

APPROVED BY ORDER # 2-07-482
MINUTES OF THE
LINCOLN COUNTY BOARD OF COMMISSIONERS
MEETING OF FEBRUARY 21, 2007

CALL TO ORDER

Chair Bill Hall convened the adjourned session of the Lincoln County Board of Commissioners. Present at the meeting were Commissioners Terry Thompson and Don Lindly, County Counsel Wayne Belmont, and Recorder Judy Eames. Also present were Matt Spangler, Director of Planning and Development, and Kiera Morgan from KNPT.

ROLL CALL - ESTABLISHMENT OF A QUORUM

ADOPTION OF CONSENT CALENDAR

County Counsel Belmont asked that item # IV.B.3 be withdrawn from the Consent Calendar in order to obtain further documentation. Commissioner Thompson made a motion to withdraw item # IV.B.3 from the Consent Calendar and to approve the remaining Consent Calendar. Commissioner Lindly seconded the motion. The vote was taken and the motion passed unanimously.

**MOTION TO WITHDRAW ITEM # IV.B.3 FROM
THE CONSENT CALENDAR AND TO APPROVE
THE REMAINING CONSENT CALENDAR OF
FEBRUARY 21, 2007**

CONSENT CALENDAR ITEMS

Minutes of the Board of Commissioners Meeting

2-07-471 BOC Meeting Minutes of February 14, 2007

Commissioner Appointments & Resignations

2-04-472 Reappointment of Robert Wentz to the Bear Valley Special Road District Board

2-04-473 Changes in Lincoln County Representatives to Cascades West Area Commission on Transportation

Tax Foreclosure, Right-of-Way, Sales and Deeds

2-04-474 Quitclaim Deed to Vernon L. and Priscilla C. Esplin, Lincoln County Assessor's Map 12-12-25-AD, Tax Lot 801; purchase price \$15,000

2-04-475 Quitclaim Deed to Vernon L. and Priscilla C. Esplin, Lincoln County Assessor's Map 13-11-20-DB, Tax Lot 502-41; purchase price \$1,000

Documents and Recording Matters in the Commissioners Journal

Acting as Governing Body of the Lincoln County Transportation Service District

2-04-476 Authorizing the purchase of 2-axle transit buses from Schetky Northwest Sales, Inc.

Execution and Recordation of:

2-04-477 Canceling personal property taxes on abandoned manufactured structures for the Tax Year 2005-2006

2-04-478 Canceling personal property taxes on abandoned manufactured structures for the Tax Year 2006-2007

2-04-479 Lease Agreement between Bridgeview Enterprises, LLC, and Lincoln County for approximately 3,215 square feet of medical office space at the Bridgeview Professional Building located at 1010 S. Coast Highway, Newport

Recordation of:

2-04-480 Amendment # 39 to IGA # 113007 between Department of Health and Human Services and Lincoln County Health and Human Services providing additional local administration funds for four clients

**MOTION TO APPROVE CONSENT CALENDAR
OF FEBRUARY 21, 2007**

DECISION/INFORMATION

Forming and appointing members to the Fishermen Involved in Natural Energy Committee

County Counsel Belmont advised that in accordance with the county's desire to partner with community stakeholders in advancing wave action energy, a new committee named "Fishermen Involved in Natural Energy" (FINE) is being formed. The committee is composed of members representing a cross-section of all the county's fishing industries. Commissioner Thompson noted that this committee presents an opportunity for the fishing industries to address potential conflicts with historical use of the ocean resources and to lend expertise in planning for and siting of wave energy parks and devices in the shores off Lincoln County. It will also allow the industries to enter into agreements with various agencies, including Oregon State University, which will be placing one buoy in the ocean in the near future to monitor wave activities. Commissioner Lindly stated he was very impressed with the list of individuals willing to serve on the committee, and Commissioner Thompson was thanked for his efforts in helping to form the group. Commissioner Thompson advised that Bob Jacobson, former Extension Agent, has been instrumental in the formation of the committee and will be acting as its chair. Commissioner Lindly moved to approve Order #2-07-481 forming and appointing members to the Fishermen Involved in

Natural Energy Committee. Commissioner Thompson seconded the motion. The vote was taken and the motion passed unanimously.

**MOTION TO APPROVE ORDER #2-07-481
FORMING AND APPOINTING MEMBERS TO
THE FISHERMEN INVOLVED IN NATURAL
ENERGY COMMITTEE**

DISCUSSION/INFORMATION

Consideration of Planning Director's reports and recommendations for Land Use Regulation Compensation (Measure 37) claims

Planning Director Matt Spangler gave a brief synopsis of the handling of Measure 37 claims being brought before the commissioners. Hearings were previously held on each claim, and Planning Department staff reports and recommendations have been submitted to the commissioners.

