

BEFORE THE BOARD OF COMMISSIONERS
FOR LINCOLN COUNTY, OREGON



In the Matter of)
)
The Ballot Measure 37 Claim of)
Matthew and Alice Gruber, Merrick Kriz, and)
Cynthia Condon; David Hilgemann, Agent)
File No. 19-LURCC-05)

ORDER NO. 7-06-275

WHEREAS on November 2, 2004, the voters of the State of Oregon approved Ballot Measure 37. The Measure amends ORS Chapter 197 to require, under certain circumstances, actions to address claims of owners of real property if government land use regulations reduce fair market property value; and

WHEREAS Ballot Measure 37 provides that to maintain a claim, an owner of real property must make a “written claim for compensation” to the government entity enacting, enforcing or applying a land use regulation that allegedly restricts the use of the owner’s property and has the effect of reducing its fair market value; and

WHEREAS Ballot Measure 37 authorized the County to adopt and apply claims procedures with certain limitations; and

WHEREAS Ballot Measure 37 requires payment of just compensation for a valid claim that reduces fair market value of real property or, in the alternative and in lieu of payment of just compensation, allows the County to modify, remove or not apply the land use regulation allegedly supporting a claim reducing a property’s fair market value; and

WHEREAS Ballot Measure 37 imposes a duty on the County to review claims for compensation and make decisions on those claims. A determination to modify, remove or not apply a land use regulation or compensate a property owner must be based on substantial factual information and analysis; and

WHEREAS the County recognizes that Ballot Measure 37 contains many unclear and ambiguous provisions and that future litigation or legislative action will be necessary to clarify the measure’s terms. The County, therefore, adopted procedures in Board of Commissioners Orders 12-04-318 and 4-05-120 to assess claims in a timely manner and to require factual and analytical information as part of the claim so the County will have a rational basis for its decision on each claim; and

WHEREAS on July 28, 2005 Matthew and Alice Gruber, Merrick Kriz, and Cynthia Condon; David Hilgemann, Agent, filed a Measure 37 claim seeking compensation or the

1 modification, removal or non-application of land use regulations (“waiver”) that limit the division
2 of new land parcels and the placement of additional single-family dwellings on the subject
3 property, which consists of three parcels: 40.34 acres (Parcel I); 26 acres (Parcel II) and 56.86
4 acres (Parcel III). The subject property is currently designated Dispersed Residential (Parcels I
5 and II) and Forest Land (Parcel III) on the comprehensive plan map and zoned Rural Residential 5
6 Acre Minimum (RR-5) for parcels I and II and Timber Conservation (T-C) for parcel III. The
7 property is located northeast of Toledo off of Olalla Road, and is further identified as tax lots 100
8 and 1300 on Lincoln County Assessor’s map #10-10-33-D; tax lots 1403, 1411 and 1412 on map
9 10-10-32; and tax lots 101, 105 and 106 on map 10-10-33. County records and the filed claim are
10 found in Lincoln County Planning Department File No. 19-LURCC-05 and by this reference are
11 incorporated into this order as if fully set forth; and

12
13 WHEREAS after notice to surrounding property owners in accordance with Order #4-05-
14 120, a hearing was held on October 25, 2005 on the claim before the Planning Director as
15 Hearings Officer for the purpose of receiving facts and evidence related to determining the
16 validity of the claim. The claimants’ representative provided testimony in support of the claim.
17 Written testimony in opposition to the claim was received from Dennis Bartoldus, an attorney
18 representing Aron Rothstein and Wendy Green, who own adjoining property. At the conclusion
19 of the hearing and upon the request of applicants’ representative, additional time was granted to
20 process this claim so that further information on the chain of title could be provided on behalf of
21 claimants. A letter was submitted by claimants’ attorneys contesting the staff’s conclusions
22 concerning the chain of title as they affect the “waiver”; and

23
24 WHEREAS the Planning Director has issued his Department’s Staff Report and
25 Recommendation which is attached to this order as Exhibit “A” and by this reference incorporated
26 herein. That report finds and concludes that the claim when submitted was valid; provided,
27 however, that the pertinent dates for the “waiver” remedy are as set forth in the Staff Report and
28 Recommendation, notwithstanding claimants’ assertions to the contrary. The report recommends
29 that the Board, lacking funds for compensation, in the alternative modify, remove or not apply the
30 subject land use regulations: staff recommends that the Board choose the non-application of land
31 use regulations as the appropriate resolution for this claim. Specifically, staff recommends the
32 following:

33
34 Parcel I: Not applying any provisions of Lincoln County Code Chapter 1 enacted since May 28,
35 1980, which place restrictions on uses. This would, in accordance with the requirements of
36 Subsection (8) of Ballot Measure 37, allow the owners to use the property for a use permitted at
37 the time of the owners’ acquisition.

