

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

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

August 19, 2005

**STATE CLAIM NUMBER:** M119959

**NAME OF CLAIMANT:** Reed Bruegman

**MAILING ADDRESS:** 1853 Henson Lane  
Las Vegas, Nevada 89156  
and  
30878 Holaday Road  
Scappoose, Oregon 97056

**PROPERTY IDENTIFICATION:** Township 3N, Range 2W, Section 4  
Tax Lot 902  
Columbia County

**DATE RECEIVED BY DAS:** February 28, 2005

**180-DAY DEADLINE:** August 27, 2005

**I. CLAIM**

Reed Bruegman, the claimant, seeks compensation in the amount of \$685,000 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 claimant desires compensation or the right to divide the property for sale and residential use. The property is located at 30878 Holaday Road, near the City of Scappoose, in Columbia 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 state laws enforced by the Land Conservation and Development Commission (the Commission) or the department, not apply to Mr. Bruegman to allow him to divide his property into lots or parcels and to place a single-family dwelling on each lot or parcel created: the applicable provisions of Statewide Planning Goal 4 (Forest Lands), ORS 215.705 to 215.755 and 215.780, and OAR 660, division 6 (specifically OAR 660-006-0027(1)(a)(A) and OAR 660-006-0027(1)(d)(B)) that took effect after April 14, 2000. These laws will not apply to the claimant's use of the property only to the

extent necessary to allow Reed Bruegman a use of the property permitted at the time he acquired the property on April 14, 2000. The department acknowledges that the relief recommended in this report will not allow the claimant to use the property in the manner set forth in the claim. (See the complete recommendation in Section VI. of this report.)

### **III. COMMENTS ON THE CLAIM**

#### **Comments Received**

On March 3, 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 28, 2005 for processing under OAR 125, division 145. The claim identifies OAR 660-006-0027(1)(a)(A) and OAR 660-006-0027(1)(d)(B) that restrict the use of the property as the basis for 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 information in the department’s file shows that the Claimant, Reed Bruegman, acquired the subject property on July 24, 1973. The property is located at 30878 Holaday Road, near the City of Scappoose, Oregon (see Correction Deed, dated July 24, 1973). A Title Report prepared by Ticor Title for the claimant, dated December 29, 2004, shows that the claimant is the present owner of the subject property, Columbia County Real Property Tax Lot Account Code # 01-14-2-3204-000-00902. (See the department’s claim file.)

The claim form states in Section 5 that the claimant “Owned & resided on property until October 2003. Retained ownership on the entire parcel except for period from \_\_\_\_ to \_\_\_\_ when ownership transferred to daughter. Repossessed on \_\_\_\_.” (See claim.) There is no information provided on the dates necessary to fill in the blanks, the name of the daughter to whom ownership was transferred and then repossessed from, or any other documentation for these incomplete statements. Staff sent the claimant a request for additional information on May 16, 2005, but the claimant did not initially respond to the request for additional information. The applicant responded to the request for additional information on June 21, 2005, which was received by the department on June 22, 2005. The response confirmed the information contained in the Title Report prepared for the department. It should be noted that staff attempted to contact the claimant on June 8, 2005, at the Las Vegas phone number listed on the claim, and encountered a recording that the number is no longer in service.

A Title Report prepared for the department, confirms that Reed Bruegman purchased the property on July 24, 1973 (see Title Report). On January 17, 1996, the property was conveyed to R.A. and T.L. Neimi (see Title Report). Additional transactions indicate Bargain and Sale Deeds involving the property on October 14, 1997, from Bruegman/Neimi to R.A. and T.L. Neimi; on October 17, 1997, from R. and T. Neimi to R.C. and S.B. Bruegman; on January 12, 1999, from T.L. Neimi to R.A. Neimi, and then finally on April 14, 2000, from T. Neimi (Johnson) to R. Bruegman. (See Title Report in the department’s claim file.)

