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

OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT

Final Staff Report and Recommendation
June 28, 2005

STATE CLAIM NUMBER:	M119148
NAME OF CLAIMANTS:	Robert J. Ericsson and Teresa Ericsson Ridgeway
MAILING ADDRESS:	P. O. Box 58 Post, OR 97752
IDENTIFICATION OF PROPERTY:	41905 Woolen Road Township 2N, Range 3W, Section 19 Tax Lot 200 Washington County
OTHER CONTACT INFORMATION:	P.O. Box. 730 Banks, OR 97106
DATE RECEIVED BY DAS:	January 3, 2005
180-DAY DEADLINE:	July 2, 2005

I. CLAIM

Robert J. Ericsson and Teresa Ericsson Ridgeway, the claimants, seek compensation in the amount of $500,000 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 claimants desire compensation or the right to divide the subject property into three parcels for residential development. This property is part of claim M119148 that also includes a staff report for property located at Lodge Road. (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 under Measure 37, the State of Oregon not apply the following laws to the claimants' division of the property or to the establishment of a dwelling on each lot or parcel: the amendments to Statewide Planning Goal 14 (Urbanization) adopted in 2000, and OAR 660-04-0040, to the extent necessary to allow the claimants a use permitted at the time they acquired the property on February 2, 1990. The claimants' use of the subject

property will be subject to those specified laws in effect on February 2, 1990. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On March 10, 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, there was 1 written comment received in response to the 10-day notice. The comment was not favorable to claimants' goal of dividing the property. (See the department's claim file for copies of the letter.) Unless and until funds become available to pay compensation, comments regarding the possible impact of the proposed or intended development of the claimants' property are not relevant to the evaluation and determination of the claimants' Ballot Measure 37 claim, and cannot be considered by the department.

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 January 3, 2005 for processing under OAR 125, Division 145. The claim identifies "all state statutes, administrative rules, county ordinances, and rules, and including ORS 197 and 215, OAR Division 6, Goal 4, Forest Lands, Agriculture and Forest Land designations including but not limited to AF 10 and AF 5 and Rural Planned Development rules…." 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 has been 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 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

This staff report refers to that part of the property referenced in claim M119148 located at 41905 NW Woolen Road, Banks Oregon. It is further described as Washington County tax assessor's map reference #2N319-00200 (Tax Lot 200) and includes 10.2 acres. The claimants state that they acquired title to subject property on February 2, 1990.[1] Washington County planning staff faxed a deed for the subject property to the department that includes a map and confirms ownership.

Conclusions

Based on information currently in the record, Robert Ericsson and Teresa Ericsson Ridgeway are "owners" of the 10.2-acre Washington County parcel that is the subject of this claim as that term is defined in Section 11 of the Measure. They acquired the property on February 2, 1990.

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 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

In an attachment to their Measure 37 claim, the claimants state that they want to divide their current rural residential 10.2-acre parcel into three lots and add dwellings. They cite several county and state rules, including ORS 197 and ORS 215, OAR 660, Division 6, Goal 4 (Forest Lands); and [county] Agricultural and Forest land Designations, including but not limited to Washington County AF-10, AF-5 and Rural Planned Development rules. The claim also references all and any state and county regulations. The claimants suggest that they want to apply the Washington County AF-5 zoning in place when they acquired the property that would

[1] Mr. Ericsson says that he paid for the property, which, however, was deeded to his in-laws. He contends that the in-laws signed, dated and notarized the property to him and his wife the same day, February 2, 1990, but that he held off recording the deed for two years (see file). It was finally recorded on February 11, 1992 (Doc: 92008492). For purposes of evaluating this claim, the department has accepted February 2, 1990 as the date the claimants acquired the property.

have allowed "the development of 3 parcels of the land buildable with dwellings on 10.2 acres of AF-5 property."

The current Washington County zoning for the subject property is AF-10, a rural residential zone that precludes division of their property.[2] At the time of the claim, OAR 660, Division 4, Interpretation of Goal 2 Exception Process, Section 0040, applied to the subject property. Specifically, Section 0040, (effective October 4, 2000) applies Goal 14 (Urbanization) to rural residential areas, and limits the ability of a property owner to create parcels smaller than 10 acres, with dwellings, without taking an exception to Goal 14 (OAR 660-04-0040 (6)).

