

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

OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT

Final Staff Report and Recommendation

July 6, 2005

STATE CLAIM NUMBER: M119302

NAME OF CLAIMANTS: Robert and Grace Wallace

MAILING ADDRESS: 97280 Homestead Way
Gold Beach, Oregon 97444

IDENTIFICATION OF PROPERTY: Township 36S, Range 14 W, Section 12
Tax Lot 309, Curry County

DATE RECEIVED BY DAS: January 13, 2005

180-DAY DEADLINE: July 12, 2005

I. CLAIM

Robert C. and Grace Wallace, the claimants, seek compensation in the amount of \$400,000 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 subdivide their property. The property is 9.23 acres located at 97280 Homestead Way in Gold Beach, Oregon. (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) finds that the claim is valid. The 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 subdivide their property to create eight building sites: applicable provisions of Statewide Planning Goal 14 and OAR 660-004-0040 that preclude the division of the subject property to the extent necessary to allow them a use permitted at the time they acquired the property on September 27, 1976. (See Section VI. of this report for the complete recommendation.)

III. COMMENTS RECEIVED

On February 22, 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 submitted to the DAS on January 13, 2005, for processing under OAR 125, Division 145. 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 was submitted within two years of December 2, 2004, based on laws enacted prior to December 2, 2004, the effective date of Measure 37, and is therefore timely filed.

V. ANALYSIS OF CLAIM

1. Ownership

Ballot Measure 37 provides payment of compensation or relief from specific laws for “owners” as that term is defined in the Measure. Section 11(C) defines “owner” as “the present owner of the property, or any interest therein.”

Findings of Fact

Robert and Grace Wallace state that they are the owners of a 9.23-acre parcel located in Curry County and that they acquired the property on September 27, 1976.

The claimants have provided a land sale contract showing that the property was transferred to them on September 27, 1976. A copy of the claimants' current tax statement was forwarded to the department by Curry County and indicates that Robert and Grace Wallace are the current owners having a chain of title to the property back to September 27, 1976.

Conclusions

The claimants, Robert and Grace Wallace are the current "owners" of the subject 9.23-acres as that term is defined by Section 11(C) of Ballot Measure 37.

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

The claimants state that the property was "down zoned" in 1982 from RR-1 (rural residential, 1 acre minimum lot size) to RR-5 (rural residential, 5 acre minimum lot size), which resulted in the loss of eight building sites.

According to Curry County, when the Claimants purchased the property in 1976, it was zoned Residential Agricultural (RA-1) which had a one-acre minimum lot size requirement for the creation of new lots or parcels. The property was rezoned to Rural Residential, which has a five-acre minimum lot size, sometime between 1981 and 1983.¹

The property is currently zoned RR-5, which requires a minimum of five-acres for the creation of a new lot or parcel (Curry County Zoning Ordinance, Section 3.083). The subject property is 9.23-acres and cannot be divided under the RR-5 zone.

As a result of a 1986 Supreme Court decision, in 2000 the Commission amended Statewide Planning Goal 14 (Urbanization) and adopted OAR 660-004-0040² which became effective on October 4, 2000. The rule provides that after October 4, 2000, a county minimum lot size requirement in RR zone may not allow a smaller minimum lot size without taking an exception to Goal 14 (OAR 660-004-0040(6)). This rule does not allow the subject property to be divided without an exception to Goal 14.

¹ Based on personal communication on April 6, 2005, between Doug White (the department) and Kathy Blansett (Curry County Planning).

² *1000 Friends of Oregon v. LCDC (Curry County)*, 301 Or App 447 (1986).

Conclusions

OAR 660-015-0000(2) and OAR 660-004-0040, adopted since the Wallaces acquired the property in 1976, restrict the use of the property relative to uses allowed when they acquired the property in 1976.

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 claimants, the down zoning resulted in “the loss of 8 one acre lots, on which to build and market houses.” The claimants indicate that the value would be \$50,000 per lot resulting in a reduction in the fair market value of \$400,000. No other information or an appraisal was provided regarding the reduction in fair market value.

Conclusions

As explained in section V. (1) of this report, the current owners are Robert and Grace Wallace, who acquired the property on September 27, 1976. Thus, under Ballot Measure 37, the Wallaces 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 claimants state that the reduction is \$400,000.

Without an appraisal or other substantiating documentation, it is not possible to substantiate the specific dollar amount the claimants demand 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 laws 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 land use regulation that is the subject of this claim is Goal 14 and OAR 660-004-0040, which set forth the requirements for the creation of new lots or parcels in rural residential areas.

Conclusions

Goal 14 was enacted before the claimants acquired an interest in the property, and as a result is exempt from the Measure under section 3(E). An amendment to Goal 14 in 2000, authorized the Commission to adopt a rule allowing single family residential development on rural lands under specified circumstances. Before that time, Goal 14 had been held to prohibit residential development in areas outside of urban growth boundaries at densities between one and five acres per lot. See, *DLCD v. Klamath County*, 38 Or LUBA 769 (2000). Claimant's use of the property will continue to be subject to Goal 14 and, as a result, it is not clear that use at the density claimants' desire is permissible.

OAR 660-004-0040, which was adopted in 2000, is not exempt under Section 3 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.

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 record before the department, laws enforced by the Commission or the department restricts the subdivision of the property described in the claim. The laws enforced by the Commission or the department reduces the fair market value of the subject property to some extent. The claim asserts this amount to be \$400,000. Without an appraisal, it is not possible to substantiate the specific dollar amount the claimants demand 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.

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 and Grace Wallace to use the subject property for a use permitted at the time they acquired the property on September 27, 1976.

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 Robert and Grace Wallace's division of the property into building sites: those provisions of Statewide Planning Goal 14 and OAR 660-004-0040, amended and enacted after September 27, 1976, respectively, that relate to the division of land.
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 September 27, 1976. On that date, the property was subject to applicable provisions of Statewide Planning Goal 14, and the RA-1 zoning, in effect at that time.
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 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 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 her 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 20, 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.