

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. M118433
(BALLOT MEASURE 37) OF)	
Adelina Slocum, CLAIMANT)	

Claimant: Adelina Slocum (the Claimant)

Property: Tax lot 5200, Township 3S, Range 2W, Section 7, Yamhill County (the Property)

Claim: The demand for compensation and any supporting information received from the Claimants 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 approved as to laws administered by DLCD and the Land Conservation and Development Commission (LCDC) for the reasons set forth in the DLCD Report, and subject to the following terms:

1. In lieu of compensation under ORS 197.352, the State of Oregon will not apply the following laws to Adelina Slocum's division and development of the 16.5-acre property: applicable provisions of Statewide Planning Goals 3, ORS 215, and OAR 660, division 33, enacted after March 9, 1993. These land use regulations will not apply to Adelina Slocum's use of her property only to the extent necessary to allow her to use the property for the use described in this report, to the extent that use was permitted at the time she acquired the property on March 9, 1993.
2. The action by the State of Oregon provides the state's authorization to the claimant to use her property for the use described in this report, subject to the standards in effect on March 9, 1993. On that date, the property was subject to applicable provisions of ORS 215 and OAR 660, division 5, then in effect.
3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the property may not be used without a permit, license, or other form of authorization or consent, the order will not authorize the use of the property unless the

claimant first obtains that permit, license or other form of authorization or consent. Such requirements may include, but are not limited to: a building permit, a land use decision, a permit as defined in ORS 215.402 or ORS 227.160, other permits or authorizations from local, state or federal agencies, and restrictions on the use of the property imposed by private parties.

4. Any use of the property by the claimant under the terms of the order will remain subject to the following laws: (a) those laws not specified in (1) above; (b) any laws enacted or enforced by a public entity other than the Commission or the department; and (c) those laws not subject to ORS 197.352 including, without limitation, those laws exempted under ORS 197.352(3).

5. Without limiting the generality of the foregoing terms and conditions, in order for the claimant to use the property, it may be necessary for her to obtain a decision under ORS 197.352 from a city and/or county and/or metropolitan service district that enforces land use regulations applicable to the property. Nothing in this order relieves the claimant from the necessity of obtaining a decision under ORS 197.352 from a local public entity that has jurisdiction to enforce a land use regulation applicable to a use of the property by the claimant.

This Order is entered by the Deputy 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 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 125, division 145, and ORS 293.

FOR DLCD AND THE LAND CONSERVATION
AND DEVELOPMENT COMMISSION:

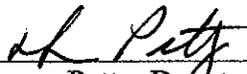
Lane Shetterly, Director



George Naughton, Deputy Director
DLCD

Dated this 24th day of March, 2006.

FOR the DEPARTMENT OF ADMINISTRATIVE
SERVICES:



Dugan Petty, Deputy Administrator
DAS, State Services Division

Dated this 24th 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 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 or the Circuit Court in the county in which you reside.
2. **A cause of action under ORS 197.352 (Measure 37 (2004)):** If a land use regulation continues to apply to the subject property more than 180 days after the present owner of the property has made written demand for compensation under ORS 197.352¹, the present owner of the property, or any interest therein, shall have a cause of action in the circuit court in which the real property is located.

(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)

FOR INFORMATION ONLY

The Oregon Department of Justice has advised the Department of Land Conservation and Development that "[i]f the current owner of the real property conveys the property before the new use allowed by the public entity is established, then the entitlement to relief will be lost."

¹ By order of the Marion County Circuit Court, "all time lines under Measure 37 [were] suspended indefinitely" on October 25, 2005. This suspension was lifted on March 13, 2006 by the court. As a result, a period of 139 days (the number of days the time lines were suspended) has been added to the 180-day time period under ORS 197.352(6) for claims that were pending with the state on October 25, 2005.

