



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

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July 12, 2007

To: Interested Persons

From: Lane Shetterly, Director



Re: Ballot Measure 37 (ORS 197.352) Claim Number M130807

Claimants: Donald Johnson, Waldo Hill LLC

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
(BALLOT MEASURE 37) OF) CLAIM NO. M130807
Donald Johnson and Waldo Hill, LLC, CLAIMANTS)

Claimants: Donald Johnson and Waldo Hill, LLC (the Claimants)

Property: Township 40S, Range 8W, Section 20, Tax lot 400
Josephine 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.

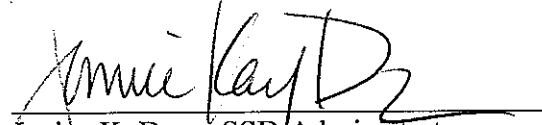
This Order is entered by the Deputy Director of the DLCD as a final order of DLCD and the Land Conservation and Development Commission under ORS 197.352, OAR 660-002-0010(8), and OAR chapter 125, division 145, and by the Administrator for the State Services Division of the DAS as a final order of DAS 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 12th day of July, 2007.

FOR THE DEPARTMENT OF
ADMINISTRATIVE SERVICES:


Janice K. Dean, SSD Administrator
DAS, State Services Division
Dated this 12th day of July, 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**

July 12, 2007

STATE CLAIM NUMBER: M130807

NAMES OF CLAIMANTS: Donald Johnson
Waldo Hill, LLC

MAILING ADDRESS: 511 NW Woodson Drive
Grants Pass, Oregon 97526

PROPERTY IDENTIFICATION: Township 40S, Range 8W, Section 20
Tax lot 400
Josephine County

OTHER CONTACT INFORMATION: Walter L. Cauble
Cauble, Dole & Sorenson, Attorneys
PO Box 398
Grants Pass, Oregon 97526

DATE RECEIVED BY DAS: November 16, 2006

DEADLINE FOR FINAL ACTION:¹ May 9, 2008

I. SUMMARY OF CLAIM

The claimants, Donald Johnson and Waldo Hill, LLC, seek compensation in the amount of \$1.88 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 196.35-acre subject property into thirteen approximately 10-acre parcels and one 60-acre parcel and to develop a dwelling on each parcel. The subject property is located at the geographic coordinates listed above, near Grants Pass, in Josephine 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 Waldo Hill, LLC

¹ ORS 197.352, as originally enacted, required that final action on claims made under Measure 37 be made within 180 days of the date the claim was filed. In response to the large volume of claims filed in late 2006, the Oregon legislature passed House Bill 3546, which became effective on May 10, 2007. This legislation increased the amount of time state and local governments have to take final action on Measure 37 claims filed on or after November 1, 2006, by 360 days, to a total of 540 days.

because its desired use of the subject property was prohibited under the laws in effect when it acquired the property in 2005. The department has further determined that the claim as to Donald Johnson is not valid because he is not an owner of the subject property. (See the complete recommendation in Section VI of this report

III. COMMENTS ON THE CLAIM

Comments Received

On May 25, 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.

Findings of Fact

This claim was submitted to DAS on November 16, 2006, for processing under OAR 125, division 145. The claim identifies Statewide Planning Goal 4 (Forest Lands) and Josephine County zoning as the basis for the 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 Donald Johnson originally acquired an ownership interest in tax lot 400 on June 27, 1977, as reflected by a warranty deed included with the claim. On June 16, 2005, Donald Johnson conveyed the subject property to Waldo Hill, LLC, as evidenced by a warranty deed included with the claim.²

The Josephine County Assessors office confirms Waldo Hill, LLC’s current ownership of the subject property. Claimant Donald Johnson is not an owner of the subject property.

Conclusions

Claimant Waldo Hill, LLC, is an “owner” of the subject property as that term is defined in ORS 197.352(11)(C) as of June 16, 2005.³ Donald Johnson is not an “owner” 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 196.35-acre subject property into thirteen approximately 10-acre parcels and one 60-acre parcel and to develop a dwelling on each parcel, and that the desired use is not allowed under current land use regulations.

