

BEFORE THE BROOKINGS CITY COUNCIL

FOR CURRY COUNTY, OREGON

In the Matter of the Measure 37
Claim of Eldon Gossett

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**MEASURE 37
RESOLUTION No. 07-R-763
Order with Findings**

ORDER AND FINDINGS OF FACT

A. Pursuant to Chapter 197 of Oregon Revised Statutes implemented pursuant to Ballot Measure 37, Eldon Gossett ("Claimant") filed Claim #M37-2-06 (attached as Exhibit A) on December 4, 2006, regarding property in Curry County (the "Property") described as:

Assessor's Map/Tax Lot 4113-08BB, Tax Lot 1903

B. Pursuant to City procedures to Implement Measure 37, the claim was investigated by City staff and a report was made and submitted regarding the claim. The Staff Report is attached hereto as Exhibit B.

C. Claimant's claim requests that Brookings Municipal Code, Section 17.20.060, which provides in part that "non-street side yards shall be increased by ½ foot for each foot by which the average building height exceeds 15 feet" be waived and that the set back provisions in effect at the time he purchased the property be applied to his Property described in the Staff Report and shown on the map, a copy of which is attached hereto as Exhibit C or that compensation in the amount of \$330,000 be paid by the City to the Claimant for the reduction in fair market value of the Property as a result of the land use regulation.

D. Pursuant to City procedures, a hearing was held on the claim on April 9, 2007, for which appropriate notice was provided.

WHEREFORE, the City Council finds and resolves as follows:

1. That the Property described in the claim is owned by the Claimant, and his interest in the Property was acquired by Claimant July 1, 1986.

2. That prior to Claimant's acquisition of the Property, land use regulations were imposed on the Property by the City pursuant to Ordinance No. 340, adopted July 9, 1980 and amended by Ordinance No. 351, adopted on May 28, 1981.

3. Ordinance No. 340 and Ordinance No. 351 required that each side yard be a minimum of five (5) feet.

4. Ordinance No. 89-O-446 adopted on April 10, 1989 requires side yard setbacks of five (5) feet for a structure up to fifteen (15) feet in height with an additional one-half ($\frac{1}{2}$) foot setback for each foot the structure exceeds fifteen (15) feet. This ordinance also requires that no structure be over thirty (30) feet in height. At the time the Claimant purchased the property in July 1986, Ordinance No. 340 as amended by Ordinance No. 351 required each side yard to be a minimum of five (5) feet and the total of both side yards to be a maximum of fifteen (15) feet. The maximum building height was limited to twenty-five (25) feet or two (2) stories, whichever was less.

5. That the current zoning side yard setback requirements, adopted after Claimant purchased the subject Property does not allow for the addition of a second story on the existing dwelling due to the requirement for a greater side yard setback based on height of the structure.

2 - MEASURE 37 RESOLUTION AND ORDER

6. The Claimant did not submit an appraisal or other documentation to substantiate a specific dollar amount by which the land use regulation may have reduced the fair market value of the subject Property.

7. That nevertheless, based on the evidence in the record Staff determines that the fair market value of the subject Property has been reduced to some extent as a result of the land use regulations adopted by the City. Measure 37 and the City's procedures provide that challenged land use regulations adopted after Claimant became the owner of the subject Property may be waived as to that property.

8. City Staff recommends that the City grant a waiver to the Claimant as to Ordinance No. 89-0-446 adopted on April 10, 1989.

9. That the subject Property continue to be regulated by Ordinance No. 340 adopted July 9, 1980 and amended by Ordinance No. 351 adopted May 28, 1981.

10. The Claimant's property will continue to be subject to the required minimum side yard setback of five (5) feet with a total of both side yard setbacks to be a minimum of fifteen (15) feet and the maximum building height will not exceed twenty-five (25) feet or two (2) stories, whichever is less.

11. The Claimant shall comply with all other current land use regulations.

12. That this Resolution and Order does not waive or otherwise affect any other regulations applicable to the Property adopted by the Oregon Land Conservation and Development Commission (LCDC) or any other agency of the State of Oregon or other regulations excluded from Ballot Measure 37.

