



Oregon

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June 28, 2007



To: Interested Persons

From: Lane Shetterly, Director

Re: Ballot Measure 37 (ORS 197.352) Claim Number M130699

Claimant: Lila M. Wood

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)	FINAL ORDER
COMPENSATION UNDER ORS 197.352)	CLAIM NO. M130699
(BALLOT MEASURE 37) OF)	
Lila M. Wood, CLAIMANT)	

Claimant: Lila M. Wood (the Claimant)

Property: Township 13S, Range 1E, Section 18, Tax lots 201, 205 and 206
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 for the eastern 4.5-acre portion of tax lot 206 as to laws administered by DLCD and the Land Conservation and Development Commission (LCDC) for the reasons set forth in the DLCD Report.

The Claim is approved for the remaining property as to laws administered by DLCD and the Land Conservation and Development Commission (LCDC) for the reasons set forth in the DLCD Report, and subject to the following terms:

1. In lieu of compensation under ORS 197.352, the State of Oregon will not apply the following laws to Lila Woods' division of the 54.49-acre subject property into one 30.27-acre parcel (tax lot 206) and three additional parcels and to her development of a dwelling on each parcel: applicable provisions of Goals 3 and 4, ORS 215 and OAR 660, divisions 6, and 33. These laws will not apply to the claimant only to the extent necessary to allow her to use the property for the use described in this report, and only to the extent that use was permitted when she acquired the subject property, excluding the eastern 4.5 portion of tax lot 206, on December 31, 1964.
2. The action by the State of Oregon provides the state's authorization to the claimant to use the subject property, excluding the eastern 4.5 portion of tax lot 206, for the use described in this report, subject to the standards in effect on December 31, 1964.

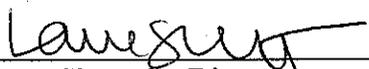
3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the subject property may not be used without a permit, license or other form of authorization or consent, the order will not authorize the use of the property unless the claimant first obtains that permit, license or other form of authorization or consent. Such requirements may include, but are not limited to: a building permit, a land use decision, a "permit" as defined in ORS 215.402 or 227.160, other permits or authorizations from local, state or federal agencies and restrictions on the use of the subject property imposed by private parties.

4. Any use of the subject property by the claimant under the terms of the order will remain subject to the following laws: (a) those laws not specified in (1) above; (b) any laws enacted or enforced by a public entity other than the Commission or the department; and (c) those laws not subject to ORS 197.352 including, without limitation, those laws exempted under ORS 197.352(3).

5. Without limiting the generality of the foregoing terms and conditions, in order for the claimant to use the subject property, it may be necessary for her to obtain a decision under ORS 197.352 from a city and/or county and/or metropolitan service district that enforces land use regulations applicable to the property. Nothing in this order relieves the claimant from the necessity of obtaining a decision under ORS 197.352 from a local public entity that has jurisdiction to enforce a land use regulation applicable to a use of the subject property by the claimant.

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 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 125, division 145, and ORS 293.

FOR DLCD AND THE LAND
CONSERVATION AND
DEVELOPMENT COMMISSION:



Lane Shetterly, Director
DLCD
Dated this 28th day of June, 2007.

FOR the DEPARTMENT OF
ADMINISTRATIVE SERVICES:



David Hartwig, Administrator
DAS, State Services Division
Dated this 28th day of June, 2007.

NOTICE OF RIGHT TO APPEAL OR OTHER JUDICIAL RELIEF

You are entitled, or may be entitled, to judicial remedies including the following:

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)

FOR INFORMATION ONLY

The Oregon Department of Justice has advised the Department of Land Conservation and Development that "[i]f the current owner of the real property conveys the property before the new use allowed by the public entity is established, then the entitlement to relief will be lost."