Based on the information in the department’s records, it appears that the property was transferred to Tammy Nemi on July 19, 1996 and that the claimant, Reed Bruegman reacquired the property on April 14, 2000. According to Todd Dugdale, Columbia County Planning staff has verified that Tammy Neimi is the daughter of Reed C. Bruegman.<sup>1</sup>

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<sup>1</sup> Staff contacted Columbia County Community Development Director Todd Dugdale on June 3, 2005 for additional information.

## **Conclusions**

The claimant, Reed Bruegman, is an “owner” of the subject property as that term is defined by Section 11(C) of Ballot Measure 37. Mr. Bruegman became the present owner of the property on April 14, 2000. The original date of acquisition of the property by the family is July 24, 1973 (see Correction Deed, dated July 24, 1973, and Title Report dated June 8, 2005).

## **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. Based on the department’s current record, Mr. Bruegman became the present owner of the property on April 14, 2000.

## **Findings Fact**

The claim states that:

“Property subdivided into 6 parcels November 1993 & approved by Columbia County. In 1997 required to recombine lots. June 27, 1997 – County Restrictions put in place – Fee No. 97-06769.” (See claim, Sections 6 and 7.)

The claim identifies “OAR 660-006-0027(1) (a) (A) and OAR 660-006-0027(1) (d) (B)” as the state land use regulations that restrict the use and reduce the value of the property as the basis for the claim.

The Commission acknowledged Columbia County’s comprehensive plan and land use regulations to be in compliance with the Statewide Planning Goals by order dated July 25, 1985. The Columbia County comprehensive plan designates the subject Bruegman property as Forest Land in compliance with Statewide Planning Goal 4 and the County has designated and zoned the property as Primary Forestry (PF-76).

Statewide Planning Goal 4, (Forest Lands) and laws applicable to land zoned for forest use under ORS 215, including ORS 215.705 to 215.755 and 215.780, and OAR 660, division 6, restrict the right of an owner to divide the property for the purpose of sale and residential use. Goal 4 became effective on January 25, 1975, and required Forest Land, as defined by the goal, to be zoned for forest use (see citations to statutory and rule history under OAR 660-015-0000(4)). The Forest Land administrative rule (OAR 660, division 6) became effective September 1, 1982. ORS 215.705 to 215.755 and 215.780, which establish a minimum lot or parcel size of land zoned for forest use, became effective on November 4, 1993 (chapter 792, Or Laws 1993). OAR 660-006-0026 and 0027, the rules implementing ORS 215.705 to 215.755 and 215.780, took effect on March 1, 1994 (see citations to rule history under OAR 660-015-0000(4)). Together, ORS 215.705 to 215.755 and 215.780, and OAR 660-006-0026 and 0027 establish an 80-acre minimum lot size for the creation of a new parcel in a forest zone and also establish the

standards for dwellings in forest zones under Statewide Planning Goal 4. The property is zoned Primary Forestry (PF-76) by Columbia County.

### **Conclusions**

The minimum lot size and dwelling standards established by Statewide Planning Goal 4 and OAR 660-006-0026 and 0027, and by provisions of ORS 215, were all adopted after the claimant first acquired the property on July 24, 1973 (the date of the family's initial acquisition of the property). State land use regulations do not allow the division of the property into parcels less than 80-acres in size or the approval of dwellings on smaller parcels, except for lot of record tract dwellings allowed in OAR 660-006-0027. Land use laws, adopted since 1973, restrict the use of the property relative to the uses allowed when the property was first acquired in 1973.

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 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 the 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**

Based on a comparative market analysis and a letter from Michael Sykes, Associate Real Estate Broker, (included with the claim), and the 2004 County Tax Statement, the claimant asserts that, the fair market value of the subject property has been reduced and that the compensation due is \$685,000. According to the letter from Michael Sykes, the property is worth approximately \$350,000 if it is sold as one undividable parcel. According to the broker, "If the property can be divided into 5 parcels as it was originally platted, its total value is \$1,035,000." This number is based on a comparative market analysis of other properties that have sold within the immediate area in the past 6 to 12 months. (See also the comparative market analysis and letter dated February 15, 2005, by Michael Sykes, Century 21 Elite Realty, Inc., submitted with the claim.) Subtracting, the value of the existing parcel (\$350,000) from the projected value of the additional parcels (\$1,035,000) yields a figure of \$685,000. This figure is what the claimant states is the reduction in fair market value as a result of state land use regulations.

