

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 122096
(BALLOT MEASURE 37) OF)	
Westenskow Farms, Inc., CLAIMANT)	

Claimant: Westenskow Farms, Inc. (the Claimant)

Property: Township 2S, Range 38, Section 15, Tax lot 300
Township 2S, Range 38, Section 16, Tax lot 3800
Union 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.

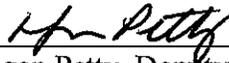
This Order is entered by the Deputy Director of the DLCD as a final order of DLCD and the Land Conservation and Development Commission under ORS 197.352, OAR 660-002-0010(8), and OAR chapter 125, division 145, and by the Deputy Administrator for the State Services Division of the DAS as a final order 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 July, 2006.

FOR the DEPARTMENT OF
ADMINISTRATIVE SERVICES:



Dugan Petty, Deputy Administrator
DAS, State Services Division
Dated this 7th 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 7, 2006

STATE CLAIM NUMBER: M122096

NAME OF CLAIMANT: Westenskow Farms, Inc.

MAILING ADDRESS: 1011 Mercita Drive
Walla Walla, Washington 99362

PROPERTY IDENTIFICATION: Township 2S, Range 38, Section 15
Tax lot 300

Township 2S, Range 38, Section 16
Tax lot 3800
Union County

OTHER CONTACT INFORMATION: John Collins
P.O. Box 326
La Grande, Oregon 97850

OTHER INTEREST IN PROPERTY: Bingaman Farms
P.O. Box 509
Imbler, Oregon 97841

DATE RECEIVED BY DAS: August 29, 2005

180-DAY DEADLINE: July 14, 2006¹

I. SUMMARY OF CLAIM

The claimant, Westenskow Farms, Inc., seeks compensation in the amount of \$693,000 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 the 289.78-acre property into seven 40-acre parcels and to develop a

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).

dwelling on each parcel. The subject property is located north of the City of La Grande, south of Starr Lane, between Mt. Glen Road and Hunter Road, in Union 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 not valid and finds the claimant is not entitled to relief under Ballot Measure 37. Based on the advice of counsel, department staff recommends that this claim be denied based on the lack of legal authority of the claimant, under the laws governing Oregon business corporations, to file and pursue the claim. Based on this determination, the department does not make any further evaluation or determination on the merits or substance of the claim.

III. COMMENTS ON THE CLAIM

Comments Received

On October 6, 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 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 (Ballot Measure 37). 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 August 29, 2005, for processing under OAR 125, division 145. The claim identifies the Union County Zoning Partition and Subdivision Ordinance (UCZPSO) 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 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, Westenskow Farms, Inc., acquired the northern portion of tax lot 300 on December 31, 1973, as reflected by a bargain and sale deed included with the claim; and acquired the southern portion of tax lot 300 and all of tax lot 3800 on March 26, 1974, as reflected by a grant deed included with the claim. On February 5, 1998, the claimant was administratively dissolved by the Oregon Secretary of State, Corporation Division (ORS 60.647 – 60.657) and remains dissolved as of the date of this report.²

Conclusions

The claimant, Westenskow Farms, Inc. is an “owner” of the subject property as that term is defined by ORS 197.352(11)(C), as of December 31, 1973, and March 26, 1974. The fact that the claimant was administratively dissolved in 1998 does not affect the claimant’s title to the properties. ORS 60.657(2) provides that the “Dissolution of a

² After notification was provided pursuant to OAR 125-145-0080, the department received a phone message on July 5, 2006 and a comment e-mail on July 6, 2006, asserting that the corporation had been dissolved in 1998. The Corporation Division confirms that the claimant corporation was administratively dissolved in 1998. ORS 60.654 allows for the reinstatement of administratively dissolved corporations within five years after the date of dissolution. The Corporation Division has no record that any effort was made within that five-year period, or since, to reinstate the claimant corporation.

corporation does not: (a) Transfer title to the corporation's property." However, the fact that the claimant corporation was dissolved limits its authority to act as an owner with regard to its property. ORS 60.651(3) provides:

"A corporation administratively dissolved continues its corporate existence but may not carry on any business except that necessary to wind up and liquidate its business and affairs under ORS 60.637, and notify claimants under ORS 60.641 and 60.644."

Based on the advice of counsel, the department finds that the filing and pursuit of this claim for compensation under Measure 37 is not within the scope of activities in which the claimant, as an administratively dissolved corporation, is permitted to engage. ORS 60.651(3) provides that an administratively dissolved corporation may only carry on those activities listed in ORS 60.637 that are "necessary" to wind up and liquidate its business and affairs. The filing of this claim under Measure 37, eight years after the corporation was administratively dissolved, is not "necessary" to the winding up of the corporation's business and affairs. Such activity is in the nature of ongoing business activity, and is not the limited type of activity in which an administratively dissolved corporation is authorized to engage for the purpose of winding up and liquidating its business and affairs.

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 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.

Not Applicable. (See Section V.1, above.)

3. Effect of Regulations on Fair Market Value

In order to establish a valid claim, Section 1 of Ballot Measure 37 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."

Not Applicable. (See Section V.1, above.)

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.

Not Applicable. (Section Section V.1, above.)

VI. FORM OF RELIEF

The claimant is not entitled to relief under Ballot Measure 37. Department staff recommend that this claim must be denied based on the lack of legal authority of the claimant, under the laws governing Oregon business corporations, to file and pursue the claim. Based on this determination, the department does not make any further evaluation or determination on the merits or substance of the claim.

Not Applicable. (See Section V.1, above.)

VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on June 21, 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.