

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

OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT

**Final Staff Report and Recommendation
July 14, 2005**

STATE CLAIM NUMBER: M119411

NAME OF CLAIMANTS: Beverley Yungen and Roy Vetsch

MAILING ADDRESS: 11188 Northwest Helvetia Road
Hillsboro, Oregon 97124

IDENTIFICATION OF PROPERTY: Township 1N, Range 2W, Section 11
Tax Lots 1001 and 1100
Washington County

DATE RECEIVED BY DAS: January 21, 2005

180-DAY DEADLINE: July 20, 2005

I. CLAIM

Beverley Yungen and Roy Vetsch, the claimants, seek compensation in the amount of \$5,175,810 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 subdivide the 80-acre parcel into one to five-acre lots and establish a single-family residence on each lot. (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 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 into one to five-acre lots and establish a single-family residence on each lot: applicable provisions of Statewide Planning Goal 3 (Agricultural Lands), Goal 14 (Urbanization), ORS 215, and OAR 660, division 33, that were enacted after April 4, 1997. These laws will not apply to the claimants' use of the property only to the extent necessary to allow Beverley Yungen and Roy Vetsch a use of the property permitted at the time they acquired it. As a result, the claimants' use of the property will be subject to those laws in effect in April, 1997. The department acknowledges that the relief

recommended in this report will not allow the claimants to use their property in the manner set forth in their 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, there were no written comments, evidence or information received by DAS in response to the 10-day notice. One letter came in after the deadline (see claim file). None of the comments were specific to the criteria required under Measure 37 to be used in the department's review of this claim.

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 Risk Management Division on January 16, 2005 for processing under OAR 125, division 145. The claim identifies the County's exclusive farm use zoning (EFU) and state laws 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 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 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

The claimants state that their parents purchased the property on June 28, 1934. A “Recorder of Conveyance” document is included with the claim to verify the parents’ ownership. The claimants inherited the property in 1997. According to Washington County records, the claimants acquired the property on April 4, 1997. (See the department’s claim file.)

Conclusions

Based on the 1934 document, the property has been owned by family members of the claimants since June 28, 1934. The claimants are the current “owners” as the term is defined in Section 11(C) of Measure 37, as of April 4, 1997.

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 they are “filing this claim because [of] land use regulation which allows only one house on an 80 acre farm. The regulation is the EFU [Exclusive Farm Use] zoning”. The claimants did not specify laws or rules or state specifically what they propose to do with the property. Their claim to Washington County states that they want to subdivide the property into one-to five-acre parcels.

The claim is based, in part, on the Washington County’s (EFU) Zone and the applicable provisions of state law that require such zoning. The claimants’ property is zoned EFU as required by Statewide Planning Goal 3 in accord with OAR 660, division 33 and ORS 215 because the claimants’ property is “agricultural land” as defined by Goal 3. Goal 3 became effective on January 25, 1975, and required that agricultural lands as defined by the Goal be zoned EFU.

Land that is zoned EFU also is subject to restrictions based on certain provisions of ORS 215, namely, ORS 215.263, 215.283, 215.284, 215.705 and 215.780. These laws do not allow the subject property to be divided into parcels less than 80 acres in zone, and establish standards for dwellings. ORS 215.705 and 215.780 became effective on November 4, 1993. (Chapter 792, Or Laws 1993.) ORS 215.263 (land divisions), 215.283 (uses allowed on EFU zoned land (and its predecessor, ORS 215.213)), and 215.284 (non-farm dwellings) first became effective in 1973.

Statewide Planning Goal 3, in addition to requiring agricultural land to be zoned for exclusive farm use, generally requires such land to be used for farm uses. Statewide Planning Goal 14 generally requires that land outside of urban growth boundaries be used for rural uses. As noted above, Goal 3 became effective on January 25, 1975, as did Goal 14. The administrative rules implementing these goals that restrict residential development of EFU land are OAR 660-033-0130 and 0135. 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 EFU 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. Subsequent amendments to comply with HB 3326, (Chapter 704, Oregon Laws 2001, and effective January 1, 2002) were adopted by the Commission effective May 22, 2002. (See citations of administrative rule history for OAR 660-033-0100, 0130 and 0135.)

