

**BALLOT MEASURE 37 (Chapter 1, Oregon Laws 2005)
CLAIM FOR COMPENSATION**

OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT

Final Staff Report and Recommendation

June 28, 2005

STATE CLAIM NUMBER: M119145

NAME OF CLAIMANT: Wayne Martin, Helen Martin and
Boyd Martin

MAILING ADDRESS: 3131 W. Highland
Redmond, Oregon 97756

IDENTIFICATION OF PROPERTY: Township 16S, Range 14E, Section 10
Tax lots 500, 600 and 800
Crook County

**OTHER CONTACT INFORMATION
FOR CLAIMANT:** Edward Fitch
P.O. Box 457
Redmond, Oregon 97756

DATE RECEIVED BY DAS: January 3, 2005

180-DAY DEADLINE: July 2, 2005

I. CLAIM

Wayne, Helen and Boyd Martin, the claimants, seek compensation in the amount of \$2,700,000 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 partition the 110.33-acre property into parcels of two-acres, more or less. (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 the claim is not valid because neither the Land Conservation and Development Commission (the Commission) nor the department have enforced laws that 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 claimants acquired interest in the properties in 1979 and 1981. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On February 28 and March 7, 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, four comments were received. The comments received do not address the criteria under Measure 37 for the department's review of this claim. Until and unless funding is provided to pay claims, comments regarding the possible impact of the proposed or intended development of the claimants' property are not relevant to the evaluation and determination of the claimant's Ballot Measure 37 claim, and cannot be considered by the department. (See comment letters 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 January 3, 2005 for processing under OAR 125, Division 145. The claim identifies "zoning regulations that restrict subdivisions" 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. Section 11(C) defines “owner” as “the present owner of the property, or any interest therein.”

Findings of Fact

The property that is identified as the subject of this claim includes three tax lots: 500, 600 and 800, all in Township 16S, Range 14E, Section 10 (Crook County).

The claimants, Wayne Martin, his wife, Helen A. Martin, and his son Boyd, along with Laurie Martin and Dale Martin, acquired a tract that included tax lots 600 and 800 on November 1, 1979. The property acquired in 1979 also included tax lot 700, tax map 16 14 10) (Warranty Deed, dated November 1, 1979).¹

Wayne and Helen Martin acquired what is now Tax lot 500 (the West ½ Northwest ¼ of Section 10, then tax lot 1202, tax map 16 14); on November 16, 1981 (Warranty Deed, dated November 16, 1981).

Wayne and Helen Martin and Dale Martin deeded tax lot 600, tax map 16 14 10, to Wayne and Helen Martin on June 29, 1989 (Warranty Deed, dated June 29, 1989). It appears that, at some point, Wayne, Helen and Boyd Martin transferred Tax Lot 800 to Boyd Martin.

The claim includes tax statements (Year 2004-2005) for tax lots 500 and 600 showing the claimant, Wayne A. Martin, and his wife, Helen A. Martin, as the current owners. The Crook County Assessor’s office confirmed that Boyd Martin is listed as the current owner of tax lot 800 (phone conversation May 27, 2005).

Conclusions

The claimants, Wayne Martin, and his wife, Helen Martin, are “owners” of an interest in tax lots 500 and 600, two of the three tax lots that are the subject of this claim as that term is defined by Measure 37. Boyd Martin appears to be an owner of tax lots 600 and 800.

The claimants, Wayne, Helen and Boyd Martin, have had ownership interests in tax lots 600 and 800 since November 1, 1979, and Wayne and Helen have had an ownership interest in Tax Lot 500 since November 16, 1981.

¹ Wayne and Helen Martin and Dale Martin deeded tax lot 700 (tax map 16 14 10), to Dale Martin on June 29, 1989. Dale Martin has filed a separate Measure 37 claim for Tax Lot 700. (See claim #M119146.)

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 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 "zoning regulations" restrict "subdividing the property into parcels of approximately 2 acres more or less."