ORS 197.352 (BALLOT MEASURE 37) CLAIM FOR COMPENSATION
OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
Final Staff Report and Recommendation

June 28, 2007

STATE CLAIM NUMBER: M130699

NAME OF CLAIMANT: Lila M. Wood

MAILING ADDRESS: 2670 Sunrise Drive
Meadow Vista, CA 95722

PROPERTY IDENTIFICATION: Township 13S, Range 1E, Section 18
Tax lots 201, 205 and 206
Linn County

DATE RECEIVED BY DAS: November 13, 2006

DEADLINE FOR FINAL ACTION:¹ May 6, 2008

I. SUMMARY OF CLAIM

The claimant, Lila Woods, 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 divide the 54.49-acre subject property into one 34.77-acre parcel (tax lot 206) and three additional parcels and to develop a dwelling on each parcel.² The subject property is located at the geographic coordinates listed above, near Sweet Home, 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 the claim is valid in part. 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 Lila Woods' division of the 54.49-acre subject property into one 30.27-acre parcel (tax lot 206) and three additional parcels and to her development of a dwelling on each parcel: applicable provisions of Statewide Planning Goals 3 (Agricultural Lands) and 4 (Forest Lands),

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.

² The subject property includes three tax lots. Tax lot 201 consists of 14.36 acres; tax lot 205 consists of 5.36 acres; and tax lot 206 consists of 34.77 acres.

ORS 215 and Oregon Administrative Rules (OAR) 660, divisions 6, and 33. These laws will not apply to the claimant only to the extent necessary to allow her to the subject property for the use described in this report, and only to the extent that use was permitted when she acquired the subject property on December 31, 1964.

The department has further determined that the claim for the eastern 4.5-acre portion of tax lot 206 is not valid because the claimant has not established her ownership of that portion of the subject property. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On April 4, 2007, 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, no written comments were received in response to the 10-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 13, 2006, for processing under OAR 125, division 145. The claim identifies Linn County 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, Lila Woods, acquired the subject property, except for the eastern 4.5-acre portion of tax lot 206, on December 31, 1964, as reflected by a warranty deed included with the claim.³ The claimant has not submitted any documentation to establish her ownership of the eastern 4.5-acre portion of tax lot 206.

The Linn County Assessor’s Office confirms the claimant’s current ownership of the subject property, excluding the eastern 4.5-acre portion of tax lot 206.

Conclusions

The claimant, Lila Woods, is an “owner” of the subject property (excluding the eastern 4.5-acre portion of tax lot 206) as that term is defined by ORS 197.352(11)(C) as of December 31, 1964. The claimant has not established that she is an “owner” of the eastern 4.5-acre portion of tax lot 206.

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 54.49-acre subject property into one 34.77-acre parcel (tax lot 206) and three additional parcels and to develop a dwelling on each parcel, and that the current zoning prohibits the desired use.

The claim is based generally on the applicable provisions of state law that allow mixed agriculture-forest zoning and restrict uses on land zoned mixed agriculture-forest. The claimant’s property is zoned Farm/Forest (F/F) by Linn County. The county’s F/F zone a mixed agricultural and forest land zone, in accordance with Goals 3 and 4, as implemented by OAR 660-006-0050. Goals 3 and 4 became effective on January 25, 1975, and required that agricultural lands as defined by Goal 3 be zoned for farm uses and that forest lands under Goal 4

³ The claimant asserts that she acquired the eastern 4.5-acre portion of tax lot 206 “sometime prior to 1980.” On April 5, 2007, department staff contacted the claimant by telephone requesting documentation to establish the acquisition date for the eastern 4.5-acre portion of tax lot 206. This documentation has not been received to date.

be zoned for forest uses. OAR 660-006-0050 authorizes local governing bodies to establish mixed agriculture-forest zones in accordance with both Goals 3 and 4 and OAR 660, divisions 6, and 33.

Under OAR 660-006-0050(2), effective on February 5, 1990, and subsequently amended on March 1, 1994, to comply with the provisions of House Bill 3661 (Chapter 792, Oregon Laws 1993), uses allowed in Exclusive Farm Use (EFU) zones under Goal 3 and forest zones under Goal 4 are allowed in mixed agriculture-forest zones.

For land divisions, OAR 660-006-0055 requires local governing bodies to apply the standards of OAR 660-006-0026 and 660-033-0100, which implement the minimum lot size requirements in ORS 215.780. ORS 215.780(1) establishes an 80-acre minimum for the creation of new lots or parcels in EFU and forest zones and became effective on November 4, 1993 (Chapter 792, Oregon Laws 1993).

