

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

OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT

Final Staff Report and Recommendation

July 1, 2005

STATE CLAIM NUMBER: M119260

NAME OF CLAIMANTS: Dale and Phyllis Amsberry

MAILING ADDRESS: 43807 Penttila Lane
Astoria, Oregon 97103

IDENTIFICATION OF PROPERTY: Township 8N, Range 7W, Section 4
Tax Lot 1000
Clatsop County

DATE RECEIVED BY DAS: January 11, 2005

180-DAY DEADLINE: July 10, 2005

I. CLAIM

Dale and Phyllis Amsberry, the claimants, seek compensation in the amount of \$150,000 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 property for sale and residential use. (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 the following laws enforced by the Land Conservation and Development Commission (the Commission) or the department, not apply to the claimants to allow them to divide the property into four lots or parcels and to establish a residential dwelling on each lot or parcel: the applicable provisions of Statewide Planning Goal 3 (Agricultural Lands), ORS 215.283 and 215.780, and OAR 660-033-0130(4) and 660-033-0135 to the extent necessary to allow the claimants a use of the property permitted at the time they acquired the property that is the subject of this claim. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On February 18, 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 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

This claim was submitted to DAS on January 11, 2005 for processing under OAR 125, Division 145. The claim identifies ORS 215.283 as restricting the division and placing of residences on land zoned EFU, 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 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 claimants, Dale and Phyllis Amsberry, acquired the subject property on August 10, 1973. (See warranty deed, dated August 10, 1973, recorded August 14, 1973). A copy of an appraisal conducted for a third party in November, 2004, shows that the claimants are the current owners of the subject property) Clatsop County tax ID # 18967, and Assessor # 0401 (& 0403)-80704-01000, 27.87 acres).

Conclusions

The claimants, Dale and Phyllis Amsberry, are “owners” 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 the Claim

In order to establish a valid claim, Section 1 of Ballot Measure 37 requires, in part, that a law must restrict the claimants’ 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 claimants or a family member acquired the property.

Findings Fact

The Amsberry’s claim submitted to DAS states that ORS 215.283 (Uses permitted in EFU Zones in Non-Marginal Lands Counties) “restricts division and placing of residences on land zoned EFU.” The Amsberry’s claim to Clatsop County further clarifies their objective to divide their land into four parcels, and place a dwelling on each parcel.

Statewide Planning Goal 3, (Agricultural Lands) (OAR 660-015-0000(3)), and the required provisions applicable to land zoned for EFU under ORS 215 and OAR 660, Division 33, including ORS 215.780, restrict the zoning, use and partition of the subject property. Goal 3 became effective on January 25, 1975 and requires agricultural land, as defined by the Goal, to be zoned EFU pursuant to ORS 215 (see citations to statutory and rule history under OAR 660-015-0000(3)). ORS 215.780 became effective on November 4, 1993 (Chapter 792, Or Laws 1993).

Together, pursuant to Statewide Planning Goal 3, ORS 215.283 and 215.780 and OAR 660- 33-0130(4) and 660-033-0135 establish an 80-acre minimum lot size for the creation of a new parcel in an agricultural zone, and establish the standards for dwellings in agricultural zones under Statewide Planning Goal 3. Clatsop County’s acknowledged EFU zoning standards, first applied

in 1983, are based on the standards contained in Statewide Planning Goal 3, ORS 215 and OAR 660, Division 33.

County zoning at the time the claimants acquired the property was A-1 Agriculture and Forestry, which allowed for lots of 10,000 sq. feet for the first lot on a parcel and 12,000 sq. feet for each lot thereafter.

Conclusions

The minimum lot size and dwelling standards established by the applicable provisions of Statewide Planning Goal 3, ORS 215 and OAR 660, Division 33, were all adopted after the claimants acquired the property in 1973, and do not allow the division of the property into parcels less than 80 acres in size, or the approval of dwellings. Subsequently adopted land use laws restrict the use of the property relative to the uses allowed when the claimants acquired the property.

3. Effect of Regulations on Fair Market Value

In order to establish a valid claim, Section 1 of Ballot Measure 37 requires that any law(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 claimants assert that the fair market value of the subject property has been reduced and that the just compensation due is \$150,000. The claimants have provided several estimates for the current market value of the property. According to a 2004 market analysis and appraisal of the subject property submitted with the claim, comparable sites with dwellings were in the range of \$200,000, and the subject property was appraised at \$214,000. At the time of the claim, the property was being offered for sale at \$245,000. (See appraisal with comparative market analysis by H. Duane Wright, submitted with the claim.) The 2004 assessed value property, including the dwelling, was \$157,949 (see tax information in the department’s claim file);

The claimants’ letters and documentation provide no further explanation or reasoning as to the estimated reduction in fair market value of \$150,000.

Conclusion

As explained in section V. (1) of this report, the current owners are Dale and Phyllis Amsberry, who acquired the property on August 10, 1973. Thus, under Ballot Measure 37, the Amsberry’s 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 2004 tax statement from Clatsop County shows that the current value of the 27.87-acre property and the existing structure(s) is \$157,949.

Without an appraisal of the property without restrictions or other explanation, it is not possible to substantiate the specific dollar amount the claimants demand for compensation. Nevertheless, based on the submitted information, including the comparative market analysis, 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

Laws that were in effect at the time the claimants acquired the property are exempt under Section 3(E) of Ballot Measure 37.

Conclusions

No regulations cited in the claim are exempt under Section 3(E) of Ballot Measure 37. There may be other specific laws that 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 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 division of the 27.87 acre subject property, and establishment of residential dwellings on the resulting parcels. The laws enforced by the Commission or department reduce the fair market value of the property to some extent. Based on a current appraisal of the property, the claim asserts this amount to be \$150,000. However, because the claim does not provide a specific explanation for how the specified restrictions reduce the fair market value of the property if divided, a specific amount of compensation cannot be determined. Nevertheless, based on the record for this claim, the department acknowledges that the laws on which the claim is 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, Ballot Measure 37 authorizes the department to modify, remove or not apply all or parts of one or more land use regulations to allow the Amsberrys to use the subject property for a use allowed at the time they acquired the property on August 10, 1973.

Conclusions

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 Amsberrys to allow them to divide the subject 27.8 acre property into four parcels or lots, and to establish a residential dwellings on each of the parcels or lots: the current applicable provisions of Statewide Planning Goal 3 (Agricultural Lands), ORS 215.283, and OAR 660-033-0130(4) and 660-033-0135 to the extent necessary to allow the claimants a use permitted at the time they acquired the property
2. The action by the State of Oregon provides the State's authorization to the claimants to use the property subject to the standards in effect on August 10, 1973.
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 remains 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 with out limitation, those laws exempted under section (3) of this 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 and/or county and/or metropolitan service district that enforces land use regulations applicable to the property. Nothing in this order 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 17, 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.