

BEFORE THE DEPARTMENT OF ADMINISTRATIVE SERVICES AND
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. M124323
(BALLOT MEASURE 37) OF)	
Willis Family, Inc.,)	
an Oregon corporation, CLAIMANTS)	

Claimants: Willis Family, Inc., an Oregon corporation (the Claimants)

Property: Township 2N, Range 11E, Section 30, Tax lot 902, Hood River 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 approved as to laws administered by DLCD and the Land Conservation and Development Commission (LCDC) for the reasons set forth in the DLCD Report, and subject to the following terms:

1. In lieu of compensation under ORS 197.352, the State of Oregon will not apply the following laws to Willis Family, Inc.'s development of a farm-related dwelling on the subject property: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, enacted or adopted after July 19, 1993. These land use regulations will not apply to Willis Family, Inc. only to the extent necessary to allow it to use the subject property for the use described in this report, and only to the extent that use was permitted when it acquired the property on July 19, 1993.
2. The action by the State of Oregon provides the state's authorization to Willis Family, Inc. to use the property for the use described in this report, subject to the standards in effect on July 19, 1993. On that date, the property was subject to compliance with Goal 3 and OAR 660, division 5, as implemented by Hood River County's acknowledged EFU zone, and the applicable provisions ORS 215 then in effect.

3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the subject property may not be used without a permit, license or other form of authorization or consent, the order will not authorize the use of the property unless Willis Family, Inc. first obtains that permit, license or other form of authorization or consent. Such requirements may include, but are not limited to: a building permit, a land use decision, a "permit" as defined in ORS 215.402 or 227.160, other permits or authorizations from local, state or federal agencies and restrictions on the use of the subject property imposed by private parties.

4. Any use of the property by Willis Family, Inc. under the terms of the order will remain subject to the following laws: (a) those laws not specified in (1) above; (b) any laws enacted or enforced by a public entity other than the Commission or the department; and (c) those laws not subject to ORS 197.352 including, without limitation, those laws exempted under ORS 197.352(3).

5. Without limiting the generality of the foregoing terms and conditions, in order for Willis Family, Inc. to use the subject property, it may be necessary for it to obtain a decision under ORS 197.352 from a city and/or county and/or metropolitan service district that enforces land use regulations applicable to the property. Nothing in this order relieves Willis Family, Inc. from the necessity of obtaining a decision under ORS 197.352 from a local public entity that has jurisdiction to enforce a land use regulation applicable to its use of the subject property.

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 125, division 145, and by the Director of the DAS as a final order of DAS under ORS 197.352, OAR 125, division 145, and ORS 293.

FOR DLCD AND THE LAND CONSERVATION
AND DEVELOPMENT COMMISSION:

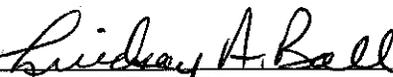
Lane Shetterly, Director



Cora R. Parker, Deputy Director
DLCD

Dated this 5th day of September, 2006.

FOR the DEPARTMENT OF ADMINISTRATIVE
SERVICES:



Lindsay A. Ball, Director
DAS

Dated this 5th day of September, 2006.

NOTICE OF RIGHT TO APPEAL OR OTHER JUDICIAL RELIEF

You are entitled, or may be entitled, to judicial remedies including the following:

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 197.352, 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)

FOR INFORMATION ONLY

The Oregon Department of Justice has advised the Department of Land Conservation and Development that “[i]f the current owner of the real property conveys the property before the new use allowed by the public entity is established, then the entitlement to relief will be lost.”

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. M124323
(BALLOT MEASURE 37) OF)
Norma Jean Willis, CLAIMANT)

Claimant: Norma Jean Willis (the Claimant)

Property: Township 2N, Range 11E, Section 30, Tax lot 902, Hood River 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 Director of the DAS as a final order of DAS under ORS 197.352, OAR chapter 125, division 145, and ORS chapter 293.

