

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

OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT

Final Staff Report and Recommendation

July 25 2005

STATE CLAIM NUMBER: M119596

NAME OF CLAIMANTS: Leonard and Tom Wood

MAILING ADDRESS: 48437 Northwest Pongratz Road
Banks, Oregon 97106

IDENTIFICATION OF PROPERTY: Township 2N, Range 4, Section 3,
Tax Lot 300,
Washington County

DATE RECEIVED BY DAS: February 3, 2001

180-DAY DEADLINE: August 2, 2005

I. CLAIM

Leonard and Tom Wood (father and son), the claimants, seek compensation in the amount of \$900,000 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 their property into 2 to 5-acre parcels, and develop and sell them. The 53.62 acre property is located at 48437 NW Pongratz Road, near Banks Oregon. (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) not apply to the claimants to allow them to subdivide and develop their property for residential use: Statewide Planning Goal 4 (Forest Lands) and applicable provisions of ORS 215 and OAR 660, division 6. These laws will not apply to the claimants' division and residential development of the subject property only to the extent necessary to allow Leonard Wood a use of the property permitted at the time he acquired it on November 23, 1966; and to allow Tom Wood a use of the property permitted at the time he acquired it on August 29, 2001. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On March 15, 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 February 3, 2005 for processing under OAR 125, division 145. The claim identifies the Washington County Comprehensive Plan (1973) and zoning code (1974) 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 enacted 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

Claimant Leonard Wood acquired an undivided ½ interest in the property from his wife, Laura, on November 23, 1966. Claimant Tom Wood is the son of Leonard Wood. Leonard Wood transferred an ownership interest in the property to Tom Wood on August 29, 2001. (See deeds in department's claim file). The Washington County Assessor's office, confirms that Leonard and Tom Wood are current owners of the property.

Conclusions

The claimants, Leonard and Tom Wood are "owners" of the subject property, as that term is defined by Section 11 (C) of Ballot Measure 37. Leonard Wood has had an interest in the property since November 23, 1966, and Tom Wood has had an interest in the property since August 29, 2001. Leonard Wood is also "family member" as to Tom Wood, as that term is defined in 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 identifies the Washington County Comprehensive Plan (1973) and zoning code (1974) that restrict the use and reduce the value of the property, as the basis for the claim, and states that "These ordinances eliminated the ability to develop and sell parcels smaller than 38-acres. It is our desire to develop and sell smaller parcels from 2 to 5-acres." (A Measure 37 claim for the subject property submitted by the claimants to Washington County identifies a goal of dividing property into 4 lots and adding 3 houses.)

Current Washington County zoning for subject property is EFC (Exclusive Forest Conservation) zone that precludes division of subject property to the extent that the claimants' desire. The county's EFC zone was adopted in 1983 to comply with the Statewide Planning Goal 4, (Forest Lands), OAR 660, division 6.

Statewide Planning Goal 4, (Forest Lands) (OAR 660-015-0000(4)), and laws applicable to land zoned for forest use under ORS 215, including ORS 215.705 to 215.755 and 215.780, and OAR 660, division 6, restrict the division and residential development of the subject property. Goal 4 became effective on January 25, 1975, and required forest land, as defined by the Goal to be zoned for forest use. (See citations to statutory and rule history under OAR 660-015-0000(4).) The forest land administrative rule (OAR 660, division 6) became effective September 1, 1982, and ORS 215.705 to 215.755 and 215.780 became effective on November 4, 1993 (chapter 792, Or Laws 1993), and were adopted into OAR 660-006-0026 and 0027 on March 1, 1994. (See citations to rule history under OAR 660-015-0000(4).)

Together, ORS 215.705 to 215.755 and 215.780 and OAR 660-006-0026 and 0027 establish an 80-acre minimum lot size for the creation of a new parcel in a forest zone, and also establish the standards for dwellings in forest zones under Statewide Planning Goal 4.

No county zoning applied to the property at the time Leonard Wood acquired the property in 1966.

Conclusions

The minimum lot size and dwelling standards established by Statewide Planning Goal 4 and OAR 660-006-0026 and 0027, and by provisions of ORS 215, were all adopted after Leonard Wood acquired the property in 1966, and do not allow the division of the property into parcels less than 80 acres in size or the approval of dwellings on 2 to 5-acre parcels.