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

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

March 24, 2006

STATE CLAIM NUMBER: M118433

NAME OF CLAIMANT: Adelina Slocum

MAILING ADDRESS: 24055 Northeast North Valley Road
Newberg, Oregon 97132

PROPERTY IDENTIFICATION: Township 3S, Range 2W, Section 7
Tax lot 5200
Yamhill County

OTHER CONTACT INFORMATION: Wallace Lien, P.C.
1775 32nd Place NE, Suite A
Salem, Oregon 97303-1674

DATE RECEIVED BY DAS: May 16, 2005

180-DAY DEADLINE: March 31, 2006¹

I. SUMMARY OF CLAIM

The claimant, Adelina Slocum, seeks compensation in the amount of \$849,309 for the 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 16.5-acre property into eight lots and to develop a dwelling on six of those lots. No street address is available. The property is located at the above coordinates, in Yamhill 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 valid. Department staff recommends that, in lieu of compensation, the requirements of the following state laws enforced by the Land Conservation and Development Commission (the Commission) or the department not apply to Adelina Slocum's division of the property for residential development: Statewide

¹ 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).

Planning Goal 3 (Agricultural Lands), ORS 215 and applicable provisions of OAR 660, division 33 enacted after March, 9, 1993. These laws will not apply to the claimant only to the extent necessary to allow Adelina Slocum to use the property for the use described in this report, to the extent that use was property permitted at the time she acquired the property in March 1993. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On March 2, 2005, pursuant to OAR 125-145-0080, the Oregon Department of Administrative Services (DAS) provided written notice to the owners of surrounding properties. According to DAS, one written comment was received in response to the 10-day notice.²

The comment does not address whether the claim meets the criteria for relief (compensation or waiver) under ORS 197.352. Comments concerning the effects a use of the property may have on surrounding areas 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 claims to pay compensation for instead of waiving a state law. (See the comment letter in the department's claim file.)

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

This claim was submitted to DAS on May 16, 2005, for processing under OAR 125, division 145. The claim identifies Yamhill County's Exclusive Farm Use (EFU) zone and state regulations requiring a minimum gross income from farming as laws that restrict the use of the property as the basis for the claim. Only laws that were enacted prior to December 2, 2004, the

² 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.

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.)

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, Adelina Slocum, acquired the subject property on March 9, 1993, upon the death of her mother, Santina Dare. The claim includes a Metroscan Property Profile listing the current owner as Adelina Slocum, Trustee of the Slocum Family Living Trust. Transfer by the claimant to a revocable trust does not constitute a change in ownership for purposes of ORS 197.352. However, the claim does not establish that the Trust is revocable.³

The property was first acquired by a family member on December 26, 1922 by warranty deed to Giovanni Dare, the claimant’s father, and Fortunato Dare, the claimant’s uncle. The claimant’s mother acquired the property in 1947.⁴ (See deeds in department’s claim file.)

Conclusions

Provided the claimant submits evidence that the Slocum Family Trust is a revocable trust, the claimant, Adelina Slocum, is an “owner” of the subject property, as that term is defined by ORS 197.352(11)(C), as of March 9, 1993. The property has been owned by a “family member” of the claimant, as that term is defined by ORS 197.352(11)(A) since December 26, 1922.

³ The claim did not include a copy of the Trust document or otherwise establish the nature of the trust. In order to substantiate that the transfer to the Trust does not constitute a change in ownership for purposes of Measure 37, the claimant must submit a copy of the Trust document or other documentation establishing the Trust is revocable.

⁴ The claim states that “At some point in the late 1930s, the property was placed in the name of Giovanni’s and Fortunato’s children, including the claimant then known as Adelina Russo. In 1947, the children deeded the property back to Giovanni’s wife, Santina Dare. Upon Santina’s death in 1992 [*sic*], the property transferred back to the claimant, now Adelina Slocum. Immediately after receiving title, claimant placed the subject property in trust of the Slocum Family Living Trust.”

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 claim includes a letter of denial from Yamhill County Planning to a request to divide the 16.5-acre property into eight lots with six additional dwelling thereon, citing the County's Exclusive Farm - 20 acre minimum (EF-20) zoning. The denial also cites the zone's farm income requirement of \$40,000 to \$80,000. Based on the claimant's denied request to Yamhill County, the department concludes that the claimant's request in this claim is based on laws that restrict her from dividing the 16.5-acre property as described above.

The claim is based, generally, on Yamhill County's current Exclusive Farm Use (EFU Zone) and the applicable provisions of state law that require such zoning. The claimant's property is zoned EFU as required by Goal 3, in accord with OAR 660, division 33, and ORS 215 because the claimant's property is "agricultural land" as defined by Goal 3. Goal 3 became effective on January 25, 1975, and required that agricultural lands as defined by the Goal be zoned EFU pursuant to ORS 215.

