

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 A
COMPENSATION UNDER ORS 197.352) CLAIM NO. M129311
(BALLOT MEASURE 37) OF)
Stacey L. Rungay, CLAIMANT)

Claimant: Stacey L. Rungay (the Claimant)

Property: Township 3S, Range 1W, Section 16, Tax lot 2000, Clackamas 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 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 Stacey Rungay's division of the 31.38-acre subject property into 1-acre parcels or to her development of a dwelling on each parcel: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, enacted or adopted after May 8, 1995. These laws will not apply to Stacey Rungay only to the extent necessary to allow her to use the subject property for the use described in this report, and only to the extent that use was permitted when she acquired the property May 8, 1995. The department acknowledges that the relief to which Stacey Rungay is entitled under ORS 197.352 will not allow her to use the subject property for the use described in this report.
2. The action by the State of Oregon provides the state's authorization to Stacey Rungay to use the subject property for the use described in this report, subject to the standards in effect on May 8, 1995. At that time, the property was subject to applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, currently in effect.

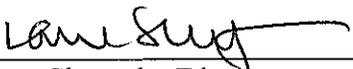
3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the subject property may not be used without a permit, license or other form of authorization or consent, the order will not authorize the use of the property unless Stacey Rungay 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 subject property by Stacey Rungay 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 Stacey Rungay to use the subject property, it may be necessary for her 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 Stacey Rungay 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 a use of the subject property by the claimant.

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 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 125, division 145, and ORS 293.

FOR DLCD AND THE LAND
CONSERVATION AND
DEVELOPMENT COMMISSION:



Lane Shetterly, Director
DLCD
Dated this 31st day of October, 2006.

FOR the DEPARTMENT OF
ADMINISTRATIVE SERVICES:



David Hartwig, Administrator
DAS, State Services Division
Dated this 31st day of October, 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 B
COMPENSATION UNDER ORS 197.352) CLAIM NO. M129311
(BALLOT MEASURE 37) OF)
Keith M. Rungay and Linda L. Rungay, CLAIMANTS)

Claimants: Keith M. Rungay and Linda L. Rungay (the Claimants)

Property: Township 3S, Range 1W, Section 16, Tax lot 2000, Clackamas County
(the property)

Claim: The demand for compensation and any supporting information received
from the Claimants by the State of Oregon (the Claim).

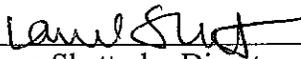
Claimants submitted the Claim to the State of Oregon under ORS 197.352. Under OAR 125-145-0010 *et seq.*, the Department of Administrative Services (DAS) referred the Claim to the Department of Land Conservation and Development (DLCD) as the regulating entity. This order is based on the record herein, 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.

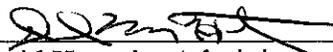
FOR DLCDD AND THE LAND
CONSERVATION AND
DEVELOPMENT COMMISSION:



Lane Shetterly, Director
DLCDD

Dated this 31st day of October, 2006.

FOR THE DEPARTMENT OF
ADMINISTRATIVE SERVICES:



David Hartwig, Administrator
DAS, State Services Division

Dated this 31st day of October, 2006.

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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

October 31, 2006

STATE CLAIM NUMBER: M129311

NAMES OF CLAIMANTS: Stacey L. Rungay
Keith M. Rungay
Linda L. Rungay

MAILING ADDRESS: PO Box 1603
Sherwood, Oregon 97140

PROPERTY IDENTIFICATION: Township 3S, Range 1W, Section 16
Tax lot 2000
Clackamas County

DATE RECEIVED BY DAS: May 9, 2006

180-DAY DEADLINE: November 5, 2006

I. SUMMARY OF CLAIM

The claimants, Stacey, Linda and Keith Rungay, seek compensation in the amount of \$4,341,126 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 31.38-acre subject property into buildable 1-acre residential parcels.¹ The subject property is located at 29335 SW Baker Road, near Sherwood, in Clackamas 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 valid in part. 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

