

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

OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT

Final Staff Report and Recommendation

July 25, 2005

STATE CLAIM NUMBER: M119597

NAME OF CLAIMANT: Laverne W. Ratzlaff and
Mary Jean Ratzlaff

MAILING ADDRESS: 15391 Airlie Road
Monmouth, Oregon 97361

IDENTIFICATION OF PROPERTY: Township 9S, Range 5W Section 5 Tax Lots
101, 102, 104, 105, 106, 107 and 108
Polk County

Township 8S, Range 5W, Section 33
Tax Lots 203, 600, 604, 608, 610, 612, 614,
616, 621 and 622
Polk County

DATE RECEIVED BY DAS: February 4, 2005

180-DAY DEADLINE: August 3, 2005

I. CLAIM

Laverne W. & Mary Jean Ratzlaff, the claimants, seek compensation in the amount of \$12,007,294 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 partition the property into five acre parcels for residential use. The subject property contains 426.09 acres (17 tax lots in two sections) located west of the City of Monmouth on Fishback Road 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 the claim is valid in part, and invalid in part.

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 subject property in order to allow the claimants to divide Tax Lots 101, 102, 104, 105, 106, 107, 108, 608, 610, 612, 614 and 621 into five-acre lots and develop each with a single-family dwelling on the property: applicable provisions of Statewide Planning Goal Goal 4 (Forest Land), ORS 215, and OAR 660, Divisions 6 and 33 in agricultural/forest zones. These laws will not apply to the claimants' use of use of Tax Lots 101, 102, 104, 105, 106, 107, 108, 608, 610, 612, 614, and 621 only to the extent necessary to allow them a use of the individual tax lots permitted at the time the claimants, individually or as husband and wife, acquired a current ownership interest in each tax lot on March 25, 1976, November 18, 1981, February 10, 1983, or December 31, 1992. (See identification of current ownership date for each tax lot under Section V.1 of this report.)

As a result, each claimant's use of these tax lots will be subject to those specified laws in effect on the date (as specified in the table in Section V.1 of this report) that the current owners, Laverne Ratzlaff, Mary Jean Ratzlaff, or both Mr. and Mrs. Ratzlaff, acquired a current interest in these tax lots. (See the complete recommendation in Section VI. of this report.)

The department recommends denial of the claim as to Tax Lots 203, 600, 612, 616 and 622 (in T8S R5W section 33). Neither the Commission or the department have enforced laws that restrict the claimants' use of Tax Lots 203, 600, 616 and 622 as road right-of-way and use of Tax Lot 612 as a developable parcel because of its size, 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 may have first acquired interest in these tax lots on March 25, 1976.

The department recommends denial of the claim as to Tax Lot 604 because information has not been presented in the claim to substantiate the current owner or owners of Tax Lot 604 and the date the interest was acquired.

III. COMMENTS RECEIVED

On February 23 and March 25, 2005, pursuant to OAR 125-145-0080, the Oregon Department of Administrative Services (DAS) provided written notice to owners of surrounding properties. In response to the notice issued, DAS received eleven 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 are available for payment of compensation, comments regarding the possible impact of the proposed or intended development of the claimants are not relevant to the evaluation and determination of the claimants' Ballot Measure 37 claim (See comment letters in the department's claim file). Specific comments on ownership, laws that are basis for claim, and the effects of these laws are discussed below in Sections V.1, V.2 and V.3 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 February 4, 2005 for processing under OAR 125, division 145. The claim identifies Polk County's farm forest (FF and FF/O) zoning 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 regulation 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. 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, Laverne W. & Mary Jean Ratzlaff, the claimants, acquired all of the seventeen (17) tax lots that constitute the subject property on March 25, 1976. A copy of a deed is attached to the claim showing that the claimants acquired the property on March 25, 1976 (Polk County Deed Records, Book 85 Page 202). To verify current ownership, property tax statements for 2004 were provided by the claimants for all 17-Tax Lots that are the subject of this claim.

Subsequent to their purchase of the property, the claimants have transferred various individual tax lots between themselves on numerous occasions. Other than current tax statements, no information was provided by the claimants to establish the date the "current owner" acquired an interest in any of the 17 tax lots. The department was able to obtain title reports for four tax lots

from the county and a title report for seven other tax lots from DAS. No substantiating ownership information has been provided regarding six of the tax lots.