38
39 Parcel II: Not applying any provisions of Lincoln County Code Chapter 1 enacted since
40 December 10, 1996, which place restrictions on uses. This would, in accordance with the
41 requirements of Subsection (8) of Ballot Measure 37, allow the owners to use the property for a
42 use permitted at the time of the owners’ acquisition.

1 Parcel III: Not applying any provisions of Lincoln County Code Chapter 1 enacted since April 18,
2 2000, which place restrictions on uses. This would, in accordance with the requirements of
3 Subsection (8) of Ballot Measure 37, allow the owners to use the property for a use permitted at
4 the time of the owners' acquisition.

5
6 WHEREAS the Board has considered the report and recommendations of the Planning
7 Director and County Counsel, including the implications known at this time concerning
8 ambiguous provisions in Measure 37 which are and will continue to be subject to judicial
9 clarification for the foreseeable future and the assertions of claimants. Given that status, the
10 Board desires to proceed cautiously with processing this Measure 37 claim. Therefore, the Board
11 will decide this Measure 37 claim after placing the claimants on notice of possible future court
12 decisions and interpretations; and

13
14 WHEREAS based on what is known at this time, the Board finds it is in the public interest,
15 due to the lack of resources to pay compensation, to modify, remove or choose not to apply the
16 challenged land use regulation to the subject property and issue the "waiver" to claimants;

17
18 NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

19 1. Claimants Matthew and Alice Gruber, Merrick Kriz, and Cynthia Condon are placed
20 on notice that Oregon courts continue to interpret provisions in Measure 37 which may change
21 the way claims are treated. Claimants proceed in this matter knowing that any action taken by
22 the Lincoln County Board of County Commissioners could be null and void if a court of
23 competent jurisdiction interprets Measure 37 in any fashion which alters the Board's approval.
24 Lincoln County does not waive any rights or remedies under law by granting a "waiver" under
25 the law.

26
27 2. The Measure 37 claim of Matthew and Alice Gruber, Merrick Kriz, and Cynthia
28 Condon, Lincoln County Case File No. 19-LURCC-05, was a valid claim when filed on July 28,
29 2005. The Board of Commissioners declines to pay just compensation for the claim. In lieu of
30 compensation, Lincoln County Code Section LCC Chapter 1 is modified, removed or not applied
31 for Matthew and Alice Gruber, Merrick Kriz, and Cynthia Condon, against the subject property
32 to the following effect:

33
34 ♦ Parcel I: Not applying any provisions of Lincoln County Code Chapter 1 enacted since May
35 28, 1980, which place restrictions on uses. This would, in accordance with the requirements of
36 Subsection (8) of Ballot Measure 37, allow the owners to use the property for a use permitted
37 at the time of the owners' acquisition.

38
39 ♦ Parcel II: Not applying any provisions of Lincoln County Code Chapter 1 enacted since
40 December 10, 1996, which place restrictions on uses. This would, in accordance with the
41 requirements of Subsection (8) of Ballot Measure 37, allow the owners to use the property for
42 a use permitted at the time of the owners' acquisition. Based on this date of acquisition, staff

1 acknowledges the recommended relief will not permit the claimants to use the subject property
2 in the manner set forth in their claim.

3
4 ◆ Parcel III: Not applying any provisions of Lincoln County Code Chapter 1 enacted since April
5 18, 2000, which place restrictions on uses. This would, in accordance with the requirements of
6 Subsection (8) of Ballot Measure 37, allow the owners to use the property for a use permitted
7 at the time of the owners' acquisition. Based on this date of acquisition, staff acknowledges
8 that the recommended relief will not permit the claimants to use the subject property in the
9 manner set forth in their claim.

10
11 ◆ Establishment of additional land parcels and dwellings authorized by these "waivers" on the
12 subject property would be subject to all applicable public health and safety regulations,
13 including but not limited to land division procedures, building codes, on-site sewage disposal
14 rules and requirements, flood hazard area regulations, and county road approach permit
15 requirements.

