

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

July 26, 2006

STATE CLAIM NUMBER: M122607

NAMES OF CLAIMANTS: Sharon Matts (personal representative,
Estate of Lois Lucille Curtis)
Richard Lane Curtis
Timothy Jack Curtis

MAILING ADDRESS: Sharon Matts
265 NE 36th Street
Newport, Oregon 97365

Richard Lane Curtis
PO Box 111042
Anchorage, Alaska 99511

Timothy Jack Curtis
8072 Pudding Creek Drive SE
Salem, Oregon 97317

PROPERTY IDENTIFICATION: Township 09, Range 09, Section 33
Tax lot 601
Lincoln County

OTHER CONTACT INFORMATION: Kurt Carstens
PO Box 1730
Newport, Oregon 97365

DATE RECEIVED BY DAS: October 3, 2005

180-DAY DEADLINE: August 18, 2006¹

I. SUMMARY OF CLAIM

The claimants, Sharon Matts, Richard Lane Curtis and Timothy Jack Curtis, seek compensation in the amount of \$53,000 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

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).

compensation or the right to develop a dwelling on the subject property. The subject property is located at 422 Gibson Lane, near Logsdan, in Lincoln 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 the claimants' development of a dwelling on the subject property: applicable provisions of Statewide Planning Goal 3 (Agricultural Lands), ORS 215 and Oregon Administrative Rules (OAR) 660, division 33, enacted or adopted after February 6, 2005. 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 the property on February 6, 2005. The department acknowledges that the relief to which the claimants are entitled under ORS 197.352 will not allow the claimants 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 23, 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 does not address whether the claim meets the criteria for relief under ORS 197.352. Comments concerning the effects a use of the 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. (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 October 3, 2005, for processing under OAR 125, division 145. The claim identifies Goal 3, ORS 197.040 and “all statewide planning goals, rules, and statutes adopted or enforced since Lois Lucille Curtis purchased 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 claimants, Sharon Matts, Richard Lane Curtis and Timothy Jack Curtis, acquired the subject property on February 6, 2005, upon the death of their mother, Lois Lucille Curtis, as reflected by the petition for probate of will and appointment of personal representative included with the claim. Lois Lucille Curtis acquired the subject property on April 17, 1978, as evidenced by a real estate contract included with the claim. The Lincoln County Assessor’s Office confirms the claimants’ current ownership of the subject property.

Conclusions

The claimants, Sharon Matts, Richard Lane Curtis and Timothy Jack Curtis, are “owners” of the subject property as that term is defined by ORS 197.352(11)(C), as of February 6, 2005. Lois Lucille Curtis is a “family member” as defined by ORS 197.352(11)(A) and acquired the subject property on April 17, 1978.

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.

