



CIRCUIT COURT OF THE STATE OF OREGON

FOURTH JUDICIAL DISTRICT
MULTNOMAH COUNTY COURTHOUSE
1021 S.W. FOURTH AVENUE
PORTLAND, OR 97204-1123

JERRY B. HODSON
JUDGE

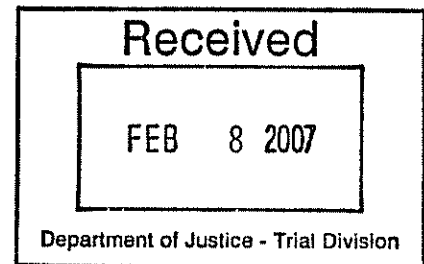
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RE: *Luethe v Multnomah County, Oregon, et al.*,
Multnomah County Circuit Court Case No. 0609-09466

Dear Counsel:

As you will recall, the above matter came before me for oral argument on January 5, 2007, on the motion of the state defendants to dismiss, and I took the matter under advisement. I have now had an opportunity for further reflection and for review of the pertinent statutes and case law. Based on my review, I am denying defendants' motions.

Measure 37 was enacted through the initiative process in 2004 to provide a means to compensate property owners for a loss in property value caused by land use regulation. Plaintiffs filed this action for compensation under Measure 37 against several state agencies and Multnomah County.

In Motion No. 1, state defendants assert that the court lacks subject matter jurisdiction because the Administrative Procedures Act (“APA”) is the exclusive means to challenge the correctness of a state agency order under Measure 37, such as the one issued in this case. ORS 183.480(2). This argument requires that I examine the statutory framework of Measure 37, codified at ORS 197.352, and determine its potential interaction with the APA.

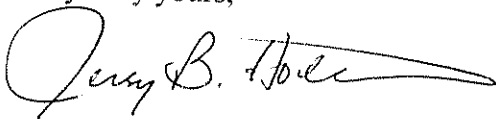
Oregon courts use the same methodology for interpreting statutes adopted by initiative as they do for other statutes. PGE v. Bureau of Labor and Industries, 317 Or 606, 612, fn. 4 , 859 P2d 1143 (1993). The first step in any such analysis is to try to discern the intent of the statute by examining its text and context. If the text and context of the statute reveal the legislative intent, then no further inquiry is necessary. 317 Or at 612.

The plain language of Measure 37 indicates an intent to allow an action like the present one, without resort to the APA and its procedure for the judicial review of agency orders. Section 6 of Measure 37 says that if a land use regulation continues to apply to a property for more than 180 days after demand for compensation, then the owner “shall have a cause of action for compensation under this section in the circuit court in which the real property is located***.” ORS 197.352(6). This language is mandatory and unqualified. The statute gives no hint that its supporters intended such a cause of action to depend on the owner exhausting administrative remedies before the relevant state or local agency and then seeking judicial review pursuant to the APA. To the contrary, Section 7 of Measure 37 suggests that its drafters expressly rejected such a prerequisite: “A metropolitan service district, city, or county, or state agency may adopt or apply procedures for the processing of claims under this section, but in no event shall these procedures act as a prerequisite to the filing of a compensation claim under subsection (6) of this section***.” ORS 197.352(7). I find that plaintiffs may pursue their Measure 37 claims in this court without resort to provisions of the APA. Accordingly, state defendants’ Motion No. 1 is denied.

In Motion No. 2, state defendants argue that plaintiffs have failed to state ultimate facts sufficient to state a claim for relief under ORCP 21A(8). In particular, defendants argue that they have waived all restrictive state land use regulations applicable to plaintiffs’ property, and that therefore, plaintiffs have no claim for compensation. On a motion under ORCP 21A(8) I must assume that the facts alleged by plaintiffs are true. Accepting those allegations as true, I find that plaintiffs have adequately stated claims under Measure 37. Accordingly, state defendants’ Motion No. 2 is denied.

I ask that plaintiffs’ counsel prepare the proposed form of order.

Very truly yours,



Jerry B. Hodson
Circuit Court Judge