13. That Exhibit B, the Staff Report is adopted by this reference in support of

this Resolution and Order.

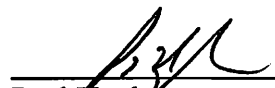
SO ORDERED this 23 day of April, 2007.

BROOKINGS CITY COUNCIL



Pat Sherman, Mayor

ATTEST:



Paul Hughes
Administrative Services Director

CLAIM APPLICATION
for 98 Tanbark, Brookings, Oregon

Exhibit No. A

The herein Claim Application is being filed in accordance with the provision added to Chapter 197 of Oregon Revised Statutes by Ballot Measure 37 dated November 2, 2004.

CLAIM: Brookings Municipal Code (Revised April 1989) Section 17.20.060 as follows:

That non-street side yards shall be increased by one-half foot for each foot by which the average building height exceeds 15 feet.

Code 17.20.060 as revised April 1989 restricts the claimant from adding a second story on a dwelling in existence at the time of purchase in 1986.

CLAIMANT:

2 (a) Eldon Gossett
P.O. Box 4610
Brookings, OR 97415
541-469-7755

2 (b) 98 Tanbark Road
Brookings, OR 97415
Map 4113-08BB, Tax Lot 1903
Title Report # 7179-945683
Deed # BR 122, Page 775
Property acquired July 1986

2 (c) Current Land Use Regulations:
Non-street side yards shall be increased by one-half foot for each foot by which the average building height exceeds 15 feet.

City of Brookings Land Development Code Section 20.060 Lot Width, Lot coverage and yard requirements

2 (d) At the time of purchase in 1986, side yard setback in the R-1 zone was 5 feet without regard to building height. The home located at 98 Tanbark could be altered to include a second story. The side yard setback was not an encumbrance against the property at that time. It was the intent of the owner to add a second story above the master bedroom and garage.

At the time of purchase side yard setback and building heights were 5 feet as follows:

Side yard setback – Brookings Ordinance No. 81-0-340 dated March 1981 and Amending Ordinance No. 81-0-351 dated March 1981 established side yard setback as follows: "Each side yard shall be a minimum of five (5) feet and the total side yards shall be a minimum of fifteen (15) feet total."

Also Building Height was 25 feet as follows:

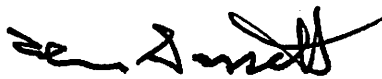
Building Height -- Brookings Ordinance No. 81-0-340 dated March 1981 stated "No building shall exceed 25 feet in height or two (2) stories, whichever is less."

On or about the year 1990 the planning director proposed a new property restriction with regard to side yard setbacks. Planning Director John Bischoff proposed that side yard setbacks would be increased one-half foot for each foot by which the average building height exceeded 15 feet.

The claimant was present at those hearings and spoke against the proposed ordinance unless the ordinance specifically addressed new construction only; that imposing this rule corresponded to a taking of rights and encumbering homeowners where dwellings were already in existence. The planning director agreed and agreed to make the ordinance effective on new construction only but failed to restrict the change to new construction only.

- 2 (e) Not applicable. There are no CC&Rs effecting the use of the property.
- 2 (f) Claimant agrees to waive claimant's right to a monetary claim provided claimant is given a variance in perpetuity for the construction of a second story on the existing home.
- 2 (g) Single-family dwelling

Claimant claims damages in the amount of \$330,000 or the cost of removing and replacing the existing home with a two-story home having all the amenities of the existing home. (twenty-two hundred square feet x \$150 per square foot construction costs.)


