

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

OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT

Final Staff Report and Recommendation

June 7, 2005

STATE CLAIM NUMBER: M118924

NAME OF CLAIMANT: Tommy M. Ursry

MAILING ADDRESS: 3400 North Fork Smith River Rd.
Reedsport, Oregon 97467

IDENTIFICATION OF PROPERTY: 1580 Winchester Avenue
Township 22S Range 12W,
Section 3AB
Tax lots 94, 116, 117 and 118
Douglas County

OTHER INTEREST IN PROPERTY: None identified

DATE RECEIVED BY DAS: December 10, 2004

180-DAY DEADLINE: June 8, 2005

I. CLAIM

Tommy Ursry, the claimant, seeks compensation in the amount of \$1,650,000 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 further develop the subject property for residential and recreational vehicle facility use. The property includes Tax Lots 94, 116, 117, and 118, located at 1580 Winchester Avenue in Reedsport, Douglas 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 not valid. The department has determined that the requirements of Statewide Planning Goals 5 (Natural Resources) and 17 (Coastal Shorelands), as amended, do not restrict the claimant's use of the property and therefore do not reduce the fair market value of the property as asserted by the claimant. Goal 5 has no effect on the property and Goal 17 was adopted by the state, and implemented through the City of Reedsport acknowledged

local comprehensive plan and zoning ordinance, prior to the acquisition of the subject property by the claimant. Changes to Goal 5 and Goal 17, and the administrative rules to implement those amendments made subsequent to the acquisition of the property by the claimant, have created no new restrictions on the use of the property. (See the complete recommendation in Section VI. of the report.)

III. COMMENTS ON THE CLAIM

Comments Received

On February 28, 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, 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 December 10, 2004 for processing under OAR 125, Division 145. The claim identifies Goal 5 and Goal 17 as 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 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

In response to the department’s request for additional information, the claimant, Tommy Ursry, provided a copy of the Deed of Trust, dated July 1, 1992. That Deed of Trust identifies the claimant as one of ten owners of the subject property. According to a phone conversation with the Douglas County Assessor’s Office on April 19, 2005, Tommy Ursry is listed as an owner of record for the subject property, located at 1580 Winchester Avenue in Reedsport.

Conclusions

Mr. Ursry acquired an ownership interest in the subject property on July 1, 1992 and is listed as an owner of record by the Douglas County Assessor’s Office. Therefore, Mr. Ursry is an “owner” of the subject property as that term is defined by 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

The claim states that, “We could develop [sic] the land when we bought it.” The claim includes correspondence from the City of Reedsport to the previous owner (Ray Soriano) dated February 18, 1986 regarding approval, with conditions, by the Reedsport Planning Commission of preliminary plans for expansion of Coho RV Park by 79 recreational vehicle spaces. Conditions of the approval included that the development comply with state and local regulations governing the RV park and any proposed expansion, and that the final plans for expansion be presented to the Planning Commission at a future hearing. There is no information in the claim to indicate that Mr. Soriano, the previous owner, obtained final approvals or permits to expand the Coho RV Park.

The claim lists Statewide Planning Goals 5 (Natural Resources, Scenic and Historic Areas, and Open Spaces) (OAR 660-015-0000(5)) and 17 (Coastal Shorelands) (OAR 660-015-0010(2)) as the land use regulations on which the claim is based. Both Goal 5 and Goal 17 were adopted prior to the date of the Deed of Trust (July 1, 1992) included in the claim as evidence of ownership. Goal 5 became effective on January 25, 1975, with amendments effective March 31, 1988. Goal 17 became effective on June 7, 1977, with amendments effective October 19, 1984.

