



Oregon

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October 31, 2007

To: Claimant and Interested Persons

From: Cora R. Parker, Acting Director



Re: Ballot Measure 37 (ORS 197.352) Claim Number M131136

Claimants: Ronald and Charlene Rivers

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. M131136
(BALLOT MEASURE 37) OF)
Ronald and Charlene Rivers, CLAIMANTS)

Claimants: Ronald and Charlene Rivers (the Claimants)

Property: Township 1S, Range 10E, Section 8, Tax lots 1000, 1100, 1200 and 1300
Hood River County (the property)

Claim: The demand for compensation and any supporting information received
from the Claimants by the State of Oregon (the Claim).

Claimants 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, Acting Director
DLCD
Dated this 2nd day of November, 2007.

FOR THE DEPARTMENT OF
ADMINISTRATIVE SERVICES:



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 NUMBER: M131136

NAMES OF CLAIMANTS: Ronald and Charlene Rivers¹

MAILING ADDRESS: 8161 Jordan Road
Mt. Hood-Parkdale, Oregon 97041

PROPERTY IDENTIFICATION: Township 1S, Range 10E, Section 8
Tax lots 1000, 1100, 1200 and 1300
Hood River County

OTHER CONTACT INFORMATION: Steven B. Andersen
Cascade Planning Associates
PO Box 135
Mosier, Oregon 97040

DATE RECEIVED BY DAS: November 22, 2006

DEADLINE FOR FINAL ACTION:² May 15, 2008

I. SUMMARY OF CLAIM

The claimants, Ronald and Charlene Rivers, seek compensation in the amount of \$435,044 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 claimants desire compensation or the right to divide the 48.22-acre subject property into two 20-acre parcels and to develop a dwelling on each resulting undeveloped parcel.³ The subject property is located at 4695 and 4799 Culbertson Drive and 7898 Cooper Spur Road, near Mt. Hood-Parkdale, in Hood River County. (See claim.)

¹ On March 16, 2007, the department received a request to amend this claim to add a claimant. The department cannot substantively amend a claim at this stage. If the claimants desire to submit a new claim with a different set of claimants than set forth in their original claim, they may file a new demand for compensation in accordance with the requirements of ORS 197.352.

² 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.

³ The subject property includes four tax lots. Tax lot 1000 consists of 10 acres, tax lot 1100 consists of 9.7 acres, tax lot 1200 consists of 9.12 acres and tax lot 1300 consists of 19.4 acres.

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 as to tax lot 1000 because the claimants' desired use of that tax lot was prohibited by the zoning in effect when the claimants acquired it. Neither the Land Conservation and Development Commission (the Commission) nor the department has enforced laws that restrict the claimants' use of tax lot 1000 relative to the uses permitted when the claimants acquired that tax lot. Therefore, no laws enforced by the Commission or the department have the effect of reducing the property's fair market value.

The department has further determined that the claim is not valid as to tax lots 1100, 1200 and 1300 because the claimants are not owners of those tax lots. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On June 15, 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 15-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 criteria, whichever is later.

Findings of Fact

This claim was submitted to DAS on November 22, 2006, for processing under OAR 125, division 145. The claim identifies ORS 197 and 215, OAR 660, division 33 and provisions of Hood River County zoning ordinances 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 claimants, Ronald and Charlene Rivers, acquired tax lot 1000 on January 31, 1985, as reflected by a contract and a December 30, 1990, fulfillment warranty deed included with the claim. Ronald and Charlene Rivers first acquired tax lots 1100, 1200 and 1300 on June 1, 1978, as reflected by a contract included with the claim. However, on January 4, 1984, the claimants conveyed all of their interest in tax lots 1100, 1200 and 1300 to Ron Rivers Orchards, Inc., as evidenced by a quitclaim deed included with the claim.

The Hood River County Assessor’s Office confirms the claimants’ current ownership of tax lot 1000 and confirms Ron Rivers Orchards, Inc.’s current ownership of tax lots 1100, 1200 and 1300.

Conclusions

The claimants, Ronald and Charlene Rivers, are “owners” of tax lot 1000 as that term is defined by ORS 197.352(11)(C), as of January 31, 1985. Ronald and Charlene Rivers are not “owners” of tax lots 1100, 1200 and 1300 as that term is defined by 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 claimants’ 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 claimants or a family member acquired the property.

Findings of Fact

The claim indicates that the claimants desire to divide the 48.22-acre subject property into two 20-acre parcels and to develop a dwelling on each resulting undeveloped parcel, and that current land use regulations prevent the desired use.⁴

The claim is based on the applicable provisions of state law that require Exclusive Farm Use (EFU) zoning and restrict uses on EFU-zoned land. The claimants' property is zoned EFU by Hood River County as required by Statewide Planning Goal 3 (Agricultural Lands), in accordance with ORS 215 and OAR 660, division 33, because the claimants' property is "agricultural land" as defined by Goal 3.⁵ Goal 3 became effective on January 25, 1975, and required that agricultural lands as defined by Goal 3 be zoned EFU pursuant to ORS 215.

Current land use regulations, particularly ORS 215.263, 215.284 and 215.780 and OAR 660, division 33, enacted or adopted pursuant to Goal 3, prohibit the division of EFU-zoned land into parcels less than 80 acres and establish standards for development of dwellings on existing or proposed parcels on that land.

