

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

**OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT**

**Final Staff Report and Recommendation**

August 8, 2005

**STATE CLAIM NUMBER:** M119802

**NAME OF CLAIMANT:** Willett Stauss

**MAILING ADDRESS:** 1275 Northeast Oleander Lane  
Hillsboro, Oregon 97124

**IDENTIFICATION OF PROPERTY:** Township 2N, Range 2W, Section 30  
Tax Lot 300  
Washington County

**OTHER CONTACT INFORMATION:** Dale Bernards  
8360 Southwest Crestwood Lane  
Portland, Oregon 97225

**DATE RECEIVED BY DAS:** February 16, 2005

**180-DAY DEADLINE:** August 15, 2005

**I. CLAIM**

Willett Strauss, the claimant, seeks compensation in the amount of \$5,300,000 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 divide the 38.8 acre property into 20,000 square foot parcels for sale and residential use. The 38.8-acre property is located at 15265 Shadybrook Road, near North Plains, in Washington 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 and department staff recommends that, in lieu of compensation, the requirements of the following state laws enforced by the Land Conservation and Development Commission (the Commission) or the department, not apply to allow Mr. Stauss to divide his property for sale and residential use: applicable provisions of Statewide Planning Goals 3 (Agricultural Lands) and 14 (Urbanization), ORS 215.213, 215.263, 215.284, ORS 215.317, 215.327, and 215.780 and OAR 660,

division 33. These laws will not apply to the claimant to the extent necessary to allow Mr. Strauss a use of the subject property permitted at the time he acquired the property on November 22, 1945.<sup>1</sup> (See the complete recommendation in Section VI. of this report.)

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

#### **Comments Received**

On March 2, 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, two written comments, evidence or information were received in response to the 10-day notice. The comments do not address whether the claim meets the criteria for relief (compensation or waiver) under Measure 37. Comments concerning the effects a use of the property may have on surrounding areas generally are not something that the department is able to consider in determining whether to waive a state law. If funds do become available to pay compensation, then such effects may become relevant in determining which claims to pay compensation for instead of waiving a state law. (See comment letter in the department's claim file.)

### **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 February 16, 2005, for processing under OAR 125, division 145. The claim identifies “Exclusive Farm Use (EFU) Zoning and 1962 zoning code” 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.)

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<sup>1</sup> It is unclear when the property was acquired in November 1945. The quality of the copy of the deed submitted is poor, but it appears that the deed was transferred on November 22, 1945. Portions of the claim refer to a November 11, 1945 date. For purposes of the claim filed the November 22, 1945 date was used.

## **Conclusions**

The claim has been submitted within two years of December 2, 2004 the effective date of Measure 37, based on land use regulations enacted 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 claimant, Willett Stauss, acquired the subject property on November 22, 1945. The property is located at 15265 Shaybrook Road, near North Plains, Oregon (A copy of the deed conveying the subject property is included with the claim in the department’s claim file). A copy of the Real Property Tax Statement from Washington County shows the claimant is the listed owner of the subject property, Washington County Property ID: R788785; Tax Lot: 2N230-00300, during the 2004 to 2005 tax year.

### **Conclusions**

As of November 22, 1945 the claimant, Willett Stauss, is an “owner” of the subject property known as Washington County Tax Lot 2N230-00300, as that term is defined by Section 11(C) of Ballot Measure 37.

### **2. The 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 Fact**

The claim states:

“The property is zoned EFU and is too small to farm effectively” and the “Market value of 20,000 square foot lots in area less cost” is “\$5,300,000.” Based on Mr. Stauss’ claim it appears that he would like to divide his property in 20,000 square foot parcels.

The claim is based, in part, on Washington County’s current 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, 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 is zoned EFU pursuant to ORS 215.

Current land use regulations, particularly Goal 3 and ORS 215.213, 215.263, 215.284, 215.317, 215.327, 215.780 and OAR 660, division 33, do not allow the subject property to be divided into parcels less than 80-acres and establish standards for allowing the existing or any proposed parcel(s) to have farm or non farm dwellings on them. Goal 14 generally prohibits urban development on lands outside of urban growth boundaries. The proposed use of the property – the creation of homes on 20,000 square foot lots, likely is an urban use of land that would be prohibited under Goal 14.

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). ORS 215.263(2003 edition) establishes standards for the creation of new parcels for non farm uses and dwellings allowed in an EFU zone.

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 215.317. OAR 660-033-0130(4) (applicable to non-farm dwellings in marginal lands counties) became effective on August 7, 1993.

The claimant acquired the subject property on November 22, 1945. At that time, Statewide Planning Goal 3, ORS 215, and administrative rules were not in effect and did not restrict the use of the property.

When Mr. Stauss acquired on November 22, 1945, the foregoing state laws were not in effect.

