

Land-Use Regulation

A Win-Win Means of Living with Measure 37

BY JOHN WALLACE

As published in The Oregonian, April 26, 2006

Oregon long has led the nation with innovative land-use regulation, and since the passage of Measure 37 it has taken the lead in property-rights protection, too. But as battles about property uses versus property rights erupt elsewhere, Oregon can show the nation how to balance such interests. The key is to acknowledge the government's double-edged impact on real estate values.

A natural tension exists between individual property rights and the state's powers to regulate land use. But the two should be viewed as being more complementary. Good land-use regulation reduces sprawl and traffic congestion, protects prime farmland and critical habitat and increases sustainability. This makes a regional area more desirable and, consequently, the land in that region more valuable. Higher real estate values also boost the tax revenues necessary to fund good government and maintain public services.

Prior to Measure 37, one city or county resolution effectively could cost a family or a farmer thousands of dollars in property value. Governments in Oregon can no longer do this without justly compensating the owner.

Yet local resolutions can increase the worth of private real estate by just as much. Look at the impact of zoning. Re-zoning or revising land-use policy for higher housing density can make property values zoom overnight. Down-zoning or reducing allowable density can depress land value.

So, when it comes to the worth of real estate, the government giveth and the government taketh away. By harnessing this essential principle, we can balance the opposing forces in the land-use wars. Here's how this would work.

First, when local governments revise land-use regulations in a way that dramatically boosts property values, let's give them a new option. On causing a big run-up in land prices, local governments should be able to recapture part of the windfall. Second, they should have to use at least part of this tax revenue to compensate owners of property adversely affected by regulation elsewhere.

This approach would require big-picture, statewide thinking, but it could balance property-value windfalls. The fact is that changes in zoning or regulation more often boost property values in cities and lower them in the country.

For example, imagine that a city council decides to triple residential housing density close to a light-rail station. Let's say a nearby vacant parcel once valued at \$1 million doubles in value

overnight. Effectively, local government has “decreed” this increase to \$2 million in property value, so it also may decree that the increase must be shared. The owner can keep half, and the state will take the other. The catch is that the state would not keep its half. The windfall money would be placed in a state fund to repay property owners badly hit by restrictions on development. The state would take its share only when the property is sold or developed. A landowner, then, would not have to come up with immediate cash and would truly be paid out of the profits of the zoning change.

Landowners, primarily urban, would still get a big cut of windfall increases in property value. This approach would give them the financial incentive to support good land-use policy, among other things.

This proposal does require a fair method of valuing impacts of property regulation. It also demands a system for sharing windfall property gains across political boundaries. Beyond that, all it requires is a vote. The people of Oregon approved Measure 37 through the initiative process. Let the voters decide on a companion measure that will actually make land-use compensation work for everyone.



John J. Wallace is a co-founder and principal in Wallace & Steichen, Inc., a real estate analysis and consulting firm based in Palo Alto, Calif., that has been involved in numerous projects throughout Oregon.