

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

OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT

Final Staff Report and Recommendation

June 3, 2005

STATE CLAIM NUMBER: M118918

NAME OF CLAIMANT: Maralynn Abrams

MAILING ADDRESS: 12477 SW Baker Creek Road
McMinnville, Oregon 97128

IDENTIFICATION OF PROPERTY: Township 4S, Range 4W,
Sections 13 and 18
Tax lot 4513-100, 4418-1000, and
4418-1100, Yamhill County

DATE RECEIVED BY DAS: December 6, 2004

180-DAY DEADLINE: June 4, 2005

I. CLAIM

Maralynn Abrams, the claimant, seeks compensation in the amount of \$20,500,000 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 the property into approximately one acre, more or less, and smaller parcels for residential development and to allow some urban type commercial uses.¹ The claim includes three properties that are described as being located within T4S, R4W, sections 13 & 18, west of Hill Road and south of Baker Creek Road, in Yamhill County, Oregon (near the City of McMinnville). The property is designated

¹ The claimant's qualifying statement filed with the state (DAS) claim form asks for a broad restoration of all rights of land division. However, an attachment to the claim (denial letter from Yamhill County for a local land division request prior to filing the Measure 37 claim) is more specific to one acre or smaller lots and some "commercial style development." The claimant's initial pre-Measure 37 claim letter to Yamhill County requesting a land division is also very specific to one acre or smaller lots and commercial development. The County supplied this letter for the department's file at the department's request. According to information received verbally from Yamhill County, the County claim is also very specific as to the proposed use. The County's staff report for the claimant's Measure 37 claim there (Docket M37-01-04) also refers to residential one-acre, more or less, lots and urban commercial development. This staff report is written to follow the more specific use request because that information is available from the Yamhill County claim and also referred to by the claimant in an attachment to the state claim form.

as Tax Lots 4513-100, 4418-1000, and 4418-1100, by Yamhill County. (See claim.) Together, the properties contain approximately 342 acres of land.

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 certain applicable state laws enacted or enforced by the Land Conservation and Development Commission (the Commission) or the department, specifically Statewide Planning Goal 3 (Agricultural Lands), applicable provisions of ORS 215 and OAR 660, Division 33, not apply to the subject property to the extent necessary to allow Ms. Abrams a use of the property permitted at the time she acquired the property that is the subject of this claim. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On February 10, 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 December 6, 2004 for processing under OAR 125, Division 145. The claim includes a list of land use regulations (see claim) all of which were enacted prior to December 2, 2004, the effective date of Measure 37. (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 claim consists of three properties. The claimant, Maralynn Abrams, acquired full interest in the three properties at the following times: tax lot 4513-100 on December 19, 1952; tax lot 4418-1000 on January 3, 1955; and tax lot 4418-1100 on November 18, 1968, (described as T4S, R4W, sections 13 and 18, in Yamhill County, Oregon). Copies of deeds for each tax lot have been included in the claim. A copy of the Real Property Tax Statements from Yamhill County for the time period July 1, 2004 to June 30, 2005 lists the claimant as the current owner of Yamhill County tax lots 4513-100, 4418-1000, and 4418-1100. The three tax lots that the claim includes represent a total of approximately 342 acres. (See 2004 Yamhill County tax statement in the department’s claim file.)

Conclusions

The claimant, Maralynn Abrams, is an “owner” of the three tax lots (342 acres total) that are the subject of this claim as that term is defined under Section 11(C) of Ballot Measure 37.

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 states that:

“Regulations cited in this claim may not be all inclusive of every regulation that restricts the use of said properties as defined by Measure 37 since the stated acquisition dates, however, it is the intention of this claim to restore all freedoms of land division and use and rights of transfer that existed at said dates of current ownership acquisition as defined by Measure 37. This is a simple directive and should be treated as such.”² (See Qualifying Statement by the claimant included as an attachment to DAS claim form.)

The claimant does not explain what was allowed in Yamhill County prior to the acquisition dates of the three tax lots, but for the purposes of this review, it is acknowledged that there were no state land use regulations in effect at that time restricting the use of the three properties when they were acquired, except as otherwise noted in this report.