Eldon Gossett, Claimant

**BALLOT MEASURE 37 CLAIM FOR COMPENSATION
CITY OF BROOKINGS
Final Staff Report and Recommendation
M37-2-06**

Report Date	March 24, 2007
Claimant:	Eldon Gossett
Mailing Address	P.O. Box 4610 Brookings, OR 97415
Property Address:	98 Tanbark Road
Assessor's Map/Tax Lot:	4113-08BB; taxlot 1903
Date of Purchase	July 1, 1986
Applicable Ordinance at time of purchase	Ord. 340 amended by Ord. 351, superseded in April 1989
Applicable Zone at time of purchase	Residential Low Density (R-L)
Current Ordinance	Ord. 446, (Land Development Code) Adopted in April 1989.
Current Zoning	Single Family Residential, 6,000 sq. ft. minimum lot size (R-1-6)
Date Claim Received by City of Brookings	December 4, 2006
180-Day Deadline	June 4, 2007
Notice of Public Hearing to Property Owners within 300' of Subject Property	March 14, 2007
Notice of Public Hearing Published in The Curry Coastal Pilot	March 17, 2007
Date of Public Hearing	April 9, 2007

SUMMARY OF CLAIM

The claimant, Eldon Gossett, seeks compensation in the amount of \$330,000 for the reduction in fair market value as a result of land use regulations (**Attachment A, Ordinance 04-O-566 definitions**) that are alleged to restrict the use of certain private real property. The Claimant desires compensation or the right to construct a second story addition on an existing single family dwelling without meeting the current sideyard setback requirements. The subject property is located on the east side of the terminus of Tanbark Road, addressed as 98 Tanbark Road (**Attachment B, Assessor's Map**).

SUMMARY OF STAFF RECOMMENDATION

Based on the findings and conclusions set forth below, the City of Brookings staff has determined that the claim is valid. Staff recommends that, in lieu of compensation, the requirements of the following sideyard setbacks not apply to the proposed second story on Eldon Gossett's existing single family dwelling. These setbacks will not apply to the claimant only to the extent that was permitted when Eldon Gossett purchased the property in 1986.

TIMELINESS OF CLAIM

Ballot Measure 37 and Brookings Ordinance 04-O-566 requires that a written demand for compensation be made for claims arising from land use regulations enacted prior to the effective date of Measure 37 (December 2, 2004) within two years of that effective date (December 4, 2006).

Findings of Fact

This claim (**Attachment C**) was submitted to the City of Brookings on December 4, 2006, for processing under Brookings Ordinance 04-O-566. The claim identifies the City of Brookings' Single Family Residential (R-1-6) zoning and Ballot Measure 37 as the basis for the claim. Only regulations that were adopted prior to the December 2, 2004, are the basis for this claim.

Conclusions

The claim has been submitted within two years of the effective date of Measure 37 (December 2, 2004), based on land use regulations adopted prior to December 2, 2004, and is therefore timely filed.

ANALYSIS OF CLAIM

Ownership

Brookings Ordinance 04-O-566 provides for payment of compensation or relief from specific land use regulation for "owners" as defined as "the present owner of the property, or any interest therein".

Findings of Fact

Claimant Eldon Gossett purchased the subject property on July 1, 1986, as reflected by a deed and "Lot Book Service" provided by a title company (**Attachment D**) included with the claim.

Conclusion

The claimant, Eldon Gossett, is the "owner" of the subject property and has been since July 1, 1986.

ORDINANCE REQUIREMENTS THAT ARE THE BASIS FOR THIS CLAIM

In order to establish a valid claim, Ballot Measure 37 requires that an ordinance 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 purchased the property.

Findings of Fact

The claim indicates that the claimant desires to construct a second story addition to an existing single family dwelling built in 1977 (**Attachment E, Plot Plan**). Current setback requirements prevent this desired use.

The claim is based on setback requirements in the Single Family Residential (R-1-6) zone (**Attachment F**) currently placed on the subject property. The sideyard setback requirements of five (5) feet for a structure up to 15 feet in height with an additional one-half (1/2) foot setback for each foot the structure exceeds 15 feet was adopted by Ordinance 89-O-446 on April 10, 1989. This ordinance also requires that no structure be over 30 feet in height. The existing dwelling is located five (5) feet from the side property line and meets these requirements.

At the time the claimant purchased the subject property in July 1986, it was zoned Residential Low Density (R-L). The ordinance in effect (Ordinance No. 340 adopted July 9, 1980 (**Attachment G**), amended by Ordinance No. 351 adopted on May 28, 1981, (**Attachment H**) required each side yard to be a minimum of five (5) feet and the total of both side yards to be a minimum of fifteen (15) feet. The maximum building height was limited to 25 feet or two (2) stories, whichever was less.

