

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. M129593
(BALLOT MEASURE 37) OF)
Parks Orchards, Inc., CLAIMANT)

Claimant: Parks Orchards, Inc. (the Claimant)

Property: Township 2N, Range 10E, Section 12, Tax lot 3100, 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).

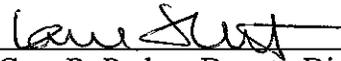
Claimant submitted the Claim to the State of Oregon under ORS 197.352. Under OAR 125-145-0010 *et seq.*, the Department of Administrative Services (DAS) referred the Claim to the Department of Land Conservation and Development (DLCD) as the regulating entity. This order is based on the record herein,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

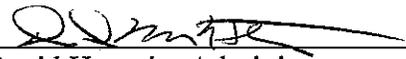
The Claim is denied as to laws administered by DLCD and the Land Conservation and Development Commission (LCDC) for the reasons set forth in the DLCD Report.

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 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


Cora R. Parker, Deputy Director
DLCD
Dated this 21st day of December, 2006.

FOR the DEPARTMENT OF
ADMINISTRATIVE SERVICES:


David Hartwig, Administrator
DAS, State Services Division
Dated this 21st day of December, 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

December 21, 2006

STATE CLAIM NUMBER: M129593

NAME OF CLAIMANT: Parks Orchards, Inc.

MAILING ADDRESS: PO Box 444
Odell, Oregon 97044

PROPERTY IDENTIFICATION: Township 2N, Range 10E, Section 12
Tax lot 3100
Hood River County

DATE RECEIVED BY DAS: June 28, 2006

180-DAY DEADLINE: December 25, 2006

I. SUMMARY OF CLAIM

The claimant, Parks Orchards, Inc., seeks compensation in the amount of \$66,602.50 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 the 18.49-acre subject property for a golf course. The subject property is located at 1901 Highway 35, north of Pine Grove, in Hood River 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 1978. Therefore, no laws enforced by the Land Conservation and Development Commission (the Commission) or the department restrict the claimant's desired use of the property relative to the uses permitted when the claimant acquired the property on June 30, 1978, and the claimant has not established a loss in the fair market value of the subject property as a result of land use regulations enforced by the Commission or the department. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On October 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 June 28, 2006, for processing under OAR 125, division 145. The claim identifies provisions of ORS 197 and 215 and OAR 660, division 33, as restricting the claimant's desired use of the subject property. 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, Parks Orchards, Inc., acquired the subject property on June 30, 1978, as reflected by a note on a January 31, 1981, warranty deed included with the claim.¹ On November 2, 2006, the Hood River County Planning Department confirmed that the claimant acquired the subject property on June 30, 1978, based on the replacement deed and the Articles of Incorporation of Parks Orchards, Inc., certified by the Oregon Department of Commerce on June 19, 1978.² The Hood River County Assessor's Office confirms the claimant's current ownership of the subject property.

Conclusions

The claimant, Parks Orchards, Inc., is an "owner" of the subject property as that term is defined by ORS 197.352(11)(C), as of June 30, 1978.

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 acquired the property.

Findings of Fact

The claim indicates that the claimant desires to develop the 18.49-acre subject property for a golf course and that EFU land use regulations restrict its desired use of the property.³

The claim is based generally on Hood River County's Exclusive Farm Use (EFU) zone and the applicable provisions of state law that require such zoning. The claimant's 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 claimant's property is "agricultural land," as defined by Goal 3.⁴ 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.

ORS 215.296 establishes standards for approval of uses listed under ORS 215.283(2), including golf courses (ORS 215.283(2)(f)). OAR 660-033-0130 includes a definition for golf courses and also regulates them on land zoned EFU. On lands identified as "High-Value Farmland" under OAR 660-033-0020(8)(a), only an existing golf course can be expanded consistent with

¹ A note on the 1981 deed included with the claim establishes that this is a replacement for the original deed, dated June 30, 1978, which was lost and therefore, never recorded.

² Parks Orchards, Inc. is a domestic business corporation registered with the Oregon Secretary of State.

³ The claim identifies ORS 197 as applicable to this claim but does not establish how it either applies to the claimant's desired use of the property or restricts its use in a manner that reduces its fair market value. On its face, that chapter does not restrict the claimant's desired use of its property. 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 description of its desired use.

⁴ The claimant's property is "agricultural land" because it contains Natural Resources Conservation Service Class I-IV soils and is rated as High-Value Farmland.

OAR 660-033-0130(5) and (20), but shall not be expanded to contain more than 36 total holes (OAR 660-033-0120 and 0130(18)). On land that is not high-value, a golf course is allowed consistent with OAR 660-033-0130(5) and (20).

