

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

OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT

Final Staff Report and Recommendation

July 27, 2005

STATE CLAIM NUMBER: M119521

NAME OF CLAIMANT: Wayne and Jackie Ralph

MAILING ADDRESS: 16600 Antioch Road
White City, Oregon 97503

IDENTIFICATION OF PROPERTY: Township 3S, Range 2W, Section 11
Tax Lot 403
Jackson County

DATE RECEIVED BY DAS: January 31, 2005

180-DAY DEADLINE: July 30, 2005

I. CLAIM

The claimants, Wayne and Jackie Ralph, seek compensation in the amount of \$910,000 for 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 partition their 43 acres into five-acre parcels for residential use. The property is located at 16600 Antioch Road, in Jackson County, Oregon.

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 this claim is valid. Department staff recommends, in lieu of just compensation, that the requirements of the following laws enforced by the Land Conservation and Development Commission (the Commission) or the department, not apply to the subject property to allow them to subdivide the property into five-acre lots and establish a dwelling on each lot: Statewide Planning Goal 3, ORS 215.263, 215.283, 215.284, 215.780 and OAR 660, division 33. These laws will not apply to the claimants' use of the property only to the extent necessary to allow Mr. Ralph a use of the subject property permitted at the time he acquired the property on April 19, 1974; and to allow Mrs. Ralph a use of the property permitted at the time she acquired her interest on August 31, 2000. The department acknowledges that the relief recommended in this report will not allow Mrs. Ralph to use the

property in the manner set forth in the claim. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS RECEIVED

On February 23, 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, 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 January 31, 2005, for processing under OAR 125, division 145. The claim identifies Jackson County's Exclusive Farm Use (EFU) zoning and state laws that restrict the use of the property 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 claims has been submitted within two years of December 2, 2004, the effective date of Measure 37, based on land use regulation 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 of 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

Wayne Ralph acquired the subject property on April 19, 1974. On August 31, 2000, Wayne Ralph conveyed the property to “Wayne Ralph and Jackie Ralph, husband and wife.”¹ (See deeds in claim file).

Conclusions

The claimants, Wayne and Jackie Ralph, are “owners” of the subject property as that term is defined by Section 11(C) of Ballot Measure 37. Wayne Ralph is also a “family member” as to Jackie Ralph, as that term is used by Section 11(A) of Ballot Measure 37. Wayne Ralph acquired his interest in the property on April 19, 1974. Jackie Ralph acquired her interest in the property on August 31, 2000.

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 requests relief from “all State of Oregon land use regulations that either prevent or inhibit ...the applicants from subdividing ...” their property into “saleable lots of five acres each (in accordance with the standards applicable at the time of acquisition) for future home sites.” The claim lists a number of state regulations including the applicable provisions of Statewide Goal 3 (Agricultural Lands), ORS 92, ORS 215 and OAR 660, division 33, pertaining to the division and residential use of land zoned for exclusive farm use (EFU).²

¹ The claim also includes a second deed conveying the subject property from Wayne Ralph to “Wayne Ralph and Jackie Ralph, husband and wife” on May 16, 2003. The claimants’ attorney was unable to explain the purpose of this second deed.

² Many additional land use regulations are listed in the claim that do not directly restrict the claimants’ use of the property relative to uses permitted when they acquired the property. In a phone conversation on June 22, 2005, the claimants’ attorney, Mr. Mark Bartholomew, informed the department that the claim was written broadly and that the department need only address those land use regulations that specifically restrict the claimants’ proposed use of the property, specifically the state land use laws related to exclusive farm use zoning.

The claim is based, in part, on Jackson County's (EFU) Zone and the applicable provisions of state law that require such zoning. The claimants' property is zoned EFU as required by Goal 3 in accord with OAR 660, division 33, because the claimants' property is "agricultural land" as defined by Goal 3. Goal 3 became effective on January 25, 1975, and required that agricultural lands as defined by the Goal be zoned EFU. Land that is zoned EFU also is subject to restrictions based on certain provisions of ORS 215. Current land use regulations, particularly ORS 215.263, 215.284, 215.780, along with Goal 3 and OAR 660, Division 33, do not allow the subject property to be divided into parcels less than 80 acres and establish standards for farm or non farm dwellings. The provisions of ORS 92 prohibiting the sale of land without the prior approval of a partition or subdivision generally date from prior to 1974, when the family first acquired an interest in the property.

ORS 215.780 established an 80-acre minimum size for the creation of new lots or parcels in EFU zones and became effective November 4, 1993 (Chapter 792, Oregon Laws 1993, HB 3661). ORS 215.263 contains standards for the creation of new parcels for farm uses, non-farm uses and dwellings allowed in an EFU zone; and became effective on October 5, 1973. ORS 215.263 (effective October 5, 1973) was amended in 2001 by HB 3326 to provide new standards for the creation of new parcels for non-farm dwellings as well as the non-farm dwellings themselves.

OAR 660-033-0135 (applicable to farm dwellings) became effective on March 1, 1994, and interprets the statutory standard for a primary dwelling in an EFU zone under ORS 215.283(1)(f). OAR 660-033-0130(4) (applicable to non-farm dwellings) became effective on August 7, 1993, and was amended to comply with ORS 215.284(4) on March 1, 1994. Subsequent amendments to comply with HB 3326, (Chapter 704, Oregon Laws 2001, and effective January 1, 2002) were adopted by the Commission effective May 22, 2002. (See citations of administrative rule history for OAR 660-033-0100, 0130 and 0135.)

