

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

**OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT**

**Final Staff Report and Recommendation**

August 31, 2005

**STATE CLAIM NUMBER:** M120086

**NAME OF CLAIMANT:** Mitchell J. Teeney

**MAILING ADDRESS:** 17558 Mt. Angel-Scotts Mills Road  
Silverton Oregon 97381

**OTHER CONTACT INFORMATION:** Owen W. VonFlue, Esq.  
P.O. Box 800  
Silverton, Oregon 97381

**PROPERTY IDENTIFICATION:** Township 06S, Range 01E, Section 16  
Tax Lots 500 and 600  
Township 06S, Range 01E, Section 17  
Tax Lot 1800,  
Township 06S, Range 01E, Section 20  
Tax Lot 500  
Township 06S, Range 01E, Section 21  
Tax Lot 700; all in Marion County

**OTHER INTEREST IN THE PROPERTY:** Kraemer Tree Farm, LCC  
(Ken Kraemer)  
13318 Dominic Road  
Mt. Angel, Oregon 97362

**DATE RECEIVED BY DAS:** March 10, 2005

**180-DAY DEADLINE:** September 6, 2005

**I. CLAIM**

The claimant, Mitchell J. Teeney, seeks compensation in the amount of \$2,408,664 for a 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

subdivide his approximately 130-acre property<sup>1</sup> into approximately 25, 5-acre parcels, and to develop each parcel with a dwelling. The property is located at 17558 Mt. Angel-Scotts Mills Road, Silverton 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 this 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 claimant's division of the approximately 130-acre property into approximately 25, 5-acre parcels, and to the development of each parcel with a dwelling: Statewide Planning Goal 3, ORS 215.263, 215.284 and 215.780, and applicable provisions of OAR 660, division 33. These laws will not apply to the claimant only to the extent necessary to allow Mitchell J. Teeney a use of the subject property permitted at the time he acquired it in 1969 and 1973. (See the complete recommendation in Section VI of this report.)

## **III. COMMENTS RECEIVED**

On March 10, 2005, pursuant to OAR 125-145-0080, the Oregon Department of Administrative Services (DAS) provided written notice to 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 10, 2005, for processing under OAR 125, division 145. The claim identifies Marion County's Exclusive Farm Use (EFU) zoning and state

---

<sup>1</sup> Ownership information provided with the claim indicates total acreage to be 129 or 134 acres (application form) but supplemental information shows the acreage when added up to equal 145 acres. Information from a Marion County Measure 37 claim filed by the claimants indicates that the property is approximately 130 acres.

laws 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 regulation 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 of 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 claimant, Mitchell Teeney, acquired the subject property in two transactions. He acquired approximately 70 acres (Section 16, Tax Lots 500 and 600) through a land sale contract on October 30, 1969 (Parcel 1).<sup>2</sup> He acquired an additional contiguous parcel (Section 17, Tax Lot 1800, Section 20, Tax Lot 500 and Section 21, Tax Lot 700) by land sale contract on August 16, 1973 (Parcel 2). (See contracts and deeds in department’s claim file.)

### **Conclusions**

The claimant, Mitchell Teeney, is an “owner” of the subject property as defined by 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.

---

<sup>2</sup> The claimant acquired approximately 132 acres through this transaction. He subsequently sold approximately 62 acres, leaving approximately 70 acres from that original transaction in his ownership.

## **Findings of Fact**

The claim cites, as the basis of the claim, Marion County's EFU zone (Marion County Zoning Ordinance Chapter 136), and state statutes and administrative rules that restrict uses on agricultural lands.<sup>3</sup>

The claimant's property is zoned EFU as required by Goal 3 in accord with OAR 660, division 33, and ORS 215 because the claimant's 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, be zoned EFU pursuant to ORS 215.

Current land use regulations, particularly ORS 215.263, 215.284, 215.780 and OAR 660, division 33, do not allow the subject property to be divided into parcels less than 80-acres, and they establish standards restricting the existing or any proposed parcel(s) to have farm or non-farm dwellings on them.

ORS 215.780 established an 80-acre minimum size for the creation of new lots or parcels in EFU zones and became effective November 4, 1993 (Chapter 792, Oregon Laws 1993). ORS 215.263 (2003 edition) establishes standards for the creation of new parcels for non-farm uses and dwellings allowed in an EFU zone.

OAR 660-033-0135 (applicable to farm dwellings) became effective on March 1, 1994, and interprets the statutory standard for a primary dwelling in an EFU zone under ORS 215.283(1)(f).

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, 0130 and 0135.)