Case File #07-LURCC-06, Gerald and Barbara Smallwood; Gerald Smallwood Logging, Inc., claimants

The subject property of this claim is located at 20963 E. Alsea Highway, which is identified as tax lot 602 on Lincoln County Assessor's map #14-09. Lincoln County Planning Director Matt Spangler advised that current zoning on the property is A-C (Agricultural Conservation) and T-C (Timber Conservation). The claimants are seeking compensation for or modification or removal of land use regulations which establish an 80-acre minimum parcel size and restrict the establishment of single-family dwellings. They have asserted a reduction in value of their property as a result of the A-C and T-C land use restrictions in the amount of \$3.1 million. Claimants originally acquired interest in the subject property in 1972, but transferred the property via bargain and sale deed in 1990 to Gerald Smallwood Logging, Inc., an Oregon corporation controlled by Gerald and Barbara Smallwood. The waiver remedy recommended by Mr. Spangler applies only to the acquisition of the property by the "present owner," and therefore extends only to regulations enacted since the 1990 acquisition date by the corporation. The zoning in effect in 1990 required a minimum lot size of 40 acres and would still preclude the division of the property in the manner sought by the claimants. County Counsel Belmont advised that the county had just participated in a circuit court case that involved an interpretation by the court as to the definition of "present owner" in a similar situation involving transfer of land owned by an individual to a corporation controlled by that individual. The county prevailed in its argument that the corporation was the "present owner." The Board gave consensus to move this claim forward.

Case File #09-LURCC-06, Vearl E. Ray, claimant

Claimant's property is located at 2980 Mossy Lane in Toledo and is identified as Tax Lot 1600 on Lincoln County Assessor's Map 11-10-05-D. The property is currently zoned R-1. The claimant is seeking compensation for or modification or removal of land use regulations restricting land divisions in the R-1 zone, which claimant asserts are resulting in a diminution in value of his property of \$55,000. The claimant acquired title to the property in 1956, at which time no zoning regulations were in place. Planning staff recommended the Board resolve the claim through non-application of the current land use regulations. The Board gave consensus to move this claim forward.

Case File #10-LURCC-06, Jack Eriksen, claimant

Mr. Spangler advised that additional questions involving ownership remain with regard to this claim and asked that the claim be set over to allow additional time to research ownership issues. The Board agreed to set over the claim.

Case File #11-LURCC-06, Robert Skauge and Debra Ison, claimants (Gary Hamilton, agent)

Mr. Spangler stated that the subject property is located at 613 Yasek Loop and is identified as Tax Lots 1200 and 1201 on Lincoln County Assessor's Map #10-10-30. The property is currently zoned T-C, which restricts land divisions and placement of dwellings. The claimants (father and daughter) are asserting a diminution of their property in the amount of \$745,000. Claimant Skauge acquired his original interest in the property in 1960; claimant Ison acquired her interest in 1986 via a land sales contract. Mr. Spangler advised that the claim is valid and recommended that the minimum parcel size requirements and restrictions on dwellings in the T-C zone enacted in 1994 not be applied and, instead, standards in effect at the time of the claimant owners' acquisition be applied. Claimant Skauge would be allowed to divide the subject property into 13 parcels, each with one single-family dwelling, as permitted at the time of his acquisition of the property in 1960. Claimant Ison's relief would be limited to uses permitted at the time of her acquisition in 1986, which would not permit her to divide or place additional dwellings on the subject property. The Board gave consensus to move this claim forward.

Case File 12-LURCC-06, Elton L. Wischnofske, Jr., claimant

This claim involves property located east of Logsdan at 16482 Logsdan Road, further identified as Tax Lots 900 and 1000 on Lincoln County Assessor's map 10-08-16. The property is currently zoned T-C, which restricts the placement of dwellings, and the claimant is asserting diminution of the property's value in the amount of \$185,000 as a result of the land use restrictions. A family member of the claimant acquired an interest in the property in 1959, but the claimant did not acquire his interest until 1985. Mr. Spangler advised that any waiver from land use regulations would not extend to regulations predating claimant's 1985 acquisition. Mr. Spangler found the claim to be valid and recommended a waiver be granted for non-application of land use regulations enacted since the claimant's acquisition of the property in 1985. He acknowledged that the recommended relief may not permit the claimant to establish additional single-family dwellings on the property, since the regulations in effect in 1985 required a minimum 40-acre parcel size for one dwelling. When asked what the claimant's remedy would be if the waiver did not result in allowing additional dwellings, Counsel Belmont advised that the claimant could pursue a remedy in court. The Board gave consensus to move this claim forward.

Case File 13-LURCC-06, Elton and Kathy Wischnofske, claimants

Mr. Spangler stated that the property in this claim is located at 946 Big Rock Creek Road and is identified as tax lot 401 on Lincoln County Assessor's map 10-08-6. The property is zoned T-C, which restricts land divisions and establishment of additional single-family dwellings. The claimants are asserting diminution of the property in the amount of \$161,000 as a result of the land use restrictions. The claimants acquired the property in 1978, at which time the property was zoned A-1. Mr. Spangler found the claim to be valid and recommended the Board resolve the claim through non-application of the T-C zone regulations currently in place. The provisions of the A-1 zone in effect in 1978 would be

applied and would allow for division of the property into eight five-acre parcels and for placement of seven additional home sites. The Board gave consensus to move this claim forward.