Claimant Wayne Ralph first acquired the property on April 19, 1974, when it was zoned Rural Residential RR-5 by Jackson County. Under the RR-5 zone, single-family dwellings were permitted and there was a five-acre minimum parcel size for the creation of new lots or parcels. Mr. Ralph acquired the property after the adoption of SB 100 (Chapter 80, Oregon Laws 1973, effective October 5, 1973) but before the adoption of the Statewide Planning Goals effective January 25, 1975. As such, ORS 197.175(1) and 197.280 (1973 edition) required, in addition to any local plan or zoning provisions, the application of interim land use goals set forth in ORS 215.515 (1973 edition) to the preparation, revision, adoption or implementation of any comprehensive plan prior to the effective date of the statewide planning goals (see *Petersen v. Klamath Falls*, 279 Or 249 (1977)).

No information has been provided showing that the 5-acre development cited by the claimants complies with the interim planning goals set forth in ORS 215.515 (1973 edition) in effect at the time the claimants first acquired the property in 1974.

Conclusions

Lot size and dwelling standards established by Statewide Planning Goal 3, amendments to ORS 215, and OAR 660, division 33, were all adopted since Wayne Ralph acquired the property

in 1974, do not allow the division of the property into parcels less than 80 acres in size or allow the approval of dwellings as may have been possible when he acquired it. However, it is unclear whether the claimants' requested level of development complies with the standards in effect when Mr. Ralph acquired his interest in the property on April 19, 1974.

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 states that the fair market value of the subject property has been reduced by \$910,000 as a result of land use laws enacted after it was acquired by Mr. Ralph in 1974. The claimants have provided information regarding the value of the property based on what is allowed under current land use regulations as compared with the assumed value if developed into 5-acre residential parcels. However, there is no appraisal or other substantiating documentation to substantiate the claimed values either with or without state land use regulations.

Conclusions

As explained in section V.(1) of this report, Wayne and Jackie Ralph are the current owners of the subject property under section (11) of Measure 37. Mr. Ralph acquired an interest in the property on April 19, 1974. Thus, under Ballot Measure 37, the claimants are due compensation for land use laws that restrict the use of the subject property in a manner that reduces its fair market value. The claim states that current laws reduce the value of the property by \$910,000. However, without an appraisal or a more detailed analysis of the information submitted, it is not possible to substantiate the specific dollar amount the claimants demand for compensation. Nevertheless, based on the submitted information, including the comparative market analysis, 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 Jackson County's EFU zone and the related provisions of state law that have restricted use of the property and reduced its fair market value, including Statewide Planning Goal 3, "Agricultural Lands," and applicable provisions of ORS 215 and OAR 660, division 33. These regulations were enacted after the family acquired the property in 1974, with the exception of those provisions of ORS 215 that may have applied to the property when

Wayne Ralph acquired the property. The subdivision and partitioning laws in ORS 92 also generally were enacted prior to Wayne Ralph's acquisition of the property. Otherwise, none of the laws identified in the claim are exempt, either on their face or as applied to the subject property, under Section 3 of Ballot Measure 37.

Conclusions

It appears that the general statutory, goal and rule restrictions on the division, 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 1974, and so will continue to apply to the property, as will any provisions of ORS 215, in effect in 1974. 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 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 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 conclusions in this report, laws enforced by the Commission or the department, prohibit the division of the subject property into 5-acre parcels with dwellings on them. Specifically, Statewide Planning Goal 3, (Agricultural Lands), ORS 215, and OAR 660, division 33, restrict division of the subject property so that the 43 acre parcel cannot be partitioned into 5-acre parcels with dwellings on them. These restrictions reduce the fair market value of the subject property to some extent. The claim asserts this amount to be \$910,000. Although the claim provides an explanation about how the specified restrictions reduce the fair market value of the property, no appraisal or other substantiating documentation was submitted and it is not possible to substantiate the specific dollar amount the claimants demand for compensation. Nevertheless, the department acknowledges that state land use laws likely 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 just compensation, Measure 37 authorizes the department to modify, remove, or not apply all or parts of certain state land use regulations to allow Mr. Ralph to use the subject property for a use permitted at the time he acquired the property on April 19, 1974 and Mrs. Ralph to use the subject property for a use permitted at the time she acquired an interest in the property on August 31, 2000.

As explained in Section V.(2) of this report, when Mr. Ralph acquired the property on April 19, 1974, the property was zoned RR-5 by Jackson County and subject to the Interim Land Use goals under ORS 215.515 (1973 edition). ORS 197.280 (1973 edition). When Mrs. Ralph acquired her interest in the property on August 31, 2000, the property was subject to the County's EFU zoning and the provisions of State Planning Goal 3, ORS 215.263, ORS 215.283, 215.284, ORS 215.780 and OAR 660, division 33, that relate to the division of property and the establishment of farm and non-farm dwellings.

Conclusions

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 of the property into 5 acre parcels or to the establishment of home sites on those parcels: the applicable provisions of ORS 215.263, ORS 215.283, 215.284 and ORS 215.780, Statewide Planning Goal 3, and OAR 660, division 33, enacted after April 19, 1974 as to Wayne Ralph and enacted after August 31, 2000 as to Jackie Ralph. These land use regulations will not apply to the Ralphs' use of the property only to the extent necessary to allow the claimant to carry out a use permitted at the time they each acquired their respective interests in the property.
2. The action by the State of Oregon provides the state's authorization to Wayne Ralph to use the property subject to the standards in effect on April 19, 1974. On that date, the property was subject to the interim planning goals set forth in ORS 215.515 (1973 edition) and provisions of ORS 92. Mrs. Ralph is authorized to use the property subject to the standards in effect on August 31, 2000.
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 215.412 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 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 June 30, 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.