

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

**OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT**

**Final Staff Report and Recommendation  
June 16, 2005**

**STATE CLAIM NUMBER:** M119025

**NAME OF CLAIMANT:** John C. Arnett

**MAILING ADDRESS:** c/o Edward Fitch  
P.O. Box 457  
Redmond, Oregon 97756

**IDENTIFICATION OF PROPERTY:** 5792 NE 5<sup>th</sup> Street  
Township 14S, Range 13E, Section 27  
Tax lot R2-004 14-13-27-300,  
Deschutes County

**OTHER CONTACT INFORMATION FOR CLAIMANT:** Edward Fitch  
Phone: (541) 548-2151

**OTHER INTEREST IN PROPERTY:** None identified

**DATE RECEIVED BY DAS:** December 20, 2004

**180-DAY DEADLINE:** June 18, 2005

**I. CLAIM**

John C. Arnett, the claimant, seeks compensation in the amount of \$1,200,000 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 claimant desires compensation or the right to subdivide the property into smaller parcels for residential development. The property is located in T14S, R13E, Section 27, at 5792 NE 5<sup>th</sup> Street, Redmond, Oregon, Tax Lot R2-004 14-13-27-300, in Deschutes 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. Department staff recommends that, in lieu of compensation, the requirements of certain state laws enforced by the Land Conservation and Development Commission (the

Commission) or the department, specifically Statewide Planning Goal 3 and OAR 660-033, not apply to the subject property to the extent necessary to allow Mr. Arnett a use of the property permitted at the time he acquired it on March 11, 1967.

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

#### **Comments Received**

On February 11, 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, there were no written comments, evidence or information received by DAS 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 December 20, 2004, for processing under OAR 125, Division 145. The claim includes a list of land use regulations 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 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, John C. Arnett, acquired the subject property on March 11, 1967. A chain of title report shows that the property was transferred to John C. and Helen V. Arnett on March 11, 1967 by warranty deed. No deed is included with the claim. Deschutes County tax records for 2004 show John C. Arnett to be the current owner of Tax Lot R2-004 14-13-27-300. (See claim file for a copy of the 2004 tax statement).

#### **Conclusions**

John C. Arnett is an “owner” of the subject property as of May 11, 1967, as that term is defined by Section 11 of Ballot Measure 37.

### **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 filed with DAS identified “All laws and rules enacted by the State of Oregon and/or Deschutes County since 1968 that restrict use of the property” and that “specifically restricts subdivision of the property for residential development.” The claim states that the property was not zoned when it was acquired in 1967 and that the current exclusive farm use (EFU) zoning restricts subdivision. The Deschutes County EFU zoning and comprehensive plan implement Statewide Planning Goal 3 (Agricultural Lands), provisions of ORS 215 pertaining to residential uses allowed in Exclusive Farm Use (EFU) zones, and administrative rules dealing with dwellings and minimum lot sizes for dwellings (OAR 660-033-0100(1) and OAR 660-033-0130(3)(a)).

The provisions of Statewide Planning Goal 3 (Agricultural Lands), (OAR 660-015-0000(3)), OAR 660-033-0090, OAR 660-033-0100(1), OAR 660-033-0130(3)(a), and ORS 215.780, restrict the use of the subject property for residential development. Goal 3 became effective on January 25, 1975, and required agricultural land as defined by the goal to be zoned EFU pursuant to ORS 215 (see citations to statutory and rule history under OAR 660-015-0000(3)). ORS 215.780 became effective on November 4, 1993. (Chapter 792, Or Laws 1993).

The claimant's parcel is "agricultural land" as defined under Statewide Planning Goal 3 because it is composed of NRCS Class III soils when irrigated (see soils map for property from "Soil Survey of Upper Deschutes River Area Area, Oregon, Sheet # 60" USDA/NRCS). Soils found on the site are Deschutes sandy loam, dry, 0 – 3% slopes.

Other provisions of state land use law, cited generally by the claimant, would include provisions of ORS 215 that establish the standards for the approval of dwellings on land zoned EFU, including ORS 215.283, 215.284 and 215.705.

### **Conclusions**

The provisions of Statewide Planning Goal 3 (Agricultural Lands), (OAR 660-015-0000(3)), OAR 660-033-0090, OAR 660-033-0100(1), OAR 660-033-0130(3)(a), and ORS 215.780, ORS 215.283, 215.284 and 215.705 that relate to the use of property for residential development restrict the use of the Claimant's property. The minimum lot size and dwelling standards established by Statewide Planning Goal 3, ORS 215 and OAR 660-033 were all adopted after the claimant acquired the subject property in 1967 and do not allow the division of the property into parcels less than 80 acres in size or the approval of residential dwellings on property zoned EFU, thereby restricting the use of the property relative to the uses allowed when the claimant acquired the property in 1967.

### **3. Affect 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 claimant states that state regulations reduce the fair market value of the 115.6-acre site by \$1.2 million, based on the inability to create additional residential parcels of 2-5 acres through further division of the subject property. The claim did not provide a breakdown of how this just compensation figure was reached (see claim).

### **Conclusions**

As explained in section V.(1) of this report, the current owner is John C. Arnett, who acquired the property on March 11, 1967. Without an appraisal based on the value of the 115.6-acre lot subdivided into 2-5 acre parcels, 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 restriction of the use of the property and 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 reference to the restrictions resulting from EFU zoning and a general claim based on any state land use regulations enacted since 1968 that restrict the use of the property relative to what would have been allowed in 1967 when the property was acquired. Most laws that qualify as “land use regulations” under the Measure were adopted after 1967. Furthermore, none of the laws identified in the claim appear to be exempt, either on their face or as applied to the subject property under Section 3 of Ballot Measure 37.

#### **Conclusions**

Without a specific proposed use or a specific listing of laws that are the basis for the claim, it is not possible for the department to determine what laws may restrict 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 agricultural land apply to the owner’s anticipated use of the property, and for the most part these laws would not come under any of the exemptions in Measure 37. There may be other specific laws that are exempt and 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 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 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 claimant cannot create the desired 2 to 5 acre lots out of the subject 115.6-acre property and sell or develop those lots for residential use. These laws enforced by the department more likely than not have reduced the fair market value of the 115.6-acre property to some extent. The claim

asserts this amount to be \$1,200,000. However, because the claim does not provide a specific explanation for how the specified restrictions reduce the fair market value of the property from what the claimant could have done under the regulations in place at the time he acquired the property in 1967, a specific amount of compensation cannot be determined. Nevertheless, based on the current record for this claim, the department finds that the laws on which the claim is based more likely than not 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 allow Mr. Arnett to use the subject property for a use permitted at the time he acquired the property on March 11, 1967.

### **Conclusion**

Based on the record before the department, John C. Arnett has established that he is entitled to relief. Therefore, department staff recommends, in lieu of compensation, not applying land use regulations enforced by the Commission or the department after the claimant acquired the subject property, specifically: the provisions of Statewide Planning Goal 3 (Agricultural Lands), (OAR 660-015-0000(3)), OAR 660-033-0090, OAR 660-033-0100(1), OAR 660-033-0130(3)(a), and ORS 215.780, ORS 215.283, 215.284 and 215.705 that relate to the use of property for residential development, in order to allow Mr. Arnett a use of the property permitted at the time he acquired the property.

Any use of the property by the claimant remains subject to the following laws: (a) those laws not specified in his claim to the State of Oregon, dated December 15, 2004 or identified in this report; (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.

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

The department issued its draft staff report on this claim on May 25, 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.