



Oregon

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October 3, 2007

To: Claimant and Interested Persons

From: Cora R. Parker, Acting Director



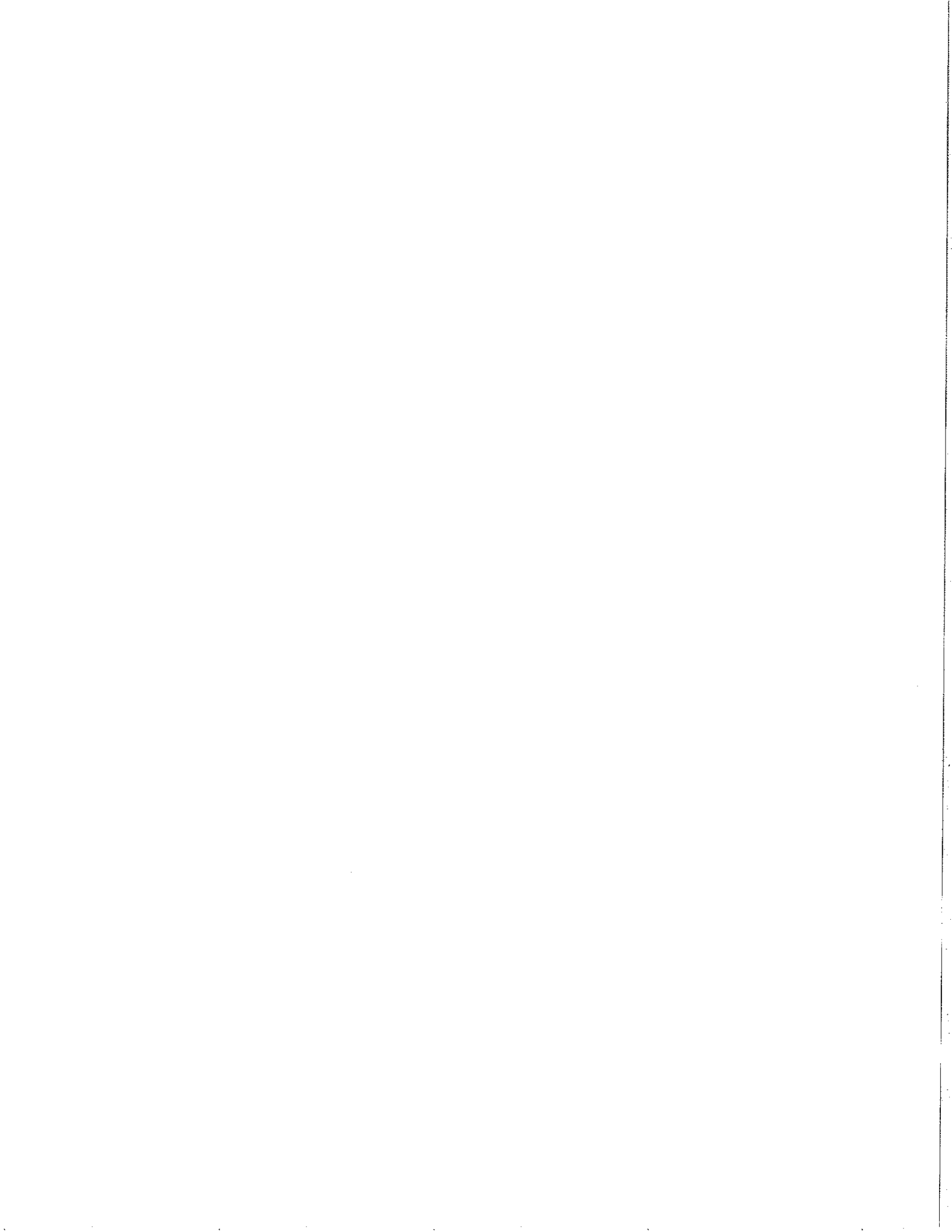
Re: Ballot Measure 37 (ORS 197.352) Claim Number M131380

Claimants: Darrell J. and Judith W. Barnes

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

This Draft Staff Report and Recommendation sets forth the department's evaluation of and recommendation on the claim. Oregon Administrative Rule 125-145-0100(3) provides that the claimant (or the claimant's agent) and any third parties who submitted comments on the claim may submit written comments, evidence, and information in response to any third-party comments contained in the report, and to the staff report and recommendation itself. Such response must be filed no more than 15 calendar days after the date of mailing of this report. Any response from you must be delivered to the Oregon Department of Administrative Services (DAS), 1225 Ferry Street SE, U160, Salem, Oregon 97301, and will be deemed timely filed if either postmarked on the 15th day or actually delivered to DAS by the close of business on the 15th day.

This department will review any responses submitted, and a Final Order on the claim will be issued after such review.



