

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. M124481
(BALLOT MEASURE 37) OF)
Earl K. Allison, CLAIMANT)

Claimant: Earl K. Allison (the Claimant)

Property: Township 41S, Range 14E, Section 11 Tax lot 2100, Klamath 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:

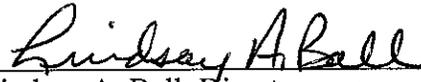
Lane Shetterly, Director



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

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 197.352, 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: M124481

NAME OF CLAIMANT: Earl K. Allison

MAILING ADDRESS: 2007 Carlson Drive
Klamath Falls, Oregon 97603

PROPERTY IDENTIFICATION: Township 41S, Range 14E, Section 11
Tax lot 2100
Klamath County

DATE RECEIVED BY DAS: March 13, 2006

180-DAY DEADLINE: September 9, 2006

I. SUMMARY OF CLAIM

The claimant, Earl Allison, seeks compensation in the amount of \$50,000 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 develop a dwelling on the 49.35-acre subject property. The subject property is located at the geographic coordinates identified above, on Willow Valley Road, near Bonanza, in Klamath 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 the claimant's desired use of the subject property was prohibited under the laws in effect when the claimant acquired the property in 1989. (See the complete recommendation in Section VI of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On August 2, 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 county zoning ordinances restricting the claimant's use of the subject property 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, Earl Allison, acquired the subject property on July 6, 1989, as reflected by a deed included with the claim. A February 3, 2006, title report submitted with the claim establishes the claimant's current ownership of the subject property.

Conclusions

The claimant, Earl Allison, is an "owner" of the subject property as that term is defined by ORS 197.352(11)(C), as of July 6, 1989.

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 indicates that the claimant desires to build a "farm dwelling" on the subject property and that county zoning restricts his desired use.¹

The claim is based generally on the applicable provisions of state law that require forest zoning. The claimant's property is zoned Forestry/Range (FR) with a Significant Resource Overlay (SRO) by Klamath County. The subject property is zoned FR, as required by Statewide Planning Goal 4 (Forest Lands), in accordance with ORS 215 and OAR 660, division 6, because the claimant's property is "forest land" under Goal 4. Goal 4 became effective on January 25, 1975, and requires that forest land be zoned for forest use (see statutory and rule history under OAR 660-015-0000(4)). The forest land administrative rules (OAR 660, division 6) became effective on September 1, 1982, and ORS 215.705 to 215.755 became effective on November 4, 1993 (Chapter 792, Oregon Laws 1993). 660-006-0027 was amended on March 1, 1994, to implement those statutes.

The subject property has also been designated as a significant Goal 5 (Natural Resources) resource—big game winter range—by Klamath County and protected with an SRO.² The original Goal 5 administrative rule (OAR 660, division 16) became effective on May 5, 1981. OAR 660, division 23, provides the current rules regarding Goal 5 and became effective on September 1, 1996. The division 23 rules do not affect the county's acknowledged Goal 5 inventory with regard to the big game winter range overlay.

The claimant acquired the subject property on July 6, 1989. At that time, the property was subject to the Klamath County's FR and SRO zones, which were acknowledged by the Commission for compliance with Goals 4 and 5 on June 1, 1984. When the claimant acquired the subject property, the desired development of the property would have been governed by the county's FR and SRO zones and the applicable provisions of OAR 660, divisions 6, and 16, then in effect.

¹ A copy of the claimant's Measure 37 claim form filed with Klamath County indicates that the Forestry Zone Template Dwelling Test/Article 55 of the county code is the regulation that restricts use of the subject property. (See claim file.)

² According to Article 57.070(1)(a) of the county code, the minimum lot size in the high-density deer winter range overlay is 160 acres and subject to special residential development standards in Article 57.070(2). According to Klamath County (historical zoning information obtained by department staff), the subject property was zoned forest in 1989 and also covered by the county's SP-2 (Special Purpose 2) overlay zone then in place to protect designated big game (deer) winter range. According to county records, the subject property has been designated in the plan as critical deer winter range since 1972.

Conclusions

The current zoning requirements and dwelling standards established by Goal 4; ORS 215.705 to 215.755; OAR 660-006-0026 and 660-006-0027; and OAR 660, division 23, were all enacted or adopted after the claimant acquired the subject property in 1989 and do not allow the claimant's desired development of the property. However, the current minimum lot size established by the SRO, in accordance with Goal 5, was adopted before the claimant, Earl Allison, acquired the subject property on July 6, 1989. These land use regulations do not allow division on the subject property. Laws enacted or adopted since the claimants acquired the subject property in 1989 do not restrict the claimant's desired use of the property relative to when the claimant acquired it in 1989.

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 \$50,000 as the reduction in the subject property's fair market value due to the regulations that restrict the claimant's desired use of the property. This amount is based on the estimated value of a dwelling on the subject property.

Conclusions

As explained in Section V.(1) of this report, the claimant is Earl Allison who acquired the subject property on July 6, 1989. State land use laws enacted or adopted since the claimant acquired the subject property do not restrict the use of the property relative to the uses allowed when he acquired the property in 1989. Therefore, the fair market value of the subject property has not been reduced 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 does not identify any state land use regulations enacted or adopted since the claimant acquired the subject property that restrict the use of the property relative to what would have been allowed when he acquired it on July 6, 1989. As set forth in Section V.(2) of this report, the state land use regulations restricting the claimant's desired use of the subject property were in effect when the claimant acquired the property in 1989.

Conclusions

The state land use regulations that restrict the claimant's desired use of the subject property were in effect when the claimant acquired the property. Therefore, these state land use regulations are exempt under ORS 197.352(3)(E), which exempts laws in effect when the claimant acquired 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 do not restrict the claimant's desired use of the subject property relative to what was permitted when the claimant acquired it in 1989 and do not reduce the fair market value of the property.

Conclusions

Based on the record and the foregoing findings and conclusions, the claimant has not established that he is 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 August 17, 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.