¹ The claim also suggests that the claimants may desire to transfer their property prior to development. ORS 197.352 only authorizes a state agency to waive a law in order to allow the current owner a use of the property permitted at the time that owner acquired the property. Whether, or under what circumstances, a subsequent owner may use the property for a particular use is beyond the scope of this order, but may depend on whether that use is first established by the current owner. The Oregon Department of Justice has advised the department that "[i]f the current owner of the real property conveys the property before a new use allowed by the public entity is established, then the entitlement to relief will be lost." If the claimants have questions about the transfer of any rights authorized by this order, the claimants should confer with an attorney.

not apply to Stacey Rumgay's division of the 31.38-acre property into 1-acre parcels or to her development of a dwelling on each parcel: applicable provisions of Statewide Planning Goal 3 (Agricultural Lands), ORS 215 and Oregon Administrative Rules (OAR) 660, division 33, enacted or adopted after May 8, 1995. These laws will not apply to Stacey Rumgay only to the extent necessary to allow her to use the subject property for the use described in this report, and only to the extent that use was permitted when she acquired the property May 8, 1995. The department acknowledges that the relief to which Stacey Rumgay is entitled under ORS 197.352 will not allow her to use the subject property for the use described in this report.

The department has further determined that this claim is not valid as to Linda and Keith Rumgay because these claimants have not established their ownership of the property. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On August 24, 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, two written comments were received in response to the 10-day notice.

One comment is relevant to whether Linda and Keith Rumgay are current owners of the subject property and when Stacey Rumgay became a current owner of the subject property. The comment has been considered by the department in preparing this report.

The other comment does not address whether the claim meets the criteria for relief under ORS 197.352. Comments concerning the effects a use of the property may have on surrounding areas are generally not something that the department is able to consider in determining whether to waive a state law. If funds do become available to pay compensation, then such effects may become relevant in determining which claims to pay compensation for instead of waive a state law. (See the comment letters 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 May 9, 2006, for processing under OAR 125, division 145. The claim identifies OAR 660-033-0100(1) and 660-033-0130(3)(a) and ORS 215.263(1), 215.283(1)(f) and 215.780(1)(a) 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 Stacey Rungay acquired the subject property on May 8, 1995, from Linda and Keith Rungay, as reflected by a warranty deed included with the claim. Linda and Keith Rungay acquired the subject property on October 20, 1964, as reflected by a deed included with the claim. Although Linda and Keith Rungay are identified as claimants, they deeded their entire interest in the subject property to claimant Stacey Rungay through the May 8, 1995, conveyance. The Clackamas County Assessor’s Office confirms Stacey Rungay’s current ownership of the subject property.

Conclusions

Claimant Stacey Rungay is an “owner” of the subject property as that term is defined by ORS 197.352(11)(C), as of May 8, 1995. Claimants Linda and Keith Rungay are “family members” of Stacey Rungay, as defined by ORS 197.352(11)(A), and acquired the subject property on October 20, 1964. The claim does not establish that Linda and Keith Rungay are current “owners” of the subject property.

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 a 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 a claimant or a family member acquired the property.

Findings of Fact

The claim indicates that the claimants desire to divide the 31.38-acre subject property into buildable one-acre residential parcels, and that current land use regulations prohibit the desired use.

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 Clackamas 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 effective on January 25, 1975, and required that agricultural lands as defined by Goal 3 be zoned EFU pursuant to ORS 215.

Current land use regulations, particularly ORS 215.263, 215.284 and 215.780 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 the development of dwellings on existing or any proposed parcel on that land.

ORS 215.780 establishes an 80-acre minimum size for the creation of new lots or parcels in EFU zones and became effective on November 4, 1993 (Chapter 792, Oregon Laws 1993). ORS 215.263 (2005 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. 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.)

Stacey Rumgay's family first acquired the subject property in 1964, prior to the adoption of the statewide planning goals and their implementing statutes and rules. No county zoning applied to the subject property in 1964.

Conclusions

The current zoning requirements, minimum lot size and dwelling standards established by applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, were all enacted or adopted after Stacey Rumgay's family acquired the subject property. These laws restrict the use of the subject property relative to the uses allowed when her family acquired the property.

