

**CITY OF BEND
BALLOT MEASURE 37 (2004) CLAIM FOR COMPENSATION
Staff Report and Recommendation to the City Council**

DATE OF REPORT: April 24,2007

CLAIM NUMBER: 06-823

CLAIMANT: Country Sunset, LLC
C/o Robert Hartford
P.O. Box 918
Rockaway Beach, Oregon 97136

DATE CLAIM RECEIVED: December 1, 2006

180-DAY DEADLINE: May 30, 2007
Note: The last regular City Council Meeting before the end of the 180 day time limit is May 16, 2007.

I. CLAIM

The claimant seeks a waiver to the regulations under City of Bend Code Section 7.260, Mobile Home Park Closures. Absent the waiver, the claimant demands compensation in the amount of \$10,826,250.00 for alleged reduction in fair market value of their property.

The property is located on the west side of SE 27th Street approximately 1,000 feet south of the intersection of SE 27th Street and Reed Market Road. The property has assigned property addresses of 61435 and 61445 SE 27th Street and is also identified as tax lots 401, 404 and 2300 on County Assessor's Map 18-12-10. (See maps attached as Exhibits "B" and "C" of this Report).

The applicant claims that the Mobile Home Park Closure Ordinance restricts the use and development of the subject property, thereby reducing the value of the property. These regulations were initially adopted by Ordinance NS-2010 on June 7, 2006 and amended through subsequent Ordinance NS-2028. City of Bend Attorney Pete Schannauer provided staff with the following historical analysis regarding the Mobile Home Park Closure Ordinance:

I. NS-2010 adopted on June 6, 2006 contains the following significant provisions:

1. A whereas clause that reads as follows: "Whereas, the Council finds that these provisions comport with applicable law and determines that the ordinance is not preempted by state law, does not constitute a land use regulation within the meaning of Measure 37, does not operate to be a barrier to conversion to a different land use, is rationally based, and is otherwise lawful".

2. The purpose of the Ordinance “is to restrict activities for the protection of public health and safety. The provisions are intended to mitigate the adverse impacts of mobile home park closures on park residents by ensuring that the closure is preceded by adequate notice, that the social and economic impacts of the involuntary relocation of tenants associated with the closure are adequately defined, and that relocation and other assistance is provided park residents.

3. The purpose of the ordinance was furthered by requiring that the Mobile Home Park owner obtain a permit to close the Park, and requiring that the Owner prepare and submit a detailed narrative and timetable for the closure, a report on the impact of the closure on park residents, a relocation plan, notice to tenants association and opportunity to purchase the park, and an application fee.

4. Section 3 of NS 2010 reads as follows: “Permit required. No person may close a mobile home park unless a mobile home park closure permit has been obtained. Provided, however, that nothing in this section is intended to limit a person’s ability 1) to apply for and obtain a plan amendment, zone change, or other land use decision pursuant to the City’s Comprehensive Plan or Zoning Ordinance . . .”

5. The ordinance contained a sunset clause rendering the Ordinance void unless Council adopted an ordinance to continue the effectiveness of the permit program after December 7, 2006. Also, the ordinance provided for the appointment of a committee of park owners and tenants to study the problem and recommend revisions to the permit program.

6. The ordinance was adopted without following any of the rules for adoption of land use regulations.

II. NS 2036 was adopted on January 17, 2007 which was the product of the council appointed committee and which made the following significant changes:

1. City staff was directed to assistance in the preparation of the closure impact report by providing a list of comparable manufactured home park spaces within the City and County.

2. The Park Owners were required to pay relocation costs to a comparable space in another park located in Bend or Deschutes County. Previously, relocation costs were required for an area of 100 miles from Bend. Also, the tenant was required to apply for \$10,000 in relocation tax credits from the state and assign those benefits to the Park Owner to defray relocation costs.

3. The City Manager is not permitted to deny a closure permit, if a completed application is submitted, but may attach conditions to the approval of the permit.

4. *Previously the Ordinance allowed tenants to sue owners who violated this ordinance. That private cause of action was removed from the ordinance.*

5. *The Ordinance took the first step in providing an alternative to the relocation requirements of the ordinance. The Park Owner would have to enter into an agreement with the City to participate in the City's Mobile Home Park Overlay Zone. This Zone has not yet been adopted.*

Note: The sunset provision was extended by an ordinance adopted by City Council in November 2006

II. SUMMARY OF STAFF RECOMMENDATION

According to the materials in the City file, an incomplete letter was not written to the applicant within 15 days after the submittal of the Demand. Therefore, staff finds that the submitted claim is automatically considered complete for purposes of processing even though several components needed for a complete application are missing.

