

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. M 122700
(BALLOT MEASURE 37) OF)
Donald and Karen Starr, CLAIMANTS)

Claimants: Donald and Karen Starr (the Claimants)

Property: Township 01S, Range 38E, Tax lots 200, 300, 400 and 401
Township 01S, Range 39E, Tax lot 3001
Township 01N, Range 38E, Tax lot 6600 and 11600
Union 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 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 Deputy 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 Deputy 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.

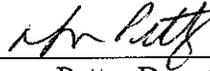
FOR DLCD AND THE LAND
CONSERVATION AND DEVELOPMENT
COMMISSION:
Lane Shetterly, Director



Cora R. Parker, Deputy Director
DLCD

Dated this 15th day of August, 2006.

FOR the DEPARTMENT OF
ADMINISTRATIVE SERVICES:



Dugan Petty, Deputy Administrator
DAS, State Services Division

Dated this 15th day of August, 2006.

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 197.352¹, 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)

¹ By order of the Marion County Circuit Court, "all time lines under Measure 37 [were] suspended indefinitely" on October 25, 2005. This suspension was lifted on March 13, 2006 by the court. As a result, a period of 139 days (the number of days the time lines were suspended) has been added to the 180-day time period under ORS 197.352(6) for claims that were pending with the state on October 25, 2005.

ORS 197.352 (BALLOT MEASURE 37) CLAIM FOR COMPENSATION

**OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
Final Staff Report and Recommendation**

August 15, 2006

STATE CLAIM NUMBER: M122700

NAMES OF CLAIMANTS: Donald and Karen Starr

MAILING ADDRESS: 68196 Myers Road
Summerville, Oregon 97876

PROPERTY IDENTIFICATION: Township 01S, Range 38E
Tax lots 200, 300, 400 and 401

Township 01S, Range 39E
Tax lot 3001

Township 01N, Range 38E
Tax lot 6600 and 11600

Union County

OTHER CONTACT INFORMATION: Kent Coppinger
62029 Tamarack Springs Lane
Summerville, Oregon 97876

DATE RECEIVED BY DAS: October 7, 2005

180-DAY DEADLINE: August 22, 2006¹

I. SUMMARY OF CLAIM

The claimants, Donald and Karen Starr, seek compensation in the amount of \$204,000 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 property, consisting of tax lots 200, 300, 400, 401, 3001, 6600 and 11600 totaling 433.78 acres, into one 40-acre parcel, one 56-acre parcel and one approximately 337-acre parcel and to develop a dwelling on the resulting 40-acre and 56-acre parcels.² The subject property is located at the geographic coordinates listed above in Union County. (See claim.)

¹ This date reflects 180 days from the date the claim was submitted, as extended by the 139 days that all timelines under Measure 37 were suspended during the pendency of *MacPherson v. Dept. of Admin. Svcs.*, 340 Or 117 (2006).

² The claimants identified tax lots 200, 300, 400, 3001, and 6600 consisting of approximately 440 acres, as being subject to this claim. However, the department notes that the identified tax lots consist of approximately 215 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 this claim is not valid because the claimants are not the owners of the subject property. (See the complete recommendation in Section VI of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On July 12, 2006, 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 10-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 October 7, 2005, for processing under OAR 125, division 145. The claim identifies Union County Zoning and Subdivision Ordinance Sections 2.06(1)(a)(A) and 4.06(3) 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.

only. The department also notes that lot line adjustments for tax lots 400 and 6600 created tax lots 401 and 11600. Tax lot 400 consists of 181.09 acres, and tax lot 11600 consists of 36.96 acres. Therefore, the department has determined that tax lots 401 and 11600 are also subject to this claim.

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, Donald and Karen Starr, acquired tax lots 400 and 6600 on August 23, 1973, and tax lots 200, 300 and 3001 on September 8, 1976, as reflected by deeds included in the claim. According to warranty deeds provided by a title search, on January 12, 2006, the claimants conveyed tax lots 200, 300, 401, 3001 and 6600 to Richard L. Ferguson and tax lots 400 and 11600 to James E. and Tracy L. Sauer and James P. and Judy J. Sauer.

The Union County Assessor’s Office confirms that Richard L. Ferguson is the current owner of tax lots 200, 300, 401, 3001 and 6600, and James E. and Tracy L. Sauer and James P. and Judy J. Sauer are the current owners of tax lots 400 and 11600. The claimants, Donald and Karen Starr, no longer own the subject property.

Conclusions

The claimants, Donald and Karen Starr, have not established that they are “owners” of the subject property as that term is defined in 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.

As explained in Section V.(1), the claimants, Donald and Karen Starr, are not “owners” of the subject property as that term is defined in ORS 197.352(11)(C). Therefore, no laws enforced by the Land Conservation and Development Commission (the Commission) or the department restrict the claimants’ use of private real property 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 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) of this report, the claimants, Donald and Karen Starr, are not “owners” of the subject property as that term is defined in ORS 197.352(11)(C). Therefore, no

laws restrict his use of the subject property with the effect of reducing the fair market value of the 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 Section V.(1) of this report, the claimants, Donald and Karen Starr, are not "owners" of the subject property 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.

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 claimants are not owners of the subject property.

Conclusions

Based on the record before the department, the claimants, Donald and Karen Starr, 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 because they are not owners of the subject 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 August 1, 2006. 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.