

**BEFORE THE BROOKINGS CITY COUNCIL  
FOR CURRY COUNTY, OREGON**

In the Matter of the Measure 37	)	
Claim of Nora L. Stanhurst-Olson	)	<b>MEASURE 37</b>
	)	<b>RESOLUTION No. 07-R-764</b>
	)	<b>Order with Findings</b>

**ORDER AND FINDINGS OF FACT**

A. Pursuant to Chapter 197 of Oregon Revised Statutes implemented pursuant to Ballot Measure 37, Nora L. Stanhurst-Olson ("Claimant") filed Claim #M37-3-06 (attached as Exhibit A) on December 4, 2006, regarding property in Curry County (the "Property") described as:

Assessor's Map/Tax Lot 4113-06AB, Tax Lot 1200

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 Claimant be granted a waiver and that Claimant be allowed to subdivide the Property without providing required street improvements, underground storm drains, sewer and water service, and all other utilities required in the Brookings Municipal Code, Chapter 17.168 Public Facilities Improvements Standards and Criteria, and Chapter 17.172.070(C). In the alternative Claimant seeks compensation in the amount of \$500,000 to be paid by the City to Claimant.

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 Exhibit A claim is owned by the Claimant, and her interest in the Property was acquired by Claimant on December 4, 2000.
2. That prior to Claimant's acquisition of the Property, land use regulations were contained in the Brookings Municipal Code Chapter 17.168 Public Facilities Improvement Standards and Criteria and Brookings Municipal Code, Chapter 17.172.070(C) were adopted and imposed on the Property by the City and remain in effect.
3. That compensation or a waiver is not owed under Ballot Measure 37 because the land use regulations were adopted and enforced on the Property prior to Claimant's acquisition, as provided in the exemption for Measure 37 for land use regulations enacted prior to the date of acquisition of the Property by the owner.
4. That additionally neither compensation or a waiver is owed under Ballot Measure 37 based upon the finding that the claim is exempt under Ballot Measure 37, based on Oregon Revised Statute 197.352(3)(B) which exempts restrictions to protect public health and safety which is the purpose of the Public Facilities Improvement Standards and Criteria.
5. That Claimant has demonstrated no restriction on the use of the Property after acquisition.
6. That Claimant has demonstrated no reduction in the value of the Property.
7. That Exhibit B, the Staff Report is adopted by this reference in support of this Resolution and Order.
8. That Claim No. M#37-3-06 is denied in its entirety.

SO ORDERED this 23 day of April, 2007.

BROOKINGS CITY COUNCIL

  
Pat Sherman, Mayor

ATTEST:

  
Paul Hughes  
Administrative Services Director

December 2, 2006  
To: Brookings Planning Commission

## Request for Real Property Compensation or Waiver of Restrictions

RE: Ordinance No. 04-O-566  
Concerning the real property located in Brookings, OR, corner of 4<sup>th</sup> and Ransom Ave.

Described as follows:

Beginning at a point, which is, situated 330.22 feet north, and 33.79 feet West, from the southeast corner of the Northeast Quarter of the Northwest Quarter of section 6, Township 41 South, Range 13 West, Willamette Meridian, then North 485.60 feet; Thence south 89 degrees 08' East, 335.67 feet; Thence South 480.52 feet; thence West 335.63 feet to the point Of beginning, containing 3.73 acres, more or less considering 4 lots were sold in 2005 in the upper quadrant of the full 3.73 acres, which brings it to a total of 3.11 acres. Situated in the County of Curry, City of Brookings, Sate of Oregon.

(Map & Tax ID # 4113-6AB-1200)  
(Property ID # R11474)

This property is owned in full by Nora Lynn Stanhurst Olson, and has been in her family for the past 90 years. The documents are enclosed to show this fact. The property was passed to Nora as a gift deed in December of 2000. Previously owned by Robert H. Stanhurst (her father), and previously owned by a niece, and parents (Charlie and Faye Stanhurst), who acquired the property in 1937 from J. S. Thornton & wife.

