

BEFORE THE DEPARTMENT OF ADMINISTRATIVE SERVICES,  
THE DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT OF  
THE STATE OF OREGON

IN THE MATTER OF THE CLAIM FOR	)	FINAL ORDER
COMPENSATION UNDER ORS 197.352	)	CLAIM NO. M 118414
(BALLOT MEASURE 37) OF	)	
Spring Valley Heights, LLC	)	
Patricia A. Beach, Principal, CLAIMANT	)	

Claimant: Spring Valley Heights, LLC, Patricia A. Beach, Principal (the Claimant)

Property: Tax Lot 700, T 6S, R 4W, S 13 (the Property)

Claim: The demand for compensation and any supporting information received from the Claimant by the State of Oregon (the Claim).

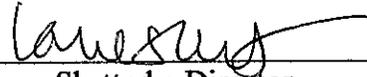
Claimant submitted the Claim to the State of Oregon under ORS 197.352. Under OAR 125-145-0010 *et seq.*, the Department of Administrative Services (DAS) referred the Claim to the Department of Land Conservation and Development (DLCD) as the regulating entity. This order is based on the record herein, including the Findings and Conclusions set forth in the Final Staff Report and Recommendation of DLCD (the DLCD Report) attached to and by this reference incorporated into this order.

ORDER

The Claim is denied as to laws administered by DLCD and the Land Conservation and Development Commission (LCDC) for the reasons set forth in the DLCD Report.

This Order is entered by the Director of the DLCD as a final order of DLCD and the Land Conservation and Development Commission under ORS 197.352, OAR 660-002-0010(8), and OAR chapter 125, division 145, and by the Deputy Administrator for the State Services Division of the DAS as a final order of DAS under ORS 197.352, OAR chapter 125, division 145, and ORS chapter 293.

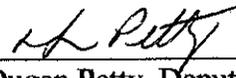
FOR DLCD AND THE LAND  
CONSERVATION AND DEVELOPMENT  
COMMISSION:



Lane Shetterly, Director  
DLCD

Dated this 20th day of March, 2006.

FOR the DEPARTMENT OF  
ADMINISTRATIVE SERVICES:



Dugan Petty, Deputy Administrator  
DAS, State Services Division

Dated this 20th day of March, 2006.

**NOTICE OF RIGHT TO APPEAL OR OTHER JUDICIAL RELIEF**

You are entitled, or may be entitled, to the following judicial remedies:

1. Judicial review under ORS 293.316: Judicial review under ORS 293.316 may be obtained by filing a petition for review within 60 days from the service of this order. Judicial review under ORS 293.316 is pursuant to the provisions of ORS 183.482 to the Court of Appeals.
2. Judicial review under ORS 183.484: Judicial review under ORS 183.484 may be obtained by filing a petition for review within 60 days from the service of this order. A petition for judicial review under ORS 183.484 may be filed in the Circuit Court for Marion County and the Circuit Court in the county in which you reside.
3. A cause of action under ORS 197.352: A present owner of the property, or any interest therein, may file a cause of action in the Circuit Court for the county where the property is located, if a land use regulation continues to apply to the subject property more than 180 days after the present owner made a written demand for compensation.

(Copies of the documents that comprise the record are available for review at the Department's office at 635 Capitol Street NE, Suite 150, Salem, Oregon 97301-2540)

**BALLOT MEASURE 37 (ORS 197.352)  
CLAIM FOR COMPENSATION**

**OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT  
Final Staff Report and Recommendation**

March 20, 2006

**STATE CLAIM NUMBER:** M118414

**NAME OF CLAIMANT:** Spring Valley Heights, LLC  
Patricia A. Beach, Principal

**MAILING ADDRESS:** 4198 Beach Lane NW  
Salem, Oregon 97304

**PROPERTY IDENTIFICATION:** Township 6S, Range 4W, Section 13  
Tax lot 700  
Polk County

**DATE RECEIVED BY DAS:** May 11, 2005

**180-DAY DEADLINE:** March 26, 2006<sup>1</sup>

**I. CLAIM**

The claimant, Spring Valley Heights, LLC, seeks compensation in the amount of \$1,220,000 for a reduction in fair market value as a result of certain land use regulations that are alleged to restrict the use of certain private real property. The claimant desires compensation or the right to divide the subject 28-acre property into nine parcels for residential use. The property is located at 4198 Beach Lane NW, Salem, in Polk County. (See claim.)

**II. SUMMARY OF STAFF RECOMMENDATION**

Based on the findings and conclusions set forth below, the Department of Land Conservation and Development (the department) has determined that the claim is not valid because neither the Land Conservation and Development Commission (the Commission) nor the department have enforced laws after June 28, 2002 when the claimant acquired the property, that restrict the claimant's use of the property. (See the complete recommendation in Section VI. of this report.)

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<sup>1</sup> This date reflects 180 days from the date the claim was submitted as extended by the 139 days enforcement of Measure 37 was suspended during the pendency of the appeal of Macpherson v. Dep't of Admin. Servs., 340 Or \_\_\_, 2006 Ore. LEXIS 104 (February 21, 2006).

