

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

OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT

Final Staff Report and Recommendation

August 2, 2005

STATE CLAIM NUMBER: M119704

NAME OF CLAIMANT: Maria Baghdanov

MAILING ADDRESS: 13930 Northeast Boones Ferry Road
Woodburn, Oregon 97071

IDENTIFICATION OF PROPERTY: Township 5S, Range 2W, Section 24
Tax Lot 1600,
Marion County

CONTACT PERSON: Paul Lodine
Churchill/Leonard
PO Box 804
Salem, Oregon 97308

OTHER INTERESTS IN PROPERTY: Jack Baghdanov¹

DATE RECEIVED BY DAS: February 10, 2005

180-DAY DEADLINE: August 9, 2005

I. CLAIM

Maria Baghdanov, the claimant, seeks compensation of an undetermined amount of money 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 her 20-acre lot into one 5-acre parcel and one 15-acre parcel, and to develop an additional residential dwelling on the resulting 15-acre parcel. The property is located at 13930 Boones Ferry Road NE, near Woodburn in Marion 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 laws enforced by

¹ Mr. Baghdanov lives on the property in a “medical hardship” manufactured home.

the Land Conservation and Development Commission (the Commission) and the department not apply to the subject property to allow Ms. Baghdanov to partition the property into one 5-acre parcel and one 15-acre parcel, and to develop a residential dwelling on the 15-acre parcel: 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 claimant's use of the property only to the extent necessary to allow her a use of the property permitted at the time she acquired it on September 30, 1964. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

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 10, 2005 for processing under OAR 125, division 145. The claim identifies generally "all land use laws enacted, which were put in place in 1971 or 1972." The claim also identifies Marion County subdivision and partitioning Ordinance 540. 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 claimant, Maria Baghdanov, acquired the property with her husband Ivan by Warranty Deed on September 30, 1964. The Hearings Officer report on the Marion County Measure 37 claim filed by the claimant confirms that the claimant is the current owner of the subject property. (See the department’s claim file.)

Conclusions

The claimant, Maria Baghdanov is the “owner” of the subject property, as defined in Section 11(C) of Ballot Measure 37, as of September 30, 1964.

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 is based on “State Land Use Planning Goals ORS 197 and Marion County Subdivision and Partitioning Ordinance 540 applicable in the county EFU (Exclusive Farm Use) zone.” The claim also identifies all land use laws in place in 1971 or 1972 as restricting the claimant’s use of the property.²

The claimant’s property is currently zoned EFU by the county, as required by Goal 3 in accord with OAR 660, division 33, and ORS 215 because the claimant’s 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 be zoned EFU pursuant to ORS 215.

² It is not clear why the claim identifies 1971 and 1972 as the baseline for laws restricting the use of the property.

Current land use regulations, particularly ORS 215.263, 215.284, 215.780 and applicable provisions of 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 claimant acquired the subject property in 1964, prior to the adoption of Statewide Planning Goal 3 it's implementing statutes and administrative rules. Some provisions of ORS 215 were in effect before 1964, but did not directly limit the use of the subject property.

Conclusions

The zoning requirements, minimum lot size and dwelling standards established by Statewide Planning Goal 3 (Agricultural Lands) (OAR 660-015-0000(3)) and provisions applicable to land zoned EFU in ORS 215 and OAR 660, division 33, were all enacted after claimant Maria Baghdanov acquired ownership of the subject property in September 30, 1964, and do not allow the division of the property, thereby restricting the use of the property relative to the uses allowed when the property was acquired by Ms. Baghdanov in 1964. Claimant acquired her property in 1964 when the parcel was not zoned by the county.

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 claimant has not provided a specific estimate of the reduction in fair market value due to laws that are claimed to have restricted the use of the subject property. There is no certified appraisal that substantiates the value of the property without current restrictions on partitioning.

The claimant's statement regarding the diminution in the value of the property is as follows:

“Current zoning laws do not allow for the partitioning of the property so that a 5-acre parcel may be created. There is currently a farmhouse on the property, which will be partitioned into the new 5-acre parcel. The ultimate plan is that this 5-acre parcel with the home will pass to one of the children of Maria Baghdanov. The remaining property will pass to her other children. All of the property will continue to be used for agricultural purposes.”

“The fair market value of the property has been diminished in that Maria Baghdanov is unable to leave a separate parcel of real property to one of her children but instead must leave the entire parcel to all of the children in undivided interests. Furthermore it is believed that the collective value of a 15-acre parcel and a 5-acre parcel is significantly more than the value of a 20-acre parcel.”

Conclusions

As explained in section V.(1) of this report, Maria Baghdanov is the current owner of the property. She acquired the property on September 30, 1964. Under Measure 37, Maria Baghdanov is due compensation for land use laws that restrict the use of the subject property in a manner that reduces its fair market value when and if that fair market value is determined.³

Without an appraisal based on the value of two parcels, one 5 and one 15-acres, and the value of one parcel with an existing dwelling and a hardship dwelling, it is not possible to determine the amount of any reduction in value. 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 enacted or 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 Marion County's EFU zone, as required by Statewide Planning Goal 3 (Agricultural Lands), and applicable provisions of ORS 215 and OAR 660, division 33. With the exception of some provisions of ORS 215 in effect before 1964, these specified laws that currently restrict the division of the property were enacted after the claimant acquired the property.

³ Marion County has requested an appraisal.

Conclusions

The laws specified above that restrict the claimant's division and development of her property were all enacted after she acquired the property on September 30, 1964, with the exception of some provisions of ORS 215 in effect at that time. Laws in effect when the claimant acquired the property are exempt under Measure 37, Section 3. Those laws specified above enacted after September 30, 1964, generally do not appear to be 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 requires 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 conclusion set forth in this report laws enforced by the Commission or the department restrict the claimant's from partitioning her property into two 2 parcels of approximately 5 and 15-acres, respectively, and developing an additional dwelling on the resulting 15-acre parcel. The laws enforced by the Commission or the department reduce the fair market value of the subject property to some extent. The claim does not assert a specified amount. Nevertheless, based on the record for this claim, 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.

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 one or more land use regulations to allow the claimant to use the subject property for a use permitted at the time she acquired the property on September 30, 1964.

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 Ms. Baghdanov's partitioning of her property into one 5-acre parcel and one 15-acre parcel, or to the establishment of a dwelling on resulting 15-acre parcel: applicable provisions of Statewide Planning Goal 3, ORS 215.263, 215.284 and 215.780, OAR 660, division 33, enacted after September 30, 1964. These land use regulations will not apply to Ms. Baghdanov's use of

the property only to the extent necessary to allow the claimant a use permitted at the time she acquired the property.

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 September 30, 1964.

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 11, 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.