

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

**OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT**

**Final Staff Report and Recommendation**

August 3, 2005

**STATE CLAIM NUMBER:** M119730

**NAME OF CLAIMANT:** Leslie and Louise Van Dyke

**MAILING ADDRESS:** 19362 South Henrici Road  
Oregon City, Oregon 97045

**IDENTIFICATION OF PROPERTY:** Township 3S, Range 2E, Section 12,  
Tax Lots 1000 and 1002  
Clackamas County

**DATE RECEIVED BY DAS:** February 11, 2005

**180-DAY DEADLINE:** August 10, 2005

**I. CLAIM**

The claimants, Leslie and Louise Van Dyke, seek compensation in the amount of \$800,000 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 claimants desire compensation or the right to divide their property for sale and residential use. The 29.4-acre property is located in Clackamas 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, 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 divide and develop their property for residential use: applicable provisions of Statewide Planning Goal 4, ORS 215.780 and provisions required in Agriculture/Forest zones under OAR 660-006-050 and 055. These laws will not apply to the claimants only to the extent necessary to allow Mr. and Ms. Van Dyke a use of the subject property permitted at the time they acquired it on March 3, 1958. (See the complete recommendation in Section VI. of this report.)

### **III. COMMENTS RECEIVED**

#### **Comments Received**

On March 1, 2005, pursuant to OAR 125-145-0080, the Oregon Department of Administrative Services (DAS) provided written notice to owners of surrounding properties. According to DAS, two written comments, evidence or information were received in response to the 10-day notice. The comments were 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 claimants' Ballot Measure 37 claim. (See comment letters 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 to DAS on February 11, 2005 for processing under OAR 125, division 145. The claim identifies Clackamas County's "TT-20 and TT-80" zoning that restricts the use of the 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 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, Leslie and Louise Van Dyke, acquired the subject property on March 3, 1958. (See warranty deed in the department’s claim file.) The Clackamas County assessor’s office confirms that Leslie and Louise Van Dyke are the present owners of the property.

### **Conclusions**

The claimants, Leslie and Louise Van Dyke, are “owners” of the subject property as that term is defined by Section 11 (C) of Ballot Measure 37, as of March 3, 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 states that, because of current land use laws, they “Can not sell less than 80-acres [and] can not subdivide.” The claim identifies “TT-20 in 1982 and TT80” as zoning that restricts the use and reduces the value of the property.

The claim is based on Clackamas County’s Agricultural/Forest zone and the applicable provisions of state law that require such zoning, although the claimants did not cite any state laws that restrict the use of their property. TT was transitional timber zone, based on Statewide Goal 4 (Forest Lands). According to the County, the TT-20 zone no longer exists and TT-80 never existed. The property is currently zoned Agricultural/Forest (AG/F).

Clackamas County’s AG/F zone provisions were originally adopted to comply with Statewide Planning Goal 4 (Forest Lands), and the implementing provisions in OAR 660-006-0050 (effective February 5, 1990) and subsequently amended on March 1, 1994, to comply with the provisions of HB 3661 (chapter 792, Oregon Laws 1993).

Under OAR 660-006-0050, related to mixed farm/forest use zones, all the uses permitted under Statewide Goals 3 and 4 are allowed except that for dwellings, either the Goal 3 or 4 standards are applicable based on the predominant use of the tract on January 1, 1993. According to 2002

aerial photographs of the subject property, the property is mostly farm and thus, the property would be subject to the requirements for dwellings applicable under exclusive farm use zoning required by Statewide Goal 3 and OAR 660, division 33. This includes the farm dwelling “income test” asserted by the claimant as restricting the use of the property.

For land divisions, OAR 660-006-0055 authorizes the creation of new parcels based on the standards applicable to farm or forest zones which implement the 80-acre minimum lot size specified in ORS 215.780. The claimants’ property is 27.4-acres. Under OAR 660-006-055, the claimants’ property cannot be divided into smaller parcels as may have been possible in 1958. However, it can be divided into two parcels each with a dwelling under ORS 215.780(1)(e) as long as one of the resulting parcels is between 2 to 5-acres in size (chapter 531, Oregon Laws 2001, effective January 1, 2001).

The claimants acquired the subject property on March 3, 1958. At that time the property was not zoned. According to Clackamas County, the first zoning restriction (RA-1) on the subject property was adopted on December 14, 1967.

### **Conclusions**

The division and dwelling standards established under OAR 660-006-050 to 055, in compliance with Statewide Planning Goal 4, relating to land divisions and dwelling standards, do not allow the division of the property or the approval of dwellings as may have been possible in 1958. Land use laws adopted since 1958, restrict the use of the property from what could have been done when the property was acquired by the Van Dykes 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 \$800,000. However, there is no explanation on how the \$800,000 was derived, and the claim did not include information on the present value of the property.

### **Conclusions**

As explained in section V. (1) of this report, the current owners are Leslie and Louise Van Dyke as of March 3, 1958. Thus, under Ballot Measure 37, the Van Dykes 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) 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 restriction is \$800,000.

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 is based on Clackamas County's Agricultural/Forest Zone and related provisions of state law that have restricted use of the property and reduced its fair market value. These include Statewide Planning Goal 4 and applicable provisions of ORS 215 and OAR 660, division 6. None of these specified laws appear to be exempt under Section 3 of Ballot Measure 37.

#### **Conclusions**

It appears that the general statutory, goal and rule restrictions on the division, residential development and use of Agricultural/Forest land apply to the claimants' 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.

### **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 enacted or 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 prohibit the division of the subject property and the use of the property for residential purposes. The claim asserts these restrictions reduce the fair market value of the subject property by \$800,000. No appraisal or other documentation was submitted and it is not possible to substantiate the specific dollar amount the claimants demand 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, Ballot Measure 37 authorizes the department to modify, remove or not apply all or parts of certain land use regulations to allow the Van Dykes to use the subject property for a use allowed at the time they acquired the property on March 3, 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 Van Dyke's division of their property for sale and residential use: applicable provisions of Statewide Planning Goal 4 (Forest Lands), ORS 215.780, and OAR 660-06-050 and 055. These land use regulations will not apply to the Van Dyke's 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 March 3, 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 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 12, 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.