



Oregon

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October 11, 2007

To: Claimant and Interested Persons

From: Cora R. Parker, Acting Director



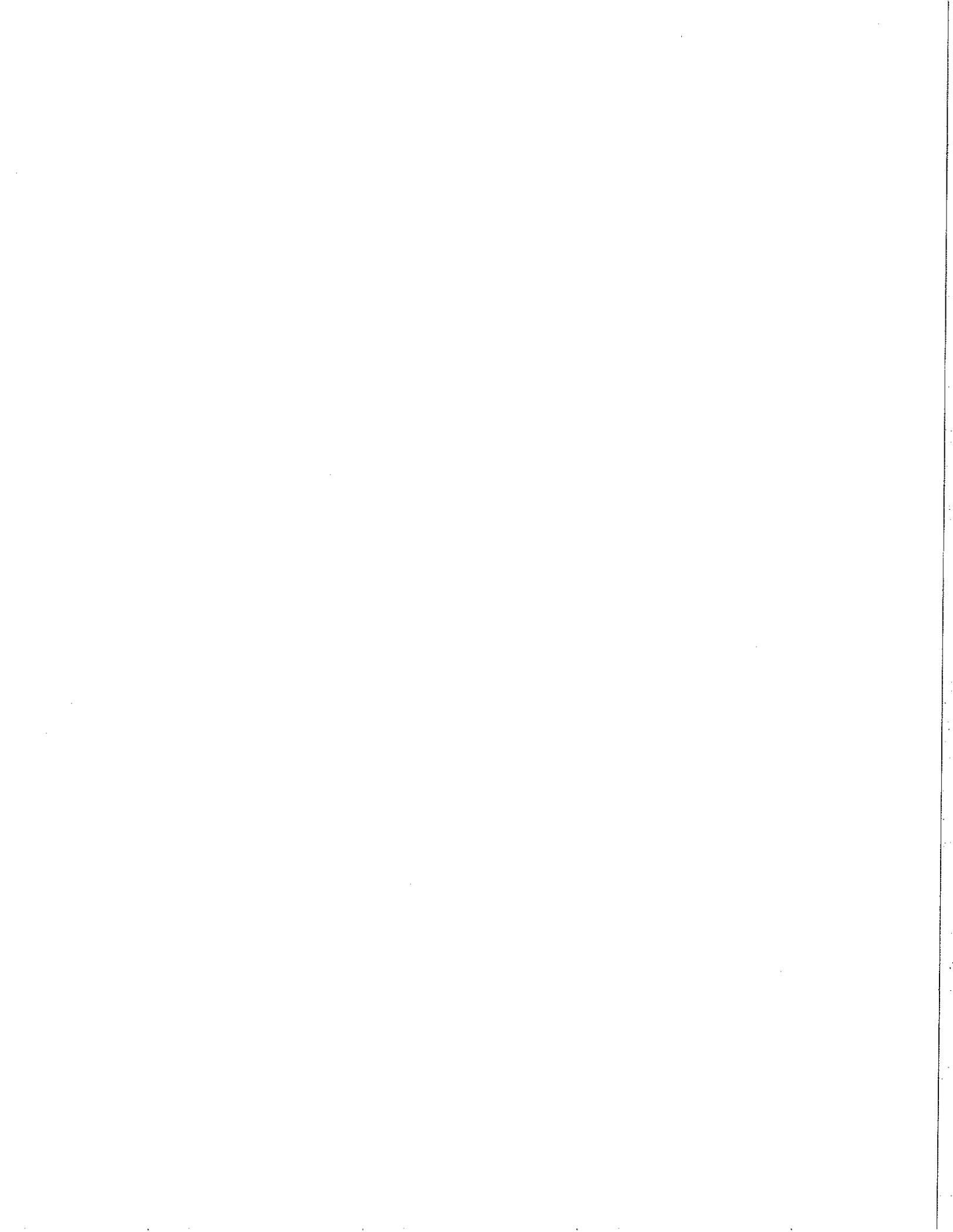
Re: Ballot Measure 37 (ORS 197.352) Claim Number M131555

Claimant: Damon E. Watters

Enclosed, in regard to the above-referenced claim for compensation under Ballot Measure 37 (ORS 197.352), is the Department of Land Conservation and Development's Draft Staff Report and Recommendation.