The information originally submitted with the claim does not specify how current land use regulations restrict the uses of the subject property allowed at the time the current owner acquired the property. Mr. Ursry provided additional information in response to a request from the department (see letter dated February 7, 2005) that indicates that he was filling 50 cubic yards of wetlands on the property annually between 1992 and 1999. He claims the implementation of a Significant Natural Resource Overlay Zone (City of Reedsport's Zoning Ordinance 99-513-Y in 1999, replaced by Zoning Ordinance 2003-1038 in 2003), which includes the subject property, restricts him from further filling of the property, thereby reducing its use and value. The Significant Natural Resources Overlay Zone is intended to provide protection for identified significant natural resources within the City of Reedsport as designated under Statewide Planning Goal 5 and Goal 17.¹

Statewide Planning Goal 5, and the provisions applicable under OAR 660-016-0000 and 660-023-0000, establish requirements and procedures for inventorying and evaluating certain natural resources and for developing programs to conserve and protect those resources determined to be significant. Although Goal 5 became effective in 1975, well before current ownership was acquired, the most recent amendments to the goal became effective on August 30, 1996, after Mr. Ursry acquired an interest in the property in 1992.² The 1996 amendments to Goal 5 specifically required that riparian corridors be included in the resources inventoried by local governments.³ In the City of Reedsport, the Goal 5 planning area is all land within the urban growth boundary that is *not included* in the Goal 17 planning area. (See Statewide Planning Goal 5 and Goal 17 City of Reedsport Periodic Review report 1999). Properties in the Goal 17 planning area are not subject to the riparian setback requirements of Goal 5 under the local ordinance. (See

¹ For the purpose of Reedsport's overlay zone, significant natural resources are designated as Significant Wetlands and Riparian Corridors under Goal 5 and Major Marshes and Riparian Vegetation under Goal 17.

² Prior to the 1996 amendments, Goal 5 required, in part, that the, "locations, quality and quantity of the following resources shall be inventoried: d.) Fish and wildlife areas and habitats, ...g.) Water areas, wetlands, watershed and groundwater resources". The rule for complying with Goal 5 (OAR 666-016-000, effective June 6, 1990) requires that the local government's analysis of resource data identify whether a particular natural area is "ecologically and scientifically significant" and include those resource sites of significance on the final plan inventory.

³ A "riparian corridor" is defined as a Goal 5 resource that includes water areas, fish habitat, adjacent riparian areas, and wetlands within the riparian area boundary (OAR 660-023-0090(c)). OAR 660-023-0000 through 660-023-0050 and 660-023-0090 (effective September 1, 1996) consist of procedures and requirements to guide local planning for Goal 5 resources and provides specific rules for managing riparian corridors.

City of Reedsport Statewide Planning Goal 17 Major Marshes and Riparian Areas Determination of Significance.)

Goal 5 and OAR 660-023-0100 also require identification of significant wetland resources. The subject property has not been inventoried as a significant wetland under the provisions of Goal 5, and is not subject to the protections required under OAR 660-023-0100 (4) for significant wetland resources within urban growth boundaries.

Statewide Planning Goal 17 (Coastal Shorelands) (OAR 660-015-0010(2)) requires local governments to conduct resource inventories within coastal shorelands planning areas to provide information necessary for identifying coastal shorelands and designating uses and policies. In Reedsport, the Goal 17 planning area includes Schofield Creek because it is tidally influenced. The subject property is adjacent to Schofield Creek and is in the Goal 17 planning area and is thus subject to the requirements of Goal 17 only. The Goal 5 riparian area protections do not apply. However, the property is subject to the riparian corridor setback along the riverbank. The setback is derived from the provision of Goal 17 that requires local jurisdictions to identify and protect riparian resources and the vegetated fringe and predates the claimant's acquisition of the subject property.

The changes to Goal 17 that have been enacted subsequent to the date of ownership cited above are the amendments to Goal 17 Coastal Shoreland Uses (2) Water Dependent Shorelands, effective August 20, 1999, and OAR 660, Division 37 for Goal 17 Water Dependent Shorelands, effective May 7, 2004. These regulations apply specifically to the location, size, suitability and uses of water dependent shorelands, and provide a process for local jurisdictions to make plan changes related to their identification and use. These rules do not restrict the use of the subject property. The City has conducted a delineation and determined that the property is not a Goal 17 significant wetland, or major marsh, and is therefore not subject to the protections afforded those resources under the local ordinance implementing the Goal.

Conclusions

The claimant identified Statewide Planning Goals 5 and 17 and implementing regulations as restricting the use of the property. Most of these provisions applied to the property prior to Mr. Ursry's acquisition of an interest in the subject property (e.g., the Goal 17 riparian area set backs). Other laws adopted after Mr. Ursry's acquisition either do not apply to the subject property (e.g., the Goal 5 riparian area protections) or do not result in a restriction on the use of the subject property (e.g., the provisions related to water dependent uses in Goal 17).

