

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. M124906
(BALLOT MEASURE 37) OF)
Donald and Rachel Harvey, CLAIMANTS)

Claimants: Donald and Rachel Harvey (the Claimants)

Property: Township 1S, Range 2W, Section 35, Tax lot 1101, Washington 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

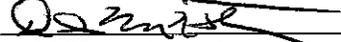
The Claim is denied as to laws administered by DLCD and the Land Conservation and Development Commission (LCDC) for the reasons set forth in the DLCD Report.

This Order is entered by the 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


Michael Morrissey, Manager
DLCD, Measure 37 Services Division
Dated this 3rd day of October, 2006.

FOR THE DEPARTMENT OF
ADMINISTRATIVE SERVICES:


David Hartwig, Administrator
DAS, State Services Division
Dated this 3rd day of October, 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 197.352, 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

October 3, 2006

STATE CLAIM NUMBER: M124906

NAMES OF CLAIMANTS: Donald and Rachel Harvey

MAILING ADDRESS: PO Box 1072
Beaverton, Oregon 97075

PROPERTY IDENTIFICATION: Township 1S, Range 2W, Section 35
Tax lot 1101
Washington County

DATE RECEIVED BY DAS: April 13, 2006

180-DAY DEADLINE: October 10, 2006

I. SUMMARY OF CLAIM

The claimants, Donald and Rachel Harvey, seek compensation in the amount of \$1 million 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 obtain a "building permit and lot line adjustment." The subject property is located at 10790 SW Clark Hill Road, near Beaverton, in Washington 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 laws in effect when the claimants acquired the property in 1996. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On August 1, 2006, 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, 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 April 13, 2006, for processing under OAR 125, division 145. The claim identifies "farmland" 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, Donald and Rachel Harvey, acquired the subject property on July 9, 1996, as reflected by a warranty deed included with the claim. The Washington County Assessor's Office confirms the claimants' current ownership of the subject property.

Conclusions

The claimants, Donald and Rachel Harvey, are "owners" of the subject property as that term is defined by ORS 197.352(11)(C), as of July 9, 1996.

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 obtain a "building permit and lot line adjustment," and that the use is not allowed under current land use regulations.

The claim is based on the applicable provisions of state law that require EFU zoning and restrict uses on land zoned EFU. The claimants' property is zoned EFU by Washington County, as required by Statewide Planning Goal 3 (Agricultural Lands), in accordance with ORS 215 and OAR 660, division 33, because the claimants' property is "agricultural land" as defined by Goal 3. Goal 3 became effective on January 25, 1975, and required that agricultural lands as defined by Goal 3 be zoned EFU pursuant to ORS 215.

Current land use regulations, particularly ORS 215.213, 215.263, and 215.780 and OAR 660, division 33, enacted or adopted pursuant to Goal 3, prohibit the division of EFU-zoned land into parcels less than 80 acres and establish standards for development of dwellings on existing or proposed parcels on that land.

ORS 215.780 establishes an 80-acre minimum size for the creation of new lots or parcels in EFU zones and became effective on November 4, 1993 (Chapter 792, Oregon Laws 1993). ORS 215.263 (2005 edition) establishes standards for the creation of new parcels for non-farm uses and dwellings allowed in an EFU zone.

OAR 660-033-0135 (applicable to farm dwellings) became effective on March 1, 1994, and interprets the statutory standard for a primary dwelling in an EFU zone under ORS 215.283(1)(f). OAR 660-033-0130(4) (applicable to non-farm dwellings) became effective on August 7, 1993, and was amended to comply with ORS 215.284(4) on March 1, 1994.

OAR 660-033-0135(7) requires farm dwellings on high-value farm land¹ to earn "at least \$80,000 in annual gross income from the sale of farm products in the last two years or three of the last five years." On July 9, 1996, OAR 660-033-0135(7) required farm dwellings on high-value farm land to earn \$80,000 in "1994 dollars" or \$84,696 dollars. Effective on May 22, 2002, the Land Conservation and Development Commission (the Commission) amended OAR 660-03-0135(7) to eliminate the requirement that the \$80,000 dollars be in "1994 dollars."

Conclusions

The current zoning requirements, minimum lot size and dwelling standards established by Goal 3 and provisions applicable to land zoned EFU in ORS 215 and OAR 660, division 33, were all enacted or adopted before the claimants acquired the subject property on July 9, 1996. These

¹ The subject property is composed of soils identified as high-value farm land under ORS 215.710.

land use regulations do not allow the desired use of the on the subject property, and current laws, with regard to farm dwellings, are less restrictive than in 1996. Laws enacted or adopted since the claimants acquired the subject property in 1996 do not restrict the claimants' desired use of the property relative to when the claimants acquired it in 1996.

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 \$1 million as the reduction in the subject property's fair market value due to the regulations that restrict the claimants' desired use of the subject 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 Donald and Rachel Harvey who acquired the subject property on July 9, 1996. 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 1996. 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 3, ORS 215 and OAR 660, division 33, which Washington County has implemented through its current EFU zone. All of these land use regulations were in effect when the claimants acquired the subject property in 1996. 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 9, 1996.

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 all 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 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 claimants' desired use of the subject property relative to what was permitted when the claimants acquired it in 1996 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 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, 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 September 19, 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.