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

October 3, 2007

STATE CLAIM NUMBER: M131380

NAMES OF CLAIMANTS: Darrell J. and Judith W. Barnes

MAILING ADDRESS: 24191 E Highway. 20
Bend, Oregon 97701

PROPERTY IDENTIFICATION: Township 18S, Range 13E, Section 24
Tax lot 700
Deschutes County

DATE RECEIVED BY DAS: November 28, 2006

DEADLINE FOR FINAL ACTION:¹ May 21, 2008

I. SUMMARY OF CLAIM

The claimants, Darrell and Judith Barnes, seek compensation in the amount of \$189,000 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 claimants desire compensation or the right to partition the 59.59-acre subject property into three 20-acre parcels and to develop a dwelling on each resulting undeveloped parcel. The subject property is located at 24185 E Highway 20, near Bend, in Deschutes County. (See claim.)

II. SUMMARY OF STAFF RECOMMENDATION

Based on the preliminary 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 claimants' desired use of the subject property was prohibited under the laws in effect when the claimants acquired the property in 1997. (See the complete recommendation in Section VI. of this report.)

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.

III. COMMENTS ON THE CLAIM

Comments Received

On June 29, 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 comments were received in response to the 15-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 November 28, 2006, for processing under OAR 125, division 145. The claim identifies provisions of ORS 215 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 claimants, Darrell and Judith Barnes, acquired the subject property on June 4, 1997, as reflected by a bargain and sale deed included with the claim. The Deschutes County Assessor's Office confirms the claimants' current ownership of the subject property.

Conclusions

The claimants, Darrell and Judith Barnes, are "owners" of the subject property as that term is defined by ORS 197.352(11)(C), as of June 4, 1997.

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 59.59-acre subject property into three 20-acre parcels and to develop a dwelling on each resulting undeveloped parcel, and that current land use regulations prevent the desired use.

The claim is based generally on the applicable provisions of state law that require Exclusive Farm Use (EFU) zoning and restrict uses on EFU-zoned land. The claimants' property is zoned EFU by Deschutes County as required by Statewide Planning Goal 3 (Agricultural Lands), in accordance with ORS 215 and Oregon Administrative Rule (OAR) 660, division 33, because the claimants' property is "agricultural land" as defined by Goal 3. 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.

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). Under ORS 215.780(2)(a), counties may adopt minimum lot sizes smaller than 80 acres, subject to approval by the Commission. The Commission has approved Deschutes County's EFU zone with several sub-zones, which establish a minimum lot size based on irrigated acreage.² ORS 215.263 (2005 edition) establishes standards for the creation of new parcels for non-farm uses and dwellings allowed in an EFU zone.

² Information provided with the claim indicates that the subject property is in the Alfalfa sub-zone. The Deschutes County zoning code (Alfalfa sub-zone - 18.16.060(E)) indicates that this sub-zone generally requires 36 irrigated acres for approval of a farm division.

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, 1994.³

The claimants acquired the subject property on June 4, 1997, after the adoption of the statewide planning goals and their implementing statutes and regulations.

Conclusions

The current zoning requirements, minimum lot size, and dwelling standards established by Goal 3 and provisions applicable to land zoned EFU in ORS 215 and OAR 660, division 33, were all enacted or adopted before, Darrell and Judith Barnes, acquired the subject property on June 4, 1997. These land use regulations do not allow the claimants' desired use of the subject property. Laws enacted or adopted since the claimants acquired the subject property in 1997 do not restrict the claimants' desired use of the property relative to when the claimants acquired it in 1997.

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 \$189,000 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 the property's value, included with the claim.

Conclusions

As explained in Section V.(1) of this report, the claimants are Darrell and Judith Barnes who acquired the subject property on June 4, 1997. No state laws enacted or adopted since the claimants acquired the subject property restrict the use of the property relative to the uses allowed in 1997. Therefore, the fair market value of the subject property has not been reduced as a result of land use regulations enforced by the Land Conservation and Development Commission (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.

³ 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.

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 Goal 3, ORS 215 and OAR 660, division 33, which Deschutes County has implemented through its current EFU zone. 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 the claimants acquired the property in 1997.

Conclusions

All of the state land use regulations that restrict the claimants' desired use of the subject property were in effect when the claimants 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.

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 claimants' desired use of the subject property relative to what was permitted when the claimants acquired it in 1997 and do not reduce the fair market value of the property. 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, the claimants 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 because no state land use regulations restrict the claimants' desired use of the property relative to uses permitted when they acquired it, with the effect of reducing the property's fair market value. Therefore, the department recommends that this claim be denied.

VII. NOTICE OF OPPORTUNITY TO COMMENT

This staff report is not a final decision by the department and does not authorize any use of the property that is the subject of this report. OAR 125-145-0100 provides 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. Such response must be filed no more than 15 calendar days after the date this report is mailed to the claimants and any third parties. Responses to this draft staff report and recommendation will be considered only as comments related to the claim described in this report. All responses must be delivered to the Oregon Department of Administrative Services (DAS), Measure 37 Unit, Risk Management–State Services Division, 1225 Ferry Street SE, U160, Salem, Oregon 97301-4292 and will be deemed timely filed if either postmarked on the 15th day, or actually delivered to DAS by the close of business on the 15th day. Note: Please reference the claim number, claimant name and clearly mark your comments as “Draft Staff Report comments.” Comments must be submitted in writing only. Those comments submitted electronically or by facsimile will not be accepted.