

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. M129325
(BALLOT MEASURE 37) OF)	
Irma Voreis, CLAIMANT)	

Claimant: Irma Voreis (the Claimant)

Property: Township 4S, Range 2E, Section 10, Tax lots 115 and 500, 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 denied as to laws administered by DLCD and the Land Conservation and Development Commission (LCDC) for the 0.05-acre portion of tax lot 500 and the 0.07-acre of tax lot 115 for the reasons set forth in the DLCD Report.

The Claim is approved as to laws administered by DLCD and the Land Conservation and Development Commission (LCDC) for the 30.3-acre portion of tax lot 500 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 Irma Voreis' division of the 30.3-acre portion of tax lot 500 into thirty 1-acre parcels or her development of a dwelling on each parcel: applicable provisions of Goal 4, ORS 215 and OAR 660, division 6. These land use regulations will not apply to the claimant only to the extent necessary to allow her to use the 30.3-acre portion of tax lot 500 for the use described in this report, and only to the extent that use was permitted when she acquired the property on April 17, 1953.
2. The action by the State of Oregon provides the state's authorization to the claimant to use the 30.3-acre portion of tax lot 500 for the use described in this report, subject to the standards in effect on April 17, 1953.

3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the 30.3-acre portion of tax lot 500 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 the claimant 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 property imposed by private parties.

4. Any use of the 30.3-acre portion of tax lot 500 by the claimant 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 the claimant to use the 30.3-acre portion of tax lot 500, 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 the claimant 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 property by the claimant.

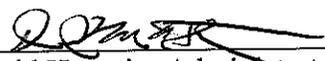
This Order is entered by the Deputy Director of the DLCD as a final order of DLCD and the Land Conservation and Development Commission under ORS 197.352, OAR 660-002-0010(8), and OAR 125, division 145, and by the Administrator for the State Services Division of the DAS as a final order of DAS under ORS 197.352, OAR 125, division 145, and ORS 293.

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


Cora R. Parker, Deputy Director
DLCD

Dated this 1st day of November, 2006.

FOR the DEPARTMENT OF
ADMINISTRATIVE SERVICES:


David Hartwig, Administrator
DAS, State Services Division
Dated this 1st day of November, 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."

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

November 1, 2006

STATE CLAIM NUMBER: M129325

NAME OF CLAIMANT: Irma Voreis

MAILING ADDRESS: 1035 Cornell Avenue
Gladstone, Oregon 97027

PROPERTY IDENTIFICATION: Township 4S, Range 2E, Section 10
Tax lots 115 and 500
Clackamas County

OTHER CONTACT INFORMATION: Donald B. Bowerman
PO Box 100
Oregon City, Oregon 97045

DATE RECEIVED BY DAS: May 12, 2006

180-DAY DEADLINE: November 8, 2006

I. SUMMARY OF CLAIM

The claimant, Irma Voreis, seeks compensation in the amount of \$1,492,507 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 30.42-acre subject property into thirty 1-acre parcels and to develop a dwelling on each parcel.¹ The subject property is located on the east side of South Newkirchner Road, 1.3 miles south of South Spangler Road and 750 feet north of South Buckner Road, 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 not apply to Irma Voreis' division of the 30.3-acre portion of tax lot 500 into thirty 1-acre parcels and to her development of a dwelling on each parcel: applicable provisions of Statewide Planning Goal 4 (Forest Lands), ORS 215 and Oregon Administrative Rules (OAR) 660,

¹ The subject property includes two tax lots. Tax lot 115 consists of .07 acres, and tax lot 500 consists of 30.35 acres.

division 6. These laws will not apply to the claimant only to the extent necessary to allow her to use the 30.3-acre portion of tax lot 500 for the use described in this report, and only to the extent that use was permitted when she acquired the 30.3 acres on April 17, 1953.

The department further finds that the claim is not valid for the remaining 0.12-acre portion of the subject property because the claimant's desired division was prohibited by the laws in effect when she acquired the 0.05-acre portion of tax lot 500 on December 11, 1981, and when she acquired the 0.07-acre tax lot 115 on March 27, 1982. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On September 5, 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 May 12, 2006, for processing under OAR 125, division 145. The claim identifies "all land use regulations that restrict development" including Senate Bill 100, House Bill 3661, 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

The claimant, Irma Voreis, acquired the 30.3-acre portion of tax lot 500 on April 17, 1953, as reflected by a warranty deed included with the claim. Through lot line adjustments, she acquired the remaining 0.05 acre of tax lot 500 on December 11, 1981, and all of tax lot 115 on March 27, 1982, as reflected by information obtained from Clackamas County’s Planning Department. The Clackamas County Assessor’s Office confirms the claimant’s current ownership of the subject property.