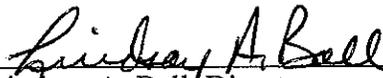
FOR DLCD AND THE LAND
CONSERVATION AND DEVELOPMENT
COMMISSION:
Lane Shetterly, Director



Cora R. Parker, Deputy Director
DLCD

Dated this 5th day of September, 2006.

FOR the DEPARTMENT OF
ADMINISTRATIVE SERVICES:



Lindsay A. Ball, Director
DAS

Dated this 5th day of September, 2006.

NOTICE OF RIGHT TO APPEAL OR OTHER JUDICIAL RELIEF

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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 197.352, 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)

ORS 197.352 (BALLOT MEASURE 37) CLAIM FOR COMPENSATION
OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
Final Staff Report and Recommendation

September 5, 2006

STATE CLAIM NUMBER: M124323

NAME OF CLAIMANT: Norma Jean Willis
Willis Family, Inc., an Oregon corporation¹

MAILING ADDRESS: 2385 Eastside Road
Hood River, Oregon 97031

PROPERTY IDENTIFICATION: Township 2N, Range 11E, Section 30
Tax lot 902
Hood River County

OTHER CONTACT INFORMATION: Stephen B. Anderson
PO Box 135
Mosier, Oregon 97040

OTHER INTEREST IN PROPERTY: Gary L. Willis
2385 Eastside Road
Hood River, Oregon 97031

Michael E. Willis
2385 Eastside Road
Hood River, Oregon 97031

DATE RECEIVED BY DAS: March 13, 2006

180-DAY DEADLINE: September 9, 2006

I. SUMMARY OF CLAIM

The claimants, Norma Jean Willis and Willis Family, Inc., seek compensation in the amount of \$32,067.90 for the reduction in fair market value as a result of land use regulations that are alleged to restrict their use of certain private real property. The claimants desire compensation or the right to establish a dwelling on the 26-acre subject property. The subject property is located at 3125 Fir Mountain Road, near Hood River, in Hood River County. (See claim.)

¹ Willis Family, Inc. is an active Oregon corporation according to the records of the Corporations Division of the Office of the Oregon Secretary of State.

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 valid as to Willis Family, Inc., and not valid as to Norma Jean Willis. Department staff recommends that, in lieu of compensation, the requirements of the following state laws enforced by the Land Conservation and Development Commission (the Commission) or the department not apply to Willis Family, Inc.'s establishment of a farm-related dwelling on the 26-acre subject property: applicable provisions of Statewide Planning Goal 3 (Agricultural Lands), ORS 215 and Oregon Administrative Rules (OAR) 660, division 33, enacted or adopted after July 19, 1993. These laws will not apply to Willis Family, Inc. only to the extent necessary to allow it to use the subject property for the use described in this report, and only to the extent that use was permitted when it acquired the property on July 19, 1993. The department acknowledges that under the standards that will continue to apply to Willis Family, Inc.'s use, that use may not be allowed. (See the complete recommendation in Section VI of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On July 18, 2006, 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.

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 March 13, 2006, for processing under OAR 125, division 145. The claim identifies ORS 197 and 215 and OAR 660 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 Norma Jean Willis is not a present owner of the subject property. Based on the information contained in the record for this claim, the present owner is Willis Family, Inc., which acquired the subject property on July 19, 1993. A recent tax statement/title report submitted with the claim confirms that Willis Family, Inc. is the current owner of the subject property.

Conclusions

Claimant Norma Jean Willis is not an “owner” of the subject property, and for this reason, the claim must be denied as to her. Claimant Willis Family, Inc. is a present owner of the subject property as that term is defined by ORS 197.352(11)(C), as of July 19, 1993.

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 claimants desire to establish a farm-related dwelling on the subject property and that the desired use is not allowed under current land use regulations.

The claim is based generally on the applicable provisions of state law that require Exclusive Farm Use (EFU) zoning and restrict uses on EFU-zoned land. The subject property is zoned EFU by Hood River County, as required by Goal 3, in accordance with ORS 215 and OAR 660, division 33, because the property is “agricultural land” as defined by Goal 3.² Goal 3 became

² The subject property is “agricultural land” because it contains Natural Resources Conservation Service Class I–IV soils.

