

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)
COMPENSATION UNDER ORS 197.352)
(BALLOT MEASURE 37) OF)
Floyd and Gayle Patrick, CLAIMANTS)

FINAL ORDER
CLAIM NO. M 118532

Claimants: Floyd and Gayle Patrick (the Claimants)

Property: Tax lot 201, Township 39S, Range 8E, Section 1, Klamath 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 Deputy 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.

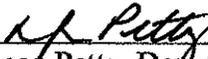
FOR DLCD AND THE LAND
CONSERVATION AND DEVELOPMENT
COMMISSION:
Lane Shetterly, Director



George Naughton, Deputy Director
DLCD

Dated this 11th day of April, 2006.

FOR the DEPARTMENT OF
ADMINISTRATIVE SERVICES:



Dugan Petty, Deputy Administrator
DAS, State Services Division

Dated this 11th day of April, 2006.

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 197.352¹, 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)

¹ By order of the Marion County Circuit Court, "all time lines under Measure 37 [were] suspended indefinitely" on October 25, 2005. This suspension was lifted on March 13, 2006 by the court. As a result, a period of 139 days (the number of days the time lines were suspended) has been added to the 180-day time period under ORS 197.352(6) for claims that were pending with the state on October 25, 2005.

**BALLOT MEASURE 37 (ORS 197.352)
CLAIM FOR COMPENSATION**

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

April 11, 2006

STATE CLAIM NUMBER: M118532

NAMES OF CLAIMANTS: Floyd and Gayle Patrick

MAILING ADDRESS: 2121 Orindale Road
Klamath Falls, Oregon 97601

PROPERTY IDENTIFICATION: Township 39S, Range 8E, Section 1
Tax lot 201
Klamath County

OTHER CONTACT INFORMATION: Michael L. Spencer
419 Main Street
Klamath Falls, Oregon 97601

DATE RECEIVED BY DAS: May 31, 2005

180-DAY DEADLINE: April 11, 2006¹

I. SUMMARY OF CLAIM

The claimants, Floyd and Gayle Patrick, seek compensation in the amount of \$145,930 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 their 8.48-acre property into 1-acre parcels for homesites. The subject property is located at 2121 Orindale Road, near Klamath Falls, in Klamath 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 the claim is not valid because the claimants' desired use of the subject property was prohibited under the state laws in effect when the claimants acquired the property in 1994. (See the complete recommendation in Section VI. of this report.)

¹ This date reflects 180 days from the date the claim was submitted as extended by the 139 days enforcement of Ballot Measure 37 was suspended during the pendency of the appeal of *MacPherson v. Dep't of Admin. Servs.*, 340 Or ___, 2006 Ore. LEXIS 104 (February 21, 2006).

III. COMMENTS ON THE CLAIM

Comments Received

On August 1, 2005, 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, evidence or information 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 (Ballot Measure 37). 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 Ballot 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 Ballot 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 May 31, 2005, for processing under OAR 125, division 145. The claim identifies all state rules and laws enacted after July 26, 1994, 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 December 2, 2004, the effective date of Ballot Measure 37, 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, Floyd and Gayle Patrick, acquired the subject property on July 26, 1994, as reflected by a warranty deed included with the claim. A 2004 tax statement submitted with the claim establishes the claimants’ current ownership.

Conclusions

The claimants, Floyd and Gayle Patrick, are “owners” of the subject property as that term is defined by ORS 197.352(11)(C), as of July 26, 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 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 numerous sections of ORS 215, Oregon Administrative Rules (OAR) 660, divisions 6 and 33, and the statewide planning goals, as implemented through Klamath County’s zoning, prevent the claimants from dividing their property into one-acre parcels for homesites and that “re-zoning of the property to 2 acre minimums must be removed.”

The claim is based on Klamath County’s current FR zone, which is a mixed agricultural and forest land zone, adopted to comply with Statewide Planning Goal 4 (Forest Lands) and the implementing provisions of OAR 660, division 6 (effective on February 5, 1990), subsequently amended on March 1, 1994, to comply with the provisions of House Bill 3661 (Chapter 792, Oregon Laws 1993).

Under OAR 660-006-0050, all the uses permitted under Goals 3 and 4 are allowed in mixed agriculture and forest zones except that for dwellings, either the Goal 3 or 4 standards are applicable based on the predominant use of the tract on January 1, 1993. No information was provided to the department regarding the predominant use of the subject property on January 1, 1993. Depending on the predominant use on January 1, 1993, the property is subject to either the requirements for dwellings applicable under Exclusive Farm Use (EFU) zoning required by Goal 3 and OAR 660, division 33, or forest zone provisions required by Goal 4 and OAR 660, division 6. This includes the dwelling standards asserted by the claimants as restricting the use of the subject property.

For land divisions, OAR 660-006-0055 authorizes the creation of new parcels based on the standards applicable to farm or forest zones that implement the minimum lot size specified in ORS 215.780. Under ORS 215.780(2)(a), the minimum lot size in Klamath County's acknowledged FR zone is 80 acres. Under OAR 660-006-055, the claimants' property cannot be divided into parcels smaller than 80 acres.

The claimants acquired the subject property on July 26, 1994, after the adoption of the zoning requirements, minimum lot size and dwelling standards described above.

Conclusions

The current zoning requirements, minimum lot size and dwelling standards established by Goal 4 and provisions applicable to land zoned farm or forest in ORS 215 and OAR 660, divisions 6 and 33, were all enacted or adopted before the claimants, Floyd and Gayle Patrick, acquired the subject property on July 26, 1994. These land use regulations, in effect when they acquired the property, do not allow the desired division of land into one-acre parcels nor do they allow the establishment of dwellings on the proposed new parcels. Laws enacted or adopted since the claimants acquired the subject property in 1994 do not restrict the claimants' desired use of the property relative to when the claimants acquired it in July 1994.

3. Effect of Regulations on Fair Market Value

In order to establish a valid claim, ORS 197.352(1) requires that any land use regulation 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 \$145,930 as the reduction in the subject property's fair market value due to current regulations. This amount is based on an estimate provided by the claimants.

Conclusions

As explained in Section V.(1) of this report, Floyd and Gayle Patrick are the current owners of the subject property. They acquired the subject property on July 26, 1994. No state laws enacted or adopted since the claimants acquired the subject property restrict the use of the property relative to the uses allowed in July 1994. 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 does not identify any state land use regulations enacted or adopted since the claimants acquired the subject property that restrict the use of the property relative to what would have been allowed when they acquired it on July 26, 1994. As set forth in Section V.(2) of this report, the state land use regulations restricting the claimants' desired use of the subject property were in effect when the claimants acquired the property in July 1994.

Conclusions

All of the state land use regulations that restrict the claimants' desired use of the subject property were in effect when the claimants 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.

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 current 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 claimants' desired division or development of their property relative to what was permitted when the claimants acquired the subject property in July 1994. The laws enforced by the Commission or the department do not reduce the fair market value of the subject property. The 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 claimants 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, this claim is denied.

VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on March 14, 2006. 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. Comments received have been taken into account by the department in the issuance of this final report.