### **III. COMMENTS RECEIVED**

#### **Comments Received**

On June 6, 2005, pursuant to OAR 125-145-0080, the Oregon Department of Administrative Services (DAS) provided written notice to owners of surrounding properties. According to DAS, three written comments, evidence or information was received in response to the 10-day notice.<sup>2</sup>

Two of the comment letters do not address whether the claim meets the criteria for relief (or compensation) under ORS 197.352. One of letters addresses the effects a use of property may have on surrounding areas, which generally are not something that the department is able to consider in determining whether to waive a state law. If funds do become available to pay compensation, then such effects may become relevant in determining which claim to pay compensation for instead of waiving a state law. The third comment letter is relevant to whether the restriction of the claimant's use of the property reduces the fair market value of the property. The comments have been considered by the department in preparing this report. (See the comment letters in the department's claim files.)

### **IV. TIMELINESS OF CLAIM**

#### **Requirement**

ORS 197.352(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.

#### **Findings of Fact**

The claim was submitted to DAS on May 11, 2005 for processing under OAR 125 division 145. The claim identifies Polk County's Farm-Forest zoning that restricts the use of the property as the basis for the claim. Only laws that were enacted prior to December 2, 2004, the effective date of Measure 37, are the basis for this claim. (See citations of statutory and administrative rule history of the Oregon Revised Statutes and Oregon Administrative Rules.)

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<sup>2</sup> The 10-day notice period was suspended for 139 days during the pendency of the *Macpherson v. Dep't of Admin. Servs.*, 340 Or \_\_\_, 2006 Ore. LEXIS 104 (February 21, 2006), which suspended all Measure 37 deadlines.

## **Conclusions**

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

## **V. ANALYSIS OF CLAIM**

### **1. Ownership**

ORS 197.352 provides for payment of compensation or relief from specific laws for “owners” as that term is defined in ORS 197.352. ORS 197.352(11)(C) defines “owner” as “the present owner of the property, or any interest therein.”

### **Findings of Fact**

The claimant, Spring Valley Heights, LLC acquired the subject property on June 28, 2002 by a Personal Representative’s Deed (Polk County Clerk Records 2002-009957).<sup>3</sup> Spring Valley Heights, LLC is an active limited-liability company registered with the Oregon Secretary of State.<sup>4</sup> Information provided by Polk County indicates that the claimant, Spring Valley Heights, LLC, is the current owner of the subject property.<sup>5</sup>

Patricia Ann Beach (aka Patricia Williams) is identified as the sole principal of Spring Valley Heights, LLC. Ms. Beach’s family acquired interest in the subject property on September 14, 1949.

### **Conclusions**

The claimant, Spring Valley Heights, LLC, is an “owner” of the subject property as that term is defined in ORS 197.352(11)(C) and acquired the property on June 28, 2002.

Although a cooperation can be a “family member” of an “owner” as that term is defined by ORS 197.352(11)(C), an “owner” that is a corporate entity cannot claim an individual as a “family member” as defined in ORS 197.352(11)(A). Therefore, Ms. Beach, who transferred the subject property into Spring Valley Heights, LLC, is not considered a “family member” of the Spring Valley Heights, LLC.

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<sup>3</sup> A correction to the Personal Representative’s Deed was recorded on July 25, 2002, (Polk County Clerk Records 2002-011257) to correct the legal description in the Deed recorded as document 2002-009957. The property was transferred from the Estate of Durlyn Beach. No information on Mr. Beach’s date of death was provided.

<sup>4</sup> The claimant LLC is registered with the Oregon Corporation Commission under the name “Spring Valley Heights, LLC.”

<sup>5</sup> Polk County Staff Report dated October 6, 2005, File M 05-35/Spring Valley Heights, LLC.

## **2. The Laws that are the Basis for this Claim**

In order to establish a valid claim, ORS 197.352(1) requires, in part, that a law 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 or a family member acquired the property.

### **Findings of Fact**

The claimant states that the resource zoning applicable to the property "restricts parcel sizes to a minimum of 20 acres & construction of single-family dwelling, plus numerous other restriction."

The claim is based, generally, on Polk County's current Farm-Forest (FF) zone and the applicable provisions of state law that require such zoning. The claimant's property is zoned Farm-Forest (FF) which is a mixed agricultural and forest land zone adopted to comply with Statewide Goal 4 (Forest Lands) and the implementing provisions of OAR 660-006-0050 (effective February 5, 1990,) and subsequently amended on March 1, 1994, to comply with the provisions of HB 3661 (Chapter 792, Or Laws 1993).

Under OAR 660-006-0050, all the uses permitted under Statewide Goals 3 and 4 are allowed except that for dwellings, either the Goal 3 or 4 standards are applicable based on the predominant use of the tract on January 1, 1993. No information was provided to the department regarding the predominant use of the property on January 1, 1993. Depending on the predominant use on January 1, 1993, the property is subject to either the requirements for dwellings applicable under exclusive farm use zoning required by Statewide Goal 3 and OAR 660 division 33 or forest zone provisions required by Statewide Goal 4 and OAR 660 division 6. This includes the dwelling standards asserted by the claimant as restricting the use of the property. However, no analysis of whether the subject property can be approved for a dwelling under the applicable farm or forest provisions has been provided.

