

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

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

September 2, 2005

STATE CLAIM NUMBER: M120163

NAME OF CLAIMANTS: Charles and Linda Stricker

MAILING ADDRESS: 13238 South Spangler Road
Oregon City, Oregon 97045

OTHER CONTACT INFORMATION: Mary Erwert
24275 South Highway 213
Mulino, Oregon 97042

IDENTIFICATION OF PROPERTY: Township 4S, Range 2E, Sections 5 and 5C
Tax Lots 700, 1200, 1401 and 1402
Clackamas County

DATE RECEIVED BY DAS: March 15, 2005

180-DAY DEADLINE: September 11, 2005

I. CLAIM

The claimants, Charles and Linda Stricker, seek compensation in the amount of \$1,621,042 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 subdivide their approximately 76.9-acre property into ten five-acre parcels, two ten-acre parcels, and two 3.2-acre parcels, and to develop each resulting parcel with a dwelling. The property is located at 13238 South Spangler Road, in the Beaver Creek area of Clackamas 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 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 approximately 76.9-acre property and to develop each resulting parcel with a dwelling:

Statewide Planning Goal 3, ORS 215.263, 215.283, 215.284 and 215.780, and applicable provisions of OAR 660, division 33. These laws will not apply to the claimants only to the extent necessary to allow Mr. and Ms. Stricker a use of Parcel 1 of subject property permitted at the time they acquired it on April 23, 1946, and to allow Mr. Stricker a use of Parcel 2, and Mrs. Stricker a use of Parcel 3 permitted at the time they acquired those parcels on November 18, 1963. (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

This claim was submitted to DAS on March 15, 2005, for processing under OAR 125, division 145. The claim identifies ORS 215 and OAR 660, divisions 6 and 33 as state laws and rules 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 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 claimants, Charles and Linda Stricker, acquired a portion of the subject property, Tax Lots 700 and 1200 (now Parcel 1) on April 23, 1946. They acquired the remaining portion, Tax Lots 1401 (now Parcel 2) and 1402 (now Parcel 3), on November 18, 1963. On March 12, 1979, they conveyed Parcel 2 to Charles Stricker individually, and Parcel 3 to Linda Stricker individually. (See deeds in department’s claim file.)

The claimants have included a January 20, 2005 Monetary Encumbrance Report issued by a Title Company, and copies of Clackamas County Tax Assessor’s Statements, dated February 22, 2005, which confirm that the Strickers are the current owners of Parcel 1, that Charles Stricker is the current owner of Parcel 2, and that Linda Stricker is the current owner of Parcel 3.

Conclusions

The claimants, Charles and Linda Stricker are “owners” of the subject property as that term is defined in Section 11(C) of Ballot Measure 37. They have jointly owned Parcel 1 since April 23, 1946. Charles Stricker has owned Parcel 2 and Linda Stricker has owned Parcel 3 since November 18, 1963.

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 lists several state regulations that restrict the use of the subject properties, including ORS 215.263, 215.283, 215.705 and 215.780, OAR 660-006-0026 and -0027, and OAR 660-033-010 and -130. The claimants state that because of the current zoning, which is based on these regulations, they cannot divide their 76.9-acres into fourteen parcels of varying size.

The subject property is currently zoned Agriculture/Forest (AG/F), which is a mixed farm and forest zone adopted by Clackamas County to comply with Statewide Planning Goal 4 (Forest Lands) and the implementing provisions of OAR 660-006-0050 (effective February 5, 1990) and subsequently amended on March 1, 1994 to comply with the provisions of HB 3661 (Chapter 792, Oregon Laws 1993.)

Under OAR 660-006-0050, all the uses permitted under Statewide Goals 3 and 4 are allowed, except that for dwellings, either the Goal 3 or Goal 4 standards are applicable, based on the predominant use of the tract on January 1, 1993. The claim includes a detailed narrative explaining that the claimants have actively farmed the property since they acquired it. Based on this information, it appears that farming was the predominant use of the property on January 1, 1993. Accordingly, the Goal 3 standards in OAR 660 division 33 pertaining to dwellings apply to the subject property.

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 Exclusive Farm Used (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 660 033-0110, 0130 and 0135).

