



Oregon

Theodore R. Kulongoski, Governor

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May 2, 2007



To: Interested Persons

From: Lane Shetterly, Director

Re: Ballot Measure 37 (ORS 197.352) Claim Number M130632

Claimant: Henry Beglinger

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. M130632
(BALLOT MEASURE 37) OF)
Henry Beglinger, CLAIMANT)

Claimant: Henry Beglinger (the Claimant)

Property: Township 1S, Range 2W, Section 30, Tax lot 601, Washington 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.

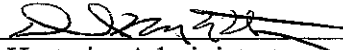
This Order is entered by the Deputy Director of the DLCD as a final order of DLCD and the Land Conservation and Development Commission under ORS 197.352, OAR 660-002-0010(8), and OAR chapter 125, division 145, and by the Administrator for the State Services Division of the DAS as a final order of DAS 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 3rd day of May, 2007.

FOR THE DEPARTMENT OF
ADMINISTRATIVE SERVICES:



David Hartwig, Administrator
DAS, State Services Division
Dated this 3rd day of May, 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**

May 3, 2007

STATE CLAIM NUMBER: M130632

NAME OF CLAIMANT: Henry Beglinger

MAILING ADDRESS: PO Box 1392
Hillsboro, Oregon 97123

PROPERTY IDENTIFICATION: Township 1S, Range 2W, Section 30
Tax lot 601
Washington County

OTHER CONTACT INFORMATION: Thomas A. Sherwood
12402 SW Chandler Drive
Tigard, Oregon 97224

DATE RECEIVED BY DAS: November 8, 2006

180-DAY DEADLINE: May 7, 2007

I. SUMMARY OF CLAIM

The claimant, Henry Beglinger, seeks compensation in the amount of \$200,000 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 divide the 38.8-acre subject property into one approximately 18-acre parcel and two 10-acre parcels, and to develop a dwelling on each resulting undeveloped parcel. The subject property is located at 29370 Burkhalter Road, in Washington 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 claimant's desired division of the 38.8-acre subject property into one approximately 18-acre parcel and two 10-acre parcels, and to develop a dwelling on each resulting undeveloped parcel was prohibited under the laws in effect when the claimant's family member acquired the property on November 25, 1998, and when the claimant acquired the property on January 12, 1999. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On March 23, 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 8, 2006, for processing under OAR 125, division 145. The claim identifies Statewide Planning Goals 3 (Agricultural Lands) and 14 (Urbanization); ORS 197.175(2) and provisions of ORS 215; and provisions of OAR 660, divisions 4, and 33, 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 claimant, Henry Beglinger, originally acquired the subject property on May 15, 1965, as reflected by a warranty deed included with the claim. On February 4, 1994, the claimant transferred the property to a revocable trust, the Henry H. Beglinger and Phyllis D. Beglinger Revocable Living Trust, as reflected by the deed included with the claim. On November 25, 1998, the trustees of the trust conveyed their entire interest in the property to Beglinger Investments, LLC, an Oregon limited liability company, as reflected by a bargain and sale deed obtained from the Washington County Planning Department.¹ On January 12, 1999, the LLC conveyed the subject property back to the trustees of the trust, as reflected by a bargain and sale deed, obtained from the Washington County Planning Department. Subsequently, on June 5, 2003, the trustees transferred a one-half interest in the property to two other revocable trusts, the Henry H. Beglinger Restated Revocable Living Trust and the Phyllis D. Beglinger Restated Revocable Living Trust, as reflected by the statutory warranty deed included with the claim.² On June 30, 2006, Henry H. Beglinger, as the sole surviving trustee of the Phyllis D. Beglinger Restated Revocable Living Trust conveyed a one-half interest in the property to the Henry H. Beglinger Restated Revocable Living Trust, as reflected by a bargain and sale deed included with the claim.³ The Washington County Assessor's Office confirms the claimant's current ownership of the subject property.

