

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

OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT

Final Staff Report and Recommendation

August 31, 2005

STATE CLAIM NUMBER: M120084

NAME OF CLAIMANTS: Roy D. and Kristi L. Moorhouse

MAILING ADDRESS: 13963 South Vick Road
Molalla, Oregon 97038

OTHER CONTACT INFORMATION: Wallace W. Lien, PC
1775 32nd Place NE, Suite A
Salem Oregon 97303-1674

PROPERTY IDENTIFICATION: Township 5S, Range 2E, Section 6
Tax Lot 2200
Clackamas County

DATE RECEIVED BY DAS: March 9, 2005

180-DAY DEADLINE: September 9, 2005

I. CLAIM

The claimants, Roy D. and Kristi L. Moorhouse, seek compensation in the amount of \$14,445,484 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 partition their 105.77-acre property into twenty-six one-acre parcels, all with dwellings. The property is located near Molalla in Clackamas County, Oregon. (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 valid. Department staff recommends, in lieu of just 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 their property into one-acre parcels and to develop each parcel with a residential dwelling: Statewide Planning Goal 3 (Agricultural Lands), Goal 14 (Urbanization), ORS 215.263, 215.284 and 215.780, and applicable provisions of OAR

660, division 33, enacted after September 19, 2001. These laws will not apply to the claimants only to the extent necessary to allow Roy D. and Kristi L. Moorhouse a use of the subject property permitted at the time they acquired it on September 19, 2001. The department acknowledges that the relief recommended in this report will not allow the claimants to use their property in the manner set forth in their claim. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS RECEIVED

On March 17, 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, one written comment, evidence or information was received in response to the 10-day notice.

The comments do not address whether the claim meets the criteria for relief (compensation or waiver) under Measure 37. Comments concerning the effects a use of the property may have on surrounding areas generally are not something that the department is able to consider in determining whether to waive a state law. If funds do become available to pay compensation, such effects may become relevant in determining which claims to pay compensation. (See the comment letter 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 March 9, 2005, for processing under OAR 125, division 145. The claim identifies Clackamas County's Exclusive Farm Use (EFU) zoning and state laws 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 regulation 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 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 Moorhouse family originally acquired interest in the subject property on March 19, 1971, by Warranty Deed to Richard and Vera Moorhouse. On May 10, 1994, the property was transferred to the claimants, Roy D. and Kristi L. Moorhouse, by Bargain and Sale Deed. On October 1, 2000, the property was transferred to R. D. Moorhouse LLC by Bargain and Sale Deed. On September 19, 2001, the property was transferred back to the claimants, Roy D. and Kristi L. Moorhouse by Quitclaim Deed. The claim includes a current Clackamas County Tax Statement listing the current owner as Roy D. Moorhouse.

Conclusions

The claimants, Roy D. and Kristi L. Moorhouse are “owners” of the subject property as that term is defined in Section 11 (C) of Ballot Measure 37. They acquired their current interest in the property on September 19, 2001. Richard Moorhouse, Vera Moorhouse and R.D. Moorhouse LLC are all family members as that term is defined in Section 11 (A) of Ballot Measure 37. Family members first acquired the property on March 19, 1971.

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 of Fact

The claim states:

“When claimants’ family purchased the property it had no zoning designation, and no restrictions were in place that affected the use of the subject property. Subsequent to their purchase of the subject property, the state and county zoned it EFU. This

significantly restricted claimants' ability to use the subject property by prohibiting residential development."

The claim is based, in part, on Clackamas 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 be zoned EFU pursuant to ORS 215.

Current land use regulations, particularly ORS 215.263, 215.284, 215.780 and OAR 660, division 33, as applied by Goal 3, do not allow the subject property to be divided into parcels of 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 interprets the statutory standard for a primary dwelling in an EFU zone under ORS 215.283(1)(f).

OAR 660-033-0130(4) (applicable to non-farm dwellings) became effective on August 7, 1993, and was amended to comply with ORS 215.284(4) on March 1, 1994. Subsequent amendments to comply with HB 3326, (Chapter 704, Oregon Laws 2001, and effective January 1, 2002) were adopted by the Commission effective May 22, 2002. (See citations of administrative rule history for OAR 660-033-0100, 0130 and 0135.)

