

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

**OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT  
Final Staff Report and Recommendation**

September 16, 2005

**STATE CLAIM NUMBER:** M120268

**NAMES OF CLAIMANTS:** Ray Hopp  
Allan Hopp  
Randy Hopp

**MAILING ADDRESS:** Post Office Box 150  
Newberg, Oregon 97132

**PROPERTY IDENTIFICATION:** Township 3S, Range 2W, Section 6,  
Tax Lot 4100, Yamhill County

**DATE RECEIVED BY DAS:** March 23, 2005

**180-DAY DEADLINE:** September 19, 2005

**I. SUMMARY OF CLAIM**

The claimants, Ray Hopp, Allan Hopp and Randy Hopp, seek compensation in the amount of \$710,000 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 claimants desire compensation or the right to subdivide the 17.45-acre property into approximately 2.5-acre lots and to develop a dwelling on each lot. The property is located at 16355 NE Chehalem Drive, Newberg, 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 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 claimants' division of the property for residential development: applicable provisions of Statewide Planning Goal 3, ORS 215 and OAR 660 division 33. These laws will not apply to Ray Hopp only to the extent necessary to allow him a use of the property

permitted at the time he acquired it in 1959. These laws will not apply to Allan Hopp and Randy Hopp only to the extent necessary to allow them a use of the property permitted at the time they acquired it on December 12, 2000. The department acknowledges that the relief to which Allan Hopp and Randy Hopp are entitled under Measure 37 will not allow them to use the property in the manner set forth in this claim. (See the complete recommendation in Section VI. of this report.)

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

#### **Comments Received**

On March 31, 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, 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 March 23, 2005, for processing under OAR 125, division 145. The claim identifies the county's Exclusive Farm Use (EF-20) zoning, ORS 92, 195, 197, provisions of ORS 215 and OAR 660, as laws that restrict the use of the property and are 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**

Claimant Ray Hopp acquired the subject property on June 9, 1959, as reflected by a Warranty Deed included with the claim. On February 9, 2000, Ray Hoff transferred his interest in the property to the Ray Hopp Living Trust. The transfer to the revocable trust does not result in a change in Ray Hopp’s ownership of the property for purposes of this Measure 37 claim.

On December 12, 2000, Allan Hopp and Randy Hopp acquired a one-quarter interest each in the property from the Betty Hopp Living Trust, as evidenced by deeds provided by the claimants.

A copy of the 2004-2005 Real Property Statement identifies the Ray Hopp Living Trust as owner of a one-half interest in the property, and Allan Hopp and Randy Hopp as owners of a one quarter interest each in the property.

#### **Conclusions**

Ray Hopp is an “owner” of the subject property, as that term is defined by Section 11(C) of Ballot Measure 37, as of June 9, 1959. Allan Hopp and Randy Hopp are owners of the property as of December 12, 2000.

### **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 claimants’ 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 the following laws, statutes, rules, regulations and ordinances that affect the property: ORS 92, 195, 197, 215.263, 215.283, 215.284, 215.700, 215.705, 215.780 and all of OAR 660.

ORS 92 was generally enacted prior to Ray Hopp’s 1959 acquisition of the property, and to the extent it could be construed to in itself restrict the use of the property, will continue to apply to the property. ORS 195 and 197 relate to procedure for development, implementation and review of local comprehensive plans, ordinances and land use applications, and do not in themselves restrict the use of the subject property.

The state land use regulations that currently restrict the use of the property include those provisions of state law implemented by Yamhill County's current EF-20 zone. The EF-20 zone, which requires a 20-acre minimum lot size, is required by Statewide Planning Goal 3 in accord with OAR 660, division 33, and ORS 215 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 Exclusive Farm Use (EFU) pursuant to ORS 215.

Yamhill County has received Commission acknowledgment for a 20-acre minimum standard for farm land in Yamhill County pursuant to ORS 215.780(2). ORS 215.263 (2003 edition) establishes standards for the creation of new parcels for non-farm uses and dwellings allowed in an EFU zone.

Current land use regulations, particularly ORS 215.263, 215.283, 215.284, 215.780(2) and OAR 660 division 33, as applied by Goal 3, do not allow the subject property to be divided into parcels less than 20-acres and establish standards for allowing the existing or any proposed parcel(s) to have farm or non-farm dwellings on them. Current land use regulation ORS 215.700 establishes a policy for resource land dwellings. ORS 215.705 discusses criteria for establishing dwellings in farm zones.

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.)

Ray Hopp acquired the subject property on June 9, 1959. At that time, the property was not zoned by the County and there were no Statewide Planning Goals or implementing statutes or rules that would have applied to the property.

