

BEFORE THE DEPARTMENT OF ADMINISTRATIVE SERVICES,
THE DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT OF
THE STATE OF OREGON

IN THE MATTER OF THE CLAIM FOR) FINAL ORDER
COMPENSATION UNDER ORS 197.352) CLAIM NO. M124497,
(BALLOT MEASURE 37) OF) M124498 and M124650
Martha Joy Rasmussen, CLAIMANT)

Claimant: Martha Joy Rasmussen (the Claimant)

Property: Township 2S, Range 39E, Section 9: tax lot 100
Sections 2, 3, 10 and 11: tax lot 1000
Section 4: tax lot 2600
Section 16: tax lot 6600
Sections 20, 21, 22, 27 and 28: tax lots 9000 and 9200
Union County (the property)

Claim: The demand for compensation and any supporting information received
from the Claimant by the State of Oregon (the Claim).

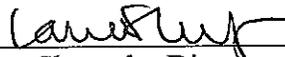
Claimant submitted the Claim to the State of Oregon under ORS 197.352. Under OAR 125-145-0010 *et seq.*, the Department of Administrative Services (DAS) referred the Claim to the Department of Land Conservation and Development (DLCD) as the regulating entity. This order is based on the record herein, including the Findings and Conclusions set forth in the Final Staff Report and Recommendation of DLCD (the DLCD Report) attached to and by this reference incorporated into this order.

ORDER

The Claim is denied as to laws administered by DLCD and the Land Conservation and Development Commission (LCDC) for the reasons set forth in the DLCD Report.

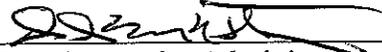
This Order is entered by the Director of the DLCD as a final order of DLCD and the Land Conservation and Development Commission under ORS 197.352, OAR 660-002-0010(8), and OAR chapter 125, division 145, and by the Administrator for the State Services Division of the DAS as a final order of DAS under ORS 197.352, OAR chapter 125, division 145, and ORS chapter 293.

FOR DLCD AND THE LAND
CONSERVATION AND
DEVELOPMENT COMMISSION:



Lane Shetterly, Director
DLCD
Dated this 11th day of September, 2006.

FOR the DEPARTMENT OF
ADMINISTRATIVE SERVICES:



David Hartwig, Administrator
DAS, State Services Division
Dated this 11th day of September, 2006.

NOTICE OF RIGHT TO APPEAL OR OTHER JUDICIAL RELIEF

You are entitled, or may be entitled, to the following judicial remedies:

1. Judicial review under ORS 183.484: Judicial review under ORS 183.484 may be obtained by filing a petition for review within 60 days from the service of this order. A petition for judicial review under ORS 183.484 may be filed in the Circuit Court for Marion County or the Circuit Court in the county in which you reside.
2. A cause of action under ORS 197.352 (Measure 37 (2004)): If a land use regulation continues to apply to the subject property more than 180 days after the present owner of the property has made written demand for compensation under ORS 197.352, the present owner of the property, or any interest therein, shall have a cause of action in the circuit court in which the real property is located.

(Copies of the documents that comprise the record are available for review at the Department's office at 635 Capitol Street NE, Suite 150, Salem, Oregon 97301-2540)

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

September 11, 2006

STATE CLAIM NUMBERS: M124497, M124498 and M124650¹

NAME OF CLAIMANT: Martha Joy Rasmussen

MAILING ADDRESS: 10805 Island Drive
La Grande, Oregon 97850

PROPERTY IDENTIFICATION: Township 2S, Range 39E
Section 9: tax lot 100
Sections 2, 3, 10 and 11: tax lot 1000
Section 4: tax lot 2600
Section 16: tax lot 6600
Sections 20, 21, 22, 27 and 28: tax lots 9000
and 9200
Union County

OTHER CONTACT INFORMATION: Dennis Rasmussen, Agent
1621 North Spruce Street
La Grande, Oregon 97850

DATE RECEIVED BY DAS: March 20, 2006

180-DAY DEADLINE: September 16, 2006

I. SUMMARY OF CLAIM

The claimant, Martha Joy Rasmussen, seeks compensation in the amount of \$42,509,478 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.² The claimant desires compensation or the right to divide the subject property, consisting of the tax lots identified above and totaling approximately 2,066.80 acres, into five-acre parcels and to develop a dwelling on each parcel. Tax lots 100, 1000 and 2600 are located on the east and west sides of Hunter Road and tax lots 6600, 9000 and 9200 are

¹ The claimant submitted three separate claims for relief under ORS 197.352. M124497 was for tax lots 6600, 9000 and 9200, which the claimant acquired on September 20, 1970. M124498 was for tax lots 600 and 2600, which the claimant acquired on March 3, 1965, and M124650 was for tax lot 1000, which the claimant acquired on January 17, 1957. The claims were consolidated under this review.

² The amount of compensation is the total amount the claimant seeks for all three claims. For M124497, she seeks \$30,971,200 or the right to divide tax lots 6600, 900 and 9200 into 240 five-acre parcels. For M124498, she seeks \$4,258,543 or the right to divide tax lots 100 and 2600 into 33 five-acre parcels. For M124650, she seeks \$7,279,715 or the right to divide tax lot 1000 into 56 five-acre parcels.

located north of Booth Lane and south of Market Lane, near La Grande, in Union County. (See claim.)

II. SUMMARY OF STAFF RECOMMENDATION

Based on the 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 is not a present owner of the subject property.

III. COMMENTS ON THE CLAIM

Comments Received

On July 5, 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, 11 written comments were received in response to the 10-day notice.

The comments do 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 letters 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 March 20, 2006, for processing under OAR 125, division 145. The claim identifies Goals 3 (Agricultural Lands) and 4 (Forest Lands) and Union County's zoning, partition and subdivision ordinances 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, Martha Joy Rasmussen, acquired tax lot 1000 on January 17, 1957, tax lots 100 and 2600 on March 3, 1965, and tax lots 6600, 9000 and 9200 on September 20, 1970, as reflected by deeds included with the claim. She conveyed all of the subject property to Terra Magic, Inc. on March 22, 1976, as reflected by a bargain and sale deed included with the claim.³ The claimant is no longer an owner of any of the subject property. The Union County Assessor’s Office confirms that Terra Magic, Inc., not the claimant, is a current owner of the subject property.

Conclusions

The claimant, Martha Joy Rasmussen, is not an “owner” of the subject property as that term is defined by 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 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 acquired the property.

Findings of Fact

The claim indicates that the claimant desires to divide the approximately 2,066.80-acre subject property into five-acre parcels and to develop a dwelling on each parcel, and that the use is not allowed under current land use regulations.

As explained in Section V.(1), the claimant, Martha Joy Rasmussen, is not an owner 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 her use of the subject property with the effect of reducing its fair market value.

³ Terra Magic, Inc. is a domestic business corporation registered with the Oregon Secretary of State.

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 claimant, Martha Joy Rasmussen, is not an owner of the subject property, as that term is defined in ORS 197.352(11)(C). Therefore, no laws restrict her use of the subject property with the effect of reducing 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.

As explained in Section V.(1) of this report, the claimant, Martha Joy Rasmussen, is not an owner 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, the department finds that the claim is not valid because the claimant is not an owner of the subject property.

Conclusions

Based on the record before the department, the claimant, Martha Joy Rasmussen, is not entitled to relief under ORS 197.352 as a result of land use regulations enforced by the Commission or the department because she is not a present owner of the subject property. Therefore, the department recommends that this claim be denied.

VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on August 24, 2006. OAR 125-145-0100(3), provided 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. Comments received have been taken into account by the department in the issuance of this final report.