



Oregon

Theodore R. Kulongoski, Governor

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August 23, 2007

To: Interested Persons

From: Lane Shetterly, Director



Re: Ballot Measure 37 (ORS 197.352) Claim Number M130879

Claimant: Christensen Rock, LLC

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. M130879
(BALLOT MEASURE 37) OF)
Christensen Rock, LLC, CLAIMANT)

Claimant: Christensen Rock, LLC (the Claimant)

Property: Township 1N, Range 9W, Section 32, Tax lot 300, Tillamook 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

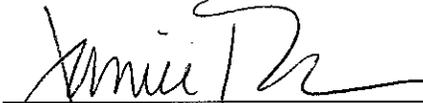
The Claim is denied as to laws administered by DLCD and the Land Conservation and Development Commission (LCDC) for the reasons set forth in the DLCD Report.

This Order is entered by the Manager for the Measure 37 Services Division 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


Michael Morrissey, Manager
DLCD, Measure 37 Services Division
Dated this 23rd day of August, 2007.

FOR the DEPARTMENT OF
ADMINISTRATIVE SERVICES:


Janice Dean, SSD Administrator
DAS, State Services Division
Dated this 23rd day of August, 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

August 23, 2007

STATE CLAIM NUMBER: M130879

NAME OF CLAIMANT: Christensen Rock, LLC

MAILING ADDRESS: 1330 Wilson River Loop
Tillamook, Oregon 97141

PROPERTY IDENTIFICATION: Township 1N, Range 9W, Section 32
Tax lot 300
Tillamook County

OTHER CONTACT INFORMATION: Julie Lafoon
JEL Property Research & Consultation
7480 Trask River Road
Tillamook, Oregon 97141

DATE RECEIVED BY DAS: November 17, 2006

DEADLINE FOR FINAL ACTION:¹ May 10, 2008

I. SUMMARY OF CLAIM

The claimant, Christensen Rock, LLC, seeks compensation in the amount of \$3 million 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 35-acre subject property into 60 half-acre parcels and to develop a dwelling on each resulting undeveloped parcel; and to operate a commercial rock quarry. The subject property is located at 9450 Kilchis River Road, near Bay City, in Tillamook 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 Land Conservation and Development Commission (the Commission) nor the department has

¹ ORS 197.352, as originally enacted, required that final action on claims made under Measure 37 be made within 180 days of the date the claim was filed. In response to the large volume of claims filed in late 2006, the Oregon legislature passed House Bill 3546, which became effective on May 10, 2007. This legislation increased the amount of time state and local governments have to take final action on Measure 37 claims filed on or after November 1, 2006, by 360 days, to a total of 540 days.

enforced laws that restrict the claimant's use of the private real property relative to uses permitted when the claimant acquired the subject property, with the effect of reducing the property's fair market value. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On June 6, 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, four written comments were received in response to the 10-day notice.

The comments are relevant to when the claimant became the present owner of the subject property, and whether the laws that are the basis for the claim are exempt under ORS 197.352(3). The comments have been considered by the department in preparing this report. (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 November 17, 2006, for processing under OAR 125, division 145. The claim identifies Statewide Planning Goal 4 (Forest Lands) and provisions of ORS 215, 321 and 527 and OAR 660-015-0000(4) 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 Christensen Rock, LLC² acquired the subject property on November 3, 2006, as reflected by a warranty deed included with the claim.³ The Tillamook County Assessor’s Office confirms Christensen Rock, LLC’s current ownership of the subject property.

Conclusions

Claimant Christensen Rock, LLC is an “owner” of the subject property as that term is defined by ORS 197.352(11)(C), as of November 3, 2006.

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 claimants’ 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 claimants or a family member acquired the property.

Findings of Fact

The claim indicates that the claimant desires to divide the 35-acre subject property into 60 half-acre parcels and to develop a dwelling on each resulting undeveloped parcel; and to operate a commercial rock quarry, and that the uses are not allowed under current land use regulations.⁴

The claim is based generally on the applicable provisions of state law that allow mixed farm-forest zoning and restrict uses on lands zoned for mixed farm-forest use. The claimant’s property is zoned SFW-20 (Small Farm and Woodlot) by Tillamook County. The county’s SFW-20 zone is a mixed agricultural and forest land zone, in accordance with Goals 3 (Agricultural Lands) and 4, as implemented by OAR 660-006-0050. Goals 3 and 4 became effective on January 25, 1975, and required that agricultural lands as defined by Goal 3 be zoned

² Christensen Rock, LLC is a domestic business corporation registered with the Oregon Secretary of State.

