

**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 23, 2005

STATE CLAIM NUMBER: M119115

NAME OF CLAIMANT: Mark Doyle

MAILING ADDRESS: P.O. Box 789
Yachats, Oregon 97498

IDENTIFICATION OF PROPERTY: Township 14S, Range 12W,
Section 36
Tax lot 200
Lincoln County

OTHER INTEREST IN PROPERTY: Richard and Rosalie Clinton
1380 Magnolia Drive
Corvallis, Oregon 97330

DATE RECEIVED BY DAS: December 30, 2004

180-DAY DEADLINE: June 28, 2005

I. CLAIM

Mark Doyle, the claimant, seeks compensation in the amount of \$73,000 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 build a dwelling on the property. (See claim.)

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 provisions of ORS 215.284(2)(b), Statewide Planning Goal 3 (Agricultural Lands) and OAR 660, Division 33, that restrict the right of the claimant to establish a single-family dwelling on the property, not apply to the subject property to the extent necessary to

allow Mr. Doyle a use of the property permitted at the time he acquired it on May 21, 1993. As a result, Mr. Doyle's use of the property will be subject to those specified laws in effect on May 21, 1993. (See Section VI. for the complete recommendation).

III. COMMENTS RECEIVED

On January 21, 2005, pursuant to OAR 125-145-0080, the Oregon Department of Administrative Services (DAS), provided written notice to property owners surrounding the property subject to this claim. 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 filed with the DAS on December 30, 2004 for processing under OAR 125, Division 145. The claim cites ORS 215.184 as the basis for the claim. Only laws enacted prior to December 2, 2004, the effective date of Measure 37 are the basis for this claim. (See citations to statutory and rule history in the Oregon Revised Statutes and 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 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

Mark Doyle acquired the subject property on May 21, 1993. (See Warranty Deed in claim file). The claim includes a chain of title report to document Mr. Doyle’s continuous ownership of the subject property since that date.

Conclusions

Mark Doyle is a current “owner” of the subject property, as defined by Section 11(C) of Measure 37, as of May 21, 1993.

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 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 claim states that the current land use regulations associated with the passing of HB 3661, which became effective on November 4, 1993, restrict the use of the subject property. Specifically, ORS 215.284(2)(b) and Section 1.1373(5)(b) of the Lincoln County Land Use Code (LCC) restrict approval of a dwelling “not in conjunction with farm use” in any area zoned for exclusive farm use (EFU) unless the property is “unsuitable for the production of...merchantable tree species...”¹ Under ORS 215.284(2)(b), a lot or parcel or portion of a lot or parcel may not be considered “unsuitable” solely because of size or location if it can reasonably be put to farm or forest use in conjunction with other land. The claimant acquired the subject property on May 21, 1993, prior to the effective date of ORS 215.284 (HB 3661).

Prior to the passage of HB 3661, the County provided conditional use approval for a non-farm dwelling on the subject property to Mark Doyle and Robert Foad (previous owner) on April 8, 1993 (Case File # 14-ADM-C-93). (See claim file for a copy of Lincoln County Planning Department’s staff report and conditional use decision.) The Lincoln County Planning Department’s report found that the property met the non-farm dwelling standards required for

¹ Chapter 792, Section 14 of Oregon Laws 1993 (HB 3661) was codified as ORS 215.284, and became effective on November 4, 1993.

a conditional use permit in place at that time. The report included a finding that the property was generally unsuitable for the production of farm crops and livestock. The claimant did not act on the conditional use permit prior to its expiration.

After the passage of HB 3661, the current Lincoln County A-C zone standards in Section 1.1373 of the Lincoln County Code and EFU zone standards in ORS 215.284 require an additional finding that the property must also be generally unsuitable for the production of merchantable tree species in order to qualify for non-farm use dwelling. Because the subject property does support limited timber production, it does not meet the current standards for approval of non-farm related dwellings in EFU zones.

Conclusions

The current provisions of ORS 215.284, adopted after the claimant acquired the property on May 21, 1993, do not allow approval of a non-farm use dwelling on property that is suitable for the production on merchantable tree species. This statute became effective on November 4, 1993, after the claimant acquired the subject property. Thus, state law currently restricts Mr. Doyle's use of the property relative to the uses permitted when he acquired the property in May, 1993.

