

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

OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT

Final Staff Report and Recommendation

July 28, 2005

STATE CLAIM NUMBER: M119662

NAME OF CLAIMANTS: Tom and Cheryl Edwards

MAILING ADDRESS: 21295 Southwest Mountain Home Road
Sherwood, Oregon 97140

IDENTIFICATION OF PROPERTY: Township 2S, Range 2W, Section 27,
Tax Lot 630,
Washington County

DATE RECEIVED BY DAS: February 8, 2005

180-DAY DEADLINE: August 7, 2005

I. CLAIM

Cheryl and Tom Edwards, the claimants, seek compensation in the amount of \$1,500,000 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 their 19.59-acre lot into lots of approximately two-to-five-acres each. The property is located at 21295 Southwest Mountain Home Road in Washington County, Oregon. (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 not valid. Laws enforced by the Commission or the Department do not restrict the claimants' use of the property relative to how it could have been used at the time the claimants' acquired the property on October 28, 1994. (See the complete recommendation in Section V of this report.)

III. COMMENTS ON THE CLAIM

On February 24, 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, there was one written comments received in response to the 10-day notice.

The comment is specific to the criteria required under Measure 37 for the department's review of this claim, in that it notes that current zoning for subject property also applied at the time claimants acquired it in 1994. (See the 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 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 February 8, 2005 for processing under OAR, 125, division 145. The claim identifies Washington County ordinances relating to lot line adjustments and 80-acre requirements for dwellings on Exclusive Farm Use (EFU), as well as ORS 215.780 and HB 3661 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 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

The claimants, Tom and Cheryl Edwards, acquired the property by a Warranty Deed on October 28, 1994. (See deed in claim file.) The real property is 19.59-acres, 21295 Southwest Mountain Home Road, Sherwood, in Washington County. The 2004-2005 Washington County Real Estate Tax Statement, confirms that Tom and Cheryl Edwards are the current owners of the subject property.

Conclusions

The claimants, Tom and Cheryl Edwards are “owners” of the subject property, as that term is 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 claimants’ 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

In a letter to Washington County, claimants state: “.....[W]e feel we are affected by the 80-acre restriction to our AF-20 farm prohibiting us from dividing it into like acreage of our surrounding area.” The claimants are also prevented by the same zoning from putting an additional dwelling(s) on their property.

The claim is based, in part, on Washington County’s current AF-20 zone, an EFU Zone, and the applicable provisions of state law that require such zoning. The claimants’ property is zoned AF 20/EFU as required by Goal 3 in accord with OAR 660, Division 33 and ORS 215 because the claimants’ property is “agricultural land” as defined by Goal 3.¹ 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. The AF-20 designation requires an 80-acre minimum parcel size, as an EFU designation.

Current land use regulations, particularly ORS 215.263, 215.284, 215.780 and OAR 660, division 33, as applied by Goal 3, do not allow the subject property to be divided into parcels less than 80 acres and establish standards for allowing the existing or any proposed parcel(s) to have farm or non farm dwellings on them.

¹ The claimant’s property is “agricultural land because it contains NRCS (Natural Resources Conservation Service) Soils. Claimants stated in claim that their land was not high value farmland. Correspondence on June 30, 2005, says that, “Our soil is rated a “28 E” in their [Washington County] records.” 28E is Laurelwood silt loam, a Class IV soil, rated high value.

The subject property was also zoned AF-20 at time of acquisition in 1994. All state laws that restrict the division of property and establishment of dwellings were in place on October 28, 1994, when the claimants acquired the property.

Conclusions

The zoning requirements, minimum lot size and dwelling standards established by Statewide Planning Goal 3 (Agricultural Lands) (OAR 660-015-0000(3)) and provisions applicable to land zoned EFU in ORS 215 and OAR 660, Division 33, do not allow the division of subject property and placement of dwellings thereon. These state laws that restrict the use of claimants' property were all adopted prior to the claimants' acquisition of the property in 1994.

Thus, laws enforced by the Commission or the department do not restrict the claimants' use of the property relative to how the property could have been used at the time the claimants acquired the property on October 28, 1994.

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' 20-acre property is zoned AF-20, requiring an 80-acre minimum lot size and therefore cannot be divided into two-to-five acre lots as they desire. The claimants state that they would prefer an AF-5 designation similar to many of their neighbors and have attached sales figures for approximately 5-acre lots in their area. The three comparables they attached to their claim listed sales prices of about \$400,000, without dwellings. Washington County Tax Assessor's information indicates an assessed value of \$182,000 for claimants' land and \$361,780 for the structure and special use portions for a total of \$543,780.

Conclusions

As explained in section V.(2) of this report, current land use regulations do not restrict the use of the subject property relative to the uses allowed when the claimants acquired the property in October 31, 1994. The laws that restrict the Edwards' proposed division of the property were all adopted prior to their acquisition of it in 1994. Therefore, the Edwards have not suffered reduction in the fair market value of their property due to state laws enacted after their acquisition of it.

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

Ballot Measure 37, Section 3, exempts all laws enacted prior to the owner's or family member's acquisition of the property. All state laws that restrict the claimants' use of the property were enacted before they acquired the property in 1994. Therefore, all state laws that restrict the use of the claimants' property are exempt.

Conclusion

All state laws that restrict the use of the claimants' property are exempt under Ballot Measure 37 (3).

VI. FORM OF RELIEF

Section 1 of Measure 37 requires 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 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

The claimants are not entitled to relief under Ballot Measure 37. Department staff recommends that this claim be denied because the laws enforced by the Commission or the department do not restrict the claimants' use of the property relative to how it could have been used at the time the claimants acquired the property on October 28, 1994.

Conclusion

Based on the record, the department recommends that the claim be denied.

VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on July 6, 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.