

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

**OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT  
Final Staff Report and Recommendation**

September 14, 2005

**STATE CLAIM NUMBER:** M119635

**NAMES OF CLAIMANTS:** Richard and Barbara Taeubel

**MAILING ADDRESS:** 16780 NE Welch Road  
Newberg, Oregon 97132

**PROPERTY IDENTIFICATION:** Township 3S, Range 2W, Section 6,  
Tax Lot 3400  
Yamhill County

**DATE RECEIVED BY DAS:** March 22, 2005

**180-DAY DEADLINE:** September 18, 2005

**I. SUMMARY OF CLAIM**

The claimants, Richard and Barbara Taeubel, seek compensation in the amount of \$845,000 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 subdivide the 20-acre property into approximately 2.5-acre residential parcels. The property is located adjacent to Welch Road in Yamhill 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 state laws enforced by the Land Conservation and Development Commission (the Commission) or the department not apply to Mr. and Ms. Taeubels' division of their 20-acre property into 2.5-acre parcels for residential development: Statewide Planning Goal 14 (Urbanization) and applicable provisions of OAR 660-004-0040. These laws will not apply to the claimants only to the extent necessary to allow Mr. and Ms. Taeubel a use of the property permitted at the time they acquired it on August 15, 1970. (See the complete recommendation in Section VI of this report.)

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

#### **Comments Received**

On March 2, 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.

### **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 March 22, 2005, for processing under OAR 125, division 145. The claim identifies ORS 92, 195, 197, 215 and all of OAR 660 as laws that restrict the use of the property and are 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. Ballot Measure 37, Section 11(C) defines “owner” as “the present owner of the property, or any interest therein.”

### **Findings of Fact**

The claimants acquired the subject property on August 15, 1970, as reflected by a contract included with the claim. A Quit Claim Deed shows that in 1992, Richard and Barbara Taeubel conveyed the subject property into the Taeubel Family Revocable Living Trust, for which they are sole trustees. A copy of a Property Tax Statement for 2004-05 indicates that the Taeubel Family Revocable Living Trust is the current owner of the subject property. Transfer to a revocable trust does not result in a change of ownership for the purposes under Measure 37.

### **Conclusions**

The claimants, Richard and Barbara Taeubel, are “owners” of the subject property, as that term is defined by Section 11(C) of Ballot Measure 37, as of August 18, 1970.

### **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 claim states that “...that the Owner seeks to allow the property to be divided to buildable parcels of approximately 2.5 acres in size, more or less, as Owner sees fit, and at a time of Owner’s discretion.” (See claim file.) The claim further states, “Some, but perhaps not all, of the following are laws, statutes, rules, regulations and ordinances, in part or in whole, from which we seek compensation for, or removal, modification or non-application of: ORS #'s: 92, 195, 197, 215 and all of OAR 660.”

ORS 92 was generally enacted prior to the claimants’ acquisition of the subject property and, to the extent it could be construed to restrict the use of the property, will continue to apply to the property. ORS 195 and 197 relate to procedures for development, implementation and review of local comprehensive plans, ordinances and land use applications, and do not in themselves restrict the use of the subject property. ORS 215 addresses uses and other provisions of exclusive farm use and forest zones, and does not apply to the subject property.

The property has been zoned Agriculture/Forestry (AF-10) by the County since 1976. The AF-10 zone is a rural residential zone, with a 10-acre minimum lot size, and with one single-family dwelling permitted per parcel. The zone is in accord with Statewide Planning Goal 14 (Urbanization) which became effective January 25, 1975 and generally required that land outside of urban growth boundaries be designated for rural uses.

As a result of a 1986 Oregon Supreme Court decision<sup>1</sup>, the Commission in 2000, amended Goal 14 (Urbanization) and adopted OAR 660-004-0040, which became effective on October 4, 2000. The rule provides that after October 4, 2000, a county minimum lot size requirement in a rural residential zone may not be amended to allow a smaller minimum lot size without taking an exception to Goal 14 (OAR 660-004-0040(6)). Therefore, under this zone, and in accordance with OAR 660-004-0040(6), the claimants are not permitted to create more than two 10-acre residential parcels without taking an exception to Goal 14.

When the claimants acquired the subject property in 1970, it was zoned Rural Residential by the County, which permitted the proposed 2.5-acre parcels.

### **Conclusions**

The zoning requirements, minimum lot size and dwelling standards for rural residential parcels established by OAR 660-004-0040 were enacted after the claimants acquired the subject property in August 1970, and do not allow the requested division of the property, thereby restricting the use of the property relative to the uses allowed when the property was acquired. In 1970, the property was subject to the requirements of the County's Rural Residential zone.

