

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. M129650
(BALLOT MEASURE 37) OF)
Nancy Sitton, CLAIMANT)

Claimant: Nancy Sitton (the Claimant)

Property: Township 1S, Range 4E, Section 8AC, Tax lot 100, Multnomah County
(the property)

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

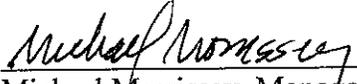
Claimant submitted the Claim to the State of Oregon under ORS 197.352. Under OAR 125-145-0010 *et seq.*, the Department of Administrative Services (DAS) referred the Claim to the Department of Land Conservation and Development (DLCD) as the regulating entity. This order is based on the record herein, 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

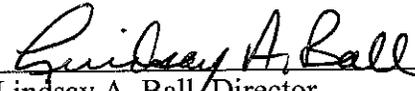
The Claim is denied as to laws administered by DLCD and the Land Conservation and Development Commission (LCDC) for the reasons set forth in the DLCD Report.

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 Director 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 3rd day of January, 2007.

FOR THE DEPARTMENT OF
ADMINISTRATIVE SERVICES:


Lindsay A. Ball, Director
DAS, State Services Division
Dated this 3rd day of January, 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

January 3, 2007

STATE CLAIM NUMBER: M129650

NAME OF CLAIMANT: Nancy Sitton

MAILING ADDRESS: PO Box 2322
Gresham, Oregon 97030

PROPERTY IDENTIFICATION: Township 1S, Range 4E, Section 8AC
Tax lot 100
Multnomah County

OTHER CONTACT INFORMATION: Kristian Roggendorf, Esq.
1650 NW Naito Parkway, Suite 302
Portland, Oregon 97209

DATE RECEIVED BY DAS: July 12, 2006

180-DAY DEADLINE: January 8, 2007

I. SUMMARY OF CLAIM

The claimant, Nancy Sitton, seeks compensation in the amount of \$800,000 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 claimant desires compensation or the right to remodel and expand an existing residence on the property. The subject property is located at 31631 SE Division Street, near Troutdale, in Multnomah 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 no state land use regulations prohibit the claimant's desired use of the subject property and because no state land use regulations enacted or adopted since the claimant acquired the subject property restrict her desired use of the property relative to uses allowed when she acquired it in 1999. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On October 16, 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 have been received.

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 12, 2006, for processing under OAR 125, division 145. The claim identifies Multnomah County's Significant Environmental Concern (SEC) overlay zone and Multnomah County's zoning ordinance sections 36.4500 and 36.4560 (SEC-h) and SEC-sw as the basis for the claim.¹ 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.

¹ The claim identifies Multnomah County zoning ordinance sections 35.4500 and 35.4560 as the local laws restricting the use of the property. These ordinance sections appear to apply to another part of Multnomah County. The claimant's attorney verified that the code sections cited in the claim are typographic errors and provided the correct code citations identified above.

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 claimant, Nancy Sitton, acquired the subject property on January 13, 1999, as reflected by a deed included with the claim. The Multnomah County Assessor’s Office confirms the claimant’s current ownership of the subject property.

Conclusions

The claimant, Nancy Sitton, is an “owner” of the subject property as that term is defined by ORS 197.352(11)(C), as of January 13, 1999.

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 claimant’s 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 claimant or a family member acquired the property.

Findings of Fact

The claim indicates that the claimant desires to remodel and expand an existing residence on the subject property and that Multnomah County zoning ordinance sections 36.4500 (SEC) and 36.4560 (SEC-h) and SEC-sw prevent the desired use.

The claim is based on the applicable provisions of state law that require SEC-h and SEC-sw zoning and restrict uses on land zoned SEC.² The claimant’s property is subject to Multnomah County’s SEC overlay zone, as required by Statewide Planning Goal 5 (Open Spaces, Scenic and Historical Areas, and Natural Resources) in accordance with OAR 660, division 16, because the claimant’s property is “wildlife habitat” as defined by Goal 5. Goal 5 became effective on January 25, 1975, and required that wildlife habitat, as defined by Goal 5, be protected.

When the claimant acquired the subject property in 1999, it was subject to the zoning now in effect. However, the state laws on which that the county’s SEC overlay provisions are based, including applicable provisions of Goal 5 and OAR 660, division 16, do not restrict or prohibit the claimant’s desired remodel and expansion of the dwelling on the subject property.

² Multnomah County states in an August 10, 2006, letter to the claimant’s attorney that the SEC overlay zone was originally adopted in October 1977 and readopted in 2003 with no substantial changes. Further the county states that the rural residential zone and SEC-h and SEC-sw overlays do not restrict the expansion of an existing dwelling. (See the letter in the department’s claim file.)

Conclusions

The current zoning requirements established by Goal 5 and provisions applicable to land subject to the SEC overlay zone in OAR 660, division 16, were all enacted or adopted before the claimant, Nancy Sitton, acquired the subject property on January 13, 1999. These land use regulations do not restrict the desired remodel or expansion of the existing dwelling. In addition, laws enacted or adopted since the claimant acquired the subject property in 1999 do not restrict her desired use of the property relative to when she acquired it in 1999.

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 \$800,000 as the reduction in the subject property’s fair market value due to the regulations that restrict the claimant’s desired use of the subject property. This amount is based on a comparison of the value of the dwelling before and after the desired improvements.

Conclusions

As explained in Section V.(1) of this report, the claimant is Nancy Sitton who acquired the subject property on January 13, 1999. The claimant is not entitled to compensation under ORS 197.352 because no state laws prohibit the claimant’s desired use of the subject property and no state laws enacted or adopted since the claimant acquired the subject property restrict the use of the property relative to the uses allowed in 1999. Therefore, the fair market value of the subject property has not been reduced as a result of land use regulations enforced by the Land Use 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 provisions of Multnomah County’s SEC overlay, which implements Goal 5 and OAR 660, division 16. These state use regulations were in effect when the claimant acquired the subject property on January 13, 1999.

Conclusions

Based on the claimant’s description of her desired use, state laws applicable to the claimant’s property were in effect when she acquired the property. Therefore, these state land use

regulations are exempt under ORS 197.352(3)(E), which exempts laws in effect when the claimant 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 prohibit the claimant's desired use of the property, do not restrict the claimant's desired use of the subject property relative to what was permitted when she acquired it in 1999 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 claimant has not established that she is 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 prohibit the claimant's desired use of the subject property and because no state land use regulations enacted or adopted since the claimant acquired the subject property restrict her desired use of the property relative to uses allowed when she acquired it in 1999. 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 December 14, 2006. 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.