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 215.284 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.

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 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.)

At the time Willis Family, Inc. acquired the subject property, it was subject to Hood River County's acknowledged EFU zone. When Willis Family, Inc. acquired the subject property, the claimants' desired use of the property would have been governed by the county's acknowledged EFU zone and the applicable provisions of ORS 215 then in effect.

ORS 215.283(1)(f) (1991 edition) generally allowed farm dwellings "customarily provided in conjunction with farm use." Non-farm dwellings were allowed under ORS 215.283(3) if they were determined to be compatible with farm use, not interfere seriously with accepted farm practices, not materially alter the stability of the land use pattern in the area and be situated on generally unsuitable land for the production of farm crops and livestock.

The claim does not establish whether or to what extent the claimants' desired development of the subject property was allowed under the standards in effect when Willis Family, Inc. acquired the property on July 19, 1993.

Conclusions

The current zoning requirements and dwelling standards established by Goal 3, ORS 215 and OAR 660, division 33, were all enacted or adopted after Willis Family, Inc. acquired the subject property in 1993 and do not allow the claimants' desired development of the property as an outright use. However, the claim does not establish whether or to what extent the claimants' desired use of the subject property complies with the standards for development under Hood River County's EFU zone and comprehensive plan in effect when Willis Family, Inc. acquired the property on July 19, 1993.

This report addresses only those state laws that are identified in the claim, or that the department is certain apply to the subject property based on the use that the claimants have identified. There may be other laws that currently apply to Willis Family, Inc.'s use of the subject property, and that may continue to apply to its use of the property, that have not been identified in the claim. In some cases, it will not be possible to know which laws apply to a use of the subject property until there is a specific proposal for that use. When Willis Family, Inc. 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 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 \$32,067.90 as the reduction in the subject property’s fair market value due to the regulation(s) that restrict the claimants’ desired use of the property. This amount is based on estimates provided by the claimants’ consultant.

Conclusions

As explained in Section V.(1) of this report, the claimants are Norma Jean Willis and Willis Family, Inc. Willis Family, Inc. acquired the subject property on July 19, 1993. Norma Jean Willis is not a present owner of the property. Under ORS 197.352, Willis Family, Inc. is due compensation for land use regulations that restrict the use of the subject property and have the effect of reducing its fair market value. Based on the findings and conclusions in Section V.(2) of this report, laws enacted or adopted since Willis Family, Inc. acquired the subject property restrict the claimants’ desired use of the property. The claimants estimate that the effect of the regulations(s) on the fair market value of the subject property is a reduction of \$32,067.90.

Without an appraisal or other documentation and without verification of whether or the extent to which the claimants’ desired use of the subject property was allowed under the standards in effect when Willis Family, Inc. acquired the property, it is not possible to substantiate the specific dollar amount by which the land use regulations have reduced the fair market value of the property. Nevertheless, based on the evidence in the record for this claim, the department determines that the fair market value of the subject property has been reduced to some extent 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 OAR 660, division 33, which Hood River County has implemented through its current EFU zone. With the exception of applicable provisions of Goal 3, ORS 215 and OAR 660, division 5, in effect when Willis Family, Inc. acquired the subject property on July 19, 1993, these state land use regulations were enacted or adopted after Willis Family, Inc. acquired the property.

Conclusions

Without a specific development proposal for the subject property, it is not possible for the department to determine all the laws that may apply to a particular use of the property, or whether those laws may fall under one or more of the exemptions under ORS 197.352. It appears that the general statutory, goal and rule restrictions on development of the subject property are not exempt under ORS 197.352(3)(E) only to the extent they were enacted or adopted after Willis Family, Inc. acquired the property on July 19, 1993. Provisions of Goal 3, ORS 215 and OAR 660, division 5, in effect when Willis Family, Inc. acquired the subject property in 1993 are exempt under ORS 197.352(3)(E) and will continue to apply to the property.

