

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

OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT

Final Staff Report and Recommendation

July 27, 2005

STATE CLAIM NUMBER: M 119604

NAME OF CLAIMANT: Bruce Meland

MAILING ADDRESS: 63600 Deschutes Market Road
Bend, Oregon 97701

IDENTIFICATION OF PROPERTY: Township 17S, Range 12E, Section 11
Tax Lot 115
Deschutes County

DATE RECEIVED BY DAS: February 4, 2005

180-DAY DEADLINE: August 3, 2005

I. CLAIM

Bruce Meland, the claimant, apparently seeks compensation in the amount of \$175,000 for the reduction in fair market value as a result of certain land use regulations that are alleged to restrict the use of certain private real property. The claimant desires compensation or the right to partition the subject property into two (2) new parcels. The subject property is 8.5-acres located at 63600 Deschutes Market Road, Bend in Deschutes 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, in lieu of compensation, that the requirements of the following laws enforced by the Land Conservation and Development Commission (the Commission) or the department, not apply to the claimant to allow him to partition his property into two parcels: Statewide Planning Goal 14 and applicable provisions OAR 660-004-0040, to the extent necessary to allow Mr. Meland a use of the subject property permitted at the time he acquired it on September 23, 1972. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS RECEIVED

On February 11, 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, one written comment was received in response to the 10-day notice. The comment was not specific to the criteria required under Measure 37 to be used in 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 claimant's property are not relevant to the evaluation and determination of the claimant's Ballot Measure 37 claim. (See comment letter in the department's claim file.)

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 DAS for processing under OAR 125, Division 145 on February 4, 2005. The claim describes land use regulations, all of which were enacted prior to December 2, 2004, the effective date of Measure 37. (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 claim includes a warranty deed showing that Mr. Meland acquired an undivided one-half interest in the subject on September 23, 1972, from Jack C. Riches and Carol L. Riches. Deschutes County tax records confirm that Mr. Meland is a current owner of the subject property.¹

Conclusions

The department concludes that Bruce Meland is an “owner” of the subject property as that term is defined in Section 11 of Measure 37.

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 cites Senate Bill (SB) 100 (1973) as restricting the use of his property. SB 100 became effective on October 5, 1973. This legislation obligated local jurisdictions to adopt comprehensive plans and zoning ordinances.

The property is currently zoned Deschutes County Multiple Use Agriculture (MUA-10), which is a rural residential zone, in accord with Statewide Planning Goal 14. Goal 14 generally requires that land outside of urban growth boundaries be used for rural uses. Prior to 2000, Goal 14 had been held to prohibit residential development in areas outside of urban growth boundaries at urban densities. . (See *DLCD v. Klamath County*, 38 Or LUBA 769 (2000)).

As a result of a 1986 Supreme Court decision², in 2000 the Commission amended Goal 14 and adopted OAR 660-004-0040, which became effective on October 4, 2000. The rule provides that after October 4, 2000, a county rural residential zone may not be amended to allow a smaller minimum lot size without taking an exception to Goal 14. The desired partition would result in two parcels with acreage less than the current 8.5-acre parcel. Because the County’s current rural residential MUA-10 acre zone has a 10-acre minimum parcel size, under OAR 660-004-0040, the subject 8.5-acre property cannot be divided without taking an exception to Goal 14.

When the claimant acquired the property in 1972, the state limits on division of rural residential property did not apply to the subject property.

¹ It is not clear if Mr. And Ms. Riches continue to have an ownership interest in the subject property. Mr. Riches is also identified on other instruments that may or may not include or affect the subject property. However, based on the record currently before the department, the Riches are not claimants for purposes of this Measure 37 claim.

² *1000 Friends of Oregon v. LCDC (Curry County)*, 301 Or App 447 (1986).

Conclusions

Statewide Planning Goal 14, and specifically the 2000 amendments to Goal 14 and OAR 660-004-0040, became effective after the claimant acquired the property in 1972, and restrict the partitioning of the subject property relative to the partitioning of the land allowed when the claimant acquired the property in 1972.

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

According to the Deschutes County Assessor’s information, the subject property includes about 8.5-acres with an established single-family dwelling. The claim estimates a land value of approximately \$16,440 per acre for a 10-acre parcel and a value of about \$30,000 per acre for a five-acre parcel. The claim does not include an appraisal to support the claimant’s estimate. However, a brief description of recent land sales in the area has been provided.

Conclusions

As explained in section V.(1) of this report, Bruce Meland is the current owner of the subject property as of September 23, 1972. Thus, under Ballot Measure 37, Mr. Meland is 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 findings and conclusions in section V. (2) of this report, laws adopted since the claimants acquired the property restrict division of the subject property. The claim asserts the reduction in value due to the restrictions to be \$175,000. However, without an appraisal or other documentation, it is not possible to substantiate the specific dollar amount the claimant’s 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 land use regulations. In addition, under Section 3 of the Measure, certain types of laws are exempt from the Measure.

Findings of Fact

The land use regulations that are the subject of this claim are Goal 14 and OAR 660-004-0040, which came into effect after the claimant acquired the property, and are not exempt under Section 3 of the Measure.

Conclusions

It appears that the restrictions on the subject property imposed by Goal 14 and OAR 660-004-0040 are not exempt under Measure 37, Section 3. 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.

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 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 conclusions in this report, laws enforced by the Commission or the department, prohibit the partitioning of the subject property into two new parcels. These restrictions reduce the fair market value of the subject property to some extent, though it is unclear what level of development would be allowed under the laws in effect in 1972 when the claimant acquired the property. The claim asserts this amount to be \$175,000. Although the claim provides an explanation about how the specified restrictions reduce the fair market value of the property, no appraisal or other substantiating documentation was submitted and it is not possible to substantiate the specific dollar amount the claimant demands for compensation. Nevertheless, the department acknowledges that state land use laws 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 just compensation, Measure 37 authorizes the department to modify, remove, or not apply all or parts of certain state land use regulations to allow Mr. Meland, to use the subject property for a use permitted at the time he acquired an interest in the property on September 23, 1972.

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 Mr. Meland's partitioning of his property into two new parcels: applicable provisions of Statewide Planning Goal 14 and OAR 660-004-0040 enacted after 1972. These land use regulations will not apply to Mr. Meland's use of his property only to the extent necessary to allow the claimant a use permitted at the time he acquired the property.
2. The action by the State of Oregon provides the state's authorization to the claimant to divide the property into two parcels, subject to the standards in effect on September 23, 1972.
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 imposed 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 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 claimant 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 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 July 1, 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.