### **Conclusions**

As explained in section V.(1) of this report, the current owner is Reed Bruegman who first acquired an interest in the property on July 24, 1973, from George K. Mier and Dorthea M. Mier

(see Correction Deed). The letter and comparative analysis by Century 21 Elite Real Estate, Inc. shows that the current value of the property and the existing structure(s) is approximately \$350,000. According to the comparative analysis, the projected value of the additional lots is \$1,035,000. Therefore, the reduction in value is assumed to be \$685,000 as a result of state land use regulations that restrict the use of the property.

Without a formal certified appraisal based on the value of the property divided into additional lots or other explanation, it is not possible to substantiate the specific dollar amount the claimant demands for compensation. Nevertheless, based on the submitted information, including the comparative market analysis, 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 laws identified in section V.2 of this report took effect after Reed Bruegman first acquired an interest in the property on July 24, 1973. As a result, these laws are not exempt under subsection 3(E) of Measure 37.

While not directly raised by the claimant, the department notes that ORS 215.730 and OAR 660, division 6, include standards for siting dwellings in forest zones. These laws include fire protection standards for dwellings and for surrounding Forest Lands. Section 3 (B) of Measure 37 specifically exempts regulations “restricting or prohibiting activities for the protection of public health and safety, such as fire and building codes...” The department finds that siting standards for dwellings in forest zones in ORS 215.730 and in Goal 4 and its implementing rules (OAR 660, division 6) are exempt under subsection (3)(B) of Measure 37.

#### **Conclusions**

Without a specific development proposal for the property, it is not possible for the department to determine what laws may apply to a particular use of the property, or whether those laws may fall under one or more of the exemptions under Measure 37. It does appear that the general statutory, goal and rule restrictions on residential development and use of forest land apply to the claimant’s use of the property, and for the most part these laws are not exempt under subsection 3(E) of Measure 37. Provisions of ORS 215 in effect when the claimant acquired the property in 1973 are exempt under subsection 3(E) of the measure 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 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 the 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. 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. The claimant 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 his 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, 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 division of the subject property into additional parcels or lots, and the use of the property for residential purposes. The claimant cannot create the desired additional lots out of the subject property, and sell or develop those lots for residential use. The laws enforced by the Commission or department reduce the fair market value of the property to some extent. The claim asserts this amount to be \$685,000. However, because the claim does not provide a specific explanation for how the specified restrictions reduce the fair market value of the property, a specific amount of compensation cannot be determined. Nevertheless, based on the record for this claim, the department acknowledges that the laws on which the claim is based likely 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 land use regulations to allow Mr. Bruegman to use the subject property for a use allowed at the time he acquired his present interest in the property, on April 14, 2000.

### **Conclusions**

Based on the record, the department recommends that the claim be approved, subject to the following terms:

1. In lieu of compensation, the State of Oregon will not apply the following laws to Mr. Bruegman's use of the property to allow him to divide his property into lots or parcels and to place a single-family dwelling on each lot or parcel created: the applicable provisions of Statewide Planning Goal 4 (Forest Lands), ORS 215.705 to 215.755 and 215.780, and OAR 660, division 6 (including OAR 660-006-0027(1)(a)(A) and OAR 660-006-0027(1)(d)(B)) that took effect after April 14, 2000. These land use regulations will not apply to Mr. Bruegman's use of the property only to the extent necessary to allow the claimant a use permitted at the time he acquired the property on April 14, 2000.

2. The action by the State of Oregon provides the state's authorization to the claimant to use his property subject to the standards in effect on April 14, 2000. On that date, the property was subject to applicable provisions of Statewide Planning Goal 4, ORS 215, and OAR 660, division 6, then in effect, including OAR 660-006-0026 and 0027 as they existed on that date. The department acknowledges that the relief recommended in this report will not allow the claimant a use of the subject property set forth in the claim.

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 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.