

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

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

September 13, 2005

**STATE CLAIM NUMBER:** M120217

**NAME OF CLAIMANT:** Leona Waldow

**MAILING ADDRESS:** 306 SE Eighth Street  
Madras, Oregon 97741

**PROPERTY IDENTIFICATION:** Township 10S, Range 14E, Section 5,  
Tax Lot 100  
Jefferson County

**OTHER CONTACT INFORMATION:** Bob Harris  
380 SW Fifth, PMB 122  
Madras, Oregon 97741

**DATE RECEIVED BY DAS:** March 18, 2005

**180-DAY DEADLINE:** September 14, 2005

**I. SUMMARY OF CLAIM**

The claimant, Leona Waldow, seeks compensation in the amount of \$2,000,000 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 her 152.08-acre property into five-acre parcels and to develop a dwelling on each parcel. The property is located at 6701 NE Quale Road near Madras, in Jefferson 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. In lieu of compensation, the department will not apply the following state laws to Ms. Waldow's division of the approximate 152-acre property into five-acre parcels and to the development of a dwelling on each parcel: Statewide Planning Goal 3 (Agricultural Lands), ORS 215.263,

215.284 and 215.780, ORS 92 and applicable provisions of OAR 660, division 33. These laws will not apply to Ms. Waldow only to the extent necessary to allow her a use of the property permitted at the time she acquired it in 1952. (See the complete recommendation in Section VI. of this report.)

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

#### **Comments Received**

On March 25, 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.

DAS did receive written comment from the claimant representative, Mr. Bob Harris on August 17, 2005. Mr. Harris requested that ORS 92 also be included in the review as an omission in the original submittal.

### **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 18, 2005, for processing under OAR 125, division 145. The claim identifies “all zoning and other ordinances that have been enacted since 1952 that effects the value of this property” as the laws that are 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.

## **Conclusions**

The claim has been submitted within two years of December 2, 2004, the effective date of Measure 37, based on land use regulations adopted prior to December 2, 2004, and is therefore timely.

## **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 claimant, Leona Waldow, acquired the subject property on February 27, 1952, as reflected by a Warranty Deed included with the claim. A copy of a Title Report dated May 18, 2001, and Jefferson County Tax Records dated October 2, 2000 indicate that Leona Waldow is the current owner of the subject property.

### **Conclusions**

The claimant, Leona Waldow, is an “owner” of the subject property, as that term is defined by Section 11(C) of Ballot Measure 37, as of February 27, 1952.

### **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 claim states that the property is currently zoned Agriculture One (A-1), and that “the zoning [in 1952] was none meaning there was no restriction on the size of a buildable lot or other building.” The claimant requests that “all zoning and other ordinances that have been enacted since 1952 that effects [sic] the value of this property,” including provisions of ORS 92, be removed. Attached to the claim is a proposed subdivision platting of claimant’s property, showing it to be divided into 29 approximately five-acre parcels. Based upon the inclusion of the subdivision plat, the department has inferred that the claimant desires to subdivide her property as indicated in the proposed plat.

ORS 92 generally prohibits the sale of property unless it is a lawfully-created lot or parcel and sets the technical requirements for partition plats.

The claim references Jefferson County's current Agriculture One (A-1) zone and the applicable provisions of state law that require such zoning. The claimant's property is zoned A-1 as required by Goal 3 in accord with OAR 660, division 33 and ORS 215 because the claimant's 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 Agriculture pursuant to ORS 215.

Current land use regulations, ORS 215.263, 215.284 and 215.780 and OAR 660, division 33 as applied by Goal 3, do not allow the subject property to be divided into parcels less than 80-acres, and establish standards for allowing the existing or any proposed parcel 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 Exclusive Farm Use (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 660-033-00100, 0130 and 0135.)

The claimant acquired the subject property on February 27, 1952, prior to the establishment of the Statewide Planning Goals and their implementing statutes and rules, and prior to the County's zoning of the property.

## **Conclusions**

The zoning requirements, minimum lot size and dwelling standards established by Statewide Planning Goal 3 (Agricultural Lands) and provisions applicable to land zoned for agricultural use in ORS 215 and OAR 660, division 33 were all enacted after Leona Waldow acquired the subject property in February 1952, and do not allow the division of the property, thereby restricting the use of the property relative to the uses allowed when the property was acquired. Provisions of ORS 92 enacted after Ms. Waldow's acquisition of the property may also restrict the use of the property relative to when it was acquired in 1952.

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 land use regulation 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 includes an informal estimate of \$2,000,000 as the reduction in the property's fair market value, due to current regulations. This amount is based on the claimant's estimate of the market value.

The claim also includes a Title Insurance Policy Report estimating the current insured value of the subject property with improvements to be approximately \$375,000. The claimant estimates the current market value of the property to be \$300,000.

#### **Conclusions**

As explained in section V.(1) of this report, the current owner is Leona Waldow who acquired the property on February 27, 1952. Under Ballot Measure 37, Leona Waldow is due compensation for land use regulations that restrict the use of the subject property in a manner that reduces its fair market value.

Without an appraisal based on the value of five-acre lots or other documentation, it is not possible to substantiate the specific dollar amount the claimant demands 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 includes a general reference to any state land use regulations that restrict the use of the property relative to what would have been allowed in 1952 when the property was acquired by Leona Waldow. These provisions include Statewide Planning Goal 3 (Agricultural Lands), and applicable provisions of ORS 215, ORS 92 and OAR 660, division 33, which Jefferson County

has implemented through its Agriculture One (A-1) zone. None of these identified laws is exempt under Section 3(E) of Ballot Measure 37, which exempts laws in effect when the claimant acquired the property.

### **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 the use and development of farm land apply to the claimant's use of the property, and for the most part these laws are not exempt under section 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 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 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 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 she has provided to the department in her claim, the greater the possibility that there may be additional laws that will later be determined to continue to apply to her 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 in order to allow the present owner to carry out a use of the property permitted at the time the current 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 set forth in this report, laws enforced by the Commission or the department restrict the division of the subject property into parcels or lots. The claimant cannot create the desired five-acre lots out of the subject property because laws enacted after the claimant acquired the property prohibit lot sizes that small. The claim asserts the laws enforced

by the Commission or department reduce the fair market value of the subject property by \$2,000,000. However, because the claim does not provide an appraisal or other specific documentation to establish 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 all or parts of certain land use regulations to allow Leona Waldow to use the subject property for a use permitted at the time she acquired the property on February 27, 1952.

### **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 Ms. Waldow's division of the 152.08-acre property into 29 parcels of approximately five-acres each and development of a dwelling on each parcel: applicable provisions of Statewide Planning Goals 3, ORS 215.263, 215.284 and 215.780, ORS 92 and OAR 660, division 33. These land use regulations will not apply to Ms. Waldow's use of her property only to the extent necessary to allow the claimant a use permitted at the time she acquired the property on February 27, 1952.
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 February 27, 1952.
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 August 11, 2005. OAR 125-145-0100(3), provided an opportunity for the claimants or the claimants' 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 amended final report.