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 asserts a loss in value totaling \$1,650,000 based on the proposed filling and subdivision of the property into 33 lots, 100' X 100' in size, with a value of \$50,000 each, which would become part of the existing RV facility. RV parks are a conditional use under the City of Reedsport Zoning Ordinance 2003-1038, Section 3.050 that applies to this property. The current property owners have not made application to the city for expansion of the RV facility.

As described in Section V.2, the requirements under Goal 5 (as amended 1996), in conjunction with OAR 660, Division 23, and Goal 17 (as amended 1999) in conjunction with OAR 660, Division 37, do not cause the uses allowed by the city on this property to be more limited than they were prior to the acquisition of the property by the claimant in 1992. The existing riparian setback that applies to the property is based on the requirements of Goal 17, as amended in 1984. The land use regulations identified in the claim have not had the effect of reducing the fair market value of the property.

Conclusions

Based on information provided in the claim, Mr. Ursry, an owner of the subject property, is not due compensation as a result of land use laws that restrict the use of the subject property in a manner that reduce its fair market value. Goal 5 and Goal 17 and the rules implementing them have not imposed additional restrictions on the property since the time he acquired an interest in the property and therefore have not reduced the fair market value of the property relative to when Mr. Ursry acquired that interest in 1992.

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

Section 3(E) of Ballot Measure 37 states that the act shall not apply to land use regulations enacted prior to the date of acquisition of the property by the owner or family member of the owner who owned the subject property prior to acquisition or inheritance by the owner, whichever occurred first. The claim lists Statewide Planning Goals 5 (OAR 660-015-0000(5)) and 17 (OAR 660-015-0010(2)) as the land use regulations on which the claim is based. Both Goal 5 and Goal 17 were adopted prior to the date of acquisition (July 1, 1992). Goal 5 became effective on January 25, 1975, with amendments effective March 31, 1988. Goal 17 became effective on June 7, 1977, with amendments effective October 19, 1984.

The applicable elements of Goal 5 that have been enacted subsequent to the date of ownership cited above are OAR 660, Division 23, Procedures and Requirements for Complying with Goal 5. The applicable elements of Goal 17 that have been enacted subsequent to the claimant's date of acquisition cited above are the amendments to Goal 17 Coastal Shoreland Uses (2) Water Dependent Shorelands, effective August 20, 1999, and OAR 660, Division 37 for Goal 17 Water Dependent Shorelands, effective May 7, 2004.

Conclusions

The regulations subject to this claim were adopted after the claimant's acquisition of the subject property including Goal 5 (as amended in 1996), OAR 660, Division 23 (Procedures and Requirements for Complying with Goal 5), Goal 17 Coastal Shoreland Uses (2) Water Dependent Shorelands, and OAR 660, Division 37 for Goal 17 Water Dependent Shorelands. None of these regulations, either on their face or as applied to the subject property, are exempt under Section 3 of Ballot Measure 37. Goal 5 and Goal 17, in the form adopted in 1977 and amended in 1984, adopted prior to Mr. Ursry's acquisition of an interest in the property, are exempt under Section 3(E) of 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 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 Land Conservation and Development Commission (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, specifically provisions of Goals 5 and 17 and implementing regulations, do not restrict the claimant's use of the 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 acquired an interest in the property in 1992. The claimant identifies Goal 5 and Goal 17 as having reduced the fair market value of his property. Both Goals were adopted and implemented prior to the ownership of the property by the claimant. Further, the amendments to Goal 5 and Goal 17, and the administrative rules amended and adopted pursuant to the Goal amendments after the claimant acquired the property, do not apply to the subject property and therefore can not cause the uses allowed by the city on this property to be more limited than they were prior to the claimant's acquisition of the property in 1992. The existing riparian setback that applies to the property is based on the requirements of Goal 17, as amended in 1984.

The land use regulations listed in the claim have not had the effect of reducing the fair market value of the property, or any use therein.

Conclusion

The claimant, Mr. Ursry, is not entitled to payment of compensation or relief under Ballot Measure 37.

VII. COMMENTS ON THE DRAFT STAFF REPORT

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