To illustrate the complexity of this claim and the 17 tax lots involved, there were 56 various deeds, contracts, surveys and easement agreements included in the title reports provided by the county for only four of the tax lots. The department compared the information from the tax statements provided by the claimants with information, including title reports, contained in the files provided by Polk County for Measure 37 claims submitted to them for four of the tax lots and with title reports obtained for seven others. The tax statements show a different owner than what the county determined for Tax Lots 608, 610 and 621. The current owner and acquisition dates for Tax Lots 101, 102, 104, 105, 106, 107 and 108 were verified based on title reports obtained by DAS.

With regard to Tax Lots 610 and 614, although they first acquired an interest in these tax lots in 1976, the claimants have deeded their interest in Tax Lots 610 and 614 to each other twice, once in 1983 and again in 1992, it resulted in changes in ownerships over time.

For Tax Lots 203, 600, 604, 612, 616 and 622, the current owner acquisition dates could not be determined from the information provided in the claim. An additional title report is needed for Tax Lot 604 in order to determine the current owner and the date of acquisition and whether there has been change in the ownership. For purposes of this report, title reports for Tax Lots 203, 600, 612, 616 and 622 are not necessary because the claimants have not shown a reduction in the fair market value of those tax lots (See Section V.3 of this report).

The following table shows the dates (claimed and verified) that the “current owner or owners” acquired their interest in each of the tax lots that are the subject of this claim:

Tax Lots	Acreage	Current Owner and their Acquisition Date	Comment	Source of Current Ownership / Acquisition Date:
9 5 5 101	67.30	Laverne and Mary Jean Ratzlaff – March 25, 1976		Title Report, DAS (Book 85 Page 202)
9 5 5 102	34.43	Mary Jean Ratzlaff – March 25, 1976		Title Report, DAS (Book 85 Page 202; Book 186 Pg. 1398)
9 5 5 104	16.24	Mary Jean Ratzlaff – March 25, 1976		Title Report, DAS (Book 85 Page 202; Book 186 Pg. 1226)
9 5 5 105	49.10	Laverne Ratzlaff – March 25, 1976		Title Report, DAS (Book 85 Page 202; Book 262 Pg. 1737)
9 5 5 106	67.69	Laverne and Mary Jean Ratzlaff – March 25, 1976		Title Report, DAS (Book 85 Page 202)
9 5 5 107	70.35	Laverne Ratzlaff – March 25, 1976		Title Report, DAS (Book 85 Page 202)
9 5 5 108	21.93	Mary Jean Ratzlaff – March 25, 1976		Title Report, DAS (Book 85 Page 202; Book 262 Pg. 1738)

8 5 33 203	3.06		Road Right-of-Way (ROW)	
8 5 33 600	.91		Road ROW	
8 5 33 604	8.13		Farm Dwelling Permit 93-86 ¹	
8 5 33 608	23.71	Mary Jean Ratzlaff – February 10, 1983 ²	Farm Dwelling Permit 93-86	Title Report, Polk County Claims File (Book 169 Page 307)
8 5 33 610	20.07	Laverne Ratzlaff – December 31, 1992 ³		Title Report, Polk County Claims File (Book 262 Page 1734)
8 5 33 612	.07		Too small	
8 5 33 614	23.69	Laverne Ratzlaff – November 18, 1981	Farm Dwelling Permit 93-86	Title Report, Polk County Claims File (Book 161 Page 560)
8 5 33 616	1.08		Road ROW	
8 5 33 621	20.01	Laverne and Mary Jean Ratzlaff – March 25, 1976 ⁴		Title Report, Polk County Claims File
8 5 33 622	.91		Road ROW	

Conclusions

The claimant, Laverne Ratzlaff is the “owner” of Tax Lots 105, 107, 610 and 614 as that term is defined by Section 11(C) of Measure 37. The claimant, Mary Jean Ratzlaff is the “owner” of Tax Lots 102, 104, 108 and 608 as that term is defined by Section 11(C) of Measure 37. The claimants, Laverne and Mary Jean Ratzlaff, are the “owners” of the Tax Lots 101, 106 and 621 as that term is defined by Section 11(C) of Measure 37. The date of each ownership is listed in the chart above. Information provided by the claimants was not sufficient to determine the date the current owner acquired an interest in the remaining tax lots that are the subject of this claim. For purposes of this claim, additional information is needed in order to determine the current owner acquisition date for Tax Lot 604.