ORS 215.780 establishes an 80-acre minimum size for the creation of new lots or parcels in EFU zones and became effective on November 4, 1993 (Chapter 792, Oregon Laws 1993). ORS 215.263 (2005 edition) establishes standards for the creation of new parcels for non-farm uses and dwellings allowed in an EFU zone.

OAR 660-033-0135 (applicable to farm dwellings) became effective on March 1, 1994, and interprets the statutory standard for a primary dwelling in an EFU zone under ORS 215.283(1)(f). OAR 660-033-0130(4) (applicable to non-farm dwellings) became effective on August 7, 1993, and was amended to comply with ORS 215.284(4) on March 1, 1994.⁶

The claimants acquired tax lot 1000 on January 31, 1985, which was subject to Hood River County's acknowledged comprehensive plan and EFU zone. At that time, the claimants' property was zoned EFU by Hood River County. The EFU zone required a 20-acre minimum lot size and permitted dwellings only in conjunction with farm use. The claimants' desired use of tax lot 1000 would have been subject to compliance with Goal 3, and OAR 660, division 5, as implemented through the county's acknowledged EFU zone, and the applicable provisions of ORS 215 then in effect.

⁴ The claimants summarily cited numerous state land use laws as applicable to this claim, but do not establish how the laws either apply to the claimants' desired use of the subject property or restrict its use with the effect of reducing its fair market value. On their face, most of these regulations either do not apply to the claimants' property or do not restrict the claimants' desired use of the property with the effect of reducing its fair market value. This report addresses only those regulations that the department finds are applicable to and restrict the claimants' desired use of the subject property, based on the claimants' description of that desired use.

⁵ The claimants' property is "agricultural land" because it contains Natural Resources Conservation Service Class I-IV soils.

⁶ The Commission adopted amendments to OAR 660-033-0100, -0130 and -0135 to comply with House Bill 3326 (Chapter 704, Oregon Laws 2001, effective on January 1, 2002), which were effective on May 22, 2002. These amendments clarified but did not further restrict dwelling standards under OAR 660, division 33, for EFU-zoned land.

The claim does not establish that the claimants' desired use of tax lot 1000 would have been allowed under the county's acknowledged EFU zone at the time the claimants acquired that tax lot. To the contrary, the claimants' desired use would not have been permitted had they sought a development permit for the desired use for that tax lot when they acquired it in 1985.

Conclusions

The current zoning requirements, minimum lot size and dwelling standards established by Goal 3, ORS 215 and OAR 660, division 33, were enacted or adopted since the claimants acquired tax lot 1000 in 1985 and do not allow the claimants' desired division and development of the property. However, based on the record before the department, the claimants' desired use of tax lot 1000 was prohibited by the county's acknowledged comprehensive plan and EFU zone in effect when they acquired that tax lot in 1985. The claim does not establish that state laws enforced by the Commission or the department restrict the claimants' desired use of tax lot 1000 relative to the uses permitted when the claimants acquired that tax lot in 1985.

As explained in Section V.(1), the claimants, Ronald and Charlene Rivers, are not "owners" of tax lots 1100, 1200 and 1300 as that term is defined in ORS 197.352(11)(C). Therefore, no laws enforced by the Commission or the department restrict their desired use of those tax lots 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."

Findings of Fact

The claim includes an estimate of \$435,044 as the reduction in the subject property's fair market value due to the regulations that restrict the claimants' desired use of the property. This amount is based on the claimants' assessment of the subject property's value.

Conclusions

As explained in Section V.(1) of this report, the claimants, Ronald and Charlene Rivers, are not "owners" of tax lots 1100, 1200 and 1300 as that term is defined in ORS 197.352(11)(C). Therefore, no laws restrict the claimants' use of those tax lots with the effect of reducing the fair market value of the subject property. As explained in Section V.(2) of this report, the claimants' desired use of tax lot 1000 was prohibited by the zoning in effect at the time they acquired the property. Therefore, land use regulations enforced by the Commission or the department do not restrict the claimants' desired use of tax lot 1000 with the effect of reducing its fair market value.

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 Goal 3, ORS 215 and OAR 660, division 33, which Hood River County has implemented through its current EFU zone. These regulations were enacted or adopted after the claimants acquired tax lot 1000.

Conclusions

It appears that the general statutory, goal and rule restrictions on division and development of tax lot 1000 apply to and restrict the claimants' desired use of the property. These laws were enacted or adopted since the claimants acquired tax lot 1000 and therefore, are not exempt under ORS 197.352(3)(E). However, as discussed in Section V.(2) of this report, the claimants' desired use of tax lot 1000 was prohibited by the zoning in effect when they acquired that tax lot.

As explained in Section V.(1) of this report, the claimants are not "owners" of tax lots 1100, 1200 and 1300 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 to those tax lots.

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.

Conclusions

Based on the record before the department, the claimants, Richard and Charlene Rivers, have not established that they are entitled to relief under ORS 197.352(1) as a result of land use regulations enforced by the Commission or the department. The department recommends that this claim be denied because the claimants' desired use of tax lot 1000 was prohibited under the zoning in effect when they acquired that tax lot in 1985. Therefore, land use regulations enforced by the Commission or the department do not restrict the claimants' desired use of tax lot 1000 with the effect of reducing its fair market value. The department further recommends that the claim be denied as to tax lots 1100, 1200 and 1300 because the claimants are not owners of those tax lots.

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 claimants or the claimants' 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.