

## **Lines drawn on land use put victory within reach**

**A well-financed opposition is ineffective against an emotional campaign, and the result may undo Oregon's planning culture**

Sunday, November 07, 2004

**LAURA OPPENHEIMER**

Dorothy English had never recorded a radio ad, but the 91-year-old widow arrived at the studio ready to go.

English sidled up to the microphone and nailed a one-minute script describing her complaint. She has spent years fighting to subdivide her land in Portland's West Hills, a right taken away by zoning changes in the 1970s.

In the weeks leading to Tuesday's election, English's pleading voice could be heard in cars, offices and living rooms throughout Oregon.

Stories like English's propelled Measure 37 to victory, although opponents outspent the campaign by a nearly 4-1 ratio. Measure proponents banked on the appeal of land-use horror stories to shake up the state's famed planning system.

"My story is a simple story, but it's been going on for so long," English said. "I'm just sorry my husband isn't alive to enjoy whatever we end up with."

A look back shows the campaign had a lot going for it: a seductive ballot title. A built-in support base because a similar measure passed in 2000. A state government that hasn't solved Oregonians' land-use gripes in the four years since. An opposition campaign that struggled to connect with voters.

Those advantages translated into a 60-40 margin of victory, and a new political reality for cities and counties: a state statute that forces governments to waive planning rules or pay property owners when land-use regulations hurt their investments. The loss erodes a planning structure that has prized farmland over subdivisions and compact cities over sprawl.

Four years ago, Oregonians in Action inherited Measure 7 from Bill Sizemore, the tax activist, who had too many campaigns to juggle. It constitutionally guaranteed Oregonians payment if a new land-use rule reduced their property value.

Measure 7 scored 54 percent of the vote, but a judge blocked it before it took effect and later overturned it.

The 2001 Legislature created a committee to sort out the issues the measure raised. Everybody from Oregonians in Action to environmental groups to builders showed up -- Oregon's equivalent

of a Middle East peace summit.

Then-Reps. Max Williams and Kurt Schrader, who led the group, said they needed to solve land-use problems before Measure 7 reappeared with a new name and a bigger following.

The group got close to a compromise, but participants couldn't agree on a way to pay for it.

Many blamed Oregonians in Action for the collapse; David Hunnicutt, who became the group's leader, blamed the governor's office. Everybody figured they were back at the beginning.

### **A crossroad approaches**

By early 2003, Oregonians in Action leaders had crafted a new measure. This time, it would change state statutes instead of the state constitution. They e-mailed versions to each other, nitpicked at words.

If the 2003 Legislature addressed compensation, the group decided, it would shelve its ballot measure.

Legislation meant to help English subdivide her land dashed those hopes. Despite a personal lobbying visit by English, Gov. Ted Kulongoski vetoed the bill, saying it would be better to address land-use issues more broadly.

Hunnicutt was furious. The campaign for Measure 7 took off.

Despite hefty contributions from logging companies, Oregonians in Action could not keep up with the opposition.

### **A no-on-37 quandary**

Even with its fatter campaign fund, the no-on-37 camp faced a real quandary.

Its initial polls showed just 23 percent of likely voters opposed Measure 37 when they heard the ballot title, which began, "Governments must pay owners. . . ."

What was worse, most undecided voters in focus groups didn't remember Measure 7. Leaders had to talk -- a lot -- before support dropped off for the revamped measure.

Most voters didn't want to dismantle land-use rules, but they didn't trust government, either, said Tim Raphael, the no-on-37 campaign manager. On TV, the campaign would have a minute or less to convince them Measure 37 was a bad idea.

Organizers ruled out images of mega-resorts or factories blanketing sentimental Oregon landmarks. Too melodramatic, they thought. Voters weren't connecting Measure 37 with land use, anyway.

"We knew we had to intersect at another angle," Raphael said.

They opted for a slogan that, in their minds, summed up problems putting Measure 37 into action: "Unfair, arbitrary, costly."

Each time Hunnicutt heard a no-on-37 ad, he felt relieved. He doubted it would connect.

### **Sounding the public**

Several state representatives set up shop on a warm August day at Sandy City Hall. It was the last in a series of traveling hearings to find out what bugs Oregonians about their land-use system.

A small-business owner said each government agency she talks to gives a different answer about land-use policies. A couple from east Multnomah County wasn't allowed to replace the sagging foundation of their 100-year-old farmhouse because a previous owner split the lot incorrectly.

Land-use laws need to be more flexible, state legislators told the audience. People in Salem get it, they promised.

"The problem is the application, not the law itself," said state Rep. Mitch Greenlick, D-Portland. "We need to make sure stupid things don't happen any more than they need to."

