



Just Compensation: Voters Passed Measure 7 for One Simple Reason

Fairness

By Larry George

Passage of Measure 7 showed that Oregonians believe that if the community wants private property, it can have the property, provided it pays just compensation. Achieving community desires should be tied to using community resources. Not too many years ago, if the

public wanted private property for an open space or a wildlife refuge, the public would buy the property. But today, government takes the property it wants through regulatory action, achieving the same public purpose with no cost to anyone except the landowner whose land is regulated.

There are hundreds of stories of individual landowners who have been hurt by the overzealous application of land use regulations. On a case-by-case basis nobody would defend the state's position that these regulatory acts were fair or represented good public policy.

But rather than addressing these real problems, Governor Kitzhaber and others have been satisfied that these landowners are the necessary victims of the greater good. This arrogance and insensitivity is what led to adoption of Measure 7.

Opponents of Measure 7 have only one argument: the community as a whole will be

unwilling to pay for everything that it wants, so we must use the power of government to force one individual to bear the entire burden to provide a public benefit.

Opponents of Measure 7 do not believe that we can have a land use planning system and protect private property rights at the same time. I disagree. Not only are they wrong, but they ignore the origins of Oregon's land use planning system and they ignore the position of Governor Tom McCall and those advocating for Senate Bill 100 in 1973.

Measure 7 is an opportunity to restore the intent of the 1973 Legislature, and build a better and more equitable land use planning system.

Political and community leaders must react proactively to the passage of Measure 7, admit that mistakes have been made in the past, and then build consensus on how to treat individual landowners more equitably while we plan for the future of our state.



We can, and will, have a better planning system if the political leaders work together to implement Measure 7. If not, Oregonians will continue to polarize around this issue and to fight battles in a conflict Oregon cannot afford.

Background

The United States Supreme Court has clearly stated that when government physically occupies part of your property, government owes you compensation. For example, if a zoning regulation requires a landowner to allow the public to walk across the landowner's property to access a lake, the landowner is

entitled to compensation.

The United States Supreme Court has also clearly stated that when a government regulation destroys all economic use of your property, government owes you compensation. For example, a regulation that required a landowner to leave his entire parcel in its natural state would trigger compensation.

The current state of the law on takings and just compensation is the primary reason we put Measure 7 before the voters. The United States Supreme Court has left open the question of what happens when a government regulation diminishes, but does not eliminate, the economic

use of private property. Imagine an open space regulation that applied to only 90 percent of your property, rather than the entire parcel. In this situation, compensation has not been required.

The opponents of Measure 7 have stated that landowners could use current law to seek compensation, but this is unrealistic. The cost to get a takings case to court almost always exceeds the loss in value of the property, making a claim economically unsound. Why spend \$200,000 in unrecoverable litigation costs and application fees in the hope of collecting the \$100,000 in value that the government has taken from you?

There are many large landowners who have the power to negotiate with local and state agencies to limit the application of regulations on their property. Unfortunately, those left on the outside of the cost curve are individual landowners who do not have the financial resources to litigate, nor the political power to negotiate.

Oregon's Land Use History: Senate Bill 100 and Measure 7

During the Measure 7 campaign, the opponents of the measure claimed that Measure 7 was contrary to Oregon's 1973 land use planning law (Senate Bill 100), and even recruited Governor Tom McCall's widow to make public appearances and file a lawsuit against Measure 7. But the facts contradict their claims.

The legislative history behind Senate Bill 100 illustrates that Governor Tom McCall, Senator Hector McPherson and Senator Hallock had committed to passing a regulatory takings

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measure as part of the land use package.

In fact, Governor Tom McCall's staff at the Executive Department was responsible for the introduction of Senate Bill 849, a bill very similar to Measure 7. On the flowchart of the 1973 land use package of bills, two bills appear at the top: Senate Bill 100 and Senate Bill 849.

