

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

July 24, 2006

**STATE CLAIM NUMBER:** M122534

**NAME OF CLAIMANT:** Roscoe E. Watts

**MAILING ADDRESS:** 3434 SW Water Avenue  
Portland, Oregon 97239

**PROPERTY IDENTIFICATION:** Township 1N, Range 4W, Section 22  
Tax lot 500  
Washington County

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

**DATE RECEIVED BY DAS:** September 29, 2005

**180-DAY DEADLINE:** August 14, 2006<sup>1</sup>

**I. SUMMARY OF CLAIM**

The claimant, Roscoe Watts, seeks 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 claimant desires compensation or the right to divide the 40.5-acre subject property and to develop a dwelling on each parcel. The subject property is located on NW Davis Road, near Forest Grove, in Washington 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 Roscoe Watts' division of the 40.5-acre property and to his development of a dwelling on each parcel: applicable provisions of Statewide Planning Goal 3

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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).

(Agricultural Lands), ORS 215 and Oregon Administrative Rules (OAR) 660, division 33, enacted or adopted after August 27, 2002. These laws will not apply to the claimant only to the extent necessary to allow him to use the subject property for the use described in this report, and only to the extent that use was permitted when he reacquired the property on August 27, 2002. The department acknowledges that the relief to which the claimant is entitled under ORS 197.352 will not allow the claimant to use the subject property in the manner set forth in the claim. (See the complete recommendation in Section VI of this report.)

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

#### **Comments Received**

On May 22, 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, one written comment was received in response to the 10-day notice. The comment is relevant to whether the claimant is an owner. The comment has been considered by the department in preparing this report. (See the comment letter 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 29, 2005, for processing under OAR 125, division 145. The claim identifies Washington County's AF-20 zone, ORS 215 and OAR 660, division 33, 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, Roscoe Watts, and his wife Jean Watts acquired the subject property on February 28, 1963, as evidenced by a warranty deed included with the claim. The claimant conveyed the subject property to his wife on December 28, 1972, as evidenced by a bargain and sale deed included with claim.<sup>2</sup> The claimant reacquired the subject property on August 27, 2002, as trustee of the Jean Watts Testamentary Trust after his wife’s death, as reflected by probate documents included with the claim. The Washington County Assessor’s Office confirms the claimant’s current ownership of the subject property.

### Conclusions

The claimant, Roscoe Watts, is an “owner” of the subject property as that term is defined by ORS 197.352(11)(C), as of August 27, 2002. The claimant’s wife, Jean Watts, is a “family member” as defined by ORS 197.352(11)(A). The claimant’s family has owned the subject property since February 28, 1963.

### 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 40.5-acre subject property and to develop a dwelling on each parcel and that Washington County’s AF-20 zone, ORS 215 and OAR 660, division 33, do not allow the desired use.

The claim is based generally on Washington County’s current AF-20 zone and the applicable provisions of state law that require such zoning. The claimant’s property is zoned AF-20 as required by Goal 3, in accordance with ORS 215 and OAR 660, division 33, because the claimant’s property is “agricultural land” as defined by Goal 3.<sup>3</sup> Goal 3 became effective on

<sup>2</sup> The claimant asserts that he transferred his interest in the subject property to his wife “only” for estate planning purposes and that he should be considered an owner since 1963, notwithstanding that transfer. However, the deed by which he conveyed the subject property to his wife does not indicate that the claimant retained any ownership interest in the property following that conveyance.

<sup>3</sup> The claimant’s property is “agricultural land” because it contains National Resources Conservation Service Class I-IV soils.

