

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

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

September 16, 2005

STATE CLAIM NUMBER: M120292

NAME OF CLAIMANT: Mary Parker

MAILING ADDRESS: 39525 SE Paul Moore Road
Sandy, Oregon 97055

PROPERTY IDENTIFICATION: Township 2S, Range 4E, Section 25,
Tax Lot 400, Clackamas County

DATE RECEIVED BY DAS: March 24, 2005

180-DAY DEADLINE: September 20, 2005

I. SUMMARY OF CLAIM

The claimant, Mary Parker, seeks compensation in the amount of \$1,500,000 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 and develop the 24.8-acre property for residential use. The property is located at 39525 SE Paul Moore Road near Sandy, in 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 the claim is valid. Department staff recommends that, in lieu of compensation, the requirements of the following state laws enforced by the Land Conservation and Development Commission (the Commission) or the department, not apply to Mary Parker's division and residential development of the 24.8-acre property: Statewide Planning Goals 4 (Forest Lands) and 14 (Urbanization), ORS 215.700- 215.780, and applicable provisions of OAR 660, division 6. These laws will not apply to the claimant only to the extent necessary to allow Mary Parker a use of the property permitted at the time she acquired it in 1950. (See the complete recommendation in Section VI of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On April 11, 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 24, 2005, for processing under OAR 125, division 145. The claim generally is based on laws that the claimant states render the property “unbuildable” and “undividable.”

Conclusions

The claim has been submitted within two years of December 2, 2004, the effective date of Measure 37, 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, Mary Parker, acquired the subject property on May 17, 1950, as evidenced by a Warranty Deed included with the claim. A copy of the Clackamas County Tax Assessor card for the property indicates that Mary Parker and James Parker, Trustees of the Parker Living Trust, are the current owners of the property. The trust was created by Mary and James Parker on July 11, 1994, as a revocable living trust. James Parker passed away on April 10, 2002. Transfer to a revocable living trust does not constitute a change in ownership for purposes of this Measure 37 claim.

Conclusions

Ms. Mary Parker is an “owner” of the subject property, as that term is defined by Section 11(C) of Ballot Measure 37, as of May 17, 1950.

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 “unbuildable” and “undividable.”

The claim appears to be based on Clackamas County’s current Timber District (TBR), a forest zone, and the applicable provisions of state law that require such zoning. The claimant’s property is zoned TBR as required by Statewide Planning Goal 4 in accord with OAR 660, division 6, and ORS 215 because the county has determined the claimant’s property to be “Forest Land” as defined by Goal 4. Goal 4 became effective on January 25, 1975, and required that Forest Lands, as defined by the Goal, be zoned pursuant to the Goal.

Current land use regulations, particularly ORS 215.700 through 215.780 and OAR 660, division 6, as applied by Goal 4, 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 parcels to have dwellings on them.

ORS 215.780 established an 80-acre minimum size for the creation of new lots or parcels in forest zones and became effective November 4, 1993. (Chapter 792, Oregon Laws 1993.) ORS 215.700-215.755 (2003 edition) establishes standards for the creation of new parcels for non-forest uses and dwellings allowed in a forest zone.

Statewide Planning Goal 14 generally requires that land outside of urban growth boundaries be used for rural uses and also became effective on January 25, 1975.

When Mary Parker purchased the property in 1950, there were no state land use laws that restricted the use of the property.

Conclusions

The zoning requirements, minimum lot size and dwelling standards established by Statewide Planning Goal 4 (Forest Lands) (OAR 660-015-0000(4)) and provisions applicable to land zoned for Forest Use in ORS 215 and OAR 660, division 6, were all enacted after Mary Parker acquired the subject property in 1950, and do not allow the division or residential development of the property, thereby restricting the use of the property relative to the uses allowed when she acquired it.

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 \$1,500,000 as the reduction in the property's fair market value, as a result of regulations that restrict the use of the property. This estimate is based on the "fair market value for [properties] with homes in area." No information regarding the claimant's desired use or other materials are provided with this claim to substantiate this amount.

Conclusions

As explained in Section V.(1) of this report, the current owner is Mary Parker, who acquired the property on May 17, 1950. Under Ballot Measure 37, Mary Parker 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 or other documentation, and without information regarding the claimant's desired use of the property, 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 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 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 laws that render the claimant's property "undividable" and "unbuildable." Based on the current zoning of the property, these laws include Statewide Planning Goal 4 (Forest Lands), and applicable provisions of ORS 215 and OAR 660 division 6, which the County has implemented through its TBR zone. None of these laws is exempt under Section 3(E) of Measure 37, which exempts laws in effect when the claimant acquired the property.

While not 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 provisions 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 these laws generally are not exempt under Section 3(E) of Measure 37. Siting standards required under ORS 215.730 are exempt under Section 3(B) of the Measure.

The 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. 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 and residential development of the subject property. The claim asserts the laws enforced by the Commission or department reduce the fair market value of the subject property by \$1,500,000. However, because the claim does not provide an appraisal or other specific explanation for how the specified restrictions reduce the fair market value of the property, and without information regarding the claimant's desired use 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 Mary Parker to use the subject property for a use permitted at the time she acquired the property on May 17, 1950.

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 Mary Parker's division and residential development of her 24.8-acre property: applicable provisions of Statewide Planning Goals 4 and 14, ORS 215.700- 215.780, and OAR 660, division 6. These land use regulations will not apply to Ms. Parker'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 May 17, 1950.
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 May 17, 1950.

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 24, 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.