16
17 3. A State of Oregon "waiver" under Measure 37 may be required for the development or
18 use of the subject property. Lincoln County lacks authority to waive state regulations or laws.
19 This order does not affect any land use regulations of the State of Oregon. The claimants are
20 responsible for seeking compensation or "waiver" from the State of any applicable State laws.
21 The Planning Director shall send notice of the Board's decision to the Director of the
22 Department of Land Conservation and Development. If a State Measure 37 claim is required, no
23 use, development, permits or other development applications will be processed or approved by
24 Lincoln County unless the State has issued, if appropriate, its own "waiver."

25
26 4. This "waiver" provision is void if the property owners or property owners' successors
27 are compensated by another governmental agency, including the State, for a reduction in value
28 resulting from the same or similar land use regulations on the subject property.

29
30 5. Excepting new land use regulations imposed after the date of this decision, and subject
31 to applicable review rights as permitted under Measure 37, this final decision bars a subsequent
32 Measure 37 claim against the County as to the subject property.


33
34 6. Transferability of the "waiver" granted by the County under this decision is unknown
35 under the current status of Measure 37. Transferability of the "waiver" is allowed to the extent
36 permitted by law. Granting of this "waiver" does not commit the County to issuance of
37 development or building permits, if those actions are not allowed under law.

38
39 7. This order be recorded in the Lincoln County Deed Records maintained by the Lincoln
40 County Clerk without payment of recording fees.

1 8. Copies of this order be provided to the Planning Director, County Counsel, claimants'
2 representative, and claimants.

DATED this 12th day of July, 2006.

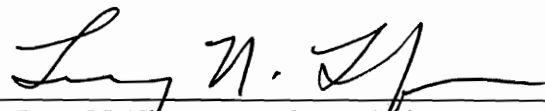
LINCOLN COUNTY BOARD OF COMMISSIONERS



Don Lindly, Chair



Bill Hall, Commissioner



Terry N. Thompson, Commissioner

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DEPARTMENT OF PLANNING AND DEVELOPMENT

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LAND USE REGULATION COMPENSATION CLAIM

PLANNING DIRECTOR'S STAFF REPORT and RECOMMENDATION

CASE FILE: 19-LURCC-05

DATE FILED: 07/28/2005

CLAIMANTS: Matthew and Alice Gruber, Merrick Kriz, Cynthia Condon; David Hilgemann, Agent.

REQUEST: The claimants seek compensation for, or the modification or removal of, land use regulations that limit the division of new land parcels and the placement of additional single-family dwellings on the subject property.

A. REPORT OF FACTS:

1. **Lot Size:** 40.34 acres (Parcel I); 26 acres (Parcel II) and 56.86 acres (Parcel III)
2. **Property Location:** The property is located northeast of Toledo off of Olalla Road, and is further identified as tax lots 100 and 1300 on Lincoln County Assessor's map #10-10-33-D; tax lots 1403, 1411 and 1412 on map 10-10-32 and tax lots 101, 105 and 106 on map 10-10-33.
3. **Zoning Designation:** RR-5 (Parcels I and II) and T-C (Parcel III).
4. **Plan Designation:** Dispersed Residential (Parcels I and II) and Forest Land (Parcel III)
5. **Surrounding Land Use:** Adjacent uses include scattered rural residences along with lands managed for forest uses. To the south and west is the Olalla Valley Golf Course.

6. **Topography & Vegetation:** The property is moderately sloped and vegetated primarily with forest cover.
7. **Existing Structures:** None.
8. **Utilities:** The following utilities are available to serve the subject property:
 - a. Sewer: On-site sewage disposal
 - b. Water: On-site well
 - c. Electricity: Central Lincoln P.U.D.
9. **Development Constraints:** None identified.

B. EVALUATION OF THE CLAIM:

1. Background:

David Hilgemann, Attorney at Law, filed a Land Use Regulation Compensation Claim on behalf of property owners Matthew and Alice Gruber, Merrick Kriz and Cynthia Condon on July 28, 2005. This claim was filed with the Department of Planning and Development in accordance with the procedure established for Ballot Measure 37 claims by Lincoln County Board of Commissioners Order # 12-04-318. The subject properties are located off of Olalla Road near Olalla Valley Golf Course. The current zoning of the property is RR-5, Rural Residential (Parcels I and II) and T-C, Timber Conservation (Parcel III). The claimants assert a diminution in the value of their property resulting from the restrictions of the RR-5 and T-C zones applied after their date of acquisition, more specifically, those restrictions that preclude the development of a residential subdivision on the subject property. The claimants state that their desired remedy to the claim is the removal or modification of the T-C zone restrictions in a manner that will permit the division of the property and the establishment of one single-family dwelling on the resultant parcels.

