



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>

October 17, 2007

To: Claimant and Interested Persons

From: Cora R. Parker, Acting Director



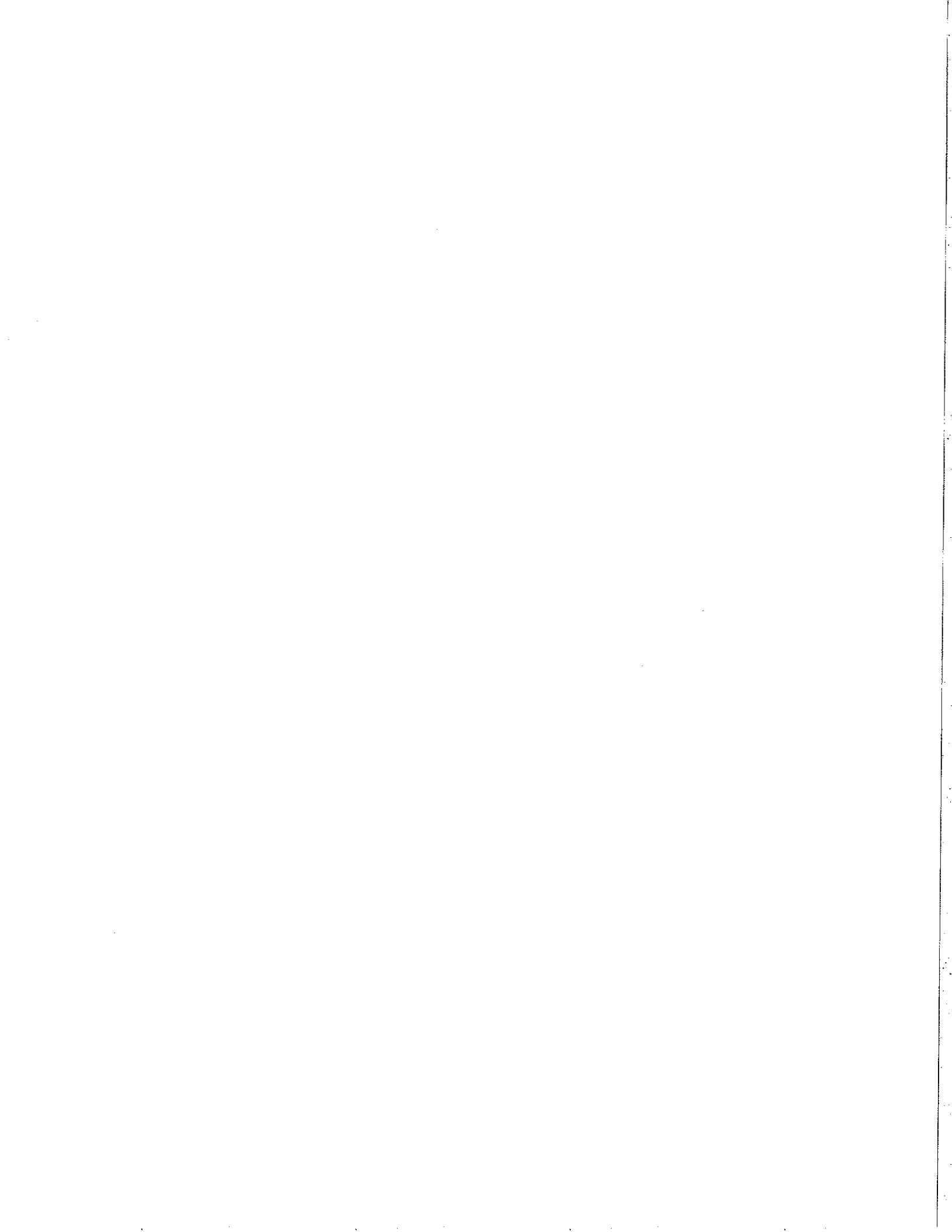
Re: Ballot Measure 37 (ORS 197.352) Claim Number M131613

Claimants: Gregory and Lynnette O'Dell

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 17, 2007

STATE CLAIM NUMBER: M131613

NAMES OF CLAIMANTS: Gregory and Lynnette O'Dell

MAILING ADDRESS: 17640 SW Neugebauer Road
Hillsboro, Oregon 97123

PROPERTY IDENTIFICATION: Township 2S, Range 2W, Section 17
Tax lot 2200
Washington County

OTHER CONTACT INFORMATION: Kevin V. Harker
7000 SW Varns Road
Portland, Oregon 97223

DATE RECEIVED BY DAS: November 29, 2006

DEADLINE FOR FINAL ACTION:¹ May 22, 2008

I. SUMMARY OF CLAIM

The claimants, Gregory and Lynnette O'Dell, seek compensation in the amount of \$250,000 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 divide the 4.77-acre subject property into two parcels for residential development. The subject property is located at 17640 SW Neugebauer Road, near Hillsboro, in Washington 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 1992. (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 August 1, 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 29, 2006, for processing under OAR 125, division 145. The claim identifies Washington County 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

The claimants, Gregory and Lynnette O'Dell, acquired the subject property on January 30, 1992, as reflected by a warranty deed included with the claim. The Washington County Assessor's Office confirms the claimants' current ownership of the subject property.