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

According to the claimant, the fair market value of the subject property has been reduced by \$73,000 because the property does not qualify for approval of a dwelling under ORS 215.284(2)(b). The land use regulations reduce the value of the property by prohibiting a non-farm dwelling on land that previously received conditional use approval for such a dwelling. The claim includes a property appraisal that addresses the difference in the value of the subject property with a residence as compared to its value with the current land use restrictions.

Conclusions

As explained in section V.(1) of this report, the current owner of the property is Mark Doyle who acquired the property on May 21, 1993. Under Ballot Measure 37, Mr. Doyle is due compensation for land use laws that restrict the use of the subject property in a manner that reduces its fair market value. According to the Mr. Doyle's claim and appraisal, the property has been reduced in value by \$73,000 due to his inability to site a dwelling. As explained under Section V (2) of this report, because ORS 215.284 does not allow a dwelling on the subject property whereas it is possible that a dwelling could be approved under the more general provisions in effect when Mr. Doyle acquired it on May 21, 1993, it is assumed for

the purpose of this claim review that there has been some reduction in the fair market value of the subject property. Based on the submitted information, 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 regulations 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 identifies the County's exclusive farm use zone and ORS 215.284 and other state laws relating to exclusive farm use zoning as restricting the use of the subject property relative to what would have been allowed in 1992 when the property was acquired. Some of these laws were enacted after Mr. Doyle acquired the property in 1993. However, other provisions relating to exclusive farm use zoning were adopted prior to 1993. Current state laws that restrict the use of the property that were enacted prior to May 21, 1993, are exempt under section (3)(E) of Measure 37.

Conclusions

Without a specific listing of laws that are the basis for the claim or a description of a specific use of the property, it is not possible for the department to determine what laws may restrict the use of the property, or whether those laws may fall under one or more of the exemptions under Measure 37. There may be 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 the 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 by the legislature to pay claims.

Findings of Fact

Based on the findings and conclusion set forth in this report, 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 property to some

extent. The claim asserts this amount to be \$73,000. Mr. Doyle has provided an appraisal to support the estimated reduction in fair market value due to restriction on the use of the property. Therefore, 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. Doyle to use the subject property for a use permitted at the time he acquired the property on May 21, 1993.

Conclusion

Based on the record, the department recommends that the claim be approved, subject to the following terms:

1. In lieu of compensation under Measure 37, the State of Oregon will not apply the following laws to Mr. Doyle's use of the subject property: ORS 215.283(2)(b) and the provisions of OAR 660, Division 33, relating to the placement of dwellings in farm zones, to the extent necessary to allow Mr. Doyle a use of the property permitted at the time he acquired it. Mr. Doyle will need to apply to Lincoln County for a single-family dwelling pursuant to the dwelling standards in place at the time he acquired the property that is the subject of this claim in order to obtain a final determination of what use of the property is permitted.
2. The action by the State of Oregon provides the state's authorization to the claimant to establish a single-family dwelling on the property, subject to the standards in effect on May 21, 1993. Those standards include the provisions of ORS 215 and Goal 3 that were in effect on that date.
3. To the extent that any law, order, deed, agreement or other legally-enforceable public or private requirement provides that the property may not be used without a permit, license, or other form of authorization or consent, the order will not authorize the use of the property unless Mr. Doyle first obtains that permit, license, or other form of authorization or consent. Such requirements may include, but are not limited to: a building permit, a land use decision, a permit as defined in ORS 215.412 or ORS 227.160, other permits or authorizations from local, state or federal agencies, and restrictions on the use of the property imposed by private parties.
4. Any use of the property by Mr. Doyle under the terms of the order will remain subject to the following laws: (a) those laws not specified in (1) above; (b) any laws enacted or enforced by a public entity other than DLCD; and (c) those laws not subject to Measure 37 including, without limitation, those laws exempted under section (3) of the Measure.
5. Without limiting the generality of the foregoing terms and conditions, in order for Mr. Doyle to use the property, it may be necessary for him to obtain a decision under

Measure 37 from a city and/or county and/or metropolitan service district that enforces land use regulations applicable to the property. Nothing in this order relieves Mr. Doyle from the necessity of obtaining a decision under Measure 37 from a local public entity that has jurisdiction to enforce a land use regulation applicable to a use of the property by Mr. Doyle.

VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on June 7, 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.