



Oregon

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Department of Land Conservation and Development

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August 23, 2007

To: Interested Persons

From: Lane Shetterly, Director



Re: Ballot Measure 37 (ORS 197.352) Claim Number M130982

Claimants: Lauren D. and Dena M. Young and Young's Management Co.

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. M130982
(BALLOT MEASURE 37) OF)
Lauren D. Young, Dena M. Young and)
Young's Management Co., CLAIMANTS)

Claimants: Lauren D. Young, Dena M. Young and Young's Management Co. (the
 Claimants)

Property: Township 28S, Range 6W, Section 5: tax lot 2601
 Township 28S, Range 6W, Section 8: tax lot 500
 Township 28S, Range 6W, Section 9: tax lots 200 and 200A1
 Douglas County (the property)

Claim: The demand for compensation and any supporting information received
 from the Claimants by the State of Oregon (the Claim).

Claimants 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

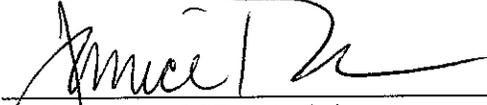
The Claim is denied as to laws administered by DLCD and the Land Conservation and Development Commission (LCDC) for the reasons set forth in the DLCD Report.

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: M130982

NAMES OF CLAIMANTS: Lauren D. Young
Dena M. Young
Young's Management Co.

MAILING ADDRESS: 820 Old Garden Valley Road
Roseburg, Oregon 97470

PROPERTY IDENTIFICATION: Township 28S, Range 6W
Section 5: tax lot 2601
Section 8: tax lot 500
Section 9: tax lots 200 and 200A1
Douglas County

DATE RECEIVED BY DAS: November 21, 2006

DEADLINE FOR FINAL ACTION:¹ May 14, 2008

I. SUMMARY OF CLAIM

The claimants, Lauren and Dena Young and Young's Management Co., seek compensation in the amount of \$365,336 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 claimants desire compensation or the right to divide the 199.99-acre subject property² into three parcels of at least 10 acres, and to develop a dwelling on each resulting 10-acre parcel and two dwellings on the resulting developed parcel. The subject property is located along Happy Valley Road, northeast of the South Umpqua River, near Roseburg, in Douglas 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 as to Lauren and Dena

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.

² The subject property includes four tax lots. Tax lot 200 consists of 139.02 acres; tax lot 200A1 consists of 0.09 acre; tax lot 500 consists of 60 acres; and tax lot 2601 consists of 0.88 acre.

and Dena Young because they are not owners of the subject property; and not valid as to Young's Management Co. because the claimants' desired use of the subject property was prohibited under the laws in effect when Young's Management Co. acquired the property in 1995. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On June 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, two written comments were received in response to the 15-day notice.

The comments do not address whether the claim meets the criteria for relief under ORS 197.352. Comments concerning the effects a use of the subject property may have on surrounding areas are generally not something that the department is able to consider in determining whether to waive a state law. If funds do become available to pay compensation, then such effects may become relevant in determining which claims to pay compensation for instead of waive a state law. (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 21, 2006, for processing under OAR 125, division 145. The claim identifies Douglas County's FG and FF zoning 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

Claimants Lauren and Dena Young acquired the subject property on December 12, 1977, as reflected by an absolute assignment and warranty deeds included with the claim and provided by DAS. According to the title information provided by DAS and Douglas County records, on June 30, 1995, claimants Lauren and Dena Young transferred the property to Young’s Management Co.³

The Douglas County Assessor’s Office confirms the Young’s Management Co.’s current ownership of the subject property.

Conclusions

Claimant Young’s Management Co. is an “owner” of the subject property as that term is defined by ORS 197.352(11)(C), as of June 30, 1995. Claimants Lauren and Dena Young are not “owners” of the subject property as that term is defined in ORS 197.352(11)(C).⁴

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 claimants desire to divide the 199.99-acre subject property into three parcels of at least 10 acres, and to develop a dwelling on each resulting 10-acre parcel and two

³ Young’s Management Co. is a domestic limited partnership registered with the Oregon Secretary of State.

⁴ 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 Young’s Management Co. are not considered family members of the limited partnership under the definition of family member in ORS 197.352(11)(A).

dwellings on the resulting developed parcel, and that the property's current zoning prevents the desired use.

The claim is based on the applicable provisions of state law that allow mixed agriculture-forest and require Exclusive Farm Use (EFU) zoning and restrict uses on lands zoned mixed agriculture-forest and EFU.

Tax lots 200, 200A1 and 500 are zoned by Douglas County as Farm Forest (FF), which is a mixed agricultural and forest land zone, in accordance with Statewide Planning Goals 3 (Agricultural Lands) and 4 (Forest Lands), 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 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 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.

