

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

**OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT**

**Final Report and Recommendation  
July 29, 2005**

**STATE CLAIM NUMBER:** M119602

**NAME OF CLAIMANTS:** James H. and Margaret H. Wilcox

**MAILING ADDRESS:** 4150 Highway 47  
McMinnville, Oregon 97128

**IDENTIFICATION OF PROPERTY:** Township 4S, Range 4W, Section 3  
Tax Lot 600  
Yamhill County

**DATE RECEIVED BY DAS:** February 7, 2005

**180-DAY DEADLINE:** August 6, 2005

**I. CLAIM**

The claimants, James H. and Margaret H. Wilcox, seek compensation in the amount of \$560,000 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 divide the 21.15 acre property to create six parcels and to develop five additional residential dwellings. (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 state laws enforced by the Land Conservation and Development Commission (the Commission) or by the department, not apply to the claimants to allow them to divide the property for residential use: Statewide Planning Goal 3 (Agricultural Lands) ORS 215.263, 215.284 and 215.780, and applicable provisions of OAR 660 Division 33. These laws will not apply to the claimants' use of the property only to the extent necessary to allow the claimants a use of the subject property permitted when they acquired in on September 2, 1964. (See the complete recommendation in Section VI. of this report.)

### **III. COMMENTS ON THE CLAIM**

#### **Comments Received**

On February 25, 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. The department has received one comment in response to the July 6, 2005, Draft Staff Report. The comment is relevant to whether the restriction of the claimants' use of the property reduces the farm market value of the property. The comment has been considered by the department in preparing 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 the DAS Risk Management division on February 7, 2005, for processing under OAR 125, division 145. The claim cites the Yamhill County EFU-80 zone as the basis for the claim. Only laws that were enacted prior to, the effective date of Measure 37 (December 2, 2004) 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. Ballot Measure 37, Section 11(C) defines “owner” as “the present owner of the property, or any interest therein.”

### **Findings of Fact**

The claimants, James H. Wilcox and Margaret H. Wilcox, acquired the subject property on September 2, 1964. The claim includes a copy of their 1964 real estate closing statement and mortgage documents to verify their date of acquisition. A copy of the Real Property Tax Statement from Yamhill County for the time period from July 1, 2004 to June 30, 2005, shows that the claimants are the listed owners of the subject property.

### **Conclusions**

The claimants, James H. and Margaret H. Wilcox, are “owners” of the 21.15-acre subject property, as that term is defined by Section 11(C) of Ballot Measure 37 (2004).

### **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**

According to the claim, the claimants wish to subdivide the property into six parcels and build five additional houses on the resulting parcels. The claim identifies Yamhill County Exclusive Farm Use (EFU) District (Section 402), Ordinance 62, and Ordinance 83, adopted after the claimants acquired the property, as restricting their ability to develop their property.

The claimants’ property is zoned EFU-80 by the County, as required by 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 are zoned EFU pursuant to ORS 215.

Current land use regulations, particularly ORS 215.263, 215.284, 215.780 and OAR 660, Division 33, as applied by Goal 3, do not allow the subject property to be divided into parcels less than 80 acres and establish standards for allowing the existing or any proposed parcel(s) to have farm or non farm dwellings on them.

ORS 215.780 established an 80-acre minimum size for the creation of new lots or parcels in EFU zones and became effective November 4, 1993 (Chapter 792, Oregon Laws 1993). ORS 215.263 (2003 edition) establishes standards for the creation of new parcels for non farm uses and dwellings allowed in an EFU zone.

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 acquired the property in 1964, general provisions of ORS 215 in effect at that time may have applied to the property, but no specific limits on division or establishment of dwellings on the subject property applied at that time.

### **Conclusions**

The minimum lot size and dwelling standards established by Statewide Planning Goal 3, ORS 215, and OAR 660, division 33, were all adopted after the claimants acquired the subject property in 1964, and do not allow the division of the property into parcels less than 80-acres in size or the approval of residential dwellings on property zoned EFU. Land use laws adopted since 1964, restrict the use of the property relative to the uses allowed when the property was acquired in 1964.

### **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 claimants assert that the fair market value of the subject property has been reduced and that the just compensation due is \$560,000. According to the information provided by the claimants, the claimants intend to subdivide the existing parcel into five additional parcels, alleged to be valued at \$125,000 each. (This would result in a fair market value reduction of \$625,000.) The claimants have not included any documentation to substantiate the reduction in fair market value. The department notes that an affidavit included in the file by the Yamhill County Assessor, David Lawson, provides his professional opinion that the property value established in the claim appears reasonable. The 2004 Tax Statement from Yamhill County shows that the real market value of the existing land and structures is \$377,045.

## **Conclusions**

As explained in section V. (1) of this report, the current owners are James H. and Margaret H. Wilcox who acquired the property on September 2, 1964. Thus, under Ballot Measure 37, Mr. and Ms. Wilcox are due compensation for land use laws that restrict the use of the subject property in a manner that reduces its fair market value. The claimants states that the reduction in value is \$560,000.

Without an appraisal based on the value of five additional lots or other 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 likely 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 Yamhill County's EF-80 EFU District and the related provisions of state law that have restricted the use of the property and reduced its fair market value, including Statewide Planning Goal 3 (Agriculture Lands), ORS 215 and OAR 660, Division 33. None of these laws, with the exception of provisions of ORS 215 in effect when the claimants acquired the property in 1964, appear to be exempt under Section 3 of Ballot Measure 37.

## **Conclusions**

It appears that the general statutory, goal and rule restrictions on residential development and use of agricultural land apply to the claimants' use of the property, and except for provisions of ORS 215 in effect in 1964, these laws would not come under any of the exemptions in 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.

### **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 the 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 division of the subject property into parcels or lots, and the use of the property for residential purposes. The claimants cannot create the desired six lots out of the subject 21.15-acre property, and establish additional dwellings on five of those resulting lots. The laws enforced by the Commission or the department reduce the fair market value of the property to some extent. The claim asserts this amount to be \$560,000. 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, the department acknowledges that the laws on which the claim is based 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, Ballot Measure 37 authorizes the department to modify, remove or not apply all or parts of one or more land use regulations to allow Mr. and Ms. Wilcox to use the subject property for a use allowed at the time they acquired the property on September 2, 1964.

## **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 the Wilcoxs' division of their property into six lots or parcels, or to the establishment of a single family dwelling on each lot or parcel created: applicable provisions of Statewide Planning Goal 3; ORS 215.263, 215.284 and 215.780, enacted after 1964; and applicable provisions of OAR 660, Division 33. These land use laws will not apply to the Wilcoxs' use of their property only to the extent necessary to allow the claimants to a use permitted at the time they acquired the property on September 2, 1964.
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 September 2, 1964. On that date, the property was subject to applicable provisions of ORS 215.
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 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 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.