Other laws in effect when Willis Family, Inc.'s acquired the subject property are also exempt under ORS 197.352(3)(E) and will continue to apply to its use of the property. There may be other laws that continue to apply to its use of the subject property that have not been identified in the claim. In some cases, it will not be possible to know which laws apply to a use of subject property until there is a specific proposal for that use. When Willis Family, Inc. seeks a building or development permit to carry out a specific use, it may become evident that other state laws apply to that use. In some cases, some of these laws may be exempt under ORS 197.352(3)(A) to (D).

This report addresses only those state laws that are identified in the claim, or that the department is certain apply to the subject property, based on the use that the claimants have identified. Similarly, this report only addresses the exemptions provided for under ORS 197.352(3) that are clearly applicable, given the information provided to the department in the claim. The claimants should be aware that the less information they have provided to the department in the claim, the greater the possibility that there may be additional laws that will later be determined to continue to apply to Willis Family, Inc.'s use of 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 restrict the claimants' desired use of the subject property. The claim asserts that existing state land use regulations enforced by the Commission or the department have the effect of reducing the fair market value of the subject property by \$32,067.90. However, because the claim does not provide an appraisal or other relevant evidence demonstrating that the land use regulations described in Section V.(2) reduce the fair market value of the subject

property, a specific amount of compensation cannot be determined. In order to determine a specific amount of the compensation due for this claim, it would also be necessary to verify whether or the extent to which the claimants' desired use of the subject property was allowed under the standards in effect when Willis Family, Inc. acquired the property. Nevertheless, based on the record for this claim, the department has determined that the laws on which the claim is based have reduced the fair market value of the subject property to some extent.

No funds have been appropriated at this time for the payment of claims. In lieu of payment of compensation, ORS 197.352 authorizes the department to modify, remove or not apply all or parts of certain land use regulations to allow Willis Family, Inc. to use the subject property for a use permitted at the time it acquired the property on July 19, 1993.

Norma Jean Willis has not established that she is a present owner of the property.

Conclusions

Based on the record, the department recommends that the claim be denied as to Norma Jean Willis. Based on the record, the department recommends that the claim be approved as to Willis Family, Inc., subject to the following terms:

1. In lieu of compensation under ORS 197.352, the State of Oregon will not apply the following laws to Willis Family, Inc.'s development of a farm-related dwelling on the subject property: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, enacted or adopted after July 19, 1993. These land use regulations will not apply to Willis Family, Inc. only to the extent necessary to allow it to use the subject property for the use described in this report, and only to the extent that use was permitted when it acquired the property on July 19, 1993.
2. The action by the State of Oregon provides the state's authorization to Willis Family, Inc. to use the property for the use described in this report, subject to the standards in effect on July 19, 1993. On that date, the property was subject to compliance with Goal 3 and OAR 660, division 5, as implemented by Hood River County's acknowledged EFU zone, and the applicable provisions ORS 215 then in effect.
3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the subject property may not be used without a permit, license or other form of authorization or consent, the order will not authorize the use of the property unless Willis Family, Inc. first obtains that permit, license or other form of authorization or consent. Such requirements may include, but are not limited to: a building permit, a land use decision, a "permit" as defined in ORS 215.402 or 227.160, other permits or authorizations from local, state or federal agencies and restrictions on the use of the subject property imposed by private parties.
4. Any use of the property by Willis Family, Inc. under the terms of the order will remain subject to the following laws: (a) those laws not specified in (1) above; (b) any laws enacted or enforced by a public entity other than the Commission or the department; and (c) those laws not subject to ORS 197.352 including, without limitation, those laws exempted under ORS 197.352(3).

5. Without limiting the generality of the foregoing terms and conditions, in order for Willis Family, Inc. to use the subject property, it may be necessary for it to obtain a decision under ORS 197.352 from a city and/or county and/or metropolitan service district that enforces land use regulations applicable to the property. Nothing in this order relieves Willis Family, Inc. from the necessity of obtaining a decision under ORS 197.352 from a local public entity that has jurisdiction to enforce a land use regulation applicable to its use of the subject property.

VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on August 17, 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.