Current land use regulations, particularly ORS 215.263, 215.284, 215.780, and OAR 660, division 33, as applied by Goal 3, do not allow the subject property to be divided into parcels less than 80 acres and establish standards for allowing the existing or any proposed parcels to have farm or non-farm dwellings on them.

ORS 215.780 established an 80-acre minimum size for the creation of new lots or parcels in EFU zones and became effective November 4, 1993 (Chapter 792, Oregon Laws 1993). ORS 215.263 (2003 edition) establishes standards for the creation of new parcels for non-farm uses and dwellings allowed in an EFU zone.

OAR 660-033-0135 (applicable to farm dwellings) became effective on March 1, 1994, and interprets the statutory standard for a primary dwelling in an EFU zone under ORS 215.283(1)(f).

OAR 660-033-0130(4) (applicable to non-farm dwellings) became effective on August 7, 1993, and was amended to comply with ORS 215.284(4) on March 1, 1994. Subsequent amendments to comply with HB 3326, (Chapter 704, Oregon Laws 2001, and effective January 1, 2002,) were adopted by the Commission effective May 22, 2002. (See citations of administrative rule history for OAR 660-033-0100, 0130 and 0135.)

The claimant's family acquired the subject property on December 26, 1922, prior to the adoption of the statewide planning goals and implementing rules and regulations. The property was not zoned by the County at that time.

Conclusions

The zoning requirements, minimum lot size and dwelling standards established by Statewide Planning Goal 3 (Agricultural Lands) and provisions applicable to land zoned EFU in ORS 215 and OAR 660, division 33, were all enacted after Adelina Slocum's family acquired the subject property in December 1922, and do not allow the division of the property, thereby restricting the use of the property relative to the uses allowed when the property was acquired by Ms. Slocum's family in 1922.

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. There may be other laws that currently apply to the claimant's use of the property, and that may continue to apply to the claimant's use of the property, that have not been identified in the claim. In some cases, it will not be possible to know what laws apply to a use of property until there is a specific proposal for that use. When the claimant seeks a building or development permit to carry out a specific use, it may become evident that other state laws apply to that use.

3. Effect of Regulations on Fair Market Value

In order to establish a valid claim, ORS 197.352(1) requires that any land use regulation 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 claimant estimates the property value has been reduced by \$849,309 as a result of current land use regulations. The claim includes Yamhill County's appraisal of \$233,471 as the property's current fair market value; and an estimate of the property's value without the zoning restrictions of \$1,082,780, based on the claimant's estimate of the market value of eight lots in the area.

Conclusions

As explained in Section V.(1) of this report, the current owner is Adelina Slocum whose family acquired the property on December 26, 1922. Under ORS 197.352, Adelina Slocum is due compensation for land use regulations that restrict the use of the subject property in a manner that reduces its fair market value. Based on the findings and conclusions in Section V.(2), land use laws enforced since 1922, restrict the ability to divide and develop the property. The claim estimates the reduction in value due to the restrictions to be \$849,309.

Without an appraisal or other documentation, it is not possible to substantiate the specific dollar amount the claimant demands for compensation. Nevertheless, based on the submitted information, the department determines that it is more likely than not that there has been some reduction in the fair market value of the subject property as a result of land use regulations enforced by the Commission or the department.

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 land use regulations that restrict the use of the property relative to what would have been allowed in 1922, when the property was acquired by Adelina Slocum's family. These provisions include Statewide Planning Goal 3 (Agricultural Lands), and applicable provisions of ORS 215 and OAR 660, division 33, which Yamhill County has implemented through its EFU zone. None of these laws appear to be exempt under ORS 197.352(3)(E), which exempts laws in effect when the claimant's family acquired the property.

Conclusions

Without a specific development proposal for the property, it is not possible for the department to determine what laws may apply to a particular use of the property, or whether those laws may fall under one or more of the exemptions under ORS 197.352. It does appear that the general statutory, goal and rule restrictions on residential development and use of farm land apply to the claimant's use of the property, and for the most part these laws are not exempt under ORS 197.352(3)(E).

