

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

OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT

Final Staff Report and Recommendation

June 16, 2005

STATE CLAIM NUMBERS: M119032, M119034 and M119035

NAME OF CLAIMANT: Jeffery R. Yarbor

MAILING ADDRESS: P.O. Box 686
St. Helens, Oregon 97051

IDENTIFICATION OF PROPERTY: 28203 Pittsburg Road
Township 5N, Range 2W, Section 30
Tax lot 407, Columbia County

28162 Pittsburg Road
Township 5N, Range 2W, Section 30
Tax lots 406 and 604
Columbia County

DATE RECEIVED BY DAS: December 21, 2004

180-DAY DEADLINE: June 19, 2005

I. CLAIM

Jeffery R. Yarbor, the claimant, seeks compensation for the reduction in fair market value of three tax lots in the amounts of \$243,070 (tax lot 604), \$103,500 (tax lot 407) and \$326,520 (tax lot 406) 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 divide the property and presumably build dwellings on the subject property. (See claim.) These three claims are being addressed in this report because the ownership, restrictive land use laws and form of relief are the same.

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 claim M119032 (tax lot 604) and claim M119034 (tax lot 407) are valid but that claim M119035 (tax lot 406) is not valid and is not entitled to relief under Ballot Measure 37. Department staff recommends for claim M119032 (tax lot 604) and claim M119034 (tax lot 407) 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 Statewide Planning Goal 4 (Forest Lands) and OAR 660, Division 6, not apply to the subject properties to the extent necessary to allow Mr. Yarbor a use of the property permitted at the time he acquired it. As a result, Mr. Yarbor's use of the property will be subject to those specified laws in effect on October 7, 2004. The department acknowledges that the relief recommended in this report for tax lots 407 and 604 will not allow the claimant to use the properties in the manner set forth in the claim. (See the complete recommendation in Section VI. of this report.) The department recommends that claim M119035 (tax lot 406) be denied. Based on this determination, the department does not make any further evaluation or determination on the merits or substance of the claim M119035.

III. COMMENTS RECEIVED

On February 14, 2005, pursuant to OAR 125-145-0080, the Oregon Department of Administrative Services (DAS), provided written notice to surrounding property owners. 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 claims were filed with DAS on December 21, 2004 for processing under OAR 125, Division 145. The claims identify land use regulations that were enacted prior to December 2, 2004, the effective date of Measure 37 as the basis for the claims. (See citations to statutory and rule history in the Oregon Revised Statutes and Administrative Rules.)

Conclusions

The claims were 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 are therefore timely filed.

V. ANALYSIS OF CLAIM

1. Ownership

Ballot Measure 37 provides for payment of compensation or relief from specific laws to “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 three tax lots subject to these claims are part of a property first acquired, in part, by Irene Yarbor on July 3, 1952 and by John and Irene Yarbor on January 29, 1959. These properties were transferred to the John V. Yarbor and Irene M. Yarbor Living Trust on February 20, 1991 (with John V. Yarbor and Irene M. Yarbor as trustees). Under the terms of the Trust, these properties, along with other trust properties, were to be transferred to the designated beneficiaries by deed following Irene M Yarbor’s death (see section 4.4 of the Yarbor Revocable Living Trust in department file). Irene M. Yarbor passed away on July 21, 2003. On October 7, 2004, tax lots 407 and 604 were conveyed from the Yarbor Revocable Living Trust to the claimant Jeffery R. Yarbor. However, there is no deed conveying tax lot 406 or other satisfactory documentation verifying that this property was, in fact, transferred to Jeffery R. Yarbor. A Columbia County tax statement dated May 24, 2005 submitted with the claim states that the owner of tax lot 406 is “Yarbor, John V. & Irene M. Trustees care of Yarbor, Jeff.”

Conclusions

John and Irene Yarbor are “family members” as defined by Section 11(A) of Ballot Measure 37 and, based on representations made in the claim the claimant Jeffery R. Yarbor is the “owner” of tax lots 407, 604 as defined by Section 11(C) of Ballot Measure 37. However, without a deed conveying or other satisfactory documentation verifying that tax lot 406 was, in fact, transferred to Jeffery R. Yarbor, tax lot 406 is still in the ownership of the Yarbor Family Trust.

