

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

**OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT**

**Final Staff Report and Recommendation**

August 26, 2005

**STATE CLAIM NUMBER:** M120067

**NAME OF CLAIMANT:** Anne K. Jones

**MAILING ADDRESS:** 15140 Northwest Burlington Court  
Portland, Oregon 97231

**IDENTIFICATION OF PROPERTY:** Township 2N, Range 1W  
Section 17  
Tax Lot 300  
Multnomah County

**OTHER CONTACT INFORMATION:** Greg Jones, Agent  
5511 Southwest Pendleton Street  
Portland, Oregon 97221

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

**180-DAY DEADLINE:** September 9, 2005

**I. CLAIM**

Anne K. Jones, the claimant, seeks compensation in the amount of \$9,500 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 build a house on her 6.78-acre property. The property is located at 15100 Northwest Burlington Court, near Portland, in Multnomah 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, in lieu of compensation, that the requirements of the following state laws enforced by the Land Conservation and Development Commission (the Commission) or the department, not apply to Ms. Jones to allow her to build a dwelling on her property: Statewide Planning Goal 3, ORS 215.263 and 215.284, and OAR 660, division 33, enacted after August 15, 1973.

These laws will not apply to the claimant only to the extent necessary to allow Ms. Jones a use of the subject property permitted at the time she acquired the property on August 15, 1973. (See the complete recommendation in Section VI. of this report.)

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

#### **Comments Received**

On March 21, 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 two written comments, evidence or information received by DAS in response to the 10-day notice, both of which are supportive of the claim. (See comment letters in the department's claim file.)

The comments do not address whether the claim meets the criteria for relief (compensation or waiver) under Measure 37. Comments concerning the effects a use of the property may have on surrounding areas generally are not something that the department is able to consider in determining whether to waive a state law. If funds do become available to pay compensation, then such effects may become relevant in determining which claims to pay compensation for instead of waiving a state law.

### **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 DAS on March 9, 2005, for processing under OAR 125, division 145. The claim cites provisions of ORS chapters 197 and 215, and their implementing rules as the bases 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 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 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 claimant, Anne K. Jones and Robert P. Jones acquired the subject property on August 15, 1973, as evidenced by the Deed provided with the claim. Robert P. and Anne K. Jones conveyed the property to Anne K. Jones on December 31, 2002. (See the department’s claim file.)

### **Conclusions**

Anne K. Jones is the owner of the subject property as that term is defined by Section 11(C) of Ballot Measure 37 as of August 15, 1973.

### **2. The Laws that are the Basis for this Claim**

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 claimant desires to build one single-family home on the subject 6.78-acre property. The claimant’s agent states that: “Senate Bill 100; 215.296 and ORS 197.247” restrict the use of the claimant’s property and prevent her from developing the property with a single-family dwelling. The claim explains that the claimant purchased the property on August 15, 1973, prior to the enactment of these regulations that now restrict building a single family dwelling.

ORS 215.296 establishes general standards for uses in Exclusive Farm Zone, but does not specifically restrict development of a single-family dwelling on the subject property. This report focuses on specific provisions of ORS 215 that relate to the desired use of the subject property. ORS 197.247, relating to local government compliance with state land use goals, was repealed in 1983 and does not restrict the use of the subject property.

Senate Bill 100, enacted during the 1973 legislative session and codified, in part, in ORS 215, became effective October 5, 1973, and established the statewide land use planning program. The claimant's property is currently zoned EFU in accord with Goal 3 and applicable provisions of ORS 215 and OAR 660, division 33, because the claimant's property is "Agricultural Land" as defined by Goal 3. Goal 3 became effective on January 25, 1975, and required that Agricultural Lands as defined by the Goal are zoned EFU pursuant to ORS 215. Current land use regulations, particularly ORS 215.263, 215.284, and OAR 660 division 33 as applied by Goal 3, establish standards for allowing the existing or parcel to have farm or non-farm dwellings on them.

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.)

When the claimant first acquired an interest in the property on August 15, 1973, some provisions of ORS 215 then in effect applied to the property, but these did not specify criteria for establishing a dwelling.

### **Conclusions**

The zoning requirements, minimum lot size and dwelling standards established by Statewide Planning Goal 3 (Agricultural Lands), and provisions applicable to land zoned EFU in ORS 215 and OAR 660, division 33, which apply to the subject property were enacted after the claimant acquired ownership of the subject property on August 15, 1973, and do not allow establishment of a dwelling, thereby restricting the use of the property relative to the uses allowed when the claimant acquired it in 1973.