For the approval and siting of dwellings, under OAR 660-006-0050(2) and (3), counties must apply either the OAR 660, division 6, or 33, standards based on the predominant use of the tract on January 1, 1993.⁴ The provisions of OAR 660-006-0027 and 660-006-0029 apply to dwelling approval and siting where the predominant use of the tract on that date was forest, and the provisions of OAR 660-033-0030 and 660-033-0035 apply where the predominant use of the tract on that date was agriculture.

The claimant acquired the subject property, excluding the eastern 4.5-acre portion of tax lot 206, on December 31, 1964, prior to the adoption of statewide planning goals and their implementing statutes and regulations.

Conclusions

The current zoning requirements, minimum lot size and dwelling standards established under Goals 3 and 4, ORS 215 and OAR 660, divisions 6, and 33, for land zoned for mixed agriculture-forest use, were for enacted or adopted after the claimant acquired the subject property, excluding the eastern 4.5 acres of tax lot 206 in 1964, and do not allow the desired division and development of the property. These laws restrict the use of the subject property relative to the uses allowed when the claimant acquired the property.

As explained in Section V.(1), the claimant, Lila Woods, has not established that she is an "owner" of the eastern 4.5-acre portion of tax lot 206 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 Commission or the department restrict the claimant's desired use of that portion of the property with the effect of reducing the fair market value of the property.

This report addresses only those state laws that are identified in the claim, or that the department is certain apply to the subject property based on the uses that the claimant has identified. There may be other laws that currently apply to the claimant's use of the subject property, and that may continue to apply to the claimant's use of the property, that have not been identified in the claim. In some cases, it will not be possible to know which laws apply to a use of the subject property

⁴ The claim does not include information regarding the predominant use of the property on January 1, 1993.

until there is a specific proposal for that use. When the claimant seeks a building or development permit to carry out a specific use, it may become evident that other state laws apply to that use.

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 \$300,000 as the reduction in the subject 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 realtor's market analysis included with the claim.

Conclusions

As explained in Section V.(1) of this report, the claimant is Lila Woods who acquired the subject property, excluding the eastern 4.5-acre portion of tax lot 206, on December 31, 1964. As explained in Section V.(1) of this report, the claimant has not established her ownership of the eastern 4.5-acre portion of tax lot 206. Without such demonstration, the department can make no determination on the effect of any land use regulations on the fair market value of the eastern 4.5-acre portion of tax lot 206.

Under ORS 197.352, the claimant is otherwise 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, laws enacted or adopted since the claimant acquired the subject property restrict the claimant's desired use of the subject property. The claimant estimates that the effect of the regulations on the fair market value of the subject property is a reduction of \$300,000.

Without an appraisal or other documentation, it is not possible to substantiate the specific dollar amount by which the land use regulations have reduced the fair market value of the subject property. Nevertheless, based on the evidence in the record for this claim, the department determines the fair market value of the subject property has been reduced to some extent as a result of land use regulations enforced by the Commission or the department.

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.

Findings of Fact

The claim is based on state land use regulations that restrict the use of the subject property, including applicable provisions of Goals 3 and 4, ORS 215 and OAR 660, divisions 6, and 33, which Linn County has implemented through its FF zone. All of these land use regulations were enacted or adopted after the claimant acquired the majority of the subject property in 1964.

Conclusions

Without a specific development proposal for the subject 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. It appears that none of the general statutory, goal and rule restrictions on residential division and development of the subject property were in effect when the claimant acquired most of the property in 1964. As a result, these laws are not exempt under ORS 197.352(3)(E).

As explained in Section V.(1), the claimant has not established that she is an "owner" of the eastern 4.5-acre portion of tax lot 206 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 as to that portion of the property.

Laws in effect when the claimant acquired the subject property are also exempt under ORS 197.352(3)(E) and will continue to apply to the claimant's use of the property. In addition, the department notes that ORS 215.730 and OAR 660, division 6, particularly OAR 660-006-0027, -0029 and -0035, include fire protection standards for dwellings and structures in forest and mixed agriculture-forest zones. ORS 197.352 (3)(B) specifically exempts regulations "restricting or prohibiting activities for the protection of public health and safety, such as fire and building codes. . . ." Accordingly, the siting standards for dwellings and structures in forest zones in ORS 215.730 and in forest and mixed agriculture-forest zones in OAR 660, division 6, are exempt under ORS 197.352(3)(B).