Staff recommends that the City Council conduct a public hearing on this matter and deny this particular claim for the following reasons: **1)** The claimants have not shown that the property has been devalued by land use regulations in place today and that such regulations restrict the use of the claimants' property more than the regulations that were in effect at the time that the current owner acquired the property. **2)** LUBA ruled in Case Nos. 2006-114 and 2006-115 that the City of Bend's Mobile Home Park Closure Ordinance (Section 7.260 of the Bend Code) is not a land use regulation. Ballot Measure 37 applies only to land use regulations, therefore, the submitted claim does not apply to the Mobile Home Park Closure Ordinance.

III. COMPLETENESS

The City of Bend Code Section 1.950 entitled "Review of Demands for Compensation under Oregon Revised Statutes Chapter 197 as amended by Ballot Measure 37 Passed November 2, 2004" requires certain information for the filing of a complete claim.

1.950(4) Demand Requirements.

(a) Form, Completeness, Completeness Review, Extension and Tolling of 180-Day Period under Measure 37.

- (1) A Demand shall only be submitted and accepted for review upon forms established by the Manager. A Demand shall consist of all materials required by Section 1.950. A Demand will not be accepted until found to be complete by the Manager after all materials required by Section 1.950 have been submitted.**

STAFF FINDING: The City of Bend has adopted an official form for submitting a Measure 37 demand. The claimant has not submitted the demand on this form. However, the demand has been accepted for the purposes of processing by the City of Bend.

- (2) *The Manager shall conduct a completeness review within 15 days after submittal of the Demand and shall advise the Owner, in writing, of any material remaining to be submitted. The Owner shall submit the material needed for completeness within 30 days of the written notice that additional material remains to be submitted. If the Owner fails to provide the materials necessary to make the Demand complete within the 30 day period the Demand shall not be accepted for filing.***

STAFF FINDING: There is no written evidence in the file that indicates whether or not a completeness review was held. In addition, there is no evidence that the applicants were advised in writing of any material remaining to be submitted within the 15 day time period as defined above. Therefore, the demand is accepted as submitted and deemed complete for purposes of processing.

- (3) *The 180-day period required to pass prior to any cause of action being available to Owner in circuit court specified Measure 37, shall only commence on the date the Manager deems the Demand complete, and accepts it for filing. The Manager shall note the date of completeness and filing, in writing, upon the Demand.***

STAFF FINDING: Based on the above findings, and the complete status of the claim, under this ordinance the 180 day time period has commenced. Based on the date of application submittal, the 180-day time period expires on Wednesday, May 30, 2007, counting from the day of application submittal.

- (b) *The Owner may request an extension for filing a complete Demand. A request for an extension or continuance shall be deemed to extend the 180-day period required to pass prior to any cause of action being available to the Owner in circuit court specified in Measure 37, and this Section 1.950.***

STAFF FINDING: The owner, claimant or the claimant's representative have not requested a time extension for filing a complete demand. Based on the above findings and the City's Ordinance, the 180-day review clock commenced on December 1, 2006.

- (c) *Information and Other Matters Required to be Submitted as Part of the Demand. A Demand shall be for a single Property and shall be submitted on forms established by the Manager, and shall consist of all materials required by this Section 1.950. Except as provided in Section***

1.950(4)(c)(17), a Demand will not be accepted for filing without all of the following information:

STAFF FINDING: The submitted claim is for one property, under common ownership, consisting of three (3) tax lots.

- (1) Fee. An application fee to be paid in advance of acceptance for filing to cover the costs of completeness review and Demand processing. The City shall record its actual costs for processing the Demand, and, in the event that the advance payment is not sufficient to cover all of the City's costs, then the Owner shall pay the balance owed, if any, upon receipt of an appropriate billing statement from the City. The City may send the Owner periodic billing statements. If the Owner does not pay on the billing statements when due, the Owner will be deemed to have abandoned the Demand. If the advance fee is more than the amount of the City's actual costs in processing the claim, then the excess shall be returned to the Owner. This fee shall be established by council resolution. In the event that the fee is not paid in full, the City of Bend shall have a lien against any Property owned by the Owner(s), and the City may take any enforcement actions to collect such fee as provided by law.**

STAFF FINDING: The claimant has paid the \$50.00 application fee which was received on December 1, 2006.

