

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

**OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT**

**Final Staff Report and Recommendation**

July 19, 2005

**STATE CLAIM NUMBER:** M119452

**NAME OF CLAIMANT:** William G. and Janet M. Hills

**MAILING ADDRESS:** 29595 Northwest Skyway Drive  
North Plains, Oregon 97133

**IDENTIFICATION OF PROPERTY:** Township 2N, Range 2W, Section 30,  
Tax Lot 805  
Washington County

**DATE RECEIVED BY DAS:** January 25, 2005

**180-DAY DEADLINE:** July 24, 2005

**I. CLAIM**

William and Janet Hills, the claimants, seek compensation in the amount of \$165,000 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 house on the subject property. The property contains 2.20 acres of land located near North Plains in Washington 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 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) or the department not apply to the Hills to allow them to develop a single family residence on the subject property: applicable provisions of Statewide Planning Goal 3 (Agricultural Lands) ORS 215.780 and OAR 660, Division 33 that were enacted after August 6, 1976. These laws will not apply to the claimants' use of the subject property only to the extent necessary to allow them a use of the property permitted at the time they acquired it on August 6, 1976. (See Section VI. of this report for the complete recommendation.)

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

#### **Comments Received**

On February 23, 2005, pursuant to OAR 125-145-0080, the Oregon Department of Administrative Services (DAS) provided notice to the owners of surrounding properties. In response to the notice, DAS received one letter containing general comments that are not specific to the criteria required under Measure 37 for the department's review of this claim. Because no funds have been made available for payment of compensation, comments regarding the possible impact of the proposed or intended development of the claimant's property are not relevant to the evaluation and determination of the claimant's Ballot Measure 37 claim. (See comment letter in the department's claim file.)

### **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 criterion 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 criterion, whichever is later.

#### **Findings of Fact**

The claim was submitted to DAS on January 25, 2005 for processing under OAR 125, Division 145. The claim identifies Washington County's Exclusive Farm Use (EFU) designation & AF- 20 zoning, as the basis for this 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**

According to the claim, William G. Hills and Janet M. Hills acquired the property by warranty deed on August 6, 1976. To substantiate their ownership, the Hills included with their claim, a copy of the deed, a title report, and the most recent Tax Statement for the property. The Hills acknowledge, in a letter dated April 30, 2005, that the subject property is likely an illegal parcel, a fact they discovered in the 1980’s. (The parcel was created in 1973, prior to the Hills’ ownership.)

### **Conclusions**

The claimants William and Janet Hills are “owners” of the 2.20-acre subject property, as that term is defined by Section 11(C) of Measure 37, as of August 6, 1976.

### **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 is based on the Washington County’s EFU designation and AF-20 zone that implement Statewide Planning Goal 3 (Agricultural Lands), ORS 215.780 and OAR 660-033-0100 and 660-033-0135. The AF-20 zone requirements for a farm dwelling, including the \$80,000 annual income standard, restrict the claimants’ ability to establish a dwelling on the property.

The claimants purchased the property in 1976. At that time, zoning for the parcel was AF-10, a rural residential zone, which permitted a dwelling outright. However, in 1976, the County’s AF-10 Zone was not acknowledged by the Commission under the standards for state approval of local comprehensive plans and land use regulations pursuant to ORS 197.250 and 197.251. Because the Commission had not acknowledged Washington County’s local comprehensive plan and land use regulations, including the AF-10 zone, Statewide Planning Goal 3 applied directly to the property when the claimants acquired it on August 6, 1976.

Statewide Planning Goal 3 became effective on January 25, 1975, and was applicable to legislative land use decisions and some quasi-judicial land use decisions prior to the Commission's acknowledgment of local plans.<sup>1</sup> Washington County's EFU zones were acknowledged in 1984. Until the County's land use regulations were acknowledged by the Commission, the use of the subject property was subject to both the county's ordinances and the applicable Statewide Planning Goals.<sup>2</sup>

## **Conclusions**

The statutory and rule provisions for farm dwellings in ORS chapter 215 and OAR 660, Division 33, adopted after the claimants acquired the property in 1976, likely do not allow a single family dwelling to be approved on the subject property. It is possible that a dwelling could be approved under the more general provisions of ORS 215.213(1) (e) and direct application of Statewide Planning Goal 3 (Agricultural Lands) that applied to the property in 1976.

### **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**

According to the claimants, the inability to build a dwelling on their 2.2- acre parcel, due to the current restrictions of the AF-20 Zone, results in a fair market value reduction of \$165,000.

