



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

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October 23, 2007

To: Interested Persons
From: Cora R. Parker, Acting Director



Re: Ballot Measure 37 (ORS 197.352) Claim Number M131173

Claimants: Roy and Barbara Peters

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. M131173
(BALLOT MEASURE 37) OF)
Roy and Barbara Peters, CLAIMANT)

Claimant: Roy and Barbara Peters (the Claimant)

Property: Township 28S, Range 14W, Section 31BC, Tax lots 2200, 2700, 3600,
3700, 4100, 4200 and 4400, Coos 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 Amended 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 Acting 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 Manager for the Measure
37 Services Unit 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:



Cora R. Parker, Acting Director
DLCD
Dated this 23rd day of October, 2007.

FOR THE DEPARTMENT OF
ADMINISTRATIVE SERVICES:



Carla Ploederer, Manager
DAS, Measure 37 Services Unit
Dated this 23rd day of October, 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**

October 23, 2007

STATE CLAIM NUMBER: M131173

NAMES OF CLAIMANTS: Roy and Barbara Peters

MAILING ADDRESS: 56188 Prosper Junction Road
Bandon, Oregon 97411

PROPERTY IDENTIFICATION: Township 28S, Range 14W, Section 31BC
Tax lots 2200, 2700, 3600, 3700, 4100, 4200
and 4400
Coos County

OTHER CONTACT INFORMATION: Emmett McIntosh
33711 Oak Flat Road
Agness, Oregon 97406

DATE RECEIVED BY DAS: November 24, 2006

DEADLINE FOR FINAL ACTION:¹ May 17, 2008

I. SUMMARY OF CLAIM

The claimants, Roy and Barbara Peters, seek compensation in the amount of \$3,911,854 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 12.64-acre subject property into 26 parcels of not less than 15,000 square feet each and to develop a dwelling on each resulting undeveloped parcel. The property has not been assigned an address, but is located one block east of Highway 101 and west of Rosa Road, near Bandon, in Coos 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 neither 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.

Land Conservation and Development Commission (the Commission) nor the department has enforced laws that restrict the claimants' use of the subject private real property. (See the complete recommendation in Section VI of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On June 26, 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 15-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 criteria, whichever is later.

Findings of Fact

This claim was submitted to DAS on November 24, 2006, for processing under OAR 125, division 145. The claim identifies Coos County's Industrial-Commercial zoning district 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, Roy and Barbara Peters, acquired the subject property on May 10, 1977, as reflected by a land sale contract included with the claim. The Coos County Assessor’s Office confirms the claimants’ current ownership of the subject property.

Conclusions

The claimants, Roy and Barbara Peters, are “owners” of the subject property as that term is defined in ORS 197.352(11)(C), as of May 10, 1977.

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 12.64-acre subject property into 26 parcels of not less than 15,000 square feet each and to develop a dwelling on each resulting undeveloped parcel, and that the property’s current zoning prevents the desired use.

The subject property is currently zoned Industrial (IND) by Coos County. The IND zone is an industrial zone that restricts residential uses. The subject property is within the City of Bandon’s Urban Growth Boundary (UGB).

In general, the zoning of a particular property within a UGB is determined by the city or county with land use jurisdiction over the property. In some circumstances, the Commission’s rules or state statutes may apply to a local government decision regarding zoning, but usually, within a UGB, state laws require or encourage a higher intensity of development rather than restrict the use of real property. In this case, the claimants have not alleged how a specific state land use regulation restricts the use of real property and has the effect of reducing the fair market value of that real property.

Based on the information in the claim, the department has not identified any state laws that restrict the claimants’ use of the subject property.