### **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 Ray Hopp acquired ownership of the subject property in June 1959, 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 Ray Hopp in 1959.

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 claimants have identified. There may

be other laws that currently apply to the claimants' use of the property, and that may continue to apply to the claimants' 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 the claimants seek 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 land use regulation 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 \$710,000 as the reduction of the property's fair market value as a result of current regulations. This amount is based on a market analysis assuming a highest and best use of 2.5-acre lots, which estimates the value of the property without regulation to be \$1,320,000. The estimated \$710,000 reduction in the fair market value is based on the \$1,320,000 minus the estimated cost to develop the property and the current "as is" value of the subject property.

#### **Conclusions**

As explained in Section V. (1) of this report, the current owners are the Ray Hopp Living Trust, Allan Hopp and Randy Hopp. Under Ballot Measure 37, Ray Hopp, Allan Hopp and Randy Hopp are due compensation for land use regulations that restrict the use of the subject property in a manner that reduces its fair market value since the family acquired the property on June 9, 1959. Based on the findings and conclusions in Section V. (2), laws adopted since 1959 restrict the ability of the claimants to divide the subject property. The claimants estimate the reduction in value due to restrictions to be \$710,000.

Without an appraisal or other documentation, it is not possible to substantiate the specific dollar amount the claimants demand 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 lists state land use regulations that restrict the use of the property relative to what would have been allowed in 1959 when the property was acquired by Mr. Ray Hopp. These

provisions include ORS 92, 195, 197, 215 and OAR 660 and the County EF-20 zone. With the exception of ORS 92 in effect in 1959, none of these laws are exempt under Section 3(E) of Ballot Measure 37, which exempts laws in effect when the claimants or claimants' family acquired the property.

### **Conclusions**

Without a specific development proposal for the property, it is not possible for 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 farm land apply to the claimants' use of the property, and for the most part these laws are not exempt under Section 3(E) of Measure 37. Provisions of ORS 92 in effect when Ray Hopp acquired the property in 1959 are exempt under Section 3(E) of the Measure and will continue to apply to the property.

Other laws in effect when the claimants acquired the property are also exempt under Section 3(E) of Measure 37, and will continue to apply to the claimants' use of the property. There may be other laws that continue to apply to the claimants' 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 the claimants seek 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 uses that the claimants have 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. The 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 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 in order to allow the present owner to carry out a use of the property permitted at the time the current 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 restrict the division of the subject property into 2.5-acre lots and the residential

development of those lots. The claim asserts the laws enforced by the Commission or department reduce the fair market value of the subject property by \$710,000. However, because the claim does not provide an appraisal or other specific documentation to establish how the specified restrictions reduce the fair market value of the property, 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 certain land use regulations to allow Ray Hopp to use the subject property for a use permitted at the time he acquired the property on June 9, 1959, and to allow Allan Hopp and Randy Hopp to use the subject property for a use permitted at the time they acquired an ownership interest in the property on December 12, 2000. When Randy and Allan Hopp acquired an ownership interest in the property on December 12, 2000, the property was generally subject to the provisions of Goal 3, ORS 215 and OAR 660, division 33 currently in effect.

### **Conclusion**

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' subdivision of the 17.45-acre property into approximately 2.5-acre lots and to develop a dwelling on each lot: applicable provisions of Statewide Planning Goal 3, ORS 215, and OAR 660, division 33. These land use regulations will not apply to Ray Hopp's use of the property only to the extent necessary to allow him a use permitted at the time he acquired the property on June 9, 1959. These land use regulations will not apply to Allan Hopp's and Randy Hopp's use of the property only to the extent necessary to allow them a use permitted at the time they acquired an interest in the property on December 12, 2000. The department acknowledges that the relief to which Allan Hopp and Randy Hopp are entitled under Measure 37 will not allow these claimants to use the property in a manner set forth in the claim.
2. The action by the State of Oregon provides the state's authorization to claimant Ray Hopp to use the property subject to the standards in effect on June 9, 1959; and to claimants Allan Hopp and Randy Hopp to use the property subject to the standards in effect on December 12, 2000. On that date, the property was generally subject to the provisions of ORS 215, Statewide Planning Goal 3 and OAR 660, division 33, currently in effect.
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 215.402 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 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 claimant.

## **VII. COMMENTS ON THE DRAFT STAFF REPORT**

The department issued its draft staff report on this claim on August 25, 2005. OAR 125-145-0100(3), provided an opportunity for the claimants or the claimants' 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.