- (2) Form. A completed Demand form.**

STAFF FINDING: The claimant did not submit the demand on the City's Measure 37 Demand form. However, as previously explained, the demand is accepted as submitted and deemed complete.

- (3) Identification of Owner. Identification of the name, physical address, street address, and phone number of the Owner. If the applicant is not the Owner, this information must also be provided for the Owner and authorization to act on behalf of the Owner must be provided**

STAFF FINDING: The claimants' demand submittal included the information required by this provision. The claimant's demand submittal, dated December 1, 2006 identifies Country Sunset, LLC as the owner of the subject property. According to submitted copies of recorded deeds, Country Sunset, LLC acquired tax lots 401 and 404 on August 8, 2003 and tax lot 2300 on August 13, 2003. Therefore, Staff finds that this provision is satisfied.

- (4) *Property Description. A legal description of the Property as well as a common address for the Property.***

STAFF FINDING: The claimant's demand submittal includes legal descriptions of the property, as well as the County Assessor's Map and Tax Lot reference. Therefore, Staff finds that this provision has been satisfied.

- (5) *Proof of Present Property Ownership. Proof, acceptable to the Manager, that the Property is in the exclusive fee simple Ownership of the Owner or that the Owner has the consent of all Owners in the Property. The name and mailing address of all Owners other than the Owner making the Demand must be provided.***

STAFF FINDING: The deeds submitted by the claimant show that the owner of the subject property to be Country Sunset, LLC. Submitted with the claim is notarized affidavit signed by Robert Hartford whom declares to be a member of Country Sunset, LLC and authorizes the City to process the Measure 37 Claim. Additionally, current County Assessor's records identify Country Sunset, LLC as the owner of the property. Staff finds that this provision has been satisfied. (See Exhibits F and G)

- (6) *Title Report. A title report, including the title history, a statement of the date the Owner acquired Ownership of the Property, and the Ownership interests of all Owners. The title report must also specify any restrictions on use of the Property unrelated to the land use regulation including, but not limited to, any restrictions established by Covenants, Conditions and Restrictions (CC&Rs), other private restrictions, or other regulations, restrictions or contracts.***

STAFF FINDING: The claimant has not submitted a Title Report or any documentation indicating any restrictions or encumbrances on the property.

- (7) *Copy of Existing Regulation. A copy of the land use regulation that the Owner making the Demand claims restricts the use of the Property, or interest therein, that has had the effect of reducing the fair market value of the Property, including the date the Owner claims the land use regulation was first enacted, enforced or applied to the Property.***

STAFF FINDING: The claimant has provided a copy of Section 7.260 of the City of Bend Code, the regulations that the owner claims restricts the use of the property. Section 7.260 was adopted by Ordinance NS-2036 on June 7, 2006, which became effective after the applicant acquired the property in August of 2003. Therefore, Staff finds that this provision has been satisfied.

- (8) ***Copy of Prior Regulations. A copy of the land use regulation in existence, and applicable to the Property, when the Owner became the Owner of the Property, and a copy of the land use regulation in existence immediately before the regulation that was enacted or enforced or applied to the Property, that the Owner claims restricts the use of the Property and, the Owner claims, caused a reduction in fair market value due to the land use regulation in question being more restrictive.***

STAFF FINDING: A copy of Chapter 7.260 of City of Bend Code, Mobile Home Park Closures, has been provided with this claim, but did not submit a copy of the land use regulations effective at the time the applicant purchased the property. Staff finds that the property is currently zoned RL and was zoned as such at the time the applicant acquired the property in 2003.

- (9) ***Appraisals. A copy of a written Appraisal or Appraisals by an appraiser, qualified as such in the State of Oregon, indicating the amount of the alleged reduction in the fair market value of the Property by showing the difference in the fair market value of the Property before and after enactment, enforcement or application of the land use regulation in question, and explaining the rationale and factors leading to that conclusion. If the Demand is for more than \$10,000, copies of two Appraisals by different appraisers must be included. If the Demand is for \$10,000 or less, one Appraisal must be provided.***

STAFF FINDING: The claimant has not provided an appraisal or any other documentation in accordance with this provision indicating the claimed devaluation of the property. Staff finds that a claim cannot be effectively evaluated based on the merits of the claim without the required appraisal information prepared by a Professional Appraiser, Licensed or Certified by the State of Oregon.

