

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. M129855
(BALLOT MEASURE 37) OF)
Wayne and Romayne Emmel)
Emmel Brothers Ranch, CLAIMANTS)

Claimants: Wayne and Romayne Emmel, Emmel Brothers Ranch (the Claimants)

Property: Township 13S, Range 33E, Section 10, Tax lot 100, Grant County
(the property)

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

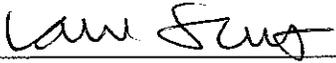
Claimants submitted the Claim to the State of Oregon under ORS 197.352. Under OAR 125-145-0010 *et seq.*, the Department of Administrative Services (DAS) referred the Claim to the Department of Land Conservation and Development (DLCD) as the regulating entity. This order is based on the record herein, 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 5th day of February, 2007.

FOR the DEPARTMENT OF
ADMINISTRATIVE SERVICES:


David Hartwig, Administrator
DAS, State Services Division
Dated this 5th day of February, 2007.

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

February 5, 2007

STATE CLAIM NUMBER: M129855

NAMES OF CLAIMANTS: Wayne and Romaine Emmel
Emmel Brothers Ranch

MAILING ADDRESS: 30380 North River Road
Prairie City, Oregon 97869

PROPERTY IDENTIFICATION: Township 13S, Range 33E, Section 10
Tax lot 100
Grant County

DATE RECEIVED BY DAS: August 14, 2006

180-DAY DEADLINE: February 10, 2007

I. SUMMARY OF CLAIM

The claimants, Wayne and Romaine Emmel and Emmel Brothers Ranch, seek compensation in the amount of \$1,085,000 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 divide the 22.4-acre subject property into 0.5- to 2-acre parcels and to develop a dwelling on each parcel. The subject property is located along Highway 26, west of Prairie City, in Grant 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 this claim is not valid as to claimants Wayne and Romaine Emmel because they are not present owners of the subject property.

The department has further determined that the claim is not valid as to claimant Emmel Brothers Ranch because neither the Land Conservation and Development Commission (the Commission) nor the department has enforced laws that restrict its use of the private real property. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On November 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, 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 August 14, 2006, for processing under OAR 125, division 145. The claim identifies ORS 215 and Grant County's zoning 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

Claimants Wayne and Romaine Emmel acquired the subject property on February 13, 1970, as reflected by a warranty deed included with the claim. Wayne and Romaine Emmel conveyed their entire ownership interest in the subject property to Emmel Brothers Ranch, a partnership, on November 16, 1993, as evidenced by a warranty deed included with the claim.

The Grant County Assessor's Office confirms Emmel Brothers Ranch's current ownership of the subject property.

Conclusions

Claimant Emmel Brothers Ranch is an "owner" of the subject property as that term is defined by ORS 197.352(11)(C), as of November 16, 1993. Claimants Wayne and Romaine Emmel are not "owners" of the subject property as that term is defined in 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 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.

Findings of Fact

The claim indicates that the claimants desire to divide the 22.4-acre subject property into 0.5- to 2-acre parcels and to develop a dwelling on each parcel, and that current land use laws prohibit the desired use.

The subject property is currently zoned M-1 Industrial by Grant County. The M-1 (General Industrial) district is an industrial zone. The subject property is within Prairie 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 claimants have not alleged how a specific state land use regulation restricts the use of the subject 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 Emmel Brothers Ranch's use of the subject property.

Conclusions

The claim does not establish any state laws that currently restrict the use of Emmel Brothers Ranch's property. Because the subject property is located within the City of Prairie 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 subject property.

As explained in Section V.(1), Wayne and Romaine Emmel are not “owners” of the subject property as that term is defined in ORS 197.352(11)(C). Therefore, no laws enforced by the Commission or the department restrict Wayne and Romaine Emmel’s use of the subject private real property with the effect of reducing its fair market value.

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 \$1,085,000 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 the claimants’ assessment of the subject property’s value.

Conclusions

As explained in Section V.(1) of this report, the claimants are Emmel Brothers Ranch, which acquired the subject property on November 16, 1993, and Dwayne and Romaine Emmel, who are not present owners of the subject property. Because Dwayne and Romaine Emmel are not “owners” of the subject property, no laws restrict their use of the subject property with the effect of reducing its fair market value.

As explained in Section V.(2) of this report, Emmel Brothers Ranch has not established that any state land use regulations 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, claimants Wayne and Romaine Emmel are not present owners of the subject property, and claimant Emmel Brothers Ranch has not established that any state land use regulations restrict its use of the subject property. Accordingly, the issue of whether any land use laws are exempt from 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, claimant Emmel Brothers Ranch 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 the City of Prairie City's UGB, neither the Commission nor the department enforces laws that require specific zoning of the property. The department further finds that the claim is not valid as to claimants Wayne and Romayne Emmel because these claimants are not present owners of the subject property.

Conclusions

Based on the record before the department, the claimants, Wayne and Romayne Emmel and Emmel Brothers Ranch, 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 January 16, 2007. 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.