The claimants have not provided specific information to show that the current Goal 3 standards have resulted in a reduction in fair market value. Their conclusion of loss in real market value is based on comparison with their adjoining parcel, on which they have their residence. However, because the potential to build a dwelling on subject property existed in 1976 whereas such development is prohibited today; it is more likely than not that there has

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<sup>1</sup> See *Sunnyside Neighborhood Assn. v. Clackamas County*, 280 Or 569 (1977), *1000 Friends of Oregon v. Benton County*, 32 Or App 413 (1978), *Jurgenson v. Union County*, 42 Or App 505 (1979), *Alexanderson v. Polk County*, 289 Or 427, *rev. denied*, 290 Or 137 (1980) and *Perkins v. City of Rajneeshpuram*, 300 Or 1, (1985). After the County's plan and land use regulations were acknowledged by the Commission, the Statewide Planning Goals and implementing rules no longer directly applied to such local land use decisions (See *Byrd v. Stringer*, 295 Or 311 (1983)). However, the statutes continue to apply and insofar as the state and local provisions are materially the same in substance, the applicable rules must be interpreted and applied by the county in making its decision. *Forster v. Polk County*, 115 Or App 475 (1992) and *Kenagy v. Benton County*, 115 Or App 131 (1992).

<sup>2</sup> The subject property was zoned AF-10 until it was ultimately rezoned in 1982 to AF-20. In 1984, the County revised the zone to comply with the acknowledged Goal 3 zone. Thus the AF-20 zone was revised to an EFU zone.

been some reduction in the fair market value of the property as a result of land use regulations enacted after the claimants acquired the property.

### **Conclusions**

Other than comparison with the adjoining parcel on which they live, claimants have not provided specific information to show that the Goal 3 standards that applied after they purchased the property in 1976 resulted in a reduction in the fair market value. The claim includes no appraisal or other substantiating documentation. In addition, the fair market value asserted in the claim was incorrectly based on the County's unacknowledged AF-10 zone, and not on the requirements for farm dwellings under Goal 3, which applied to the property in 1976.

Until it is determined whether a dwelling would have been allowed 1976 under the Goal 3 standard, the specific amount of any reduction in the fair market value of the property cannot be determined. However, since a dwelling is not allowed under current standards, but possibly could have been allowed under the Goal 3 standard in effect at the time of purchase in 1976, the department concludes that it is more likely than not that there has been some reduction in the fair market value of the subject 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 versions of Statewide Planning Goal 3, and relevant provisions of ORS chapter 215 and OAR 660 Division 33 relating to agricultural lands in place as of March 1, 1976, the date the claimants acquired the property, are exempt under section 3 of Measure 37. Other applicable state regulations cited in the claim do not appear to be exempt under Section 3 of Ballot Measure 37.

### **Conclusions**

The versions of Statewide Planning Goal 3 and relevant portions of ORS chapter 215 relating to agricultural lands in place before August 6, 1976, are exempt from this claim. Other applicable regulations cited in the claim do not appear, either on their face or as applied to the subject property, to be exempt under Section 3 of Ballot 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.

## **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 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 conclusion 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 laws enacted enforced by the Commission or the department, reduce the fair market value of the subject property to some extent. The claim asserts this amount to be \$165,000. However, because the amount identified by the claimants is not based on the development standard and 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 current record for this claim, the department believes that the laws on which the claim is based may 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 one or more land use regulations to the extent necessary to allow the Hills to use the subject property for a use permitted at the time they acquired the property on August 6, 1976.

### **Conclusions**

Based on the current 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 claimants' establishment of a dwelling on the subject property: the applicable provisions of Statewide Planning Goal 3 (Agricultural Lands) that were enacted after August 6, 1976, ORS 215.780, and OAR 660-033-0130 and 660-033-0135. These laws will not apply to the claimants' use of the property only to the extent necessary to allow them to use the property permitted at the time they acquired it in 1976.
2. The action by the State of Oregon provides the state's authorization to develop the subject property with a single family residential dwelling, subject to applicable provisions of Statewide Planning Goal 3, ORS chapter 215, and specifically the dwelling standards of ORS 215.213(1)(e), other laws in effect when the claimants acquired the property in 1976,

and any other laws that are exempt under section 3(E) of Measure 37. The claimants' right to establish a dwelling is also subject to their showing that the possible illegal partition of the property does not preclude the issuance of a building permit for a dwelling.

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 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 William G. and Janet M. Hills 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 June 24, 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.