

ORS 197.352 (BALLOT MEASURE 37) CLAIM FOR COMPENSATION
OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
Draft Staff Report and Recommendation

July 14, 2006

STATE CLAIM NUMBER: M122451

NAME OF CLAIMANT: Audrey M. Shumaker

MAILING ADDRESS: 19605 SE River Road
Gladstone, Oregon 97027

PROPERTY IDENTIFICATION: Township 3S, Range 2E, Section 3C
Tax lot 101
Township 3S, Range 2E, Section 3D
Tax lot 201
Clackamas County

OTHER CONTACT INFORMATION: Ed and Sandra Lindquist
111 Ogden Drive
Oregon City, Oregon 97045

OTHER INTEREST IN PROPERTY: Theodore K. Shumaker
17352 S. Bradley Road
Oregon City, Oregon 97045

William F. Shumaker
5011 Broadway Street, Apt. 5
West Linn, Oregon 97068

Daniel M. Shumaker
6113 Canter Lane
West Linn, Oregon 97068

James E. Shumaker
7937 SE Monroe Street
Milwaukie, Oregon 97222

Sandra Lindquist
111 Ogden Drive
Oregon City, Oregon 97045

DATE RECEIVED BY DAS: September 23, 2005

180-DAY DEADLINE:

August 8, 2006¹

I. SUMMARY OF CLAIM

The claimant, Audrey Shumaker, seeks compensation in the amount of \$1,424,165 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 19-acre property into six parcels and to develop a dwelling on each parcel. The subject property is located at the geographic coordinates listed above, near Oregon City, in Clackamas County. (See claim.)

II. SUMMARY OF STAFF RECOMMENDATION

Based on the preliminary findings and conclusions set forth below, the Department of Land Conservation and Development (the department) has determined that the claim is valid. Department staff recommends that, in lieu of compensation, the requirements of the following state laws enforced by the Land Conservation and Development Commission (the Commission) or the department not apply to Audrey Shumaker's division of the 19-acre property into six parcels or to her development of a dwelling on each parcel: applicable provisions of Statewide Planning Goal 4 (Forest Lands), ORS 215 and Oregon Administrative Rules (OAR) 660, division 6. These laws will not apply to the claimant only to the extent necessary to allow her to use the subject property for the use described in this report, and only to the extent that use was permitted when she acquired the property in 1968. (See the complete recommendation in Section VI of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On October 14, 2005, pursuant to OAR 125-145-0080, the Oregon Department of Administrative Services (DAS) provided written notice to the owners of surrounding properties. According to DAS, two written comments were received in response to the 10-day notice.

The comments do 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 letters in the department's claim file.)

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).

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 September 23, 2005, for processing under OAR 125, division 145. The claim identifies Goal 4, ORS 215.705 and 215.720 and OAR 660-006-0026 and 660-006-0027 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, Audrey Shumaker, acquired the subject property on April 8, 1968, as reflected by a contract included with the claim. In 1986, the claimant and her husband transferred the subject property to their children, William, James, Daniel and Theodore, reserving in themselves a life estate in the property, as reflected by a deed and correction deed included with the claim. An August 30, 2005, title report submitted with the claim reflects the claimant’s and her sons’ current ownership of the subject property.

