

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

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

September 15, 2005

STATE CLAIM NUMBER: M120338

NAMES OF CLAIMANTS: Lyle and Sheri Hallgren

MAILING ADDRESS: 30845 S. Wall Street
Colton, Oregon 97017

PROPERTY IDENTIFICATION: Township 5S, Range 3E, Section 4
Tax Lots 2601 and 2605
Clackamas County

DATE RECEIVED BY DAS: March 25, 2005

180-DAY DEADLINE: September 21, 2005

I. SUMMARY OF CLAIM

The claimants, Lyle and Sheri Hallgren, seek compensation in the amount of \$47,771 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 claimants desire compensation or the right to subdivide the 3.63 acre property to create two lots, and to develop a dwelling on both lots.¹ The subject property is located at 30845 S. Wall Street, Colton, 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 the Hallgren's division of the property into two lots, and to the development of a dwelling on each lot: Statewide Planning Goal 14 (Urbanization) and applicable provisions of OAR 660-004-0040. These laws will not apply to the claimants only to the extent necessary to allow Lyle Hallgren a use of the property permitted at the time he acquired it in 1971; and to

¹The claim states that the claimants desire to combine two lots totaling 3.63 acres, then to divide that single parcel into two lots. However, based on a telephone conversation with Jennifer Hughes, Clackamas County Land Use and Planning Department, August 12, 2005, the entire property is currently a single lot of record. The two lots are treated as a single parcel for purposes of this review.

allow Sheri Hallgren a use of the property permitted at the time she acquired it in 1980. (See the complete recommendation in Section VI of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On March 2, 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 25, 2005, for processing under OAR 125, division 145. The claim identifies OAR 660-004-0040(7)(a) as the law that restricts the use of the property as the basis for the claim. Only laws 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

Claimant Lyle Hallgren acquired tax lot 2601 on September 29, 1971, as reflected by a Warranty Deed included with the claim.² On October 21, 1980, claimant Sheri Hallgren acquired an undivided one-half interest in tax lot 2601, as reflected by a Deed creating an estate by the entirety included in the claim. Tax lot 2605 was acquired by the Hallgrens on December 14, 1981 through a lot line adjustment. According to Clackamas County, tax lots 2601 and 2605 constitute a single lot of record.

A copy of a 2004-05 Clackamas County property tax bill shows that the Hallgrens are the current owners of the subject property.

Conclusions

Claimant Lyle Hallgren is an “owner” of the subject property, as that term is defined by Section 11(C) of Ballot Measure 37, as of September 29, 1971. Claimant Sheri Hallgren is an “owner” of the subject property, as that term is defined by Section 11(C) of Ballot Measure 37, as of October 21, 1980. Lyle Hallgren is a “family member” as to Sheri Hallgren as that term is defined by Section 11(A) of Measure 37.

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 claimants’ 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

An attachment to the claim states, “I would like to create a buildable lot by combining tax lot # 2605 (approximately .63 acres) with a portion of tax lot # 2601 (approx. 2/3 acre). RRFF 5 Zoning does not allow this.”³ The claimants also state in the claim that the County zone applied to the properties “does not allow me to split property and have another buildable lot.” The claim also notes that OAR 660-004-0040(7) (a) restricts parcel size to two acres.

² There is a statement in the claim that claimant Lyle Hallgren acquired tax lot 2601 from a family member. There is no evidence presented substantiating when the family member acquired the property, so the analysis in this report does not address prior family ownership.

³ Tax lot 2601 contains approximately three acres.

The property is currently zoned RRFF-5 by the County. The RRFF-5 zone is a rural-residential zone, with a five-acre minimum lot size, with one single-family dwelling permitted per lot or parcel. The zone is in accord with Statewide Planning Goal 14 (Urbanization), which became effective January 25, 1975, and generally required that land outside of urban growth boundaries be used for rural uses.

As a result of a 1986 Oregon Supreme Court decision,⁴ the Commission amended 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 a rural-residential zone may not be amended to allow a smaller minimum lot size without taking an exception to Goal 14 (OAR 660-004-0040(6)). This rule does not allow the subject property to be divided without an exception to Goal 14.

Claimant Lyle Hallgren acquired tax lot 2601 in 1971, before the adoption of the Statewide Planning Goals. It was not zoned by the County at that time, so division and residential development was permitted. The property was zoned RRFF-5 in 1979.⁵

Conclusions

The zoning requirements, minimum lot size and dwelling standards established by OAR 660-004-0040 and Statewide Planning Goal 14 (Urbanization) were enacted after Lyle Hallgren acquired ownership of tax lot 2601 in September 1971. Statewide Planning Goal 14 (Urbanization) and local zoning were in effect when claimant Sheri Hallgren acquired an ownership interest in tax lot 2601 in 1980.

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 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."

⁴ *1000 Friends of Oregon v. LCDC (Curry County)*, 301 Or App 447 (1986).

⁵ According to Clackamas County Order 2005-88 regarding Measure 37 claim File No. ZCO17-04 filed by the claimants with the County.

Findings of Fact

The claim includes an informal estimate of \$47,771 as the reduction in the property's fair market value as a result of current regulations. The claimants' calculations appear to be based on using an assessor's valuations and are not based on an appraisal.

Conclusions

As explained in Section V.(1) of this report, claimant Lyle Hallgren acquired an interest in the property in September 1971. Under Ballot Measure 37, the Hallgrens are due compensation for land use regulations that restrict the use of this portion of the 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 1971 restrict the ability of the claimants to divide the property.

Without an appraisal or other documentation, 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 amendments to Statewide Planning Goal 14 and OAR 660-004-0040, which restrict the use of the property relative to what would have been allowed in 1971 when claimant Lyle Hallgren acquired it. None of these laws are 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 residential development apply to the claimants' use of the property and none of these laws are exempt under Section 3(E) of Measure 37.

Laws in effect when the claimants 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 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 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 3.63-acre subject property into two parcels and the development of a dwelling on each parcel. The claim asserts the laws enforced by the Commission or reduce the fair market value of the subject property by \$47,771. However, because the claim does not provide an appraisal or other 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 have likely 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 Lyle Hallgren to use the subject property for a use permitted at the time he acquired the property on September 29, 1971, and to allow Sheri Hallgren to use the subject property for a use permitted at the time she acquired the property on October 21, 1980.

Lyle Hallgren acquired the subject property before adoption of the statewide planning goals and their implementing statutes and rules. At that time, it was not zoned by the County. When Sheri Hallgren acquired the subject property in 1980, it was subject to, and currently remains subject to, the RRFF-5 by Clackamas County. The current restrictions, based on the 2000 amendments to Goal 14 and the adoption of OAR 660-04-0040, were enacted after both claimants acquired the property.

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 the claimants' division and development of the subject property: applicable provisions of Statewide Planning Goal 14 and OAR 660, division 4. These land use regulations will not apply to Lyle Hallgren's use of the property only to the extent necessary to allow him a use permitted at the time he acquired the property on September 29, 1971; and will not apply to Sheri Hallgren's use of the property only to the extent necessary to allow her a use permitted at the time she acquired the property on October 21, 1980.
2. The action by the State of Oregon provides the state's authorization to claimant Lyle Hallgren to use the property subject to the standards in effect in September, 1971. The action by the State of Oregon provides the state's authorization to Sheri Hallgren to use the subject property subject to the standards in effect in 1980, including the provisions of Goal 14 then in effect.
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 29, 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.