

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

OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT

Final Staff Report and Recommendation

July 13, 2005

STATE CLAIM NUMBER: M119387

NAME OF CLAIMANT: Allen D. Spiering

MAILING ADDRESS: 44540 Northwest Hartwick Road
Banks, Oregon 97106

IDENTIFICATION OF PROPERTY: Township 2N, Range 4W
Section 35,
Tax Lot 100,
Washington County

DATE RECEIVED BY DAS: January 20, 2005

180-DAY DEADLINE: July 19, 2005

I. CLAIM

Allen D. Spiering, the claimant, seeks compensation in the amount of \$ 474,030, for the reduction in fair market value as a result of land use regulations that are alleged to restrict the use of certain private real property. The claimant desires compensation or the right to divide his 9.34 acre property into four parcels and to establish a single family dwelling on each parcel.

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 laws enforced by the Land Conservation and Development Commission (the Commission) or the department not apply to the claimant to allow him to divide the property into four parcels and establish a single family residence on each parcel: the applicable provisions of ORS 215.263, 215.284 215.780, OAR 660-033-0090, 660-033-100, 660-033-0130(4), and OAR 660-033-0135, as well as the applicable provisions of Statewide Planning Goal 3 (Agricultural Lands) . These laws will not apply to the claimant's use of the property only to the extent necessary to allow Allen Spiering a use of the subject property permitted at the time he acquired it. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On February 18, 2005, pursuant to OAR 125-145-0080, the Oregon Department of Administrative Services (DAS), provided written notice to property owners surrounding the property subject to this claim. 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

The claim was filed with DAS on January 20, 2005 for processing under OAR 125, Division 145. The claim includes a list of land use regulations that were enacted prior to December 2, 2004, the effective date of Measure 37. (See citations of statutory and administrative rule history of the Oregon Revision 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

According to documents filed with the claim, the claimant, Allen D. Spiering, purchased the property with his wife, Cheryl A. Spiering, on February 1, 1967. Cheryl A. Spiering conveyed her interest in the property to Allen D. Spiering, free of encumbrances, on November 2, 1993. (Washington County, Oregon, Case No. C93-2438DR.) The claim includes a Chain of Title report demonstrating Mr. Spiering's ownership since 1967.

Conclusions

The claimant is the "owner" of the subject property, as that term is defined by Section 11(C) of Ballot Measure 37, as of February 1, 1967.

2. Laws that are the Basis for the Claim

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 identifies ORS 215.780, OAR 660-033-0100, OAR 660-033-0135 and OAR 660-04-0040 as restricting the use of the property.

Statewide Planning Goal 3, "Agricultural Lands" and the provisions applicable to land zoned for Exclusive Farm Use (EFU) under ORS 215 and OAR 660-033-0090 including ORS 215.780, restrict the zoning, use and partition of the subject property. 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).

OAR 660-033-0100 establishes an 80-acre minimum size for the creation of a new parcel in an EFU zone. OAR 660-033-0135, regulates the number of dwellings that can be located on farmland and rangeland.

OAR 660-004-040 is also cited by the claimant as restricting the subject property. That rule addresses the application of Goal 14 (Urbanization) to Rural Residential areas. The claim does not indicate how that rule restricts the use of the property. The land is not planned or zoned for rural residential use and, as a result, the rule does not have any application to the subject property.

Conclusions

Land use laws adopted since February 1967 restrict the use of the property relative to the uses allowed when the property was acquired 1967. Specifically, Statewide Planning Goal 3 and the

minimum lot size and dwelling standards established by OAR 660, Division 33, and by certain provisions of ORS 215, were all adopted after the claimant acquired the property in 1967, and do not allow the division of the property into parcels less than 80 acres in size, or the approval of dwellings.

3. Effect of Regulations on Fair Market Value

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

The claim includes a notation on the 2003-04 Real Property Tax Statement for the property that calculates a \$474,030 reduction in value. (See the department’s claim file.) The claimed reduction amount appears to be based on the present Market and Special Use Value of \$120,000 for the 9.34 acres, as stated on the Tax Statement. The claimant then multiplied this amount times four parcels for a total of \$480,000. He then deducts a Special Use Portion for \$5,970, to arrive at a total of \$474,030. There is no appraisal or other documentation to substantiate the alleged reduction in value.

Conclusions

As explained in section V. (1) of this report, the current owner is Mr. Allen Spiering and he has owned the property since February 1, 1967. Thus, under Ballot Measure 37, Mr. Spiering is due compensation for land use laws that restrict the use of the subject property in a manner that reduces its fair market value.

Based on the information provided, it is not clear that the property could accommodate five home sites. Nor is there any appraisal or other documentation to substantiate the alleged reduction in value. 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 laws. In addition, under Section 3 of the Measure, certain types of laws are exempt from the Measure.

Findings of Fact

Laws that were in effect at the time the claimant acquired the property are exempt under Section 3(E) of the Measure. Certain provisions of ORS 215 (1965 version) in effect in 1967 when the claimant acquired the property are exempt and will continue to apply. Otherwise, the land use regulations cited in the claim were enacted after the claimant acquired the property.

Conclusions

The provisions of the EFU zoning enacted after the claimant acquired the property in 1967 are not exempt under Measure 37. Provisions of ORS 215 that applied prior to 1967 are exempt under the Measure. There may be other specific laws that continue to apply under one or more of the exemptions in the Measure, or because they are

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 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 the 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, 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, farm zoning required by Goal 3 and applicable provisions of ORS 215 and OAR 660, Division 33, restrict the division and the approval of dwellings on the subject property and thus the claimant cannot create the desired five parcels out of the subject 9.34-acre parcel. This reduces the fair market value of the 9.34-acre property to some extent. The claim asserts this amount to be \$474,030; however, because the claim does not provide a specific explanation for how the specified restriction reduces the fair market value of the property, a specific amount of compensation cannot be determined. Nevertheless, the department acknowledges that the regulations on which the claim is based have reduced the fair market value of the property.

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 Allen Spiering to use the subject property for a use allowed at the time they acquired the property on February 1, 1967.

Conclusion

Based on the record, the department recommends that the claim be approved, subject to the following terms:

1. In lieu of compensation, the department recommends that the requirements of the following laws enforced by the Commission or the department not apply to the claimant to allow him to divide the property into four parcels and establish a single family residence on each parcel: the applicable provisions of ORS 215.263, 215.284, 215.780, OAR 660-033-0090, 660-033-100, 660-033-0130(4), and OAR 660-033-0135, as well as the applicable provisions of Statewide Planning Goal 3 (Agricultural Lands). These laws will not apply to the claimant's use of the

property only to the extent necessary to allow Allen Spiering a use of the subject property permitted at the time he acquired it.

2. The action by the State of Oregon provides the State's authorization to the claimant to use the property as permitted on February 1, 1967. On that date, the property was subject to the provisions of ORS 215 (1965 edition.).

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 215.412 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 remains 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 with out limitation, those laws exempted under section (3) of this 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 him 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 June 24, 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.