Statewide Planning Goal 14 (Urbanization) generally requires that land outside of urban growth boundaries be zoned for rural uses. Goal 14 became effective on January 25, 1975.

The claimants' family acquired the subject property on March 19, 1971. At that time, with the exception of applicable provisions of ORS 215 adopted in 1963, no state laws restricted the use of the subject property.

Conclusions

Minimum lot size and dwelling standards established Statewide Planning Goal 3, amendments to ORS 215, and OAR 660, division 33, adopted since the claimants' family acquired the property in 1971, do not allow the division of the property into parcels less than 80-acres in size or allow the approval of dwellings as may have been possible in 1971. The County's EFU zone is based on the standards required by Goal 3, ORS 215 and OAR 660, division 33. Land use laws adopted since 1971 restrict the use of the property from what was allowed when the property was acquired by the claimants' family member in 1971.

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 the 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.

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 \$14,445,484 as a result of land use laws enacted after the family acquired the property in 1971. The claimants have provided information including an appraiser’s estimate regarding the value of the property based on what is allowed under current land use regulations as compared with the assumed value if developed into twenty-six (26) 1-acre residential parcels.

Conclusions

As explained in section V.(1) of this report, Roy D. and Kristi L. Moorhouse are the current owners of the subject property as of September 19, 2001. The subject property was acquired by family members on March 19, 1971. Thus, under Ballot Measure 37, Roy D. and Kristi L. Moorhouse are 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’ family acquired the property restrict division of the subject property. The claim asserts the reduction in value due to the restrictions to be \$14,445,484 and has provided an appraisal. Although it is not possible to substantiate the specific dollar amount the claimants demand for compensation, 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 EFU zone and the related provisions of state law that have restricted use of the property and reduced its fair market value. These are Statewide Planning Goal 3, (Agricultural Lands), and applicable provisions of ORS 215 and OAR 660, division 33. The specific state land use regulations upon which the claim is based were enacted after the claimants' family acquired the property in 1971, and do restrict the use of the property in a manner that likely reduces its fair market value. With the exception of provisions of ORS 215 in effect when the claimants acquired the property, none of the laws identified in the claim are exempt under Section 3(E) of Ballot Measure 37, which exempts laws enacted prior to the acquisition of the property by the claimants' family.

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 farm land apply to the claimants' use of the property, and for the most part these laws are not exempt under section 3(E) of Measure 37.

Provisions of ORS 215 in effect when the claimants' family acquired the property in 1971 are exempt under section 3 (E) of the measure and will continue to apply to the property. There may be other laws that 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 the 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. The 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 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 findings and conclusions in this report, laws enforced by the Commission or the department, prohibit the division of the subject property into twenty-six (26) 1-acre parcels with dwellings on each parcel. The claim asserts these restrictions reduce the fair market value of the subject property by \$14,445,484. Although the claim provides an explanation about how the specified restrictions reduce the fair market value of the property, based on the information submitted 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 Roy D. and Kristi L. Moorhouse to use the subject property for a use permitted at the time they acquired the property on September 19, 2001.

When the claimants acquired the property on September 19, 2001, it was subject to the land use laws currently in effect, as described above in Section V.(2) of this report.

Conclusions

Based on the current 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 Roy D. and Kristi L. Moorhouse's division of their property or to the establishment of a single family dwelling on each lot or parcel created: applicable provisions of Statewide Planning Goal 3 and Goal 14, ORS 215.263, 215.780 and 215.284, and OAR 660, division 33, enacted after September 19, 2001. These land use regulations will not apply to Roy D. and Kristi L. Moorhouses' use of their property only to the extent necessary to allow the claimants a use permitted at the time they acquired the property on September 19, 2001. The department acknowledges that the relief recommended in this report will not allow the claimant to use their property in the manner set forth in their claim.
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 September 19, 2001. On that date, the property was subject to Statewide Goal 3 and Goal 14 and applicable provisions of ORS 215 and OAR 660, division 33.
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 215.402 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 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 28, 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.