The properties are currently zoned Exclusive Farm-80 (EF-80) by Yamhill County.³ The claimant applied to the County for permission to develop lots of approximately one acre and smaller and for commercial use on a strip of land. The claimant was informed by a letter from Michael Brandt, Yamhill County Planning Director (December 2, 2005), that current County zoning did not allow the proposed uses and the proposal was denied by Yamhill County. In the letter, Mr. Brandt explained that the County’s EF-80 zone establishes a minimum lot size of 80 acres. The County’s EF-80 zone also requires that before a dwelling can be allowed on a parcel, the property owner must demonstrate that the parcel can generate at least \$80,000 annual farm income. In addition, regarding establishment of commercial style development, Section 402 of the County’s zoning

² The claim also identifies a number of additional provisions of state law, which the claimant states “restrict the use and reduce the value of the property” from what was permitted in 1952, 1955, and 1968, the dates of acquisition of the three tax lots. The claim includes a list of Oregon Revised Statutes (ORS) that claimant states were enacted subsequent to acquisition of the tax lots, and restrict the use and reduce the value of the property. These include provisions of ORS 92, pertaining to the subdivision and partitioning of land; provisions of ORS 94, pertaining to real property development, property rights and transactions, and development agreements; provisions of ORS 105, pertaining to property rights, property rights and transactions, and actions for recovery of real property; provisions of ORS 183, pertaining to the Administrative Procedures Act, and Executive Branch; Organization Administrative Procedures Act; provisions of ORS 197 pertaining to the department and to land use procedures; provisions of ORS 215 pertaining to the uses and dwellings allowed in Exclusive Farm Use (EFU) zones, the established minimum lot sizes required for land divisions in such zones, and; ORS 227.110, a provision pertaining to the subdivision plats within six miles of a city, and OAR 661, pertaining to Land Use Board of Appeal procedures.

³ At the time the claim was filed, McMinnville had submitted an Urban Growth Boundary (UGB) expansion to the Commission for review and acknowledgement. The UGB expansion is currently the subject of a partial remand by the Commission. The UGB expansion includes one of the smaller tax lots, Tax Lot 4418-1000 (approximately 29.4 acres). A new zone will apply to this part of the property and may allow some or all of the uses requested by the claim. The department notes that the city has written the UGB expansion ordinance to be effective upon acknowledgment by the Commission.

ordinance does not allow commercial development except commercial activities in conjunction with a farm use as a conditional use. Further, any commercial development would also need to meet the 80-acre minimum lot size requirement. The claim did not include any information on whether or not any dwellings would be allowed on the three subject properties under Yamhill County's current zoning.

Statewide Planning Goal 3 (Agricultural Lands), OAR 660-015-0000(3) and the provisions applicable to land zoned for exclusive farm use under ORS 215 and OAR 660-033-0090, including ORS 215.780, restrict the zoning, use and division of the subject properties. Goal 3 became effective on January 25, 1975, and required agricultural land, as defined by the Goal, to be zoned EFU pursuant to ORS 215. (See citations to statutory and rule history under OAR 660-015-0000(3).) ORS 215.780 became effective on November 4, 1993 (Chapter 792, Or Laws 1993). The claimant's three tax lots are "agricultural land" as defined under Statewide Planning Goal 3 because they are predominantly composed of NRCS Class I-IV soils. (See soils map for property from the "Soil Survey of Yamhill Area, Oregon, Sheet # 26" USDA/NRCS.) In addition, significant portions of the three parcels are also defined as "high-value farmland" in OAR 660-033-0020(8)(a)(A)&(B) because they contain substantial amounts of NRCS Class I – II soils and also the Class III-IV soils listed in OAR 660-033-0020(c)(A)-(C).

Specifically, ORS 215.780(1) establishes an 80-acre minimum lot size for the creation of a new parcel in an EFU zone. Other provisions of state law, generally cited by the claimant as ORS 215, establish the standards for the approval of dwellings on land zoned EFU. These include ORS 215.283, 215.284 and 215.705. These current state laws restrict the claimant's ability to develop the property as stated in the claim.

The provisions of ORS 92 prohibiting the sale of land without the prior approval of a partition or subdivision plat, generally date from prior to 1952, the date the claimant acquired the first parcel that is part of the subject property.

The claim also asserts other state statutes and rules regulate the use of the claimant's property resulting in the reduction in its fair market value, specifically, ORS 94, ORS 105, ORS 183, ORS 197, ORS 227, and OAR 661. These statutes generally do not restrict the use of private real property or are otherwise not land use regulations as defined in Measure 37(11)(B). Without more information from the claimant as to how a specific statute restricts the claimant's use of the property, the department is not able to identify a particular statute that the claimant may have a right to relief for under Measure 37. As to OAR 661, administrative rules of the Oregon Land Use Board of Appeals are not "land use regulations" as that term is defined in Measure 37.

