

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

OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT

Final Staff Report and Recommendation

August 1, 2005

STATE CLAIM NUMBER: M119664

NAME OF CLAIMANTS: Lyle and Beverly Meeuwsen

MAILING ADDRESS: 40714 Northwest Greenville Road,
Forest Grove, Oregon 97116

IDENTIFICATION OF PROPERTY: Township 1N, Range 30W, Section 7
Tax Lot 100
Washington County

OTHER CONTACT INFORMATION: Scott Meeuwsen
940 Northwest Jackson Street
Hillsboro Oregon 97124

OTHER INTEREST IN THE PROPERTY: John W. Meeuwsen and
James L. Meeuwsen

DATE RECEIVED BY DAS: February 8, 2005

180-DAY DEADLINE: August 7, 2005

I. CLAIM

The claimants, Lyle and Beverly Meeuwsen, seek compensation in the amount of \$130,000 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 partition a two-acre parcel from their 11.4 acre property and construct a single-family residence on the resulting parcel. The property is located at 40714 NW Greenville Road, near Forest Grove, in Washington County, Oregon. (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 claimants to allow them to partition a 2 acre parcel from the property and to develop one single-family residence on the resulting parcel: Statewide Planning Goal 3, 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 at the time they acquired the property on May 7, 1958. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS RECEIVED

On February 24, 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 February 8, 2005 for processing under OAR 125, Division 145. The claim identifies more than forty provisions of ORS 197 and 215 and OAR 660, as well as Washington County's Exclusive Farm Use (EFU) zoning that restrict the use of the property as the basis for the claim. Only laws that were enacted prior to December 2, 2004, the effective date of Measure 37 are the basis for this claim. (See citations of statutory and administrative rule history of the Oregon Revised Statutes and Oregon Administrative Rules.)

Conclusions

The claim has been submitted within two years of December 2, 2004, the effective date of Measure 37, based on land use regulations enacted 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, Lyle Francis Meeuwsen and Beverly Anne Meeuwsen, acquired the subject property by warranty deed on May 7, 1958. On February 6, 2002, the claimants transferred the subject property into the Meeuwsen Family Living Trust, a revocable family trust. A copy of the Real Property Tax Statement from Washington County for the time period from July 1, 2004 to June 30, 2005 shows that the Meeuwsen Family Living Trust is the listed owner of the subject property. The transfer to a revocable trust does not create a new owner for purposes of Ballot Measure 37.

Conclusions

Lyle Francis Meeuwsen and Beverly Anne Meeuwsen are owners of the subject property, as that term is defined by Section 11(C) of Ballot Measure 37, as of May 7, 1958.

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 Fact

The claim cites forty-six (46) individual provisions of two state statutes and several Administrative Rules (OARs). The claimants cite the following state regulations and administrative rules as those that restrict the use of the property:

- A. ORS 197.010 through .835 – the Comprehensive Land Use Planning Coordination statute (see claim)
- B. ORS 215.050 through .780, County Planning; Zoning; Housing Codes (see claim)
- C. OAR 660, divisions 3, 4, 15, 16, 18, 23, 25, 33, 45 (see claim)

Many of the laws identified in the claim do not apply to, or restrict the claimants’ use of their property, including ORS 197.010 through 197.835 (framework for the state land use planning

program and the establishment of the Land Conservation and Development Commission); OAR 660, division 3 (procedure for acknowledgment of local government plans), division 4 (procedures for exceptions to Goal 2), division 18 (procedure to amend local comprehensive plans); divisions 16 and 23 (procedures to protect certain natural resources), and division 15 (codification of the nineteen (19) Statewide Planning Goals).

The restrictions on the property result from the zoning of the property by the county as EFU and the applicable provisions of state law that require such zoning. The claimants' property is zoned EFU 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 is 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.)

The claimants acquired the subject property on May 7, 1958. Washington County reports the subject parcel was not zoned by the County at the time the Meeuwseus acquired the property.

Conclusions

Lot size and dwelling standards established by Statewide Planning Goal 3, ORS 215, and OAR 660, Division 33, adopted since the claimants acquired the property in 1958, do not allow the division of the property into parcels less than 80 acres in size or allow the approval of an additional dwelling as may have been possible in 1958. The Washington County's EFU zone is based on the standards required by Goal 3, ORS 215 and OAR 660, Division 33. Land use laws adopted since 1958 restrict the use of the property from what could have been done when the claimants acquired the property in 1958.

3. Effect of Regulations on Fair Market Value

In order to establish a valid claim, Section 1 of Ballot Measure 37 requires that any law(s) described in Section V.(2) of this report must have “the effect of reducing the fair market value of the property, or any interest therein.”

Findings of Fact

The claim states that the fair market value of the subject property has been reduced by \$130,000, as a result of land use laws enacted after they acquired the property in 1958. The claimants would like to have one two-acre residential parcel partitioned from the 11.4 acre property, and to develop one single-family residence on the resulting parcel.

Based on recent real estate market comparatives of two-acre parcels included with the claim, the claimants assert that, the fair market value of the subject property has been reduced and that the just compensation due is \$65,000 per-acre. There is no certified appraisal or other documentation to substantiate the claimed values.

Conclusions

As explained in section V.(1) of this report, Lyle and Beverly Meeuwsen are owners of the subject property and acquired the subject property on May 7, 1958. Thus, under Ballot Measure 37, the Meeuswens are 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 the use of the subject property as proposed by the claimants.

The claim asserts the reduction in value due to the restrictions to be \$130,000. However, 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 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 Washington County’s EFU zone and the related provisions of state law that have restricted use of the property and reduced its fair market value. These are Statewide Planning Goal 3, “Agricultural Lands,” and applicable provisions of ORS 215 and OAR 660, Division 33. All of the specific state land use regulations cited in the claim were enacted after the claimants acquired the property in 1958, and restrict the use of the property in a manner that

likely reduces its fair market value. None of these laws appear to be exempt under Section 3 of Ballot Measure 37.

Conclusions

It appears that the general statutory, goal and rule restrictions placed on residential development as stated in the claim apply to the owner's use of the property, and for the most part 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 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 in this report, laws enforced by the Commission or the department restrict the claimants' ability to partition 2 acres from the subject property, and to construct a single-family residence on the resulting two-acre parcel. These restrictions reduce the fair market value of the subject property to some extent. The claim asserts this amount to be \$130,000. Although the claim provides an explanation about how the specified restrictions reduce the fair market value of the property, no appraisal was submitted and it is not possible to substantiate the specific dollar amount the claimants demand for compensation. Nevertheless, the department acknowledges that the 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 the Meeuwens to use the subject property for a use permitted at the time they acquired the property on May 7, 1958.

Conclusions

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 Meeuwens' partition of two acres from the subject property or establishment of a single family dwelling on the resulting parcel: Statewide Planning Goal 3, ORS 215.263,

215.780, and 215.284; and applicable provisions of OAR 660, Division 33. These land use regulations will not apply to the Meeuwens' use of their property only to the extent necessary to allow the claimants to a use permitted at the time they acquired the property.

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 May 7, 1958.

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 7, 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.