

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

OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT

Final Staff Report and Recommendation

July 8, 2005

STATE CLAIM NUMBER: M119303

NAME OF CLAIMANT: Rice Paddy LLC

MAILING ADDRESS: c/o George Heilig, Attorney
P.O. Box 546
Corvallis OR 97339

IDENTIFICATION OF PROPERTY: Township 14S, Range 5W, Section 19
Tax Lot 300, Benton County

DATE RECEIVED BY DAS: January 13, 2005

180-DAY DEADLINE: July 12, 2005

I. CLAIM

Rice Paddy LLC, the claimant, seeks compensation in the amount of \$50,000 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 build a single dwelling unit under the 1989 standard “customarily provided in conjunction with farm use”. The property is located in rural Benton 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 laws enforced by the Land Conservation and Development Commission (the Commission) or the department not apply to the claimant’s use of the property Statewide Planning Goal 3 (Agricultural Lands), applicable provisions of ORS 215 and OAR 660, Division 33, to the extent necessary to allow Rice Paddy LLC a use of the property permitted at the time it acquired the property that is the subject of this claim. As a result, the claimant’s use of the subject property will be subject to those specified laws in effect on December 19, 2001. The department acknowledges that the relief recommended in this report will not allow the claimant to use the property in the manner set forth in the claim. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On February 10, 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 January 13, 2005 for processing under OAR 125, Division 145. The claim includes a list of land use regulations (see claim) all of which were enacted prior to December 2, 2004, the effective date of Measure 37. (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 claim includes a Bargain and Sale Deed dated December 19, 2001 transferring real property to the claimant, Rice Paddy LLC, from Kenneth E. Hull. Kenneth E. Hull acquired the property by warranty deed December 27, 1989. Kenneth E. Hull is the sole registered member and manager of Rice Paddy LLC. Rice Paddy LLC is a current and valid Limited Liability Company (LLC) in Oregon.

Conclusions

The claimant, Rice Paddy LLC, is an “owner” of the subject property, as that term is defined under Section 11(C) of Ballot Measure 37. Kenneth E. Hull is a “family member” as that term is defined under Section 11(A) 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: “Claimant wishes to build single dwelling customarily provided in conjunction with farm use on Exclusive Farm Use (EFU) farm land acquired by claimant or family member on December 27, 1989.”

The claim identifies state laws restricting ability to build a single dwelling on farm land:

1. ORS 215.283(1-3) EFU zone amended 1993.
2. ORS 215.284(1-7) EFU zone amended 1993.
3. ORS 215.700 EFU zone amended 1993.
4. ORS 215.705(1-7) EFU zone amended 1993.
5. OAR 660-033-0090 EFU zone amended 1993.
6. OAR 660-033-120 EFU zone amended 1993.
7. OAR 660-033-130 EFU zone amended 1993.
8. OAR 660-033-135 EFU zone amended 1993.

Statewide Planning Goal 3 (Agricultural Lands), OAR 660-015-0000(3) and the provisions applicable to land zoned for EFU under ORS 215 and OAR 660-033-0090, including ORS 215.780, restrict the zoning and use of the subject property. Goal 3 became effective on January 25, 1975, and required agricultural land, as defined by the Goal, to be zoned EFU pursuant to ORS 215. (See citations to statutory and rule history under OAR 660-015-0000(3).) ORS 215.780, as well as the specified statutory and rule provisions listed above, became effective on November 4, 1993 (Chapter 792, Or Laws 1993) and restrict the use of the property.

Conclusion

The minimum lot size and dwelling standards established by Statewide Planning Goal 3, and applicable provisions of ORS 215 and OAR 660, Division 033, adopted since the property was acquired by the claimant's family restrict the use of the property relative to the uses allowed when the property was acquired on December 27, 1989.

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 includes a market analysis, including comparable sales information, prepared by a real estate broker estimating a loss of value of \$50,000 caused by laws prohibiting construction of a single dwelling customarily provided in conjunction with farm use on EFU farmland. No appraisal or other documentation to substantiate the estimate of the loss of value was provided with the claim.

Conclusions

As explained in section V. (1) of this report, the current owner is Rice Paddy LLC, which acquired the property in 2001. A family member has owned the property since 1989. Thus, under Ballot Measure 37, Rice Paddy LLC is due compensation for land use regulations that restrict the use of the subject property in a manner that reduces its fair market value. Rice Paddy LLC estimates the loss in value at \$50,000.

Rice Paddy has provided an analysis of the subject property's fair market value with current land use restrictions. It has also provided comparable sales information to estimate the value of similar property with a dwelling. However, without a specific appraisal or other verification of the value of the property, 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 laws. In addition, under Section 3 of the Measure, certain types of laws are exempt from the Measure.

Findings of Fact

The claim identifies the intended use of the property, and lists state laws preventing construction of a single dwelling customarily provided in conjunction with farm use on EFU farmland. None

of the referenced land use laws are exempt under Section 3 of Ballot Measure 37 with the exception of those provisions in Statewide Planning Goal 3, ORS 215 and other state laws related to siting a dwelling on farm land that that were adopted prior to the claimant's family's acquisition of the property in 1989.

Conclusions

It does appear that the general statutory, goal and rule restrictions on siting a dwelling on property zone EFU apply to the owner's anticipated use of the property, and for the most part these laws would not come under any of the exemptions in Measure 37. However, those laws adopted prior to the family member's acquisition of the property in 1989 are exempt under Section 3(E) of the Measure. 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 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 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 a 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, that 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 construction of single dwelling customarily provided in conjunction with farm use on EFU farmland. The laws enforced by the Commission or the department reduce the fair market value of the subject property to some extent. The claim asserts this amount to be \$50,000. This amount is substantiated by a realtor's market analysis, but no appraisal or other substantiating documentation has been provided. Nevertheless, based on the record for this claim, the department acknowledges that the laws on which the claim is based more likely than not 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 Rice Paddy LLC to use the subject property for a use permitted at the time it acquired the property on December 19, 2001.

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 claimant's establishment of a dwelling on the subject property: the applicable

provisions of Statewide Planning Goal 3 (Agricultural Lands), OAR 660, Division 033, and ORS 215 to the extent necessary to allow the claimant to use the property as permitted at the time it acquired it.

2. The action by the State of Oregon provides the state's authorization to the claimant to use the subject property subject to the laws in effect when it acquired the property on December 19, 2001. The department acknowledges that this relief will not allow the claimant to use the property in the manner set forth in the claim.

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 215.412 or ORS 227.160, other permits or authorizations from local, state or federal agencies, and restrictions on the use of the property posed 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 DLCD; 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 it 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 June 20, 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.