

March 23, 2007

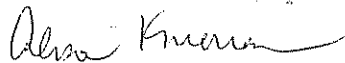
Case File: T1-06-009

Claimant: Mark Knieriem

Dear Lisa,

Attached is comment to staff report received by you via email 3/17/2007.

Thank you,

A handwritten signature in cursive script, appearing to read "Alison Knieriem".

Alison Knieriem
Spouse of Claimant

Comments to Staff Analysis Report

March 23, 2007

Case File: T1-06-009

Claimant: Mark Knieriem
136 SE 5th Street
Troutdale, OR 97060

Location: TL 500, Sec 31DA, T1N, R4E, W M
Tax account # R64973-4150

The following comments are in response to the Staff Analysis Report of Measure 37 claim – Case File T1-06-099. **The purpose** of M37 is for modification, removal, or to not apply land use restrictions restricting use of property when owner acquired property. Under OARs 125-145-0020, Multnomah County is a regulating entity with the authority to remove, modify or not apply the Land Use Regulations identified in the claim. Also of note, ORS 197 (11) A, is used in support of the following comments. Claiming a M37 claim is required at both the state and county levels.

Approach to Claim: It is noted in this portion of the report that the 2-acre property did not comply with minimum lot size regulation in effect when the property was created and acquired by the current owner. The regulation requires new parcels to be at least 20 acres in size.

Comment: The purpose of filing the M37 claim is to **legalize** the 2-acre property due to MUA-20 restrictions (rules, and regulations) as noted: *Compensation in the amount of \$96,167.00 or relief from regulations to allow the legalization of a 2.00 acre parcel in the MUA-20 zone district.*

Comments to Evaluation Questions

Question 1: Has the owner made a complete written demand under Ballot Measure 37?
Staff report states YES.

Comment to Question 1: No comment.

Question 2: Did the claimant acquire the property before the laws in question were adopted? According to staff report, the answer is NO

Note: Under OAR 125-145-0020 Definitions (12) Regulating Entity - Multnomah County is the regulating entity who has the authority to remove, modify or not apply the Land Use Regulation(s) identified in the Claim. I would also like to note that ORS 197 (11) A was made part of Measure 37. (See Text of Measure Exhibit A)

Comment to Question 2: According to provisions added and made part of ORS chapter 197 (11) A, *the definition of a “**Family Member**” shall include the wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent, or grandchild of the owner of the property, an estate of any of the foregoing family members, or a legal entity owned by any one or combination of these family members or the owner of the property.*

There is a question on the State of Oregon claim form that asks the following in consideration of the claim:

If the claimant(s) acquired the property from a “**family member**” (as defined in ORS 197.352), what was the zoning of each tax lot when the “**family member**” of the claimant acquired the tax lot?

The answer to this question is ... there was no zoning in unincorporated Multnomah County. Therefore according to the definition of a “family member” under ORS chapter 197 (11) A, which includes a grandparent or and estate of any of the foregoing family members etc, the property under claim is legal due to the grandparent acquiring the property in 1928 where there was no zoning in unincorporated Multnomah County and where there were no limitations as to number of single-family dwellings on a parcel of land. Again, the purpose of the claim is to legalize the 2-acre property.

Therefore according to ORS 197 (11) A – definition for “family member”, the answer to the above-note question should be YES

Question 3: Have the challenged regulations restricted the use of the property? According to the staff report, the answer is NO.

Comment to Question 3: As noted in the staff report, “While the **claimant’s family** acquired the property in February 1928, a deed submitted by the claimant shows that he acquired the 2 acres on September 29, 1993.” Again, according to ORS 197 (11) A, it holds true that property under claim is covered by this definition and should be **legal** due to no zoning in unincorporated Multnomah County in 1928 when the **claimant’s family** (grandfather) acquired the property. The purpose of this claim is to legalize the 2-acre property to allow a single family dwelling. MUA-20 regulations have restricted the use of the property.