This report addresses only those state laws that are identified in the claim, or that the department is certain apply to the property based on the use that the claimant has identified. There may be other laws that currently apply to the claimant's use of the property, and that may continue to apply to the claimant's use of the property, that have not been identified in the claim. In some cases it will not be possible to know what laws apply to a use of property until there is a specific proposal for that use. When a claimant seeks a building or development permit to carry out a specific use, it may become evident that other state laws apply to that use.

### **3. Effect of Regulations on Fair Market Value**

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**

A Multnomah County Tax Statement and an appraisal are attached to the claim. The county has assessed the property at \$11,670. The appraisal values the subject property as a homesite at \$275,000 as of January 13, 2005. However, the claimant states her property has been devalued by only \$9,500 and asks for a wavier in lieu of compensation.<sup>1</sup>

## **Conclusions**

As explained in section V.(1) of this report, the claimant Anne K. Jones currently owns the subject property and acquired the property on August 15, 1973. Thus, under Ballot Measure 37, Anne K. Jones is due compensation for land use laws restricting the use of the property in a manner reducing 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 establishment of a dwelling on the property. She estimates the reduction in the value of her property due to land use regulations as \$9,500.

Based on the information provided with the claim, including the appraisal, the department determines that it is more likely than not that there has been a reduction in the fair market value of the subject property of at least \$9500 as a result of laws enforced by 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**

The claim is based on Multnomah County's EFU 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 these regulations were enacted after the claimant acquired the property in 1973, with the exception of some provisions of ORS 215 adopted prior to 1973, which do not restrict the establishment of a dwelling on the subject property.

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<sup>1</sup> The claimant states in her attached claim to Multnomah County: "We are not seeking a monetary claim. We have no interest in dividing the parcel of land. We will stipulate to Multnomah County that we have no interest other than building a single family dwelling on the parcel of land."

## **Conclusions**

Without a specific development proposal for the property, it is not possible for the department to determine what laws may apply to a particular use of the property, or whether those laws may fall under one or more of the exemptions under Measure 37.

It appears that the general statutory, goal and rule restrictions on the development and use of Agricultural Land apply to the claimant's 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 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.

Laws in effect when the claimant acquired the property, including any applicable provisions of ORS 215 enacted before August 15, 1973, are exempt under Section 3(E) of Measure 37, and will continue to apply to the claimant's use of the property. There may be other laws that continue to apply to the claimant's use of the property that have not been identified in the claim. In some cases it will not be possible to know what laws apply to a use of property until there is a specific proposal for that use. When the claimant seeks a building or development permit to carry out a specific use, it may become evident that other state laws apply to that use. And, in some cases, some of these laws may be exempt under subsections 3(A) to 3(D) of Measure 37.

This report addresses only those state laws that are identified in the claim, or that the department is certain apply to the property based on the use that the claimant has identified. Similarly, this report only addresses the exemptions provided for under section (3) of Measure 37 that are clearly applicable given the information provided to the department in the claim. The claimant should be aware that the less information they have provided to the department in their claim, the greater the possibility that there may be additional laws that will later be determined to continue to apply to her use of the property.

## **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 department 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 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 set forth in this report, laws enforced by the Commission or the department restrict development of a dwelling on Ms. Jones' property. The claim asserts that the laws enforced by the Commission or department reduce the fair market value of the subject property by \$9500. A comparative appraisal of the property as a homesite, submitted with the claim, shows a reduction in value of the property of at least this much. Based on the

submitted information, the department determines that there has been some reduction in the fair market value of the subject property as a result of laws enforced by the Commission or the department.

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 Anne K. Jones, the claimant, to use the subject property for a use permitted at the time she acquired the property on August 15, 1973.

### **Conclusion**

Based on the record the department recommends that the claim be approved, subject to the following conditions.

1. In lieu of compensation under Measure 37, the State of Oregon will not apply the following laws to Ms. Jones' establishment of a dwelling on her property: those provisions of Statewide Planning Goal 3, ORS 215.263 and ORS 215.284 and OAR 660, division 33, enforced after August 15, 1973 that relate to the claimant's establishment of a dwelling on the subject property.
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 August 15, 1973. At that time, some provisions of ORS 215 were in effect.
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 215.402 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 July 26, 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.