This report addresses only those state laws that are identified in the claim, or that the department is certain apply to the property based on the use that the claimants have identified. There may be other laws that currently apply to the claimants' use of the property, and that may continue to apply to the claimants' use of the property, that have not been identified in the claim. In some cases it will not be possible to know what laws apply to a use of property until there is a specific proposal for that use. When the claimants seek a building or development permit to carry out a specific use, it may become evident that other state laws apply to that use.

### **3. Effect of Regulations on Fair Market Value**

In order to establish a valid claim, Section 1 of Ballot Measure 37 requires that any land use regulation 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."

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<sup>1</sup> *1000 Friends of Oregon v. LCDC (Curry County)*, 301 Or App 447 (1986).

## **Findings of Fact**

The claim includes an informal estimate of \$845,000 as reduction in the property's fair market value, as a result of current regulations. This amount is based on the claimants' estimate of the market value of 2.5-acre lots in the area.

## **Conclusions**

As explained in Section V.(1) of this report, the current owners, Richard and Barbara Taeubel, acquired the property on August 15, 1970. Under Ballot Measure 37, Mr. and Ms. Taeubel are due compensation for land use regulations 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), laws adopted since the claimants acquired the subject property restrict the ability of the claimants to divide their property for residential development.

Without an appraisal or other documentation, 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 land use regulations. In addition, under Section 3 of the Measure, certain types of laws are exempt from the Measure.

## **Findings of Fact**

The claim includes reference to certain state land use regulations that restrict the use of the property relative to what would have been allowed in 1970, when the claimants acquired the property. These provisions include Statewide Planning Goal 14 (Urbanization) and OAR 660-004-0040, which Yamhill County has implemented through its AF-10 zone. These laws are not exempt under Section 3(E) of Ballot Measure 37, which exempts laws in effect when the claimants acquired the property. The claim also cites ORS 92, which generally has been in effect since before August 15, 1970, when the claimants acquired the property and is, therefore, exempt under Section 3(E) of the Measure.

## **Conclusions**

Without a specific development proposal for the property, it is not possible for the department to determine what laws may apply to a particular use of the property, or whether those laws may fall under one or more of the exemptions under Measure 37. It does appear that the general statutory, goal and rule restrictions on residential development and use of farm land apply to the claimants' use of the property, and for the most part these laws are not exempt under Section 3(E) of Measure 37. Provisions of ORS 92 in effect when the claimants acquired the property in 1970, are exempt under Section 3(E) of the Measure and will continue to apply to the property.

Laws in effect when the claimants acquired the property are exempt under Section 3(E) of Measure 37, and will continue to apply to the claimants' use of the property. There may be other laws that continue to apply to the claimants' use of the property that have not been identified in the claim. In some cases it will not be possible to know what laws apply to a use of property until there is a specific proposal for that use. When the claimants seek a building or development permit to carry out a specific use, it may become evident that other state laws apply to that use. In certain cases, some of these laws may be exempt under subsections 3(A) to 3(D) of Measure 37.

This report addresses only those state laws that are identified in the claim, or that the department is certain apply to the property based on the use that the claimants have identified. Similarly, this report only addresses the exemptions provided for under Section 3 of Measure 37 that are clearly applicable given the information provided to the department in the claim. The claimants should be aware that the less information they have provided to the department in their claim, the greater the possibility that there may be additional laws that will later be determined to continue to apply to their 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 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 in order to allow the present owner to carry out a use of the property permitted at the time the current 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 the division of the subject property into 2.5-acre parcels for residential development. The claim asserts laws enforced by the Commission or department reduce the fair market value of the subject property by \$845,000. However, because the claim does not provide an appraisal or other specific documentation to establish how the fair market value of the property has been reduced, 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, Ballot Measure 37 authorizes the department to modify, remove or not apply all or parts of certain land use regulations to allow Richard and Barbara Taeubel to use the subject property for a use permitted at the time they acquired the property on August 15, 1970.

## **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 Richard and Barbara Taeubels' division of their 20-acre property into 2.5-acre parcels for residential development: applicable provisions of Statewide Planning Goal 14 and OAR 660-004-0040. These land use regulations will not apply to Mr. and Ms. Taeubels' use of their property only to the extent necessary to allow them a use permitted at the time they acquired the property on August 15, 1970.
2. The action by the State of Oregon provides the state's authorization to the claimant to use the property subject to the standards in effect on August 15, 1970.
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 215.402, 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 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 August 23, 2005. OAR 125-145-0100(3), provided an opportunity for the claimants or the claimants' 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.