



Oregon

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Department of Land Conservation and Development

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August 28, 2007

To: Interested Persons

From: Lane Shetterly, Director



Re: Ballot Measure 37 (ORS 197.352) Claim Number M131044 and M131045

Claimant: Alice I. Propes

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. M131044 and M131045
(BALLOT MEASURE 37) OF)
Alice I. Propes, CLAIMANT)

Claimant: Alice I. Propes (the Claimant)

Property: Township 6S, Range 7W, Section 35, Tax lots 1601 and 2403
Polk 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.

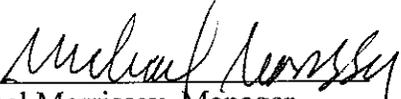
ORDER

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.

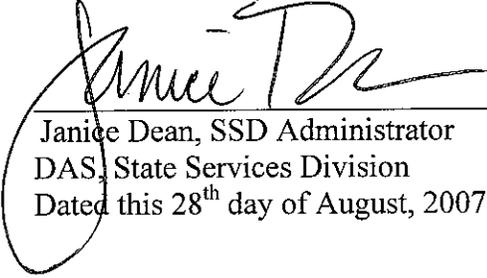
This Order is entered by the Manager for the Measure 37 Services Division of the DLCD as a final order of DLCD and the Land Conservation and Development Commission under ORS 197.352, OAR 660-002-0010(8), and OAR chapter 125, division 145, and by the Administrator for the State Services Division of the 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


Michael Morrissey, Manager
DLCD, Measure 37 Services Division
Dated this 28th day of August, 2007.

FOR the DEPARTMENT OF
ADMINISTRATIVE SERVICES:


Janice Dean, SSD Administrator
DAS, State Services Division
Dated this 28th day of August, 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

August 28, 2007

STATE CLAIM NUMBERS: M131044 and M131045

NAME OF CLAIMANT: Alice I. Propes

MAILING ADDRESS: 225 SE Walnut Avenue
Dallas, Oregon 97338

PROPERTY IDENTIFICATION: Township 6S, Range 7W, Section 35
Tax lots 1601 and 2403
Polk County

DATE RECEIVED BY DAS: November 21, 2006

DEADLINE FOR FINAL ACTION:¹ May 15, 2008

I. SUMMARY OF CLAIM

The claimant, Alice Propes, seeks compensation in the amount of \$237,050² 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 10.08-acre subject property into one-acre parcels for residential development.³ The subject property is located at 23740 Gooseneck Road and 23300 Mt. Springs Drive, near Sheridan, in Polk 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 not valid because the claimant's desired use of the subject property was prohibited under the laws in effect when the claimant's

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 M131044 and M131045. 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.

³ The subject property includes two tax lots. Tax lot 1601 consists of 4.9 acres, and tax lot 2403 consists of 5.18 acres.

family member acquired the property on November 21, 2000. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On June 22, 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, no written comments were received in response to the 15-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 21, 2006, for processing under OAR 125, division 145. The claim identifies Polk County's Acreage Residential-Five Acre zone 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, Alice Propes, originally acquired the subject property on April 4, 1962, as reflected by a warranty deed included with the claim. On November 21, 2000, she conveyed all of her interest in the subject property to Mt. Springs Ranch, LLC, a limited liability corporation, of which she is an owner, as reflected by a warranty deed included with the claim. Mt. Springs Ranch, LLC conveyed a one percent interest in the subject property to Alice Propes as trustee of the Alice I. Propes Living Trust on September 15, 2006, as evidenced by a bargain and sale deed included with the claim. The Polk County Assessor's Office confirms the claimant's current ownership of the subject property.

Conclusions

The claimant, Alice Propes, is an "owner" of the subject property as that term is defined by ORS 197.352(11)(C), as of September 15, 2006.⁴ Mt. Springs Ranch, LLC is a "family member" of the claimant, as defined by ORS 197.352(11)(A), and acquired the subject property on November 21, 2000.⁵

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.

Findings of Fact

The claim indicates that the claimant desires to divide the 10.08-acre subject property into one-acre parcels for residential development, and that the property's current zoning prevents the desired use.

