

Measure 37 opponents fight back

Friends of Marion County challenges how state is handling cases

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Measure 37 spurred hundreds of lawsuits against the state -- most from people trying to use the law to gain compensation or a waiver of a land-use regulations.

But in an emerging trend, Measure 37 opponents are taking to the courts as well.

Friends of Marion County has joined groups in central Oregon, along the coast and out of Hood River in fighting the way the state is handling Measure 37 cases.

One of the main arguments in the Friends of Marion County lawsuit is that the state is not determining whether a land-use regulation actually reduced property value.

"Regulations that prohibit subdivision of the property do not reduce its fair market value," according to the lawsuit. "The State agencies misinterpret applicable law by concluding that these land use regulations reduce the value of the Claimants' Properties."

Of the more than 200 lawsuits filed against the state, about eight are from groups similar to Friends of Marion County, a nonprofit whose mission is to protect the livability of the communities of Marion County. Each lawsuit includes several Measure 37 claims.

"Now people are being affected by decisions on the ground," said Richard van Pelt, secretary of Friends of Marion County. "It is no longer theoretical ... because now they are seeing a potential for a tangible harmful effect on themselves."

Measure 37, passed by voters in 2004, requires government to either pay landowners for property-value losses caused by regulations or waive the regulations. About 7,000 claims have been filed -- governments have chosen to waive regulations rather than pay compensation because of budget constraints.

A recent lawsuit filed by Friends of Marion County challenges the state's decisions to waive regulations in 13 separate Measure 37 claims that have been filed in Marion County. The group argues that the state agency that has granted relief to landowners under Measure 37 is misinterpreting the law and acting outside the scope of its authority.

One of the claims challenged in the lawsuit was filed by Richard Schaefer, 74, of Aumsville. He wants to subdivide his 33-acre rural property into six 5-acre parcels and give some of them to his sons to live on. Under current land-use laws, subdividing that property is prohibited.

"One son wants to move into the other house and my other son is in Albany and might move back if there was a house," Schaefer said. "My other son is getting ready to retire and might move back."

Schaefer said he doesn't understand why his claim is one of 13 claims cited in

the lawsuit by Friends of Marion County.

Roger Kaye, president of the friends group, said the 13 Measure 37 claims cited in the lawsuit "are the ones that are the most egregious, the most expansive. These are the ones that are the most damaging to farm and forest land."

Friends of Marion County is following the same path as several other regional groups in terms of filing lawsuits against the state.

Central Oregon LandWatch in Bend, for example, has filed several challenges.

"The focus is on the fragmentation on the rural landscape, both farm and forest lands," said Paul Dewey, litigation director for Central Oregon LandWatch. "The group is trying very hard to keep those lands intact."

The Friends of Marion County lawsuit was filed in Marion County Circuit Court in late May.

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