



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF DESCHUTES

Laurel H. Griffiths)
Plaintiff)

Case No. 06CV0159SF

v.)

Decision on Motion to Dismiss

State of Oregon)
)
)

This matter comes before the court on Defendant's Motion to Dismiss on two grounds: 1) the court lacks subject matter jurisdiction (ORCP 21 A (1)); and 2) Plaintiff's complaint fails to state a claim (ORCP 21 A (8)). The facts are not in dispute. Plaintiff filed a Measure 37 claim with Deschutes County and the State in April 2005, seeking compensation for land use regulations restricting Plaintiff's use of the property since her acquisition on December 12, 1949. Plaintiff married her husband on January 31, 1948 and remained married until husband's death in 2003. On December 12, 1949, Plaintiff's husband took title to the subject property. A mortgage was obtained to finance the purchase from the Federal Land Bank executed by both Plaintiff and her husband. Plaintiff and her husband farmed the land until his death in 2003. On June 19, 1985, Plaintiff's husband recorded a bargain and sale deed transferring ownership from husband to husband and Plaintiff, as husband and wife.

1 Upon the filing of the Measure 37 claim, Deschutes County opted to waive any land use
2 regulations back to 1949 as provided by ORS 197.352. Defendant, through the Department of
3 Land Conservation and Development (DLCD) issued a final agency order on October 4, 2005,
4 granting a waiver to June 19, 1985, the date when husband included Plaintiff's name on the title.
5 On March 27, 2006, Plaintiff filed her Complaint for compensation pursuant to the statutory
6 scheme outlined in ORS 197.352.

7 Defendant's position, is that Plaintiff's recourse is through the procedures outlined in
8 ORS 183, the Administrative Procedures Act (APA). Under Defendant's theory, Plaintiff was
9 required to file for a review pursuant to ORS 183.484(2) within 60 days of the October 4, 2005
10 DLCD order. Additionally, Defendant claims that Plaintiff's Complaint should be dismissed as
11 Plaintiff has failed to state a claim, and Defendant has waived application of the land use
12 regulations to Plaintiff's ownership date in 1985. Plaintiff has acknowledged in her Complaint
13 that she did not appear on the title until 1985. Under Defendant's theory, pursuant to ORS
14 197.352, there are no land use restrictions applicable to the property from the time Plaintiff
15 obtained her ownership interest, therefore, no claim.

16 Plaintiff contends that Plaintiff owned the property since 1949. Plaintiff claims that any
17 land use restrictions, which were still applicable to Plaintiff's land 180 days following the
18 Measure 37 claim, entitles Plaintiff to file her Complaint pursuant to ORS 197.352(6). Plaintiff
19 argues that the DLCD order did not waive the land use restriction from 1949 to 1985, therefore,
20 Plaintiff was entitled to file the claim for any reduction of the fair market value as a result of the
21 application of those restrictions.

22 Defendant has pointed out to this court that a number of other jurisdictions around the
23 state have applied the APA to Measure 37 claims under ORS 197.352. While those cases are
24 helpful, they are not dispositive of this case for this court. ORS 197.352 is the controlling statute
25 with regard to these claims. ORS 197.352(6) states:

26

1 “If a land use regulation continues to apply to the subject property more than 180
2 days after the present owner of the property has made written demand for
3 compensation under this section, the present owner of the property, or any interest
therein, shall have a cause of action for compensation under this section in the
circuit court in which the real property is located;...”

4 While Defendant has extrapolated arguments to similar statutory schemes, which applied
5 the APA, ORS 197.352 has specifically provided for recourse in the circuit court. See *PGE v.*
6 *Bureau of Labor and Industries*, 317 Or. 606, 859 P2d 1143 (1993). This court certainly
7 believes the application of the APA to Measure 37 claims, outlined by the State, may result in a
8 better resolution of the claims, however, the statute specifically provides for a different method.
9 As the parties are aware,

10 “In the construction of a statute, the office of the judge is simply to ascertain and
11 declare what is, in term or in substance, contained therein, not to insert what has
been omitted, or to omit what has been inserted;...” ORS 174.010

12 The statute states, if regulations continue to apply after 180 days, the property owner has “a cause
13 of action in the circuit court.” ORS 197.352(6).

14 Because this court has resolved this case as specified above, the other arguments are
15 moot.

16 Defendant’s Motion to Dismiss is denied.

17
18 Dated this 3 day of November, 2006.

19
20
21 /s/ STEPHEN P. FORTE

22

Circuit Judge, Stephen P. Forte

23 c: Edward P. Fitch
24 Darsee Staley