

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

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

September 9, 2005

STATE CLAIM NUMBER: M120219

NAME OF CLAIMANT: Harold MacLaughlan

MAILING ADDRESS: 14674 Sunnyside Road PMB #115
Clackamas, OR 97015

PROPERTY IDENTIFICATION: Township 2S, Range 3E, Section 7A,
Tax Lot 602
Clackamas County

OTHER INTEREST IN PROPERTY: Rebeca MacLaughlan
14674 Sunnyside Road PMB #115
Clackamas, OR 97015

DATE RECEIVED BY DAS: March 18, 2005

180-DAY DEADLINE: September 14, 2005

I. SUMMARY OF CLAIM

The claimant, Harold MacLaughlan, seeks compensation in the amount of approximately \$700,000-\$800,000 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 subdivide the 5.7-acre property into one-acre lots and to develop a dwelling on each lot. The property is located at 14820 172nd Avenue, near the City of Damascus, in Clackamas County.¹ (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 not valid because neither the Land Conservation and Development Commission nor the department have

¹ The subject property is proposed for annexation into the City of Damascus. An election on the annexation of the property, along with other properties in the area, will be held on September 20, 2005. Materials concerning the proposed annexation may be viewed at: <http://www.ci.damascus.or.us/References/Webmaterialonannex.pdf>

enforced laws that restrict the claimant's use of 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 purchased the property in 1974. (See 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.

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 indirectly identifies Goal 14 and OAR 660-004-0040, as 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 regulations 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 claimant, Harold MacLaughlan, acquired an interest in the subject property by contract on June 17, 1974, as reflected by a 1995 Quit Claim Deed included with the claim and materials from the County assessor’s office. A copy of a preliminary Title Report dated February 9, 2005, indicates that Harold MacLaughlan is a current owner of the subject property.

Rebeca MacLaughlan is the wife of Harold MacLaughlan. She is indicated as an “other with interest in the property” and was a signatory to the 1974 contract. However, she is not identified as a claimant on the M37 claim form, nor did she sign the form as such.

Conclusions

The claimant, Harold MacLaughlan, is an “owner” of the subject property, as that term is defined by Section 11(C) of Ballot Measure 37, as of June 17, 1974.

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 “zoning changes to RRFF5 reduced building sites from six to one” for the subject 5.7-acre property.

The property is currently zoned with a rural residential farm/forest (RRFF-5) designation under the Clackamas County Comprehensive Plan. The RRFF-5 zone requires a minimum of five-acres for the creation of new lots or parcels (Clackamas County Zoning Ordinance, Section 309.08.B). The subject property is 5.7-acres and cannot be further divided under the RRFF-5 zone.

As a result of a 1986 Supreme Court decision², in 2000 the Commission amended Statewide Planning Goal 14 (Urbanization) and adopted OAR 660-004-0040, which became effective on October 4, 2000. The rule provides that after October 4, 2000, a County minimum lot size requirement in Rural Residential (RR) zone outside of an urban growth boundary (UGB) may not allow a smaller minimum lot size without taking an exception to Goal 14 (OAR 660-004-0040(6)). This rule does not apply to the subject property, however, because the property is located within the Portland metropolitan area urban growth boundary.

When Mr. MacLaughlan acquired the property in June, 1974, it was after the adoption of SB 100 (Chapter 80, Oregon Laws 1973, effective October 5, 1973) but before the adoption of the Statewide Planning Goals effective January 25, 1975. As such, ORS 197.175(1) and 197.280 (1973 edition) required, in addition to any local plan or zoning provisions, the application of the interim land use goals set forth in ORS 215.515 (1973 edition) to the preparation, revision, adoption or implementation of any comprehensive plan prior to the effective date of the Statewide Planning Goals (see *Petersen v. Klamath Falls*, 279 Or 249 (1977)).

No information has been provided showing that the one-acre development described by the claimant complies with the Interim Planning Goals set forth in ORS 215.515 (1973 edition) in effect at the time the claimant acquired the property in 1974. As a result, in addition to there being no state law that prevents division of the property into smaller lots, it is also not clear that this use was allowed at the time the claimant acquired the property.

Statewide Planning Goal 14 generally requires that land inside of urban growth boundaries be made available for urban uses. Goal 14 became effective on January 25, 1975. By requiring that the property be made available for urban use, Goal 14 promotes the use of the property, and increases its fair market value.

Conclusions

No state law prevents or restricts the ability of the claimant to divide the property into smaller lots or parcels. OAR 660-004-0040 does not apply to the property, and Goal 14 promotes the development of the property for urban uses. No state land use regulation has been identified that restricts the use described in the claim. Since the claimant acquired the property in 1974, it has been brought into the UGB of Portland's Metropolitan area. It is now eligible for division at urban densities.

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 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.

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

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 \$700,000-\$800,000 as the property’s fair market value, in the absence of current regulations. This estimate is based on a sample of comparable lots in the area provided by a real estate firm.

Since the claimant acquired the property in 1974, the UGB for the Portland Metropolitan area was expanded in 2002 to include the subject property. Through the plan amendment process, the property could be developed to urban densities, which would allow division of the subject property into lots of less than one-acre in size. Now that the property is within the UGB, state land use laws applicable to the property require that it be made available for urban uses, enhancing, rather than restricting the potential uses of the property, and consequently, its value.

Conclusions

As explained in Section V. (1) of this report, a current owner of the property is Harold MacLaughlan who acquired it on June 17, 1974. Under Ballot Measure 37, Harold MacLaughlan is not due compensation because no state land use regulation restricts the use of the subject property described in the claim in a manner that reduces its fair market value.

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

As no land use regulations have been identified that restrict the use of the property described in the claim, the department is not analyzing whether any exemptions apply. In the event a new claim is filed, or it is determined that Statewide Planning Goal 14 or its implementing rules do restrict the use of the property, the department reserves the right to determine whether any of the exemptions provided under Measure 37 apply to this claim.

Conclusions

No exemptions have been analyzed at this time as no law has been identified that restricts the claimant's use of the property.

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 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 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 he has provided to the department in his 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 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, neither the Commission nor the department have enforced laws that 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 acquired the property in 1974.

Conclusion

Based on the record, the claimant, Harold MacLaughlan, has not established that he is entitled to relief under Section 1 of Measure 37. Therefore, the department recommends that this claim be denied.

VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on August 23, 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 final report.