The current land was to be for duplexes and the zoning was changed to reflect this use. The situation now causes the property to be inundated with regulations, which causes the land to be split into large lots. Our ideal situation requires 6,200, and or up to 6,500 square foot lots. The restrictions will cause me to lose (along with the wetland imposition) the necessary lots I need to sell in order to have the monies required for my unfortunate medical condition. The imposition of requiring the rebuilding of Fourth street, and the necessary road to cut through the land, have created the loss of 5 to 6 lots, which are selling for approximately \$100,00.00 each. The wetland was not noted on the National Wetland Inventory Map, as stated by the letter attached from the State of Oregon. These standards that are being imposed on the property did not exist until 1988. The land has been slated for use as a retirement contribution or for emergency cash flow if needed, and is needed for medical reason.

Also, the conditions imposed by the City of Brookings has stated that there must be an improvement of Fourth Street, to include connection to sewer, water, electrical and repaving of the street with sidewalks and gutters. This imposes an extreme burden and needs to be either waived or relieved with compensation.

1. The waiver/compensation is to include the General Conditions, the Street conditions requiring Fourth Street to be improved with gutters, sidewalks, and pavement to match existing pavement along lot 1, which cannot be imposed on the seller.
2. Underground storm drains to be provided by the builder or developer the particular lot.
3. Sewer service laterals will be provided by the builder, or developer of the lot.
4. All water lines are to be provided by the builder, or developer of each lot.
5. Water meters are to be provided by the builder, or developer of each lot.
6. Utilities are to be provided by the builder, or developer of each lot, including communication, street lighting, cable television and the builder plans will reflect any easements required.

RECEIVED

DEC 4 2006

CITY OF BROOKINGS

December 2, 2006  
To: Brookings Planning Commission

7. Each specific home shall have its mailbox's positioned as per the requirements of the Postal Commission, not the seller of said lot.

In other words, I am seeking waiver or relief from all the restrictions required by the city in it's reports dated May 6, 2003 and July 19, 2004 and heard in the City staff agenda on August 3, 2004.

This claim (or relief) that I am filing for is in the sum of \$500,000.00. Which is exactly what would be lost if the waiver of the above restrictions is not met. All the land, which is now 3.11 acres, is best used as single family dwellings. I would like to place a road entering from Fourth Street, and commencing to a cul-de-sac ending on the land, and name it Stanhurst Court. This proposal is not meant to overlook the cities best interest, nor the seller's best interest. The circumstances of the sellers' situation have changed, and since the land has been in the family for nearly 90 years, I am requesting compensation of the above dollar amount, or a waiver to the conditions restricting the property, and causing the seller to provide all stipulations in the above mentioned city reports.

Best regards,



Nora L. Stanhurst-Olson

Attached:

1. City ordinance 04-O-566
2. Statutory Warranty Deed to Nora L. Olson (2000)
3. Deed from Robert H. Stanhurst receipt of property (1976)
4. Deed from Thornton to Charlie and Faye Stanhurst (1938)
5. Real Property Tax Statement 7-1-06 to 6-30-07
6. Exhibit "A" and "B"
7. Area map-streets etc. obviously to be split further.
8. City of Brookings Conditions of Approval.
9. Oregon letter of wetland
10. Lilybrooke CC & R's, obviously to be revised.