¹ A request to place a farm dwelling on Tax Lots 604, 608 and 614 (55.26 acres) was approved by Polk County on October 9, 1996. In that approval, the county determined that Tax Lots 604, 608 and 614 are one legal parcel (Permit FD 93-86 Received by DLCD from Polk County, via facsimile, on June 23, 2005).

² The 2004 tax statement provided by the claimants show Laverne Ratzlaff as the current owner.

³ The 2004 tax statement provided by the claimants show Laverne and Mary Jean Ratzlaff as the current owners. Also, a deed recorded on December 31, 1992 (Book 262 Page 1733) shows the property being transferred to both Laverne and Mary Jean Ratzlaff, and another deed also recorded that day (Book 262 Page 1734) shows the property being transferred to Laverne Ratzlaff. Polk County determined that Laverne is the current owner of Tax Lot 610.

⁴ The 2004 tax statement provided by the claimants show Laverne Ratzlaff as the current owner.

Comments Received

Several comments were received regarding ownership changes made in the property, the need to limit the use of the property to the present owner only based on regulations effect on the date of their ownership, and that no single person has continuously owned the subject property since 1976.

Response to Comments

As discussed above, the current owner varies for three tax lots resulting in a more recent date that the current owner acquired interest in them.

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 asserts that the claimants "have been in continuous ownership since we bought this land in 1976, and it was zoned Agricultural Residential-5 Acres at that time." The claim also identifies "statewide planning goals, including 3, 4 and 14, ORS Ch. 197, ORS Ch. 215, and OAR chapter. 660" as prohibiting the partitioning and subdividing of land for residential use as the basis for this claim.

The claim is based on Polk County's Farm Forest (FF) Zone, Farm Forest Overlay (FFO) Zone and state laws that restrict the use of the property. The subject property is zoned FF and FFO as required for mixed farm and forest zones by Goal 4 (Forest Land) and the implementing provisions of OAR 660-006-0050 (effective February 5, 1990) and subsequently amended on March 1, 1994 to comply with the provisions of HB 3661 (Chapter 792, Or Laws 1993).

Under OAR 660-006-0050, all the uses permitted under Statewide Goals 3 and 4 are allowed except that for dwellings, either the Goal 3 or 4 standards are applicable based on the predominant use of the tract on January 1, 1993. No information was provided to the department regarding the predominant use of the property on January 1, 1993, and therefore, it cannot be determined what provisions of the county's FF and FF Overlay zones pertaining to dwellings apply to the subject property. Regardless, the property will be subject to either the requirements for dwellings applicable under exclusive farm use zoning required by Statewide Goal 3 and OAR 660, Division 33 or forest zone provisions required by Statewide Goal 4 and OAR 660, Division 006. This includes the dwelling standards asserted by the claimant as restricting the use of the property. However, no analysis of whether any of the tax lots can be approved for a dwelling under the applicable farm or forest provisions has been provided.

For land divisions, OAR 660-006-0055 authorizes the creation of new parcels based on the standards applicable to farm or forest zones which implement the 80-acre minimum lot size

specified in ORS 215.780. Under OAR 660-006-055, the claimants' property cannot be divided into parcels smaller than 80 acres as may have been possible under the county zones applied on March 25, 1976. ORS 215.263(4) prohibits the creation of new parcels for non-farm dwellings in the Willamette Valley. However, no analysis of whether any of the tax lots are eligible for a non-farm dwelling under ORS 215.284 has been provided.

The provisions cited by the claimants regarding Goal 14 and ORS 197 do not restrict the use of the subject property. Specifically, Goal 14 applies to urban areas and to lands planned and zoned for uses not allowed by Goals 3 and 4. ORS 197 establishes Oregon's planning program, including local government responsibilities for adoption, amendments and implementation of comprehensive plans. Goals 1 and 5 through 13 are also cited by the claimants as restricting the use of the property. No information was provided to explain how these goals may apply to the property and why they restrict the use of the property. In any case, the statewide planning goals were in place prior to when the claimants acquired the property in 1976. Goals 15 through 19 do not apply to the subject property.

