

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

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

August 12, 2005

STATE CLAIM NUMBER: M119864 (North)

NAME OF CLAIMANTS: Leroy L. and Jean R. Laack

MAILING ADDRESS: 5601 66th Avenue NE
Salem, Oregon 97305

IDENTIFICATION OF PROPERTY: Township 6S, Range 2W, Section 33
Tax Lot 1700
Marion County

DATE RECEIVED BY DAS: February 22, 2005

180-DAY DEADLINE: August 21, 2005

I. CLAIM

Leroy and Jean Laack, the claimants, seek compensation in the amount of \$1,620,000 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 divide the property into approximately 11 lots or parcels ranging in size from 2.25-acres to 8-acres for residential use. The claim concerns property that is located at 5601 66th Avenue NE, Salem, Oregon. The property contains approximately 84-acres.

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 enacted or enforced by the Land Conservation and Development Commission (the Commission) or the department, not apply to the claimants to allow them to divide the property into approximately 11 lots or parcels and to establish a dwelling on each lot or parcel: the applicable provisions of Statewide Planning Goal 3 (Agricultural Lands), ORS 215.263, 215.284 and 215.780, and OAR 660, division 33, that took effect after February 8, 1967. These laws will not apply to the claimants only to the extent necessary to allow Leroy and Jean Laack a use of the property permitted at the time they acquired the property that is the subject of this claim on February 8, 1967. (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 February 22, 2004 for processing under OAR 125, division 145. The claim includes a list of land use regulations (see claim) all of which were enacted prior to December 2, 2004, the effective date of Measure 37. (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 property that is the subject of this claim is owned by LeRoy L. Laack and Jean Raymonda Laack, as Trustees of the LeRoy L. Laack and Jean Raymonda Laack Family Trust. The property was acquired by the claimants Leroy and Jean Laack on February 8, 1967 and subsequently placed in the Laack Family Trust. A facsimile of the deed confirming the ownership date is attached to the title report that confirms Leroy and Jean Laack, as trustees for the Laack Family Trust as the current owners.

Conclusions

The claimants, Leroy and Jean Laack as trustees of the LeRoy L. Laack and Jean Raymonda Laack Family Trust, are “owners” of the property that is the subject of this claim as that term is defined under Section 11(C) of Ballot Measure 37. Leroy L. Laack and Jean R. Laack became owners of the property on February 8, 1967.

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 claimants or a family member acquired the property.

Findings of Fact

The claim cites Exclusive Farm Use (EFU) laws that were not in place at the time of purchase as restricting the claimant’s ability to subdivide and build residences on the property.

The claim is based, in part, on Marion County’s current EFU zone 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 215.284, 215.263, 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 implements the statutory standard for a farm dwelling in an EFU zone under ORS 215.283.

OAR 660-033-0130(4)(e) (applicable to non-farm dwellings in marginal lands counties) became effective on August 7, 1993.

The claimants acquired the subject property in 1967. At that time, Statewide Planning Goal 3 and administrative rules were not in effect. Provisions of ORS 215 were adopted in 1963, but do not appear to have restricted the use of the subject property (unless the property was in a qualified farm use zone at that time).

Conclusion

Lot size and dwelling standards established by Statewide Planning Goal 3, ORS 215, and OAR 660, division 33, that took effect after the claimants acquired the property in 1967, do not allow the division of the property into parcels or lots less than 80- acres in size or allow the approval of dwellings as may have been possible in 1967. The County's EFU zone is based on the standards required by Goal 3, ORS 215 and OAR 660, division 33. Land use regulations adopted since 1967 restrict the use of the property from what could have been done when the property was acquired by the claimants in 1967.

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 uses 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 a claimant seeks 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 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 includes an estimate of the value of the property if the property were fully developed as proposed. The estimate relies on two comparables, although the claimants acknowledge that good comparables are difficult to identify. The claimants estimate a reduction in value of \$1,620,000. No certified appraisal is included.

Conclusions

As explained in section V.(1) of this report, the current owners of the subject properties are Leroy and Jean Laack, who acquired the property in 1967. State land use regulations that

became effective after that time restrict the claimants' desired use of the property. The claimants have submitted some evidence that this restriction has reduced the fair market value of their property. The claim states that the reduction in value is \$1,620,000.

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 references EFU laws that were enacted subsequent to the acquisition date of the property in 1967 that restrict the use and reduce the value of the property. (See claim.) The laws related to Statewide Planning Goal 3 (Agricultural Lands), including specific provisions of ORS 215 and OAR 660, division 33, are "land use regulations" under the Measure and were adopted after the claimants acquired the property in 1967, with the exception of some provisions of ORS 215, which were adopted prior to the claimants' 1967 acquisition of the subject property.

Conclusions

The claim refers to EFU zoning laws that are alleged to apply to the property. It appears that the general statutory, goal and rule restrictions on minimum lot size, residential development and use of Agricultural Land apply to the owner's anticipated use of the property, and for the most part these laws do not come under the exemption under subsection 3(E) of Measure 37.

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. Provisions of ORS 215 were adopted prior to 1967, and so will continue to apply to the property. There may be other laws that continue to apply to the claimant's 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. The department notes that the Little Pudding River appears to form the northern boundary of the property. There may be laws relating to this or other aspects of the property that restrict its use, but that are exempt under one or more of the specific exemptions in section 3 of Measure 37. When 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. And, in some 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 uses 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. 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 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, that 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, specifically Goal 3, ORS 215 and applicable provisions of OAR 660, division 33, restrict the partition of the subject properties and thus, the claimants cannot divide the property into parcels with dwellings. The laws enforced by the Commission or department reduce the fair market value of the approximately 84-acre property to some extent. The claim asserts this amount to be \$1,620,000. Although the claim provides an explanation about how the specified restrictions reduce the fair market value of the property, no appraisal or other substantiating 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 compensation, Ballot Measure 37 authorizes the department to modify, remove or not apply all or parts of certain land use regulations to allow Leroy and Jean Laack to use the subject property for a use permitted at the time they acquired the property in 1967.

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 Leroy and Jean Laacks' division of their property into lots or parcels, or to the establishment of a single family dwelling on each lot or parcel created: applicable provisions of Statewide Planning Goal 3, ORS 215, and OAR 660, division 33, enacted after the claimants acquired their interest in the property on February 8, 1967. These land use regulations will not

apply to the claimants' 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 Mr. and Ms. Laack, to use their property subject to the standards in effect on February 8, 1967. On that date, the property was subject to some provisions of ORS 215.

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 22, 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.