- (10) ***Narrative. The Owner shall provide a narrative describing the history of the Owner and/or Family Member's Ownership in the Property, the history of the relevant land use regulations applicable to the Demand, and how the enactment, enforcement or application of the land use regulation restricts the use of the Property, or any interest therein, and has the effect of reducing the fair market value of the Property, or any interest therein.***

STAFF FINDING: The claimant has provided a narrative detailing the ownership of the subject property since their acquisition. (See Exhibit A)

- (11) ***A statement Regarding Exceptions. A statement by the Owner making the Demand of why the land use regulation in question is***

not an “Exempt land use regulation” as defined in Section 1.950(2)(c).

STAFF FINDING: There is no statement made by the claimant in regard to exceptions.

(12) A statement regarding date of acquisition of the Property by the Owner. The statement must explain how the subject land use regulation was enacted after the date of the acquisition of the Property by the Owner, or after acquisition by a Family Member of the Owner who owned the subject Property prior to the acquisition or inheritance by the Owner [if “Family Member” status is claimed it must also be addressed in the title report required by item (8) of this sub-section].

STAFF FINDING: The claimant states in the submitted demand letter that the property has been under their ownership since August of 2003. Additionally, corroborating evidence (recorded deeds) has been provided with the claim to support this.

(13) Statement of the Owner’s Understanding of the Effect of Any Modification, Removal or Non-Application of Land Use Regulation. A statement by the Owner explaining their understanding of what effect a modification, removal or non-application of the land use regulation would have on the potential development of the Property, stating the greatest degree of development that the Owner believes would be permitted on the Property if the identified land use regulation were modified, removed or not applied.

STAFF FINDING: In the submitted narrative, the claimants state: “Bend Code § 7.260 et seq. directly restricts claimants’ use and development of claimants’ subject property. Claimant purchased the subject property as an investment, with the intent to maximize the subject property’s investment value. Claimant purchased the property subject to current regulations by the State of Oregon regulating mobile home park closure. Bend Code § 7.260 et seq. constitutes a further restriction on claimants’ subject property, as follows:

- A. *It extends the period prior to which the subject property can be closed as a mobile home park and redeveloped;*
- B. *It purportedly requires Claimant to undergo additional procedures and applications prior to the closing of the subject property as a mobile home park and its redevelopment.*
- C. *It purportedly requires Claimant to pay additional sums to mobile home park applicants that are in excess of the sums required to be paid by the State of Oregon.*
- D. *It purports to condition the claimant’s closure of the subject property upon discretionary determinations by the City.”*

Staff finds that the above quotation constitutes a statement of the owners understanding of the effect of a waiver under the above criterion and therefore, this criterion is satisfied.

(14) Copies of Prior Permit Applications and Description of Enforcement and/or Application Actions by the City. Copies of any land use actions, development applications or other relevant applications for permits that have previously been filed in connection with the Property and the action taken. Any such actions that represent the required “enforcement” and/or “application” of the land use regulation that are prerequisites to making a Demand must be described and identified as such.

STAFF FINDING: The claimant has not provided copies of prior land use actions or development applications in connection with the subject property.

(15) Site Plan and Drawings. A copy of the site plan and drawings related to the expected use of the Property should the land use regulation be modified, removed or not applied in a readable/legible 8 ½ by 11-inch format.

STAFF FINDING: The claimant has not provided any plans or drawings related to the expected use of the property.

(16) Statement of Relief Sought. A statement of the relief sought by the Owner.

STAFF FINDING: Unless the City waives the regulations, the claimant demands the city provide the property owners monetary compensation. The claimant’s demand letter states that regulations limiting the ability of claimant to develop the property have caused the fair market value of the property to decrease by approximately \$10,826,250.00. As discussed above, the claim of diminished value has not been supported by an appraisal as required by this ordinance.

