

**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:** M122500

**NAMES OF CLAIMANTS:** Alfred H. Rohde  
Lorrell L. Brown  
Barbara B. Brown  
Joanne M. Leggett

**MAILING ADDRESS:** 251 Laurel Drive  
Roseburg, Oregon 97470

**PROPERTY IDENTIFICATION:** Township 2S, Range 3W, Section 36  
Tax lot 3000  
Yamhill County

**OTHER CONTACT INFORMATION:** Walter R. Gowell, Esq.  
PO Box 480  
McMinnville, Oregon 97128

**DATE RECEIVED BY DAS:** September 27, 2005

**180-DAY DEADLINE:** August 12, 2006<sup>1</sup>

**I. SUMMARY OF CLAIM**

The claimants, Alfred Rohde, Lorrell and Barbara Brown and Joanne Leggett, seek compensation in the amount of \$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 28.45-acre property into two parcels and to develop a dwelling on the resulting undeveloped parcel and a guesthouse on the resulting developed parcel. The subject property is located at 18255 NE Chehalem Drive, near Newberg, 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 this claim is not valid

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<sup>1</sup> 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).

because the claimants' have not established their ownership of the subject property. (See the complete recommendation in Section VI. of this report.)

### **III. COMMENTS ON THE CLAIM**

#### **Comments Received**

On May 12, 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 27, 2005, for processing under OAR 125, division 145. The claim identifies provisions of Yamhill County Zone Section 402, ORS 215.780(1)(a) and OAR 660-033-0135(7)(a) 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**

#### **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, Alfred Rohde, Lorrell and Barbara Brown and Joanne Leggett, acquired an interest in the subject property on October 5, 2004, as reflected by a death certificate included with the claim.<sup>2</sup> Documents obtained from First American Title indicate that the claimants transferred all of their interest in the subject property to a third party on September 30, 2005. The claim does not establish that the claimants have retained any ownership of the subject property.

## **Conclusions**

The claimants, Alfred Rohde, Lorrell and Barbara Brown and Joanne Leggett, have not established that they are “owners” of the subject property as that term is defined in ORS 197.352(11)(C).

### **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.

As explained in Section V.(1) of this report, the claimants, Alfred Rohde, Lorrell and Barbara Brown and Joanne Leggett, have not established that are “owners” of the subject property as that term is defined in ORS 197.352(11)(C). Therefore, no laws enforced by the Land Conservation and Development Commission (the Commission) or the department restrict the claimants’ use of private real property in a manner that reduces the subject property’s fair market value.

### **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.”

As explained in Section V.(1) of this report, the claimants, Alfred Rohde, Lorrell and Barbara Brown and Joanne Leggett, have not established that they are “owners” of the subject property as that term is defined in ORS 197.352(11)(C). Therefore, no laws restrict their use of the subject property in a manner that reduces its fair market value.

### **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.

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<sup>2</sup> The claimants’ mother, Bessie Huffman, conveyed the subject property to the claimants on April 11, 1979, subject to her reservation of a life estate. Under the terms of the life estate, Bessie Huffman retained the subject property until her death. The claimants acquired the remainder fee title and right to use the subject property upon Bessie Huffman’s death on October 5, 2004.

As explained in Section V.(1) of this report, the claimants, Alfred Rohde, Lorrell and Barbara Brown and Joanne Leggett, have not established that they are “owners” of the subject property of the subject property as that term is defined in ORS 197.352(11)(C). Therefore, the issue of whether any laws are exempt from ORS 197.352 is not relevant.

## **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 record before the department, the claimants, Alfred Rohde, Lorrell and Barbara Brown and Joanne Leggett, have not established that they are entitled to relief under ORS 197.352(1) as a result of land use regulations enforced by the Commission or the department because they have not established they are present owners of the subject property. 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 claimants or the claimants’ 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 claimants 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.