As explained in Section V.(1), claimants Linda and Keith Rumgay have not established that they are "owners" of the subject property as that term is defined in ORS 197.352(11)(C). Without such demonstration, the claimants have not established that any laws enforced by the

² The subject property is "agricultural land" because it contains National Resources Conservation Service Class I-IV soils.

Commission or the department restrict these claimants' use of private real property in a manner that reduces the fair market value of the 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 \$4,341,126 as the reduction in the subject property's fair market value due to the regulations that restrict the claimants' desired use of the property. This amount is based on the claimants' assessment of the property's value.

Conclusions

As explained in Section V.(1) of this report, the claimants are Stacey Rungay whose family members acquired the subject property in 1964, and Linda and Keith Rungay who have not established their current ownership of the subject property. Because Linda and Keith Rungay have not established their ownership of the subject property, they are not entitled to compensation under ORS 197.352. Under ORS 197.352, claimant Stacey Rungay is due compensation for land use regulations that restrict the use of the 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 Stacey Rungay's family acquired the subject property restrict her desired use of the property. The claimants estimate that the effect of the regulations on the fair market value of the subject property is a reduction of \$4,341,126.

Without an appraisal or other documentation, it is not possible to substantiate the specific dollar amount by which the land use regulations have reduced the fair market value of the subject 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 since Stacey Rungay's family acquired the property.

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 relative to the uses permitted when Stacey Rungay's family acquired the property, including applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, which Clackamas County has implemented through its current EFU zone. All of these land use regulations were enacted or adopted after Stacey Rungay's family acquired the subject property.

Conclusions

It appears that none of the general statutory, goal and rule restrictions on residential division and development of the subject property were in effect when Stacey Rumgay's family acquired the property on October 20, 1964. As a result, these laws are not exempt under ORS 197.352(3)(E). Laws in effect when Stacey Rumgay's family acquired the subject property are exempt under ORS 197.352(3)(E) and do not provide a basis for compensation. In addition, other land use laws enacted or adopted for a purpose set forth in ORS 197.352(3)(A) to (D) are also exempt and would not provide a basis for compensation.

As explained in Section V.(1) of this report, claimants Linda and Keith Rumgay have not established their ownership of the subject property. Therefore, the issue of whether any laws are exempt from ORS 197.352 is not relevant to Linda and Keith Rumgay.

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, the department finds that the claim is not valid as to claimants Linda and Keith Rumgay because they have not established their current ownership of the subject property. The department further finds that laws enforced by the Commission or the department restrict Stacey Rumgay's 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 \$4,341,126. 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 compensation due for this claim, it would also be necessary to verify whether or the extent to which Stacey Rumgay's desired use of the subject property was allowed under the standards in effect when her family 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 Stacey Rumgay to use the subject property for a use permitted at the time she acquired the property on May 8, 1995.

At the time Stacey Rungay acquired an interest in the subject property, it was zoned EFU-20 by Clackamas County and subject to the current lot size and dwelling standards under Goal 3, ORS 215 and OAR 660, division 33, and as described in Section V.(2) of this report.

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 Stacey Rungay's use of the subject property.

Conclusions

Based on the record, the department recommends that the claim be approved, 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 Stacey Rungay's division of the 31.38-acre subject property into 1-acre parcels or to her development of a dwelling on each parcel: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, enacted or adopted after May 8, 1995. These laws will not apply to Stacey Rungay only to the extent necessary to allow her to use the subject property for the use described in this report, and only to the extent that use was permitted when she acquired the property May 8, 1995. The department acknowledges that the relief to which Stacey Rungay is entitled under ORS 197.352 will not allow her to use the subject property for the use described in this report.
2. The action by the State of Oregon provides the state's authorization to Stacey Rungay to use the subject property for the use described in this report, subject to the standards in effect on May 8, 1995. At that time, the property was subject to applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, currently 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 Stacey Rungay 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 subject property by Stacey Rungay 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 Stacey Rungay to use the subject property, it may be necessary for her 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 Stacey Rungay 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 a use of the subject property by the claimant.

VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on October 10, 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.