

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 121639
(BALLOT MEASURE 37) OF)	
Gavin Rajnus, LLC, CLAIMANT)	

Claimant: Gavin Rajnus, LLC (the Claimant)

Property: Township 40S, Range 11E, No Section, Tax lot 6001
Township 40S, Range 11E, Section 24, Tax lot 801
Township 40S, Range 11E, Section 36, Tax lot 100
Klamath County (the property)

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

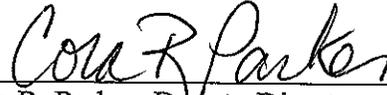
Claimant submitted the Claim to the State of Oregon under ORS 197.352. Under OAR 125-145-0010 *et seq.*, the Department of Administrative Services (DAS) referred the Claim to the Department of Land Conservation and Development (DLCD) as the regulating entity. This order is based on the record herein,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

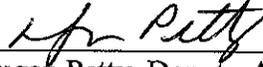
FOR DLCD AND THE LAND
CONSERVATION AND DEVELOPMENT
COMMISSION:
Lane Shetterly, Director



Cora R. Parker, Deputy Director
DLCD

Dated this 7th day of June, 2006.

FOR the DEPARTMENT OF
ADMINISTRATIVE SERVICES:



Dugan Petty, Deputy Administrator
DAS, State Services Division

Dated this 7th day of June, 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.

ORS 197.352 (BALLOT MEASURE 37) CLAIM FOR COMPENSATION
OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
Final Staff Report and Recommendation

June 7, 2006

STATE CLAIM NUMBER: M121639

NAME OF CLAIMANT: Gavin Rajnus, LLC

MAILING ADDRESS: 30485 Transformer Road
Malin, Oregon 97632

PROPERTY IDENTIFICATION: Township 40S, Range 11E, No Section
Tax lot 6001

Township 40S, Range 11E, Section 24
Tax lot 801

Township 40S, Range 11E, Section 36
Tax lot 100

Klamath County

OTHER CONTACT INFORMATION: Donald A. Rajnus (agent)
30485 Transformer Road
Malin, Oregon 97632

DATE RECEIVED BY DAS: July 29, 2005

180-DAY DEADLINE: June 13, 2006¹

I. SUMMARY OF CLAIM

The claimant, Gavin Rajnus, LLC, seeks compensation in the amount of \$9 million for the reduction in fair market value as a result of land use regulations that are alleged to restrict the use of certain private real property. The claimant desires compensation or the right to divide and develop the 1,868.16-acre² property for residential use. No street address was provided for the subject property, which is located near Malin in Klamath County. (See claim.)

¹ This date reflects 180 days from the date the claim was submitted, as extended by the 139 days that all timelines under Measure 37 were suspended during the pendency of *MacPherson v. Dept. of Admin. Svcs.*, 340 Or 117 (2006).

² A current tax map shows that the subject property, tax lot 6001, is 1309.64 acres. While the claim identifies only tax lot 6001 as the subject property, information in the claim indicates that the claimant may have intended to include tax lot 801 (Township 40S, Range 11E, Section 24) and tax lot 100 (Township 40S, Range 11E, Section 36)

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 the claimant's desired use of the subject property was prohibited under the laws in effect when the claimant acquired the property in 1999. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On September 29, 2005, pursuant to Oregon Administrative Rules (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.

The comment does not address whether the claim meets the criteria for relief under ORS 197.352. Comments concerning the effects a use of the subject property may have on surrounding areas are generally 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 waive 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 Measure 37 (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 Measure 37 (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 July 29, 2005, for processing under OAR 125, division 145. The claim identifies provisions of Goal 5 (Natural Resources, Scenic and Historic Areas and Open Spaces), ORS 197, OAR 660 and Klamath County zoning ordinances as the basis for the

in the claim. Tax lot 801 is 78.85 acres. Tax lot 100 is 479.67 acres. Both are adjacent to tax lot 6001. This report considers tax lots 6001, 801 and 100 as the subject property, which totals 1,868.16 acres.

claim. Only laws that were enacted or adopted prior to December 2, 2004, are the basis for this claim.

Conclusions

The claim has been submitted within two years of the effective date of Measure 37 (December 2, 2004), based on land use regulations enacted or 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, Gavin Rajnus, LLC,³ acquired the subject property on April 8, 1999, as reflected by a bargain and sale deed included with the claim.⁴ The Klamath County Assessor’s Office confirms claimant’s current ownership of the subject property.

Conclusions

The claimant, Gavin Rajnus, LLC, is an “owner” of the subject property as that term is defined by ORS 197.352(11)(C), as of April 8, 1999. The claimant’s agent asserts a family ownership date of March 13, 1969, as reflected by warranty deeds included with the claim.⁵ However, an “owner” that is a corporate entity cannot claim an individual as a “family member,” as that term is defined in ORS 197.352(11)(A). Therefore, none of the individuals who transferred the subject property to Gavin Rajnus, LLC can be considered a “family member” of Gavin Rajnus, 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.

