

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

**OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT**

**Final Staff Report and Recommendation**

July 11, 2005

**STATE CLAIM NUMBER:** M119304

**NAME OF CLAIMANTS:** Frank and Shirley Hoekstre

**MAILING ADDRESS:** 3910 Van Well Road  
Dallas, Oregon 97338

**IDENTIFICATION OF PROPERTY:** Township 7S, Range 5W, Section 5  
Tax Lots 201, 206 and 207  
Polk County

**OTHER CONTACT INFORMATION:** Wallace W. Lien, P.C.  
1775 32<sup>nd</sup> Place NE, Suite A  
Salem, Oregon 97303

**OTHER INTEREST IN PROPERTY:** AAT Communications, Corp. (cell tower)

Gordon Domes (Tax Lot 206)  
4190 Van Well Road  
Dallas, Oregon 97338

**DATE RECEIVED BY DAS:** January 13, 2005

**180-DAY DEADLINE:** June 2, 2005

**I. CLAIM**

Frank and Shirley Hoekstre, the claimants, seek compensation in the amount of \$951,120 for the reduction in fair market value as a result of certain land use regulations that are alleged to restrict the use of private real property. The claimants desire compensation or the right to divide the property for sale and residential development. (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 subject property: Statewide Planning Goal 3, ORS 215.780 and OAR 660-015-0000(3), 660-033-0090, 660-033-0100, 660-033-0130(4) and 660-033-0135 to the extent necessary to allow Frank and Shirley Hoekstre a use of the property permitted at the time they acquired the subject property. (See the complete recommendation in Section VI. of this report.)

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

#### **Comments Received**

On February 22, 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, three written comments, evidence or information were received in response to the 10-day notice. The comment letters raise questions as to the date of ownership.

### **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 13, 2004, for processing under OAR 125, Division 145. The claim states that “OAR 660, Statewide Planning Goals 3, 4 and 14, ORS 197 – comprehensive land use planning coordination and ORS 215 – County Planning” and “all Oregon revised Status (ORS) and Oregon Administrative Rules (OAR) which qualify as land use regulations under Measure 37 and that were enacted subsequent to October 22, 1943, are subject to this 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, Frank and Shirley Hoekstre, acquired the subject property from Henry and Clara Hoekstre, Frank’s parents on February 7, 1964. Frank’s parents acquired the property on October 22, 1943. (See the department’s claim file for copies of the deeds). The 171.5 acre property is composed of 3 parcels. As documented by the most recent three deeds, the parcels comprising the subject properties are held by the claimants in three separate revocable trusts, established by the claimants, and with the claimants serving as trustees.

### **Conclusions**

The claimants, Frank and Shirley Hoekstre, are owners of the subject property as that term is defined by Section 11(C) of Ballot Measure 37 and have owned the property since February 7, 1964. A family member as defined by Section 11(A) has owned the property since October 22, 1943.

### **2. The Laws that Are the Basis for the Claim**

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 Fact**

The claim states that:

“Of the 171.5 acres, the claimants propose to develop approximately 147 acres into residential parcels. The claimants intend to divide the western 43 acres of the subject property into two lots and divide the remaining 144 acres into 5 or 10 acre lots.”

The claim identifies “Specifically, the Statewide Planning Goals, OAR 660, and ORS 197 and 222, dictate that Polk County adopt a Comprehensive Plan and accompanying Zoning Ordinance which restricts the use of Agricultural land...and the claimants hereby request a waiver of enforcement and application of those regulations in their entirety in regard to the subject property.”

Statewide Planning Goal 3, Agricultural Lands (OAR 660-015-0000(3)) and the required provisions applicable to land zoned for exclusive farm use (EFU) under ORS 215 and OAR 660-033-0090, including ORS 215.780, restrict the zoning, use and partitioning 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 became effective on November 4, 1993 (Chapter 792, Or Laws 1993).

OAR 660-033-0100 establishes an 80-acre minimum size for the creation of a new parcel in an EFU zone. OAR 660-0033-0135, establishes the standards for siting dwellings on farm land.

### **Conclusions**

The minimum lot size and dwelling standards established by Statewide Planning Goal 3 and OAR 660, Division 33, and by certain provisions of ORS 215, were all adopted after the claimants’ family acquired the property in 1943, and do not allow the division of the property into parcels less than 80 acres in size, or the approval of dwellings. Land use laws, adopted since October 1943, restrict the use of the property relative to the uses allowed when the property was acquired by family members in 1943.<sup>1</sup>

### **3. Effect of Regulations on Fair Market Value**

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 claimants estimate: “Based on the Real Market Value estimates contained in the Polk County Tax Assessor reports, the current value of the subject land with current land use restrictions in place is \$322,200. The estimated fair value of the subject land without the land use restrictions is approximately \$1,711,500. Therefore, the approximate loss in value, and thus the claim amount is \$1,389,258.”

### **Conclusions**

As explained in section V. (1) of this report, the current owners are Frank and Shirley Hoekstre who acquired the property on February 7, 1964, from Frank’s parents, Henry and Clara Hoekstre, who acquired the property in 1943. Thus, under Ballot Measure 37, Frank and Shirley Hoekstre

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<sup>1</sup> The claim does not establish that ORS 197 or 222 restrict the use of the subject property.

are due compensation for land use laws that restrict the use of the subject property in a manner that reduces its fair market value.

Based on the real market value estimates and comparable recently sold properties in Polk County, the claimants estimate their loss in value to be “conservatively” \$1.3 million. However, without an appraisal of the parcels or another explanation, it is not possible to substantiate the specific dollar amount the claimants demand for compensation. Nevertheless, based on the submitted information, including the comparative market analysis, 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**

Most laws that qualify as “land use regulations” under the Measure were adopted after 1943, when the family acquired the property, with the exception of some subdivision and partitioning laws in what is now ORS 92. None of the laws identified in the claim are exempt, either on their face or as applied to the subject property, under Section 3 of Ballot Measure 37.

#### **Conclusions**

The provisions of the EFU zoning enacted after the claimants’ family acquired the property in 1943 are not exempt under Measure 37. There may be other specific laws that continue to apply under one or more of the exemptions in the Measure, because they were not identified in the claim 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 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 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 enforced by the Commission or the department restrict the division of the subject property into parcels or lots, and the use of the property for residential purposes. The claimants cannot create the desired lots out of the

subject 171.75-acre property, and sell or develop those lots for residential use. 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 \$1,389,258. However, because the claim does not provide a specific explanation for how the specified restrictions reduce the fair market value of the property, a specific amount of compensation cannot be determined. Nevertheless, the department acknowledges that the laws on which the claim is based 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 Frank and Shirley Hoekstre to use the subject property for a use allowed at the time they acquired the property on January 7, 1964.

### **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 Hoekstres' division of their property or to the establishment of dwellings on it: those provisions of Statewide Planning Goal 3, ORS 215.780 and OAR 660-015-0000(3), 660-033-0090, 660-033-0100, 660-033-0130(4) and 660-033-0135 to the extent necessary to allow the claimants a use permitted at the time they acquired the property
2. The action by the State of Oregon provides the State's authorization to the claimants to use the property subject to the standards in effect on January 7, 1964. On that date, the property was subject to the provisions of ORS 92 and 215 that were in effect at that time.
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 215.412 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 remains 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 with out limitation, those laws exempted under section (3) of this 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 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.