**BALLOT MEASURE 37 CLAIM FOR COMPENSATION  
CITY OF BROOKINGS  
Final Staff Report and Recommendation  
M37-3-06**

<b>Report Date</b>	March 24, 2007
<b>Claimant:</b>	Nora L. Stanhurst-Olson
<b>Mailing Address</b>	845 Crestwood Place Brookings, OR 97415
<b>Property Address:</b>	None assigned
<b>Assessor's Map/Tax Lot:</b>	4113-06AB; taxlot 1200
<b>Date of Purchase</b>	December 4, 2000
<b>Applicable Ordinance at time of purchase</b>	Ord. 89-O- 446, (Land Development Code) Adopted in April 1989.
<b>Applicable Zone at time of purchase</b>	Single Family Residential, 6,000 sq. ft. minimum lot size (R-1-6)
<b>Current Ordinance</b>	Ord. 06-O-572, Brookings Municipal Code, Chapter 17 Adopted in April 2006.
<b>Current Zoning</b>	Two Family Residential, 6,000 sq. ft. minimum lot size (R-2)
<b>Date Claim Received by City of Brookings</b>	December 4, 2006
<b>180-Day Deadline</b>	June 4, 2007
<b>Notice of Public Hearing to Property Owners within 300' of Subject Property</b>	March 14, 2007
<b>Notice of Public Hearing Published in The Curry Coastal Pilot</b>	March 17, 2007
<b>Date of Public Hearing</b>	April 9, 2007

**SUMMARY OF CLAIM**

The claimant, Nora Stanhurst-Olson, seeks compensation in the amount of \$500,000 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 subdivide the parcel without complying with sewer, water, storm drain, and public improvement requirements. The subject property is located adjacent to the eastern boundary of Fourth Street between Easy and Ransom, and has no situs address assigned (**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 exempt under ORS 197.352(3)(B) and Brookings Ordinance No. 04-O-566.

### TIMELINESS OF CLAIM

ORS 197.352 (**Attachment C**) 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 D**) was submitted to the City of Brookings on December 4, 2006, for processing under Brookings Ordinance 04-O-566. The claim identifies regulations in the Brookings Municipal Code Chapter 17.168 *Public Facilities Improvement Standards and Criteria* (**Attachment E**) 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 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”. Jurisdictions can avoid the compensation requirements by waiving those regulations that caused the devaluation, but only back to the date the property was acquired by the current owner. Claimant acquired the property as a “Gift Deed” (**Attachment F**) in December 2000.

### Findings of Fact

Claimant Nora Stanhurst-Olson’s ownership dates to December 4, 2000 when the subject property was zoned R-1-6. The Claimant requested and received a zone change to the current zoning of Two-Family Residential (R-2) in June 2001.

### Conclusion

The claimant, Nora Stanhurst-Olson, is the “owner” of the subject property and has been since December 4, 2000. For the purposes of waiving regulations, ORS 197.352 exempts land use regulations enacted prior to the date the current owner acquired the property. Claimant’s ownership does not predate current zoning.

## **ORDINANCE REQUIREMENTS THAT ARE THE BASIS FOR THIS CLAIM**

In order to establish a valid claim, Ballot Measure 37 requires that a land use 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 subdivide the property without providing required street improvements, underground storm drains, sewer and water service, and all other utilities. Current public improvement requirements in the Brookings Municipal Code Chapter 17.168 *Public Facilities Improvement Standards and Criteria* and Chapter 17.172.070(C) require these public improvements.

### **Conclusions**

The current zoning of R-2 does not prevent the desired use to subdivide without providing public improvements. Staff finds the land use regulations the claimant wishes to have waived were in force when the property was acquired. The City has no authority to grant the relief sought in the claim.

## **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 the City's *Public Facilities Improvement Standards and Criteria*.

### **Conclusions**

The claim falls under the exemptions of Ballot Measure 37, (b) above, ORS 197.352(3)(B) restrictions to protect public health and safety which is the purpose of *Public Facilities Improvement Standards and Criteria*.

## **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 \$500,000 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. Claimant submitted no appraisal in support of the alleged reduction of value.

### **Conclusions**

As explained in the Ownership section of this report, the claimant was gifted the subject property in December 2000. Under ORS 197.352 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, claimant’s ownership does not predate current zoning.

However, it has also been determined in Exemption under Ballot Measure 37 of this report, the regulations specified in the claim are exempt under ORS 197.352(3)(B).

## **FORM OF RELIEF**

### **Findings of Fact & Conclusions**

As explained above, no form of relief (waiver or compensation) is possible.

## **RECOMMENDATION**

Based on the record, City Staff recommends that the claim be denied, as the regulations that restrict the claimant’s desired use of the property are exempt under ORS 197.352(3)(B).