

**BALLOT MEASURE 37 (Chapter 1, Oregon Laws 2005)
CLAIM FOR COMPENSATION**

OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT

Final Staff Report and Recommendation

June 13, 2005

STATE CLAIM NUMBER: M118995

NAME OF CLAIMANT: ARJO Enterprises, Inc.

MAILING ADDRESS: c/o Gary J. Arnett
4710 Smith Rock Way
Terrebonne, Oregon 97760

IDENTIFICATION OF PROPERTY: 1876 NE State Highway 20
Township 17S, Range 12E,
Section 34CA
Tax lot 300, Deschutes County

**OTHER CONTACT INFORMATION
FOR CLAIMANT:** Edward P. Fitch, Attorney at Law
Emerson & Fitch
888 SW Evergreen Avenue
P.O. Box 457
Redmond, Oregon 97756-0103

OTHER INTEREST IN PROPERTY: Gary Arnett and Tim Eide,
corporate officers and owners of ARJO
Enterprises, Inc.;

Oregon Department of Transportation
(temporary easement for
right-of-way construction)

DATE RECEIVED BY DAS: December 17, 2004

180-DAY DEADLINE: June 15, 2005

I. CLAIM

ARJO Enterprises, Inc., the claimant, seeks compensation in the amount of \$1,100,000 for the reduction in fair market value as a result of certain land use regulations that are alleged to restrict the use of certain private real property. The claimant desires compensation or the right to develop the property for commercial use. The property is

located at 1876 NE State Highway 20, Bend, Oregon in Deschutes County and is described by the Deschutes County Tax Assessor as T17S, R12E, Section 34CA, Tax Lot 300. (See the claim.)

II. SUMMARY OF STAFF RECOMMENDATION

Based on the findings and conclusions set forth below and on information in the record, the Department of Land Conservation and Development (the department) has determined that the claim is not valid because the claimant is not an owner of the subject property. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS RECEIVED

On February 11, 2005, pursuant to OAR 125-145-0080, the Oregon Department of Administrative Services (DAS) provided written notice to the owners of surrounding properties. According to DAS, no written comments, evidence, or information were received in response to the notice.

IV. TIMELINESS OF CLAIM

Requirement

Ballot Measure 37, Section 5, requires that a written demand for compensation be made:

1. For claims arising from land use regulations enacted prior to the effective date of the measure (December 2, 2004), within two years of that effective date or the date the public entity applies the land use regulation as an approval criteria to an application submitted by the owner, whichever is later; or
2. For claims arising from land use regulations enacted after the effective date of the measure (December 2, 2004), within two years of the enactment of the land use regulation, or the date the owner of the property submits a land use application in which the land use regulation is an approval criteria, whichever is later.

Findings of Fact

This claim was submitted DAS on December 17, 2004 for processing under OAR 125, Division 145. The claim generally identifies “all laws and rules enacted by the State of Oregon and/or Deschutes County including, but not limited to, statutes, planning goals, and transportation rules and policies promulgated since 1968 that restrict the use of the property,” as the basis for the claim. Only laws that were enacted prior to December 2, 2004, the effective date of Measure 37, are the basis for this claim. (See citations of statutory and administrative rule history of the Oregon Revised Statutes and Oregon Administrative Rules.)

Conclusions

The claim was submitted within two years of December 2, 2004, the effective date of Measure 37, based on land use regulations adopted prior to December 2, 2004, and is therefore timely filed.

V. ANALYSIS OF CLAIM

1. Ownership

Ballot Measure 37 provides for payment of compensation or relief from certain laws for “owners” as that term is defined in the measure. Ballot Measure 37, Section 11(C) defines “owner” as “the present owner of the property, or any interest therein.”

Findings of Fact

The claimant, ARJO Enterprises, Inc., acquired the subject property from brothers John C. Arnett and Sheldon R. Arnett on September 18, 2001. The Arnett brothers and their wives had acquired the property from Deschutes County on December 31, 1968. ARJO Enterprises, Inc. deeded the property to Gary Arnett and Tim Eide on July 25, 2002. (See the department’s claim file.) Both a chain of title report and Deschutes County Tax Assessor records show Gary Arnett and Tim Eide as the current owners of the property.

Department staff communicated by letter with the claimant’s attorney, Edward Fitch, on February 10, 2005, requesting additional information about the claim. Mr. Fitch responded by letter dated March 9, 2005 but did not provide documentation or other evidence establishing that the claimant is an owner of the subject property. Department staff requested additional information to clarify the claimant’s ownership of the property in a letter faxed to Mr. Fitch on May 9, 2005. Department staff called Mr. Fitch’s office on May 16, 2005 to follow up on the information request. As of the date of this report, no additional information or clarification of the claimant’s ownership of the subject property has been received from Mr. Fitch.

Conclusions

The claimant, ARJO Enterprises, Inc. has not established that it is an “owner” of the subject property, as that term is defined by Section 11(C) of Ballot Measure 37.

2. The Laws that are the Basis for this Claim

In order to establish a valid claim, Section 1 of Ballot Measure 37 requires, in part, that a land use regulation must restrict the claimant’s use of private real property in a manner that reduces the fair market value of the property relative to how the property could have been used at the time the claimant or a family member acquired the property.

Not applicable. (See Section V.1. above.)

3. Effect of Regulations on Fair Market Value

In order to establish a valid claim, Section 1 of Ballot Measure 37 requires that any laws described in Section V.(2) of this report must have "the effect of reducing the fair market value of the property, or any interest therein."

Not applicable. (See Section V.1. above.)

4. Exemptions Under Section 3 of Measure 37

Ballot Measure 37 does not apply to certain laws. In addition, under Section 3 of the measure, certain types of laws are exempt from the measure.

Not applicable. (See Section V.1. above.)

VI. FORM OF RELIEF

Based on the record before the department, the claimant, ARJO Enterprises, Inc. has not established that it is an owner of the subject property and has not established that it is entitled to relief under Section 1 of Measure 37. Therefore, this claim is denied.

The claimant is not entitled to relief under Ballot Measure 37. By its terms, Ballot Measure 37 limits relief to owners of private real property. The claimant, ARJO Enterprises, Inc., has not established that it is an owner of the subject property as that term is defined in Ballot Measure 37(11)(C). Therefore, department staff recommends that this claim be denied. Based on this determination, the department does not make any further evaluation or determination on the substance of the claim.

VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on May 25, 2005. OAR 125-145-0100(3), provided an opportunity for the claimant or the claimant's authorized agent and any third parties who submitted comments under OAR 125-145-0080 to submit written comments, evidence and information in response to the draft staff report and recommendation. Comments received have been taken into account by the department in the issuance of this final report.