

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

OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT

Final Staff Report and Recommendation

July 13, 2005

STATE CLAIM NUMBER: M119388

NAME OF CLAIMANTS: Kathleen S. Beck-Blaine
and Clayton H. Rogers

MAILING ADDRESSES: Kathleen Beck-Blaine
PO Box 5521
Salem, Oregon 97304

Clayton Rogers
7340 Spring Valley Road NW
Salem, Oregon 97304

IDENTIFICATION OF PROPERTY: Township 6S, Range 3W, Section 19
Tax lot 1802,
Polk County

DATE RECEIVED BY DAS: January 20, 2005

180-DAY DEADLINE: July 19, 2005

I. CLAIM

Kathleen S. Beck-Blaine and Clayton H. Roger (daughter and father), the claimants, seek compensation in the amount of \$225,500 for the reduction in fair market value as a result of certain state land use regulations that are alleged to restrict the use of certain private real property. The claimants desire compensation or the right to establish a single-family dwelling on the property. The property contains 5 acres located on the south side of Oak Hill Road and east of Spring Valley Road located in Polk County. (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 develop a

single-family dwelling on the property: applicable provisions of Statewide Planning Goal 3 (Agricultural Lands), (OAR 660-015-0000(3)), OAR 660-033-0130(4), OAR 660-033-0135, and ORS 215.284, ORS 215.283. These laws will not apply to the claimants' use of the property only to the extent necessary to allow Clayton Rogers to use the property for a use permitted at the time he acquired his interest on September 25, 1968; and to the extent necessary to allow Kathleen Beck-Blaine to use the property for a use permitted at the time she acquired her interest in the property on March 4, 1980. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On February 23, 2005, pursuant to OAR 125-145-0080, the Oregon Department of Administrative Services (DAS) provided written notice to the owners of surrounding properties. In response to the notice, DAS received three letters containing general comments that are not specific to the criteria required under Measure 37 for the department's review of this claim. Because no funds have been made available for payment of 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 claimant's Ballot Measure 37 claim. (See comment letters in the department's claim file). Specific comments on the ownership and applicable regulations are discussed in Section V. of this report.

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 20, 2005 for processing under OAR 125, Division 145. The claim identifies various sections of ORS 215 and OAR 660, Division 33, that restrict the use of the property 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, Kathleen S. Beck-Blaine (formally Kathleen Wardell and Kathleen Rogers) and Clayton H. Rogers, are owners as tenants in common of the subject property. The claimant, Clayton Rogers and his mother, Alice C. Rogers, acquired the property on September 25, 1968. The claim includes a copy of the land sales contract and the fulfillment deed confirming Clayton Roger’s September 30, 1968, acquisition.

In 1980, Kathleen Beck-Blaine (at that time Kathleen Wardell) acquired an undivided interest in the property, as a tenant in common with her father. The claim includes a warranty deed confirming the conveyance of the interest to Ms. Beck-Blaine on March 4, 1980.

Comment Received on Ownership

DAS received one comment that the “date of owner acquisition appears to be March 4, 1980.”

Response to Comment

Ms. Beck-Blaine acquired an interest in the property in 1980. However, her father, Clayton Rogers, acquired an interest in the property in 1968 and continues to own the property as a tenant in common with his daughter. (See Section VI. below).

Conclusions

The claimants, Clayton Rogers and Kathleen Beck-Blaine, are “owners” of the subject property, as that term is defined in Section 11(C) of Ballot Measure 37. Clayton Rogers

has owned an interest in the property since September 25, 1968. Kathleen S. Beck-Blaine has owned an interest in the property since March 4, 1980.

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 Fact

The claimants would like to place a single-family dwelling on the subject 5-acre parcel.

The claim identifies "ORS 215.203, 215.213, 215.243, 215.283, and 215.284, OAR 660-033-0020, -0120, -0130, -0135, -0110, Polk County 136, and Zoning Ordinance 110" that restrict the use and reduces the value of the property as the basis for the claim.

The cited land use laws are the provisions applicable to the approval of dwellings on land planned and zoned for exclusive farm use. Land must be planned and zoned for exclusive farm use under Statewide Goal 3 (Agricultural Lands), (OAR 660, Division 33) if it meets the definition of agricultural land. The claimants' property is "agricultural land" as defined by Goal 3 because it is predominantly composed of NRCS Class IIe Woodburn soils. (See Natural Resource Conservation Service Soil Survey of Polk County, page 179.)

OAR 660 Division 33 establishes standards for the approval of farm and non-farm dwellings, among others, for lands zoned exclusively for farm use. Specifically, OAR 660-033-0135 requires that for the approval of a dwelling "customarily provided in conjunction with farm use," the owner demonstrate, in part, that the owner's farm operation produced a certain gross farm annual income from the sale of farm products in the last two or three of the last five years. For a non-farm dwelling, ORS 215.284(4) as applied by OAR 660-033-0130(4) requires, in part, that a non-farm dwelling may only be established on a parcel predominately composed of Class IV to VIII soils. The subject property is predominantly composed of Class II soils and is therefore not eligible for a non-farm dwelling. ORS 215.203 and ORS 215.283 limit what uses may be allowed on land zoned for exclusive farm use. ORS 215.213 does not apply to the subject property, as it applies only in counties that have made marginal lands designations (which Polk County has not).

