

THE OPINION OF THE OREGONIAN EDITORIAL BOARD

Imaginary losses, real damage

The Legislature must set a uniform, realistic way of calculating losses under Measure 37

You've heard of leaving nothing to the imagination? Property-rights Measure 37 has inflicted the opposite problem on Oregon. It leaves everything to the imagination.

After voters approved this crude wrecking ball of a law in 2004, it's no surprise that some property owners would imagine they'd lost millions. Measure 37 requires governments to compensate people if regulations reduce the value of their land. But it doesn't explain how to calculate such losses.

Or verify them.

That's largely been left to Measure 37 claimants to figure out. And guess what: Human beings, seeking compensation, tend to exaggerate their losses. If that's predictable, what is surprising is how meekly state and local governments have gone along with owners' figures.

"We look at what they put down on their claim form as the loss in value," one Washington County official said last week. "But we really don't pay a great deal of attention to the loss they report."

Neither do most other jurisdictions. Overwhelmed by claims, they don't have time to investigate claims thoroughly. And the dollar amounts don't matter, anyway, officials say, because there's no money to pay compensation.

True, there's no way to pay \$12.6 billion. As of Friday, that's how much the roughly 7,500 claimants in Oregon had demanded. Yet if the state imposed a prudent way to measure and verify losses, that method in and of itself would help to curtail exorbitant demands.

Typically, the amount on claims is based on what property might be worth today. Take, for instance, one \$9.5 million claim, recently analyzed by the American Land Institute. The dollar amount is based on the hope of building a huge subdivision on 54 acres of prime farmland.

That is, it's based on the possible value of the land as developed today, not on what the land would have been worth in the early 1970s. Back then, any housing the claimant might have built would have competed with thousands of other potential home sites. Today, however, farm zoning restricts the supply of such sites.

Thus, ironically, farm zoning actually *benefits* Measure 37 claimants. They can pursue subdivision claims, while neighboring farmers around them cannot. Many dollar amounts for damages are based on a monopoly advantage that the claimant never possessed originally — but only enjoys now, thanks to farm zoning. And here's another problem with that \$9.5 million claim we mentioned earlier.

Had the state confiscated that farm acreage for a park, sold it for roughly \$70,000 in the early 1970s, put the proceeds in a bank, paid interest on it, and then returned the money to the

claimant, the American Land Institute estimates it would have been worth \$838,055. That's a tenth of what the property owner claimed to have lost.

Strangely enough, the proponents of Measure 37 actually suggested a similar strategy for calculating losses. In arguing that the Oregon Supreme Court should uphold Measure 37, proponents' attorney argued that "if the state had confiscated \$1,000 from Smith's savings account . . . and 32 years later it

decided by popular vote that this was unfair, presumably all would agree that repayment should include an amount to offset lost interest as well as principal. *That is all that is required under Measure 37.*"

Proponents of Measure 37 seem to have forgotten they ever suggested this approach. We trust it hasn't slipped the minds of the Oregon Supreme Court justices, who ultimately upheld Measure 37. The state should have quickly adopted this way of calculating losses. The Oregon Legislature should still adopt it.

Because there's another big problem here. If state and local governments don't verify the amount of a claimant's loss, how do they know for certain that any loss took place?

Recent calculations by the American Land Institute show many claimants have lost nothing, or only a fraction of what they imagine they've lost. As for that \$9.5 million claim? Not long after it was filed, the American Land Institute reported, "a neighboring farmer offered in writing to buy the claimant's land for \$12,500 an acre or \$676,000." The claimant turned this down, preferring to wait

for the state's anticipated valuation of \$9.5 million.

Who wouldn't?

We don't accept Measure 37's absurd notion that people should be paid for hypothetical losses on speculative values of their land. But if Oregonians still believe this nonsense, then the process of awarding claims should have some toehold in reality. If the dollar amounts on Measure 37 claims were calculated fairly and realistically, the American Land Institute concluded a great deal of valuable farmland in the Willamette Valley could still be saved.

If legislators still cannot bring themselves to end the Measure 37 scam, they must at least set a uniform method of calculating and verifying losses. They must put a stop to the wildly exaggerated expectations this law has dialed up.

Measure 37 threatens real damage to our state — based on dollar amounts that reside, mainly, in property owners' imaginations.

