

**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:** M122686

**NAME OF CLAIMANT:** Vernon Schnoberger

**MAILING ADDRESS:** 5934 N. Villard Avenue  
Portland, Oregon 97217

**PROPERTY IDENTIFICATION:** Township 03S, Range 01E, Section 12  
Tax lot 500  
Clackamas County

**OTHER CONTACT INFORMATION:** Kenneth B. Ross  
8803 SW 57th Avenue  
Portland, Oregon 97219

**DATE RECEIVED BY DAS:** October 3, 2005

**180-DAY DEADLINE:** August 18, 2006<sup>1</sup>

**I. SUMMARY OF CLAIM**

The claimant, Vernon Schnoberger, seeks compensation in the amount of \$400,000 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 4.86-acre property and to develop a dwelling on each parcel. The subject property is located on South Forest Ridge Lane, near Oregon City, 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 neither the Land Conservation and Development Commission (the Commission) nor the department has enforced laws that restrict the claimant's use of the private real property. (See the complete recommendation in Section VI. of this report.)

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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).

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

#### **Comments Received**

On October 14, 2005, 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, 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 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. (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 Clackamas County Zoning and Development Ordinance, Section 314 FU-10 zone; Clackamas County Zoning Code, Section 21 GU; provisions of OAR 660; and all statewide planning goals, statutes, rules and regulations adopted since September 7, 1967, 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, Vernon Schnoberger, acquired the subject property on September 7, 1967, as reflected by a warranty deed provided by Clackamas County’s Department of Transportation and Development. A 2004–05 tax statement submitted with the claim establishes the claimant’s current ownership of the subject property.

### **Conclusions**

The claimant, Vernon Schnoberger, is an “owner” of the subject property as that term is defined in ORS 197.352(11)(C), as of September 7, 1967.

### **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 4.86-acre property and to develop a dwelling on each parcel. It indicates that Clackamas County Zoning and Development Ordinance, Section 314 FU-10 zone; Clackamas County Zoning Code, Section 21 GU; provisions of OAR 660; and all statewide planning goals, statutes, rules and regulations adopted since September 7, 1967, restrict the claimant’s desired use.

The subject property is currently zoned Future Urbanizable 10 Acre (FU-10) district by Clackamas County. The FU-10 district is a residential zone with a minimum lot size of 10 acres. The subject property is located within Oregon City’s Urban Growth Boundary (UGB).

In general, the zoning of a particular property within a UGB is determined by the city or county with land use jurisdiction over the property. In some circumstances, the Commission’s rules or state statutes may apply to a local government decision regarding zoning, but usually, within a UGB, state laws require or encourage a higher intensity of development rather than restrict the use of real property. In this case, the claimant has not alleged how a specific state land use regulation restricts the use of real property and has the effect of reducing the fair market value of that real property.

Based on the information in the claim, the department has not identified any state laws that restrict the claimant's use of the subject property.

### **Conclusions**

The claim does not establish any state laws that currently restrict the use of the claimant's property. Because the subject property is located within Oregon City's UGB, neither the Commission nor the department enforces laws that require specific zoning of the property. Based on the record before the department, neither the Commission nor the department enforces any laws that restrict the use of the claimant's real property.

### **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.(2) of this report, the claimant, Vernon Schnoberger, has not established that any state laws restrict the use of the subject property. Accordingly, the department cannot determine that any laws enforced by the Commission or the department have had the effect of reducing the fair market value of the subject property.

### **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.

As explained in Section V.(2) of this report, the claimant, Vernon Schnoberger, has not established that any state laws restrict the use of the subject property. Accordingly, the department cannot determine that any exemptions under ORS 197.352(3) apply to this claim.

## **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 for this claim, the claimant has not established that any state laws enforced by the Commission or the department restrict the use of the subject property, and have the effect of reducing the fair market value of the subject property. Because the subject property is located

within Oregon City's UGB, neither the Commission nor the department enforces laws that require specific zoning of the property.

### **Conclusions**

Based on the record before the department, the claimant, Vernon Schnoberger, has not established that he 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.

