



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

635 Capitol Street NE, Suite 150

Salem, Oregon 97301-2524

Phone: (503) 373-0050

First Floor/Coastal Fax: (503) 378-6033

Second Floor/Director's Office Fax: (503) 378-5518

Third Floor/Measure 37 Fax: (503) 378-5318

Web Address: <http://www.oregon.gov/LCD>

April 23, 2007

To: Interested Persons

From: Lane Shetterly, Director



Re: Ballot Measure 37 (ORS 197.352) Claim Number M130495

Claimant: Delbert Gottsacker

Enclosed, in regard to the above-referenced claim for compensation under Ballot Measure 37 (ORS 197.352), is the Final Staff Report and Recommendation of the Department of Land Conservation and Development, and the Final Order.

This Final Staff Report and Recommendation and the Final Order constitute the final decision on this claim. No further action will be taken on this matter.

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. M130495
(BALLOT MEASURE 37) OF)
Delbert Gottsacker, CLAIMANT)

Claimant: Delbert Gottsacker (the Claimant)

Property: Township 5S, Range 1W, Section 17BA, Tax lot 200, Marion 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 23rd day of April, 2007.

FOR THE DEPARTMENT OF
ADMINISTRATIVE SERVICES:


David Hartwig, Administrator
DAS, State Services Division
Dated this 23rd day of April, 2007.

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

April 23, 2007

STATE CLAIM NUMBER: M130495

NAME OF CLAIMANT: Delbert Gottsacker

MAILING ADDRESS: 8518 Parr Road NE
Gervais, Oregon 97026

PROPERTY IDENTIFICATION: Township 5S, Range 1W, Section 17BA
Tax lot 200
Marion County

OTHER CONTACT INFORMATION: Norman Webb, Attorney
1114 12th Street SE
Salem, Oregon 97302

DATE RECEIVED BY DAS: October 30, 2006

180-DAY DEADLINE: April 28, 2007

I. SUMMARY OF CLAIM

The claimant, Delbert Gottsacker, seeks compensation in the amount of \$205,000 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 redevelop the subject property with a commercial use.¹ The property is located on North Pacific Highway, in Woodburn, in Marion 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 neither the

¹ The claimant states in his claim that he desires to use the subject property for "any and all lawful purposes" allowed at the time he acquired the property in 1965. Under ORS 197.352(8), if a public entity elects to not apply one or more land use regulations to the claimant's use of the property, it may do so only to allow "a use." Further, in order to determine that land use regulations have restricted the claimant's use of the property, the department must base that determination on a use. Because the claimant's desired use has not been sufficiently articulated to allow evaluation and because the claimant has not established how any state land use regulation has restricted his ability to develop the property for any use, the department has evaluated this claim based on the claimant's desire to develop the property with a commercial use, the desired use that the department can determine based on the information in the claim.

Land Conservation and Development Commission (the Commission) nor the department has enforced laws that restrict the claimant's use of the private real property. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On March 14, 2007, 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 comment was 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 October 30, 2006, for processing under OAR 125, division 145. The claim identifies the City of Woodburn's commercial zoning and development standards 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, Delbert Gottsacker, acquired the subject property on June 7, 1965, as reflected by a warranty deed included with the claim. The Marion County Assessor’s Office confirms the claimant’s current ownership of the subject property.

Conclusions

The claimant, Delbert Gottsacker, is an “owner” of the subject property as that term is defined in ORS 197.352(11)(C), as of June 7, 1965.

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 redevelop the subject property with a commercial use and that current land use regulations prohibit the desired use.²

The subject property is currently zoned Commercial General (CG) by the City of Woodburn. The subject property is within the City of Woodburn’s Urban Growth Boundary (UGB) and is within the city limits.

In general, the zoning of a particular property within a UGB is determined by the city or county with land use jurisdiction over the property. In some circumstances, the Commission’s rules or state statutes may apply to a local government decision regarding zoning, but usually, within a UGB, state laws require or encourage a higher intensity of development rather than restrict the use of real property. In this case, the claimant has not alleged how a specific state land use regulation restricts the use of real property and has the effect of reducing the fair market value of that real property.

² Although the claimant summarily cites numerous land use laws as applicable to this claim, he does not establish how any state land use laws apply to his desired use of the subject property or restrict the use with the effect of reducing its fair market value.

Based on the information in the claim, the department has not identified any state laws that restrict the claimant's use of the subject property.

Conclusions

The claim does not establish any state laws that currently restrict the use of the claimant's property. Because the subject property is located within the City of Woodburn's UGB, neither the Commission nor the department enforces laws that require specific zoning of the property. Based on the record before the department, neither the Commission nor the department enforces any laws that restrict the use of the claimant's real 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.(2) of this report, the claimant, Delbert Gottsacker, has not established that any state land use regulations restrict the use of the subject property. Accordingly, the department cannot determine that any laws enforced by the Commission or the department have had the effect of reducing the fair market value of the subject 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.(2) of this report, the claimant, Delbert Gottsacker, has not established that any state land use regulations restrict the use of the subject property. Accordingly, the department cannot determine that any exemptions under ORS 197.352(3) apply to this claim.

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 for this claim, the claimant has not established that any state laws enforced by the Commission or the department restrict the use of the subject property, and have the effect of reducing the fair market value of the subject property. Because the subject property is located

within the City of Woodburn, neither the Commission nor the department enforces laws that require specific zoning of the property.

Conclusions

Based on the record before the department, the claimant, Delbert Gottsacker, 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 April 2, 2007. 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.

The claimant and his attorney both commented on the draft staff report. Their comments were taken into account in the preparation of the final report.