

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

July 18, 2006

STATE CLAIM NUMBER: M122452

NAMES OF CLAIMANTS: James C. and Viola F. Rasmusan

MAILING ADDRESS: 18445 S. Cadle Road
Oregon City, Oregon 97045

PROPERTY IDENTIFICATION: Township 03S, Range 02E, Section 01
Tax lot 4500

Township 03S, Range 02E, Section 01AD
Tax lots 1400, 1401 and 1402

Clackamas County

OTHER CONTACT INFORMATION: Edward H. Trompke
Jordan Schrader, PC
PO Box 230669
Portland, Oregon 97281

DATE RECEIVED BY DAS: September 23, 2006

180-DAY DEADLINE: August 8, 2006¹

I. SUMMARY OF CLAIM

The claimants, James and Viola Rasmusan, seek compensation in the amount of more than \$100,000 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 49.74-acre property into 1-acre parcels for residential development. The subject property is located at the geographic coordinates listed above, near Oregon City, in Clackamas 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).

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 1) James and Viola Rasmusan's division of the 40-acre tax lot 4500 into 1-acre parcels and to their development of a dwelling on each parcel: applicable provisions of Statewide Planning Goals 3 (Agricultural Lands) and 4 (Forest Lands), ORS 215 and Oregon Administrative Rules (OAR) 660 divisions 6, and 33, enacted or adopted after October 24, 1975, and 2) James and Viola Rasmusan's division of tax lots 1400, 1401 and 1402, totaling 9.74 acres, into 1-acre parcels for residential development: Goal 4 (Urbanization) and OAR 660-004-0040 adopted after October 24, 1975. These laws will not apply to the claimants only to the extent necessary to allow them to use the subject property for the use described in this report, and only to the extent that use was permitted when they acquired the property in 1975. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On May 11, 2006, 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, four 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.)

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 Clackamas County RA-2 and AG/F zones, ORS 215.780 and OAR 660-003-0010 to 660-033-0160 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, James and Viola Rasmusan, acquired the subject property on October 24, 1975, as reflected by a contract and an April 29, 1977, fulfillment warranty deed included with the claim. On June 22, 1998, the claimants transferred tax lots 1400, 1401 and 1402 into a revocable trust with themselves as trustees. They transferred tax lot 1402 from the trust to themselves on August 24, 2004.² A September 6, 2005, lot book service report submitted with the claim establishes the claimants’ current ownership of the subject property.

Conclusions

The claimants, James and Viola Rasmusan, are “owners” of the subject property as that term is defined by ORS 197.352(11)(C), as of October 24, 1975.

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.

² Transfer of property to and from a revocable trust does not result in a change in ownership for the purposes of ORS 197.352.

