

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)
COMPENSATION UNDER ORS 197.352)
(BALLOT MEASURE 37) OF)
Velda Dickey, CLAIMANT)

FINAL ORDER
CLAIM NO. M 122564

Claimant: Velda Dickey (the Claimant)

Property: Tax lot 501, Township 38, Range 1E, Section 32, Jackson 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.

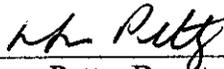
FOR DLCD AND THE LAND
CONSERVATION AND DEVELOPMENT
COMMISSION:
Lane Shetterly, Director



George Naughton, Deputy Director
DLCD

Dated this 24th day of March, 2006.

FOR the DEPARTMENT OF
ADMINISTRATIVE SERVICES:



Dugan Petty, Deputy Administrator
DAS, State Services Division

Dated this 24th 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 24, 2006

STATE CLAIM NUMBER: M122564

NAME OF CLAIMANT: Velda Dickey

MAILING ADDRESS: 900 Siskiyou Boulevard, #A-1
Medford, Oregon 97504

PROPERTY IDENTIFICATION: Township 38, Range 1E, Section 32
Tax lot 501

OTHER INTERESTS IN PROPERTY: Karl Douglas Olson
Olson Holdings, LLC
Olson Holdings II, LLC
900 Siskiyou Boulevard #A-1
Medford, Oregon 97504

Joy Olson
900 Siskiyou Blvd. #C-2
Medford, Oregon 97504

Rita D. Wagner
2723 Berkeley
Klamath Falls, Oregon 97601

Kathy M. Villa
William M. Dickey
Robert R. Dickey
Robert R. Dickey QTIP Trust
2 North Oakdale
Medford, Oregon 97501

DATE RECEIVED BY DAS: May 16, 2005

180-DAY DEADLINE: March 31, 2006¹

¹ This date reflects 180 days from the date the claim was submitted as extended by the xx 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).

I. SUMMARY OF CLAIM

The claimant, Velda Dickey, seeks compensation in the amount of \$30,000,000 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 claimant desires compensation or the right to develop the 69.5-acre property for commercial and/or residential uses. The property is located at the geographic coordinates listed above, near Medford, in Jackson 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 have enforced laws after May 12, 2005, when the claimant acquired the property that restrict the claimant's use of the subject real property. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On September 27, 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, no written comments were received in response to the 10-day notice.²

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.

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.

Findings of Fact

This claim was submitted to DAS on May 16, 2005, for processing under OAR 125 division 145. The claim identifies wetland protection statutes 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.)

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 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, Velda Dickey, acquired an undivided one-half interest in the subject property on December 7, 1961, as reflected by a Warranty Deed included with the claim. The claimant states “I currently own interests individually and through closely held entities (Olson Holdings, LLC and Olson Holdings II, LLC) owned by my three children... and myself.” A January 2, 1996, Bargain and Sale Deed submitted by the claimant’s son shows a transfer of all of the subject property (referred to in the Deed as Parcel No. 2 of Partition Plat No. P-127-1991) to Olson Holdings, LLC.³ On May 12, 2005, Olson Holdings, LLC transferred an interest in the property to Olson Holdings II, LLC and on the same day Olson Holdings II, LLC transferred its interest to Velda Dickey, as reflected by Bargain and Sale Deeds included in the claim. Information from the Jackson County Assessor’s Office indicates that Velda Dickey and Olson Holdings, LLC are the current owners of the subject property.

The claimant also indicates an ownership interest “due to being an income beneficiary of the Robert Dickey QTIP Trust,” created on January 27, 1995.

Conclusions

The claimant, Velda Dickey, is an “owner” of the subject property, as that term is defined by ORS 197.352(11)(C), as of May 12, 2005, when she acquired an interest in the property from

³ This document shows no evidence of being recorded. It may be the same document referred to on Jackson County Assessor’s website as document 1996-0007

Olson Holdings II, LLC. Olson Holdings, LLC, is an owner as well, but is not a claimant on this ORS 197.352 claim. Ms. Dickey did not acquire an ownership interest in the property as an income beneficiary of the Robert Dickey QTIP Trust.

