

**BALLOT MEASURE 37 (CHAPTER 1, OREGON LAWS OF 2005)
CLAIM FOR COMPENSATION**

OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT

Final Staff Report and Recommendation

June 16, 2005

STATE CLAIM NUMBER: M119026

NAME OF CLAIMANT: Argene Allison

MAILING ADDRESS: 17680 SW Fitch Drive
Sherwood, Oregon 97140

IDENTIFICATION OF PROPERTY: Township 3S, Range 2W, Section 3
Tax lot 3203-102, Yamhill County

DATE RECEIVED BY DAS: December 20, 2004

180-DAY DEADLINE: June 18, 2005

I. CLAIM

The Claimant, Argene Allison, seeks compensation in the amount of \$950,000 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 construct a dwelling on the subject 20-acre property. The property is located along Chapman Hill Road, near the City of Sherwood.

II. SUMMARY OF STAFF RECOMMENDATION

Based on the findings and conclusions set forth below, the Department of Land Conservation and Development (the department) has determined that the claim is valid. Department staff recommends that, in lieu of compensation, the requirements of certain state laws enforced by the Land Conservation and Development Commission (the Commission) or the department, specifically the \$80,000 gross sales requirement established in OAR 660-033-0135(7), not apply to the subject property to the extent necessary to allow Mr. Allison a use of the property permitted at the time he acquired it on December 30, 1980. (See Section VI. of this report for the complete recommendation.)

III. COMMENTS ON THE CLAIM

Comments Received

On February 11, 2005, pursuant to OAR 125-145-0080, the Oregon Department of Administrative Services (DAS) provided written notice to owners of surrounding properties. According to DAS, there were no written comments, evidence or information received in response to the 10-day 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

The claim was submitted to DAS on December 20, 2004 for processing under OAR 125, Division 145. The claim identifies the County's exclusive farm use zoning and the \$80,000 annual gross sales requirement of OAR 660-033-135(7) as land use regulations that restrict the use of the property and 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 the claim. (See citations of statutory and administrative rule history of the Oregon Revised Statutes and the Oregon Administrative Rules.)

Conclusions

The claim has been submitted within two years of December 2, 2004, the effective date of Measure 37, based on land use regulations enacted 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 specific 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, Argene Allison, and his wife, Mary Lou Allison, acquired the subject property on December 30, 1980. (See copy of 1980 deed included with the claim.) A copy of the Real Property Tax Statement from Yamhill County for the time period July 2004 to June, 2005 lists the claimant as an owner of the subject property.

Conclusions

The claimant, Argene R. Allison, is an “owner” of the property as of December 30, 1980, as that term is defined in Section 11(C) of Ballot Measure 37.

2. The Laws that are the Basis for the Claim

In order to establish a valid claim, Section 1 of Ballot Measure 37 requires, in part, that a law 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.

Findings of Fact

The claim states that the \$80,000 farm annual gross sales rule (OAR 660-033-0135 (7)) “restricts a single family dwelling” on the subject property (see claim). OAR 660, Division 33, establishes criteria for siting a dwelling on high value farmland. One of the ways a property owner can qualify for a single family dwelling is by showing that they produce a certain amount of gross sales income (\$80,000) from farm products. Specifically, OAR 660-033-0135(7) requires that for the approval of a dwelling “customarily provided in conjunction with farm use” on high-value farmland, the owner must demonstrate, in part, that the farm operation produced at least \$80,000 in gross annual income from the sale of farm products in the last two or three of the last five years. OAR 660-033-0135(7) became effective on March 1, 1993. (See citations of administrative rule history for OAR 660-033-0135(7).)¹

The claimant’s property is “high-value farmland” as defined under Statewide Planning Goal 3 and OAR 660-033-0020(8)(c)(A) because it is predominantly composed of

¹ Yamhill County applied and enforced OAR 660-033-0135(7) to the subject property on December 10, 2004, by denying a request to place a dwelling on it (County Land Use Decision Docket Number M37-03-04).

