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BEFORE THE BOARD OF COMMISSIONERS
FOR LINCOLN COUNTY, OREGON

In the Matter of)
)
The Ballot Measure 37 Claim of) **ORDER NO. 3-06-75**
David E. Peterson)
File No. 25-LURCC-05)

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 September 16, 2005, David E. Peterson, filed a Measure 37 claim seeking compensation or the modification, removal or non-application of land use regulations (“waiver”) that establish an 80-acre minimum parcel size for land divisions and restrict the establishment of

1 additional single family dwellings in the A-C (Agricultural Conservation) Zone (LCC 1.1373). A
2 “waiver” would allow the claimant to divide the subject property into six parcels as proposed and
3 to establish one single-family dwelling on each of the resultant parcels. The property is 55.51
4 acres in size, is located at 1404 South Beaver Creek Road and is identified as tax lot 10404 on
5 Lincoln County Assessor's Map 12-11. County records and the filed claim are found in Lincoln
6 County Planning Department File No. 25-LURCC-05 and by this reference are incorporated into
7 this Order as if fully set forth; and

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

14
15 WHEREAS the Planning Director has issued his Department’s Staff Report and
16 Recommendation that is attached to this order as Exhibit “A” and by this reference incorporated
17 herein. That report finds and concludes that the claim when submitted was valid and recommends
18 that the Board, lacking funds for compensation, in the alternative modify, remove or not apply the
19 subject land use regulations: staff recommends that the Board direct that the minimum parcel size
20 requirements and the restrictions on dwellings in the A-C zone not be applied to the subject
21 property. This would allow the claimant to divide the subject property into six parcels as proposed
22 and to establish one single-family dwelling on each of the resultant parcels. As there were no
23 zoning regulations in place at the time of the claimant’s acquisition of the subject property in
24 1973, the allowance to partition the subject property and establish dwellings on the resultant
25 parcels would, in accordance with the requirements of Subsection (8) of Ballot Measure 37, allow
26 the owner to use the property for a use permitted at the time of the owner’s acquisition of the
27 subject property in 1973; and

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

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

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

41 1. Claimant David E. Peterson 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

1 Commissioners could be null and void if a court of competent jurisdiction interprets Measure 37
2 in any fashion which alters the Board's approval. Lincoln County does not waive any rights or
3 remedies under law by granting a "waiver" under the law.

4
5 2. The Measure 37 claim of David E. Peterson, Lincoln County Case File No. 25-LURCC-
6 05, was a valid claim when filed on September 16, 2005. The Board of Commissioners declines
7 to pay just compensation for the claim. In lieu of compensation, Lincoln County Code Section
8 LCC 1.1373 (A-C Agricultural Conservation Zone) is modified, removed or not applied for
9 David E. Peterson against the subject property to the following effect:

- 10
11 • The non-application of regulations would be limited to the minimum parcel size
12 requirements and restrictions on dwellings provided for in LCC 1.1373 in order to permit
13 the creation of up to six additional land parcels and the placement of one single-family
14 residence on each resultant parcel. All other provisions of the Lincoln County Code would
15 continue to apply.
- 16 • Establishment of additional land parcels and dwellings on the subject property would be
17 subject to all applicable public health and safety regulations, including but not limited to
18 land division procedures, building codes, on-site sewage disposal rules and requirements,
19 flood hazard area regulations, and county road approach 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.

33
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.

37
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.
42

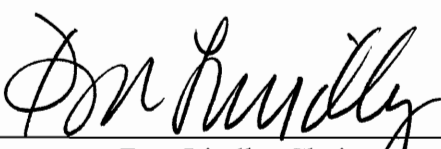
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7. This Order be recorded in the Lincoln County Deed Records maintained by the Lincoln County Clerk without payment of recording fees.

8. Copies of this Order be provided to the Planning Director, County Counsel, claimant's agent, 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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