

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

**OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT**

**Final Staff Report and Recommendation**

August 5, 2005

**STATE CLAIM NUMBER:** M119740

**NAME OF CLAIMANT:** Thelma E. Stice

**MAILING ADDRESS:** 5315 Gaffin Road SE  
Salem, Oregon 97301

**IDENTIFICATION OF PROPERTY:** Township 8S, Range 2W, Section 5A  
Tax Lot 200,  
Marion County

**OTHER CONTACT INFORMATION:** Lowell R. Stice  
952 62<sup>nd</sup> Ave SE  
Salem, Oregon 97301-8916

**DATE RECEIVED BY DAS:** February 14, 2005

**180-DAY DEADLINE:** August 13, 2005

**I. CLAIM**

The claimant, Thelma E. Stice, seek compensation in the amount of \$411,530 for a 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 divide the property into four additional 2-acre parcels, with the existing house to remain on a fifth 1.71-acre parcel. The property is located at 5315 Gaffin Road SE, near Salem, in Marion 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 this claim is valid. Department staff recommends, in lieu of compensation, that the requirements of the following laws enforced by the Land Conservation and Development Commission (the Commission) or the department, not apply to the claimant to allow her to divide and develop her property for residential use: Statewide Planning Goal 3 (Agricultural Lands), ORS 215.263, 215.284 and 215.780, and OAR 660, division 33. These laws will not apply to the claimant to the extent necessary to allow

Ms. Stice a use of the subject property permitted at the time she acquired it on October 11, 1963. (See the complete recommendation in Section VI. of this report.)

### **III. COMMENTS RECEIVED**

On February 25, 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, 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 14, 2005, for processing under OAR 125, division 145. The claim identifies Special Agriculture (SA) zoning (chapter 137 of the Marion County zoning code) and state laws 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 regulation adopted prior to December 2, 2004, and is therefore timely filed.

## V. ANALYSIS OF CLAIM

### **1. Ownership**

Ballot Measure 37 provides for payment of compensation of 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, Thelma E. Stice, acquired the subject property on October 11, 1963. A copy of the deed conveying the subject property to Thelma E. Stice and her late husband, Richard W. Stice, dated October 11, 1963, was included with the claim. A January 7, 2005 title report prepared by Fidelity National Title Company shows Thelma E. Stice as the current owner of the property.

### **Conclusions**

The claimant, Thelma E. Stice, is the “owner” of the subject property as that term is defined in Section 11 of Ballot Measure 37, as of October 11, 1963.

### **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 states that Thelma E. Stice cannot create four additional 2-acre parcels for residential uses, with the existing house remaining on a 1.71-acre parcel, because of the law that created Marion County’s Special Agricultural (SA) zoning. The current zoning has a minimum lot size of 80-acres for new parcels that does not allow division of the 9.71-acre property into additional smaller tracts. The SA zone contains provisions that allow creation of smaller new non-farm parcels, but not for residential uses.

The claim is based on Marion County’s current Exclusive Farm Use (EFU) Zone - (SA Special Agriculture, chapter 137- Marion County Code) and the applicable provisions of state law that require such zoning. The claimant’s property is zoned EFU/SA as required by Goal 3 in accord with OAR 660, division 33, and ORS 215 because the claimant’s property is “Agricultural Land” as defined by Goal 3.<sup>1</sup> Goal 3 became effective on January 25, 1975, and required that Agricultural Lands as defined by the Goal be zoned EFU pursuant to ORS 215.

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<sup>1</sup> The claimant’s property is “Agricultural Land” because it contains NRCS (Natural Resources Conservation Service) Soils, Woodburn silt loam, 0 – 3% slopes, Soil Class IIw-1.

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.

ORS 215.780 established an 80-acre minimum size for the creation of new lots or parcels in EFU zones and became effective November 4, 1993 (chapter 792, Oregon Laws 1993).

ORS 215.263 (2003 edition) establishes standards for the creation of new parcels for non-farm uses and dwellings allowed in an EFU zone.

OAR 660-033-0135 (applicable to farm dwellings) became effective on March 1, 1994, and interprets the statutory standard for a primary dwelling in an EFU zone under ORS 215.283(1)(f).

