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 Homestead Investment, LLC, CLAIMANT	))))	FINAL ORDER CLAIM NO. M129328

Claimant: Homestead Investment, LLC (the Claimant)

Property: Township 10S, Range 12E, Section 1DA, Tax lot 100

Township 10S, Range 13E, Section 6, Tax lot 300
Jefferson 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 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 DLCD AND THE LAND CONSERVATION AND DEVELOPMENT COMMISSION:

Lane Shetterly, Director
DLCD
Dated this 6th day of November, 2006.

FOR THE DEPARTMENT OF ADMINISTRATIVE SERVICES:

David Hartwig, Administrator
DAS, State Services Division
Dated this 6th day of November, 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

November 6, 2006

STATE CLAIM NUMBER:	M129328
NAME OF CLAIMANT:	Homestead Investment, LLC
MAILING ADDRESS:	PO Box 481 Madras, Oregon 97741
PROPERTY IDENTIFICATION:	Township 10S, Range 12E, Section 1DA Tax lot 100 Township 10S, Range 13E, Section 6 Tax lot 300 Jefferson County
OTHER CONTACT INFORMATION:	McGraw & Associates 1160 NE Scenic Drive Madras, Oregon 97741
DATE RECEIVED BY DAS:	May 15, 2006
180-DAY DEADLINE:	November 11, 2006

I. SUMMARY OF CLAIM

The claimant, Homestead Investment, LLC, seeks compensation in the amount of $1,250,000 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 divide the 368.32-acre subject property into 2- to 10-acre parcels and to develop a golf course.[1] The subject property is located at geographic coordinates listed above, in Jefferson 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 this claim is not valid because the claimant has not established its ownership of the subject property. (See the complete recommendation in Section VI. of this report.)

[1] The subject property, consisting of tax lots 100 and 300, is a single parcel with tax lots 103 and 301. Although the four tax lots are a single parcel, as noted by Jefferson County, the claim is only for tax lots 100 and 300.

III. COMMENTS ON THE CLAIM

Comments Received

On August 24, 2006, pursuant to Oregon Administrative Rule (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 criterion, whichever is later.

Findings of Fact

This claim was submitted to DAS on May 15, 2006, for processing under OAR 125, division 145. The claim identifies Goal 3, ORS 215.263 and 215.780 and OAR 660-033-0135 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, Homestead Investment, LLC, asserts that it acquired the subject property on May 29, 1968, as an Oregon corporation and on August 14, 1978, as a partnership. However, the claim does not establish the claimant's ownership. According to the information provided in the claim, Homestead Investment Company, an Oregon corporation, first acquired the subject property on May 29, 1968. On August 14, 1978, Homestead Investment Company transferred the property to Homestead Investment Company, a partnership, as reflected by a bargain and sale deed included with the claim.[2] The claimant, Homestead Investment, LLC, has not provided any documentation of its acquisition of the property. Homestead Investment, LLC is not registered with the Oregon Secretary of State.

The Jefferson County Assessor's Office confirms that Homestead Investment Company, a partnership, is the current owner of the subject property.

Conclusions

The claimant, Homestead Investment, LLC, has not established that it is an "owner" of the subject property as that term is defined in ORS 197.352(11)(C).

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.

As explained in Section V.(1), the claimant, Homestead Investment, LLC, is not an "owner" of the subject property as that term is defined in ORS 197.352(11)(C). Therefore, no laws enforced by the Land Conservation and Development Commission (the Commission) or the department restrict the claimant's use of private real property with the effect of reducing 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."

As explained in Section V.(1) of this report, the claimant, Homestead Investment, LLC, is not an "owner" of the subject property as that term is defined in ORS 197.352(11)(C). Therefore, no laws restrict his use of the subject property with the effect of reducing the fair market value of the subject property.

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[2] The claimant submitted a comment to the draft staff report dated October 13, 2006, clarifying the ownership of the subject property. That clarification confirms that the claimant, Homestead Investment, LLC., is not a present owner of the subject property. Accordingly, that clarification does not provide a basis to revise the analysis of the report. The present owner of the property may submit a new claim based on its ownership of 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.
As explained in Section V.(1) of this report, the claimant, Homestead Investment, LLC, is not an "owner" of the subject property as that term is defined in ORS 197.352(11)(C). Therefore, the issue of whether any laws are exempt from ORS 197.352 is not relevant.

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 record, the department finds that the claim is not valid because the claimant is not an owner of the subject property.

Conclusions

Based on the record before the department, the claimant, Homestead Investment, LLC, has not established that it is entitled to relief under ORS 197.352(1) as a result of land use regulations enforced by the Commission or the department because it is not an owner of the subject property. 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 October 13, 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.