



CIRCUIT COURT OF OREGON

FIFTH JUDICIAL DISTRICT
CLACKAMAS COUNTY COURTHOUSE
807 MAIN STREET, ROOM 304
OREGON CITY, OREGON 97045

THOMAS J. RASTETTER
CIRCUIT COURT JUDGE

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October 1, 2007

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Stacy Posegate
Asst. Atty. General
1162 Court Street N.E.
Salem, Oregon 97301-4096

Re: Oldenstadt et al v. State of Oregon; No. CV 06110875

Dear Counsel:

This matter came before the court on September 28, 2007 upon defendants' Motion to Dismiss. Having read the memoranda and heard the arguments of the parties, the state's Motion to Dismiss for failure to state a claim will be granted. Plaintiffs in their individual capacities, who have only an ownership interest in the LLC and not in the real property itself, are not within the class of persons entitled to bring a Measure 37 claim. While the LLC as a business entity is an owner of the property, the complaint does not allege that any restrictive land use regulations have been imposed on the property since the LLC acquired the property.

The Motion to Dismiss based on APA exclusivity and option to waive will be denied.

I would ask that Ms. Posegate submit a form of order and General Judgment of Dismissal.

Thank you.

Very truly yours,

Thomas J. Rastetter
Circuit Court Judge

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