Oregon
Theodore R. Kulongoski, Governor

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September 20, 2007

To: Interested Persons

From: Cora R. Parker, Acting Director

Re: Ballot Measure 37 (ORS 197.352) Claim Numbers M130755, M130756, M130757 and M130758

Claimant: Ray Drayton

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 Ray Drayton, CLAIMANT	))))	FINAL ORDER CLAIM NO. M130755, M130756, M130757 and M130758

Claimant: Ray Drayton (the Claimant)

Property: Township 6S, Range 10W, Section 34D: Tax lot 2601
Township 7S, Range 11W, Section 2BD: tax lots 100, 200, 300, 400 & 2700
Township 7S, Range 11W, Section 22AA: tax lots 1200 and 2300
Township 7S, Range 11W, Section 34AD: tax lot 200
Lincoln 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 Amended 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 Acting 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 Manager for the Measure 37 Services Unit 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:

Cora R. Parker

Cora R. Parker, Acting Director
DLCD
Dated this 20th day of September, 2007.

FOR THE DEPARTMENT OF ADMINISTRATIVE SERVICES:

Carla Ploederer

Carla Ploederer, Manager
DAS, Measure 37 Services Unit
Dated this 20th day of September, 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

September 20, 2007

STATE CLAIM NUMBERS:	M130755, M130756, M130757 and M130758
NAME OF CLAIMANT:	Ray Drayton
MAILING ADDRESS:	c/o Russell L. Baldwin, Attorney PO Box 1242 Lincoln City, Oregon 97367
PROPERTY IDENTIFICATION:	Township 6S, Range 10W Section 34D: Tax lot 2601 Township 7S, Range 11W Section 2BD: tax lots 100, 200, 300, 400 & 2700 Section 22AA: tax lots 1200 and 2300 Section 34AD: tax lot 200 Lincoln County
DATE RECEIVED BY DAS:	November 15, 2006
DEADLINE FOR FINAL ACTION:[1]	May 8, 2008

I. SUMMARY OF CLAIM

The claimant, Ray Drayton, seeks compensation in the amount of $24,150,000[2] under ORS 197.352. The claimant desires compensation but has not identified his desired use of the subject property or how any land use regulations restrict the use of the property with the effect of reducing the property's fair market value. The subject property is located at the geographic coordinates listed above, near Lincoln City, in Lincoln County. (See claim.)

[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] This amount represents total compensation sought for all tax lots subject to claims M130755, M130756, M130757 and M130758. The claimant submitted a separate claim for relief under ORS 197.352 for each of the tax lots identified above. Those claims were consolidated under this review.

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 has not (1) established his ownership of the property or when he acquired it; (2) identified his desired use of the subject property or any land use regulations that restrict his desired use of the property; or (3) established that land use regulations enacted or adopted after he acquired the property have the effect of reducing the property's fair market value. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments

On July 26, 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, five written comments were received in response to the 15-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 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 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 criteria, whichever is later.

Findings of Fact

This claim was submitted to DAS on November 15, 2006, for processing under OAR 125, division 145. The claim does not identify any land use regulations that restrict the claimant's desired use of the property.

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 claim does not establish when claimant Ray Drayton acquired the subject property and does not include copies of any deeds or otherwise establish that the claimant is a current owner of the subject property.[3]

Conclusions

The claimant, Ray Drayton, has not established that he is 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.

The claim does not indicate the claimant's desired use of the subject property and does not identify any land use regulations as restricting a desired use of the property.

As explained in Section V.(1), the claimant, Ray Drayton, has not established that he is an "owner" of the subject property as that term is defined in ORS 197.352(11)(c). In addition, the claimant has not identified his desired use of the subject property or any land use regulations that restrict that use. Therefore, it is not possible to determine that any laws enforced by the Land Conservation and Development Commission (the Commission) or the department restrict the claimant's desired use of the subject property with the effect of reducing the fair market value of the property.

[3] On February 9, 2007, department staff sent two letters to the claimant's attorney requesting the claimant's intended use of the property, proof of ownership documentation and a list of land use regulations on which the claim is based. The claimant's attorney responded by letter dated February 28, 2007, but did not include any documentation. The requested documentation has not been received to date.

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 Sections V.(1) and (2) of this report, the claimant, Ray Drayton, has not established his ownership of the subject property and has not identified his desired use of the subject property or any land use regulations that restrict a use of the property with the effect of reducing the property's fair market value. Therefore, 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 Sections V.(1) and (2) of this report, the claimant, Ray Drayton, has not established that he is an "owner" of the subject property as that term is defined in ORS 197.352(11)(C) and has not identified a use of the subject property or any land use regulations that restrict a use of the property with the effect of reducing the property's fair market value. Therefore, 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 (1) established his ownership of the property or when he acquired it; (2) identified his desired use of the subject property or any land use regulations that restrict his desired use of the property; or (3) established that land use regulations enacted or adopted after he acquired the property have the effect of reducing the property's fair market value.

Conclusions

Based on the record before the department, the claimant, Ray Drayton, 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 August 20, 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.