When the claimants acquired the properties in 1979 and 1981, the property was zoned exclusive farm use (EFU) in accord with Statewide Planning Goal 3 (Agricultural Lands). According to the department's acknowledgement records, as of 2000, the current "zoning regulations" that apply to the claimant's properties consist of a "Non-Resource" Plan Map designation under the acknowledged Crook County Comprehensive Plan, and the County's Exclusive Farm Use, EFU-3 (Powell Butte Area). (See Section 3.030 of Crook County Zoning Ordinance 18 (Crook County Ordinance No. 127 Amend No. 1 for Area 2-4, July 26, 2000).)

The designation of lands as "Non-Resource" on the acknowledged comprehensive plan map means that the County determined, and the state agreed, that the claimants' properties were *not* "agricultural lands" as defined by Statewide Planning Goal 3.² As such, Goal 3 does not apply to the subject property. Lands that are not agricultural lands under Goal 3 do not need to be zoned exclusive farm use pursuant to ORS 215 and OAR 660, Division 33.

The amendment to the County's comprehensive plan map in 2000 designating the properties as "Non-Resource" removed state land use laws requiring that the properties be planned and zoned for exclusive farm use. Under state land use laws, the properties may be planned, zoned and used for rural development, including dwellings.

Conclusions

The claimants, by identifying "zoning regulations that restrict subdivisions" appear to assert that Statewide Planning Goal 3, ORS 215 and OAR 660, Division 33 restrict the use of the property. However, the subject property is designated in Crook County's acknowledged comprehensive plan as "Non-Resource," and therefore is not subject to these state land use laws. Based on the record currently before the department, neither the Commission nor the department has enforced any laws that currently restrict the use of the subject properties for subdivisions relative to what was allowed when the property

² The post acknowledgment plan amendment adopting Crook County Ordinance No. 127 was acknowledged pursuant to ORS 197.625(1) on August 18, 2000 (Notice of Adoption issued August 4, 2000).

was acquired in 1979 and 1981. Depending on the number and size of lots the claimants wish to create by subdivision, Statewide Land Use Planning Goal 14 may restrict the use of the property. However, Goal 14 was in effect when the claimants acquired their interests in the property and to the extent it does impose any restriction, that restriction was present in 1979 and 1981.

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 asserts a loss in the fair market value of the properties totaling \$2,700,000. No discussion or information was presented indicating how that amount was determined, including the values of property with restrictions and without restrictions.

Conclusions

As determined in Section V. (2) above, the claimants have not identified any laws enforced by the Commission or the department that restrict the use of the subject property. Without such identification, it is impossible to determine that any laws enforced by the Commission or the department have had the effect of reducing the fair market value of the property.

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 regulations that are the subject of this claim are Crook County’s “Non-Resource” Plan Map designation and the provisions of the County’s Exclusive Farm Use, EFU 3, Zone (Powell Butte Area). Some of the state laws relating to County’s EFU zone, including OAR 660, Division 33 and related provisions of state statutes and Goal 3 were enacted after the Martins acquired the properties in 1979 and 1981, but no longer apply to the property. However, some provisions in Goal 3 and related statutes, were adopted prior to 1979. Any state laws that restrict the use of the property that were enacted prior to November 1, 1979 are exempt under section (3)(E) of Measure 37.

Conclusions

Without a specific proposed use or a specific listing of laws that are the basis for the claim, or more detail concerning the anticipated use of the property, it is impossible for

the department to determine what laws may apply to a particular use of the properties, or whether those laws may fall under one or more of the exemptions under Measure 37. There may be 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 to begin with.

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 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 to allow the present owner to carry out a use of the property allowed at the time the present owner acquired the property. The Commission has by rule 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 do not restrict the claimants' use of the properties in a manner that reduces the fair market value of the properties relative to how the properties could have been used at the time the claimant acquired an interest in the properties in 1979 and 1981. The claim identifies "zoning regulations" as having reduced the fair market value of their property. However, in 2000, the properties were designated "Non-Resource" lands, removing the more restrictive provisions of Goal 3 and ORS 215 that applied to the properties when acquired by the Martins in 1979 and 1981. The land use regulations cited in the claim have not had the effect of reducing the fair market value of the properties, or any use therein.

Conclusion

Based on the record before the department, the claimants, Wayne Martin, Helen Martin and Boyd Martin have not established that they are entitled to relief under Ballot Measure 37.

VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on June 10, 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.