When the claimants' family acquired the property in 1934, no state land use regulations applied to the use of the subject property, with the possible exception of ORS 227.120 (concerning subdivisions within six miles of a city).

Conclusions

Current land use laws adopted since 1934 restrict the use of the property from what could have been done when the claimants' family acquired the property in 1934. The current minimum lot size and dwelling standards established by Statewide Planning Goal 3, ORS 215, and OAR 660, division 33, adopted since the claimants' family acquired the property in 1934, do not allow the division of the property into parcels less than 80 acres in size or allow the approval of dwellings on it.

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 states that a 1999 appraisal of the property with the EFU regulation valued the property at \$355,590 and the current value without the EFU land use regulation is \$5,531,400. Accordingly, the claimants assert a reduction in value of \$5,175,810. However, no appraisal or other documentation was submitted to substantiate this reduction amount. The claimants did

submit real estate sale values of three five-acre plots nearby. The sale price of the parcels ranged from \$350,000 to \$375,000. If the claimants were to subdivide their 80 acres into 5-acre plots, relying on the sales prices provided, the total value of the land would range from \$5.6 to 6 million, similar to what they submitted as the value of the land without regulations. Claimants have not, however, specified a proposed use of their property.

Conclusions

As explained in section VI. Of this report, Beverly Yungen and Roy Vetsch are current owners of the subject property as of April 4, 1997. The claimants' family has owned the property since 1934. Thus, under Measure 37, the claimants are due compensation for land use laws that restrict the use of the property in a manner that reduces its fair market value.

Based on the information submitted with the claim, the claimants estimate their loss of value to be \$5,175,810. However, without an appraisal or other substantiating documentation, and without information regarding a proposed use of the property, 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 laws enforced since 1934.

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 laws identified in the claim were generally adapted after the claimants' family acquired the property in 1934. Generally, none of these laws are exempt under Measure 37. One law that was in place in 1934 when claimant's family acquired the property was what is now codified as ORS 227.120. This statute required that cities approve the subdivision of land within six miles of the city's limits. This law may still apply to the use of the property.

In addition, other laws adopted to protect public health and safety or to prevent a public nuisance, may be exempt and may apply to the type of development that appears to be anticipated by claimant. These laws include, but are not limited to: laws governing septic and water systems.

Conclusions

The laws identified in the claim are not exempt from Measure 37. However, there maybe other specific laws that continue to apply under one or more of the exemptions in the Measure, because they are laws 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 department has enacted or 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 owner to carry out a use of the property allowed at the time the owner acquired the property. The Commission has by rule directed that if the department determines a claim is valid, the Director must provide non-monetary relief unless and until funds are appropriated by the legislature to pay claims.

Findings of Fact

Based on the findings and conclusions set forth in this report, the laws and rules enacted or enforced by the Commission or the department since 1934 restrict the claimants' development of their property. The laws enacted or enforced by the Commission or the department reduce the fair market value of the subject property to some extent. The claim asserts this amount to be \$5,175,810. This amount is based on comparisons with sale values of similar properties nearby. However, because the claim does not provide a specific proposed use or provide an 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 law on which the claim is based likely has 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 certain land use regulations to allow Beverley Yungen and Roy Vetsch to use the subject property for a use allowed at the time they acquired the property on April 4, 1997.

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 Beverley Yungen and Roy Vetsch's subdivision of their property into one to five-acre lots and the establishment of a single-family residence on each lot: the applicable provisions of Statewide Planning Goals 3 and 14 that were enacted after April 4, 1997, the applicable provisions of ORS 215.263, 215.283, 215.284, 215.705 and 215.780 that were enacted after April 4, 1997; and the applicable provisions of OAR 660-033-0130 and 660-033-0135 that were enacted after April 4, 1997. The department acknowledges that the relief recommended will not allow the claimants to use the property in a manner that appears to be anticipated in their claim.

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 April 4, 1997, including, but are not limited to: the provisions of Statewide Land Use Planning Goal 3, ORS 215, and OAR 660, division 033, in effect on that date.

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 and/or county and/or metropolitan service district that enforces land use regulations applicable to the property. Nothing 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 28, 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.