Senator McPherson, Senator Hallock, and Senator Wingard introduced Senate Joint Resolution 28 which was the funding mechanism for Senate Bill 849, the compensation measure. Why introduce this bill if there was not the intention to pass and then fund a bill similar to Measure 7?

Although Senate Bill 849 was not adopted, the legislature addressed the compensation issue in Section 24 of Senate Bill 100. Section 24 states:

[The Joint Legislative Committee on Land Use shall] study and make recommendation to the Legislative Assembly to on the implementation of a program for compensation by the public to owners of land within this state for the value of any loss of use of such lands resulting directly from the imposition of any zoning subdivision or other ordinance or regulation

regulating or restricting the use of such lands.

Every time opponents state that Measure 7 is contrary to Senate Bill 100, they intentionally mislead the Oregon voters, which is destructive to the public discussion.

Measure 7: Making Compensation Work

Nearly every constitutional amendment requires implementing statutes by the legislature. The proponents of Measure 7 are currently at the table working on implementation of the measure.

But the same people who have opposed private property rights, who have opposed changes to balance Oregon's land use system, who refuse to admit that there are problems with the current system, are now making it difficult to make implementation work.

Instead of rehashing the same issues, it is time to move forward. The people have spoken. Measure 7 is a great opportunity to balance the economic costs of our land use system—the opportunity should not be wasted.

Measure 7: Debunking the Myths

Now that Oregon voters have approved Measure 7, it is time to set aside the rhetoric and start working toward implementing the measure. Oregonians In Action is committed to working with interested parties, local governments, state agencies, and Oregon landowners to insure a responsible and constructive implementation of Measure 7.

Despite the rhetoric, Measure 7 will not have the negative effects claimed by the opponents. The following article, "Debunking the Myths," origi-

nally appeared in Oregonians In Action's newsletter, *Looking Forward*. I thought it would be useful to the discussion here.

Unfortunately, Measure 7 opponents continue to exaggerate and misstate the impacts of the measure. Their statements have led to a great deal of concern and confusion over implementation. The purpose of this article is to debunk those statements.

Measure 7 Myths

Myth #1 — Measure 7 will have huge cost impacts on government. There was never any substance or justification for the estimated \$5.4 billion per year fiscal impact in the Voters Pamphlet or in opponents' campaign. The "study" used to determine the fiscal impact was based upon an analysis that was prepared by the opponents of an earlier Washington takings measure. The Washington state agency charged with preparing fiscal impact statements for the Washington ballot rejected the study, and it has been widely discredited since that time. In fact, Measure 7 opponents immediately backed away from these claims within days after the passage of Measure 7.

Moreover, if the estimated \$5.4 billion dollar cost estimate of Measure 7 were accurate, who did the opponents think had been bearing this staggering cost? If the cost estimates were true, then our land use system takes \$5.4 billion dollars from private landowners each year. That's unfair.

Measure 7 simply implements Governor McCall's and the State Legislature's intention to compensate landowners for loss of value caused by regulations imposed under Senate Bill

100, which launched Oregon's land use planning program in 1973.

In any case, Measure 7 allows government regulators to avoid the cost impacts simply by removing or modifying the regulations (i.e., allow the use). The government can decide, on a case-by-case basis, whether or not the benefit to the public when enforcing the regulation justifies paying the claim.

Not only will removing regulations offset cost impacts, it will actually provide benefits. For example, removing regulations will increase the use and value of property which will result in increased tax revenues and increased economic benefits to local communities in the form of more housing and job opportunities.

Myth #2 — Measure 7 will allow development on ocean beaches. Measure 7 will not allow development on ocean beaches. The Oregon Beach Law arises under the Oregon Supreme Court's determination

explanatory committee meetings that the measure did not apply to the Oregon beach law.

Myth #3 — Measure 7 will limit access to ocean beaches. Opponents of Measure 7 claimed the measure restricts access to beaches over privately owned land. Not true. Public access over private property is already prohibited unless compensation is paid to the landowner. There is a United States Supreme Court case concerning exactly this point (*Nollan v. California Coastal Commission*), and opponents are well-aware of this. Measure 7 does not change what the federal and state constitutions already protect.

