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Jefferson County Courthouse
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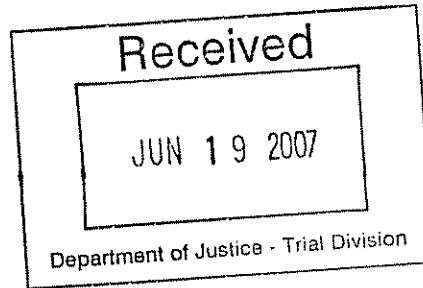
Judge Gary S. Thompson

Judge George W. Neilson
Presiding Judge

Judge Daniel J. Ahern

Twenty-Second Judicial District Trial Courts

June 18, 2007



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RE: Larsen v State of Oregon
Jefferson County Circuit Court Case No. 06-CV-0048

Dear Counsel:

This letter has been prepared to rule upon issues argued before this court on April 16, 2007.

In the allegations of the Amended Complaint Plaintiffs seek: 1) an award of compensation under ORS 197.352 (Measure 37); and, 2) a judicial review of a Final Order No. 122803 which was entered by the Department of Land Conservation and Development (DLDC) on the 22nd day of August 2006.

Plaintiffs filed a Motion for Partial Summary Judgment wherein they seek an order from this Court concluding: 1) that Plaintiff's acquired the real property subject to this suit on June 8, 1973; and, 2) that land use regulations entered after the date of acquisition have the effect of diminishing the value of Plaintiff's real property Defendant has not only opposed Plaintiff's motion, but also, filed it's own motion for summary judgment.

FACTS

The land at the center of this dispute is a 24.99 acre parcel located in Jefferson County, Oregon. While the history of acquisition is undisputed, the legal consequences which arise from the collection of facts are in dispute.

In 1973 Plaintiff, Harry Larsen, observed an advertisement in the Madras Pioneer regarding the subject property. In response to the ad Plaintiff contacted John's Real Estate and submitted a bid of \$15,000 to purchase the land. On June 8, 1973, Plaintiffs delivered a check to John's Real Estate in the amount of \$100.00 and entered upon the property. No earnest money, lease-option or lease agreement was signed by Plaintiff or the seller at any relevant time. During the time Plaintiffs occupied the property and prior to the payment of the purchase price and delivery of a deed by the seller, Plaintiffs: (1) prepared the land for farming; (2) authorized the construction of an irrigation pond; and (3) delivered a second check for \$100.00 to John's Real Estate on November 16, 1973.

On March 12, 1974, the Plaintiff's deposited \$15,000.00 at the law office of Walter I. Edmonds, Jr. On the same date John J. Cunningham executed a warranty deed which conveyed his interest in the subject real property to Plaintiffs. The deed was recorded on April 2, 1974.

On June 8, 1973, existing land use regulations permitted the subject real property to be divided into one acre parcels. As of March 12, 1974, the existing land use regulations prohibited splitting the property into smaller parcels. Presently, the real property would have greater value if it could be divided into smaller parcels. (Simmons Affidavit)

On October 14, 2005, Defendant received a claim for compensation under the provisions of ORS 197.352 (See, Defendant's Response to Plaintiff's Motion for Summary Judgment (DRPSJ) Ex. 1) The claim was filed by Plaintiffs and related to a 24.99 acre parcel of land located in Jefferson County, Oregon. (DRPSJ Ex 2) In April of 2006, Plaintiff's supplemented their claim by including an affidavit of Harry T. Larsen (DRPSJ - Ex 3) On the 22nd day of August, 2006, the Department of Administration issued a final order no. 122803 after conducting a non-contested case proceeding. (DRPSJ Ex 6) As disclosed in the order, Defendant determined Plaintiff's acquired the subject real property on March 12, 1974 and all land use regulations adopted prior to the date of acquisition applied to the real property.

DECISION

If a public entity, such as the State of Oregon, enacts or seeks to enforce land use regulations which restrict the use of "private real property OR any interest therein" (emphasis supplied) and the change has the effect of reducing the fair market value of "the effected property interest", then the owner of the property may be entitled to just compensation. ORS 197.352(1),(2) To assert a claim an owner must file a written demand for compensation. ORS 197.352(4) The State and other relevant public entities are authorized to adopt procedures for processing the claims, but the adopted procedures may not serve as a prerequisite to the filing a claim for compensation under ORS 197.352(6). If a claim has been filed and the land use regulations continue to apply against the related property more than 180 days after the claim was

Mr. Edward P. Fitch and Ms. Darsee Staley
June 18, 2007
Page 3

filed, then “...the present owner of the property, or any interest therein, shall have a cause of action for compensation under this act in circuit court...”. ORS 197.352(6)(emphasis supplied) However, the right to just compensation of the owner or effected interest is not without limit. An example of one of the limits is found in ORS 197.352(3)(E). An owner is not entitled to just compensation if the land use regulations were already in effect as of the date the present owner acquired the property.

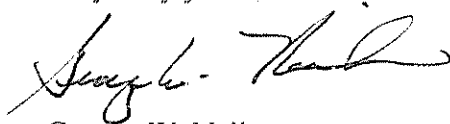
Many issues have been raised in the case at bar but this court will only address only what this court believes to be the critical issue. In the case at bar the date of acquisition is the focal point whether this court’s analysis is based upon a theory associated with an appellate issue under the APA or a cause of action under ORS 197.352(6).

The date of acquisition is central to this case because significant land use regulations (which impacted the development potential of the subject property) were adopted by the State of Oregon between the date Plaintiff’s occupied the property and the date the deed conveying the property to Plaintiff was executed. Before the regulations were adopted, the property could have been divided into one acre parcels. After the regulations were adopted, the property could not be divided. The inability to divide the property did diminish the value of the parcel.

If an independent cause of action is authorized under ORS 197.352(6) (notwithstanding the rules of procedure adopted and followed by the State of Oregon in this case), Plaintiff must be able to prove a cognizable ownership interest in the subject property existed prior to the date the land use regulations were adopted. ORS 197.352(3)(E) As discussed hereinabove, Plaintiff is not required to demonstrate full ownership to have a cause of action for compensation. ORS 197.352(6) However, the record before the court does not demonstrate a cognizable interest in the real property until the deed was executed and delivered to Plaintiff. Prior to that date no earnest money receipt or lease option agreement existed and no admissible evidence establishes proof of a sales agreement between the owner and Plaintiff. It is true Plaintiff entered upon the property, but Plaintiffs’ at will occupation of real property is not a interest protected by ORS 197.352.

Plaintiff’s motion for partial summary judgment is denied. Since the failure of proof goes to the very foundation of a claim under ORS 197.352, counsel for the Defendant shall prepare the proper order and judgment. All remaining issues are moot.

Very truly yours,



George W. Neilson
Presiding Circuit Court Judge

GWN/jss