Oregon
Theodore R. Kulongoski, Governor

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April 17, 2007

To: Interested Persons

From: Lane Shetterly, Director

Re: Ballot Measure 37 (ORS 197.352) Claim Number M130392

Claimant: Dennis R. Hall

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

This Final Staff Report and Recommendation and the Final Order constitute the final decision on this claim. No further action will be taken on this matter.

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 Dennis R. Hall, CLAIMANT	))))	FINAL ORDER CLAIM NO. M130392, M130393 and M130394[1]

Claimant: Dennis R. Hall (the Claimant)

Property: Township 2N, Range 3W, Section 9: tax lot 1800, Section 10: tax lots 700 and 900, Washington County[2] (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.

[1] The claimant submitted three separate claims for relief under ORS 197.352: M120392, M130393 and M130394. Those claims were consolidated for this order.
[2] The subject property includes three tax lots. Tax lot 700 consists of 11.06 acres; tax lot 900 consists of 70.98 acres; and tax lot 1800 consists of 20.61 acres.

FOR DLCD AND THE LAND CONSERVATION AND DEVELOPMENT COMMISSION:

Lane Shetterly, Director
DLCD
Dated this 17th day of April, 2007.

FOR THE DEPARTMENT OF ADMINISTRATIVE SERVICES:

David Hartwig, Administrator
DAS, State Services Division
Dated this 17th day of April, 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

April 17, 2007

STATE CLAIM NUMBERS:	M130392, M130393 and M130394[1]
NAME OF CLAIMANT:	Dennis R. Hall
MAILING ADDRESS:	20064 NW Dairy Creek Road North Plains, Oregon 97133
PROPERTY IDENTIFICATION:	Township 2N, Range 3W Section 9: tax lot 1800 Section 10: tax lots 700 and 900 Washington County[2]
OTHER CONTACT INFORMATION:	Eric W. Hall 3585 NW Glencoe Road Hillsboro, Oregon 97124
DATE RECEIVED BY DAS:	October 24, 2006
180-DAY DEADLINE:	April 22, 2007

I. SUMMARY OF CLAIM

The claimant, Dennis Hall, seeks compensation in the amount of $8,687,000[3] 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 102.65-acre subject property into thirteen 5- to 10-acre parcels and to develop a dwelling on each resulting undeveloped parcel. The subject property is located along the east side of NW Dairy Creek Road, south of its intersection NW Oliver Hill Road, near North Plains, in Washington 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

[1] The claimant submitted three separate claims for relief under ORS 197.352: M120392, M130393 and M130394. Those claims were consolidated for review in this report.
[2] The subject property includes three tax lots. Tax lot 700 consists of 11.06 acres; tax lot 900 consists of 70.98 acres; and tax lot 1800 consists of 20.61 acres.
[3] This amount represents total compensation sought for all of the tax lots subject to claims M130392, M130393 and M130394.

not an owner of the subject property. (See the complete recommendation in Section VI of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On March 12, 2007, 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, one written comment was received in response to the 10-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 criterion, whichever is later.

Findings of Fact

This claim was submitted to DAS on October 24, 2006, for processing under OAR 125, division 145. The claim identifies provisions and "all associated regulations" of ORS 92 and 215 and Exclusive Farm Use (EFU) and Exclusive Forest and Conservation district (EFC) zoning 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, Dennis Hall, states in the claim that he acquired tax lot 700 on November 15, 1949, tax lot 900 on November 1, 1951, and tax lot 1800 on April 5, 1949, and now has an interest as an owner of Fertile Valley, LLC.[4] According to the information provided in the claim, the claimant conveyed all of his individual interest in the property to Fertile Valley, LLC on August 27, 1999, as reflected by a bargain and sale deed included with the claim. The claimant has no ownership interest in the subject property as an individual.

The Washington County Assessor's Office confirms Fertile Valley, LLC's current ownership of the subject property.

Conclusions

The claimant, Dennis Hall, is not an "owner" of the subject property as that term is defined in ORS 197.352(11)(C).[5]

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, Dennis Hall, 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

[4] Fertile Valley, LLC, is a domestic limited liability company registered with the Oregon Secretary of State.

[5] Although the claimant may have an ownership interest in Fertile Valley, LLC, Fertile Valley, LLC is a separate and distinct legal entity from the claimant. Under ORS 197.352(11)(A), legal entities can be "family members" of individuals who are owners of property under ORS 197.352(11)(C). However, legal entities cannot have family members under the statute. Therefore, an individual who transferred property to the Fertile Valley, LLC, is not considered a family member under the definition of family member in ORS 197.352(11)(A).

the 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, Dennis Hall, 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, Dennis Hall, 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, Dennis Hall, 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 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 March 27, 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.