

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. M129974  
(BALLOT MEASURE 37) OF )  
George Kuzma, CLAIMANT )

Claimant:     George Kuzma (the Claimant)

Property:     Township 9S, Range 1W, Section 29, Tax lots 400 and 500  
                  Linn 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 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.

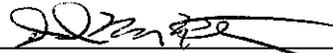
FOR DLCD AND THE LAND  
CONSERVATION AND  
DEVELOPMENT COMMISSION:



Lane Shetterly, Director  
DLCD

Dated this 27<sup>th</sup> day of February, 2007.

FOR THE DEPARTMENT OF  
ADMINISTRATIVE SERVICES:



David Hartwig, Administrator  
DAS, State Services Division

Dated this 27<sup>th</sup> day of February, 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**

February 27, 2007

**STATE CLAIM NUMBER:** M129974

**NAME OF CLAIMANT:** George Kuzma

**MAILING ADDRESS:** 10008 SW Quailpost Road  
Portland, Oregon 97219

**PROPERTY IDENTIFICATION:** Township 9S, Range 1W, Section 29  
Tax lots 400 and 500  
Linn County

**OTHER CONTACT INFORMATION:** John Shonkwiler  
13425 SW 72nd Ave.  
Tigard, Oregon 97223

**OTHER INTEREST IN PROPERTY:** John Kuzma

**DATE RECEIVED BY DAS:** September 5, 2006

**180-DAY DEADLINE:** March 3, 2007

**I. SUMMARY OF CLAIM**

The claimant, George Kuzma, seeks compensation in the amount of \$15,031,690 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 154.47-acre subject property into 77 parcels and to develop a dwelling on each parcel. The subject property is located at 39265 Shelburn Drive, near Scio, 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 claimant is no longer an owner of the subject property. (See the complete recommendation in Section VI of this report.)

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

#### **Comments Received**

On December 1, 2006, 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 10-day notice.

The comments are relevant to whether the claimant is an owner. The comments have 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 criterion, whichever is later.

#### **Findings of Fact**

This claim was submitted to DAS on September 5, 2006, for processing under OAR 125, division 145. The claim identifies provisions of ORS chapter 215 and OAR 660, division 33, 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 subject property consists of tax lots 400 and 500. The claimant, George Kuzma, acquired tax lot 400 on August 1, 1967, and tax lot 500 on August 2, 1967, as reflected by warranty deeds included with the claim. On July 6, 1990, the claimant transferred the property to a revocable trust, the George R. and Dorothy G. Kuzma Family Trust, with himself as a trustee, as reflected by a bargain and sale deed included with the claim.<sup>1</sup> On November 25, 1994, the claimant resigned as trustee, naming his son John Kuzma as successor trustee of the George R. and Dorothy G. Kuzma Family Trust, as reflected by a resignation of trustee document recorded with the county and included with the claim.<sup>2</sup>

George Kuzma died on December 27, 2006, according to an obituary published in the *Statesman Journal* on December 29, 2006. Therefore, George Kuzma no longer owns the subject property.

### **Conclusions**

The claimant, George Kuzma, is not 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.

As explained in Section V.(1), the claimant, George Kuzma, is not an “owner” of the subject property as that term is defined in ORS 197.352(11)(C). Therefore, no laws enforced by the Land Conservation and Development Commission (the Commission) or the department restrict the claimant’s use of private real property with the effect of reducing the fair market value of the property.

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<sup>1</sup> Transfer of property to a revocable trust does not result in a change in ownership for purposes of ORS 197.352, while the grantor is alive, even if the grantor designates a trustee other than himself.

<sup>2</sup> John Kuzma is not identified as a claimant on this claim for compensation under ORS 197.352.

### **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, George Kuzma, is not an “owner” of the subject property as that term is defined in ORS 197.352(11)(C). Therefore, no laws restrict his use of the subject property with the effect of reducing 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, George Kuzma, is not an “owner” of the subject property as that term is defined in ORS 197.352(11)(C). Therefore, the issue of whether any laws are exempt from ORS 197.352 is not relevant.

## **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 is not an owner of the subject property.

### **Conclusions**

Based on the record before the department, the claimant, George Kuzma, 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 he is no longer an owner 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 February 6, 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.