



WESTERN CENTRAL CHAPTER

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Oregon's Measure 37: A New Property Rights Initiative in a Leading Comprehensive Planning State

by Nancy E. Stroud, JD/AICP

On November 2, 2004, Oregon voters passed an initiative known as Measure 37, which requires state and local governments to compensate property owners for any loss of value in land occurring due to regulations enacted after the owner's purchase of the land. Measure 37 amends the state's statutes. It is similar in some respects to Florida's "Harris Act", but goes beyond the Florida legislation in many ways.

The successful initiative follows the Oregon Supreme Court's invalidation last year of a similar Oregon initiative ("Measure 7") in 2000 that amended the state constitution to require such compensation. The American Planning Association, with other planning public interest organizations, filed an amicus curiae brief supporting the earlier measure's invalidation¹. APA argued that Measure 7 would significantly increase the cost of implementing and enforcing regulations, seriously degrade the quality of life that Oregonians had built as a result of 30 years of planning controls and successful land use management, and give priority to the right of the private individual to develop land at the expense of the wider community that may be harmed by that development.

Measure 37's provisions include, in part: "If a public entity enacts or enforces a new land use regulation or enforces a land use regulation enacted prior to the effective date of this amendment that restricts the use of private real property or any interest therein and has the effect of reducing the fair market value of the property, or any interest therein, then the owner of the property shall be paid just compensation (equal to) the fair market value of the affected property interest...(as) of the date the owner makes a written demand for compensation under this act."

Claims under the new initiative can be made to regulatory restrictions that preceded the initiative, for a period of two years from the later of 1) initiative's effective date or 2) the date the public entity applies the regulation to a development application. If a new regulation is enacted, claims can be made for two years after the later date of either the enactment or the application of the regulation to a development application. Not only may the current owner of the property claim compensation, but if the current owner's family, going back to a grandparent, owned the property in whole or in part, the initiative entitles the current owner to a claim. This apparently means that regulations that changed during the time of that grandparent's ownership may be the basis of a claim for compensation.

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NEWSLETTER INFORMATION

This newsletter is published by the Western Central Chapter of the American Planning Association. Circulation is to APA members of the Western Central Chapter (WCC). The WCC Board welcomes submission of original articles, editorial letters, and any other information of interest to both professional and citizen planners. Submissions should be made to the newsletter editor:

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2005 WCC Newsletter Schedule

Spring - March 4 (submittal deadline February 18)
Summer - June 3 (submittal deadline May 20)
Fall - September 2 (submittal deadline August 19)
Winter - December 2 (submittal deadline November 18)

CHANGES OF ADDRESS

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*This position is
currently vacant.*

President's Message

by Andrew C. Epple, AICP

I hope the New Year is off to a good start for everyone. You'll see in the summary of minutes from our Executive Committee meeting in January that WCC has committed to three new initiatives that should be of interest to you. First, Diane Kushlan of Idaho and Steve Miller of North Dakota have taken the lead in getting a web page established for the Chapter. The RFP was sent out last fall and a response is currently being considered. With any luck, we should have a web page up and running this spring, as a new service for our members, and for others outside the Chapter who are looking for information about WCC.

Second, we have decided to obtain a Chapter subscription to APA's Planners' Advisory Service (PAS) as a service to our members. The intent is to have the subscription accessible to WCC members at no cost other than the one subscription rate we pay as an organization. Those of you who are familiar with PAS Reports know they are an extremely valuable resource for practicing planners. You may also know PAS subscriptions are relatively expensive, and therefore not available to many of our members. Having a Chapter subscription will hopefully make PAS reports and services available to hundreds of Chapter planners who otherwise might not have access to this valuable planning resource. Thanks to Patricia Nilsson of Idaho for taking the lead on this initiative.

Finally, we are putting the finishing touches on developing a policy for rebating Chapter funds to state Sections for continuing education purposes. Rebates would be made to Sections on a prorata basis, based on membership levels. State Sections would need to provide narrative descriptions of how the funds would be used to be eligible to receive them, and would need to provide an accounting of how the funds are actually spent. The intention is to provide more support to state Sections to sponsor high quality training sessions at state conferences or through media workshops.

Your Executive Committee is committed to exploring and implementing ways to deliver more tangible services to our members. Please contact any of us with feedback on these initiatives, and ideas for any others you feel would be important to the membership.

Stay warm the rest of this winter, and stay in touch.

