ORS 197.352 (BALLOT MEASURE 37) CLAIM FOR COMPENSATION

OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
Draft Staff Report and Recommendation

January 3, 2007

STATE CLAIM NUMBER:	M129793
NAME OF CLAIMANT:	Calvary Chapel Corvallis
MAILING ADDRESS:	PO Box 965 Corvallis, Oregon 97339
PROPERTY IDENTIFICATION:	Township 11S, Range 5W, Section 15 Tax lots 801 and 803 Benton County
DATE RECEIVED BY DAS:	July 31, 2006
180-DAY DEADLINE:	January 27, 2007

I. SUMMARY OF CLAIM

The claimant, Calvary Chapel Corvallis, seeks compensation in the amount of $1,325,000 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 develop a dwelling on tax lot 801, consisting of 5.77- acres, and to divide a portion of tax lot 803, consisting of 50.62-acres, into up to 10 half-acre parcels and to develop a dwelling on each resulting half-acre parcel. The subject property is located at 3860 NW Glen Eden Drive, near Corvallis, in Benton 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 state land use regulations that may restrict the claimant's use of the subject property were in effect when the claimant acquired the property in 2005. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On October 24, 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, three 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 July 31, 2006, for processing under OAR 125, division 145. The claim identifies Benton County Development Code (BCC) 88 (Natural Features Overlay in the Corvallis Urban Fringe) as restricting the claimant's desired use of the property. 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, Calvary Chapel Corvallis, acquired the subject property on July 29, 2005, as reflected by bargain and sale deeds included with the claim.[1] The Benton County Assessor's Office confirms that the claimant is the current owner of the subject property.

Conclusions

The claimant, Calvary Chapel Corvallis, is an "owner" of the subject property as that term is defined by ORS 197.352(11)(C), as of July 29, 2005.

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 develop a dwelling on a 5.77-acre portion of the subject property and to divide 10 half-acre parcels from a 50.62-acre portion of the property and to develop a cluster of homesites on those half-acre parcels, and that the Benton County Natural Features Overlay restricts that desired use.

The state land use regulations that are the subject of this claim are Statewide Planning Goal 5 (Natural Resources, Scenic and Historic Areas and Open Spaces) and OAR 660, division 23, both as implemented by BCC 88. Goal 5 and OAR 660, division 23, normally do not apply directly to individual properties until and unless a local government has inventoried Goal 5 resources on the property and adopted a program to protect those resources by limiting or prohibiting conflicting uses. In this case, Benton County has taken a variety of actions to implement Goal 5 and OAR 660, division 23, the most recent being adoption of the Natural Features Overlay, which was adopted on October 6, 2005, and November 25, 2005.

BCC 88 contains land use regulations protecting certain natural resources that include the subject property. BCC 88 was adopted by Benton County as required by Goal 5 and OAR 660, division 23.

The claimant acquired the subject property on July 29, 2005, prior to the adoption of BCC 88. Regardless of any action taken by Benton County with respect to the claimant's county claim filed under ORS 197.352, the property is still subject to Goal 5 and OAR 660, division 23, to the extent that is was inventoried as containing one or more Goal 5 resources. Goal 5 and OAR 660, division 23, apply by requiring the protection of Goal 5 resources that are inventoried as significant.

[1] Calvary Chapel Corvallis is a domestic non-profit corporation registered with the Oregon Secretary of State

Under this claim, it is not clear to what extent Goal 5 and OAR 660, division 23, restrict the claimant's desired use of the subject property, but the department finds that these laws do apply to the claimant's desired use and that they restrict it to some extent. However, to the extent Goal 5 and OAR 660, division 23, apply to the claimant's desired use of the subject property as a result of BCC 88, they do not restrict that use because these laws were in effect when the claimant acquired the subject property on July 29, 2005.

Conclusions

To the extent that Goal 5 and OAR 660, division 23, apply to the claimant's desired use of the subject property as a result of Benton County's adoption of BCC 88, these state laws were in effect when the claimant acquired the subject property and do not restrict the claimant's desired use of the property relative to the uses allowed when the claimant acquired the property.

This report addresses only those state laws that are identified in the claim, or that the department is certain apply to the subject property based on the uses that the claimant has identified. There may be other laws that apply to the claimant's desired use of the subject property that have not been identified.

3. Effect of Regulations on Fair Market Value

In order to establish a valid claim, ORS 197.352(1) requires that the land use regulations (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 $1,325,000 as the reduction in the subject property's fair market value due to the regulations that restrict the claimant's desired use of the subject property.. This amount is based on the claimant's assessment of comparable homesite sales in the area surrounding the property.

Conclusions

As explained in Section V.(1) of this report, the claimant is Calvary Chapel Corvallis, which acquired the subject property on July 29, 2005. No state laws enacted or adopted since the claimant acquired the subject property restrict the use of the property relative to the uses allowed in 2005. Therefore, the fair market value of the subject property has not been reduced as a result of land use regulations enforced by the Land Use Conservation and Development Commission (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, specifically Goal 5 and OAR 660, division 23, to the extent they apply to the claimant's use of the property as a result of Benton County's adoption of BCC 88. Goal 5 and OAR 660, division 23, were adopted and in effect before the claimant acquired the subject property.

Conclusions

The state land use regulations that are the basis of this claim, Goal 5 and OAR 660, division 23, were both adopted before the claimant acquired the subject property on July 29, 2005. As a result, these state land use regulations are exempt under ORS 197.352(3)(E), which exempts laws in effect when the claimant acquired the subject property..

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 findings and conclusions set forth in this report, laws enforced by the Commission or the department do not restrict the claimant's desired use of the subject property relative to what was permitted when the claimant acquired it in 2005 and do not reduce the fair market value of the property. All state laws restricting the use of the subject property are exempt under ORS 197.352(3)(E).

Conclusions

Based on the record and the foregoing findings and conclusions, the claimant has not established that it is entitled to relief under ORS 197.352(1) as a result of land use regulations enforced by the Commission or the department because the state land use regulations that may restrict the claimant's desired residential use of the subject property were in effect when the claimant acquired the property in 2005. 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.