Conclusion

The zoning requirements, minimum lot size and dwelling standards established by Statewide Planning Goal 3, and ORS 215, including ORS 215.780, and OAR 660-033-0090, were all adopted after the claimant acquired the three tax lots that are the subject of this claim, and restrict the use of the subject properties. Except for the

provisions of ORS 92, which were generally in effect when the claimant acquired the property, the land use laws identified above were adopted since 1968, and restrict the use of the property relative to the uses allowed when the property was acquired...

3. Effect of Regulations on Fair Market Value

In order to establish a valid claim, Section 1 of Ballot Measure 37 requires that any law(s) 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

Based on an appraisal done for the 39.10-acre parcel (tax lot 4418-1100) alone (see appraisal attached to the claim form), the claimant states that the fair market value of the three subject properties has been reduced and the compensation due is \$20,500,000. This amount was apparently derived from a calculation of a reduction of \$60,000 per acre for the combined 342 acres of the three tax lots (4513-100, 4418-1000, and 4418-1100) (See section 8 of the claim.)⁴

Conclusions

As explained in section V.(1) of this report, the current owner of the subject properties is Maralynn Abrams, who acquired the three tax lots in 1952, 1955 and 1968. Thus, under Ballot Measure 37, Maralynn Abrams is due compensation for land use regulations that restrict the use of the subject properties in a manner that reduces its fair market value. The claim states that the reduction in value is \$20,500,000.

Based on the appraisal and other 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 laws. In addition, under Section 3 of the Measure, certain types of laws are exempt from the Measure.

Findings of Fact

The claim includes a long list of statutes and rules and states that they “were enacted subsequent to the acquisition dates of the three parcels (1952, 1955, and 1968), [and] restrict the use and reduce the value of the property.” (See claim). The laws related to Statewide Planning Goal 3 (Agricultural Lands), including specific provisions of ORS

⁴ This amount could be reduced to reflect the value of the acreage (29.4 acres) that may be included in McMinnville’s urban growth boundary and zoning that allows some or all of the uses requested in the claim.

215 and OAR 660-033 qualify as “land use regulations” under the Measure and were adopted after the claimant acquired the three tax lots in 1952, 1955 and 1968, with the exception of some subdivision and partitioning laws in what is now ORS 92, which were adopted prior to the claimant’s 1952 acquisition of the first of the three tax lots.

Conclusions

The claim includes a detailed listing of the laws that are alleged to apply to the property. However, it is impossible for the department to determine if the list is comprehensive without a more specific statement of what use the owner intends to carry out. Similarly, without a specific statement of what use is intended, the department is not able to determine whether particular laws that do apply to that use fall under one or more of the exemptions under Measure 37. It does appear that the general statutory, goal and rule restrictions on minimum lot size, residential development and use of agricultural land apply to the owner’s anticipated use of the property, and for the most part these laws would not come under any of the exemptions in Measure 37.

The restrictions in ORS 92, on the sale of land prior to the approval and filing of a plat, generally predate 1952, and so will continue to apply to the property. There may be other specific laws that continue to apply under one or more of the exemptions in the Measure, or because they are laws that are not covered by the Measure to begin with.

VI. FORM OF RELIEF

Section 1 of Measure 37 provides for payment of compensation to an owner of private real property if the department has enacted or 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 a 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, that 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 conclusion set forth in this report, laws enacted or enforced by the Commission or the department, specifically Goal 3 and ORS 215.780, restrict the partition of the subject properties and thus, the claimant cannot divide the property into one-acre parcels with dwellings and develop some commercial uses on portions of the site. The laws enacted or enforced by the Commission or department reduce the fair market value of the 342 acre property to some extent. The claim asserts this amount to be \$20,500,000. However, because the claim does not provide a specific explanation for 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 more likely than not 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 Ms. Abrams to use the subject property for a use permitted at the time she acquired the property in 1952, 1955 and 1968.

Conclusion

Based on the record before the department, Ms. Abrams has established that she is entitled to relief. Therefore, department staff recommends that, in lieu of compensation, the requirements of applicable state laws enacted or enforced by the Commission or the department, specifically Statewide Planning Goal 3 (Agricultural Lands), applicable provisions of ORS 215 and OAR 660, Division 033 not apply to the subject property to the extent necessary to allow Ms. Abrams a use of the property permitted at the time she acquired the property that is the subject of this claim. Provisions of ORS 92, related to subdivision and partitioning, adopted prior to the claimant's 1952 acquisition of the first of the three tax lots, will remain in effect.

Any use of the property by the claimant remains subject to the following laws:

- (a) those laws not specified in this claim to the State of Oregon, dated December 6, 2004;
- (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.

VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on May 9, 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.