For land divisions, OAR 660-006-0055 authorizes the creation of new parcels based on the standards applicable to farm or forest zones which implement the 80-acre minimum lot size specified in ORS 215.780. Under OAR 660-006-055, the claimant's property cannot be further divided. No analysis of whether the property can be divided for non-farm dwellings under ORS 215.263(4)(b) has been provided.

Spring Valley Heights, LLC, acquired the subject property on June 28, 2002, after the current zoning requirements, minimum lot size and dwelling standards established by Statewide Planning Goals 3 and 4 and the provisions applicable to land zoned Farm-Forest (FF) as established in ORS 215 and OAR 660 division 6 were enacted and adopted.

### **Conclusions**

The minimum lot size and dwelling standards established by Statewide Planning Goals 3 and 4, ORS 215 and OAR 660 division 6 were all enacted or adopted before Spring Valley Heights, LLC, acquired the subject property on June 28, 2002. These laws do not allow the division of

the property, nor do they allow additional dwellings on lands zoned under Goals 3 and 4 as a mixed farm and forest zone. Based on the current record, the claimant has not established that current laws restrict the claimant's use of the 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 acquired the property on June 28, 2002.

### **3. Effect of Regulations on Fair Market Value**

In order to establish a valid claim, ORS 197.352(1) requires that any laws described in Section V.(2) of this report must have "the effect of reducing the fair market value of the property, or any interest therein."

#### **Findings of Fact**

The claim states that the fair market value of the subject property has been reduced by \$1,220,000 as a result of current regulations that restrict the use of the property. The amount is based on the claimant's estimate of the market value and is based on the sales of similar two and one-half acre or larger parcels.

The alleged reduction in the property's fair market value appears to be based on those land use regulations enacted after Patricia A. Beach's family acquired the subject property in 1949, rather than those enacted after the claimant and current owner, Spring Valley Heights, LLC, acquired the property in 2002.

The claim does not include an appraisal or other documentation to substantiate the claimant's estimate of the property's reduction in fair market value.

#### **Conclusions**

As explained in Section V.(1) of this report, the current owner is Spring Valley Heights, LLC, which acquired the property on June 28, 2002. Under ORS 197.352, the claimant is not due compensation because no land use regulations adopted since the claimant acquired the property on June 28, 2002, have the effect of reducing the property's fair market value relative to the division of the property for residential use when Spring Valley Heights, LLC acquired the property. (See Section V.(2) of this report.)

### **4. Exemptions under ORS 197.352(3)**

ORS 197.352 does not apply to certain land use regulations. In addition, under ORS 197.352(3), certain types of laws are exempt from ORS 197.352.

#### **Findings of Fact**

The claim is based on Polk County's FF zone and the related provisions of state law that restrict the claimant's division of the property for residential use. All of the laws were in effect when

the claimant acquired the property in 2002. These laws are exempt under ORS 197.352(3)(E), which exempts laws enacted prior to the date the claimant acquired the property.

### **Conclusions**

The general statutory, goal and rule restrictions on dividing property for residential use and the use of farm and forest land apply to the claimant's use of the property. Statewide Planning Goals 3 and 4, ORS 215 and OAR 660 division 6 in effect when the claimant acquired the property on June 28, 2002, are exempt under ORS 197.352(3)(E) and will continue to apply.

This report addresses only those state laws that are identified in the claim, or that the department is certain apply to the property based on the uses that the claimant has identified. Similarly, this report only addresses the exemptions provided for under ORS 197.352(3) that are clearly applicable given the information provided to the department in the claim.

### **VI. FORM OF RELIEF**

ORS 197.352(1) provides for payment of compensation to an owner of private real property if the Commission or the department has enforced a law that restricts the use of the property in a manner that reduces its fair market value. In lieu of compensation, the department may choose to not apply the law to allow the present owner to carry out a use of the property permitted at the time the present owner acquired the property. The Commission, by rule, has directed that if the department determines a claim is valid, the Director must provide only non-monetary relief unless and until funds are appropriated by the legislature to pay claims.

### **Conclusion**

Based on the findings and conclusions in this report, the claimant is not entitled to relief under ORS 197.352. Department staff recommends that this claim be denied because neither the Commission nor the department has enforced laws that were enacted after the claimant acquired the property on June 28, 2002, that restrict the claimant's division of the property for residential use.

### **VII. COMMENTS ON THE DRAFT STAFF REPORT**

The department issued its draft staff report on this claim on October 14, 2005. OAR 125-145-0100(3), provided an opportunity for the claimant or the claimant's authorized agent and any third parties who submitted comments under OAR 125-145-0080 to submit written comments, evidence and information in response to the draft staff report and recommendation. Comments received have been taken into account by the department in the issuance of this final report.