Myth #4 — Measure 7 will allow service stations in residential zones. Opponents say Measure 7 would allow someone in a residential zone to have a service station or 7-11 store. Not so.



Commercial uses were outlawed when he purchased the property, and his purchase price reflected that fact.

Myth #5 — Measure 7 will nullify building codes. Opponents claim Measure 7 will outlaw building codes thereby threatening health and safety. Not true. Genuine building code provisions protect, and may actually increase, the value of property and they may well be necessary to secure fire and other types of insurance. Measure 7 will not outlaw or stop the application of any building code that protects the integrity of a structure.

Myth #6 — Measure 7 will result in excessive litigation. Opponents of Measure 7 claim the measure will cause litigation. Measure 7 does not require court litigation. The only claims for compensation that will end up in court are those where the county, city, or state agency chooses not to remove or amend a challenged regulation and not to pay fair compensation within the 90-day period after a claim is presented. Most claims will be resolved within that period and need never

go to litigation. These claims are similar to ordinary condemnation ("eminent domain") matters, such as acquisitions for roads rights-of-way, where most claims are settled without court litigation.

In truth, the number of claimants filing Measure 7 claims will be limited because landowners will be unwilling to spend the money to pursue or litigate a Measure 7 claim unless the government devaluation is a serious burden to them (e.g., takes away significant investment backed expectations). Unlike the Measure 7 opponents, the thought of filing a lawsuit is unpleasant to most Oregonians.

It is ironic that the same opponents who use "litigation" scare-talk are themselves doing the litigation with their court attacks against Measure 7.

Myth #7 — Measure 7 will gut urban growth boundaries. Opponents grossly overstate impacts of Measure 7 on urban growth. Urban growth boundaries limit expansion of urban areas, but do not directly impose restrictions on land outside the boundary. The regulations that directly restrict rural properties are those imposed by exclusive farm-use, forest, and rural resi-

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that there is a long-standing "custom" that people use Oregon beaches. The Court held that this long-standing custom means that there are no private property interests in beach lands. If there is no private property interest, there is no property owner to bring a Measure 7 claim in the first place.

In fact, the opponents recognized and agreed during the

Measure 7 requires compensation only when a regulation, imposed after property is acquired, reduces the value of the property. It does not compensate a landowner if he is unable to up-zone his property. Therefore, any residential owner of a zoned lot cannot assert a claim for compensation because the owner cannot use his property for commercial purposes.

dential zones. Under Measure 7, claims for compensation may arise if landowners can show that rural zoning regulations imposed after they bought the land reduced the value of the land. That has nothing to do with urban growth boundaries.

The few rural landowners who purchased their land prior to rural zoning may have a claim, as will landowners who purchased their land prior to the adoption of more restrictive rural zoning laws (i.e., LCDC's \$80,000 rule). The claims, however, will be limited to rural development types.

If urban services are not available to the land, the very few rural landowners who purchased their land prior to the adoption of rural zoning will not have a claim based on the inability to have an urban-type development. Alternatively, if the local government chooses to remove the rural zoning imposed

such as a single family dwelling on rural parcels.

Therefore, Measure 7 will have little impact on government control over urban growth.

Conclusion

There is nothing wrong with land use planning. In fact, a properly implemented land use planning system should provide economic benefits to every landowner. Unfortunately, Oregon's current land use system relies on regulation, not planning, and the results haven't surprised anyone (and they shouldn't). Through the passage of Measure 7, Oregonians have again demonstrated their willingness to fix a problem that the politicians have been avoiding. Hopefully, this opportunity will not be wasted.

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after purchase of the land, the landowner will not be able to develop it for urban uses without urban services, which local government controls.

At the most, rural landowners who may have claims will prove their loss of value by pointing to their inability to use their land for rural purposes,

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