Therefore according to ORS 197 (11) A (definition for “family member”), the answer to this question is YES

Question 4. Have the regulations reduced the fair market value of the properties?
According to the staff report, the answer is NO.

Comment to Question 4: The regulations **HAVE reduced** the fair market value of the property under claim due to restrictions. When the owner acquired the 2-acre property in September, 1993, the fair market value according to Multnomah County records (See Exhibit B) was \$6,100, however, after only 5 months the value raised to \$33,000 on 2/28/94 then an additional \$4,000 on 9/16/94 (a second adjustment within the same year) to increase RVM to \$37,000. Due to MUA-20 restrictions not allowing a single family dwelling on the property, a real property value adjustment was made and adjusted on 3/1/1996 which **lowered the value** from \$37,000 to \$12,000 – a LOSS of \$25,000. The adjustment was applied for and filed due to the MUA-20 restricting the use of the land by not allowing a single-family dwelling. Therefore this shows that the property under claim lost value due to the MUA-20 restriction.

Also, it was noted by Bob Alcantara, Senior Appraisal Supervisor with the Multnomah County Division of Assessment and Taxation, that if the site under claim was legally created and buildable it would have lost value. I do not agree with the assessment by Bob Alcantara due to the fact that if the property was legal to build, the value of the property would **increase** by at least the \$25,000 making the total property RMV \$37,000 (1993 dollars) and would increase even more if a single family dwelling was established. Evidence of 3 Multnomah County tax assessed buildable properties of identical size and located next to and across the street from 2-acre property under claim were included in filing the claim (A 10 of staff report) and show the following values for the land that is deemed buildable as well as the RMV of the land and house.

2006 Land Value of submitted comparable locations:

- a. \$110,000.00
- b. \$128,500.00
- c. \$110,000.00

2006 RMV land and house of submitted comparable locations:

- a. \$318,550.00
- b. \$334,690.00
- c. \$256,090.00

2006 Property Tax Multnomah County received from comparable locations:

- a. \$3,304.00
- b. \$3,554.00
- c. \$2,515.00

At this time, Multnomah County receives only \$213.19 from the owner of the tax lot under M37 claim. If the property was legalized and a single family home was placed on it, it is my assessment that with support of the above-mentioned data, **the property would increase substantially** in value, not decrease as Bob Alcantara indicated and noted on the staff report.

In addition, applying ORS 197 (11) A – definitions for “family member”, the 2-acre property could be legal under M37 claim. If property is deemed legal, then presently with MUA-20 restrictions there is a reduction of fair market value.

Therefore, I conclude that the answer to question 4 above is YES.

Conclusion

In conclusion, I believe with the above-noted comments and recognition of (ORS 197 (11) A) definition of a “**family member**”, I have established that MUA-20 regulations on property under claim have restricted the use of the land and reduced its value.

Under Ballot Measure 37, this claim is to seek **legalization** of T1-06-099 which is asking not to apply MUA-20 restrictions to the property and to apply 1928 zoning when grandfather acquired property where there was no zoning in unincorporated Multnomah County, hence making property under claim legal.

Therefore, I ask that the Board of Commissioners approve this claim.

Thank you,

Mark Knieriem

Measure 37

Text of Measure

The following provisions are added to and made a part of ORS chapter 197:

- (1) If a public entity enacts or enforces a new land use regulation or enforces a land use regulation enacted prior to the effective date of this amendment that restricts the use of private real property or any interest therein and has the effect of reducing the fair market value of the property, or any interest therein, then the owner of the property shall be paid just compensation.
- (2) Just compensation shall be equal to the reduction in the fair market value of the affected property interest resulting from enactment or enforcement of the land use regulation as of the date the owner makes written demand for compensation under this act.
- (3) Subsection (1) of this act shall not apply to land use regulations:
- (A) Restricting or prohibiting activities commonly and historically recognized as public nuisances under common law. This subsection shall be construed narrowly in favor of a finding of compensation under this act;
- (B) Restricting or prohibiting activities for the protection of public health and safety, such as fire and building codes, health and sanitation regulations, solid or hazardous waste regulations, and pollution control regulations;
- (C) To the extent the land use regulation is required to comply with federal law;
- (D) Restricting or prohibiting the use of a property for the purpose of selling pornography or performing nude dancing. Nothing in this subsection, however, is intended to affect or alter rights provided by the Oregon or United States Constitutions; or
- (E) Enacted prior to the date of acquisition of the property by the owner or a family member of the owner who owned the subject property prior to acquisition or inheritance by the owner, whichever occurred first.
- (4) Just compensation under subsection (1) of this act shall be due the owner of the property if the land use regulation continues to be enforced against the property 180 days after the owner of the property makes written demand for compensation under this section to the public entity enacting or enforcing the land use regulation.
- (5) For claims arising from land use regulations enacted prior to the effective date of this act, written demand for compensation under subsection (4) shall be made within two years of the effective date of this act, or the date the public entity applies the land use regulation as an approval criteria to an application submitted by the owner of the property, whichever is later. For claims arising from land use regulations enacted after the effective date of this act, written demand for compensation under subsection (4) shall be made 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.
- (6) If a land use regulation continues to apply to the subject property more than 180 days after the present owner of the property has made written demand for compensation under this act, the present owner of the property, or any interest therein, shall have a cause of action for compensation under this act in the circuit court in which the real property is located, and the present owner of the real property shall be entitled to reasonable attorney fees, expenses, costs, and other disbursements reasonably incurred to collect the compensation.
- (7) A metropolitan service district, city, or county, or state agency may adopt or apply procedures for the processing of claims under this act, but in no event shall these procedures act as a prerequisite to the filing

of a compensation claim under subsection (6) of this act, nor shall the failure of an owner of property to file an application for a land use permit with the local government serve as grounds for dismissal, abatement, or delay of a compensation claim under subsection (6) of this act.

(8) Notwithstanding any other state statute or the availability of funds under subsection (10) of this act, in lieu of payment of just compensation under this act, the governing body responsible for enacting the land use regulation may modify, remove, or not to apply the land use regulation or land use regulations to allow the owner to use the property for a use permitted at the time the owner acquired the property.

(9) A decision by a governing body under this act shall not be considered a land use decision as defined in ORS 197.015(10).

(10) Claims made under this section shall be paid from funds, if any, specifically allocated by the legislature, city, county, or metropolitan service district for payment of claims under this act. Notwithstanding the availability of funds under this subsection, a metropolitan service district, city, county, or state agency shall have discretion to use available funds to pay claims or to modify, remove, or not apply a land use regulation or land use regulations pursuant to subsection (6) of this act. If a claim has not been paid within two years from the date on which it accrues, the owner shall be allowed to use the property as permitted at the time the owner acquired the property.

(11) Definitions - for purposes of this section:

(A) "Family member" shall include the wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent, or grandchild of the owner of the property, an estate of any of the foregoing family members, or a legal entity owned by any one or combination of these family members or the owner of the property.

(B) "Land use regulation" shall include:

- (i) Any statute regulating the use of land or any interest therein;
- (ii) Administrative rules and goals of the Land Conservation and Development Commission;
- (iii) Local government comprehensive plans, zoning ordinances, land division ordinances, and transportation ordinances;
- (iv) Metropolitan service district regional framework plans, functional plans, planning goals and objectives; and
- (v) Statutes and administrative rules regulating farming and forest practices.

(C) "Owner" is the present owner of the property, or any interest therein.

(D) "Public entity" shall include the state, a metropolitan service district, a city, or a county.

(12) The remedy created by this act is in addition to any other remedy under the Oregon or United States Constitutions, and is not intended to modify or replace any other remedy.

(13) If any portion or portions of this act are declared invalid by a court of competent jurisdiction, the remaining portions of this act shall remain in full force and effect.

[illegible]