



Oregon

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April 27, 2007

To: Interested Persons

From: Lane Shetterly, Director



Re: Ballot Measure 37 (ORS 197.352) Claim Number M130548

Claimants: Triple LJ, LLC; Helen Janay Myers; and Larry Myers

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)	FINAL ORDER
COMPENSATION UNDER ORS 197.352)	CLAIM NO. M130548
(BALLOT MEASURE 37) OF)	
Triple LJ, LLC, Helen Janay Myers, and)	
Larry Myers, CLAIMANTS)	

Claimants: Triple LJ, LLC, Helen Janay Myers, and Larry Myers (the Claimants)

Property: Township 3N, Range 9W, Section 18, Tax lot 400, Tillamook County (the Property)

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

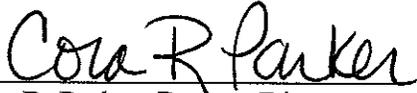
Claimants submitted the Claim to the State of Oregon under ORS 197.352. Under OAR 125-145-0010 *et seq.*, the Department of Administrative Services (DAS) referred the Claim to the Department of Land Conservation and Development (DLCD) as the regulating entity. This order is based on the record herein,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

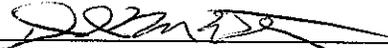
FOR DLCD AND THE LAND
CONSERVATION AND
DEVELOPMENT COMMISSION:
Lane Shetterly, Director



Cora R. Parker, Deputy Director
DLCD

Dated this 27th day of April, 2007.

FOR THE DEPARTMENT OF
ADMINISTRATIVE SERVICES:



David Hartwig, Administrator
DAS, State Services Division

Dated this 27th 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 27, 2007

STATE CLAIM NUMBER: M130548

NAMES OF CLAIMANTS: Triple LJ, LLC
Helen Janay Myers
Larry Myers

MAILING ADDRESS: 40500 Highway 53
Nehalem, Oregon 97131

PROPERTY IDENTIFICATION: Township 3N, Range 9W, Section 18
Tax lot 400
Tillamook County

OTHER CONTACT INFORMATION: Julie Lafoon
JEL Property Research & Consultation
7480 Trask River Road
Tillamook, Oregon 97141

DATE RECEIVED BY DAS: November 3, 2006

180-DAY DEADLINE: May 2, 2007

I. SUMMARY OF CLAIM

The claimants, Triple LJ, LLC and Helen and Larry Myers, seek compensation in the amount of \$850,000 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 66.05-acre subject property into ten 3-acre parcels on the portion east of Highway 53 and four 0.5- to 1-acre parcels on the portion west of Highway 53 and to develop a dwelling on each parcel. The subject property is located at 40500 Highway 53, near Nehalem, in Tillamook 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 as to Triple LJ, LLC because neither the Land Conservation and Development Commission (the Commission) nor the department has enforced laws that restrict its use of the private real property relative to uses permitted when it acquired the property, with the effect of reducing the property's fair market value. The department has further determined that this claim is not valid as to Helen and Larry

Myers 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 20, 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, two written comments were received in response to the 10-day notice.

The comments do 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 letters 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 criteria, whichever is later.

Findings of Fact

This claim was submitted to DAS on November 3, 2006, for processing under OAR 125, division 145. The claim identifies Statewide Planning Goals 3 (Agricultural Lands) and 4 (Forest Lands), ORS 215, OAR 660, divisions 15, and 33, and Tillamook County's Exclusive Farm Use (EFU) and SFW-20 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

Claimant Triple LJ, LLC acquired an interest in the subject property on August 28, 2002, as reflected by a bargain and sale deed included with the claim.¹ Claimants Helen and Larry Myers assert that they acquired the subject property on August 28, 2002, as owners of Triple LJ, LLC. Although claimants Helen and Larry Myers may have an ownership interest in Triple LJ, LLC, Triple LJ, LLC is a separate and distinct legal entity.² Helen and Larry Myers have not established that they have an individual ownership interest in the subject property. The Tillamook County Assessor’s Office confirms Triple LJ, LLC’s current ownership of the subject property.

Conclusions

Claimant Triple LJ, LLC is an “owner” of the subject property as that term is defined by ORS 197.352(11)(C), as of August 28, 2002. Claimants Helen and Larry Myers are not “owners” of the subject property as that term is defined in ORS 197.352(11)(C).

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 66.05-acre subject property into ten 3-acre parcels on the portion east of Highway 53 and four 0.5- to 1-acre parcels on the portion west of Highway 53 and to develop a dwelling on each parcel, and that the uses are not allowed under current land use regulations.³

¹ Triple LJ, LLC is a domestic business corporation registered with the Oregon Secretary of State.

