

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

**OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT**

**Final Staff Report and Recommendation  
August 1, 2005**

**STATE CLAIM NUMBER:** M119675

**NAME OF CLAIMANT:** Alice Sulak

**MAILING ADDRESS:** 6331 Riverside Drive  
McMinnville, Oregon 97128

**IDENTIFICATION OF PROPERTY:** 6331 Riverside Drive  
Township 4S, Range 4W, Section 23  
Tax Lot 2600, Yamhill County

**DATE RECEIVED BY DAS:** February 9, 2005

**180-DAY DEADLINE:** August 8, 2005

**I. CLAIM**

Alice Sulak, the claimant, seeks compensation in the amount of \$110,000 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 5.17 acre property for residential development. The property is located at 6331 Riverside Drive in Yamhill 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 not valid. Neither the Land Conservation and Development Commission (the Commission) nor the department have enforced laws that restrict the claimants' use of private real property in a manner that reduces that fair market value of the property relative to how the property could have been used at the time the claimant acquired the property in 1955. (See Section VI. of this report for the complete recommendation.)

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

#### **Comments Received**

On February 25, 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 February 9, 2005 for processing under OAR 125, division 145. The claimant identifies “AF-10” zoning as the restriction that limits her ability to divide the property. 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 claimant, Alice Sulak, and her late husband Miles Sulak, acquired the subject property from family members on August 15, 1955.<sup>1</sup> (See Warranty Deed, dated August 15, 1955). A copy of the Real Property Tax Statement from Yamhill County for the period from July 1, 2004 to June 30, 2005 shows that the claimant is the listed owner of the subject property.

## **Conclusions**

The claimant, Alice Sulak, is an “owner” 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 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 Fact**

The claimant wishes to subdivide the property into two parcels and to build a house on the additional lot in lieu of compensation for the reduction in property value caused by the application of land use regulations enacted after the claimant acquired the property.

The claim is based on Yamhill County’s Agriculture/Forestry Small Holding District (AF-10) and County Ordinance Section 501. These land use regulations were adopted after the claimant acquired the property.

The Yamhill County AF-10 zoning is in accord with Statewide Planning Goals and applicable statutes and administrative rule provisions governing land use, dwellings and minimum lot sizes. However, as of December, 2004, the subject property is now located within the City of McMinnville’s (City) urban growth boundary (UGB).<sup>2</sup> The claimant’s property was within the Riverside South “exception area” and was identified for inclusion in the City’s UGB as shown in the City’s 2003 Growth Management and Urbanization Plan. Inclusion of this exception area within the UGB was acknowledged by a partial approval and remand order issued by the Commission on December 3, 2004.<sup>3</sup> According to the order, no objections to these areas were submitted.

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<sup>1</sup> It is not clear from the current record when the claimant’s family first acquired the subject property.

<sup>2</sup> The City of McMinnville has been in periodic review since 1994, and has submitted an urban growth boundary (UGB) amendment to the Commission for review and acknowledgment. The city’s UGB expansion is currently the subject of a partial remand by the Commission, although, portions of the expansion area, including the area containing the claimant’s property, have been acknowledged by the Commission.

<sup>3</sup> Order item 1 of Commission Order 04-WKTASK-001646.

Properties located within the UGB are allowed to develop at higher overall residential densities than areas outside UGB. The subject property is not within the corporate limits of the City. The County, in coordination with the City, is responsible for zoning administration and land use actions. The City's Growth Management and Urbanization Plan depicts a residential plan designation for this area, and recommends the area allow for low density residential development commensurate with the R-2 (Single Family Residential) zone.<sup>4</sup> According to the plan, the City's R-2 zone allows a minimum density of 4.3 dwelling-units per-gross-acre.

Because the property is within the City's UGB, under state law the property is now available for urban uses. Through the plan amendment process, the property may now be developed to urban densities through the McMinnville/Yamhill County joint management agreement. The claimant has not demonstrated how state law restricts the use of the property relative to uses that were permitted at the time the property was acquired.

### **Conclusions**

This claim is based on the assumption that state and local regulations restrict the development of the subject property. The claimant has not demonstrated that state laws restrict any land division or residential development. The claimant's property has been approved by the Commission for inclusion within the City of McMinnville's UGB in compliance with the Statewide Planning Goals, and is therefore considered urbanizable land. There are no state land use laws that apply to the property which currently restrict the minimum lot size and dwelling standards applicable to the property. Rather, residential development at urban densities enhances the potential residential uses of the property, thereby increasing the fair market value of the property.

### **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 claimant asserts that the fair market value of the subject property has been reduced and that just compensation due is \$110,000. According to the information provided by the claimant, the claimant intends to subdivide the existing 5.17-acre parcel into two parcels, with an added value of \$110,000. The 2004 Tax Statement from Yamhill County shows that the real market value of the land to be worth \$190,968.

The McMinnville UGB has been amended to include the subject property. Through the plan amendment process, the property could be developed to urban densities under the McMinnville/Yamhill County joint management agreement. Now that the property is within the UGB, it is available for urban uses, which enhance rather than restrict the potential uses of the property, thereby increasing the property's fair market value.

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<sup>4</sup> McMinnville Growth Management and Urbanization Plan, page 6-12.

## **Conclusions**

The claimant has not provided information to show that state regulations result in a decrease in the fair market value of the subject property. The Riverside South area, including the subject property, has been incorporated into the City of McMinnville's UGB. Development of the area will now be carried out under the provisions of the growth management agreement between the City of McMinnville and Yamhill County. That agreement and provisions of state law provide the property owner with the right to subdivide the property and develop it to urban densities.

### **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**

The claim includes specific reference to a Yamhill County ordinance as a land use regulation that restricts the use of the property relative to what would have been allowed in 1955, when the property was acquired. The state land use laws on which that ordinance is based were adopted after 1955.

## **Conclusions**

The laws on which the claim is based do not appear to be exempt under Section 3(E) of Measure 37. There may be other specific laws that continue to apply under one or more of the other 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 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**

Based on the findings and conclusion set forth in this report, neither the Commission nor the department have enforced laws that restrict the claimant's use of real private 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 claimants acquired the property. State land use laws do not currently restrict the division of the claimant's property into parcels or lots and the use of the property for residential purposes.

## **Conclusions**

Based on the record, the department recommends that the claim be denied. The claimant, Alice Sulak, has not established that she is entitled to relief under Section 1 of Measure 37.

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

The department issued its draft staff report on this claim on July 8, 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.