

**BALLOT MEASURE 37 (Chapter 1, Oregon Laws 2005)  
CLAIM FOR COMPENSATION**

**OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT**

**Final Staff Report and Recommendation  
June 28, 2005**

**STATE CLAIM NUMBER:** M119146

**NAME OF CLAIMANT:** Dale Martin

**MAILING ADDRESS:** P.O. Box 114  
Powell Butte, Oregon 97753

**IDENTIFICATION OF PROPERTY:** Township 16S, Range 14E, Section 10  
Tax Lot 700  
Crook County

**OTHER CONTACT INFORMATION:  
FOR CLAIMANT:** Edward Fitch  
P.O. Box 457  
Redmond, Oregon 97756

**DATE RECEIVED BY DAS:** January 3, 2005

**180-DAY DEADLINE:** July 2, 2005

**I. CLAIM**

Dale Martin, the claimant, seeks compensation in the amount of \$3,000 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 partition the 7.85-acre property into parcels of two-acres more or less (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 the claim is not valid. 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 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 interest in the property in 1979 (See the complete recommendation in Section VI. of this report).

### **III. COMMENTS ON THE CLAIM**

#### **Comments Received**

On March 1, 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, one comment was received but did not address criteria used in the department's review of this claim. (See comment letter in the department's claim file). Until and unless funding is provided to pay claims, comments regarding the possible impact of the proposed or intended development of the claimants' property are not relevant to the evaluation and determination of the claimant's Ballot Measure 37 claim, and cannot be considered by the department.

### **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**

The claim was submitted to DAS on January 3, 2005, for processing under OAR 125, Division 145. The claim identifies "zoning regulations that restrict subdivisions" 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 enforced prior to December 2, 2004, and is therefore timely filed.

## V. ANALYSIS OF CLAIM

### **1. Ownership**

Ballot Measure 37 provides 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, Dale Martin, along with his parents Wayne and Helen A. Martin, and his brother Boyd, acquired the East ½ East ½ Northwest ¼ of Section 10 (then tax lot 1200 tax map 16 14 - now tax lots 600, 700 and 800, tax map 16-14-10) on November 1, 1979. (See claim file M11945 for Wayne Martin, Warranty Deed, dated November 1, 1979.)<sup>1</sup>

The claimant’s parents, Wayne and Helen Martin, deeded their interest in the subject property (tax lot 700, tax map 16-14-10) to the claimant, Dale Martin, on June 29, 1989 (Warranty Deed, dated April 25, 1984). The claim includes a tax statement for 2004-2005 for tax lots 700 showing the claimant, Dale R. Martin, and Susan Y. Martin, as the current owners. A preliminary title report shows both Dale and Susan as owners. (See the department’s claim file.)

### **Conclusions**

The claimant, Dale Martin, is an “owner” of the subject property, as that term is defined by Measure 37.<sup>2</sup> The claimant has had ownership interest in Tax Lot 700 since November 1, 1979.

### **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 “zoning regulations” restrict “subdividing the property into parcels of approximately 2 acres more or less.”

When the claimant acquired the property in 1979, the property was zoned exclusive farm use (EFU) in accord with Statewide Planning Goal 3 (Agricultural Lands). According to the department’s acknowledgement records, as of 2000, the current regulations that apply to the claimant’s properties consist of a “Non-Resource” Plan Map designation under the acknowledged

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<sup>1</sup> Wayne Martin has filed a separate Measure 37 claim for Tax Lots 600 and 800, along with Tax Lot 500. See State claim No. M119145.

<sup>2</sup> Based on the information currently before the department, it does not appear that Susan Y. Martin is a claimant.

Crook County Comprehensive Plan, and the County’s Exclusive Farm Use, EFU-3 (Powell Butte Area). (See Section 3.030 of Crook County Zoning Ordinance 18 (Crook County Ordinance No. 127 Amend No. 1 for Area 2-4, July 26, 2000).)

The designation of land as “Non-Resource” on the acknowledged comprehensive plan map means that the County determined, and the State agreed, that the claimant’s property was *not* “agricultural lands” as defined by Statewide Planning Goal 3.<sup>3</sup> As such, Goal 3 does not apply to the subject property. Lands that are not agricultural lands under Goal 3 do not need to be zoned Exclusive Farm Use pursuant to ORS 215 and OAR 660, Division 33.

The amendment to the County’s comprehensive plan map in 2000 designating the property as “Non-Resource” removed state land use laws requiring that the properties be planned and zoned for Exclusive Farm Use. Under state land use laws, the property may be planned, zoned and used for rural development, including dwellings.

### **Conclusions**

The claimant, by identifying Crook County “zoning regulations that restrict subdivisions,” appear to assert that Statewide Planning Goal 3, ORS 215 and OAR 660, Division 33 restrict the use of the property. However, the property is designated in Crook County’s acknowledged comprehensive plan as “Non-Resource,” and therefore is not subject to these state land use laws. Based on the record currently before the department, neither the Commission nor the department has enforced any laws that currently restrict the use of the subject properties for subdivisions relative to what was allowed when the claimant acquired the property in 1979. Depending on the number and size of lots the claimant wishes to create by subdivision, Statewide Land Use Planning Goal 14 may restrict the use of the property. However, Goal 14 was in effect when the claimant acquired his interest in the property and, to the extent it does impose any restriction, that restriction was present in 1979.

### **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 claim asserts a loss in the fair market value of \$300,000. No discussion or information was presented indicating how that amount was determined, including the values of property with restrictions and without restrictions.

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<sup>3</sup> The post acknowledgment plan amendment adopting Crook County Ordinance No. 127 was acknowledged pursuant to ORS 197.625(1) on August 18, 2000 (Notice of Adoption issued August 4, 2000).

## **Conclusions**

As explained 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 not possible 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 regulations that are the subject of this claim is Crook County's "Non-Resource" Plan Map designation and the provisions of the County's Exclusive Farm Use, EFU 3, Zone (Powell Butte Area). Some of the state laws relating to County's EFU zone, including OAR 660, Division 33, and related provisions of state statutes and Goal 3 were enacted after Mr. Martin acquired the property in 1979, but no longer apply to the property. However, some provisions in Goal 3 and related statutes were adopted prior to 1979. Any state laws that restrict the use of the property that were enacted prior to November 1, 1979, when the claimant acquired interest in the property, are exempt under section (3)(E) of Measure 37.

## **Conclusions**

Without a specific proposed use or a specific listing of laws that are the basis for the claim, or more detail concerning the anticipated use of the property, it is impossible for the department to determine what laws may apply to a particular use of the properties, 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 cited in the claim do not come under any of the exemptions in Measure 37. There may be other specific laws that continue to apply under one or more of the exemptions in 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 Commission or 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 to allow the owner to carry out a use of the property allowed at the time the owner acquired the property. The Commission, has by rule, directed that if the department determines a claim is valid, the Director must provide 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, do not restrict the claimant's use of the 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 an interest in 1979. The claim identifies "zoning regulations" as having reduced the fair market value of the property. However, in 2000, the property was designated "Non-Resource" lands, removing the more restrictive provisions of Goal 3 and ORS 215 that applied to the properties when acquired by Mr. Martin in 1979. The land use regulations cited in the claim have not had the effect of reducing the fair market value of the property, or any use therein.

### **Conclusion**

Based on the record before the department, the claimant, Dale Martin, has not established that he is entitled to payment of compensation or relief under Ballot Measure 37.

## **VII. COMMENTS ON THE DRAFT STAFF REPORT**

The department issued its draft staff report on this claim on June 10, 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.