

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

**OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
Final Staff Report and Recommendation**

August 23, 2005

STATE CLAIM NUMBER: M120014

NAME OF CLAIMANTS: William R. Long and
Janet S. Long, Trustees
Long Living Trust

MAILING ADDRESS: 6227 Culver Drive SE
Salem Oregon 97301

PROPERTY INFORMATION: Township 7S, Range 2W
Section 8A
Tax Lot 600
Marion County

DATE RECEIVED BY DAS: March 4, 2005

180-DAY DEADLINE: August 31, 2005

I. CLAIM

William and Janet Long, the claimants, seek compensation in the amount of \$160,000 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 build a non-farm dwelling. The claim concerns property containing 2.4 acres that is located on Cordon Road. NE, near Salem in Marion 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 state laws enforced by the Land Conservation and Development Commission (the Commission) or the department, not apply to the Longs' establishment of a non-farm dwelling: the applicable provisions of Statewide Planning Goal 3 (Agricultural Lands), ORS 215.284, and OAR 660, division 33, that took effect after November 29, 1962. These laws will not apply to the Longs' use of the property only to the extent necessary to allow them a use permitted at the time they acquired the property

that is the subject of this claim on November 29, 1962. (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 March 4, 2005 for processing under OAR 125, division 145. The claim identifies EFU zoning and state land use regulations adopted since 1962 that restrict the use of 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 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, William and Janet Long, acquired the property on November 29, 1962. A copy of the deed has been included in the claim. On January 8, 1993 the property was transferred by deed to the William Long and Janet Long Living Trust, with the claimants as trustees. A copy of a Ticor Title Report dated January 5, 2005 confirms that title to the property remains with William and Janet Long as trustees of the William Long and Janet Long Living Trust. Transfer to the Living Trust does not constitute a change in ownership for purposes of this Measure 37 claim.

Conclusions

William Long and Janet Long, as trustees of the William Long and Janet Long Living Trust, are the owners of the subject property. The claimants, William and Janet Long, as trustees of the Long Living Trust, have an interest in the property and are “owners” as that term is defined under 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:

“When land was bought it was zoned R1 [and] changed to EFU December 24, 1974. Unable to build a non-farm dwelling.” (See Qualifying Statement by the claimant included as an attachment to DAS claim form.)

The claim is based, in part, on Marion County’s current Exclusive Farm Use (EFU Zone) and the applicable provisions of state law that require such zoning. The claimants’ property is zoned EFU as required by Goal 3 in accordance with OAR 660, division 33 and ORS 215 because the claimants’ property is “Agricultural Land” as defined by Goal 3. Goal 3 became effective on January 25, 1975, and required that Agricultural Lands as defined by the Goal is zoned EFU pursuant to ORS 215.

Current land use regulations, particularly 215.284 and OAR 660, division 33, as applied by Goal 3 do not allow a non-farm dwelling to be established on the subject property.

OAR 660-033-0130(4) (applicable to non-farm dwellings) became effective on August 7, 1993, and was amended to comply with ORS 215.284(4) on March 1, 1994. Subsequent amendments to comply with HB 3326, (chapter 704, Oregon Laws 2001, and effective January 1, 2002) were adopted by the Commission effective May 22, 2002. (See citations of administrative rule history for OAR 660-033-0100 and 0135.)

The claimants acquired the subject property on November 29, 1962, prior to the establishment of the Statewide Planning Goals or ORS 215 or the Commission's rules. At that time the property was zoned R1 by Marion County.

Conclusion

The dwelling standards established by Statewide Planning Goal 3, ORS 215.284, and OAR 660-033-0135, were all adopted after the claimants acquired the property that is the subject of this claim, and restrict the use of the subject property. Therefore, laws enacted and enforced since 1962 restrict the use of the property relative to the uses allowed when the property was acquired in 1962.

This report addresses only those state laws that are identified in the claim, or that the department is certain apply to the property based on the use(s) that the claimants have identified. There may be other laws that currently apply to the claimants' use of the property, and that may continue to apply to the claimants' use of the property, that have not been identified in the claim. In some cases it will not be possible to know what laws apply to a use of property until there is a specific proposal for that use. When the claimants seek a building or development permit to carry out a specific use, it may become evident that other state laws apply to that use.

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 state that the fair market value of the subject property has been reduced by \$145,000 to \$160,000 as a result of land use laws enacted after the claimants acquired the property in 1962. Based on a letter of opinion, the claimants state the value of the property is approximately \$5,000 as currently zoned EFU. According to a market analysis conducted by the real estate company, Gladys Blum Group, the fair market value of the subject property with one dwelling unit would be between \$150,000 and \$165,000.

Conclusions

Based on the record currently before the department, there is some evidence that state land use regulations have been enforced in a manner that reduces the fair market value of the property. The claim states that the reduction in value is \$145,000 to 160,000.

Without an appraisal or other explanation, 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 enacted or 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 includes a general reference to any state land-use regulations that restrict the use of the property relative to what would have been allowed in 1962 when the claimants acquired the property. These provisions include Statewide Planning Goal 3 (Agricultural Lands), ORS 215, and OAR 660, division 33, which Marion County has implemented through applying its EFU zone to the property. None of these laws appear to be exempt under subsection 3(E) of Ballot Measure 37.

Conclusions

Without a specific listing of laws that are the basis for the claim, it is not possible for the department to determine what laws may apply to a particular use of the property, or whether those laws may fall under one or more of the exemptions under Measure 37. It does appear that the general statutory, goal and rule restrictions on residential development and use of farm land apply to the owners' anticipated use of the property, and these laws are not exempt under subsection 3(E) of Measure 37. 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.

In some cases it will not be possible to know what laws apply to a use of property until there is a specific proposal for that use. When the claimants seek a building or development permit to carry out a specific use, it may become evident that other state laws apply to that use. And, in some cases, some of these laws may be exempt under subsections 3(A) to 3(D) of Measure 37.

This report addresses only those state laws that are identified in the claim, or that the department is certain apply to the property based on the uses that the claimants have identified. Similarly, this report only addresses the exemptions provided for under section (3) of Measure 37 that are clearly applicable given the information provided to the department in the claim. The claimants

should be aware that the less information they have provided to the department in their claim, the greater the possibility that there may be additional laws that will later be determined to continue to apply to their use of the property.

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(s) to carry out a use of the property permitted at the time the present owner(s) 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 restricts the construction of a non-farm dwelling on the subject property. The laws enforced by the Commission or the department may reduce the fair market value of the subject property to some extent. The claim asserts this amount to be \$145,000 to \$160,000. Although the claim provides an explanation about how the specified restrictions reduce the fair market value of the property, no appraisal or other documentation was submitted to substantiate the reduction in value and so it is not possible to substantiate the specific dollar amount the claimants demand for compensation. Nevertheless, the department acknowledges that state land use laws 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 William and Janet Long to use the subject property for a use permitted at the time they acquired the property in 1962.

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 Longs' establishment of a non-farm dwelling on the subject property: applicable provisions of Statewide Planning Goals 3, ORS 215.284 and OAR 660, division 33, enacted after November 29, 1962. These land use regulations will not apply to the Longs' use of their property only to the extent necessary to allow the claimants a use permitted at the time they acquired the property on November 29, 1962.
2. The action by the State of Oregon provides the state's authorization to the claimants to use their property subject to the standards in effect on November 29, 1962.

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 215.402 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 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 the Commission or the department; 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 22, 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.