Idaho Planning Association Provides Financial Support for AICP Exam

To encourage more Idaho planners to take the AICP exam and enhance the level of professionalism throughout the state, the IPA Board has earmarked a total of \$1,000/ year in support of planners taking the AICP exam. To qualify, planners must be a member of APA and IPA and submit a letter to the IPA Board which describes their need for the financial support. Deadline for submittal is March 1, 2005 for the May exam and September 1, 2005 for the November exam. Selection will be based on the following criteria:

- Length of membership in IPA; preference will be given to planners with the longest membership;
- Level of financial support from the planner's employer ;
- Salary; preference will be given to those planners making less than \$35,000 a year; and
- A letter of endorsement from the planner's immediate supervisor.

Costs for taking the AICP exam are \$65 to determine eligibility and \$325 for the exam. Typical AICP annual dues are \$80 - \$100, in addition to APA and IPA membership.

AICP Exam Fee Reimbursable Under GI Bill

Congress passed a revision to the GI Bill Education program in March 2001 that includes additional licensing and certification examinations. AICP submitted an application to have its certification credential included, and the application was approved in December 2002.

This means that military veterans (and their surviving dependents) who are also approved AICP applicants (meaning they have paid the registration fee to AICP and taken the exam), can now ask the Veterans Administration to reimburse them the fee.

Veterans interested in the GI Bill Education Benefits Program may visit the website www.gibill.va.gov/education/LCweb.htm or send an e-mail to AICPexam@planning.org.

Oregon's Measure 37, continued from Page 1

The initiative provides for certain land use regulations to be exempt, including those “historically recognized” under common law to restrict or prohibit public nuisances, those that protect public health and safety such as fire and building codes, and those required to comply with federal law. The present owner must make a written demand for compensation by the government, and compensation includes attorney’s fees and other costs incurred to collect the compensation. As an alternative to paying compensation, the government may decide to remove the regulation as it applies to the property.

Measure 37 has been criticized as sidestepping the normal public notice and hearing safeguards for development applications, creating unfair case by case waivers, and creating additional costs and complications for due diligence analysis for real estate transactions, in addition to the same criticisms as leveled at Measure 7. The new initiative was not funded by any new revenues, although the Oregon Secretary of State has estimated that taxpayers will pay up to \$344 million per year in administrative costs for its implementation. The Oregon League of Cities, which opposed the measure, has developed an implementation ordinance for claims processing.

The President of the Oregon chapter of the American Planning Association explains the initiative’s success as follows: “My own view is that Measure 37’s passage was the product of a variety of things, including a deceptively innocuous ballot title that contributed to a lack of understanding of the full implications of the measure. Proponents offered well-told stories that went unchallenged and played to an underlying frustration with ‘the system.’ I do not believe the majority of the electorate intended to devastate long-range comprehensive planning.” He recommends that the chapter continue its efforts to educate the public of the benefits of comprehensive planning. Is Measure 37 the next generation of private property rights legislation? Stay tuned.

For more information, visit www.oregonapa.org, www.friends.org, or www.orcities.org.

Footnote:

The author is a member of the APA Amicus Curiae Committee which sponsored the amicus brief. The Oregon Court found Measure 7 to be invalid based upon a procedural irregularity, because it violated the state constitution’s balloting requirements that mandate separate votes for amendments to different parts of the constitution.

Bechen v. Moody County

by Sam Trebilcock

The South Dakota Planners Association is working with the APA Amicus Curiae Committee to submit a brief to the South Dakota Supreme Court concerning a contentious animal confinement case – imagine that.

This past summer, the Third Judicial Circuit Court found that a Moody County conditional use was an administrative action and thus not referable to a vote of the people of Moody County. You may ask – what’s the big deal! Well, this is contrary to the Hutchinson County case of a few years ago, again involving a animal confinement, in which our Supreme Court ruled that a conditional use is a legislative act.

This new case, John Bechen and the Moody County Chapter of Dakota Rural Action v. the Moody County Board of Commissioners, involves two dairies. Interestingly, both of these dairies continue to be constructed as we speak. The circuit judge lifted an injunction on construction also. This case has significant impacts to all local governments.

If you are interested in seeing the brief, check out the APA website under Amicus Curiae Committee at <http://www.planning.org/amicusbriefs/>.



Find Yourself in an Ethical Dilemma? Need to Reacquaint Yourself with the Planners Code of Ethics?

Help is available. WCC Members receive a discount for the on-line Ethics Course offered by Ohio State University.

The Cost is \$37.50. For more information on the course and how to register, visit: <http://knowlton.osu.edu/ped/ethics.htm>.

WCC Executive Committee Meeting Summary

Call to Order: The winter meeting of the WCC Executive Committee was held via conference phone call on Thursday, January 20, 2005. The meeting was called to order by President Andy Epple at 10:00 a.m. with the following Committee members participating:

Dave Abo, Secretary
Don Contraman, Vice President
Andy Epple, President
Diane Kushlan, Professional Development Officer
Steve Miller, North Dakota State Director
Ramona Mattix, Treasurer
Jeff Bollman, Montana State Director
Neil Putman, South Dakota State Director

Minutes: The minutes of the November 19, 2004 meeting were approved as distributed.