OAR 660-033-0130(4) (applicable to non-farm dwellings) became effective on August 7, 1993, and was amended to comply with ORS 215.284(4) on March 1, 1994. Subsequent amendments to comply with HB 3326, (chapter 704, Oregon Laws 2001, and effective January 1, 2002) were adopted by the Commission effective May 22, 2002. (See citations of administrative rule history for OAR 660-033-0100, 0130 and 0135.)

The claimant acquired the subject property on October 11, 1963. At that time the property was not subject to zoning.

### **Conclusions**

Lot size and dwelling standards established by amendments to Statewide Planning Goal 3, amendments to ORS 215, and OAR 660, division 33, adopted since the claimant acquired the property in 1963, do not allow the division of the property into parcels less than 80-acres in size or allow the approval of dwellings as may have been possible in 1963. The County's EFU/SA zone is based on the standards required by Goal 3, ORS 215 and OAR 660, division 33. Land use laws adopted since 1963, restrict the use of the property from what could have been done when the property was acquired by the claimant on October 11, 1963.

### **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**

The claim states that the fair market value of the subject property has been reduced by \$411,530 as a result of land use laws enacted after she acquired the property in 1963.

The claim includes a title report and property summary prepared by Fidelity National Title Company that shows the current real market value of the 9.71-acre property and existing house as \$208,470.

The title report and property summary contains a comparative analysis of similar properties in the Willamette Valley. The report calculated the value of the property divided into five lots, including a 1.71-acre lot with the existing house, and four new 2-acre residential lots. The calculated loss in fair market value is \$411,530 based on a value of \$440,000 for the four new 2-acre lots, plus \$180,000 for the 1.71-acre lot with existing house, less the \$208,470 listed as the current value for the 9.71-acre lot with the existing house.

### **Conclusions**

As explained in section V. (1) of this report, Thelma E. Stice is the current owner of the subject property as of October 11, 1963. Thus, under Ballot Measure 37, Ms. Stice is due compensation for land use laws that restrict the use of the subject property in a manner that reduces its fair market value. Based on the findings and conclusions in section V. (2) of this report, laws adopted since the claimant acquired the property restrict division of and placement of residential dwellings on the subject property. The claim asserts the reduction in value due to the restriction to be \$411,530. However, without a certified appraisal or other documentation, the specific dollar amount the claimant demands for compensation cannot be substantiated. 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 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 is based on Marion County's EFU/SA zone and the related provisions of state law that have restricted use of the property and reduced its fair market value, including Statewide Planning Goal 3, "Agricultural Lands," and applicable provisions of ORS 215 and OAR 660, division 33. All of the specified state land use regulations were enacted after the claimant acquired the property in 1963, and restrict the use of the property in a manner that likely reduces its fair market value. None of the laws identified in the claim appear to be exempt under Section 3 of Ballot Measure 37.

### **Conclusions**

It appears that the general statutory, goal and rule restrictions on the division, residential development, and use of Agricultural Land apply to the claimant's use of the property, and it does not appear that any of these laws would come under any of the exemptions in Measure 37,

Section 3. 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 Measure 37.

## **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 the 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 conclusions in this report, laws enforced by the Commission or the department, restrict the claimant's use of the subject property. The claimant cannot subdivide the subject property into four additional 2-acre parcels for residential development, with the existing house to remain on a fifth 1.71-acre parcel. The claim asserts these restrictions reduce the fair market value of the subject property by \$411,530. Although the claim provides an explanation about how the specified restrictions reduce the fair market value of the property, no certified appraisal was submitted. Therefore, it is not possible to accurately substantiate the specific dollar amount the claimant demands for compensation. Nevertheless, the department acknowledges that state land use laws 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 just compensation, Measure 37 authorizes the department to modify, remove, or not apply all or parts of certain state land use regulations to allow Ms. Stice to use the subject property for a use permitted at the time they acquired the property on October 11, 1963.

### **Conclusions**

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. Stice's division of her property into four 2-acre parcels and one 1.7 acre parcel or to the establishment of a single family dwelling on each of the 2-acre parcels created: applicable provisions of Statewide Planning Goal 3, ORS 215.263, 215.780 and 215.284; and OAR 660, division 33. These land use regulations will not apply to Ms. Stice's use of her property only to the extent necessary to allow the claimant a use permitted at the time she acquired the property on October 11, 1963.
2. The action by the State of Oregon provides the state's authorization to the claimant to use her property subject to the standards in effect on October 11, 1963.

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 them 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 July 12, 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.