Conclusions

The claimant, Henry Beglinger, is an "owner" of the subject property as that term is defined by ORS 197.352(11)(C), as of January 12, 1999. Beglinger Investments, LLC is a "family member" of the claimant, as defined by ORS 197.352(11)(C), as of November 25, 1998.

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 divide the 38.8-acre subject property into one approximately 18-acre parcel and two 10-acre parcels, and to develop a dwelling on each resulting undeveloped parcel, and that the current land use regulations prohibit the desired use.

¹ 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, individuals who transferred property to the LLC are not considered family members under the definition of family member in ORS 197.352(11)(A).

² Transfer of property to a revocable trust does not result in a change in ownership for purposes of ORS 197.352.

³ The department acknowledges receipt of the claimant's agent's correspondence dated April 20, 2007, relative to the department's finding as to the claimant's date of acquisition of the subject property. The department has considered the comment and finds that the record before the department supports the department's initial determination of the claimant's date of acquisition.

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 claimant's property is zoned EFU by Washington County as required by Goal 3, in accordance with ORS 215 and OAR 660, division 33, because the claimant's 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 the Goal be zoned EFU pursuant to ORS 215.

Current land use regulations, particularly ORS 215.213, 215.263 and 215.780 and OAR 660, division 33, enacted or adopted pursuant to Goal 3, prohibit the division of EFU-zoned land in marginal lands counties 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 (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 in a marginal lands county under ORS 215.213. OAR 660-033-0130(4)(e) (applicable to non-farm dwellings in marginal lands counties) became effective on August 7, 1993. 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 claimant's family first acquired the subject property on November 25, 1998, and the claimant acquired the property on January 12, 1999. At that time, the property was subject to Washington County's acknowledged EFU zone currently in effect, and the applicable provisions of Goal 3, ORS 215 and OAR 660, division 33.

Conclusions

The current zoning requirements, minimum lot size and dwelling standards established by Goal 3 and provisions applicable to land zoned EFU in ORS 215 and OAR 660, division 33, were all enacted or adopted before the claimant's family, acquired the subject property on November 25, 1998, and when the claimant acquired the property on January 12, 1999. These land use regulations do not allow the division of the 38.8-acre subject property into one approximately 18-acre parcel and two 10-acre parcels, or the development of a dwelling on each resulting undeveloped parcel. Laws enacted or adopted since the claimant's family member acquired the subject property in 1998 and since the claimant acquired it in 1999 do not restrict the claimant's desired use of the property relative to when he and his family member acquired it in 1998 and 1999.

⁴ The claimant's property is "agricultural land" because it contains National Resources Conservation Service Class I-IV soils.

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 \$200,000 as the reduction in the subject property’s fair market value due to the regulations that restrict the claimant’s desired use of the property. This amount is based on a real estate broker’s assessment of the property’s value, included with the claim.

Conclusions

As explained in Section V.(1) of this report, the claimant is Henry Beglinger, whose family acquired the subject property on November 25, 1998. The claimant’s desired division of the subject property was prohibited under the regulations in effect when the claimant’s family member acquired the property. No state laws enacted or adopted since the claimant’s family acquired the subject property restrict the use of the property relative to the uses allowed in 1998. 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 does not identify any state land use regulations enacted or adopted since the claimant’s family acquired the subject property that restrict the use of the property relative to what would have been allowed when they acquired it on November 25, 1998. As set forth in Section V.(2) of this report, the state land use regulations restricting the claimant’s desired use of the subject property were in effect when the claimant’s family acquired the property in 1998 and when the claimant acquired it in 1999.

Conclusions

All of the state land use regulations that restrict the claimant’s desired use of the subject property were in effect when the claimant’s family 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 restrict the claimant's desired use of the subject property relative to what was permitted when the claimant's family acquired it in 1998 and when the claimant 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 he 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 claimant's desired use of the property was prohibited under the laws in effect when he and his family acquired the property in 1998 and 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 April 10, 2007. 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. Comments received have been taken into account by the department in the issuance of the final report.