

Freedom Matters

A News & Opinion Paper

Dane County, Wisconsin

Preserving Property Rights

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Our republic limits government to securing individual unalienable rights to life, liberty, and property. These rights are eroded by legislatures, and by courts complicit with them. To encourage wise jurists and journalists to help, Freedom Matters dedicates itself to the fight to restore that republic.

A New Year, A New Dedication Government Must Pay for Regulatory Takings

by Bob Bowman & Mike Byrne

With this issue, *Freedom Matters* enters its fifth year of publication. As with Volume 4, we present a redesigned format, as a symbol of rededication. The political outlook is promising. The property rights movement is beginning to gain back against the forces that have come perilously close to destroying private property rights in this nation, and to destroying this nation with it. Sadly, these gains will not be able to replace all that has been so wrongfully stolen by government from so many of its helpless citizens. Only if we all pull together, will we win.

The November elections in the U.S.A. did more than elect a national government somewhat more protective of property rights than before. It also enacted a new law in the state of Oregon, by their right of ballot initiative. That law will restore to land owners in the state of Oregon much of the meaning of the constitutional property rights protection written into our federal constitution.

Despite fierce opposition by environmentalists and anti-property rights forces in Oregon, this new law was passed by a vote of 60% in favor versus 40% opposed. These are voters who lived for 20 some years under the most restrictive land use regulations of any state in the nation. They have said "NO" to regulatory confiscation.

Will the voters of Wisconsin have to suffer for 20 more years under evermore restrictive land use regulations before passing such a common sense measure?

The Oregon law, Measure 37, is best understood by reading its actual language. It is that clearly written.

BALLOT MEASURE 37 TEXT OF THE MEASURE

The following provisions are added to and made a part of ORS chapter 197:

(1) 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.

(2) Just compensation shall be equal to the reduction in the fair market value of the affected property interest resulting from enactment or enforcement of the land use regulation as of the date the owner makes written demand for compensation under this act.

(3) Subsection (1) of this act shall not apply to land use regulations:

(A) Restricting or prohibiting activities commonly and historically recognized as public nuisances under common law. This subsection shall be construed narrowly in favor of a finding of compensation under this act;

(B) Restricting or prohibiting activities for the protection of public health and safety, such as fire and building codes, health and sanitation regulations, solid or hazardous waste regulations, and pollution control regulations;

(c) To the extent the land use regulation is required to comply with federal law;

(D) Restricting or prohibiting the use of a property for the purpose of selling pornography or performing nude dancing. Nothing in this subsection, however, is intended to affect or alter rights provided by the Oregon or United States Constitutions; or

(E) Enacted prior to the date of acquisition of the property by the owner or a family member of the owner who owned the subject property prior to acquisition or inheritance by the owner, whichever occurred first.

(4) Just compensation under subsection (1) of this act shall be due the owner of the property if the land use regulation continues to be enforced against the property 180 days after the owner of the property makes written demand for compensation under this section to the public entity enacting or enforcing the land use regulation.

(5) For claims arising from land use regulations enacted prior to the effective date of this act, written demand for compensation under subsection (4) shall be made within two years of the effective date of this act, or the date the public entity applies the land use regulation as an approval criteria to an application submitted by the owner of the property, whichever is later. For claims arising from land use regulations enacted after the effective date of this act, written demand for compensation under subsection (4) shall be made within two years of the enactment of the land use regulation, or the date the owner of the property submits a land use application in which the land use regulation is an approval criteria, whichever is later.

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(6) If a land use regulation continues to apply to the subject property more than 180 days after the present owner of the property has made written demand for compensation under this act, the present owner of the property, or any interest therein, shall have a cause of action for compensation under this act in the circuit court in which the real property is located, and the present owner of the real property shall be entitled to reasonable attorney fees, expenses, costs and other disbursements reasonably incurred to collect the compensation.

(7) A metropolitan service district, city or county, or state agency may adopt or apply procedures for the processing of claims under this act, but in no event shall these procedures act as a prerequisite to the filing of a compensation claim under subsection (6) of this act, nor shall the failure of an owner of property to file an application for a land use permit with the local government serve as grounds for dismissal, abatement, or delay of a compensation claim under subsection (6) of this act.

(8) Notwithstanding any other state statute or the availability of funds under subsection (10) of this act, in lieu of payment of just compensation under this act, the governing body responsible for enacting the land use regulation may modify, remove, or not to [sic] apply the land use regulation or land use regulations to allow the owner to use the property for a use permitted at the time the owner acquired the property.

(9) A decision by a governing body under this act shall not be considered a land use decision as defined in ORS 197.015 (10).

(10) Claims made under this section shall be paid from funds, if any, specifically allocated by the legislature, city, county, or metropolitan service district for payment of claims under this act. Notwithstanding the availability of funds under this subsection, a metropolitan service district, city, county, or state agency shall have the discretion to use available funds to pay claims or to modify, remove, or not apply a land use regulation or land use regulations pursuant to subsection (6) of this act. If a claim has not been paid within two years from the date on which it accrues, the owner shall be allowed to use the property as permitted at the time the owner acquired the property.

(11) Definitions -- for purposes of this section:

(A) "Family member" shall include the wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent, or grandchild of the owner of the property, an estate of any of the foregoing family members, or a legal entity owned by any one or combination of these family members or the owner of the property.

(B) Land use regulation" shall include:

(i) Any statute regulating the use of land or any interest therein;

(ii) Administrative rules and goals of the Land Conservation and Development Commission;

(iii) Local government comprehensive plans, zoning ordinances, land division ordinances, and transportation ordinances;

(iv) Metropolitan service district regional framework plans, functional plans, planning goals and objectives, and

(v) Statutes and administrative rules regulating farming and forest practices.

(C) "Owner" is the present owner of the property, or any interest therein.

(D) "Public entity" shall include the state, a metropolitan service district, a city, or a county.

(12) The remedy created by this act is in addition to any other remedy under the Oregon or United States Constitutions, and is not intended to modify or replace any other remedy.

(13) If any portion or portions of this act are declared invalid by a court of competent jurisdiction, the remaining portions of this act shall remain in full force and effect.

The above is the full text of Oregon Measure 37. In statements made by the petitioners for this ballot measure, one important and critical clarification was noted by them, as follows. They pointed out that this measure is intended to apply to land use regulations as currently identified in the law in Oregon, and it is not intended that the courts can allow those current regulations to be redefined into building codes, public health and safety codes, sanitation codes, or public welfare codes, thereby allowing current land regulations thus to escape the remedy of Measure 37.

It is an indication of the moral corruption of our courts and society that Measure 37 was needed at all. It is a further indication of corruption that the petitioners had to warn against redefining regulations as a way to continue to steal the value of land from the land owners, and cited examples of such nefarious attempts. These tricks steal land from commoners, not the rich. And here is the worst corruption: the people who use these tricks to steal land feel proud.