

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

**OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT**

**Final Staff Report and Recommendation**

August 3, 2005

**STATE CLAIM NUMBER:** M119706

**NAME OF CLAIMANT:** Maurice K. Cooper

**MAILING ADDRESS:** 23910 Northeast Spring Hill Road  
Gaston, Oregon 97119

**IDENTIFICATION OF PROPERTY:** Township 2S, Range 3W, Section 19  
Tax Lot 190, Yamhill County

**OTHER CONTACT INFORMATION:** Gary Cooper

**OTHER INTEREST IN PROPERTY:** Gary Cooper, Dennis L. Cooper and  
Katherine Y. Cooper

**DATE RECEIVED BY DAS:** February 10, 2005

**180-DAY DEADLINE:** August 9, 2005

**I. CLAIM**

Maurice Cooper, the claimant, seeks compensation in the amount of \$150,000 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 construct a home on a 31-acre parcel. The property is located at 23910 Northeast Springhill Road and Albertson Road (Tax Lot 2319-190) in Yamhill County. (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 that the claim is valid. Department staff recommends not applying the requirements of the following state laws enforced by the Land Conservation and Development Commission or the department to allow Maurice Cooper to place a single family dwelling on the subject property: applicable provisions of Statewide Planning Goal 3 (Agricultural Lands), ORS 215 and OAR 660-033-0135(7). These laws will not apply to the claimant's use of the property only to the extent necessary to allow the claimant a use permitted at the time he acquired the subject property in 1944. (See the complete recommendation in Section VI. of this report.)

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

On February 28, 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 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**

The claim was submitted to DAS February 10, 2005, for processing under OAR 125, division 145. The claim includes a reference to the Yamhill County Exclusive Farm Use (EFU) 40 zoning district, which was applied to this property by Yamhill County, Ordinance 310.<sup>1</sup> 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 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. Section 11(C) defines “owner” as “the present owner of the property, or any interest therein.”

---

<sup>1</sup> Ordinance 310 was amended in 1994, to include the requirements of OAR 660-033-0135(7), the \$80,000 rule for placing a farm dwelling on high value farmland. OAR 660-033-0135(7) became effective on March 1, 1994.

## **Findings of Fact**

The claimant, Maurice Cooper, acquired the subject property on January 18, 1944. On April 29, 1994, Maurice Cooper conveyed the property to himself, Dennis L. Cooper and Katherine Y. Cooper, husband and wife, and Gary N. Cooper, not as tenants in common, but with right of survivorship. Dennis, Katherine and Gary Cooper are not listed as claimants for purposes of this Measure 37 claim. Yamhill County Assessor's Office confirms that Maurice Cooper is a present owner of this property.

## **Conclusions**

The claimant, Maurice Cooper, is an "owner" of the subject property, as the term is defined in 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 claimant's son explains that the claimant is requesting relief from the laws that prevent him from building a home on his 31-acre parcel (Tax Lot 2319-190) in Yamhill County.

The claim is based on Yamhill County's current EFU zone and the applicable provisions of state law that require such zoning. The claimant's property is zoned EFU as required by Goal 3 in accord with OAR 660, division 33, and ORS 215 because the claimant's 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 pursuant to ORS 215.

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). Yamhill County's Ordinance 310 was amended in 1994, to include the requirements of OAR 660-033-0135(7), the \$80,000 rule, for placing a farm dwelling on high value farmland. OAR 660-033-0135(7) became effective on March 1, 1994. OAR 660-033-0135(7) precludes the claimant from establishing a dwelling on his property.

The claimant acquired the subject property in 1944. Statewide Planning Goal 3, and the statutory provisions and administrative rules limiting the claimant's requested use of the property were not in effect at that time.

## **Conclusions**

The standards that restrict the placement of a dwelling on the subject property were not adopted until after 1944 when the claimant acquired the property. Land use laws adopted since 1944, restrict the use of the property from what could have been done when the property was acquired by the claimant in 1944.

### **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**

A property profile by Ticor Title Insurance Company is included in the claim. The profile estimates a fair market value of \$198,426 for the property with current restrictions. The Yamhill County Assessor’s Office confirms this estimate. The claimant states the loss in value due to restrictions is \$150,000, based on an evaluation by a realtor. Yamhill County concurs with estimate with the affidavit of the County Assessor, Davis Lawson.

The claim includes no appraisal, and the documents provided are not sufficient to substantiate the dollar amount the claimant demands for compensation. 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.

## **Conclusions**

As explained in section V.(1) of this report, Maurice Cooper is the current owners of the subject property as January 18, 1944. Thus, under Ballot Measure 37, Mr. Cooper 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 findings and conclusions in section V.(2) of this report, laws adopted since the claimant acquired the property do not allow him to place a dwelling on the subject property. The claim asserts the reduction in value due to the restrictions to be \$150,000. The claimant has provided some documentation of the amount.

### **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 is based on Yamhill County’s EFU zone and the related provisions of state law that have restricted use of the property and reduced its fair market value. These include Statewide

Planning Goal 3, “Agricultural Lands,” and applicable provisions of ORS 215 and OAR 660, division 33. All of these cited regulations were enacted after the claimant acquired the property in 1944. None of these specified laws identified appear to be exempt under Section 3 of Ballot Measure 37.

### **Conclusions**

It appears that the general statutory, goal and rule restrictions on the placement of a residential dwelling apply to the claimant’s use of the property, and for the most part these laws would 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 the Measure, or because they are laws that are not covered by the Measure.

## **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 present owner to carry out a use of the property allowed at the time the present owner acquired the property. The Commission has by rule 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 set forth in this report, laws enforced by the Commission or the department restrict the construction of a single family farm dwelling on this 31-acre property. The claim asserts the laws enforced by the Commission or the department reduce the fair market value of the subject property by \$150,000. The department acknowledges that state land use laws have reduced the fair market value of the property to some extent. However, without an appraisal, it is not possible to substantiate the specific dollar amount the claimant demands for compensation. 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.

No funds have been appropriated at this time for the payment of claims. In lieu of payment of compensation, Measure 37 authorizes the department to modify, remove or not apply all or parts of certain land use regulations to allow Maurice Cooper to use the subject property for a use permitted at the time they acquired the properties on January 18, 1944.

### **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 Maurice Cooper's establishment of a single family dwelling on the subject property: applicable provisions of Statewide Planning Goal 3, ORS 215, and OAR 660-033-0135(7). These land use regulations will not apply to Mr. Cooper's use of his property only to the extent necessary to allow the claimant to a use permitted at the time he acquired the property on January 18, 1944.
2. The action by the State of Oregon provides the state's authorization to the claimant to use his property subject to the standards in effect on January 18, 1944.
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 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 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 July 11, 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.