Conclusions

The claimants, Gregory and Lynnette O'Dell, are "owners" of the subject property as that term is defined by ORS 197.352(11)(C) as of January 30, 1992.

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' desires to divide the 4.77-acre subject property into two parcels for residential development and that current land use regulations prevent the desired use:

The claim is based on the provisions of state law that regulate rural residential zoning. The claimants' property is zoned Agriculture and Forest (AF-10) by Washington County. The AF-10 zone is a rural residential zone, in accordance with Statewide Planning Goal 14 (Urbanization), which prohibits urban use of rural lands. The county's AF-10 zone requires ten acres for the creation of any new lot or parcel and was in effect and applied to the subject property on or before October 4, 2000.

Goal 14 became effective on January 25, 1975, and requires that local comprehensive plans identify and separate urbanizable land from rural land in order to provide for an orderly and efficient transition from rural to urban land use. In 2000, as a result of a 1986 Oregon Supreme Court decision,² the Commission amended Goal 14 and adopted OAR 660-004-0040 (Application of Goal 14 to Rural Residential Areas), which was effective on October 4, 2000.

The rule states that if a county rural residential zone in effect on October 4, 2000, specifies a minimum lot size of two acres or more, the area of any new lot or parcel shall equal or exceed the minimum lot size then in effect (OAR 660-004-0040(7)(c)).³ Because Washington County's rural residential zone was in effect on October 4, 2000, and requires a minimum lot size of ten acres, the minimum lot size for all new lots or parcels must equal or exceed ten acres.

² *1000 Friends of Oregon v. LCDC (Curry County)*, 301 Or 447 (1986).

³ Some relief from this provision is available for lots or parcels having more than one permanent habitable dwelling pursuant to OAR 660-004-0040(7)(h). The rule also provides that a county's minimum lot size requirement in a rural residential zone shall not be amended to allow a smaller minimum lot size without approval of an exception to Goal 14 (OAR 660-004-0040(6)).

The claimants acquired the property on January 30, 1992. At that time, the property was subject to Washington County's acknowledged comprehensive plan and AF-10 zone. The AF-10 zone required a minimum lot size of 10-acres and allowed only one permanent dwelling per lot. The claimants' desired residential development of the subject property at that time would have been subject to the provisions of the county's comprehensive plan and AF-10 zone, including the provisions of Goal 14 implemented by those regulations.

Conclusions

The current minimum lot size requirements for rural residential lots or parcels established by Goal 14 and OAR 660-004-0040 were all enacted or adopted after Gregory and Lynnette O'Dell acquired the subject property on January 30, 1992. These land use regulations do not allow the claimants' desired use of the subject property. However, the provisions of Goal 14 and the county's acknowledged comprehensive plan and zoning designation in effect when the claimants acquired the subject property also prohibited the claimants' desired division of the property. Laws enacted or adopted since the claimants acquired the subject property in 1992 do not restrict the claimants' desired use of the property relative to when the claimants acquired it in 1992.

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 \$250,000 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 subject property's value. .

Conclusions

As explained in Section V.(1) of this report, the claimants are Gregory and Lynnette O'Dell who acquired the subject property on January 30, 1992. The local and state land use regulations in effect when the claimants acquired the subject property prohibited the claimants' desired use of the property. Laws enacted or adopted since the claimants acquired the subject property do not restrict the use of the property relative to the uses allowed in 1992. 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.

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 14 and OAR 660-004-0040, which Washington County has implemented through its current AF-10 zone. Provisions of OAR 660-004-0040 were adopted after the claimants acquired the property in 1992.

Conclusions

Provisions of OAR 660-004-0040 were adopted after the claimants acquired the subject property and, therefore are not exempt under ORS 197.352. However, state and local land use regulations in effect when the claimants acquired the subject property prohibit the claimants' desired use of the 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, the claimants' desired use of the subject property was prohibited by the state and local land use regulations in effect when the claimants acquired the property. Laws enforced by the Commission or the department since the claimants acquired the property do not restrict the claimants' desired use of the subject property relative to what was permitted when the claimants acquired it in 1992 and, therefore, do not reduce the fair market value of the property.

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 state land use regulations adopted since the claimants acquired the property do not 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.