2. The Laws that are the Basis for Claims M119032 (tax lot 604) and M119034 (tax lot 407)

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

Findings of Fact

The claims generally state that under current land use regulations, “this land can only be used for reforestation.” The claims identify the Columbia County comprehensive plan and PF-76 (Primary Forest) zoning as the land use regulations that restrict the use of the property. The claimant does not explain what was allowed in 2004 when he acquired the properties.

The cited Columbia County regulations implement Statewide Planning Goal 4 (Forest Lands) (OAR 660-015-0000(4)) and statutes applicable to land zoned for forest use under ORS 215, including ORS 215.705 to 215.755 and 215.780, and OAR 660, Division 6 that restrict the properties’ zoning, use and division. The subject properties are composed primarily of Bacona Silt Loam soils (NRCS Capability Class VI) with a forest cubic foot site class of 2 (Soil Survey of Columbia County, Oregon, pp. 18-19 and map sheet # 30, published in 1986 based on fieldwork completed in 1982). Goal 4 became effective on January 25, 1975, and required forestland as defined by the goal to be zoned for forest use. (See citations to statutory and rule history under OAR 660-015-0000(4).) The forest land administrative rule, OAR 660, Division 6, became effective September 1, 1982 and ORS 215.705 to 215.755 and 215.780 became effective on November 4, 1993 (Chapter 792, Or Laws 1993) and were adopted into OAR 660-006-0026 and 0027 on March 1, 1994. (See citations to rule history under OAR 660-006-0026 and 0027.) ORS 215.730(1)(b) establishes approval standards for dwellings on lands zoned for forest use to protect the public health and safety with regard to fire safety, water supply and development on steep slopes.

Together, ORS 215.705 to 215.755 and 215.780 and OAR 660-006-0026 and 0027 establish an 80-acre minimum lot size for the creation of a new parcel in a forest zone and also establish the standards for dwellings in forest zones.

Conclusions

The minimum lot size and dwelling standards established by ORS 215.705 to 215.755 and 215.780, Statewide Planning Goal 4 and OAR 660-006-0026 and 0027 were all adopted after the Yarbor family acquired the properties in 1952 and 1959 and do not allow the division of the properties into parcels less than 80 acres in size or the approval of dwellings on smaller parcels. The current land use regulations, all adopted since 1952 and 1959, restrict the use of the properties from what could have been done when the properties were acquired by the Yarbor family in 1952 and 1959.

3. Effect of Regulations on Fair Market Value for Claims M119032 (tax lot 604) and M119034 (tax lot 407)

In order to establish a valid claim, Section 1 of Ballot Measure 37 requires that the current land use regulation(s) 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

The claims submitted by the claimant for these tax lots specify several dollar amounts for the reduction in the fair market value for the subject properties. For tax lot 604, the claim specifies a reduction \$9,000 per acre. The claim forms submitted to Columbia County included with each claim indicate the following amounts for the “Amount of Claim:” (See department’s claim files for copies of the Columbia County claims.)

	Tax Lot 604	Tax Lot 407
Amount of Claim	\$362,800	\$253,500

Each claim also includes the following regarding the reduction in fair market value of the subject tax lots:

Values	Tax Lot 604	Tax Lot 407
As Is	\$ 27,230	\$150,000
Fair Market Value	\$270,300	\$270,300
Loss of	\$243,070	\$103,500

Each claim also includes a “Comparative Market Analysis” for the properties regarding real estate sales in Columbia County. On one of the pages of this information, each claim states: “Longview Fiber will only pay up to \$1000 per reforested acre.” The current tax statements submitted with the claims indicate that each property has a total real market value of:

	Tax Lot 604	Tax Lot 407
Real Market Value	\$106,800	\$102,100

No explanation about how current land use laws have reduced the fair market value of the subject properties has been submitted.

Conclusions

As explained in Section V.(2) of this report, the current land use regulations, all adopted since 1952 and 1959, restrict the partition and use of the properties from what could have been done when the properties were first acquired by the Yarbor family in 1952 and 1959.

Without an appraisal based on the value of the properties when divided for residential development or another explanation of the reduction in fair market value, it is not possible to substantiate the specific dollar amount the claimant demands for compensation. Nevertheless, based on the submitted information, the department determines that it is more likely than not that there has been some reduction in the fair market value of the subject properties as a result of land use regulations enforced by the Commission or the department.