Comments Received

Several comments state that the claimants purchased the properties in 1976, after the statewide planning goals took effect, so there is no basis for this claim.

Response to Comments

While it is true that Goals 3 and 4 were applicable to the property in 1976, current land use laws, particularly those enacted in 1993 under HB 3661, restrict the use of the property from what may have been allowed when interest in the property was acquired prior to the 1993 law.

Conclusions

Land use laws in effect at the time the current owners acquired their interest in each of the tax lots may or may not prevent them from being able to divide and develop the subject property to some extent. However, under the current provisions, the claimants are clearly restricted from further dividing or developing their property as they could have when they acquired 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 asserts a reduction in the fair market value of \$9,741,644 for the seven tax lots in Section 5 and \$2,265,650 for the ten tax lots located in Section 33. Therefore, the alleged reduction in fair market value for all of the property that is the subject of the claim totals \$12,007,294. These amounts were derived by the claimants using County assessment values that

are based on the average land value per acre for parcels in the area and on whether dwellings are allowed.

No information was provided explaining how the land use laws that applied to the subject property in 1976 reduce the fair market value of the property when compared to current regulations. The reduction in fair market value being asserted by the claimant is based on the AR-5 zone that applied to the property in 1976. However, as explained further in Section V, below, Statewide Planning Goals 3 and 4 became effective on January 25, 1975 and was applicable to legislative land use decisions and some quasi-judicial land use decisions, on a site-specific basis prior to the Commission's acknowledgment of the Polk County's EFU-20 and FF (Farm Forest) zones on April 22, 1988. Until the County's land use regulations were acknowledged by the Commission in 1988, both the County's zoning code and Goals 3 and 4 applied to property in 1976. The reduction in the fair market value being alleged by the claimants is based on the county's unacknowledged AR-5 zone, instead of the standards under state law applicable to the property in 1976.

The reduction in fair market value determined by the claimants includes applying a "per acre" value to Tax Lots 203, 600, 616 and 622 that are described in the county Assessor Records as a road right of way (ROW). This road ROW is 60 feet wide and extends for about .82 miles and consists of 5.96 acres. The claimants have not presented information explaining how the current regulations that apply to a road right-of-way will reduce the fair market value of the use of that property as a road. Tax Lot 612 is hard to distinguish on the County tax maps, and is only .07 acres in size. The claimants have not presented information explaining how the current regulations reduce the fair market value of the ROW and of the small acreage Tax Lot 612.

Comments Received

One comment states that the alleged reduction in fair market value is a "gross exaggeration of the value of this land," and "deed restrictions imposed by Mr. Ratzlaff in 1992 (BOR 257, Page 1411) made it very clear that 'Grantee is hereby notified that the real property and improvements adjacent and including the property conveyed hereunder are zoned for agricultural and forestry purposes and are currently being used for agricultural and forestry purposes.'"

Response to Comments

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." Regardless of any deed restrictions that may restrict the right of the claimants to object to the use of accepted farm or forest practices on surrounding properties, the department believes 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.

Conclusions

As explained in Section V.3 of this report, in determining reduction in fair market value the claimants applied the unacknowledged AR-5 zoning instead of the state land use laws that

applied to the subject property at the time of purchase in 1976. Further, some of the subject tax lots are described as a road and the claimants have not established that the regulations that were enacted after 1976 have reduced the fair market value of these tax lots. Tax Lot 612 is too small for the desired use. 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 Tax Lots 101, 102, 104, 105, 106, 107, 108, 608, 610, 614 and 621 as a result of land use regulations enforced by the Commission or the department.

