dictate the language. "As of a couple of months ago, the ballot title alone polled at 81 percent [in favor]," he said. "That's a problem for us, as the title is supposed to be fair and factual."

An explanatory statement written by the Assembly to describe Measure 49 stated "the measure expands homebuilding

rights," while the anti-49 campaign contends it "radically changes Oregon law to allow government to take your land without compensating you."

Though Oregonians in Action filed complaints at both state and federal court levels, Hunnicutt admitted his organization's chances of overturning any election results were slight, barring proof of "bald-faced lies" in the title language.

While the anti-49 forces seemed discouraged, supporters of the measure also expressed concerns because vote-by-mail returns were proving sluggish in an election that had only two initiatives – the other being a cigarette tax proposal that has drawn big spending from tobacco companies opposed to it.



Courtesy of the Yes-on-49 campaign.

As of Tuesday, the Secretary of State's Office reported that 492,543 mail-in ballots had been returned; about 25 percent of Oregon's total 1,963,983 registered voters. That is a much slower response than for the two previous elections that resulted in a 60-percent-plus voter turnout, said Jeremiah Baumann, spokesman for the "Yes on 49" group. "The turnout is significantly lower than we were hoping for, but we are optimistic Oregonians are with us on this."

Financial backers of the measure, Baumann said, are largely environmental groups and about 5,000 individuals.

As of Wednesday, the "Yes on 49" campaign had raised \$4.7 million, compared with \$2.3 million for the opposition, according to the Oregon Elections Division. Top donors in favor of the measure included the Nature Conservancy and Environment Oregon. The top donors against the measure included three timber companies, Stimson Lumber, Seneca Jones Timber and the Swanson Group.

Loss of land value not found

One of the claims used to support passage of the original Measure 37 – and resurrected by the anti-49 forces – is that restrictive land-use regulations adopted by Oregon since the 1960s have substantially impaired property values. The Oregonians in Action group, for example, contends that land-use planning rules have lowered the value of private property in the state by \$5.4 billion per year.

However, a new analysis by two Oregon State University professors fails to find such an impact. In fact, wrote William Jaeger and Andrew Plantinga in an Oct. 28 op-ed piece in the *Medford Mail Tribune* not only did the value of lands with development restrictions continue to rise over a 40-year period, their rates of increase were essentially the same as for properties without such restrictions. In addition, in comparing rural lands in Oregon with similar property in Washington state that did not impose severe development restrictions, they found slightly higher increases in valuation within Oregon.

Plantinga, an associate professor in the Department of Agriculture and Resource Economics of OSU, told *Land Letter*, "We collected data on land that had not been developed going back to before the major land-use regulations were enacted to see if those regulations had the effect of lowering values. We didn't find any evidence of large effects on values."

While there were differences in property values between developed lands and non-developed lands, "Those differences existed before the regulations went into effect."

One of Oregon's key planning tools is designation of the "urban growth boundary" (UGB), he explained. Parcels inside the UGB in the Eugene/Springfield metro area, for example, appreciated at about the same rate as those outside the UGB.

"While property values are higher inside the UGB, our data indicate this was also true in the 1960s before the planning system was adopted," the researchers found. "The upshot based on our data is that a \$1,000 investment back in the 1960s left you with about the same wealth today regardless of whether your land was ultimately incorporated into the UGB."

Plantinga said that one valuable aspect of Measure 49 is that it would include an actual process for landowners to prove they had lost value because of restrictions, rather than just accepting contentions that land-use impairs valuation.