

BEFORE THE DEPARTMENT OF ADMINISTRATIVE SERVICES,
THE DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT OF
THE STATE OF OREGON

IN THE MATTER OF THE CLAIM)	FINAL ORDER
FOR COMPENSATION UNDER)	CLAIM NO. M118382
BALLOT MEASURE 37 (CHAPTER 1,)	
OREGON LAWS 2005) OF)	
Timothy and Belva Hadley, CLAIMANTS)	

Claimant(s): Timothy and Belva Hadley (the Claimants)

Property: Tax Lot 2300, T.10S, R.2W, Section 12C, W.M., Linn County

Claim: The demand for compensation and any supporting information received from the Claimants by the State of Oregon (the Claim).

Claimants submitted the Claim to the State of Oregon under Ballot Measure 37 (2004) (Oregon Laws 2005, Chapter 1) (hereafter, Measure 37). Under OAR 125-145-0010 *et seq.*, the Department of Administrative Services (DAS) referred the Claim to the Department of Land Conservation and Development (DLCD) as the regulating entity. This order is based on the record herein, including the Findings and Conclusions set forth in the Final Staff Report and Recommendation of DLCD (the DLCD Report) attached to and by this reference incorporated into this order.

ORDER

The Claim is approved as to laws administered by DLCD and the Land Conservation and Development Commission (LCDC) for the reasons set forth in the DLCD Report, and subject to the following terms:

1. In lieu of compensation under Measure 37, the State of Oregon will not apply the following laws to Timothy and Belva Hadley's division of the 17.68-acre portion of the subject property into 15, one-acre parcels for residential use, and one parcel for their existing residence: applicable provisions of Statewide Planning Goal 3 and Goal 14, ORS 215.263, 215.284 and 215.780 and OAR 660, division 33. These land use regulations will not apply to the claimants' use of the 17.68-acre portion of their property only to the extent necessary to allow the claimants a use permitted at the time they acquired that portion of their property on November 24, 1970.
2. The action by the State of Oregon provides the state's authorization to the claimants to use the 17.68-acre portion of their property subject to the standards in effect on November 24, 1970.

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 claimants.

This Order is entered by the Director of the DLCD as a final order of DLCD and the Land Conservation and Development Commission under Measure 37, OAR 660-002-0010(8), and OAR 125, division 145, and by the Deputy Administrator for the State Services Division of the DAS as a final order of DAS under Measure 37, OAR 125, division 145, and ORS 293.

FOR DLCD AND THE LAND CONSERVATION
AND DEVELOPMENT COMMISSION:

Lane Shetterly
Lane Shetterly, Director

DLCD

Dated this 9th day of October, 2005.

FOR the DEPARTMENT OF ADMINISTRATIVE
SERVICES:

Dugan Petty
Dugan Petty, Deputy Administrator
DAS, State Services Division

Dated this 18th day of October, 2005.

NOTICE OF RIGHT TO APPEAL OR OTHER JUDICIAL RELIEF

You are entitled, or may be entitled, to the following judicial remedies:

1. **Judicial review under ORS 293.316:** Judicial review under ORS 293.316 may be obtained by filing a petition for review within 60 days from the service of this order. Judicial review under ORS 293.316 is pursuant to the provisions of ORS 183.482 to the Court of Appeals.
2. **Judicial review under ORS 183.484:** Judicial review under ORS 183.484 may be obtained by filing a petition for review within 60 days from the service of this order. A petition for judicial review under ORS 183.484 may be filed in the Circuit Court for Marion County and the Circuit Court in the county in which you reside.
3. **A cause of action under Oregon Laws 2005, chapter 1 (Measure 37 (2004)):** A present owner of the property, or any interest therein, may file a cause of action in the Circuit Court for the county where the property is located, if a land use regulation continues to apply to the subject property more than 180 days after the present owner made a written demand for compensation.

(Copies of the documents that comprise the record are available for review at the Department's office at 635 Capitol Street NE, Suite 150, Salem, Oregon 97301-2540)

FOR INFORMATION ONLY

The Oregon Department of Justice has advised the Department of Land Conservation and Development that "[i]f the current owner of the real property conveys the property before the new use allowed by the public entity is established, then the entitlement to relief will be lost."

FOR INFORMATION ONLY

The Marion County Circuit Court has issued an opinion declaring that 2004 Oregon Ballot Measure 37 (2005 Or Laws chapter 1) is invalid. As of the date of this order, the court has not entered a judgment that gives legal effect to the court's opinion. Once a judgment is entered by the court, and effective, any rights granted by this order may be void or voidable.