Conclusions

The claimant, Irma Voreis, is an “owner” of the subject property as that term is defined by ORS 197.352(11)(C), as of April 17, 1953, for the 30.3-acre portion of tax lot 500; as of December 11, 1981, for the remaining 0.05-acre portion of tax lot 500; and as of March 27, 1982, for 0.07-acre tax lot 115.

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 divide the 30.42-acre subject property into thirty 1-acre parcels and to develop a dwelling on each parcel. It indicates that the use is not allowed under current land use regulations.²

The claim is based generally on the applicable provisions of state law that require forest and rural residential zoning and restrict uses on lands zoned forest and lands zoned rural residential.

The 30.3-acre portion of tax lot 500 is zoned Timber District (TBR) by Clackamas County, as required by Goal 4, in accordance with ORS 215 and OAR 660, division 6, because the property

² The claimant summarily cited numerous state land use laws as applicable to this claim, but did not establish how the laws either apply to the claimant’s desired use of the subject property or restrict its use with the effect of reducing its fair market value. On their face, most of the regulations either do not apply to the claimant’s property or do not restrict the use of the claimant’s property in a manner that reduces its fair market value. This report addresses only those regulations that the department finds are applicable to and restrict the claimant’s use of the subject property, based on the claimant’s asserted desired use.

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 and 215.780 became effective on November 4, 1993 (Chapter 792, Oregon Laws 1993). OAR 660-006-0026 and 660-006-0027 were amended on March 1, 1994, to implement those statutes.

Together, ORS 215.705 to 215.755 and 215.780 and OAR 660, division 6, enacted or adopted pursuant to Goal 4, prohibit the division of forest land into parcels less than 80 acres and establish standards for development of dwellings on existing or proposed parcels on those lands.

The remaining 0.12 acre of tax lot 115 and 500 is zoned Rural Residential Farm/Forest 5-Acre District (RRFF-5) by Clackamas County, consistent with Goal 14 (Urbanization), which generally requires that land outside of urban growth boundaries be used for rural uses. The county's RRFF-5 zone was adopted on August 23, 1979, and requires a minimum of five acres for the creation of a new lot or parcel.

Goal 14 was effective on January 25, 1975, and requires that local comprehensive plans identify and separate urbanizable land from rural land in order to provide for an orderly and efficient transition from rural to urban land use. In 2000, as a result of a 1986 Oregon Supreme Court decision,³ the Commission amended Goal 14 and adopted OAR 660-004-0040 (Application of Goal 14 to Rural Residential Areas), which was effective on October 4, 2000.

The rule states that if a county rural residential zone in effect on October 4, 2000, specifies a minimum lot size of two acres or more, the area of any new lot or parcel shall equal or exceed the minimum lot size that is already in effect (OAR 660-004-0040(7)(c)). Some relief from this provision is available for lots or parcels having more than one permanent habitable dwelling pursuant to OAR 660-004-0040(7)(h). The rule also provides that a county's minimum lot size requirement in a rural residential zone shall not be amended to allow a smaller minimum lot size without approval of an exception to Goal 14 (OAR 660-004-0040(6)). Because Clackamas County's rural residential zone was in effect on October 4, 2000, and requires a minimum lot size of five acres, the minimum lot size for any new lot or parcel must equal or exceed five acres.

The claimant acquired the 30.3-acre portion of tax lot 500 on April 17, 1953, prior to the adoption of the statewide planning goals and their implementing statutes and regulations.

When the claimant acquired the 0.05-acre portion of tax lot 500 on December 11, 1981, and all of tax lot 115 on March 27, 1982, these portions of the subject property were subject to Clackamas County's acknowledged comprehensive plan and zoning ordinances.⁴ At that time, the 0.05-acre portion of tax lot 500 and all tax lot 115 were zoned RRFF-5 by Clackamas County, which established a five-acre minimum for new lots or parcels. Division of these portions would have been subject to Goal 14, as implemented through the county's acknowledged RRFF-5 zone.

³ *1000 Friends of Oregon v. LCDC (Curry County)*, 301 Or 447 (1986).

⁴ Clackamas County's comprehensive plan was acknowledged for compliance with Goal 14 on December 31, 1981.

Conclusions

The current zoning requirements, minimum lot size and dwelling standards established by Goal 4 and provisions applicable to land zoned for forest use in ORS 215 and OAR 660, division 6, were all enacted or adopted after the claimant acquired the 30.3-acre portion of tax lot 500 in 1953 and do not allow the desired division or development of the property. These laws restrict the use of the property relative to the uses allowed when the claimant acquired the property. However, when the claimant acquired the 0.05-acre portion of tax lot 500 in 1981 and all of tax lot 115 in 1982, the minimum lot size requirements for rural residential lots or parcels established by Goal 14, as implemented by the county's acknowledged RRFF-5 zone, prohibited the division of the property into lots or parcels of less than five acres. Accordingly, the claimant's division of the 0.05-acre portion of tax lot 500 and all of tax lot 115, which total 0.12 acre, would not have been permitted at the time she acquired these portions of the subject property.

