

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. M129856
(BALLOT MEASURE 37) OF)
Wayne and Romaine Emmel)
Emmel Brothers Ranch, CLAIMANTS)

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

Property: Township 12S, Range 34E, Sections 9 and 16, Tax lot 600
Grant County (the property)

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

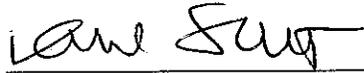
Claimants submitted the Claim to the State of Oregon under ORS 197.352. Under OAR 125-145-0010 *et seq.*, the Department of Administrative Services (DAS) referred the Claim to the Department of Land Conservation and Development (DLCD) as the regulating entity. This order is based on the record herein,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

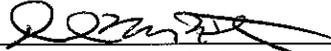
FOR DLCD AND THE LAND
CONSERVATION AND
DEVELOPMENT COMMISSION:
Lane Shetterly, Director



~~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: M129856

NAMES OF CLAIMANTS: Wayne and Romaine Emmel
Emmel Brothers Ranch

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

PROPERTY IDENTIFICATION: Township 12S, Range 34E, Sections 9 & 16
Tax lot 600
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 \$5,505,500 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 642-acre subject property into 2.5- to 10-acre parcels and to develop a dwelling on each parcel. The subject property is located along Highway 26, near 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 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 Emmel Brothers Ranch because its desired use of the subject property was prohibited under the laws in effect when it acquired the property on November 16, 1993. (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 642-acre subject property into 2.5- to 10-acre parcels and to develop a dwelling on each parcel, and that the use is not allowed under current land use regulations.

The claim is based generally on the applicable provisions of state law that require forest zoning and restrict uses on forest-zoned land. The subject property is zoned Primary Forest by Grant County as required by Goal 4, in accordance with ORS 215 and OAR 660, division 6, because the subject property is "forest land" under Goal 4. Goal 4 became effective on January 25, 1975, and requires that forest land be zoned for forest use (see statutory and rule history under OAR 660-015-0000(4)). The forest land administrative rules (OAR 660, division 6) became effective on September 1, 1982, and ORS 215.705 to 215.755 and 215.780 became effective on November 4, 1993 (Chapter 792, Oregon Laws 1993). OAR 660-006-0026 and 660-006-0027 were amended on March 1, 1994, to implement those statutes. As effective on November 4, 1993, ORS 215.780(c) requires a minimum of 80 acres for the creation of a new lot or parcel on forest-zoned land.

Emmel Brothers Ranch acquired the subject property on November 16, 1993. At the time, the subject property was zoned Primary Forest by Grant County and subject to the current lot size standards under Goal 4 and ORS 215.780 as described above.

Conclusions

The current zoning requirements, minimum lot size and dwelling standards established pursuant to Goal 4 and ORS 215 were all enacted or adopted before Emmel Brothers Ranch acquired the subject property on November 16, 1993. These land use regulations do not allow the division of forest land into parcels less than 80 acres. Laws enacted or adopted since the Emmel Brothers Ranch acquired the subject property in 1993 do not restrict the claimants' desired use of the property relative to when it acquired the property in 1993.

As explained in Section V.(1), Wayne and Romayne 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 Land Conservation and Development Commission (the Commission) or the department restrict Wayne and Romayne 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 \$5,505,500 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 Wayne and Romayne Emmel, who are not present owners of the subject property. Because Wayne and Romayne 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, no state laws enacted or adopted since Emmel Brothers Ranch acquired the subject property restrict the use of the property relative to the uses allowed on November 16, 1993. Therefore, the fair market value of the subject property has not been reduced as a result of land use regulations enforced by the Commission or the department.

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

The claim is based on state land use regulations that restrict the use of the subject property, including applicable provisions of Goal 4, ORS 215 and OAR 660, division 6, which Grant County has implemented through its Primary Forest zone. With the exception of amendments to OAR 660, division 6, adopted after Emmel Brothers Ranch acquired the property, these land use regulations were in effect when Emmel Brothers Ranch acquired the property on November 16, 1993, and prohibit Emmel Brothers Ranch's desired use of the property.

Conclusions

The state land use regulations that restrict Emmel Brothers Ranch's desired use of the subject property were in effect when it acquired the property. Therefore, these state land use regulations are exempt under ORS 197.352(3)(E), which exempts laws in effect when the claimants acquired the subject property.

As explained in Section V.(1) of this report Wayne and Romaine Emmel are not "owners" of the subject property as that term is defined in ORS 197.352(11)(C). Therefore, the issue of whether any land use laws are exempt from ORS 197.352 is not relevant as to them.

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, laws enforced by the Commission or the department do not restrict Emmel Brothers Ranch's desired use of the subject property relative to what was permitted when it acquired it on November 16, 1993, and do not reduce the fair market value of the property. The claimants' desired use of the subject property was prohibited under the laws in effect when Emmel Brothers Ranch acquired the property on November 16, 1993. The department further finds that the claim is not valid as to Wayne and Romaine Emmel because these claimants are not present owners of the subject property.

Conclusions

Based on the record before the department, the claimants, Wayne and Romaine 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.