Case File 14-LURCC-06, Kathy Wischnofske, claimant

The subject property of this claim is located east of Logsden at 17725 Logsden Road and is identified as tax lot 600 on Lincoln County Assessor's map #10-08-16. The property is zoned T-C which prohibits the establishment of a single-family dwelling on the property and, as a result, the claimant is asserting diminution of the property in the amount of \$29,000. A family member of the claimant acquired an interest in the property in 1959; the claimant acquired her interest in 1995. The current T-C zone regulations were enacted in 1994. Mr. Spangler found the claim to be valid and recommended the Board resolve the claim through non-application of land use regulations enacted since claimant's acquisition of the property in 1995. Based on the date of acquisition, Mr. Spangler noted that the recommended relief will not permit the claimant to establish a single-family dwelling. The Board gave consensus to move the claim forward.

Case File 15-LURCC-06, Harriet Parsley, claimant (Agent: Verlyn R. Ryan)

Mr. Spangler stated that the subject property of this claim is located at 31 Harlan-Burnt Woods road and is identified as tax lot 101 on Lincoln County Assessor's map 11-08-23. The property is currently zoned A-C, which prohibits land divisions and establishment of additional single-family dwellings on the property. Claimant is alleging a diminution of the property's value as a result of the land use restrictions. The claimant acquired her interest in the property in 1972, at which time no zoning regulations were in place. Mr. Spangler found the claim to be valid and recommended the Board resolve the claim through non-application of land use regulations enacted since claimant's acquisition of the property in 1972. This would allow creation of up to three additional land parcels and establishment of single-family dwellings on each of the parcels. The Board gave consensus to move the claim forward.

Case File 17-LURCC-06, Darrell Hunker, claimant

The subject property of this claim is located at 221 Happy Valley Road and is identified as tax lot 300 on Lincoln County Assessor's map 11-10-04. The property is currently zoned RR-5 (Rural Residential) and restricts further division of the property. Claimant asserts diminution of his property in the amount of \$25,300 as a result of the zoning restrictions. Claimant acquired the property in 1978, at which time the property was zoned A-2 (Rural Residential, one-acre minimum parcel size). Mr. Spangler found the claim to be valid and recommended the Board resolve the claim through non-application of land use regulations enacted after claimant's acquisition of the property in 1978. This would allow claimant to divide the property into residential parcels and/or develop other uses on the property as was permitted at the time of the claimant's acquisition in 1978. The Board gave consensus to move the claim forward.

Case File 18-LURCC-06, George Westcott III, claimant

Mr. Spangler advised that the subject property of this claim is located on the east side of Highway 101 just north of Carmel Knoll and is identified as tax lot 300 on Assessor's map 10-11-08-D0. The property is currently zoned RR-2 which restricts land divisions and uses. The claimant acquired the property in 1979, prior to the adoption on June 30, 1980 of the RR-2 zone by Lincoln County. The claimant is asserting a diminution of his property in the amount of \$430,000 as a result of the current zoning

restrictions. Mr. Spangler found the claim to be valid and recommended the Board resolve the claim through non-application of the land use regulations enacted after claimant's acquisition of the property in 1979. In their place, the provisions of the R-2 zone in effect on September 5, 1979 would apply, allowing establishment of additional land parcels, dwellings, and other uses on the property. Mr. Spangler advised that if community water is available to this site, the property could be divided into as many as 75 parcels. The Board gave consensus to move the claim forward.

Mr. Spangler noted that there are approximately 120 Measure 37 claims left to process before the end of the mandatory 120-day time limit from the date the claims were filed. He stated that some counties have thousands of claims left to process and are hoping the legislature will act to extend the time in which to make a determination regarding the claims. The policy being practiced by the Lincoln County Planning Department, however, is to process the claims as quickly as possible. If the claims are not completed in a timely manner and no relief is provided by the legislature, the monetary relief requested by claimants could be imposed. Commissioner Lindly remarked that over \$5.2 million in compensation is being requested by these claims alone, and all three commissioners complimented Mr. Spangler and his staff on their work.

REPORTS

Commissioners Reports

Commissioner Lindly reported that as part of the Board's outreach to other governing bodies within the county, the Board met with the Port of Toledo commissioners on Tuesday evening, February 20, in a joint work session. The various stages of development of a number of projects and how the county might be of assistance to the port were discussed.

Commissioner Thompson noted that on February 26, he will be receiving an award at the Capitol for his work regarding school-based health clinics within the Lincoln County schools. Chair Hall and Commissioner Lindly commended him for his work in this important area of health care.

ADJOURNMENT

The meeting adjourned at 10:20 a.m. These meeting minutes were read and approved this 28th day of February 2007.

LINCOLN COUNTY BOARD OF COMMISSIONERS

BILL HALL, Chair

TERRY N. THOMPSON, Commissioner

DON LINDLY, Commissioner

APPROVED