³ Gavin Rajnus, LLC is a domestic limited liability company registered with the Oregon Secretary of State.

⁴ However, the deed does not include property descriptions for tax lots 6001 and 100 to document the claimant’s acquisition of these tax lots in 1999.

⁵ Deeds included with the claim indicate that in 1969, a Rajnus family partnership acquired an interest in the property. That partnership transferred the property to Donald Rajnus and one brother in 1994, and the two of them transferred the property to Donald Rajnus and his wife, Sharon in 1995. They then created Gavin Rajnus, LLC and transferred the property to that LLC on April 8, 1999.

Findings of Fact

The claim indicates that provisions of Goal 5, ORS 197, OAR 660 and Klamath County zoning ordinances prevent the claimant from dividing and developing the subject property for residential use.⁶

The claim is based generally on Klamath County's current Forestry/Range (FR) and Big Game Habitat Overlay zones and the applicable provisions of state law that require such zoning. The claimant's property is zoned FR, which is a mixed agricultural and forest land zone, as required by Goal 4 and the implementing provisions of OAR 660, division 6 (effective on February 5, 1990), subsequently amended on March 1, 1994, to comply with the provisions of House Bill 3661 (Chapter 792, Oregon Laws 1993).

Under OAR 660-006-0050, all the uses permitted under Goals 3 and 4 are allowed in mixed agriculture and forest zones except that for dwellings, either the Goal 3 or 4 standards are applicable based on the predominant use of the tract on January 1, 1993.⁷ 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 Goal 3 and OAR 660, division 33, or forest zone provisions required by Goal 4 and OAR 660, division 6.

In addition, the claimant's property is in a Big Game Habitat Overlay zone, as required by Goal 5, in accordance with ORS 215 and OAR 660, divisions 16, and 23, because the claimant's property is "wildlife habitat" as defined by Goal 5. Goal 5 became effective on January 25, 1975, and required that habitat lands as defined by the Goal be zoned for habitat protection pursuant to ORS 215. The administrative rule implementing Goal 5 and OAR 660, division 16, became effective on May 18, 1981. OAR 660, division 23 (Procedures and Requirements for Complying with Goal 5, including Section 0110, Wildlife Habitat), became effective on September 1, 1996.

Conclusions

The current zoning requirements, minimum lot size and dwelling standards established by Goals 3, 4 and 5 and provisions applicable to land zoned forest or agriculture in ORS 215 and OAR 660, divisions 6, 16, 23, and 33, were all enacted or adopted before claimant, Gavin Rajnus, LLC, acquired the subject property on April 8, 1999. These land use regulations do not allow the claimant's desired division and development of the subject property. Laws enacted or adopted since the claimant acquired the subject property in 1999 do not restrict the claimant's desired use of the property relative to when the claimant acquired it in 1999.

⁶ The claim cites ORS 197 as restricting the use of the property, but does not establish how provisions of this law restrict the use of its property. On its face, that statute does not restrict the use of the subject property in a manner that reduces its fair market value.

⁷ No information was provided to the department regarding the predominant use of the subject property on January 1, 1993.

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 claim includes an estimate of \$9 million as the reduction in the subject property’s fair market value due to current regulations. This amount is based on the claimant’s own assessment.

Conclusions

As explained in Section V.(1) of this report, the claimant is Gavin Rajnus, LLC, which acquired the subject property on April 8, 1999. No state laws enacted or adopted since the claimant acquired the subject property restrict the use of the property relative to the uses allowed in 1999. Therefore, the fair market value of the subject property has not been reduced 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 state land use regulations that restrict the use of the subject property, including applicable provisions of Goals 3, 4 and 5 and OAR 660, divisions 6, 16, 23, and 33, which Klamath County has implemented through its FR and Big Game Habitat Overlay zones. As set forth in Section V.(2) of this report, all of these state land use regulations were in effect when the claimant acquired the property in 1999.

Conclusions

All of the state land use regulations that restrict the claimant’s desired use of the subject property were in effect when the claimant acquired the property. Therefore, these state land use regulations are exempt under ORS 197.352(3)(E), which exempts laws in effect when the claimant acquired the subject 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 one or more laws that restrict 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 of the

department 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 do not restrict the claimant's desired use of the subject property relative to what was permitted when the claimant acquired it in 1999 and do not reduce the fair market value of the property. All state laws restricting the use of the subject property are exempt under ORS 197.352(3)(E).

Conclusions

Based on the record and the foregoing findings and conclusions, the claimant has not established that it is entitled to relief under ORS 197.352(1) as a result of land use regulations enforced by the Commission or the department. Therefore, the department recommends that this claim be denied.

VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on May 23, 2006. 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.