



Oregon

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August 13, 2007

To: Interested Persons

From: Lane Shetterly, Director



Re: Ballot Measure 37 (ORS 197.352) Claim Number M130942

Claimants: Elkridge Estates Properties LLC, John and Christine Kennedy

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. M130942
(BALLOT MEASURE 37) OF)
Elkridge Estates Properties LLC and)
John and Christine Kennedy, CLAIMANTS)

Claimants: Elkridge Estates Properties LLC and John and Christine Kennedy
(the Claimants)

Property: Township 1N, Range 1W, Section 7, Tax lot 500
Washington County (the Property)

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

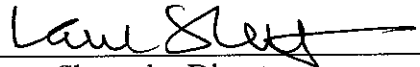
Claimants submitted the Claim to the State of Oregon under ORS 197.352. Under
OAR 125-145-0010 *et seq.*, the Department of Administrative Services (DAS) referred
the Claim to the Department of Land Conservation and Development (DLCD) as the
regulating entity. This order is based on the record herein,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

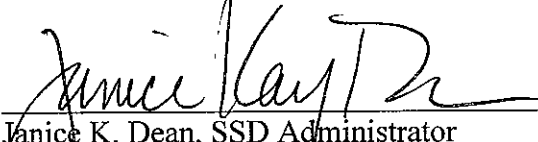
The Claim is denied as to laws administered by DLCD and the Land Conservation and
Development Commission (LCDC) for the reasons set forth in the DLCD Report.

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 13th day of August, 2007.

FOR THE DEPARTMENT OF
ADMINISTRATIVE SERVICES:


Janice K. Dean, SSD Administrator
DAS, State Services Division
Dated this 13th day of August, 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**

August 13, 2007

STATE CLAIM NUMBER: M130942

NAMES OF CLAIMANTS: Elkridge Estates Properties LLC
John and Christine Kennedy

MAILING ADDRESS: PO Box 1824
Beaverton, Oregon 97075

PROPERTY IDENTIFICATION: Township 1N, Range 1W, Section 7
Tax lot 500
Washington County

OTHER CONTACT INFORMATION: Jack L. Orchard
101 SW Main Street, Suite 1100
Portland, Oregon 97204

DATE RECEIVED BY DAS: November 20, 2006

DEADLINE FOR FINAL ACTION:¹ May 13, 2008

I. SUMMARY OF CLAIM

The claimants, Elkridge Estates Properties LLC and John and Christine Kennedy, seek compensation in the amount of \$700,000 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 and develop the 10.13-acre subject property. The subject property is located between 17240 and 1800 Germantown Road, near Hillsboro, 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 (1) the claim is not valid as to Elkridge Estates Properties LLC because the desired use of the subject property was prohibited under the

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.

laws in effect when it acquired the property in 2003; and (2) the claim is not valid as to John and Christine Kennedy 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 June 6, 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 20, 2006, for processing under OAR 125, division 145. The claim identifies Statewide Planning Goals 3 (Agricultural Lands) and 4 (Forest Lands); ORS 197 and 215; OAR 660, divisions 5, 6, 11, 22, and 33; and provisions of Washington County's zoning code 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 John Kennedy first acquired the subject property on October 22, 1979, as reflected by a land sale contract included with the claim. On July 17, 2003, John Kennedy conveyed the subject property to Elkridge Estates Properties LLC, as reflected by a warranty deed included with the claim. Claimant Christine Kennedy asserts she acquired the property on October 22, 1979. However, she has not submitted any documentation to substantiate that assertion.

The Washington County Assessor’s Office confirms Elkridge Estates Properties LLC’s current ownership of the subject property.

Conclusions

Claimant Elkridge Estates Properties LLC is an “owner” of the subject property as that term is defined by ORS 197.352(11)(C), as of July 17, 2003. John and Christine Kennedy 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 and develop the 10.13-acre subject property and that current land use regulations prevent the desired use.²

The claim is based on the applicable provisions of state law that require Exclusive Farm Use (EFU) zoning and restrict uses on land zoned EFU. The subject property is zoned EFU by Washington 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. Goal 3 became effective on

² The claimants summarily list numerous state land use laws as applicable to this claim, but do not establish how the laws either apply to the claimants’ desired use of the subject property or restrict its use with the effect of reducing its fair market value. 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’ desired use of the subject property, based on the claimants’ description of their desired use.

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 215.213, 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 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 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, 1993.³

Elkridge Estates Properties LLC acquired the subject property on July 17, 2003. At that time, the property was subject to the current laws in effect, as described above.

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 Elkridge Estates Properties LLC acquired the subject property on July 17, 2003. These land use regulations do not allow Elkridge Estates Properties LLC's desired use of the subject property. Laws enacted or adopted since Elkridge Estates Properties LLC acquired the subject property in 2003 do not restrict its desired use of the property relative to when it acquired the subject property in 2003.

As explained in Section V.(1) of this report, claimants John and Christine Kennedy are not "owners" 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 John and Christine Kennedy's use of private real property with the effect of reducing the fair market value of the subject 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."

³ The Commission adopted amendments to OAR 660-033-0100, -0130 and -0135 to comply with House Bill 3326 (Chapter 704, Oregon Laws 2001, effective on January 1, 2002), which were effective on May 22, 2002. These amendments clarified but did not further restrict dwelling standards for EFU-zoned land.

Findings of Fact

The claim includes an estimate of \$700,000 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 a real estate broker's assessment of the subject property's value.

Conclusions

As explained in Section V.(1) of this report, the claimants are Elkridge Estates Properties LLC, which acquired the property on July 17, 2003, and John and Christine Kennedy. John and Christine Kennedy are not "owners" of the subject property as that term is defined by ORS 197.352(11)(C). Therefore, no laws restrict John and Christine Kennedy's use of the subject property with the effect of reducing the fair market value. No state laws enacted or adopted since Elkridge Estates Properties LLC acquired the subject property restrict its use of the property relative to the uses allowed in 2003. 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.

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 the applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, which Washington County has implemented through its current EFU zone. As set forth in Section V.(2) of this report, all of the state land use regulations that restrict Elkridge Estates Properties LLC's desired use of the subject property were in effect when it acquired the property in 2003.

Conclusions

All of the state land use regulations that restrict Elkridge Estates Properties 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 Elkridge Estates Properties LLC acquired the subject property.

As explained in Section V.(1) of this report, claimant John and Christine Kennedy 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 John and Christine Kennedy.

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 Elkridge Estates Properties LLC's desired use of the subject property relative to what was permitted when the it acquired it in 2003. All state laws restricting the use of the subject property are exempt under ORS 197.352(3)(E) as to Elkridge Estates Properties LLC. The laws also do not restrict John and Christine Kennedy's use of the subject property because they are not owners of the subject 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 because 1) no state land use regulations restrict Elkridge Estates Properties LLC's desired use of the subject property relative to uses permitted when it acquired the property; and 2) John and Christine Kennedy 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 July 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.