As explained in Section V.3 of this report, laws enforced by the Commission or the department, do not restrict the claimants use of Tax Lots 203, 600, 612, 616 and 622 for purposes of access in a manner that reduces the fair market value of these tax lots relative to how they could have been used for access at the time the claimants acquired these tax lots in 1976 and further do not restrict the use of Tax Lot 612 relative to how .07 acres could have been used at the time the claimants acquired this small acreage property. The claimants have not presented information explaining how the current regulations that apply to road right-of-way and the .07-acre Tax Lot 612 reduce the fair market value of that road and of the small acreage (Tax Lot 612). The claimants have not provided information on the current ownership of Tax Lot 604 to allow an evaluation of whether land use restrictions on the use of that property have reduced its value relative to uses allowed on the date the current owner acquired the property.

Based on the record before the department, the claimants, Laverne and Mary Jean Ratzlaff, have not established that they are entitled to payment of compensation or relief under Ballot Measure 37 for Tax Lots 203, 600, 604, 612, 616 and 622.

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 Farm Forest (FF and FFO) and the related provisions of state law that have restricted the right of the claimants to divide and establish single-family dwellings on five-acre parcels. The state laws that restrict the right to divide and establish dwellings are the applicable provisions of Statewide Planning Goal 4 (Forest Lands), ORS 215 and OAR 660, divisions 06 and 33. Most of the laws upon which this claim is based were adopted after 1976, when the claimants acquired the subject property, with the exception of some provisions of Goals 3 and 4 and provisions of ORS 215 in effect in 1976. The provisions of Goal 4 and ORS 215 enacted prior to the claimants' acquisition of the property on March 25, 1976, are exempt under Section 3(E) of Measure 37.

Conclusions

It appears that the general statutory, goal and rule restrictions on the dividing and development of the subject property apply to the claimants' 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 Goals 3

and 4 and ORS 215 in effect when the claimants originally acquired the property are exempt under Section 3(E) of 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 conclusions set forth in this report, laws enforced by the Commission or the department restrict subdividing the subject properties into 5-acre parcels and development of single-family homes on Tax Lots 101, 102, 104, 105, 106, 107, 108, 608, 610, 614 and 621. The laws enacted or enforced by the Commission or department reduce the fair market value of the subject property to some extent. The claim asserts this amount to be \$12,007,904. The amount is not substantiated by an appraisal or by other documentation. Nevertheless, based on the record for this claim, the department acknowledges that the laws on which the claim is based more likely than not have reduced the fair market value of these eleven (11) tax lots 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 one or more land use regulations to allow the claimants to use the subject property for a use allowed when they first acquired the property on March 25, 1976.

Statewide Planning Goals 3 and 4 became effective on January 25, 1975 and were applicable to legislative land use decisions and some quasi-judicial land use decisions, on a site-specific basis prior to the Commission's acknowledgment of the Polk County's EFU-20 and FF (Farm Forest) zones on April 22, 1988 (see Endnote ¹). Until the County's land use regulations were acknowledged by the Commission in 1988, both the County's zoning code and Goals 3 and 4 applied to the use of the property, except to Tax Lot 610, to determine what uses were permitted.⁵

⁵ See *Sunnyside Neighborhood Assn. v. Clackamas County*, 280 Or 569 (1977), *1000 Friends of Oregon v. Benton County*, 32 Or App 413 (1978), *Jurgenson v. Union County*, 42 Or App 505 (1979), and *Alexanderson v. Polk County*, 289 Or 427, *rev. denied*, 290 Or 137 (1980) and *Perkins v. City of Rajneeshpuram*, 300 Or 1, (1985). After the County's plan and land use regulations were acknowledged by the Commission, the Statewide Planning Goals and implementing rules no longer directly applied to such local land use decision (*Byrd v. Stringer*, 295 Or 311 (1983)). However, the applicable statutes continue to apply and insofar as the local implementing provisions are materially the same as the rules, the local provisions must be interpreted consistent with the substance of the rules. *Forster v. Polk County*, 115 Or App 475 (1992) and *Kenagy v. Benton County*, 115 Or App 131 (1992).

