

BEFORE THE DEPARTMENT OF ADMINISTRATIVE SERVICES, THE DEPARTMENT
OF LAND CONSERVATION AND DEVELOPMENT OF THE STATE OF OREGON

IN THE MATTER OF THE CLAIM) FINAL ORDER
FOR COMPENSATION UNDER) CLAIM NO. M 118328
BALLOT MEASURE 37 (CHAPTER 1,)
1, OREGON LAWS 2005) OF)
Albert Snyder, CLAIMANT)

Claimant: Albert Snyder (the Claimant)

Property: Tax Lot 1100, T.2S, R.6E, Section 18, W.M., Clackamas County

Claim: The demand for compensation and any supporting information received from the Claimant by the State of Oregon (the Claim).

Claimant submitted the Claim to the State of Oregon under Ballot Measure 37 (2004) (Oregon Laws 2005, Chapter 1) (hereafter, Measure 37). Under OAR 125-145-0010 *et seq.*, the Department of Administrative Services (DAS) referred the Claim to the Department of Land Conservation and Development (DLCD) as the regulating entity. This order is based on the record herein, including the Findings and Conclusions set forth in the Final Staff Report and Recommendation of DLCD (the DLCD Report) attached to and by this reference incorporated into this order.

ORDER

The Claim is denied for the eastern one-half of the subject property, containing 18.75 acres more or less, as to laws administered by DLCD and the Land Conservation and Development Commission (LCDC) for the reasons set forth in the DLCD Report.

The Claim is approved for the western one-half of the subject property, containing 18.75 acres more or less, as to laws administered by DLCD and the Land Conservation and Development Commission (LCDC) for the reasons set forth in the DLCD Report, and subject to the following terms:

1. In lieu of compensation under Measure 37, the State of Oregon will not apply the following laws to Albert Snyder's use of the westerly approximately 18.75-acres of the subject property: applicable provisions of Statewide Planning Goal 4, ORS 215.705 to 215.750, and 215.780, and OAR 660, division 6, enacted after November 22, 2003. These land use regulations will not apply to Albert Snyder's use of his property only to the extent necessary to allow the claimant a use permitted at the time he acquired the property on November 22, 2003. The department acknowledges that the relief to which Albert Snyder is entitled under Measure 37 will not allow him to use the property in a manner set forth in the claim.

2. The action by the State of Oregon provides the state's authorization to the claimant to use the westerly approximately 18.75-acres of the subject property subject to the standards in effect on November 22, 2003. On that date, the property was subject to applicable provisions of Statewide

Planning Goal 4, ORS 215.705 to 215.750 and 215.780, and OAR 660, division 6, in effect on that date.

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.

This Order is entered by the Deputy Director of the DLCD as a final order of DLCD and the Land Conservation and Development Commission under Measure 37, OAR 660-002-0010(8), and OAR 125, division 145, and by the Administrator for the State Services Division of the DAS as a final order of DAS under Measure 37, OAR 125, division 145, and ORS 293.

FOR DLCD AND THE LAND CONSERVATION
AND DEVELOPMENT COMMISSION:

Lane Shetterly, Director



George Naughton, Deputy Director
DLCD

Dated this 7th day of October, 2005.

FOR the DEPARTMENT OF ADMINISTRATIVE
SERVICES:



David Hartwig, Administrator
DAS, State Services Division

Dated this 7th day of October, 2005.

NOTICE OF RIGHT TO APPEAL OR OTHER JUDICIAL RELIEF

You are entitled, or may be entitled, to the following judicial remedies:

1. **Judicial review under ORS 293.316:** Judicial review under ORS 293.316 may be obtained by filing a petition for review within 60 days from the service of this order. Judicial review under ORS 293.316 is pursuant to the provisions of ORS 183.482 to the Court of Appeals.
2. **Judicial review under ORS 183.484:** Judicial review under ORS 183.484 may be obtained by filing a petition for review within 60 days from the service of this order. A petition for judicial review under ORS 183.484 may be filed in the Circuit Court for Marion County and the Circuit Court in the county in which you reside.
3. **A cause of action under Oregon Laws 2005, chapter 1 (Measure 37 (2004)):** A present owner of the property, or any interest therein, may file a cause of action in the Circuit Court for the county where the property is located, if a land use regulation continues to apply to the subject property more than 180 days after the present owner made a written demand for compensation.

(Copies of the documents that comprise the record are available for review at the Department's office at 635 Capitol Street NE, Suite 150, Salem, Oregon 97301-2540)

FOR INFORMATION ONLY

The Oregon Department of Justice has advised the Department of Land Conservation and Development that “[i]f the current owner of the real property conveys the property before the new use allowed by the public entity is established, then the entitlement to relief will be lost.”

