

**BALLOT MEASURE 37 (Chapter 1, Oregon Laws 2005)  
CLAIM FOR COMPENSATION**

**OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT**

**Final Staff Report and Recommendation**

July 1, 2005

**STATE CLAIM NUMBER:** M119201

**NAME OF CLAIMANT:** Betty K. Klahn

**MAILING ADDRESS:** 15025 South Mitchell Lane  
Oregon City, Oregon 97045

**IDENTIFICATION OF PROPERTY:** Township 3S, Range 2E, Section 22  
Tax Lot 400  
Clackamas County

**OTHER INTEREST IN PROPERTY:** Darrel Klahn – Owner, Trustee  
15025 S Mitchell Road  
Oregon City, OR 97045

**DATE RECEIVED BY DAS:** January 7, 2005

**180-DAY DEADLINE:** July 6, 2005

**I. CLAIM**

Betty K. Klahn, the claimant, seeks compensation in the amount of \$300,000 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 six 5-acre dwelling sites. (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. In lieu of compensation, department staff recommends the requirements of the following laws not apply to Ms. Klahn's division of the property into six parcels or lots or the placement of a dwelling on each lot or parcel: Statewide Planning Goal 14, OAR 660-015-0002(2) and OAR 660-004-0040 to the extent necessary to allow the claimant a use permitted at the time she acquired the property on April 21, 1966. (See the complete recommendation in Section VI. of this report.)

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

#### **Comments Received**

On February 18, 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 were no written comments, evidence or information 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**

The claim was submitted to the DAS on January 7, 2005, for processing under OAR 125, Division 145. 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 payment of compensation or relief from specific laws for “owners” as that term is defined in the Measure. Section 11(C) defines “owner” as “the present owner of the property, or any interest therein.”

## **Findings of Fact**

The claim includes a contract and warranty deed documenting that Betty K. Ius (now Betty Klahn) acquired an interest in the subject property, along with other property not subject to this claim, on April 21, 1966. On November 30, 1993 the property was transferred to a trust with Betty K. Klahn and Darrel Klahn named as Trustees. The claimant has indicated the trust is a revocable trust, and the transfer is noted in the Clackamas County Records. Information from the County Tax Assessor indicates that the property remains under the ownership of Betty Klahn, Trustee, and Darrel Klahn, Trustee, as of January 4, 2005.<sup>1</sup>

## **Conclusions**

The claimant, Betty Klahn (formerly Betty Ius), is a current “owner” of the 32.44-acre parcel that is subject to this claim, as that term is defined by Section 11(C) of Ballot Measure 37, and acquired the property on April 21, 1966.

## **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 OAR 660-004-0040 “restricts any division of this 32.44 acre parcel in any way whatsoever”. The claim indicates that a twenty-acre minimum parcel size restriction was enacted against the property on June 9, 2000. A conversation with the claimant on April 14, 2005, clarifies her intent to divide the property into six 5-acre parcels for the placement of single-family dwellings.

County FF-10 zoning (Farm and Forest, 10 acre minimum) designates the subject property as rural residential land limited to 10–acre land divisions, except within one mile of an Urban Growth Boundary, where subdivisions are precluded on parcels less than 20 acres, as required by OAR 660-004-0040(8)(e). The FF-10 zone provides an exception to Goals 3 and 4 (resource land zones) and OAR 660-004-0040 interprets both the Goal 2 Exception Process and Statewide Land Use Planning Goal 14 for developing lands within one mile of an urban growth boundary (UGB). The County’s FF-10 zone was amended to conform to OAR 660, Division 15, and OAR 660-004-0040(8)(e).

The claim includes a letter from Clackamas County Planner Jon Skidmore, indicating that the subject property contains 22.86 acres within one-mile of the UGB. An additional 9.58 acres are

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<sup>1</sup> Based on a telephone conversation with Betty Klahn and on information in the record, it appears that Darrel Klahn is not a claimant in this Measure 37 claim.

outside the one-mile UGB buffer. As a result of a 1986 Supreme Court decision<sup>2</sup>, the Land Conservation and Development Commission in 2000 amended Goal 14 “(Urbanization)” and adopted OAR 660-004-0040 Application of Goal 14 in Rural Residential Areas. After October 4, 2000, a county’s minimum lot size requirement in a rural residential zone may not be reduced without taking an exception to Goal 14 (OAR 660-004-0040(6)). The amended rule prevents the subject property from division without an exception to Statewide Planning Goal 14.

### **Conclusions**

Statewide Planning Goal 14, as amended in 2000, OAR 660-015-0000(2) and OAR 660-004-0040, adopted since Betty Klahn acquired the property, restrict the use of the property relative to uses allowed when she acquired the property on April 21, 1966.

### **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**

Tax statements submitted with the claim indicate that the subject parcel and similar parcels subject to the same regulations are valued at approximately \$10,000 per acre. Additional Tax Statements and letters from the claimant indicate that parcels with smaller acreage buildable sites may be valued as high as \$30,000 per acre. The claim states a reduction in value of \$300,000.

The claim does not include specific comparisons, appraisals or other analyses to confirm estimates of reduction in value. The claim also does not include an analysis of the reduction in value due to specific land use laws.

### **Conclusions**

Without an appraisal 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 laws enforced by the Land Conservation and Development Commission (the Commission) or the department.

### **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**

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<sup>2</sup> *1000 Friends of Oregon v. LCDC (Curry County)*, 301 Or App 447 ((1986).

Laws that were in effect at the time the claimant acquired the property are exempt under Measure 37, Section 3(E). The state regulations subject to this claim include Statewide Planning Goal 14 (Urbanization) and OAR 660-004-0040 (for the application of Goal 14 in Rural Residential Areas), all of which were adopted after the claimant acquired an interest in the property.

### **Conclusions**

The amendments to Statewide Planning Goal 14 and OAR 660-004-0040 that are the basis for this claim were adopted after the claimant acquired the property and are not 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.

## **VI. FORM OF RELIEF**

Section 1 of Measure 37 provides for payment of compensation to an owner of private real property if 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 to allow the present owner to carry out a use of the property allowed at the time the present owner acquired the property. The Commission has by rule directed that if the department determines a claim is valid, the Director must provide non-monetary relief unless and until funds are appropriated by the legislature to pay claims.

### **Findings of Fact**

Based on the record currently before the department, laws enforced by the Commission or the department restrict the subdivision and establishment of dwellings on the property described in the claim. The laws 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 \$300,000. Without an appraisal, 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.

No funds have been appropriated at this time for the payment of claims. In lieu of payment of compensation, Measure 37 authorizes the department to modify, remove or not apply all or parts of certain land use regulations to allow Betty Klahn to use the subject property for a use permitted at the time she acquired the property April 21, 1966.

### **Conclusion**

Based on the 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 Ms. Klahn's division of the property into six parcels or lots for the placement of a dwelling on each lot or parcel: Statewide Planning Goal 14, OAR 660-015-0002(2) and OAR 660-004-0040 to the extent necessary to allow the claimant a use permitted at the time she acquired the property on April 21, 1966.
2. The action by the State of Oregon provides the state's authorization to the claimant to use the property subject to the standards in effect on April 21, 1966. On that date, the property was governed by state laws that include, but are not limited to: the provisions of ORS 92 and ORS 215 that existed at that time.
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 215.412 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 her 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 June 15, 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.