



Oregon

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Department of Land Conservation and Development

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October 11, 2007

To: Claimant and Interested Persons

From: Cora R. Parker, Acting Director



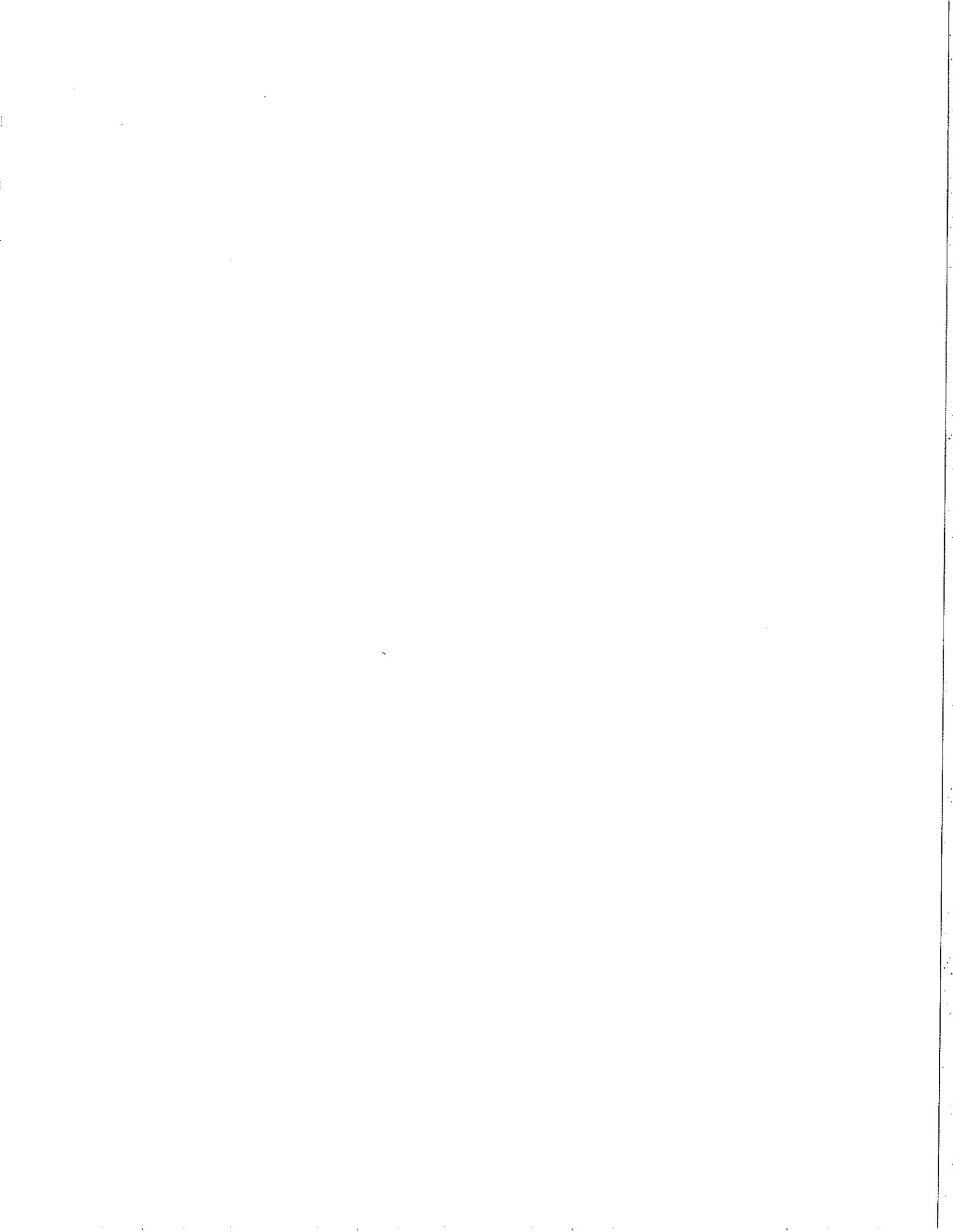
Re: Ballot Measure 37 (ORS 197.352) Claim Number M131593

Claimant: Fiona MacNeill

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: M131593
NAME OF CLAIMANT: Fiona MacNeill
MAILING ADDRESS: 55170 Lazy River Drive
Bend, Oregon 97707
PROPERTY IDENTIFICATION: Township 2N, Range 5W, Section 10
Tax lot 700
Washington County
DATE RECEIVED BY DAS: November 29, 2006
DEADLINE FOR FINAL ACTION:¹ May 22, 2008

I. SUMMARY OF CLAIM

The claimant, Fiona MacNeill, seeks compensation in the amount of \$300,000 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 claimant desires compensation or the right to develop a dwelling and accessory structures on the 10-acre subject property. The subject property is located at 59330 NW Strassel Road, near Forest Grove in Washington 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 this claim is not valid because the claimant has not established her ownership of the property. (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.

III. COMMENTS ON THE CLAIM

Comments Received

On August 2, 1007, 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, evidence or information were received in response to the 15-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 29, 2006, for processing under OAR 125, division 145. The claim identifies all Statewide Planning Goals, ORS 215 and Senate Bill 100 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, Fiona MacNeill, alleges she acquired the subject property on July 1, 1974, as reflected by a land sale contract included in the claim. However, the deed on which the claim relies conveys the property to a Linda MacNeill. In response to an inquiry from department staff, Fiona MacNeill explained that she has had her name changed and that Fiona MacNeill and Linda MacNeill are the same person. However, the claimant has not provided any documentation to substantiate that assertion. Without that documentation, the department cannot substantiate the claimant's asserted acquisition of the property.²

Conclusions

The claimant, Fiona MacNeill, has not established that she is 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 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.

The claim indicates that the claimant desires to develop a dwelling and accessory structures on the 10-acre subject property and that current land use regulations prevent the desired use.

As explained in Section V.(1) above, the claimant, Fiona MacNeill, has not established that she is an "owner" 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 claimant's 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 claimant 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 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."

As explained in Section V.(1) of this report, the claimant, Fiona MacNeill, has not established her ownership of the subject property. Without such demonstration, the department can make no

² On August 21, 2007, department staff left a telephone message with the claimant requesting deeds to support a conveyance of the subject property to Fiona MacNeill. Claimant responded that she was formerly known as Linda MacNeill and had legally changed her name to Fiona MacNeill. Department staff requested documentation from claimant supporting her name change in order to verify the claimant's acquisition of the property. This documentation has also not been received to date.

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 claimant, Fiona MacNeill has not established that she is 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 claimant has not demonstrated her ownership of the subject property.

Conclusions

Based on the record before the department, the claimant, Fiona MacNeill, has not established that she is entitled to relief under ORS 197.352(1) as a result of land use regulations enforced by the Commission or the department because the claimant has not established that she is the owner of the subject property. 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.

