

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: M122453

NAME OF CLAIMANT: Lawrence F. Williams

MAILING ADDRESS: 44975 SW Seghers Road
Gaston, Oregon 97119

PROPERTY IDENTIFICATION: Township 02S, Range 04W, Section 05
Tax lots 1100, 1200, 1300, 1500 and 1600
Yamhill County

OTHER CONTACT INFORMATION: Frederick S. Carman
220 NE Third Avenue
Hillsboro, Oregon 97124

DATE RECEIVED BY DAS: September 23, 2005

180-DAY DEADLINE: August 8, 2006¹

I. SUMMARY OF CLAIM

The claimant, Lawrence Williams, seeks compensation in the amount of \$350,000 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 claimant desires compensation or the right to build a dwelling on each of the following four tax lots totaling 14.17 acres: 1100, 1200, 1300 and 1500, and to divide tax lot 1600, consisting of 21.30 acres, into 20 parcels for residential development. The subject property is located at the geographic coordinates listed above, near Yamhill, in Yamhill 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 not valid because the claimant's desired use of the subject property was prohibited under the laws in effect when the claimant's family acquired the property in 2002. (See the complete recommendation in Section VI. of this report.)

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).

III. COMMENTS ON THE CLAIM

Comments Received

On May 11, 2006, pursuant to Oregon Administrative Rules (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 September 23, 2005, for processing under OAR 125, division 145. The claim identifies Statewide Planning Goal 4 (Forest Lands), ORS 215.700 to 215.730 and Oregon Administrative Rule (OAR) 660-006-0000 to 660-006-0060 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, Lawrence Williams, acquired the subject property from Williams Canyon, LLC on September 16, 2005, as reflected by a bargain and sale deed. Williams Canyon, LLC acquired the subject property on December 18, 2002, as reflected by bargain and sale deeds acquired through a title search. Lawrence Williams was a member of Williams Canyon, LLC. The Yamhill County Assessor's Office confirms the claimant's current ownership of the subject property.

Conclusions

The claimant, Lawrence Williams, is an "owner" of the subject property as that term is defined by ORS 197.352(11)(C), as of September 16, 2005. Williams Canyon, LLC is a "family member" as defined by ORS 197.352(11)(A) and acquired the subject property on December 18, 2002.²

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 claimant's 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 claimant or a family member acquired the property.

Findings of Fact

The claim indicates that the claimant desires to build a dwelling on each of the following four tax lots totaling 14.17 acres: 1100, 1200, 1300 and 1500 and to divide tax lot 1600, consisting of 21.30 acres, into 20 parcels for residential development. The claim identifies Goal 4, ORS 215.700 to 215.730 and OAR 660-006-0000 to 660-006-0060 as restricting the desired use.

The claim is based on Yamhill County's current F-80 Forestry District and the applicable provisions of state law that require such zoning. The claimant's property is zoned F-80 as required by Goal 4, in accordance with ORS 215 and OAR 660, division 6, because the claimant's property is "forest land" as defined by Goal 4. Goal 4 became effective on November 4, 1993, and required that forest lands as defined by the Goal be zoned for forest use (see statutory and rule history under OAR 660-015-0000(4)). The forest land administrative rules (OAR 660, division 6) became effective on September 1, 1982, and ORS 215.705 to 215.755 and 215.780 became effective on November 4, 1993 (Chapter 792, Oregon Laws 1993). OAR 660-006-0026 and 660-006-0027 were amended on March 1, 1994, to implement those statutes.

At the time the claimant's family member acquired an interest in the subject property on December 18, 2002, and at the time the claimant acquired it in 2005, it was zoned F-80 by Yamhill County and subject to the current zoning requirements, minimum lot size and dwelling

² Under ORS 197.352(11)(A), legal entities can be "family members" of individuals who are owners of property under ORS 197.352(11)(C). However, legal entities cannot have family members under the statute. Therefore, individuals who transferred property to the LLC are not considered family members under the definition of family member in ORS 197.352(11)(A).

standards established by Goal 4, ORS 215.705 to 215.755 and 215.780 and OAR 660-006-0026 and 660-006-0027.

Conclusions

The current zoning requirements, minimum lot size and dwelling standards established by Goal 4 and provisions applicable to land zoned forest land in ORS 215 and OAR 660, division 6, were all enacted or adopted before the claimant's family member acquired the subject property on December 18, 2002. These land use regulations do not allow the claimant's desired use of the subject property. Laws enacted or adopted since the claimant and his family member acquired the subject property do not restrict the claimant's desired use of the property relative to when the claimant's family member acquired it in 2002 or when the claimant acquired it in 2005.

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."

Findings of Fact

The claim includes an estimate of \$350,000 as the reduction in the subject property's fair market value due to the regulations that restrict the claimant's desired use of the property. This amount is based on the difference between the claimant's estimate of the fair market value for developed and undeveloped parcels.

Conclusions

As explained in Section V.(1) of this report the claimant is Lawrence Williams whose family member acquired the subject property on December 18, 2002, and who acquired the property on September 16, 2005. No state laws enacted or adopted since the claimant's family acquired the subject property restrict the use of the property relative to the uses allowed in 2002. Therefore, the fair market value of the subject property has not been reduced as a result of land use regulations enforced by the Land Use Conservation and Development Commission (the Commission) or the department.

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.

Findings of Fact

The claim does not identify any state land use regulations enacted or adopted since the claimant acquired the subject property that restrict the use of the property relative to what would have been allowed when his family member acquired it on December 18, 2002. As set forth in Section V.(2) of this report, the state land use regulations restricting the claimant's desired use of

the subject property were in effect when the claimant's family member acquired the property in 2002.

Conclusions

All of the state land use regulations that restrict the claimant's desired use of the subject property were in effect when the claimant and his family member acquired the property. Therefore, these state land use regulations are exempt under ORS 197.352(3)(E), which exempts laws in effect when the claimant's family member acquired the subject property.

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 findings and conclusions set forth in this report, laws enforced by the Commission or the department do not restrict the claimant's desired use of the subject property relative to what was permitted when the claimant's family member acquired it in 2002 and when the claimant acquired it in 2005, and do not reduce the fair market value of the property. All state laws restricting the use of the subject property are exempt under ORS 197.352(3)(E).

Conclusions

Based on the record and the foregoing findings and conclusions, the claimant has not established that he is entitled to relief under ORS 197.352(1) as a result of land use regulations enforced by the Commission or the department. Therefore, the department recommends that this claim be denied.

VII. NOTICE OF OPPORTUNITY TO COMMENT

This staff report is not a final decision by the department and does not authorize any use of the property that is the subject of this report. OAR 125-145-0100 provides 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. Such response must be filed no more than 10 calendar days after the date this report is mailed to the claimant and any third parties. Responses to this draft staff report and recommendation will be considered only as comments related to the claim described in this report. All responses must be delivered to the Oregon Department of Administrative Services (DAS), Measure 37 Unit, Risk Management-State Services Division, 1225 Ferry Street SE, U160, Salem, Oregon 97301-4292 and will be deemed timely filed if

either postmarked on the tenth day, or actually delivered to DAS by the close of business on the tenth day. Note: Please reference the claim number, claimant name and clearly mark your comments as "Draft Staff Report comments." Comments must be submitted in writing only. Those comments submitted electronically or by facsimile will not be accepted.