

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

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

September 29, 2005

**STATE CLAIM NUMBER:** M120530

**NAMES OF CLAIMANTS:** Raymond A. Weygandt, individually and as  
Trustee of the Raymond A. Weygandt  
Revocable Living Trust; and  
Patsy A. Weygandt<sup>1</sup>, individually and as  
Trustee of the Patsy A. Weygandt  
Revocable Living Trust

**MAILING ADDRESS:** 24401 S. Mulino Road  
Canby, Oregon 97013

**PROPERTY IDENTIFICATION:** Township 4S, Range 1E, Section 3  
Tax Lot 101  
Clackamas County

**OTHER CONTACT INFORMATION:** R. Roger Reif, Attorney at Law  
Reif, Reif & Thalhoffer  
273 N. Grant Street  
P.O. Box 729  
Canby, Oregon 97013

**DATE RECEIVED BY DAS:** April 11, 2005

**180-DAY DEADLINE:** October 8, 2005

**I. SUMMARY OF CLAIM**

The claimants, Raymond A. Weygandt, the Raymond A. Weygandt Revocable Living Trust, Patsy A. Weygandt, and the Patsy A. Weygandt Revocable Living Trust, seek compensation in the amount of \$100,000 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 a 9.78-acre parcel from a larger property and to develop the parcel for residential use. The property is located at 24401 S. Mulino Road, within the urban growth boundary (UGB), of the City of Canby, in Clackamas County. (See claim.)

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<sup>1</sup> Also known as Patricia A. Weygandt.

## **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 not valid because neither the Land Conservation and Development Commission (the Commission) nor the department have enforced laws that restrict the claimants' use of private real property. (See the complete recommendation in Section VI. of this report.)

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

### **Comments Received**

On April 21, 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 April 11, 2005, for processing under OAR 125, division 145. The claim identifies farm zoning as the law that restricts 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 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, Raymond A. and Patsy Weygandt, acquired the subject property by Deed on November 18, 1966, from Raymond’s parents, Raymond M. Weygandt and Dorothy M. Weygandt. Dorothy Weygandt acquired her interest in the property from her husband, Raymond M. Weygandt, by Deed on May 16, 1951. Raymond M. Weygandt acquired his ownership interest from his parents, Fred and Carrie Weygandt, around May 1950.<sup>2</sup> Fred and Carrie Weygandt acquired the property by Deed on December 26, 1923. On July 24, 1990, the claimants conveyed the subject property to their respective revocable living trusts by Deed, with themselves as trustors and trustees. The transfer by claimants to their revocable living trusts does not constitute a change of ownership for the purpose of this Measure 37 claim.

A March 29, 2005, preliminary Title Report and current Clackamas County Assessor records state that Raymond A. Weygandt, trustee, and Patsy A. Weygandt, trustee, are current owners of the subject property. (See the claim file.)

### **Conclusions**

Raymond A. Weygandt and Patsy A. Weygandt are “owners” of the subject property, as that term is defined by Section 11(C) of Ballot Measure 37, as of November 18, 1966. The Weygandt family acquired ownership in 1923, and appears to have maintained ownership since then.

### **2. The Laws that are the Basis for this 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 claimants or a family member acquired the property.

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<sup>2</sup> See copy of claimants’ Measure 37 claim to Clackamas County, and a July 29, 2005, letter from R. Roger Reif, Attorney at Law, to department staff, both in the department’s claim file. The record contains no Deed documenting Raymond M. Weygandt’s conveyance of the property to his son, claimant Raymond A. Weygandt. (Regarding availability of the Deed, see August 9, 2005, letter from R. Roger Reif, Attorney at Law, to department staff, in the department’s claim file.)

## **Findings of Fact**

The claim is based on “General Farm Use” zoning, which the claim states was adopted June 18, 1979, and “any other regulations unknown by” the claimants. The claimants assert that such regulations prevent them from dividing a 9.78-acre parcel from a larger property and using that parcel for residential purposes. The property is in Clackamas County, within the Canby UGB, and is currently zoned for industrial use.

Zoning allocations for properties within a UGB are assigned by the governing jurisdiction (in this case, Clackamas County) addressing local conditions, including, but not limited to, available infrastructure and services and forecasted population and economic growth. Neither the Commission nor the department enforces laws that require specific zoning of the subject property. Rather, any restriction on dividing and developing the property attributable to the property’s zoning is based on restrictions imposed by the County.

## **Conclusions**

The claim does not identify any state law that restricts the use of the claimants’ property. Because the property is located within the City of Canby UGB, Clackamas County has jurisdictional authority over the property’s zoning and use. Based on the record before the department, neither the Commission nor the department has enforced any laws that restrict the use of claimants’ real property.

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

In order to establish a valid claim, Section 1 of Ballot Measure 37 requires that any land use regulation 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 an informal estimate of \$100,000 as the reduction in the property’s fair market value due to current regulations. The source of this estimate is: “Based upon the owner’s discussions with realtors, if the parcel was divided into two parts, we could receive more than \$100,000 extra for the sale of two parcels as opposed to one parcel.”<sup>3</sup> The claim does not include an estimate of the current value of the subject property with restrictions or value without restrictions or an appraisal to substantiate the requested amount of compensation.<sup>4</sup>

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<sup>3</sup> July 29, 2005, letter from R. Roger Reif, Attorney at Law, to department staff, in the claim file.

<sup>4</sup> The Clackamas County Assessor records show a real market value for the subject property of \$403,700 (see copy in the department’s claim file).

## **Conclusions**

Although the claim includes an estimate of an alleged reduction in value due to state land use regulations, as explained in Section V.(2) above, the claimants have not identified any state laws that have restricted the use of the subject property. Accordingly, the claim has not identified any state laws that have reduced the fair market value of the property.

## **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 refers to Clackamas County's General Agricultural Zone applied on August 23, 1979. Based on the record, the claim does not identify state laws enforced by the Commission or the department that restrict the use of the subject property.

## **Conclusions**

The claim does not identify any state laws enforced by the Commission or the department that restrict the use of the subject property. Therefore, the question whether state laws are exempt under Section 3 of Measure 37 is inapplicable to the analysis of the claim.

## **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 current 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 record for this claim, the claimants have not established that any state laws enforced by the Commission or the department restrict the use of or reduce the value of the subject property.

## **Conclusion**

Based on the record before the department, the claimants, Mr. and Ms. Weygandt, have not established that they are entitled to relief under Section 1 of Measure 37 as a result state land use regulations that have reduced the value of the claimants' property. Neither the Commission nor

the department enforces laws that require specific zoning of the subject property. Therefore, this claim is denied.

## **VII. COMMENTS ON THE DRAFT STAFF REPORT**

The department issued its draft staff report on this claim on September 15, 2005. OAR 125-145-0100(3), provided an opportunity for the claimants or the claimants' 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.