

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: M122465

NAMES OF CLAIMANTS: Loren and Charlotte Sawyer

MAILING ADDRESS: PO Box 38
Turner, Oregon 97392

PROPERTY IDENTIFICATION: Township 8S, Range 2W, Section 33B
Tax lot 500

Township 8S, Range 2W, Section 33BA
Tax lot 2200

Marion County

OTHER CONTACT INFORMATION: Norman F. Webb
1114 12th Street SE
Salem, Oregon 97302

DATE RECEIVED BY DAS: September 23, 2005

180-DAY DEADLINE: August 8, 2006¹

I. SUMMARY OF CLAIM

The claimants, Loren and Charlotte Sawyer, seek compensation in the amount of \$78,799 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 combined 54.37-acre subject property (consisting of two tax lots) into one 13.82-acre parcel and one 40.55-acre parcel and to establish a permanent dwelling on the 13.82-acre parcel.² The

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 subject property currently consists of two tax lots. Tax lot 500 includes 50.85 acres. Tax lot 2200 currently includes 3.52 acres and was illegally created from adjoining tax lot 200. In an ORS 197.352 claim for relief before Marion County, the claimants sought to legalize the illegally created tax lot and then through a "lot line adjustment," sought to increase its size to 13.82 acres. In this claim, the claimants seek to "divide" the 3.52-acre parcel from the larger parcel, then increase its size. The state considers the entire subject property, including tax lots 500 and 2200, in this request for relief from state regulations that currently prohibit the division of property into parcels less than 80 acres.

subject property is located at the geographic coordinates listed above in Marion 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 Loren and Charlotte Sawyer's partition of the combined 54.37-acre subject property into one 13.82-acre parcel and one 40.55-acre parcel and to their development of a dwelling on the 13.82-acre parcel: applicable provisions of Statewide Planning Goal 3 (Agricultural Lands), ORS 215 and Oregon Administrative Rules (OAR) 660, division 33, enacted or adopted after they acquired the subject tax lots. 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 tax lot 500 on April 1, 1977, and when they acquired tax lot 2200 on September 6, 1977. (See the complete recommendation in Section VI of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On October 11, 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.

One of the comments does 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.

The second comment is relevant to whether the restriction of the claimants' use of the subject property reduces the fair market value of the property and whether a state agency may waive state law. The comments have been considered by the department in preparing this report. (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 the provisions of Marion County's Exclusive Farm Use (EFU) zone 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 subject property consists of two tax lots. This claimants, Loren and Charlotte Sawyer, acquired tax lot 500, consisting of 50.85 acres, on April 1, 1977, as reflected in a land sales contract included with the claim. The claimants acquired tax lot 2200, consisting of 3.52 acres, on September 6, 1977, from Loren Sawyer's parents, Vincent and Helen Sawyer, as reflected by a deed of record cited in the Marion County staff report for the claimants' ORS 197.352 claim for relief before the county. Vincent and Helen Sawyer acquired tax lot 2200 as part of a larger unit of land, tax lot 200 (Township 8S, Range 2W, Section 33B), on December 1, 1964, also as reflected by a deed of record cited in the Marion County staff report. The Marion County Assessor's Office confirms the claimants' current ownership of the subject tax lots.

Conclusions

The claimants, Loren and Charlotte Sawyer, are "owners" of tax lots 500 and 2200 as that term is defined by ORS 197.352(11)(C). They have been owners of tax lot 500 since April 1, 1977, and owners of tax lot 2200 since September 6, 1977. The claimants' parents, Vincent and Helen Sawyer, are "family members," as defined by ORS 197.352(11)(A), as to tax lot 2200 and acquired the property that includes tax lot 2200 on December 1, 1964.