This Draft Staff Report and Recommendation sets forth the department's evaluation of and recommendation on the claim. Oregon Administrative Rule 125-145-0100(3) provides that the claimant (or the claimant's agent) and any third parties who submitted comments on the claim may submit written comments, evidence, and information in response to any third-party comments contained in the report, and to the staff report and recommendation itself. Such response must be filed no more than 15 calendar days after the date of mailing of this report. Any response from you must be delivered to the Oregon Department of Administrative Services (DAS), 1225 Ferry Street SE, U160, Salem, Oregon 97301, and will be deemed timely filed if either postmarked on the 15th day or actually delivered to DAS by the close of business on the 15th day.

This department will review any responses submitted, and a Final Order on the claim will be issued after such review.



ORS 197.352 (BALLOT MEASURE 37) CLAIM FOR COMPENSATION
OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
Draft Staff Report and Recommendation

October 11, 2007

STATE CLAIM NUMBER: M131555

NAME OF CLAIMANT: Damon E. Watters

MAILING ADDRESS: PO Box 422
Selma, Oregon 97538

PROPERTY IDENTIFICATION: Township 37S, Range 5W, Section 19A
Tax lots 200 and 300
Josephine County

OTHER CONTACT INFORMATION: Rick Riker
560 NE "F" Street, PMB 224
Grants Pass, Oregon 97526

DATE RECEIVED BY DAS: November 29, 2006

DEADLINE FOR FINAL ACTION:¹ May 22, 2008

I. SUMMARY OF CLAIM

The claimant, Damon Watters, seeks compensation in the amount of \$1,836,440 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 develop 57,600-square feet of mini-warehouses on the 5-acre subject property.² The subject property is located at 6555 Williams Highway, near Murphy, in Josephine County. (See claim.)

II. SUMMARY OF STAFF RECOMMENDATION

Based on the preliminary 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 use of the subject property was prohibited under the laws in effect when the claimant acquired tax lot 200 on November 20, 2000, and tax lot 300 on January 15, 2001. (See the complete recommendation in Section VI. of this report.)

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.

² The subject property includes two tax lots. Tax lot 200 consists of 2.5 acres and tax lot 300 consists of 2.5 acres.

III. COMMENTS ON THE CLAIM

Comments Received

On July 30, 2007, pursuant to 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, evidence or information 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 29, 2006, for processing under OAR 125, division 145. The claim identifies a provision of Josephine 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

The claimant, Damon Watters, acquired tax lot 200 on November 20, 2000, and acquired tax lot 300 on January 15, 2001, as reflected by warranty deeds included with the claim. The Josephine County Assessor’s Office confirms the claimant’s current ownership of the subject property.

Conclusions

The claimant, Damon Watters, is an “owner” of the subject property as that term is defined by ORS 197.352(11)(C) as of November 20, 2000, for tax lot 200 and as of January 15, 2001, for tax lot 300.

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 develop 57,600-square feet of mini-warehouses on the 5-acre subject property and that the property’s current zoning prevents the desired use.

The claim is based on the applicable provisions of state law that allow counties to adopt individual plan and zone designations (e.g., residential, commercial, industrial, public) for land in designated rural communities. The claimant’s property is zoned Rural Commercial by Josephine County as required by Statewide Planning Goals 11 (Public Facilities and Services) and 14 (Urbanization), in accordance with ORS 197 and OAR 660, division 22.

Goal 11, which became effective on January 25, 1975, generally prohibits urban levels of public facilities and services on lands that are outside an Urban Growth Boundary (UGB). Goal 11 and its implementing rules have two components: one that prohibits an owner from developing or utilizing urban-level facilities or services, and another that prohibits service providers from extending their facilities to serve property outside a UGB, unless a Goal 2 exception has been acknowledged. The claimant’s property is zoned for rural commercial use because the county justified exceptions to Goals 3, 4 and 11 to allow non-resource uses and to allow public facilities and services for the property.