On March 25, 1976, November 18, 1981 and February 10, 1983, Tax Lots 101, 102, 104, 105, 106, 107, 108, 608, 614 and 621 were subject to either Statewide Goal 3 or Goal 4, and the minimum lot size standard specified therein (effective January 25, 1975). On December 31, 1992, Tax Lot 610 was subject to the County's acknowledged FF zone. Therefore, staff recommends that the department not apply the current provisions of Statewide Goals 3 and 4, ORS 215, and OAR 660, Divisions 006 and 033 to the extent necessary for the claimants to divide the property and develop Tax Lots 101, 102, 104, 105, 106, 107, 108, 608, 610, 614 and 621 for residential use as permitted at the time they acquired these tax lots. The claimants will be allowed to divide the property and use it for residential use only as permitted at the time they acquired each of the tax lots. The laws that define what use the claimants are permitted to do at the time they acquired these tax lots include the provisions of Goals 3 or 4 and ORS 215 applicable at the time of their acquisitions of the tax lots.⁶

At the time the claimants acquired an interest in Tax Lots 101, 102, 104, 105, 106, 107, 108, 608, 614, and 621 on March 25, 1976, November 18, 1981 and February 10, 1983, the Goal 3 "commercial" standard (i.e., "appropriate for the continuation of the existing commercial agricultural enterprise in the area") applied directly to these tax lots for the creation of new farm parcels or for new dwellings on pre-existing parcels (Goals 3 and 4, effective January 25, 1975 and OAR 660-05-020 and 025, effective July 21, 1982). At the time Laverne Ratzlaff acquired an interest in Tax Lot 610 on December 31, 1992, the minimum lot size provisions under the county's acknowledged FF and FF/O zones applied directly to this tax lot for the creation of new farm parcels or for new dwellings on pre-existing dwellings. These laws determine what division of the property was permitted at the time the current owner or owners acquired each of the tax lots.

The applicable statutory standards for the approval of farm or non-farm dwellings for each of the current owner acquisition dates specified in this report are set forth in ORS 215 as enacted (See citations of statutory history of the Oregon Revised Statutes.) and OAR 660, Division 5 (effective July 21, 1982, amended May 7, 1986, and repealed August 7, 1993).⁷ These laws

⁶ Except for OAR 660-006-015(3) (effective September 1, 1982), prior to 1993 there was no requirements for determining whether the provisions of Goal 3 or Goal 4 applied to these tax lots at the time of acquisition. To determine whether the provisions under Goal 3 or Goal 4 applied to uses or divisions of these tax lots the provisions of OAR 660-006-0050 could be used as guidance.

⁷ Before a farm dwelling may be established on agricultural land, the farm use to which the dwelling relates must "be existing" (*Matteo v. Polk County*, 11 Or LUBA 259, 263 (1984) *affirmed without opinion*, 70 Or App 179 (September 14, 1984) and *Newcomer v. Clackamas County*, 92 Or App 174, (modified 94 Or App 33, November 23, 1988). Further, approval of a farm dwelling required that the dwelling be situated on a parcel wholly devoted to farm use (*Matteo v. Polk County*, 14 Or LUBA 67, 73 (1985). Guidance on the application and interpretation of the applicable statutory and rule standards for farm dwellings for Polk County in 1986 can be found in the County's Exclusive Farm Use Zone, which in 1978 under Ordinance No. 219 incorporated the appropriate provision for farm dwellings, i.e., "single-family dwelling or a mobile home...in conjunction with farm use." Guidance on the application and interpretation of Statewide Planning Goal 3 (effective January 25, 1975) and OAR 660, Division 5 (effective July 21, 1982), for the approval of a farm parcel or the approval of a farm dwelling on an existing lot or parcel for Polk County can be found in Ordinance No. 87-26, which amended the Comprehensive Land Use Plan, Ordinance No.217 to adopt revised Goal 3 language and a "Commercial Agricultural Justification Statement" as an amendment to the Agricultural Lands Background Report of the Comprehensive Plan (December 23, 1987).

determine what residential development was permitted at the time the current owners acquired each of the tax lots.

Based on the findings and conclusions set forth in this report, the claimants have not established that that land use regulations have reduced the fair market value of Tax Lots 203, 600, 612, 616, and 622. Tax Lots 203, 600, 616 and 622 consist of road ROW. Tax Lot 612 is a small, .07-acre property. The claimants have not presented information explaining how the current regulations that apply to road right of way and the small acreage property reduce the fair market value of those tax lots.

