

**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: M119874

NAME OF CLAIMANT: Warnock Ranches, Inc.

MAILING ADDRESS: c/o Dan R. Warnock, Jr.
18963 West Campbell Loop
Baker City, Oregon 97814

IDENTIFICATION OF PROPERTY: Township 10S, Range 37E,
Tax Lots 2200, 2300, 2600, 2700, and 2800

Township 10S, Range 37E, Section 4CA
Tax Lots 100 and 500

Township 10S, Range 37E, Section 10B
Tax Lots 700 and 800

Township 10S, Range 37E, Section 10C
Tax Lot 100

Township 10S, Range 37E, Section 14
Tax Lots 500, 600, and 700

Township 10S, Range 38E, Section 7C
Tax Lot 1200

Township 10S, Range 38E, Section 18
Tax Lots 500, 900, and 1100

Township 10S, Range 38E, Section 18AB
Tax Lot 400

Township 10S, Range 38E, Section 18AC
Tax Lot 100

Township 10S, Range 38E, Section 18BA
Tax Lots 500, 600, 700, 800, 1200, 1300,
1400, 1500, 1600, and 1700

Township 10S, Range 38E, Section 18BD
Tax Lots 100, 200, and 300

All tax lots are located in Baker County

DATE RECEIVED BY DAS: February 22, 2005

180-DAY DEADLINE: August 21, 2005

I. CLAIM

The claimant, Warnock Ranches, Inc., seeks compensation in an unspecified amount for a reduction in fair market value as a result of land use regulations that are alleged to restrict the use of certain private real property. The claimant desires compensation or the right to make an unspecified use¹ of its approximately 1,639-acres of real property. The property consists of 33 Tax Lots located southwest of Baker City in Baker 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 this claim is not valid. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS RECEIVED

On June 9, 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, 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 The claim does not state an intended use. On June 21, 2005, department staff sent a letter to Dan R. Warnock, Jr., requesting information on the desired use of the property that is currently prohibited by land use regulations but was permitted when the property was acquired. Mr. Warnock responded by phone on June 26, stating that he and the other owners of Warnock Ranches, Inc. did not have anything specific to request and had no intention to use the subject property for anything other than a cattle ranch. Mr. Warnock advised department staff that he filed a claim because he was invited to do so by the Baker County Assessor.

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, 2005, for processing under OAR 125, division 145. The claim identifies “all land use regulations” as the basis for the claim.² Without a more specific list of laws that restrict the use of the property, it is not possible to determine whether only laws that were enacted prior to December 2, 2004, the effective date of Measure 37, are the basis for this claim.

Conclusions

The department cannot determine whether the claim has been submitted within two years of December 2, 2004, the effective date of Measure 37, based on land use regulation adopted prior to December 2, 2004, and therefore cannot determine whether the claim is timely filed.

V. ANALYSIS OF CLAIM

1. Ownership

Ballot Measure 37 provides for payment of compensation of 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 claim does not state when Warnock Ranches, Inc., acquired the subject property and does not include copies of any deeds.³

² On June 21, 2005, department staff sent a letter to Dan R. Warnock, Jr., Secretary of Warnock Ranches, Inc., requesting identification of the specific state land use regulations that currently restrict use of the property and did not restrict its use when acquired. This information has not been provided to date.

³ On June 21, 2005, department staff sent a letter to Dan R. Warnock, Jr., requesting copies of all deeds showing claimant’s ownership of the subject property. This documentation has not been received to date.

Conclusions

There is insufficient information from which to determine whether the claimant, Warnock Ranches, Inc.⁴, is an “owner” of the subject property as that term is defined in Section 11 of Ballot Measure 37.

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.

The claimant has not specified any laws that restrict the use of the subject property relative to how the claimant could have used the subject property when it was acquired. Nor has the claimant asserted any intended use of the property, which may have been restricted due to laws enacted since the property was acquired.

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.”

The claimant has not identified any laws that restrict the use of the property, which could have the effect of reducing the value of the property. See Sections IV. and V.⁵

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.

This criterion is not applicable. See Sections IV. and V.

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

⁴ Dan R. Warnock, Jr. advised department staff by phone on June 26, 2005 that Warnock Ranches, Inc. is a family Subchapter S Corporation owned by himself; his wife, Joann W. Warnock; his son, Randy Warnock; and Randy’s wife, Jeannie Warnock. The Oregon Secretary of State Business Registry shows the claimant as an active domestic business corporation with Randy Warnock as President, Dan R. Warnock, Jr. as Secretary, and Martin J. Leuenberger as registered agent.

⁵ On June 21, 2005, department staff sent a letter to Dan R. Warnock, Jr., requesting information and/or an appraisal on fair market value with and without land use regulations. This information has not been provided to date.

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 record, the department finds that the claim is not valid because (1) there is insufficient information to determine whether the claimant owns the subject property; (2) there is insufficient information to determine whether laws enforced by the Commission or the department prohibit a use of the property that was allowed at the time that it was acquired; and, (3) there is insufficient information to determine whether laws enforced by the Commission or the department have reduced the fair market value of the subject property.

Conclusion

Based on the record, the department recommends the claim be denied.

VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on July 15, 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.