

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. M129608
(BALLOT MEASURE 37) OF)
Ernest A. Reinhard, CLAIMANT)

Claimant: Ernest A. Reinhard (the Claimant)

Property: Township 7W, Range 4W, Section 26, Tax lot 3000, Polk 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 28th day of December, 2006.

FOR THE DEPARTMENT OF
ADMINISTRATIVE SERVICES:


David Hartwig, Administrator
DAS, State Services Division
Dated this 28th day of December, 2006.

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

December 28, 2006

STATE CLAIM NUMBER: M129608

NAME OF CLAIMANT: Ernest A. Reinhard

MAILING ADDRESS: 28727 Pacific Highway S
Federal Way, Washington 98003

PROPERTY IDENTIFICATION: Township 7W, Range 4W, Section 26
Tax lot 3000
Polk County

OTHER CONTACT INFORMATION: Gregory C. Hansen
750 Front Street, Suite 100
Salem, Oregon 97301

DATE RECEIVED BY DAS: July 3, 2006

180-DAY DEADLINE: December 30, 2006

I. SUMMARY OF CLAIM

The claimant, Ernest Reinhard, seeks compensation in the amount of \$4,139,192.40 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 25.26-acre subject property into twenty-four 1.00-acre parcels and one 1.26-acre parcel for commercial and retail development. The subject property is located at 5490 Dallas Highway NW, near Salem, in Polk 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 enforced laws that restrict the claimant's use of the private real property relative to uses permitted when the claimant acquired the property, and no laws enforced by the Commission or the department have 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 October 24, 2006, 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 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 July 3, 2006, for processing under OAR 125, division 145. The claim identifies ORS 197.175 and Statewide Planning Goals 3 (Agricultural Lands) and 4 (Forest Lands) 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."