Based on the findings and conclusions set forth in this report, the claimants have not presented information to substantiate the current owner of Tax Lot 604 and when they acquired interest in this tax lot. Although, the claimants first acquired interest in Tax Lot 604 in 1976, and so appear to have a family ownership as of that date, the claimants have been deeding their interest in various tax lots to one another resulting in a break in the chain in this ownership. Without information on the current ownership of this tax lot, the claimants have not established that restrictions on the use of this property have reduced its value relative to uses allowed when acquired the by the current owner.

Conclusions

Based on the record, the department recommends that the claim be denied as to Tax Lots 203, 600, 604, 612, 616 and 622. The department recommends the claim be approved as to Tax Lots 101, 102, 104, 105, 106, 107, 108, 608, 614 and 621, subject to the following terms:

1. In lieu of compensation, the State of Oregon will not apply the requirements of the following state laws enforced by the Commission or the department, specifically: the applicable provisions of Statewide Planning Goal 4 (Forest Lands), ORS 215, and OAR 660, Divisions 06 and 33, to the extent necessary to allow: (a) Laverne Ratzlaffs a use of Tax Lots 105 and 107 permitted at the time he acquired these tax lots on March 25, 1976, a use of Tax Lot 614 permitted at the time he acquired this tax lot on November 18,1981, and a use of Tax Lot 610 permitted at the time he acquired this tax lot on December 31, 1992; and (b) Mary Jean Ratzlaff's a use of Tax Lots 102, 104, and 108 permitted at the time she acquired these tax lots on March 25, 1976, and a use of Tax Lot 608 permitted at the time she acquired this tax lot on February 10, 1983; and (c) Laverne and Mary Jean Ratzlaff's a use of Tax Lots 101, 106 and 621 permitted at the time they acquired these tax lots on March 25, 1976. As a result, the claimant's use of Tax Lots 101, 102, 104, 105, 106, 107, 108, 608, 610, 614, and 621 will be subject to those specified laws that were in effect on those dates including, but not limited to, those laws specified in (2), immediately below.

2. The action by the State of Oregon provides the state's authorization to the claimants to subdivide the portions of the subject property for which the claim is approved, and to place a dwelling on each lot or parcel created. The establishment of new lots or parcels, and new dwellings, remains subject to the applicable provisions of the following laws that were in effect when the properties were acquired by their respective current owner(s): Statewide Planning Goals 3 or 4, OAR 660, Divisions 5 or 6, and the applicable edition of ORS 215 in effect when:

(a) Mr. Ratzlaff acquired Tax Lot 610 on December 31, 1992, Tax Lot 614 on November 18, 1981 and Tax Lots 104 and 107 on March 25, 1976; (b) Mrs. Ratzlaff acquired Tax Lot 608 on February 10, 1983 and Tax Lots 102, 104 and 108 on March 25, 1976; and (c) Mr. and Mrs. Ratzlaff acquired Tax Lots 101, 106 and 621 on March 25, 1976.⁸

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 any of 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 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 excepted under section (3) of the measure.

5. Without limiting the generality of the foregoing terms and conditions, in order for any of 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 any of 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 July 6, 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.

Endnote

ⁱ The Land Conservation and Development Commission (the Commission) acknowledged the county's EFU zone to be in compliance with Statewide Planning Goal 3 on March 25, 1981. However, the Commission's 1981 acknowledgment order was appealed to the Marion County Circuit Court. On August 3, 1984, Marion County Circuit Court affirmed in part and remanded in part the Commission's 1981 acknowledgment of the county's EFU zone (*1000 Friends of Oregon, Friends of Polk County and Marilyn Stringer v. LCDC and Polk County*, Marion County Circuit Court No. 126, 792 (August 3, 1984)).

⁸ For the December 31, 1992 acquisition date of Tax Lot 610, the county's acknowledged FF zone and the applicable provisions of ORS 215 (1991 edition) applied to this tax lot.

On February 12, 1986, the Oregon Court of Appeals reversed the Circuit Court’s decisions and remanded the Commission’s 1981 acknowledgment of the county’s EFU zone, except with respect to the “Homestead Exemption” provisions that were upheld by both courts.