Goal 14, which also became effective on January 25, 1975, generally requires that land outside of urban growth boundaries be used for rural uses. OAR 660-022-0030(4), (10) and (11) became effective on December 5, 1994, and implement Goal 14 by limiting uses within rural unincorporated communities. OAR 660-022-0030(3)(c) limits industrial uses and OAR 660-022-0030(4)(b) limits commercial uses to "small-scale, low-impact uses." OAR 660-022-0030(10) and (11) further defines a small-scale, low impact commercial or industrial use as, "one which takes place . . . in any other type of unincorporated community in a building or buildings not exceeding 4,000 square feet of floor space."

Conclusions

The current applicable zoning requirements and development standards established by Goals 11 and 14 and provisions in OAR 660, division 22 (as applicable to lands within rural unincorporated communities) were adopted before Damon Watters acquired the subject property on November 20, 2000 and January 15, 2001.³ These land use regulations limit commercial and industrial uses in rural unincorporated communities to small-scale, low impact uses and do not allow a commercial or industrial building or buildings more than 4,000 square feet on the subject property. Laws enacted or adopted since the claimant acquired tax lot 200 on November 20, 2000 and tax lot 300 on January 15, 2001, do not restrict the claimant's desired use of the property relative to when the claimant acquired it in 2000 and 2001.

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 \$1,836,440 as the reduction in the property's fair market value due to the regulations that restrict the claimant's desired use of the property. This amount is based on the claimant's assessment of the subject property's value.

Conclusions

As explained in Section V.(1) of this report, the claimant is Damon Watters who acquired tax lot 200 on November 20, 2000, and tax lot 300 on January 15, 2001. No state laws enacted or adopted since the claimant acquired the subject property restrict the use of the property relative to the uses allowed when the claimant acquired it. Therefore, the fair market value of the subject property has not been reduced as a result of land use regulations enforced by the Land Conservation and Development Commission (the Commission) or the department.

4. Exemptions Under ORS 197.352

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.

³ OAR 660, division 22, was amended in 2003; however, those amendments are unrelated to this claim.

Findings of Fact

The claim is based on state land use regulations that restrict the claimant's desired use of the subject property, including relevant provisions of Goals 11 and 14, which Josephine County has implemented through its Rural Commercial zone. The provisions of Goals 11 and 14 that restrict the claimant's desired use of the subject property were all in effect when the claimant acquired tax lot 200 on November 20, 2000, and tax lot 300 on January 15, 2001. The claim does not identify any state land use regulations enacted or adopted since the claimant acquired the subject property that restrict the use of the property relative to what would have been allowed when he acquired tax lot 200 in 2000 and tax lot 300 in 2001.

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 acquired tax lot 200 on November 20, 2000, and tax lot 300 on January 15, 2001. 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 acquired tax lot 200 on November 20, 2000, and tax lot 300 on January 15, 2001, 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 no state land use regulations restrict the claimant's desired use of the property relative to uses permitted when he acquired it, with the effect of reducing the property's fair market value. Therefore, the department recommends that this claim be denied.

VII. NOTICE OF OPPORTUNITY TO COMMENT

This staff report is not a final decision by the department and does not authorize any use of the property that is the subject of this report. OAR 125-145-0100 provides 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. Such response must be filed no more than 15 calendar days after the date this report is mailed to the claimant and any third parties. Responses to this draft staff report and recommendation will be considered only as comments related to the claim described in this report. All responses must be delivered to the Oregon Department of Administrative Services (DAS), Measure 37 Unit, Risk Management-State Services Division, 1225 Ferry Street SE, U160, Salem, Oregon 97301-4292 and will be deemed timely filed if either postmarked on the 15th day, or actually delivered to DAS by the close of business on the 15th day. Note: Please reference the claim number, claimant name and clearly mark your comments as "Draft Staff Report comments." Comments must be submitted in writing only. Those comments submitted electronically or by facsimile will not be accepted.