² The claimants also assert family ownership through Helen Myers’ great grandfather, who originally acquired the property. However, 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), but legal entities cannot have family members under the statute. Therefore, Helen Myers’ great grandfather is not considered a family member of Triple LJ, LLC under the definition of family member in ORS 197.352(11)(A).

³ The claimants summarily cite numerous state land use laws as applicable to this claim. On their face, most of the regulations either do not apply to the subject property or do not restrict the use of the property with the effect of reducing its fair market value. This report addresses only those regulations that the department finds are applicable to and restrict the claimants’ use of the subject property, based on the claimants’ description of their desired use.

The claim is based generally on the applicable provisions of state law that require EFU and mixed farm-forest zoning and restrict uses on lands zoned EFU and mixed farm-forest.

A 32.6-acre portion of the subject property is zoned F-1 (Farm-1) by Tillamook County, as required by Goal 3, in accordance with ORS 215 and OAR 660, division 33, because the F-1 zoned portion of the subject 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 the development of dwellings on existing or any proposed parcel 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 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.)

The remaining 33.45-acre portion of the subject property is zoned SFW-20 (Small Farm and Woodlot) by Tillamook County. The SFW-20 zone is a mixed agricultural and forest land zone, as provided for by Goal 4 and the implementing provisions of OAR 660, division 6 (effective on February 5, 1990), subsequently amended on March 1, 1994, to comply with the provisions of House Bill 3661 (Chapter 792, Oregon Laws 1993).

Under OAR 660-006-0050, all the uses permitted under Goals 3 and 4 are allowed in mixed agriculture and forest zones except that for dwellings, either the Goal 3 or 4 standards are applicable based on the predominant use of the tract on January 1, 1993.⁵ Depending on the predominant use on January 1, 1993, the property is subject to either the requirements for dwellings applicable under EFU zoning required by Goal 3 and OAR 660, division 33, or forest zone provisions required by Goal 4 and OAR 660, division 6.

For land divisions, OAR 660-006-0055 authorizes the creation of new parcels based on the standards applicable to farm or forest zones that implement the minimum lot size specified in ORS 215.780. Under ORS 215.780(2)(a), the minimum lot size in Tillamook County's SFW-20

⁴ The 32.6-acre portion of the subject property is "agricultural land" because it contains National Resources Conservation Service Class I-VI soils.

⁵ No information was provided to the department regarding the predominant use of the property on January 1, 1993.

zone is 80 acres. ORS 215.780 became effective on November 4, 1993 (Chapter 792, Oregon Laws 1993).

When Triple LJ, LLC acquired the subject property in 2002, the property was subject to the current state land use laws in effect, as described above.

Conclusions

The current zoning requirements, minimum lot size and dwelling standards established by Goals 3 and 4, ORS 215 and OAR 660, divisions 6, and 33 were enacted or adopted before Triple LJ, LLC acquired the subject property in 2002 and do not allow its desired division or development of the property. The claim does not establish that any state laws enforced by the Commission or the department restrict Triple LJ, LLC's desired use of the subject property relative to uses permitted when it acquired the property in 2002.

As explained in Section V.(1), Helen and Larry Myers 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 the subject 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 Fact

The claim includes an estimate of \$850,000 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' market assessment of the subject property's value.

Conclusions

As explained in Section V.(1) of this report, the claimants are Triple LJ, LLC, which acquired the property on August 28, 2002, and Helen and Larry Myers, who are not owners of the subject property. No state laws enacted or adopted since Triple LJ, LLC acquired the subject property restrict the use of the property relative to the uses allowed in 2002. 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 since Triple LJ, LLC acquired the property. No laws restrict Helen and Larry Myers' use of the subject property with the effect of reducing the fair market value of the subject property because they are not "owners" of the subject property.

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 Goals 3 and 4, ORS 215 and OAR 660, divisions 6, and 33, which Tillamook County has implemented through its F-1 and SFW-20 zones. All of these state land use regulations were in effect when Triple LJ, LLC acquired the property in 2002.

Conclusions

All of the state land use regulations that restrict Triple LJ, LLC's desired use of the subject property were in effect when it acquired the property in 2002. Therefore, these state land use regulations are exempt under ORS 197.352(3)(E), which exempts laws in effect when it acquired the subject property.

As explained in Section V.(1) of this report, claimants Helen and Larry Myers 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 Helen and Larry Myers.

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 Helen or Larry Myers' desired use of the subject property because they are not owners of the property; and do not restrict Triple LJ, LLC's desired use of the subject property relative to what was permitted when it acquired the property in 2002 and do not reduce the fair market value of the property. All state laws restricting Triple LJ, LLC's use of the subject property are exempt under ORS 197.352(3)(E).

Conclusions

Based on the record before the department, 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 Triple LJ, LLC's desired use of the property was prohibited under the zoning in effect when it acquired the property in 2002; and because Helen and Larry Myers 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 April 6, 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.