

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

**OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT**

**Final Staff Report and Recommendation**

August 16, 2005

**STATE CLAIM NUMBER:** M119925

**NAME OF CLAIMANT:** Norma Cannon

**MAILING ADDRESS:** 3868 Portland Drive  
Hood River, Oregon 97031

**IDENTIFICATION OF PROPERTY:** Township 2N, Range 10E,  
Section 10D, Tax Lot 2100,  
Hood River County

**DATE RECEIVED BY DAS:** February 24, 2005

**180-DAY DEADLINE:** August 23, 2005

**I. CLAIM**

The claimant, Norma Cannon, seeks compensation in the amount of \$285,133 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 subdivide her 3.9-acre property into four one-acre plots for single-family dwellings. The subject property is identified as Tax Lot 2100, T2N R10E, section 10D, and is located at 3868 Portland Drive, near the City of Hood River in Hood River County.

**II. SUMMARY OF STAFF RECOMMENDATION**

Based on the findings and conclusions set forth below, the Department of Land Conservation and Development (the department) finds that the claim is valid. The department staff recommends that, in lieu of compensation, the requirements of the following laws enforced by the Land Conservation and Development Commission (the Commission) or the department not apply to the claimant to allow her to subdivide her property: the applicable provisions of Statewide Planning Goal 14 and OAR 660-004-0040 that preclude the division of her 3.9-acre property to the extent necessary to allow Ms. Cannon a use of the subject property permitted at the time she acquired it on November 14, 1961. (See the complete recommendation in Section VI. of this report.)

### **III. COMMENTS RECEIVED**

On March 21, 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. 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 24, 2005, for processing under OAR 125, division 145. The claim identifies Hood River County's Rural Residential (RR) zoning and state laws that restrict 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 regulation adopted prior to December 2, 2004, and is therefore timely filed.

### **V. ANALYSIS OF CLAIM**

#### **1. Ownership**

Ballot Measure 37 provides 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, Norma Cannon, acquired an ownership interest in the subject property on November 14, 1961. The claimant provided a Warranty Deed showing that the property was transferred to her and Beauford Cannon on November 14, 1961. The claimant submitted a Title Search dated March 23, 2005 and a recent Property Tax Statement indicating that she is the current owner of the subject property. Family ownership dates back to September 13, 1953, based on the text in a 1957 Assignment of Contract document submitted with the claim.

## **Conclusions**

The claimant, Norma Cannon, is an “owner” of the subject property as that term is defined by Section 11 (C) of Ballot Measure 37. “Family members” of Ms. Cannon as that term is defined in section 11 (A) of Measure 37 acquired the property in 1953.

## **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 claimant states she is “No longer able to subdivide into one-acre lots for single-family dwellings” due to “Rural residential zoning as of 1980,” specifically Hood River County Ordinance Nos. 102 and 109 that set a 2 ½-acre minimum. She also cited, ORS 197.175 (effective 1973) that “Required Hood River County to plan and zone land in accordance with state goals.”<sup>1</sup>

Although the claimant did not specifically identify these state laws as a basis for her claim, in 2000 the Commission amended Statewide Planning Goal 14 (Urbanization) and adopted OAR 660-004-0040 (which became effective on October 4, 2000) as a result of a 1986 Supreme Court decision.<sup>2</sup> The rule provides that after October 4, 2000, a county minimum lot size requirement in RR zone may not allow a smaller minimum lot size without taking an exception to Goal 14 (OAR 660-004-0040(6)). Thus, in this situation the rule does not allow the subject property to be divided into one-acre lots rather than the 2.5-acre lot allowed by the current Hood River County Ordinance without an exception to Goal 14.

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<sup>1</sup> ORS 197.175 establishes land use planning responsibilities for cities and counties but does not directly restrict the subject property.

<sup>2</sup> *1000 Friends of Oregon v. LCDC (Curry County)*, 301 Or App 447 (1986).

## **Conclusions**

Requirements established by Statewide Planning Goal 14, and OAR 660-004-0040, adopted since the claimant's family acquired the property in 1953, do not allow the division of the property into one-acre lots. State land use regulations adopted since 1953 restrict the use of the property relative to the uses permitted when the property was acquired by a family member in 1953.

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 use(s) that the claimant has identified. There may be other laws that currently apply to the claimant's use of the property, and that may 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. When a claimant seeks a building permit 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 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 \$285,133 as a result of land use laws enacted after the family acquired the property in 1953. This value is based on an appraisal for Norma Cannon by Steven B. Anderson, Consulting Land Use Planner. He based his estimates on sales of comparable property. (See claim.)

## **Conclusions**

As explained in section V.(1) of this report, Norma Cannon is the current owner of the subject property as of November 14, 1961. The claimant's family has owned the property since 1953. Thus, under Ballot Measure 37, the Norma Cannon is due compensation for land use laws 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 to be \$285,133. However, without an appraisal or other documentation of the reduction in value due to land use restrictions, 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 Hood River County's rural residential zoning and related provisions of state laws that restrict the use of the property and reduce its fair market value. These are Statewide Planning Goal 14 and OAR 660-004-0040. All of these state laws were adopted after the claimant's family acquired the property in 1953. Therefore, none of the laws identified in the claim are exempt under subsection 3(E) of Ballot Measure 37.

Laws in effect when the claimant acquired the property are exempt under Section 3(E) of Measure 37, and will continue to apply to the claimant's use of the property. There may be other laws that continue to apply to the claimant's use of the property because they were not 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 an owner of property seeks 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 use(s) that the claimant has 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 provide 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.

#### **Conclusions**

It appears that the state goal and rule restrictions on division of RR land apply to the owner's use of the property, and are not exempt under subsection 3(E) of 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 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 has by rule 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 prohibits the subdivision of the property. These restrictions reduce the fair market value of the subject property to some extent, though it is unclear what level of development would be allowed under the laws in effect in 1961 when the claimant acquired the property. The claim asserts this amount to be \$285,133. Although the claim provides an explanation about how the specified restrictions reduce the fair market value of the property, 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, Measure 37 authorizes the department to modify, remove, or not apply all or parts of certain state land use regulations to allow Norma Cannon to use the subject property for a use permitted at the time she acquired the property on November 14, 1961.

## **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 Norma Cannon's division of the property into four one-acre parcels for single family dwellings: applicable provisions of Statewide Planning Goal 14 and OAR 660-004-0040 enacted after November 14, 1961. These land use regulations will not apply to Norma Cannon's use of her property only to the extent necessary to allow the claimant to 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 her property subject to the standards in effect on November 14, 1961.
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 215.402 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 her 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 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.