A chain of title report submitted with the claim documents the ownership history of the properties, which is complex and will be discussed in detail later in the report.

On October 25, 2005, a public hearing was held on the subject claim for the purpose of receiving facts and evidence related to determining the validity of the claim. Notice of the hearing was provided in accordance with Board of Commissioners order #4-05-120. The claimants provided testimony in support of the claim. Written testimony in opposition to the claim was received from Dennis Bartoldus, an attorney representing Aron Rothstein and Wendy Green, who own adjoining property.

2. Measure 37 Claim Requirements:

Measure 37 provides the following criteria for establishing eligibility for the supplemental right of compensation created by the measure:

- a. **Ballot Measure 37 provides for payment of compensation or relief from specific laws for “owners” of property, which is defined in Measure 37 as the “present owner of the property, or any interest therein.”**

Claimants Matthew and Alice Gruber acquired their current interest in Parcel I in 1980 by bargain and sale deed (recorded at Book 113, page 800, Lincoln County Deed Records) and in Parcel III in 2000 by bargain and sale deed (recorded at Book 400, page 1915). Claimants Kriz and Condon acquired their interest in Parcel II in 1996 by bargain and sale deed (recorded at Book 329, page 1274). Records of the Lincoln County Assessor’s office confirm that claimants Gruber, Kriz and Condon remain the owners of the respective subject parcels.

- b. **A public entity enacts or enforces a land use regulation that restricts the use of private real property:**

The current RR-5 regulations (LCC 1.1355) at issue in the subject claim were enacted by Lincoln County by ordinance #139 on June 30, 1980. The T-C zone regulations (LCC 1.1375) at issue in the subject claim were enacted by Lincoln County in their present form by ordinance #347 in 1994. These regulations are applied to all private real property designated on the Lincoln County Comprehensive Plan and Zoning maps as being within the RR-5 or T-C zone, respectively. These regulations restrict the use of this private real property to only those uses expressly authorized in the RR-5 or T-C zone.

- c. **The land use regulation has the effect of reducing the fair market value of the property:**

The currently effective requirements of the RR-5 zone limit land divisions to parcels of not less than five acres in size. In addition, development in the RR-5 zone is further restricted by planned development limitations on clustering and limits on public facilities (e.g., water and sewer). The currently effective T-C zone provisions restrict land divisions to a minimum of eighty acres and also limit the placement of dwellings.

Stating that the currently effective land use regulations applicable to the subject property limit the development of the subject property for residential subdivision purposes, claimants assert that these regulations reduce fair market value of the property. In support of this claim, claimants have submitted an appraisal prepared by an Oregon Certified General Appraiser which establishes value for the properties “as is” and hypothetical values based on the ability to develop the property into one-acre home sites. This appraisal estimates this value difference at \$1.84 million.

It should be noted that the appraisal submitted by the claimants establishes a hypothetical “before regulation” value for the subject properties based on the assumption that a Measure 37 claim would extend back to the original date of acquisition by a family member, i.e., 1966. However, as discussed below, because, at the earliest dates of acquisition by a claimant family member, Parcels II and III were subject to zoning more restrictive than assumed by the appraisal, the county rejects as overstated the amount of value reduction asserted by claimants. Nonetheless, it appears likely that land use regulations enacted after the date of acquisition by claimants’ family in 1986 have reduced the value of Parcels II and III at least to some extent.

- d. **The land use regulation complained of is not a regulation; (a) restricting or prohibiting activities commonly and historically recognized as nuisances under common law; (b) restricting or prohibiting activities for the protection of public health and safety, such as fire and building codes, health and sanitation regulations, solid or hazardous waste regulations, and pollution control regulations; (c) required to comply with federal law; (d) restricting or prohibiting the use of a property for the purpose of selling pornography or performing nude dancing; or (e) enacted prior to the date of acquisition of the property by the owner or a family member of the owner.**

The regulations addressed by the subject claim are the restrictions on land divisions and residential development imposed by the RR-5 and T-C zones. The T-C zone was enacted to comply with Statewide Planning Goal 4, which mandates the placement of defined forestlands into zones that comply with the requirements of OAR 660, Division 6. The purpose of the T-C zone is to conserve forestlands for forest uses. The RR-5 zone was enacted to provide for low-density residential development not exceeding rural levels. Neither of these zones directly addresses common nuisances, health and safety, adult businesses or activities, nor do they have any federal nexus.

