

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

OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT

Final Staff Report and Recommendation

July 11, 2005

STATE CLAIM NUMBER: M119330

NAME OF CLAIMANT: Robert Riemenschneider

MAILING ADDRESS: P.O. Box 457
Redmond, Oregon 97756

IDENTIFICATION OF PROPERTY: Township 15S, Range 15E, Section 4, 9, 10,
14, 15, 16, 22 Tax Lots 1210 and 1210AO1,
Crook County

OTHER INTEREST IN PROPERTY: Sheldon Arnett
John Arnett

DATE RECEIVED BY DAS: January 18, 2005

180-DAY DEADLINE: July 17, 2005

I. CLAIM

Robert Riemenschneider, the claimant, seeks compensation in the amount of \$3,400,000 to \$5,900,000 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 divide the subject property into two-acre parcels "more or less", and allow the owners to build access roads to the parcels. The property contains 1,425.68 acres of land located near Prineville. (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 not valid because neither the Land Conservation and Development Commission (the Commission) nor the department have enforced laws subject to Measure 37 that restrict the claimant's use of private real property. Based on this determination, the department does not make any further evaluation or determination on the merits or substance of the claim. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On March 15, 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

The claim was submitted to DAS on January 18, 2005, for processing under OAR 125, Division 145. The claim identifies Crook County's exclusive farm use (EFU) zoning, and all regulations enacted since 1985, as the basis for this 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

According to the claim, Robert Riemenschneider, the claimant, and Ronald L. Riemenschneider (father) acquired the subject property, approximately 1,100 acres zoned EFU and 300 acres zoned Airport Obstructions (AO1), as tenants in common on July 29, 1985.

Mr. Riemenschneider provided a warranty deed and a title report dated August 6, 1985, to substantiate that acquisition date.

On September 23, 2004, Robert Riemenschneider sold subject property to Sheldon and John Arnett. The same day, Robert Riemenschneider leased the property from Sheldon and John Arnett, with an option to buy. (See Bargain and Sale deed and lease agreement in claim file.)

Conclusions

The claimant, Robert Riemenschneider, acquired the subject property on July 29, 1985. However, on September 23, 2004, he terminated his ownership when he sold the property to John and Sheldon Arnett. He subsequently leased the property back with an option to buy. The lease constitutes a new ownership interest with a new acquisition date. The claimant is an “owner” of the property as that term is defined in section 11(C) of Measure 37. The terms of the September 23, 2004 lease establish the claimant’s current interest in the property.

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 does not clearly identify a specific law or regulation that restricts the claimant’s use of the subject property. The claim states that laws or regulations generally “restricts the ability of the owners to develop the property consistent with the dimensional standards and usage allowed in 1985.” The claim filed with Crook County more clearly seeks to waive the EFU designation because “the owners intend to divide this into smaller parcels with nonfarm dwellings as there are no agricultural activities in the area.” In a cover letter to Crook County, Ed Fitch, attorney for the claimant, further identifies his client’s objectives as being “restrict[ed by] the ability of the applicant [sic] to subdivide this property into parcels of two acres more or less and allowing the owners to build access roads to the parcels.”

A May 27, 2005, letter from Mr. Fitch provides additional direction with regard to regulation that is alleged to affect this property. With regard to the 1,100 acres zoned EFU, Mr. Fitch additionally cites “revisions in the state statutes (e.g. ORS 203 and 205)” as regulations for which a waiver is sought. He also seeks waiver of Goal 11, Public Facilities Planning.

With regard to the 300 acres zoned (AO1), he requests a waiver of “all state regulations, including those enacted by the Oregon Department of Transportation through the Aeronautics Division that would effect the development of this property, excepting those which may fall into an exemption under measure 37.” He again cites Goal 11 and “also any other goals or implementing regulations concerning urban type development outside the UGB that were or have been adopted since 1985.”

The claimant’s interest in this property is limited to that of a lessee under the terms of the September 23, 2004 lease. To the extent the claimant has claimed that laws or regulations have restricted the use of the property, he has not identified or established that any laws or regulations enacted after he acquired his interest in the property have restricted his use of the property as that use is defined under the terms of the lease.

Conclusions

The claimant’s interest in the subject property is limited to that of a lessee under the terms of a September 23, 2004 lease. The claimant has not identified a land use regulation that restricts his rights to use the property under the terms of his leasehold interest in the property. Nor has he cited any land use regulations affecting the property that have been enacted since he acquired his interest on September 23, 2004.

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 claim asserts that land use regulations have restricted the use of the subject property thereby reducing its value. However, none of the regulations relied upon were enacted subsequent to the claimant’s acquisition of a leasehold interest in the property on September 23, 2004. In addition, the claimant has not established that any of any regulations reduce the value of his leasehold interest in the property.

Conclusions

The claimant has not demonstrated that any state land use regulation restricts his use of private real property under the terms of his leasehold interest, and has not demonstrated that any land use regulations reduce the fair market value of his interest in the subject property.

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

All laws and regulations cited in the claim were enacted prior to Mr. Riemenschneider's acquisition of a leasehold interest in the property on September 23, 2004.

Conclusions

All laws and regulations cited in the claim are exempt under Ballot Measure 37 Section 3(E) because they were enacted prior to the date the claimant acquired the property.

VI. FORM OF RELIEF

Based on the record, the claimant is not entitled to relief under Ballot Measure 37. Department staff recommend that this claim be denied because neither the Commission nor the department have enforced laws that restrict the claimant's interest in the private real property that is the subject of this claim. Based on this determination, the department does not make any further evaluation or determination on the merits or substance of the claim.

VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on June 22, 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.