

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

**CITY OF EUGENE
REPORT AND RECOMMENDATION OF THE CITY MANAGER**

NAME OF THE CLAIMANT: Judith M. Bush

MAILING ADDRESS: 1333 West 10th Avenue, No.3
Eugene, Oregon 97402

CLAIMANT'S REPRESENTATIVE: Ron Blacquiere
1858 Lawrence Street
Eugene, Oregon 97401

PROPERTY IDENTIFICATION: Lot 12100 of Assessor's Map
17-04-36-13

ZONING: S-C/R2 Subarea, Chambers
Special Area Zone/Medium
Density Residential Subarea

I. SUMMARY OF CLAIM

Judith M. Bush submitted a claim under Ballot Measure 37 for compensation for the alleged reduction in fair market value to her lot at 1333 West 10th Avenue. Ms. Bush claimed that the S-C Chambers Special Area Zone, Eugene Code sections 9.3050-9.3065 restricted the use of her property. Ms. Bush claimed that these land use provisions, enacted after she acquired the property, have the effect of restricting use and thereby diminishing the fair market value of the property, and so she seeks compensation or waiver of regulations under Measure 37.

II. SUMMARY OF CITY MANAGER RECOMMENDATION

Based on the analysis set forth in section III below, the City Manager has concluded that Ms. Bush's claim is valid. Since the City has no funds with which to pay compensation, and in light of an agreement negotiated between the claimant, affected neighbors and representatives of the local neighborhood organization, Jefferson Westside Neighbors,

related to an acceptable waiver, the City Manager is recommending a waiver consistent with that agreement.

Measure 37 generally grants a property owner the right to compensation (or waiver at the option of the government) within two years of enactment of a new regulation if five substantive requirements are met. First, the regulation must constitute a “land use regulation” as that term is defined by Measure 37. Second, the public entity must have enacted a new regulation or enforced a regulation that was in effect prior to the Measure 37 effective date (December 2, 2004). Third, the regulation must “restrict the use” of private property. Fourth, the effect of the regulation must cause a reduction in the fair market value of the property. And fifth, the regulation must not fall within one of Measure 37’s five exemptions.

As discussed below, the regulations that are subject of this claim were enacted following the effective date of Measure 37, qualify as land use regulations, effectively restrict previously allowed uses on the property, and reduce the property’s fair market value. Further, the regulations do not fall within one of Measure 37’s five exemptions. Therefore, the claim is valid.

III. ANALYSIS OF CLAIM

A. Ownership.

Measure 37 provides for payment of compensation or relief from (waiver of) specific laws for “owners” as that term is defined by the Measure. Ballot Measure 37, Section 11(C) defines “owner” as “the present owner of the property or any interest therein.”

Based on the information that is available from the deed submitted by the claimant (warranty deed 9745544) and from Lane County Regional Land Information Database (RLID), the subject lot was acquired by Judith M. Bush and Ronald B. and Bess Blacquiere and recorded on July 8, 1997. The property is currently owned solely by Judith M. Bush.

B. “Land use regulations.”

Measure 37 requires compensation (or waiver) only for those regulations which constitute “land use regulations” as that term is defined by Measure 37. Measure 37 defines land use regulation, with respect to local governments, as “local government comprehensive plans, zoning ordinances, land division ordinances and transportation ordinances.”

Ms. Bush’s claim is based on sections 9.3050-9.3065 of the Eugene Code, the S-C Chambers Special Area Zone. That zoning ordinance would qualify as a “land use regulation” under the Measure 37 definition. Although the land use regulations cited include all of the S-C Chambers Special Area Zone provisions, the appraisal submitted

with the claim specifically analyzes the impact of the density restrictions on Ms. Bush's ability to further develop the property. Because the S-C Chambers Special Area Zone provisions limit the density on the subject site, pursuant to the requirements of EC 9.3065(3)(a), the owner is unable to add at least one additional dwelling unit as would have been permitted under previous regulations. EC 9.3065(3)(a)1.c. restricts a property over 9200 square feet (the subject lot is approximately 10,905 square feet) to a maximum of three dwelling units. In fact, four dwelling units are currently constructed on the property. The effect of the regulations is to disallow the addition of previously permitted additional dwelling units on the property and to render one of the dwelling units legally non-conforming.

Since submittal of the claim, Ms. Bush has entered into discussions in a collaborative spirit with abutting neighbors, neighbors across the street from the property and representatives of the affected neighborhood organization, the Jefferson Westside Neighbors, to seek a mutually agreeable solution to her claim. Members of the Jefferson Westside Neighbors played an active role in developing the Chambers Special Area Zone regulations and representatives of the neighborhood group sought to participate in discussions regarding resolution of the claim. Following discussions, Ms. Bush determined that she would be satisfied to construct one more dwelling on the property (as opposed to three additional dwellings the claim alleged could be built) and would comply with specific standards within EC 9.3050-9.3065 as described in the Recommendation section below. Ms. Bush, the neighbors and the neighborhood organization have reached an agreement that is in the process of being reduced to writing and signed. The draft of that agreement is consistent with the proposed waiver described below.