Although a corporation can be a "family member" of an owner as that term is defined by ORS 197.352(11)(C), an "owner" that is a corporate entity cannot claim an individual as a "family member," as defined in ORS 197.352(11)(A). Therefore, Velda Dickey, who transferred all of her interest in the subject property into Olson Family Holdings, LLC, and Olson Holdings II, LLC, cannot be considered a "family member" of Olson Holdings, LLC, or Olson Holdings II, 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.

Findings of Fact

The claim states that Ms. Dickey intends a multipurpose use for the property, including commercial, highway service and possible residential use.

The claim is based, generally, on Jackson 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 Goal 3, in accord with OAR 660, division 33, and ORS 215 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, 215.780 and OAR 660, division 33, as applied by Goal 3, do not allow the subject property to be divided into parcels less than 80 acres and establish standards for allowing the existing or any proposed parcels to have farm or non farm dwellings on them.

ORS 215.780 established an 80-acre minimum size for the creation of new lots or parcels in EFU zones and became effective November 4, 1993 (Chapter 792, Oregon Laws 1993). ORS 215.263 (2003 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. Subsequent amendments

to comply with HB 3326 (Chapter 704, Oregon Laws 2001, and effective January 1, 2002,) were adopted by the Commission effective May 22, 2002. (See citations of administrative rule history for OAR 660-033-0100, 0130 and 0135.)

In addition to the standards for dwellings on agricultural land, OAR 660-033-120 and -130 list other uses that are allowed in agricultural zones, including commercial uses, and the establish the standards that apply to such uses. The property is also subject to these provisions.

The claimant acquired an interest in the subject property on May 5, 2005. The County's current EFU zoning and statutory restrictions applied to the subject property on that date.

Conclusions

The zoning requirements, minimum lot size and dwelling standards and allowed commercial uses established by Statewide Planning Goal 3 (Agricultural Lands) and provisions applicable to land zoned EFU in ORS 215 and OAR 660 division 33 were all enacted before Velda Dickey acquired ownership of the subject property in May 2005. Therefore, there is no restriction of the use of the property relative to the uses allowed when the property was acquired by Velda Dickey in 2005. In 2005, the property was subject to the requirements of the County's EFU zone, which were adopted pursuant to the provisions of Statewide Planning Goal 3, ORS 215, and OAR 660, division 33.

This report addresses only those state laws that are identified in the claim, or that the department is certain apply to the property based on the uses that the claimant has identified. There may be other laws that currently apply to the claimant's use of the property, and that may continue to apply to the claimant's use of the property, that have not been identified in the claim. In some cases it will not be possible to know what laws apply to a use of property until there is a specific proposal for that use. When the claimant seeks a building or development permit to carry out a specific use, it may become evident that other state laws apply to that use.

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 \$30,000,000 as the reduction in the property's fair market value, due to current regulations. This estimate is based on the claimant's "knowledge and belief."

Conclusions

As explained in Section V.(1) of this report, Velda Dickey is an owner of the subject property who acquired the property on May 12, 2005. Under ORS 197.352, the claimant is not due

compensation because no land use regulations adopted since the claimant acquired the property on May 12, 2005 have been enacted that have the effect of reducing the fair market value of the property relative to uses permitted when she acquired the property. (See Section V.(2) of this report.)

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 land use regulations that do not restrict the use of the property relative to what would have been allowed in 2005 when the property was acquired by Ms. Dickey. These provisions include Statewide Planning Goal 3 (Agricultural Lands) and applicable provisions of ORS 215 and OAR 660 division 33 which Jackson County has implemented through its EFU zone. All of these laws are exempt under ORS 197.352(3)(E) because they were adopted prior to May 12, 2005 when the claimant acquired the property.

Conclusions

The general statutory, goal and rule restrictions on subdividing property for residential or recreational development and use of farm land apply to the claimant's use of the property and were in effect when the claimant acquired the property in 2005. They are, therefore, exempt under ORS 197.352(3)(E) and will continue to apply to the 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 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 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 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 claimant has not established that any state laws enforced by the Commission or the department restrict the use of her 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 acquired the property on May 12, 2005.

Conclusion

Based on the record, the claimant, Velda Dickey, has not established that she is entitled to relief under ORS 197.352(1). 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 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.