The claimants have provided documentation that the claimants’ families’ original interest in the property was acquired in 1966. However, the subject properties were subsequently transferred to ownership by corporate entities

and, in the case of Parcels II and III, into the ownership of other individual entities, before being reacquired by the claimants. For purposes of evaluating the effective dates of ownership for Measure 37 compensation purposes, the deed records of Lincoln County indicate the following dates of acquisition: Parcel I: May 28, 1980 (Book 113, Page 800). Parcel II: October 21, 1986 (Book 175, Page 1697). Parcel III: October 21, 1986 (Book 175, Page 1697). The T-C zone regulations, which are the subject of this claim, were enacted in their present form in 1994. The RR-5 zone regulations were enacted on June 30, 1980. Based on these dates, certain of the regulations giving rise to the claim were enacted after the date of acquisition by a family member of the owner.

- e. **For claims arising from land use regulations enacted prior to December 3, 2004 (the effective date of Ballot Measure 37), written demand for compensation shall be made within two years of the effective date of the act.**

The land use regulations for which compensation is sought, the T-C zone restrictions on dwellings, were enacted in their present form in 1994, prior to the effective date of Ballot Measure 37. The subject claim was filed on July 20, 2005, within two years of the December 3, 2004 effective date of Ballot Measure 37.

- f. **In lieu of compensation, the governing body may modify, remove or not apply the land use regulation or land use regulations to allow the owner to use the property for a use permitted at the time the owner acquired the property.**

The claimants have documented dates of acquisition by a family member of 1980 (Parcel I) and 1986 (Parcel II). Although Measure 37, Section 1 permits an owner to go back to the date of prior acquisition by a family member for purposes of determining just compensation, the "waiver" remedy provided for in Section 8 does not relate back to the prior date of acquisition by a family member. It applies only to the "present owner". Therefore, the transfer of ownership of the subject property to the present claimant owners establishes the date of acquisition for purposes of the waiver remedy, regardless of the fact that the prior owner was a family member.

In the case of the subject properties, the dates of acquisition for applying the waiver remedy are as follows: Claimants Matthew and Alice Gruber acquired their current interest in Parcel I in 1980 by bargain and sale deed (recorded at Book 113, page 800, Lincoln County Deed Records) and in Parcel III in 2000

by bargain and sale deed (recorded at Book 400, page 1915). Claimants Kriz and Condon acquired their interest in Parcel II in 1996 by bargain and sale deed (recorded at Book 329, page 1274).

C. Recommended Findings and Conclusions:

The director recommends for the Board's consideration the following findings and conclusions:

Findings:

1. David Hilgemann filed a Land Use Regulation Compensation claim on behalf of claimants Gruber, Condon and Kriz with the Lincoln County Department of Planning Development on July 28, 2005.
2. According to records of the Lincoln County Assessor, Alice S. Gruber is the current owner of Parcel I, Merrick Kriz and Cynthia Condon are the owners of Parcel II and Matthew and Alice Gruber are the owners of Parcel III. The claim is based on an assertion of a reduction in fair market value of real property due to the enforcement of land use regulations by Lincoln County.
3. The subject property is identified as tax lots 100 and 1300 on Lincoln County Assessor's map #10-10-33-D; tax lots 1403, 1411 and 1412 on map 10-10-32 and tax lots 101, 105 and 106 on map 10-10-33 and is taxed as real property by Lincoln County
4. The T-C zone provisions (LCC 1.1375) and RR-5 zone provisions (LCC 1.1355) applicable to the subject property are land use regulations enacted and enforced by Lincoln County, a public entity.
5. The T-C and RR-5 zoning restrict uses; specifically, the T-C zone standards, as applied to the subject property, prohibit the further division of the property and the RR-5 zone limits land divisions to parcels of a minimum size of five acres. The claimants have submitted evidence of a diminution in value caused by the land use regulation restrictions in the form of an appraisal licensed Oregon General Appraiser. The resulting appraisal states that the land use regulations that limit the subdivision and placement of dwellings on the subject property have the effect of reducing the fair market value of the subject property by \$1.84 million. This appraisal assumes a "before" regulation value based on an acquisition date of 1966. Because,

at the earliest dates of acquisition by a claimant family member, Parcels II and III were subject to zoning more restrictive than assumed by the appraisal, the county rejects as overstated the amount of value reduction asserted by claimants. Nonetheless, it appears likely that land use regulations enacted after the date of acquisition by claimants' family in 1986 have reduced the value of Parcels II and III at least to some extent.