OAR 660-033-0135 (applicable to farm dwellings) became effective on March 1, 1994, and interprets the statutory standard for a primary dwelling in an exclusive farm use zone under ORS 215.283(1)(f). OAR 660-033-0130(4) (applicable to non-farm dwellings) became effective on August 7, 1993 and was amended to comply with ORS 215.284(4) on March 1, 1994. (See citations of administrative rule history for OAR 660-033-0130

and 0135(7).)Except for some provisions of ORS 215, related to farm dwellings, in effect when Mr. Rogers acquired the property, there were few state land use regulations applicable to the establishment of a dwelling on the property when he acquired the property on September 25, 1968.

Comment Received on the Laws that are the Basis for the Claim

DAS received one comment that the proposed use, even with a waiver, remains prohibited by state regulations.

Response to Comment

Land use laws in effect at the time the claimant, Ms. Beck-Blaine, acquired her interest in the property in 1980 may prevent her from having the right to establish a single-family dwelling on the subject property. However, there were few, if any, land use laws in effect at the time Clayton Rogers acquired an interest in the property in 1968.

Conclusions

The dwellings standards established by Statewide Planning Goal 3, ORS 215, and OAR 660 Division 033, and Polk County's Exclusive Farm Use (EFU) Zone, adopted since the claimant, Clayton Rogers, acquired the property in 1968, do not allow a single-family dwelling to be approved on the property. The current land use laws, most of them adopted since 1968, restrict the use of the property from what could have been done when Mr. Rogers acquired the property in 1968.

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 claim asserts a reduction in the fair market value of the property is \$225,500 based on the difference between a buildable lot, which the claim asserts to be worth \$237,000 and bare farmland the claim asserts to be worth \$11,500. The claim identifies sources of information as: July 1, 2004 to June 30, 2005 tax statement for Tax Lot 1801, which is an adjacent similar 5-acre parcel; and various listings of properties for sale in the West Salem area.

Conclusions

As explained in Section V. (1) of this report, the current owners are Clayton Rogers and Kathleen Beck-Blaine. Mr. Rogers has owned the property since 1968 and thus, under

Ballot Measure 37, the claimants are due compensation for land use laws that restrict the use of the subject property in a manner that reduces its fair market value.

Based on the real market value estimates and comparable properties, the claimants estimate their loss in value to be \$225,500. However, without an appraisal of the parcels or another explanation, 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 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 is based on Polk County's EFU zone and the related provisions of state law that have restricted the right of the claimants to establish a single-family dwelling on the property and reduced its fair market value. The state laws that restrict the right to establish a dwelling are applicable provisions of Statewide Planning Goal 3 (Agricultural Lands), ORS 215 and OAR 660, Division 33. Most laws that qualify as "land use regulations" under the Measure were adopted after 1968, when the claimant, Clayton Rogers, acquired the property, with the exception of some provisions of ORS 215. The provisions of ORS 215 enacted prior to Mr. Roger's acquisition of the property on September 25, 1968, are exempt under Section 3(E) of Measure 37.

Conclusions

It appears that the general statutory, goal and rule restrictions on the development of subject property apply to the owner's anticipated use of the property, and for the most part, these laws would not come under any of the exemptions in Measure 37. Applicable provisions of ORS 215 in effect when Mr. Rogers acquired the property are exempt under Measure 37(3)(E). There may be other specific laws that continue to apply, under one or more of the exemptions in Measure 37 or because they are laws that are not covered by the Measure to begin with. Laws enacted after Ms. Beck-Blaine acquired the property in 1980 will continue to apply to her use of the property.

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 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 claimants' development of the lot for residential use. The laws enforced by the Commission or department reduce the fair market value of the property to some extent. The claim asserts this amount to be \$225,500. However, because the claim does not provide a specific explanation for how the specified restrictions reduce the fair market value of the property, 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, Measure 37 authorizes the department to modify, remove or not apply all or parts of certain land use regulations to allow Clayton Rogers to use the subject property for a use permitted at the time he acquired interest in the property on September 25, 1968; and to allow the claimant, Kathleen Beck-Blaine, to use the subject property for a use permitted at the time she acquired interest in the property on March 4, 1980.

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 Mr. Roger's establishment of a dwelling on the subject property: applicable provisions of Statewide Planning Goal 3 (Agricultural Lands), (OAR 660-015-0000(3)), OAR 660-033-0130(4), OAR 660-033-0135, and ORS 215.284, ORS 215.283 and ORS 215.203. These laws will not apply to Mr. Roger's use of the property only to the extent necessary to allow him to use the property as permitted at the time he acquired it on September 25, 1968. In lieu of compensation under Measure 37, the State of Oregon will not apply the following laws to Ms. Beck-Blaine's establishment of a dwelling on the subject property: Applicable provisions of OAR 660-033-0130(4), OAR 660-033-0135 and ORS 215.284. These laws will not apply to Ms Beck-Blaine's use of the property only to the extent necessary to allow her to use the property as permitted at the time she acquired an interest in it on March 4, 1980.
2. The action by the State of Oregon provides the state's authorization to Mr. Rogers to place a dwelling on the subject property subject to the laws in effect when he acquired the property in 1968 and to any other laws that are exempt under section 3(E) of Measure 37; and to Ms. Beck-Blaine to place a dwelling on the subject property subject to

the laws in effect when she acquired the property on March 4, 1980 and to any other laws that are exempt under section 3(E) of Measure 37.

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 claimant 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 posed by private parties.

4. Any use of the property by the claimant 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 the claimant 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 claimant 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 claimant.

VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on June 24, 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.