

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 118448
(BALLOT MEASURE 37) OF)
Martha Dodds and Thomas K. Dodds, CLAIMANTS)

Claimants: Martha Dodds and Thomas K. Dodds (the Claimants)

Property: Tax lot 400, Township 3S, Range 1E, Section 28C, Clackamas County
(the property)

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

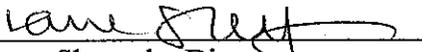
Claimants submitted the Claim to the State of Oregon under ORS 197.352. Under OAR 125-145-0010 *et seq.*, the Department of Administrative Services (DAS) referred the Claim to the Department of Land Conservation and Development (DLCD) as the regulating entity. This order is based on the record herein, 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

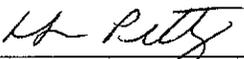
The Claim is denied as to laws administered by DLCD and the Land Conservation and Development Commission (LCDC) for the reasons set forth in the DLCD Report.

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 27th day of March, 2006.

FOR the DEPARTMENT OF
ADMINISTRATIVE SERVICES:


Dugan Petty, Deputy Administrator
DAS, State Services Division
Dated this 27th 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 27, 2006

STATE CLAIM NUMBER: M118448

NAMES OF CLAIMANTS: Martha Dodds and Thomas K. Dodds

MAILING ADDRESS: Martha Dodds
2030 North Holly Street
Canby, Oregon 97013

Thomas K. Dodds
1882 North Holly Street
Canby, Oregon 97013

PROPERTY IDENTIFICATION: Township 3S, Range 1E, Section 28C,
Tax lot 400
Clackamas County

OTHER CONTACT INFORMATION: John Pinkstaff
Ramis Crew Corrigan LLP
1727 Northwest Hoyt Street
Portland, OR 97209

OTHER INTEREST IN PROPERTY: IFA Nurseries
136 Northwest Territorial Road
Canby, Oregon 97013

DATE RECEIVED BY DAS: May 17, 2005

180-DAY DEADLINE: April 1, 2006¹

I. SUMMARY OF CLAIM

The claimants, Martha Dodds and Thomas K. Dodds, seek compensation in the amount of \$3,626,250 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 claimants desire compensation or the ability to divide the 19.45-acre property in parcels as small as approximately 7,000-square-

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).

feet and to develop a residential dwelling on each parcel. The property is located at 2030 North Holly Street, near Canby, Oregon. (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 claimants' use of private real property. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS RECEIVED

On June 23, 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, evidence or information were received in response to the 10-day notice.² The comment is relevant to whether the restriction of the claimants' use of the property reduces the fair market value of the property. The comments have been considered by the department in preparing this report.

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 17, 2005, for processing under OAR 125, division 145. The claim indicates that zoning and subsequent regulations prevent land division and development for urban residential use 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 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.)

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.

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 of 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

Claimant Martha Dodds acquired a one-half interest in the subject property on February 10, 1956, as reflected by a Warranty Deed included with the claim. Claimant Thomas K. Dodds acquired a one-half interest in the subject property on June 17, 1987, as evidenced by a Warranty Deed included with the claim. A September 6, 2005, Title Report demonstrates that Martha Dodds and Thomas K. Dodds are the current owners of the subject property.

Conclusions

The claimants, Martha Dodds and Thomas K. Dodds, are “owners” of the subject property, as that term is defined by ORS 197.352(11)(C). Martha Dodds is an owner as of February 10, 1956. Thomas K. Dodds is an owner as of June 17, 1987. Martha Dodds is a “family member” of Thomas K. Dodds, as that term is defined in ORS 197.352(11)(A).

2. The Laws that are the Basis for the Claim

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

Findings of Fact

The claim states, “The original R-20 zoning and subsequent zoning regulations prevent land division and lot development for urban residential use.” The property is currently zoned Rural Residential Farm Forest-5 acre minimum (RRFF-5) by Clackamas County and has a minimum lot size of five acres. The property is in Clackamas County and within the Canby Urban Growth Boundary (UGB).

The information contained in the "Calculation of Estimated Lost Value" included with the claim indicates the claimants' desired use of the property is "low density residential" development, defined as lots with a minimum size of approximately 7,000 square feet.

Zoning allocations for properties within a UGB are assigned by the governing jurisdiction - in this case, Clackamas County - addressing local conditions including, but not limited to, available infrastructure and services and forecasted population and economic growth. Neither the Commission nor the department enforces laws that require specific zoning of the subject property. Rather, any restriction on dividing and developing the property attributable to the property's zoning is based on restrictions imposed by the County.

Conclusions

The claim does not identify any state law that restricts the use of the claimants' property. Because the property is located within the City of Canby UGB, Clackamas County has jurisdictional authority over the property's zoning and use. Based on the record before the department, neither the Commission nor the department has enforced any laws that restrict the use of the claimants' real property.

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 there has been a reduction in the fair market value of the property of \$3,626,250 based on calculations apparently performed by the claimant. No appraisal was provided regarding the reduction in the fair market value.

Conclusions

Although the claim includes an estimate of an alleged reduction in value due to state land use regulations, as explained in Section V.(2) above, the claimants have not identified any state laws that have restricted the use of the subject property. Accordingly, the claim has not identified any state laws that have reduced 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 refers the Clackamas County's RRFF-5 zone applied on August 23, 1979. Based on the record, the claim does not identify state laws enforced by the Commission or the department that restrict the use of the subject property.

Conclusions

The claim does not identify any state laws enforced by the Commission or the department that restrict the use of the subject property, and the department is unable to identify a relevant state law. Therefore, the question whether state laws are exempt under ORS 197.352(3) is inapplicable to this 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 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 allowed at the time the present owner acquired the property. The Commission has by rule 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 claimants have not established that any state laws enforced by the Commission or the department restrict the use of the claimants' private real property in a manner that reduces the fair market value of the property.

Conclusion

Based on the record before the department, the claimants Martha Dodds and Thomas K. Dodds have not established that they are entitled to relief under ORS 197.352(1) as a result of state land use regulations that have reduced the value of the claimants' property. Neither the Commission nor the department enforces laws that require specific zoning of the subject property. Therefore, this claim is denied.

VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on October 21, 2005. OAR 125-145-0100(3), provided an opportunity for the claimants or the claimants' 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.