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

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

October 19, 2005

STATE CLAIM NUMBER: M118382

NAMES OF CLAIMANTS: Timothy and Belva Hadley

MAILING ADDRESS: 38260 Jefferson Scio Drive, Box 70
Scio, Oregon 97373

PROPERTY IDENTIFICATION: Township 10S, Range 2W, Section 12C
Tax Lot 2300
Linn County

DATE RECEIVED BY DAS: May 2, 2005

180-DAY DEADLINE: October 29, 2005

I. SUMMARY OF CLAIM

The claimants, Timothy and Belva Hadley, seek compensation in the amount of \$1,025,000 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 divide the 18.35-acre property into 15, one-acre parcels for residential development, and one 3.35-acre parcel, on which their existing residence is located. The property does not have a street address and is located at Township 10S, Range 2W, Section 12C, tax lot 2300, Linn 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 for the 17.68-acre portion of the subject property, but is not valid for the 0.67-acre portion of the property zoned Rural Center (2.5-acre minimum lot size).¹ 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 the claimants' division of the 17.68-acre portion of the property for residential development: applicable provisions of Statewide Planning Goal 3 (Agricultural Lands), Goal 14 (Urbanization), ORS 215,

¹ According to the claimants, it is their intent to use the 0.67-acre portion of the property as an access road. Use of this portion of the property is subject to the county's RCT-2.5 zoning district.

and OAR 660, division 33. These laws will not apply to the claimants only to the extent necessary to allow them a use of the 17.68-acre portion of the property permitted at the time they acquired it in 1970. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On May 20, 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, one written comment, evidence or information was received in response to the 10-day notice.

The comment is relevant to whether the restriction of the claimants' use of the property reduces the fair market value of the property. The comment has been considered by the department in preparing this report. (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 May 2, 2005, for processing under OAR 125, division 145. The claim identifies "exclusive farm use" provisions as the 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 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 claimants acquired the subject property in two parts. On November 24, 1970, they acquired the 17.68-acre portion of the property. They acquired an additional 70 foot strip (approximately 0.67 acres) on October 21, 1980. The Linn County staff report for a county claim for this property, verifies the claimants’ acquisition dates in 1970 and 1980, respectively. The claim includes the current county property tax statements that verify that the claimants are current owners of the property. (See documents in the department’s claim file).

Conclusions

The claimants are “owners” of the subject property as that term is defined by Section 11(C) of Ballot Measure 37 as of November 24, 1970 for the 17.68-acre portion of the property, and as of October 21, 1980 for the remaining 0.67 acres.

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 “exclusive farm use” provisions as the laws that restrict the partition of and access to the 18.35-acre property into an additional 15, one-acre parcels for residential development.

The claim is based generally on Linn County's current Exclusive Farm Use (EFU) Zone and the applicable provisions of state law that require such zoning. The majority of the claimants' property (17.68 acres) is zoned EFU as required by Statewide Planning Goal 3 (Agriculture Lands) in accord with OAR 660, division 33 and ORS 215 because the claimants' property is "Agricultural Land" as defined by Goal 3.² 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. The 0.67-acre portion of the property is currently zoned Rural Center – 2.5-acre minimum lot size (RCT- 2.5).

Current land use regulations, particularly ORS 215.263, 215.284, 215.780 and OAR 660, division 33 as applied by Goal 3, do not allow the subject 17.68-acre portion of the property zoned EFU, to be divided into parcels less than 80 acres and establish standards for allowing the existing or any proposed parcels to have farm or non-farm dwellings on them.

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 215.283(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.)

Statewide Planning Goal 14 (Urbanization) would likely apply to the division of the claimants' property into parcels of less than two acres in size. Goal 14 generally requires that land outside of urban growth boundaries be used for rural uses. Goal 14 became effective on January 25, 1975.

The claimants acquired the 17.68-acre portion of the subject property on November 4, 1970, before the adoption of the statewide planning goals or other state or local land use regulations.

The remaining 70-foot strip of land (0.67 acres) was zoned RCT -2.5 when the claimants acquired it on October 21, 1980, and currently continues to be zoned RCT-2.5. That zone requires a 2.5-acre minimum lot size for development. The claimants only request to use this portion of the property for access to the remaining 17.68-acre portion.

