



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

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November 6, 2007

To: Interested Persons

From: Cora R. Parker, Acting Director



Re: Ballot Measure 37 (ORS 197.352) Claim Number M131396

Claimants: Wanda Gibson, David Luehring and Karen Dickson

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. M131396
(BALLOT MEASURE 37) OF)
Wanda Gibson, David Luehring and)
Karen Dickson, CLAIMANTS)

Claimants: Wanda Gibson, David Luehring and Karen Dickson (the Claimants)

Property: Township 11S, Range 1W, Section 20, Tax lots 1200 and 1201
Linn 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

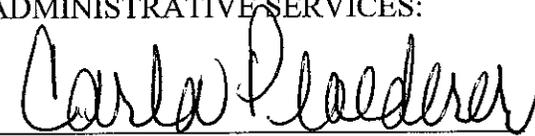
The Claim is denied as to laws administered by DLCD and the Land Conservation and
Development Commission (LCDC) for the reasons set forth in the DLCD Report.

This Order is entered by the Manager of the Measure 37 Services Division 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 of 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


Michael Morrissey, Manager
DLCD, Measure 37 Services Division
Dated this 6th day of November, 2007.

FOR THE DEPARTMENT OF
ADMINISTRATIVE SERVICES:


Carla Ploederer, Manager
DAS, Measure 37 Services Unit
Dated this 6th day of November, 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

November 6, 2007

STATE CLAIM NUMBER: M131396

NAMES OF CLAIMANTS: Wanda Gibson
David Luehring
Karen Dickson

MAILING ADDRESS: Wanda Gibson
905 Birdcreek Lane
Guthrie, Oklahoma 73044

David Luehring
34848 Bond Road
Lebanon, Oregon 97355

Karen Dickson
8901 McKenzie Road
Guthrie, Oklahoma 73044

PROPERTY IDENTIFICATION: Township 11S, Range 1W, Section 20
Tax lots 1200 and 1201
Linn County

OTHER CONTACT INFORMATION: Donald M. Kelley
Kelley, Kelley & Doyle
110 N Second Street
Silverton, Oregon 97381

DATE RECEIVED BY DAS: November 28, 2006

DEADLINE FOR FINAL ACTION:¹ May 21, 2008

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.

I. SUMMARY OF CLAIM

The claimants, Wanda Gibson, David Luehring and Karen Dickson, seek compensation in the amount of \$2,663,000 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 the 121.38-acre subject property into one 11.38-acre parcel and eleven 10-acre parcels and to develop a dwelling on each resulting undeveloped parcel. The subject property is located at 34848 Bond Road, Lebanon, in Linn 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 because the claimants have not established their ownership of the property. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On August 20, 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, three written comments were received in response to the 15-day notice.

Two of the comments do 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.

The other comment is relevant to when the claimants became the present owners of the subject property. The comment has been considered by the department in preparing this report. (See the comment letters 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 28, 2006, for processing under OAR 125, division 145. The claim identifies Senate Bill 100, Statewide Planning Goal 3 (Agricultural Lands), OAR 660, division 33, and provisions of ORS 215 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 assert that they acquired the subject property in 1946 through their parents, Virginia and Ernest Luehring, and that they are current owners as trustees of their father’s trust, and personal representatives of their mother’s estate. However, while the claim indicates that Virginia and Earnest Luerhring may have acquired the property in 1946, there is no documentation in the claim to establish that any of the claimants acquired the property in 1946. The claim also includes no documentation as to when any of the claimants acquired an ownership interest in the property, as trustee or personal representative.²

Conclusions

The claimants, Wanda Gibson, David Luehring and Karen Dickson, have not established that they are “owners” of the subject property as that term is defined in ORS 197.352(11)(C).

² On July 20, 2007, department staff sent a letter to the claimants’ agent requesting evidence of ownership, including a certification of trust, a copy of a deed showing when property was transferred to the trust and when the claimants became trustees, documentation showing claimants’ involvement with the trust and death certificates for the claimants’ parents, Ernest and Virginia Luehring. This documentation has not been received to date.

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.

The claim indicates that the claimants desire to divide the 121.38-acre subject property into one 11.38-acre parcel and eleven 10-acre parcels and to develop a dwelling on each resulting undeveloped parcel, and that current land use regulations prevent the desired use.

As explained in Section V.(1) above, the claimants, Wanda Gibson, David Luehring and Karen Dickson, have not established that they are "owners" of the subject property as that term is defined in ORS 197.352(11)(C). Without such demonstration, it is not possible to determine that any laws enforced by the Land Conservation and Development Commission (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 relative to how the property could have been used at the time the claimants or a family member may have acquired 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."

As explained in Section V.(1) of this report, the claimants, Wanda Gibson, David Luehring and Karen Dickson, have not established their ownership of the subject property. Without such demonstration, the department can make no determination on the effect of any land use regulations on 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, Wanda Gibson, David Luehring and Karen Dickson have not established that they are an "owner" of the subject property as that term is defined in ORS 197.352(11)(C). Without such demonstration, the department can make no determination as to whether any land use laws are exempt from ORS 197.352.

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 because the claimants have not demonstrated their ownership of the subject property or established the date the claimants acquired the property.

Conclusions

Based on the record before the department, the claimants, Wanda Gibson, David Luehring and Karen Dickson, 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 the claimants have not established that they are the 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 October 1, 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 this final report.