Laws in effect when the claimant's family acquired the property are exempt under ORS 197.352(3)(E) and will continue to apply to the claimant's use of the property. There may be other laws that continue to apply to the claimant's use of the property that have not been identified in the claim. In some cases, it will not be possible to know what laws apply to a use of property until there is a specific proposal for that use. When the claimant seeks a building or development permit to carry out a specific use, it may become evident that other state laws apply to that use. And, in some cases, some of these laws may be exempt under ORS 197.352(3)(A) to (D).

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. The claimant should be aware that the less information she has provided to the department in the claim, the greater the possibility that there may be additional laws that will later be determined to continue to apply to her use of the property.

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 in order to allow the present owner to carry out a use of the property permitted at the time the current 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.

Findings of Fact

Based on the findings and conclusions set forth in this report, laws enforced by the Commission or the department restrict the claimant's ability to divide the property into the desired eight lots and to develop those lots for residential use. The claim asserts the laws enforced by the Commission or department reduce the fair market value of the subject property by \$849,309. However, because the claim does not provide an appraisal or other specific documentation how the specified restrictions reduce the fair market value of the property, a specific amount of compensation cannot be determined. Nevertheless, based on the record for this claim, the department acknowledges that the laws on which the claim is based likely have reduced the fair market value of the property to some extent.

No funds have been appropriated at this time for the payment of claims. In lieu of payment of compensation, ORS 197.352 authorizes the department to modify, remove or not apply all or parts of certain land use regulations to allow Adelina Slocum to use the subject property for a use permitted at the time she acquired the property on March 9, 1993.

The claimant acquired the subject property on March 9, 1993. At that time, the property was zoned EF-40, an acknowledged EFU zone under Statewide Goal 3 (Agricultural Lands). The zone was subject to the applicable provisions of ORS 215 and OAR 660, division 5, in effect at that time.

Under the sections of Yamhill County Ordinances in effect in March 1993, newly created parcels had to be a "minimum of 40/20-acres or that size which is appropriate for the continuation of the existing Commercial Agricultural Enterprise in the area, whichever is greater, consistent with the requirements of OAR 660-05-015 and 660-05-020." For non-farm dwellings, the Yamhill County standard was at least two- and one-half-acres in size. Farm and non-farm dwellings were allowed subject to the applicable provisions required for EFU zones under ORS 215 and OAR 660, division 5, in effect at that time.

The claim does not establish whether or to what extent the level of development requested in this claim would have been allowed under the standards in effect in March 1993.

Conclusion

Based on the record, the department recommends that the claim be approved, subject to the following terms:

1. In lieu of compensation under ORS 197.352, the State of Oregon will not apply the following laws to Adelina Slocum's division and development of the 16.5-acre property: applicable provisions of Statewide Planning Goals 3, ORS 215, and OAR 660, division 33, enacted after

March 9, 1993. These land use regulations will not apply to Adelina Slocum's use of her property only to the extent necessary to allow her to use the property for the use described in this report, to the extent that use was permitted at the time she acquired the property on March 9, 1993.

2. The action by the State of Oregon provides the state's authorization to the claimant to use her property for the use described in this report, subject to the standards in effect on March 9, 1993. On that date, the property was subject to applicable provisions of ORS 215 and OAR 660, division 5, then in effect.

3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the property may not be used without a permit, license, or other form of authorization or consent, the order will not authorize the use of the property unless the claimant first obtains that permit, license or other form of authorization or consent. Such requirements may include, but are not limited to: a building permit, a land use decision, a permit as defined in ORS 215.402 or ORS 227.160, other permits or authorizations from local, state or federal agencies, and restrictions on the use of the property imposed by private parties.

4. Any use of the property by the claimant under the terms of the order will remain subject to the following laws: (a) those laws not specified in (1) above; (b) any laws enacted or enforced by a public entity other than the Commission or the department; and (c) those laws not subject to ORS 197.352 including, without limitation, those laws exempted under ORS 197.352(3).

5. Without limiting the generality of the foregoing terms and conditions, in order for the claimant to use the property, it may be necessary for her to obtain a decision under ORS 197.352 from a city and/or county and/or metropolitan service district that enforces land use regulations applicable to the property. Nothing in this order relieves the claimant from the necessity of obtaining a decision under ORS 197.352 from a local public entity that has jurisdiction to enforce a land use regulation applicable to a use of the property by the claimant.

VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on October 20, 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.