Natural Resource Conservation Service (NRCS) soil, Laurelwood silt loam, a (sub)Class IIIe soil capability class.)²

The claimants acquired the subject property on December 30, 1980. The rules that applied to the subject property in 1980 are found in Yamhill County's then acknowledged comprehensive plan and zoning ordinance.³ The \$80,000 farm annual gross sales rule for construction of a farm dwelling (OAR 660-033-0135 (7)) was not adopted until March 1, 1993.

Under ORS 197.646 (Chapter 612, Section 7, Oregon laws 1991), OAR 660-033-0135(7) was applicable to the property until the county amended its comprehensive plan and land use regulations to implement OAR 660-033-0135(7). As long as the county continues to implement the rule through its code, the rule will not be directly applicable to county decisions made consistent with the local ordinance. However, to the extent the county determines to not apply its own ordinance as a result of a local claim brought by the claimants under Measure 37, under ORS 197.646, OAR 660-033-0135(7) will apply to local actions affecting the claimants' use of their property. To the extent the requirements of OAR 660-033-1035(7) may apply, that rule restricts the claimants' ability to construct a dwelling on the subject property.

When the claimant acquired the property in 1980, the subject property was zoned AF-20 Agriculture/Forest Use with a 20-acre minimum lot size under Yamhill County's County Zoning Ordinance 83, acknowledged by the Commission on February 11, 1976. At that time, the claimant could have applied for a dwelling "customarily provided for in conjunction with farm use." Approval of that application would have been subject to compliance with the requirements of Yamhill County's AF-20 Agriculture/Forest zoning standard.

Conclusions

Based on information provided in the claim, including Yamhill County's December 10, 2004 denial of a dwelling on the property, OAR 660-033-0135(7) does not allow a single family dwelling to be approved on the subject property. The subject property is high-value farmland, as defined in OAR 660-033-0020(8)(c)(A), the property is in the Willamette Valley, and the claimant does not earn \$80,000 in gross annual income from the sale of farm products from the property. To the extent the county does not apply its implementing regulations to the claimant's use of the property, OAR 660-

² See soils map and soil descriptions for property from the "Soil Survey of Yamhill Area, Oregon, Sheet # 16" United States Department of Agriculture, Natural Resources Conservation Service. OAR 660-033-0020(8)(c)(A) defines soils in the Laurelwood soil subclassification IIIe as high-value farmland, in addition to Class I and II soils, if in the Willamette Valley. The claimant's Yamhill County property is in the Willamette Valley as defined in OAR 660-033-0020(12).

³ Acknowledged comprehensive plans and ordinances are those approved by the Commission as complying with the Statewide Planning Goals.

033-0135(7) will restrict the use of the property relative to the uses allowed when the property was acquired in 1980.

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.”

Findings of Fact

Based on the claimant’s comparative analysis of the sales price of adjacent parcels within 500 feet of the subject property, and the 2004 Yamhill County tax statement, the claimant states that the fair market value of the subject 20-acre property has been reduced by the inability to construct a dwelling, and the just compensation due is \$950,000, the difference in value between a buildable and non-buildable lot. (See claim.)

The claimant’s 2004 tax statement from Yamhill County shows that the subject 20-acre property and structures are currently assessed at a real market value of \$367,403. According to information provided by the claimant’s comparative market analysis, the recent sale of two adjacent properties with dwellings yielded approximately \$47,000 per acre. Using this figure, the claimant calculated a reduction in fair market value of \$950,000 for his 20-acre property as a result of not being able to build a dwelling on it.

Statewide Planning Goal 3 and OAR 660-033-0135(7), as implemented by the county, restrict the approval of a dwelling in conjunction with the farm use on the site. The claimant has not supplied an appraisal for the property showing a reduction in value on account of the regulations on which the claim is based, or the limits imposed on the property by the regulations.