Treasurer's Report: Ramona Mattix, Treasurer, reported that there is \$13,120.19 in the checking account. The Chapter received a total revenue of \$8,819.08 in 2004 and had a total of \$10,164.82 in expenses. Concern was expressed that expenditures exceeded revenues for the year. It was decided that this issue should be addressed in budget preparation. After further discussion, the Treasurer's report was approved.

Policy Discussion on Section Rebates: Andy Epple presented a draft policy regarding the distribution of professional development funds to States. The policy would provide a formula based on membership percentage by State to disperse funds available after the Chapter expenses have been covered for the annual budget. Committee members were basically supportive of the proposal.

Ramona Mattix was concerned that checks would automatically sent without any justification. Jeff Bollman stated that AICP rebate funds would need to be accounted for. Steve Miller suggested that professional development funds up to the percentage would be available if the States requested eligible reimbursement.

Dave Abo suggested that the AICP rebate funds should be separated and not dispersed the same as the APA rebate funds. The AICP funds need to be accounted for back to APA. Andy Epple stated that he didn't feel that WCC received AICP funds in 2004. Ramona Mattix stated that WCC did not receive an AICP rebate in 2004.

Jeff Bollman stated that two years ago, that APA started a policy that a Chapter member had to have an ethics session to receive AICP funds. Andy Epple asked Diane Kushlan and Ramona Mattix to look into the AICP rebate status.

2005 Chapter Budget: Andy Epple stated that WCC has a current balance over \$13,000. He asked the Board if they wanted to maintain the balance or how they wanted to use the balance.

Steve Miller had a concern of approving a deficit budget to use the balance. The Board agreed to establish a balanced annual budget and leave the WCC balance and consider un-budgeted expenses as they occur. Jeff Bollman suggested investing some of the balance to earn better interest than the checking account. Andy Epple stated that this should be looked into.

Ramona Mattix suggested using some funds for recruiting new members.

Andy Epple stated that he will prepare a proposed budget with these ideas in mind, and send it to the Board prior to the April conference call.

PAS Membership: Andy Epple stated that Trish Nillson informed him that WCC could obtain a Planning Advisory Service (PAS) subscription for \$495 for a nonprofit. Dave Abo asked how this would be administered. Andy Epple stated that he would ask Trish Nillson to determine how WCC members could utilize the subscription from the American Planning Association. Steve Miller moved to include the PAS subscription in the annual budget. Seconded by Ramona Mattix, motion passed.

WCC Website Report: Steve Miller reported on the status of the WCC web site RFP. The RFP's are due at the end of the month. RFP's from Chapter members would be given special consideration but would not be limited to members of WCC. The Board agreed to approve a contract by e-mail communication after Steve Miller and Diane Kushlan presented a recommendation to Andy Epple.

AICP Preparation: Diane Kushlan stated that a dozen planners in Boise will begin studying for AICP exams. In November, two planners in Idaho passed in the exam. Two planners in Jackson, Wyoming have requested assistance but there is no PDO in Wyoming. Andy Epple stated that he will contact Wyoming to see if they will appoint a PDO. Diane Kushlan will send study materials to Wyoming planners.

Next Meeting Date: Conference Call on April 21, 2005 (Thursday at 10:00 a.m., Mountain Standard Time)

Adjournment: Conference Call Adjourned at 11:10 a.m.

Upcoming Conferences

2005 Rocky Mountain Land Use Institute Land Use Conference

The RMLUI's fourteenth annual land use conference will be held April 21 and 22, 2005, at the University of Denver's College of Law. For registration and session information, please check their web site at: <http://www.law.du.edu/rmlui>.

Idaho Planner's Association (IPA) Annual Conference

Save the date! The Idaho Planner's Association will hold their annual conference October 12 - 14, 2005, at Templins - Post Falls, ID. Special invitation to Montana Planners.

2005 Western Planner Resources Conference

The 2005 WPR Conference will be held August 3 - 5, 2005 at the magnificent Homestead Resort in Midway, UT. Our Hosts will be the Utah Chapter of the American Planning Association. Check <http://www.westernplanner.org/2005conf.htm> for more information.

Montana Association of Planners (MAP) Annual Conference

The Montana Association of Planners will hold their annual conference September 28 - 30, 2005, at the Red Lion Inn in Helena, MT.

Newsletter Correction

The Winter 04-05 WCC newsletter contained a list of WCC members who passed the November AICP Exam. Martin Matsen, of the Cheyenne Metropolitan Planning Organization, also passed the exam but his name was inadvertently left off the list. Sorry Martin and congratulations!

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