² The claimant's property is "Agricultural Land because it contains NRCS (Natural Resources Conservation Service) Class I-IV Soils (www.websoilsurvey.nrcs.usda.gov)

Conclusions

The zoning requirements, minimum lot size and dwelling standards established by Statewide Planning Goal 3 (Agricultural Lands) and provisions applicable to land zoned EFU in ORS 215 and OAR 660, division 33 were all enacted after the claimants acquired ownership of the 17.68-acre portion of the subject property in 1970 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 the claimants in 1970 and 1980, respectively. In 1970, the 17.68-acre portion of the property was not subject to state and local land use regulations.

In 1980, the 0.67-acre portion of the subject property was zoned RCT-2.5, the same as it is today. Thus, current land use regulations do not restrict the use of this 0.67-acre portion of the property relative to uses permitted when the claimants acquired that portion of the property.³

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. 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 estimates \$1,025,000 as the reduction in the property's fair market value due to current regulations. This amount is based on an estimate of the market value made by a local real estate firm, dated April 26, 2005, which states:

"Tim and Belva Hadley own a 1658 square foot home, shop and 18.35 acres at 38360 Jefferson Scio Drive, Scio 97374. This would sell at a minimum of approximately \$250,000 with all the property in tact. If the Hadley's were to subdivide 15 acres into one-acre parcels, they would have an approximately [sic] value of \$1,250,000-\$1,275,000 for their 15 acres and home with 3.35 acres."

No appraisal or other documentation to support this statement has been provided with the claim.

³ Whether this portion of the property can be used as access to the remaining 17.68-acre portion is subject to the applicable provisions of the county RCT-2.5 zoning district.

Conclusions

As explained in Section V. (1) of this report, the claimants acquired the property in 1970 and 1980. Thus, under Ballot Measure 37, the claimants are due compensation for land use regulations that restrict the use of the 17.68-acre portion of subject property in a manner that reduces its fair market value.⁴ Based on the findings and conclusions in Section V.(2) of this report, laws adopted since the claimants acquired the 17.68-acre portion of the property restrict division of that portion of the subject property for residential use. The claimants estimate the reduction in value, due to the restrictions, to be \$1,025,000.

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 17.68-acre portion 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 state land use laws that restrict the use of the 17.68 acre-portion of the subject property relative to uses permitted when the claimants acquired that portion of the property including Statewide Planning Goal 3 (Agricultural Lands) and applicable provisions of ORS 215 and OAR 660, division 33. None of these laws is exempt under Section 3(E) of Measure 37, which exempts laws in effect when the claimants acquired the 17.68-acre portion of the property in 1970.

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 17.68-acre portion of their property, and for the most part, these laws are not exempt under Section 3(E) of Measure 37.

⁴ The estimated reduction in value is based on the entire 18.35-acre property. As stated in Section V.(2) of this report, no current state land use laws restrict the use of the 0.67-acre portion of the subject property relative to uses allowed when they acquired that portion of the property in 1980.

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 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 Sections 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 claimants' ability to divide the 17.68-acre portion of the property into one, 3.35-acre parcel and 15, one-acre parcels for residential use. The claim asserts the laws enforced by the Commission or department reduce the fair market value of the subject property by \$1,025,000. However, because the claim does not provide an appraisal or other specific documentation for how the specified restrictions reduce the fair market value of the property, and because the estimated reduction includes the 0.67-acre portion of the property for which the claim is not valid, 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 one or more land use regulations to the extent necessary to allow the claimants to use the 17.68-acre portion of the subject property for a use permitted at the time they acquired that portion of the property on November 24, 1970.

The department recommends denial of the claim as to the remaining 0.67-acre portion of the property the claimants acquired in 1980, because the laws enforced by the Commission of the department do not restrict the use of the property relative to how it could have been used in 1980.

Conclusion

Based on the record, the department recommends that the claim be denied as to the 0.67-acre portion of the property, and approved as to the 17.68-acre portion of the property, subject to the following terms:

1. In lieu of compensation under Measure 37, the State of Oregon will not apply the following laws to Timothy and Belva Hadley's division of the 17.68-acre portion of the subject property into 15, one-acre parcels for residential use, and one parcel for their existing residence: applicable provisions of Statewide Planning Goal 3 and Goal 14, ORS 215.263, 215.284 and 215.780 and OAR 660, division 33. These land use regulations will not apply to the claimants' use of the 17.68-acre portion of their property only to the extent necessary to allow the claimants a use permitted at the time they acquired that portion of their property on November 24, 1970.
2. The action by the State of Oregon provides the state's authorization to the claimants to use the 17.68-acre portion of their property subject to the standards in effect on November 24, 1970.
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 claimants.

VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on October 5, 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.