Oregon
Theodore R. Kulongoski, Governor

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November 2, 2007

To: Interested Persons

From: Cora R. Parker, Acting Director

Re: Ballot Measure 37 (ORS 197.352) Claim Number M130947

Claimant: Swan Lake Moulding Co.

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 Swan Lake Moulding Co., CLAIMANT	))))	FINAL ORDER CLAIM NO. M130947

Claimant: Swan Lake Moulding Co. (the Claimant)

Property: Township 38S, Range 9E, Section 34CD, Tax lots 6500 and 6600
Township 39S, Range 9E, Section 3BB, Tax lot 1700
Township 39S, Range 9E, Section 3BC, Tax lots 400 and 1000
Township 39S, Range 9E, Section 3BD, Tax lots 1300, 1400, 2900 and 3000
Township 39S, Range 9E, Section 3CA, Tax lots 100, 300 and 400
Klamath 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 2nd day of November, 2007.

FOR THE DEPARTMENT OF ADMINISTRATIVE SERVICES:

Carla Ploederer

Carla Ploederer, Manager
DAS, Measure 37 Services Unit
Dated this 2nd day of November, 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

November 2, 2007

STATE CLAIM NUMBERS:	M130947
NAME OF CLAIMANT:	Swan Lake Moulding Co.
MAILING ADDRESS:	PO Box 428 Klamath Falls, Oregon 97601
PROPERTY IDENTIFICATION:	Township 38S, Range 9E, Section 34CD Tax lots 6500 and 6600 Township 39S, Range 9E Section 3BB: tax lot 1700 Section 3BC: tax lots 400 and 1000 Section 3BD: tax lots 1300, 1400, 2900 and 3000 Section 3CA: tax lots 100, 300 and 400 Klamath County
OTHER INTEREST IN PROPERTY:	Mark S. Bartholomew Hornecker, Cowling, et al. 717 Murphy Road Medford, Oregon 97504
DATE RECEIVED BY DAS:	November 20, 2006
DEADLINE FOR FINAL ACTION:[1]	May 13, 2008

I. SUMMARY OF CLAIM

The claimant, Swan Lake Moulding Co., seeks compensation in the amount of $1 million 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 develop the 18.52-acre subject property[2] for a residential use. The subject property is located at the geographic coordinates listed above, near Klamath Falls, in Klamath County. (See claim.)

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[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 twelve tax lots. Tax lot 100 consists of 0.36 acre, tax lot 300 consists of 3.05 acres, tax lot 400 (Section 3BC) consists of 0.20 acre, tax lot 400 (Section 3CA) consists of 0.11 acre, tax lot 1000 consists

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) identified how its desired use of the subject property is restricted by land use regulations; or (2) established that land use regulations enacted or adopted after it 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 June 7, 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, two 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.

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of 3.05 acres, tax lot 1300 consists of 0.34 acre, tax lot 1400 consists of 0.12 acre, tax lot 1700 consists of 1.21 acres, tax lot 2900 consists of 0.43 acre, tax lot 3000 consists of 4.3 acres, tax lot 6500 consists of 5.1 acres and tax lot 6600 consists of 0.25 acre.

Findings of Fact

This claim was submitted to DAS on November 20, 2006, for processing under OAR 125, division 145. The claim identifies Statewide Planning Goals 1 through 14; ORS 92, 197 and 215; provisions of OAR 660, divisions 4, 11, 12, and 33; Senate Bill 100; "any limitations, prohibitions, or inhibitions on land division"; "any limitations of commercial or industrial use enacted after acquisition"; "the imposition of zoning"; and "any limitations on the extension of water and sewer service to rural areas" 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, Swan Lake Moulding Co., acquired the subject property on separate dates as follows:

Date of Acquisition:	Tax Lots:	Document:
December 20, 1923	100 and the eastern portion of 3000	Deed
February 8, 1934	The western portion of 3000	Indenture
May 18, 1935	1000 and 1700	Indenture
May 22, 1940	1300 and 1400	Warranty Deed
September 10, 1962	300	Warranty Deed
June 17, 1964	6500	Warranty Deed
May 26, 1965	6600	Warranty Deed
May 16, 1967	400 (Section 3CA)	Warranty Deed
May 27, 1968	2900	Warranty Deed and Title Report
November 9, 1976	400 (Section 3BC)	Warranty Deed

The Klamath County Assessor's Office confirms the claimant's current ownership of the subject property.

Conclusions

The claimant, Swan Lake Moulding Co., is an "owner" of the subject property as that term is defined in ORS 197.352(11)(C), as of December 20, 1923, for tax lot 100 and the eastern portion of tax lot 3000; February 8, 1934, for the western portion of tax lot 3000; May 18, 1935, for tax lots 1000 and 1700; May 22, 1940, for tax lots 1300 and 1400; September 10, 1962, for tax lot

300; June 17, 1964, for tax lot 6500; May 26, 1965, for tax lot 6600; May 16, 1967, for tax lot 400 (Section 3CA); May 27, 1968, for tax lot 2900; and November 9, 1976, for tax lot 400 (Section 3BC).

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 indicates that the claimant desires to develop the 18.52-acre subject property for an undescribed residential use and that current land use regulations prevent the desired use.[3] Tax lots 100, 400 (Section 3BC), 1000, 1300, 1400, 1700, 2900 and 3000 are zoned General Commercial (CG). Tax lots 6500 and 6600 are zoned Recreational Commercial (CR). Tax lots 300 and 400 (Section 3CA) are zoned Heavy Industrial (IH).

The claimant, Swan Lake Moulding Co., has not identified how its desired "residential" use of the subject property is restricted by land use regulations. While it may be that some land use regulations enforced since the claimant acquired the property may restrict some uses of the property, not all "residential use" of the property has been restricted. Based on the claimant's generally described desired "residential" use, 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 property with the effect of reducing its fair market value.

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), the claimant, Swan Lake Moulding Co., has not identified how its desired use of the subject property is restricted by land use regulations. 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, Swan Lake Moulding Co., has not identified how its desired use of the subject property is restricted by land use regulations with

[3] The claimant summarily lists numerous state land use laws as applicable to this claim, but does not establish how the laws either apply to the claimant's desired use of the subject property or restrict its use with the effect of reducing its fair market value.

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) identified how its desired use of the subject property is restricted by land use regulations; or (2) established that land use regulations enacted or adopted after it acquired the property have the effect of reducing the property's fair market value.

Conclusions

Based on the record before the department, the claimant, Swan Lake Moulding Co., has not established that it 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 September 25, 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. Comments received have been taken into account by the department in the issuance of this final report.