4. Exemptions under Section 3 of Measure 37 for Claims M119032 (tax lot 604) and M119034 (tax lot 407)

Ballot Measure 37 does not apply to certain land use regulations. The type of land use regulations not subject to a claim for compensation under Ballot Measure 37 are set forth in section 3 of the Measure.

Findings of Fact

The claims include specific reference to County ordinances and general claims based on state land use regulations that restrict the use of the property relative to what would have been allowed in 1952 and 1959 when the property was acquired by the Yarbor family. Most laws that qualify as “land use regulations” under the Measure were adopted after 1959.

While not directly raised by the claimant, the department notes that ORS 215.730 and OAR 660, Division 6 include standards for siting dwellings in forest zones. This provision includes fire protection standards for dwellings and for surrounding forest lands. Section 3(B) of Measure 37 specifically exempts regulations “restricting or prohibiting activities for the protection of public health and safety, such as fire and building codes...” The department finds that siting standards for dwellings in forest zones in ORS 215.730 and in Goal 4 and its implementing rules (OAR 660, Division 6) are exempt under section (3) of Measure 37.

Conclusions

Without a specific proposed use or a specific listing of laws that are the basis for the claims, it is impossible for the department to determine what laws may apply to a particular use of the property, or whether those laws may fall under one or more of the exemptions under Measure 37. It does appear that the general statutory, goal and rule restrictions on residential development and use of forest land apply to the owner’s anticipated use of the property and for the most part these laws would not come under any of the exemptions in Measure 37.

The siting requirements of ORS 215.730, Goal 4 and its implementing rules related to dwelling siting standards based on health and safety will also continue to apply. There may be other specific laws that continue to apply under one or more of the exemptions in the Measure because they were not identified in the claim or because they are laws that are not covered by the Measure to begin with.

IV. FORM OF RELIEF **Claims M119032 (tax lot 604) and M119034 (tax lot 407)**

Section 1 of Measure 37 provides for payment of compensation to an owner of private real property if the Commission or 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 the law to allow the present owner to carry out a use of the property permitted at the time the 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 by the legislature to pay claims.

Findings

Based on the findings and conclusions set forth in this report, laws enforced by the Commission or the department restrict the division of the tax lots 604 and 407 into parcels less than 80 acres or the approval of dwellings on smaller parcels and therefore reduce the fair market value of these properties. The claims provide several dollar amounts for how much the property has been reduced in value as a result of current land laws. However, because the claims do not provide a specific explanation for how the specified restrictions reduce the fair market value of the property from what he could have done under the regulations in place at the time the family acquired the property in 1952 and 1959, a specific amount of compensation cannot be determined. Nevertheless, based on the record for claim M119032 (tax lot 604) and claim M119034 (tax lot 407), the department acknowledges that the laws on which the claims are based likely 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, Measure 37 authorizes the department to modify, remove or not apply all or parts of one or more land use regulations to allow Mr. Yarbor to use the subject property for a use permitted at the time he acquired the properties on October 7, 2004.

Conclusions

Based on the record before the department for claim M119032 (tax lot 604) and claim M119034 (tax lot 407), Mr. Yarbor has established that he is entitled to relief. Therefore, department staff recommends that, in lieu of compensation (and except for ORS 215.730 and those provisions of Goal 4 and its implementing rules (OAR 660, Division 6) relating to siting standards for dwellings for the protection of public health and safety) the requirements of the following state laws enforced by the Commission or the department not apply to Mr. Yarbor's use of tax lots 604 and 407: the minimum lot size and dwelling standards established by ORS 215.705 to 215.755 and 215.780, Statewide Planning Goal 4 and OAR 660-006-0026 and 0027. These laws will not apply to the subject property to the extent necessary to allow Mr. Yarbor to divide the property and place dwellings on it as permitted on October 7, 2004. The department acknowledges that the relief recommended in this report will not allow the claimant to use the properties in the manner set forth in the claims. If verification of ownership is not provided, the department recommends that the claim be denied.

Any use of the properties by the claimant remains subject to the following laws: (a) those laws not specified in the claims to the State of Oregon, dated December 21, 2004 or identified in this report; (b) any laws enacted or enforced by a public entity other than the Commission or department; and (c) those laws not subject to Measure 37 including without limitation, those laws exempt 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 27, 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.