

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 122036
(BALLOT MEASURE 37) OF)	
Clarice Fern Wilde, CLAIMANT)	

Claimant: Clarice Fern Wilde (the Claimant)

Property: Township 15S, Range 13E, Section 6D, Tax lot 7000, Deschutes 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 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.

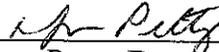
FOR DLCD AND THE LAND
CONSERVATION AND DEVELOPMENT
COMMISSION:



Lane Shetterly, Director
DLCD

Dated this 3rd day of July, 2006.

FOR the DEPARTMENT OF
ADMINISTRATIVE SERVICES:



Dugan Petty, Deputy Administrator
DAS, State Services Division

Dated this 3rd day of July, 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**

July 3, 2006

STATE CLAIM NUMBER: M122036

NAME OF CLAIMANT: Clarice Fern Wilde

MAILING ADDRESS: 7475 Northwest Eagle Drive
Redmond, Oregon 97756

PROPERTY IDENTIFICATION: Township 15S, Range 13E, Section 6D
Tax lot 7000
Deschutes County

OTHER CONTACT INFORMATION: Edward P. Fitch
PO Box 457
Redmond, Oregon 97756

OTHER INTEREST IN PROPERTY: James A. Smith
Esther L. Smith
Pennie S. Simpson

DATE RECEIVED BY DAS: August 24, 2005

180-DAY DEADLINE: July 9, 2006¹

I. SUMMARY OF CLAIM

The claimant, Clarice Fern Wilde, seeks compensation in the amount of \$600,000 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 her 20-acre property into 2 to 5-acre parcels and to develop a dwelling on each parcel. The subject property is located at 1700 NE Helmholtz Way, near Redmond, in Deschutes 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 this claim is not valid because the claimant's

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).

desired use of the subject property was prohibited under the laws in effect when the claimant acquired the property in 2003. (See the complete recommendation in Section VI of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On September 23, 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, no written comment, evidence or information was received in response to the 10-day notice.

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 August 24, 2005, for processing under OAR 125, division 145. The claim identifies the statewide planning goals and ORS 215 as the basis for the 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 the Measure (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, Clarice Fern Wilde, first acquired an interest in the subject property on January 26, 1968, with her now ex-husband Carl Smith, as reflected by a warranty deed included with the claim. The claim includes eight subsequent deeds affecting this property and transferring ownership between various individuals. A table of property transactions is provided below.

Ownership Information for Claim M122036

Date	Ownership from:	Ownership to:	Document
January 26, 1968	R.V. and Margaret Jahns	Carl Smith and Clarice Fern Smith	Warranty Deed
September 4, 1980	Clarice Fern Smith (Wilde)	Carl Smith	Warranty Deed
April 14, 1993	Peggy J. Smith	James A. Smith	Bargain and Sale Deed
September 30, 1995	Carl H. Smith and Bonnie Smith	Pennie Susan Walker, Richard D. Wilde, C. Fern Wilde and James A. Smith	Special Warranty Deed
September 29, 1995	Richard D. Wilde and C. Fern Wilde	Pennie Susan Walker and James A. Smith	Statutory Bargain and Sale Deed
November 21, 1995	James A. Smith and Pennie S. Walker	Pennie Susan Walker, Richard D. Wilde, C. Fern Wilde, James A. Smith and Esther L. Smith	Bargain and Sale Deed
June 30, 2001	Pennie Susan Walker, Richard D. Wilde, C. Fern Wilde, James A. Smith and Esther L. Smith	James A. Smith and Pennie S. Walker	Statutory Bargain and Sale Deed
March 21, 2003	James A. Smith	Pennie S. Walker	Bargain Sale Deed
April 11, 2003	Michael Walker	Pennie Susan Walker	Statutory Bargain and Sale Deed
March 21, 2003	Pennies S. Walker	Pennie Susan Walker, C. Fern Wilde, James A. Smith and Esther L. Smith	Statutory Bargain and Sale Deed

These deeds establish that the claimant did not retain an ownership interest in the subject parcel when she conveyed it to others in 1980, in 1995 and again in 2001. The claimant regained an ownership interest in the subject property on March 21, 2003. There is no evidence in the claim

to establish a family relationship among any of the present or immediate past owners of the subject property. The Deschutes County Assessor's Office confirms the claimant's current ownership of the subject property.

Conclusions

The claimant, Clarice Fern Wilde, is an "owner" of the subject property as that term is defined by ORS 197.352(11)(C), as of March 21, 2003. The claim does not establish any continuous family ownership of the subject property.

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 indicates that the claimant desires to divide her 20-acre property into 2 to 5-acre parcels and to develop a dwelling on each parcel. It identifies the statewide planning goals and provisions of ORS 215 as preventing the desired use.

The claim is based on Deschutes 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 Statewide Planning Goal 3 (Agricultural Lands), in accordance with ORS 215 and OAR 660, division 33, 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 and 215.780 and OAR 660, division 33, enacted or adopted pursuant to Goal 3, prohibit the division of EFU-zoned land into parcels less than 80 acres and establish standards for development of dwellings on existing or proposed parcels on that land.

ORS 215.780 establishes an 80-acre minimum size for the creation of new lots or parcels in EFU zones and became effective on November 4, 1993 (Chapter 792, Oregon Laws 1993). ORS 215.263 (2005 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. The Land Development and Conservation Commission (the Commission) subsequently adopted amendments to comply with House Bill 3326 (Chapter 704, Oregon Laws 2001, effective on January 1, 2002), which were effective on May 22, 2002. (See administrative rule history for OAR 660-033-0100, -0130 and -0135.)

When the claimant acquired the subject property on March 21, 2003, it was subject to the state land use regulations currently in effect.

Conclusions

The current zoning requirements, minimum lot size and dwelling standards established by Goal 3 and provisions applicable to land zoned EFU under ORS 215 and OAR 660, division 33, were all enacted or adopted before the claimant, Clarice Fern Wilde, most recently acquired an interest in the subject property on March 21, 2003. These land use regulations do not allow the desired division and development of the subject property. No state land use laws enacted or adopted since the claimant acquired an interest in the subject property in 2003 restrict the claimant's desired use of the property relative to uses allowed when she acquired it.

3. Effect of Regulations on Fair Market Value

In order to establish a valid claim, ORS 197.352(1) requires that the land use regulation(s) (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 \$600,000 as the reduction in the subject property's fair market value due to the regulations. This amount is based on the claimant's assessment of the subject property's fair market value.

Conclusions

As explained in Section V.1 of this report, the claimant, Clarice Fern Wilde, acquired the subject property on March 21, 2003. No state laws enacted or adopted since the claimant acquired an interest in the subject property restrict the use of the property relative to the uses allowed when she acquired it in 2003. 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 Goal 3, ORS 215 and OR 660, division 33. As set forth in Section V.(2) of this report, all of these state land use regulations restricting the claimant's desired use of the subject property were in effect when she acquired the property in 2003.

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, all of 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 present 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 she acquired the property in 2003 or 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 she 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 June 14, 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.