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 claimant has identified. There may be other laws that currently apply to the claimant's use of the subject property, and that may continue to apply to the claimant's 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 the claimant 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 \$1,492,507 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 difference between the subject property's current assessed value and a comparison of similar properties in the surrounding area.

Conclusions

As explained in Section V.(1) of this report, the claimant is Irma Voreis who acquired the 30.3-acre portion of tax lot 500 on April 17, 1953, the 0.05-acre portion of tax lot 500 on December 11, 1981, and all of tax lot 115 on March 27, 1982. Under ORS 197.352, the claimant 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 the claimant acquired the 0.12-acre portion of the subject property in 1981 and 1982 do not restrict the claimant's desired use of this portion relative to uses permitted when she acquired it. Laws enacted or adopted since the claimant acquired the 30.3-acre portion of tax lot 500 restrict the claimant's desired use of the property.

The claimant estimates that the effect of the regulations on the fair market value of the subject property is a reduction of \$1,492,507.

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.

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 Goals 4 and 14, ORS 215 and OAR 660-004-0040 and 660, division 6, which Clackamas County has implemented through its current TBR and RFFF-5 zones. With the exception of provisions of Goal 14 in effect when the claimant acquired the 0.05-acre portion of tax lot 500 on December 11, 1981, and all of tax lot 115 on March 27, 1982, these land use regulations were enacted or adopted after the claimant 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, with the exception of provisions of Goal 14 in effect when the claimant acquired the 0.05-acre portion of tax lot 500 and all of tax lot 115, the general statutory, goal and rule restrictions on division and development of the claimant's property are not exempt under ORS 197.352(3)(E). Provisions of Goal 14 in effect when the claimant acquired the 0.05-acre portion of tax lot 500 in 1981 and all of tax lot 115 in 1982 are exempt under ORS 197.352(3)(E) and will continue to apply.

Laws in effect when the claimant acquired the subject property are exempt under ORS 197.352(3)(E) and will also continue to apply to the claimant's use of the property. In addition, the department notes that ORS 215.730 and OAR 660, division 6, include standards for siting dwellings in forest zones. Those provisions include fire protection standards for dwellings. ORS 197.352(3)(B) specifically exempts regulations "restricting or prohibiting activities for the protection of public health and safety, such as fire and building codes...." Accordingly, siting standards for dwellings in forest zones in ORS 215.730 and OAR 660, division 6, are exempt under ORS 197.352(3)(B).

There may be other laws that continue to apply to the claimant's 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 the subject property until there is a specific proposal for that use. When the claimant 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 claimant has 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 claimant should be aware that the less information she has 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 her 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 do not restrict the claimant's use of the 0.12-acre portion of the subject property acquired in 1981 and 1982. Laws enforced by the Commission or the department do restrict the claimant's desired use of the 30.3-acre portion of tax lot 500. 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 \$1,492,507. 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 the claimant's desired use of the subject property was allowed under the standards in effect when she 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 30.3-acre portion of tax lot 500 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 Irma Voreis to use the subject property for a use permitted at the time she acquired the 30.3-acre portion of tax lot 500 on April 17, 1953.

Conclusions

Based on the record, the department recommends that the claim be denied as to the 0.12-acre portion of the subject property the claimant acquired in 1981 and 1982 because the claimant's

desired division of that the 0.12-acre portion was prohibited by the provisions of Goal 14, as implemented through Clackamas County's acknowledged RRFF-5 zone, in effect when she acquired the 0.05-acre portion of tax lot 500 on December 11, 1981, and 0.07-acre tax lot 115 on March 27, 1982. The department otherwise 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 Irma Voreis' division of the 30.3-acre portion of tax lot 500 into thirty 1-acre parcels or her development of a dwelling on each parcel: applicable provisions of Goal 4, ORS 215 and OAR 660, division 6. These land use regulations will not apply to the claimant only to the extent necessary to allow her to use the 30.3-acre portion of tax lot 500 for the use described in this report, and only to the extent that use was permitted when she acquired the property on April 17, 1953.
2. The action by the State of Oregon provides the state's authorization to the claimant to use the 30.3-acre portion of tax lot 500 for the use described in this report, subject to the standards in effect on April 17, 1953.
3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the 30.3-acre portion of tax lot 500 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 the claimant 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 property imposed by private parties.
4. Any use of the 30.3-acre portion of tax lot 500 by the claimant 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 the claimant to use the 30.3-acre portion of tax lot 500, 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 the claimant 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 property by the claimant.

VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on October 12, 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.