For land divisions, OAR 660-006-0055 authorizes the creation of new parcels based on the standards applicable to farm or forest zones, which implement the 80-acre minimum lot size specified in ORS 215.780. Under OAR 660-006-0055, the claimants' property cannot be divided into parcels smaller than 80 acres, as was possible when the claimants acquired the property in 1946 and 1963.

The subject property was not zoned when the claimants acquired it in 1946 and 1963.

Conclusions

Lot size and dwelling standards established by Statewide Planning Goals 3 and 4, ORS 215, and OAR 660, divisions 6 and 33, adopted since the claimants acquired the properties in 1946 and 1963, do not allow the division of the property into parcels smaller than 80-acres or allow the approval of dwellings. Land use laws adopted since 1946 and 1963 restrict the use of the property from what could have been done when the claimants acquired it.

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 \$1,621,042 as a result of land use laws enacted after they acquired the property in 1946 and 1963.

This estimate is based on comparative sales information regarding what is alleged to be the current market value of rural residential lots. This data is comprised of real estate advertisements, County Tax Assessor's sales sheets, and recent sale prices for 20-acre, five-acre and 3.2-acres rural parcels. After adjusting for market value under current regulations, the claimants estimate that current zoning regulations have reduced the value of the property by \$1,621,042.

There is no certified appraisal to substantiate the claimed values either before or with state land use regulations.

Conclusions

As explained in Section V.1 of this report, Charles and Linda Stricker are current owners of Parcel 1 as of April 23, 1946; and Charles Stricker is a current owner of Parcel 2 and Linda Stricker is a current owner of Parcel 3, as of November 18, 1963. Thus, under Ballot Measure 37, the Strickers 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 acquired the property restrict division of the subject property. The claim asserts the reduction in value due to the restrictions to be \$1,621,042. However, without an appraisal 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 Clackamas County's AG/F zone and the related provisions of state law that have restricted use of the property and reduced its fair market value. These include Statewide Planning Goals 3 (Agricultural Lands), Goal 4 (Forest Lands), and their respective applicable provisions of ORS 215 and OAR 660, divisions 6 and 33. All of these identified land use regulations were enacted after the claimants acquired the property in 1946 and 1963. None of the laws identified in the claim are exempt under Section 3(E) of Ballot Measure 37, which exempts laws enacted after the claimants or family members acquired the property.

Conclusions

Without a specific development proposal for the property, it is not possible for the department to determine precisely what laws may apply to the contemplated use of this property, or whether those laws may fall under one or more of the exemptions under Measure 37. None of the laws identified in the claim are exempt under subsection 3(E) of 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 claimants' use of 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 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 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 14 parcels with dwellings on them. The claim asserts these restrictions reduce the fair market value of the subject property by \$1,621,042. Although the claim provides an explanation about how the specified restrictions reduce the fair market value of the property, no appraisal was submitted and it is not possible to substantiate the specific dollar amount the claimants demand for compensation. 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 just compensation, Measure 37 authorizes the department to modify, remove, or not apply all or parts of certain state land use regulations to allow the Strickers to use Parcel 1 for a use permitted at the time they acquired it on April 23, 1946, and to allow Mr. Stricker to use Parcel 2 and Mrs. Stricker to use Parcel 3 for a use permitted at the time they acquired those parcels on November 18, 1963.

Conclusions

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 the Strickers' division of their 76.9-acre property into ten, five-acre parcels, two, ten-acre parcels, and two, 3.2-acre parcels, or to the establishment of a single family dwelling on each parcel created: Statewide Planning Goals 3 and 4, ORS 215.263, 215.283, 215.284 and 215.780; and applicable provisions of OAR 660, divisions 6 and 33, enacted after the claimants acquired the property. These land use regulations will not apply to the Strickers' use of Parcel 1 only to the extent necessary to allow the claimants a use permitted at the time they acquired that parcel on April 23, 1946; and will not apply to Mr. Stricker's use of Parcel 2 and Mrs. Stricker's use of Parcel 3 only to the extent necessary to allow them a use permitted at the time they acquired those parcels on November 18, 1963.
2. The action by the State of Oregon provides the state's authorization to the claimants to use Parcel 1 subject to the standards in effect on April 23, 1946; and for Mr. Stricker to use Parcel 2 and Mrs. Stricker to use Parcel 3, subject to the standards in effect on November 18, 1963.
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 August 10, 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.