Conclusions

The current zoning sideyard setback requirements, adopted after claimant Eldon Gossett purchased the subject property in 1986, does not allow for the addition of a second story on the existing dwelling due to the requirement for a greater sideyard setback based on height of the structure.

EFFECT OF REGULATIONS ON FAIR MARKET VALUE

In order to establish a valid claim, land use regulations must have "the effect of reducing the fair market value of the property".

Findings of Fact

The claim includes an estimate of \$330,000 as the reduction in the subject property's fair market value due to the regulations that restrict the claimant's desired use of the property. This amount is based on the claimant's assessment of the property's value.

Conclusions

As explained in the Ownership section of this report, the claimant is Eldon Gossett, who purchased the subject property on July 1, 1986. Under Ballot Measure 37 and Brookings Ordinance No. 04-O-566, the claimant is due compensation for land use regulations that restrict the use of the subject property and have the effect of reducing its fair market value. Based on the findings and conclusions in Ordinance Requirements that are the Basis for this Claim section of this report, ordinances adopted since Eldon Gossett purchased the subject property in 1986 restrict the claimant's desired use of the property. The claimant estimates that the effect of the regulations on the fair market value of the subject property is a reduction of \$330,000.

Without an appraisal or other documentation, it is not possible to substantiate the specific dollar amount by which the land use regulations have reduced the fair market value of the subject property. Nevertheless, based on the evidence in the record for this claim, staff determines the fair market value of the subject property has been reduced to some extent as a result of land use regulations adopted by the City of Brookings since Eldon Gossett purchased the property.

EXEMPTIONS UNDER BALLOT MEASURE 37

Measure 37 contains five categories of regulations that are not covered. They are:

- (a) Restrictions on uses commonly and historically recognized as public nuisances under common law;
- (b) Restrictions to protect public health and safety, such as fire and building codes, health and sanitary regulations, solid or hazardous waste regulations, and pollution control regulations;
- (c) Restrictions required to comply with the federal law;
- (d) Restrictions on use of property to sell pornography or perform nude dancing; and
- (e) Regulations enacted prior to the date of acquisition of the property by the owner or a family member.

Findings of Fact

The claim is based on City land use setback regulations that restrict the use of the subject property. These land use regulations were adopted after Eldon Gossett purchased the subject property.

Conclusions

The setback regulations do not appear to fall under the exemptions of Ballot Measure 37.

FORM OF RELIEF

Brookings Ordinance No. 04-O-566 provides for payment of compensation to an owner of private real property if the City has enforced regulations that restrict the use of the property in a manner that reduces its fair market value. In lieu of compensation, the City may choose to not apply the regulation in order to allow the present owner to carry out a use of the property permitted at the time the present owner purchased the property.

Findings of Fact

Based on the findings and conclusions set forth in this report, regulations enforced by the City restrict the claimant's desired use of the subject property. The claim asserts that existing City land use regulations enforced by the City have the effect of reducing the fair market value of the subject property by \$330,000. However, because the claim does not provided an appraisal or other relevant evidence demonstrating that the land use regulations described in Ordinance Requirements That are the Basis for This Claim reduce the fair market value of the subject property, a specific amount of compensation cannot be determined. Nevertheless, based on the record for this claim, City Staff has determined that the regulations on which the claim is based have reduced the fair market value of the subject property to some extent.

No funds have been appropriated at this time for the payment of claims. In lieu of payment of compensation, Ordinance No. 04-O-566 authorizes removal, modification or direct that the challenged land use regulation not be applied to the property to allow Eldon Gossett to use the subject property for a use permitted at the time he purchased the property on July 1, 1986.

Conclusions

Based on the record, City Staff recommends that the claim be approved, subject to the sideyard setbacks in effect at the time claimant purchased the property in 1986. The minimum side yard setback will be 5 feet with a total of both sideyard setbacks to be a minimum of 15 feet. The maximum building height will not exceed 25 feet or two (2) stories, whichever is less. The claimant shall comply with all other current land use regulations.