Conclusions

As explained in section V.(1) of this report, Argene Allison, and his wife, Mary Lou Allison, acquired the property on December 30, 1980. The 2004 tax statement from Yamhill County shows that the current value of the 20-acre property and structures is \$367,403.

Without an appraisal based on the value of the twenty-acre parcel with a dwelling or other documentation of the reduction in fair market value, it is not possible to substantiate the specific dollar amount the claimant demands for compensation. However, the claimant may have qualified for approval of a dwelling under the standards in effect when he acquired it in 1980, whereas OAR 660-033-0135(7), as implemented by the county, clearly does not allow a dwelling on the subject property. Therefore, based on the submitted information, including the comparative analysis, the department determines that it is more likely than not that there has been some restriction of the use of the

property and some reduction in the fair market value of the subject property as a result of land use regulation enforced by the Commission or the department.

4. Exemptions Under Section 3 of Measure 37

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

Findings of Fact

The claim asserts that the “\$80,000 farm annual gross sales rule” (OAR 660-033-135(7)) restricts the building of a single family dwelling on the property, a use of the property that would have been allowed when the property was acquired in 1980. The laws identified by the claim were adopted after 1980. Furthermore, none of the laws identified in the claim appear to be exempt, either on their face or as applied to the subject property, under Section 3 of Ballot Measure 37.

Conclusions

It does not appear that the general statutory, goal and rule restrictions on placing a dwelling on high value farmland come under any of the exemptions in Measure 37. There may be other specific laws that are exempt and continue to apply under one or more of the exemptions in the Measure, or because they are laws that are not covered by the Measure to begin with.

VI. FORM OF RELIEF

Section 1 of Measure 37 provides for payment of compensation to an owner of private real property if the Commission or the department has enforced a law that restricts the use of the property in a manner that reduces its fair market value. In lieu of compensation, the department may choose to not apply a law to allow the present owner to carry out a use of the property permitted at the time the present owner acquired the property. The Commission, by rule, has directed that if the department determines a claim is valid, the Director must provide only non-monetary relief unless and until funds are appropriated to pay claims.

Findings of Fact

Based on the findings and conclusions set forth in this report, and OAR 660-033-0135(7) will restrict the use of the subject property following a determination by the county to not apply its own implementing ordinance to the claimant’s property. As a result, laws enforced by the Commission or the department restrict the placement of a dwelling on the subject property. These laws more likely than not have reduced the fair market value of the 20-acre property to some extent. The claim asserts this amount to be \$950,000. However, because the claim does not provide a specific explanation for how the specified restrictions reduce the fair market value of the property from what the claimant could

have done under the regulations in place at the time he acquired the property in 1980, a specific amount of compensation cannot be determined. Nevertheless, based on the current record for this claim, the department finds that the laws on which the claim is based more likely than not have reduced the fair market value of the property to some extent.

No funds have been appropriated at this time for the payment of claims. In lieu of payment of compensation, Ballot Measure 37 authorizes the department to modify, remove or not apply one or more land use regulations to allow Mr. Allison to use the subject property for a use permitted at the time he acquired the property on December 30, 1980.

Conclusion

Based on the record before the department, Mr. Allison has established that he is entitled to relief. Therefore, department staff recommends, in lieu of compensation, not applying the \$80,000 gross sales requirement established in OAR 660-033-0135(7), to the subject property, to the extent necessary to allow Mr. Allison a use of the property permitted at the time he acquired it and to authorize Mr. Allison to apply to Yamhill County for a dwelling on the subject property pursuant to the provisions of Yamhill County's AF- 20 zone and any state statutes applicable to the property on December 30, 1980.

Any use of the property by the claimant remains subject to the following laws: (a) those laws not specified in his claim to the State of Oregon, dated December 15, 2004, or identified in this report; (b) any laws enacted or enforced by a public entity other than the Commission or the department; and (c) those laws not subject to Measure 37 including, without limitation, those laws excepted under section (3) of the measure.

VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on May 23, 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.