Nobody mentioned Measure 37. Many likely didn't know about it then. But they'd hear about it in the fall or see it on their ballots, "Governments must pay owners. . . ."

### **A pioneer speaks**

Environmentalists, planners and fixtures in liberal politics clutched mugs of beer as they crowded into the White Eagle Saloon, a lovably gritty North Portland landmark. They prepared for the political equivalent of a rock 'n' roll primer from the Beatles.

Ted Hallock shuffled toward the stage, accepting an arm to brace himself as he got situated at the microphone. The onetime state senator can't see very well anymore. But he still knows politics.

"You know there's a problem," said Hallock, a pioneer of Oregon's planning system, when they bring out the old-timers.

Admirers hooted and laughed.

Hallock reminisced about Senate Bill 100, the 1973 law that created the land-use rules that ferociously guard farmland and nudge growth in cities. He grew a little surly recalling political rivals who tried to ax the legislation, and then a little emotional, predicting the havoc Measure 37 could wreak.

"We might as well never have passed Senate Bill 100," Hallock said.

The crowd quieted. Over at the bar, a few accidental guests looked up from their drinks.

### **An ominous split**

On election night, opponents gathered so early that daylight still reflected on the condominiums and storefronts outside their Pearl District digs. They had a good party, tequila and all, until results arrived.

The clock barely had struck 8 when liberal Multnomah County loaded its initial numbers. Voters were split almost dead even. The numbers needed to break much better than that, Raphael

thought. "I knew it was over then," he said.

Much of the crowd dispersed for the party for Sen. John Kerry at the Oregon Convention Center.

Raphael wasn't sure what else he could have done, even with more than the \$2.4 million the group had raised trying to knock down the measure. In an atmosphere of government distrust, he felt, an appealing ballot title translated to success.

Late last week, little remained of the campaign. A sign squiggled in black marker by Raphael's 5-year-old daughter hung outside the office door. "Unfair, arbitrary, costly," it said.

### **A question of when**

Hunnicutt spent the early part of election night watching cartoons with his children while his wife monitored results.

Polls predicted a win for his measure. He sensed it, too. But Hunnicutt couldn't bear to see it unfold on TV, let alone in a crowded room of people counting on him.

A fellow campaign leader called to deliver the good news before his wife could. His measure had the edge in Multnomah County.

"This is over," they told each other. It wasn't a question of if. It was a question of how much.

In the next two days, Hunnicutt alone fielded 100 calls at the Oregonians in Action office. Some wanted help filing claims. Others just called to say "thank you" or "good job."

Hunnicutt talks to English daily.

She hasn't missed an election in 68 years, but this one was especially important.

When it's time to file her Measure 37 claim, English said, she'll be ready. "I could do it with my eyes closed," she said.

### **Metro's perspective**

Robert Liberty handily won a council seat at Metro, Portland's regional government, Tuesday night.

But Liberty and the few dozen supporters who gathered at the Lucky Labrador Brewpub in Southeast Portland were more melancholy than ecstatic. Measure 37 had won.

"If I could flip the outcomes, I gladly would," said Liberty, who shared a campaign office with the no-on-37 camp.

Liberty served a stint as director of 1000 Friends of Oregon, the group created in the 1970s to shield the state's environmentally friendly land-use laws. He's traveled the country to extol the importance of saving farms and creating communities that don't hinge on freeway lanes.

Now, Liberty said, he knew what his first order of business would be at the Metro Council: sorting out Measure 37. Oregonians want to be treated fairly, Liberty said, but surely they don't want to

undo the legacy of their land-use system.

"I do not believe this is a referendum on planning laws in the state of Oregon," Liberty said. "The proponents of Measure 37 knew they couldn't win that fight."

### **Panic, antidotes**

This year's League of Oregon Cities conference fell conveniently in the midst of governments' Measure 37 panic.

Friday morning, several hundred Oregon mayors, city councilors and administrators scribbled an important date in their notebooks: Dec. 2. It's the day they'll have to start accepting property owners' requests.

There's no need to freak out, a panel of experts told the crowd.

Take a deep breath, set up a system, don't toss land-use laws just yet. The state will help. The Legislature might tweak Measure 37 this winter.

Beaverton Mayor Rob Drake, who fought the measure, suggested responding to claims publicly.

"It's the only way to get the public to understand the door they opened," Drake said. "I think it's an even bigger door than Oregonians in Action thought."

Laura Oppenheimer: 503-294-5957; [loppenheimer@news.oregonian.com](mailto:loppenheimer@news.oregonian.com)