Tax lot 2601 is zoned Exclusive Farm Use-Grazing (FG) by Douglas County, as required by Goal 3, in accordance with ORS 215 and OAR 660, division 33, because it is "agricultural land" as defined by Goal 3.⁶ 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.

Current land use regulations, particularly ORS 215.263, 215.284 and 215.780 and OAR 660, division 33, enacted or adopted pursuant to Goal 3, prohibit the division of EFU-zoned land into parcels less than 80 acres and establish standards for development of dwellings on existing or proposed parcels on that land.

⁵ The claim does not include information regarding the predominant use of tax lots 200, 200A1 and 500 on January 1, 1993.

⁶ Tax lot 2601 is "agricultural land" because it contains Natural Resources Conservation Service Class I-IV soils.

ORS 215.780 establishes an 80-acre minimum size for the creation of new lots or parcels in EFU zones and became effective on November 4, 1993 (Chapter 792, Oregon Laws 1993). ORS 215.263 (2005 edition) establishes standards for the creation of new parcels for non-farm uses and dwellings allowed in an EFU zone.

OAR 660-033-0135 (applicable to farm dwellings) became effective on March 1, 1994, and interprets the statutory standard for a primary dwelling in an EFU zone under ORS 215.283(1)(f). OAR 660-033-0130(4) (applicable to non-farm dwellings) became effective on August 7, 1993, and was amended to comply with ORS 215.284(4) on March 1, 1994.⁷

Claimant Young's Management Co. acquired the property on June 30, 1995. At that time, the property was subject to the current laws in effect, as described above.

Conclusions

The current zoning requirements, minimum lot size and dwelling standards established by Goals 3 and 4 and provisions applicable to land zoned mixed agriculture-forest and EFU in ORS 215 and OAR 660, divisions 6, and 33, were all enacted or adopted before Young's Management Co. acquired the subject property on June 30, 1995. These land use regulations do not allow the claimants' desired use of the subject property. Laws enacted or adopted since Young's Management Co. acquired the subject property in 1995 do not restrict the claimants' desired use of the property relative to when Young's Management Co. acquired it in 1995.

As explained in Section V.(1), claimants Lauren and Dena Young are not "owners" 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 claimants' use of the subject 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 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 \$365,336 as the reduction in the subject property's fair market value due to the regulations that restrict the claimants' desired use of the property. This amount is based on the claimants' assessment of a comparative market analysis included with the claim.

⁷ The Commission adopted amendments to OAR 660-033-0100, -0130 and -0135 to comply with House Bill 3326 (Chapter 704, Oregon Laws 2001, effective on January 1, 2002), which were effective on May 22, 2002. These amendments clarified but did not further restrict dwelling standards for EFU-zoned land.

Conclusions

As explained in Section V.(1) of this report, the claimants are Young's Management Co., which acquired the property on June 30, 1995, and Lauren and Dena Young. Lauren and Dena Young are not "owners" of the subject property as that term is defined in ORS 197.352(11)(C). Therefore, no laws restrict their use of the subject property with the effect of reducing the fair market value of the subject property. No state laws enacted or adopted since Young's Management Co. acquired the subject property restrict the use of the property relative to the uses allowed in 1995. 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.

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 the applicable provisions of Goals 3 and 4, ORS 215 and OAR 660, divisions 6, and 33, which Douglas County has implemented through its current FF and FG zones. As set forth in Section V.(2) of this report, all of the state land use regulations that restrict the claimants' desired use of the subject property were in effect when Young's Management Co. acquired the property in 1995.

Conclusions

All of the state land use regulations that restrict the claimants' desired use of the subject property were in effect when Young's Management Co. acquired the property. Therefore, these state land use regulations are exempt under ORS 197.352(3)(E), which exempts laws in effect when the claimants acquired the subject property.

As explained in Section V.(1) of this report, claimants Lauren and Dena Young. are not "owners" 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 to Lauren and Dena Young.

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, the department finds that the claim is not valid as to Lauren and Dena Young because they are not owners of the subject property; and not valid as to Young's Management Co. because its desired use of the property was prohibited by the laws in effect when it acquired the property in 1995. Laws enforced by the Commission or the department do not restrict its desired use of the subject property relative to what was permitted when Young's Management Co. acquired the subject property in 1995 and do not reduce its fair market value. All state laws restricting the use of the subject property are exempt under ORS 197.352(3)(E).

Conclusions

Based on the record and the foregoing findings and conclusions, claimants Lauren and Dena Young and Young's Management Co. have not established that they are 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 July 20, 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.