³ The claimant also asserts an earlier family ownership by individuals who conveyed the property to the LLC. However, under ORS 197.352(11)(A), legal entities can be “family members” of individuals who are owners of property under ORS 197.352(11)(C). However, legal entities cannot have family members under the statute. Therefore, individuals who transferred property to the LLC are not considered family members under the definition of family member in ORS 197.352(11)(A).

⁴ The claimant summarily cites numerous state land use laws as applicable to this claim. On their face, most of the regulations either do not apply to the subject property or do not restrict the use of the property with the effect of reducing 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 description of the desired use.

for farm uses and that forest lands under Goal 4 be zoned for forest uses. OAR 660-006-0050 authorizes local governing bodies to establish mixed agriculture-forest zones in accordance with both Goals 3 and 4 and OAR 660, divisions 6, and 33.

Under OAR 660-006-0050(2), effective on February 5, 1990, and subsequently amended on March 1, 1994, to comply with the provisions of House Bill 3661 (Chapter 792, Oregon Laws 1993), uses allowed in Exclusive Farm Use (EFU) zones under Goal 3 and forest zones under Goal 4 are allowed in mixed agriculture-forest zones.

For land divisions, OAR 660-006-0055 requires local governing bodies to apply the standards of OAR 660-006-0026 and 660-033-0100, which implement the minimum lot size requirements in ORS 215.780. ORS 215.780(1) establishes an 80-acre minimum for the creation of new lots or parcels in EFU and forest zones and became effective on November 4, 1993 (Chapter 792, Oregon Laws 1993).

For the approval and siting of dwellings, under OAR 660-006-0050(2) and (3), counties must apply either the OAR 660, division 6, or 33, standards based on the predominant use of the tract on January 1, 1993.⁵ The provisions of OAR 660-006-0027 and 660-006-0029 apply to dwelling approval and siting where the predominant use of the tract on that date was forest, and the provisions of OAR 660-033-0030 and 660-033-0035 apply where the predominant use of the tract on that date was agriculture.

When Christensen Rock, LLC acquired the subject property in 2006, the property was subject to the current state land use laws in effect, as described above.

Conclusions

The current zoning requirements, minimum lot size and dwelling standards established by Goals 3 and 4, ORS 215 and OAR 660, divisions 6, and 33, were enacted or adopted before Christensen Rock, LLC acquired the subject property in 2006 and do not allow its desired division or development of the property. The claim does not establish that any state laws enforced by the Commission or the department restrict Christensen Rock, LLC's desired use of the subject property relative to uses permitted when it acquired the property in 2006.

3. Effect of Regulations on Fair Market Value

In order to establish a valid claim, ORS 197.352(1) requires that the land use regulations (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 \$3 million 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 subject property's value.

⁵ The claim does not include information regarding the predominant use of the property on January 1, 1993.

Conclusions

As explained in Section V.(1) of this report, the claimant is Christensen Rock, LLC, which acquired the property on November 3, 2006. No state laws enacted or adopted since Christensen Rock, LLC acquired the subject property restrict the use of the property relative to the uses allowed in 2006. Therefore, the fair market value of the subject property has not been reduced as a result of land use regulations enforced by the Commission or the department since Christensen Rock, LLC 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, including Goals 3 and 4, ORS 215 and OAR 660, divisions 6, and 33, which Tillamook County has implemented through its SFW-20 zone. All of these state land use regulations were in effect when Christensen Rock, LLC acquired the property in 2006.

Conclusions

All of the state land use regulations that restrict Christensen Rock, LLC's desired use of the subject property were in effect when it acquired the property in 2006. Therefore, these state land use regulations are exempt under ORS 197.352(3)(E), which exempts laws in effect when Christensen Rock, LLC 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 Christensen Rock, LLC's desired use of the subject property relative to what was permitted when it acquired the property in 2006 and do not reduce the fair market value of the property. All state laws restricting Christensen Rock, LLC's use of the subject property are exempt under ORS 197.352(3)(E).

Conclusions

Based on the record before the department, Christensen Rock, 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 Christensen Rock, LLC's desired use of the property was prohibited under the zoning in effect relative to what was permitted when it acquired the property in 2006. 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 July 18, 2007. 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.