

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. M124829  
(BALLOT MEASURE 37) OF )  
Bridget Beaudet, CLAIMANT )

Claimant: Bridget Beaudet (the Claimant)

Property: Township 3S, Range 2E, Section 23, Tax lot 605, Clackamas 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 Final Staff Report and Recommendation of DLCD (the DLCD Report) attached to and by this reference incorporated into this order.

ORDER

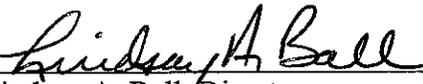
The Claim is denied as to laws administered by DLCD and the Land Conservation and Development Commission (LCDC) for the reasons set forth in the DLCD Report.

This Order is entered by the Deputy 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 Director 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

  
Cora R. Parker, Deputy Director  
DLCD  
Dated this 29<sup>th</sup> day of September, 2006.

FOR the DEPARTMENT OF  
ADMINISTRATIVE SERVICES:

  
Lindsay A. Ball, Director  
DAS  
Dated this 29<sup>th</sup> day of September, 2006.

## **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**

September 29, 2006

**STATE CLAIM NUMBER:** M124829

**NAME OF CLAIMANT:** Bridget Beaudet

**MAILING ADDRESS:** 21198 South Beaver creek Road  
Oregon City, Oregon 97045

**PROPERTY IDENTIFICATION:** Township 3S, Range 2E, Section 23  
Tax lot 605  
Clackamas County

**OTHER CONTACT INFORMATION:** Kelly S. Hossaini  
111 Southwest Fifth Avenue, Suite 3400  
Portland, Oregon 97204

**DATE RECEIVED BY DAS:** April 7, 2006

**180-DAY DEADLINE:** October 4, 2006

**I. SUMMARY OF CLAIM**

The claimant, Bridget Beaudet, seeks compensation in the amount of \$225,000 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 divide the 9.48-acre subject property into four or five approximately 2-acre parcels for residential development. The subject property is located at 21198 South Beaver creek Road, near Oregon City, in Clackamas 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. Department staff recommends that, in lieu of compensation, the requirements of the following state laws enforced by the Land Conservation and Development Commission (the Commission) or the department not apply to Bridget Beaudet's division of the 9.48-acre subject property into four or five approximately 2-acre parcels for residential development: applicable provisions of Statewide Planning Goal 14 (Urbanization) and Oregon Administrative Rule (OAR) 660-004-0040, adopted after May 9, 1994. These land use regulations will not apply to the claimant only to the

extent necessary to allow her to use the subject property for the use described in this report, and only to the extent that use was permitted when she acquired the property on May 9, 1994. (See the complete recommendation in Section VI. of this report.)

### **III. COMMENTS ON THE CLAIM**

#### **Comments Received**

On August 1, 2006, 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 was received in response to the 10-day notice.

The comment addresses whether the claim demonstrates that a state land use regulation has restricted the claimant's desired use, and whether the claim demonstrates that the land use regulation(s) has had the effect of reducing the fair market value of the property. The comment letter has been considered by the department. (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 April 7, 2006, for processing under OAR 125, division 145. The claim identifies Goal 14 and OAR 660-004-0040 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, Bridget Beaudet, acquired the subject property on May 9, 1994, as reflected by a statutory warranty deed included with the claim. The Clackamas County Assessor’s Office confirms the claimant’s current ownership of the subject property.

### **Conclusions**

The claimant, Bridget Beaudet, is an “owner” of the subject property as that term is defined by ORS 197.352(11)(C) as of May 9, 1994.

### **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 divide the 9.48-acre subject property into four or five approximately 2-acre parcels for residential development, and that the use is not allowed under current land use regulations. The claim also states that the claimant intends to apply to Clackamas County for a zone change from RRFF-5 to Rural Area Single Family Residential District (“RA-2”), and that the claimant’s desired use – to create four or five approximately 2-acre parcels – is not permitted under the RRFF-5 zone.

The subject property was zoned RRFF-5 when the claimant acquired it in 1994. The claimant’s desired use, to create four or five parcels of approximately two acres each, was not permitted at that time, based on the information in the claim. The claimant’s desired use still is not permitted under the RRFF-5 zoning.

As the claimant’s desired use was not permitted at the time she acquired the property, the claimant has failed to establish that any state land use regulation enacted after her acquisition of the property restricts her desired use of the property.

## **Conclusions**

The claimant's desired use of the property was not permitted when she acquired it in 1994. As a result, no state land use regulation enacted since that time has restricted her use of the property as set forth in her claim. As a result, the claim fails to establish a required element under ORS 197.352, and must be denied.

This report addresses only those state laws that are identified in the claim, or that the department is certain apply to the property based on the use that the claimant has identified. There may be other laws that currently apply to the claimant's use of the property, and that may continue to apply to the claimant's use of the property, that have not been identified in the claim.

### **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."

### **Findings of Fact**

The claim includes an estimate of \$225,000 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 a May 19, 2005, appraisal report submitted with the claim. The appraisal establishes that state land use regulations have had the effect of reducing the fair market value of the property by comparing the value of the property divided into two-acre lots with its current value. That assumes that the present owner had the right to divide the property in that manner in 1994, which, as described above, is not the case. As a result, the evidence in the claim is not relevant to the effect of the identified state land use regulations, and the claim fails to establish that the identified state land use regulations have had any effect on the fair market value of the property.

## **Conclusions**

As explained in Section V.(1) of this report, the claimant is Bridget Beaudet who acquired the subject property on May 9, 1994. Under ORS 197.352, the claimant is due compensation for land use regulations that restrict the use of the subject property and have the effect of reducing its fair market value. Based on the findings and conclusions in Section V.(2) of this report, no laws adopted since the claimant acquired the subject property restrict the claimant's desired use of the property. The evidence in the claim concerning fair market value is premised on a faulty assumption, and as a result there is no evidence of reduction of fair market value in the claim and the claim must be denied..

### **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.

### **Findings of Fact**

The claim is based on state land use regulations that restrict the use of the claimant's property, including Goal 14 and OAR 660-004-0040, which Clackamas County has implemented through its RRF-5 zone. With the exception of provisions of Goal 14 in effect when the claimant acquired the subject property on May 9, 1994, these land use regulations were adopted after the claimant acquired the property.

### **Conclusions**

Without a specific development proposal for the property, it is not possible for the department to determine all the laws that may apply to a particular use of the property, or whether those laws may fall under one or more of the exemptions under ORS 197.352. The provisions of Goal 14 in effect when the claimant acquired the subject property on May 9, 1994 are exempt. under ORS 197.352(3)(E).

This report addresses only those state laws that are identified in the claim, or that the department is certain apply to the property based on the use that the claimant has identified. Similarly, this report only addresses the exemptions provided for under ORS 197.352(3) that are clearly applicable, given the information provided to the department in the claim. The claimant should be aware that the less information she has provided to the department in the claim, the greater the possibility that there may be additional laws that will later be determined to continue to apply to her use of the 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, and have not had the effect of reducing the fair market value of the subject property.

## **Conclusions**

Based on the record, the department recommends that the claim be denied for the reasons stated in this report.

### **VII. COMMENTS ON THE DRAFT STAFF REPORT**

The department issued its draft staff report on this claim on September 13, 2006. 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 have been received on the draft report, and have been taken into account by the department in the issuance of this final report.