The claim is based on the provisions of state law that regulate rural residential zoning. The claimant's property is zoned AR-5 by Polk County. The AR-5 zone is a rural residential zone, in accordance with Statewide Planning Goal 14 (Urbanization), which prohibits urban use of rural lands. The county's AR-5 zone requires five acres for the creation of any new lot or parcel and was in effect and applied to the subject property on or before October 4, 2000.

Goal 14 became effective on January 25, 1975, and requires that local comprehensive plans identify and separate urbanizable land from rural land in order to provide for an orderly and

⁴ The department acknowledges receipt of the claimant's correspondence dated August 2, 2007, relative to the department's finding as to the claimant's date of acquisition of the subject property. The department has considered the comment and finds that the record before the department supports the department's initial determination of the claimant's date of acquisition.

⁵ 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, individuals who transferred property to the LLC are not considered family members under the definition of family member in ORS 197.352(11)(A).

efficient transition from rural to urban land use. In 2000, as a result of a 1986 Oregon Supreme Court decision,⁶ the Land Conservation and Development Commission (the Commission) amended Goal 14 and adopted OAR 660-004-0040 (Application of Goal 14 to Rural Residential Areas), which was effective on October 4, 2000.

The rule states that if a county rural residential zone in effect on October 4, 2000, specifies a minimum lot size of two acres or more, the area of any new lot or parcel shall equal or exceed the minimum lot size then in effect (OAR 660-004-0040(7)(c)).⁷ Because Polk County's rural residential zone was in effect on October 4, 2000, and requires a minimum lot size of five acres, the minimum lot size for all new lots or parcels must equal or exceed five acres.

The claimant's family member first acquired the subject property on November 21, 2000. At that time, the property was subject to Polk County's acknowledged AR-5 zone and the provisions of Goal 14 and OAR 660-004-0040 currently in effect.

Conclusions

The minimum lot size for rural residential lots or parcels established by amendments to Goal 14 and OAR 660-004-0040 were in effect when the claimant's family member acquired the subject property in 2000 and do not allow the claimant's desired division of the subject property for residential development. State land use laws adopted since the claimant's family member acquired the subject property do not restrict the claimant's use of that property relative to uses permitted when her family member acquired it and therefore, do not reduce the property's 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."

Findings of Fact

The claim includes an estimate of \$237,050 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 the claimant's assessment of the subject property's value.

Conclusions

As explained in Section V.(1) of this report, the claimant is Alice Propes, whose family member acquired the subject property on November 21, 2000. The claimant's desired division of the subject property for residential development was prohibited under the regulations in effect when

⁶ *1000 Friends of Oregon v. LCDC (Curry County)*, 301 Or 447 (1986).

⁷ Some relief from this provision is available for lots or parcels having more than one permanent habitable dwelling pursuant to OAR 660-004-0040(7)(h). The rule also provides that a county's minimum lot size requirement in a rural residential zone shall not be amended to allow a smaller minimum lot size without approval of an exception to Goal 14 (OAR 660-004-0040(6)).

the claimant's family member acquired the property in 2000. No state laws enacted or adopted since the claimant's family member acquired the subject property restrict the use of the property relative to the uses allowed when her family member acquired it in 2000. Therefore, the fair market value of the subject property has not been reduced 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 Goal 14 and OAR 660-004-0040, which Polk County has implemented through its current AR-5 zone. These land use regulations were in effect when the claimant's family member acquired the subject property in November 2000.

Conclusions

All of the state land use regulations that restrict the claimant's desired use of the subject property were in effect when the claimant's family member acquired the property. Therefore, these state land use regulations are exempt under ORS 197.352(3)(E), which exempts laws in effect when the claimant's family member acquired 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 subject property relative to what was permitted when the claimant's family member acquired it in 2000 because the claimant's desired division of the property was prohibited under the laws in effect when the claimant's family member acquired the subject property. All state laws restricting the use of the subject property are exempt under ORS 197.352(3)(E).

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) as a result of land use regulations enforced by the Commission or the department because the claimant's desired use of the property was prohibited under the laws in effect when her family member acquired the 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 July 26, 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.