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

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

October 7, 2005

STATE CLAIM NUMBER: M118328

NAME OF CLAIMANT: Albert Snyder

MAILING ADDRESS: 54120 SE Marmot Road
Sandy, Oregon 97055

PROPERTY IDENTIFICATION: Township 2S, Range 6E, Section 18
Tax Lot 1100
Clackamas County

OTHER INTEREST IN PROPERTY: Estate of William A. Snyder, deceased
Albert Snyder, Personal Representative
54120 SE Marmot Road
Sandy, Oregon 97055

Elizabeth Whitney
Route 1, Box 17
Broken Bow, Nebraska 68822

Kay Howard
633 Bain Street
Albany, Oregon 97321

Janice Whisler
4300 S Business Highway
Edinburg, Texas 78539

DATE RECEIVED BY DAS: April 18, 2005

180-DAY DEADLINE: October 16, 2005

I. SUMMARY OF CLAIM

The claimant, Mr. Albert Snyder, seeks compensation in the amount of \$689,633 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 claimant desires compensation or the right to

partition the 37.1-acre property into two, approximately 18.75-acre parcels and to divide the westerly 18.75-acre parcel into three parcels of approximately eleven-acres, five-acres and two-acres respectively, with one dwelling on each new parcel. The property is located at 54120 SE Marmot Road, near Sandy, in Clackamas 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 as to the westerly approximately 18.75-acres. However, the claim is not valid as to the easterly approximately 18.75-acres, because the claimant is not an owner of that portion of the property. 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 Albert Snyder's division of the westerly approximately 18.75-acre portion of the subject property for residential development: Statewide Planning Goal 4 (Forest Lands) and applicable provisions of ORS 215, and OAR 660, division 6, enacted after November 22, 2003. These laws will not apply to the claimant only to the extent necessary to allow Albert Snyder a use of the property permitted at the time he acquired it in 2003. The department acknowledges that the relief to which Albert Snyder is entitled under Measure 37 will not allow him to use the property in the manner set forth in the claim. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On April 28, 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 18, 2005, for processing under OAR 125, division 145. The claim identifies Clackamas County's ORD 406-05 and OAR 660-006-0026 and -0027, as laws that restrict the use of the property and are 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 claimant, Albert Snyder, acquired the westerly approximately 18.75-acres of the subject property on November 22, 2003, by inheritance from his father, William Albert Snyder. The claimant's sisters inherited the easterly approximately 18.75-acres of the subject property. The sisters are not claimants under this Measure 37 claim. William Snyder acquired the subject property by Contract on September 10, 1937. According to records provided by the Clackamas County Assessor, William Snyder remains the owner of the subject property as of August 16, 2005.¹

Conclusions

The claimant, Albert Snyder, is an "owner" of the westerly approximately 18.75-acres of the subject property, as that term is defined by Section 11(C) of Ballot Measure 37, as of November 22, 2003. The claimant is not an owner of the easterly approximately 18.75-acres of the subject property. William Snyder is a "family member" as to Albert Snyder, as that term is defined under Section 11(A) of Measure 37, as of September 1937.

¹ In a telephone conversation on August 17, 2005, the claimant's wife, Sharon Snyder, confirms that the property remains in probate, following the death of William Snyder.

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 claimant or a family member acquired the property.

Findings of Fact

The claim states that "Land with TBR zoning cannot partition less than 80 acres" and "Restricts construction of dwellings on small parcels." A conversation with the claimant's wife on August 16, 2005, indicates the claimant desires to partition the 37.11-acre property into two approximately 18.75-acre parcels. The claimant also indicates his intent to partition the westerly approximately 18.75 acres into three parcels of approximately eleven-acres, five-acres and two-acres and to develop a dwelling on each parcel.

The Clackamas County Timber District (TBR) is a forest zone, and implements the standards contained in Statewide Planning Goal 4 and OAR 660, division 6. The Clackamas County Comprehensive Plan designates tax lot 1100 as forest land in compliance with Statewide Planning Goal 4. The subject tax lot is "forest land" under Statewide Goal 4 because it is composed of forest soils that are well-suited to the production of harvestable timber.²

Statewide Planning Goal 4 (Forest Lands) 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 right of an owner to divide the property for the purpose of sale and residential use. Goal 4 became effective on January 25, 1975, and required forest land, as defined by the Goal, to be zoned for forest use. (See 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, Oregon Laws 1993) and were adopted into OAR 660-006-0026 and -0027 on March 1, 1994. (See 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.

When the claimant's family acquired the property in 1937, the property was not zoned by Clackamas County and was not subject to any statewide land use regulations.

² The subject property includes a combination of 5E -Aschoff cobbly loam 30 to 60 percent slopes (site index 140 to 155 for Douglas-fir, capability subclass VI), 9B - Bull Run silt loam 3 to 8 percent slopes (site index 155 to 175 for Douglas Fir, capability subclass IIIe) and 9E - Bull Run silt loam 8 to 30 percent slopes (site index 155 to 175 for Douglas Fir, capability subclass VIe) (1985 Soil Survey of Clackamas County Oregon).

