

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: M122477

NAME OF CLAIMANT: L & N Seventh, LLC

MAILING ADDRESS: c/o Nina L. Lindstrom
28250 SW Pete's Mountain Road
West Linn, Oregon 97068

PROPERTY IDENTIFICATION: Township 3S, Range 1E, Section 15
Tax lot 3400
Clackamas County

OTHER CONTACT INFORMATION: Bob Harris
380 SW 5th Street
Madras, Oregon 97741

DATE RECEIVED BY DAS: September 26, 2005

180-DAY DEADLINE: August 11, 2006¹

I. SUMMARY OF CLAIM

The claimant, L & N Seventh, LLC, seeks compensation in the amount of \$2 million 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 subject 39.38-acre property into two parcels to accommodate two existing dwellings on the property. The subject property is located on the east side of Pete's Mountain Road, near West Linn, 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 not valid because the claimant's desired use of the subject property was prohibited under the laws in effect when the claimant acquired the property in 2003. (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 19, 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 26, 2005, for processing under OAR 125, division 145. The claim identifies Clackamas County's current zoning and state regulations that restrict the claimant's use of the property 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, L & N Seventh, LLC, is a Nevada limited liability company registered with the Oregon Secretary of State. The claimant acquired the subject property from Larry L. and Nina L. Lindstrom on December 31, 2003, as reflected by a quitclaim deed included with the claim. The Clackamas County Assessor's Office confirms the claimant's current ownership of the subject property.

Conclusions

The claimant, L & N Seventh, LLC, is an "owner" of the subject property as that term is defined by ORS 197.352(11)(C), as of December 31, 2003.

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 divide the subject 39.38-acre property into two parcels to accommodate two existing dwellings on the property and that county and state regulations prohibit the desired use.

The claimant's property is zoned Ag/Forest (AG/F), which is a mixed agricultural and forest land zone, as permitted by Statewide Planning Goal 4 (Forest Lands) and the implementing provisions of OAR 660-006-0050 (effective on February 5, 1990), subsequently amended on March 1, 1994, to comply with the provisions of House Bill 3661 (Chapter 792, Oregon Laws 1993).

Under OAR 660-006-0050, all the uses permitted under Goals 3 (Agricultural Lands) and 4 are allowed in mixed agriculture and forest zones, except that for dwellings, either the Goal 3 or 4 standards are applicable based on the predominant use of the tract on January 1, 1993.² Depending on the predominant use on that date, the property is subject to either the requirements for dwellings applicable under exclusive farm use zoning required by Goal 3 and OAR 660, division 33, or forest zone provisions required by Goal 4 and OAR 660, division 6.

For land divisions, OAR 660-006-0055 authorizes the creation of new parcels based on the standards applicable to farm or forest zones that implement the 80-acre minimum lot size specified in ORS 215.780. Under ORS 215.780(2)(a), the minimum lot size in Clackamas County's AG/F zone is 80 acres. The claimant's property cannot be divided into parcels smaller than 80 acres.

The claimant acquired the subject property on December 31, 2003. At that time, the property was subject to the land use laws currently in effect, as described above.

² No information was provided to the department regarding the predominant use of the property on January 1, 1993.

Conclusions

The current zoning requirements, minimum lot size and dwelling standards established by Goal 4 for lands zoned for mixed farm-forest use and the statutory and rule restrictions under applicable provisions in ORS 215 and OAR 660, divisions 6, and 33, were all enacted or adopted before the claimant acquired the subject property on December 31, 2003. These land use regulations do not allow the desired division and development of the property. Laws enacted or adopted since the claimant acquired the subject property in 2003 do not restrict the claimant's desired use of the property relative to when the claimant acquired it in 2003.

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 \$2 million 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 claimant's assessment that the ability to divide the property into two homesites would add \$1.5 million to its current value of \$500,000.

Conclusions

As explained in Section V.(1) of this report, the claimant, L & N Seventh, LLC, acquired the subject property on December 31, 2003. No state laws enacted or adopted since the claimant acquired the subject property restrict the claimant's desired use of the property relative to the uses allowed in 2003. 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 the claimant acquired it on December 31, 2003. 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 acquired the property in 2003.

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 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 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 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 acquired it in 2003 and do not reduce its fair market value. 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 it 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.

