

**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

OREGON CLAIM NUMBER: M119676

NAME OF CLAIMANT: Jedediah Aylett

MAILING ADDRESS: 75816 Frontage Road
Hermiston, Oregon 97838

IDENTIFICATION OF PROPERTY: Township 4N, Range 27E, parts of
Section 27 and all of Section 35
Umatilla County

DATE RECEIVED BY DAS: February 9, 2005

180-DAY DEADLINE: August 8, 2005

I. CLAIM

The claimant, Jedediah Aylett, seeks compensation in the amount of \$50,000,000 for a 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 mine aggregate from his property. (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 not valid and that the claimant is not entitled to relief under Ballot Measure 37. Department staff recommends that the claim be denied because the requirements of OAR 660-023-0180, enforced by the Land Conservation and Development Commission (the Commission) or the department, applied to the claimant's property at the time he acquired it on December 31, 1996. (See the complete recommendation in Section VI of this report.)

III. COMMENTS RECEIVED

On February 15, 2005, pursuant to OAR 125-145-0080, the Oregon Department of Administrative Services (DAS), provided written notice to owners of surrounding

property. According to DAS, two written comments, evidence or information were received in response to the 10-day notice. One letter was specific to the criteria required under Measure 37 to be used in the department's review of this claim. That letter states that "there are public health and safety issues which nullify the Measure 37 claim." (See comment letters in the department's claim file.) Because no funds have been made available for payment of compensation, comments in the other letter 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.

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

The claim was submitted to DAS on February 9, 2005 for processing under OAR 125, division 145. The claim identifies the state aggregate mining administrative rule that restricts the use of property as the basis of 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 claimant, Jedediah Aylett, acquired an interest in the subject property (subsurface mineral rights) on December 31, 1996. To verify his interest, the claim includes a Memorandum of Land Sale contract, a Quit Claim Deed and a Preliminary Report for Title Insurance for the property. (See claim file.)

Conclusions

The claimant, Jedediah Aylett), is an “owner” of an interest in the subject property as that term is defined in Section 11 (C) of Ballot Measure 37, as of December 31, 1996.

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 does not specify the applicable laws that restrict his intended use of the property except to refer to a 1998 application he filed with Umatilla County to mine the subject property, which the county denied. Umatilla County used the Goal 5 aggregate administrative rule, OAR 660-023-0180, to evaluate the application, and the County denied the application on the basis that the agricultural use on the surface took precedence over mineral extraction below the surface. OAR 660-023-0180 does not prohibit mining outright, but also does not provide absolute certainty that the application will be approved. Rather, the regulatory process and provisions in the rule allowed the County to balance competing uses, resulting in a restriction of Mr. Aylett’s right to mine the subsurface.

OAR 660-023-0180 became effective September 1, 1996, prior to the date that Mr. Aylett acquired his interest in the property. Changes to the rule were made on June 25, 2004, but the changes did not place any new restrictions on the property that were not already in place at the time Mr. Aylett acquired the property.

Conclusions

Aggregate mining land use permit standards were established by OAR-660-023-1080 on September 1, 1996. This administrative rule was in effect before Mr. Aylett acquired the property on December, 31, 1996. Land use laws adopted since December 31, 1996, do not restrict the use of the property from what the claimant could have been done when he acquired the property.

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 states that the fair market value of the subject property has been reduced by \$50,000,000. The Memorandum of Land Sale Contract states that the claimant purchased his interest in the property for \$80,000. The claimant did not explain how he determined the \$50,000,000 alleged reduction, other than his assessment of the aggregate resource that included a description of the quantity and quality of the aggregate resource, but no indication of its value.

Conclusions

As explained in section V.(1) of this report, Jedediah Aylett is the current owner of an interest in the subject property as of December 31, 1996. Under Measure 37, the claimant is due compensation for land use laws that restrict the use of the property in a manner that reduces its fair market value. However, the state law that is the basis of the claim was in place and applied to the use of the property before the claimant acquired it. Therefore, there is no reduction in fair market value because of the law 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 is based on Umatilla County’s denial of an aggregate mining application based on OAR-660-023-1080. The law identified in the claim was adopted before the claimant acquired the subject property on December, 31, 1996. Measure 37(3)(E) exempts laws enacted prior to the owner’s acquisition of the subject property.

Conclusions

The law identified in the claim is exempt under section 3 (E) of Ballot Measure 37.

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, the laws enforced by the Commission or the department do not restrict the mining of the claimant's property relative to uses permitted when the claimant acquired an interest in the property. The claimant acquired the subject property on December 31, 1996, after the law that restricts the use of the property went into effect on September 1, 1996.

Conclusions

Based on the record the department recommends that the claim be denied. The claimant is not entitled to relief under Ballot Measure 37.

VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on July 8, 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.