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

April 18, 2007

To: Interested Persons

From: Lane Shetterly, Director

Re: Ballot Measure 37 (ORS 197.352) Claim Number M130413

Claimants: Oldenstadt, LLC, Dennis and Jacqueline Oldenstadt, and Allen and Donna Smith

---

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 COMPENSATION UNDER ORS 197.352 (BALLOT MEASURE 37) OF Oldenstadt, LLC , Dennis and Jacqueline Oldenstadt, and Allen and Donna Smith, CLAIMANTS	))))))	FINAL ORDER CLAIM NO. M130413

Claimants: Oldenstadt, LLC, Dennis and Jacqueline Oldenstadt, and Allen and Donna Smith (the Claimants)

Property: Township 3S, Range 1E, Section 5, Tax lots 300 and 800, Clackamas 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 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 18th day of April, 2007.

FOR THE DEPARTMENT OF ADMINISTRATIVE SERVICES:

David Hartwig, Administrator
DAS, State Services Division
Dated this 18th day of April, 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

April 18, 2007

STATE CLAIM NUMBER:	M130413
NAMES OF CLAIMANTS:	Oldenstadt, LLC Dennis and Jacqueline Oldenstadt Allen and Donna Smith
MAILING ADDRESSES:	Oldenstadt, LLC 24725 SW Mountain Road West Linn, Oregon 97068 Dennis and Jacqueline Oldenstadt 24725 SW Mountain Road West Linn, Oregon 97068 Allen and Donna Smith 24725 SW Mountain Road West Linn, Oregon 97068
PROPERTY IDENTIFICATION:	Township 3S, Range 1E, Section 5 Tax lots 300 and 800 Clackamas County
OTHER CONTACT INFORMATION:	John Shonkwiler 13425 SW 72nd Avenue Tigard, Oregon 97223
DATE RECEIVED BY DAS:	October 25, 2006
180-DAY DEADLINE:	April 23, 2007

I. SUMMARY OF CLAIM

The claimants, Oldenstadt, LLC, Dennis and Jacqueline Oldenstadt and Allen and Donna Smith, seek compensation in the amount of $13.8 million 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 92.84-acre subject property into

forty-six 2-acre parcels and to develop a dwelling on each parcel.[1] The subject property is located at 24725 SW Mountain Road, near West Linn, in Clackamas 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 this claim is not valid as to Oldenstadt, LLC because its desired use of the subject property was prohibited under the laws in effect when it acquired the property on April 19, 1999. The department has further determined the claim is not valid as to Dennis and Jacqueline Oldenstadt and Allen and Donna Smith because they are not owners of the subject property. (See the complete recommendation in Section VI of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On March 9, 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, one written comment was received in response to the 10-day notice.

The comment does 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 letter 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 criterion, whichever is later.

[1] The subject property includes two tax lots. Tax lot 300 consists of 60.11 acres, and tax lot 800 consists of 32.73 acres.

Findings of Fact

This claim was submitted to DAS on October 25, 2006, for processing under OAR 125, division 145. The claim identifies the provisions of ORS 215 and OAR 660 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

Claimant Dennis Oldenstadt acquired an interest in the subject property on April 28, 1948, and claimants Jacqueline Oldenstadt and Allen and Donna Smith acquired an interest in the subject property on February 21, 1969, as reflected by information provided by Clackamas County's Planning Department. On June 23, 1997, the claimants transferred all of their individual interest in the subject property to the Oldenstadt Family Limited Partnership, as reflected by information provided by Clackamas County's Planning Department. The Oldenstadt Family Limited Partnership transferred the subject property to claimant, Oldenstadt, LLC, on April 19, 1999, as reflected by a bargain and sale deed included with the claim.[2]

The Clackamas County Assessor's Office confirms Oldenstadt, LLC's current ownership of the subject property. Claimants Dennis and Jacqueline Oldenstadt and Allen and Donna Smith do not own the subject property.

