

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

February 22, 2007

STATE CLAIM NUMBER: M130085

NAME OF CLAIMANT: Murphy Company

MAILING ADDRESS: 2350 Prairie Road
Eugene, Oregon 97402

PROPERTY IDENTIFICATION: Township 25 S, Range 5E, Section 13
Tax lot 601
Township 25 S, Range 5E, Section 24
Tax lots 100 and 201
Township 25 S, Range 6E, Section 18
Tax lots 302, 605, 802, 803, 901 and 1000
Township 25 S, Range 6E, Section 19
Tax lots 101, 200 and 301
Clackamas County

OTHER CONTACT INFORMATION: Timothy Ramis
1727 NW Hoyt St.
Portland, Oregon 97209

DATE RECEIVED BY DAS: September 21, 2006

180-DAY DEADLINE: March 20, 2007

I. SUMMARY OF CLAIM

The claimant, Murphy Company, seeks compensation in the amount of \$900,000 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 divide the approximately 553-acre subject property into twenty-seven 20-acre parcels and to develop a dwelling on each parcel¹. The subject property is located at the geographic coordinates listed above, near Sandy, in Clackamas 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

¹ Twelve tax lots, which total approximately 553.23 acres, comprise the subject property.

because the claimant's desired use of the property was prohibited under the laws in effect when the claimant acquired the property on January 13, 1994. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On January 4, 2007, 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, two 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 September 21, 2006, for processing under OAR 125, division 145. The claim identifies ORS 215.705 and 215.780(1)(c); OAR 660-006-0026(1)(a), 660-006-0027(1) and 660-006-0029 (a-c); and any amendments thereto after the date of acquisition and all other "state or county regulations, including but not limited to state statutes, statewide planning goals, and administrative rules adopted since the date of acquisition that restrict the use or value of the property" 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 subject property was originally acquired by The Murphy Company, an Oregon domestic business corporation, on May 22, 1979, as reflected by a real estate contract included with the claim. On May 30, 1986, The Murphy Company changed its name to Murphy Timber Company, an Oregon domestic business corporation. On January 13, 1994, Murphy Timber Company merged with another corporation to form a new corporation known as Murphy Company, as reflected by the articles of merger included with the claim. By deed dated and recorded on October 15, 1998, Murphy Timber Company conveyed the subject property to the surviving corporation, Murphy Company, effective as of the date of the 1994 merger. The Clackamas County Assessor’s Office confirms the claimant’s current ownership of the subject property.

Conclusions

The claimant, Murphy Company, is an “owner” of the subject property as that term is defined by ORS 197.352(11)(C), as of January 13, 1994.

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 divide the 553-acre subject property into twenty-seven 20-acre parcels and to develop a dwelling on each parcel, and that state and county forest regulations prevent the desired use.

The claim is based generally on the applicable provisions of state law that require forest zoning and restrict uses on forest-zoned land. The claimant’s property is zoned TBR by Clackamas County as required by Goal 4, in accordance with ORS 215 and OAR 660, division 6, because the claimant’s 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). Specifically, ORS 215.780(1)(c) required a minimum of 80 acres for the creation of a new lot or parcel on land designated forest land, and ORS 215.705 to 215.755 restrict the development of dwellings on land designated forest land. OAR 660-006-0026 and 660-006-0027 were amended on March 1, 1994, to implement those statutes.

The claimant acquired the subject property on January 13, 1994. At that time, the property was subject to the current provisions of ORS 215.705 to 215.755 and 215.780, which became effective on November 4, 1993, and prohibit the claimant's desired division of the property into 20-acre parcels and its development of a dwelling on each parcel.

Conclusions

The current zoning requirements, minimum lot size and dwelling standards established pursuant to Goal 4 and ORS 215.705 to 215.755 and 215.780 were enacted or adopted before the claimant acquired the subject property on January 13, 1994, and do not allow the claimant's desired division or development of the property. Regulations enacted or adopted after the claimant acquired the subject property on January 13, 1994, do not restrict the claimant's desired use of the property relative to uses permitted when it acquired the property in 1994.

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 \$900,000 as the reduction in the subject property's fair market value due to the regulations that restrict the claimant's desired use of the property. This amount is based on a certified appraisal included with the claim.

Conclusions

As explained in Section V.(1) of this report, the claimant is Murphy Company, which acquired the subject property on January 13, 1994. The claimant has not established that it is entitled to compensation under ORS 197.352. Based on the findings and conclusions in Section V.(2) of this report, laws enacted or adopted since the claimant acquired the subject property do not restrict the claimant's desired use of the property relative to uses permitted when the claimant acquired the property and therefore, do not have 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

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 Clackamas County has implemented through its current TBR zone. With the exception of amendments adopted after January 13, 1994, the applicable provisions of Goal 4, ORS 215 and OAR 660, division 6, were in effect when the claimant acquired the subject property. The applicable provisions of ORS 215 in effect when the claimant acquired the property in 1994 prohibit the claimant's desired use of the property.

Conclusions

It appears that the general statutory, goal and rule restrictions on residential division and development of the subject property are not exempt under ORS 197.352(3)(E) only to the extent they were enacted or adopted after the claimant acquired the property. Provisions of Goal 4, ORS 215 and OAR 660, division 6, in effect when the claimant acquired the subject property in 1994 are exempt under ORS 197.352(3)(E). Laws in effect when the claimant acquired the subject property prohibit the claimant's desired use of the 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 uses permitted when the claimant acquired the property on January 13, 1994. Laws in effect on that date prohibit the claimant's desired use of the property. Regulations adopted after January 13, 1994, do not restrict the claimant's desired use of the property, relative to uses permitted at the time the claimant acquired the property, and with the effect of reducing the property's fair market value. Laws that prohibit the claimant's desired use of the property are exempt under ORS 197.352(3)(E).

Conclusions

Based on the record, the department has determined that the claim is not valid because the claimant's desired use of the property was prohibited under the laws in effect when it acquired the property on January 13, 1994. Therefore, the department recommends that the 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.