### **Conclusions**

The zoning requirements, minimum lot size and dwelling standards established by Statewide Planning Goal 3 (Agricultural Lands) (OAR 660-015-0000(3)) and provisions applicable to land zoned EFU in ORS 215 and OAR 660, division 33, were all enacted after Willett Stauss acquired ownership of the subject property on November 22, 1945, and do not allow the division of the property, thereby restricting the use of the property relative to the uses allowed when the property was acquired by Mr. Stauss in 1945.

This report addresses only those state laws that are identified in the claim, or that the department is certain apply to the property based on the uses the claimant has identified. There may be other laws that currently apply to the claimant's use of the property, and may continue to apply to the claimant's use of the property, that have not been identified in the claim. In some cases, it will not be possible to know what laws apply to a use of property until there is a specific proposal for that use. When a claimant seeks a building or development permit to carry out a specific use, it may become evident that other state laws apply to that use.

### **3. Effect of Regulations on Fair Market Value**

In order 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 estimates the reduction in fair market value due to land use restrictions as \$5,300,000. The \$5,300,000 amount is not substantiated. However, dividing the 38-acre parcel into 20,000 square foot lots for housing increases the value of the property resulting in a loss compared to present value for farm use.

The claim includes a property tax assessment showing that the 38.8 acres of land and existing dwelling has a 2004 real market value of \$196,440.

#### **Conclusions**

As explained in section V.(1) of this report, the current owner is Willett Strauss acquired the property on November 22, 1945, (see deed). Thus, under Ballot Measure 37, Willett Stauss is due compensation for land use regulations that restrict the use of the subject property in a manner that reduces its fair market value. The Tax Statement from Washington County shows Mr. Stauss is the current owner of the 38.80 acre property and the existing structure(s).

Without an appraisal based on the value of 20,000 square foot lots or other explanation, 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.

### **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 includes a general reference to any state land-use regulations that restrict the use of the property relative to what would have been allowed in 1945 when the Mr. Stauss acquired the property. These provisions include Statewide Planning Goal 3 (Agricultural Lands), ORS 215, and OAR 660, division 33. None of these laws appear to be exempt, under subsection 3(E) of Ballot Measure 37.

## **Conclusions**

Without a specific proposed use or a specific listing of laws that are the basis for the claim, it is impossible for the Commission or 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. It does appear that the general statutory, goal and rule restrictions on 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 subsection 3(E) of 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.

Laws in effect with the claimant acquired the property are exempt under Section 3(E) of Measure 37, and will continue to apply to the claimant's use of the property. There may be other laws that continue to apply to the claimant's use of the property that have not been identified in the claim. In some cases it will not be possible to know what laws apply to a use of property until there is a specific proposal for that use. When a claimant seeks a building or development permit to carry out a specific use, it may become evident what other state laws apply to that use. And, in some cases, some of these laws may be exempt under subsections 3(A) to 3(D) of Measure 37.

This report addresses only those state laws that are identified in the claim, or that the department is certain apply to the property based on the use that the claimant has identified. Similarly, the report only addresses the exemptions provided for under section (3) of Measure 37 that are clearly applicable given the information provided to the department in the claim. Claimants should be aware that the less information they have provided to the department in their claim, the greater the possibility that there may be additional laws that will later be determined to continue to apply to their use of the property.

## **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 enacted 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 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 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, laws enacted or enforced by the Commission or the department restrict the division of the subject property into parcels or lots, and the use of the property for residential purposes. The claimant cannot create the desired 20,000 square foot lots out of the subject 38.8-acre property, and sell or develop those lots for residential use. The laws enacted or enforced by the Commission or department reduce the fair

market value of the 38.8-acre property to some extent, although it is unclear what level of development would be allowed under the laws in effect on November 22, 1945, when the claimant acquired the property. The claim asserts this amount to be \$5,300,000. However, because the claim does not provide a specific explanation for how the specified restrictions reduce the fair market value of the property, no appraisal or other documentation was submitted and a specific amount of compensation cannot be determined. Nevertheless, based on the record for this claim, the department acknowledges that the laws on which the claim is based 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 compensation, Ballot Measure 37 authorizes the department to modify, remove or not apply all or parts of one or more land use regulations to allow Mr. Stauss to use the subject property for a use allowed at the time she acquired the property on November 22, 1945.

### **Conclusions**

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

1. In lieu of compensation, the requirements of the following state laws enforced by the Land Conservation and Development Commission (the Commission) or the department, not apply to allow Mr. Stauss to divide his property for sale and residential use: applicable provisions of Statewide Planning Goals 3 (Agricultural Lands) and 14 (Urbanization), ORS 215.213, 215.263, 215.284, ORS 215.317, 215.327, and 215.780 and OAR 660, division 33. These laws will not apply to the claimant to the extent necessary to allow Mr. Strauss a use of the subject property permitted at the time he acquired the property on November 22, 1945.
2. The action by the State of Oregon provides the state's authorization to the claimant to use the property subject to the standards in effect on November 22, 1945.
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 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 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 19, 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.