

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. M129483
(BALLOT MEASURE 37) OF)
Michael and Bobbie Rainey, CLAIMANTS)

Claimant(s): Michael and Bobbie Rainey (the Claimants)

Property: Township 35, Range 2W, Section 26, Tax lot 107, Jackson County
(the property)

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

Claimants 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

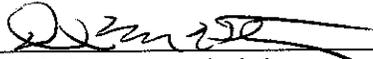
The Claim is denied as to laws administered by DLCD and the Land Conservation and Development Commission (LCDC) for the reasons set forth in the DLCD Report.

This Order is entered by the Deputy 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


Cora R. Parker, Deputy Director
DLCD
Dated this 1st day of December, 2006.

FOR the DEPARTMENT OF
ADMINISTRATIVE SERVICES:


David Hartwig, Administrator
DAS, State Services Division
Dated this 1st day of December, 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**

December 1, 2006

STATE CLAIM NUMBER: M129483

NAMES OF CLAIMANTS: Michael and Bobbie Rainey

MAILING ADDRESS: 4000 Highway 234
White City, Oregon 97503

PROPERTY IDENTIFICATION: Township 35, Range 2W, Section 26
Tax lot 107
Jackson County

OTHER CONTACT INFORMATION: Christian E. Hearn
515 East Main Street
Ashland, Oregon 97520

DATE RECEIVED BY DAS: June 9, 2006

180-DAY DEADLINE: December 6, 2006

I. SUMMARY OF CLAIM

The claimants, Michael and Bobbie Rainey, seek compensation in the amount of \$375,000 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 structurally connect two existing structures, currently used as a feedstore serving the surrounding rural area, to create a single 10,000 square foot commercial feed store on the 6.46-acre subject property.¹ The subject property is located at 4864 Highway 234, near White City, in Jackson 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 neither the Land Conservation and Development Commission (the Commission) nor the department has

¹ The claim as submitted applies only to the 6.46-acre portion of tax lot 107 that the claimants acquired in 1978 and 1981. This portion of the tax lot was zoned RS (Rural Service Commercial) when claimants acquired it in 1978 and 1981, and is currently zoned SVRS (Sam's Valley Rural Service Commercial) and EFU. The claimants acquired the balance of the 9.27-acre tax lot at a later date and added it to the property by lot line adjustment in June 2004 (Jackson County file # SUB2004-00047). Those portions of tax lot 107 are not subject to this claim.

enforced laws that restrict the claimants' use of the subject property. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On September 27, 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, 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 June 9, 2006, for processing under OAR 125, division 145. The claim identifies Jackson County land use ordinances; provisions of ORS 197 and 215; OAR 660; all state and county land use regulations and all statewide planning goals 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, Michael and Bobbie Rainey, acquired approximately 3.4 acres of the 6.46-acre subject property on April 15, 1978, as reflected by a lease option agreement submitted with the claim. They acquired fee title to the entire 6.46-acre subject property on March 12, 1981, as reflected by a warranty deed included with the claim. The Jackson County Assessor's Office confirms the claimants' current ownership of the subject property.

Conclusions

The claimants, Michael and Bobbie, are "owners" of the subject property as that term is defined by ORS 197.352(11)(C), as of April 15, 1978 for a 3.4-acre portion of the property and as of March 12, 1981 for the remainder of the 6.46-acre property.

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 acquired the property.

Findings of Fact

The claim indicates that claimants desire to structurally connect two existing 4,000 square-foot structures, currently developed and used as a commercial feedstore serving the surrounding rural area on the 6.46-acre subject property, in order to create a single 10,000 square-foot feedstore, and that current zoning prohibits the desired use.²

The claim is based on the provisions of state law that regulate rural unincorporated communities. The claimants' property is zoned SVRS (Sam's Valley Rural Service Commercial) by Jackson County, consistent with Goal 14.³

Goal 14 generally requires that land outside of urban growth boundaries be used for rural uses. However, the goal specifically allows counties to approve certain uses in unincorporated communities outside of urban growth boundaries that are more intensive than otherwise allowed on rural lands, subject compliance with OAR 660-022-0030.

² The claimants have summarily cited numerous state land use laws as applicable to this claim, but do not establish how they either apply to the claimants' desired use of the subject property or restrict its use with the effect of reducing its fair market value. On their face, most of the regulations either do not apply to the claimants' property or do not restrict the use of the claimants' property in a manner that reduces its fair market value. This report addresses only those regulations that the department finds are applicable to and restrict the claimants' use of the subject property, based on the claimants' asserted desired use.

³ A portion of the claimants' property is zoned EFU. However, the desired use is limited to the SVRS-zoned portion of the property. No use is proposed for the EFU-zoned portion of the property and, therefore, state land use laws restricting uses on EFU-zoned land are not addressed in this report..

Under OAR 660-022-0030(4)(a), county plans and land use regulations may authorize any use permitted authorized under Goals 3 or 4. The desired commercial use is a feedstore serving the surrounding rural area, which is specifically allowed in an EFU zone pursuant to ORS 215 and therefore is authorized under Goal 3. In addition, OAR 660-022-0030(4)(c) allows counties to authorize commercial uses which serve the community, surrounding rural area and needs of the traveling public with no limitation on commercial floor area. The desired use is a feed store which serves the community and surrounding rural area as permitted under and OAR 660-022-0030(4)(c).

Conclusions

The current uses in rural unincorporated communities established by Goal 14 and provisions applicable to land zoned SVRS in OAR 660-22-0030(4)(a) and OAR 660-022-0030(4)(c) specifically allow the claimant's desired use of the subject property as a feedstore. The claimants have not identified any state land use regulations enforced by the Commission or the department that restrict the claimant's desired use of the subject property as a feedstore.

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."

Findings of Fact

The claim includes an estimate of \$375,000 as the reduction in the subject property's fair market value due to the regulations that restrict the claimants' desired use of the property. This amount is based on a market analysis included with the claim.

Conclusions

As explained in Section V.(1) of this report, the claimants are Michael and Bobbie Rainey who acquired the subject property on April 15, 1978. As explained in Section V.(2) of this report, the claimants have not established that any state laws restrict their desired use of the subject property. Accordingly that the claimants have not established that any laws enforced by the Commission or the department have had the effect of reducing the property's 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.

Findings of Fact and Conclusions

The claim does not identify any state land use regulations enforced by the Commission or the department that restrict the claimant's desired use of the property. Accordingly, the issue of whether any state laws are exempt under ORS 197.352(3) is not relevant 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's desired use of the property is permitted under OAR 660-022-0030(4)(a) and OAR 660-022-0030(4)(c). The claimants have not established that any state laws enforced by the Commission or the department restrict the claimant's desired use of the subject property.

Conclusions

Based on the record and the foregoing findings and conclusions, the claimants 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. 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 November 9, 2006. OAR 125-145-0100(3), provided 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. No comments were received.