

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

**OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT**

**Final Staff Report and Recommendation**

August 16, 2005

**STATE CLAIM NUMBER:** M119937

**NAME OF CLAIMANT:** Robert D. White

**MAILING ADDRESS:** 9260 Youngberg Hill Road  
McMinnville, Oregon 97128

**IDENTIFICATION OF PROPERTY:** Township 4S, Range 5W, Section 26  
Tax Lot 1200  
Yamhill County

**DATE RECEIVED BY DAS:** February 25, 2005

**180-DAY DEADLINE:** August 24, 2005

**I. CLAIM**

Robert D. White, the claimant, seeks compensation in the amount of \$450,000 for a reduction in fair market value of his subject property 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 subdivide his 12.5 acre property into five or six approximately two-acre parcels, all with dwellings. The subject property is identified as Tax Lot 1200, T4S R5W, section 26, and is located at 9260 Youngberg Hill Road, near the city of McMinnville 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, in lieu of 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 claimant to allow him to divide the property into six lots, and to establish a dwelling on each lot or parcel created: the applicable provisions of Statewide Planning Goal 14 (Urbanization) and OAR 660-004-0040. These laws will not apply to Mr. White's use of the property only to the extent necessary to allow Mr. White a use of the subject property permitted at the time he acquired it on June 19, 1973. (See the complete recommendation in Section VI. of this report.)

### **III. COMMENTS RECEIVED**

In March, 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, one was 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**

The claim was submitted to DAS on February 25, 2005 for processing under OAR 125, division 145. The claim identifies Yamhill County's Agriculture/ Forestry Small Holding (AF-10) zoning that restricts 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 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**

The claimant, Robert White, acquired the subject property from his father and mother, Luther A. and Theresa White, by Warranty Deed on June 19, 1973. (See claim.) According to verbal statements by the claimant, acquisition of the property by Luther White occurred in 1940.<sup>1</sup> Robert White is the current owner of the property, as documented by a February 22, 2005, property profile from Western Title and Escrow Company; by a December 21, 2004, letter from Michael Brandt, Yamhill County Planning Director to the claimant; and by the April 7, 2005, Yamhill County staff report which references a property Tax Statement verifying the current ownership.

### **Conclusions**

The claimant, Robert White is the “owner” of the subject property as that term is defined in Section 11(C) of Ballot Measure 37.

### **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**

Based on the county’s response letter, the claimant, Robert White, in a December 2004 letter to the Yamhill County Planning Department, requested permission to partition the subject property into 6 lots. The county denied this request based on the property’s AF-10 zoning, which established a 10-acre minimum lot size for the property.

The claimant lists only the county’s AF-10 zone as the land use regulation restricting the use of the property. The AF-10 zone is a rural residential zone.

Although the claimant did not specifically identify these state laws as a basis for his claim, in 2000 the Commission amended Statewide Planning Goal 14 (Urbanization) and adopted OAR 660-004-0040 (which became effective on October 4, 2000) as a result of a 1986 Supreme

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<sup>1</sup> The claim file includes no documentation of the family’s date of acquisition. Consequently, because the acquisition date of the claimant’s “family member” cannot be verified, only the claimant’s 1973 acquisition date is considered valid for the purposes of this claim.

Court decision.<sup>2</sup> The rule provides that after October 4, 2000, a county minimum lot size requirement in RR zone may not allow a smaller minimum lot size without taking an exception to Goal 14 (OAR 660-004-0040(6)). Thus, in this situation the rule does not allow the subject property to be divided into two-acre lots rather than the 10-acre lots allowed by the current Yamhill County Ordinance, without an exception to Goal 14.

Yamhill County had not zoned this property when the claimant acquired it in 1973. However, the county did have subdivision regulations adopted on April 1, 1959. (See pages 1 and 2 of the Yamhill County staff report, in claim file.)

### **Conclusions**

Statewide Goal 14 and OAR 660-004-0040 were adopted after the claimant became the owner of the subject property. Land use laws adopted since June 19, 1973, restrict the use of the property relative to the uses allowed when he acquired the property June 19, 1973.

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(s) that the claimant has identified. There may be other laws that currently apply to the claimant's use of the property, and that 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 permit or development permit to carry out a specific use, it may become evident that other state laws apply to that use. In this case, the department notes that the subject property may not have legal access to a public road. As a result, the claimant may need to acquire access prior to development of the property.

### **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 includes an informal estimate of \$600,000 as the property's fair market value, in the absence of current regulations. This estimate is based on the claimant's estimate of the market value of two-acre lots in the area.

The claim also includes an estimate of the current real market value of the subject property to be approximately \$150,000. The claim includes the affidavit of David Lawson, Yamhill County Assessor, which states the reduction in value submitted with the White claim is reasonable.

### **Conclusions**

As explained in section V.(1) of this report, Robert White is the current owner as of June 19, 1973. Under Ballot Measure 37, Mr. White is due compensation for land use laws that

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<sup>2</sup>*1000 Friends of Oregon v. LCDC (Curry County)*, 301 Or App 447 (1986).

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 restrict division of the subject property. The claim asserts the reduction in value due to the restrictions to be \$450,000. However, without an appraisal or other documentation, 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 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 provisions of state law that restrict the use of the property and reduce its fair market value. These are Statewide Planning Goal 14 (Urbanization) and OAR 660-004-0040. All of these state laws were adopted after the claimant acquired the property in 1973. Therefore, none of the laws identified in the claim are exempt, under subsection 3(E) of Ballot Measure 37.

Laws in effect when 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 because they were not 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 an owner of property seeks a building or development permit to carry out a specific use, it may become evident that 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(s) that the claimant has identified. Similarly, this 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. Claimant should be aware that the less information they provide 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.

#### **Conclusions**

It appears that the general statutory, goal, and rule restrictions on division of rural residential land apply to the owner's use of the property, and are not exempt under subsection 3(E) 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 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 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 set forth in this report, laws enforced by the Commission or the department prohibit the division of the subject property into 6 lots. These laws are the requirements of Statewide Goal 2 language relating to the exception process, applicable provisions of Statewide Planning Goal 14 (Urbanization), OAR 660-004-0040, and the statutory requirements for compliance with Statewide Goals found in ORS 197.175 and 197.250. These restrictions reduce the fair market value of the subject property to some extent, though it is unclear what level of development would be allowed under the laws in effect in 1973 when the claimant acquired the property. The claim asserts this amount to be \$450,000. Nevertheless, the department acknowledges that state land use laws 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 certain land use regulations to allow Mr. White to use the subject property for a use permitted at the time he acquired the property on June 19, 1973.

### **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 Mr. White's division of his property into six lots or parcels, or to the establishment of a single family dwelling on each lot or parcel created: Statewide Goal 14 and OAR 660-004-0040. These land use regulations will not apply to the subject property to Mr. White'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.
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 June 19, 1973.
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 215.402 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 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.