There may be other laws that continue to apply to the claimant's use of the subject property that have not been identified in the claim. In some cases, it will not be possible to know which laws apply to a use of the subject property until there is a specific proposal for that use. When the claimant seeks a building or development permit to carry out a specific use, it may become evident that other state laws apply to that use. In some cases, some of these laws may be exempt under ORS 197.352(3)(A) to (D).

This report addresses only those state laws that are identified in the claim, or that the department is certain apply to the subject property based on the uses 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 subject 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 eastern 4.5-acre portion of tax lot 206 because the claimant has not demonstrated her ownership of the subject property or established the date the claimant acquired the property. Therefore, the claimant is not entitled to relief under ORS 197.352 for that portion of the property. The department has otherwise determined that laws enforced by the Commission or the department do restrict the claimant's desired use of the remainder of the subject property. The claim asserts that existing state land use regulations enforced by the Commission or the department have the effect of reducing the fair market value of the subject property by \$300,000. However, because the claim does not provide an appraisal or other relevant evidence demonstrating that the land use regulations described in Section V.(2) reduce the fair market value of the subject property, a specific amount of compensation cannot be determined. In order to determine a specific amount of compensation due for this claim, it would also be necessary to verify whether or the extent to which the claimant's desired use of the subject property was allowed under the standards in effect when she acquired the property. Nevertheless, based on the record for this claim, the department has determined that the laws on which the claim is based have reduced the fair market value of the subject property to some extent.

No funds have been appropriated at this time for the payment of claims. In lieu of payment of compensation, ORS 197.352 authorizes the department to modify, remove or not apply all or parts of certain land use regulations to allow Lila Woods to use the subject property for a use permitted at the time she acquired the subject property, excluding the eastern 4.5 portion of tax lot 206, on December 31, 1964.

Conclusions

Based on the record and the foregoing findings and conclusions, the claimant has not established that she is entitled to relief under ORS 197.352(1) for the eastern 4.5-acre portion of tax lot 206 as a result of land use regulations enforced by the Commission or the department because the claimant has not established that she is an owner of that portion of the subject property. Therefore, the department recommends that this claim be denied for the eastern 4.5-acre portion of tax lot 206

The department otherwise recommends that the claim be approved, subject to the following terms:

1. In lieu of compensation under ORS 197.352, the State of Oregon will not apply the following laws to Lila Woods' division of the 54.49-acre subject property into one 30.27-acre parcel (tax lot 206) and three additional parcels and to her development of a dwelling on each parcel: applicable provisions of Goals 3 and 4, ORS 215 and OAR 660, divisions 6, and 33. These laws will not apply to the claimant only to the extent necessary to allow her to use the property for the use described in this report, and only to the extent that use was permitted when she acquired the subject property, excluding the eastern 4.5 portion of tax lot 206, on December 31, 1964.

2. The action by the State of Oregon provides the state's authorization to the claimant to use the subject property, excluding the eastern 4.5 portion of tax lot 206, for the use described in this report, subject to the standards in effect on December 31, 1964.

3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the subject property may not be used without a permit, license or other form of authorization or consent, the order will not authorize the use of the property unless the claimant first obtains that permit, license or other form of authorization or consent. Such requirements may include, but are not limited to: a building permit, a land use decision, a "permit" as defined in ORS 215.402 or 227.160, other permits or authorizations from local, state or federal agencies and restrictions on the use of the subject property imposed by private parties.

4. Any use of the subject property by the claimant under the terms of the order will remain subject to the following laws: (a) those laws not specified in (1) above; (b) any laws enacted or enforced by a public entity other than the Commission or the department; and (c) those laws not subject to ORS 197.352 including, without limitation, those laws exempted under ORS 197.352(3).

5. Without limiting the generality of the foregoing terms and conditions, in order for the claimant to use the subject property, it may be necessary for her to obtain a decision under ORS 197.352 from a city and/or county and/or metropolitan service district that enforces land use regulations applicable to the property. Nothing in this order relieves the claimant from the necessity of obtaining a decision under ORS 197.352 from a local public entity that has jurisdiction to enforce a land use regulation applicable to a use of the subject property by the claimant.

VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on June 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.