The claim is based on the applicable provisions of state law that require Forest Commercial (FC) zoning and restrict uses on land zoned forest. The claimants’ property is zoned FC by Josephine County as required by Goal 4, in accordance with ORS 215 and OAR 660, division 6, because the claimants’ property is “forest land” as defined by Goal 4. Goal 4 became effective on January 25, 1975, and required that forest lands as defined by Goal 4 be zoned forest pursuant to ORS 215.

² Waldo Hill, 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, individuals who transferred property to Waldo Hills, LLC are not considered family members under the definition of family member in ORS 197.352(11)(A).

Current land use regulations, including ORS 215.705 to 215.755 and 215.780 and OAR 660, division 6, enacted or adopted pursuant to Goal 4, generally prohibit the division of forest-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 generally establishes an 80-acre minimum size for the creation of new lots or parcels on forest-zoned land and became effective on November 4, 1993 (Chapter 792, Oregon Laws 1993). ORS 215.705 to 215.755 establish standards for the creation of new parcels and dwellings allowed in forest zones.

OAR 660, division 6, became effective on September 1, 1982, to implement Goal 4 and establish standards for divisions and development of land zoned for forest use, and was amended on March 1, 1994, to implement ORS 215.705 to 215.755 and 215.780. OAR 660-006-0025 interprets the goal and statutory standard for uses allowed in forest zones. OAR 660-006-0026 interprets land division requirements in forest zones, and 660-006-0027 and 660-006-0029 interpret the standards for dwellings in forest zones.

Waldo Hill, LLC acquired the subject property on June 16, 2005, after the adoption of the statewide planning goals and their implementing statutes and regulations, as identified above.

Conclusions:

The current zoning requirements, minimum lot size and dwelling standards established by Goal 4 and provisions applicable to land zoned forest in ORS 215 and OAR 660, division 6, were all enacted or adopted before Waldo Hill, LLC acquired the subject property on June 16, 2005. These land use regulations do not allow the division and development of the subject property. No laws enacted or adopted since Waldo Hill, LLC acquired the subject property in 2005 restrict Waldo Hill, LLC's desired use of the property relative to when it acquired it in 2005.

As explained in Section V.(1), Donald Johnson is not an "owner" of the subject property as that term is defined in ORS 197.352(11)(C). Therefore, no laws enforced by the Land Conservation and Development Commission (the Commission) or the department restrict the claimants' 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 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 \$1.88 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 Waldo Hill, LLC, which acquired the subject property on June 16, 2005, and Donald Johnson. No state laws enacted or adopted since Waldo Hill, LLC acquired the subject property restrict the use of the property relative to the uses allowed in 2005. 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. Donald Johnson is not an "owner" of the subject property as that term is defined in ORS 197.352(11)(C). Therefore, no laws restrict his 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.

Findings of Fact

The claim is based on state land use regulations that restrict the use of the subject property, including provisions of Goal 4, ORS 215 and OAR 660, division 6, which Josephine County has implemented through its current FC zone. As set forth in Section V.(2) of this report, these state land use regulations restricting Waldo Hill, LLC's desired use of the subject property were in effect when it acquired the property in 2005.

Conclusions

All of the state land use regulations that restrict Waldo Hill, 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 laws in effect when Waldo Hill, LLC acquired the subject property.

As explained in Section V.(1) of this report, Donald Johnson, is not an "owner" 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 as to him.

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 record, the department finds that the claim is not valid as to Donald Johnson because he is not an owner of the subject property. The department further finds laws enforced by the Commission or the department do not restrict Waldo Hill, LLC's desired use of the subject property relative to what was permitted when it acquired the property in 2005 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 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 claimant Donald Johnson is not an owner of the subject property and because no laws restrict claimant Waldo Hill, LLC's desired use of the property relative to uses permitted at the time it acquired the property in 2005. 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 June 14, 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.