Current land use regulations, particularly OAR 660-033-0090, -0120 and -0130(18), adopted pursuant to Goal 3, prohibit golf courses on land identified as "High-Value Farmland."

The claimant acquired the subject property after the adoption of the statewide planning goals, but before the Commission acknowledged Hood River County's land use regulations to be in compliance with the statewide planning goals pursuant to ORS 197.250 and 197.251. Because the Commission had not acknowledged the county's plan and land use regulations when the claimant acquired the subject property on June 30, 1978, the statewide planning goals, and Goal 3 in particular, applied directly to the claimant's property when it acquired the property.⁵

The subject property was zoned A-1, Farm Zone when the claimant acquired the subject property on June 30, 1978. At that time, golf courses were not an allowed use on land zoned A-1 under an Interim Farm-Use Protection Ordinance (Ordinance No. 90) adopted by Hood River County on May 15, 1978.⁶

Conclusions

The current standards established by Goal 3, ORS 215 and OAR 660, division 33, do not allow the claimant's desired development of the subject property for a golf course. These laws restrict the claimant's desired use of the subject property to the same degree as the laws in effect when it acquired the property in 1978. Laws enacted or adopted since the claimant acquired the subject property do not restrict its desired use relative to the uses permitted at the time the claimant acquired the property on June 30, 1978.

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."

⁵ The statewide planning goals became effective on January 25, 1975, and were applicable to legislative land use decisions and some quasi-judicial land use decisions prior to the Commission's acknowledgment of each county's comprehensive plan and implementing regulations. *Perkins v. City of Rajneeshpuram*, 300 Or 1 (1985); *Alexanderson v. Polk County*, 289 Or 427, rev. den 290 Or 137 (1980); *Sunnyside Neighborhood Assn. v. Clackamas County*, 280 Or 3 (1977); *Jurgenson v. Union County*, 42 Or App 505 (1979); and *1000 Friends of Oregon v. Benton County*, 32 Or App 413 (1978). After the county's plan and land use regulations were acknowledged by the Commission, the statewide planning goals and implementing rules no longer applied directly to such local land use decisions. *Byrd v. Stringer*, 295 Or 311 (1983). However, statutory requirements continue to apply, and insofar as the state and local provisions are materially the same, the local provisions must be interpreted consistent with the substance of the goals and implementing rules. *Forster v. Polk County*, 115 Or App 475 (1992) and *Kenagy v. Benton County*, 115 Or App 131 (1992).

⁶ On May 15, 1978, Hood River County adopted Ordinance No. 90, which amended the Permanent Zoning Ordinance (Ordinance No. 2) and deleted subsection D "Golf Courses" as a conditional use under Article 8, Section 8.40. On November 2, 2006, Hood River County Planning Department confirmed that golf courses were not an allowed use on land zoned A-1 under Interim Farm-Use Protection Ordinance No. 90.

Findings of Fact

The claim includes an estimate of \$66,602.50 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 claimant's assessment of the fair market value of a golf course, which incorporates the existing dwelling, compared to the fair market value of \$41,602 for the property without a golf course.

Conclusions

As explained in Section V.(1) of this report, the claimant is Parks Orchards, Inc, which acquired the subject property on June 30, 1978. Laws enacted or adopted since the claimant acquired the subject property do not restrict its desired use relative to uses permitted at the time the claimant acquired the property on June 30, 1978. The claimant's estimate of a reduction in value is premised on the assumption that its desired use was lawful in 1978. That assumption is not correct. As a result, the department concludes that the fair market value of the subject property has not been reduced as a result of land use regulations enforced by the Commission or 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 provisions of Goal 3 and ORS 215 in effect when the claimant acquired the subject property on June 30, 1978, these land use regulations were enacted or adopted after the claimants acquired the property. The regulations in effect when the claimant acquired the property prohibit the claimant's desired use of the property.

Conclusions

State laws enacted or adopted since the claimant acquired the subject property do not restrict its desired use relative to uses permitted at the time the claimant acquired the property on June 30, 1978. The land use regulations that restrict the claimant's desired use of the property 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 it acquired it in 1978 and do not reduce the fair market value of the property. In addition, the state land use regulations that restrict the use of the subject property in effect at the time the claimant acquired it in 1978 are exempt under ORS 197.352(3)(E).

Conclusions

Based on the records and the foregoing findings and conclusions, the claimant 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 the claimant's desired use of the subject property was prohibited under the laws in effect when the claimant acquired the property in 1978. Therefore no laws enforced by the Commission or the department restrict the claimant's desired use of the property relative to the uses permitted when the claimant acquired the property on June 30, 1978, and the claimant has not established a loss in the fair market value for the subject property as a result of land use regulations enforced by the Commission or the department.

VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on November 30, 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.