6. According to the Lincoln County deed records, family members of the claimants acquired an interest in the subject property in 1980 (Parcel I) and 1986 (Parcels II and III). Claimant Alice S. Gruber acquired her current interest in Parcel I on May 28, 1980; claimants Kriz and Condon acquired their interest in Parcel II on December 10, 1996, and claimants Matthew and Alice Gruber acquired their current interest in Parcel III on April 18, 2000.
7. The RR-5 zone regulations applicable to Parcel I were enacted by Lincoln County on June 30, 1980, after the date of acquisition of the current claimant owner.
8. The RR-5 zone restrictions applicable to Parcel II were enacted on June 30, 1980, after the date of acquisition by the claimants' family member, but before the date of acquisition by the claimant owners.
9. The currently effective T-C zone regulations applicable to Parcel III were enacted by Lincoln County in 1994 (Ordinance # 347), after the date of acquisition by the claimants' family member, but before the date of acquisition by the claimant owners.
10. The T-C zone and RR-5 restrictions are not encompassed within the definition of regulations excluded from compensation requirements, as set forth in Subsection (3) of Ballot Measure 37.
11. The subject claim was filed on July 28, 2005, which is less than two years from the December 3, 2004 effective date of Ballot Measure 37.

Conclusions:

Based on the above findings of fact, the Board reaches the following conclusions:

1. The subject claim for compensation for reduction in value of private real property from the enforcement of land use regulations was timely filed on behalf of the owners, Matthew

and Alice Gruber and Merrick Kriz and Cynthia Condon, pursuant to Subsection (5) of Ballot Measure 37.

2. The land use regulations which are the subject of the claim, specifically the restrictions on land divisions imposed by LCC 1.1375 (T-C zone) and LCC 1.1355 (RR-5 zone), are land use regulations enacted by Lincoln County prior to the effective date of Ballot Measure 37; they restrict the use of the subject private real property; and they have the effect of reducing the fair market value of the property.
3. The owners of the property, Matthew and Alice Gruber and Merrick Kriz and Cynthia Condon are therefore entitled to the payment of just compensation equal to the reduction in the fair market value of the subject property caused by the enforcement of the T-C zone and RR-5 zone restrictions or, in lieu of the payment of just compensation, the Board, as the governing body responsible for the enactment of these restrictions, may modify, remove or not apply these restrictions in order to permit the present owners to use the property for a use permitted at the time of their acquisition.

D. Recommended Decision

Based on the preceding findings and conclusions that the subject claim is valid, resolution of the claim requires either the payment of just compensation, or the modification, removal or non-application of land use regulations in a manner which will permit the present owners to use the property as allowed at the time of acquisition. The selection of the remedy is at the discretion of the Board. Staff recommends that the Board choose the non-application of land use regulations as the appropriate resolution for this claim. Specifically, staff recommends the following:

Parcel I: Not applying any provisions of Lincoln County Code Chapter 1 enacted since May 28, 1980, which place restrictions on uses. This would, in accordance with the requirements of Subsection (8) of Ballot Measure 37, allow the owner to use the property for a use permitted at the time of the owner's acquisition.

Parcel II: Not applying any provisions of Lincoln County Code Chapter 1 enacted since December 10, 1996, which place restrictions on uses. This would, in accordance with the requirements of Subsection (8) of Ballot Measure 37, allow the owners to use the property for a use permitted at the time of the owners' acquisition.

Based on this date of acquisition, staff acknowledges the recommended relief will not permit the claimants to use the subject property in the manner set forth in their claim.

Parcel III: Not applying any provisions of Lincoln County Code Chapter 1 enacted since April 18, 2000, which place restrictions on uses. This would, in accordance with the requirements of Subsection (8) of Ballot Measure 37, allow the owners to use the property for a use permitted at the time of the owners' acquisition.

Based on this date of acquisition, staff acknowledges that the recommended relief will not permit the claimants to use the subject property in the manner set forth in their claim.

If the Board concurs with the above recommendation, you may direct staff to prepare an order for your adoption implementing this recommendation. This order will incorporate the above recited findings of fact and conclusions, and the appropriate directives for the application of the land use regulations in effect on the date of acquisition by the current owners, subject to applicable public health and safety regulations.

Respectfully submitted,

Matt Spangler
Director