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 claimants assert that the fair market value of the subject property has been reduced and that the compensation due is \$900,000. The current tax statement from Washington County shows that the 53.62-acre property and existing structure are valued at \$144,630.

The information provided by the claimants provides no further explanation or reasoning as to the amount of loss in real market value, other than to link it to an assumed market value for the property if divided into 2 to 5-acre lots.

Conclusions

As explained in section V. (1) of this report, the current owners are Leonard Wood and Tom Wood. Thus, under Ballot Measure 37, the Woods are due compensation for land use regulations that restrict the use of the subject property in a manner that reduces its fair market value.

The claimants state that the compensation due is \$900,000. Without an appraisal or other substantiating documentation, it is not possible to substantiate the specific dollar amount the claimants demand for compensation. Nevertheless, 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 is based on Washington County's EFC zone and the related provisions of state law that have restricted the use of the subject property and reduced its fair market value, including Statewide Planning Goal 4 (Forest Lands), and relevant provisions of ORS 215, OAR 660, division 6. These laws were adopted after 1966, when Leonard Wood acquired the property.

While not directly raised by the claimant, the department notes that ORS 215.730 and OAR 660, division 6 include standards for siting dwellings in forest zones. This provision includes fire protection standards for dwellings and for surrounding forest lands. Section 3 (B) of Measure 37 specifically exempts regulations "restricting or prohibiting activities for the protection of public health and safety, such as fire and building codes..." The department finds that siting standards for dwellings in forest zones in ORS 215.730 and in Goal 4 and its implementing rules (OAR 660, division 6) are exempt under subsection (3) of Measure 37.

Conclusions

Applicable provisions of ORS 215, Statewide Planning Goal 4 Forest Land, OAR 660, division 6, adopted subsequent to Wood Family's acquisition of the subject property in 1966 are not exempt from Ballot Measure 37.

The restrictions in ORS 215.730 and provisions of OAR 660, Division 6 that establish fire protection standards for dwellings in forest zones are exempt under Section 3 (B) of the Measure and will continue to apply to the subject property. 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.

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, 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 division of the subject property into parcels or lots, and the use of the property for residential purposes. The claimants cannot create the desired 2 to 5-acre lots out

of the subject 53.62-acre property, and sell or develop those lots for residential use. The laws enforced by the Commission or department reduce the fair market value of the property to some extent. The claim asserts this amount to be \$900,000. 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, 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 all or parts of one or more land use regulations to allow Leonard Wood a use the subject property for a use allowed at the time he acquired the property on November 23, 1966, and to allow Tom Wood a use allowed at the time he acquired the property on August 29, 2001.

Conclusions

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 Leonard Wood's subdivision of the property into two to five acre lots, and residential development of the subject property: the applicable provisions of Statewide Planning Goal 4 (Forest Lands), ORS 215.705 to 215.755 and 215.780, and OAR 660 division 6. In lieu of compensation under Measure 37, the State of Oregon will not apply the following laws to Tom Wood's subdivision of the property into two to five acre lots and residential development of the property: the applicable provisions of ORS 215.705 to 215.755 and 215.780, and OAR 660 division 6 that were enacted on or after August 29, 2001. The department acknowledges that the relief recommended in this report will not allow Tom Wood to use the property in a manner set forth in the claim. These land use regulations will not apply to the Woods' use of the property only to the extent necessary to each claimant to carry out a use permitted at the time they each acquired their respective interest in the property.
2. The action by the State of Oregon provides the state's authorization to Leonard Wood to use the property subject to the laws in effect when he acquired the property on November 23, 1966, and to Tom Wood to use the property subject to the laws in effect when he acquired the property on August 29, 2001. The claimants also continue to be subject ORS 215.730 and those provisions of Goal 4 and its implementing rules (OAR 660, Division 06) related to siting standards for dwellings for the protection of public health and safety and to any other laws that are exempt under section 3(E) of Measure 37.
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 posed 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 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 claimants to use the property, it may be necessary for her 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 July 1, 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.