Conclusions

Applicable portions of Statewide Planning Goal 14 (Urbanization), OAR 660-04-0040 and Statewide Planning Goal 2 relating to the requirements for exceptions to Statewide Planning Goals, adopted by the Commission since the claimants acquired the property, restrict the use of the property compared to the uses allowed when the property was acquired in February 1990. Under these provisions, the claimants would have to apply for a Goal 14 exception in order to rezone the property from AF-10 to AF-5 to allow the division of the property into 3 parcels.

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

The current market value of the property according to a 2005 Washington County Assessor's office statement is $163,290. The claimants, state that the reduction in fair market value for the subject property as "not less than $500,000." The basis for claimants' estimate of reduction in value is "$250,000 per buildable site, times the loss of two buildable sites." The claimants state that these figures have been determined by experience as well as consultation with various real estate market professionals. No appraisal has been submitted with this claim.

Conclusions

As explained in section V.(1) of this report, the Ericssons are the current owners of the property and acquired the property in 1990. Thus, under Ballot Measure 37, the Ericssons are due compensation for land use regulations that restrict the use of the subject property in a manner that reduces its fair market value. The Ericssons estimate the loss in value as $500,000. Without

[2] AF-10 is a Washington County designation described in the County's Comprehensive Plan, vol. 3 "Rural/Natural Resource Elements." Rural Lands designations, including AF-10, have been created by the County's taking an exception to Statewide Planning Goal 3 (Agricultural Lands), or Goal 4 (Forest Lands), as allowed by Goal 2 (Land Use Planning), exception process. AF-10 requires a minimum lot size of 10 acres. Claimant identifies zoning at the time of purchase in 1990, as AF-10, first adopted by the county in 1974.

an appraisal based on the value of 3 parcels for residential development, 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 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 laws. In addition, under Section 3 of the Measure, certain types of laws are exempt from the Measure.

Findings of Fact

The claim includes a list of state and county land use regulations, and states that they were enacted subsequent to acquisition of subject property in 1990, and restrict the use of subject property, resulting in a reduction in fair market value. None of the specific regulations enacted after February 12, 1990 appear to be exempt under Section 3 of Ballot Measure 37. Provisions in ORS 92 that restrict the sale of property without prior approval of the partition or subdivision, and those provisions of Statewide Planning Goals 2 and 14 in effect in1990, were adopted prior to the claimants' acquisition of the property in 1990, and are thus exempt under Section 3(E) of Measure 37. Other Statewide Land Use Planning Goals and their implementing rules may also apply to the use of the property, and (because they pre-date the date of acquisition) may be exempt under Measure 37.

Conclusions

Provisions in ORS 92, as well as the provisions of Statewide Planning Goals 2 and 14 and OAR 660, Division 4, adopted before 1990, are exempt under Section 3(E) of Measure 37. Other applicable regulations citied in the claim do not appear, either on their face, to be exempt under Section 3 of Ballot Measure 37. There may be other specific laws that continue to apply under one or more exemptions in the Measure, because they were not identified in the claim, or because they are laws they are not covered by the law.

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 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 allowed at the time the present owner acquired the property. The Commission has by rule 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 preliminary findings and conclusions set forth in this report, laws enacted or enforced by the Commission or the department restrict the claimants' ability to divide their property and to add dwellings for residential purposes. The laws enacted or enforced by the department reduce the fair market value of the subject property to some extent. The claim asserts this amount to be no less than $500,000. Because the claim does not provide an appraisal or other evaluation of the reduction in value, the specific amount of reduction of fair market value based on the identified restrictions cannot be determined. Nevertheless, the department acknowledges that the laws on which the claim is based 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 certain land use regulations to allow Robert Ericsson and Teresa Ericsson Ridgeway to use the subject property for a use at the time they acquired the property on February 2, 1990.

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 the Ericssons' division of their property or to the establishment of a dwelling on each lot or parcel: the amendments to Statewide Planning Goal 14 (Urbanization) adopted in 2000, and OAR 660-04-0040, to the extent necessary to allow the Ericssons a use permitted at the time they acquired the property on February 2, 1990.

2. The action by the State of Oregon provides the state's authorization to the claimants to use their property subject to the standards in effect on February 2, 1990. On that date, the property was subject to Statewide Planning Goal 14 (effective January 25, 1975). In addition, provisions of ORS 92, prohibiting the sale of land without the prior approval of a partition or subdivision, dated prior to 1990, will continue to apply to the subject property.

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 the claimants first obtain 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 the claimants 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 the Commission or the department; 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 the claimants to use the property, it may be necessary for them to obtain a decision under Measure 37 from a city, county and metropolitan service district that enforces land use regulations applicable to the property. Nothing in this draft report relieves the claimants 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 the claimants.

VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on June 10, 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.