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 COMPENSATION UNDER ORS 197.352 (BALLOT MEASURE 37) OF Beverly Grant, CLAIMANT	))))	FINAL ORDER CLAIM NO. M129782

Claimant: Beverly Grant (the Claimant)

Property: Township 17S, Range 1W, Section 28, Tax lot 700, Lane 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 Administrator for the State Services Division 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 25th day of January, 2007.

FOR the DEPARTMENT OF ADMINISTRATIVE SERVICES:

David Hartwig, Administrator
DAS, State Services Division
Dated this 25th day of January, 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

January 25~~3~~, 2007

STATE CLAIM NUMBER:	M129782
NAME OF CLAIMANT:	Beverly Grant
MAILING ADDRESS:	319 Country Club Road Eugene, Oregon 97401
PROPERTY IDENTIFICATION:	Township 17S, Range 1W, Section 28 Tax lot 700 Lane County
OTHER CONTACT INFORMATION:	Poage Engineering PO Box 2527 Eugene, Oregon 97402
DATE RECEIVED BY DAS:	August 1, 2006
180-DAY DEADLINE:	January 28, 2007

I. SUMMARY OF CLAIM

The claimant, Beverly Grant, seeks compensation in the amount of $1,788,210 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 30.19-acre subject property into fifteen 2-acre parcels and to develop a dwelling on each resulting undeveloped parcel. The subject property is located at 39040 McKenzie Highway, near Springfield, in Lane 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 the claimant has not established her ownership of the property. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On November 6, 2006, pursuant to Oregon Administrative Rules (OAR) 125-145-0080, the Oregon Department of Administrative Services (DAS) provided written notice to the owners of surrounding properties. According to DAS, two written comments, evidence or information were received in response to the 10-day notice.

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 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 letters in the department's claim file.)

The comments are relevant to whether the claimant is an owner; when the claimant became the present owner of the subject property; whether a state law restricts the claimant's use of the subject property; whether the restriction of the claimant's use of the subject property reduces the fair market value of the property; whether the laws that are the basis for the claim are exempt under ORS 197.352(3). The comment have been considered by the department in preparing this report.

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 August 1, 2006, for processing under OAR 125, division 145. The claim identifies Lane County Code sections 16.212(5) through (10) 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, Beverly Grant, originally acquired the subject property with her husband, Jack Grant, on or about June 25, 1976, as evidenced by a series of personal representative deeds. On May 11, 1999, the claimant and her husband transferred the property to the Grant Revocable Living Trust, as reflected by a warranty deed included with the claim. On that same day, the claimant and her husband, as trustees of the trust, conveyed the property to David D. Grant, as reflected by a warranty deed included with the claim.[1] Evergreen Lane Title Company identifies David D. Grant as the current owner of the property in fee simple.

Conclusions

The claimant, Beverly Grant, has not established that she is an "owner" of the subject property, as that term is defined by 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.

As explained in Section V.(1) above, the claimant, Beverly Grant, 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 cannot determine that any laws enforced by the Land Use Conservation and Development Commission (the Commission) or the department restrict the

[1] After they had transferred the property to David Grant, the claimant and her husband, as trustees of the trust, purportedly conveyed the subject property to Michael T. Grant and Debra J. Grant by a deed recorded on January 8, 2001 (No. 2001-001117), and Michael and Debra Grant purportedly conveyed the property back to the trust by a deed recorded on January 10, 2001 (No. 2001-001508). Michael T. Grant and Debra J. Grant are the son and daughter –inlaw of the claimant.However, those conveyances to Michael and Debra Grant and from Michael and Debra Grant back to the trust have no legal effect because the claimant and her husband had previously conveyed any interest they had in the subject property to David Grant on May 11, 1999.

claimant's use of private real property with the effect of reducing the fair market value of 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 claimant, Beverly Grant, has not established her 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 claimant, Beverly Grant, 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 established her ownership of the subject property.

Conclusions

Based on the record before the department, the claimant, Beverly Grant, 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 her current ownership of the 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 January 4, 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.