(17) For purposes of discussing settlement of a Demand, the Manager may proceed to negotiate a Demand or schedule a public hearing before the City Council, even if the Demand lacks one or more of the items listed in Section 1.950(4)(c)(1-16), if the missing item(s) are clearly not necessary for the purpose of discussing settlement of the Measure 37 Demand. The Manager’s determination of whether a Demand is complete for purposes of settlement discussions shall be subject to Oregon Evidence Rule 408 as it is part of the conduct or statement of the parties made in negotiations to compromise a disputed claim. The Manger’s determination to go forward with settlement discussions, even if a Demand is not complete, shall therefore not be admissible against the City of

Bend in any court proceeding as an admission or otherwise on the question of whether the Demand was complete. The City Council may elect to conduct a hearing on an incomplete Demand application, but the decision to hold a hearing is not an admission that the Demand is complete, or that the Owner has met the burden of proof on any item required under Section 1.950(4)(c)(1-16). A decision to approve a Demand following negotiations or a public hearing shall not be considered an admission by the City of Bend that the Demand is complete, and shall not abrogate an Owner's burden of proof in a subsequent court proceeding on any element of the Measure 37 claim.

STAFF FINDING: The above criterion allows the City Manager to proceed with negotiations and discussions of a settlement even if the demand lacks one or more items are required by this ordinance. Staff has found that the demand is adequate to address the claims identified in this application.

STAFF CONCLUSION IN REGARD TO COMPLETENESS OF CLAIM

Based on the above findings, Staff finds that the submitted demand, Claim Number 06-823, is accepted as complete for the purposes of processing under the City of Bend Ordinance 1.950.

IV. TIMELINESS OF CLAIM

Requirement

Ballot Measure 37 (2004), 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.**

STAFF FINDING: This claim was submitted to the City of Bend on December 1, 2006. The claim's statement of the relief sought by the applicant is granting of a waiver to Section 7.260, The Mobile Home Park Closure Ordinance, or compensation of \$10,826,250.00.

As stated above, the applicant contends that the Bend Code § 7.260 et seq. constitutes a further restriction on claimants' subject property, as follows:

- A. *"It extends the period prior to which the subject property can be closed as a mobile home park and redeveloped;*
- B. *It purportedly requires Claimant to undergo additional procedures and applications prior to the closing of the subject property as a mobile home park and its redevelopment.*
- C. *It purportedly requires Claimant to pay additional sums to mobile home park applicants that are in excess of the sums required to be paid by the State of Oregon.*
- D. *It purports to condition the claimant's closure of the subject property upon discretionary determinations by the City."*

Conclusions

The claim has been submitted in a timely manner based on the claim being made within two years from the effective date of Measure 37 becoming effective on December 2, 2004.

V. ANALYSIS OF CLAIM

1. Whether the Mobile Home Park Closure Ordinance, Section 7.260 of the Bend Code, is a land use regulation exempt under section 3 of Measure 37.

Ballot Measure 37 (2004) does not apply to certain land use regulations. In addition, under Section 3 of the Measure, certain types of land use regulations are not subject to a claim for compensation.

Section 3 of the measure states that,

2) 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.

2. Whether the Mobile Home Park Closure Ordinance, Section 7.260 of the Bend Code, restricts the use of the property permitted at the time the owner or family member acquired the property.

In order to establish a valid claim, Section 1 of Ballot Measure 37 requires, in part, that a land use regulation restrict the current use of private real property, or any interest therein, from how the property could have been used at the time the owner(s) or family member(s) acquired the property and has the effect of reducing the fair market value of the private real property.

3. Whether a land use regulation has the effect of reducing the fair market value of the property and the amount of any such reduction.

In order to establish a valid claim, Section 1 of Ballot Measure 37 requires that any land use regulation described in Section V(3) of this report “has the effect of reducing the fair market value of the property, or any interest therein.”

STAFF FINDINGS: In their Final Opinion and Order for LUBA Nos. 2006-114 and 2006-115 (*Century Drive Mobile Home Park, LLC and Tim Larkin vs. City of Bend* **and** *Cascade Village NW, LLC vs. City of Bend*, respectively) LUBA determined that they do not have jurisdiction to review the appeals of City of Bend Ordinance NS-2010, the Mobile Home Park Closure Ordinance (Section 7.260). In the aforementioned Orders, LUBA found that the petitioners failed to demonstrate that Ordinance NS-2010 concerns the adoption, amendment or application of any goal, comprehensive plan provision, land use regulation or new land use regulation. The order states that LUBA’s jurisdiction is limited in relevant part to “land use decisions” as Oregon Revised Statute (ORS) 197.015(11) (a) (A) defines “land use decision” as: “*A final decision or determination made by a local government or special district that concerns the adoption, amendment or application of:*

