

## OSU study examines uneven approaches to evaluating Measure 37 claims

by Bend\_Weekly\_News\_Sources

Since the passage of Measure 37 in 2004, government officials have been grappling with its implementation in cities and counties throughout the state. The ballot measure enables landowners to seek compensation if their property values are reduced by land use regulations. But how should a reduction in value be determined?

A new study published this week by Oregon State University Extension Service examines the uneven way that Measure 37 claims have been evaluated across the state. In particular, the study looks at the economics of determining if, and to what degree, a "reduction in value" was caused by a land use regulation.

The study compares two approaches to calculating reduction in value: the "single exemption" approach used by most local governments throughout the state which relies on standard appraisal methods; and the "before-and-after" approach used by the Portland Metro Council.

The two approaches to calculating "reduction in value" will nearly always lead to different dollar estimates, according to William Jaeger and Andrew Plantinga, economists in OSU's College of Agricultural Sciences and the authors of the report.

"In fact," Jaeger said, "there appear to be many cases where one approach will lead to approval of a Measure 37 claim, while the other approach would lead to denial of the claim."

The study finds that the standard appraisal methods used in the "single exemption" approach do not consider how land markets "supply and demand" are affected by the land use regulations. The authors suggest that this approach is misleading, and ultimately invalid, as a way to determine whether land use regulations have caused a reduction in value or for estimating the amount of reduction.

"The potential change in value when removing a regulation from one single property does not take into consideration what the market effects of that regulation were when it was applied to many properties," Jaeger said. "Giving one landowner a single exemption may create "monopoly benefits" that are a result of the regulations but not available to other landowners."

In contrast, the Portland Metro Council takes a before-and-after approach to see whether there is evidence of a reduction in value for a property. They calculate the market value of the land before land use regulations were enacted, adjusting for inflation, and compare that figure to the property's current market value.

This approach has led Portland Metro to deny all seven of the claims they have evaluated so far. By contrast, those local governments taking the “single exemption” approach have almost always validated the claims.

“Calculating changes to a single property will almost always lead to the conclusion that there has been a reduction in value, even when the value of the property actually increased following introduction of the land use regulations,” Jaeger said.

“An individual waiver is like a monopoly,” he added. “Exempting one property owner from a land use regulation may be valuable, but that value may be due to the fact that other land owners are denied that same exemption.”

According to the study, the value of a “single exemption” cannot be equated to the reduction in market value caused by a regulation. The effects of applying a regulation to many properties are not reversed by removing that regulation from one single property.

To prove their point, the authors looked at the current Measure 37 claims surrounding the Portland area and evaluated what would happen if the urban growth boundary were removed. Based on this “single exemption” approach, they found that Portland would be more than three and one-half times its current size.

One implication is that there will be cases, perhaps many cases, where the “single exemption” approach will indicate a valid Measure 37 claim when, in fact, no reduction in value has occurred.

“Across Oregon there is a widely held perception that land use regulations are denying many landowners lucrative opportunities. But this perception fails to recognize the direct and indirect ways that the land use regulations themselves have increased land values,” Plantinga said.

When land use regulations limit development, these limitations can preserve the surrounding areas, maintain open space, or protect groundwater resources. In short, these regulations protect the kinds of amenities that, over time, become valuable attributes for the first parcel of land that is developed, surrounded by lands that are restricted to development.

“This added value stems from the regulation that has kept all other landowners from developing their land first, or from using their land in ways that would detract from the existing amenities, such as junk yards, gravel pits, or incinerators,” Plantinga said.

The study concludes that in order to calculate the reduction in value of Measure 37 claims in a credible, valid and accurate way, governments must compare “before-and-after” (the approach used by the Portland Metro Council) or “with-and-without” situations where the land use regulations are either applied, or removed, from all relevant properties. To do this they must use something other than standard appraisal methods.

“There are many issues related to Measure 37 that the legislature needs to consider, but unless they recognize how the issues are distorted by using an invalid measure of reduction in value, the other questions are going to be much more difficult to address,” Jaeger said.

To view the entire report, “The Economics Behind Measure 37,” go to:  
<http://extension.oregonstate.edu/catalog/pdf/em/em8925.pdf>

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