Conclusions

The zoning requirements, minimum lot size and dwelling standards established by Statewide Planning Goal 4 (Forest Lands) and provisions applicable to land zoned TBR in ORS 215 and OAR 660, division 6 were all enacted after the claimant's family acquired the subject property in 1937. Those laws do not allow the division or residential development of the property, thereby restricting the use of the property relative to the uses allowed when the property was acquired by the claimant's father in 1937. In 1937, the property was not subject to county zoning or to state land use regulations.

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 claimant has identified. There may be other laws that currently apply to the claimant's use of the property, and that may 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 the 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.

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 estimates a reduction of \$689,633 in the fair market of the property due to restricting land use regulations. This amount appears to be based on the claimant's estimate of the market value of two- to three-acre residential lots (approximately \$96,000 each), less the current assessed real market value of the property (\$210,367). The claim includes Clackamas County Tax Statements from several nearby properties in support of the claimant's estimated reduction in value.

Conclusions

As explained in Section V.(1) of this report, the current owner is Albert Snyder, whose family acquired the property in 1937. Under Ballot Measure 37, Albert Snyder is due compensation for land use regulations that restrict the use of the subject property in a manner that reduces its fair market value. Based on the findings and conclusions in Section V.(2) of this report, laws adopted since the claimant's family acquired the property restrict division and development of the subject property. The claimant estimates the reduction in value due to the restrictions to be \$689,633.

Without an appraisal or other documentation, 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 is based on state land use regulations that restrict the use of the property relative to what would have been allowed in 1937, when the claimant's father acquired the property. These provisions include Statewide Planning Goal 4 (Forest Lands), and applicable provisions of ORS 215 and OAR 660, division 6, which Clackamas County has implemented through its TBR zone. None of these laws is exempt under Section 3(E) of Measure 37, which exempts laws in effect when the claimant's family member acquired the property.

The department notes that ORS 215.730 and OAR 660, division 6, include standards for siting dwellings in forest zones. Those provisions include 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 Section 3(B) of Measure 37.

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 forest 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.

Laws in effect when the claimant's family 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. The fire protection standards for dwellings and surrounding forest lands in ORS 215.730 and OAR 660, division 6 are exempt under Section 3(B) of the Measure and will also continue to apply to 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 the property until there is a specific proposal for that use. When the 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. In some cases, these laws may also 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 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. The claimant should be aware that the less information he has provided to the department in his claim, the greater the possibility that there may be additional laws that will later be determined to continue to apply to the use of his 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 set forth in this report, laws enforced by the Commission or the department restrict the division of the 37.11-acre parcel into two approximately 18.75-acre parcels, and the further division of the westerly approximately 18.75-acres into parcels of approximately eleven-acres, three-acres and two-acres, or the development of those three parcels for residential use. The claim asserts that laws enforced by the Commission or department reduce the fair market value of the subject property by \$689,633. Because the claim does not provide an appraisal or other specific documentation 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 certain land use regulations to allow Albert Snyder to use the westerly approximately 18.75-acres of the subject property for a use permitted at the time he acquired the property on November 2, 2003.

When Albert Snyder acquired a portion of the subject property on November 22, 2003, the property was subject to the current provisions of Statewide Planning Goal 4 (Forest Lands) and applicable provisions of ORS 215 and OAR 660, division 6 (2003 edition), as implemented by Clackamas County through its TBR zone. For a detailed description of laws that applied to the property in 2003, see the discussion of the current laws that apply to the property in Section V.(2) of this report.

Conclusion

Based on the record, the department recommends that the claim be denied as to the easterly one-half (approximately 18.75 acres) of the subject property on the basis that the claimant is not an owner of that property. The department recommends that the claim be approved as to the westerly one-half (approximately 18.75 acres) of the subject property, subject to the following terms:

1. In lieu of compensation under Measure 37, the State of Oregon will not apply the following laws to Albert Snyder's use of the westerly approximately 18.75-acres of the subject property: applicable provisions of Statewide Planning Goal 4, ORS 215.705 to 215.750, and 215.780, and OAR 660, division 6, enacted after November 22, 2003. These land use regulations will not apply to Albert Snyder's use of his property only to the extent necessary to allow the claimant a use permitted at the time he acquired the property on November 22, 2003. The department acknowledges that the relief to which Albert Snyder is entitled under Measure 37 will not allow him to use the property in a manner set forth in the claim.
2. The action by the State of Oregon provides the state's authorization to the claimant to use the westerly approximately 18.75-acres of the subject property subject to the standards in effect on November 22, 2003. On that date, the property was subject to applicable provisions of Statewide Planning Goal 4, ORS 215.705 to 215.750 and 215.780, and OAR 660, division 6, in effect on that date.
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 September 20, 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.