C. Enactment/Enforcement.

Measure 37 states that a property owner has a claim 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 Measure 37. The relevant provisions in Chapter 9 of the Eugene Code which the owner alleges have reduced the property value of the subject lot are EC 9.3050-9.3060, enacted on December 12, 2005 and EC 9.3065, enacted on December 14, 2005. Since these were enacted following the effective date of Measure 37 (December 2, 2004) the claim meets this requirement.

D. Restriction on use, reduction in value.

A "land use regulation" gives rise to a Measure 37 claim only if the regulation would "restrict the use" of private property and have the effect of reducing the fair market value of property. The specific regulations which the claimant states has restricted use of the property are EC 9.3050-9.3065 from the Chambers Special Area zone. These regulations generally restrict the density and limit the form and volume of structures on the property.

The claimant submitted an appraisal, the purpose of which, as written on page 1 is "to provide the appraiser's best estimate of the market value of the subject property with its current restricted zoning, S-R2, as of the effective valuation date." (May 11, 2006) The

appraisal, prepared by Charles E. Thompson & Assoc., Inc., concludes that “there is excess land (that) could accommodate three additional units.” Therefore, the appraisal evaluated the value of the land as currently restricted by the land use regulations versus the value of the land with the maximum allowed development under previous regulations. With the results of the appraisal, the claimant alleges that the estimated “Potential Measure 37 Claim” on the property is \$111,000, quoted as follows:

1) Estimated Value of Subject Property under the hypothetical condition and extraordinary assumption that it is zoned with no special overlay restrictions allowing or up to seven residential units effective May 11, 2006	\$446,000.
2) Estimated Value of Subject Property as currently zoned (S R2) effective May 11, 2006.....	\$335,000.
Potential Measure 37 Claim:.....	<u>\$111,000.</u>

E. Exemptions.

Finally, a Measure 37 claim would not be valid to the extent that one or more of the regulations fell within one of the five exemptions under the Measure. Regulations adopted for the purposes of protecting the public health and safety or were adopted to prevent nuisances, or comply with federal law, then the regulations are exempt under Measure 37, even if they otherwise constitute “land use regulations” that “restrict the use” and “reduce the fair market value” of the property. This claim is not subject to any of the five exemptions.

IV. CONCLUSION AND RECOMMENDATION

Based on the analysis above, the City Manager has determined that Ms. Bush’s claim is valid. In lieu of the request for compensation as described above, and based on the claimant’s subsequent proposed agreement with neighbors, the City Manager is recommending that a waiver or modification of some of the regulations be approved to allow the claimant to develop the property to an extent that would have been permitted under previous regulations and that would satisfy her intentions with the claim. (It should be noted that, since no formal development application has been filed, the City has not conducted an exhaustive evaluation of all the regulations that may apply at the time the owner applies for a building permit. The additional regulations that will apply at that time are typical of new construction and will not exclude the construction of a new dwelling unit on the property.)

Although the original claim alleged that all of the Chambers Special Area Zone standards restricted development of her lot, Ms. Bush has proposed to comply with the following modified regulations, as agreed upon by the claimant, the abutting neighbors, neighbors

across the street, and representatives of the Jefferson Westside Neighbors, if allowed to develop one additional dwelling:

Recommended modifications to Chambers Special Area Zone Development Standards Applicable in S-C/R-2 Subarea:

The following proposed waivers or modification of regulations are made upon the condition that a new dwelling unit may be constructed only on the portion of the lot within 60 feet of the front lot line.

1. **EC 9.3065(3)(a)1.c.** Modify to allow more than the maximum three dwelling units permitted by the regulation as follows:

Allow the EXISTING four dwelling units and ONE additional detached dwelling unit.

2. **EC 9.3065(3)(j).** Modify to allow total vehicle use area to exceed 20 percent of the lot area, as follows:

Allow the EXISTING 1,820 square feet of vehicle use area that provides access and parking for the existing four dwelling units and ONE additional driveway to serve the additional, detached dwelling unit. The additional driveway must comply with EC 9.3065(3)(f) Driveway Standards, and the total vehicle use area on the subject lot must not exceed 2,435 square feet total.

3. **EC 9.3065(3)(b) through (j).** No modifications permitted for the new dwelling unit, as follows:

Except as otherwise stated in this agreement, all development within 60 feet of the front lot line must comply with all other Chambers Special Area Zone development standards for the S-C/R-2 subarea, including those in EC 9.3065(3)(b) through (j). (An approved adjustment to a standard constitutes compliance with the standard.)

4. **EC 9.5500 (1)-(14) Multiple Family Standards.**

Proposed waiver of all standards, as follows:

Development entirely within 60 feet of the front lot line of the subject lot shall not be subject to these standards.

5. **EC 9.6100-9.6110 Bicycle Parking Standards.** Not waived or modified.

These standards should not be waived as they have been in effect since 1993, prior to acquisition of the property by the current owner.

Because the City Manager is recommending that the Council grant a waiver, and the code requires a public hearing before the Council could decide whether to grant a waiver, this claim has been scheduled for a public hearing on November 20. For that meeting, the City Manager anticipates having (and including as an attachment to the AIS) the agreement signed by neighbors, the claimant and the neighborhood association.