

1 **BEFORE THE BOARD OF COMMISSIONERS**
2 **FOR LINCOLN COUNTY, OREGON**

3
4 In the Matter of)
5)
6 *The Ballot Measure 37 Claim of*) **ORDER NO. 3-06-74**
7 *Steve Buermann*)
8 *File No. 24-LURCC-05*)
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11 WHEREAS on November 2, 2004, the voters of the State of Oregon approved Ballot
12 Measure 37. The Measure amends ORS Chapter 197 to require, under certain circumstances,
13 actions to address claims of owners of real property if government land use regulations reduce fair
14 market property value; and

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

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

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

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

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

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41 WHEREAS on September 8, 2005, Steven Buermann, filed a Measure 37 claim seeking
42 compensation or the modification, removal or non-application of land use regulations (“waiver”)
43 that regulate minimum parcel size requirements and the restrictions on dwellings in the T-C zone

1 (LCC 1.1375). A “waiver” would allow the claimant to divide the subject property into two
2 parcels as proposed and to establish one other single-family dwelling on the resultant vacant
3 parcel. The property is 21.01 acres in size, is located at 821 Sams Creek Road and is identified as
4 tax lot 501 on Lincoln County Assessor’s Map 10-9. County records and the filed claim are found
5 in Lincoln County Planning Department File No. 24-LURCC-05 and by this reference are
6 incorporated into this Order as if fully set forth; and

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8 WHEREAS after notice to surrounding property owners in accordance with Order #4-05-
9 120, a hearing was held on December 8, 2005, on the claim before the Planning Director as
10 Hearings Officer for the purpose of receiving facts and evidence related to determining the
11 validity of the claim. The claimant’s representative provided testimony in support of the claim.
12 There was no testimony in opposition to the claim; and

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14 WHEREAS the Planning Director has issued his Department’s Staff Report and
15 Recommendation that is attached to this order as Exhibit “A” and by this reference incorporated
16 herein. That report finds and concludes that the claim when submitted was valid and recommends
17 that the Board, lacking funds for compensation, in the alternative modify, remove or not apply the
18 subject land use regulations: staff recommends that the Board direct that the minimum parcel size
19 requirements and the restrictions on dwellings in the T-C zone not be applied to the subject
20 property. This would allow the claimant to divide the subject property into two parcels as
21 proposed and to establish one other single-family dwelling on the resultant vacant parcel. As the
22 zoning regulations on the subject property allowed five-acre divisions at the time of the claimant’s
23 acquisition of the subject property in 1979, the allowance to partition the subject property and
24 establish a dwelling on the resultant parcel would, in accordance with the requirements of
25 Subsection (8) of Ballot Measure 37, allow the owner to use the property for a use permitted at the
26 time of the owner’s acquisition of the subject property in 1979; and

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28 WHEREAS the Board has considered the report and recommendations of the Planning
29 Director and County Counsel, including the implications known at this time concerning
30 ambiguous provisions in Measure 37 which are and will continue to be subject to judicial
31 clarification for the foreseeable future. Given that status, the Board desires to proceed cautiously
32 with processing this Measure 37 claim. Therefore, the Board will decide this Measure 37 claim
33 after placing the claimant on notice of possible future court decisions and interpretations; and

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35 WHEREAS based on what is known at this time, the Board finds it is in the public interest,
36 due to the lack of resources to pay compensation, to modify, remove or choose not to apply the
37 challenged land use regulation to the subject property and issue the “waiver” to claimant;

38
39 NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

- 40
41 1. Claimant Steven Buermann is placed on notice that Oregon courts continue to interpret
42 provisions in Measure 37 which may change the way claims are treated. Claimant proceeds in
43 this matter knowing that any action taken by the Lincoln County Board of County
Commissioners could be null and void if a court of competent jurisdiction interprets Measure 37

1 in any fashion which alters the Board's approval. Lincoln County does not waive any rights or
2 remedies under law by granting a "waiver" under the law.

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4 2. The Measure 37 claim of Steven Buermann, Lincoln County Case File No. 24-LURCC-
5 05, was a valid claim when filed on September 8, 2005. The Board of Commissioners declines
6 to pay just compensation for the claim. In lieu of compensation, Lincoln County Code Section
7 LCC 1.1375 (TC Zone) is modified, removed or not applied for Steven Buermann against the
8 subject property to the following effect:

- 9
- 10 • The non-application of regulations would be limited to the minimum parcel size
11 requirements and restrictions on dwellings provided for in LCC 1.1375 in order to
12 permit the creation of one additional land parcel and the placement of one single
13 family residence on the resultant parcel. All other provisions of the Lincoln County
14 Code would continue to apply.
 - 15 • Establishment of an additional land parcel and dwelling on the subject property
16 would be subject to all applicable public health and safety regulations, including
17 but not limited to land division procedures, building codes, on-site sewage disposal
18 rules and requirements, flood hazard area regulations, and county road approach
19 permit requirements.

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

29
30 4. This "waiver" provision is void if the property owner or property owner's successors
31 are compensated by another governmental agency, including the State, for a reduction in value
32 resulting from the same or similar land use regulations on the subject property.

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

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38 6. Transferability of the "waiver" granted by the County under this decision is unknown
39 under the current status of Measure 37. Transferability of the "waiver" is allowed to the extent
40 permitted by law. Granting of this "waiver" does not commit the County to issuance of
41 development or building permits, if those actions are not allowed under law.
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1 7. This Order be recorded in the Lincoln County Deed Records maintained by the Lincoln
2 County Clerk without payment of recording fees.

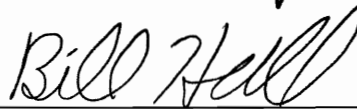
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4 8. Copies of this Order be provided to the Planning Director, County Counsel, claimant's
5 representative, and claimant.

DATED this 1st day of March, 2006.

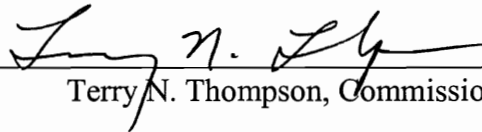
LINCOLN COUNTY BOARD OF COMMISSIONERS



Don Lindly, Chair



Bill Hall, Commissioner



Terry N. Thompson, Commissioner

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