

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. M122725
(BALLOT MEASURE 37) OF)
William and Susan Steevens, CLAIMANTS)

Claimants: William and Susan Steevens (the Claimants)

Property: Township 25S, Range 13W, Section 29, Tax lot 300, Coos 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 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.

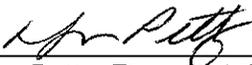
FOR DLCD AND THE LAND
CONSERVATION AND DEVELOPMENT
COMMISSION:


Lane Shetterly, Director

DLCD

Dated this 22nd day of August, 2006.

FOR the DEPARTMENT OF
ADMINISTRATIVE SERVICES:


Dugan Petty, Deputy Administrator

DAS, State Services Division

Dated this 22nd day of August, 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**

August 22, 2006

STATE CLAIM NUMBER: M122725

NAMES OF CLAIMANTS: William and Susan Steevens

MAILING ADDRESS: 91564 Spaw Lane
Coos Bay, Oregon 97420

PROPERTY IDENTIFICATION: Township 25S, Range 13W, Section 29
Tax lot 300
Coos County

DATE RECEIVED BY DAS: October 11, 2005

180-DAY DEADLINE: August 26, 2006¹

I. SUMMARY OF CLAIM

The claimants, William and Susan Steevens, seek compensation in the amount of \$1 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 claimants desire compensation or the right to divide the subject property into five-acre parcels and to develop a residential dwelling on each parcel, including a second "caretaker" dwelling on the existing parcel. The subject property is located at 91564 Spaw Lane, near Coos Bay, in Coos 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 June 26, 2006, 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 comments were 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 October 11, 2005, for processing under OAR 125, division 145. The claim identifies Coos County's industrial zone 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

Claimant William Steevens acquired the subject property on December 17, 1976, as reflected by a warranty deed included with the claim. According to county records, William Steevens transferred the subject property to himself and Susan Steevens on August 7, 2003. A September 29, 2005, title report submitted with the claim establishes the claimants' current ownership of the subject property.

Conclusions

Claimant William Steevens is an "owner" of the subject property as that term is defined in ORS 197.352(11)(C) as of December 17, 1976. Claimant Susan Steevens is an "owner" of the subject property as of August 7, 2003.

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 claim indicates that the subject property is zoned industrial. The claimants desire to divide the subject property into five-acre parcels and the right to build a residential dwelling on each parcel, including a second "caretaker dwelling" on the existing parcel.

The subject property is located within an Urban Unincorporated Community (UUC) in Coos County and is currently zoned industrial. According to the county, its industrial zoning district allows land divisions with no restrictions on minimum lot size, but does not allow residential dwellings except in conjunction with an industrial use.

In general, the zoning of a particular property within a UUC is determined by the county with land use jurisdiction over the property. In some circumstances, the Commission's rules or state statutes may apply to a local government decision regarding zoning, but usually, within a UUC, state laws do not restrict the use of real property. In this case, the claimants have not alleged how a specific state land use regulation restricts the use of real property and has the effect of reducing the fair market value of that real property.

Based on the information in the claim, the department has not identified any state laws that restrict the claimants' use of the subject property.

Conclusions

The claim does not establish any state laws that currently restrict the use of the claimants' property. Because the subject property is located within a UUC, neither the Commission nor the department enforces laws that require specific zoning of the property. Based on the record