Conclusions

Claimant Oldenstadt, LLC is an "owner" as that term is defined in ORS 197.352(11)(C) as of April 19, 1999.[3] Claimants Dennis and Jacqueline Oldenstadt and Allen and Donna Smith are not "owners" of the property as that term is defined in ORS 197.352(11)(C).

---

[2] Oldenstadt, LLC is a domestic limited liability company registered with the Oregon Secretary of State.

[3] 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, the individuals who transferred property to the Oldenstadt Family Limited Partnership, and the Limited Partnership that transferred the property to the Oldenstadt LLC are not considered family members under the definition of family member in ORS 197.352(11)(A).

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 92.83-acre subject property into forty-six 2-acre parcels and to develop a dwelling on each parcel, and that that the desired use is not allowed under current land use regulations.

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 subject property is zoned EFU by Clackamas County as required by Goal 3, in accordance with ORS 215 and OAR 660, division 33, because the property is "agricultural land" as defined by Goal 3.[4] 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). 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. The Commission subsequently adopted amendments to comply with House Bill 3326 (Chapter 704, Oregon Laws 2001, effective on January 1, 2002), which were effective on May 22, 2002. (See administrative rule history for OAR 660-033-0100, -0130 and -0135.)

Claimant Oldenstadt, LLC acquired the subject property on April 19, 1999. At that time, the property was subject to the laws for division and development, currently in effect, as described above.

---

[4] The subject property is "agricultural land" because it contains Natural Resources Conservation Service Class I–IV soils.

Conclusions

The current zoning requirements, minimum lot size and dwelling standards established by Goal 3 and provisions applicable to land zoned for farm use in ORS 215 and OAR 660, division 33, were all enacted or adopted before Oldenstadt, LLC acquired the subject property on April 19, 1999, and do not allow the desired division or residential use of the property. Laws enacted or adopted since Oldenstadt, LLC acquired the subject property in 1999 do not restrict its desired use of the property relative to when it acquired the property in 1999.

As explained in Section V.(1), Dennis and Jacqueline Oldenstadt and Allen and Donna Smith are not "owners" of the subject property as that term is defined in ORS 197.352(11)(C). Therefore, no laws enforced by the Commission or the department restrict their use of private 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 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 Facts

The claim includes an estimate of $13.8 million 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 Oldenstadt, LLC, Dennis and Jacqueline Oldenstadt and Allen and Donna Smith. Oldenstadt, LLC acquired the subject property on April 19, 1999. No state laws enacted or adopted since Oldenstadt, LLC 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 Commission or the department.

As explained in Section V.(1) of this report, Dennis and Jacqueline Oldenstadt and Allen and Donna Smith 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.

Findings of Facts

The claim is based on state land use regulation s that restrict the use of the subject property, including the applicable provisions of Goal 3, ORS 215 and ORS 660, division 33, which Clackamas County has implemented through it EFU zone. All of these regulations were in effect when Oldenstadt, LLC acquired the subject property in 1999.

Conclusions

All of the state land use regulation that restrict Oldenstadt, LLC's desired use of the subject property were in effect when it acquired the property. Therefore, these state land use regulations are exempt under ORS 197.352(3)(E), which exempts law in effect when Oldenstadt, LLC acquired the subject property.

As explained in Section V.(1) of this report, Dennis and Jacqueline Oldenstadt and Allen and Donna Smith 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 them.

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 Dennis and Jacqueline Oldenstadt and Allen and Donna Smith's desired use of the property because they are not owners of the property; and do not restrict Oldenstadt, LLC's desired use of the subject property relative to what was permitted when it 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, Oldenstadt, LLC has not established that it is entitled to relief under ORS 197.352(1) as a result of land use regulations enforced by the Commission or the department because the claimants' desired use of the property was prohibited under the laws in effect when it acquired the property. The department has further determined that Dennis and Jacqueline Oldenstadt and Allen and Donna Smith 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 they are not owners of the subject property. 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 March 27, 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.