

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 122267
(BALLOT MEASURE 37) OF)
Fred and Judy Hall, CLAIMANTS)

Claimants: Fred and Judy Hall (the Claimants)

Property: Township 2N, Range 2W, Section 10, Tax Lot 200, Multnomah 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

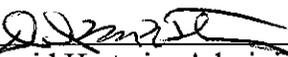
The Claim is denied as to laws administered by DLCD and the Land Conservation and Development Commission (LCDC) for the reasons set forth in the DLCD Report.

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 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 18th day of July, 2006.

FOR the DEPARTMENT OF
ADMINISTRATIVE SERVICES:


David Hartwig, Administrator
DAS, State Services Division
Dated this 18th 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 18, 2006

STATE CLAIM NUMBER: M122267

NAMES OF CLAIMANTS: Fred and Judy Hall

MAILING ADDRESS: 23425 Northwest Moreland Road
North Plains, Oregon 97133

PROPERTY IDENTIFICATION: Township 2N, Range 2W, Section 10
Tax Lot 200
Multnomah County

OTHER CONTACT INFORMATION: Bob Harris
380 Southwest 5th Street #122
Madras, Oregon 97741

DATE RECEIVED BY DAS: September 9, 2005

180-DAY DEADLINE: July 25, 2006¹

I. SUMMARY OF CLAIM

The claimants, Fred and Judy Hall, seek compensation in the amount of \$750,000 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 claimants desire compensation or the right to adjust the common property line between the subject one-acre developed lot and an adjacent parcel also owned by the claimant, but which is not a part of this claim, in order to increase the property to two acres. The subject property is located at 23425 NW Moreland Road in the West Hills area of Multnomah 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 because neither the Land Conservation and Development Commission (the Commission) nor the department has enforced laws that restrict the claimants' use of the 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 that all timelines under Measure 37 were suspended during the pendency of *MacPherson v. Dept. of Admin. Svcs.*, 340 Or 117 (2006).

III. COMMENTS ON THE CLAIM

Comments Received

On October 10, 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 is relevant as to whether the restriction of the claimants' use of the subject property reduces the fair market value of the property, whether statewide planning goals apply, whether waivers are transferable and whether state agencies can waive statutes. The comment has been considered by the department in preparing this report. (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 September 9, 2005, for processing under OAR 125, division 145. The claim identifies all “. . . statutes, [rules and goals] . . . enacted after August 1971 . . . regulating the use of [the subject property] or any interest therein”² as the basis for the claim.³ Only laws that were enacted or adopted prior to December 2, 2004, are the basis for this claim.

² Claimant Fred Hall acquired the subject property on July 21, 1972, as described in Section V.1 of this report.

³ The claim mentions local government land use regulations and fees as well as state laws and administrative rules regulating farming and forest practices. The claim does not provide any information as to how these regulations restrict the claimants' use of the subject property in a manner that reduces its fair market value.

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

Claimant Fred Hall acquired the subject property on July 21, 1972, as reflected by a deed of personal representative included with the claim.⁴ He transferred an undivided interest in the subject property to claimant Judy Hall on February 28, 1990, as reflected by a warranty deed included with the claim. An undated title report submitted with the claim establishes the claimants’ current ownership of the subject property.

Conclusions

The claimants, Fred and Judy Hall, are “owners” of the subject property as that term is defined by ORS 197.352(11)(C). Fred Hall acquired the property on July 21, 1972. Judy Hall acquired an interest in the subject property on February 28, 1990.

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 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 claimants desire to adjust the size of two contiguous parcels by the relocation of a common property line between a 1-acre developed parcel subject to this claim and an adjacent 154-acre parcel owned by the claimants but not a part of the claim. The purpose of the property line adjustment is to expand the one-acre parcel by one acre (i.e., making it a two-acre developed lot). The claim asserts that the property line adjustment is requested in order to “make this a legal lot of record.”⁵

⁴ The claim asserts that Fred Hall acquired the subject property in August 1971. However, the deed he provided with the claim establishes that he acquired the subject property on July 21, 1972.

⁵ The current zoning requires an 80-acre minimum lot size. As such, the assertion that the desired boundary line adjustment (adding one acre to the subject property) “would make this a legal lot” is not supported.

The claim is based on Multnomah County's current commercial forestry (CFU) zone⁶ and other unspecified county ordinances that, according to the claim, "place a non-conforming use on the property." The claim states that the property was non-conforming as of the date of its creation due to a Multnomah County "mistake."⁷ The claim does not indicate any state laws or rules that further contributed to the initial "non-conforming" status of the subject property or that otherwise restrict the current use of the property due to its non-conforming status.⁸

Conclusions

The claim does not establish any state laws that currently restrict the desired use of the claimants' property. Based on the record before the department, neither the Commission nor the department enforced any laws that restrict the desired 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 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 \$750,000 as the reduction in the subject property's fair market value due to all regulations enacted or adopted since the claimants acquired the property. The claim includes an additional estimate of "\$200,000 or less" due to the "present zoning or ordinance that places a non-conforming use on the property." The claim does not provide an explanation as to how these estimates were determined.

Conclusions

As explained in Section V.(2) of this report, the claimants have not established that any state laws restrict the desired use of the subject property. Accordingly, the department cannot determine that any laws enforced by the Commission or the department have had the effect of reducing the fair market value of the subject property.

⁶ The claimants' property is zoned CFU with an 80-acre minimum lot size, as required by Goal 4, in accordance with ORS 215 and OAR 660, division 6, because the claimants' property is "forest land" under Goal 4. However, this claim is not based on the applicable provisions of state law that require such zoning; it is based on county land use restrictions regarding non-conforming uses and property line adjustments.

⁷ The claimants desire to expand the subject property to two acres in order to "correct" a 1972 Multnomah County "mistake" whereby, according to the claim, the county allowed the division of this 1-acre property from a 154-acre parcel that, at the time, was zoned with a 2-acre minimum lot size. The claimant subsequently obtained a building permit and built a home on the one-acre lot. The claim asserts that the claimants "did not catch [the county] mistake until a few years ago."

⁸ Under ORS 215.130(5) and other state laws that regulate "non-conforming uses," the lawful use of any building, structure or land at the time of the enactment or amendment of any zoning ordinance or regulation may be continued, and alteration of any such use may be permitted by the local government, subject to provisions in that statute.

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 does not identify any state land use regulations enacted or adopted since the claimants acquired the subject property that restrict the desired use of the property relative to what would have been allowed when they acquired it in 1972 (Fred Hall) or 1990 (Judy Hall).

Conclusions

As explained in Section V.(2) of this report, the claimants have not established that any state laws restrict their use of the subject property. Accordingly, the department cannot determine that any exemptions under ORS 197.352(3) apply 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 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 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 subject property and have the effect of reducing its fair market value.

Conclusions

Based on the record and the foregoing findings and conclusions, the claimants have not established that they are 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 July 3, 2006. 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.