- “(i) The goals;*
- (ii) A comprehensive plan provision;*
- (iii) A land use regulation; or*
- (iv) A new land use regulation[.]”*

Further, the Order asserts that ORS 197.015(12) provides: ‘*Land use regulation*’ means *any local government zoning ordinance, land division ordinance adopted under ORS*

92.044 or 92.046 or similar general ordinance establishing standards for implementing a comprehensive plan.” Therefore LUBA agreed with the City that they lack jurisdiction over the appeals. LUBA concluded in the opinion that: “Because we have no jurisdiction over the challenged decision, petitioners’ motion to suspend this appeal is denied, as moot. Petitioners’ motion to transfer this appeal to Deschutes County Circuit Court is granted.” Staff also notes that the Mobile Home Park Closure Ordinance is contained in Chapter 7 of the City of Bend Code (Business), not Chapter 10, (Planning), which further supports the viewpoint that it is not a land use regulation.

Conclusions

Regarding items 1 through 3 above, staff concurs with LUBA’s opinion in Case Nos. 2006-114 and 2006-115 that the City of Bend’s Mobile Home Park Closure Ordinance is not a land use regulation. Therefore, the submitted claim has no merit and should be denied.

4. Whether the claimant is an owner of the property and whether the claimant’s request for compensation is based on the prior ownership of a family member.

Ballot Measure 37 provides for payment or compensation or relief from specific laws for “owners” as that term is defined in the Measure. Ballot Measure 37 (2004), Section 11(C) defines “owner” as “the present owner of the property, or any interest therein.”

STAFF FINDING: Staff has researched the submitted Deschutes County property records associated with the subject property and reviewed the deeds submitted by the applicant. These documents indicated that the current owner is Country Sunset, LLC and that they have owned the property since August of 2003. Staff concludes that the claimant, Country Sunset LLC, is the current “owner” of the property as defined by Section 11(C) of Ballot Measure 37 as of August 8 and August 13, 2003.

VI. STAFF CONCLUSIONS AND RECOMMENDATION FOR JUST COMPENSATION AND WHETHER TO MODIFY, REMOVE OR NOT APPLY THE REGULATION

Section 1 of Measure 37 requires payment of compensation to an owner of private real property if the City has enacted or enforced a law that restricts 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 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.

Findings

It is staff’s opinion, as well as LUBA’s that Section 7.260, the City of Bend’s Mobile Home Park Closure Ordinance (NS-2010), is not a land use regulation.

Since the Claimant has not effectively demonstrated that the City has enacted or enforced any new land use laws that restrict the use of the claimant's property in a manner that reduces its fair market value, Staff finds that there is no reason to modify, remove, or not apply the City's current regulations.

Conclusions

Based on the record currently before the City and the findings stated above, the claimant, Sunset Country LLC, has not established that they are entitled to relief. Therefore, Staff concludes that the claim should be denied.

Recommended Motion:

Based on the preliminary findings and conclusions set forth above, the claim is valid based on the date of the property owners, Country Sunset, LLC, acquired the property.

However, based on the record currently before the City, and the findings stated above, **Staff recommends that the claim be denied.** Staff recommends that the City Council conduct a public hearing on this claim and consider any additional testimony received during the hearing.

Based on staff's understanding of when the 180-day time clock began (the date the application was submitted), the City Council has until May 30, 2007 to act on the claim under Measure 37, before the claimant can take action in circuit court against the City.

Note: The last regular City Council Meeting before the end of the 180 day time limit is May 16, 2007.

VII. List of Exhibits to the Staff Report

Exhibit A – Claim narrative dated November 30, 2006

Exhibit B – Deschutes County Assessor's Tax Map

Exhibit C – Air photo/map of site

Exhibit D – Warranty Deed, V. 2003, P. 54004, recorded August 8, 2003

Exhibit E – Bargain & Sale Deed, V. 2003, P. 55353, recorded August 13, 2003

Exhibit F – Affidavit from claimant, Robert Hartford

Exhibit G – DIAL Report dated March 21, 2007 (Excerpt)

Exhibit H – LUBA Final Opinion & Order 2006-114/115

Exhibit I – Section 7.260, Mobile Home Park Closure Ordinance