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4 IN THE CIRCUIT COURT OF THE STATE OF OREGON
5 FOR THE COUNTY OF MARION

6 VICTOR C. COBOS and PAMELA J.
7 COBOS,

8 Plaintiffs,

9 v.

10 MARION COUNTY, by and through its
11 BOARD OF COMMISSIONERS,,

12 and

13 STATE OF OREGON, by and through the
14 DEPARTMENT OF LAND
15 CONSERVATION AND DEVELOPMENT

16 Defendants.

Case No. 05C16640

REPLY TO PLAINTIFF'S RESPONSE TO
STATE'S MOTION FOR SUMMARY
JUDGMENT

17 **Rules of Statutory Construction Control**

18 Plaintiffs wish that Measure 37 states something it does not. Plaintiffs thought that
19 Measure 37 would yield a financial benefit to them by virtue of the descent of the subject
20 property through familial generations down to their ownership. Plaintiffs ask this court to insert
21 what has been omitted in Measure 37 so that the language of the measure itself no longer “flies
22 in the face of the intent of the voters,”¹ as interpreted by the plaintiffs. That, of course, is not
23 something that this court can do.²

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25 ¹ Response Brief at page 2, line 20

26 ² ORS 174.010

1 There is no maxim of statutory construction that would support the plaintiffs' position.
2 Plaintiffs' position is best stated in their thematic argument: "Form is elevated over substance."³

3 Unfortunately for plaintiffs, it is the *form* of words that the court reads and, unless those
4 are so ambiguous that the meaning cannot be determined, they are given their ordinary meaning
5 in the context of the statute.⁴ The court cannot assign another meaning to the words in order to
6 overcome their form and to reach a *substance* that, it is argued, might better reflect the intention
7 of the voters.⁵ In all cases, the intention of the voters is discerned best by reading the text of the
8 measure that the voters passed, rather than opining about what a public interest poll might or
9 might not reveal of past intentions.

10 **There are two distinct dates in Measure 37**

11 While the statute itself does not use the terms "compensation date" and "waiver date,"
12 those two distinct dates are evident and are important. They are not fictions.

13 The plaintiffs argue that Measure 37 is ambiguous on the whole. That may be true. But
14 there is nothing ambiguous about the different sections that provide different remedies to be
15 applied at the governing body's option. Those were explained in the initial Memorandum, but to
16 *reply* to the assertion that the two dates are fictions, the court need only read the words in
17 Sections 1, through 6 to determine that there is a "compensation date" and read the words in
18 Sections 8 and 10 to determine that there is a "waiver date," irrespective of the characterization
19 given those dates.

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22 ³ Brief, p. 4, lines 17-18; p. 6, lines 11 – 12; p. 8, line 14;

23 ⁴ *PGE v. BOLI*, 317 Or 606, 611 (1993).


24 ⁵ The hearings currently underway in Congress on the appointment of a new Chief Justice have
25 concentrated on the debate between "judicial activism" and the importance of *stare decisis*.
26 Judge Roberts and his supporters seem to press the issue that "judges are supposed to decide
cases" and in that regard must interpret statutes and the Constitution both without inserting their
own political views of what is the best *substance* to elevate over *form*. NPR show, morning
hearings of 9/13/05.

1 property "as permitted at the time the owner acquired the property." There is nothing ambiguous
2 about either option. The State, through its Department of Land Conservation and Development
3 properly construed the statute and properly issued its Final Order, which should now be affirmed.

4 DATED this 16th day of September, 2005.

5 Respectfully submitted,

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CERTIFICATE OF SERVICE


I certify that on September 16th, 2005, I served the foregoing Reply to Plaintiff's Response to State's Motion for Summary Judgment upon the parties hereto by the method indicated below, and addressed to the following:

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