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:	M118920
NAME OF CLAIMANT:	Howard E. Meredith
MAILING ADDRESS:	c/o Russell L. Baldwin Attorney at law 4355 N. Highway 101, Suite B P.O. Box 1242 Lincoln City, Oregon 97367
IDENTIFICATION OF PROPERTY:	159 SE 8th Street, Dundee, Oregon Township 3S, Range 3W, Section 25CC, Tax lots 3900, 4000, 4001, Yamhill County
OTHER INTEREST IN THE PROPERTY:	Doris L. Meredith, co-owner
DATE RECEIVED BY DAS:	December 9, 2004
180-DAY DEADLINE:	June 7, 2005

I. CLAIM

Howard E. Meredith, the claimant, seeks compensation in the amount of $250,000 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 develop the property without land use regulations.

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 the claim is not valid because neither the Land Conservation and Development Commission (the Commission) nor the department have enforced laws that restrict the claimant's use of private real property. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

On March 31, 2005, pursuant to OAR 125-145-0080, the Oregon Department of Administrative Services (DAS), provided written notice to owners of surrounding properties. According to DAS, there were no written comments, evidence or information 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 9, 2004 for processing under OAR 125, Division 145. The claim generally identifies "aggressive land use planning by the City of Dundee," and state laws "to the extent that the City of Dundee has implemented statutory or administrative requirements mandated by the State of Oregon [since] Mr. Meredith acquired the real property within the City of Dundee in 1975," 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 (2004), 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 states that Howard Meredith acquired ownership in 1975. The claim does not include a deed or other evidence of ownership.

According to Yamhill County Tax Assessor records, Howard E. Meredith and Doris I. Meredith have been the owners of Tax lots 3900 and 4000 since 1979, and the owners of Tax lot 4001 since 1986.

Conclusions

The claimant, Howard E. Meredith appears to be an "owner" of the subject property, as that term is defined by Section 11(C) of Ballot 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 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: "Mr. Meredith acquired real property within the City of Dundee in 1975, and has been burdened by aggressive land use planning by the City of Dundee, and to the extent that the City of Dundee has implemented statutory or administrative requirements mandated by the State of Oregon, Mr. Meredith has also suffered at the hands of the State."

At all relevant times, the subject property has been located within the corporate limits of the City of Dundee. The City of Dundee has had zoning jurisdiction over the subject property at least since the claimant acquired the two tax lots in 1979 and 1986. The City zoned the subject property Central Business District on November 6, 1995. Prior to that, the City zoned the property Community Commercial.

The claim does not identify any specific state land use regulations that restrict the use of the property, nor does the claim describe the nature of the restrictions on the use of the property. Department staff requested this information from the claimant's representative, Russell Baldwin, in an April 4, 2005 letter, to understand what laws the claimant believes are restricting the use of the property. (See letter in department's claim file.) However, no additional information has been provided to date.

Based on the information that is in the claim, it appears it may be directed at state land use laws, for which the department would be the regulating entity. However, as the regulating entity, the department is unable to determine what, if any, state laws may be restricting the claimant's use of the property.

Conclusions

The claim does not identify any state laws that restrict the use of the claimant's property, nor has the claimant described a use of the property that is restricted by state law. Based on the record currently before the department, as the regulating state agency, neither the Commission nor the department has enforced any laws that restrict the use of claimant's real property.

3. Effect of Regulations on Fair Market Value

In order to establish a valid claim, Section 1 of Ballot Measure 37 requires that any laws 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 claimant, Howard E. Meredith, demands $250,000 in compensation. The claim does not provide an estimate of the value of the property without current land use restrictions nor does it state the value of the property with current land use restrictions. The claim includes no appraisals.

Conclusions

As determined in Section V.(2) above, the claimant has not identified any laws enforced by the Commission or the department that have restricted the use of the subject property. Without such identification, it is impossible to determine that any laws enforced by the Commission or the department have had the effect of reducing the fair market value of the property.

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 generally based on "the extent that the City of Dundee has implemented statutory or administrative requirements mandated by the State of Oregon" since Mr. Meredith acquired the property in 1979 and 1986. No state laws are specified in the claim, nor can the department determine from the claim that any state laws restrict the claimant's use of his property. As a result, the department is unable to determine at this time whether one or more of the exemptions under Measure 37 may apply.

Conclusions

Without a specific proposed use or an indication of the state laws that are the basis for the claim, it is impossible 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.

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 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 that a claim is valid, the Director must provide only non-monetary relief, unless and until funds are appropriated to pay claims.

Findings of Fact

Based on the record for this claim, the claimant has not established that any state laws restrict the use of or reduce the value of the subject property.

Conclusion

Based on the record before the department, the claimant, Howard Meredith, has not established that he is entitled to relief under Section 1 of Measure 37. Therefore, this claim is denied.

VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on May 16, 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.