

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)
COMPENSATION UNDER ORS 197.352)
(BALLOT MEASURE 37) OF)
Howard Meredith, CLAIMANT)

FINAL ORDER
CLAIM NO. M 118446

Claimant: Howard Meredith (the Claimant)

Property: Tax Lots 37, Township 7S, Range 11W, Section 22, Lincoln County (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 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 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:

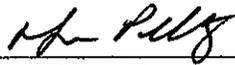
Lane Shetterly, Director



George Naughton, Deputy Director
DLCD

Dated this ___ day of _____, 2006.

FOR the DEPARTMENT OF
ADMINISTRATIVE SERVICES:



Dugan Petty, Deputy Administrator
DAS, State Services Division

Dated this 23rd 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)

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: MI18446

NAME OF CLAIMANT: Howard Meredith

MAILING ADDRESS: c/o Russell L. Baldwin
Attorney at Law
4355 North Highway 101, Suite B
P.O. Box 1242
Lincoln City, Oregon 97367

PROPERTY IDENTIFICATION: Township 7 S, Range 11 W, Section 22
Tax lot 3700
Lincoln County

DATE RECEIVED BY DAS: May 16, 2005

180-DAY DEADLINE: March 31, 2006¹

I. SUMMARY OF CLAIM

The claimant, Howard Meredith, seeks compensation in the amount of \$350,000 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 build a dwelling on the subject property. The property is located on South Anchor Court, Nelscott Beach, in Lincoln City. (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 that restrict the claimant's use of private real property. (See the complete recommendation in Section VI. of this report.)

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).

III. COMMENTS ON THE CLAIM

Comments Received

On July 18, 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, five written comments, evidence or information were received in response to the 10-day notice.² These comments have been considered by the department in preparing this report. (See comment letters 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 consists of a letter from the claimant's attorney (Russell L. Baldwin) identifying Lincoln City land use regulations that limit the claimant's ability to build a dwelling.

Conclusions

The claim has been submitted within two years of December 2, 2004, the effective date of Measure 37. From the claim materials submitted to the state, it cannot be determined if the claim is based on land use regulations adopted prior to December 2, 2004.

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.

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 claim does not state when Howard Meredith acquired ownership of the subject property, nor does it include a deed or other evidence of ownership.³ According to Lincoln County Tax Assessor records, Howard E. Meredith acquired the property on October 19, 1992. He transferred it to Howard E. Meredith and Doris Irene Meredith on February 7, 1995.⁴

Conclusions

The claimant, Howard Meredith, appears to be an “owner” of the subject property as that term is defined by ORS 197.352(11)(C), as of October 19, 1992.

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 states: “Mr. Meredith has endeavored to build a residential dwelling on his property, and to landscape the lot, over the course of the last 13 years (approximately). He previously submitted an engineering geologic survey dated January 26, 1998, to the City at its request following the City’s stop work order. At that time, one or more stop work orders had been issued following Mr. Meredith’s efforts to landscape his property.”

The property is zoned Single-Family Residential (R-1-5) and is located in the within the city of Lincoln City. The city identified several Lincoln City ordinances that may be the basis of the claim. (See Notice of Public Hearing included in the claim.)

³ Russell Baldwin, the claimant’s attorney, has not returned phone calls (August 19, 2005, and September 14, 2005) requesting additional information.

⁴ There is nothing in the record to indicate that Doris Irene Meredith is a claimant for purposes of this Measure 37 claim.

The claim does not identify any state land use regulations that restrict the use of the property, nor does the claim describe the nature of the restrictions on the use of the property that could be based on state regulations. Department staff attempted to contact the claimant's representative, Russell Baldwin, by phone on August 19, 2005, and September 14, 2005, to attain additional information regarding the laws that the claimant believes are restricting the use of the property. No additional information has been provided to date.

Based on the information in the claim, it appears that it may be directed at state land use laws for which the department is the regulating entity. However, as the regulating entity, the department is unable to determine what, if any, state laws may restrict the claimant's use of the property.

Conclusions

The claim does not identify any state laws that restrict the use of the claimant's property, nor has the claimant described a use of the property that is restricted by state law. The claimant acquired the subject property on October 19, 1992, after the establishment of the statewide planning goals and their implementing statutes and rules. Based on the record currently before the department, it cannot be determined if amendments to the statewide planning goals and changes to their implementing statutes and rules enacted after the claimant's acquisition of the subject property restrict the use of the claimant's real property.

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, Howard Meredith, demands \$350,000 in compensation. The claim does not provide an estimate of value of the property without the current land use restrictions nor does it state the value of the property with current land use restrictions. The claim includes no appraisals.

Conclusions

As determined in Section V.(2) above, the claimant has not identified any laws enforced by the Commission or the department that have restricted the use of the subject property. Without such identification, it is impossible to determine that any laws enforced by the Commission or the department have had the effect of reducing the fair market value of the property.

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 generally based on “all land use regulations and restrictions burdening Mr. Meredith’s property” since Mr. Meredith acquired the property in 1992. No state laws are specified in the claim, nor can the department determine from the claim that any state laws restrict the claimant’s use of his property. As a result, the department is unable to determine whether one or more of the exemptions under ORS 197.352 may apply.

Conclusions

Without a specific proposed use or an indication of the state laws that are the basis for the claim, it is impossible 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.

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 record for this claim, the claimant has not established that any state laws restrict the use of or reduce the value of the subject property.

Conclusion

Based on the record before the department, the claimant, Howard Meredith, has not established that he is entitled to relief under ORS 197.352(1). Therefore, this claim is denied.

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.