

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

**OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT  
Final Staff Report and Recommendation**

September 23, 2005

**OREGON CLAIM NUMBER:** M120410

**NAMES OF CLAIMANTS:** Argie W. and Helen Martin

**MAILING ADDRESS:** c/o Chris B. Bedsaul  
Bedsaul Consulting, Inc.  
63215 Wishing Well Lane  
Bend, Oregon 97701

**PROPERTY IDENTIFICATION:** Township 15S, Range 13W, Section 17BC  
Tax Lot 3500  
Deschutes County

**DATE RECEIVED BY DAS:** April 1, 2005

**180-DAY DEADLINE:** September 28, 2005

**I. CLAIM**

The claimants, Argie W. and Helen Martin, seek compensation in the amount of \$857,307 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 claimants desire compensation or the right to develop the 4.1-acre property for commercial development. The property is located at 3131 W. Highland Avenue, Redmond 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 not valid because neither the Land Conservation and Development Commission (the Commission) nor the department have enforced laws that restrict the claimants' use of private real property. (See the complete recommendation in Section VI. of this report.)

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

On April 14, 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 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 April 1, 2005, for processing under OAR 125, division 145. The claim generally identifies ORS 197 and zoning changes adopted by Deschutes County and the City of Redmond 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 (2004), 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. Ballot Measure 37, Section 11(C) defines “owner” as “the present owner of the property, or any interest therein.”

## **Findings of Fact**

The claimants, Argie and Helen Martin, acquired the property in 1963, as documented by a Warranty Deed included with the claim. The claim also includes a lot book report from Western Title & Escrow Company, showing the Martin's continuous ownership of the subject property.

## **Conclusions**

The claimants, Argie and Helen Martin are "owners" of the subject property as that term is defined by Section 11(C) of Ballot Measure 37 as of 1963.

## **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 claimants' 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 claimants or a family member acquired the property.

## **Findings of Fact**

The claim states "the zone changes that were adopted by Deschutes County and City of Redmond for residential designations on the Martin property eliminated permitted outright uses in 1963 for any proposed commercial development and those zoning actions have significantly reduced the overall total fair market value of the property." The claim also states that ORS 197 "created restrictions on the development or improvements on the identified property of this claim that was permitted outright in 1963."

The claimants' property was included in the City of Redmond's Urban Growth Boundary (UGB), after they acquired it in 1963. According to a March 28, 2005, letter from Deschutes County Community Development Department, the property was annexed into the City of Redmond, effective March 1, 2005. The City of Redmond has zoning jurisdiction over the subject property as of that date. Consistent with the 1982 and 2002 Joint Management Agreements for the Redmond UGB area, the County adopted the current general residential zoning applicable to this property in Ordinance 2001-026. Redmond has continued to apply such zoning now that the property has been incorporated into the City.<sup>1</sup>

Zoning allocations for properties within an urban growth boundary are assigned by the governing jurisdiction addressing local conditions including but limited to available infrastructure and services and forecasted population growth. Neither the department nor the Commission enforces the laws that require specific zoning of the subject property (e.g., residential zoning or commercial zoning) or other individual properties within urban growth boundaries.

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<sup>1</sup>This information does not match the information submitted, on behalf of the applicant, in a March 29, 2005 letter by Bedsaul Consulting, Inc. regarding Claim for Compensation Pursuant to Ballot Measure 37 (2004). Specifically, information submitted by the claimants' consultants does not reflect the property's annexation into the City of Redmond.

The claim does identify ORS 197 as the general state law restricting use of the property. ORS 197 establishes the general procedures for comprehensive land use planning and coordination but does not directly restrict the use of the subject property. The claim asserts that ORS 197 “created restrictions on the development or improvements on the identified property” but does not establish how that law may restrict the use of the claimants’ property. Absent any explanation as to how ORS 197 has restricted the use of the claimants’ commercial development within the City of Redmond, the department finds that no provisions of that statute has restricted the use of the claimants’ property in a manner that reduces its fair market value. The claim identified no other state law that may restrict the use of the claimants’ property, and as the regulating entity, the department is unable to determine that any state laws may be restrict the claimants’ use of the property.

### **Conclusions**

The claim does not identify any state law that restricts the use of the claimants’ property. Based on the record before the department, as the regulating state agency, neither the Commission nor the department has enforced any laws that restrict the use of claimants’ real 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 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 claimants, Argie and Helen Martin, demand \$857,307 in compensation. The claim provides an estimate of the value of the property with commercial zoning applied and provides a current tax assessor’s value, pre-annexation, of \$42,046 per acre. The land has not been appraised to reflect the value of the property since it has been included within Redmond’s city boundary.

### **Conclusions**

While the claim includes an estimate of an alleged reduction in value due to land use regulations, as explained in Section V. (2) above, the claimants have not identified any laws enforced by the Commission or the department that have restricted the use of the subject property. No laws enforced by the Commission or the department have had the effect of reducing the fair market value of the property.

### **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 state law that is the basis of this claim is ORS 197. Because it was enacted after the claimants acquired the property in 1963, it would not be exempt under Section (3)(E) of Measure 37, which exempts laws in effect when the claimant acquired the property. However, as discussed above, that law does not restrict the claimants' use of the property for commercial development.

### **Conclusions**

Based on the record, the claim does not identify state laws enforced by the Commission or the department that restrict the use of the subject property. Therefore, the question of whether state laws are exempt under Section 3 of Measure 37 is not applicable.

## **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 that 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 record for this claim, the claimants have not established that any state law enforced by the Commission or the department restricts the use of the subject property in a manner that reduces the value of the property.

### **Conclusion**

Based on the record before the department, the claimants, Argie and Helen Martin, have not established that they are entitled to relief under Section 1 of Measure 37. Therefore, this claim is denied.

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

The department issued its draft staff report on this claim on September 8, 2005. OAR 125-145-0100(3), provided an opportunity for the claimants or the claimants' 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.