



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

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April 30, 2007

To: Interested Persons

From: Lane Shetterly, Director



Re: Ballot Measure 37 (ORS 197.352) Claim Number M130578

Claimants: Richard E. and Diane C. Anderson

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. M130578
(BALLOT MEASURE 37) OF)
Richard E. Anderson and)
Diane C. Anderson, CLAIMANTS)

Claimants: Richard E. Anderson and Diane C. Anderson (the Claimants)

Property: Township 4S, Range 1E, Section 6, Tax lot 1600, Clackamas County
(the Property)

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

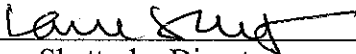
Claimants submitted the Claim to the State of Oregon under ORS 197.352. Under OAR 125-145-0010 *et seq.*, the Department of Administrative Services (DAS) referred the Claim to the Department of Land Conservation and Development (DLCD) as the regulating entity. This order is based on the record herein,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

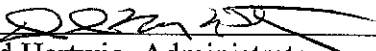
The Claim is denied as to laws administered by DLCD and the Land Conservation and Development Commission (LCDC) for the reasons set forth in the DLCD Report.

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 30th day of April, 2007.

FOR THE DEPARTMENT OF
ADMINISTRATIVE SERVICES:


David Hartwig, Administrator
DAS, State Services Division
Dated this 30th 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 30, 2007

STATE CLAIM NUMBER: M130578

NAMES OF CLAIMANTS: Richard E. Anderson
Diane C. Anderson

MAILING ADDRESS: PO Box 499
Aurora, Oregon 97002

PROPERTY IDENTIFICATION: Township 4S, Range 1E, Section 6
Tax lot 1600
Clackamas County

OTHER OWNERSHIP INTEREST Pacific Rock Products, LLC (Lessee)
8705 NE 117th Avenue
Vancouver, Washington 98662

OTHER CONTACT INFORMATION: Robert Engle
610 Glatt Circle
Woodburn, Oregon 97071

DATE RECEIVED BY DAS: November 6, 2006

180-DAY DEADLINE: May 5, 2007

I. SUMMARY OF CLAIM

The claimants, Richard and Diane Anderson, seek compensation in the amount of \$2.52 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 27.59-acre subject property into 2-acre parcels and to develop light industrial uses on each parcel. The subject property is located at 6822 S. Anderson Road, near Aurora, 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 the claim is not valid because the claimants do not have a present right to use the subject property in a manner that can be restricted by land use regulations, and therefore, no land use regulations enforced by the Commission or the department restrict the claimants' desired use of the subject property with the effect of reducing

the fair market value of the property. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On March 21, 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 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 November 6, 2006, for processing under OAR 125, division 145. The claim identifies Exclusive Farm Use (EFU) 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, Richard and Diane Anderson, acquired the subject property on May 6, 1980, as reflected by a bargain and sale deed included with the claim.¹ However, on July 31, 1997, the claimants leased the property to Pacific Rock Products, LLC. Under the terms of the 20-year lease, Pacific Rock Products, LLC has the exclusive right to use the property and the claimants do not have a right to use and develop the property in the manner set forth in their claim. Until the expiration of the lease, the claimants do not have a right to use the subject property in a manner that can be restricted by land use regulations.

Conclusions

The claimants, Richard and Diane Anderson, are “owners” of the subject property as that term is defined by ORS 197.352(11)(C), as of May 6, 1980, subject to the terms of the 20-year lease with Pacific Rock Products, LLC, under which Pacific Rock Products, LLC has the exclusive right to use the subject property and under which the claimants have no present right to use the subject property in a manner that can be restricted by land use regulations.²

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 27.59-acre subject property into 2-acre parcels and to develop light industrial uses on each parcel, and that the current zoning prohibits the desired use.

As explained in Section V.1 of this report, the claimants, Richard and Diane Anderson, do not have a present right to use the property in a manner that can be restricted by land use regulations. In 1997, under the terms of a 20-year lease, the claimants granted to Pacific Rock Products, LLC the exclusive right to use the subject property during the term of that lease. Because the claimants have no right to use the subject property in a manner that can be restricted by land use regulations, no land use laws enforced by the Commission or the department restrict the claimants’ desired use of the subject property with the effect of reducing the fair market value of the property.

¹ T. J. Anderson, the claimants’ father/father-in-law, acquired the subject property on January 18, 1945, as evidenced by a warranty deed included with the claim.

² In a letter dated April 14, 2007, the claimants’ attorney Robert Engle responded to the draft staff report. The comment was considered in this report.

Conclusions

The claimants have no present right to use the subject property in a manner that can be restricted by land use regulations. Therefore, no land use laws enforced by the Commission or the department restrict the claimants' use of the subject property in a manner that reduces 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 regulations (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 \$2.52 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 a real estate broker's assessment included with the claim.

Conclusions

As explained in Section V.(1) of this report, the claimants, Richard and Diane Anderson, do not have a present right to use the subject property in a manner that can be restricted by land use regulations. Therefore, no state land use regulations restrict their use of the subject property with the effect of reducing the fair market value 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.

As explained in Section V.1 of this report, the claimants, Richard and Diane Anderson, do not have a present right to use the subject property in a manner that can be restricted by land use regulations. Therefore, the issue of whether any laws are exempt from ORS 197.352 is not relevant to this claim.

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 department finds that the claim is not valid because the claimants do not have a present right to use the subject property in a manner that can be restricted by land use regulations. Therefore, land use laws enforced by the Commission or the department do not restrict the claimants' desired use of the subject property and 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. 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 10, 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.