The claimant acquired the subject property in 1969 and 1973. At that time, Statewide Planning Goal 3 and its administrative rules were not in effect. The property was zoned Farm-Recreation-5acre minimum (FR-5) when the claimant acquired it. Provisions of ORS 215 were adopted in 1963 and may have been applicable to the property in 1969 and 1973.

## **Conclusions**

Lot size and dwelling standards established by Statewide Planning Goal 3, amendments to ORS 215, and OAR 660, division 33, adopted since the claimant acquired the property in 1969 and 1973, do not allow the division of the property into parcels less than 80-acres or allow the approval of dwellings as may have been possible in 1973. The county's EFU zone is based on

---

<sup>3</sup> The claim incorrectly refers to ORS 197 as the state statute that restricts uses on agricultural lands. ORS 215 includes the state statutes that restrict uses on agricultural lands. The department concludes that the claimant intended to refer to ORS 215 rather than ORS 197 as the laws that restrict the use of his property. ORS 197 does not in itself restrict the use of the claimant's property.

the standards required by Goal 3, ORS 215 and OAR 660, division 33. Land use laws adopted since 1969 and 1973 restrict the use of the property from what could have been done when the property was acquired by the claimant.

### **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 states that the fair market value of the subject property has been reduced by \$2,408,664 as a result of land use laws enacted after Mitchell Teeney acquired the property in 1969 and 1973. To substantiate the asserted reduction in value, the claimant has provided a comparative market analysis, which he prepared as a “realtor with extensive knowledge of real estate values in the mid-Willamette Valley.” The analysis includes information regarding the value of the property based on what is allowed under current land use regulations as compared with the assumed value if developed into 24 five-acre residential parcels.

There is no certified appraisal to substantiate the claimed values either before or with state land use regulations.

#### **Conclusions**

As explained in section V.1 of this report, Mitchell J. Teeney is the current owner of the subject property as of 1969 and 1973. Under Ballot Measure 37, Mr. Teeney is due compensation for land use regulations that restrict the use of the subject property in a manner that reduces its fair market value.

Without an appraisal, 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 land use regulations. In addition, under Section 3 of the Measure, certain types of laws are exempt from the Measure.

#### **Findings of Fact**

The claim includes a reference to state land use regulations that restrict the use of the property relative to what would have been allowed in 1969 and 1973 when the property was acquired by Mitchell Teeney. These provisions include Statewide Planning Goal 3 (Agricultural Lands), and

applicable provisions of ORS 215 and OAR 660, division 33, which Marion County has implemented through its EFU zone. With the exception of provisions of ORS 215 in effect when the claimant acquired the property in 1969 and 1973, none of these laws are exempt under Section 3(E) of Ballot Measure 37. Provisions of ORS 215 in effect when the claimant acquired the property are exempt under Section 3(E) of the Measure.

### **Conclusions**

Without a specific development proposal for the property, 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 claimant's use of the property, and for the most part these laws are not exempt under section 3(E) of Measure 37. Provisions of ORS 215 in effect when the claimant acquired the property in 1969 and 1973 are exempt under section 3 (E) of the Measure and will continue to apply to the property.

Laws in effect when the claimant acquired the property are exempt under Section 3(E) of Measure 37, and will continue to apply to the claimant's use of the property. There may be other laws that continue to apply to the claimant's 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 claimant seeks 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 use(s) that the claimant has 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. 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 the law in order 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 in this report, laws enforced by the Commission or the department prohibit the division of the subject property into approximately 25 five-acre parcels and development of dwellings on them. The claim asserts these restrictions reduce the fair market value of the subject property by \$2,408,622. Although the claim provides an explanation about how the specified restrictions reduce the fair market value of the property, no appraisal was submitted and it is not possible to substantiate the specific dollar amount the claimant demands 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 just compensation, Measure 37 authorizes the department to modify, remove, or not apply all or parts of certain state land use regulations to allow Mr. Teeney to use the subject property for a use permitted at the times he acquired the property.

## **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 Mitchell Teeney's division of his property into approximately 25, five acres parcels, or to the establishment of a single family dwelling on each parcel created: applicable provisions of Statewide Planning Goal 3, ORS 215.263, 215.780 and 215.284; and applicable provisions of OAR 660, division 33, enacted after the claimant acquired the property in 1969 and 1973. These land use regulations will not apply to Mr. Teeney's use of his property only to the extent necessary to allow the claimant to a use permitted at the time he acquired Parcel 1 in 1969 and Parcel 2 in 1973.
2. The action by the State of Oregon provides the state's authorization to the claimant to use his property subject to the standards in effect when he acquired Parcel 1 in 1969 and Parcel 2 in 1973. On those dates, the property was subject to applicable provisions of ORS 215 (1969 and 1971 editions).
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 215.402 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 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 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 claimant to use the property, it may be necessary for him 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 August 12, 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.