The court specifically reversed the Circuit Court and the Commission regarding the farmland division standards. The court found that the standards failed because they did not restrict divisions to those that are appropriate for the "existing agricultural enterprise" within the area. As part of this issue, the court struck down the county’s EFU and FF land division standards permitting division of intensive agricultural activities and for those required to obtain construction financing for farm housing. The Circuit Court had struck down other land division standards in the same section of the EFU and FF zones (and these had not been appealed). Source: Department of Land Conservation and Development April 10, 1986 Report to the Land Conservation and Development Commission on Polk County’s Remand from the Court of Appeals. The following table summarizes the courts decisions relative to each of the “assignments of error” (objections) filed by the Petitioners in this appeal:

TABLE: APPEAL OF THE LAND CONSERVATION AND DEVELOPMENT COMMISSION’S MARCH 25, 1981 ACKNOWLEDGMENT OF POLK COUNTY’S COMPREHENSIVE PLAN AND LAND USE REGULATIONS

Ass #	Assignments of Error Raised by Petitioners	Marion County Circuit Court Decision	Oregon Court of Appeals Decision
1	6,067-Acre Need Exception violated goals - lacks findings	Assignment of error - well taken	Polk County-on cross appeal was not sustained
2	6,067-Acre Need Exception violated goals - lacks conclusion	Assignment of error - well taken	Polk County-on cross appeal - was not sustained
3	6,067-Acre Need Exception violated goals – inconsistent with LCDC policy	Assignment of error - well taken	Polk County-on cross appeal - was not sustained
4	6,067-Acre Need Exception - lacks substantial evidence in record	Assignment of error - well taken	Polk County-on cross appeal - was not sustained
5	EFU/FF zones provisions for dwellings in conjunction with farm use on existing lots violates Goal 3 “commercial” standard	Assignment of error – not well taken	Circuit Court decision Reversed
6	LCDC conclusion that EFU/FF zones comply with Goal 3 not supported by clear statement of findings setting basis for conclusion	Assignment of error – not well taken	Circuit Court decision Reversed
7	EFU “Homestead Exemption” provisions complies with ORS 215.213	Assignment of error – not well taken	Circuit Court decision Upheld
8	EFU zone provisions for new parcels does not comply with Goal 3	Assignment of error - well taken	Polk County-on cross appeal - was not sustained
9	FF zone provisions for new parcels does not comply with Goal 3	Assignment of error - well taken	Polk County-on cross appeal - was not sustained
10	EFU/FF zone provisions for dividing property to dispose of second dwelling violates Goal 3	Assignment of error - well taken	Polk County-on cross appeal - was not sustained
11	EFU/FF zone provisions for divisions based on physical features violate Goal 3	Assignment of error - well taken	Polk County-on cross appeal - was not sustained
12	EFU/FF zone provisions for divisions for “labor intensive” agricultural farm use violates Goal 3	Assignment of error - well taken as to forest use in FF zone, and not well taken in EFU or agricultural use in FF zone	Polk County-on cross appeal - was not sustained. Circuit Court decision regarding EFU and agricultural use in FF zone was reversed
13	EFU divisions based on construction financing violates Goal 3	Assignment of error – not well taken	Circuit Court decision Reversed
14	LCDC disregarded Goal violations	Assignment of error – not well taken	Not challenged

SOURCE: 1000 Friends of Oregon, Friends of Polk County, and Marilyn Stringer v. LCDC and Polk County, Marion County Circuit Court No. 126, 792 (August 3, 1984), and Oregon Court of Appeals, CA A33638 (February 12, 1986).

On April 24, 1986, in response to the Oregon Court of Appeals remand of the county's EFU zone, the Commission issued a continuance order directing Polk County to revise the zone to comply with Statewide Planning Goal 3 (LCDC Order 86-CONT-037, signed May 6, 1986).

On December 23, 1987, Polk County revised its agricultural lands element of the comprehensive plan and EFU zone to comply with the Commission's 1986 continuance order (County Ordinance 87-26 and 87-27). On February 17, 1988, the Commission acknowledged the Polk County's revised comprehensive plan and EFU Zone as complying with Statewide Planning Goal 3 and OAR 660, Division 5 (Commission Order 88-ACK-347, order signed April 22, 1988).