



Oregon

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October 18, 2007

To: Claimant and Interested Persons

From: Cora R. Parker, Acting Director



Re: Ballot Measure 37 (ORS 197.352) Claim Number M131496

Claimants: Robert and Andrea Noble

Enclosed, in regard to the above-referenced claim for compensation under Ballot Measure 37 (ORS 197.352), is the Department of Land Conservation and Development's Draft Staff Report and Recommendation.

This Draft Staff Report and Recommendation sets forth the department's evaluation of and recommendation on the claim. Oregon Administrative Rule 125-145-0100(3) provides that the claimant (or the claimant's agent) and any third parties who submitted comments on the claim may submit written comments, evidence, and information in response to any third-party comments contained in the report, and to the staff report and recommendation itself. Such response must be filed no more than 15 calendar days after the date of mailing of this report. Any response from you must be delivered to the Oregon Department of Administrative Services (DAS), 1225 Ferry Street SE, U160, Salem, Oregon 97301, and will be deemed timely filed if either postmarked on the 15th day or actually delivered to DAS by the close of business on the 15th day.

This department will review any responses submitted, and a Final Order on the claim will be issued after such review.

ORS 197.352 (BALLOT MEASURE 37) CLAIM FOR COMPENSATION

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

October 18, 2007

STATE CLAIM NUMBER: M131496

NAMES OF CLAIMANTS: Robert and Andrea Noble

MAILING ADDRESS: 13655 SE 132nd Avenue
Clackamas, Oregon 97015-9334

PROPERTY IDENTIFICATION: Township 2S, Range 2E, Section 2CA
Tax lot 1001
Clackamas County

DATE RECEIVED BY DAS: November 29, 2006

DEADLINE FOR FINAL ACTION:¹ May 22, 2008

I. SUMMARY OF CLAIM

The claimants, Robert and Andrea Noble, seek compensation in the amount of \$421,000 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 operate a family owned business that will allow them to store, maintain and repair equipment and vehicles. The subject property is located at 13655 SE 132nd Avenue, near Clackamas, 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 because neither the Land Conservation and Development Commission (the Commission) nor the department has enforced laws that restrict the claimants' use of the subject private real property. (See the complete recommendation in Section VI. of this report.)

¹ ORS 197.352, as originally enacted, required that final action on claims made under Measure 37 be made within 180 days of the date the claim was filed. In response to the large volume of claims filed in late 2006, the Oregon legislature passed House Bill 3546, which became effective on May 10, 2007. This legislation increased the amount of time state and local governments have to take final action on Measure 37 claims filed on or after November 1, 2006, by 360 days, to a total of 540 days.

III. COMMENTS ON THE CLAIM

Comments Received

On August 9, 2007, pursuant to Oregon Administrative Rule (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 15-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 November 29, 2006, for processing under OAR 125, division 145. The claim identifies ORS 215.448 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, Robert and Andrea Noble, acquired the subject property on June 4, 1979, as reflected by a warranty deed included with the claim. The Clackamas County Assessor’s Office confirms the claimants’ current ownership of the subject property.

Conclusions

The claimants, Robert and Andrea Noble, are “owners” of the subject property as that term is defined in ORS 197.352(11)(C), as of June 4, 1979.

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 operate a family owned business that will allow them to store, maintain and repair equipment and vehicles, and that current land use regulations prevent the desired use.

The subject property is currently zoned FU-10 (Future Urbanizable) by Clackamas County. The FU zone is residential, with a minimum lot size of ten acres. The subject property is within Metro’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 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 the claimants’ use of the subject property.

Conclusions

The claim does not establish that any state laws currently restrict the claimants' desired use of their property. Because the subject property is located within Metro'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 claimants' desired use of the subject property.

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."

As explained in Section V.(2) of this report, the claimants, Robert and Andrea Noble, have 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, the claimants, Robert and Andrea Noble, have not established that any state land use regulations restrict their desired use of the subject property. Accordingly, the department cannot determine that any exemptions under ORS 197.352(3) apply 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 claimants have 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 Metro's UGB, neither the Commission nor the department enforces laws that require specific zoning of the property.

Conclusions

Based on the record before the department, the claimants, Robert and Andrea Noble, 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 because no state land use regulations restrict the claimants' desired use of the subject property. 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 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. Such response must be filed no more than 15 calendar days after the date this report is mailed to the claimants 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 15th day, or actually delivered to DAS by the close of business on the 15th 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.